

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JUSTIN BROWNING, et al.,	:	Case No. 3:15-cv-02687-JGC
	:	
Plaintiffs,	:	(Judge James G. Carr)
	:	
vs.	:	ANSWER OF DEFENDANTS
	:	UNIVERSITY OF FINDLAY BOARD OF
UNIVERSITY OF FINDLAY BOARD OF TRUSTEES, et al.,	:	TRUSTEES, UNIVERSITY OF
	:	FINDLAY, DAVID W. EMSWELLER,
	:	BRANDI LAURITA, MATTHEW
Defendants.	:	BRUSKOTTER, RACHEL WALTER,
	:	KEN WALERIUS, BRIAN TREECE and
	:	BREANNA ERVIN MILLER

Defendants, University of Findlay Board of Trustees, University of Findlay, David W. Emsweller, Brandi Laurita, Matthew Bruskotter, Rachel Walter, Ken Walerius, Brian Treece and Breanna Ervin Miller (hereinafter sometimes collectively referred to as “All Defendants”), for their answer herein, state and allege as follows:

FIRST DEFENSE

Deny each and every allegation contained in the Complaint except as hereinafter admitted, qualified or otherwise answered.

1. With regard to the allegations contained in paragraph 1 of the Complaint, All Defendants admit that Justin Browning and Alphonso Baity, II are two African-Americans student athletes who attended college at the University of Findlay. University of Findlay, David W. Emsweller, Brandi Laurita, Matthew Bruskotter, Rachel Walter and Ken Walerius admit on a Saturday night in September 2014, Plaintiffs engaged in sex acts with a Caucasian female, Defendant M.K.; further admit, several persons, both male and female, were present at Plaintiffs’ house when the sex acts occurred; further admit, approximately 10 days later, Defendant M.K. reported to representatives at the University of Findlay that Plaintiffs had sexually assaulted her;

and deny the remaining allegations contained in paragraph 1 of the Complaint. Defendants University of Findlay Board of Trustees (“Board of Trustees”), Brian Treece (“Treece”) and Breanna Ervin Miller (“Miller”) deny the remaining allegations contained in paragraph 1 of Plaintiffs’ Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

2. All Defendants deny the allegations contained in paragraph 2 of the Complaint.

3. All Defendants deny the allegations contained in paragraph 3 of the Complaint.

4. With regard to the allegations contained in paragraph 4 of the Complaint, All Defendants admit that the University of Findlay sent out an email directed to students, faculty and parents that provided in part that a student reported that she had been sexually assaulted by 2 student athletes in a University owned house, that an investigation was conducted, that based on the findings of the investigation, a preponderance of the evidence indicated that a sexual assault had been committed, and as a result Plaintiffs were dismissed from the University of Findlay and advised of the appeal procedure; further admit local media outlets became aware of the email; and deny the remaining allegations contained in paragraph 4 of the Complaint.

5. With regard to the allegations contained in paragraph 5 of the Complaint, All Defendants admit that Browning is a 21 year-old African-American male, and at the time of the incident alleged in the Complaint was a junior and a student-athlete at the University of Findlay and a member of the football team; and deny the remaining allegations contained in paragraph 5 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

6. With regard to the allegations contained in paragraph 6 of the Complaint, All Defendants admit that Baity is a 21 year-old African-American male, and at the time of the

incident alleged in the Complaint was a junior and a student-athlete at the University of Findlay and a member of the basketball team; and deny the remaining allegations contained in paragraph 6 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

7. All Defendants admit the allegations contained in paragraph 7 of the Complaint.

8. With regard to the allegations contained in paragraph 8 of the Complaint, All Defendants admit the University of Findlay is a private school that receives federal funds, and is located in the City of Findlay, Hancock County, Ohio. The remaining allegations contained in paragraph 8 of the Complaint call for a legal conclusion and no response is required.

9. With regard to the allegations contained in paragraph 9 of the Complaint, All Defendants admit that the Board of Trustees is comprised of approximately 30 persons; deny the Board of Trustees is a proper party with standing or is a real party in interest to defend this action against the University of Findlay; affirmatively allege that the terms of the University of Findlay's "Preamble and Premises" speak for themselves; further affirmatively allege the Board of Trustees is not endowed with an independent, separate corporate existence; and deny the remaining allegations contained in paragraph 9 of the Complaint.

10. With regard to the allegations contained in paragraph 10 of the Complaint, All Defendants deny that the University of Findlay and the Board of Trustees are properly referred to collectively as the "University"; and affirmatively allege that unlike the University of Findlay, the Board of Trustees is not an independent corporate entity, and is not a proper party to this lawsuit. With regard to any and all allegations referencing the "University" in paragraphs 10-266 of the Complaint by referring to the Board of Trustees and University of Findlay collectively as "University," All Defendants answer such allegations herein by defining "University" as only the

University of Findlay, and otherwise deny such allegations if “University” is defined to include the Board of Trustees. For purposes of this Answer, all references herein to “University” refer only to the University of Findlay and do not include the Board of Trustees. All Defendants deny the remaining allegations contained in paragraph 10 of the Complaint.

11. All Defendants admit the allegations contained in paragraph 11 of the Complaint.

12. With regard to the allegations contained in paragraph 12 of the Complaint, All Defendants admit that Laurita was, at the time of the incident alleged in the Complaint, the University’s Assistant Athletic Director and Senior Woman Administrator, and is now the University’s Athletic Director; further admit she is Caucasian, is the University’s Title IX Coordinator, is a resident of Ohio and that all of her acts and/or omissions occurred within the course and scope of her employment with the University; and deny the remaining allegations contained in paragraph 12 of the Complaint.

13. All Defendants admit the allegations contained in paragraph 13 of the Complaint.

14. All Defendants admit the allegations contained in paragraph 14 of the Complaint.

15. With regard to the allegations contained in paragraph 15 of the Complaint, All Defendants admit that Walerius was, at the time of the incident alleged in the Complaint, the University’s Director of Safety and Security; further admit he is Caucasian, is a resident of Ohio and that all of his acts and/or omissions occurred within the course and scope of his employment with the University; and deny the remaining allegations contained in paragraph 15 of the Complaint.

16. With regard to the allegations contained in paragraph 16 of the Complaint, All Defendants admit that Treece is the University’s Assistant Dean of Students and Director of Resident Life, is Caucasian and a resident of Ohio; and affirmatively allege he played no role in

the investigation or decision relevant to the matters asserted in the Complaint and is therefore not a proper party. The claims against Treece are the subject of a Motion to Dismiss and no response to any such claims are required. However, to the extent any response to any claims hereinafter are required, Treece denies for lack of knowledge or information sufficient to form a belief as to the truth thereof unless specifically answered otherwise. All Defendants deny the remaining allegations contained in paragraph 16 of the Complaint.

17. All Defendants admit the allegations contained in paragraph 17 of the Complaint.

18. All Defendants deny the allegations contained in paragraph 18 of the Complaint.

19. The allegations contained in paragraph 19 of the Complaint call for a legal conclusion and no response is required. However, to the extent the allegations state a cause of action against Emsweller, Laurita, Bruskotter, Walter or Walerius (hereinafter sometimes collectively referred to as “Individual Defendants”), the University, Board of Trustees, Treece or Miller, or any element of a cause of action against them, the allegations are denied in their entirety by All Defendants. All Defendants deny that they are properly referred to collectively as “University Defendants.” All Defendants deny the remaining allegations contained in paragraph 19 of the Complaint.

20. With regard to the allegations contained in paragraph 20 of the Complaint, All Defendants admit that M.K. is a Caucasian female and at the time of the incident was a freshman student at the University; and deny the remaining allegations contained in paragraph 20 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

21. With regard to the allegations contained in paragraph 21 of the Complaint, Individual Defendants and University admit that Q.J. is an African-American male; further admit he was a junior basketball player at the University at the time of the incident alleged in the

Complaint and has knowledge of portions of the incident alleged in the Complaint; and deny the remaining allegations contained in paragraph 21 of the Complaint. Board of Trustees, Treece and Miller deny the allegations in paragraph 21 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

22. With regard to the allegations contained in paragraph 22 of the Complaint, Individual Defendants and University admit that Z.W. is an African-American male; further admit he was a senior football player at the University at the time of the incident alleged in the Complaint and has knowledge of portions of the incident alleged in the Complaint; and deny the remaining allegations contained in paragraph 22 of the Complaint. Board of Trustees, Treece and Miller deny the allegations in paragraph 22 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

23. With regard to the allegations contained in paragraph 23 of the Complaint, Individual Defendants and University admit upon information and belief that R.J. is an African-American male and he has knowledge of portions of the incident alleged in the Complaint; and deny the remaining allegations contained in paragraph 23 of the Complaint. Board of Trustees, Treece and Miller deny the allegations in paragraph 23 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

24. With regard to the allegations contained in paragraph 24 of the Complaint, Individual Defendants and University admit that A.D. is a Caucasian female; further admit she has knowledge of portions of the incident alleged in the Complaint; and deny the remaining allegations contained in paragraph 24 of the Complaint. Treece admits that A.D. is a Caucasian female; and denies the remaining allegations contained in paragraph 24 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees

and Miller deny the allegations in paragraph 24 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

