UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO.:

ADAM DRISIN,

Plaintiff,

vs.

THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES; MARK B. ROSENBERG, Individually and in his capacity as President of Florida International University; SHIRLYON McWHORTER, Individually and in her capacity as Title IX Coordinator and Director of The Office of Equal Opportunity Programs and Diversity; KENNETH FURTON, Individually and in his capacity as Provost, Executive Vice President & Chief Operating Officer; BRIAN SCHRINER, Individually and in his capacity as Dean, College of Architecture + The Arts; JAFFUS HARDRICK, Individually and in his capacity as Vice President for Human Resources; ROBERT JAROSS, Individually and in his capacity as Director of Student Media; and LARRY LUNSFORD, Individually and in his capacity as Vice President for Student Affairs,

Defendants.
_____/

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, ADAM DRISIN, by and through undersigned counsel, sues the above-captioned Defendants, and states:

THE NATURE OF THE CASE

1. Plaintiff ADAM DRISIN ("Drisin") was an esteemed tenured professor and a Dean of Architecture at Florida International University. Andrea Rivera ("Rivera"), a graduate student

who had no previous association with Drisin but was known as a sexual predator amongst her peers, sexually assaulted Drisin in his sleep. No sooner than he became conscious of what was happening, Drisin put a resolute stop to Rivera's conduct and admonished Rivera regarding the impropriety of her conduct. Rivera then maliciously filed a frivolous complaint with Florida International University in which she fabricated (or "confabulated," as the case may be)[1], allegations of sexual battery against Drisin. At the conclusion of the investigation conducted by Florida International University's Office of Equal Opportunity Programs & Diversity under the authority of Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*, Drisin's employment was wrongfully terminated upon a finding of sexual misconduct. Drisin's termination, together with defamatory comments about Drisin, including both oral dissemination and publication of defamatory information by FIU officers, has had a catastrophic and stigmatizing effect on Drisin's reputation and career, and has caused him to become a pariah amongst his peers. In this lawsuit, Drisin asserts that, in the handling of the Rivera complaint, the corporate Defendant has unlawfully violated Drisin's statutory civil rights arising under Title IX of the Education Act Amendments of 1972, 20 U.S.C. §1681, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e, *et seq.* ("Title VII"), as amended by the Civil Rights Act of 1991; individual defendants have unlawfully deprived Drisin of civil rights arising under 42 U.S.C. §1983 for the violation of Drisin's constitutional rights to procedural due process (deprivation of property and liberty), gender-based equal protection, and his statutory right under Title IX to protection against sexual harassment. In addition, Drisin asserts a supplemental state law cause of action against individual Defendants for defamation. Drisin seeks monetary damages for pecuniary and non-pecuniary

[1] Drisin does not purport to allege a psychiatric assessment for Rivera's inexplicable conduct or to speculate as to whether Rivera reasonably believed in her fabricated version of the Subject Incident.

injury, punitive damages, and attorneys' fees and costs, as redress for the tortious and discriminatory acts of the corporate and individual Defendants.

THE PARTIES

2. Plaintiff, ADAM DRISIN, is an individual residing in Broward County, Florida, and is otherwise *sui juris*.

3. Defendant, THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES ("FIU"), is a body corporate organized under Florida law with all the powers to conduct the affairs of Florida International University, an institution of higher learning, including the power to sue and be sued, pursuant to Fla. Stat. §1001.72(1) (2003). FIU's largest campus, the Modesto A. Maidique campus, is located in University Park, Miami-Dade County, Florida and maintains an office located at 11200 S.W. 8th Street, Miami, Florida 33199.

4. FIU is a recipient of federal funding in various forms, including but not limited to, grants and federal student loans provided to FIU for its students or given to FIU directly by the federal government.

5. FIU has 501 or more employees in each of 20 or more calendar weeks in the current or preceding calendar year.

6. Defendant, MARK B. ROSENBERG ("Rosenberg"), has at all times material served as President of FIU. Rosenberg is otherwise *sui juris* and subject to personal jurisdiction in this judicial district.

7. Defendant, SHIRLYON McWHORTER ("McWhorter"), has at all times material served as FIU's Title IX Coordinator and Director of The Office of Equal Opportunity Programs and Diversity. McWhorter is otherwise *sui juris* and subject to personal jurisdiction in this judicial district.

8. Defendant, KENNETH FURTON ("Furton"), has at all times material served as FIU's Provost, Executive Vice President & Chief Operating Officer. Furton is otherwise *sui juris* and subject to personal jurisdiction in this judicial district.

9. Defendant, BRIAN SCHRINER ("Schriner"), has at all times material served as FIU's Dean of the College of Architecture + The Arts. Schriner is otherwise *sui juris* and subject to personal jurisdiction in this judicial district.

10. Defendant, JAFFUS HARDRICK ("Hardrick"), has at all times material served as FIU's Vice President for Human Resources. Hardrick is otherwise *sui juris* and subject to personal jurisdiction in this judicial district.

11. Defendant, ROBERT JAROSS ("Jaross") has at all times material served as FIU's Director of Student Media. Jaross is otherwise *sui juris* and subject to personal jurisdiction in this jurisdiction.

12. Defendant, LARRY LUNSFORD ("Lunsford") has at all times material served as FIU's Vice President for Student Affairs. Lunsford is otherwise *sui juris* and subject to personal jurisdiction in this judicial district.

JURISDICTION

13. This Court has original federal subject matter jurisdiction pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343(a)(3), 20 U.S.C. §1681-1683 (Title IX)[2]; and 42 U.S.C. §2000e-5(f)(3) (Title VII), because Drisin pleads one or more federal questions and alleges violations and deprivation of his equal rights under color of State law.

14. This Court also has jurisdiction over Drisin's supplemental state law claims in accordance with 28 U.S.C. §1367.

[2] *See* Cannon v. University of Chicago, 441 U.S. 677 (1979).

15. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(b)(1) and (2) because the Defendants reside in this judicial district and because the events or omissions giving rise to the claims asserted occurred in this judicial district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Drisin has exhausted all available required administrative remedies for violations for claims arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.*

17. Drisin timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"). The EEOC issued Drisin a Notice of Right to Sue which was dated August 22, 2016 and received by Drisin on August 30, 2016, thereby giving Drisin a private right of action in this United States District Court under Title VII. A true and correct copy of the Notice of Right to Sue is attached as Exhibit "1."

18. This lawsuit is timely brought pursuant to the terms of the Notice of Right to Sue and Section 717(c) of Title VII, 42 U.S.C. §2000e-16.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

19. Drisin was employed by FIU in August 2004 as a tenured Associate Professor and Director of the architecture program.

20. In April 2011, Drisin was promoted to Associate Dean of the College of Architecture + The Arts, and in January 2013, Drisin was promoted to Senior Associate Dean of the College of Architecture + The Arts.

21. At all times material, Drisin performed his work as Associate Professor, Director of the architecture program, Associate Dean of the College of Architecture + The Arts, and Senior

Dean of the College of Architecture – The Arts, in an excellent, professional and competent manner.

22. During his tenure at FIU, Drisin was principal investigator, co-principal investigator, or team member on over eleven million dollars ($11,000,000) in grant funding.

23. As a tenured professor at FIU, Drisin could only be terminated for just cause, which is defined as "incompetence or misconduct" by the Collective Bargaining Agreement between The Florida International University Board of Trustees and The United Faculty of Florida (the "CBA").

24. The CBA provides that "[a]n employee's activities which fall outside the scope of employment shall constitute misconduct only if such activities adversely affect the legitimate interests of the University or Board."

25. As a tenured professor who could only be terminated for just cause, Drisin had a constitutionally protectable property interest in his continuing employment which entitled him to procedural due process of law both prior to and subsequent to his termination.

26. Drisin also had a constitutionally protectable liberty interest in his reputation.

27. At all times material, the individual Defendants acted under color of state law and in furtherance and fulfillment of their official duties as employees or agents of FIU, and their conduct constituted official action by FIU.

28. In 2004-2005, during his first year as an associate professor and director of the architecture program at FIU, Drisin inaugurated the Genoa Study Abroad Program, a permanent semester-long study abroad program for architectural graduate students.

29. Typically, between 2005 and 2014, Drisin would travel to Genoa once during the semester to participate as a professor in the academic portion of the program.

30. During the fall semester 2014, Drisin and other senior administrators were inundated with e-mail from the Genoa Study Abroad Program's student participants expressing concern about strained relations between the graduate students and the Director of the Genoa Study Abroad Program. Specifically, students were concerned that their final projects would be judged overly harshly by the Director because of the ongoing problems between the Director and the students.

31. In response to the e-mails, certain senior administrators, including Drisin, Schriner, Laura Boudon, (Director of the FIU Office of Study Abroad), and Jason Chandler (Chair of the College of Architecture – The Arts), collaborated and determined that Drisin would make an additional trip to Genoa to serve as a supplemental juror in the evaluation of the students' final projects.

The Events of December 12-13, 2014 (the "Subject Incident)

32. On or about December 11, 2014, Drisin flew to Genoa and arrived the following morning. As planned, Drisin served as a juror for the graduate students' final projects on Friday, December 12, 2014.

33. A faculty-student dinner was arranged for the evening of December 12, 2014 to mark the conclusion of FIU's semester abroad program in Genoa, Italy. The dinner was attended by Drisin as well as the majority of faculty members and graduate student participants in the Genoa semester abroad program.

34. Following dinner, the majority of students and some of the faculty, including Drisin, went to a local osteria where everyone continued to socialize.

35. Upon leaving the osteria, five female students directed Drisin to his short-term rental apartment. The students agreed to direct Drisin to his apartment because it was on the way

to the apartment which served as their residence for the semester, a 2-story apartment that was shared by seven students as "roommates."

36. When Drisin arrived at his apartment, two of the students, Rivera and Larisa Sherbakova ("Sherbakova"), asked if she could enter the apartment to use the bathroom. Drisin agreed. Accordingly, three of the students, Rivera, Sherbakova and Lorena Behamon ("Behamon") entered Drisin's apartment to use the bathroom, and the other two students returned directly to their residence.

37. Once in the apartment, Drisin led the women to one bathroom and he used the other. When he came out of the bathroom, he sat on the right side of the bed. The three women took turns using the bathroom. After using the bathroom, Sherbakova sat on the left side of the bed. Rivera sat on the floor to the right side of the bed. Behamon sat at the foot of the bed.

38. The students decided to wait and chat in Drisin's apartment because the weather had turned inclement, and it began to rain heavily.

39. A professionally-oriented conversation ensued in which Rivera was the cynosure. Rivera was loquacious and spoke about how photography was her first love and how she was contemplating the comparative merits of a career in architecture versus a career in photography. Drisin was polite and professional in his responses, although it was Rivera who did most of the talking.

40. Sherbakova and Behamon participated in the beginning of the conversation, but eventually lost interest. Behamon first fell asleep; then, Sherbakova fell asleep.

41. Finally, Drisin, too, exhausted from his overseas travel earlier that same day, fell asleep.

42. Shortly thereafter, Sherbakova was awakened by Rivera's knee jabbing into Sherbakova's side, and from that moment became a percipient eyewitness to this incident.

43. Sherbakova observed that Drisin was clothed and fast asleep, and Rivera was naked on top of Drisin, with her hand fiddling in the area of Drisin's pants fly. Sherbakova heard Rivera saying to Drisin, repetitively, "I want to fuck you, and I want you to fuck me."

44. Sherbakova jumped off the bed and stood up on the floor, and asked Rivera, "What are you doing? Are you enjoying yourself"? Rivera answered, "yes."

45. Drisin woke up groggily to find Rivera naked on top of him, as Rivera was telling him, "I want to fuck you and I want you to fuck me" and Sherbakova was standing on the floor asking Rivera if she was enjoying herself."

46. At the very instant that Drisin became fully cognizant that he was subjected to Rivera's act of non-consensual sexual aggression, he resolutely pushed Rivera off him and told her, "you can't be doing this. We can't be doing this."

47. Prior to this incident, Drisin had no previous relationship with Rivera. Drisin first met Rivera on December 12, 2014 on the way home from the osteria.

48. Inasmuch as this incident was so unanticipated and passed so quickly, wresting Drisin out of a deep-fatigued slumber, Drisin has no personal knowledge as to whether Rivera succeeded in having sexual intercourse with him. Likewise, Sherbakova has provided in sworn testimony that the whole incident passed so quickly and that she was so startled by Rivera's conduct that she never actually observed whether Rivera succeeded in either exposing Drisin's penis or in consummating sexual intercourse.

49. Later during the morning of December 13, 2014, when Rivera returned to her apartment, Sherbakova engaged Rivera in a conversation about what had occurred at Drisin's

apartment. At first, Rivera said that she did not remember anything. Sherbakova, assuming that Rivera remembered everything because Rivera responded to her when she asked if she was enjoying herself, asked incredulously, "You don't remember anything? I saw you fucking Drisin." Sherbakova used the term "fucking Drisin" despite the fact that she was not in fact certain whether Rivera had succeeded in having sexual intercourse with Drisin. Once Sherbakova said this, Rivera then acknowledged her behavior, became remorseful, and began to cry, reflecting openly that she feared she was "becoming her father," whom she described as having sexually compulsive behavior, including illicit affairs with friends of her mother.

50. Rivera also told Sherbakova that she "ruins everything with sex" and that she will never have sex again until she loves somebody because what happened was so embarrassing. Rivera said to Sherbakova, "I can't keep doing this," and "I can't look at myself in the mirror."

