

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

**JOHN DOE,**

**Plaintiff,**

**v.**

**FLORIDA STATE UNIVERSITY  
BOARD OF TRUSTEES; FRANK  
DENENBERG, an individual; and  
CODY HARTLEY, an individual,**

**Defendants.**

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**Case No. 4:17-cv-516**

On removal from the Circuit Court of the  
Second Judicial Circuit, In and for Leon  
County, Florida, Case No. 2017-CA-002187

**DEFENDANTS' NOTICE OF REMOVAL**

The Defendants FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES; FRANK DENENBERG, an individual; and CODY HARTLEY an individual, pursuant to 28 U.S.C. §§ 1441, et seq., and 1446, and Local Rules 3.1(B) and 7.2 of the United States Court for the Northern District of Florida, hereby gives notice of the removal of an action pending in the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, and in support of the removal, states the following:

1. Defendants desire to exercise their right under the provisions of Title 28 U.S.C. § 1441, et seq., to remove this action from the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, where it is now pending

under the name and style of *John Doe v. Florida State University Board of Trustees; Frank Denenberg, an individual; and Cody Hartley, an individual*, Case No. 2017-CA-002187 (hereinafter referred to as the Circuit Court Action). The Circuit Court Action is of a civil nature over which the United States district courts have been given original jurisdiction and which may be promptly removed. See 28 U.S.C. §§ 1331, 1343 and 1441. Specifically, Plaintiff's claims for damages include federal claims under 42 U.S.C. § 1983 and 20 U.S.C. §§ 1681-1688 (Title IX). See Exhibit A, Plaintiff's Complaint at ¶¶ 2, 3, 52 and 60-63. Moreover, this Court has supplemental jurisdiction over the state law claims for false arrest, malicious prosecution, and spoliation, which form part of the same case or controversy under Article III of the United States Constitution as the federal claims. See 28 U.S.C. § 1367.

2. Under the provisions of 28 U.S.C. § 1441, et seq., Defendants have the right to remove this cause from the Circuit Court Action to the United States District Court for the Northern District of Florida, Tallahassee Division, the district and division in which the action is currently pending.

3. Plaintiff served the summons and complaint upon Florida State University on October 25, 2017 and upon the individual Defendants on October 23, 2017. In accordance with the requirements of 28 U.S.C. § 1446, this petition

for removal is filed within 30 days after receipt of the initial pleading by the Defendants through service of the summonses and complaint.

4. Pursuant to 28 U.S.C. § 1446(a), Defendants have filed with this Notice of Removal, true and legible copies of Plaintiff's Complaint and all process, pleadings or orders on file in the state court as of the date of this Notice of Removal, including copies of the following documents served upon it or which have been filed in the Circuit Court Action:

(a) Plaintiff's Complaint is attached hereto as Exhibit A.

(b) The summonses that have been served on the Defendants at the time of this filing are attached hereto as Exhibit B.

(c) Notice of Appearance on behalf of the Defendants by Henry Buchanan, P.A. served on November 13, 2017, is attached hereto as Exhibit C.

5. As set forth herein, the Defendants desire and are entitled to have this cause removed from the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, such being the district where suit is currently pending, to the United States District Court for the Northern District of Florida, Tallahassee Division.

6. Written notice of the filing of this petition will be given to the adverse parties as required by law.

7. A true copy of this petition will also be filed with the Clerk of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, as required by law.

8. All defendants consent to this removal.

WHEREFORE, Defendants FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES; FRANK DENENBERG, an individual; and CODY HARTLEY, pray that this action be removed to this Court and that this Court accept jurisdiction and, henceforth, that this action be placed on the docket of this Court for further proceedings, the same as though this action had been originally instituted in this Court.

Dated this 13th day of November 2017.

HENRY BUCHANAN, P.A.

s/ Miriam R. Coles

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UNIVERSITY BOARD OF TRUSTEES,  
FRANK DENENBERG and CODY  
HARTLEY*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed via the CM/ECF system and furnished via U.S. Mail to: Michael L. MacNamara (macnamara.law@gmail.com), The MacNamara Law Firm, P.A., Post Office Box 883, Tallahassee, Florida 32302 on this 13th day of November 2017.

*s/ Miriam R. Coles*  
ATTORNEY

**Exhibit A**  
to  
**DEFENDANT'S NOTICE OF REMOVAL**

**Plaintiff's Complaint**

JOHN DOE v. FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES; FRANK  
DENENBERG, an individual; and CODY HARTLEY, an individual

USDC CASE NO: 4:17-cv-516

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

JOHN DOE,<sup>1</sup>

Plaintiff,

v.

FLORIDA STATE UNIVERSITY  
BOARD OF TRUSTEES; FRANK  
DENENBERG, an individual; and  
CODY HARTLEY, an individual,

Defendants.<sup>2</sup>

Case No.: 2017 CA 002187

Fla. Bar No.: 0093603

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**COMPLAINT**

The Plaintiff, John Doe (“Plaintiff”), sues Defendants, Florida State University Board of Trustees (“FSU”), Frank Denenberg (“Denenberg”), individually, and Cody Hartley (“Hartley”), individually, (collectively, “Defendants”), and alleges:

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<sup>1</sup> Since this case arises in part under Title IX of the Education Amendments of 1972, and to protect the privacy of the Plaintiff and his family, the Plaintiff is proceeding anonymously in this pleading. To the extent necessary, the Plaintiff will seek appropriate relief from the Court to continue to proceed in this fashion and to otherwise protect his anonymity throughout this action. The Plaintiff’s identity is known to the Defendants; they are not prejudiced by him proceeding anonymously.

<sup>2</sup> The Plaintiff hereby gives notice that there are other employees/agents of FSU that tortiously contributed to the Plaintiff’s damages. The Plaintiff does not know the names of these individuals, since they are not clearly designated by name in the reports or videos. The Plaintiff may seek to add additional individual defendants as their identities and full actions are learned in discovery.

## **INTRODUCTION**

1. This is an action involving claims regarding the violation of the Plaintiff's federal civil rights and state causes of action. The Plaintiff's claims for relief are predicated upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of any rights, privileges, or immunities secured to Plaintiff by the Constitution and the law of the United States; upon 42 U.S.C. § 1988, which authorizes the award of attorney's fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983; upon 20 U.S.C. § 1681-1688, which is Title IX, as amended by the Higher Education Amendments of 1972 ("Title IX"); and upon the common law of the state of Florida.

## **PARTIES, JURISDICTION, AND VENUE**

2. The Plaintiff has been a resident of Leon County, Florida, or St. Lucie County, Florida, at all times pertinent hereto. The allegations contained herein relating to the Defendants' conduct all occurred in Leon County, Florida. The Plaintiff is *sui juris*. The Plaintiff has retained the undersigned and has agreed to pay a reasonable attorneys' fee to represent him in this action.

3. Defendant FSU is a public body corporate, as defined by § 1001.72, Florida Statutes, and an instrumentality of the state of Florida responsible for the administration of Florida State University. FSU's main campus is in Leon



County, Florida. FSU also administers the Florida State University Police Department, the main office of which is located on FSU's main campus. FSU receives federal funding and financial assistance within the meaning of 20 U.S.C. § 1681(a) and is otherwise subject to Title IX.

4. Upon information and belief, Defendant Denenberg has been a resident of Florida and employed by FSU as an officer with the Florida State University Police Department at the times relevant hereto. Denenberg is sued in his individual capacity. Denenberg has engaged in tortious acts and/or violations within the jurisdiction of this court. Denenberg is *sui juris*.

5. Upon information and belief, Defendant Hartley has been a resident of Florida and employed by FSU as an officer with the Florida State University Police Department at the times relevant hereto. Hartley is sued in his individual capacity. Hartley has engaged in tortious acts and/or violations within the jurisdiction of this court. Hartley is *sui juris*.

6. This court has subject matter jurisdiction; this court is the proper venue; the damages alleged in this action are in excess of \$15,000.00; and all conditions precedent to initiation of litigation have been satisfied, including written notice pursuant to § 768.28(6), Florida Statutes.

## FACTUAL ALLEGATIONS

### *Summary*

7. Wednesday, August 24, 2016, was move-in day for FSU dorms, and students were able to move into their dorm rooms for the first time that day. The Plaintiff was among the first students in line with his parents on Wednesday morning to move into DeGraff Hall East. The Plaintiff had turned eighteen years-old just over two months prior to this date. The Plaintiff and his family spent the morning moving him into the dorm. The Plaintiff spent most of the afternoon and evening hanging out with friends around Tallahassee. At approximately 1:20 a.m. on August 25, 2016, the Plaintiff returned to his dorm room and went to sleep in his bed for his first night in the dorm as a college student.

8. When responding to a call for service in the early morning hours of Thursday, August 25, 2016, Denenberg intentionally ignores information provided to him by witnesses during the course of his investigation for the purpose of building a false case against the Plaintiff in order to arrest him. Denenberg intentionally falsifies facts in his report on the arrest of the Plaintiff in order to establish probable cause to arrest the Plaintiff for entering a dorm room, #1305, in DeGraff East, belonging to two female students, A.A. and M.B.<sup>3</sup>, at approximately

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<sup>3</sup> Since the two female students were technically classified as reporting parties in a Title IX investigation and in an abundance of caution, their full names are not included in this filing. The other student-witnesses will be treated similarly.

3:30 a.m. on that date. Denenberg falsely arrested the Plaintiff and took him to jail. The body camera videos are uniquely revealing in this civil rights action when compared to Denenberg's report.

9. During video-recorded interviews with officers on August 25, 2016, and August 30, 2016, A.A. and M.B. give a consistent description of the suspect to several officers: a white male, tall – “six feet” – with red hair, extremely pale skin – like it glowed in the dark; “ghost-like” – and lanky.

10. The Plaintiff is approximately five-feet, eight-inches tall. The Plaintiff has red hair. On August 25, 2016, the Plaintiff's skin was tan, since he had just spent the entire summer working outside as a life guard in Martin County, Florida.

11. During the incident, A.A. was not wearing her glasses, and M.B. was unable to see the suspect's face because of where he was standing in relation to M.B.'s bed. When A.A. wakes up to the suspect in her room, she yells at and kicks the suspect. This wakes up M.B. and causes the suspect to leave the room. A.A. and M.B. hear the sound of a door close across the hallway from their room and towards the elevators very shortly after the suspect leaves their suite. M.B. says that A.A. described the suspect to her, and M.B. met someone matching that description on their floor and across the hall in the direction of the sound of the door closing. M.B. says, she met the person while he was moving into his room a

couple doors down from hers; based on her interaction with him, she got a creepy feeling about the guy; M.B. texted A.A. immediately after meeting the guy to warn her about him; M.B.'s text to A.A. was sent at 1:50 p.m. on August 24, 2016.<sup>4</sup>

12. At 1:50 p.m. on August 24, 2016, the Plaintiff was with two of his friends on another part of campus. The Plaintiff was not in the hallway where M.B. was interacting with the guy matching the suspect's description. The Plaintiff has never met, seen in person, or spoken to M.B. in his life, including on August 24 or 25, 2016; same with A.A. The Plaintiff and his parents had moved the Plaintiff into his dorm room, #1302, from approximately 8:00 a.m. to 12:00 p.m. on August 24, 2016. The Plaintiff and his parents are done moving by the time M.B. saw the guy matching the suspect's description moving into his room.