25. With regard to the allegations contained in paragraph 25 of the Complaint, Individual Defendants and University admit that K.D. is A.D.'s mother; and deny the remaining allegations contained in paragraph 25 of the Complaint. Board of Trustees, Treece and Miller deny the allegations in paragraph 25 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

26. With regard to the allegations contained in paragraph 26 of the Complaint, Individual Defendants and University admit that K.A. is a Caucasian female; further admit she has knowledge of portions of the incident alleged in the Complaint; and deny the remaining allegations contained in paragraph 26 of the Complaint. Board of Trustees, Treece and Miller deny the allegations in paragraph 26 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

27. With regard to the allegations contained in paragraph 27 of the Complaint, Individual Defendants and University admit that A.J. is a Caucasian female and certain assertions made in the Complaint are attributed to her; and deny the remaining allegations contained in paragraph 27 of the Complaint. Board of Trustees, Treece and Miller deny the allegations in paragraph 27 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

28. With regard to the allegations contained in paragraph 28 of the Complaint, Individual Defendants, University and Miller admit that H.S. is a Caucasian female and certain assertions made in the Complaint are attributed to her; and deny the remaining allegations contained in paragraph 28 of the Complaint. Board of Trustees and Treece deny the allegations

in paragraph 28 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

29. With regard to the allegations contained in paragraph 29 of the Complaint, Individual Defendants and University admit that J.F. is a male and certain assertions made in the Complaint are attributed to him; and deny the remaining allegations contained in paragraph 29 of the Complaint. Treece admits that J.F. is a male; and denies the remaining allegations contained in paragraph 29 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees and Miller deny the allegations in paragraph 29 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

30. With regard to the allegations contained in paragraph 30 of the Complaint, All Defendants admit the Court has subject matter jurisdiction, but deny the claims have any validity.

31. All Defendants deny the allegations contained in paragraph 31 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

32. All Defendants deny the allegations contained in paragraph 32 of the Complaint.

33. All Defendants admit the allegations contained in paragraph 33 of the Complaint.

34. With regard to the allegations contained in paragraph 34 of the Complaint, All Defendants admit that the City of Findlay is located in Hancock County, Ohio, approximately 50 miles south of Toledo, Ohio; further admit the racial makeup of the city is predominately Caucasian; and deny the remaining allegations contained in paragraph 34 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

35. With regard to the allegations contained in paragraph 35 of the Complaint, All Defendants admit the University is a private university located in Findlay, Ohio; affirmatively

state that the Enrollment by Racial/Ethnic Category Fall 2014 is available at <https://www.findlay.edu/offices/academic/registrar/shared%20Documents/StudentDiversity2014.pdf>; affirmatively state the terms of the Enrollment by Racial/Ethnic Category Fall 2014 speak for themselves; and deny the remaining allegations contained in paragraph 35 of the Complaint.

36. All Defendants admit the allegations contained in paragraph 36 of the Complaint.

37. All Defendants admit the allegations contained in paragraph 37 of the Complaint.

38. With regard to the allegations contained in paragraph 38 of the Complaint, All Defendants admit the University provides campus housing for many of its students; further admit that the University owns a house located at 438 Howard Street, Findlay, Ohio; and deny the remaining allegations contained in paragraph 38 of the Complaint.

39. With regard to the allegations contained in paragraph 39 of the Complaint, Individual Defendants, University, and Treece admit that during the beginning of the 2014-15 academic year, four student-athletes - Browning, Baity, Q.J. and Z.W. - shared the house located at 438 Howard Street, Findlay, Ohio; further admit Room A was assigned to be shared by Browning and Baity, Room B was assigned to Q.J., and Room C was assigned to Z.W.; deny that the diagram is an accurate depiction of the house; and deny the remaining allegations contained in paragraph 39 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees and Miller deny the allegations contained in paragraph 39 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

40. With regard to the allegations contained in paragraph 40 of the Complaint, Individual Defendants and University admit that Browning and Baity were students in good standing at the University of Findlay and members of their respective sports teams; and deny the

remaining allegations contained in paragraph 40 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 40 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

41. With regard to the allegations contained in paragraph 41 of the Complaint, Individual Defendants and University admit that early in the 2014-15 academic year Baity and Q.J. became acquainted with M.K; and deny the remaining allegations contained in paragraph 41 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 41 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

42. With regard to the allegations contained in paragraph 42 of the Complaint, Individual Defendants and University admit that M.K. had visited 438 Howard Street prior to the night of the incident and was familiar with the housemates at 438 Howard Street prior to the night of the incident; and deny the remaining allegations contained in paragraph 42 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 42 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

43. All Defendants deny the allegations contained in paragraph 43 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

44. All Defendants deny the allegations contained in paragraph 44 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

45. All Defendants admit the allegations contained in paragraph 45 of the Complaint.

46. With regard to the allegations contained in paragraph 46 of the Complaint, Individual Defendants and University admit that as is customary, certain members of the University football team gathered in Henderson dining hall on the morning of September 20, 2014 for a team meal; and deny the remaining allegations contained in paragraph 46 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 46 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

47. All Defendants deny the allegations contained in paragraph 47 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

48. With regard to the allegations contained in paragraph 48 of the Complaint, Individual Defendants and University admit the University football team traveled to Tiffin for a game on September 20, 2014; and deny the remaining allegations for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 48 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

49. Individual Defendants and University admit the allegations contained in paragraph 49 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 49 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

50. With regard to the allegations contained in paragraph 50 of the Complaint, Individual Defendants and University admit that on the evening of September 20, 2014 a party was scheduled to take place at the “Mascot House” located several blocks from 438 Howard Street; and deny the remaining allegations contained in paragraph 50 of the Complaint for lack of

knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 50 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

51. With regard to the allegations contained in paragraph 51 of the Complaint, Individual Defendants and University admit that prior to the party at the Mascot House a “pre-party” was held at 438 Howard Street; further admit Browning, Baity, Z.W., Q.J., R.J. and K.A. were present at the pre-party; further admit there was alcohol at the pre-party; affirmatively allege the presence of alcohol at 438 Howard Street was a violation of the housing agreements Plaintiffs entered into with the University; and deny the remaining allegations contained in paragraph 51 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 51 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

52. With regard to the allegations contained in paragraph 52 of the Complaint, Individual Defendants and University admit that later in the evening of September 20, 2014, several of the individuals left 438 Howard Street to attend the Mascot House party; further admit, K.A. drove R.J. in her vehicle and Q.J. stayed home that evening; and deny the remaining allegations contained in paragraph 52 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 52 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

53. With regard to the allegations contained in paragraph 53 of the Complaint, Individual Defendants and University admit there was a party at the Mascot House, M.K. was

present, and M.K. was drinking something out of a Gatorade bottle; affirmatively allege the beverage she was drinking was a combination of vodka and a mixer; and deny the remaining allegations contained in paragraph 53 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 53 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

54. All Defendants deny the allegations contained in paragraph 54 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

55. With regard to the allegations contained in paragraph 55 of the Complaint, Individual Defendants and University admit M.K. and Browning danced together at the Mascot Party; and deny the remaining allegations contained in paragraph 55 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 55 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

56. With regard to the allegations contained in paragraph 56 of the Complaint, Individual Defendants and University admit that it was reported that neither Baity nor K.A. consumed alcohol at the Mascot House. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 56 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

57. With regard to the allegations contained in paragraph 57 of the Complaint, Individual Defendants and University admit that K.A. drove R.J., Browning and M.K. back to 438 Howard Street; and deny the remaining allegations contained in paragraph 57 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 57

of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

58. With regard to the allegations contained in paragraph 58 of the Complaint, Individual Defendants and University admit Z.W. and A.D. returned to 438 Howard Street, and Baity left the Mascot House party; and deny the remaining allegations in paragraph 58 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 58 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

59. Individual Defendants and University admit the allegations contained in paragraph 59 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 59 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

60. With regard to the allegations contained in paragraph 60 of the Complaint, Individual Defendants and University admit that it was reported that R.J. and K.A. decided to drive to Taco Bell for food; and deny the remaining allegations contained in paragraph 60 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 60 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

61. With regard to the allegations contained in paragraph 61 of the Complaint, Individual Defendants and University admit that it has been reported by some witnesses that Browning and M.K. exited the common area, entered Browning's bedroom and closed the door while Q.J. remained on the couch; deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations contained in paragraph 61

of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 61 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

62. With regard to the allegations contained in paragraph 62 of the Complaint, Individual Defendants and University admit that Z.W. and A.D. returned to 438 Howard Street; further admit Z.W. and A.D. reported having a conversation with Q.J. in the common area and during the course of this conversation heard what they believed was sexual activity in and coming from within Browning's bedroom; further admit Z.W. and A.D. reported walking into Z.W.'s bedroom; further admit it has been reported that Q.J. remained on the couch; deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations contained in paragraph 62 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 62 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

