

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE,

Plaintiff,

v.

SAINT JOSEPH'S UNIVERSITY, et al.

Defendants.

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CIVIL ACTION NO.
18-cv-2044

**DEFENDANT SAINT JOSEPH'S UNIVERSITY'S
ANSWER TO PLAINTIFF JOHN DOE'S COMPLAINT,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIM**

Defendant, SAINT JOSEPH'S UNIVERSITY ("SJU"), responds to Plaintiff JOHN DOE's¹ ("plaintiff") complaint as follows:²

ANSWER

1. Admitted that plaintiff was and is a matriculated student at SJU and is a resident on SJU's Pennsylvania campus.
2. Admitted.
3. Denied as a conclusion of law.
4. Admitted that defendant Jane Roe ("Roe") was and is a matriculated student at SJU and is a resident on SJU's Pennsylvania campus.

Answer to Jurisdiction

5. Admitted that plaintiff invokes this Court's jurisdiction over his claims pursuant

¹ SJU's consent to the Doe and Roe designators is expressly conditioned upon the representation of Doe's counsel as to Doe's actual identity and the expectation that any judgment is binding on the identified client as if named.

² This answer, prepared in less than 48 hours at the direction of the Court is as accurate as possible under the circumstances. Should issues come to light subsequently upon further review by SJU, it will be amended.

to Title IX of the Education Act Amendments of 1972 (“Title IX”) and the doctrine of the doctrine of ancillary and/or pendent jurisdiction.

6. Admitted that venue lies in this District if this Court retains jurisdiction of this action.

Answer to Facts

7-8. Admitted.

9-37. Denied.

38. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of this paragraph.

39. Admitted only that the alleged email exchange between plaintiff and Forte is reflected in Exhibit B.³ Denied as to the remaining allegations.

40. Denied.

41. Admitted only that the alleged email exchange between plaintiff and Forte is reflected in Exhibit B. Denied as to the remaining allegations.

42. Admitted, except that Exhibit C, which speaks for itself, is not the signed copy of the checklist. Denied as to the remaining allegations.

43. Admitted only that Exhibit D is a true and correct copy of SJU’s Student Handbook, which includes SJU’s Sexual Misconduct Policy (“SMP”) as an addendum. Exhibit D and the SMP addendum speak for themselves. Denied as to the remaining allegations.

44. Admitted only that Exhibit E is a true and correct copy of SJU’s SMP, which speaks for itself. Denied as to the remaining allegations.

45. Admitted only that Exhibit F is a true and correct copy of Bordak’s April 16, 2018

³ Unless otherwise indicated, all references to exhibits are to exhibits to plaintiff’s complaint.

email to plaintiff. Denied as to the remaining allegations.

46-48. Admitted only that Exhibit C is a true and correct copy of the referenced checklist, which speaks for itself. Denied as to the remaining allegations.

49. Admitted only that plaintiff has requested and been granted accommodations at SJU for his ADHD. Denied as to the remaining allegations.

50. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of this paragraph.

51. Denied as stated. Admitted only that Exhibit G is a true and correct copy of a memo on accommodations that SJU granted to plaintiff, which speaks for itself. Denied as to the remaining allegations.

52-56. Denied.

57-58. Admitted only that Exhibit H is a true and correct copy of the referenced press release, which speaks for itself. Denied as to the remaining allegations.

59-61. Admitted only that Exhibit I is a true and correct copy of the referenced article, which speaks for itself. Denied as to the remaining allegations.

62-63. Admitted only that Forte held a pre-investigation meeting with plaintiff on March 6, 2018. Denied as to the remaining allegations.

64-65. Denied.

66. Admitted only that Malloy was identified as the investigator. Denied as to the remaining allegations.

67. Admitted only that Malloy is an attorney at Cozen O'Connor. Denied as to the remaining allegations.

68. Denied.

69. Admitted only that paragraph 13 of the checklist so states in part. Denied as to the remaining allegations.

70. Denied.

71. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of this paragraph, especially because plaintiff has failed to attach as an exhibit the source of the quotes that he has included in the paragraph.

72. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of this paragraph.

