

MONROE COUNTY CLERK'S OFFICE

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Return To:
JENNIFER MORGAN LEVY
4 Little Spring Run
Fairport, NY 14450

Doe, Jane

Roberts Wesleyan College

State Fee Index Number	\$165.00	
County Fee Index Number	\$26.00	
State Fee Cultural Education	\$14.25	
State Fee Records Management	\$4.75	Employee: CW
Total Fees Paid:	\$210.00	

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



2. Defendant Roberts's unlawful conduct was knowing, malicious, willful, and wanton and/or showed a reckless disregard for Jane Doe's protected rights, which has caused and continues to cause her to suffer substantial economic and non-economic damages.

3. A non-exhaustive list of Roberts's wrongful and unfair actions include:
- Immediately disclosing, *to her rapist*, the fact of Jane Doe's meeting with Roberts Title IX staff, providing him notice of her intent to file a report against him before police had an opportunity to interview him about the assault.
 - Failing to provide Jane Doe with an accommodation that could allow her to participate fully in the investigation process given her disabling PTSD resulting from her assault.
 - Knowingly distributing statements about Jane Doe's prior sexual history despite the information being protected from disclosure by "Rape Shield" protections.
 - Failing to respond to her report her rapist violated the College's no contact order.
 - Failing to complete its investigation into Jane Doe's complaint prior to her and her rapist's graduations from Roberts.
 - Failing to hold a hearing regarding Ms. Doe's complaint prior to her and her rapist's graduations from Roberts.
 - Failing to employ individuals competent and prepared for the highly sensitive task of Title IX Coordinator whilst simultaneously encouraging students to seek the Title IX Coordinator's assistance if sexually assaulted.

JURISDICTION AND PARTIES

4. Plaintiff resides in the Town of Greece, County of Monroe, and State of New York.

5. Roberts is located in the Town of Chili, in the County of Monroe and State of New York.

6. Roberts is a private, post-secondary school.

7. Roberts is a recipient of federal funds and is therefore subject to Title IX.

8. Roberts is an "educational institution" as defined in 20 USCS §1681(c) and a "postsecondary institution" as defined by 34 CFR § 106.30(b).

9. Roberts is an "educational institution" as defined by New York State Human Rights Law (NYSHRL) N.Y. Exec. Law § 292 (39).

10. This court has jurisdiction over Roberts pursuant to Sections 301 of the New York Civil Practice Law and Rules (C.P.L.R.) in that Roberts is within Monroe County, New York State.

11. This court has subject matter jurisdiction over this action by virtue of the NYSHRL, N.Y. Exec. Law § 297 (9).

12. Venue is proper in this county pursuant to C.P.L.R. 501 because at the time Ms. Doe commenced this action, she was a resident of this county.

BACKGROUND FACTS AND CIRCUMSTANCES

I. A Senior, About to Begin Her Teaching Career

13. Ms. Doe, a self-described “rule follower,” was drawn to attend Roberts when researching colleges because her family, friends, and fellow church community members attended the school, and she understood it would be a safe place to learn the skills she needed to become a teacher.

14. Ms. Doe and Roberts entered into a contract under which she paid tuition and fees to Roberts in consideration of educational services and programs Roberts provided to Ms. Doe.

15. Ms. Doe paid approximately \$75,000 in tuition to Roberts in tuition and supplies in connection with this contract.

16. While a student at Roberts, Ms. Doe excelled academically while playing soccer on the junior varsity team and participating in student council.

17. Ms. Doe began the 2021 academic year looking forward to finishing her undergraduate degree, beginning her career as a teacher and then continuing her education at Roberts and obtaining a master’s degree.

II. The Assault

18. On October 26, 2021, Ms. Doe visited the residence hall room of a male student (herein after “respondent”²) who, at the time, was enrolled in a master’s degree program at Roberts. Ms. Doe planned to watch a television show with respondent in his single on-campus residence hall room, a room provided to him because he was employed by Roberts as a resident assistant.

19. Prior to going to respondent’s room, Ms. Doe contacted her own resident assistant to ensure she was not violating the schools’ rules “visiting hours.”