51. The conversation was joined by Behamon and Jennifer Sandoval, one of the other "roommates" in the apartment. Rivera said to Behamon that Rivera "had never done anything like this before" and that she was ashamed. Behamon told Rivera that was not true, because Rivera bragged frequently about previous sexual relationships with graduate assistants and an illicit affair with the Dean of Architecture at the University of Puerto Rico, which Rivera attended as an undergraduate.

52. Sherbakova likewise had personal knowledge that Rivera's actions were consistent with an entrenched pattern of sexually predatory behavior, which Rivera confided to her classmates throughout the semester abroad, and which Sherbakova had the opportunity to personally observe. For example, Sherbakova observed Rivera looking at herself in the mirror before going out at night and saying to her roommates, "I'm such a slut, I just love going out and fucking men and tossing them out in the morning. No, I'm not a slut, I'm just a liberated woman."

Accordingly, Sherbakova attempted to downplay the incident by also reminding Rivera, without being judgmental, that there was no reason for her to be so upset, because she has also identified herself as a woman who loves to have sex with many men.

53. As it became more and more apparent to Rivera that her sexual aggression towards Drisin had been witnessed by Sherbakova, Rivera began to backtrack and suggest that she was not sure what had actually happened, because she was certain that she "would not ever have done it" in front of others." At that moment, Rivera seemed to be speaking only her embarrassment at having been witnessed. Her implication was that she would not have done what she did if she had known that Sherbakova would witness it, and not that because having sex in front of others is something that she "would not have done," the fact that she did do it demonstrated that she had no recollection of what happened. Yet, Rivera continued to act puzzled as if she were torn between wanting to admit responsibility, embarrassment and shame on the one hand, and wanting to claim "no awareness" of what happened on the other hand.

54. On the day after Rivera's sexually predatory assault on Drisin (December 14, 2014), Rivera called FIU via Skype and, inexplicably, reported that Drisin had non-consensual sexual intercourse with her. FIU has characterized the December 14, 2014 report from Rivera as an "informal complaint."

55. Notwithstanding Rivera's allegation charging Drisin with having non-consensual sexual intercourse, Rivera has maintained at all times material, including all times throughout FIU's investigation of Rivera's complaint, that she has no memory whatsoever of the occurrence, and Rivera has never affirmatively articulated any *actus rea* committed by Drisin.

56. In contrast, two percipient witnesses (Drisin and Sherbakova) do have personal knowledge and memory of the occurrence; thus, in light of Rivera's purported lack of memory, it

is uncontroverted that Rivera was a sexual aggressor and Drisin was a victim of an unwanted sexual assault.

Title IX of the Education Amendments of 1972

57. On June 23, 1972, President Richard M. Nixon signed Title IX of the Education Amendments of 1972, 20 U.S.C. §1981 *et seq.* into law. A comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity, the principal objective of Title IX is to avoid the use of federal money to support sex discrimination in education programs and to provide individual citizens effective protection against those practices.

58. The statute provides, in relevant part, that: "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

59. Title IX applies, with a few specific exceptions, to all aspects of federally funded education programs or activities, including educational institutions such as colleges, universities, and elementary and secondary schools, as well as any education or training program operated by a recipient of federal financial assistance.

60. The Revised Sexual Harassment Guidance dated January 19, 2001 (the "2001 Guidance" issued by the Office of Civil Rights of the United States Department of Education ("OCR") required schools to "adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex." (Emphasis added).[3]

[3] *See generally* U.S. Dep't of Education, Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties – Title IX* (2001) at 19-21.

61. The 2001 Guidance further instructed that 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…"[4]

62. To ensure the requisite level of due process, the 2001 Guidance identified the minimum level of procedures that must be in place, including:

- "Notice . . . of the procedure, including where complaints may be filed";
- "Application of the procedure to complaints alleging [sexual harassment]...";
- "Adequate, reliable and impartial investigation of complaints, including the opportunity to present witnesses and other evidence";
- "Designated and reasonably prompt timeframes for the major stages of the complaint process"; and
- "Notice to the parties of the outcome of the complaint…."[5]

63. Further, the 2001 Guidance instructed that a school 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."[6]

64. The 2001 Guidelines provided universities with wide latitude in adopting policies and procedures that best fit the particular institution, noting, "[p]rocedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience."

[4] Id. at 22.

[5] Id. at 20.

[6] Id. at 21.

65. On April 4, 2011, the OCR issued a letter known as the "Dear Colleague Letter" ("DCL") to parties affected by Title IX which was designated by the OCR to constitute a "guidance" document that interpreted the requirements of Title IX.

66. The DCL threatened to impose severe penalties, including rescission of federal funding, upon education institutions who were non-compliant in their enforcement of Title VII pursuant to the guidelines expressed in the DCL.

67. The DCL aggressively dictated how universities handle sexual assault and sexual harassment on campus, by setting forth specific requirements that universities must adopt and utilize, all of which encouraged universities to vitiate due process rights of students and employees accused of sexual assault or harassment. Specifically, for example, the DCL called for an exceedingly low "preponderance of the evidence" burden of proof and allowed accusers to appeal non-guilty findings (thus permitting a form of double jeopardy).

68. During his tenure, Drisin was FIU's College of Architecture + The Arts' administrator assigned to work with McWhorter, Title IX's Coordinator, to promote policies and procedures that were compliant with the guidance established by the United States Department of Education Office for Civil Rights ("OCR") for the enforcement of Title IX by recipients of federal education funding.

69. As faculty point person for the promotion of Title IX's goals and objectives, Drisin acquired personal knowledge that after the issuance of the DCL, there was political pressure on FIU to enforce Title IX claims of sexual harassment aggressively. At FIU this translated into a biased focus on the female gender as the expected victim and the male gender as expected perpetrator. This pressure was amplified in the wake of national media attention to sexual harassment claims against university male athletes and male athletic programs. In a desire to

disassociate itself from such adverse publicity, for example, FIU "parted ways" with its renowned basketball coach Isaiah Thomas when he was charged with sexual harassment during his prior role as an executive for the New York Knicks.

70. Through his involvement with FIU's implementation of Title IX's goals and objectives, Drisin acquired personal knowledge that McWhorter regarded her role as Title IX Coordinator specifically as a strong advocate for women on campus and in the community and as an enforcer of sexual harassment complaints against the male gender, and as an advocate of female victims. Specifically, Drisin participated in presentations to students by McWhorter in which McWhorter highlighted the female gender as the expected victim of harassment on campus, notwithstanding that all promulgated Title IX guidelines emphasize that all persons are protected by Title IX, irrespective of gender, sexual orientation or gender identity.

71. FIU has, in its practices related to sexual harassment, consistently and improperly, defined it as an issue that befalls women. Despite ample evidence to suggest that both men and women are victims of sexual harassment, FIU's initiatives and events promoting Title IX awareness focused exclusively on harassment of women by men. At the direction of McWhorter and through The Office on Equal Opportunity Programs and Diversity, FIU presented numerous public initiatives and events which one-sidedly depicted males as perpetrators of sexual assault and women as victims. Examples of this include FIU's Slut Walk, FIU's Take Back the Night, and FIU's Clothesline Project. And, FIU's sponsored a sexual harassment educational event titled "It's on Us," in which activist Tony Porter asserted that breaking out of the "man box," or the masculine, sex-driven gender roles assigned to men in American society, is required in order to end sexual harassment.

72. McWhorter has, in her own public Twitter account, demonstrated gender bias by falsely and hyperbolically characterizing the incidents of harassment and rape perpetrated against females. Specifically, McWhorter has "tweeted" that "the average girl is raped 7-20 times a day five days a week. It is not voluntary." This disturbing, incorrect and misleading metric depicts the "average" female as a victim and the average male as a victimizer.

73. The distortion inherent in McWhorter's promulgated belief, which she has promulgated through social media, is contradicted by a review of any actual survey. For example, RAINN (Rape, Abuse & Incest National Network), a national anti-sexual violence organization, reports that among graduate students, 8.8% of females and 2.2% of males experience rape or sexual assault through physical force, violence or incapacitation.[7]

74. The wide disparity between a statistical survey which reports that fewer than 1 in 11 females experience rape as a graduate student and the averment that "the average girl is raped 7-20 times a day five days a week" is remarkable and constitutes circumstantial evidence that McWhorter is challenged in her ability to maintain gender impartiality. That is, it is difficult to imagine how someone who presents such a falsely hostile environment in which women are typically victimized, could be able to suspend such egregious preconceptions and serve as Title IX Coordinator with impartiality.

75. Upon information and belief, FIU has no reported incidents of male complainants against female students for sexual misconduct which have resulted in any female (employee or student) being disciplined.

[7] Source: David Cantor, Bonnie Fisher, Susan Chibnall, Reanna Townsend, et. al., Association of American Universities (AAU), *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct* (September 21, 2015).

76. Upon information and belief, FIU is knowledgeable of the fact that complaints of sexual misconduct are disproportionately lodged by females against males.

77. Upon information and belief, once a male student or employee is accused of sexual misconduct at FIU, the investigative reports are slanted and deliberately drafted against the accused male.

78. FIU vests the Title IX Coordinator with unwarranted authority. Not only is the Title IX Coordinator given sole discretion to determine how to conduct the investigation into a sexual harassment complaint, to decide what information is necessary and relevant to include in the investigative report, and to selectively present the facts that she deems relevant, she is also permitted to offer a subjective assessment as to the evidence and credibility of the parties, and to provide a conclusion of findings which form the sole basis upon which disciplinary action is determined. Given that no meaningful independent investigation or interviews are conducted by the Vice President for Human Resources, to whom appeal rights are afforded to the accused, the Vice President for Human Resources relies entirely on the Report prepared by the Title IX Coordinator, and is unlikely to question or disturb the findings of a colleague. As such, FIU's policies lacked the requisite level of checks and balances to ensure the administration of an objective investigation and adjudication.

The Putative Investigation

79. In furtherance of the goals and objectives of Title IX, FIU has implemented an internal Human Resource Policy on Sexual Harassment/Educational Equity Grievance Procedure which provides, *inter alia*, in pertinent part:

Informal Complaints

> a. Any person who believes that he or she has been the subject of sexual harassment may elect to file an informal complaint with the Office of Equal Opportunity Programs. . . .
>
> c. In the case of a student complaint against a faculty member, within ten (10) University business days of the beginning of class of the following semester.
>
> d. Thirty (30) days shall be allowed to resolve an informal complaint.
>
> Formal Complaints
>
> c. In the case of a student complaint against a faculty member, the complaint must be made within then (10) University business days of the beginning of class of the following semester.
>
> d. Where an informal complaint has already been filed, a formal complaint shall be filed within one hundred (100) days of the alleged act(s).
>
> e. Thirty (30) days shall be allowed to resolve the complaint.

80. In addition, FIU has adopted regulations in compliance with its Title IX obligations which are contained in FIU Regulation No. 105 (April 2015), entitled "REGULATION ON PROHIBITED DISCRIMINATION, HARASSMENT AND RELATED MISCONDUCT INCLUDING SEXUAL AND GENDER-BASED HARASSMENT, SEXUAL VIOLENCE, DATING VIOLENCE, DOMESTIC VIOLENCE AND STALKING." ("FIU-105").

81. In its "Policy Statement," FIU-105 expressly "affirms its commitment to ensure **that each member of the University community** shall be permitted to work or study in an environment free from any form of illegal discrimination based on race, color, religion, age, disability, sex (including sexual misconduct), sexual orientation, gender identity or expression, national origin, marital status, veteran status, and/or any other legally protected status." (Emphasis added).

82. FIU-105 expressly governs the conduct of "University students and employees, including faculty and staff."

83. FIU-105 also applies to "all Prohibited Conduct that occurs on campus [as well as] Prohibited Conduct that occurs off campus, including . . . if: the conduct occurred in the context of an employment or education program or activity of the University, had continuing adverse effects on campus, or had continuing adverse effects in an off-campus employment or education program or activity. Examples of covered off-campus conduct include . . . University-sponsored study abroad…" (FIU-105, at section II, Scope and Applicability).

84. FIU-105 defines "Prohibited Conduct" to include sexual or gender-based harassment, sexual assault, sexual violence and sexual exploitation. Its proscriptions against Prohibited Conduct apply to any **individual** and are thus gender neutral in their application.

85. Rivera and Drisin are covered in identical fashion by FIU-105s Scope and Applicability and are similarly subject to its enforcement provisions.

86. At Section VII, "Investigation of a Report of a Potential Violation of this Regulation and Resolution of an Investigation," FIU-105 provides, in pertinent part:

> If, after an initial assessment of a report of a Prohibited Conduct, the Title IX Coordinator determines that an investigation is necessary, the Title IX Coordinator will oversee the investigation. If Reporting Party and the Responding Party are students, the Director of Student Conduct and Conflict Resolution/Deputy Title IX Coordinator will work with the Title IX Coordinator regarding the investigation. **All investigations will be conducted in a prompt fashion to determine what occurred and whether steps must be taken to resolve the situation. The investigation phase will be completed within 60 calendar days from the filing of a report or when the University becomes aware of behavior that may be a violation of this Regulation.** The parties will be advised of any extension of time as needed to complete the investigation phase. (Emphasis added).

> There may be instances in which a Reporting Party is unable or unwilling to pursue a report of Discrimination, but where the University administration is aware of the behavior. In such instances, the Title IX Coordinator may choose to pursue an investigation of the alleged offense. The decision of whether or not to take further action on a report will be based on an assessment of safety and the maintenance of a non-discriminatory environment.