73. Denied, as a conclusion of law based upon plaintiff's alleged belief.

74. Admitted only that Exhibit J (not Exhibit I) is a true and correct copy of an email exchange between plaintiff and Malloy, which speaks for itself. Denied as to the remaining allegations.

75. Admitted only that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Denied as to the remaining allegations.

76. Admitted only that plaintiff did not initially seek an advisor. Denied as to the remaining allegations.

77-79. Denied.

80. Admitted only that Exhibit J (not Exhibit I) is a true and correct copy of an email exchange between plaintiff and Malloy, which speaks for itself. Denied as to the remaining allegations.

81. Admitted only that Exhibit J (not Exhibit I) is a true and correct copy of an email exchange between plaintiff and Malloy, which speaks for itself. Denied as to the remaining allegations.

82. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of this paragraph.

83. Denied.

84. Admitted only that, before his meeting with Malloy, plaintiff was not given an incident report document or given a chance to question Roe. Denied as to the remaining allegations.

85. Admitted only that plaintiff met with Malloy on March 19, 2018. Denied as to the remaining allegations.

86. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of this paragraph.

87. Denied.

88. Admitted only to the extent that plaintiff's allegations reflect specific findings of fact made by Malloy following her independent investigation. Denied as to the remaining allegations.

89. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of this paragraph.

90. Admitted only that Exhibit K is a true and correct copy of an email exchange between plaintiff and Bordak, which speaks for itself. Denied as to the remaining allegations.

91. Denied.

92. Admitted only that plaintiff asked Bordak if his advisor, Joe Corabi, could participate in his meeting with Bordak by telephone. Denied as to the remaining allegations.

93-98. Admitted only that Exhibit L is a true and correct copy of Bordak's April 11, 2018 letter and attachment, which speak for themselves. Denied as to the remaining allegations.

99-100. Denied.

101. Admitted that Exhibit L is a true and correct copy of the April 11 Outcome Letter, which speaks for itself. Admitted that plaintiff saw Malloy's full report, a portion of which is reproduced in Exhibit L, at the April 11 meeting. The remaining allegations of this paragraph are denied as SJU is without knowledge or information sufficient to form a belief as to their truth or accuracy.

102. Admitted that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Admitted that the materials plaintiff references are not attached as an exhibit to his complaint. Denied as to the remaining allegations.

103. Malloy's full report is a document that speaks for itself and includes a number of findings and conclusions. Denied as to the remaining allegations.

104. Denied.

105. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of this paragraph.

106. Admitted that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Admitted that the materials plaintiff references are not attached as an exhibit to his complaint. Denied as to the remaining allegations.

107-110. Denied.

111. Admitted that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Admitted that Corabi participated by telephone in the April 11, 2018 meeting between plaintiff and Bordak. Denied as to remaining allegations.

112. Denied.

113. Denied.

114-118. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of these paragraphs.

119. Admitted only that Exhibit F is a true and correct copy of an April 16, 2018 email from Bordak to plaintiff, which speaks for itself. Denied as to the remaining allegations.

120. Admitted only that Exhibit M is a true and correct copy of plaintiff's appeal filed on April 18, 2018, which speaks for itself. Denied as to the remaining allegations.

121. Admitted.

122-124. Admitted only that Exhibit N is a true and correct copy of an email exchange between plaintiff and CSO assistant vice-president Kiersten White, which speaks for itself. Denied as to the remaining allegations.

125. Denied. In any event, Doe was not entitled to any further submission with respect to his appeal, including any rebuttal or further argument based upon his examination of the record.

126. Admitted that the appeals panel affirmed Malloy's determination of outcome. Admitted that Exhibit O (not Exhibit N) is a true and correct copy of the April 30, 2018 decision of the appeals panel. Denied as to the remaining allegations.

127. Denied.

128. Admitted only that plaintiff contacted CSO to review Roe's response to his appeal. Denied as to the remaining allegations.

129. Admitted only that Exhibit P is a true and correct copy of an email sent by plaintiff to White, which speaks for itself. Denied as to the remaining allegations.