63. With regard to the allegations contained in paragraph 63 of the Complaint, Individual Defendants and University admit Browning and M.K. engaged in sexual activity; admit Plaintiffs have recently provided video, taken without the consent of M.K. of the sexual assault, that shows, among other things, M.K. on top of Browning; deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations of paragraph 63 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 63 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

64. With regard to the allegations contained in paragraph 64 of the Complaint, Individual Defendants and University admit that Baity returned to 438 Howard Street; further

admit Baity reported entering the bedroom he shared with Browning to retrieve his phone charger; deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations contained in paragraph 64 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 64 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

65. With regard to the allegations contained in paragraph 65 of the Complaint, Individual Defendants and University admit that Baity entered the bedroom and engaged in sexual activity with M.K.; deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations contained in paragraph 65 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 65 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

66. With regard to the allegations contained in paragraph 66 of the Complaint, Individual Defendants and University admit that R.J. and K.A. returned to 438 Howard Street and K.A. reported hearing sexual activity coming from the bedroom; deny M.K. had the capacity to consent to the sexual activity; and deny the remaining allegations contained in paragraph 66 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 66 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

67. With regard to the allegations contained in paragraph 67 of the Complaint, Individual Defendants and University admit it was reported at some point Baity, Q.J., Z.W., A.D., R.J. and K.A. were all in the common room; deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations contained

in paragraph 67 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 67 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

68. With regard to the allegations contained in paragraph 68 of the Complaint, Individual Defendants and University admit that at some point during the evening M.K. emerged naked from the bedroom, and indicated she may have to vomit; further admit Browning followed her into the common area, his lower body covered by a blanket; further admit M.K. was provided a trash can; and deny the remaining allegations contained in paragraph 68 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 68 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

69. With regard to the allegations contained in paragraph 69 of the Complaint, Individual Defendants and University admit M.K. asked A.D. to call one of M.K.'s friends, and A.D. has reported she attempted to do so; and deny the remaining allegations contained in paragraph 69 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 69 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

70. With regard to the allegations contained in paragraph 70 of the Complaint, Individual Defendants and University admit that Browning engaged in sexual activity with M.K.; deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations contained in paragraph 70 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 70 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

71. With regard to the allegations contained in paragraph 71 of the Complaint, Individual Defendants and University deny for lack of knowledge or information sufficient to form a belief as to the truth thereof the allegation that Baity entered the room and climbed into his bed to go to sleep; deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations contained in paragraph 71 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 71 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

72. Individual Defendants and University deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the allegations contained in paragraph 72 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 72 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

73. All Defendants deny the allegations contained in paragraph 73 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

74. With regard to the allegations contained in paragraph 74 of the Complaint, Individual Defendants and University admit that M.K. and others in the house awoke the next day; further admit M.K. could not initially find her keys; further admit M.K. did not initially seek assistance from the University Security Department, University officials or related campus authorities; and deny the remaining allegations contained in paragraph 74 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 74 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

75. With regard to the allegations contained in paragraph 75 of the Complaint, Individual Defendants and University admit that M.K. returned to her dormitory; and deny the remaining allegations contained in paragraph 75 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 75 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

76. Individual Defendants and University deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations contained in paragraph 76 of the Complaint. Miller admits that M.K. never spoke with her regarding a sexual assault; and denies the remaining allegations contained in paragraph 76 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees and Treece deny the allegations contained in paragraph 76 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

77. With regard to the allegations contained in paragraph 77 of the Complaint, Individual Defendants and University admit on or about the morning of September 21, 2014, M.K. returned to a house where J.F. lived to retrieve some of her belongings she had left the previous night; deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations contained in paragraph 77 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 77 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

78. All Defendants deny the allegations contained in paragraph 78 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

79. All Defendants deny the allegations contained in paragraph 79 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

80. With regard to the allegations contained in paragraph 80 of the Complaint, All Defendants admit the University Policies provide that “the following policies apply to all University of Findlay students and are in effect at all times”; admit the remaining allegations of paragraph 80 of the Complaint; and affirmatively allege the terms of University Policies speak for themselves.

81. With regard to the allegations contained in paragraph 81 of the Complaint, All Defendants admit that one of the University policies pertains to Sexual Assault, Domestic Violence, Dating Violence and Stalking (“Sexual Assault Policy”); and deny the remaining allegations contained in paragraph 81 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

82. With regard to the allegations contained in paragraph 82 of the Complaint, All Defendants admit that the Sexual Assault Policy provides that “The University prohibits and will not tolerate dating violence, domestic violence, stalking or sexual assault as defined by this policy and federal law; further admit, the University prohibits and will not tolerate any attempts by any person(s) or group to prevent the institution from investigating incidents of these actions or to ‘cover up’ their occurrence;” further admit, the Sexual Assault Policy defines “sexual assault” as “[A]ny sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent;” affirmatively allege the terms of the Sexual Assault Policy speak for themselves; and deny the remaining allegations contained in paragraph 82 of the Complaint.

83. With regard to the allegations contained in paragraph 83 of the Complaint, All Defendants admit that the Sexual Assault Policy includes information regarding what constitutes consent under the Policy; and affirmatively allege the terms of the Sexual Assault Policy speak for themselves, and the Policy language provides, in part, as follows:

A knowing, voluntary, and affirmatively communicated willingness to participate in a particular sexual activity or behavior. It must be given by a person with the ability and capacity to exercise free will and make a rational, reasonable judgment. Consent may be expressed either by words or actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity.

It is the responsibility of the person who wants to engage in sexual activity to ensure that he/she has the consent of the other to engage in the activity.

Additional considerations include:

- Lack of protest or resistance is not consent. Nor may silence, in and of itself, be interpreted as consent. For that reason, solely relying on non-verbal communication can lead to misunderstanding.
- Previous relationships, including past sexual relationships, do not imply consent to future sexual acts.
- Consent to one form of sexual activity cannot automatically imply consent to other forms of sexual activity.
- To give consent, one must be of legal age.
- Consent must be present throughout sexual activity and may be withdrawn at any time. If there is confusion as to whether there is consent or whether prior consent has been withdrawn, it is essential that the participants stop the activity until the confusion is resolved.
- Consent cannot be obtained by the use of physical force, threats, intimidating behavior or coercion. Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure used. When someone makes clear that he/she does not want sex or wants to stop, that he/she does not want to do certain things or that he/she does not want to go beyond a certain point, continued pressure can be coercive.
- If you have sexual activity with someone you know, or should know, is incapacitated, you are in violation of this policy. The relevant standard is whether a sober, reasonable person in the same position should have known that the other party was incapacitated and therefore unable to consent. Incapacitated, for the purposes of this policy, means that the person's decision-making ability is impaired such that the person lacks the

ability to understand the “who, what, where, why or how” of their sexual interaction. Incapacitation may result from:

- Sleep or unconsciousness
- Temporary or permanent mental or physical disability
- Involuntary physical restraint
- The influence of alcohol, drugs or medication, including Rohypnol, Ketamine, GHB, and other substances used to facilitate “date-rape” or “sexual misconduct”.

All Defendants deny the remaining allegations contained in paragraph 83 of the Complaint.

84. With regard to the allegations contained in paragraph 84 of the Complaint, All Defendants admit the University has a number of prevention programs; affirmatively allege the terms of the Sexual Assault Policy speak for themselves, and that the Policy language provides, in part, as follows:

To address the issue of sexual assaults, domestic violence, dating violence and stalking, The University of Findlay requires all students, faculty, and staff to participate in an annual on-line training program. This primary prevention training program offers practical guidance for risk reduction, violence prevention, and bystander intervention. University policies, Title IX, the Clery Act and the Campus Save Act are also discussed.

All Defendants deny the remaining allegations contained in paragraph 84 of the Complaint.

85. With regard to the allegations contained in paragraph 85 of the Complaint, All Defendants admit that the Sexual Assault Policy states “If an incident of sexual assault, domestic violence, dating violence or stalking occurs, it is important to preserve evidence so that the University can successfully conduct an internal investigation and the potential for criminal prosecution remains an option for the survivor;” affirmatively allege the terms of the Sexual Assault Policy speak for themselves; and deny the remaining allegations contained in paragraph 85 of the Complaint.

86. With regard to the allegations contained in paragraph 86 of the Complaint, All Defendants admit that the Sexual Assault Policy, includes, in part, the following:

SEXUAL ASSAULT

This guidance is intended as a general guide for victims and family members or friends of a person who has been sexually assaulted. Specific direction about the victim's situation should be sought from a person who is experienced in the care and management of victims, such as an emergency department doctor, nurse, sexual assault nurse examiner, or counselor.

After Sexual Assault

- Find a safe environment away from the assailant.
- Call a close friend or relative – someone who will offer unconditional support.
- Seek medical care.
- Do not change clothes, bathe, douche, or brush your teeth until evidence is collected. New undergarments and sweat suits are available to victims at on-campus and off-campus service providers.
- A complete medical evaluation includes evidence collection, a physical examination, treatment and/or counseling. Survivors may opt out of any part of this evaluation at their own discretion.
- Follow up with a healthcare provider one to two weeks following the assault.
- Seek counseling services.

