APPENDIX

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1724

SERGIO VERDU,

Appellant

v.

THE TRUSTEES OF PRINCETON UNIVERSITY; THE BOARD OF TRUSTEES OF PRINCETON UNIVERSITY; CHRISTOPHER L. EISGRUBER; DEBORAH A. PRENTICE; REGAN CROTTY; TONI MARLENE TURANO; LISA M. SCHREYER; MICHELE MINTER; CLAIRE GMACHL; CHERI BURGESS; LYNN WILLIAM ENQUIST; SUSAN TUFTS FISKE; CAROLINA MANGONE; HARVEY S. ROSEN; IRENE V. SMALL

Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 3-19-cv-12484)
District Judge: Honorable Freda L. Wolfson

Submitted under Third Circuit LAR 34.1(a)
On June 24, 2021

Before: CHAGARES, *Chief Judge,*
PORTER and ROTH, *Circuit Judges*

(Opinion filed: September 27, 2022)

OPINION*

ROTH, *Circuit Judge.*

Sergio Verdu served as a tenured professor in the electrical-engineering department at Princeton University before his termination in 2018. Verdu asserts that Princeton and its agents (collectively, Princeton) violated his rights when it terminated him, so he filed a complaint in the District Court asserting violations of Title IX and of Title VII and state-law claims. Princeton moved to dismiss the complaint, and the District Court granted the motion. In doing so, the District Court ruled that Verdu failed to state a plausible claim for relief under either Title IX or Title VII. The District Court then declined to exercise supplemental jurisdiction over Verdu's state-law claims. Finding no error, we will affirm the order of the District Court.

I.[1]

Verdu taught at Princeton for nearly thirty-five years. In April 2017, Yeohee Im, a graduate stu-

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, does not constitute binding precedent.

[1] These facts are taken from the complaint and treated as true because, in reviewing a denial of a motion under Federal Rule of Civil Procedure 12(b)(6), we accept as true all well-pleaded allegations and construe the complaints in the

dent at Princeton, reported Verdu for sexual harassment. Princeton investigated the charge and determined that Verdu had violated Princeton's sexual-misconduct policy. Princeton disciplined Verdu by putting him on probation for a year.

According to Verdu, Im did not believe that Princeton punished Verdu sufficiently. That feeling was enhanced by Im's relationship with Paul Cuff, a former assistant professor at Princeton who held a grudge against Verdu. When Princeton denied Cuff tenure, Cuff blamed Verdu. Verdu believed that Cuff then influenced Im to engage in a public-pressure campaign against Verdu.[2] Im's campaign led to calls for Verdu's termination.

In September 2017, Princeton launched a second investigation into Verdu. The second investigation involved an alleged romantic relationship between Verdu and another Princeton graduate student, E.S., a student whose graduate dissertation Verdu had evaluated. According to Verdu, the second investigation was caused, at least in part, by Im's efforts to find evidence about the relationship between Verdu and E.S. At first, Verdu and E.S. denied that they had had any romantic relationship, Princeton, however, ultimately concluded that Verdu and E.S. engaged in an impermissible romantic relationship while Verdu evaluated her

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light most favorable to the plaintiff. *See Lewis v. Atlas Van Lines, Inc.,* 542 F.3d 403, 405 (3d Cir. 2008).

[2] Verdu alleges that Im violated numerous policies and rules at Princeton when she executed her alleged public-pressure campaign.

dissertation. Verdu later admitted that he and E.S. did engage in a romantic relationship during that period. As punishment, Princeton's president recommended that Verdu be fired. The president based his recommendation on the fact that Verdu had lied during the investigation.

Verdu asserts that both investigations involved discrimination against him because of his sex. He claims that Princeton's investigations were defective because of alleged procedural anomalies, Im's public-pressure campaign, and other public pressures on Princeton to more rigorously investigate and punish any on-campus sexual misconduct.

Verdu sued Princeton in the District Court. The court dismissed his suit because Verdu failed to plausibly allege his federal-law claims. Verdu's appeal is now before us.

II.

The District Court had subject-matter jurisdiction over Verdu's federal claims under 28 U.S.C. § 1331. Although the District Court dismissed Verdu's complaint without prejudice, Verdu stood on his complaint by filing his appeal and by making certain representations in his appellate briefing. "Although generally a plaintiff who decides to stand on the complaint does so in the district court[,] . . . we have made clear that such a course, while preferable, is not always necessary."[3] When a plaintiff "declare[s] [his] intention to stand on [his]

[3] *Remick v. Manfredy,* 238 F.3d 248, 254 (3d Cir. 2001).

complaint in this [C]ourt[,] . . . we thereafter treat[] the district court's order dismissing the complaint, albeit without prejudice, as a final order dismissing with prejudice . . . ."[4] Verdu unequivocally stated his intention to stand on his complaint in his briefing before us.[5] Thus, we have appellate jurisdiction under 28 U.S.C. § 1291. We review de novo an order granting a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).[6]

III.

Verdu's first contention is that the District Court erred when it dismissed his claims for relief under Title IX of the Education Amendments of 1972. Title IX provides that "[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."[7] In *Doe*

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[4] *Id.* (citing *Semerenko v. Cendant Corp.,* 223 F.3d 165, 172–73 (3d Cir. 2000)); *see also Pascack Valley Hosp. v. Local 464A UFCW Welfare Reimbursement Plan,* 388 F.3d 393, 398 (3d Cir. 2004) ("At oral argument [before us], counsel for the Hospital declared the Hospital's intention to . . . stand on its complaint. Counsel's declaration is sufficient to render the District Court's order final and appealable.").

[5] *See, e.g.,* Appellant's Opening Br. at 21–22. Princeton does not contest whether Verdu has clearly stood on his complaint; nor does it contest our appellate jurisdiction.

[6] *See, e.g., Connelly v. Lane Constr. Corp.,* 809 F.3d 780, 786 n.2 (3d Cir. 2016).

[7] 20 U.S.C. § 1681(a).

v. University of the Sciences,[8] we adopted a "straightforward pleading standard" and held "that, to state a claim under Title IX, the alleged facts, if true, must support a plausible inference that a federally-funded college or university discriminated against a person on the basis of sex."[9] Plaintiffs, of course, remain "free to characterize their claims however they wish."[10]

In his complaint, Verdu states three theories under which Princeton discriminated against him: erroneous outcome, selective enforcement, and retaliation.

1. *Erroneous Outcome.* Verdu claims that Princeton discriminated against him based on his sex by reaching the incorrect conclusion both times that it investigated him.

As for the first investigation, Verdu attempts to show that Princeton discriminated against him based on his sex when it investigated and disciplined him based on (1) generalized archaic stereotypes about the sexes, (2) the history of complaints to the Department of Education's Office for Civil Rights about Princeton's purported failure to respond adequately to allegations of sexual misconduct advanced by female students and the resulting pressure on Princeton to remedy that perception,

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[8] 961 F.3d 203 (3d Cir. 2020). We reaffirmed that pleading standard more recently in *Doe v. Princeton University,* 30 F.4th 335, 343 (3d Cir. 2022).

[9] *Univ. of the Scis.,* 961 F.3d at 209.

[10] *Id.*

and (3) the fact that three female graduate students studying in a *different* department at Princeton left abruptly and, as a result, Princeton held a townhall meeting concerning systematic and long-term sexual harassment within *that* department.

The District Court correctly found that, based on those allegations, Verdu had failed to state a plausible claim that, because of his sex, Princeton investigated and sanctioned him. Verdu's allegations simply reflect the pressure on Princeton to enforce its sexual-misconduct policy. These allegations alone are not enough to state a plausible claim against Princeton under Title IX.[11]

As for Princeton's second investigation of Verdu, the District Court found that Verdu's erroneous-outcome theory could not survive a motion to dismiss because he failed to sufficiently plead his innocence. As we explained in *University of the Sciences,* we have a standard based on the text of Title IX itself: "the alleged facts, if true, must support a plausible inference that a federally-funded college or university discriminated against a person on the basis of sex."[12] Verdu failed to satisfy that standard.

On appeal, Verdu contends that his complaint alleges that the second investigation suffered from

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[11] *Id.* at 210 ("Like our colleagues on the Sixth and Seventh Circuits, we . . . recognize that allegations about pressure from [the Department of Education] and the 2011 Dear Colleague Letter cannot alone support a plausible claim of Title IX sex discrimination." (citations omitted)).

[12] *Id.* at 209.

sex bias because of a purported lack of evidence of sexual misconduct, Princeton's decision to press the investigation despite E.S. not wanting one to occur, procedural irregularities in the investigation, and a variety of public pressures placed on Princeton. However, the District Court found that, in his own complaint, Verdu acknowledged that he violated Princeton's policies: "Plaintiff alleges in the [c]omplaint that he and E.S. commenced a relationship in Spring 2014, that the relationship was ongoing during the period when Plaintiff evaluated E.S.'s dissertation, and that [Princeton's] rules at the time prohibited 'sexual or romantic relation[s] involv[ing] individuals in a teacher-student relationship.'"[13] Verdu's admission of guilt undercuts the strength of his allegations that Princeton investigated him because of his sex. As a result, Verdu's allegations concerning the second investigation also fall short.

2. *Selective Enforcement.* Verdu claims that both the first and second investigation suffered from sex bias because Princeton selectively enforced its policies against him. He is wrong. As for the first investigation, Verdu claims that Princeton discriminated against him based on his sex because (1) on information and belief, females are purportedly investigated less frequently than males, (2) on information and belief, females are punished less severely than males, and (3) Princeton treated his

[13] App. 15 (cleaned up); *see also* Compl. ¶¶ 229, 235, 298(h).

accuser, Im, differently than it treated him during the first investigation. As for the allegations about how females and males are generally treated differently, those allegations are too abstract to support a claim of sex bias under Title IX.[14] In addition, the purported differences in how Princeton treated Verdu and Im are too conclusory to support a plausible claim for relief.[15]

As for the second investigation, Verdu asserts essentially the same arguments to support his selective-enforcement theory as he asserts to support his erroneous-outcome theory. For substantially the same reasons that we reject those arguments in support of his erroneous-outcome theory, we reject them in support of his selective-enforcement theory.

3. *Retaliation.* Verdu challenges the District Court's order dismissing his Title IX retaliation claim. To state a claim for retaliation under Title IX, the plaintiff must plausibly allege that he "engaged in activity protected by Title IX, that he "suffered an adverse action," and that "there was a causal connection between the two."[16] "Retaliation against a person because that person has complained of sex discrimination is another form of

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[14] *See Univ. of the Sciences,* 961 F.3d at 209–11.

[15] *See, e.g., Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007).

[16] *See, e.g., Doe v. Mercy Catholic Med. Ctr.,* 850 F.3d 545, 564 (3d Cir. 2017) (cleaned up); *Moore v. City of Phila.,* 461 F.3d 331, 340–42 (3d Cir. 2006).

intentional sex discrimination encompassed by Title IX's private cause of action."[17] A plaintiff alleging retaliation "need not prove the merits of the underlying discrimination complaint, but only that 'he was acting under a good faith, reasonable belief that a violation existed.'"[18]

The District Court found that, at a minimum, Verdu failed to allege that he engaged in activity protected by Title IX. As we explained earlier, Title IX protects against discrimination because of sex. In his complaint, Verdu alleges merely that he reported being subjected to a "hostile work environment" because of Im's pressure campaign.[19] Verdu's complaint never connects the purported "hostile work environment" and Im's public-pressure campaign to any purported sex-based discrimination. For that reason, Verdu's complaint does not include plausible allegations that Verdu's conduct of reporting the alleged "hostile work environment" is protected by Title IX.[20] Thus, the District

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[17] *Jackson v. Birmingham Bd. of Educ.,* 544 U.S. 167, 173 (2005).

[18] *Aman v. Cort Furniture Rental Corp.,* 85 F.3d 1074, 1085 (3d Cir. 1996) (quoting *Griffiths v. CIGNA Corp.,* 988 F.2d 457, 468 (3d Cir. 1993)).

[19] To be sure, the alleged "hostile work environment" is related to publicity surrounding Princeton's first Title IX investigation into him. However, that is not a sufficient connection by itself to show that the purported "hostile work environment" was caused by sex discrimination directed at Verdu.

[20] *See, e.g., Twombly,* 550 U.S. at 570; *cf. Sitar v. Ind. DOT,* 344 F.3d 720, 727 (7th Cir. 2003) (holding that, in Title

Court correctly dismissed Verdu's retaliation claim.

IV.

Next, Verdu challenges the District Court's dismissal of his Title VII claims. Title VII makes it unlawful "for an employer . . . to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of such individual's . . . sex*."[21] Verdu alleges that Princeton violated Title VII under two theories: one alleging disparate treatment and the other alleging a hostile work environment.

1. *Disparate Treatment.* To allege plausibly a disparate-treatment claim under Title VII, a plaintiff must allege that (1) he is a member of a protected class, (2) he is qualified for the position he sought to retain or attain, (3) he suffered an adverse employment action, and (4) the adverse action occurred under circumstances that may give rise to an inference of intentional discrimination.[22] The "central focus of the *prima facie* [Title VII] case is always whether the employer is treating some people less favorably than others because of

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VII context, the plaintiff had not engaged in protected activity because she "complained only that she felt picked on, not that she was discriminated against 'because of' sex or gender, which is what Title VII requires").

[21] 42 U.S.C. § 2000e–2(a) (emphasis added).

[22] *See Makky v. Chertoff,* 541 F.3d 205, 214 (3d Cir. 2008).

their race, color, religion, *sex,* or national origin."[23] "The evidence most often used to establish . . . disparate treatment" involves "a plaintiff show[ing] that [he] was treated less favorably than similarly situated employees who are not in [his] protected class."[24]

The District Court found that Verdu failed to allege that he received different treatment by Princeton than a similarly situated female. He never identifies a female professor at Princeton as a comparator; at most, his complaint alleges that Im—a graduate student and his accuser—is a valid comparator. Although a plaintiff need not show an exact match between himself and the comparator, he must show a sufficient similarity.[25] Verdu, a professor, and Im, a graduate student, hold unquestionably different roles and levels of authority at Princeton. Verdu has not alleged enough commonalities to show that they are sufficiently alike to be considered valid comparators. Although on appeal Verdu contends that one can infer that Princeton discriminated against him because of his

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[23] *Sarullo v. U.S. Postal Serv.,* 352 F.3d 789, 798 (3d Cir. 2003) (emphasis added) (cleaned up).

[24] *Doe v. C.A.R.S. Prot. Plus, Inc.,* 527 F.3d 358, 366 (3d Cir. 2008); *see also Simpson v. Kay Jewelers, Div. of Sterling, Inc.,* 142 F.3d 639, 645 (3d Cir. 1998).

[25] *See, e.g., Johnson v. Kroger Co.,* 319 F.3d 858, 867 (6th Cir. 2003) ("In the context of personnel actions, the relevant factors for determining whether employees are similarly situated often include the employees' supervisors, the standards that the employees had to meet, and the employees' conduct." (cleaned up)).

sex, none of his allegations plausibly support that contention.[26] His disparate-treatment claim therefore must fail.

2. *Hostile Work Environment.* To allege a plausible hostile-work-environment claim under Title VII, a plaintiff must allege that (1) he suffered intentional discrimination based on his being a part of a protected class, (2) the discrimination was severe or pervasive; (3) the discrimination had a detrimental influence on the plaintiff; (4) the discrimination would have had a detrimental influence on a reasonable person in similar circumstances; and (5) respondeat-superior liability exists.[27]

The District Court found that Verdu failed to allege sufficiently the first element: whether any harassment that he suffered was motivated by sex discrimination. The District Court's analysis is correct. In his complaint, Verdu explains that Im's public-pressure campaign, along with other public pressures on Princeton concerning on-campus sexual harassment, led to Verdu facing public scrutiny from his colleagues and students at Princeton. All of that, according to Verdu's complaint, caused him stress, anxiety, elevated blood pressure; all of it also allegedly led to a "hostile work environment" for Verdu.