87. Although Rivera "informally" reported a complaint against Drisin on or about December 13, 2014, Rivera did not provide a "formal" complaint until April 1, 2015 (Case No. 14-15-1009), more than 100 days after the alleged act of non-consensual sex.

88. Pursuant to FIU Policy 105, McWhorter had a duty to complete the investigation phase of Rivera's "informal" complaint within 60 calendar days of December 13, 2014, when FIU became aware of behavior that may have been a violation of its sexual misconduct policy.

89. Pursuant to FIU's Human Resource Policy on Sexual Harassment, McWhorter had a duty to require Rivera to file a formal complaint within one hundred (100) days of December 13, 2014, the date that Rivera made an informal complaint.

90. Rivera made a formal complaint against Drisin on April 1, 2015. Upon information and belief, Rivera was reluctant to make a formal complaint prior to April 1, 2015 because she was uncomfortable being identified as the complainant.

91. During the time period between December 13, 2014 and April 1, 2015, McWhorter had a duty under Title IX to resolve Rivera's complaint promptly and equitably. Nevertheless, during this period, FIU did not even notify Drisin that a complaint had been filed by Rivera.

92. The failure of McWhorter to take action on Rivera's December 13, 2014 informal complaint gives rise to a presumption under regulation FIU 105 that the alleged conduct against Drisin did not adversely affect "safety and the maintenance of a non-discriminatory environment."

93. During the interim period between December 13, 2014 and April 1, 2015, McWhorter had "numerous conversations" with Rivera, Rivera's attorney Anne Lyons, and Rivera's aunt, of unknown name. Neither Anne Lyons nor Rivera's aunt had any personal knowledge of the events of December 12-13, 2014.

94. Upon information and belief, during the period between December 13, 2014 and April 1, 2015, Rivera, attorney Anne Lyons, and Rivera's aunt spread false and defamatory statements to McWhorter and amongst FIU students asserting that Drisin and Sherbakova were having a sexual affair.

95. Because Rivera was aware that Sherbakova was a percipient witness to Rivera's sexual misconduct with Drisin and Rivera's fabrication of the allegation against Drisin, Rivera's decision to promulgate rumors of an affair between Drisin and Sherbakova was maliciously fashioned in order to vitiate the impact of Sherbakova's anticipated truthful testimony against Rivera in the investigation into Drisin's conduct on December 13, 2014, by impeaching Sherbakova's credibility as a witness.

96. In furtherance of her duty to bring Rivera's complaint to a prompt and equitable resolution, McWhorter reasonably should have promptly interviewed Sherbakova who was a known percipient witness to the events of December 12-13, 2014.

97. Had McWhorter acted reasonably and impartially and interviewed Sherbakova promptly, McWhorter would have adduced incontrovertible and unimpeachable testimony that Rivera's complaint against Drisin was fabricated and frivolous, and that Rivera's conduct, not Drisin's, violated FIU's sexual misconduct policies, necessitating a timely finding that Drisin was not guilty of any misconduct.

98. Instead, during the period between December 12-13, 2014 and April 1, 2015, McWhorter, motivated by gender bias and a predetermined disposition to find Drisin culpable of the sexual misconduct alleged by Rivera, failed to interview either Drisin or Sherbakova, but spoke "numerous times" to Rivera, Anne Lyons, and Rivera's aunt.

99. McWhorter's "numerous conversations" with Rivera, Anne Lyons and Rivera's aunt (coupled with her failure to interview Drisin and Sherbakova) constitute a violation of McWhorter's duty of impartiality as Title IX Coordinator. Having listened only to one side's view of the Subject Incident (Rivera's), McWhorter allowed herself to be unduly influenced by Rivera's frivolous and fabricated allegations concerning both Drisin's conduct and Drisin's relationship with Sherbokova, from which McWhorter formulated conclusory opinions prior to conducting any investigation, despite the facts that Rivera herself had no knowledge or memory of any sexual harassment by Drisin, Anne Lyons and Rivera's aunt had no personal knowledge whatsoever, and Rivera's allegations thus entirely lacked evidentiary support.

100. On or about April 10, 2015, McWhorter left voicemail for Drisin asking him to meet with her. A meeting between Drisin and McWhorter was conducted on April 13, 2015. Prior to the meeting, Drisin had no personal knowledge that Rivera had reported the Genoa incident to FIU. At the April 13, 2015 meeting, McWhorter asked Drisin "whether [he knew] what the meeting was all about." Drisin responded that he assumed that McWhorter was talking about what had happened in Genoa. McWhorter told Drisin there were allegation against him and asked Drisin if he knew what they were. Drisin responded that he was shocked that Rivera would make any charges against him, because there was a witness, and that Drisin was the one who was "attacked" by Rivera and that Rivera engaged in sexually predatory behavior without Drisin's consent, and

that any attempt on Rivera's part to cast herself as anything other than the aggressor would be a falsification.

101. At the April 13, 2015 meeting, McWhorter told Drisin that she did not want to get into any more detail at that time, but that an investigative process would ensue and that Drisin would be the last person interviewed in that process. At the April 13, 2015, McWhorter failed to provide Drisin with oral or written notice of the allegations against him.

102. McWhorter did, however, make it clear during her April 13, 2015 meeting with Drisin that she did not doubt the veracity of Rivera's claim and that her role would be to "find out who was lying, and if witnesses were covering up, and why." In short, McWhorter was implicitly disclosing that she had already made a determination that Rivera was telling the truth, and that Rivera's total absence of memory of the events in question did not hamper her ability as investigator to determine what actually happened.

103. McWhorter's investigation was procedurally flawed because, *inter alia*, by huddling for three months with Rivera, Rivera's aunt, and Anne Lyons, McWhorter had already given Rivera an opportunity to eviscerate the reputations of Drisin and Sherbakova, the only independent witness to Rivera's conduct on December 13, 2014, which paved the road for McWhorter's formulation of improper preliminary opinions and factual findings against Drisin without the benefit of any investigation.

104. McWhorter's unreasonable delay in conducting the investigation spawned an environment which foreclosed Drisin's ability to adequately defend himself, because McWhorter was unlawfully conducting herself as both a prosecutor and as an advocate for Rivera's "team" rather than as an impartial investigator.

105. On April 21, 2015, Drisin sent an e-mail to McWhorter to remind McWhorter that he still had not received notice of the precise allegations against him. The April 21, 2015 e-mail also asked McWhorter, (1) if Drisin would be shown a written statement made by Rivera, (2) what would happen procedurally at the conclusion of the interviewing process, (3) whether a written statement will be required from Drisin at his interview, (4) whether his interview will be recorded, and (5) the date on which River's complaint was filed with McWhorter's office.

106. McWhorter never responded, either orally or in writing, to Drisin's April 21, 2015 e-mail.

107. McWhorter interviewed Sherbakova on May 3, 2015.

108. At the May 3, 2015 interview, Sherbakova told McWhorter unequivocally that she witnessed the Subject Incident and observed Rivera committing an act of sexual aggression upon Drisin, while Drisin was clothed and unconscious.

109. Sherbakova also told McWhorter that while Rivera was naked and on top of Drisin, she heard Rivera say to Drisin, "I want you to fuck me." While this statement is reflected in McWhorter's interview notes, it is not cited in McWhorter's final investigative report and, significantly, it is not stated amongst the "undisputed facts." A proper consideration of this Sherbakova testimony, alone, would have necessitated a dismissal of the charge against Drisin, because Rivera's statement incontrovertibly establishes that Rivera expressly consented to having sex with Drisin, for which singular reason Drisin could not have violated Title IX or FIU's policies on sexual misconduct.

110. Sherbakova also told McWhorter that Sherbakova asked Rivera if she was enjoying herself, and Rivera responded "yes," evincing complete awareness of her conduct.

111. Sherbakova also told McWhorter that there was not a doubt in her mind that Rivera was fully conscious of her actions, and that Rivera later decided to recount an apocryphal story that she lacked consciousness of her behavior with Drisin only because Rivera felt rejected by Drisin when Drisin pushed Rivera off him immediately when he became conscious of Rivera's assault, and because Rivera was mortified that she had been caught *in flagrante delicto* by Sherbakova.

112. Sherbakova also told McWhorter that she was Rivera's closest friend in the Genoa program. McWhorter's investigative notes reflect that Rivera also testified likewise about her friendship with Sherbakova.

113. Sherbakova also provided McWhorter with extensive testimony, based on her personal knowledge derived directly from Rivera's intimate personal confessionals which she shared in confidence with Sherbakova, relating to Rivera's compulsive sexual promiscuity, including Rivera's prior affairs with a Dean of Architecture at the University of Puerto Rico, which Rivera attended as an undergraduate, and with two FIU graduate teaching assistants.

114. McWhorter plainly told Sherbakova that she "was not interested in that information," and that her only job was to determine "who is covering up for whom," thus insinuating that McWhorter was discrediting Sherbakova's testimony because she had falsely concluded that Sherbakova and Drisin were having an affair.

115. In furtherance of her preconceived design to impeach the credibility of Sherbakova's testimony by attempting to establish that Sherbakova was "covering up for Drisin," McWhorter conducted a prosecutorial-minded interrogation of Sherbakova which focused on Sherbakova's relationship with Drisin. For example, McWhorter told Sherbakova repeatedly, in an inappropriately accusatory manner, "you have a stake in this." McWhorter disregarded all of

Sherbakova's testimony which established that the speculation of an alleged affair between her and Drisin were frivolous and based on mistaken assumptions and malicious rumors started by students. For example, there was an allegation that Drisin accompanied Sherbakova on a mid-semester weekend trip to Cannes, France, and McWhorter disregarded evidence which conclusively demonstrated that Drisin was in the United States during the time that Sherbakova was in Cannes.

116. During McWhorter's interview with Sherbakova regarding Rivera's complaint, McWhorter also interrogated Sherbakova regarding Drisin's sexual behavior with former graduate students and Drisin's previous Graduate Assistants, in an attempt to adduce "propensity" evidence that would support her unfounded preconceived opinions about Drisin's conduct.

117. McWhorter also interviewed Behamon, who lacked personal knowledge of the Subject Incident because she had fallen asleep and did not awaken until after Drisin pushed Rivera off him and retired to the next room, while Rivera got under the covers of the bed and ostensibly went to sleep.

118. Behamon, like Sherbakova, reported to McWhorter that as Rivera's roommate, she had personal knowledge of Rivera's promiscuous, aggressive and predatory sexual behavior throughout the semester in Genoa and of Rivera's self-defining sexual braggadocio.

119. Records of the EOPD investigation reveal that McWhorter conducted a fishing expedition in a prosecutorial-minded attempt to elicit testimony confirming her unfounded and prejudicial belief that Drisin was predisposed to sexual misconduct. Casting her net far and wide, McWhorter interviewed several other FIU students, past and present, despite the fact that these other witnesses completely lacked personal knowledge relating to the Subject Incident. McWhorter's investigatory interviews of other witnesses were conducted with the hope that she

could adduce "propensity" evidence that Drisin had a prior history of sexual misconduct, or with the hope to corroborate rumors of an affair between Drisin and Sherbakova. Rather than conducting an impartial investigation of Rivera's complaint regarding the Subject Incident, McWhorter's investigation consisted of a veritable witch-hunt, and she maliciously crusaded to eviscerate Drisin's reputation, generally, in order to justify and bolster her predetermined findings of sexual misconduct against Drisin.

120. McWhorter interviewed Drisin on May 6, 2015.

121. Prior to his May 6, 2015 interview, at which time Drisin's participation in the investigative process was required, McWhorter failed to identify specific allegations against Drisin, which substantially hindered Drisin's ability to prepare for the interview or to formulate his response to the charges. For example, had he known that Rivera was spreading rumors that he and Sherbakova were having an affair and that they had gone to France together, Drisin would have been able to adduce evidence to prove that such rumors were entirely false.

122. At all times material, Drisin was denied an opportunity to cross-examine any witnesses. Further, at all times material, McWhorter failed to disclose to Drisin (and refused to disclose upon Drisin's request) the identities of adverse witnesses, hindering Drisin's ability to challenge their credibility.

123. The May 6 interview was attended by David Duncan, Esq. ("Duncan"), a Boston-based attorney specializing in Title IX defense, who was retained by Drisin to provide counsel relating to the FIU investigation into Rivera's complaint.

124. During the May 6, 2015 interview, Drisin told McWhorter unequivocally, as Sherbakova had done previously, that Rivera was a sexual aggressor who imposed herself sexually upon Drisin without his consent.

125. Drisin also told McWhorter that Rivera was unable to offer any evidence because she fabricated the allegation that Drisin committed sexual misconduct while maintaining that she had no knowledge or recollection of the events.

126. In response, McWhorter told Drisin, "it doesn't matter, if Rivera believes that she may have be a victim of sexual misconduct, that's good enough for me to accept her claim." In view of Rivera's having committed herself to a version of the story which requires that she concedes no personal knowledge of the Subject Incident, McWhorter's faith in her own ability to refashion the truth according to her own unfounded assumptions, which lack evidentiary support, over the uncontroverted eye witness accounts of Drisin and Sherbakova is evidence of a gross substantive flaw in her investigative process, and constitutes a clear betrayal of McWhorter's unlawful gender bias.

127. On July 8, 2015, McWhorter authored a final investigative report ("ROI") which substantiates the charge of sexual misconduct against Drisin.