20. While in respondent’s room, respondent raped Ms. Doe.

III. Roberts’s Lengthy and Contradictory Policies

21. Roberts promises to its students, through its adoption, publication, and distribution of the following policies, [Title IX Sex Discrimination: Dating Violence, Domestic Violence, Sexual Assault, Stalking and Title IX Sexual Harassment](#) (Administrative Policy #120), [Sexual Misconduct and Title IX Compliance Policy](#) (Administrative Policy #108), and [Sexual Harassment Prevention Policy](#) (Administrative Policy #109) and [Non-Discrimination & Non-Harassment](#) (Administrative Policy #116), it will prevent and respond to harassment and discrimination.

22. While each of these policies is listed under the [“Sexual Misconduct Policy” heading of Roberts Title IX Website](#)³, only two, Administrative Policy #120 and Administrative Policy #108 apply to students.

23. Copies of Administrative Policy #120 and Administrative Policy #108 (hereinafter together, “the policies”) are included at Exhibit 1.

² Plaintiff is prepared to disclose this male student’s name to the court if necessary.

³ <https://www.roberts.edu/title-ix/sexual-misconduct-policy/> Last accessed August 16, 2022, 12:30PM.

24. Each of the policies indicate their applicability to all students and employees.
25. Each of the policies contain Roberts's promise to eliminate sexual harassment, including sexual violence and to remedy its effects.
26. Both policies also states that it is **the policy** under which allegations of sexual violence, including sexual assault, are handled by Roberts. *See Exhibit 1, Administrative Policy # 108, page 2 and Administrative Policy 120, page 4.*
27. While both policies instruct students that it is **the policy** that applies to allegations of sexual violence, the definitions of key terms, timelines, and procedures used to report, investigate, and respond to complaints of sexual harassment are different under each.
28. In example, Administrative Policy #108 indicates that the time frame for resolution is within sixty (60) days of the report, and Administrative Policy #120 indicates the time frame for resolution is within "90 school/calendar/business days" of the Formal Complaint. Exhibit 1, Administrative Policy 108 pg. 20, and Administrative Policy 120, pg. 7.
29. Together, the policies are **85 pages** long. In addition to the policies, students are also accountable to a **56-page** Student Handbook, including information about student behavioral expectations and references to the policies.
30. A copy of the Student Handbook is attached at Exhibit 2.
31. Roberts does not just distribute the policies to Roberts's students but also actively trains students on the policies during students' orientation to the institution.
32. The policies and Roberts's training sessions encourage Roberts's students, like Ms. Doe to report harassment based on protected categories, such as sex.

33. Administrative Policy 120, the policy Roberts purports to have followed in its response to Ms. Doe's report, enthusiastically encourages students to report sex-based harassment, on at least three separate pages.

III. A Confusing Reporting Experience and Lack of Accommodation

34. In accordance with her understanding of the policies, Ms. Doe reported respondent raping her to her resident advisor and another Roberts's employee, Resident Director Bostanic the very same day.

35. Ms. Doe also sought to make a report to Ms. Monika Robertson, a Roberts employee, who serves as Roberts's Title IX Coordinator (herein after, "TIXC".)

36. Ms. Robertson is an official with authority to address alleged discrimination and to institute corrective measures.

37. Ms. Doe understood that as TIXC, Ms. Robertson would assist her in determining whether to make a formal a report and what steps she should take next.

38. Instead, Ms. Robertson provided Ms. Doe with vague and confusing information and failed to sufficiently explain the investigation process.

39. Ms. Robertson could not answer Ms. Doe's questions regarding how the investigation would progress, a fact noted by not just Ms. Doe, but also by Ms. Doe's Resident Assistant, during her subsequent interview with investigators. The investigation report completed months later, included Ms. Doe's resident assistant's perspective of this meeting, explaining the meeting with Ms. Robertson was "really hard" and there was "a lot of miscommunication" between Ms. Robertson and Ms. Doe. Ms. Doe's resident assistant further explained that Ms. Robertson provided vague descriptions and at one point in the meeting, commented that if Ms. Doe decided not to proceed with the Title IX Process, she and respondent

could reach a “beautiful reconciliation where both parties agree”, which the resident assistant felt was misleading.

40. Roberts’s TIXC’s suggestion that a “beautiful reconciliation” could be achieved if Ms. Doe did not go forward with a formal complaint against respondent had a devastating impact on Ms. Doe, exacerbating the shame, self-doubt, and confusion she, like so many other rape survivors, experience.

