IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN DOE,	:	
	:	
Plaintiff,	:	
	:	No.: 4:17-CV-01315
-against-	:	
	:	**(**Judge Brann)
THE PENNSYLVANIA STATE UNIVERSITY, THE PENNSYLVANIA STATE UNIVERISTY BOARD OF TRUSTEES, ERIC J. BARRON, individually and as agent for The Pennsylvania State University, **PAUL APICELLA,** individually and as agent for The Pennsylvania State University, **KAREN FELDBAUM,** individually and as agent for The Pennsylvania State University, **KATHARINA MATIC,** individually and as agent for The Pennsylvania State University,	:	
	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR CIVIL CONTEMPT AS AGAINST THE PENNSYLVANIA STATE UNIVERSITY, DANNY SHAHA AND KAREN FELDBAUM

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PROCEDURAL HISTORY

Plaintiff filed a Complaint on July 25, 2017, (See **Exhibit "A**"). On August 10, 2017 and August 11, 2017 Your Honor conducted a hearing, which included testimony from five (5) witnesses, in furtherance of Plaintiff's motion seeking a Temporary Restraining Order and subsequent Preliminary Injunction prohibiting Defendants from barring Plaintiff from attending Fall Semester 2017 classes at The Pennsylvania State University and participation in the Penn State Jefferson seven (7) year pre-med program. (See **Exhibits "B" and "C"**).

On August 18, 2017 Your Honor issued an Order and Memorandum Opinion granting Plaintiff's application for a TRO and ordering that:

> Penn State is **immediately enjoined from enforcing its June 27, 2017 suspension and exclusion** of Plaintiff, John Doe from the Pennsylvania State University and the Penn State-Jefferson seven (7) year pre-med program.
>
> Penn State shall immediately permit and assist the Plaintiff, John Doe in registering for classes necessary for participation in the Penn State-Jefferson seven (7) year pre-med program for the Fall 2017 Semester which begins on August 21, 2017. **Said registration and participation by Doe** is to be effectuated in accordance with Penn State's practice, **utilized during the prior academic year, of separating Doe and Roe**.

(See **Exhibits "D" and "E"**). (Emphasis added).

FACTUAL BACKGROUND

Respectfully, Your Honor is very familiar with the underlying facts of this action as a result of the two (2) day hearing conducted before Your Honor on August 10 and 11, 2017. Thereafter, Your Honor issued an extensive 33-page Memorandum Decision and accompanying Order concerning the hearing. (The hearing testimony, Memorandum

Decision and Order are annexed to this motion as **Exhibits "B', "C", "D" and "E**" respectively).

The instant application has become necessary as a result of the actions of the Defendants The Pennsylvania State University, Karen Feldbaum and non-party Danny Shaha. On September 25, 2017, Danny Shaha, Penn State's Interim Assistant Vice President-Student Affairs sent an e-mail to the Plaintiff and notified him that effective immediately, "Penn State has withdrawn the finding of responsibility and sanctions assigned to you as a result of the Title IX Decision Panel held on June 6, 2017. **A *new* Title IX Decision Panel will be convened.** Accordingly, Penn State will"

- Lift the finding from your record (i.e. remove the finding of responsibility and the accompanying sanctions).
- Assemble a new Title IX Decision Panel.
- Replace the redacted version of the response to charges with an unredacted version in the investigative packet.
- Provide the investigative packet to the Panel at least 5 days prior to a new hearing.
- Ask the new Panel to conduct a new Title IX hearing, during which each party may submit questions to the panel to be asked of the respondent and complainant, as appropriate, acknowledging that either may decline to answer any question.
- Allow both parties (respondent and complainant) the opportunity to participate by video or audio. If they participate by video, they acknowledge that they will be seen by the other.
- **Ask the Panel to reach a decision of responsibility** or non-responsibility per the Code of Conduct &Student Conduct Procedures (Nov. 3, 2016) version).
- Allow appeals per the Code of Conduct &Student Conduct Procedures (Nov. 3, 2016 version)
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(See **Exhibit "F"**). (Emphasis added).