128. The "Analysis" portion of the ROI belies the evidence which McWhorter actually adduced. For example, the report states that "[t]here was no evidence provided to show motive for the Complainant to subject a false claim of sexual misconduct against Associate Dean Drisin." This conclusion improperly disregards Sherbakova's testimony that Rivera's decision to concoct a bogus story in which she depicted herself as unconscious throughout the Subject Incident was motivated by Drisin's demonstrable rejection of Rivera and by Rivera's shame and embarrassment at having the rejection witnessed by Sherbakova. The "analysis" also improperly disregards probative evidence (which is cited in the ROI) that Behamon testified that when Rivera returned to her apartment immediately after the Subject Incident, Rivera cried tears of remorse, and said

(about herself) that she "was horrible" and ashamed, and that Rivera's "crying turned to rage" when it was suggested that Rivera could "get [money] from this."

129. It is uncontroverted in the ROI that both Rivera and Sherbakova testified that they asked Drisin if they could come up to his apartment to use the bathroom. Notwithstanding this uncontroverted evidence, McWhorter fails to include this fact amongst the ROI's enumerated "undisputed facts." To the contrary, the ROI's "analysis" states that "[Drisin] invited the students to come to his apartment, a behavior not condoned by the University," and relies on this statement in support of its finding that Drisin was guilty of sexual misconduct. McWhorter's conclusion reflects an intentional and reckless regard for the truth, by falsely accusing Drisin of "inviting" the students into his apartment. Further, McWhorter's assertion that Drisin's behavior (i.e., inviting the students to his apartment) is "a behavior not condoned by the University," is a bald, judgmental and conclusory opinion which is neither supported in the ROI nor supportable as a matter of any actual ascertainable FIU policy.

130. Moreover, the ROI states that "[Drisin] ultimately did not take steps to stop the sexual relationship," which conclusion improperly disregards the adduced uncontroverted evidence, contained in the report, that Drisin pushed Rivera off him and said "you can't do this".

131. Moreover, the "analysis" portion of the ROI relies heavily on innuendo relating to the rumored affair between Sherbakova and Drisin as the basis for its adverse findings against Drisin, despite the fact that the rumored affair could not in the mind of a reasonable investigator bear any material relevance to the issue under investigation, to wit, whether Drisin committed sexual misconduct with Rivera.

132. Moreover, the ROI is predicated on McWhorter's absurdly biased presumption that, if Sherbakova and Drisin were conducting a sexual affair, Sherbakova would have a motive to

"cover up" for Drisin's sexual misconduct, given that the record reflects that Sherbakova and Rivera were very good friends and roommates. McWhorter fails to consider that the proposition that a woman (Sherbakova) would naturally lie to exculpate her alleged lover for raping her friend in her presence is plainly, if not preposterously, illogical. Nevertheless, the ROI implicitly promotes such an inference while failing to consider the more logical proposition that Sherbakova proffered testimony that was unfavorable to her friend Rivera for the sole reason that she sought to promote the truth in the face of the gross injustice which Rivera was perpetrating upon Drisin.

133. The ROI is replete with indications that McWhorter lacked proper training and was incompetent in her ability to independently interpret her evidentiary findings. To illustrate, the ROI states, "[Sherbakova and Behamon] went to great lengths to make the point that Complainant was promiscuous and had a previous relationship with a dean during her undergraduate studies. While witnesses indicated their belief that [Sherbakova] was having an affair with [Drisin], there is no evidence that Complainant had affairs with professors or administrators." This "analysis" is flawed because, (1) it implicitly regards the hearsay statements of unidentified students as "evidence" against Drisin while disregarding Sherbakova's and Behamon's statements, which are based on personal knowledge and derived from Rivera's admissions (exception to hearsay) as not constituting "evidence" at all; (2) it makes an improper credibility determination by disregarding Sherbakova's and Drisin's testimony that they were "not" having an affair, while evincing her utter failure to have asked Rivera to comment on the allegations that she had a history of sexual conduct that was consistent with Drisin's and Sherbakova's testimony that Rivera was a sexual aggressor with Drisin; (3) it affords more weight to the "irrelevant" issue of Drisin's relationship with Sherbakova than to the issue under investigation, whether Drisin committed sexual misconduct with Rivera, by ignoring probative evidence that Rivera's history as a sexual aggressor

was consistent with both Drisin and Sherbakova testimony regarding Rivera's sexual behavior with Drisin; and (4) it raises the question of why McWhorter did not seek out the names of the two graduate teaching assistants with whom Rivera boasted of having had initiated sexual affairs for the purpose of obtaining their witness statements.

134. Further, without any evidence, McWhorter makes an improper and incongruous leap and falsely claims in the ROI that:

> [t]his case involved alcohol. [Rivera] and [Behamon] admitted that they were intoxicated. [Drisin] and [Sherbakova] stated that they were not intoxicated. It is known that one may not engage in sexual activity with another person who one knows, or one reasonably should have known, is incapacitated as a result of alcohol or other drugs. The use of alcohol or other drugs can have unintended consequences. Being intoxicated or high does not diminish one's responsibility to obtain consent and is never an excuse for sexual misconduct.
>
> The behavior of [Rivera] as described by witnesses and the complainant **could** lead one to believe that the [Rivera] was intoxicated. [Drisin] also knew that she had been drinking at various places throughout the evening. It appears that [Rivera] was in an alcoholic blackout state. She may have appeared to act normally but she had no memory of the events. **[Rivera] was in an alcoholic blackout state** and thus whether she may have stated any words or engaged in actions that could have portrayed a willingness to engage in sexual activity, she was not in a state of mind where she could have given known [sic] consent." (Emphases added).

McWhorter's analytical conclusion is a *non sequitur* which belies the evidence. There is no evidentiary basis that "could lead McWhorter to believe" that Rivera was intoxicated, let alone in an "alcoholic blackout state." Rivera herself testified to McWhorter that she engaged in a "long professional conversation" before she says she fell asleep. This significant fact is cited in the ROI, but McWhorter improperly omits this in the ROI's statement of "undisputed facts." Further, Rivera herself did **not** testify that she was intoxicated. Instead, her statement, as quoted in the ROI, is that "[w]e all had a drink." Thus, Rivera's own depiction of her state that evening does

not support that she was intoxicated or incapacitated and certainly not to a level that would result in a blackout. By all witness accounts, Rivera was coherent, alert, engaged in a professional conversation and showing no sign of intoxication. McWhorter's statement, then, that Rivera "admitted that she was intoxicated" reflects an improper conclusion of McWhorter's own making which distorts the evidence of record. Likewise, McWhorter's statement that Behamon admitted that she was intoxicated also distorts the evidence. Behamon's actual statement was that she sleeps "really hard, especially when she has been drinking." (Emphasis supplied). Behamon did not report drinking an inordinate amount or being intoxicated. She stated only that drinking can enhance her normal "hard" sleeping. Behamon said nothing about how much alcohol she consumed, let alone how much alcohol Rivera consumed.

135. From Rivera's statement that she fell asleep and remembers nothing of any sexual acts, McWhorter leaps from a first improper supposition, that Rivera was intoxicated, to another supposition, also belied by the evidence, that it "appears that Rivera was in an alcoholic blackout state." Then, riding on the momentum of her own speculation rather than the factual record, McWhorter makes a third leap from the factual record, to the conclusory determination that Rivera indeed "**was**" in an alcoholic blackout state. There is absolutely no bridge between the antecedent speculative assumption to the consequential conclusory assertion, other than McWhorter's own gender bias. To arrive at her conclusion, McWhorter discounted to zero the testimony of Drisin, Sherbakova and Behamon and relied solely upon Rivera's self-serving statement that she has no recollection of the incident.

136. Likewise, there is not one iota of evidence in the ROI that would support McWhorter's conclusion Drisin knew, or should have known, that Rivera was not in a state of mind where "she could have given knowing consent."

137. McWhorter violated the DCL by failing to base her findings on a preponderance of the evidence. Instead, McWhorter demonstrated a clear gender bias which did not afford Drisin the required presumption of innocence, and improperly placed the burden on Drisin to establish that Rivera consented to the sexual activity, instead of correctly placing the burden of proof on Rivera to establish that she did not consent, which would have been an impossible burden for Rivera to meet.

138. McWhorter's actions were based on actual knowledge and deliberate indifference to the fact that Drisin was improperly charged with sexual misconduct.

139. A reasonable Title IX Coordinator would have believed that clear and convincing evidence established no sexual misconduct by Drisin. By substantiating a finding of sexual misconduct against Drisin by knowingly and intentionally drawing conclusions that were not derived from an impartial interpretation of the evidentiary facts, McWhorter reasonably should have believed that she was violating Drisin's clearly-established rights under Title IX, the Fourteenth Amendment (procedural due process), and the Equal Protection Clause of the United States Constitution.

140. Because the evidence so substantially favored Drisin's version of the disputed issues relating to the Subject Incident, the fact that McWhorter formed a conclusion in favor of Rivera's version gives rise to a plausible inference that McWhorter was influenced by gender bias. Doe v. Columbia, Case No. 15-1536, 2016 WL 4056034, at *8 (2d Cir. July 29, 2016).

141. FIU employs the "single-investigator" model for its investigation of Title IX complaints of sexual misconduct. This model, which is permitted under express OCR guidance, allows a solitary "trained" investigator (together with, possibly, an assistant) to handle the entire investigative and adjudicative processes. This process poses a serious threat to the due process

rights of an accused under Title IX because one person -- presumably paid by the university, whose federal funding may be at stake if the government finds that the institution violates the enforcement mandates of the OCR -- will effectively decide innocence or guilt.

142. McWhorter conducted a one-sided investigation in favor of Rivera's allegations when she excluded relevant and exculpatory evidence, disregarded dispositive eyewitness testimony, afforded significant weight to witnesses lacking any independent knowledge of the material events, and denied Drisin his procedural rights, all in an effort to fit within the narrative that Drisin was guilty of the misconduct alleged.

143. McWhorter violated FIU-105 by failing to complete the investigation phase of Rivera's complaint within sixty (60) days from the filing of the report (April 1, 2015) or from the date when the University became aware of behavior that may be a violation of FIU-105 (December 13, 2015).

144. McWhorter violated FIU's Human Resources Policy by failing to resolve Rivera's formal complaint within thirty (30) days.

145. McWhorter further violated FIU's Human Resources Policy, which establish 100 days from the alleged act as the time limitation within which a student complaint against a faculty member can be brought where the student has already brought an informal complaint, by failing to dismiss the complaint against Drisin when Rivera failed to file a formal complaint within 100 days of December 13, 2014.

146. McWhorter violated Title IX and FIU's procedures by failing to dismiss Rivera's Complaint in view of the fact that two percipient witnesses (Drisin and Sherbakova) heard Rivera state to Drisin, "I want to fuck you and I want you to fuck me," because Rivera's statement summarily evinces "welcomeness" of any implied *actus rea* which was alleged against Drisin.

Inasmuch as a lack of consent is the cornerstone of any valid charge of sexual harassment under Title IX, Rivera's statement obviates her ability to establish a prima facie case, and necessitated a summary finding in favor of Drisin.

Drisin's Appeal

147. On July 16, 2015, Drisin served a letter appeal of the decision of the Title IX Coordinator Shirlyon McWhorter upon appealed to Meredith Newman, Vice Provost for Faculty and Global Affairs (the "Drisin Appeal").

148. The Drisin Appeal cogently set forth numerous grounds to establish that ROI arrived at a plainly erroneous outcome because the factual evidence was insufficient to nudge the allegation from the speculative to the plausible, let alone to support the findings, even at the relaxed standard of a "preponderance of the evidence." The particulars of the argument contained in the Drisin Appeal have been in substantial part incorporated into the allegations of this Complaint.

149. In a letter to Drisin from Jaffus Hardrick, Vice President, Human Resources, dated July 30, 2015, Hardrick ratified the findings of the ROI and summarily denied the ROI Appeal (the "Drisin Appeal Denial").

150. The Drisin Appeal Denial states, in pertinent part, that "[b]ased on my review of the record, I find that EOPD's findings are supported by the evidence. The additional information contained in your appeal, even if true, does not negate the findings made by EOPD. Accordingly, no change in the EOPD's findings and conclusions are warranted."

151. No reasonable impartial reviewer could conclude, as Hardrick did, either that (1) "the [ROI's] findings are supported by the evidence," or that (2) "the additional information contained in [the Drisin Appeal], even if true, does not negate the findings made by EOPD." The unreasonable nature of Hardrick's conclusion is betrayed by the fact, as alleged more particularly

above, that the only percipient independent witness (Sherbakova) testified unequivocally that Rivera, not Drisin, consciously and affirmatively told Drisin, "I want to fuck you," and "I want you to fuck me." As such, EOPD was required to dismiss Rivera's complaint because Rivera's conduct obviated any possibility that Drisin could have acted without Rivera's express consent.

152. Because the evidence so substantially favored Drisin's version of the disputed issues relating to the Subject Incident, the fact that Hardrick ratified the EOPD's findings against Drisin gives rise to a plausible inference that Hardrick was influenced by gender bias. Doe v. Columbia, Case No. 15-1536, 2016 WL 4056034, at *8 (2d Cir. July 29, 2016).

153. From Hardrick's failure to undertake any factual analysis of the issues raised in Drisin's appeal, coupled with his rubber-stamping of McWhorter's gender-biased and incompetent analysis which leads to a finding of guilt against Drisin without one iota of evidence to support such a finding, an inference of gender-bias can be imputed to Hardrick.