However, Verdu never plausibly alleges that Im's pressure campaign and the "hostile work environ-

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[26] *See supra* § 2.

[27] *See, e.g., Mandel v. M & Q Packaging Corp.,* 706 F.3d 157, 167 (3d Cir. 2013).

ment" that purportedly resulted from it were motivated by sex discrimination. If anything, Verdu alleges that Im launched her pressure campaign because she felt "[d]issatisfied with [the] sanction" of Verdu.[28] Additionally, his complaint makes much of Im's purported relationship with Professor Cuff. According to Verdu, Cuff "held a grudge against" him because Cuff blamed Verdu for his failure to obtain tenure.[29] Based on Im allegedly "[h]aving developed a close relationship with Cuff," she purportedly filed her grievances against Verdu based on Cuff's alleged encouragement.[30] Those allegations do not relate to sex discrimination; instead, they relate to a purported feud between Cuff and Im, on one hand, and Verdu, on the other. That is not enough to allege a plausible hostile-work-environment claim based on sex discrimination. "Many may suffer severe or pervasive harassment . . . , but if the reason for that harassment is one that is not proscribed by Title VII, it follows that Title VII provides no relief."[31] Thus, the District Court properly dismissed Verdu's hostile-work-environment claim under Title VII.

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[28] Compl. ¶ 12.

[29] Compl. ¶ 4.

[30] Compl. ¶¶ 6–7.

[31] *See, e.g., Jensen v. Potter,* 435 F.3d 444, 449 (3d Cir. 2006), *overruled in part on other grounds by Burlington N. & Santa Fe Ry. Co. v. White,* 548 U.S. 53 (2006).

V.

The District Court properly dismissed the federal-law claims asserted in Verdu's complaint for failure to state a claim. We will affirm the District Court's order dismissing Verdu's complaint.[32]

[32] Having dismissed all federal-law claims and failing to find any other basis for subject-matter jurisdiction over Verdu's state-law claims, the District Court declined to exercise supplemental jurisdiction over the state-law claims. *See, e.g., Borough of West Mifflin v. Lancaster,* 45 F.3d 780, 788 (3d Cir. 1995) (stating that, when "the claim[s] over which the district court has original jurisdiction [are] dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so."). Verdu makes no contrary argument.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY(v. Action No. 19-12484 (FLW)

SERGIO VERDU,

Plaintiff,

v.

THE TRUSTEES OF PRINCETON UNIVERSITY, *et al.*,

Defendants.

ORDER

THIS MATTER having been opened to the Court by Linda Wong, Esq., counsel for Defendants,[1] on a motion to dismiss the Complaint filed by Plaintiff Sergio Verdu; it appearing that Plaintiff, through his counsel, Adrienne Levy, Esq., opposes the motion; the Court having considered the parties' submissions in connection with the motion without oral argument, pursuant to Fed. R. Civ. P. 78; for the reasons set forth in the Opinion filed on this date, and for good cause shown,

IT IS on this 30th day of March, 2020,

[1] The Complaint names the following defendants: The Trustees of Princeton University, the Board of Trustees of Princeton University, Christopher L. Eisgruber, Deborah A. Prentice, Regan Crotty, Toni Marlene Turano, Lisa Michelle Schreyer, Michele Minter, Claire Gmachl, Cheri Burgess, Lynn William Enquist, Susan Tufts Fiske, Carolina Mangone, Harvey S. Rosen and Irene Small.

ORDERED that Plaintiff's federal claims (*i.e.*, Count I, Count II, Count III, and Count IV of the Complaint) are dismissed, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim; and

FURTHER ORDERED that, pursuant to 28 U.S.C. § 1367(c)(3), the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims (*i.e.*, Count V, Count VI, Count VII, Count VIII, Count IX, Count X, Count XI, Count XII, Count XIII, Count XIV, Count XV, and XVI of the Complaint); and

FURTHER ORDERED that Plaintiff is given leave to file an amended complaint, consistent with the Opinion filed on this date, within forty-five (45) days of the date of this Order; and

FURTHER ORDERED that, if Plaintiff adequately pleads one or more of his federal claims in an amended complaint, the Court may exercise any supplemental jurisdiction at that time; and

FURTHER ORDERED that, in lieu of filing an amended complaint in federal district court, Plaintiff may pursue his state law claims in state court, and the limitations period for each of those claims is tolled, to the extent the limitations period has not already expired, for a period of thirty (30) days, pursuant to 28 U.S.C. § 1367(d).

/s/ Freda L. Wolfson
Hon. Freda L. Wolfson
U.S. Chief District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civ. Action No. 19-12484 (FLW)

SERGIO VERDU,

Plaintiff,

v.

THE TRUSTEES OF PRINCETON UNIVERSITY, *et al.*,

Defendants.

OPINION

I. INTRODUCTION

Plaintiff Sergio Verdu ("Plaintiff"), a former professor in the Department of Electrical Engineering at Princeton University (the "University"), was terminated from his employment with the University in September 2018. His termination followed two separate investigations by the University, which concluded that Plaintiff had violated the University's rules and policies governing sexual misconduct, prohibiting certain relationships between teachers and students, and requiring faculty members to be honest during interviews with investigators. In this action, Plaintiff sues the University, the University's Board of Trustees, and certain administrators of the University who were involved

in the investigations (collectively, "Defendants"),[1] claiming, among other things, that the University's proceedings were tainted with gender bias against him. The Complaint asserts claims for violations of Title IX of the Education Amendments of 1972 (Counts I thru III) and of Title VII of the Civil Rights Act of 1964 (Count IV). The Complaint also asserts a host of state statutory and common law claims (Counts V thru XIV).

Presently before the Court is Defendants' motion to dismiss the Complaint pursuant Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, Defendants' motion is **GRANTED IN PART** and **DENIED IN PART.** Plaintiff's federal claims (Counts I thru IV) are dismissed for failure to state a claim, and the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims (Counts V thru XVI) at this time. Plaintiff is given leave to file an amended complaint to replead his federal claims, in a manner consistent with this Opinion, within forty-five (45) days. In lieu of filing an amended complaint, Plaintiff may pursue his state law claims in state court.

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[1] The Complaint names the following administrators of the University as defendants: Christopher L. Eisgruber, Deborah A. Prentice, Regan Crotty, Toni Marlene Turano, Lisa Michelle Schreyer, Michele Minter, Claire Gmachl, Cheri Burgess, Lynn William Enquist, Susan Tufts Fiske, Carolina Mangone, Harvey S. Rosen and Irene Small.

II. BACKGROUND[2]

Plaintiff taught at the University as a professor for nearly 35 years without incident until 2017. (Compl. ¶¶ 2, 49-50.) In April 2017, a twenty-five-year-old female graduate student, Yeohee Im ("Im"), reported to the University's Title IX Office that Plaintiff had sexually harassed her. (*Id.* ¶¶ 118-119.) The University convened a Title IX panel ("Panel") to conduct an investigation pursuant to its Sexual Misconduct Policy (the "First Investigation"). (*Id.* ¶¶ 76-91, 125.) The Panel ultimately found Plaintiff responsible for sexual harassment. (*Id.* ¶¶ 11, 164.) On June 9, 2017, the Dean of the Faculty disciplined Plaintiff for violating the Sexual Misconduct Policy by, among other things, placing him on a one-year probation. (*Id.* ¶¶ 165, 167.)

Plaintiff alleges that, following the conclusion of the First Investigation, Im believed that the sanction Plaintiff received was inadequate and, as a result, waged a public campaign against him and the University. (*Id.* ¶¶ 177-208.) In the course of Im's campaign, Plaintiff alleges that Im committed numerous violations of the University's policies. For example, Plaintiff alleges that Im disclosed confidential records to news outlets, commented on the case to journalists who published articles about

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[2] In this Background section, I provide a brief overview of the facts that are pertinent to this motion. In the Discussion section, *infra*, I set forth a more detailed recitation of the relevant facts that are alleged by Plaintiff in support of each of his claims.

it, encouraged social media posts against Plaintiff, and filed complaints with professional associations to which Plaintiff belonged. (*Id.* ¶¶ 12, 177-226.) Plaintiff alleges that these efforts ultimately led to calls for his termination. (*Id.* ¶ 13.) Plaintiff further alleges that the University refused to address Im's violations of the University's Title IX policies or remedy the increasingly aggressive harassment and hostile environment caused by Im's activities. (*Id.* ¶¶ 209-211, 215.)

In September 2017, officials at the University told Plaintiff that it was commencing a second investigation into reports that Plaintiff may have had a romantic relationship with a different graduate student (the "Second Investigation"). (*Id.* ¶ 239.) The student, E.S., had been a student in two of Plaintiff's classes in 2011, and Plaintiff had served as a reader on her dissertation committee in Fall 2015. (*Id.* ¶¶ 235-236.) Witnesses reported that they had seen Plaintiff and E.S. kissing at a bar in Hong Kong during a conference, and photographs emerged of a man and woman kissing who appeared to be Plaintiff and E.S. (*Id.* ¶ 227.) Plaintiff alleges that Im unearthed this evidence because she was dissatisfied with the outcome of the First Investigation. (*Id.* ¶ 226.)

The University's *Rules and Procedures of the Faculty*, at the time, prohibited "sexual or romantic relationship[s] involv[ing] individuals in a teacher-student relationship (e.g. being directly or indirectly taught, supervised or evaluated)." (*Id.* ¶ 229.) Plaintiff and E.S. both denied that any relationship had occurred during interviews with investigators.

(*Id.* ¶¶124, 250, 299.) Notwithstanding those denials, the investigators ultimately concluded that Plaintiff and E.S. had engaged in a romantic relationship during the time when he evaluated her dissertation. (*Id.* ¶261.) Plaintiff now admits in the Complaint that he and E.S. commenced a relationship in Spring 2014. (Compl. ¶235.) That relationship was ongoing during the period when Plaintiff evaluated E.S.'s dissertation. (*Id.* ¶298(h).)

On May 21, 2018, the University's President issued a memo to the University's Board of Trustees recommending that Plaintiff be dismissed. (*Id.* 304.)[3] The memo concluded that Plaintiff lied during the Second Investigation; his lies were substantial and material under the University's rules and policies; the lies justified dismissal;

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[3] Defendants attach this recommendation memo as an exhibit to their motion papers. (*See* Exhibit 1 to Declaration of Christine E. Gage, ECF 20-3 ("Recommendation Memo").) Because the Complaint quotes extensively from the recommendation memo and relies on it as the basis for multiple claims, this Court may consider the memo for the purposes of this motion to dismiss. *See Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006) ("In evaluating a motion to dismiss, we may consider documents . . . and any 'matters incorporated by reference or integral to the claim[.]'" *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993) (citing 5B Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (3d ed. 2004)); *see also Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993) (holding "that a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document.")

Plaintiff also violated the University's policies on consensual relations; and neither Im nor Cuff (a former Assistant Professor who allegedly blamed his failure to obtain tenure on Plaintiff, *see* Compl. ¶ 4) influenced the proceedings in a manner that could excuse Plaintiff's conduct. (*See* Recommendation Memo, ECF 20-3.) On September 24, 2018, Plaintiff was notified that the University had terminated his employment effective immediately. (Compl. ¶ 324.)

Plaintiff alleges that, in the course of the Second Investigation, the University and its administrators violated numerous provisions of the University's *Rules and Procedures of the Faculty* and expanded the investigation to include baseless claims against him. (*Id.* ¶¶ 238-331.) Plaintiff further alleges that the University and other defendants relied on gender stereotypes, distorted the evidence and the applicable standards, and improperly relied upon Plaintiff's probation as a basis for his termination. (*Id.)* Plaintiff asserts that the University and other defendants were motivated by external pressure and the need to repair the University's tarnished reputation, which resulted from: (i) numerous investigations by the Department of Education's Office of Civil Rights for the University's alleged failure to properly respond to female students' claims of sexual assault and harassment (*id.* ¶¶ 66-73); (ii) public criticism over the alleged sexual harassment of a number of female students in the University's German Department (*id.* ¶ 75); (iii) criticism of the University by Im and Cuff for the results of the

First Investigation (*id.* ¶¶ 180-187, 191-201, 208, 216-220); and (iv) the rebirth of the #MeToo movement, which had gained momentum during the timeframe of the Second Investigation and contributed to further criticism of the University and public calls for Plaintiff's termination (*id.* ¶¶ 188-190, 202-207, 212-214, 221-225).

III. LEGAL STANDARD

Rule 12(b)(6) authorizes a defendant to move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* This "plausibility standard" requires that the plaintiff allege "more than a sheer possibility that a defendant has acted unlawfully," but it "is not akin to a 'probability requirement.'" *Id.* (citing *Twombly*, 550 U.S. at 556). Although the court must accept the allegations in the complaint as true, it is not compelled to accept "unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation," *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (citation omitted). "Determining whether a complaint states a plausible claim for

relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. In deciding a Rule 12(b)(6) motion, although "a district court . . . may not consider matters extraneous to the pleadings," the court may consider documents that are *"integral to or explicitly relied* upon in the complaint." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (citation omitted) (emphasis in original).

IV. DISCUSSION

A. Title IX Claims

Counts I, II, and III of the Complaint assert that the University violated Title IX of the Education Amendments of 1972 by discriminating against Plaintiff on the basis of his gender. (*See* Compl. ¶¶ 332-352 (Count I), ¶¶ 353-380 (Count II), ¶¶ 381-418 (Count III).)[4] Title IX states that "[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Among other things, it "bars the imposition of university discipline where gender is a motivating factor," and it "is enforceable through an implied private right of action . . . for monetary damages as well as injunc-

[4] Count I alleges a violation of Title IX with respect to the First Investigation. Counts II and III allege violations of Title IX with respect to the Second Investigation.

tive relief." *Yusuf v. Vassar Coll.*, 35 F.3d 709, 714-15 (2d Cir. 1994) (citations omitted). In most Title IX cases, a plaintiff advances a claim under one of two theories: (1) an "erroneous outcome" theory; or (2) a "selective enforcement" theory. *Doe v. The Trustees of the Univ. of Pennsylvania*, 270 F. Supp. 3d 799, 822 (E.D. Pa. 2017) (citation omitted); *see also Yusuf*, 35 F.3d at 714-16 (dividing Title IX claims involving university disciplinary proceedings into two categories based on erroneous outcome and selective enforcement theories).[5] Occasionally, a plaintiff will also assert a Title IX claim under a theory of "retaliation" for complaining of gender discrimination. *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545, 563-64 (3d Cir. 2017); *see also Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173-74 (2005) (stating that "[r]etaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by

[5] Although a Second Circuit case, *Yusuf* has been cited by numerous courts in the Third Circuit as setting the standard for Title IX erroneous outcome/selective enforcement claims. *See*, *e.g.*, *Doe v. Trustees of Princeton Univ.*, 2020 WL 967860, at *2-3 (D.N.J. Feb. 28, 2020); *Doe v. Rider Univ.*, 2020 WL 634172, at *7 (D.N.J. Feb. 4, 2020); *Doe v. The Trustees of the Univ. of Pennsylvania*, 270 F. Supp. 3d 799, 822 (E.D. Pa. 2017); *Saravanan v. Drexel Univ.*, 2017 WL 5659821, at *4-6 (E.D. Pa. Nov. 24, 2017); *see also Doe v. Princeton Univ.*, 790 F. App'x 379, 383-84 (3d Cir. 2019) (affirming a decision of the district court that applied the *Yusuf* standard to a Title IX claim that was advanced under a selective enforcement theory). As such, I apply the standard from Yusuf in this case.