Mr. Shaha further advised the Plaintiff that Defendant Karen Feldbaum, Penn State's Interim Director of the Office of Student Conduct, will be in contact with further information. (See **Exhibit "F"**). Thereafter, on September 25, 2017, Plaintiff received an e-mail from Defendant Karen Feldbaum advising him that Penn State is "working on identifying the date for your new panel". Additionally, Defendant Feldbaum stated that the Administrative Directive, that restricts all direct and indirect contact with the complainant is still in effect. (See **Exhibit "K"**).

On September 25, 2017, counsel for the Plaintiff sent an extensive e-mail to counsel for Penn State objecting to Penn State's unilateral attempt to violate Your Honor's August 18, 2017 Order by retrying the Plaintiff. In addition to outlining the numerous reasons why Defendants were not in accordance with Your Honor's Order, counsel also demanded that Defendants cease and desist from contacting the Plaintiff directly concerning issues specifically related to this ongoing litigation. (See **Exhibit "L")**.

On September 26, 2017, counsel for the Defendants responded to Plaintiff's counsel's e-mail. Defendants' counsel in his response, provided a list of words that had no relevance to the issue in an attempt to defend Defendants' indefensible position. (See **Exhibit "M")**.

On October 5, 2017 Plaintiff received an e-mail from Defendant Feldbaum notifying him of a "new panel hearing" to take place on October 25, 2017. (See **Exhibit "N")**.

On October 6, 2017, Plaintiff's counsel, Stuart Bernstein spoke with Defendants' counsel, Emily Edmunds, regarding Defendants intention to conduct a "new panel

hearing" and Plaintiff's intention to seek the Court's intervention. Ms. Edmunds did not concur with Plaintiff's intention to make a motion. At the conclusion of this conversation, no resolution could be reached, necessitating Plaintiff's pending application.

QUESTIONS PRESENTED

Question: Should Defendants The Pennsylvania State University, Karen Feldbaum and non-party Danny Shaha been held in Civil Contempt of Court by violating this Court's August 18, 2017 Order.

Suggested Answer: Yes, Plaintiff has established all of the legal requirements for the granting of an Order of Civil Contempt of Court.

Question: Should Defendants The Pennsylvania State University, Karen Feldbaum and non-party Danny Shaha be fined, including the imposition of all costs associated with this motion.

Suggested Answer: Yes, Plaintiff has established all of the legal requirements for the imposition of a fine, including the imposition of all costs associated with this motion.

ARGUMENT

I. LEGAL STANDARD FOR THE FINDING OF CIVIL CONTEMPT OF COURT

In accordance with prevailing law in the Third Circuit, for the issuance of an Order of Civil Contempt, a plaintiff needs to establish "(1) that a valid court order existed; (2) that the defendants had knowledge of the order; and (3) that the defendants disobeyed the order". *Roe v. Operation Rescue*, 919 F.2d. 857 (3rd Cir 1990), *Marshak v.*

Treadwell, 595 F.3rd 478 (3rd Cir 2009); *Loftus v. Southeastern Pennsylvania Transportation Authority*, 8 F.Supp 2d. 464 (E.D. PA. 1998).

Danny Shaha, a non-party to the litigation, is nonetheless subjected to this Court's Contempt power. It has long been held in the Third Circuit that "a person who is not a party to a proceeding may be held in contempt if he or she has actual knowledge of a court's order and either abets the defendant or its legally identified with him". *Quinter v. Volkswagen of America, 676 F.2d 969, 972* (3rd Cir 1982), *Roe v. Operation Rescue*, 919 F.2d. at 871. Danny Shaha not only testified before Your Honor on August 11, 2017, but Mr. Shaha sat at Defendants' counsel's table during both days of the hearing. Additionally, Mr. Shaha is Penn State's Interim Assistant Vice President-Student Affairs.