154. Further, FIU's appeal process for challenging the findings of the ROI violated Drisin's procedural due process rights, by depriving him of his right to be heard by a tribunal with academic expertise and an apparent impartiality. Because the ultimate decision is based exclusively upon the reported results of the investigation, which the Vice President for Humarn Resources accepts at face value, and McWhorter's biased findings deprived Drisin of his presumption of innocence, the appeal afforded to Drisin provided little meaningful opportunity to challenge McWhorter's conclusions or her rendition of what witnesses purportedly said.

155. Hardrick's summary denial of Drisin's appeal is intentional and discriminatory, as he willingly participated in an adjudicative process suggestive of a kangaroo court. Upon an appropriate and measured consideration of the underlying factual record, Hardrick reasonably would have believed that his summary denial of the Drisin Appeal constituted an unlawful denial

of Drisin's clearly-established rights under Title IX, the Fourteenth Amendment, and the Equal Protection Clause of the United States Constitution.

Drisin's Complaint of Sexual Misconduct Against Rivera

156. On or about July 10, 2015, Drisin filed a complaint (Case No. 15-16-1018) of sexual misconduct against Rivera with the EOPD, pursuant to FIU Regulation No. 105.

157. In his complaint, Drisin asserted that that he was a victim of a non-consensual sexual assault committed by Rivera, which resulted in his feeling panicked and violated.

158. Shortly after Drisin filed the complaint, McWhorter called Duncan to say that unless Drisin withdrew his complaint, she would likely considered it to constitute unlawful retaliation against Rivera.

159. McWhorter's statement constituted an intentional and unlawful violation of Drisin's civil rights, because the OCR requires that, "[i]n **all** cases, a school's Title IX investigation must be adequate, reliable, impartial, and prompt and include the opportunity for both parties to present witnesses and other evidence." (Emphasis added).

160. Confident that his complaint against Rivera was meritorious and that he was within his rights to advance his claim under Title IX, Drisin persevered, and on August 18, 2015, he met with McWhorter and provided an oral statement of his complaint.

161. In his August 18, 2015 "statement" (as reported by McWhorter), Drisin explained that he was victimized by Rivera's unwelcomed sexual advances, and that Rivera "had a history of engaging in predatory sexual relationships where she seeks people out in an aggressive manner," and a "reputation for engaging in the same type of behavior that [Drisin] is suggesting that [Rivera] engaged in with [Drisin]."

162. In response, McWhorter told Drisin that he had not introduced any additional witnesses or information that would warrant an extension of her initial investigation. Drisin then provided McWhorter with the specific names of two additional witnesses, both former FIU graduate instructors, with whom Rivera had boasted of having seduced into sexual affairs. Drisin also informed McWhorter that Rivera had boasted of starting a sexual affair with a Dean of Architecture at the University of Puerto Rico when she was an undergraduate there, and that Rivera had boasted of an incident in which the wife of the Dean of Architecture of the University of Puerto Rico threw Rivera out of a party due to Rivera's blatantly sexually aggressive behavior.

163. With deliberate indifference to this information, McWhorter told Drisin that he would have to do his own investigation of those witnesses, and stated, "I'm not going to get involved in investigating the sexual history of a woman who is the victim of a sexual battery."

164. McWhorter, in short, was at all times material incapable of comprehending that a female could be a perpetrator of sexual misconduct, even when all evidence and eyewitness testimony pointed to that conclusion.

165. Drisin also asserted in his August 18, 2015 "statement" that he was being discriminated against because of his gender and that "[i]f a female faculty member made the same mistake of allowing three students in her room and found herself in the situation that [Drisin] did, the results would be different."

166. Although Drisin spent almost an hour giving a statement to McWhorter on August 18, 2015, McWhorter drafted what purports to be Drisin's "statement" – in the first person – when in actuality it is a redacted one-page rendition of McWhorter's biased and distortive interpretation of Drisin's testimony. For example, the "statement" attributes to Drisin, "I accept lots of blame," when Drisin's actual words were, "Allowing [Rivera] into my apartment was a mistake but [] I did

it because she was the roommate of a mutual friend whom I trusted and who was with us that evening." Drisin elaborated by stating that "I was culpable in extending my trust to [Rivera] when, in fact, I did not know her, know her history or what her behavior might be." McWhorter's editorializing improperly and intentionally mischaracterizes Drisin's testimony to bolster her own unfounded and erroneous findings which are adverse to Drisin, and as such, constitutes further evidence of McWhorter's gender bias, which violates Drisin's rights under Title IX and his Fourteenth Amendment right to procedural due process.

167. On September 10, 2015, McWhorter issued a written investigative report finding that "EOPD is unable to conclude that the information obtained establishes, by a preponderance of the evidence, a violation of FIU's sexual misconduct regulation."

168. The September 10, 2015 investigative letter concludes that Drisin's allegation that Rivera was guilty of sexual misconduct was "thoroughly investigated by [EOPD] in the previous complaint [against Drisin]."

169. The findings contained in the September 10, 2015 investigative report are based on nothing other than McWhorter's previous review of the contents of the Rivera complaint, including the old witness statements, documents, evidence and the statement that Drisin had provided in the presence of his attorney on May 7, 2015 as a respondent, as well as the statement which Drisin provided on August 18, 2015. The September 10, 2015 report also states that Rivera was given an opportunity to respond but chose to rely on the statement which she provided during the investigation into her complaint against Drisin.

170. The September 10, 2015 letter also asserts that Drisin advised McWhorter that "there were no new witnesses, information or evidence," which statement is false and disingenuous because Drisin expressly suggested that McWhorter interview the two former FIU graduate

instructors and seek out the Dean from University of Puerto Rico whom Rivera had boasted of having seduced into a sexual affair.

171. By incorporating the findings of the Rivera complaint as the sole basis for adjudication of Drisin's independent complaint against Rivera, McWhorter acted with actual knowledge of, and deliberate indifference to, the fact that Drisin's Title IX rights to an adequate, reliable, and impartial investigation, and constitutional right to gender-based equal protection, were being violated.

172. By failing to attempt to interview identified witnesses with whom Rivera had boasted of having sexual affairs, McWhorter evidenced gender bias and disparate treatment towards Drisin, because in her prior investigation into Rivera's complaint against Drisin, McWhorter actively solicited information relating to Drisin's rumored relationship with Sherbakova and conducted a fishing expedition with the hope of uncovering prior sexual relationships that Drisin allegedly had with other students, in a grossly ill-conceived attempt to establish Drisin's propensity for sexual harassment.

173. Because McWhorter's prior investigation into Rivera's complaint against Drisin actively solicited information relating to Drisin's rumored relationship with Sherbakova and conducted a fishing expedition with the hope of uncovering prior sexual relationships that Drisin had with other students, McWhorter's deliberate indifference to the exploration of Rivera's sexual history violated the guidance of the OCR, which provides that "[a] balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions."

174. Furthermore, while neither Title IX nor the DCL specifies who should conduct an investigation into sexual misconduct, the OCR clarifies that an investigation can be conducted by the Title IX coordinator, provided that there are no conflicts of interest. Given that McWhorter

served under the single investigator model as both investigator and adjudicator of Rivera's claim, it goes without saying that she had a conflict of interest in investigating Drisin's claim against Rivera because of her obvious incentive not to disturb her own prior judgment. Accordingly, McWhorter was under a duty to recuse herself as the investigator and adjudicator of Drisin's complaint, and her willful failure to do so constitutes a further violation of Drisin's Title IX and procedural due process rights.

175. In spite of McWhorter's actual knowledge that Rivera had committed sexual misconduct with Drisin during the Subject Incident, McWhorter acted with deliberate indifference to Drisin's independent claim of sexual misconduct. McWhorter's failure to recuse herself from her role as single-investigator of Drisin's complaint and her failure to conduct an independent *de novo* investigation is evidentiary that McWhorter has unlawfully structured the EOPD and her role as Title IX Coordinator to selectively enforce Title IX complaints against males only, and turn a blind eye to acts of sexual harassment committed by females upon males.

176. By failing to conduct an independent *de novo* investigation into Drisin's complaint and for the reasons more particularly alleged above, McWhorter intentionally discriminated against Drisin, and reasonably would have had knowledge that her conduct unlawfully violated Drisin's rights to protection against selective enforcement of Title IX, to procedural due process under the Fourteenth Amendment, to protection against discriminatory gender-based disparate treatement under Title VII, and to gender-based equal protection under the United States Constitution.

177. Drisin retained local counsel Mark Richard, Esq. to appeal the EOPD's adverse decision on Drisin's complaint (the "Richard Appeal"). By letter dated September 30, 2015 to Hardrick, Richard requested a *de novo* review of the complaint, based on (1) McWhorter's failure

to recuse herself, (2) McWhorter's failure to review and/or consider evidence which would have supported the statements provided by Drisin, and (3) the clearly erroneous outcome.

178. Richard's September 30, 2015 letter also emphasized that Drisin was deprived of due process rights based on the fact that McWhorter's decision indicates that she conducted no investigation of Drisin's charge, but rather relied on documentation she obtained during the investigation of Rivera's complaint, as to which she already had reached a decision.

179. On October 20, 2015, Hardrick wrote Drisin a letter in which he ratified the findings and conclusions of the September 10, 2015 investigative report.

180. In the October 20, 2015 denial of the Richard Appeal, Hardrick wrote that (1) there was "no due process violation based on who conducted the investigation, how it was conducted or the extent of the investigation," and (2) the decision was supported by substantial competent evidence.

181. No reasonable impartial reviewer could conclude, as Hardrick did, either that (1) McWhorter did not have a conflict of interest in adjudicating Drisin's claim against Rivera, or (2) the findings of the September 10, 2015 investigative report were supported by substantial competent evidence.

182. Because the evidence so substantially favored Drisin's allegations that Rivera committed sexual misconduct with Drisin, the fact that Hardrick ratified the EOPD's findings against Drisin gives rise to a plausible inference that Hardrick was influenced by gender bias. Doe v. Columbia, Case No. 15-1536, 2016 WL 4056034, at *8 (2d Cir. July 29, 2016).

183. Hardrick's summary denial of the Richard Appeal is intentional and discriminatory, as he willingly participated in an adjudicative process suggestive of a kangaroo court. Upon an appropriate and measured consideration of the underlying factual record, Hardrick reasonably

would have believed that his summary denial of the Richard Appeal constituted an unlawful denial of Drisin's clearly-established rights under Title IX, the Fourteenth Amendment, and the Equal Protection Clause of the United States Constitution.

Unlawful Termination of Drisin's Employment

184. The contract between the FIU Board of Trustees and the United Faculty of Florida ("BOT-UFF") provides, at BOT-UFF Policy – Disciplinary Action and Job Abandonment, in pertinent part, as follows:

> (1) Just Cause
>
> (a) The purpose of this Policy is to provide a prompt and equitable procedure for disciplinary action taken with just cause. Just cause shall be defined as:
>
> (i) incompetence, or
> (ii) misconduct.
>
> (b) An employee's activities which fall outside the cope of employment shall constitute misconduct only if such activities adversely affect the legitimate interests of the University or Board.
>
> (2) Progressive Discipline. Both parties endorse the principle of progressive discipline as applied to professionals.
>
> * * *
>
> (5) Termination. A tenured appointment or any appointment of definite duration may be terminated during its term for just cause. An employee shall be given written notice of termination, at least six (6) months in advance of the effective date of such termination, except that in cases where the President or designee determines that an employee's actions adversely affect the functioning of the University or jeopardize the safety or welfare of the employee, colleagues, or students, the President or designee may give less than six (6) months notice.

185. In addition, at Section VII.A., FIU-105 provides, in pertinent part:

> **Resolution of the Investigation When Both Parties are Employees or if the Responding Party is an Employee and the Reporting Party is a Student** . . .
>
> Upon final acceptance by the Vice President for Human Resources or designee of a written finding that there was a Preponderance of Evidence that an employee violated this Regulation, the Director of Employee Labor and Relations Department, the immediate supervisor of the Responding Party, and the Title IX Coordinator will determine the disciplinary action to be taken against the Responding Party. The resolution of the complaint will be communicated to the Reporting Party and the Responding Party at the same time. Disciplinary action shall be taken in accordance with the Regulations and policies affecting the class of employee and the terms of any applicable collective bargaining agreement. (Emphasis added).

186. In or about late July and early August, 2015, after the issuance of McWhorter's ROI, Drisin had several telephone conversations with Brian Schriner, FIU's Dean of the College of Architecture + The Arts. During these conversations, Drisin fully informed Schriner of the true facts concerning the Subject Incident and the reasons that the ROI findings constituted a clearly erroneous outcome to the investigation. Drisin reiterated to Schriner that he committed no misconduct and was rather the victim of a non-consensual sexual assault by Rivera.

187. Schriner in turn offered to attempt to negotiate a resolution with the FIU Office of the President which would allow Drisin to maintain his employment.

188. Shortly thereafter, Schriner told Drisin that he had spoken with the FIU Provost Kenneth Furton who made clear to Schriner that FIU President Mark B. Rosenberg wanted to "get rid of Drisin." Schriner informed Drisin, "[Rosenberg] wants you out, and out quickly."

189. Schriner told Drisin that in view of Rosenberg's decision, Drisin would be receiving a letter constituting a notice of intent to terminate Drisin's employment, and that letter would be authored by FIU's general counsel, for Schriner's signature, at the direction and behest of Rosenberg.