Title IX's private cause of action"). Plaintiff proceeds under all three theories. (*See* Pl.'s Opp. at 7-20, 25-28.)

(1) Erroneous Outcome

Under an "erroneous outcome" theory, a plaintiff asserts that he or she was "innocent and wrongly found to have committed an offense." *Yusuf.*, 35 F.3d at 715. An erroneous outcome challenge to university disciplinary proceedings requires a plaintiff to plead (1) "particular facts sufficient to cast some articulable doubt on the accuracy of the outcome of the disciplinary proceeding," and (2) "particular circumstances suggesting that gender bias was a motivating factor behind the erroneous finding." *Id.* A complaint meets the first prong if it alleges "particular evidentiary weaknesses behind the finding of an offense such as a motive to lie on the part of a complainant or witnesses, particularized strengths of the defense, or other reason to doubt the veracity of the charge." *Id.* It may also allege procedural flaws affecting the evidence. *Id.* "[T]he pleading burden in this regard is not heavy." *Id.* However, "[i]f no such doubt exists based on the record before the disciplinary tribunal, the claim must fail." *Id.*

Once doubt has been cast on the accuracy of the proceedings, the plaintiff must present "particularized allegation[s] relating to a causal connection between the flawed outcome and gender bias." *Id.* "[A]llegations of a procedurally or otherwise flawed proceeding that has led to an adverse and erro-

neous outcome combined with a conclusory allegation of gender discrimination is not sufficient to survive a motion to dismiss." *Id.* The allegations must "go well beyond the surmises of the plaintiff as to what was in the minds of others and involve provable events that in the aggregate would allow a trier of fact to find that gender affected the outcome of the disciplinary proceeding." *Id.* at 716. Allegations that may support gender bias include "statements by members of the disciplinary tribunal, statements by pertinent university officials, or patterns of decision- making that also tend to show the influence of gender." *Id.* at 715.[6]

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[6] In his opposition papers, Plaintiff asserts that "[t]he second prong—gender bias as a motivating factor—can be met by pleading 'specific facts that support a *minimal plausible* inference of [gender] discrimination" (Defs.' Opp. at 11 (quoting *Doe v. Columbia Univ.*, 831 F.3d 46, 56 (2d Cir. 2016).) I note that at least one circuit has rejected this modified pleading standard. *See Doe v. Miami Univ.*, 882 F.3d 579, 5889 (6th Cir. 2018) (stating that the Second Circuit's "modified pleading standard . . . lacks support from our precedent . . . [and] [a] ccordingly, in this Circuit, [the plaintiff] must meet the requirements of *Twombly* and *Iqbal* for each of his claims"). The Third Circuit has not yet addressed this issue, but its precedent suggests that it would follow the Sixth Circuit in rejecting the *Columbia* decision. As the Sixth Circuit explained in *Miami Univ.*, the *Columbia* decision was partially premised on the Second Circuit's decision in *Littlejohn v. City of New York*, 795 F.3d 297 (2d Cir. 2015). In *Littlejohn*, the Second Circuit reconciled *Twombly* and *Iqbal* with the Supreme Court's holding in *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002). While *Swierkiewicz* remains good law in some circuits, the Third Circuit has explicitly held that the pleading standard set forth in *Swierkiewicz* is incompatible with *Twombly* and *Iqbal*. *See Fowler v. UPMC Shadyside*, 578

In this case, Plaintiff contends that the allegations in the Complaint support claims under an erroneous outcome theory with respect to both the First Investigation and the Second Investigation. I address the sufficiency of the allegations as they relate to each of the two investigations, in turn, below.

First Investigation (Count I). Defendants contend that Plaintiff has failed to allege a Title IX claim based on an erroneous outcome theory as to the First Investigation, because, "even assuming the outcome was flawed" (*i.e.*, the first prong), Plaintiff does not allege that the erroneous outcome was causally connected to gender bias (*i.e.*, the second prong). (Defs.' Br. at 11-13.) In response, Plaintiff contends that "the Complaint properly alleges that [the University] exhibited gender bias because the infantilization of women plays into archaic gender stereotypes about women as chaste, sexually innocent, naive, lacking sexual autonomy, and needing protection from men, who are considered the sexual aggressors." (Pl.'s Opp. at 11-12 (citing Compl. ¶¶ 151, 343).) Plaintiff also contends that the Complaint "alleges a considerable connection between the Im investigation and the specific pressure placed on the University to prosecute male professors and protect and believe

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F.3d 203, 211 (3d Cir. 2009) (claiming that *Swierkiewicz* "has been specifically repudiated by both *Twombly* and *Iqba*l"). As such, based on the Third Circuit's repudiation of *Swierkiewicz*, I adopt the Sixth Circuit's approach by applying the general *Twombly/Iqbal* pleading standard.

female graduate students in the time period leading up to Ms. Im's complaint against Plaintiff." (*Id.* at 12.) In support of the latter contention, Plaintiff cites to allegations in the Complaint, which allege that, "in addition to [the University]'s history of complaints and issues with the [Department of Education's] Office for Civil Rights for purportedly failing to sufficiently respond to allegations of sexual misconduct by female students, [the University] faced considerable pressure from its student body to remedy a perceived atmosphere of gender bias specifically against female graduate students, like Im, by male faculty, like Plaintiff." (*Id.* at 12 (citing Compl. ¶¶ 66-75, 344).) Plaintiff also cites to allegations that, during the 2016-2017 academic year, three female graduate students in the German Department left the University abruptly, prompting a town hall meeting to address systematic and long-term sexual harassment within the Department. (*Id.* at 15 (citing Compl. ¶ 75).) Plaintiff avers that the town hall meeting took place in May 2017, which was the same timeframe when the University's Title IX office was deciding Im's case against Plaintiff. (*Id.)*

Having considered Plaintiff's allegations, I cannot find that the Complaint supports a plausible inference that, *because of his gender*, Plaintiff was found to have violated the University's Sexual Misconduct Policy.[7] As an initial matter, I note that

[7] Although Defendants do not contest the first prong of the analysis in the present motion, I note that Plaintiff alleges facts "sufficient to cast some articulable doubt on the

Plaintiff has neither alleged any statements by officials showing gender bias in his disciplinary proceedings, nor has he alleged any pattern or practice designed to produce gender-specific outcomes. Instead, Plaintiff relies on allegations that the University infantilized Im during the First Investigation, for instance by faulting Plaintiff for offering Im alcohol even though she was of legal drinking age, or by faulting Plaintiff for inviting Im to his home to watch movies featuring sexual assault and full frontal nudity even though she praised these films. (*See* Pl.'s Opp. at 11-12 (citing Compl. ¶¶ 151, 343). However, Plaintiff fails to explain how "infantilizing" an accuser amounts to bias against men. These allegations do not reference gender, let alone suggest that gender was a motivating factor in the University's decision. At most, these allegations show that the University exhibited bias in favor of a younger student vis-a-vis an older professor, an inference having nothing to do with gender.

Plaintiff's allegations about pressure allegedly faced by the University from the Office of Civil Rights and students in the German Department also do not support an inference of bias *against men*. Although the Third Circuit has not had occa-

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accuracy of the outcome" of the First Investigation. *Yusuf*., 35 F.3d at 715. Specifically, the Complaint describes numerous instances where, during the course of the First Investigation, the University's Title IX office allegedly withheld evidence from Plaintiff, ignored exculpatory evidence, accepted altered evidence submitted by Im, or failed to question Im's credibility or narrative. (*See* Compl. ¶¶ 229-160.)

sion to address this specific issue, other courts have recognized that external pressure from campus organizations and government agencies such as the Office of Civil Rights may "provide[ ] a backdrop that, when combined with other circumstantial evidence of bias in [the plaintiff's] specific proceeding, gives rise to a plausible [Title IX] claim." *Doe v. Baum*, 903 F.3d 575, 586 (6th Cir. 2018) (citing *Twombly*, 550 U.S. at 570). However, external pressure alone is not enough. Rather,"[i]n the cases where public pressure was found to support claims of erroneous outcome, that public pressure targeted the *specific* disciplinary action being challenged." *Doe v. Univ. of Cincinnati*, 2018 WL 1521631, at *6 (S.D. Ohio Mar. 28, 2018) (emphasis added); *see also Doe v. Univ. of St. Thomas*, 240 F. Supp. 3d 984, 992 (D. Minn. 2017) ("[T]his Court joins the majority of federal courts in finding a general reference to federal pressure, by itself, is insufficient to show gender bias."); *Doe v. Univ. of Colo.*, 255 F. Supp. 3d 1064, 1078 (D. Colo. 2017) (same); *Doe v. Lynn Univ., Inc.*, 224 F. Supp. 3d 1288, 1294 (S.D. Fla. 2016) (same). In this case, Plaintiff does not point to any public pressure directed at any single individual involved in his specific case, and the allegations in the Complaint pertain to investigations and incidents that are unconnected to the First Investigation. Indeed, these allegations are anything but specific to Plaintiff's case: they concern federal investigations by Office of Civil Rights into the University's handling of sexual misconduct accusations by students; and criticism focused on the German Department (to

which Plaintiff did not belong). Without any allegations specifically connecting the external pressure on the University to Plaintiff's specific case, there is simply no basis to plausibly infer that the outcome of the First Investigation was motivated by his gender.

Second Investigation (Count III). Defendants contend that Plaintiff cannot sustain a claim as to the Second Investigation based on an erroneous outcome theory because "he *admits* he lied to University officials about his relationship" with E.S. (Defs.' Br. at 14 (emphasis in original).) Defendants further argue that, "[e]ven if [Plaintiff] disputes that his affair violated University policy . . . , the admission that he violated the policy on Honesty and Cooperation in University Matters is enough to prevent him from alleging his innocence, a required element of an erroneous outcome claim." (*Id.* (citing *Doe v. Rider Univ.*, 2018 WL 466225, at *8 (D.N.J. Jan. 17, 2018)).) In his opposition brief, Plaintiff does not directly address Defendants' argument that his claim must fail based on the admission that he lied. Instead, Plaintiff points to allegations in the Complaint that show that the Second Investigation suffered from extensive procedural irregularities and was infected by gender bias. (*See* Pl.'s Opp. at 16-20.)

I find that, regardless of the presence of any procedural irregularities or alleged gender bias during the Second Investigation, Plaintiff's claim under an erroneous outcome theory fails for the simple reason that he has not sufficiently alleged his innocence. *See Yusuf.*, 35 F.3d at 715 (stating that,

under an erroneous outcome theory, the "claim is that the plaintiff was innocent and wrongly found to have committed an offense"). Indeed, rather than affirmatively alleging that Plaintiff is innocent, the allegations in the Complaint support the opposite inference: that Plaintiff was *guilty* of the charges for which he was ultimately terminated. Plaintiff alleges in the Complaint that he and E.S. commenced a relationship in Spring 2014 (*see* Compl. ¶ 235), that the relationship was ongoing during the period when Plaintiff evaluated E.S.'s dissertation (*see id.* ¶ 298(h)), and that the University's rules at the time prohibited "sexual or romantic relationship[s] involve[ing] individuals in a teacher-student relationship (e.g. being directly or indirectly taught, supervised or evaluated)" (*id.* ¶ 229). Moreover, Plaintiff admits that he lied during the investigation about his relationship with E.S. (*See* Compl. ¶ 124 (stating that "Plaintiff . . . denied the relationship [with E.S.] when interviewed" by a member of the Title IX panel).) It was for this very conduct—engaging in a prohibited teacher-student relationship and lying to investigators—that the University terminated Plaintiff's employment. (*See* Recommendation Memo, ECF 20-3.) Because the undisputed facts, as alleged by Plaintiff, negate any inference that he was innocent, Plaintiff has failed to state a claim as to the Second Investigation based on an erroneous outcome theory.

(2) Selective Enforcement

Under a selective enforcement theory, a plaintiff "asserts that, regardless of the student's [or faculty member's] guilt or innocence, the severity of the penalty and/or the decision to initiate the proceeding was affected by the student's [or faculty member's] gender." *Yusuf*, 35 F.3d at 715. Under a selective enforcement theory, a male plaintiff must allege that "a female was in circumstances sufficiently similar to his own and was treated more favorably by the [educational institution]." *Tafuto v. N.J. Inst. of Tech.*, 2011 WL 3163240, at *2 (D.N.J. July 26, 2011) (alteration in original). Thus, when a male professor claims that a university selectively enforced a policy against him, he must identify a female professor who received better treatment even though she "engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the [school's] treatment of them for it." *Saravanan v. Drexel Univ.*, 2017 WL 5659821, at *6 (E.D. Pa. Nov. 24, 2017). I address the sufficiency of the allegations as they relate to each of the two investigations, in turn, below.

First Investigation (Count I). Defendants assert that Plaintiff has failed to allege selective enforcement as to the First Investigation because he has not identified any specific female who was accused of similar conduct and treated more favorably by the University. (Defs.' Br. at 9-11.) In response, Plaintiff cites to allegations in the Complaint that state, on information and belief, female

respondents and faculty members are formally investigated at a lower rate and are punished less severely than similarly accused male respondents and faculty members. (Pl.'s Opp. at 8 (citing Compl. ¶¶ 161-163, 346, 348).) Plaintiff also cites to allegations in the Complaint which allege that the University treated Plaintiff differently than Im, his female accuser, during the course of the First Investigation. (Pl.'s Opp. at 9 (citing Compl. ¶¶ 15, 192, 146-150, 157, 207, 210, 215, 243, 255, 265, 304, 359-360, 400, 436, 441, 454).) Plaintiff contends that his female accuser is a sufficient comparator for the purposes of pleading his claim based on selective enforcement. (*Id.)*

I do not agree with Plaintiff that Im is a sufficient comparator. A selective enforcement claim requires a comparison between two similarly situated individuals—in the instant case, a male and female professor accused of similar conduct. *See*, *e.g.*, *Tafuto*, 2011 WL 3163240, at *2-3; *Saravanan*, 2017 WL 5659821, at *6; *Rider Univ.*, 2020 WL 634172, at *12. Im—the student complainant against Plaintiff during the First Investigation—"is not a counterpart for the purposes of a selective enforcement claim." *Doe v. Case W. Reserve* Univ., 2015 WL 5522001, at *6 (N.D. Ohio Sept. 16, 2015). Im was a student and Plaintiff was a professor; the University's obligations and relationship to each were fundamentally different. Further, Plaintiff's claim that the University treated Plaintiff differently during the course of the investigation is very different from Im's claim that Plaintiff sexually harassed her. "To consider a student similarly situ-

ated, 'the individuals with whom a plaintiff seeks to be compared must have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the [school's] treatment of them for it.'" *See Saravanan*, 2017 WL 5659821, at *6 (emphasis and alteration in original) (citation omitted). There is no suggestion that Im engaged in sexual harassment, sounding the death knell for Plaintiff's claim that Im is an appropriate comparator. Moreover, Plaintiff's allegations that female respondents are formally investigated at a lower rate and are punished less severely than male faculty respondents is far too general to constitute an example of "a female [who] was in circumstances sufficiently similar to his own and [who] was treated more favorably." *Tafuto*, 2011 WL 3163240, at *2. Because Plaintiff has failed to allege a single example of a similarly situated female who was treated differently, I find that his claim fails under a selective enforcement theory as to the First Investigation.

