

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIAN HARRIS  
17 Duchess Path  
Clifton Park, NY 12065

Plaintiff

v.

SAINT JOSEPH'S UNIVERSITY  
5600 City Avenue  
Philadelphia, PA 19131

and

JOSEPH KALIN  
c/o St. Joseph's University  
5600 City Avenue  
Philadelphia, PA 19131

and

LINDSAY HORST  
One Marian Circle  
Chalfont, PA 18914

Defendants

CIVIL ACTION

NO.

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

PARTIES

1. Plaintiff, Brian Harris ("Harris"), is an adult individual residing at 17 Duchess Path, Clifton Park, New York 12065.

2. Defendant, Saint Joseph's University ("SJU"), is a Pennsylvania University, with its main campus located at 5600 City Avenue, Philadelphia, Pennsylvania 19131.

3. At all times material hereto, SJU acted by and through its agents, servants, employees, workmen and/or representatives who were acting in the course and scope of their respective agency or employment and/or in the promotion of SJU's business, mission and/or affairs.

4. Defendant, Joseph Kalin ("Kalin"), is an adult individual and who, upon information and belief, is, and was at all times material hereto, employed by SJU as a security officer or investigator, having a place of business located at 5600 City Avenue, Philadelphia, Pennsylvania 19131. As detailed below, Kalin was assigned by SJU to investigate the alleged incident involving Harris and Defendant, Lindsay Horst.

5. Defendant, Lindsay Horst ("Horst"), is an adult individual who both at present, and at all times material hereto, is, and was, a matriculated student at SJU, residing at One Marian Circle, Chalfont, Pennsylvania 18914.

6. At all times material hereto, Horst resided at a SJU dormitory complex known as the "Villiger."

#### JURISDICTION

7. Plaintiff invokes this Court's jurisdiction under Title IX of the Education Act Amendments of 1972, 20 U.S.C. §1681, *et seq.* and 28 U.S.C. §1331.

8. Venue primarily lies in this district pursuant to 28 U.S.C. §1391(a) inasmuch as this is the district in which the instant claims arise.

9. Jurisdiction is also claimed over the related common law state claims under the principles of ancillary and/or pendent jurisdiction pursuant to 28 U.S.C. §1367.

10. Alternatively, Plaintiff invokes this Court's jurisdiction pursuant to 28 U.S.C. §1332, diversity of citizenship, with the amount in controversy exceeding \$75,000.00, exclusive of interest and costs.

#### FACTS

11. At all times material hereto, Harris was a first year (freshman) student at SJU, residing at its main campus at a dormitory complex known as "Sourin," commencing August 25, 2012.

12. At some time prior to November 16, 2012, Harris and Horst, the latter a member of SJU's girls' soccer team, became acquainted following which a friendship developed.

13. Harris and Horst would see each other on campus and at social events.

14. Harris later learned from one of Horst's friends that Horst "liked him."

15. Harris obtained Horst's cell phone number and during the early evening hours of November 16, 2012, Harris sent Horst a text message, identifying himself.

16. Thereafter, Harris and Horst began exchanging text messages, beginning with Harris' text message at 5:12 p.m. and ending with Horst's text message at 12:36 a.m. on November 17, 2012. Copies of these text messages (the "text messages") are collectively attached hereto as Exhibit "A."

17. During the initial exchange of text messages, Harris told Horst he obtained her cell phone number from a mutual friend, John "Jack" McWilliams ("McWilliams"), to which Horst responded, "Ha oh okay that's cool." Harris asked Horst what she was doing that evening to which Horst responded she did not know.

18. Over an hour later, Harris texted Horst again, suggesting Horst should go to the Lax House, Horst replying she believed she would be. An hour later, it was determined neither Harris nor Horst would be participating in events at the Lax House and approximately 15 minutes later, Horst asked Harris if he was going any where that evening to which Harris said he was not, and proposed that Horst come to his room.

19. Horst seemingly wanted to come to Harris' room but informed him she had already left the SJU campus but wanted to return. Horst told Harris she was in Manyunk and could not return herself. Later, Horst proposed that Harris come to Horst's dormitory room at Villiger.

20. At 10:57 p.m. on November 17, 2012, Horst sent a text to Harris, asking if he was alone, to which Harris replied affirmatively. In response, Horst asked Harris if he could come "cuddle" with her.

21. In modern parlance, the terms "cuddle" or "cuddling" are synonymous with, *inter alia*, "sex" or "having sex."

22. Unsolicited, Horst further wrote that she was a "good cuddler," followed by the symbol " : ))," commonly used in text messaging to express a happy face.

23. Horst then asked Harris if he was a "gooood cuddler," adding o's to the word "good" intimating great or very good. Harris replied he was.