41. While meeting with Ms. Robertson, Ms. Doe clearly instructed her NOT to take any steps in response her report until Ms. Doe spoke with the Monroe County Sherriff’s Office and understood her options in the criminal process.

42. The right of victims of sexual assault to make a report to law enforcement is clearly articulated by Roberts in the policies.

43. Despite this instruction, Ms. Robertson contacted the respondent the very next day.

44. Because of Ms. Robertson’s outreach, respondent promptly sent a message to Ms. Doe asking why he was being contacted by the TIXC, further traumatizing Ms. Doe and causing her significant emotional distress.

45. Ms. Robertson’s disclosure to respondent also provided him an opportunity to discuss the encounter with individuals he would later identify as witnesses. These witnesses would later share one, very consistent, and fabricated account of what occurred with investigators.

46. Ms. Robertson’s disclosure also provided respondent the opportunity to create and hone his version of the encounter before he was contacted by police.

47. After Ms. Robertson informed respondent of Ms. Doe's report, false rumors about Ms. Doe began to circulate around Roberts including:

- a) Ms. Doe attended a party immediately after her assault.
- b) Ms. Doe needed to leave a party she attended after the assault because of a "pregnancy scare".
- c) Ms. Doe made prior reports of sexual misconduct to Roberts.
- d) A student about whom Ms. Doe had made a report of sexual misconduct to Roberts left Roberts and killed himself shortly afterwards.
- e) Ms. Doe told friends that she enjoyed the assault.

48. When Ms. Doe attempted to meet with Ms. Robertson to share the severe emotional distress Ms. Robertson's disclosure to respondent caused her, Ms. Robertson refused to allow Ms. Doe to bring another Roberts's staff member to the meeting for support; claiming Ms. Doe was only allowed one "advisor" at meeting with Ms. Robertson because they were meeting about "a Title IX matter."

49. Ms. Robertson's rationale was nonsensical as Ms. Doe had not filed a Title IX complaint at this time and therefore any Title IX policies regarding advisors did not apply.

50. Ms. Robertson further stated that if she met with Ms. Doe, she would need to call respondent in for a meeting too.

51. Despite this being neither required by Roberts's policy, nor Title IX regulations, Ms. Robertson's threat of having further conversations with respondent dissuaded Ms. Doe from meeting with Ms. Robertson about the impact of her disclosure.

52. Nevertheless, Roberts became aware of the harassing rumors spreading through campus about Ms. Doe because witnesses reported these rumors during the investigation process.

53. Roberts did not offer Ms. Doe support or resources upon its receipt of these reports of sexual harassment.

54. When Ms. Doe reported fear of interacting with respondent because he lived close to Ms. Doe on-campus residence, Ms. Robertson offered no accommodation to address her fear of residing in close proximity to her rapist.

55. Ms. Doe had no choice but to move home during the second semester of her senior year.

56. Ms. Doe was referred to the counseling center by Ms. Robertson, however Ms. Robertson did not share why she was referring Ms. Doe to the center. Ms. Doe arrived and told the story of what happened to her all over again, only to be referred to an off-campus resource with the appropriate expertise in sexual assault.

57. Upon information and belief if Ms. Robertson had shared the reason for which she was referring Ms. Doe, the counseling center could have more promptly referred her to the correct resource without her having to share her story again.

IV. Formal Report and Investigation

58. The policies promise a prompt, thorough and impartial investigation will follow complaints of sex-based harassment.

59. On December 13, 2021, Ms. Doe filed a formal complaint of title ix sexual harassment with Roberts.

60. After making her formal complaint, Ms. Doe requested Ms. Robertson arrange for her to meet with investigators assigned to her case, in person, rather than via telephone or video conference because Ms. Doe knew talking about what happened to her would be emotionally challenging for her.

61. Ms. Doe had, at this time, been diagnosed with PTSD and requested in person meetings with investigators upon recommendation of her medical provider.

62. Ms. Robertson should have understood that Ms. Doe's request was a request for an accommodation due to her disabling medical condition.