13. M.B. cannot remember the guy's name or which room was his. Based on the direction of the sound of the door closing and on the basis of the gender of the occupants of the rooms in this area of the dorm, M.B. is able to personally point out to officers rooms #1302 and #1304 as the possible rooms that the guy was moving into when she met him. Even when physically standing in front of the doors with the name tags on them, M.B. is unable to say which room it was exactly. All of the occupants of those rooms have moved-in, and the dorm's night

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<sup>4</sup> The video interview that shows what time this text message was sent was intentionally withheld by FSU until approximately October 30, 2016. Denenberg's report omits this information.

desk attendant has information cards at the desk downstairs for each of the occupants. Officers take down the names of all of the occupants.

14. Officers interview only one suspect: the Plaintiff. The Plaintiff tells officers that he got home around 1:00 or 1:30 a.m. and went straight to his room. He got into bed and went to sleep. When he got into bed, his suitemates were still up and listening to music in their room.

15. The Plaintiff's roommate, A.S., was asleep in his bed when the Plaintiff got home. A.S. stirred awake when the door opened. A.S.'s bed is closest to the door. When the door to the dorm room opens, light shines in on A.S.'s bed, since the hallway lights are always fully turned-on. Between the time the Plaintiff got home around 1:30 a.m. and the time Denenberg knocks on the door to interrogate the Plaintiff, the Plaintiff and A.S. are both asleep in their beds. They both wake up to the knocking. From the time the Plaintiff gets home to the time Denenberg knocks, their door does not open and neither of them leaves their room.

16. Upon information and belief, officers on-scene only investigate the Plaintiff in room #1302 and never investigate any of the occupants of room #1304. After interviewing the Plaintiff – during which time the Plaintiff consistently denies any involvement in the matter being investigated – officers take the Plaintiff outside for a show-up.

17. The show-up is conducted in an overly-suggestive manner and in a way designed to have the Plaintiff identified as the suspect. The officers walk the Plaintiff to the spot for the show-up in such a way as to scare A.A. before she even has a chance to actually see the Plaintiff. Then, for twenty-two seconds, officers flank the Plaintiff and shine a bright, white L.E.D. light on the shirtless Plaintiff. A.A. and M.B. are in police vehicles in the parking lot approximately twenty to thirty feet away from the Plaintiff and the officers during this time. According to Denenberg, A.A. and M.B. identify the Plaintiff as the suspect. The Plaintiff is placed in handcuffs in A.A. and M.B.'s view. The vehicles in which the witnesses are sitting have functioning interior cameras. However, FSU did not preserve any video of the witnesses during the show-up; only videos from body cameras on officers that are standing outside the vehicles were made and preserved at the show-up.

18. At approximately 5:00 a.m., on August 25, 2016, the Plaintiff was arrested for Burglary of a Dwelling with a Person Assaulted and Assault – the first charge being a felony that is punishable by life in prison – and taken to the Leon County Jail, where he remained until the afternoon of August 26, 2016. The Plaintiff hires an attorney. While in jail, the Plaintiff is advised by FSU that he has been evicted from his dorm and must vacate no later than noon on August 27, 2016.

19. Based on the information Denenberg chose to include in his report on the arrest of the Plaintiff regarding the description of the actual suspect, the Plaintiff realizes that his suitemate, M.C., perfectly matches the description of the suspect and does not believe that FSU police officers had investigated M.C..<sup>5</sup> In fact, M.C. is six-feet, two-inches tall; M.C. has red hair; and on August 25, 2016, M.C. was of pale complexion and lanky. Additionally, the Plaintiff knows that M.B. must have met M.C. while he was moving in, since Plaintiff had only met two other people on his floor – both male – since moving in.

20. Starting on August 26, 2016, investigators working for the Plaintiff interview witnesses with relevant information about the Plaintiff and the allegations. The investigators write reports of their interviews with various witnesses. Based on the reports and on cell phone data, an approximate timeline (“Timeline”) is prepared showing where the Plaintiff was and who he was with starting at 8:00 a.m. on August 24, 2016, and going through to the time Denenberg knocked on the Plaintiff’s dorm room door in at approximately 5:00 a.m. on the morning of August 25, 2016. Also, on August 26, 2016, the Plaintiff posts a \$50,000 bond through a bondsman and is released from jail.

21. On August 29, 2016, the Plaintiff – through counsel – provides Jason Newlin (“Newlin”), an investigator and law enforcement officer with the State

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<sup>5</sup> The Plaintiff was given a copy of Denenberg’s report while being booked into the jail and placed into the inmate population.

Attorney's Office in Leon County, with the Timeline, a report on the Plaintiff's investigators' interview of M.C., and photographs of M.C. on his Facebook page.

22. Upon information and belief, in the morning on August 29, 2016, and after meeting with the Plaintiff's attorney, Newlin informs FSU that it looks like they may have arrested the wrong suspect and sends FSU the Timeline, along with photographs and the report on M.C.'s interview with instructions to reinvestigate and check out M.C. Indeed, Hartley interviews A.S., the Plaintiff's roommate, in a follow-up interview on the afternoon of August 29, 2016, and does the same with A.A. and M.B. on August 30, 2016. Between the information from Newlin and the witnesses, Hartley is given information that clearly shows that M.C. has been giving inconsistent statements to various people about his knowledge of what happened in the females' dorm on August 25, 2016, and that he perfectly fits the description of the suspect.

23. In their follow-up interviews, A.A. and M.B. both say that M.C. reacted in a shocked manner on approximately August 28, 2016, when they both approached him and told him about what happened to them on August 25, 2016. M.C. acts surprised to hear about their ordeal, like he can't believe something like that happened on their first night in the dorm. M.C. tells the girls that he just moved down from New Jersey the day before. M.C. exchanges phone numbers with the girls and offers to be there for them if they need anything.



24. In fact, M.C. had heard about the incident no later than August 26, 2016, when he was interviewed in person by the Plaintiff's investigator. During that interview, M.C. asks the investigator what this was about, and the investigator tells M.C. about the incident involving two girls across the hall from his room. M.C. then proceeds to speak to the investigator about his actions since moving into his dorm. Upon information and belief, the report from that interview with M.C. was provided to Hartley by Newlin. Also, M.C. had been at school for summer session and living in another dorm; he had not just moved down from New Jersey. Hartley intentionally ignores this inconsistent information and does not bring M.C. in for a recorded interview, even though he knows M.C. matches the description and – unlike the Plaintiff – has given inconsistent information about the case. Hartley's sole motivation is to make sure that the witnesses express no doubt about the Plaintiff's guilt at trial, regardless of the truth.

25. FSU sent the Plaintiff a letter immediately after his arrest saying that his freedom to be on the FSU campus would be severely constrained. He would only be allowed on campus for thirty minutes before and after each class and must check in with FSU police on arrival and departure. When the Plaintiff called FSU Student Affairs for clarification, he was advised that he would not be allowed to eat on campus. The letter provides that he's not being expelled at this time but that FSU can change their mind about that at any time for any reason.

26. With no place to live in Tallahassee, no ability to use his FSU meal plan, being prohibited from participating in any student activities, and subject to expulsion by FSU at any time for any reason while he's enrolled there, during the week of August 29, 2016 (which was also drop/add week at FSU), the Plaintiff drops all of his fall semester classes and enrolls in school back home in Port St. Lucie, Florida, so that he will not lose his Florida Bright Futures Scholarship.

27. From the end of August 2016 through the end of October 2016, FSU fails to respond to requests from the State Attorney's Office to hand over its evidence. During that time, the Plaintiff's case sits in limbo, since the State Attorney's Office will not make a final charging decision until they can review all of FSU's evidence. At the end of October 2016, Newlin has to physically drive over to FSU's Police Department to retrieve copies of the evidence for the case. Newlin was purportedly given copies of all the evidence at that time (however, that turns out not to be true, as FSU did not hand over the copies of the August 29, 2016, video interview with A.S. or the August 30, 2016, interviews with A.A and M.B.; the Plaintiff does not receive copies of those interviews until March 2017).

28. Among the evidence retrieved by Newlin and turned over to the Plaintiff's attorney are body camera videos from several different officers. Prior to this, FSU had not disclosed that there were video recordings of the investigation,

including recordings of the interviews of A.A., M.B., and the Plaintiff on the night of the incident.

29. The information on the body camera videos differs materially from the information in Denenberg's report. The Plaintiff did not have access to or knowledge of the body cameras until approximately October 31, 2016.

30. The body camera videos revealed that on the night of the incident M.B. told investigators that she thought the male that unlawfully entered her room looked like the same male that she met in the hall the afternoon before when students were moving into the dorm. Critically, the body camera videos show the part of the interview where M.B. tells officers that she texted A.A. immediately after her encounter with the male in the hall, which was on August 24, 2016, at 1:50 p.m., according to M.B., as she reads aloud the time stamp on the text message on her phone for the recording. This information about the time of the encounter with the suspect is omitted from Denenberg's report.

31. Based on the Timeline that was submitted to Newlin on August 29, 2016 – nearly two full months before the Plaintiff even knew that body camera videos existed – the Plaintiff was on a different area of campus with two of his friends at the time M.B. and the other male were interacting in the hallway in DeGraff East. The names of those two witnesses that were with the Plaintiff at that time and the phone number of one of those witnesses are included with the

Timeline. FSU never attempts to contact those two witnesses at any stage of any investigation.

32. On November 3, 2016, Assistant State Attorney Erin Cuzzort files a No Information on the Plaintiff's criminal case because "the State has concluded that this case appears to be a case where the Defendant has been misidentified."

33. However, this case goes further than misidentification. Upon further review of the body camera videos, it is clear that A.A. and M.B. tell Denenberg that the suspect is either in room #1302 or #1304. The Plaintiff and A.S. lived in #1302, and M.C. and his roommate lived in #1304. For unknown reasons, Denenberg chooses not to look in room #1304 and picks the Plaintiff as his suspect.

34. In his follow-up interviews with A.S., A.A., and M.B., Hartley is only interested in getting the witnesses to confirm that the Plaintiff is the right suspect, regardless of whether that is true or not. In fact, the witnesses provide him with critical information that shows M.C. is objectively the more likely suspect and that M.C. is misrepresenting his knowledge of the events that occurred in their room on August 25, 2016, which Hartley does not act upon.