24. Horst then asked Harris if he would come to her dormitory room at Villiger, as she would be there soon; Harris replied he would.

25. Later, Horst asked Harris to meet her at a party; however, Harris suggested she return to campus as he had been asked to leave his dormitory room by his roommate.

26. Horst changed her mind, returned to her dormitory room and asked Harris to come there.

27. Unsolicited and without suggestion or request by Harris, Horst asked Harris if he would sleep in her dormitory room. Harris replied he would.

28. Horst then arranged for a male resident of Villiger to go to the front entrance of the Villiger building and allow Harris access.

29. The male resident accompanied Harris to Horst's dormitory floor lobby from which Horst escorted Harris to her dormitory room.

30. At Horst's invitation, Harris lay down on Horst's bed, with Horst lying next to him. The two began kissing and engaging in foreplay. They both voluntarily, and without force, suggestion or intimidation, removed their respective clothing.

31. Harris asked Horst whether he should get a condom to which Horst replied affirmatively.

32. Upon donning a condom, Harris and Horst freely and voluntarily engaged in sexual intercourse; the love making was consensual.

33. At no time did Horst ask, or demand, that Harris leave her dormitory room; at no time did Horst tell Harris she did not want to engage in sexual intercourse with him.

34. Following their love making, Horst left her dormitory room to go the bathroom, returning to the dormitory room approximately 3 to 4 minutes later.

35. Upon her return, Horst got back into bed with Harris, embracing him as they slept into the morning of November 17, 2012.

36. Later in the morning of November 17, 2012, Horst's roommate returned to the room upon which Harris gathered his belongings, and hugged and kissed Horst before leaving.

37. Sometime later on November 17, 2012, Harris was informed by Alex Iannucci ("Iannucci"), Resident Area Manager for Villiger, that Harris was being investigated and, possibly, accused of non-consensual sexual relations with Horst, an accusation which was not only wholly untrue but startling and unreasonable to Harris.

38. Kalin was assigned by SJU to investigate Horst's claim of sexual misconduct against Harris.

39. On November 19, 2012, Kalin met with Harris to interview him about the alleged incident. Harris, without acts or displays of aggression, and in compliance with SJU protocol governing investigations, voluntarily participated in same, explaining what occurred and providing Kalin with the text messages corroborating Harris' version of the events, which Kalin read but disregarded. Kalin appeared harsh and abusive, unnecessarily comparing Harris to

"Jerry Sandusky" and feigning concern that Harris would retaliate against Kalin notwithstanding the clear absence of any such characteristic or intent on the part of Harris.

40. During the investigation, Harris learned that during Horst's visit to the bathroom, her absence for no more than 3 to 4 minutes, Horst saw another student, Ola Tomczyk ("Tomczyk").

41. While in the bathroom, Horst allegedly told Tomczyk she (Horst) had been intimidated into having sex with a male, identified by a name other than Harris. Horst allegedly told Tomczyk she (Horst) was unwilling or disinterested in reporting the incident; however, Tomczyk insisted she did, threatening to report the incident on Horst's behalf if Horst did not.

42. Notwithstanding these assertions, Horst did not ask for help, did not ask that Harris be evicted from her room, did not call security and did not leave the Villiger dormitory.

43. Conversely, after her brief absence, Horst returned to her dormitory room and got into bed with Harris with whom she remained, sleeping, for the next several hours. Harris left when Horst roommate returned at 10:00 a.m.

#### SJU INTERNAL POLICIES AND PROCEDURES

44. SJU issues to students a Student Handbook (the "Handbook") which sets forth standards of conduct expected of members of the SJU community, as well as policies and procedures for investigating and adjudicating complaints made by members of the SJU community.

45. The Handbook defines SJU community standards. Students are expected to: "1. Be Honest; 2. Have Respect for Self; 3. Have Respect for Others, their well-being and their property; and, 4. Have Respect for the Standards of the University and the laws of the larger community." The Handbook also defines and precludes sexual offenses such as rape, involuntary

deviate sexual intercourse, sexual assault, aggravated indecent assault, indecent assault, and indecent exposure.

46. Allegations of sexual offenses are required to be reported to the Office of Public Safety and Security. The Office of Public Safety and Security is then required to conduct a prompt and thorough investigation and prepare a factual report which is forwarded to the Student Life Administrator. Additionally, the Office of Public Safety and Security is required to advise the alleged victim regarding preservation of relevant evidence and to assist with access to hospitals specializing in rape treatment.

47. The Handbook requires allegations of sexual misconduct, where both the accuser and the accused are students, be resolved by the Community Standards process.