All Defendants affirmatively allege the terms of the Sexual Assault Policy speak for themselves; and deny the remaining allegations contained in paragraph 86 of the Complaint.

87. With regard to the allegations contained in paragraph 87 of the Complaint, All Defendants admit that the Sexual Assault Policy provides in its description of investigatory procedures and disciplinary actions as follows:

The University of Findlay has a responsibility to respond promptly and effectively to reports of sexual assault, domestic violence, dating violence and stalking... Additionally, the University will conduct a prompt, impartial, and thorough investigation and take intermediate and final steps to resolve the situation. Investigations will be carried out by personnel who receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking, as well as investigation procedures that protect victim safety and promotes accountability. Additionally, the University personnel involved in investigations will not have a conflict of interest or bias for or against the complainant or respondent. The University will take all reasonable actions to maintain the confidentiality of all parties during the investigation.

All Defendants affirmatively allege the terms of the Sexual Assault Policy speak for themselves; and deny the remaining allegations contained in paragraph 87 of the Complaint.

88. With regard to the allegations contained in paragraph 88 of the Complaint, All Defendants admit that the Sexual Assault Policy provides “[t]he University will strive to complete all investigations within the 60 day timeframe established by Title IX regulations;” affirmatively allege the terms of the Sexual Assault Policy speak for themselves, and the Policy language provides, in part, that “[A]ll UF investigations of sexual assault, domestic violence, dating violence and stalking will be conducted in the same manner and begin their investigation as Title IX cases. If it can be determined that the civil rights of the victim(s) have not been affected, the University will complete the investigation under the regulatory requirements of the Clery and Campus Save Acts;” and deny the remaining allegations contained in paragraph 88 of the Complaint.

89. With regard to the allegations contained in paragraph 89 of the Complaint, All Defendants admit that the Sexual Assault Policy provides “Both the complainant and respondent are entitled to the opportunity to be accompanied to interviews or other related meetings by an advisor of their choice. These advisors may not participate in the meetings or interviews but are available to provide support to the individual;” affirmatively allege the terms of the Sexual Assault Policy speak for themselves; and deny the remaining allegations contained in paragraph 89 of the Complaint.

90. With regard to the allegations contained in paragraph 90 of the Complaint, All Defendants admit that the Sexual Assault Policy states that “Investigations and disciplinary decisions will be conducted by applying a preponderance of the evidence standard. This means that investigators will use their best judgment to determine whether, more likely than not a crime

has been committed;” further admit an expelled student has 72 hours to appeal the decision and said decisions must be in writing; affirmatively allege the terms of the Sexual Assault Policy speak for themselves; and deny the remaining allegations contained in paragraph 90 of the Complaint.

91. All Defendants admit the allegations contained in paragraph 91 of the Complaint.

92. With regard to the allegations contained in paragraph 92 of the Complaint, University, Board of Trustees, Treece and Individual Defendants admit that all public and private educational institutions that receive federal funds must comply with the requirements of Title IX; further admit Title IX prohibits discrimination on the basis of gender in a school’s “education program or activity” under certain circumstances; affirmatively allege the terms of 20 U.S.C. §§ 1681(a), 1687 speak for themselves; further assert the allegations in paragraph 92 of the Complaint call for a legal conclusion; and deny the remaining allegations contained in paragraph 92 of the Complaint. Miller denies the allegations contained in paragraph 92 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

93. University, Board of Trustees, Treece and Individual Defendants admit the allegations in paragraph 93 of the Complaint. Miller denies the allegations contained in paragraph 93 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

94. The allegations contained in paragraph 94 of the Complaint call for a legal conclusion and no response is required. Miller denies the allegations contained in paragraph 94 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

95. All Defendants admit the allegations contained in paragraph 95 of the Complaint.

96. With regard to the allegations contained in paragraph 96 of the Complaint, All Defendants admit that the Title IX Investigation Policy states as follows:

The University of Findlay will conduct all activities covered by Title IX with due regard for any legitimate privacy concerns or requests. Materials and information prepared or required through Title IX activities will be kept confidential and shared only with those who have a legitimate need to know or view the records. Disclosure may also be made if it is permitted by law and the Title IX coordinator determines that disclosure is necessary to protect the health, safety and wellbeing of the University community.

All Defendants affirmatively allege the terms of the Title IX Investigation Policy speak for themselves; and deny the remaining allegations contained in paragraph 96 of the Complaint.

97. With regard to the allegations contained in paragraph 97 of the Complaint, All Defendants affirmatively allege the terms of the Title IX Investigation Policy speak for themselves; admit that pursuant to the Title IX Investigation Policy “The University of Findlay will work to maintain the confidentiality of information during any Title IX review and investigation;” and, “The University of Findlay will conduct all activities covered by Title IX with due regard for any legitimate privacy concerns or requests. Materials and information prepared or acquired through Title IX activities will be kept confidential and shared only with those who have a legitimate need to know or view the records. Disclosure may also be made if it is permitted by law and the Title IX coordinator determines that disclosure is necessary to protect the health, safety and well-being of the University community;” and deny the remaining allegations contained in paragraph 97 of the Complaint.

98. With regard to the allegations contained in paragraph 98 of the Complaint, University, Board of Trustees, Treece and Individual Defendants admit the University is committed, under Title IX and the Title IX Investigation Policy, to providing a prompt, fair, and impartial investigation and resolution. All Defendants affirmatively allege the terms of the Title

IX Investigation Policy speak for themselves; further admit the University's Title IX Investigation Policy provides as follows:

The University of Findlay is committed to providing a prompt, fair and impartial investigation and resolution to all alleged incidents of discrimination prohibited by Title IX. Investigations, hearings and disciplinary decisions will be conducted by applying a preponderance of the evidence standard. This means that investigators or hearing panels will use their best judgment to determine whether, more likely than not a violation of the Non-Discrimination Policy has occurred.

University, Board of Trustees, Treece and Individual Defendants deny the remaining allegations contained in paragraph 98 of the Complaint. Miller denies the remaining allegations in paragraph 98 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

99. All Defendants admit the allegations contained in paragraph 99 of the Complaint.

100. With regard to the allegations contained in paragraph 100 of the Complaint, All Defendants admit that Appendix I to the Title IX Investigation Policy ("Investigation Procedures") describes the procedures followed in a Title IX investigation and that a true and accurate copy is attached as Exhibit A to the Complaint; affirmatively allege the terms of the Title IX Investigation Policy speak for themselves; and deny the remaining allegations contained in paragraph 100 of the Complaint.

101. All Defendants admit the allegations contained in paragraph 101 of the Complaint.

102. With regard to the allegations contained in paragraph 102 of the Complaint, All Defendants admit that Article I *The following particular rights of the student are recognized as among those which the University has a duty to foster and protect* provides in paragraph 1 "[T]he right to pursue education, recreational, social, religious, cultural, and residential activities;"

affirmatively allege that the terms of the Student Handbook speak for themselves; and deny the remaining allegations contained in paragraph 102 of the Complaint.

103. With regard to the allegations contained in paragraph 103 of the Complaint, All Defendants admit the Preamble and Premises to the Student Handbook provides as follows: “[T]he student has basic civil and human rights and immunities which the University has a duty to protect and which the student has an obligation to fulfill;” affirmatively allege the terms of the Student Handbook speak for themselves; and deny the remaining allegations contained in paragraph 103 of the Complaint.

104. With regard to the allegations contained in paragraph 104 of the Complaint, All Defendants admit that Article V *Disciplinary procedures in instances of misconduct of a non-academic nature which may subject a student to suspension or dismissal* provides in paragraph 1a. that “[B]efore being questioned, a student shall be advised of the specific allegations made against him or her and that he or she is not required to make any statement but may voluntarily make a statement and explanation of the facts and submit information in proof of the same;” affirmatively allege paragraph 1a. goes on to state “Exceptions to this policy include any cases of sexual discrimination, sexual assault, dating violence, domestic violence, or stalking. (See the University policy on Sexual Assault, Domestic Violence, Dating Violence, and Stalking;)” affirmatively allege the procedures referenced in paragraphs 104 and 105 of the Complaint are inapplicable to the incident alleged herein as they only pertain to matters heard by the Conduct and Discipline Committee; affirmatively allege the terms of the Student Handbook speak for themselves; and deny the remaining allegations contained in paragraph 104 of the Complaint.

105. With regard to the allegations contained in paragraph 105 of the Complaint, All Defendants admit that Article V *Disciplinary procedures in instances of misconduct of a non-academic nature which may subject a student to suspension or dismissal* provides as follows:

1. Investigation of alleged misconduct of a non-academic nature:
 - a. Investigations of alleged serious misconduct of a non-academic nature shall be made by authorized personnel of the Division of Student Affairs. Accused students shall be personally interviewed. Before being questioned, a student shall be advised of the specific allegations made against him or her and that he or she is not required to make any statement but may voluntarily make a statement and explanation of the facts and submit information in proof of the same. If, as a result of such preliminary procedures, it appears there is factual basis supporting an allegation which could lead to suspension or dismissal, then the matter will be referred to the vice president for student affairs for review and possible referral to the Conduct and Discipline Committee* for a more detailed investigation before any decision is made or disciplinary action is taken against him or her. Exceptions to this policy include any cases of sexual discrimination, sexual assault, dating violence, domestic violence, or stalking. (See the University policy on Sexual Assault, Domestic Violence, Dating Violence, and Stalking.)