Second Investigation (Count III). Defendants contend that Plaintiff has also failed to allege that a female professor "was in circumstances sufficiently similar to his own and was treated more favorably" with respect to the Second Investigation. (Defs.' Br. at 14 (quoting *Tafuto*, 2011 WL 3163240, at *2).) In response, Plaintiff argues he has sufficiently alleged that the decision to initiate the Second Investigation and the severity of the resulting punishment were influenced by gender bias. (Pl.'s Opp. at 16-17.) Specifically, Plaintiff cites to allegations that suggest that the Second

Investigation and decision to terminate Plaintiff were prompted by Im's campus-wide pressure campaign and by public pressure from the #MeToo movement, which had gained momentum during the timeframe of the Second Investigation. (*Id.* (citing Compl. ¶¶ 188-208, 217, 222-224, 226-288, 304, 385-395, 408.)

As I found with respect to the First Investigation, I find that, regardless of whether gender bias influenced the Second Investigation, Plaintiff has failed to sufficiently allege a single comparator between two similarly situated individuals, which is required to sustain his claim under a selective enforcement theory. *See*, *e.g.*, *Tafuto*, 2011 WL 3163240, at *2-3; *Saravanan*, 2017 WL 5659821, at *6; *Rider Univ.*, 2020 WL 634172, at *12. Plaintiff does not identify, for example, any female professor who was accused of engaging in a prohibited teacher-student relationship or of being dishonest during disciplinary proceedings, and who received different treatment. Accordingly, the Complaint fails to allege a claim under a selective enforcement theory as to the Second Investigation.

(3) Retaliation

Count II of the Complaint asserts a violation of Title IX under a theory of retaliation. To plead a case of "retaliation" under Title IX, a plaintiff must allege that (i) he "engaged in activity protected by Title IX," (ii) he "suffered an adverse action," and (iii) "there was a causal connection between the two." *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d

545, 564 (3d Cir. 2017) (citing *Moore v. City of Philadelphia*, 461 F.3d 331, 340–42 (3d Cir. 2006)). If a plaintiff fails to plead any one of the required elements, the retaliation claim must be dismissed. *See Doe v. Princeton Univ.*, 2018 WL 2396685, at *7. In this case, although I find that the allegations in the Complaint are insufficient to meet either the first or the third element, I nevertheless address each of the three elements, in turn, below.

Protected Activity. Under Title IX, "protected activity" includes reporting or opposing discrimination prohibited by the statute. *Jackson v. Birmingham Board of Ed.*, 544 U.S. 167, 173 ("Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX's private cause of action."). A plaintiff alleging retaliation "need not prove the merits of the underlying discrimination complaint, but only that 'he was acting under a good faith, reasonable belief that a violation existed.'" *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1085 (3d Cir. 1996) (quoting *Griffiths v. CIGNA Corp.*, 988 F.2d 457, 468 (3d Cir.1993)). However, "[g]eneral complaints about unfair treatment are not considered protected activity," and so do not suffice. *Borowski v. Premier Orthopaedic & Sports Med. Ass'n, Ltd.*, 2014 WL 3700342, at *5 (E.D. Pa. July 24, 2014). Instead, this element requires allegations that that the complaint was "about conduct prohibited by" the statute. *Davis v. City of Newark*, 417 F. App'x 201, 203 (3d Cir. 2011).

In this case, Plaintiff alleges that he reported to the Acting Chair of Plaintiff's Department and to the University's counsel that he was being subjected to a "hostile work environment" as a result of Im's public campaign against him. (*See* Compl. ¶¶ 209, 215, 361, 364.) However, Plaintiff does not aver that when he made his complaints to the Acting Chair or the University's counsel, he also conveyed to them that his complaints related to a claim about sex discrimination or gender bias. The only conduct prohibited by Title IX is discrimination on the basis of sex. Plaintiff's mere use of the phrase "hostile work environment" in his complaints does not convert those complaints into "protected activity." Accordingly, I find that Plaintiff has not satisfied the first prong by alleging that he engaged in any activity that is protected by Title IX.

Adverse Action. The second element requires Plaintiff to "point to an employment action that is 'harmful to the point that [it] could well dissuade a reasonable worker from making or supporting a charge of discrimination.'" *Clarkson v. SEPTA*, 700 F. App'x 111, 115 (3d Cir. 2017) (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006)). Only actions that "effect a material change in the terms or conditions of . . . employment" are sufficient. *Deans v. Kennedy House*, Inc., 587 F. App'x 731, 734 (3d Cir. 2014). In this case, Plaintiff alleges that, in response to his complaint to the Acting Chair of Plaintiff's Department, Plaintiff was *asked* to step down as a co-director of an upcoming conference. (Compl. ¶ 362.) Plaintiff also

alleges that, after he complained to the University's counsel about the hostile environment, the University (i) *asked* Plaintiff to tender his resignation, (ii) placed him on administrative leave, (iii) publicly announced Plaintiff's administrative leave, and (iv) improperly pursued and extended the Second Investigation into Plaintiff's relationship with E.S., despite the University having initially concluded that there was insufficient evidence of a policy violation. (Compl. ¶¶ 364-377.) Plaintiff asserts, in his opposition, that "[a]ll of the above actions served to prevent Plaintiff from performing his ordinary employment duties and further served to humiliate and denigrate him, which would also discourage reporting by a reasonable employee." (Defs.' Opp. at 27.)

I find that the Acting Chair's mere request that Plaintiff step-down from an upcoming conference (which Plaintiff apparently declined), and the University's mere pursuit of the Second Investigation, both fall short of a material change in the terms or conditions of his employment, which is necessary to constitute an adverse action. However, Plaintiff's placement on administrative leave, which was taken against Plaintiff after he complained to the University's counsel, is more akin to the type of action that constitutes a material change in employment. Based on that action, I find that Plaintiff has *arguably* satisfied the second element.[8] Therefore, I

[8] Defendants cite to two cases for the proposition that placement on administrative leave does not rise to the level of a material adverse action. (See Defs.' Br. at 20 (citing *Jones*

will turn to the issue of whether Plaintiff has sufficiently pled a causal connection between those actions and his complaints to the University's Counsel.

Causal Connection. "[A] plaintiff may demonstrate causation in a retaliation claim by showing: (1) a close temporal relationship between the protected activity and the adverse action, or (2) that 'the proffered evidence, looked at as a whole, . . . raise[s] the inference [of causation].'" *Nuness v. Simon & Schuster, Inc.*, 325 F. Supp. 3d 535, 563 (D.N.J. 2018) (alteration in original) (citation omitted). However, "the mere fact that adverse employment action occurs after a complaint will ordinarily be insufficient to satisfy the plaintiff's burden of demonstrating a causal link between the two events." *Groeber v. Friedman & Schuman, P.C.*, 555 F. App'x 133, 136 (3d Cir. 2014) (citation and internal quotation marks omitted). Any "causal connection may be severed by the passage of a significant amount of time, or by some legitimate intervening event." *Wiest v. Tyco Elecs. Corp.*,

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v. Se. Pa. Transp. Auth., 796 F.3d 323, 326 (3d Cir. 2015) (stating that "[a] paid suspension pending an investigation of an employee's alleged wrongdoing does not fall under any of the forms of adverse action mentioned by Title VII's substantive provision.") and *Doe v. Princeton University*, 2018 WL 2396685, at *7 (D.N.J. May 24, 2018) (finding that "thoroughly investigating the charges [against the plaintiff], and offering a leave of absence" did not constitute retaliation). Because I find that Plaintiff has clearly not satisfied the first and third element of his retaliation claim, I need not address whether the particular circumstances of his administrative leave rose to the level of a material adverse action.

812 F.3d 319, 330 (3d Cir. 2016); *cf. Hernandez v. Temple Univ. Hosp.*, 2019 WL 130508, at *9 (E.D. Pa. Jan. 8, 2019) ("[M]isconduct occurring between the dates of the protected activity and adverse employment action is the type of intervening event that can destroy what otherwise would be an inference of retaliation.") (citation omitted).

In this case, I find that the allegations in the Complaint, when taken together, negate any plausible inference that a causal connection can be drawn between Plaintiff's complaint to the University's counsel and his subsequent placement on administrative leave. The Complaint alleges that Plaintiff notified the University's counsel of his complaint about a hostile work environment on December 21, 2017, and was placed on administrative leave approximately one month later, on January 23, 2018. (Compl. ¶¶ 364, 366.) Despite the temporal proximity between these events, however, it is significant that, during this same time period, on December 20, 2017, the Complaint alleges that the University received an investigative report, which detailed Plaintiff's relationship with E.S. and found that Plaintiff had violated the University's policy on Consensual Relationships with Students. (*Id.* ¶¶ 255, 261.) Although the issuance of this report was not technically an "intervening event" (because it occurred one day before Plaintiff complained to the University's counsel), it provides an "obvious alternative explanation" for why Plaintiff was placed on administrative leave. Given this obvious alternative explanation, there is nothing "unduly suggestive" about the fact he was placed

on administrative leave just one month later. *See George v. Rehiel*, 738 F.3d 562, 586 (3d Cir. 2013) (stating that "an obvious alternative explanation . . . negates any inference of retaliation"). Therefore, I find that any inference that the University's decision to place him on administrative leave was caused by Plaintiff's complaint is simply not plausible in light of the contemporaneous report finding that he had violated the University's policies.

In sum, I find that, although Plaintiff's placement on administrative leave arguably constituted an adverse action, he has failed to allege a causal connection between any protected activity and that adverse action. Accordingly, Plaintiff has failed to allege a Title IX claim under a retaliation theory.

B. Title VII Claims

Count IV of the Complaint asserts that the University violated Title VII of the Civil Rights Act of 1964. (*See* Compl. ¶¶ 419-476). Title VII states, in relevant part, that "[i]t shall be an unlawful employment practice for an employer . . . to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of such individual's* race, color, religion, *sex*, or national origin." 42 U.S.C. § 2000e–2(a) (emphasis added). Plaintiff contends in his opposition that the Complaint sufficiently alleges a violation of Title IX under two separate theories of liability. *First*, he contends that "he was subjected to adverse employment actions, including proba-

tion, administrative leave, and termination . . . under circumstances that could give rise to an inference of gender bias." (Pl.'s Opp. at 22.) *Second*, he contends that "[t]he actions of [the] University in knowingly ignoring, and even permitting and encouraging, numerous actions . . . by Ms. Im directed at impugning Plaintiff's reputation and specifically at ending his career, constituted and comprised a hostile environment." (Pl.'s Opp. at 24.) I address the sufficiency of the allegations in the Complaint as they relate to each of those theories, in turn, below.

(1) Disparate Treatment

Courts analyze claims under Title VII that an employee was treated differently because of his or her gender under the framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under this framework, a plaintiff must establish a *prima facie* case of discrimination by alleging the following: "(1) s/he is a member of a protected class; (2) s/he was qualified for the position s/he sought to attain or retain; (3) s/he suffered an adverse employment action; and (4) the action occurred under circumstances that could give rise to an inference of intentional discrimination." *Semple v. Donahoe*, 2014 WL 4798727, at *7 (D.N.J. Sept. 25, 2014) (citing *Makky v. Chertoff*, 541 F.3d 205, 214 (3d Cir. 2008)). At the motion to dismiss stage, a Title VII plaintiff does not prove a *prima facie* case of discrimination, because the *McDonnell Douglas* standard "is an evidentiary standard, not

a pleading standard." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510 (2002). However, the plaintiff must still allege "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft*, 556 U.S. at 678 (citing *Twomby*, 550 U.S. 570).

The Third Circuit has stated that the "central focus of the *prima facie* [Title VII] case 'is always whether the employer is treating some people less favorably than others because of their race, color, religion, sex, or national origin." *Sarullo v. U.S. Postal Serv.*, 352 F.3d 789, 798 (3d Cir.2003) (internal quotation marks omitted). "The facts necessary to establish a *prima facie* case of discrimination under Title VII vary depending on the particular circumstances of each case." *Id.* at 797 n. 7 (citation omitted). However, "[t]he evidence most often used to establish this nexus is that of disparate treatment, whereby a plaintiff shows that [he] was treated less favorably than similarly situated employees who are not in plaintiff's protected class." *Doe v. C.A.R.S. Prot. Plus*, *Inc.*, 527 F.3d 358, 366 (3d Cir. 2008); *see also Ewell v. NBA Properties*, *Inc.*, 94 F. Supp. 3d 612, 624 (D.N.J. 2015) ("An inference of discrimination may arise if similarly situated employees of a different race received more lenient treatment than that afforded plaintiff.") (citing *Simpson v. Kay Jewelers*, *Div. of Sterling*, *Inc.*, 142 F.3d 639, 645 (3d Cir.1998)). "A determination of whether employees are similarly situated takes into account factors such as the employees' job responsibilities, the supervisors and decision-makers, and the nature of the misconduct

engaged in." *Wilcher v. Postmaster Gen.*, 441 F. App'x 879, 882 (3d Cir. 2011).

In this case, Plaintiff has not alleged any facts that tend to show that Plaintiff, based on his sex, was treated differently than any similarly situated female employee of the University. The allegations in the Complaint of Plaintiff's differential treatment vis-a-vis another female employee are all directed towards the University's treatment of Im. (*See* Compl. ¶¶ 436-438, 441-444, 450-451.) However, Im—a graduate student and the accuser—was not similarly situated in any relevant respects to Plaintiff—a faculty member and the accused. Although Plaintiff "is not required to show that he is identical to [his alleged] comparator," he must still show "substantial similarity." *See Houston v. Easton Area Sch. Dist.*, 355 F. App'x 651, 654-55 (3d Cir. 2009) (stating that "[t]o make a comparison of the plaintiff's treatment to that of an employee outside the plaintiff's protected class for purposes of a Title VII claim, the plaintiff must show that he and the employee are similarly situated in all relevant respects") (citations omitted). Plaintiff has not alleged that he is similar in *any* relevant respect to Im. He also has not identified any other similarly situated female employees (professors or otherwise) who were treated differently than him in similar circumstances. Accordingly, I find that Plaintiff has not sufficiently pled facts from which it can be inferred that Plaintiff was treated differ-

ently by his employer, the University, because of his gender.[9]

(2) Hostile Work Environment

To state a claim for hostile work environment under Title VII, the plaintiff must allege that: "(1) he suffered intentional discrimination because of his membership in a protected class; (2) the discrimination was severe or pervasive; (3) the discrimination detrimentally affected the plaintiff; the discrimination would detrimentally affect a reasonable person in like circumstances; and the existence of respondeat superior liability." *Ali v. Woodbridge Twp. Sch. Dist.*, 2019 WL 1930754, at *8 (D.N.J. Apr. 30, 2019) (citing *Mandel v. M & Q Packaging Corp.*, 706 F.3d 157, 167 (3d Cir. 2013)). "When the workplace is permeated with 'discriminatory intimidation, ridicule, and insult,' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment,'" a hostile environment is created. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993)). In evaluating whether a plaintiff was subjected to a hostile environment, courts look to "all the circumstances," including "the frequency of

[9] In his opposition, Plaintiff contends that his claim for disparate treatment under Title VII may be alleged even absent an allegation that a similarly situated individual was treated more favorably than Plaintiff. (Pl.'s Opp. at 21-22.) Even if that were true, Plaintiff has still not alleged any other facts from which to infer a connection between his gender and the University's treatment of him, other than his conclusory accusation.

the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 116 (2002).