48. The Community Standards process is initiated when an incident report, completed by a Public Safety or Residence Life staff member, or a written complaint, prepared by any other member of the SJU community, is provided to the Office of Community Standards.

49. Allegations of serious offenses, including sexual offenses, are resolved by an Administrative Hearing Officer or by the Community Standards Board.

50. Administrative Hearing Officers are professional SJU staff members, usually in the office of Community Standards or Residence Life.

51. The Community Standards Board ("CSB") is a seventeen-person board consisting of seven students, five faculty members, and five administrators/staff, all of whom are to be trained by SJU to hear cases involving serious Community Standards violations (Handbook, p. 33). A CSB panel is comprised of five representatives and must include one (1) faculty member, one (1) student, and one (1) administrator/staff. The CSB panel members are selected by the Moderator, a professional SJU staff member, who also advises the CSB on matters such as the

type of information that may help in determining if Community Standards were violated, prior sanctions, and facilitating the appropriate paperwork and record keeping.

52. Upon receiving notice of a violation, the Community Standards office notifies the accused via University email, outlining the hearing process and, in the case of CSB hearings, setting forth a CSB pre-hearing.

53. The Handbook guidelines afford both the accused and accuser with equal process in cases of sexual harassment. No such guarantees are made with respect to the accused and accuser in cases of sexual offenses, which are defined separately in the Handbook.

54. At any time during the Community Standards process, the Vice-President for Student Life, Associate Provost, or a designee, may place a student on interim suspension provide guidelines for conditional attendance if the student is deemed to present a risk to the health, safety, or welfare of anyone within the SJU community. Interim suspension/conditional attendance decisions are made without notice or an opportunity to be heard on the part of the accused and no appeal of this decision may be taken.

55. The Handbook proclaims the CSB hearing is designed to encourage open discussion among the participants that promotes the understanding of the facts, individuals involved, and conduct and circumstances surrounding the incident. Nevertheless, during the hearing, the accused, accuser, and witnesses are permitted to provide testimony in separate facilities such that an accused is deprived the opportunity to question and confront his accuser and witnesses to test their veracity and credibility.

56. In addition to depriving an accused the ability to examine his accuser, the Handbook lacks any rules governing the type of testimony offered and affirmatively permits hearsay testimony, which could not be challenged even if the accused was permitted to question witnesses.



57. Further, the Handbook lacks any rules requiring the disclosure of evidence to be submitted prior to the CSB hearing.

58. In contrast, non-institutional information will only be considered by the CSB panel if deemed appropriate by the Vice-President for Student Life, Associate Provost, or a designee.

59. The accused is not permitted to be accompanied by parents, counsel, or by any person other than a Community Standards advisor during the hearing.

60. Following the hearing, the CSB panel evaluates the information received during the hearing, the facts of the conduct alleged, and determines whether it is more likely than not that the accused was responsible for the alleged violation; a mere 51% threshold for even the most severe of allegations.

61. If the CBS panel finds responsibility on the part of the accused, the CSB panel determines the appropriate sanction, taking into consideration motivation, present attitude, past record (positive and negative), damage/harm severity, honesty, maturity, cooperation, willingness to make amends, and compliance with previous sanctions (Handbook, p. 36). The Handbook identifies 16 different sanctions, of which suspension is most severe after only expulsion and revocation of degree.

62. After the CSB panel reaches its decision and issues sanctions, if any, the accused is notified in writing of the result and the result may be disclosed to others, including the SJU community.

63. After the accused receives written notification of the CSB panel's decision, he has three (3) days to request an appeal. The appeal request is directed to the Vice President of Student for Student Life or Associate Provost and must demonstrate one or more of the following:

- a. A material failure to follow the procedures of the Community Standards process that affected the outcome.
- b. There is new information, sufficient to alter a decision that was not reasonably available at the time of the original hearing.
- c. The sanction(s) was not consistent for the violations of the Community Standards.

The Handbook further limits disclosure of relevant sanctions to the victim in cases of crimes of violence or sexual harassment.

64. Once an appeal has been requested, the Vice President of Student for Student Life or Associate Provost, in concert with the Provost or designee, are required to make a decision within five (5) days of the appeal period expiration. The Vice President of Student for Student Life, Provost or a designee may: (a) replace the sanction; (b) remand the case for reconsideration; or, (c) direct the case for a new hearing.

65. The Handbook requires Community Standards violations and sanctions to become part of a student's educational record. Student discipline records not relating to expulsion are to be maintained for five (5) years after conclusion of the last semester the student attended SJU. Case notes are not made part of the student's educational record and are destroyed upon conclusion of the appeal period.

66. The Handbook reads, "[i]t has been and remains the policy of [SJU] to prohibit discrimination on the basis of sex/gender . . . ." and describes unacceptable conduct to include "decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain gender . . . ."