* The Conduct and Discipline Committee is composed of up to three faculty members and up to four student members. Committee members are appointed annually based on recommendations from the Student Government Association and the subsequent approval from the vice president for student affairs. The vice president for student affairs is not a member of the committee, but is responsible for observing all meetings to insure that appropriate procedures are followed and that all pertinent information is presented.
 - b. In a matter when a student feels that disclosure of events surrounding his/her actions before a committee may be detrimental to his/her reputation, he/she may request that the vice president for student affairs adjudicate the matter and not make a referral to the Conduct and Discipline Committee. Should the student choose this alternate route, the vice president for student affairs will review the matter and render a decision. Exceptions to this policy include any cases of sexual discrimination, sexual assault, dating violence, domestic violence, or stalking. (See the University policy on Sexual Assault, Domestic Violence, Dating Violence, and Stalking.)
2. Conduct and Discipline Committee Meeting:

- a. The student shall be furnished with a written statement of the allegations against him/her along with a notice of the time and place of the Conduct and Discipline Committee meeting.
- b. The student shall be given (at the discretion of the Conduct and Discipline Committee Chair) reasonable opportunity to introduce information by way of written and/or oral statements from witnesses and otherwise in his/her own defense. **Outside parties may not represent or be present at a Conduct and Discipline Committee meeting.** The Conduct and Discipline Committee shall weigh the information, reach a decision, and determine and impose the appropriate sanction, if any. The committee's action shall not be subject to any further appeal in the normal sense except as described in Section V, Item 4.

* * *

4. Conduct and Discipline Committee Meeting Appellate procedure:
 - a. A student who has been found responsible for misconduct of a non-academic nature and who is subsequently suspended or dismissed may file a written application for permission to appeal to the President. Such application shall identify the matter and contain a concise statement of the reason for the appeal (e.g., a claim that the finding of responsibility is contrary to the manifest weight of the information presented at the hearing; that the sanction assessed exceeds that prescribed for the violation for which the student was cited; other substantial errors in the original proceeding) and shall be filed within 72 hours from the pronouncement of the decision.

All Defendants affirmatively allege the procedures referenced in paragraphs 104 and 105 of the Complaint are inapplicable to the incident alleged herein as they only pertain to matters heard by the Conduct and Discipline Committee; affirmatively allege the terms of the Student Handbook speak for themselves; and deny the remaining allegations contained in paragraph 105 of the Complaint.

106. With regard to the allegations contained in paragraph 106 of the Complaint, All Defendants admit that Article X *Non-Discrimination, Anti-Harassment, and Hostile Campus Environment Policy* states: “[A]ny complaint determined to be intentionally dishonest or made

maliciously without regard to the truth shall be considered misconduct and will subject such complainant to disciplinary action;” affirmatively allege the terms of the Student Handbook and its *Non-Discrimination, Anti-Harassment, and Hostile Campus Environment Policy* speak for themselves; and deny the remaining allegations contained in paragraph 106 of the Complaint.

107. All Defendants admit the allegations contained in paragraph 107 of the Complaint; and affirmatively allege the terms of the Student Handbook and its *Non-Discrimination, Anti-Harassment, and Hostile Campus Environment Policy* speak for themselves.

108. Individual Defendants and University deny the allegations contained in paragraph 108 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 108 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

109. All Defendants deny the allegations contained in paragraph 109 of the Complaint.

110. Individual Defendants and University deny the allegations contained in paragraph 110 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 110 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

111. With regard to the allegations contained in paragraph 111 of the Complaint, Individual Defendants and University admit that there were persons other than M.K. and Plaintiffs with information relevant to the sexual assault; further admit Q.J. was interviewed prior to Plaintiffs’ expulsion from the University and Z.W. was interviewed subsequent to Plaintiffs’ expulsion from the University; further admit R.J. was not interviewed; and deny the remaining allegations contained in paragraph 111 of the Complaint. Board of Trustees, Treece

and Miller deny any allegations attributed to them as University Defendants; and deny the remaining allegations contained in paragraph 111 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

112. With regard to the allegations contained in paragraph 112 of the Complaint, Individual Defendants and University admit that the University interviewed Caucasian women, some of whom were present at 438 Howard Street on the evening in question and some of whom were not present; and deny the remaining allegations contained in paragraph 112 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 112 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

113. All Defendants deny the allegations contained in paragraph 113 of the Complaint.

114. All Defendants deny the allegations contained in paragraph 114 of the Complaint.

115. All Defendants deny the allegations contained in paragraph 115 of the Complaint.

116. All Defendants deny the allegations contained in paragraph 116 of the Complaint.

117. With regard to the allegations contained in paragraph 117 of the Complaint, Individual Defendants and University admit that no audio recordings were taken or maintained by the University; further admit generally each person was interviewed by two persons, and each interviewer took his/her own handwritten notes; further admit, generally one of the interviewers condensed the handwritten notes into a summary statement and discarded the handwritten notes; further admit, these summary statements are the primary written evidence maintained memorializing the interviews with Plaintiffs and other persons with whom the University spoke; and deny the remaining allegations contained in paragraph 117 of the Complaint. Board of Trustees, Treece and Miller deny any allegations attributed to them as University Defendants;

and deny the remaining allegations contained in paragraph 117 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

118. Individual Defendants and University admit the allegations contained in paragraph 118 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 118 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

119. Individual Defendants and University deny the allegations contained in paragraph 119 of the Complaint. Board of Trustees, Treece and Miller deny any allegations attributed to them as University Defendants; and deny the remaining allegations contained in paragraph 119 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

120. With regard to the allegations contained in paragraph 120 of the Complaint, Individual Defendants and University admit that during their interviews Plaintiffs were not advised collectively or respectively that they were entitled to the opportunity to be accompanied to the interviews or other related meetings by an advisor of their choice nor that such advisors would not be able to participate in the meetings or interviews but were available to provide support to them; affirmatively allege the University's policies require students to accept responsibility for becoming familiar with University published statements; and deny the remaining allegations contained in paragraph 120 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 120 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

121. Individual Defendants and University deny the allegations contained in paragraph 121 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in

paragraph 121 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

122. With regard to the allegations contained in paragraph 122 of the Complaint, Individual Defendants and University admit that during Browning's interview he indicated certain video of the evening existed; further admit he told his interviewers there were no pictures or videos on his phone; affirmatively allege Browning was told by the interviewers they wanted to see any video and that the video could help his case if it supported his statement; further affirmatively allege Browning denied any video had been taken at 438 Howard Street; further affirmatively allege no video was ever presented to the investigators; and deny the remaining allegations contained in paragraph 122 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 122 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

123. With regard to the allegations contained in paragraph 123 of the Complaint, Individual Defendants and University admit that Plaintiffs were given a "non-contact letter" signed by Bruskotter prohibiting Plaintiffs from any contact with M.K.; and deny the remaining allegations contained in paragraph 123 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 123 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

124. Individual Defendants and University deny the allegations contained in paragraph 124 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 124 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

125. All Defendants deny the allegations contained in paragraph 125 of the Complaint.

126. Individual Defendants and University deny the allegations contained in paragraph 126 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 126 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

127. With regard to the allegations contained in paragraph 127 of the Complaint, Individual Defendants and University admit a hearing was not held; and deny the remaining allegations contained in paragraph 127 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 127 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

128. With regard to the allegations contained in paragraph 128 of the Complaint, Individual Defendants and University admit that the University expelled Plaintiffs on Friday, October 3, 2014; further admit Plaintiffs were each provided correspondence from Bruskotter on October 3, 2014 in the form of “Expulsion Letters” indicating the University had completed its investigation into the sexual assault complaint; further admit that the University found the Complaint factual and the Plaintiffs were responsible for the assault; further admit that Plaintiffs were permanently dismissed as University of Findlay students; further admit that they were required to leave campus with all of their belongings by noon on Saturday, October 4, 2014, and they were prohibited from appearing at any University-affiliated event on-campus or off-campus, and advising of their right to and the timing of an appeal which had to be filed within 72 hours, which was on or about noon on Monday, October 6, 2014; and deny the remaining allegations contained in paragraph 128 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 128 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

129. With regard to the allegations contained in paragraph 129 of the Complaint, Individual Defendants and University admit that consistent with the Expulsion Letters, prior to noon on Saturday, October 4, 2014, Browning and Baity left campus; and deny the remaining allegations contained in paragraph 129 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 129 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

130. With regard to the allegations contained in paragraph 130 of the Complaint, Individual Defendants and University admit that Plaintiffs timely submitted their written appeals in response to the Expulsion Letters as required under the Sexual Assault Policy; and deny the remaining allegations contained in paragraph 130 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 130 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

131. With regard to the allegations contained in paragraph 131 of the Complaint, All Defendants admit that the University issued an email on October 6, 2014 to current students, faculty, staff and current parents advising, in part, that “Based on the findings of the investigation, a preponderance of the evidence indicated that a sexual assault had been committed. As a result, on Friday, October 3, Justin Browning and Alphonso Baity were dismissed from the University of Findlay and advised of the appeal procedure;” and deny the remaining allegations contained in paragraph 131 of the Complaint.