130. Admitted only that Exhibit Q (not Exhibit P) is a true and correct copy of an email sent by Bordak to plaintiff, which speaks for itself. Denied as to the remaining allegations.

131. Admitted.

132-138. Denied, as SJU's SMP, which is Exhibit E, speaks for itself. Denied as to the remaining allegations.

139. Denied.

140. Denied as stated, as Forte's response is a document that speaks for itself. Denied as to the remaining allegations.

141. Admitted only that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Denied as to the remaining allegations.

142. Admitted only that plaintiff has requested and been granted accommodations at SJU for his ADHD. Denied as to the remaining allegations.

143. Denied.

144. Admitted only that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Denied as to the remaining allegations.

145-150. Denied.

151. Denied, as Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself.

152-157. Denied.

158. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of this paragraph.

159. Denied.

160. Admitted only that Exhibit O is a true and correct copy of the April 30, 2018 letter of SJU's Office of Student Life, which speaks for itself. Denied as to the remaining allegations.

161. Admitted only that Exhibit L is a true and correct copy of Bordak's April 11, 2018 letter and attachment, which speak for themselves. Denied as to the remaining allegations.

162-165. Denied.

166. Admitted only that plaintiff is prohibited from having any contact with Roe. Denied as to the remaining allegations.

167-169. Denied.

170. Admitted only that Exhibit L is a true and correct copy of Bordak's April 11, 2018 letter and attachment, which speak for themselves. Denied as to the remaining allegations.

171-172. Denied.

173. Admitted only that Exhibit L is a true and correct copy of Bordak's April 11, 2018 letter and attachment, which speak for themselves. Denied as to the remaining allegations.

174. Denied.

175-181. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of these paragraphs.

182. Admitted that the class is scheduled to leave for Northern Ireland on May 21, 2018 and return on May 31, 2018. Denied as to the remaining allegations.

183. Admitted only that Exhibit R is a true and correct copy of an email from Kesaris to plaintiff, which speaks for itself. Denied as to the remaining allegations.

184. Denied.

185-192. Denied.

Answer to Count I
Plaintiff v. SJU
Answer to Alleged Breach of Contract

193. SJU's answers to the paragraphs of plaintiff's complaint are incorporated herein

by reference and made a part hereof.

194-200. Admitted only that SJU has a Student Handbook and SMP, which speak for themselves, constitute part of an SJU student's contract with SJU. All remaining allegations are conclusions of law and are denied.

201. Denied.

A

202. Admitted only that, in proceedings at SJU, Roe accused plaintiff of squeezing her neck, causing bruises, and scaring her without her consent while they were consensually kissing. Denied as to the remaining allegations.

203-205. Admitted only that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Denied as to the remaining allegations.

206-210. Denied.

B

211. Denied.

212-213. Admitted only that Exhibit D is a true and correct copy of SJU's Student Handbook, which speaks for itself. Denied as to the remaining allegations.

214-215. Denied.

216-218. Admitted only that Exhibit D is a true and correct copy of SJU's Student Handbook, which speaks for itself. Denied as to the remaining allegations.

219. Denied.

220. Admitted only that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Denied as to the remaining allegations.

221-223. Denied.

C

224-225. Admitted only that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Denied as to the remaining allegations.

226. Denied.

227. Bordak, Forte, and Malloy's separate submissions to the appeals panel speak for themselves. Denied as to the remaining allegations.

228. Denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of this paragraph.

229-230. Denied.

D

231-232. Admitted only that Exhibit D is a true and correct copy of SJU's Student Handbook, which speaks for itself. Denied as to the remaining allegations.

233. Admitted only that plaintiff was entitled to accommodations when requested in accordance with Exhibit G, which is a true and correct copy of Patricia Gregg's January 31, 2017 memorandum. Denied as to the remaining allegations.

234-236. Denied.

E

237. Admitted only that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Denied as to the remaining allegations.

238. Denied as a conclusion of law.

239. Admitted that the selective quote came from the cited case. Denied as to the remaining allegations.

240-242. Denied.

243-245. Admitted only that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Denied as to the remaining allegations.

246-247. Denied.

F

248-251. Denied.