190. On August 17, 2015, Drisin received the notice of FIU's intent to terminate Drisin's employment with FIU, on grounds of "misconduct."

191. FIU's determination that Drisin committed misconduct, as reflected in Schriner's August 17, 2015 letter, was wholly-based on the ROI's findings.

192. The August 17, 2015 letter reflects that FIU conducted no independent review of the ROI, and states summarily, "[t]he findings made by EOPD reveal that your behavior was in violation of University policy on sexual harassment and adversely affected the legitimate interests of the University. Your conduct constitutes behavior unbecoming of a faculty member and of a Senior Associate Dean, the position you held at the time of the events at issue. Based on the findings contained in the report, I have concluded that there is just cause to terminate your employment."

193. At the time that Schriner authored the August 17, 2015 letter, Schriner had personal knowledge or reasonably should have had personal knowledge that the facts upon which the ROI relied were false. For example, on April 30, 2015, Sherbakova wrote an e-mail to Schriner which affirmatively declared that the rumor that she was having an affair with Drisin was false.

194. By rubber-stamping the findings of the ROI without further independent investigation, Schriner acted with deliberate indifference to Drisin's civil rights and with actual knowledge that the findings of the ROI were unsupported by the factual record.

195. Drisin was not provided any opportunity to have a hearing pursuant the notice of intent to terminate his employment, in violation of his procedural due process rights under the Fourteenth Amendment to be heard by a tribunal with academic expertise and an apparent impartiality.

196. On or about August 26, 2015, Drisin responded to Schriner's letter of intent to terminate Drisin's employment. In his August 26, 2015 letter, Drisin asserted that the decision to terminate him was arbitrary and capricious, and based on clearly erroneous findings. Drisin reiterated that the ROI's findings were prejudicially based on "unfounded leaps of logic" which lacked any evidentiary support, and ignored all probative exculpatory evidence.

197. Pursuant to BOT-UFF Policy on Disciplinary Action, paragraph 5 (Termination), Drisin was entitled to six (6) months' notice of termination unless "the President or designee determines that an employee's actions adversely affect the functioning of the University or jeopardize the safety or welfare of the employee, colleagues, or students."

198. Drisin's August 26, 2015 letter also noted, "If FIU seeks to not abide by this policy, a written explanation should be included in my letter of termination as to why the continuation of my earned, and scheduled Fall professional leave in which I am not on campus or interacting in any manner with students, faculty or staff for my assigned duties over the next six months, would *adversely affect the functioning of the university or jeopardize the welfare of the employee, colleagues, or students.* (FIU Policy 320.025)." (Emphasis in original).

199. On September 11, 2015, Schriner wrote a letter to Drisin which officially terminated Drisin's employment effective September 14, 2015, for "just cause due to misconduct." Schriner's September 11, 2015 termination letter ratified the findings of the ROI and summarily dismissed the contentions of Drisin's August 26, 2015 letter by summarily stating, that "[t]he final determination is that competent, substantial evidence supports the finding that you engaged in sexual misconduct in violation of the University policy on sexual harassment. . . . Your misconduct warrants the immediate termination of your employment."

200. The September 11, 2015 termination letter violates Drisin's right to six (6) months' notice for his termination as set forth in the BOT-UFF Policy because it contains no finding that Drisin's conduct "adversely affected the functioning of the University or jeopardized the safety or welfare of the employee, colleagues, or students."

201. The September 11, 2015 letter violates FIU-105 because it contains no finding that the ultimate disciplinary action taken against Drisin – termination of his employment – was determined by Schriner (Drisin's immediate supervisor), together with the Director of Employee Labor and Relations Department and McWhorter (the Title IX Coordinator). Instead, as Schriner had admitted to Drisin, the disciplinary decision to terminate Drisin's employment was made at the sole direction of Rosenberg.

202. Schriner's official participation in the arbitrary and capricious decision to terminate Drisin constitutes a reckless and deliberate indifference to Drisin's statutory and constitutional rights, in view of Schriner's actual knowledge that the evidentiary record could not have possibly supported the findings of the ROI and adverse employment action against Drisin.

203. A reasonable person acting in Schriner's capacity would have had actual knowledge that the decision to terminate Drisin unlawfully violated Title IX, deprived Drisin of his property interest in continued employment without due process of law, stigmatized Drisin so that he would become a pariah amongst his peers and be unable to procure lucrative future employment in his chosen career, and unlawfully violated Drisin's right to gender-based equal protection under the United States Constitution.

204. Rosenberg's arbitrary and capricious decision to terminate Drisin, based upon his rubber-stamping of a clearly biased and erroneous decision which was prejudicially motivated by gender bias and conducted in violation of Drisin's procedural due process rights, as more fully

alleged above, together with his oppressive and malicious decision to terminate Drisin "immediately" in violation of Drisin's contractual right to six (6) months' notice prior to termination, demonstrates a custom or policy of FIU to be deliberately indifferent to the sexual harassment claim of a male, and constitutes an intentional violation of Drisin's rights under Title IX, the Fourteenth Amendment, and the Equal Protection Clause of the United States Constitution.

205. A reasonable person acting in Rosenberg's capacity would have had actual knowledge that the decision to terminate Drisin unlawfully violated Title IX, deprived Drisin of his property interest in continued employment without due process of law, stigmatized Drisin so that he would become a pariah amongst his peers and be unable to procure lucrative future employment in his chosen career, and unlawfully violated Drisin's right to gender-based equal protection (gender) under the United States Constitution.

Defamation, Stigmatization, and Damages

206. Drisin is an individual who is neither an involuntary public figure nor a limited purpose public figure.

207. On or about June 10, 2015, while the EOPD investigation into Rivera's complaint against Drisin was pending, Drisin attended a meeting of the Honors College Facility Program Committee.

208. Immediately prior to the meeting, Drisin encountered Lesley Northup, Dean of the FIU Honors College ("Northup"), who was also attending the meeting, with whom Drisin maintained a friendly and cordial relationship.

209. As Drisin and Northup walked together down the hallway towards the conference room in which the meeting was to be held, Northup told Drisin, "I hear you couldn't keep your [penis] in your pants and that you fucked a graduate student."

210. Drisin was shocked to hear this statement coming from a peer who had no reason to have knowledge relating to Rivera's claim against Drisin or the investigation into that claim.

211. Drisin asked Northup how she heard this information and Northup informed Drisin that she was told what Drisin had done by Furton (FIU Provost).

212. Drisin responded by telling Northup that the claim was absolutely false, and that he was extremely disappointed that false information was being circulated from the highest academic officer at FIU.

213. On or about June 11, 2015, Drisin went to see McWhorter in the Office of Equal Opportunity Programs and Diversity to report what he had been told by Northup.

214. Drisin told McWhorter that he considered the circulation of this comment to be false and defamatory, and that it constituted a serious procedural failure of his right to an unbiased review of the ROI by the Provost's Office/Office of Academic Affairs, which Drisin was anticipating would be conducted after the completion of the ROI if the ROI was unfavorable to him.

215. McWhorter told Drisin that while she is required to inform the Provost and other FIU officials about the claim and the investigation, she does ask all parties who are informed about the claim to maintain confidentiality and not to discuss the case or draw conclusions, but that she is not capable of controlling what others do once they leave her office.

216. McWhorter expressed her disappointment that a senior university dean would have been careless and offered to speak immediately with Furton in an effort to stop the dissemination of defamatory information. Drisin asked McWhorter not to speak to Furton until after the investigation was completely resolved, because Drisin assumed that if, ultimately, there were to be adverse findings, that those findings would be reviewed by Furton. Drisin told McWhorter that

the last thing he needed was for the Provost to be antagonized by a complaint from Drisin. Drisin told McWhorter that because it appeared that Furton was the originating source of defamatory comments impugning Drisin with guilt of a sexual battery in the absence of any such finding, Drisin would only be throwing gas on the fire in the Provost's office, which could presumably soon be reviewing allegations against him. Accordingly, McWhorter agreed not to raise Drisin's concerns about inappropriate gossip and defamatory comments until after the investigation was fully resolved.

217. Furton's oral dissemination of false comments that Drisin had committed a sexual battery upon Rivera subjected Drisin to distrust, hatred, contempt, ridicule or obloquy and caused Drisin to be avoided by his peers, thus causing injury to Drisin's reputation, and to his personal social, official and business relations of life.

218. McWhorter had a duty to safeguard the confidentiality of the Title IX investigation into Rivera's charge of sexual misconduct against Drisin and failed to do so.

219. On information and belief, McWhorter intentionally and with actual malice made false statements to FIU officials and other third parties which imputed that Drisin was guilty of the charge of sexual misconduct which was filed by Rivera.

220. On or about April 28, 2016, Rivera filed a civil lawsuit against Drisin in the United States District Court, Southern District of Florida, Case No. 0:16-cv-60939-BB, styled pseudonymously as Doe v. Drisin (the "Doe" Lawsuit). Rivera's lawsuit alleged sexual battery and negligent infliction of emotional distress.

221. Upon the presentation of sworn testimony from Sherbakova which set forth her personal knowledge of the Subject Incident, Rivera's attorney voluntarily dismissed the lawsuit on June 23, 2016, in accordance with his duty under Fed.R.Civ.P. 11 not to advance a pleading

when, to the best of the attorney's knowledge, information and belief, formed after reasonable inquiry, the factual contentions lack evidentiary support.

222. The Doe Lawsuit was terminated on June 24, 2016, prior to any substantive judicial action or comment relating to the merits of the complaint.

223. FIU's *The Beacon* newspaper and the FIU Student Media are two of the publicly accessible media arms of FIU.

224. The Beacon is the student-run newspaper of FIU and has, upon information and belief, a circulation of approximately 7,500. It is available free campus-wide and typically contains a mix of campus and local news coverage. The Beacon's content is also published online at FIUSM.com. FIUSM.com is run separately from The Beacon and is part of FIU Student Media.

225. The FIU Student Media is the student media department of FIU. It combines the newspaper, *The Beacon*, and WRGP, the student radio station. Organizationally, both *The Beacon* and the FIU Student Media are situated within the FIU Office of Student Affairs under the direct supervision of Robert Jaross, Director of Student Media, and Larry Lunsford, Vice President of Student Affairs. Lunsford reports directly to Furton, FIU's Provost and Executive Vice-President, who in turn reports directly to Rosenberg, FIU's President.

226. FIUSM.com is published on the world-wide web and is thus accessible to a world-wide audience, including any and all persons throughout the world who do an Internet search for Adam Drisin.

227. On or about May 6, 2016, FIUSM.com published a feature story about Drisin, entitled "Rape allegations brought against former associate dean" (the "Subject Article"). The Subject Article, which refers to Drisin as "a former senior associate dean of architecture at the

[FIU] College of Architecture" creates a false impression that Drisin left his faculty post because he committed a sexual battery upon Rivera.

228. In principal part, the Subject Article strives to parrot the allegations of the Doe Lawsuit.

229. The Subject Article concludes with the comment: "Requests for contact from Drisin and FIUPD [Florida International University Police Department] have not yet been returned."

230. The averment that FIUSM.com requested that Drisin contact the Student Media regarding the article is false. Drisin was never contacted or informed that FIUSM.com would or did publish the Subject Article.

231. Further, the averment that a "request[] for contact from FIUPD ha[s] not yet been returned" intentionally creates an impression that a criminal police report was filed against Drisin, which is false.

232. A postscript to the Subject Article states that "Student Media will update this story as more details become available." Upon information and belief, FIUSM.com has failed to publish the relevant "update" that the Doe Lawsuit was voluntarily dismissed.

233. The Restatement of Torts (Second) §611 provides for a "judicial action" exception to the "fair report" privilege. This exception vitiates the important journalistic privilege with respect to the publication of the contents of a preliminary pleading, such as the complaint in the Doe Lawsuit, before any judicial action has been taken. The public policy underlying the "judicial action" exception to the "fair report" privilege is to prevent implementation of a scheme to file a complaint for the purpose of establishing a privilege to publicize its content and then dropping the action," which is exactly what happened with the Doe Lawsuit.

234. Under the direction of responsible parties Jaross, Lunsford, Furton and Rosenberg, FIUSM.com failed to exercise reasonable care to determine whether the published allegations against Drisin were meritorious and worthy of publication. Upon a reasonable journalistic investigation, FIUSM would have discovered that the defamatory allegations were abjectly false and would have decided not to publish the May 6, 2016 article about Drisin.

235. In particular, the headline of the Subject Article, which states, "Rape allegations brought against former associate dean," is deliberately and maliciously fashioned to create a misimpression that Drisin was charged with a felony, and distorts the allegations of the Doe Lawsuit (which was carefully drafted so as specifically **not** to use the term "rape," which clearly suggests a criminal act, in view of the fact that the Doe Lawsuit failed to articulate any cognizable *actus rea* against Drisin).

236. A reasonable person acting in the capacity of Jaross, Lunsford, Furton and Rosenberg would have interceded to prevent the defamatory and stigmatizing publication of the Subject Article, and would have known that the publication would have unlawfully stigmatized Drisin and caused irreparable injury to his reputation, thus depriving Drisin of his Fourteenth Amendment right to liberty.

237. Alternatively, a reasonable person acting in the capacity of Jaross, Lunsford, Furton and Rosenberg would have recognized, after the defamatory and stigmatizing publication of the Subject Article, that the Subject Article unlawfully deprived Drisin of his Fourteenth Amendment right to liberty, and would have interceded to remove the article from the world-wide web in an effort to mitigate against the continuing unlawful stigmatizing effect of the Subject Article on Drisin's reputation.