63. Both Administrative Policy #108 and the Student Handbook promise to provide students with disabilities accommodations in the conduct process. Exhibit 2, Student Handbook, page 25, Exhibit 1, Administrative Policy #108, pages 15, 20.

64. While Administrative Policy #120 does not directly reference Roberts's accommodation obligations to complainants, Roberts's nevertheless has an obligation to accommodate requests for accommodations on the basis of disability from complainants participating in the Administrative Policy #120 process.

65. Ms. Robertson never asked Ms. Doe why she requested to meet the investigators in person.

66. Instead, Ms. Robertson set up a video conference for the interview with no explanation why she was unable to accommodate Ms. Doe request for an in-person meeting.

67. When Ms. Doe joined the video-conference on the day of her interview she learned her interview was not held in person because investigators had been hired from out of state and were located in Massachusetts and Colorado.

68. During the investigation, Ms. Doe did not understand how investigators would use evidence she submitted including whom would be entitled access. When she expressed frustration with not being told how the evidence exchange would work, she was admonished to "just read the policy."

69. When Ms. Doe's advisor became suddenly and unexpectedly ill and was hospitalized and therefore unable to join Ms. Doe for a second interview requested by the investigators Ms. Doe attempted to convey this fact to Ms. Robertson.

70. Rather than informing Ms. Doe during this conversation that her advisor's unavailability was a legitimate reason to delay the interview, as stated in its policies, Ms. Robertson interrupted Ms. Doe "reminding" her that any further delays were her fault and saying that Ms. Doe needed to find a new advisor if she couldn't get in touch with her current one.

71. Concerned and upset that she would not be able to provide the investigators information they needed, Ms. Doe decided to move forward with her interview despite her inability to contact her advisor. Unfortunately, early in the interview Ms. Doe became emotional due to the lack of support.

72. Investigators later characterized of her emotional response during this meeting as "defensive, evasive and hostile." Ms. Doe objected to this depiction of her, particularly given the investigators' intentional exclusion of Ms. Doe and her resident assistant's description of Ms. Robertson's ineptitude (which strongly contributed to Ms. Doe's emotional response to the investigation in general and to this meeting.)

73. Nevertheless, Roberts left the language in the report characterizing Ms. Doe as "defensive, evasive and hostile" and refused to include the explanation for this hostility; that Ms. Robertson failed to inform Ms. Doe that her advisor's absence was a legitimate reason to request a delay for the interview, Ms. Robertson's blaming Ms. Doe for a potential delay (despite her advisor's medical emergency) and Ms. Robertson's general ineptitude in her dealings with Ms. Doe.

74. The investigation report also documented and further spread rumors about Ms. Doe prior sexual history that permeated campus after Ms. Robertson disclosed Ms. Doe initial report to respondent.

V. No Contact Order Violation

75. Respondent was issued a “no contact order” on November 4, 2021, informing him he was not permitted to contact Ms. Doe directly or through a third party, until the grievance process has concluded, and he was informed the order was no longer in effect.

76. In April 2022 Ms. Doe learned respondent had followed her sister, a fellow Roberts’s student whose physical appearance is almost identical to Ms. Doe, while her sister was on campus.

77. Upon learning of respondent’s action in following Ms. Doe’ sister, Ms. Doe was scared for her own physical safety and for the physical safety of her sister.

78. Ms. Doe reported respondent’s following her sister to Ms. Robertson and shared her concern for her and her sister’s safety.

79. Ms. Doe explained her belief that respondent either followed her sister because he believed her to be Ms. Doe or did so to intimidate Ms. Doe.

80. Ms. Robertson did not inform Ms. Doe of any steps she would take to respond to her report of the violation of the no contact order.

81. When directly questioned, Ms. Robertson could not articulate the consequences respondent may face because of his violation of the no contact order.

82. Upon information and belief Ms. Robertson did not respond to Ms. Doe’s report of the no contact order violation in any manner.

83. Ms. Robertson's decision not to pursue the matter was so outrageous and inconsistent with typical safety procedures that a member of Roberts's Campus Safety Office reported to Ms. Doe's parents that he was concerned about Ms. Robertson's lack of follow up.

84. Ms. Doe suffered severe emotional distress and fear for her safety and that of her sister after learning that no action would be taken in response to respondent's violation of the no contact directive.