II. A VALID COURT ORDER EXISTED

On August 18, 2017 following a two (2) day hearing, which consisted of testimony from Defendant Feldbaum, Danny Shaha, two (2) other Penn State employees and the Plaintiff, Your Honor issued an Order and Memorandum Opinion granting Plaintiff's motion for a TRO. The Court's Order held:

> Penn State is **immediately enjoined from enforcing its June 27, 2017 suspension and exclusion** of Plaintiff, John Doe from the Pennsylvania State University and the Penn State-Jefferson seven (7) year pre-med program.
>
> Penn State shall immediately permit and assist the Plaintiff, John Doe in registering for classes necessary for participation in the Penn State-Jefferson seven (7) year pre-med program for the Fall 2017 Semester which begins on August 21, 2017. **Said registration and participation by Doe** is to be effectuated in accordance with Penn State's practice, **utilized during the prior academic year, of separating Doe and Roe**.

(See **Exhibits "D" and "E"**). (Emphasis added).

It is clear and unambiguous that Your Honor's Memorandum Opinion and Order required the Defendants to ensure that the Plaintiff was back in school and participating fully as a student in the Penn State-Jefferson seven (7) year pre-med program. The Court was not seeking to provide the Defendants an opportunity to interrupt Plaintiff's studies and subject him to the same lack of due process he had just endured. As demonstrated below, Defendants and Danny Shaha not only violated the letter of the August 18. 2017 Memorandum Opinion and Order but also the spirit of them.

III. DEFENDANTS THE PENNSYLVANIA STATE UNINVERSITY, KAREN FELDAUM AND DANNY SHAHA HAD KNOWLEDGE OF THE COURT'S AUGUST 18, 2017 MEMORANDUM OPINION AND ORDER

It is undisputed that Defendants and their counsel received a copy of the Court's August 18, 2017 Memorandum Decision and Order. Following the Court's Memorandum Decision and Order, Plaintiff was re-matriculated into the Penn State-Jefferson pre-med program, through the assistance of the Defendants and other Penn State employees, and began classes on August 21, 2017. Additionally, in a September 1, 2017 e-mail written by Danny Shaha, Mr. Shaha expressly acknowledged the "judge's orders" and Your Honor's intention of making sure that the Plaintiff is back in school and participating fully as a student in the Penn State-Jefferson seven (7) year pre-med program. Mr. Shaha in his September 1, 2017 e-mail to the Plaintiff wrote that the purpose of an upcoming meeting was to "explore with you ways to ensure that you and the complainant both **receive as full an educational experience as possible while adhering to the expectations to keep you as separate as possible**". (See **Exhibit "J"**). (Emphasis added).

As demonstrated above, Defendants and Danny Shaha had full knowledge of Your Honor's August 18, 2017 Memorandum Opinion and Order.

IV. DEFENDANTS THE PENNSYLVANIA STATE UNINVERSITY, KAREN FELDAUM AND DANNY SHAHA DISOBEYED THE COURT'S AUGUST 18, 2017 MEMORANDUM OPINION AND ORDER

Defendants and Danny Shaha's actions, as documented in Danny Shaha's September 25, 2017 e-mail, and Defendant Feldbaum's September 25, 2017 and October 5, 2017 e-mails clearly demonstrate Defendants and Danny Shaha's direct disobedience with Your Honor's August 18, 2017 Memorandum Opinion and Order.

These e-mails and plan to conduct a "second panel hearing" clearly manifest Defendants and Danny Shaha's intent to usurp and circumvent this Court's jurisdiction and authority. It is indisputable that Your Honor held, in granting Plaintiff's TRO, that the plaintiff has "made the necessary showing of likelihood of the success on the merits". Your Honor continued and stated: "my reasoning is **based on both (1) significant and unfair deviations from policy during the *investigation* and hearing**; and (2) the redactions made by the Investigator to Doe's June 1, 2017 Response to the Charge and Sanctions Notification" (See **Exhibit "D"**, pages 16-17). (Emphasis added).