35. After charges were officially dropped, the Plaintiff began the process of trying to re-enroll at FSU. At this time and for the first time, the Plaintiff is told that there is a Title IX investigation into his conduct that has been pending since

the day of his arrest. The Executive Director of FSU's Title IX Office, Jennifer Broomfield ("Broomfield"), was handling the investigation into the Plaintiff.

36. On or about November 3 or 4, 2016, the Plaintiff's attorney spoke to Carolyn Egan ("Egan"), General Counsel for FSU, on the phone. The Plaintiff's attorney explained that the Plaintiff had been falsely arrested, the prosecutor dropped the case, and the Plaintiff was having trouble re-enrolling because of some holds on his account. Egan offered to step-in and get the Plaintiff's case fast-tracked to resolution. Egan mentioned the potential for civil action by the Plaintiff. Egan was told that the Plaintiff had not made a final decision one way or another about potential civil action, and the Plaintiff's attorney was not in a position to discuss that matter at that time. Egan stated that she would rather have the Plaintiff's readmission as a bargaining chip in a civil case than to give it away now, only to be served with a civil rights lawsuit in the future. At this point in time, it became clear that FSU viewed the Plaintiff with hostility. After the phone call, Egan instructs one of her deputies to get with the Plaintiff's attorney about moving the Title IX process along.

37. On November 4, 2016, Robyn Jackson ("Jackson"), Associate General Counsel for FSU, contacts the Plaintiff's attorney and requests copies of the documents that had been provided to the prosecutor. On the same day, the Plaintiff's attorney sends copies of the Timeline and M.C.'s interview to Jackson.

In an email on November 4, 2016, Jackson suggests to the Plaintiff's attorney that she has the capability – similar to Egan's statement on the phone – to get the Plaintiff's Title IX case moving along at a faster pace. On November 7, 2016, the Plaintiff's attorney sent photos of M.C. to Jackson. A picture of the Plaintiff was sent to Jackson, too.

38. On November 9, 2016, the Plaintiff's attorney meets with Broomfield and Jackson at the Westcott Building in the Office of the General Counsel. At that time – two-and-a-half months since the Title IX investigation was “initiated” – Broomfield has only just requested copies of any evidence from the FSU police department and had not spoken to a single witness, despite explicit direction from the U.S. Department of Education to begin her Title IX investigation immediately. During the meeting, the Plaintiff's attorney reached into his file and loaned Broomfield all of his discs that contained copies of the body camera videos for Broomfield to use in her investigation, since she still did not have her own copies for her investigation.

39. When asked during the meeting why the Plaintiff was not informed earlier about the Title IX investigation, Broomfield says that it is policy not to tell the subject of the investigation about the investigation until after the victims have been interviewed, which also explicitly contradicts the direction from the U.S. Department of Education. Broomfield also makes misrepresentations during the

meeting about the people working on the investigation and the scope of her authority to conduct investigations.

40. About a week after a meeting with the Plaintiff's attorney, Broomfield finally begins an investigation in which she only interviews M.C., M.C.'s roommate, and the night desk guy at DeGraff East (M.C.'s roommate and the night desk guy were interviewed by phone). Broomfield does not appear to take note of any of the inconsistencies in M.C.'s statements to her, which are readily apparent to anyone familiar with M.C.'s other statements prior to Broomfield's interview of him. Broomfield does not interview either A.A. or M.B., any of FSU's police officers involved in the investigation, arrest, and attempted prosecution of the Plaintiff, or any of the witnesses whose names and phone numbers the Plaintiff provided to FSU. Broomfield does not even speak to any of the prosecutors or investigators at the State Attorney's Office. On December 1, 2016, Broomfield issues her Title IX report.

41. In Broomfield's report and in her official FSU credentials, she holds herself out as a Licensed Clinical Social Worker ("LCSW").

42. However, according to the Department of Health's database, Broomfield has never been so licensed in the state of Florida.

43. In other words, it appears Broomfield's official FSU credentials were materially falsified while she was serving as FSU's Title IX Director.<sup>6</sup> At this time, it is unknown how many FSU students met with Broomfield while thinking that they were meeting with an LCSW, and it is unclear why FSU allowed Broomfield to hold herself out as an LCSW when she was not so licensed.

44. On December 8, 2016, the Plaintiff's attorney contacts Rod Kelley ("Kelley"), the Assistant Dean of Students and Director of Student Rights and Responsibilities, to setup a meeting between the Plaintiff and his office. Kelley requests a meeting on December 15, 2016, instead of December 13, 2016, so that Tammy Patrick ("Patrick"), Associate Dean of Students for FSU, would have time to review the Plaintiff's case before the meeting.

45. On December 15, 2016, the Plaintiff, the Plaintiff's father, and the Plaintiff's attorney attend a meeting with Patrick at the FSU Student Rights and Responsibilities at Doak Campbell Stadium to have the Plaintiff's holds lifted. Patrick and Mike Flury ("Flury"), Associate General Counsel for FSU, attend the meeting for FSU. Patrick refuses to allow anyone except the Plaintiff to speak during the interview. Patrick records the interview with a tape recorder. During the meeting, Patrick reveals that she has not completely reviewed the Plaintiff's case – most shockingly, Patrick has not even read the No Information filed by the

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<sup>6</sup> Upon information and belief and in or around January 2017, Broomfield separated from FSU as an employee for reasons as yet unknown to the Plaintiff.



prosecutor, which dropped the charges that were the sole reason for the Plaintiff's holds in the first place. Patrick asks the Plaintiff – not her own counsel or other attorneys in the room – to explain to her the significance of a No Information. It was like Patrick was learning about the case for the first time during the December 15 meeting.

46. At the end of the meeting, Patrick advises the Plaintiff that she will not make an immediate determination on terminating the hold on his account.

47. Immediately upon exiting the conference room, the Plaintiff, his father, and his attorney were approached by an FSU staff member. The staff member told the Plaintiff to remember that he's still not allowed to be on campus, so he needs to leave immediately.

48. Finally, on December 19, 2016, FSU tells the Plaintiff that the administrative complaints have been resolved in his favor and all of his holds will be lifted.

49. Until December 19, 2016, the Plaintiff's arrest mug shot remained on FSU's "Trespass Warning" website.

50. By the time FSU lifts the holds on the Plaintiff's account, registration for FSU's spring classes has already ended, registration for dorms is closed, and the Plaintiff is unable to apply to attend a different university. As a result of FSU's

conduct, the Plaintiff has no option but to return to FSU and accept whatever classes and dorm rooms remain available.

51. When the Plaintiff returns to campus in January 2017, he and his attorney go to the FSU Police Department and file a formal complaint against Denenberg for his conduct. Shortly after the complaint was initiated, Lieutenant Jacob with the Internal Affairs Division contacts the Plaintiff's attorney to say that FSU does not have copies of the body camera videos for review in their investigation into the Plaintiff's complaint. These videos should have been retained, since the Plaintiff's attorney sent Anti-Spoliation Notices to several FSU departments – including the police department – instructing the departments to preserve relevant evidence related to the Plaintiff. Upon information and belief, FSU has allowed other relevant evidence in this case to despoil, too.

52. Due to the false arrest and total lack of diligence and fundamental due-process violations in the Title IX investigation, the Plaintiff was unable to transfer to a new school; he was denied employment opportunities; he was placed on a public list indicating he was trespassed from FSU's campuses; his mugshot appeared online; he was physically removed from a fraternity's event during spring rush by the fraternity's risk manager; and he was financially, emotionally, and otherwise damaged.

***Denenberg's Falsified Report on the Arrest of the Plaintiff***

53. On August 25, 2016, at approximately 3:49 a.m., FSU police officers responded to a complaint at DeGraff Hall East on FSU's campus at 808 West Tennessee Street in Leon County, Florida. Among those responding officers was Denenberg. Upon information and belief, Denenberg was still in the officer training program at FSU at the time. Denenberg prepared a report and affirmed the same to be true and correct.

54. According to Denenberg's report, M.B. and A.A. told him that a tall lanky male with red hair, who was extremely pale – almost “ghost-like” – and wearing blue boxer shorts unlawfully entered their room shortly before officers arrived at DeGraff.

55. According to Denenberg's report, M.B. and A.A. wake up to the male in their room. A.A. kicks the male in the chest, and he leaves the room. They call the police, and the police arrive a short time later.

56. According to Denenberg's report, M.B. recognized the suspect as the Plaintiff, who lives across the hall in room #1302. M.B. interacted with the Plaintiff the previous day, and she had an uneasy feeling about the Plaintiff. After the interaction, M.B. warned A.A. about the Plaintiff. Denenberg's report implies that M.B. recognized the Plaintiff's face.

57. According to Denenberg's report, he checks the student files for room #1302 and sees a picture of the Plaintiff, a red-headed male. So, he went up to the Plaintiff's room to question him.

58. According to Denenberg's report, the Plaintiff was read *Miranda* Warnings and agreed to answer questions. There is no mention of any refusal.

59. According to Denenberg's report, the Plaintiff said, he got home around 1:20-1:30 p.m. and went to sleep. He was still asleep when the police knocked on his door. He said, he knows which room is his, and was never in the two females' room. The Plaintiff is taken outside for a show-up, positively identified by both females, and taken to jail.

60. When the Plaintiff reads Denenberg's report for the first time while he is sitting in jail, he knows that M.B. could not have met him, because the Plaintiff did not meet anyone on his hall on August 24 or 25, 2016, other than A.S. and M.C., both males. So, M.B. encountered most likely encountered M.C. earlier in the day, and she definitely did not encounter the Plaintiff.

61. The Plaintiff hires investigators to interview witnesses and review cell phone data to put together the Timeline, in order to establish and document the Plaintiff's movements and contacts during the relevant time periods.

***Body Camera Videos of Events in Denenberg's Report***

62. In his report on the Plaintiff's arrest, Denenberg makes no mention of the fact that any video recordings – including video recordings of the statements made by the arrestee, the Plaintiff – exist and are in the possession of FSU.

63. The body camera videos show that Denenberg falsified statements made by the Plaintiff and the witnesses.

64. Denenberg and Officer Cutchins ("Cutchins") question M.B. and A.A. together in a common room downstairs at DeGraff East.

65. A.A. explains her interaction with the suspect in her room. A.A. and M.B. are roommates in room #1305. Approximately two to three minutes after sitting down with A.A. and M.B., Denenberg questions them about the individual that was in their room and whether or not they know him:

Denenberg: Did you, um, did you know -- you said you know the individual?

A.A.: No, we don't --

M.B.: Okay, I (raises left hand) -- I think -- I didn't get to see his face because it was on the other side of the room.

Denenberg: Okay.

M.B.: But I am -- she told me (glances and motions to A.A.), like she described him and I met somebody like that, like, yesterday, moving in. He told me his name, but I can't remember. He -- I could, like, tell he was kind of creepy --

A.A.: Yeah, she texted me -- I was over doing rush --

M.B.: Yeah, I literally texted her right after I met him, "okay, there's a creep across the hall--"

A.A.: --we need to stay on high alert.