VI. Delay

85. The policies promise a prompt, thorough and impartial investigation will follow complaints of sex-based harassment.

86. Administrative Policy #120 promises "When a member of the College community chooses to make a formal report of an incident of sexual misconduct, then the College will [. . .] take prompt and appropriate action to respond."

87. Roberts Policy 120 continues, "The Grievance Process will be concluded within a reasonably prompt manner, and **no longer than ninety (90) school/calendar/business days** after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities."

88. The final investigative report for Ms. Doe complaint was not completed until June 6, 2022, 175 calendar and 119 business days after Ms. Doe's formal report.

89. Both Ms. Doe and respondent graduated from Roberts on May 14, 2022, prior to the investigation being completed.

90. The Grievance Process has still not been concluded as of the writing of this complaint, more than 245 calendar and 167 business days after Ms. Doe's formal report.

VII. A Sham Hearing

91. Roberts Student Handbook, declares: “For the purposes of Student Conduct at Roberts Wesleyan College, a student is defined as any person who is registered for, or enrolled in, a traditional undergraduate program, either full-time or part-time, on the residential campus.” See Exhibit 2, Student Handbook page 22.

92. Upon information and belief, respondent was not charged with violating Roberts’s Administrative Policy 120 until after the investigation concluded, on or about June 3, 2022.

93. At the time respondent was charged with violating Roberts’ policies he was neither a student, nor an employee at Roberts.

94. As respondent was not a student when he was charged with violating student conduct policies, Roberts knew it could not hold respondent accountable for his behaviors in this matter.

95. Nevertheless, Roberts held a hearing on June 20, 2022.

96. The hearing was held via Zoom and marred by technical and procedural challenges.

97. During the hearing respondent clearly acknowledged:

- a) He, and not Ms. Doe, initiated every aspect of the sexual encounter.
- b) He believed he had consent for penile vaginal intercourse, in part, because Ms. Doe had given consent to other, different, sexual activities earlier in the encounter.
- c) He believed he had consent for penile vaginal intercourse, in part, because Ms. Doe should have known when he said, “I’m going to get a condom” it meant he would have penile vaginal sex with her immediately upon his return.

d) Ms. Doe facial expression was “flat” when he returned with the condom and immediately before penile vaginal intercourse.

e) Ms. Doe *said nothing* before or during the penile vaginal sex.

98. No information was shared during the hearing that could have led a reasonable decision maker to conclude that Ms. Doe consented to respondent’s penetration of her vagina by his penis, particularly considering Roberts’s definition of consent:

Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent.

[. . .]

Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act.

[. . .]

Consent may be initially given but withdrawn at any time.

Exhibit 2, Administrative Policy #120, pages 44-5.

99. After hearing no news regarding the hearing board’s decision, on August 2, 2022, Ms. Doe delivered a letter to Roberts demanding it act on her complaint.

100. On August 12, 2022, Roberts issued its decision, finding Respondent “not responsible” for violating its policies.

101. Roberts came to this conclusion despite respondent clearly articulating a lack of affirmative consent during the hearing, as more fully described above.

102. Upon information and belief, Roberts found respondent “not responsible” because it understood it could not hold him accountable for his behaviors given its error in charging him with a violation of its policies only after he had already graduated from Roberts.

103. Upon information and belief, Roberts found respondent “not responsible” because it was concerned respondent would bring a legal challenge against Roberts for attempting to charge him with violating Roberts’s policies after his graduation, and he would be successful.

IX. Hostile Environment to Survivors

104. Many more women than men are subject to sexual assault in college, as data recently published in the Federal Register confirms:

One in five college women experience attempted or completed sexual assault in college; some studies state one in four. One in 16 men are sexually assaulted while in college. One poll reported that 20 percent of women, and five percent of men, are sexually assaulted in college.

85 FR 30026, 30076 (internal references omitted.)

105. Roberts’s campus climate is hostile to sexual assault survivors.

106. Upon information and belief, most survivors of sexual assault at Roberts are women.

107. While the policies encourage reporting of sexual violence, Roberts also, simultaneously, promises to punish students who engage in sex before marriage. *See* Exhibit 2, Student Handbook, page 24.

108. There is no “amnesty” policy in the Student Handbook assuring students who may be considering reporting sexual assault, they will not be charged with violating the “sexual activity” policy in the Student Handbook.