There can be no question in the mind of any individual who not only sat through the two (2) day hearing and had knowledge of the Court's August 18, 2017 Memorandum Opinion and Order, that Your Honor found due process deficiencies with both the Investigation and Hearing the Plaintiff was subjected to by the Defendants.

It is not lost on the Plaintiff that Defendants and Danny Shaha's egregious actions came the very next business day (Monday September 25, 2017) following the

Department of Education's Office for Civil Rights' September 22, 2017 issuance of a new "Dear Colleague Letter" to colleges and universities **withdrawing** the prior administration's "April 4, 2011 Dear Colleague Letter" and its "April 29, 2014 Question and Answers". Defendant Feldbaum herself, during her hearing testimony, admitted that Defendant Penn State changed and lowered their burden of proof to comply with the April 4, 2011 "Dear Colleague Letter". (See pages 15-19 of **Exhibit "B"**). Based upon the hearing testimony and the Court's findings and the recent withdrawal of the old "Dear Colleague Letter", Defendants have every right to anticipate a negative outcome at the time of trial. As such, they are desperately and haphazardly attempting to unilaterally rewrite history.

Defendants' counsel in his September 26, 2017 e-mail (See **Exhibit "M"**) attempts to justify Defendants and Danny Shaha's blatant disobedience and circumvention of the Court's Opinion and Order by indicating that these individuals' "goal is to get to a final resolution sooner rather than later…" Counsel continues by saying "A new hearing and prompt resolution would seem to be in everyone's best interest". (See **Exhibit "M"**).

Defendants and Danny Shaha's only goal is to have the Plaintiff once again removed, though a fatally flawed and biased process, from Penn State. Clearly, this is in direct contradiction of Your Honor's August 18, 2017 Opinion and Order. Who are the Defendants and Danny Shaha to take it upon themselves to unilaterally alter the course of this litigation? Your Honor at no time or anywhere in the 33 page Memorandum Opinion

and Order contemplate, discuss, let alone ordered the vacating of the old findings and ordered a "second panel hearing".

Had Defendants and Danny Shaha actually wanted "to get to a final resolution sooner rather than later" Defendants' counsel should have contacted Plaintiff's counsel, following the Court's August 18, 2017 ruling to discuss a settlement. Defendants' counsel's statement that Defendants "goal is to get to a final resolution sooner rather than later…" simply makes no sense. How could this matter proceed faster should the Plaintiff once again be suspended from school? It is clear Defendants are attempting to divest the Court of jurisdiction, without a scintilla of authority, by claiming to remedy Defendants' faulty process.

A. Defendants and Danny Shaha Lack Any Authority to Conduct A "Second Panel Hearing"

Conspicuously absent from Danny Shaha's September 25, 2017 e-mail to the Plaintiff is any reference to a rule, statute, policy or any authority to justify Defendants and Mr. Shaha's attempt to conduct a "second panel hearing" It is respectfully submitted that such reference is absent simply because no such authority exists. As noted above, Your Honor at no time ever directed or provided Defendants leave to retry the Plaintiff, let alone, as demonstrated below, use the same biased, and utterly flawed process.

Plaintiff's counsel raised the issue of no authority with Defendants' counsel in his September 25, 2017 e-mail. (See **Exhibit "L"**). In response to Plaintiff's counsel's inquiry, Defendants' counsel replied that the University's decision to attempt to conduct a "second panel hearing" is "consistent with the underpinnings of the University's Code

of Conduct, which include the need to: a) maintain a civil and safe community in which all Penn Staters can live and learn; b) administer a disciplinary process that is designed to foster growth and learning through holding students accountable for their behavior; and c) create a community in which students' actions reflect the essential values of Penn State University, namely: Community, Discovery, Excellence, Integrity, Respect, Responsibility". (See **Exhibit "M"**).