#### **THE HARRIS INVESTIGATION REPORT AND HEARING**

67. As part of SJU's investigation of Horst's claims of sexual misconduct against Harris, an investigation report (the "report") was prepared, including a charge against Harris

for forcible rape. The report was first shown to Harris at a prehearing conference held in the office of Keirsten White ("White"). Harris reviewed Horst's account, but not his own, innocently believing his account was accurately recorded based upon his interview with Kalin. However, the report shown to Harris at the prehearing was not the same report later presented to him at the hearing as the latter report included additional comments from Iannucci and Tomczyk. This was the first time Harris saw the full report. He was never asked to execute or review his account, nor did he refuse to execute same. Harris never read what was written about him.

68. On December 4, 2012, a community standards board hearing was held before five panelists (the "Panel") selected by SJU: Nancy Komada ("Komada"), Chris Heasley ("Heasley"), Keith Brown ("Brown"), Dorian Sanders ("Sanders"), Melanie Solano ("Solano") and White, during which Horst, Harris and Tomczyk were separately, and privately, questioned. Harris was denied an opportunity to confront his accuser(s) despite the glaring evidence contradicting Horst's baseless accusations.

69. Critically, although earlier provided, the record before the Panel did not include the text messages (Exhibit "A").

70. Following the hearing, Harris was found guilty of disrespecting another student and sexual assault, and was summarily suspended from the University by SJU.

71. In accordance with SJU policy and procedure, Harris timely submitted an appeal, challenging the findings of the Panel as against the great weight of the evidence, and the Panel's failure to review the text messages which, on their face, contradicted Horst's baseless accusations of involuntary sexual contact.

72. During the pendency of the appeal, Harris completed the first semester of his freshman year and thereafter left SJU's campus for the winter holiday break.

73. As the second semester of the freshman year was about to begin, the appeal board had still not ruled upon the Panel's findings and Harris was hesitant to return to SJU in light of the then pending suspension. To accommodate Harris, SJU had first proposed that he be placed in alternative housing, be denied access to all privileges, and be limited to attending classes until the appeal board ruled.

74. SJU subsequently removed the restrictions and allowed Harris to return to his dormitory room, attend classes and participate in campus activities. Notwithstanding, Harris sought to avoid social contact, embarrassed by Horst's baseless charges.

75. On or about January 11, 2013, the appeal board, finding the text messages were critical to the investigation and, thus, necessary evidence, remanded the matter to the Panel for further consideration.

76. On or about January 18, 2013, a second hearing was held before the Panel during which Harris and Horst were questioned regarding the text messages.

77. Notwithstanding their respective explanations and, more importantly, the plain meaning of the text messages, themselves, the Panel upheld its earlier finding of guilt; Harris was denied a further appeal.

78. As a direct result of the Panel's finding, Harris was suspended from SJU for a year and the conviction was noted on his school (SJU) record. Harris was notified of the suspension at 3:00 p.m. on Saturday, January 19, 2013 (of a holiday weekend) and was instructed to remove all of his belongings from his dormitory room and depart the campus promptly or he would be arrested for trespassing.

79. At no time were the police or other governmental authorities ever contacted about the incident.

COUNT I  
Harris v. SJU  
(Breach of Contract)

80. Harris incorporates by reference the allegations of paragraphs 1 through 79 and makes them a part hereof as though they were more fully set forth at length herein.

81. At all times material hereto, a contractual relationship existed between SJU and Harris. The Handbook was deemed part of that contract. Pursuant thereto, SJU was required to act in accordance with the Handbook in resolving complaints of misconduct and violations of SJU's policies and regulations, in the investigation of those complaints, in the process of adjudicating complaints of sexual misconduct, and in resolving appeals brought challenging disciplinary decisions.

82. SJU breached its contract with Harris by failing to comply with the Handbook, a contract between Harris and SJU, by:

- a. Failing to provide adequate policies and procedures for the investigation and adjudication of complaints of alleged sexual misconduct;
- b. Failing to provide adequate notice of the policies and procedures for the investigation and adjudication of complaints of alleged sexual misconduct;
- c. Conducting a cursory, superficial, and biased investigation into Horst's allegations, during which Kalin compared Harris to Jerry Sandusky, a publicized convicted pedophile;
- d. Causing a superficial, conclusory, and capricious "investigative" report to be created, which is utterly devoid of factual content and clearly biased in favor of the accuser;
- e. Failing to provide fair notice of the parameters of the charged offenses;
- f. Rendering a decision for interim suspension/conditional attendance based only upon a baseless charge without a meaningful opportunity to be heard;
- g. Failing to provide a proper community standards board pre-hearing given the gravity of the allege violation and consequences;