M.B.: And, I mean, I could tell, that he, like --

A.A.: Like, I can literally show you our conversation (gestures to her cell phone, which is next to her on the table).

M.B.: --he was kind of, like, really sketchy, and -- cause he was like, hi, and he just stared at me, and I was like, "hi," like, "nice to meet you," like, "what's your name?" -- cause, like, I don't know, cause that's, like, my general reaction, just be friendly to people, and -- I don't know -- I -- I don't know if that's him, like, I don't -- I can't tell you 100%, cause I didn't get to see him in the face.

A.A.: He was like --

M.B.: This all happened so fast, and we were like --

A.A.: Yeah --

M.B.: -- get -- get out, and, like, I --

Denenberg: So, did know when you guys went back to the room, let's say when you guys met him yesterday, did he know which room you guys were staying in?

M.B.: Yeah, because I was walking into my room when I -- it -- it -- he's literally, like across the hall to the left, maybe two doors --

A.A.: One of the two doors. We don't know --

Denenberg: So, he lives down the hall from you -- from both you guys?

M.B.: Literally two steps away.

A.A.: Literally, like, our RA is here (gesturing with hands/fingers on table), there's one room, then there's a double set of rooms here, and a double set of rooms --

M.B.: And I heard him go back into his room after this happened.

Denenberg: So, he's a resident of this hall? He lives a few halls down on your floor?

A.A.: He's -- no -- across the hall.

M.B.: He lives two doors down.

Denenberg: Two doors down, on the same hall though?

M.B.: On the same hall.

A.A.: Yes.

Denenberg: Alright.

A.A.: So, I guess he was --

M.B.: And I -- I heard his door close when he went back into his room, so I know where he lives --

Denenberg: Okay, and --

A.A.: But we just don't know which one.

M.B.: I just --<sup>7</sup>

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<sup>7</sup> Video dcutchins@20160825035734, from 5:36 to 7:13.

Then, the officer moves on to question them about other parts of the incident. Throughout the interviews, M.B. and A.A. consistently maintain that they do not know if the individual M.B. met in the hall the day before is in room #1302 or #1304, but she knows it's one of them. Multiple times during the interview, Denenberg asks A.A. where the individual touched her, and A.A. keeps rejecting Denenberg's premise that she was touched at any point, specifically denying that she was ever touched by the individual. Denenberg is intent on manufacturing a charge that is as serious as possible against whomever he decides to arrest.

66. A couple minutes later, unidentified officers enter the common room and ask the females which room the suspect is in. Again, M.B. and A.A. explain that they don't know which room it is, but it is either #1302 or #1304.

67. M.B. and A.A. both estimate the individual in their room to be "six feet" tall.<sup>8</sup>

68. Later, another unknown officer enters the common room where officers are interviewing the two females. This officer re-raises the issue of which room officers should look in:

Unknown Officer: The RA is not there, or they're not answering. Um, so, once you've got as much information as you can -- um, I'd like to avoid knocking on every single door.<sup>9</sup>

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<sup>8</sup> Video dcutchins@20160825035734, at 13:48

<sup>9</sup> Video dcutchins@20160825035734, from 15:31 to 15:42.



Clearly, FSU's police officers were less concerned with finding the right suspect than they were with making sure they wouldn't have to overwork themselves on this case with grueling tasks, like knocking on doors.

69. After their interview and completing sworn statements, the two females accompany Denenberg and Cutchins up to their floor to see if M.B. can recall which room the red-head from the day before stayed in. While standing in the hallway in front of rooms #1302 and #1304, M.B. states, "It's either this one or this one," while pointing at rooms #1302 and #1304.<sup>10</sup> Denenberg then writes the names down from the name tags stuck to the doors.

70. Cutchins requests the information cards for rooms #1302 and #1304 from the front desk and copies down the names/information of the students.<sup>11</sup>

71. Approximately 20 minutes later, Denenberg and Cutchins knock on the Plaintiff's door and ask for him by name. When the Plaintiff steps outside, Cutchins asks for the Plaintiff, Denenberg, and Cutchins to go somewhere more private to talk. The Plaintiff is visibly tanner than both Denenberg and Cutchins, which is the result of the Plaintiff spending the summer of 2016 just prior to moving to Tallahassee working as a life guard near in Martin County, Florida, near his Port St. Lucie home. He is also visibly shorter than both Denenberg and

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<sup>10</sup> Video dcutchins@20160825035734, at 42:50.

<sup>11</sup> Video dcutchins@20160825044050, start at 2:00

Cutchins. Both Denenberg's report and the Plaintiff's Florida driver's license list him at five-feet, eight-inches tall.

72. Denenberg and Cutchins move the Plaintiff from his room into a study room down the hall and around the corner to question him; as they walk to the new location, the Plaintiff rubs his eyes, like he's trying to wake up. The Plaintiff is led into the study room and sits down in one of the chairs:

Denenberg: (Standing) Now Ryan, do you know why we're talking to you?

Plaintiff: I -- I have no idea at all.

Denenberg: You have no idea? (Sits.)

Plaintiff: No (the Plaintiff looks at Cutchins, who points the Plaintiff's attention back to Denenberg; Cutchins stands at the door the entire time he is in the study room with the Plaintiff and Denenberg to prevent the Plaintiff from leaving).

Denenberg: Okay. I'm gonna read you something real quick, okay?

Plaintiff: Okay.

Denenberg: You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions and have him with you during questioning. If you cannot afford a lawyer one will be appointed to you before any questioning, if you wish. If you decide to answer questions without a lawyer present you will still have the right to stop answering at any time. You will also have the right to stop answering at any time

until you talk to a lawyer. Do you understand each of these rights that I have explained to you?

Plaintiff: Yeah, I'm sorry, am I under arrest?

Denenberg: Have you previously -- with these rights in mind do you wish to talk to us about your actions tonight?

Plaintiff: My actions tonight? No.

Denenberg: You don't want to talk to us?

Plaintiff: I -- I don't know of my actions tonight.

Denenberg: (With a notably sterner tone) With your rights in mind, do you want to talk to me about tonight?

Plaintiff: Oh, yes.

Denenberg: You do?

Plaintiff: I will if -- if you have questions, I will answer them.

Denenberg: You will answer them? Okay. Alright. We just want to get your side of, uh, where you were tonight, what happened, everything like that.

Plaintiff: I drove to my friend's apartment off campus. I hung out there, and then at 1:00 a.m. I came back. I parked in this parking lot (gestures). I came upstairs. I went to bed, and that's it.

Denenberg: Okay that's --

Plaintiff: Did -- did something happen? I don't know what happened. Am I under arrest?

Denenberg: Not at this current second, no, but we're investigating something that happened with another individual in a nearby room who is giving us a description of a suspect and you match the suspect to the "T" of what they're describing. Did you --

Plaintiff: What did this person do?

Denenberg: Um, did you happen to go in anybody's room?

Plaintiff: I did not --

Denenberg: Now let me tell you before you answer the questions, if you lie to me, we're gonna have issues.

Plaintiff: I did not go into anyone's room.

Denenberg: So, you didn't go into anybody's room tonight?

Plaintiff: The moment I came home, I went right into my roommate's room -- a friend I know -- changed, went to bed, and that's it. But the people -- my suitemates were up, loud, making noise. So, I'm sure they were up. I did not leave my room.

Cutchins: Was your suitemate (meaning the Plaintiff's roommate, A.S.) home when you got there?

Plaintiff: Yeah (Cutchins then exits the room to question A.S., who is right outside the door at the elevators). (Under his breath to himself) What time is it? It's 5?

Denenberg: Alright, so you're claiming that you didn't -- you didn't walk maybe into somebody's room today, or tonight, early this morning, wake two individuals and walk into their room and wake them up?

Plaintiff: Definitely not.

Denenberg: Definitely not? Okay. So, if we check video surveillance, we're not going to find you walking into somebody else's room that you shouldn't be in, right?<sup>12</sup>

Plaintiff: Definitely not.<sup>13</sup>

Denenberg: Okay.

Plaintiff: I mean, if you can give me a time frame, I can tell you where I was. Is that an option?

Denenberg: No. I just -- I just want to know if you walked into somebody else's room maybe that you shouldn't have, or maybe got --

Plaintiff: I --

Denenberg: -- confused and walked into the wrong room and maybe woke some people up and caused a commotion earlier this morning around three o'clock?

Plaintiff: Three o'clock in the afternoon?

Denenberg: No, three o'clock this morning.

Plaintiff: I wasn't here at three o'clock this morning. Oh, *this* morning? Oh, definitely not. Definitely not. I've been asleep since -- I got home at 1:20.

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<sup>12</sup> This suggestion of video surveillance evidence is an interrogation technique and a bluff by Denenberg. Denenberg is suggesting that he will soon have irrefutable video evidence that nails the suspect cold, so the Plaintiff should confess now and ask for mercy, rather than lie and face the "issues" to which Denenberg just recently referred.

<sup>13</sup> Since the Plaintiff knows he did not go into anyone else's room or do anything wrong, he immediately reaffirms his denial, since no video surveillance could possibly exist of him going into any room except his own.

Denenberg: Okay. Okay. (Pauses) So, you're sure if we check the video surveillance we're not going to find you walking into a nearby -- a nearby --

Plaintiff: I'm beyond positive.

Denenberg: Okay. Alright. Do you know anybody else who lives on the floor who maybe looks similar to you do?

Plaintiff: No, I haven't talked to anyone.

Denenberg: No?

Plaintiff: Not really. (Long pause) You know this happened in middle school and high school, too.

Denenberg: What?

Plaintiff: They always say, "the ginger kid." If they saw a ginger, they say, the ginger [inaudible].

Denenberg: Well, it's just very coincidental how the victims of a crime are describing exactly your description, not even just --

Plaintiff: Like what I'm wearing, too?

Denenberg: Everything, yep. Your build, your hair, what you're wearing matches. (Long pause) Do you know any of the other individuals on this floor? Have you talked to any of the other individuals on this floor?

Plaintiff: Just [inaudible].

Denenberg: Okay, what about yesterday?

Plaintiff: Uh, [inaudible] no I didn't -- I mean, I talked to my suitemates yesterday.

Cutchins: (Re-enters) We're gonna, uh, do a show-up.

Denenberg: Sounds good to me.

Cutchins: (To the Plaintiff) You alright? ...<sup>14</sup>

This line of questioning ends, and Cutchins goes into a good-cop routine to try to get the Plaintiff talking. The three of them make small talk until the show-up. The small talk includes discussion of FSU football.<sup>15</sup>

73. Cutchins and Denenberg escort the Plaintiff downstairs to the parking lot. They walk the Plaintiff over to a spot in the parking lot approximately twenty to thirty feet away from some police vehicles. Cutchins and Denenberg stand on either side of the Plaintiff, and they shine a bright, white, L.E.D. light onto the Plaintiff, who is not wearing a shirt. The show-up occurs almost two hours after the unknown male left room #1305.