Respectfully, Defendants' counsel's response is nothing more than a string of self-serving words looking to justify Defendants' baseless position. Counsel first writes "a) maintain a civil and safe community in which all Penn Staters can live and learn." The fact remains that the Plaintiff and Jane Roe have co-existed, by all accounts, including the Defendants, for well over a year since the incident, in nothing but a "civil and safe community." As such, this reason lacks any justification to disobey the Court's order and attempt to conduct a "second panel hearing."

Defendants' counsel next writes as Defendants' justification, **"**administer a disciplinary process that is designed to foster growth and learning through holding students accountable for their behavior." This statement is exactly what forms the basis of this lawsuit and only Your Honor has authority to alter it. As demonstrated at the hearing, and as noted in Your' Honor's Memorandum Opinion, it appears more likely than not that Defendants "disciplinary process" is legally flawed.

Lastly, Defendants' counsel lists some cliché words in attempt to justify Defendants' indefensible position. Again, absent a single reference to any authority for Defendants and Mr. Shaha attempt to conduct a "second panel hearing".

However, when one really looks at Defendants' Code of Conduct and Student Conduct Procedures, (either the 4-25-16 or 11-3-16, see **Exhibits "G" and "H"**) one would see that the Policy not only does not authorize Defendants and Mr. Shaha's disobedience**, but it superficially prohibits such action**.

It is undisputed that Plaintiff timely and properly filed an Appeal with regards to his June 6, 2017 panel hearing and subsequent sanctions. Further, it is undisputed that this Appeal was denied by Defendants on June 27, 2017.

Both Defendants' April 25, 2016 and November 3, 2016 Code of Conduct and Student Conduct Procedures contain the following provisions:

> h. The Appeals Officer will forward his/her decision and rationale to the Senior Director or designee within five (5) business days of receiving the appeal request
>
> i. The respondent and complainant, if applicable, will be notified in writing.
>
> j. **If an appeal is denied, *no further review will occur*.** (Emphasis added).

(See, pages 19-20 of **Exhibit "G"** and pages 18-19 of **Exhibit "H"**)

Following the June 27, 2017 denial, Plaintiff's case was over in the eyes of Penn State. This is simply no mechanism for which Defendants and Danny Shaha can justify their outrageous conduct in attempting to *sua sponte* vacate the decision and conduct a new hearing. Could the Plaintiff *sua sponte* vacate the findings and order a new hearing for himself, I don't think so. The procedures clearly and unambiguously state ***no further review will occur.*** Besides Defendants contempt of this Court, Defendants and Mr. Shaha have no authority to retry the Plaintiff.

B. Defendants and Danny Shaha Intend to Utilized a Biased and Flawed Investigative Report During Their Attempt to Conduct an Improper Second Panel Hearing

In their attempt to circumvent this Court's holdings, Defendants and Danny Shaha have at best, grossly misinterpreted the hearing testimony and more importantly this Court's findings as to full extent of the Defendants Due Process violations perpetrated upon the Plaintiff.

Initially, Mr. Shaha in his September 25, 2017 e-mail lists several areas Defendants will alter in their second go around to suspend the Plaintiff. This time, Defendants will submit Plaintiff's "unredacted" response to charge. However, Defendants fully intend to submit the reminder of the 77-page redacted Investigative Report as the basis for their charges. (**See Exhibit" F"**).

Defendants, Defendants counsel and Mr. Shaha blatantly ignore Your Honor's findings in their unilateral attempt to cure what they perceive to be the deficiencies found by the Court. Defendants' counsel's justification for the "second panel hearing" (See **Exhibit "M"**) is that "**The University has determined** that it will address **these issues that were the focus of Judge Brann's order** by conducting a new hearing that ameliorates those issues". (Emphasis added).

Mr. Shaha's September 25, 2107 e-mail and Defendants' counsel's September 26, 2017 e-mail only focus on the lack of due process and deficiencies found by the Court as to the hearing phase. Conspicuously absent is any discussion as to the numerous due process failures that occurred during the investigation phrase.