- h. Failing to adequately and impartially investigate the allegations against Harris;
- i. Failing to locate, preserve and/or present relevant information that would have established Horst's allegations were false;
- j. Failing to provide Harris with requested, relevant information, including the investigative report, prior to the community standards board hearing;
- k. Failing to provide Harris with basic due process, including the opportunity to confront and question Horst to test her veracity and credibility;
- l. Failing to provide Harris with basic due process, including the opportunity to confront and question Tomczyk to test the basis of her knowledge and credibility;
- m. Failing to provide Harris with basic due process, including the opportunity to confront and question Kalin to test the veracity of statements contained in his investigative report, as well as his credibility and bias;
- n. Failing to consider the text messages, which were previously provided, during the initial community standards board hearing;
- o. Considering the superficial, biased, and conclusory incident report during the community standards board hearing;
- p. Conducting an arbitrary community standards board hearing not governed by any standards and/or rules to ensure evidence and testimony is relevant, probative, and/or trustworthy;
- q. Conducting an arbitrary community standards board hearing with panel members not adequately trained or experienced in properly questioning witnesses as to their statements or evidence provided;
- r. Precluding Harris from having a person outside the SJU community attend the community standards board hearing to advise and/or support him;
- s. Rendering a decision Harris violated SJU rules applying an unreasonably lax standard of proof in light of the gravity of the charged offense and significance of the potential penalties;
- t. Remanding the matter to the same community standards board, which failed to consider the text messages, for *de novo* review;
- u. Failing to timely resolve the allegations against Harris;

- v. Rendering a decision Harris violated SJU rules against the clear weight of the evidence;
- w. Violating SJU policy against gender/sex based discrimination by establishing a *de facto* presumption Harris committed sexual assault on the basis of male stereotypes; and,
- x. Providing a disciplinary process that was fundamentally unfair.

83. As a direct and proximate of SJU's breach of contract, Harris has suffered damages including, without limitation, having his SJU school record improperly include a conviction and/or other finding of guilt of sexual misconduct (assault) based upon the unfounded charges brought against him, marring Harris' ability to enroll in another college or university of similar or greater stature as SJU, stigmatizing Harris with a finding of guilt for an act he did not commit, and monetary losses.

WHEREFORE, Plaintiff, Brian Harris, demands that judgment be entered in his favor and against Defendant, Saint Joseph's University, for the following relief:

- (a) Mandating that SJU correct Harris' student record and/or file to remove the finding of guilt with respect to the charges brought against Harris by Horst;
- (b) Mandating that SJU provide Harris with a letter or other written memorial confirming his student record and/or file has been expunged with respect to the finding of guilt for the charges brought against him by Horst;
- (c) Awarding Harris compensatory damages in excess of Seventy-Five Thousand (\$75,000.00) Dollars, together with interest and costs; and,
- (d) Such other relief which the Court deems just and proper under the circumstances.

COUNT II  
Harris v. SJU

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

84. Harris incorporates by reference the allegations of paragraphs 1 through 83 and makes them a part hereof as though they were more fully set forth at length herein.

85. Title IX of the Education Act Amendment of 1972, 20 U.S.C. §1681 *et seq.* ("Title IX") is enforceable through an implied right of action affording an aggrieved individual pecuniary damages and equitable relief.

86. SJU violated Title IX in the manner in which it improperly adjudicated the baseless charge of sexual misconduct by Horst against Harris.

87. SJU receives federal funding in various manners including, without limitation, student loans given to students either directly by the federal government or by SJU with funds furnished by the federal government.

88. In virtually all cases of campus sexual misconduct, the accused student is male and the accusing student is female.

89. SJU, in the manner in which it approaches the investigation, adjudication, and appeal of allegations of sexual misconduct, and related claims made in connection to sexual misconduct, creates an environment in which a male accused is so fundamentally denied due process as to be virtually assured of a finding of guilt. Such a biased and one-sided process deprives male students of educational opportunities on the basis of gender.

90. Harris, as a male student at SJU who has been subject to a school disciplinary action alleging a campus sexual misconduct, has been discriminated against by SJU on the basis of his gender in violation of Title IX.

91. As a result of SJU's Title IX violation, Harris has been seriously and irreparably damaged.



92. As a direct and proximate result of SJU's Title IX violation, Harris has suffered damages including, without limitation, having his SJU school record improperly include a conviction and/or other finding of guilt of sexual misconduct (assault) based upon the unfounded charges brought against him, marring Harris' ability to enroll in another college or university of similar or greater stature as SJU, stigmatizing Harris with a finding of guilt for an act he did not commit, and monetary losses.