74. FSU does not have video of the witnesses in the vehicles or their statements. However, when they transport the Plaintiff to jail, they have video of his entire ride. Upon information and belief, during the show-up, one of the witnesses was in the back of the same vehicle that ended up later taking the Plaintiff to jail. Upon information and belief, FSU intentionally failed to preserve this crucial evidence.

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<sup>14</sup> Video jstlouis@20160825050116 from 2:22 to 8:49.

<sup>15</sup> As a result of his false arrest and FSU's hostility towards the Plaintiff, the Plaintiff was prohibited from attending any FSU football games during the 2016 season.

*The Plaintiff's Post-Arrest Investigation*

75. The Plaintiff goes to first appearance on August 26, 2016. His bond is set at \$50,000, based solely on Denenberg's falsified affidavit. The Plaintiff's father travels to Tallahassee to help get the Plaintiff out of jail. On August 26, 2016, the Plaintiff hires two investigators to go and interview witnesses to collect information and put together the Timeline for the Plaintiff, to refute Denenberg's claim that M.B. met the Plaintiff earlier and recognized him.

76. The Plaintiff's investigators go to campus. They are invited upstairs into DeGraff East. They are able to interview A.S., M.C., and M.C.'s roommate. M.C. tells investigators that he is six-feet, two-inches tall. The Plaintiff's investigators also interview other FSU students that do not live in DeGraff East but were with the Plaintiff at some point on August 24, 2016.

77. A.A. and M.B. are not at the dorm while the Plaintiff's investigators were there on August 26, 2016. The Plaintiff's investigators attempt to contact A.A. and M.B. by phone. Eventually, the Plaintiff's investigators speak to M.B.'s mom, who identifies herself as an attorney and a former prosecutor. She says, she does not give us permission to speak to A.A or M.B. The Plaintiff respects that instruction and does not speak to A.A. or M.B or attempt to contact them any further.



78. After witnesses are interviewed and reports are compiled, the Timeline is drafted. On Monday, August 29, 2016, the Plaintiff's attorney goes to the State Attorney's Office and gives Newlin the report on M.C.'s interview, the Timeline, and shows Newlin pictures of M.C. on Facebook.

79. Upon information and belief, Newlin contacts FSU about M.C.

***Hartley's Follow-up Interviews with A.A., M.B., and A.S.***

80. On August 29, 2016, at approximately 1:20 p.m., Hartley conducts a follow-up interview with A.S. Hartley starts by asking A.S. how he knows the Plaintiff from before they were roommates. A.S. explained that he and the Plaintiff are from the same hometown. A.S. says, he and the Plaintiff had a mutual friend, but he never texted or personally contacted the Plaintiff until after they found out they were going to be roommates at school in the fall.

81. A.S. confirms that the Plaintiff arrived home at approximately 1:30 a.m., which was about an hour after A.S. laid down to go to sleep. A.S. had fallen asleep by the time the Plaintiff came home, but he woke up when the Plaintiff entered the room. A.S. reports to be an average sleeper. Between the time the Plaintiff opens the door and enters the room and the time Denenberg knocks and announces his presence, A.S. is asleep and does not remember the Plaintiff leaving the room.

82. A.S. tells Hartley that A.S. has had very little contact with the Plaintiff since the arrest. A.S. has not talked about anything related to the case with the Plaintiff. A.S. has spoken to the Plaintiff's investigators. Hartley tells A.S. that he has instructed the Plaintiff's investigators not to talk to any of the student-witnesses without permission from FSU first.

83. Florida Rule of Criminal Procedure 3.220(i), states that no other prosecution personnel (which Hartley is, since he is a law enforcement witness for the prosecution trying to make sure the witnesses in the case say the right things for the prosecutor at trial) shall impede the accused's investigation of the case.

84. By forbidding the Plaintiff's investigators from speaking to witnesses or even setting foot on FSU's campus, Hartley is illegally impeding a criminal investigation. Hartley's actions are done in bad faith and with the intent to hide favorable evidence and testimony from the Plaintiff.

85. Throughout the interview, Hartley tries to put his own words in A.S.'s mouth. Hartley is only interested in getting A.S. to say what Hartley wants said in order to reach the conclusion that FSU wants in this investigation. Hartley is not interested in A.S. providing any information that hurts FSU's case against the Plaintiff. Hartley is not happy that A.S. does not have any testimony to damage the Plaintiff. So, Hartley turns his attention to quashing any helpful testimony.

86. During the interview, A.S. tells Hartley twice that he really doesn't think that the Plaintiff is the kind of kid who would do something like what the suspect in this case did. A.S. says it the second time when Hartley wraps up the interview and asks if there is anything else A.S. wants to add. After A.S. speaks well of the Plaintiff's character, Hartley moves to dissuade A.S. from repeating his sentiment.

87. In response to A.S. saying that he doesn't think the Plaintiff is the kind of kid who would do this, Hartley says:

Hartley: Okay, now don't let first impressions or generally just --

A.S.: Yeah --

Hartley: -- [inaudible] impressions fool you, either. Cause last year, there was a coll-- er, you know, one of our students who moved in, and prior to coming up here she killed both her parents. So, you wouldn't expect something like that either.

A.S.: Yeah, honestly.

Hartley: So, so, you never know what -- the way someone really is -- um, you know, you never know what kind of secrets they might have hidden.

A.S.: Yeah, I'll keep that in mind...

Hartley: So, yeah, like you say, just keep that in mind.<sup>16</sup>

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<sup>16</sup> Video ch01\_20160829131722 at 11:14

88. Immediately after comparing the Plaintiff to a murderer, Hartley ends the interview and sends A.S. on his way. A.S. was visibly taken aback by Hartley's statement that a new student killed both of her parents, which was Hartley's intent. Hartley knew from the Timeline, that A.S. did not meet the Plaintiff's parents while they were moving the Plaintiff in on August 24, 2016.

89. Hartley also knows that the suspect's door closed loudly enough for A.A. and M.B. to hear it from their room. The door to #1304 is closer to #1305 than #1302 is. Also, with A.S.'s bed being right next to the door, A.S. – being a self-reported average sleeper – would have woken up to the sound of his own door closing, if the sound was loud enough to be heard inside a different room several doors down the hall.

90. On August 30, 2016, A.A. and M.B. go to the FSU Police Department to be interviewed by Hartley.

91. Upon information and belief, A.A. and M.B. have seen the Plaintiff's mugshot online relating to his arrest in this case before going to interview with Hartley.

92. Hartley interviews A.A. first, at approximately 11:00 a.m. A.A. recounts the story of the encounter with the suspect and describes the layout of her room. M.B.'s interview, which is shorter, starts at approximately 11:30 a.m.

93. Hartley asks A.A. about the suspect's hair length. A.A. says, the suspect's hair was not long, but it probably covered his ears, like he could've used a haircut; it was shaggy and had grown out.<sup>17</sup> The Plaintiff's hair did not cover his ears at the relevant time. M.B. describes the suspect's hair as shaggy.<sup>18</sup> After this experience, A.A. says that whenever she sees *any* male with red hair, she jumps.<sup>19</sup>

94. A.A. says that when the officers brought the Plaintiff out for the show-up, they walked him in view of a camera and A.A. was able to partly see the Plaintiff on a monitor in the front seat. The Plaintiff walked by a camera that showed him on a monitor from the waist down, but A.A. was not able to actually see him, just part of him briefly. A.A. said, when she saw blue boxer-like shorts – but nothing else – she “immediately got, like, chills. I just kind of knew.”<sup>20</sup> The Plaintiff was wearing navy-blue Hollister shorts when being escorted by officers.

95. However, M.B. very notably tells Hartley that the shorts the Plaintiff was wearing during the show-up *were not* the same shorts that the suspect was wearing when he was in the room. They were the same color, but the suspect was wearing boxer shorts, and the Plaintiff had gym shorts on during the show-up.<sup>21</sup> The underwear worn by the Plaintiff that night were not navy-blue boxer shorts.

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<sup>17</sup> Video ch02\_20160830110429 at 6:05

<sup>18</sup> Video ch02\_20160830110429 at 30:57

<sup>19</sup> Video ch02\_20160830110429 at 17:36

<sup>20</sup> Video ch02\_20160830110429 at 11:50

<sup>21</sup> Video ch02\_20160830110429 at 30:39

96. A.A. says, officers flanked the Plaintiff, held the Plaintiff's arms, and shined the light on him. This is an intentionally overly-suggestive procedure by Denenberg and Cutchins. A.A., still under the physical stress of what she just saw on the monitor, positively identifies the Plaintiff:

A.A.: We both immediately were like, "that's him."  
And the officer was like, "are you positive?" And I was like, I'm sure as I can be. I mean -- he appeared to have darker hair with the light shined on his face than when I saw him in my room.

Hartley: Mm-hmm.<sup>22</sup>

97. Hartley ignores this evidence about the Plaintiff's hair being darker than the suspect's hair. Hartley also ignores M.B.'s clear-headed testimony about the Plaintiff wearing different shorts during the show-up than the shorts being worn by the suspect in the room. Hartley does nothing to investigate these inconsistencies and intentionally omits them from his written report on the interviews. Investigating these inconsistencies would require very little effort on Hartley's part. In his report, Hartley falsely affirms that everything is consistent in the case.

98. Hartley asks A.A. if any other people on the hall remind her of the suspect, which turns the discussion to M.C. Initially, A.A. says, it's not M.C., but

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<sup>22</sup> Video ch02-20160830110429 at 12:25.

when Hartley tries to put words into her mouth (like he did with A.S. the day before), A.A. equivocates:

Hartley: So, you're definitively positive it's not [M.C.]?

A.A.: I mean -- the -- when I saw the -- I mean, I've not seen him standing up, but I saw him laying down, because we went back to DeGraff on Sunday and we knocked on his roommate's door just to ask and see if he knew anything, because we knew they were from the same place. And he told us, that they've hired a private investigator and they're trying to investigate the kid next door. And we were like, well, can we talk to him?

Hartley: Mm-hmm.

A.A.: So, he knocked on their door, and he was asleep, and his suitemate was up and we were talking to his -- or his roommate -- the suitemate -- the two suitemates -- the one with red hair was asleep. We talked to his roommate for a little bit, and he woke up his roommate, the boy with the red hair. And he stayed in the bed and was just like, "I'm so sorry. I don't know." And he -- he didn't know they were trying to do that.<sup>23</sup>

...

A.A.: He seemed very genuinely sorry for what happened to us and he had no idea what was going on, and then we explained the situation, and he kept -- if we ever needed anything, to talk to him, he's right across the hall.<sup>24</sup>

99. During M.C.'s talk with A.A. and M.B., he acts like he does not know anything about the incident or the investigation into him as a suspect. He

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<sup>23</sup> Video ch02\_20160830110429 at 18:05

<sup>24</sup> Video ch02\_20160830110429 at 20:38

exchanges phone numbers with both girls. Hartley continues to try – usually unsuccessfully – to put his words into the witnesses’ mouths.