WHEREFORE, SJU demands judgment in its favor, attorneys' fees and costs of suit.

**Answer to Count II
Plaintiff v. SJU
Answer to Alleged Violation of Title IX**

252. SJU's answers to the paragraphs of plaintiff's complaint are incorporated herein by reference and made a part hereof.

253-260. Admitted only that the referenced statutes, regulations, guidance and letters are written documents that speak for themselves. Denied as to the remaining allegations.

261. Admitted only that SJU's SMP was considered, drafted, adopted, and revised in accordance with the applicable law. Denied as to the remaining allegations.

262-264. Admitted only that Exhibit S is a true and correct copy of a 9/22/2017 Dear Colleague Letter, which speaks for itself. Denied as to the remaining allegations.

265-267. Admitted only that Exhibit T is a true and correct copy of a U.S. Department of Education, Office of Civil Rights, September 2017 Q&A on Campus Sexual Misconduct, which speaks for itself. Denied as to the remaining allegations.

268-277. Denied.

278-280. Admitted only that Exhibit T is a true and correct copy of a U.S. Department of Education, Office of Civil Rights, September 2017 Q&A on Campus Sexual Misconduct, which speaks for itself. Denied as to the remaining allegations.

281-294. Denied.

295. Admitted only that Exhibit T is a true and correct copy of a U.S. Department of Education, Office of Civil Rights, September 2017 Q&A on Campus Sexual Misconduct, which speaks for itself. Denied as to the remaining allegations.

296. Denied.

297. Admitted only that Perry is a Title IX officer at SJU, and was aware of the 9/22/2017 Dear Colleague Letter and September 2017 Q&A. Denied as to the remaining allegations.

298-300. Denied.

301-302. Admitted only that Exhibit E is a true and correct copy of SJU's SMP, which speaks for itself. Denied as to the remaining allegations.

303-304. Denied.

305-308. Admitted that the complaints and judicial opinions in the referenced lawsuits are written documents that speak for themselves. Denied as to the remaining allegations.

309-314. Denied.

315-317. Admitted that Exhibit H is a true and correct copy of a press release, which speaks for itself. Denied as to the remaining allegations.

318. Admitted only that The Hawk is SJU's university newspaper. Denied as to the remaining allegations.

319-325. Admitted only that Exhibit I is a true and correct copy of a Hawk newspaper article, which speaks for itself. Denied as to the remaining allegations.

326-340. Denied.

WHEREFORE, SJU demands judgment in its favor, attorneys' fees and costs of suit.

Answer to Count III
Plaintiff v. SJU
Answer to Intentional Infliction of Emotional Distress

341. SJU's answers to the paragraphs of plaintiff's complaint are incorporated herein by reference and made a part hereof.

342. There being no specification in paragraph 342 of the alleged agents, servants, employees and/or investigators of SJU and the activities in which they allegedly engaged, SJU denies the allegations, as it is without knowledge or information sufficient to form a belief as to the truth or accuracy of plaintiff's allegations of agency and his allegations of the nature of their alleged conduct.

343-345. Denied.

WHEREFORE, SJU demands judgment in its favor, attorneys' fees and costs of suit.

Answer to Count IV
Plaintiff v. SJU
Answer to Negligent Infliction of Emotional Distress

346. SJU's answers to the paragraphs of plaintiff's complaint are incorporated herein by reference and made a part hereof.

347-349. Denied.

350. Admitted that Exhibits C, D and E are true and correct copies of the documents that they purport to be. Denied as to the remaining allegations.

351-356. Denied.

WHEREFORE, SJU demands judgment in its favor, attorneys' fees and costs of suit.

Answer to Count V
Plaintiff v. SJU
Answer to Unfair Trade Practices and Consumer Protection Law,
73 Pa.C.S. § 201-1 et seq.

357. SJU's answers to the paragraphs of plaintiff's complaint are incorporated herein by reference and made a part hereof.

358. Denied as a conclusion of law.

359-361. Denied.

WHEREFORE, SJU demands judgment in its favor, attorneys' fees and costs of suit.

Answer to Count VI
Plaintiff v. SJU
Answer to Defamation

362. SJU's answers to the paragraphs of plaintiff's complaint are incorporated herein by reference and made a part hereof.