109. Upon information and belief Robert’s threat of punishment for engaging “sexual activity” creates a chilling effect on is students’ willingness to report incidents of sexual harassment and assault.

110. Even when students such as Ms. Doe do report sexual violence, Roberts refuses to hold accused students responsible for violating its policies.

111. According to data published on the [New York State Education Department website](#)⁴ in accordance with New York’s comprehensive sexual assault prevention legislation, “Enough is Enough”, ***Roberts has never found a student responsible for violating its sexual assault policies in all the years reported.***

⁴ <http://www.nysed.gov/information-reporting-services/chapter-76-laws-2015-enough-enough-annual-aggregate-data-report>, last accessed August 16, 2022, 2:26PM

FIRST CAUSE OF ACTION

**Deliberate Indifference Sexual Harassment
in Violation of
Title IX, 20 U.S.C. § 1681, et seq.**

112. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

113. Roberts receives federal financial assistance from the United States government.

114. Ms. Doe experienced harassment because of her sex that was so severe, pervasive, and objectively offensive that it deprived her of access to the educational opportunities and/or benefits provided by Roberts when it failed to appropriately respond to her report that respondent raped her in his residence hall room, on Roberts' property.

115. Roberts's grossly inadequate response to Ms. Doe's October 2021 report of sexual harassment was clearly unreasonable in light of the known circumstances and was, therefore, deliberately indifferent.

116. Roberts's failure to appropriately investigate an allegation of sexual harassment and abuse despite its knowledge that Title IX applied to it, coupled with its failure to ever hold a student responsible for sexual assault according to publicly available data, evidences a systemic failure to adequately prevent or respond to instances of sexual assault/violence and sexual harassment within its educational program and activities.

117. As a direct and proximate result of Roberts's systemic failures, Ms. Doe was subject to further harassment via the spread of rumors regarding her prior dating and sexual history and an allegation that she became pregnant as more fully described above.

118. The harassment Ms. Doe experienced occurred in a context that was subject to Roberts's control and where Roberts could have taken remedial action.

119. Roberts had actual knowledge of the harassment Ms. Doe experienced because Ms. Doe reported respondent's rape to Roberts's TIXC in October 2021, made a Formal Complaint to the TIXC in December 2021 and because the harassment she experienced was noted in the investigation report commission by Roberts.

120. As a direct and proximate result of Roberts's deliberately indifferent response to its actual notice of sexual harassment, plaintiff suffered economic and non-economic damages including but not limited to a loss of educational opportunities; loss of future income, medical costs, was forced to move off campus, unable to continue her education at Roberts as she had planned and was damaged.

121. Plaintiff is entitled to economic and non-economic damages in an amount to be determined at trial, plus prejudgment interest and attorneys' fees and costs.

SECOND CAUSE OF ACTION

Sexual Harassment in Violation of New York Human Rights Law

122. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

123. Roberts is an "educational institution" as defined by NYSHRL § 292 (39).

124. Ms. Doe suffered harassment because of her sex that was so severe, pervasive, and objectively offensive that it deprived her of access to the educational opportunities and/or benefits provided by Roberts, as more fully described above.

125. Roberts knew about the sexual harassment Ms. Doe experienced and did nothing to prevent or stop it.

126. The aforesaid acts by defendants violated Ms. Doe's rights under N.Y. Exec. Law § 296 (4).

127. As a result of Roberts's actions, conduct, and omissions, including but not limited to those described above, Roberts permitted harassment of Ms. Doe because of her sex.

128. The harm Ms. Doe experienced was proximately caused by Roberts's acts and/or omissions.

129. Roberts's acts and/or omissions proximately caused Ms. Doe to suffer economic and non-economic damages including but not limited to a loss of educational opportunities; loss of future income, medical costs, severe emotional distress, psychological injury, and mental anguish; degradation; and embarrassment.

130. Plaintiff is therefore entitled to monetary damages, punitive or exemplary damages in an amount to be determined at trial, plus prejudgment interest and attorneys' fees and costs.

THIRD CAUSE OF ACTION

Breach of Contract

131. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

132. Roberts entered a contract with Ms. Doe to provide educational opportunities and experiences to her in consideration of payment of tuition to Roberts.