132. With regard to the allegations contained in paragraph 132 of the Complaint, Miller admits that H.S. spoke to her about the email by the University issued on October 6, 2014;

and denies the remaining allegations contained in paragraph 132 of the Complaint. Individual Defendants, University, Board of Trustees and Treece deny the allegations contained in paragraph 132 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

133. With regard to the allegations contained in paragraph 133 of the Complaint, Individual Defendants and University admit that M.K.'s dorm mates were not questioned prior to the decision to expel the Plaintiffs; further admit Miller did not tell the University about any statements made by M.K.; and deny the remaining allegations contained in paragraph 133 of the Complaint. Miller admits she did not tell the University about any statements made by M.K. the morning after the alleged incident; and denies the remaining allegations contained in paragraph 133 of the Complaint. Treece and Board of Trustees deny any allegations attributed to them as University Defendants; and deny the remaining allegations contained in paragraph 133 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

134. With regard to the allegations contained in paragraph 134 of the Complaint, All Defendants admit that on October 6, 2014 and thereafter news stories were published specifically identifying Plaintiffs by name and photographs and reporting that Plaintiffs had been expelled from the University for sexually assaulting a University of Findlay student; and deny the remaining allegations contained in paragraph 134 of the Complaint.

135. With regard to the allegations contained in paragraph 135 of the Complaint, University, Board of Trustees and Individual Defendants admit that Emsweller considered and denied the appeals filed by Browning and Baity in separate letters dated October 10, 2014; and deny the remaining allegations contained in paragraph 135 of the Complaint. Treece and Miller

deny the allegations contained in paragraph 135 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

136. With regard to the allegations contained in paragraph 136 of the Complaint, All Defendants state the University's policies and procedures speak for themselves; and deny the remaining allegations contained in paragraph 136 of the Complaint.

137. With regard to the allegations contained in paragraph 137 of the Complaint, Individual Defendants and University admit that on or about October 11, 2014, J.F. wrote an email to Bruskotter; and deny the remaining allegations contained in paragraph 137 of the Complaint. Board of Trustees, Treece and Miller deny any allegations attributed to them as University Defendants; and deny the remaining allegations contained in paragraph 137 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

138. With regard to the allegations contained in paragraph 138 of the Complaint, Individual Defendants and University admit that on or about October 13, 2014, Bruskotter interviewed J.F.; and deny the remaining allegations contained in paragraph 138 of the Complaint. Board of Trustees, Treece and Miller deny any allegations attributed to them as University Defendants; and deny the remaining allegations contained in paragraph 138 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

139. With regard to the allegations contained in paragraph 139 of the Complaint, Individual Defendants and University admit that on or about October 13, 2014, the University interviewed Z.W.; further admit the University knew that Z.W. was a witness to some of the events of the night in question prior to its decision to expel Plaintiffs or to deny Plaintiffs' appeal; further admit Z.W. indicated that video was taken both at the Mascot Party and at the house located at 438 Howard Street; and deny the remaining allegations contained in paragraph

139 of the Complaint. Board of Trustees, Treece and Miller deny any allegations attributed to them as University Defendants; and deny the remaining allegations contained in paragraph 139 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

140. With regard to the allegations contained in paragraph 140 of the Complaint, All Defendants admit, upon information and belief, M.K. filed a complaint with the Findlay Police Department and an investigation was conducted; and deny the remaining allegations contained in paragraph 140 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

141. All Defendants deny the allegations contained in paragraph 141 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

142. All Defendants deny the allegations contained in paragraph 142 of the Complaint.

143. All Defendants deny the allegations contained in paragraph 143 of the Complaint.

144. All Defendants deny the allegations contained in paragraph 144 of the Complaint.

Answer to Count I
Racial Discrimination in Violation of Title VI of the Civil Rights Act of 1964

145. All Defendants deny the allegations contained in paragraph 145 of the Complaint except as hereinbefore otherwise answered.

146. With regard to the allegations contained in paragraphs 146-163 of the Complaint, as they pertain to the Board of Trustees, Emsweller, Laurita, Bruskotter, Walter, Walerius, Treece and Miller, they are the subject of a Motion to Dismiss and no response is required on their behalf. However, to the extent a response is required on their behalf, they adopt the responses below. Further answering, All Defendants admit in response to the allegations in

paragraph 146 of the Complaint that Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, *et seq.*, provides in pertinent part that

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program of activity receiving Federal financial assistance.

All Defendants deny the remaining allegations contained in paragraph 146 of the Complaint.

147. The allegations contained in paragraph 147 of the Complaint call for a legal conclusion and no response is required.

148. All Defendants admit the allegations contained in paragraph 148 of the Complaint.

149. All Defendants deny the allegations contained in paragraph 149 of the Complaint.

150. All Defendants admit the allegations contained in paragraph 150 of the Complaint.

151. All Defendants admit the allegations contained in paragraph 151 of the Complaint.

152. With regard to the allegations contained in paragraph 152 of the Complaint, All Defendants admit that Emsweller, Laurita, Bruskotter, Walter, Walerius, Treece and Miller are Caucasian; and deny the remaining allegations contained in paragraph 152 of the Complaint.

153. With regard to the allegations contained in paragraph 153 of the Complaint, Individual Defendants and University deny M.K. had the capacity to consent to the sexual activity; deny M.K.'s acts were voluntary; and deny the remaining allegations contained in paragraph 153 of the Complaint. Board of Trustees, Treece and Miller deny the allegations contained in paragraph 153 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

154. All Defendants deny the allegations contained in paragraph 154 of the Complaint.

155. All Defendants deny the allegations contained in paragraph 155 of the Complaint.

156. All Defendants deny the allegations contained in paragraph 156 of the Complaint.

157. All Defendants deny the allegations contained in paragraph 157 of the Complaint.

158. All Defendants deny the allegations contained in paragraph 158 of the Complaint.

159. With regard to the allegations contained in paragraph 159 of the Complaint, All Defendants admit approximately 85% of University students were Caucasian in Fall 2014; and affirmatively state the terms of the Enrollment by Racial/Ethnic Category Fall 2014 speak for themselves. Individual Defendants and University admit in November 2014, an African American male was accused of sexual assault by a Caucasian female and was expelled after an investigation; further admit one sexual assault incident was reported in 2013, involving an African American male and a Caucasian female; and deny the remaining allegations contained in paragraph 159 of the Complaint. Board of Trustees, Treece and Miller deny the remaining allegations contained in paragraph 159 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

160. All Defendants deny the allegations contained in paragraph 160 of the Complaint.

161. All Defendants deny the allegations contained in paragraph 161 of the Complaint.

162. All Defendants deny the allegations contained in paragraph 162 of the Complaint.

163. All Defendants deny the allegations contained in paragraph 163 of the Complaint.

Answer to Count II
Racial Discrimination in Violation of 42 U.S.C. § 1981

164. All Defendants deny the allegations contained in paragraph 164 of the Complaint except as hereinbefore otherwise answered.

165. The allegations contained in paragraphs 165-174 of the Complaint, as they pertain to Treece, are the subject of a Motion to Dismiss and no response is required on his behalf. However, to the extent a response is required on his behalf, he adopts the responses of All Defendants. Further answering, All Defendants admit the allegations contained in paragraph 165 of the Complaint.

166. The allegations contained in paragraph 166 of the Complaint call for a legal conclusion and no response is required.

167. With regard to the allegations contained in paragraph 167 of the Complaint, All Defendants admit the relationship between the University and Plaintiffs is sometimes considered contractual in nature with certain provisions of the University's published policies and procedures supplying the contractual terms between the parties; and deny the remaining allegations contained in paragraph 167 of the Complaint.

168. With regard to the allegations contained in paragraph 168 of the Complaint, All Defendants admit that the University's Non-Discrimination, Anti-Harassment and Hostile Campus Environment Policy provides as follows:

The University strives for an environment in which all individuals are treated with respect and dignity. Each individual has the right to study and work in an atmosphere which promotes equal opportunities and prohibits discriminatory practices and harassment based upon age, race, ethnicity, national origin, color, religion, gender, handicap, sexual orientation, genetic information, veteran or military status and physical or mental disabilities.

All Defendants deny the remaining allegations contained in paragraph 168 of the Complaint.