WHEREFORE, Plaintiff, Brian Harris, demands that judgment be entered in his favor and against Defendant, Saint Joseph's University, for the following relief:

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(b) Mandating that SJU provide Harris with a letter or other written memorial confirming his student record and/or file has been expunged with respect to the finding of guilt for the charges brought against him by Horst;

(c) Awarding Harris compensatory damages in excess of Seventy-Five Thousand (\$75,000.00) Dollars, together with interest and costs; and,

(d) Such other relief which the Court deems just and proper under the circumstances.

**COUNT III**  
**Harris v. SJU**  
**(Negligence)**

93. Harris incorporates by reference the allegations of paragraphs 1 through 92 and makes them a part hereof as though they were more fully set forth at length herein.

94. At all times material hereto, SJU had a duty to hire competent personnel, adequately train its personnel, adequately supervise its personnel, and terminate and/or sanction personnel for substandard performance.

95. SJU owed a duty of care to Harris to ensure that its policies and procedures including, without limitation, those set forth in the Handbook were fair and reasonable, and a further duty to Harris to ensure that its staff and personnel were properly trained and supervised.

96. SJU breached these duties of care owed to Harris and, independent of its breach of contract set forth above in Count I, was negligent the following respects:

- a. Failing to hire well-trained agents and employees, including, without limitation, investigators and community standards board panel members, including, without limitation, the proper selection of student panelist with requisite knowledge and majority;
- b. Failing to train its employees, agents or representatives in the proper method to thoroughly investigate and adjudicate, without bias, complaints of sexual misconduct;
- c. Failing to properly train its employees, agents or representatives regarding the requirements of Title IX;
- d. Failing to properly train its employees, agents or representatives in the discovery and preservation of relevant evidence;
- e. Failing to properly train its employees, agents or representatives in basic due process as it pertains to the investigation, adjudication, and appeal from adjudication of complaints of sexual misconduct;
- f. Failing to supervise its employees, agents or representatives to ensure complaints of sexual misconduct are adequately investigated and fairly adjudicated;
- g. Continuing to employ substandard employees, including investigators and community standards panel members; and,
- h. Failing to maintain proper policies and procedures designed to fairly, reasonably and properly adjudicate claims of sexual misconduct without bias or favor.

97. As a direct and proximate of SJU's negligence, Harris has suffered damages including, without limitation, having his SJU school record improperly include a conviction and/or other finding of guilt of sexual misconduct (assault) based upon the unfounded charges

brought against him, marring Harris' ability to enroll in another college or university of similar or greater stature as SJU, stigmatizing Harris with a finding of guilt for an act he did not commit, and monetary losses.

WHEREFORE, Plaintiff, Brian Harris, demands that judgment be entered in his favor and against Defendant, Saint Joseph's University, in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, together with pre and post judgment interest, costs, and such other and further relief which the Court deems just and proper under the circumstances.

**COUNT IV**

**Harris v. SJU**

**(Unfair Trade Practices and Consumer Protection Law, 73 Pa. C.S.A. § 201-1, et seq.)**

98. Harris incorporates by reference the allegations of paragraphs 1 through 97 and makes them a part hereof as though they were more fully set forth at length herein.

99. At all times material hereto, SJU offered for sale to the public, educational services.

100. In connection with the sale of its educational services and collection of tuition, fees and costs related thereto, SJU committed various unfair and deceptive acts and practices in violation of the Unfair Trade Practices and Consumer Protection Law, 73 Pa. C.S.A. §201-1, et seq. ("UTPCPL"), including, but not limited to:

- a. Representing, warranting and guaranteeing in writing that SJU trained its employees and agents in the proper and unbiased investigation and adjudication of complaints of sexual misconduct, when in fact it had not;
- b. Representing that Harris would receive a fair and impartial hearing in connection with any allegation of sexual misconduct, when he would not;
- c. Representing that Harris would receive adequate notice of and due process in connection with allegations of sexual misconduct, when he would not; and,
- d. Misrepresenting SJU's compliance with Title IX;

101. Harris relied upon the various warranties and misrepresentations of SJU in entering his agreement with SJU and in continuing to make payments to SJU.

102. SJU's unfair and deceptive conduct constituted untrue representations of the characteristics and benefits of SJU's educational services; constituted untrue representations that SJU's educational services was of a particular standard or quality; constituted a failure to comply with the terms of a written guarantee or warranty; and constituted deceptive conduct which created a likelihood of confusion and misunderstanding – all within the meaning of §3 of the UTPCPL and §§2(4)(v), (vii), (xiv) and (xxi) of the UTCPL.