133. In the contract Roberts promises to Ms. Doe it will respond to complaints of sexual harassment in a manner consistent with the law and its own policies.

134. Through its policies, Roberts actively encouraged Ms. Doe to report sexual harassment and promised it would investigate her complaint according to its policies.

135. Plaintiff fulfilled her obligations pursuant to her contract with Roberts.
136. Plaintiff relied upon her contract with Roberts.
137. Roberts did not fulfill its obligations pursuant to the contract.
138. Roberts failed to respond to Ms. Doe's report of sexual harassment as required by law and its policies when it's TIXC:
 - a. Failed to provide Ms. Doe requested accommodations.
 - b. Disclosed Ms. Doe's report of sexual assault to respondent prior to Ms. Doe's making a formal report to Roberts and after Ms. Doe requested the TIXC allow her the opportunity to speak with the police prior to taking any action.
 - c. Failed to respond by offering supportive resources or informing Ms. Doe of her options for making a report upon receipt of actual notice of retaliatory sexual harassment Ms. Doe suffered when rumors about her sexual promiscuity began to surface in response to her report.
 - d. Included in its investigation report information regarding Ms. Doe's prior sexual history and allegations of promiscuity despite being prohibited from doing so pursuant to "rape-shield" protections.
 - e. Failed to inform Ms. Doe that her advisor's unavailability was a legitimate reason for a delay in the process and instead suggested Ms. Doe was at fault for "any further delays."
 - f. Failed to respond to Ms. Doe's report of respondent's violation of the "no contact order."
 - g. Failed to complete its investigation and grievance process within the timelines established by the policies.

- h. Failed to complete its investigation and grievance process prior to respondent's graduation from Roberts.
139. Roberts failed to conduct a prompt, thorough and impartial investigation into Ms. Doe's allegations of sexual harassment.
140. Roberts's breach was egregious.
141. Roberts's actions, conduct, and omissions proximately caused Ms. Doe to suffer damages including but not limited to loss of tuition paid; loss of future earnings; and consequential damages; together with punitive or exemplary damages, in an amount to be determined at trial, plus prejudgment interest and attorneys' fees and costs.

FOURTH CAUSE OF ACTION

Breach of Covenant of Good Faith and Fair Dealing

142. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.
143. The covenant of good faith and fair dealing is implied in every contract.
144. In determining if there was a breach of the implied covenant of good faith and fair dealing, the essential inquiry is whether the challenged conduct conformed to the parties' reasonable understanding of performance obligations, as reflected in the overall spirit of the bargain.
145. Based on the foregoing facts, Roberts breached and violated the duty of good faith and fair dealing implied in its contracts with Ms. Doe for all the reasons set forth in the Third Cause, including by, inter alia, failing to provide Ms. Doe with a full and fair investigatory and adjudicatory process.

146. As a direct, proximate, and foreseeable consequence of these breaches, Ms. Doe's academic and career prospects, earning potential and reputation have been severely harmed. She has sustained significant damages.

147. As a result of the foregoing, Ms. Doe is entitled to recover damages in an amount to be determined at trial, plus prejudgment interest and attorney fees and costs.

FIFTH CAUSE OF ACTION

Negligent Hiring and Supervision

148. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

149. Roberts has a duty to employ qualified and competent staff who can provide proper supervisory care to its students.

150. The reasonable standard of proper supervisory care for a title ix coordinator to its student, includes responding to notice of sexual harassment in a manner not deliberately indifferent, providing supportive measures, and adequately explaining options for making a formal complaint and the process through which the complaint will be investigated. Proper supervisory care also includes promptly and thoroughly investigating complaints in a manner consistent with the law and the institution's policies.

151. Ms. Doe reported sexual harassment to Roberts's TIXC as more fully detailed above when she reported respondent's rape and again when she reported respondent's violation of the no contact order.

152. Roberts's TIXC had actual notice of additional sexual harassment Ms. Doe suffered in retaliation for her report of sex-based harassment when witnesses in the investigation reported the harassment to investigators, as more fully detailed above.

153. Roberts's TIXC did not respond to Ms. Doe's reports of harassment, nor its actual notice of sexual harassment with proper supervisory care, as more fully detailed above.