100. M.B. gives a similar account to A.A. and M.B.’s encounter with M.C.:

Hartley: Did you ever talk to his suitemate?

M.B.: Yeah, we went -- cause -- when we went to move our stuff back into the dorm -- we stayed in a hotel, like, a couple nights after it happened --

Hartley: Mm-hmm.

M.B.: -- just cause we were too creeped out to go back. Um. But we decided to talk to his roommate about it to see, like -- cause we were scared he was -- he would be there at the same time as us, like moving his stuff out. So, we went up and knocked on the door and, like, introduced ourselves and he told us what happened, like, about his dad and how his dad’s, like, hiring a private investigator and all this stuff, and how they thought it was the suitemate. So, we went and talked to the suitemate, and he was, like, so confused. He -- he -- he was traumatized by our story. He was like, I’m so sorry. He literally just moved here from New Jersey. Um. And I mean, there was no way it was him.

Hartley: Okay.

M.B.: He was so shocked.<sup>25</sup>

101. Since A.A. knows who has been charged as the suspect in her case, she asks Hartley about the Plaintiff’s ability to be on campus, since she is worried about running into him. Hartley explains that if the Plaintiff has contact with her,

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<sup>25</sup> Video ch02\_20160830110429 at 35:05



legal action and university action can be taken against him. Hartley and A.A. discuss her concerns about her safety on campus, making reference to Jameis Winston (“Winston”):

A.A.: And I don’t get how he’s charged with burglary and gets to go to school here.

Hartley: Well -- well, that’s interesting, there’s been people who were charged with, you know, rape and they got to still stay and take their finals and things. That’s way above my head. I can’t -- I -- I -- I don’t -- even my captain, you know, she doesn’t even get to make those decisions on who gets to stay and who doesn’t.

A.A.: Yeah, but it’s not like he’s a football player and they need him to stay here, he’s a creepy student.

Hartley: I’m not even referring to Jameis.

A.A.: Oh! (Laughs)

Hartley: [Inaudible]

A.A.: I thought that’s what you were talking about.<sup>26</sup>

102. On August 30, 2016, at 11:25:44 a.m. and 11:40:46 a.m., respectively, Hartley lays his motivations in this case bare on video:

Hartley (to A.A.): Alright, basically, what we’re trying to do is clear all this up and do whatever -- when this

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<sup>26</sup> Video ch02\_20160830110429 at 25:12 (A.A. is being serious in her confusion about how FSU’s priorities work. She seems resigned to the fact that FSU would side with an athlete over her and give that athlete special treatment, but she also seems to think that among the regular students – like those involved in her case – she should get basic protections from FSU. Upon information and belief, this is due to FSU’s prior conduct in handling criminal cases and Title IX investigations.)

does go to trial there's no deniability that it wasn't him, cause, you know -- the -- the -- the investigator, you know, right now -- they kind of showed some doubt but I just wanted to bring you in and clear all that up.<sup>27</sup>

...

Hartley (to M.B.): Basically, I just wanted to have you guys come in here so there's no doubt whatsoever --<sup>28</sup>

### ***Unfulfilled Requests to FSU to Turn Over Evidence***

103. Starting the week of August 29, 2016, the Plaintiff's attorney asks Newlin to get the evidence in the case from FSU. Upon information and belief, Newlin sends various requests to FSU in August, September, and October 2016, and FSU does not respond to Newlin's multiple requests. Finally, at the end of October 2016, Newlin drives over to FSU to pick up copies of the evidence himself. Even then, FSU withholds some of the evidence from Newlin.

104. If FSU had turned over the evidence in a timely manner, then the charges would have been dropped sooner, and the Plaintiff would have suffered fewer damages.

### ***FSU's Title IX Office***

105. On April 29, 2015, FSU's news site published a story heralding the hiring of Broomfield as FSU's new Title IX director.

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<sup>27</sup> Video ch02\_20160830110429 at 21:21

<sup>28</sup> Video ch02\_20160830110429 at 36:23

106. Upon information and belief, was hired in response to a January 2015 federal civil rights lawsuit filed against FSU by Erica Kinsman (“Kinsman”). Kinsman is the former FSU student who accused Winston<sup>29</sup> of rape and accused FSU of violating her civil rights under Title IX. Upon information and belief, Broomfield’s hiring is specifically mentioned in FSU’s settlement agreement with Kinsman as evidence that FSU’s days-of-not-investigating-Title-IX-cases are behind them, and in the same paragraph, made a commitment to continue better Title IX practices going forward.

107. In the Plaintiff’s Title IX case, Broomfield does not interview any witnesses between August 25, 2016, and November 15, 2016.

108. During a November 9, 2016, meeting with the Plaintiff’s attorney, Broomfield, and Jackson, Broomfield says that she did not notify the Plaintiff about the Title IX investigation sooner than November 2016 because her policy is to interview the reporting students before notifying the responding student of the investigation. Broomfield intentionally withholds notice of the investigation from the Plaintiff. Broomfield indicates that she requested the evidence from FSU Police Department during the first week of November 2016. When questioned about the delay, she attributes her lack of diligence to FSU Police Department’s

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<sup>29</sup> Unlike the Plaintiff, Winston was free to attend FSU football games during the fall of 2016, even though FSU had stronger evidence that Winston had committed a crime than the Plaintiff.

general preference or policy not to release any evidence to anyone until after the criminal case has resolved in the courts. Since the Plaintiff wants the Title IX investigation resolved sooner than later, the Plaintiff's attorney gives Broomfield his copies of the discs containing the body camera videos, so that Broomfield does not need to keep waiting on the FSU Police Department to send their evidence a couple blocks up the road to her office.

109. According to the U.S. Department of Education, Broomfield should start her independent investigation immediately.

110. According to the U.S. Department of Education, Broomfield should not wait for law enforcement to conclude their case or wait for any criminal case to resolve.

111. According to the U.S. Department of Education, the investigation should be completed within sixty days of the initial report date.

112. According to the U.S. Department of Education, Broomfield should notify all parties immediately about their involvement in the investigation, so that they can provide evidence to the investigation if they so choose.

113. Broomfield does not even interview her first witness until over eighty days after the initial report date.

114. Despite having the names of a dozen different people – including FSU employees and students – with relevant information about the case, Broomfield

only interviews three people, of which two were done by phone. Broomfield never interviews A.A. or M.B.

115. Since Broomfield has clearly been approaching the Plaintiff's case with deliberate indifference bordering on actual malice, the Plaintiff declines to participate in Broomfield's sham investigation. Additionally, FSU's General Counsel's Office was involved in the Title IX investigation and had already implied that they were more concerned about potential liability to FSU than to the safety, well-being, and fair treatment of FSU's students.

116. The Plaintiff earned his admission to FSU for the Fall of 2016.

117. The Plaintiff entered as a Florida Bright Future's Scholarship recipient.

118. FSU wanted to take his admission away from him for committing the sin of being falsely arrested and maliciously prosecuted by FSU and its employees.

119. The Plaintiff has consistently maintained that he is innocent of the allegations that were made against him, but he has never disputed the allegation that someone was in A.A. and M.B.'s room that night. Broomfield's failures in her Title IX investigation not only harmed the Plaintiff, but they gave no resolution to A.A. and M.B. about who trespassed in their room that night.

120. Upon information and belief, if everything in this case were the same except that the gender of the suspect was switched from male to female, then the

Plaintiff would never have been subjected to a biased and unfair Title IX investigation. The Plaintiff's gender was the deciding factor for FSU.

*The Plaintiff's Freshman Year*

121. During the Fall 2016, the Plaintiff moves back home to Port St. Lucie and lives with his parents.

122. In order to preserve his Florida Bright Future's Scholarship, he enrolls in classes at Indian River State College, which has open admission. Due to having to register late, he had to travel approximately 100 miles per week to attend classes on campuses in Martin, Okeechobee, and Indian River Counties. The Plaintiff was prohibited from visiting the FSU campus or attending any FSU football games during the fall. The Plaintiff was severely upset that he had to miss his first semester at college, instead having to live at home with his parents.

123. Due to the holds FSU placed on the Plaintiff, he was unable to apply to transfer away from FSU to another university. In essence, he was stuck with FSU as a direct result of FSU's hostility towards him. This hostility came from Egan and Broomfield.

124. In January 2017, the Plaintiff moved back into the dorms at FSU. Instead of going back to DeGraff Hall, FSU sticks the Plaintiff in Salley Hall, which is an objectively worse dorm than DeGraff Hall. It is older; the rooms are smaller and in worse shape; and the quarters were more crowded.

125. During rush in January 2017, the Plaintiff was physically removed from a fraternity that he had hoped to join because of the case of his false arrest.

126. The Plaintiff has been denied employment opportunities as a result of his false arrest.

**COUNT I**  
**FOURTH AMENDMENT VIOLATION – FALSE ARREST**  
**(Against Denenberg, individually)**

127. Paragraphs 1-126 are hereby re-alleged by reference, as if restated fully herein.

128. This is an action against Denenberg for false imprisonment/false arrest. This count is pled in the alternative. For the purpose of this count alone, Denenberg was acting outside the course and scope of his duties and employment with FSU.

129. Denenberg operated to violate the Plaintiff's rights under the Fourth Amendment to the United States Constitution. These violations were of the type and character as to which any reasonable person would be aware.

130. Denenberg further operated to violate the Plaintiff's civil rights, as protected by The Civil Rights Act, 42 U.S.C. § 1983. Denenberg is a person under applicable law.

131. Denenberg acted in bad faith and with malicious purpose and in a manner exhibiting wanton and willful disregard of human rights, safety, and property. In fact, he lied to effect the Plaintiff's arrest.

132. Denenberg misused his power, possessed by virtue of state law and made possible only because he was clothed with the authority of state law. The violation of the Plaintiff's rights, as described above, occurred under color of state law and is actionable under 18 U.S.C. § 1983.

133. The foregoing actions of Denenberg were willful, wanton, and in reckless disregard of the Plaintiff's rights, and were taken without any lawful justification and/or in the absence of probable cause. Denenberg knew or should have known that there was no probable cause to arrest the Plaintiff given the circumstances present and the clearly established law on the proof needed to establish arguable probable cause.

134. Based upon the facts presented to Denenberg and the applicable law, no reasonable law enforcement officer could have concluded that there existed any probable cause to arrest the Plaintiff. The law was well settled and clearly established that the actions of Denenberg constituted a false arrest under the Fourth Amendment to the United States Constitution at the time the actions by these Defendants were committed.



135. The actions or inactions of Denenberg as set forth in part above constituted deliberate indifference or reckless disregard for the safety of the Plaintiff when he knew of and disregarded a risk to the Plaintiff's health and safety.