WHEREFORE, Plaintiff, Brian Harris, demands that judgment be entered in his favor and against Defendant, Saint Joseph's University, for the following relief:

- (a) Find, determine and declare that SJU's business practices violate the UTPCPL;
- (b) Enjoin SJU from continuing to investigate and adjudicate claims of sexual misconduct in the manner prescribed by the Handbook;
- (c) Award actual and/or statutory damages including attorney's fees and costs; and,
- (d) Grant such any and other further relief that is just and proper under the circumstances.

**COUNT V**  
**Harris v. SJU, Horst and Kalin**  
**(Defamation)**

103. Harris incorporates by reference the allegations of paragraphs 1 through 102 and makes them a part hereof as though they were more fully set forth at length herein.

104. SJU, Horst, and Kalin each made communications about Harris which were defamatory in nature.

105. Specifically, each referred to Harris as the perpetrator of a sexual assault on Horst, even though they knew the allegations were false, or with reckless indifference to the truth or falsity of said allegations

106. The defamatory communications tended to harm and did harm the reputation of Harris so as to lower him in the estimation of the community and to deter third persons from associating with him.

107. The defamatory communications were intended to, and did, convey Harris' guilt of alleged misconduct involving moral turpitude.

108. SJU, Horst and Kalin intended not only to deprive Harris of his good name, and to bring him into scandal and disrepute amongst his neighbors and peers, but also to limit Harris' future educational and employment prospects.

109. The defamatory communications tended to, and did, blacken Harris' reputation and exposed him to public hatred, contempt and ridicule.

110. The allegations against Harris were so inherently improbable that only a reckless and dishonest person would have conveyed them as there were obvious reasons to doubt Horst's and Kalin's veracity and the accuracy of their reports.

111. The defamatory communications were not statements of mere opinion.

112. The defamatory communications were published in that they were made to third parties.

113. The defamatory communications included, without limitation, the following:

- a. On November 17, 2012, Horst stated to Tomczyk a male student intimidated her into having sexual relations with him and although, upon information and belief, Horst improperly identified Harris she was referring to Harris;
- b. Thereafter, Horst reported Harris' alleged sexual misconduct to SJU which, in turn, assigned Kalin to investigate same;

- c. Either Horst, Kalin or other SJU employees, agents or representatives informed Iannucci of Harris' alleged sexual misconduct;
- d. Horst and/or Kalin communicated Harris' alleged sexually misconduct to the Panel; and,
- e. The defamatory communications continued to be re-published after these Defendants were made aware of the falsity of the allegations against Harris.

114. The defamatory communications were malicious, reckless, and negligently made.

115. The defamatory communications were not justifiably published by any privilege.

116. The defamatory communications referenced Harris by name to ensure those who received the communications knew they were about Harris.

117. All persons receiving the communications understood the defamatory meaning of the communications.

118. Harris was specially harmed from the publication of these defamatory communications

119. Harris suffered actual loss to his reputation and personal humiliation,

120. The defamatory communications let the audience to conclude that Harris lacked honor and integrity, and have grievously fractured his standing in respectable society.

121. SJU's, Horst's and Kalin's conduct was wanton, reckless, willful, malicious and oppressive, demonstrating reckless indifference to the rights and interests of Harris, so as to warrant an award of punitive damages.

WHEREFORE, Plaintiff, Brian Harris, demands that judgment be entered in his favor and against Defendants, Saint Joseph's University, Joseph Kalin and Lindsey Horst, jointly and severally, for compensatory damages in an amount in excess of Seventy-Five Thousand

(\$75,000.00) Dollars, punitive damages, together with pre and post judgment interest, costs, and such further and appropriate relief as determined by the Court.

**COUNT VI**  
**Harris v. SJU, Horst and Kalin**  
**(False Light)**

122. Harris incorporates by reference the allegations of paragraphs 1 through 121 and makes them a part hereof as though they were more fully set forth at length herein.

123. SJU, Horst and Kalin each made public statements about Harris which placed him in a false light.

124. These statements include allegations that Harris perpetrated a sexual assault on Horst and was a danger to either Horst or to the SJU community.

125. SJU, Horst, and Kalin had knowledge of, or acted in reckless disregard as to, the falsity of these statements and the false light in which Harris would be placed.

126. The false light in which Harris was placed is highly and unreasonably offensive

127. Such false light has caused Harris to suffer mental anguish, shame, and humiliation.

128. SJU's, Horst's and Kalin's conduct was wanton, reckless, willful, malicious and oppressive, demonstrating reckless indifference to the rights and interests of Harris, so as to warrant an award of punitive damages.

WHEREFORE, Plaintiff, Brian Harris, demands that judgment be entered in his favor and against Defendants, Saint Joseph's University, Joseph Kalin and Lindsey Horst, jointly and severally, for compensatory damages in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, punitive damages, together with pre and post judgment interest, costs, and such further and appropriate relief as determined by the Court.