In support of his hostile work environment claims, Plaintiff points to the following allegations in the Complaint: (i) Plaintiff and Im were both employees of the University (Compl. ¶¶ 478-479); (ii) the University was under considerable scrutiny in 2016-2017 regarding its perceived failure to protect female students from sexual harassment (Compl. ¶¶ 71, 74-75); (iii) following the outcome of the First Investigation, Im embarked on a broad campaign to destroy Plaintiff's reputation, relying heavily on the backdrop of the #MeToo movement and focusing on the University's alleged failure to adequately punish male respondents (Compl. ¶¶ 188-222); (iv) in furtherance of her campaign against Plaintiff, Im publicized numerous Title IX documents and information that the University had marked as confidential (Compl. ¶¶ 193, 200, 219-220); (v) as a result of Im's public campaign, Plaintiff was publicly criticized, mocked, and his courses were protested on campus (Compl. ¶ 207); (vi) Im's campaign impeded Plaintiff's ability to perform his employment duties and caused him anxiety, distress, and high blood pressure (Compl. ¶¶ 209, 215); (vii) Plaintiff reported that Im's actions were creating a "hostile working environment" to the Acting Chair of Plaintiff's department and to the University's counsel (Compl. ¶¶ 215,

219); and (viii) the University took no actions to quell or remedy the hostile environment (Compl. ¶¶ 192, 209-211; 215; 220-221). (*See* Pl.'s Opp. at 23-24.)

I need not exhaustively analyze the sufficiency of Plaintiff's allegations against each of the required elements of a hostile work environment claim, because I find that Plaintiff has not established a basic element of a claim. "[H]arassment, no matter how unpleasant and ill-willed, is simply not prohibited by Title VII if not motivated by the plaintiff's gender (or membership in other protected groups)." *Dalton v. New Jersey*, 2018 WL 305326, at *9 (D.N.J. Jan. 5, 2018) (citation omitted); *see also Ullrich v. U.S. Sec'y of Veterans Affairs*, 457 F. App'x 132, 140 (3d Cir. 2012) ("Many may suffer severe or pervasive harassment at work, but if the reason for that harassment is one that is not proscribed by Title VII, it follows that Title VII provides no relief."). Although, according to Plaintiff, Im's alleged public pressure campaign caused him a great deal of anxiety and distress, I find that there are insufficient allegations from which to infer that Im's public campaign (or the University's failure to quell her campaign) was motivated by gender bias.[10] Indeed, the Complaint ascribes only two to Im, neither having to do with Plaintiff's gender: Im's dissatisfaction with the University's reso-

[10] In addition, importantly, I note that Plaintiff does not explain, in his opposition, how Im's conduct in allegedly creating a hostile work environment can be attributed to the University.

lution of her report of sexual harassment, and her desire to advance the alleged vendetta of another professor in the Electrical Engineering department against Plaintiff based on departmental politics. (*See* Compl. ¶ 12 (stating that Im "embarked on a vicious, retaliatory campaign" because she was "[d]issatisfied with [Plaintiff]'s sanction"); *id.* ¶¶ 4-7 (attributing Im's report to her "close relationship with Cuff"). Given these motivations, which are alleged by Plaintiff in the Complaint, I cannot sustain Plaintiff's hostile work environment claims without more specific allegations that Im's conduct was motivated by Plaintiff's gender as a male.

C. State Law Claims

Counts V thru XVI of the Complaint assert claims under the New Jersey Law Against Discrimination, for breach of contract, for breach of the covenant of good faith and fair dealing, for negligence and gross negligence, and for wrongful discipline. Because the Court has found that Plaintiff has failed to state any of his federal claims, the only potential basis for this Court's jurisdiction over Plaintiff's state law claims is supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Under 28 U.S.C. § 1367(c)(3), a district court "may decline to exercise supplemental jurisdiction over a claim . . . [if] the district court has dismissed all claims over which it has original jurisdiction." The Third Circuit has stated that "where the claim[s] over which the district court has original jurisdiction [are] dismissed before trial, the district court must

decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so." *Borough of West Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995); *cf. Markowitz v. Ne. Land Co.*, 906 F.2d 100, 106 (3d Cir. 1990) ("[T]he rule within this Circuit is that once all claims with an independent basis of federal jurisdiction have been dismissed the case no longer belongs in federal court."). In this case, having dismissed all of Plaintiff's federal claims, I find that no considerations justify this Court's exercise of supplemental jurisdiction over the remaining state law claims and, therefore, I decline to exercise jurisdiction over those claims.

V. CONCLUSION

In summary, I find that Plaintiff has failed to state his federal claims (Counts I thru IV), and I decline to exercise supplemental jurisdiction over Plaintiff's state law claims (Counts V thru XVI). Accordingly, Defendants' motion to dismiss is **GRANTED IN PART** and **DENIED IN PART.** Plaintiff's federal claims are dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff is given leave to file an amended complaint to replead his federal claims, in a manner consistent with this Opinion, within forty-five (45) days of the date of the Order accompanying this Opinion. If Plaintiff adequately pleads one or more of his federal claims in an amended complaint, the Court may exercise any supplemental jurisdiction

at that time. In lieu of filing an amended complaint, Plaintiff may pursue his state law claims in state court, and the limitations period for each of those claims is tolled, to the extent the limitations period has not already expired, for a period of thirty (30) days, pursuant to 28 U.S.C. § 1367(d).

DATED: March 30, 2020 /s/ Freda L. Wolfson
Hon. Freda L. Wolfson
U.S. Chief District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Case No. 19-1248

SERGIO VERDÚ

Plaintiff,

v.

THE TRUSTEES OF PRINCETON UNIVERSITY, THE BOARD OF TRUSTEES OF PRINCETON UNIVERSITY, CHRISTOPHER L. EISGRUBER, DEBORAH A. PRENTICE, REGAN CROTTY, TONI MARLENE TURANO, LISA MICHELLE SCHREYER, MICHELE MINTER, CLAIRE GMACHL, CHERI BURGESS, LYNN WILLIAM ENQUIST, SUSAN TUFTS FISKE, CAROLINA MANGONE, HARVEY S. ROSEN, and IRENE V. SMALL,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Sergio Verdú ("Plaintiff" or "Dr. Verdú"), by and through his attorneys Nesenoff & Miltenberg, LLP, as and for his complaint against Defendants The Trustees of Princeton University ("Princeton" or the "University"), the Board of Trustees of Princeton University, Christopher L. Eisgruber, Deborah A. Prentice, Regan Crotty, Toni Marlene Turano, Lisa Michelle Schreyer, Michele Minter, Claire Gmachl, Cheri Burgess, Lynn William Enquist, Susan Tufts Fiske, Carolina

Mangone, Harvey S. Rosen and Irene Small (collectively the "Defendants") alleges as follows:

THE NATURE OF THE ACTION

1. This action arises out of Princeton's flawed and gender-biased Title IX proceedings, unremedied harassment and retaliation against Dr. Verdú and the subsequent unwarranted and flawed termination proceedings against him.

2. Dr. Verdú, formerly Princeton's Eugene Higgins Professor of Electrical Engineering, who taught at the University for nearly 35 years, held his tenured position without incident until Spring 2017. Dr. Verdú has long been held in the highest esteem by students and colleagues alike, he has achieved the highest levels of success in his field and received numerous awards and accolades over the course of his career.

3. Rather than make any effort to protect its highly esteemed faculty member, Princeton instead pursued the decimation of Dr. Verdú's reputation and career, and violated his right to privacy over an extramarital affair that took place years earlier so that it could exact a harsher punishment against Dr. Verdú in the wake of the #MeToo movement.

4. In Spring 2017, Paul Cuff ("Cuff"), an Assistant Professor who held a grudge against Dr. Verdú, and blamed him for Cuff's failure to obtain tenure, reported allegations to then Dean of the Graduate School, Sanjeev Kulkarni ("Kulkarni"), that, years prior, Dr. Verdú had been involved in a

consensual romantic relationship with a former female graduate student supervised by Cuff. A month earlier, the University heard the same allegation from a faculty member at Stanford University.

5. Concerned about Cuff's motives, and the lack of any complaint from the former graduate student, "E.S."—who received her Ph.D. from Princeton over two years earlier and never made a report or complaint about Dr. Verdú—Kulkarni told Cuff that no investigation was warranted. At the time, Cuff said he was going to "watch out" for Dr. Verdú's only female advisee, twenty-five-year-old graduate student Yeohee Im ("Ms. Im").

6. A short time later, Cuff notified the University that Dr. Verdú had allegedly acted inappropriately with Ms. Im, and, upon information and belief, encouraged Ms. Im to file a false charge of sexual harassment against Dr. Verdú with the University's Title IX Office, stemming from two occasions on which Ms. Im and Dr. Verdú watched movies together at his home. Ms. Im also alleged—as had Cuff—that Dr. Verdú was rumored to have engaged in a consensual relationship with E.S.

7. Having developed a close relationship with Cuff, Ms. Im willfully mischaracterized ordinary social interactions with Dr. Verdú, which she enthusiastically participated in, as sexual harassment. She claimed sexual harassment even though she admitted that Dr. Verdú acted professionally

during the course of her graduate studies—both before and after the incidents she complained of.

8. When complaining to the University, Ms. Im supplied only part of the story, and presented deliberately altered "evidence" in support of her claim of sexual harassment, including select portions of a secretly taped conversation with Dr. Verdú and excerpted emails. The full set of emails—produced by Dr. Verdú to the Title IX administrator—demonstrated that Ms. Im initiated a social relationship with Dr. Verdú and made attempts to foster a closer relationship with him. The Title IX panel, tasked with investigating Ms. Im's allegations *and* determining responsibility, relied on the altered evidence, as opposed to the exculpatory evidence provided by Dr. Verdú, to erroneously find him responsible for sexual harassment.

9. Though the panel members admitted that Ms. Im downplayed her efforts to foster a close relationship with Dr. Verdú, they failed to consider this in weighing the evidence. The panel also ignored that Cuff—not Ms. Im—was the original source of Ms. Im's Title IX complaint and turned a blind eye to the simultaneous timing of the allegations about E.S., brought forward by Cuff and Ms. Im. The panel further ignored that, only months earlier, Ms. Im made a Title IX report against a male teaching assistant. All of these facts raised serious questions about Ms. Im's credibility and her motives.

10. When she reported the "sexual harassment" to the University, Ms. Im embellished her story in a manner that directly contradicted the evidence, including her own email communications with Dr. Verdú. Ms. Im's story also continuously changed. The Title IX panel members ignored these contradictions. Their assessment of the case, and corresponding finding of responsibility against Dr. Verdú, revealed their sex bias because they treated Ms. Im—an adult— like a child in need of parental supervision. They also assumed that—because Dr. Verdú was male and Ms. Im female—Dr. Verdú intended a simple gesture like quickly cleaning a red wine stain off Ms. Im's sweatshirt to be a sexual advance. They ignored Dr. Verdú's consistent account of the events in question.

11. The University ultimately found Dr. Verdú responsible for sexual harassment. As a result of this finding, he was placed on probation for one year, could not take a planned sabbatical, and was required to attend a mandatory 8-hour counseling program with an outside psychologist, whose services had been secured by Princeton exclusively to deal with student cases in the past.

12. Dissatisfied with this sanction, Ms. Im embarked on a vicious, retaliatory campaign to destroy Dr. Verdú's career and reputation by disclosing confidential Title IX records and altered recordings to the press, making unsubstantiated comments in an article published by the *Huffington Post,* encouraging social media posts against Dr. Verdú within the construct of the #MeToo move-

ment, filing complaints with professional associations to which Dr. Verdú belonged, and publicly accusing him of sex crimes. Ms. Im succeeded in her destructive efforts.

13. The November 9, 2017 *Huffington Post* article, published against the backdrop of the #MeToo movement, prompted a firestorm of negative publicity at Princeton, leading to the plastering of flyers across campus with Dr. Verdú's photo, calls to the Princeton administration for his termination, exaggerated accusations and unsubstantiated rumors which Ms. Im and Cuff fueled by publishing editorials about Dr. Verdú in *The Daily Princetonian* newspaper.

14. The University took no steps to quell the harassment of Dr. Verdú or prohibit Ms. Im from revealing confidential information obtained through the Title IX process. On the contrary, the University encouraged retaliation against Dr. Verdú by taking a position that supported Ms. Im. Princeton had already been subjected to a number of Office for Civil Rights investigations[1] and was embroiled in a sexual harassment scandal concerning professors in the University's German Department and, in the weeks following the rebirth of the #MeToo movement, was, upon information and belief, more interested in preserving its reputation than preventing further harm to Dr. Verdú.

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[1] Indeed, its handling of sexual misconduct allegations received a score of 5/20 (letter grade D) from the *Foundation for Individual Rights in Education.*

15. All the while, Dr. Verdú was under a gag order, as the University warned him against disclosing any emails from and to Ms. Im or any other confidential information from the Title IX proceedings. Although Ms. Im was also subject to such confidentiality orders, the University chose not to enforce them against *her*. As a result, Dr. Verdú was unable to publicly defend himself against Ms. Im's accusations and the unsubstantiated rumors that were the subject of campus discourse, including nearly a dozen articles in *The Daily Princetonian* attacking his character. Essentially, the University barred Dr. Verdú from coming to his own defense while simultaneously allowing Ms. Im to unabashedly and publicly attack Dr. Verdú.

16. Not only did the University encourage retaliation against Dr. Verdú, its administration opened a second investigation into the allegations originally lodged by *Ms. Im* and *Cuff* concerning a consensual relationship between Dr. Verdú and E.S.

17. Ms. Im contacted E.S. on a number of occasions, threatened her and solicited her to file a university complaint against Dr. Verdú, because she was dissatisfied with the fact that he was not fired as a result of her, and Cuff's, sexual harassment allegation. Ms. Im's threats were unsuccessful. E. S. even met with Princeton's Title IX administrators to inform them that Dr. Verdú had not engaged in any sexual misconduct with respect to her. Regardless, Princeton administrators attempted to coerce E.S. into admitting that Dr. Verdú had

an improper relationship with her that violated University policies. This was simply not the case.

18. Despite the lack of any evidence that sexual misconduct occurred with respect to E.S. the University pressed on, seeking to bolster its reputation for failing to protect female students from sexual harassment by faculty members. Princeton also sought to correct its perceived laxity in sanctioning Dr. Verdú in Ms. Im's Title IX proceeding by resurrecting the allegations against him concerning E.S.—and opening an unwarranted investigation—at Ms. Im's insistence.

19. Dr. Verdú was punished for his efforts to protect E.S.'s and his right to privacy and for railing against the University's unwarranted and relentless invasion of his privacy in the face of Ms. Im's and Cuff's drummed up allegations. E.S. and Dr. Verdú engaged in an extramarital affair, years earlier, which did not violate University policy. Princeton used the affair as a mechanism for terminating Dr. Verdú, in an effort to appease Ms. Im—and her angry supporters who took the *Huffington Post* article at face value—who would not rest until Dr. Verdú was fired.

20. Princeton administrators went so far as to keep Ms. Im informed about the status of the E.S. investigation even though she was not a proper complainant or participant in the alleged events. In contrast, the administrators acted hostile, menacing and coercive towards E.S., treating her more like a criminal than an alumna. There was no policy

in place that even permitted post hoc investigations concerning students who had graduated, let alone complaints lodged by third parties.

21. Princeton breached University protocol when conducting the investigation, hiring a high-profile law firm to provide an investigator rather than the Dean of the Faculty. Though the initial investigation turned up insufficient evidence, the Provost urged Dr. Verdú to confess in order to receive a lesser punishment. Her recommendations for discipline were rife with judgment about the propriety of Dr. Verdú, an older man, being involved in a consensual relationship with a younger woman.

22. Dissatisfied with Dr. Verdú's refusal to admit to any wrongdoing, the President of the University ordered a search of Dr. Verdú's university emails for communications with E.S., including a timeframe well beyond the date upon which E.S.'s Ph.D. was conferred. Ultimately, the investigators relied on flimsy evidence, including communications which post-dated E.S.'s departure from Princeton, to conclude that Dr. Verdú violated Princeton's policy on Consensual Relations with Students. Because Dr. Verdú defended himself, and E.S., against Princeton's unwarranted invasion of privacy, the University President also found him responsible for violating University policies involving dishonesty.