136. Denenberg was acting under color of state law at all times pertinent hereto. The false arrest of the Plaintiff without probable cause violated the Fourth Amendment. Denenberg misused his power, possessed by virtue of state law and made possible only because Denenberg was clothed with the authority of state law. The violation of the Plaintiff's rights, as described above, occurred under color of state law and is actionable under 42 U.S.C. § 1983.

137. As a direct and proximate cause of Denenberg's actions, Plaintiff has been damaged, which damages include: cost of criminal defense, mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, loss of reputation, lost wages, loss of equal access to the educational benefits and opportunities provided by FSU, and the loss of other emoluments. These damages have occurred in the past, in the present, and will most likely continue to occur in the future. Defendants are jointly and severally liable to the Plaintiff. The Plaintiff is entitled to punitive damages against Denenberg under this count.

**COUNT II**  
**FOURTH AMENDMENT VIOLATION – FALSE ARREST**  
**(Against FSU)**

138. Paragraphs 1-126 are hereby re-alleged by reference, as if restated fully herein.

139. This is an action against FSU for false imprisonment/false arrest. This court is pled in the alternative. For the purposes of this county only, agents of FSU were acting inside the scope of their duties and employment with FSU.

140. FSU operated to violate the Plaintiff's rights under the Fourth Amendment to the United States Constitution. These violations were of the type and character to which any reasonable person would be aware.

141. The violation of the Plaintiff's rights, as described above, occurred under color of state law and is actionable under 42 U.S.C. § 1983.

142. The foregoing actions of FSU are willful, wanton, and in reckless disregard of the Plaintiff's rights, and were taken without any lawful justification and/or in the absence of probable cause. FSU knew or should have known that there was no probable cause to arrest Plaintiff given the circumstances present and the clearly established law on the proof needed to establish arguable probable cause.

143. Based upon the facts presented to FSU and the applicable law, no reasonable law enforcement officer could have concluded that there existed any

probable cause to arrest the Plaintiff. The law was well settled and clearly established that the actions of FSU constituted false arrest under the Fourth Amendment to the United States Constitution at the time the actions by these Defendants was committed.

144. The actions of FSU, as set forth in part above, constituted a deliberate indifference or reckless disregard for the safety of the Plaintiff when it knew of and disregarded a risk to the Plaintiff's health and safety.

145. FSU acted with deliberate indifference in the failure to implement adequate hiring and supervisory procedures to properly identify suspects of crimes, to identify officers who falsified facts to support probable cause to arrest a person like the Plaintiff, and to prevent officers from falsifying facts to support probable cause affidavits, the direct result of which was the false arrest and imprisonment of the Plaintiff.

146. FSU has final policy-making authority for the Florida State University Police Department. FSU is responsible for hiring and supervising the law enforcement officers who work for it, and, when necessary, for investigating alleged wrongdoing by its employees and disciplining those employees. At all times referenced herein, FSU acted under color of state law and failed to train, supervise, investigate, and discipline the individual Defendants as alleged herein. FSU's failure to supervise, investigate, and discipline the individual Defendants

constitutes either an improper policy or the absence of a policy of FSU, which resulted in the deliberate indifference to the constitutional rights of the Plaintiff. FSU also, after notice of the constitutional violations alleged herein, officially sanctioned these actions and refused to discipline the individual Defendants named herein, which established a policy by the final policy-maker, and that directly or indirectly resulted in the violation of the Plaintiff's constitutional rights.

147. As a direct and proximate cause of Denenberg's actions, Plaintiff has been damaged, which damages include: cost of criminal defense, mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, loss of reputation, lost wages, loss of equal access to the educational benefits and opportunities provided by FSU, and the loss of other emoluments. These damages have occurred in the past, in the present, and will most likely continue to occur in the future. Defendants are jointly and severally liable to the Plaintiff.

**COUNT III**  
**FALSE ARREST/IMPRISONMENT**  
**(Against Denenberg, individually)**

148. Paragraphs 1-126 are hereby re-alleged by reference, as if restated fully herein.

149. This is an action against Denenberg in his individual capacity. This count is pled in the alternative. For the purposes of this count alone, Denenberg was acting outside the course and scope of his duties and employment with FSU.

150. The Plaintiff is entitled to relief against Denenberg in that Denenberg intentionally and unlawfully detained and restrained the Plaintiff against his will; deprived the Plaintiff of his liberty without any reasonable cause or color of authority and maintained such complete restraint and deprivation for a period of time.

151. This unlawful restraint of the Plaintiff's liberty was also accomplished by Denenberg confining the Plaintiff to an area in which Plaintiff did not wish to be confined.

152. The Plaintiff was further restrained by Denenberg's coercive words and threats of force, as well as actual force and immediate means of coercion against Plaintiff, so that Plaintiff was restrained and deprived of liberty. Denenberg restrained Plaintiff without any justification and in the absence of probable cause. Denenberg conducted no independent investigation into whether any criminal conduct had occurred.

153. At all times material to this action, and at all times during which the Plaintiff was being unlawfully restrained, the Plaintiff was restrained against his will, and without consent, so that the Plaintiff was not free to leave his place of

confinement. Denenberg acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights or safety.

154. As a direct and proximate cause of Denenberg's actions, Plaintiff has been damaged, which damages include: cost of criminal defense, mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, loss of reputation, lost wages, loss of equal access to the educational benefits and opportunities provided by FSU, and the loss of other emoluments. These damages have occurred in the past, in the present, and will most likely continue to occur in the future. Defendants are jointly and severally liable to the Plaintiff. The Plaintiff is entitled to punitive damages against Denenberg under this count.

**COUNT IV**  
**FALSE ARREST/IMPRISONMENT**  
**(Against FSU)**

155. Paragraphs 1-126 are hereby re-alleged by reference, as if restated fully herein.

156. This is an action against FSU for false imprisonment/arrest. This count is pled in the alternative. For the purposes of this county only, agents of FSU were acting inside the scope of their duties and employment with FSU.

157. The Plaintiff is entitled to relief against FSU in that its agents, acting in the course and scope of their employment with FSU, intentionally and

unlawfully detained and restrained the Plaintiff against his will, deprived the Plaintiff of his liberty without any reasonable cause, and maintained such complete restraint and deprivation for a period of time.

158. The actions by the employees and agents of FSU were committed within the course and scope of their employment with FSU.

159. This unlawful restraint of the Plaintiff's liberty was also accomplished by FSU confining the Plaintiff to an area in which the Plaintiff did not wish to be confined and by compelling the Plaintiff to go where he did not wish to go.

160. The Plaintiff was further restrained by FSU, through its agents' and employees' use of coercive words, threats of force as well as actual force, and immediate means of coercion against the Plaintiff so that the Plaintiff was restrained and deprived of liberty.

161. FSU restrained the Plaintiff without any justification and in the absence of probable cause. FSU conducted no independent investigation into whether any criminal conduct had occurred.

162. At all times material to this action, and at all times during which the Plaintiff was being unlawfully restrained, the Plaintiff was restrained against his will, and without consent, so that the Plaintiff was not free to leave his place of confinement.

163. As a direct and proximate cause of FSU's actions, the Plaintiff has been damaged, which damages include: cost of criminal defense, mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, loss of reputation, lost wages, loss of equal access to the educational benefits and opportunities provided by FSU, and the loss of other emoluments. These damages have occurred in the past, in the present, and will most likely continue to occur in the future. Defendants are jointly and severally liable to the Plaintiff.

**COUNT V**  
**MALICIOUS PROSECUTION**  
**(Against Denenberg, individually)**

164. Paragraphs 1-126 are hereby re-alleged by reference, as if restated fully herein.

165. This is an action against Denenberg for malicious prosecution. This count is pled in the alternative. For the purposes of this count only, Denenberg was acting outside the scope of his employment with FSU.

166. Denenberg caused the commencement or continuation of a criminal proceeding against the Plaintiff. The criminal proceedings had a bona fide termination in the Plaintiff's favor.



167. There was no probable cause or reasonable basis in fact or law for causing the commencement of the criminal proceedings, and Denenberg acted with malice. The Plaintiff suffered damages as a result of Denenberg's actions.

168. As a direct and proximate cause of Denenberg's actions, Plaintiff has been damaged, which damages include: cost of criminal defense, mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, loss of reputation, lost wages, loss of equal access to the educational benefits and opportunities provided by FSU, and the loss of other emoluments. These damages have occurred in the past, in the present, and will most likely continue to occur in the future. Defendants are jointly and severally liable to the Plaintiff. The Plaintiff is entitled to punitive damages against Denenberg under this count.

**COUNT VI**  
**MALICIOUS PROSECUTION**  
**(Against Hartley, individually)**

169. Paragraphs 1-126 are hereby re-alleged by reference, as if restated fully herein.

170. This is an action against Hartley for malicious prosecution. This count is pled in the alternative. For the purposes of this county only, Hartley was acting outside the scope of his employment with FSU.

171. Hartley caused the commencement or continuation of a criminal proceeding against the Plaintiff. The criminal proceedings had a bona fide termination in the Plaintiff's favor.

172. There was no probable cause or reasonable basis in fact or law for causing the commencement of the criminal proceedings, and Hartley acted with malice. The Plaintiff suffered damages as a result of Hartley's actions.

173. As a direct and proximate cause of Hartley's actions, Plaintiff has been damaged, which damages include: cost of criminal defense, mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, loss of reputation, lost wages, loss of equal access to the educational benefits and opportunities provided by FSU, and the loss of other emoluments. These damages have occurred in the past, in the present, and will most likely continue to occur in the future. Defendants are jointly and severally liable to the Plaintiff. The Plaintiff is entitled to punitive damages against Hartley under this count.

**COUNT VII**  
**TITLE IX DISCRIMINATION/VIOLATION**  
**(Clearly Unreasonable Response)**  
**(Against FSU)**

174. Paragraphs 1-126 are hereby re-alleged by reference, as if restated fully herein.

175. FSU discriminated against the Plaintiff in its Title IX process and has received disparate treatment due to the Plaintiff's gender and perceived skin color.

176. FSU's responses to the discrimination were clearly unreasonable in light of the known circumstances.

177. FSU's discrimination against the Plaintiff was so severe, that it cost him educational, employment, and social opportunities at FSU and elsewhere.

178. The Plaintiff was subjected to discrimination because of FSU's deliberate indifference to his false arrest, malicious prosecution, and disparate treatment.

179. Had FSU not been deliberately indifferent to Plaintiff's false arrest, malicious prosecution and disparate treatment, and instead complied with its own policies and federal law by promptly launching a Title IX investigation independent of the FSU Police Department's investigation into the Plaintiff's false arrest, malicious prosecution and disparate treatment while protecting the Plaintiff, an FSU student, then Plaintiff would not have been damaged to the severe extent he has been. Instead, the Plaintiff was forced to leave school during his first semester, and he was prevented from pursuing alternative educational opportunities.