COUNT VII

Harris v. SJU, Horst and Kalin

(Intentional Infliction of Emotional Distress)

129. Harris incorporates by reference the allegations of paragraphs 1 through 128 and makes them a part hereof as though they were more fully set forth at length herein.

130. At all times material hereto, Horst, Kalin, and SJU, acting through its agents, servants, and employees, did by extreme, outrageous, intentional, willful, malicious and reckless conduct, humiliate, embarrass, shock and scar Harris.

131. SJU, Horst and Kalin made public statements which were not true and took actions based upon false information to falsely portray Harris as a cruel sex offender, which was not true and caused him severe distress.

132. SJU, Horst and Kalin made public statements which were not true and took actions based on false information which caused Harris extreme distress as the result of unjustly being suspended from school and not being able to participate in the campus life to which he had looked forward.

133. SJU's, Horst's and Kalin's actions further distressed Harris due to the possibility of permanently being barred from campus and never being able to participate in the college experience to which he had looked forward.

134. SJU's, Horst's and Kalin's actions further distressed Harris due to the possibility of facing criminal charges and being accused of a crime he never committed.

135. As a direct and proximate result of the aforementioned extreme, outrageous, intentional, willful and malicious conduct of SJU, Horst, and Kalin, Harris suffered and will continue to suffer, *inter alia*, severe emotional distress, mental anguish, embarrassment and humiliation, all of which may be permanent in nature.



136. SJU's, Horst's and Kalin's conduct was wanton, reckless, willful, malicious and oppressive, demonstrating reckless indifference to the rights and interests of Harris, so as to warrant an award of punitive damages.

WHEREFORE, Plaintiff, Brian Harris, demands that judgment be entered in his favor and against Defendants, Saint Joseph's University, Joseph Kalin and Lindsey Horst, jointly and severally, for compensatory damages in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, punitive damages, together with pre and post judgment interest, costs, and such further and appropriate relief as determined by the Court.

**COUNT VIII**  
**Harris v. SJU, Horst and Kalin**  
**(Negligent Infliction of Emotional Distress)**

137. Harris incorporates by reference the allegations of paragraphs 1 through 136 and makes them a part hereof as though they were more fully set forth at length herein.

138. At all times material hereto, SJU, Horst and Kalin acted in a negligent manner for the reasons set forth above as a direct and proximate result of which Plaintiff suffered and will continue to suffer, *inter alia*, severe emotional distress, mental anguish, embarrassment and humiliation, all of which may be permanent in nature.

WHEREFORE, Plaintiff, Brian Harris, demands that judgment be entered in his favor and against Defendants, Saint Joseph's University, Joseph Kalin and Lindsey Horst, jointly and severally, for compensatory damages in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, together with pre and post judgment interest, costs, and such further and appropriate relief as determined by the Court.

**Count IX**  
**Harris v. Horst**  
**(Intentional Interference with Contractual Relations)**

139. Harris incorporates by reference the allegations of paragraphs 1 through 138 and makes them a part hereof as though they were more fully set forth at length herein.

140. Harris has the right to pursue his contractual relationships free from interference on the part of other persons.

141. At all times material hereto, Horst did willfully, maliciously, and improperly interfere with an existing contract between Harris and SJU by repeatedly meeting with SJU agents, servants, and/or employees and leveling false accusations against Harris which resulted in his suspension from SJU.

142. Horst had no privilege, justification or legitimate interest for interfering with the contract between Harris and SJU.

143. Horst, who intentionally and improperly interfered with the performance of this contract, is subject to liability.

144. In intentionally accusing Harris of sexual assault, Horst was giving false information to SJU which Horst knew to be false.

145. As a direct and proximate result of Horst's intentional interference of contract, Harris suffered suspension and expulsion, and financial harm stemming therefrom.

146. Horst's conduct was wanton, reckless, willful, malicious and oppressive, demonstrating reckless indifference to the rights and interests of Harris, so as to warrant an award of punitive damages.

WHEREFORE, Plaintiff, Brian Harris, demands that judgment be entered in his favor and against Defendant, Lindsey Horst, for compensatory damages in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, punitive damages, pre and post judgment interest,

costs, and such further relief to which the Court deems just and proper under the circumstances.

Respectfully submitted,

THE CHARTWELL LAW OFFICES, LLP

BY: 

KENNETH M. DUBROW, ESQUIRE

I.D. NO. 34665

1735 Market Street, 29<sup>th</sup> Floor

Philadelphia, PA 19103

(215) 972-7006

Attorney for Plaintiff,

Brian Harris

Harris, Brian (44982)/Pleadings/Complaint