23. In assessing and adjudicating the false allegations against Dr. Verdú, the University deprived him of a fair and impartial process. Princeton had

no regard for the heightened protections that were warranted in the case of deciding allegations against a tenured professor and the significant interest he had in his professorship.

24. Throughout both investigations, Princeton officials withheld information from Dr. Verdú, including the identities of key witnesses and the individuals who made certain allegations, as well as the fact that Ms. Im and Cuff were behind the E.S. allegations. Dr. Verdú had no right to cross-examine his accusers or question witnesses. He had no right to be represented by counsel during any appearances, nor did he receive a proper hearing.

25. Both the outcome of the Title IX investigation and the decision to terminate Dr. Verdú resulted from an abuse of power and were the product of sex discrimination.

26. During the relevant timeframe, Princeton was under constant, extreme pressure to repair its tarnished reputation, which resulted from: i) numerous OCR investigations; ii) public outcry over the alleged sexual harassment of a number of female students in the German Department; iii) Ms. Im's and Cuff's public vilification of the Provost for failing to terminate Dr. Verdú; and iv) the momentum of the #MeToo movement.

27. As a result of Defendants' misconduct in violating Princeton's policies, failing to provide Dr. Verdú with a fundamentally fair process in either investigation, assisting Ms. Im's retaliatory campaign against Dr. Verdú and engaging in sex dis-

crimination, Dr. Verdú has, among other things, suffered irreparable harm to his career and reputation, been cut off from conducting research in his field, and is unemployable. Dr. Verdú has also suffered physical illness and emotional distress as a result of the discriminatory and hostile environment created by Ms. Im's retaliatory campaign.

* * *

[12]FACTS RELEVANT TO ALL CLAIMS

I. Dr. Verdú's Background

49. Dr. Verdú grew up in Barcelona, Spain. In 1980 he came to the United States to pursue his Ph.D. and, in 1984, he became the youngest faculty member at Princeton at that time. Dr. Verdú was employed by Princeton, including as a tenured professor since 1989, for the next 34 years.

50. Until June 2017, or over a span of 33 years, Dr. Verdú had an unblemished disciplinary record.

51. Over the years, Dr. Verdú received recognition for his teaching and research, including as the youngest recipient ever of the Claude Shannon Award, the top distinction in Dr. Verdú's field of study, information theory. In recognition of his research achievements, Dr. Verdú was also elected to the National Academy of Sciences and the National Academy of Engineering.

52. Prior to his termination, and in the wake of a negative publicity campaign sparked by one of his former graduate students, as fully described below,

Dr. Verdú received continuing support from former and current students and colleagues, men and women alike, who provided testimonials to Princeton in support of his character. Their support continues to the present day.

53. Despite these words of support, Princeton caved in to pressure surrounding the #MeToo movement and criticism that it failed to protect its female students from sexual harassment, stripping Dr. Verdú of his tenured position after conducting an unauthorized, unwarranted and biased investigation, the primary purpose of which was to find a reason to terminate him.

* * *

[29]123. On the same day, Crotty interviewed E.S. by phone about the allegations that she had engaged in a consensual, romantic relationship with Dr. Verdú. Notably, E.S. was not an advisee of Dr. Verdú's during the time in which she attended Princeton. E.S. denied that anything inappropriate or violative of any policies had occurred. E.S. also denied having a romantic relationship with Dr. Verdú. Crotty asked E.S. if there might be any pictures of her and Dr. Verdú taken in a Hong Kong bar in 2015, which she denied. Crotty had heard about these pictures from Ms. Im, who in the course of her subsequent harassment of E.S. told her that Ms. Im's friends were willing to provide statements to the University that E.S. had been seen with Dr. Verdú in a Hong Kong bar.

124. After her interview, E.S. called Dr. Verdú and asked him not to disclose that he and E.S. had been involved in an extramarital affair. She went on to say that if this information was made public her husband "might kill him." Unconcerned about policy violations—as the relationship had not violated any policy—but about the harm that could result from any disclosure of the relationship, Plaintiff also denied the relationship when interviewed on April 18, 2017.

125. On April 17, 2017, Ms. Im was interviewed by the Title IX panel convened to investigate her allegations, comprised of Crotty, Schreyer and Turano (the "Panel").

126. Before Dr. Verdú was given any notice of the charges against him, he was called to meet with the Panel and did so on April 18, 2017. A "summary" of the interview was not finalized until several days letter. Though Schreyer read a summary of her notes to Dr. Verdú at the end of his interview, the final memo contained inaccuracies that were inconsistent with what Dr. Verdú told the Panel.

127. During the April 18th interview, Dr. Verdú voluntarily provided the Panel with complete copies of all of his email correspondence with Ms. Im. In contrast, Ms. Im—who was interviewed the day before—provided only excerpted copies of her email communications with Dr. Verdú, leaving out, for instance, the love song that she sent to him as well as other emails that showed her enthusiasm for the movies that they watched together and sug-

gesting that they watch other films. Ms. Im also failed—and was not asked—to provide any email communications with Cuff which might have shown a coordination of efforts to damage Dr. Verdú's career and reputation.

* * *

[58]V. Princeton's Unwarranted Second Investigation Against Dr. Verdú

226. Ms. Im's efforts at retribution against Dr. Verdú, and to exact a harsher punishment against him, were successful as, over Summer 2017, Ms. Im drummed up enough "evidence" to prompt the University to pursue an investigation into whether Dr. Verdú and E.S. had a "romantic relationship" more than two years prior to Ms. Im reporting the allegation.

227. In fact, Ms. Im solicited various individuals to provide statements to University officials that, in Summer 2015, Dr. Verdú and E.S. were seen kissing at a bar in Hong Kong, during an IEEE Conference. An anonymous individual also supplied photographs of a man and woman purportedly kissing, allegedly E.S. and Dr. Verdú.

228. In actuality, the photographs provided to the University did not show the woman's face and it was not clear from the photographs that the individuals were kissing. The University did not question who took the photographs or why they were taken. The photographer was never interviewed. The University also failed to question why the pho-

tos were of such grave concern after sitting in someone's file for over two years.

A. The *Rules and Procedures of the Faculty*

229. The 2015 version of the *Rules and Procedures of the Faculty* stated as follows with respect to consensual relationships between faculty and graduate students:

> Whenever a faculty member has a professional responsibility for a student or could reasonably expect to have professional responsibility for the student during the student's time at Princeton, a consensual sexual or romantic relationship between the faculty member and the student raises a serious question of violation of this provision. A faculty member has a professional responsibility for a student when he or she has direct or indirect administrative, teaching or supervisory responsibility for that student.
>
> When a sexual or romantic relationship involves individuals in a teacher-student relationship (e.g. being directly or indirectly taught, supervised or evaluated) . . . it is a clear and most serious violation of both University and professional standards, as well as a potential violation of state and federal anti-discrimination statutes. Any sexual or romantic relationship between teacher and student is bound to impinge upon the teacher student

relationship, not only with regard to the student involved but also in relationship to his or her peers, who may perceive favoritism or unequal treatment by the faculty member.

* * *

[60]B. Dr. Verdú and E.S.

235. Dr. Verdú and E.S. commenced a relationship in Spring 2014. At the time, Dr. Verdú had no teacher-student relationship with E.S., he was neither her advisor nor her teacher. She had taken courses from him *three years* before the relationship began. At no point during the course of their relationship was E.S. under Dr. Verdú's supervision.

236. In Fall 2015, Dr. Verdú served as a reader of E.S.'s dissertation but this role was not dispositive as to whether she would get her Ph. D. E.S.'s two advisors wrote glowing reports and the main results from her thesis were published in the top journal in the field.

237. The rules of the Princeton University Graduate School state: "When the dissertation has been formally presented the department takes action on the positive recommendation of at least two principal readers to request that the dissertation advance to the final public oral (FPO) examination." Leaving aside the fact that at Princeton it is exceedingly rare for a dissertation to be found unacceptable by a reader, E.S. certainly did not need Plaintiff's report to get her Ph.D.

C. The Unwarranted University Investigation Concerning Dr. Verdú and E.S.

238. On September 19, 2017, Crotty emailed Ms. Im and requested a meeting with her. She informed Ms. Im that the University had received enough information to start a new investigation into Ms. Im's allegation that Plaintiff and E.S. potentially engaged in a consensual, romantic relationship.

239. On September 25, 2017, Prentice—who had determined Dr. Verdú's sanction in the Title IX proceedings and was now the Provost—emailed a letter to Dr. Verdú informing him that "the Office of the Dean of the Faculty has received a report that you may have engaged in conduct with a now former graduate student that violated University policy." The letter further informed Dr. Verdú that a review of the report would be conducted pursuant to the *Rules and Procedures of the Faculty*. Senior Associate Dean of the Faculty Turano—who had served on Ms. Im's Title IX Panel—would lead the review and work with Cheri Burgess, the Director of Institutional Equity and EEO, who is also an employment attorney. The letter noted that the Dean of the Faculty, Kulkarni had recused himself "due to his personal and professional relationship with" Dr. Verdú.[28]

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[28] In his February 2018 editorial in *The Daily Princetonian,* Cuff stated "as soon as Princeton's general counsel got word that Dean Kulkarni had received reports of violations prior to Yeohee's incident, he recused himself from the

* * *

[75]292. Upon information and belief, Eisgruber, Prentice and/or the investigators reviewed the contents of Dr. Verdú's mailbox when the snapshot was taken in or around September 2017. Aware that such a search was outside the scope of the allegations at issue, concerning a conference in June 2015, they waited until Prentice issued her recommendation to create a pretext of dishonesty which would justify searching through Dr. Verdú's emails. Further aware that Dr. Verdú's and E.S.'s relationship did not violate University policy, Eisgruber, Prentice and/or the investigators had to find another reason to justify terminating Dr. Verdú—Ms. Im's dissatisfaction with the outcome of the Title IX proceedings was not a sufficient reason to do so.

293. On April 11, 2018, President Eisgruber ordered investigators Burgess and Okubadejo to undertake a search of Dr. Verdú's Princeton email account.

294. According to Eisgruber, the purpose of the email search was to "shed light" on Dr. Verdú's alleged relationship with E.S.

295. Dr. Verdú was not given notice of the email search until April 27, 2018.

296. On May 2, 2018, Dr. Verdú objected to the search on the grounds that it violated University rules. Dr. Verdú further objected to the staffing of the investigation, its lack of impartiality and the credibility of the anonymous witnesses.

297. The investigators reviewed emails dating back to October 2011 and through May 2017. Notably, E.S. graduated from Princeton in November 2015. The email communications showed that Dr. Verdú and E.S. had been involved in a consensual relationship, which the investigators concluded began "sometime in April 2014."

298. On May 8, 2018, the investigators issued a report of their findings:

a. The investigators erroneously found that the relationship between E.S. and Dr. Verdú violated the 2015 policy on Consensual Relationships. They based their finding on: i) Dr. Verdú serving as a reader of E.S. dissertation; and ii) that he sent "written recommendations" regarding E.S. to his professional contacts in September 2, 2015 and **after E.S. graduated** on January 17, 2016.

b. The investigators erroneously concluded that, as a reader of E.S.'s dissertation, Dr. Verdú had supervisory responsibility for E.S. Straining to find a policy violation, the investigators likened this role to an unofficial "advisor" to E.S. This is untrue. At the time, E.S.'s co-advisors were Cuff and Professor H. Vincent Poor. Two reports finding the dissertation acceptable are required to get a PhD at Princeton. As in the immense majority of cases, both Cuff and Poor found E.S.'s dissertation accept-

able. The approval of E.S.'s dissertation was unanimous and its major results were published in a leading journal.

c. In yet another strained attempt to find a policy violation, the investigators found that E.S. and Dr. Verdú had a "teacher/student" relationship because he discussed professional opportunities with her and sent an email on her behalf to a former student of Dr. Verdú's with whom E.S. had a job interview in the private sector.

d. The definition of teacher-student relationship in the policy on Consensual Relations with Students, did not include giving a student general career advice or reaching out to contacts who may be interviewing said student. In fact, E.S. took only two courses with Dr. Verdú—three years prior to the commencement of any relationship.

e. The investigators further mischaracterized Dr. Verdú's two emails to his contacts (one of which post-dated E.S.'s graduation as noted *supra)* as "written recommendations." The emails were hardly as formal as described.

f. The investigators also found that Dr. Verdú violated the policy on Honesty and Cooperation in University matters. In making this determination, the investigators relied in large part on email communications between E.S. and Dr. Verdú during

the time period after E.S.'s degree was conferred. Events that occurred after E.S. left Princeton were irrelevant to the charge that E.S. and Dr. Verdú engaged in a consensual relationship *while she was a graduate student*. Such "evidence" should have been excluded from consideration.

g. Equally troubling was the investigators' assumptions that Dr. Verdú was at all times dishonest when he spoke with Princeton administrators three years after a number of the events in question. For example, it was no secret, nor did Dr. Verdú deny, that he served as a reader of E.S.'s dissertation. Yet the investigators concluded that he made a material misrepresentation about when he agreed to become a reader.

h. Given that Dr. Verdú had been in a relationship with E.S. for almost a year at the time in which the investigators found, based on email correspondence, that he agreed to serve as a reader, Dr. Verdú had no motive to be dishonest. Whether he agreed in February 2015 or September 2015, his role was the same. It is possible that Dr. Verdú did not recall the email exchange that took place years earlier. Yet the investigators simply assumed that any fact not remembered and volunteered by Dr. Verdú, about events that took place years before he was questioned, signaled

> dishonesty. Moreover, when Dr. Verdú merely agreed to serve as a reader was irrelevant to whether doing so in September 2015 violated the policy on Consensual Relationships with Students. As set forth *supra* at Paragraphs 107-108, 235-237, 252, 261, 264, 266, 268 and 278, it did not. This is yet another example of the investigators grasping at straws to find a policy violation.

299. In their May 2018 report, the investigators referenced Ms. Im's Title IX proceedings. Like Prentice, they purposely left out the source of the E.S. allegations—Cuff and Ms. Im. The investigators also failed to consider that when Dr. Verdú and E.S. each denied their relationship they were less concerned with Princeton's policies (which they had not violated) than the complete and utter havoc that would be wrought on their personal lives—an outcome which, upon information and belief, Cuff and Ms. Im desired.

300. The investigators also failed to consider whether it was proper to investigate allegations concerning events that occurred years earlier. They pointed to no policy provision which allowed *post hoc* investigations, particularly when neither party to the alleged relationship had come forward and raised concerns. Neither Prentice nor Eisgruber questioned the propriety of the investigation either.

301. The above-referenced copying of Dr. Verdú's mailbox, "legal hold," searches and review of Dr. Verdú's emails without notice and consent not only violated, upon information and belief, the technology policy in place at the time, but was contrary to the procedures recommended by the American Association of University Professors ("AAUP").

302. The AAUP has stated that electronic communications can "be used to investigate individuals in ways that were impossible just a decade ago." The AAUP recognizes that "faculty members have a reasonable expectation of privacy in their electronic communications and traffic data" and that a university should not "examine or disclose the contents of electronic communications and traffic data without the *consent* of the individual participating in the communication except in *rare and clearly defined cases."* (emphasis added). Moreover, "all parties to the communications should be notified in ample time for them to pursue protective measures."[30]

303. Eisgruber followed no such protocols when directing the copying, search and of Dr. Verdú's mailbox for personal communications with E.S.

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[30] Academic Freedom and Electronic Communications, *available at* https://www.aaup.org/report/academic-freedom-and-electronic-communications-2014. *See also* https://www.aaup.org/issues/academic-freedom/professors-and-institutions.