180. As a direct and proximate cause of FSU's actions and deliberate indifference, Plaintiff has been damaged, which damages include: cost of criminal

defense, mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, loss of reputation, lost wages, loss of equal access to the educational benefits and opportunities provided by FSU, and the loss of other emoluments. These damages have occurred in the past, in the present, and will most likely continue to occur in the future. Defendants are jointly and severally liable to the Plaintiff.

**COUNT VIII**  
**TITLE IX DISCRIMINATION/VIOLATION**  
**(Hostile Educational Environment)**  
**(Against FSU)**

181. Paragraphs 1-126 are hereby re-alleged by reference, as if restated fully herein.

182. The Plaintiff was subjected to a hostile educational environment where, through no fault of his own, he was, by ways of example only, told that FSU wanted to withhold his readmission as a chip to be played in a potential civil rights lawsuit and subjected to public shaming by having his name and photograph appear alongside common criminals on FSU's website.

183. FSU was deliberately indifferent to the Plaintiff's suffering and threatened expulsion at any time.

184. The Plaintiff, due to FSU's hostility, was unable to pursue his educational opportunities at FSU.

185. As a direct and proximate cause of FSU's actions, Plaintiff has been damaged, which damages include: cost of criminal defense, mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, loss of reputation, lost wages, loss of equal access to the educational benefits and opportunities provided by FSU, and the loss of other emoluments. These damages have occurred in the past, in the present, and will most likely continue to occur in the future. Defendants are jointly and severally liable to the Plaintiff.

**COUNT IX**  
**SPOILIATION OF EVIDENCE**  
**(Against FSU)**

186. Paragraphs 1-126 are hereby re-alleged by reference, as if restated fully herein.

187. This is an action against FSU for spoliation of evidence. This action is pled in the alternative.

188. The Plaintiff notified FSU of a potential civil action.

189. In that notice, the Plaintiff told FSU that it had a duty to preserve evidence that is relevant to the Plaintiff's claims in a potential civil action.

190. After receiving that notice, FSU allowed the spoliation of evidence which it knew it had a duty to preserve.

191. The spoliation of evidence significantly impairs the Plaintiff's ability to prove the civil action due to the important and material nature of the spoliated evidence. The Plaintiff hands are clean with respect to the spoliated evidence.

192. As a direct and proximate cause of FSU's actions, Plaintiff has been damaged, which damages include: cost of criminal defense, mental anguish, pain and suffering, loss of capacity for the enjoyment of life, embarrassment, humiliation, loss of reputation, lost wages, loss of equal access to the educational benefits and opportunities provided by FSU, and the loss of other emoluments. These damages have occurred in the past, in the present, and will most likely continue to occur in the future. Defendants are jointly and severally liable to the Plaintiff.

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for and requests the following relief:

- (a) That process issue and this court take jurisdiction over this case;
- (b) Enter judgment against the Defendants and for the Plaintiff, awarding damages against Defendants, including punitive damages against the individual Defendants, for the violations of law enumerated herein in amounts to be established at trial;
- (c) Attorneys' fees, pursuant to 42 U.S.C. § 1988;

- (d) Pre- and post-judgment interest on monetary recovery obtained pursuant to law, including attorneys' fees and costs; and
- (e) Such further relief that is equitable and just.

**DEMAND FOR JURY TRIAL**

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

Dated: October 20, 2017.

Respectfully submitted,

/s/ Michael L. MacNamara

Michael L. MacNamara

FBN: 0093603

The MacNamara Law Firm, P.A.

P.O. Box 883

Tallahassee, Florida 32302

Phone: 850.284.4944

Email: macnamara.law@gmail.com

Attorney for the Plaintiff

**Exhibit B**  
to  
**DEFENDANT'S NOTICE OF REMOVAL**

**Summonses**

JOHN DOE v. FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES; FRANK  
DENENBERG, an individual; and CODY HARTLEY, an individual

USDC CASE NO: 4:17-cv-516



RETURN OF SERVICE

PERSON TO BE SERVED:

RECEIPT NUMBER: 0004358-17

CODY HARTLEY  
830 WEST JEFFERSON ST

PLAINTIFF: JOHN DOE  
DEFENDANT: FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES; FRANK DENENBERG ET AL  
TYPE WRIT: SUMMONS, COVER SHEET, DESIGNATION OF EMAIL ADDRESS, COMPLAINT

COURT: LEON  
CASE #: 2017CA002187

COURT DATE:  
COURT TIME:

Received the above-named writ on October 23, 2017, at 4:34 PM, and  
SERVED / NONSERVED the same on the 23 day of Oct,  
2017, at 9:24 AM / PM, in LEON County, Florida, as follows:

INDIVIDUAL

By delivering a true copy of this writ together with a copy of the  
initial pleadings, if any, with the date and hour of service endorsed  
thereon by me, to:

☒ SUBSTITUTE

By delivering a true copy of this writ together with a copy of the  
initial pleadings, if any, with the date and hour of service endorsed  
thereon by me,

to the person's spouse, to-wit:

☒ at the person's usual place of abode with a person residing  
therein who is fifteen (15) years of age, or older,  
to-wit: Lea Varner - Dispatch  
and informing said person of their contents.

NOT FOUND

By returning said writ unserved for the reason that after due  
diligence to locate, the named person to-wit: Cody Hartley  
could not be found in LEON County, Florida.

SERVICE COST: \$40.00  
LH, CIVIL CLERK

WALT MCNEIL, SHERIFF  
LEON COUNTY, FLORIDA

MAIL TO:

LEON COUNTY CLERK OF COURT  
GWEN MARSHALL  
301 S MONROE ST  
TALLAHASSEE FL 32301

BY: W. R. Mason  
[ ] DEPUTY SHERIFF [X] PROCESS SERVER

MARK MASON

Print Name

RETURN OF SERVICE

PERSON TO BE SERVED:

RECEIPT NUMBER: 0004357-17

FRANK DENENBERG  
830 WEST JEFFERSON ST

PLAINTIFF: JOHN DOE  
DEFENDANT: FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES; FRANK DENENBERG ET AL  
TYPE WRIT: SUMMONS, COVER SHEET, DESIGNATION OF EMAIL ADDRESS, COMPLAINT

COURT: LEON  
CASE #: 2017CA002187

COURT DATE:  
COURT TIME:

Received the above-named writ on October 23, 2017, at 4:29 PM, and  
SERVED / NONSERVED the same on the 23 day of OCT,  
20 17, at 9:24 AM PM, in LEON County, Florida, as follows:

INDIVIDUAL

By delivering a true copy of this writ together with a copy of the  
initial pleadings, if any, with the date and hour of service endorsed  
thereon by me, to:

☒ SUBSTITUTE

By delivering a true copy of this writ together with a copy of the  
initial pleadings, if any, with the date and hour of service endorsed  
thereon by me,

to the person's spouse, to-wit:

☒ at the person's usual place of abode with a person residing  
therein who is fifteen (15) years of age, or older,  
to-wit: LEA VARNER - DISPATCH  
and informing said person of their contents.

NOT FOUND

By returning said writ unserved for the reason that after due  
diligence to locate, the named person to-wit: FRANK Denenberg  
could not be found in LEON County, Florida.

SERVICE COST: \$40.00  
LH, CIVIL CLERK

WALT MCNEIL, SHERIFF  
LEON COUNTY, FLORIDA

MAIL TO:

LEON COUNTY CLERK OF COURT  
GWEN MARSHALL  
301 S MONROE ST  
TALLAHASSEE FL 32301

BY:

MD/14507

[ ] DEPUTY SHERIFF [X] PROCESS SERVER

MARK MASON

Print Name

RETURN OF SERVICE

PERSON TO BE SERVED:

RECEIPT NUMBER: 0004359-17

ED BURR  
FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES  
216 WESTCOTT

PLAINTIFF: JOHN DOE  
DEFENDANT: FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES; FRANK DENENBERG ET AL  
TYPE WRIT: SUMMONS, COVER SHEET, DESIGNATION OF EMAIL ADDRESS, COMPLAINT

COURT: LEON  
CASE #: 2017CA002187

COURT DATE:  
COURT TIME:

Received the above-named writ on October 23, 2017, at 4:36 PM, and  
~~SERVED~~ / NONSERVED the same on the 25 day of OCT,  
20 17, at 9:56 AM PM, in LEON County, Florida, as follows:

INDIVIDUAL

By delivering a true copy of this writ together with a copy of the  
initial pleadings, if any, with the date and hour of service endorsed  
thereon by me, to:

☒ SUBSTITUTE

By delivering a true copy of this writ together with a copy of the  
initial pleadings, if any, with the date and hour of service endorsed  
thereon by me,

to the person's spouse, to-wit:

☒ at the person's usual place of abode with a person residing  
therein who is fifteen (15) years of age, or older,

to-wit: Robyn Jackson - Assoc Gen Counsel  
and informing said person of their contents.

NOT FOUND

By returning said writ unserved for the reason that after due  
diligence to locate, the named person to-wit: ED Burr FSU Board of Trustees  
could not be found in LEON County, Florida.

SERVICE COST: \$40.00  
LH, CIVIL CLERK

WALT MCNEIL, SHERIFF  
LEON COUNTY, FLORIDA

MAIL TO:

LEON COUNTY CLERK OF COURT  
GWEN MARSHALL  
301 S MONROE ST  
TALLAHASSEE FL 32301

BY: WJH 11-15-17

[ ] DEPUTY SHERIFF [X] PROCESS SERVER

HEATHER KING

Print Name

**Exhibit C**  
to  
**DEFENDANT'S NOTICE OF REMOVAL**

Notice of Appearance on behalf of the  
Defendant by Henry Buchanan, P.A.

JOHN DOE v. FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES; FRANK  
DENENBERG, an individual; and CODY HARTLEY, an individual

USDC CASE NO: 4:17-cv-516

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

**JOHN DOE,**

**Plaintiff,**

**CASE NO.: 2017-CA-2187**

**v.**

**FLORIDA STATE UNIVERSITY  
BOARD OF TRUSTEES; FRANK  
DENENBERG, an individual; and  
CODY HARTLEY, an individual,**

**Defendants.**

\_\_\_\_\_ /

**NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that the undersigned hereby notices the appearance of Henry Buchanan, P.A., J. Steven Carter, Joseph V. Gardner and Miriam R. Coles, as counsel of record on behalf of Defendants, FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES, FRANK DENENBERG and CODY HARTLEY. The undersigned respectfully request inclusion with the party's service list respective to this cause.

Dated this 13th day of November 2017.

HENRY BUCHANAN, P.A.

s/ Miriam R. Coles  
J. STEVEN CARTER  
Florida Bar No. 896152  
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*Counsel for Defendants: FLORIDA STATE  
UNIVERSITY BOARD OF TRUSTEES, FRANK  
DENENBERG and CODY HARTLEY*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via the Florida Courts E-filing System which will send electronic notification to all counsel of record on this 13th day of November 2017.

*s/ Miriam R. Coles*  
MIRIAM R. COLES