169. All Defendants admit the allegations contained in paragraph 169 of the Complaint.

170. All Defendants deny the allegations contained in paragraph 170 of the Complaint.

171. All Defendants deny the allegations contained in paragraph 171 of the Complaint.

172. All Defendants deny the allegations contained in paragraph 172 of the Complaint.

173. All Defendants deny the allegations contained in paragraph 173 of the Complaint.

174. All Defendants deny the allegations contained in paragraph 174 of the Complaint.

**Answer to Count III
Gender Discrimination in Violation of Title IX of the Education Amendments of 1972**

175. All Defendants deny the allegations contained in paragraph 175 of the Complaint except as hereinbefore otherwise answered.

176. With regard to the allegations contained in paragraphs 176-196 of the Complaint, as they pertain to the Board of Trustees, Emsweller, Laurita, Bruskotter, Walter, Walerius, Treece and Miller, they are the subject of a Motion to Dismiss and no response is required on their behalf. However, to the extent a response is required on their behalf, they adopt the responses below. Further answering, All Defendants state the allegations contained in paragraph 176 of the Complaint call for a legal conclusion and no response is required.

177. With regard to the allegations contained in paragraph 177 of the Complaint, All Defendants admit that Catherine E. Lhamon, Assistant Secretary for Civil Rights, U.S. Department of Education, Office for Civil Rights, authored a document on April 29, 2014 commonly referred to as “Questions and Answers on Title IX and Sexual Violence” which provides, in part, as follows:

C-5 Under Title IX, what elements should be included in a school’s procedure for responding to complaints of sexual violence?

Answer: Title IX requires that a school adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints of sex discrimination, including sexual violence. In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

* * *

- (3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence; ...

All Defendants further admit the document goes on to state:

The rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights.

All Defendants affirmatively allege the terms of the document speak for themselves; and deny the remaining allegations contained in paragraph 177 of the Complaint.

178. With regard to the allegations contained in paragraph 178 of the Complaint, All Defendants admit that the Dear Colleague Letter, when describing the role of the Title IX Coordinator, states as follows:

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate.

All Defendants affirmatively allege the terms of the Dear Colleague Letter speak for themselves; and deny the remaining allegations contained in paragraph 178 of the Complaint.

179. With regard to the allegations contained in paragraph 179 of the Complaint, All Defendants admit that the Dear Colleague Letter, when addressing designated and reasonably prompt timeframes with regard to a school's grievance procedures states:

Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint.

All Defendants affirmatively allege the terms of the Dear Colleague speak for themselves; and deny the remaining allegations contained in paragraph 179 of the Complaint.

180. All Defendants deny the allegations contained in paragraph 180 of the Complaint.

181. All Defendants deny the allegations contained in paragraph 181 of the Complaint.

182. All Defendants deny the allegations contained in paragraph 182 of the Complaint.
183. All Defendants deny the allegations contained in paragraph 183 of the Complaint.
184. All Defendants deny the allegations contained in paragraph 184 of the Complaint.
185. All Defendants deny the allegations contained in paragraph 185 of the Complaint.
186. All Defendants deny the allegations contained in paragraph 186 of the Complaint.
187. All Defendants deny the allegations contained in paragraph 187 of the Complaint.
188. All Defendants deny the allegations contained in paragraph 188 of the Complaint.
189. All Defendants deny the allegations contained in paragraph 189 of the Complaint.
190. All Defendants deny the allegations contained in paragraph 190 of the Complaint.
191. All Defendants deny the allegations contained in paragraph 191 of the Complaint.
192. All Defendants deny the allegations contained in paragraph 192 of the Complaint.
193. All Defendants deny the allegations contained in paragraph 193 of the Complaint.
194. All Defendants deny the allegations contained in paragraph 194 of the Complaint.
195. All Defendants deny the allegations contained in paragraph 195 of the Complaint.
196. All Defendants deny the allegations contained in paragraph 196 of the Complaint.

**Answer to Count IV
Violation of Due Process and Equal Protection - 42 U.S.C. § 1983**

197. All Defendants deny the allegations contained in paragraph 197 of the Complaint except as hereinbefore otherwise answered.

198. The allegations contained in paragraphs 198-213 of the Complaint, as they pertain to Treece, are the subject of a Motion to Dismiss and no response is required on his behalf. However, to the extent a response is required on his behalf, he adopts the responses of All Defendants. Further answering, All Defendants admit the allegations contained in paragraph 198 of the Complaint.

199. All Defendants deny the allegations contained in paragraph 199 of the Complaint.

200. All Defendants deny the allegations contained in paragraph 200 of the Complaint.

201. All Defendants deny the allegations contained in paragraph 201 of the Complaint.

202. All Defendants admit the allegations contained in paragraph 202 of the Complaint.

203. All Defendants deny the allegations contained in paragraph 203 of the Complaint.

204. All Defendants deny the allegations contained in paragraph 204 of the Complaint.

205. All Defendants deny the allegations contained in paragraph 205 of the Complaint.

206. All Defendants deny the allegations contained in paragraph 206 of the Complaint.

207. All Defendants deny the allegations contained in paragraph 207 of the Complaint.

208. All Defendants deny the allegations contained in paragraph 208 of the Complaint.

209. All Defendants deny the allegations contained in paragraph 209 of the Complaint.

210. All Defendants deny the allegations contained in paragraph 210 of the Complaint.

211. All Defendants deny the allegations contained in paragraph 211 of the Complaint.

212. All Defendants deny the allegations contained in paragraph 212 of the Complaint.

213. All Defendants deny the allegations contained in paragraph 213 of the Complaint.

**Answer to Count V
Breach of Contract**

214. All Defendants deny the allegations contained in paragraph 214 of the Complaint except as hereinbefore otherwise answered.

215. The allegations contained in paragraphs 215-222 of the Complaint, as they pertain to the Board of Trustees, Emsweller, Laurita, Bruskotter, Walter, Walerius, Treece and Miller, are the subject of a Motion to Dismiss and no response is required on their behalf. However, to the extent a response is required on their behalf, they adopt the responses below. Further

answering, with regard to the allegations contained in paragraph 215 of the Complaint, University, Board of Trustees, Individual Defendants and Treece admit that certain of the University's policies and procedures may act to create a contract between the University and Plaintiffs; and deny the remaining allegations contained in paragraph 215 of the Complaint. Miller denies the allegations contained in paragraph 215 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

216. All Defendants deny the allegations contained in paragraph 216 of the Complaint.

217. All Defendants deny the allegations contained in paragraph 217 of the Complaint.

218. All Defendants deny the allegations contained in paragraph 218 of the Complaint.

219. All Defendants deny the allegations contained in paragraph 219 of the Complaint.

220. All Defendants deny the allegations contained in paragraph 220 of the Complaint.

221. All Defendants deny the allegations contained in paragraph 221 of the Complaint.

222. All Defendants deny the allegations contained in paragraph 222 of the Complaint.

**Answer to Count VI
Promissory Estoppel**

223. All Defendants deny the allegations contained in paragraph 223 of the Complaint except as hereinbefore otherwise answered.

224. The allegations contained in paragraphs 224-227 of the Complaint, as they pertain to Board of Trustees, Emsweller, Laurita, Bruskotter, Walter, Walerius, Treece and Miller, are the subject of a Motion to Dismiss and no response is required on their behalf. However, to the extent a response is required on their behalf, they adopt the responses below. Further answering, with regard to the allegations contained in paragraph 224 of the Complaint, University, Board of Trustees, Individual Defendants and Treece admit that the University agreed to follow its policies and procedures contained in its institutional documents provided students, including

Plaintiffs; and deny the remaining allegations contained in paragraph 224 of the Complaint. Miller denies the allegations contained in paragraph 224 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

225. All Defendants deny the allegations contained in paragraph 225 of the Complaint.

226. All Defendants deny the allegations contained in paragraph 226 of the Complaint.

227. All Defendants deny the allegations contained in paragraph 227 of the Complaint.

**Answer to Count VII
Negligence and Negligent Training**

228. All Defendants deny the allegations contained in paragraph 228 of the Complaint except as hereinbefore otherwise answered.

229. With regard to the allegations contained in paragraphs 229-234 of the Complaint, as they pertain to Treece, they are the subject of a Motion to Dismiss and no response is required on his behalf. However, to the extent a response is required on his behalf, he adopts the responses of All Defendants. Further answering, All Defendants deny the allegations contained in paragraph 229 of the Complaint.

230. All Defendants deny the allegations contained in paragraph 230 of the Complaint.

231. All Defendants deny the allegations contained in paragraph 231 of the Complaint.

232. All Defendants deny the allegations contained in paragraph 232 of the Complaint.

233. All Defendants deny the allegations contained in paragraph 233 of the Complaint.

234. All Defendants deny the allegations contained in paragraph 234 of the Complaint.

**Answer to Count VIII
Defamation *Per Se***

235. All Defendants deny the allegations contained in paragraph 235 of the Complaint except as hereinbefore otherwise answered.