154. Public data demonstrates during all years reported, Roberts's process for responding to allegations of sex-based harassment, a process controlled by its TIXC, has never resulted in a student being found responsible for violating its policies.

155. Roberts's knew or should have known that its TIXC did not respond to Ms. Doe case with the proper level of supervisory care.

156. Roberts's actions, conduct, and omissions proximately caused Ms. Doe to suffer economic and non-economic damages including but not limited to a loss of educational opportunities; severe emotional distress, psychological injury, and mental anguish; degradation; and embarrassment.

157. Plaintiff is therefore entitled to economic and non-economic damages, or exemplary damages in an amount to be determined at trial, plus prejudgment interest and attorneys' fees and costs.

SIXTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

158. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

159. Defendant Roberts's conduct in failing to appropriately respond to Ms. Doe's reports of harassment constitutes extreme and outrageous conduct. Specifically,

- a) Ms. Robertson's suggestion that Ms. Doe come to a "beautiful reconciliation" with her rapist less than a day after her rape when Ms. Doe reported the assault.

- b) Ms. Robertson's disclosure of Ms. Doe report of sexual assault to respondent prior to Ms. Doe's making a formal report to Roberts and after Ms. Doe requested that Ms. Robertson allow her the opportunity to speak with the police prior Ms. Robertson taking any action.
- c) Roberts's failure to respond by offering supportive resources or informing Ms. Doe of her options for making a report when it received actual notice of retaliatory sexual harassment Ms. Doe suffered when rumors about her sexual promiscuity began to surface after her report.
- d) Ms. Robertson's suggestion that Ms. Doe was at faults for "any further delays" in the investigation process when Ms. Doe's advisor was unavailable due to a medical emergency.
- e) Roberts's failure to appropriately respond Ms. Doe reported respondent violated the "no contact order" by following Ms. Doe's sister on campus.
- f) Roberts's failure to complete its investigation prior to Ms. Doe and the respondent graduating from Roberts.
- g) Roberts's failure to hold a hearing to adjudicate Ms. Doe's complaint prior to her graduation from Roberts.

160. When Ms. Robertson, a Roberts's employee, engaged in the actions described above, Roberts disregarded a substantial probability of those actions causing Ms. Doe severe emotional distress.

161. Roberts's actions did cause Ms. Doe to suffer severe emotional distress.

162. Roberts's actions, conduct, and omissions proximately caused Ms. Doe to suffer economic and non-economic damages including but not limited to a loss of educational

opportunities; severe emotional distress, psychological injury, and mental anguish; degradation; and embarrassment.

163. As a result of the foregoing, Ms. Doe is entitled to recover damages in an amount to be determined at trial, plus prejudgment interest and attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

Estoppel and Reliance

164. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

165. Roberts's policies and procedures constitute representations and promises that Roberts expected or should have reasonably expected would induce action or forbearance by Ms. Doe.

166. Roberts expected or should have expected Ms. Doe to accept Roberts's offer of admission, incur tuition and fee expenses, and choose not to attend other colleges based on its express and implied promises, including that Roberts would provide Ms. Doe with a fundamentally fair investigation and hearing should she raise complaints of sex-based harassment.

167. Ms. Doe relied to her detriment on Roberts's express and implied promises and representations.

168. As a direct, proximate, and foreseeable consequence of the above-referenced conduct, Ms. Doe academic and career prospects, earning potential, and reputation have been severely harmed. She has sustained significant damages, including but not limited to, damages to physical well-being, emotional and psychological damages, past and future economic losses,

loss of educational and professional opportunities, loss of future career prospects, and other direct and consequential damages.

169. As a result of the foregoing, Ms. Doe is entitled to recover damages in an amount to be determined at trial, plus prejudgment interest and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment:

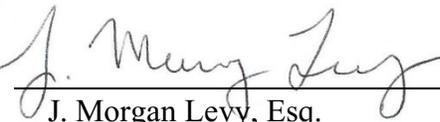
(a) in the form of compensatory, punitive, or exemplary damages in an amount to be proven at trial,

(b) that includes such other, further, or different relief as the Court may deem just and proper, together with attorneys' fees, costs, and disbursements of the action.

Dated: August 22, 2022
Rochester, New York

Attorney for Plaintiff

By: _____



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