238. By falsely implicating Drisin in the commission of a felonious sexual crime, FIUSM.com, at the direction of Jaross, Lunsford, Furton and Rosenberg, has intentionally and unlawfully stigmatized Drisin and subjected him to distrust, hatred, contempt, ridicule or obloquy and caused Drisin to be avoided by his peers, thus causing severe and irreparable injury to Drisin's reputation, and to his personal social, official and business relations of life.

239. As the direct and foreseeable result of the violation of Drisin's statutory and civil rights, as more fully alleged above, coupled with the alleged tortious defamatory and stigmatizing publications and conduct, Drisin has become a pariah amongst his peers and been permanently deprived of his ability to secure lucrative employment in his chosen profession, in which he has built a superb and stand-out reputation over the last twenty-five (25) years. Specifically, (1) three universities abruptly discontinued final negotiations with Drisin for senior dean positions when they learned of the findings against Drisin, (2) Drisin has since applied for more than 250 academic positions and has received no response despite his highly-esteemed and impeccably-credentialed work history; and (3) Drisin was ousted from his role as Founding Director of the National Young Arts Foundation's Design Arts Program when they were informed of the claims against him from an FIU administrator/faculty member.

240. As the direct and foreseeable result of the violation of Drisin's statutory and civil rights, as more fully alleged above, coupled with the alleged tortious defamatory and stigmatizing publications and conduct, Drisin has suffered catastrophic personal damage and loss, including (1) panic and depression arising first out of having been a victim of sexual assault, and later having to come to terms with his being accused of the misconduct that was in fact perpetrated upon him; (2) the dissolution of an eleven-year marriage, in which his petitioner spouse expressly alleged the findings of sexual misconduct in the workplace as the grounds for divorce; (3) mental anguish, (4)

emotional pain and suffering, (5) loss of the enjoyment of life, and (6) the expense of attorneys' fees in seeking mitigation and redress for his injuries; and (7) the expense of psychological counseling as required for the adaptation to the extreme pecuniary and non-pecuniary losses.

COUNT I

Violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.

(Against FIU and All Individual Defendants in their Official Capacities)

241. Drisin realleges paragraphs 1 through 240 as paragraph 241.

242. Title IX of the Education Amendments of 1972 provides, in relevant part, that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

243. Title IX is enforceable through an implied private right of action for damages arising from employment discrimination claims against schools, such as FIU, which receive federal funding.

244. 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 and employee complaints alleging any action which would be prohibited by" Title I 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). Such prohibited actions include all forms of sexual harassment, including sexual intercourse, sexual assault, and rape.

245 FIU, through its gender-biased and improper administration of FIU's Title IX policies and procedures, including those pertaining to the application of its sexual harassment policy, its handling of the sexual misconduct complaint by Rivera against Drisin, and its handling

of the sexual misconduct complaint by Drisin against Rivera, has discriminated against Drisin on the basis of his gender and deprived Drisin of the benefits of employment at FIU and his rights to due process and equal protection under federal law.

A. ERRONEOUS OUTCOME

246. The facts, as more specifically alleged above, which cast some articulable doubt on the accuracy of the outcome of the investigation into Rivera's claim against Drisin and the disciplinary proceeding against Drisin, include:

a. Failure to conduct a timely investigation. FIU displayed preferential favoritism to Rivera and her "team" by allowing the delay of the investigation for three months, during which time McWhorter improperly functioned as a *de facto* "women's rights" advocate for Rivera rather than as an impartial investigator. During this three-month delay, which was non-compliant with FIU's internal Title IX guidelines, Rivera had an opportunity to propagate false statements about Drisin (and Drisin's relationship with Sherbakova) and exercised under influence over McWhorter who failed to make any effort to adduce evidence from other witnesses during this expanded investigatory period who, unlike Rivera who at all times material conceded **no** recollection or knowledge relating to the Subject Incident, did have actual knowledge of what transpired between Rivera and Drisin;

b. The irrational transmogrification from Rivera's willful sexual attack on Drisin, as he slept, into a finding that Drisin engaged in non-consensual sex with Rivera as a purported "unconscious" victim. In order to effectuate this irrational transmogrification, McWhorter improperly underweighted or disregarded eyewitness accounts and relied instead on a fabricated statement from Rivera, despite Rivera's conceded lack of recollection.

c. A slanted investigative report. McWhorter conducted a biased, prosecutorial-minded investigation, as more fully alleged above, that failed to keep the roles of prosecutor, witness and judge separate as required by due process. McWhorter's ROI findings were reasonably derived from the independent adduction of evidence, but were biased and partial and predetermined so as to treat as plausible only allegations against Drisin, and not allegations against Rivera, irrespective of the manifest weight of the evidence that the allegations against Drisin were either wholly fabricated or confabulated by Rivera;

d. A badly flawed interviewing process. As more fully alleged above, McWhorter disregarded critical facts and exculpatory information which would have necessitated the dismissal of the Rivera's claim against Drisin. During the investigation of the Rivera complaint, no credible or reliable evidence was presented in support of Rivera's claim that she lacked the ability to consent; to the contrary, all of the eyewitnesses to her behavior concurred that Rivera was in control and was not in an alcoholic blackout state.

e. Manipulation of the preponderance of the evidence standard. McWhorter's ultimate substantiation of Rivera's claim against Drisin is predicated on her belief that "[Rivera's behavior] **could lead one to believe** that [Rivera] was intoxicated," which in turn, inexplicably, leads McWhorter to leap to the conclusions that Rivera was in an alcoholic blackout state and that Drisin had knowledge of that state. McWhorter's conclusion does not have one iota of evidentiary support to nudge it from the speculative to the plausible, let alone to support a 51% preponderance standard, and, as such, reflects her failure to properly apply the burden of proof as would be required by due process.

f. The singular investigator model denied Drisin due process of law.

247. The foregoing circumstances, when viewed in connection with all facts alleged above and regarded in their totality, establish a plausible causal nexus between Drisin's termination and FIU's gender bias.

248. Drisin did not engage in conduct that any reasonable person could conclude meets the definition of sexual harassment, yet he was terminated because of FIU's desire to improve its record with respect to the handling of complaints of sexual harassment brought by female students against males, and due to the EOPD investigator's personal biases that prejudged an accused male as guilty, as well as a perceived imposition of pressure placed upon FIU by by the OCR to feverishly enforce Title IX sexual harassment claims against male respondents, as manifested through the DCL which contained a threat of curtailment of federal funding to educational institutions who are non-complaint with the enforcement of sexual harassment prohibitions.

249. Drisin's employment was terminated because he was a male, as no reasonable person could have determined that the record before the EOPD investigator justified a finding that Drisin and engaged in sexual harassment in violation of FIU policy.

250. Through her interview with Sherbakova, a percipient witness to the events resulting in sexual harassment charge against Drisin, McWhorter acquired actual knowledge that the allegation of sexual misconduct against Drisin was entirely false and confabulated, if not outright fabricated; nevertheless, McWhorter acted with deliberate and reckless indifference to that fact.

251. FIU's decision-makers ratified the findings of the EOPD investigator with no independent investigation, and acted with deliberate indifference when presented with evidence from which FIU's decision-makers acquired actual knowledge that the findings of the EOPD investigator were spurious and based on bias and card-stacking of the evidence against Drisin.

252. FUI's decision-making with respect to Drisin was based on the gender discriminatory principle that if a female student subjectively purports to believe that male conduct is offensive and/or has an adverse emotional impact on her, it constitutes sexual harassment, notwithstanding the fact that the female accuser has in actuality conducted herself predatorily against her male accused, and the male has committed no misconduct.

B. SELECTIVE ENFORCEMENT.

253. When FIU subjected Drisin to disciplinary action, it did so in an arbitrary and capricious manner, and selectively enforced Title IX against him on the basis of his male sex. FIU failed to adhere to its own guidelines and regulations, and the guidelines and regulations themselves are insufficient to protect the rights of male students and employees.

254. All relevant statistical surveys demonstrate that the incidents of male victimization in sexual misconduct cases on campuses throughout the United States is not nil. For example, upon information and belief, the FIU "It's On Us" Student Affairs website has reported that "1 in 5 women and 1 in 16 men are sexually assaulted in college." And, the Florida Council Against Sexual Violence has reported that in Florida, 20.4% of men, or 1,437,000 men, have been victimized by sexual violence other than rape.

255. Upon information and belief, FIU's EOPD has not even one reported finding of sexual misconduct of a female committed against a male and involving disciplinary action taken against the female as a person guilty of sexual misconduct under Title IX.

256. According to a 2010 paper from the Centers for Disease Control and Prevention, approximately 40 percent of homosexual men, 47 percent of bisexual men, and 21 percent of

heterosexual men in the United States "have experienced sexual violence other than rape at some point in their lives."[8]

257. The perpetuation of norms that see men as sexual aggressors and females as disempowered victims reinforces societal misconception that women are "noble, pure, passive, and ignorant."[9]

258. Likewise, treating male sexual victimization as a rare occurrence can impose regressive expectations about masculinity on males, by promoting a counterproductive construct of what it means to "be a man" which reinforces notions of naturalistic masculinity long criticized by feminist theory.[10]

259. Decision-making based on the conventional norms is discriminatory against males.

260. FIU has conducted itself in a manner which betrays an entrenchment in longstanding patterns and practices which are discriminatory against males, as evidenced by the selective enforcement of Rivera's complaint against Drisin, and the dismissal of Drisin's complaint against Rivera arising out of the identical events, as more fully alleged above.

261. As a result of FIU's gender-biased discrimination against Drisin under Title IX, Drisin has suffered damages and will continue to suffer irreparable injury and damages in the future, including but not limited to:

a. Loss of back pay, bonus incentives, and front pay;

[8] The National Center for Injury Prevention and Control of the Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010 Findings on Victimization by Sexual Orientation*

[9] Lara Stemple, J.D., and Ilan H. Meyer, Ph.D., *The Sexual Victimization of Men in America: New Data Challenge Old Assumptions*, Am J Public Health. 2014 June; 104(6): e19–e26.

[10] Id.

b. Damage to national professional reputation, which has had a palpable and irremediable deleterious impact on Drisin's opportunities to procure gainful and prestigious academic appointments;

c. Damage to confidence and self-esteem, humiliation, indignity, personal embarrassment, and stigmatization;

d. Stress, anxiety, and emotional distress resulting from Drisin's having been cast as a pariah amongst his colleagues;

e. Depression and loss of capacity for the enjoyment of life; and

f. Significant past and future pain and suffering.

WHEREFORE, Drisin respectfully requests this Court to enter judgment in his favor and against FIU, awarding him damages for back pay, front pay, loss of benefits, consequential damages, compensatory damages, prejudgment and postjudgment interest, reasonable attorneys' fees pursuant to 42 U.S.C. §1988(b) (2000), and punitive damages, as will effectuate the purpose of Title IX, together with all such other and further relief as the Court deems just and proper.

COUNT II
42 U.S.C. §1983 Claim for
Violation of Fourteenth Amendment Right to Procedural Due Process
(Deprivation of Property)

(Against McWhorter, Hardrick, Schriner, and Rosenberg)

262. Plaintiff realleges paragraphs 1 through 240 as paragraph 262.

263. 42 U.S.C. §1983 provides that "[e]very person who, under color of [state law] subjects, or causes to be subjected, any citizen of the United States . . . the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured."

264. Defendants McWhorter, Hardrick, Schriner, and Rosenberg have exercised power possessed by virtue of state law and made possible only because they are clothed with the authority of state law, to violate Drisin's Fourteenth Amendment right to procedural due process.

265. Defendants McWhorter, Hardrick, Schriner and Rosenberg have violated Drisin's procedural due process rights by depriving Drisin of his property interest in his continued tenured employment at FIU without due process of law, by failing to provide Drisin with (1) adequate notice of the reasons for his termination, (2) the names of adverse witnesses and the nature of their testimony; (3) a meaningful opportunity to be heard; and (4) the right to be heard by a tribunal that possesses some academic expertise and apparent impartiality towards the charges leveled against him, all as more particularly alleged above.

266. Defendants McWhorter, Hardrick, Schriner and Rosenberg had actual or constructive knowledge that the EOPD's Title IX investigation was conducted in a manner that posed a pervasive and unreasonable risk of constitutional injury to Drisin, and they each acted with malicious, intentional, reckless, or callous indifference to the violation of Drisin's constitutional rights, or their response to that knowledge was so inadequate as to show tacit authorization of the unlawful practices.

267. There was an affirmative causal link between the conduct of McWhorter, Hardrick, Schriner and Rosenberg which deprived Drisin of his procedural due process rights to his property interest in continued employment and the wrongful termination of Drisin's employment.

268. As a direct result of the deprivation of Drisin's constitutional property interest without due process of law, Drisin has suffered injury.

WHEREFORE, Drisin respectfully requests this Court to enter judgment in his favor and against FIU, awarding him pecuniary damage, non-pecuniary damage, including mental anguish

and emotional distress, for which he is entitled to a recovery, together with punitive damages to deter or punish the malicious deprivations of Drisin's constitutional rights, and attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b) (2000).

COUNT III
42 U.S.C. §1983 Claim for
Violation of Fourteenth Amendment Right to Procedural Due Process
(Deprivation of Liberty)

(Against Jaross, Lunsford, Furton and Rosenberg)

269. Plaintiff realleges paragraphs 1 through 240 as paragraph 269.

270. 42 U.S.C. §1983 provides that "[e]very person who, under color of [state law] subjects, or causes to be subjected, any citizen of the United States . . . the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured."