236. The allegations contained in paragraphs 236-245 of the Complaint, as they pertain to Treece, are the subject of a Motion to Dismiss and no response is required on his behalf. However, to the extent a response is required on his behalf, he adopts the responses of All Defendants. Further answering, with regard to the allegations contained in paragraph 236 of the Complaint, All Defendants admit that the statements made in the email of October 6, 2014 were made to others, including current University students, faculty and parents; and deny the remaining allegations contained in paragraph 236 of the Complaint.

237. All Defendants deny the allegations contained in paragraph 237 of the Complaint.

238. All Defendants deny the allegations contained in paragraph 238 of the Complaint.

239. The allegations contained in paragraph 239 of the Complaint do not state a claim or an element of a claim against All Defendants, and no response is required on their behalf. However, to the extent a response is required on their behalf, All Defendants deny the allegations contained in paragraph 239 of the Complaint.

240. The allegations contained in paragraph 240 of the Complaint do not state a claim or an element of a claim against All Defendants, and no response is required on their behalf. However, to the extent a response is required on their behalf, All Defendants deny the allegations contained in paragraph 240 of the Complaint.

241. All Defendants deny the allegations contained in paragraph 241 of the Complaint.

242. All Defendants deny the allegations contained in paragraph 242 of the Complaint.

243. All Defendants deny the allegations contained in paragraph 243 of the Complaint.

244. All Defendants deny the allegations contained in paragraph 244 of the Complaint.

245. All Defendants deny the allegations contained in paragraph 245 of the Complaint.

Answer to Count IX
Intentional Infliction of Emotional Distress

246. All Defendants deny the allegations contained in paragraph 246 of the Complaint except as hereinbefore otherwise answered.

247. The allegations contained in paragraphs 247-253 of the Complaint, as they pertain to Treece, are the subject of a Motion to Dismiss and no response is required on his behalf. However, to the extent a response is required on his behalf, he adopts the responses of All Defendants. Further answering, All Defendants deny the allegations contained in paragraph 247 of the Complaint.

248. All Defendants deny the allegations contained in paragraph 248 of the Complaint.

249. All Defendants deny the allegations contained in paragraph 249 of the Complaint.

250. All Defendants deny the allegations contained in paragraph 250 of the Complaint.

251. All Defendants deny the allegations contained in paragraph 251 of the Complaint.

252. All Defendants deny the allegations contained in paragraph 252 of the Complaint.

253. All Defendants deny the allegations contained in paragraph 253 of the Complaint.

Answer to Count X
Negligent Infliction of Emotional Distress

254. All Defendants deny the allegations contained in paragraph 254 of the Complaint except as hereinbefore otherwise answered.

255. The allegations contained in paragraphs 255-261 of the Complaint, as they pertain to All Defendants, are the subject of a Motion to Dismiss and no response is required on their behalf. However, to the extent a response is required on their behalf, they adopt the responses below. Further answering, All Defendants deny the allegations contained in paragraph 255 of the Complaint.

256. All Defendants deny the allegations contained in paragraph 256 of the Complaint.

257. All Defendants deny the allegations contained in paragraph 257 of the Complaint.

258. All Defendants deny the allegations contained in paragraph 258 of the Complaint.

259. All Defendants deny the allegations contained in paragraph 259 of the Complaint.

260. All Defendants deny the allegations contained in paragraph 260 of the Complaint.

261. All Defendants deny the allegations contained in paragraph 261 of the Complaint.

**Answer to Count XI
Declaratory Judgment**

262. All Defendants deny the allegations contained in paragraph 262 of the Complaint except as hereinbefore otherwise answered.

263. The allegations contained in paragraphs 263-266 of the Complaint, as they pertain to Board of Trustees, Emsweller, Laurita, Bruskotter, Walter, Walerius, Treece and Miller, are the subject of a Motion to Dismiss and no response is required on their behalf. However, to the extent a response is required on their behalf, they adopt the responses below. Further answering, All Defendants deny the allegations contained in paragraph 263 of the Complaint.

264. All Defendants deny the allegations contained in paragraph 264 of the Complaint.

265. All Defendants deny the allegations contained in paragraph 265 of the Complaint.

266. All Defendants deny the allegations contained in paragraph 266 of the Complaint.

SECOND DEFENSE

267. Plaintiffs' Complaint fails to state a claim upon which relief can be granted and should therefore be dismissed.

THIRD DEFENSE

268. Plaintiff's claims are barred by the applicable statute of limitations.

FOURTH DEFENSE

269. The alleged injuries suffered by Plaintiffs are the result of Plaintiffs' own negligence and/or other persons for whom Defendants are not responsible.

FIFTH DEFENSE

270. The University of Findlay's policies and procedures were and are fundamentally fair and fairly applied in all materials respects.

SIXTH DEFENSE

271. The University of Findlay's policies and procedures, as applied to Plaintiffs, were not arbitrary, nor capricious, nor unreasonable, nor unconscionable, nor was there an abuse of discretion.

SEVENTH DEFENSE

272. Plaintiffs' claims are barred by their own misconduct and/or assumption of the risk.

EIGHTH DEFENSE

273. Plaintiffs' claims are barred by the doctrines of waiver, laches, and/or estoppel.

NINTH DEFENSE

274. Plaintiffs' claims are barred for lack of, want of and/or failure of consideration.

TENTH DEFENSE

275. Plaintiffs' claims fail for insufficient process and/or insufficient service of process.

ELEVENTH DEFENSE

276. The statements complained of are true and therefore not libelous.

TWELFTH DEFENSE

277. Defendants acted under a conditional and/or qualified privilege in making the statements complained of.

THIRTEENTH DEFENSE

278. Certain statements complained of are protected opinions, which are privileged under the doctrine that freedom of expression is guaranteed by the First Amendment to the United States Constitution, as well as the Constitution of the State of Ohio.

FOURTEENTH DEFENSE

279. Any communications of Defendants were made in good faith on a subject in which they had an interest and/or in reference to which they had a duty, and were privileged.

FIFTEENTH DEFENSE

280. Plaintiffs breached the terms of contracts existing between Defendants and Plaintiffs.

SIXTEENTH DEFENSE

281. Any alleged deviation from the University's policies and procedures was not a clear abuse of discretion.

SEVENTEENTH DEFENSE

282. Plaintiffs have failed to adequately plead a claim for attorney's fees.

EIGHTEENTH DEFENSE

283. Plaintiffs have failed to adequately plead a claim for punitive damages.

NINETEENTH DEFENSE

284. Plaintiffs have failed to mitigate their damages.

TWENTIETH DEFENSE

285. Plaintiffs' claims may be barred or reduced under the after-acquired evidence doctrine.

TWENTY-FIRST DEFENSE

286. Defendants' acts and/or omissions with respect to Plaintiffs were based on legitimate, non-discriminatory reasons and were not a pretext for any unlawful discrimination or retaliation against Plaintiffs.

TWENTY-SECOND DEFENSE

287. Defendants' conduct with respect to Plaintiffs was not malicious or reckless, and therefore Plaintiffs are not entitled to punitive damages.

TWENTY-THIRD DEFENSE

288. Plaintiffs' alleged damages and remedies, if any, are subject to and limited by the provisions of Ohio and federal law, including the cap on compensatory and punitive damages and/or the exclusion of such damages.

TWENTY-FOURTH DEFENSE

289. Plaintiffs' claims for punitive damages is unconstitutional pursuant to the U.S. and Ohio Constitutions.

TWENTY-FIFTH DEFENSE

290. Plaintiffs' claims under Title VI and Title IX against the Board of Trustees, Individual Defendants, Treece and Miller based on individual liability are barred.

TWENTY-SIXTH DEFENSE

291. There is no personal jurisdiction as to Defendant Board of Trustees.

TWENTY-SEVENTH DEFENSE

292. Defendants did not intentionally discriminate against either Plaintiff on the basis of race or gender, and were not motivated by a racial or gender bias.

TWENTY-EIGHTH DEFENSE

293. At all times relevant to this action, Defendants have acted in good faith toward Plaintiffs and in compliance with all applicable laws.

TWENTY-NINTH DEFENSE

294. Plaintiffs cannot establish reasonable and/or justifiable reliance.

THIRTIETH DEFENSE

295. Plaintiffs' Complaint fails to state a claim upon which declaratory judgment may be granted.

THIRTY-FIRST DEFENSE

296. Plaintiffs are not entitled to due process or equal protection of the laws.

THIRTY-SECOND DEFENSE

297. Defendants are not a governmental entity or acting under the color of State law.

THIRTY-THIRD DEFENSE

298. Plaintiffs' Complaint fails to state a claim against Emsweller, Laurita, Bruskotter, Walter, Walerius, Treece and Miller individually.

THIRTY-FOURTH DEFENSE

299. Defendants hereby give notice they intend to rely upon and utilize any other affirmative defenses which become apparent or available during the course of discovery and hereby reserve the right to amend their Answer to assert such defenses or to withdraw certain defenses.

WHEREFORE, having fully answered, Defendants pray that Plaintiffs' Complaint be dismissed with prejudice, that they be awarded their costs and expenses incurred herein, including reasonable attorney's fees, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

KOHNEN & PATTON, LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 22nd day of February 2016, electronically through the Court's ECF system upon the following:

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