Defendants and Mr. Shaha ignored the Court's very specific and pointed findings as to the deficiencies of the investigation. These include the following:

> "In the instant matter, I find that, based on the singularities of this case, Doe has made the necessary showing of likelihood of the success on the merits. My reasoning is **based on both (1) significant and unfair deviations from policy during the *investigation* and hearing**; and (2) the redactions made by the Investigator to Doe's June 1, 2017 Response to the Charge and Sanctions Notification" (See pages 16-17 of **Exhibit "D"**). (Emphasis added).
>
> "I specifically note that, during the hearing, Ms. Matic stated repeatedly that her ultimate role is 'be impartial and objective to both parties' and that is this goal necessities that she redact information provided. **I preliminarily find that those statements to be in conflict and may work to violate Doe's due process"**. " (See pages 25-26 of **Exhibit "D"**). (Emphasis added).
>
> "I note further that this function has a funneling **effect whereby information deemed irrelevant by the Investigator**, an allegedly neutral party, is thereafter disallowed from submission to the Title IX decision panel—the ultimate, and I believe proper, arbiter of both relevance and the accused's fate" (See pages 26 of **Exhibit "D")** (Emphasis added).
>
> Based on the above deviations in conjunction with what **I view as the questionable role of the Investigator in redacting information**, I find that Doe has demonstrated the necessary showing of likelihood of success on the merits of his due process claim" (See page 27 of **Exhibit "D"** (Emphasis added).

First and foremost, Plaintiff at no time consents to being retried by Defendants. As demonstrated above, Defendants have no authority to conduct such a second trial. Moreover, Defendants and Mr. Shaha is attempting to retry the Plaintiff using the same exact biased and flawed Investigative Report, written by an Investigator whose tactics and testimony have been unequivocally called into question by the Court.

Interestingly, according to Mr. Shaha, Defendants during their "second panel hearing" will submit Plaintiff's unredacted "response to charges" but inexplicitly intend to utilize the remainder of the almost 77 redacted pages of the Investigative Report. (**Exhibit "I"**).

The Investigative Report that Defendants and Mr. Shaha intend to use during their retrial still contains the redacted initial statement of the Plaintiff, who provided the unredacted version to Defendant Matic, the Investigator. (See Exhibit C of **Exhibit "I"**). Additionally, the Investigative Report sought to be used by the Defendants and Mr. Shaha still contains Jane Roe's heavily redacted statement to Penn State's Resident Life. (See Exhibit A of **Exhibit "I"**).

The evidence in this case has established that Jane Roe never provided a statement to Defendant Matic, the "Investigator" or Defendant Feldbaum, the "Case Worker". Instead, Jane Roe insisted, throughout the seven (7) month investigation, to have the Defendants rely on her statement to Resident Life.

However, as testified to by Defendant Matic, her Investigative Report only contains a heavily redacted summary of Jane Roe's Resident Life statement provided to her by Meeghan Hollis, a person with absolutely no authority to be part of the investigation. (see pages 131-132 of **"Exhibit "C"),** let alone be the author of one, if not the most, important piece of evidence in the case. Defendant Matic further testified that she herself, at some point, read Jane Roe's unredacted statement but again those statements are not included in her Investigative Report. (See pages 129-153 of **Exhibit "C"**).

Again, although Plaintiff does not consent to a "second panel hearing", it cannot go unsaid as to the shear unfairness and improper manner Defendants and Mr. Shaha intend to conduct this retrial. According to Mr. Shaha, the Defendants intend to utilize the Code of Conduct and Student Conduct Procedures effective November 3, 2016.

Not only was that document not even in existence at the time of Plaintiff's alleged Code of Conduct violation, but Defendants' investigation had been in progress for approximately two (2) months preceding pursuant to a different set of rules under a different policy.

Defendant Feldbaum testified that there was a change in the rules being implemented by Penn State during Plaintiff's investigation. Moreover, contrary to Mr. Shaha's hearing testimony, (see pages 170-172 of **Exhibit "C"**) Defendant Feldbaum **never** personally notified the Plaintiff and knew of no one that did, of any change in the way his investigation would be conducted under the revised November 3, 2016 Code of Conduct and Student Conduct Procedures. (See page 138 of **Exhibit "B"**).