271. Defendants Jaross, Lunsford, Furton and Rosenberg, have exercised power possessed by virtue of state law and made possible only because they are clothed with the authority of state law, to violate Drisin's Fourteenth Amendment right to procedural due process.

272. Defendants Jaross, Lunsford, Furton and Rosenberg, have violated Drisin's procedural due process rights by depriving Drisin of his liberty interest in his reputation without due process of law, by failing to exercise administrative control to prevent publication, or to remove subsequent to publication, an FIU-subsidized Student Media group's May 6, 2016 publication on the world-wide web of a featured story about Drisin, entitled, "Rape allegations brought against former associate dean."

273. As more particularly alleged above, the Subject Article was replete with false statements of a stigmatizing nature and was published to a world-wide audience to whom the information that Drisin was no longer employed by FIU was juxtaposed to blatant false

insinuations that Drisin was being accused with a felonious sexual crime, in such a manner as to create an intentional and malicious defamatory and stigmatizing impression.

274. The Subject Article was published without Drisin having been first provided a meaningful opportunity for a name-clearing hearing.

275. Defendants Jaross, Lunsford, Furton and Rosenberg, as FIU administrators with actual control and/or supervisory responsibility over the FIU Student Media, had a duty to ensure the protection of Drisin's procedural due process rights to his reputation, and had actual or constructive knowledge that the publication of the Subject Article would have posed a pervasive and unreasonable risk of constitutional injury to Drisin. Each of the aforementioned individual Defendants acted with malicious, intentional, reckless, or callous indifference to the violation of Drisin's constitutional rights, or their response to that knowledge was so inadequate as to show tacit authorization of the unlawful practices.

276. Drisin's employment was terminated based on the identical false and defamatory allegations which were published by FIU in the Subject Article.

277. As the direct and foreseeable result of the foregoing acts of stigma-plus deprivation of Drisin's Fourteenth Amendment right to liberty, employment was terminated.

278. There was an affirmative causal link between the conduct of McWhorter, Hardrick, Schriner and Rosenberg and the deprivation of Drisin's procedural due process rights to his liberty interest in good reputation.

279. As a direct result of the deprivation of Drisin's constitutional liberty interest without due process of law, Drisin has suffered injury.

WHEREFORE, Drisin respectfully requests this Court to enter judgment in his favor and against FIU, awarding him pecuniary damage, non-pecuniary damage, including mental anguish

and emotional distress, for which he is entitled to a recovery, together with punitive damages to deter or punish the malicious deprivations of Drisin's constitutional rights, and attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b) (2000).

COUNT IV
42 U.S.C. §1983 Claim for Violation of
Equal Protection Clause of the U.S. Constitution

(Against McWhorter, Hardrick, Schriner and Rosenberg)

280. Plaintiff realleges paragraphs 1 through 237 as paragraph 276.

281. 42 U.S.C. §1983 provides that "[e]very person who, under color of [state law] subjects, or causes to be subjected, any citizen of the United States . . . the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured."

282. Defendants McWhorter, Hardrick, Schriner, and Rosenberg have exercised power possessed by virtue of state law and made possible only because they are clothed with the authority of state law, to violate Drisin's Fourteenth Amendment right to be free from sex discrimination in a state-operated educational institution.

283. Defendants McWhorter, Hardrick, Schriner and Rosenberg have violated Drisin's Fourteenth Amendment right to be free from gender-based discrimination under the Equal Protection Clause of the United States Constitution. Defendants McWhorter, Hardrick, Schriner and Rosenberg have administered FIU's policies and protocols regarding complaints of sexual misconduct, which are required to facially neutral in their implementation, investigation, and enforcement, in an intentionally discriminatory manner. These individual Defendants have been grossly negligent by administering FIU's sexual misconduct policies so as to afford favoritism to

female complainants and have condoned and applied such unlawfully preferential practices to Drisin with the force of law.

284. Defendants McWhorter, Hardrick, Schriner and Rosenberg were grossly negligent, and acted with malicious, intentional, reckless or callous indifference to Drisin's Equal Protection Rights, as demonstrated by McWhorter's egregiously gender-biased investigation and conclusions relating to Rivera's complaint against Drisin which imputed guilt to Drisin with not one iota of evidentiary support, and the deliberate indifference to that gender bias in the review and ratification of the ROI by Hardrick, Schriner and Rosenberg which sanctioned and condoned the gender-biased ROI in a manner which reflected a broader unlawful pattern and practice of gender discrimination, and from the failure of the McWhorter and Hardrick to conduct a bona fide independent investigation into Drisin's complaint against Rivera which arose out of the same facts and circumstances, as more particularly alleged above.

285. There was an affirmative causal link between the conduct of McWhorter, Hardrick, Schriner and Rosenberg and the deprivation of Drisin's right to freedom from gender bias in his employment under the Equal Protection Clause of the United States Constitution and wrongful termination of Drisin's employment.

286. As a direct result of the deprivation of Drisin's constitutional right to gender-based equal protection, Drisin has suffered injury.

WHEREFORE, Drisin respectfully requests this Court to enter judgment in his favor and against FIU, awarding him pecuniary damage, non-pecuniary damage, including mental anguish and emotional distress, for which he is entitled to a recovery, together with punitive damages to deter or punish the malicious deprivations of Drisin's constitutional rights, and attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b) (2000).

COUNT V
42 U.S.C. §1983 Claim for Violation of Title IX

(Against McWhorter, Hardrick, Schriner, and Rosenberg)

287. Plaintiff realleges paragraphs 1 through 240 as paragraph 287.

288. 42 U.S.C. §1983 provides that "[e]very person who, under color of [state law] subjects, or causes to be subjected, any citizen of the United States . . . the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured."

289. Defendants McWhorter, Hardrick, Schriner, and Rosenberg have exercised power possessed by virtue of state law and made possible only because they are clothed with the authority of state law, to violate Drisin's right to the statutory protection afforded by Title IX.

290. Defendants McWhorter, Hardrick, Schriner and Rosenberg have violated Drisin's Title IX rights by denying him the benefits of his employment and subjecting him to discrimination, on the basis of sex, under FIU's educational program which is the recipient of federal financial assistance.

291. Defendant's McWhorter, Hardrick, Schriner and Rosenberg were grossly negligent, and acted with malicious, intentional, reckless or callous indifference to Drisin's Title IX rights by orchestrating and ratifying an erroneous outcome to the investigation of Rivera's complaint, with actual knowledge and deliberate indifference to the fact that a reasonable review of the factual record required the dismissal of Rivera's complaint with no adverse findings against Drisin, and that the decision to substantiate Rivera's complaint was motivated by gender bias, as more particularly alleged above.

292. In addition, Defendants McWhorter, Hardrick, Schriner and Rosenberg were grossly negligent, and acted with malicious, intentional, reckless or callous indifference to Drisin's

Title IX rights by selectively enforcing Title IX rights in the wrongful dismissal of Drisin's meritorious complaint against Rivera which arose out of the identical facts and circumstances which gave rise to Rivera's frivolous complaint, which were substantiated by Defendant McWhorter and Hardrick substantiated and ratified by Defendants Schriner and Rosenberg, as more particularly alleged above.

293. There was an affirmative causal link between the conduct of McWhorter, Hardrick, Schriner and Rosenberg and the deprivation of Drisin's Title IX rights which constituted the FIU's articulated "just cause" for the wrongful termination of Drisin's employment.

294. As a direct result of the deprivation of Drisin's Title IX rights, Drisin has suffered injury.

WHEREFORE, Drisin respectfully requests this Court to enter judgment in his favor and against FIU, awarding him pecuniary damage, non-pecuniary damage, including mental anguish and emotional distress, for which he is entitled to a recovery, together with punitive damages to deter or punish the malicious deprivations of Drisin's federal statutory rights, and attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b) (2000).

COUNT VI
Violations of Title VII (42 U.S.C. §2000e2)
(Employment Discrimination Based on Gender – Disparate Treatment)

(Against FIU)

295. Plaintiff realleges paragraphs 1 through 237 as paragraph 291.

296. Title VII prohibits an employer from discriminating "against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

297. At all times material, FIU was an employer within the meaning of Title VII.

298. At all times material, Drisin was an employee within the meaning of Title VII who as a male was a member of a protected class.

299. Drisin was at all times material highly qualified for the position of Associate Professor, Director of the Architecture Program, Associate Dean of the College of Architecture + The Arts, and Senior Associate Dean of the College of Architecture + The Arts at FIU.

300. Drisin suffered an adverse employment action when his employment was abruptly terminated.

301. The termination of Drisin's employment occurred under circumstances that support an inference of unlawful termination.

302. Rivera, a female, was governed by the identical code of conduct (FIU-105), as Drisin with respect to FIU's policy on sexual harassment, and Rivera and Drisin were both subject to identical standards of investigation and review of their conduct under FIU's policies for the implementation of OCR guidelines for the enforcement of Title IX.

303. Although Rivera was engaged in the same or similar sexual misconduct to that in which Drisin was alleged to have been engaged, Rivera was not disciplined for any misconduct whatsoever, despite the fact that the manifest weight of the evidence demonstrated that Rivera was guilty of sexual misconduct and Drisin was not guilty of sexual misconduct, and no reasonable person who reviewed the evidence could find otherwise, as more particularly alleged above.

304. FIU further subjected Drisin to disparate treatment by failing to conduct an independent *de novo* investigation of Drisin's claim of sexual misconduct against Rivera, as more particularly alleged above.

305. On the basis of gender, FIU, together with its employees and/or agents, has discriminated against Drisin, and has subjected Drisin to disparate treatment which resulted in his wrongful termination.

306. FIU, together with its employees and/or agents, has failed to exercise reasonable care to prevent disparate gender treatment, but rather has supported and ratified such conduct through a willful and malicious pattern of twisting and fabricating facts for the purpose of finding Drisin guilty of sexual harassment, when he was the victim of a sexual attack by a female who was undisciplined, despite FIU's actual knowledge that Drisin was innocent and the female was guilty.

307. As the direct and proximate result of FIU's gender-based discrimination, Drisin has suffered damages and will continue to suffer irreparable injury and damages in the future, including but not limited to:

a. Loss of back pay, bonus incentives, and front pay;

b. Damage to national professional reputation, which has had a palpable and irremediable deleterious impact on Drisin's opportunities to procure gainful and prestigious academic appointments;

c. Damage to confidence and self-esteem, humiliation, indignity, personal embarrassment, and stigmatization;

d. Stress, anxiety, and emotional distress resulting from Drisin's having been cast as a pariah amongst his colleagues;

e. Depression and loss of capacity for the enjoyment of life; and

f. Significant past and future pain and suffering.

WHEREFORE, Drisin respectfully requests this Court to enter judgment in his favor and against FIU, awarding him damages for back pay, front pay, loss of benefits, consequential

damages, compensatory damages to the extent permitted by law, prejudgment and postjudgment interest, reasonable attorneys' fees pursuant to 42 U.S.C. §2000e(5)(k) of Title VII, and punitive damages, as will effectuate the purpose of Title VII, together with all such other and further relief as the Court deems just and proper.

COUNT VII
Defamation

(Against McWhorter and Furton)

308. Plaintiff realleges paragraphs 1 through 240 as paragraph 308.

309. Upon information and belief, while the investigation into Rivera's complaint against Drisin was pending, McWhorter made statements which imputed sexual misconduct to Drisin,

310. Without privilege, McWhorter communicated the statements which imputed sexual misconduct to Drisin to third parties, including Furton, and upon information and belief and subject to discovery, to additional parties.

311. The statements made by McWhorter about Drisin which imputed to Drisin guilt of sexual misconduct are defamatory per se.

312. The falsity of the statements published by McWhorter and Furton were the proximate cause of injury to Drisin.

313. Upon information and belief, while the investigation into Rivera's complaint against Drisin was pending, Furton made statements which imputed sexual misconduct to Drisin,

314. Without privilege, Furton communicated the statements which imputed sexual misconduct to Drisin to third parties, including Northup, and upon information and belief and subject to discovery, to additional parties.

315. The statements by Furton about Drisin imputing guilt of sexual misconduct are defamatory per se.

316. McWhorter and Furton published defamatory statements about Drisin without reasonable care as to the truth or falsity of the statements, and with actual malice with the intent to cause injury to Drisin.

317. Drisin suffered irreparable injury as a result of the publication of the false and defamatory statements which were published by McWhorter and Furton.

WHEREFORE, Drisin respectfully requests this Court to enter judgment in his favor and against McWhorter and Furton, awarding him general damages for past and future harm to his reputation, stigmatization, and ensuing mental and emotional anguish and humiliation; special damages as compensation for Drisin's pecuniary loss as a result of the defamation, and punitive damages to deter McWhorter and Furton from such willful and malicious conduct in the future.

DEMAND FOR JURY TRIAL

Drisin demands a trial by jury of all issues triable as of right by jury

DATED this 28th day of November, 2016, in Miami Beach, Miami-Dade County, Florida.

Respectfully submitted,

s/ Howard Levine

HOWARD J. LEVINE, ESQ.
Fla. Bar No. 0075670
Law Offices of Howard Levine
1560 Lenox Avenue
Suite 307
Miami Beach, Florida 33139
Tel: (305) 534-0403
Fax: (305) 672-5305
HLevineEsq@aol.com