363-371. Denied.

372. Denied as a conclusion of law.

373-375. Denied.

376. Denied as a conclusion of law.

377-381. Denied.

WHEREFORE, SJU demands judgment in its favor, attorneys' fees and costs of suit.

Answer to Count VII
Plaintiff v. Roe
Answer to Defamation

382. SJU's answers to the paragraphs of plaintiff's complaint are incorporated herein by reference and made a part hereof.

383-399. The allegations of these paragraphs are directed against Roe, not against SJU, and, thus, no response by SJU is required. To the extent SJU is obligated to respond further, the allegations are denied. Moreover, denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of these

paragraphs.

WHEREFORE, SJU demands judgment in its favor, attorneys' fees and costs of suit.

Answer to Count VIII
Plaintiff v. Roe
Answer to Intentional Interference with Contractual Relations

400. SJU's answers to the paragraphs of plaintiff's complaint are incorporated herein by reference and made a part hereof.

401. Admitted that SJU's Student Handbook and SMP are documents, which speak for themselves. Denied as to the remaining allegations.

402-407. The allegations of these paragraphs are directed against Roe, not against SJU, and, thus, no response by SJU is required. To the extent SJU is obligated to respond further, the allegations are denied. Moreover, denied, as SJU is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of these paragraphs.

WHEREFORE, SJU demands judgment in its favor, attorneys' fees and costs of suit.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim for which relief can be granted.
2. SJU is not subject to liability under Title IX because it has a fair and effective policy for reporting and redressing reports of sexual assault and other types of sex discrimination, which it followed throughout its investigation into complainant's allegation directed against plaintiff.
3. SJU is not subject to liability under Title IX because it has a fair and effective policy for reporting and redressing reports of sexual assault and other types of sex discrimination, and plaintiff's disciplinary and corrective sanctions related to the finding of

responsibility against him are appropriate under this policy.

4. SJU did not breach any material duty owed to plaintiff.

5. If any breach of duty occurred, which SJU expressly denies, plaintiff suffered no harm resulting from said breach.

6. SJU does not have a special relationship with plaintiff.

7. SJU did not breach any contractual obligation owed to plaintiff.

8. Without waiving any defenses, plaintiff failed to utilize all available support and resources as was his right and choice. To the extent such support and resources would have reduced any damages plaintiff now seeks in this lawsuit, defendants are not liable for such damages.

COUNTERCLAIM
Attorneys Fees Pursuant to 42 U.S.C. § 1988(b)

9. SJU is entitled to attorneys fees because plaintiff has filed claims against SJU that are frivolous, without foundation and lack any objectionable reasonable basis pursuant to both 42 U.S.C. § 1988(b) and the Court's inherent power.

10. Specifically, plaintiff's complaint contains frivolous and unreasonable allegations that SJU intentionally withheld information from plaintiff during its investigation in an attempt to embarrass, humiliate, and otherwise punish him.

11. Plaintiff knows these allegations are unfounded, but nonetheless pursues them in an effort to damage SJU's public reputation and coerce SJU into capitulating to plaintiff's unreasonable demands even though SJU has done nothing wrong.

12. As a result of defending itself against plaintiff's frivolous, unfounded, and unreasonable allegations, SJU has incurred and continues to incur reasonable attorneys fees to defend this matter.

WHEREFORE, SJU demands judgment in its favor, attorneys' fees and costs of suit.

Respectfully submitted,

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Dated: May 18, 2018

By: 

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CERTIFICATE OF SERVICE

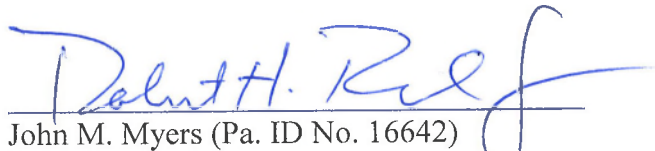
I HEREBY CERTIFY that a true and correct copy of the foregoing is being served the below date in the manner set forth below.

Via: Electronic Mail

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Dated: May 18, 2018



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