Ms. Feldbaum testified that there was no role of "case worker" in the Investigative Model" that Defendants used at the commencement of the investigation. In fact, Ms. Feldbaum testified that the change in procedure, mid investigation, caused a change in the individual who would determine if the Plaintiff was responsible for a code violation and what if any sanction should be imposed. She testified that it was the Investigator, (Defendant Matic) under the Investigative Model being used by the Defendants in the beginning of the investigation, who had the duty to determine the responsibility of the Plaintiff. (See page 137-138 of **Exhibit "B"**).

Additionally, Ms. Feldbaum testified that she made her decision in this matter based upon the investigative packet and its redactions. (See page 138-139 of **Exhibit "B"**). How then could the Plaintiff possibly get a fair assessment of his responsibility, when the decision maker, "Case Manager", Defendant Feldbaum **never** reviewed Plaintiff's unredacted statement and more importantly **never** reviewed any unredacted statement of Jane Roe?

As noted above, Defendant Matic testified that she redacted both Plaintiff's and Jane Roe's statements that were contained in her Investigative Report. However, she further testified that she had at some point reviewed the unredacted version. Although, Defendants Matic may have been in the better position to make a determination, based upon the fact that she actually reviewed at some point, the unredacted statement of the complainant and respondent, she was summarily divested of that authority by the Defendants, midway through the investigation.

In turn, Defendants thrusted the weight of making a determination as to Plaintiff's responsibility, midway through an investigation, onto someone who **never** had the benefit of reviewing the complainant's and respondent's unredacted statements.

This is what Defendants call fairness and due process? Despite the laundry list of deficiencies in Defendants investigation and Investigative Report, Mr. Shaha and Defendants intend to use the same Investigative Report, prepared under the above reference deficiencies, in their "second panel hearing". Somehow, Defendants and Mr. Shaha believe this in compliance with Your Honor's August 18, 2017 memorandum Opinion and Order.

V. PLAINTIFF IS ENTITLED TO AWARD FOR ALL COSTS ASSOCIATED WITH THIS RULE TO SHOW CAUSE

The case law is clear that the imposition of costs associated with civil contempt is appropriate. "sanctions for civil contempt serve two purposes: 'to coerce the defendant into compliance with the court's order **and to compensate for loses sustained by the disobedience**". *Marshak v. Treadwell*, 595 F.3rd 478, 494 (3rd Cir 2009); Defendant The Pennsylvania State University should be sanctioned and made to bear all of Plaintiff's costs and legal fees associated with this application. The Third Circuit has held that civil contempt can be used to "compensate for losses sustained by the disobedience". *McDonald's Corp v. Victory Investments*, 727 F.2d. 82, 87 (3rd Cir 1984).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order of Civil Contempt of Court as against The Pennsylvania State University, Karen Feldbaum and non-party Danny Shaha as a result of their violation of the Court's August 18, 2017 Memorandum Opinion and Order. Plaintiff respectfully requests that the Court enter an Order enjoining The Pennsylvania State University, Karen Feldbaum and non-party Danny Shaha from conducting a "second panel hearing" and/or seek to take any further action as against Plaintiff from any allegations associated with this pending litigation and Plaintiff's alleged September 7, 2016 violation of Defendant, The Pennsylvania State University's Code of Conduct. Plaintiff respectfully requests that the Court enter an Order against Defendant The Pennsylvania State University awarding all costs to the Plaintiff associated with this motion.

Dated: October 6, 2017

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the word-count limit set forth in Local Rule 7.8(b)(2) in that it contains 4,535 words, as determined by the word count feature of the word-processing system used to prepare the brief.

Dated: October 6, 2017

/s/ Stuart Bernstein
Stuart Bernstein, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2017, a copy of the foregoing was filed electronically with this Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Stuart Bernstein
Stuart Bernstein, Esq.