F. The Eisgruber Recommendation

304. On May 21, 2018, President Eisgruber issued a recommendation memo to the Board of Trustees that Dr. Verdú be dismissed from Princeton. In this memo, Eisgruber made a number of misrepresentations and statements that were not supported by the evidence and/or did not support finding a policy violation, including:

a. *[E.S.] was under Verdú's supervision.* This is false. The 2015 *Rules and Procedures of the Faculty* define "Academic supervision" as including teaching, advising, supervising research, supervising teaching or grading, and serving as Departmental Representative or Director Graduate Studies of the student's academic program." At no time during their relationship did Plaintiff play any of those roles with respect to E.S. His role was to serve as one of the three readers of her dissertation.[31] Elsewhere Eisgruber stated: "Dr. Verdú. . . told me, as he had the Provost, that [E.S.] was not under his supervision at the time of the ISIT conference." This was, and remains, the truth. Per her March 2018 recommen-

[31] Notably, Princeton recently revised its Rules and Procedures of the Faculty to include "serving as a dissertation reader" and "providing letters of reference" in its definition of academic supervision. See Point V.C.2. *available at* https://dof.princeton.edu/rules-and-procedures-faculty-princeton-university-and-other-provisions-concern-faculty/chapter-v-2

dation, Prentice found that, even if Dr. Verdú and E.S. had been in a romantic relationship at the time of the conference this would not have violated the policy on Consensual Relationships with Students. Tellingly, Eisgruber's assertion that E.S. was under Dr. Verdú's supervision echoed the claims made by both Ms. Im and Cuff in their *Daily Princetonian* articles.

b. *Dr. Verdú and [E.S.] were engaged in a sexual or romantic relationship while they were also in a teacher-student relationship, as defined by the University's policy on Consensual Relations with Students.* This statement, repeated throughout Eisgruber's memo, is false. E.S. took two courses from Dr. Verdú, in Spring 2011 and Fall 2011, and their relationship started in 2014.

c. *Dr. Verdú's dishonesty harmed [E.S.]. If Dr. Verdú had forthrightly acknowledged his relationship with [E.S.], we might have been able to resolve the case without her.* This is false. E.S. was interviewed by Crotty on April 13, 2017, and denied the extramarital relationship, before Plaintiff was even asked anything about E.S. At that time, E.S. had asked Plaintiff not to acknowledge a relationship between them. Effectively, Eisgruber claimed that if Dr. Verdú had told Crotty that E.S. was lying when she denied the relationship, he

would have avoided harming E.S. The spin Eisgruber put on the harm inflicted on E.S. is all the more egregious since, prior to issuing his recommendation, he received a letter from her in which she was unequivocal about who was to blame for the harm done to her, the invasion of her privacy and the degrading treatment she received—Eisgruber, Crotty, Cuff, Burgess and Okubadejo. Eisgruber elected not to disclose this letter to the Board of Trustees even though Prentice had included it in the document file she provided to him. Eisgruber knew that Princeton had harmed E.S. by pursuing stale allegations made by a disgruntled former colleague of Dr. Verdú, about events that took place years prior, and which Kulkarni found no grounds for pursuing in Spring 2017. In her March 2, 2018 recommendation to Eisgruber, Prentice acknowledged *"the significant collateral damage to Dr. [E.S.] (who remains the subject of unresolved allegations and the target of unwanted public attention)."* Furthermore, it is incredible that Eisgruber would not realize that, with his unprecedented actions and the inevitable public airing of the circumstances of Plaintiff's dismissal, he was undermining the legitimacy of E.S.'s doctoral degree in addition to breaching her right to privacy.

d. Eisgruber referred to Dr. Verdú's *"2015 romantic liaison with a graduate student whose dissertation [he was] evaluating."* Eisgruber ignored that Dr. Verdú and E.S. commenced their relationship in Spring 2014 when, by Princeton's own evidence, he had no professional relationship with E.S. The policy on Consensual Relationships with Students contemplated the commencement of a relationship at a time when two persons had a teacher/student relationship. Eisgruber's use of the word "liaison" further demonstrates that his decision was tainted by personal bias about the fact that E.S. and Dr. Verdú had engaged in an extramarital affair. Eisgruber took into account that E.S. was a student in Dr. Verdú's "department" when finding that he violated the policy on Consensual Relationships with Students—this was not the proper standard or a relevant consideration.

e. Eisgruber erroneously concluded that Dr. Verdú deliberately misrepresented the timeframe in which he was designated as a reader of E.S.'s thesis, which, in Eisgruber's opinion, impacted Prentice's finding that "even if he had a romantic relationship with [E.S.] during the conference, it would not have constituted a clear violation of the policy on Consensual Relations with Students." Yet Prentice's conclusion

on this issue turned on when Dr. Verdú served as an "official reader." Prentice directed Burgess to conduct further investigation, which led Prentice to acknowledge that Dr. Verdú was not an official reader until Fall 2015. Dr. Verdú never denied this role. The May 2018 investigation report also pinpointed September 2015 as the time in which Dr. Verdú reviewed E.S.'s dissertation and "signed off" on it. However, based on a single email exchange, the report concluded that Dr. Verdú *agreed* to serve as a reader in February 2015. Eisgruber transformed Dr. Verdú's failure to recall when he agreed to read E.S.'s thesis into one of the "substantial and material misrepresentations" upon which Eisgruber based his recommendation of dismissal.

f. By his own admission, Eisgruber demonstrated that he does not believe that the members of the University community can expect any right to privacy in their personal communications. Eisgruber falsely asserted that he ordered a *"narrowly-tailored search"* of Dr. Verdú's emails, hiding the fact that a large portion of the purported "evidence" against Dr. Verdú post-dated the conferral of E.S.'s degree. In fact, "the appropriately narrow time period" turned out to be the whole body of their emails, from the time she took courses from him in

2011 until 2017, well after E.S. left the university. Upon information and belief, the search violated the technology policy in place at the time. In contrast, Eisgruber ordered no "legal hold" in order to search Ms. Im's or Cuff's email accounts, including their deleted emails, even though there was evidence that Ms. Im had not been forthcoming with the initial emails she provided to the Title IX Panel and that Cuff was behind the initial Title IX complaints—with respect to Ms. Im and E.S.

g. Eisgruber's memo stated *"If students or faculty members acknowledge misconduct and take responsibility for it, we can work with them to avoid recurrences of the problem and to restore the community's trust in them."* Eisgruber went on to say: *"In her recommendation, Provost Prentice observed that Dr. Verdú could mitigate the harm from these violations by "respond[ing] more fully and openly." In the event that Dr. Verdú availed himself of this opportunity, she recommended that he be suspended for a period of two years."* Eisgruber did not identify the members of the community who lost trust in E.S. and Dr. Verdú because they engaged in a consensual relationship that did not violate any existing policy. Eisgruber also failed to identify who had been harmed by the relationship. Indeed, Prentice's investigation revealed

no evidence of favoritism towards E.S. and no evidence of a policy violation. Yet Prentice and Eisgruber each sought to penalize Dr. Verdú for defending himself against an unauthorized post hoc invasion of privacy initiated by Ms. Im and Cuff, attempting to coerce a confession from him despite a lack of evidence of wrongdoing. Eisgruber did not explain to the Board of Trustees that the extraordinarily severe penalty of a two-year suspension in exchange for Dr. Verdú's acknowledgment of a consensual relationship with E.S. was proposed by Prentice without any attempt to find a single University rule which would support it, let alone that she proposed the disciplinary measure after concluding that there was insufficient evidence of a policy violation.

h. Eisgruber mischaracterized Dr. Verdú's email to a friend as a formal letter of reference for E.S., noting *"Their relationship was ongoing . . . on September 2, 2015, when he recommended her for employment."* On the contrary, Plaintiff informally emailed one of his former Ph.D. students on the day E.S. was interviewing at his company to put in a good word for her. This information had not been solicited by E.S.'s potential employer. Such informal communications with former graduate students or other contacts in their industry are routinely sent by faculty on behalf of

graduate students with whom they are acquainted. Eisgruber's reliance on this email as evidence of Plaintiff's dishonesty as to whether he wrote letters of reference for E.S. is yet another example of the flimsy evidence relied upon by Eisgruber in recommending Dr. Verdú's dismissal—particularly since Eisgruber could not pinpoint this routine email as the cause of any harm to the University or to other graduate students. As Burgess pointed out in her report to Prentice, Dr. Verdú's grades were consistently fair.

i. Eisgruber justified his unprecedented breach of Dr. Verdú's privacy by referring to the "gravity of his apparent misconduct." However, he did not explain or argue why serving as a reader on E.S.'s thesis was such a grave offense. Eisgruber did not—because he could not—suggest that E.S. would not have gotten her degree had Dr. Verdú not served as a reader of her dissertation. Upon information and belief, Eisgruber trumped up the purported gravity of what occurred in order to draw attention away from the fact that the investigation into the E.S. allegations was launched in order to appease Ms. Im and to find a reason to exact harsher punishment on Dr. Verdú amidst the campus backlash created by Ms. Im and Cuff.

j. Regarding the Hong Kong photographs, Eisgruber acknowledged that Dr. Verdú told him that "it looked like him, that he did not deny it was him . . . that he did not allege [the photographs] were photoshopped, [and] that he did not dispute the eyewitness identification of him." In fact, Dr. Verdú had even told the investigators that he owned clothing like that shown in the photographs. Yet, Eisgruber concluded that Dr. Verdú was untruthful because he did not recall the bar in the photographs.

k. Eisgruber did not cite a single University investigation of a consensual relationship between a faculty member and a graduate student who had graduated and left Princeton years prior, let alone one triggered by accusations brought by third parties whose motivations were highly suspect. Eisgruber did not cite to any precedent of any tenured faculty being expelled from the Faculty (even in cases of faculty who had been accused of criminal sexual activity). Eisgruber was only able to cite the case of a faculty member who resigned and joined another University in 2013 after, according to Eisgruber, "lying to University officials about past interactions with students."[32]

[32] Notably, in February 2016, Princeton was featured by *The New York Times* for failing to notify future employers

l. Eisgruber incorrectly concluded—despite Dr. Verdú's unblemished record over a 34-year period—that his desire to protect E.S. by not disclosing their relationship equaled dishonesty in all aspects of Dr. Verdú's career. Adding insult to injury, Eisgruber wrote *"We must be able to trust that faculty members are expressing honest and impartial judgments when they assess students, participate in personnel processes, review scholarship, or account for contributions to work sponsored by grant-making agencies."* Naturally, Eisgruber did not—and could not—cite a single instance in Dr. Verdú's 34-year career at Princeton in which Dr. Verdú was dishonest or partial when judging a student, participating in personnel processes, reviewing scholarship, or accounting for research contributions to funding agencies. That President Eisgruber felt compelled to invoke this dismal innuendo epitomized the unfairness of his recommendation to the Board of Trustees.

m. Eisgruber likened Dr. Verdú to a criminal who was beyond "rehabilitation" yet Dr. Verdú had an unblemished prior record, and consensual relationships and social

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about this professor's alleged sexual harassment. https://www.nytimes.com/2016/02/03/us/chicago-professor-resigns-amid-sexual-misconduct-investigation.html.

interactions are neither criminal nor do they necessitate rehabilitation. Moreover, Dr. Verdú was deprived of due process in all aspects of the investigation and determination of its outcome, even though his tenure was at stake. There was no hearing, he had no right to confront his accusers, evidence was withheld from him and the charges against him were continuously modified, evidencing the University's intent to punish him in the wake of the Im uproar.

n. Eisgruber seemed to rejoice in Ms. Im's and Cuff's negative campaign of retaliation against Dr. Verdú, causing Eisgruber to overlook the relevance of Cuff's role. *"There is no doubt that Dr. Cuff and Ms. Im have conducted a vigorous campaign against Dr. Verdú . . . Animus toward Dr. Verdú might bias Dr. Cuff's own testimony, but neither this case nor the previous one turned on Dr. Cuff's recollections or on any other evidence that he personally provided."* In accordance with this reasoning, Ms. Im's allegations concerning E.S. should have been disregarded and deemed unworthy of investigation because the case should have turned on whether *E.S.* filed a complaint—she did not—and E.S.'s recollection. Prentice acknowledged this when noting in her recommendation that she felt bound to support E.S. over the anonymous

witnesses whom she found lacking in credibility. Eisgruber's statement further suggests that Cuff provided evidence to the University during the investigation. Yet Plaintiff received no "evidence" (let alone "recollections" or "testimony") provided by Cuff during the course of the Title IX investigation or otherwise. Considering the many other omissions and breaches of due process in the investigation—including that Plaintiff was unable to review any evidence against him during the second investigation—it is quite possible that Eisgruber was not misspeaking.

o. In his disingenuous attempt to disassociate both cases, Eisgruber hid from the Board of Trustees that Cuff and Ms. Im were the sources of the allegations against E.S. and Dr. Verdú, instead attributing them to *"rumors"* from unnamed sources. Unlike Kulkarni, Eisgruber embraced the view that any individual may trigger an investigation of a faculty members for violation of the consensual relationship policy—even in cases where the student has graduated. Yet this position is unsupported by any University policy. Eisgruber omitted from his memo that termination was the goal of Ms. Im's and Cuff's negative publicity campaign against Dr. Verdú.

p. Though Eisgruber repeatedly asserted that the Title IX proceedings were irrelevant to

his decision, he admonished Dr. Verdú for watching a movie with Ms. Im. Eisgruber ignored *Ms. Im*'s solicitation of a closer social relationship, as well as her suggestion that they watch films more explicit than *The Handmaiden,* including up to the time she claimed discomfort at Dr. Verdú allegedly touching her leg. Upon information and belief, Eisgruber's only interest was to parse the Title IX record in a manner that suited his goal of supporting Ms. Im and to find a basis for Plaintiff's termination. Indeed, on March 13, 2018, Plaintiff informed Eisgruber that the Title IX allegation was a hoax fabricated by Cuff and Ms. Im, and that they were the individuals responsible for bringing the accusations about E.S. to the attention of the University. This was not pursued. At a meeting on May 14, 2018 Eisgruber admitted to Plaintiff that he had not even read his appeal of the Title IX ruling, submitted over a month earlier. Days after that meeting, the chair of CCFA wrote to Plaintiff to inform him that the committee "did not accept your appeal." At this point and despite an abundance of evidence, and unwilling to entertain the notion that Plaintiff had been wrongly found responsible for sexual harassment, Eisgruber's goal was, upon information and belief, to quell the firestorm ignited by Ms. Im by terminating Dr. Verdú.

q. Instead of quoting the emails produced by Dr. Verdú during the Title IX investigation, Eisgruber misrepresented them to the Board of Trustees, blaming Dr. Verdú for the Title IX investigation and "publicity that followed." He also described Dr. Verdú's defense of himself against the Title IX charge and negative publicity campaign as "shameful" and accused him of "blam[ing] his victim."

r. Despite Eisgruber's statement to Dr. Verdú that the Title IX proceeding had nothing to do with the second investigation concerning E.S., Eisgruber relied upon the sanction issued in the Title IX proceeding to call for Dr. Verdú's dismissal: *"Dr. Verdú's dishonesty occurred while he was on disciplinary probation as a result of a spring 2017 University investigation that found him responsible for sexually harassing a female graduate student who was then his advisee."* Eisgruber's invocation of the probation penalty was another misrepresentation to the Board of Trustees. The June 9, 2017 letter from the Provost states: "you are being placed on probation for one year, effective immediately, with the understanding that any further violation of this policy or attempts to retaliate against those who brought their concerns to the Title IX office will result in more serious disciplinary action." "This policy"

> refers only to the University's Sexual Misconduct Policy. Thus, relying on the Title IX sanction to dismiss Dr. Verdú was not justified.

305. On May 29, 2018, Prentice "revised" Dr. Verdú's administrative leave *during the pendency of Dr. Verdú's right to appeal* to the CCFA. The revised leave: i) included transitioning all of his graduate students and postdoctoral researchers to another academic advisor; ii) mandated that after September 1, 2018, Dr. Verdú would not advise, support or supervise students; iii) beginning on May 29, 2018 effectively banned Dr. Verdú from campus except for the purpose of helping the students in his group find new advisors; iv) required Dr. Verdú to vacate his office by August 31, 2018; and v) prohibited Dr. Verdú from representing Princeton at any conferences. The following day, the University's counsel took it upon himself to add to the restrictions by banning Dr. Verdú from attending commencement. He emailed Dr. Verdú's counsel "[t]here is a firm expectation that Professor Verdú will not be present at Commencement related events next week."

* * *

[92]338. Title IX may be violated by a school's imposition of university discipline where gender is a motivating factor in the decision to discipline.

339. Challenges to the outcome of university disciplinary proceedings can fall into two categories: (1) "erroneous outcome" cases, in which the claim is

that plaintiff was innocent and wrongly found to have committed an offense and gender bias was a motivating factor behind the erroneous findings; and (2) "selective enforcement" cases, in which the claim asserts that, regardless of the respondent's guilt or innocence, the severity of the penalty and/or decision to initiate the proceeding was affected by the respondent's gender.

340. To succeed on an erroneous outcome claim under Title IX, a plaintiff must demonstrate: (1) a flawed proceeding, which (2) led to an erroneous outcome; and (3) gender was a motivating factor in the decision to discipline.

341. An erroneous outcome occurred in this case because Plaintiff was subjected to a blatantly flawed proceeding and erroneously found to be responsible for violating Princeton's Sexual Misconduct Policy, and gender was a motivating factor behind this erroneous outcome.

342. Plaintiff was deprived of a fair and impartial process with regard to Ms. Im's sexual harassment complaint because without limitation:

a. Crotty, the Title IX Administrator, had a conflict of interest because she was responsible for Title IX compliance and, as a Panel member, was responsible for deciding Dr. Verdú's case.

b. The Sexual Misconduct Policy did not provide for Crotty's participation on the Title IX Panel.

c. Crotty's lack of impartiality was abundantly exhibited during the proceedings, when i) she violated the Sexual Misconduct Policy by meeting with Ms. Im in the absence of the other Panel members and without informing them or Plaintiff; and ii) when she leaked the news to Ms. Im of a confidential investigation regarding Plaintiff, to which Ms. Im was not a party, and which was not under the purview of Crotty's office.

d. Crotty did not provide Plaintiff with notice of the specific allegations against him until after he was interviewed twice.

e. Crotty withheld evidence from Dr. Verdú, including: i) the date the Title IX complaint was filed; ii) that his disgruntled colleague, Cuff, was behind Ms. Im's filing of the sexual harassment complaint; iii) that the report about Dr. Verdú's consensual relationship with E.S. came from Cuff, Ms. Im and a Stanford University professor, in the same time frame as the Title IX complaint; iv) that Ms. Im informed Crotty that there were pictures of E.S. and Dr. Verdú taken in Hong Kong; v) Ms. Im's secret, altered recording of her conversation with Dr. Verdú; vi) the fact that Cuff became financially responsible for Ms. Im's research assistantship and her travel to a conference in Germany to deliver a paper co-authored with Dr. Verdú; and

vii) Crotty's meetings with Ms. Im, in the absence of other members of the Panel, including one in Kulkarni's office. Crotty also redacted laudatory comments about Dr. Verdú from a text exchange to Ms. Im from a fellow graduate student.

f. A "summary" of the Panel's April 18, 2017 interview with Dr. Verdú was prepared several days afterwards and was inconsistent with the notes that Schreyer read to Dr. Verdú at the conclusion of his interview.

g. Only two of the three Panel members were present for Dr. Verdú's second interview, on April 19, 2017. Crotty acted as scribe and wrote a very short summary of the meeting three days later.

h. The Panel did not question Ms. Im's delivery of excerpted email communications with Dr. Verdú or her decision to delete portions of her recorded conversation with him. On the contrary, prejudging the relevance of the evidence collected and then hidden by Ms. Im, Crotty wrote to her "I realize that much of it may be focused on academic issues." The Panel also explained away Ms. Im's omission of email communications which supported Dr. Verdú's account of what happened as an attempt by Ms. Im to downplay her efforts to foster a relationship with Dr. Verdú.

i. The Panel did not question Ms. Im about Cuff, or seek copies of email communications between Ms. Im and Cuff concerning Dr. Verdú.

j. The Panel did not question Cuff. In particular, they made no inquiry about the simultaneity of the accusations made by him, Ms. Im and the Stanford professor, nor about the fact that these accusations and the Title IX complaint occurred right after Cuff's tenure denial.

k. The Panel did not question why Ms. Im was concerned about Dr. Verdú's consensual relationship with E.S., or her motive for bringing forth those allegations.

l. The Panel knew, and concealed from Dr. Verdú, that Ms. Im made the allegation about his relationship with E.S. The Sexual Misconduct Policy required that all information provided by the complainant be provided to the respondent, and vice versa.

m. The Panel did not question why Ms. Im changed her account from Plaintiff brushing against her thigh while they watched a movie, to alleging that he placed his hand on her upper thigh for a prolonged period of time. Nor did they question that she complained to Plaintiff about the single instance in which Plaintiff brushed against her leg, yet lodged a number of new allegations against Plaintiff concerning a num-

ber of instances in which she purportedly felt uncomfortable.

n. The Panel dismissed abundant evidence that called Ms. Im's credibility into question, including: i) the inconsistency of her accounts, which varied with time; ii) her accusations regarding E.S., a former graduate student she had not even met; iii) her enthusiastic agreement to watching *The Handmaiden;* iv) her suggestion that she and Dr. Verdú watch *Oldboy* and *Thirst* together after *The Handmaiden,* followed by her false claims of being uncomfortable watching *The Handmaiden,* and that she did not want to spend time with Dr. Verdú outside of work; v) after watching *Oldboy* Ms. Im emailed Dr. Verdú yet another movie suggestion; vi) the absence of any expressions of discomfort to Dr. Verdú other than the brief contact with her leg, as expressed in her March 11, 2017 email and at their subsequent, in-person meeting; vii) Ms. Im's secret recording of Dr. Verdú which contradicted the Panel's subsequent, portrayal of Ms. Im as a reluctant witness who "had not intended to report this matter at all;" viii) her destruction of part of the recording (remarkably, the Panel bolstered her credibility citing that her oral testimony weeks later was consistent with the recording); ix) Ms. Im's selective disclosure of emails to/from Dr. Verdú,

and the contradictions between the emails she did not disclose and her account of what happened; x) Ms. Im's effort to conceal that she knew she would be alone with Dr. Verdú to watch the soccer match; xi) Ms. Im's misrepresentations about Dr. Verdú offering her alcohol, when she asked for red wine during each social interaction; xii) Ms. Im's strained account of the cleaning of the wine stain on her shirt and her allegation that it may have been Dr. Verdú, who, unbeknownst to her, was responsible for the stain; xiii) her misrepresentation that "Graduate Student 7" assisted her with her March 11, 2017 email to Dr. Verdú; and xiv) Ms. Im's email to Dr. Verdú, after watching *The Handmaiden,* bemoaning that Dr. Verdú did not invite her to watch the return Champions League soccer match.

o. The Panel failed to investigate Dr. Verdú's allegation that he believed he was being set up and that this had all the hallmarks of a hoax. Unlike Dr. Verdú, who was completely unaware of Cuff's role, the Panel knew that Cuff was the individual who initiated the Title IX complaint right after his tenure denial. The Panel also knew that Ms. Im had tried to hide her efforts to establish a close relationship with Dr. Verdú, that she had accused Dr. Verdú of

having a relationship with E.S. and that she secretly recorded him.

p. The Panel interviewed no witnesses other than Dr. Verdú and Ms. Im.

q. Even though a credibility determination was required in these circumstances, no hearing was held and Dr. Verdú had no right to cross-examine Ms. Im.

r. The individuals responsible for investigating Ms. Im's allegations were responsible for determining whether Dr. Verdú violated the Sexual Misconduct Policy.

s. Crotty's April 26, 2017 letter incorrectly stated that a "majority decision" would be required for a finding of responsibility when, in proceedings against faculty, a unanimous decision was required.

t. The Panel impeached Dr. Verdú's credibility by accusing him of trying to mislead the Panel about the nature of *The Handmaiden*. Yet, he bought and provided a DVD of the film to the Panel for its consideration. Two of the Panel members, Turano and Schreyer, declined to watch the film yet the Panel "agreed that the film was very explicit."

u. The Panel misconstrued the definition of Sexual Harassment, finding that even if Plaintiff did not intend his conduct to be sexual in nature, his behavior was to be judged "by its impact on the person direct-

ly affected." The definition of Sexual Harassment required that unwelcome behavior be *"directed at* a person based on sex." With respect to certain of Ms. Im's allegations, she told the Panel that she was unsure whether the alleged conduct was sexual in nature.

v. By Ms. Im's own account, her professional relationship with Plaintiff was "going smoothly" when she made the Title IX report. It remained professional during the Title IX investigation.

w. Dean of the Graduate School Kulkarni told Plaintiff on June 15, 2017 that the Title IX Panel "made a case out of nothing."

x. Turano, one of the three Panel members, advised Plaintiff that he was not going to get far with an appeal of the Title IX finding. Both Turano and Kulkarni advised that, instead of appealing, a preferable course of action was to submit a letter to Prentice to be included in Plaintiff's personnel file.

y. Turano was proven right in her assessment of Dr. Verdú's chances on appeal. Plaintiff's 55-page, 82-attachment, appeal was dispatched with one sentence by CCFA without even holding a hearing. According to the 2011 Dear Colleague Letter, the 2014 Q&A and the 2001 Guidance, the persons responsible for investigating

and determining the outcome of Ms. Im's Title IX complaint and considering Plaintiff's appeal had to be trained in handling sexual harassment complaints as well as Princeton's Sexual Misconduct Policy and procedures for handling student sexual harassment complaints against faculty. *See* 2011 DCL at p. 12; 2014 Q&A at p. 40; 2001 Guidance, at p. 21. Upon information and belief, the CCFA members had no such training.

343. Apart from the allegations set forth *supra* Paragraph 342, the Panel's report shows that gender bias was a motivating factor behind their erroneous finding that Plaintiff violated the Sexual Misconduct Policy:

a. The Panel credited Ms. Im's portrayal as a "reluctant" complainant because Plaintiff was "the biggest name in the field" yet by all accounts her professional relationship with Plaintiff was not affected by the alleged harassment, nor did Plaintiff ever pressure Ms. Im to socialize with him or threaten her in any way.

b. The Panel relied upon the IMDb *Parents'* Guide to determine whether the content contained in *The Handmaiden* was appropriate for a twenty-five-year-old woman, suggesting that they viewed Ms. Im as a child in need of adult supervision and incapable of making her own decisions.

c. The Panel repeatedly criticized Plaintiff for serving alcohol to Ms. Im in the "middle of the afternoon" ignoring not only that Ms. Im requested red wine on each and every occasion but that she was well beyond the legal drinking age. There were, further, no allegations that either Plaintiff or Ms. Im was incapacitated.

d. The Panel ignored that Ms. Im suggested that she and Plaintiff watch *Oldboy* and *Thirst* after *The Handmaiden*. These films contain scenes depicting sexual assault, showing full frontal nudity, and other scenes that are sexual in nature. The Panel failed to consider the IMDB *Parents'* Guide entries for those films.

e. The Panel's report reflected the gender-biased assumption that Plaintiff's actions, such as: agreeing to watch one of the most successful films from Korea; agreeing to watch a second film that Ms. Im suggested (by the same director); resting one's arm on the back of a couch (which Ms. Im said did not seem sexual); inadvertently brushing a person's leg while reaching for a wine bottle; and quickly removing a red wine stain from someone's shirt were sexual in nature simply because Plaintiff is male and Ms. Im is female.

f. The Panel's conclusion that Plaintiff's actions "were sufficiently severe to have

> the effect of unreasonably interfering with [Ms. Im's] educational experience by creating a hostile or offensive environment," could only be reached by distorting the available evidence (including the email record, which demonstrated that this was not the case) to conclude that Plaintiff had a sexual interest in Ms. Im. This conclusion was, further, unsupported because Ms. Im acknowledged that her relationship with Plaintiff remained professional and was "going smoothly" after they met to discuss her alleged discomfort.

344. Additional circumstances suggesting that gender bias was a motivating factor, because Princeton was under continuous and severe public pressure for allegedly failing to protect female students from sexual harassment are, without limitation:

a. Since 2014, Princeton was under constant OCR scrutiny, and threat of rescission of federal funds, after the University was found to be in violation of Title IX for using a burden of proof (clear and persuasive evidence) that was too demanding, and for creating a hostile environment for female students. Princeton was required to submit annual reports to OCR, for an indefinite period of time, as a result of these violations. Crotty, a Panel member, was appointed to the position of Title IX

Administrator in the wake of Princeton entering into the Resolution Agreement with OCR. Upon information and belief, Princeton has also entered into a number of financial settlements with female OCR complainants.

b. On February 2, 2016, *The New York Times* published an article concerning a former Princeton professor who resigned from University of Chicago due to alleged sexual misconduct with a student who was incapacitated. The article noted that the professor had abruptly resigned from Princeton and that the University had failed to provide information about the professor in response to employer inquiries.

c. In May 2016, a female student filed a complaint with OCR, and an investigation was later opened, into allegations of sexual harassment and sexual assault by a male student or faculty member.

d. During the 2016-2017 academic year, three female graduate students in the German Department left Princeton abruptly, prompting a town hall meeting to address systemic and long-term sexual harassment within the Department. A Title IX investigation was launched in Summer 2017.

345. Upon information and belief, Princeton has engaged in a pattern of unfair investigations and adjudications resulting in unduly severe sanctions

being imposed on males accused of sexual harassment while not making comparable efforts with respect to allegations of sexual harassment against non-males.

346. Upon information and belief, Princeton engaged in selective enforcement because, unlike Dr. Verdú, female professors accused of sexual harassment have not been investigated by Title IX administrators, have not been found responsible for sexual harassment and/or have not received probation as a result of a finding of responsibility. The University does not publish this level of detail in its Title IX data[34] and, accordingly, Plaintiff did not have the ability to confirm these facts at the pleading stage. However, annual student surveys published by Princeton indicate that both male and female students have experienced sexual harassment.[35]

347. Upon information and belief, the University has information in its possession demonstrating that only male professors have been formally investigated, and sanctioned, for sexual harassment since April 2011, when OCR issued the Dear Colleague Letter.

348. Upon information and belief, the University has not pursued reports of sexual misconduct against female professors or, when it did so, imposed far less severe sanctions than against male professors.

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[34] *See* https://sexualmisconduct.princeton.edu/reports

[35] *See* https://sexualmisconduct.princeton.edu/reports

349. Plaintiff was subjected to a sex-biased, prejudiced and unfair process in violation of Title IX.

350. The wrongful outcome in the Title IX proceedings further resulted in subsequent, adverse actions by the University, including the second investigation into the E.S. allegations at Ms. Im's prompting and, ultimately, Plaintiff's termination. Among other things, Eisgruber improperly relied on the Title IX sanction to argue to the Board of Trustees that Plaintiff should be more severely disciplined and used it to justify recommending Plaintiff's dismissal. *See supra* ¶ 304, p, r.