

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NATALIE PLUMMER,
1620 Hawthorne, Unit 1
Houston TX 77006

and

RYAN MCCONNELL,
1620 Hawthorne, Unit 1
Houston TX 77006

Plaintiffs,

v.

UNIVERSITY OF HOUSTON,
4800 Calhoun Rd.
Houston, TX 77004

RICHARD BAKER,
153 Student Service Ctr 2
Houston, TX 77204

and

RICHARD WALKER,
114 E Cullen Building
Houston, TX 77204

Defendants

Case No. 4:14-cv-02959

Judge:

FIRST AMENDED VERIFIED
COMPLAINT FOR DECLARATORY
JUDGMENT, VIOLATION OF CIVIL
RIGHTS, AND TITLE IX

AND

JURY DEMAND

INTRODUCTION

1. Plaintiffs Natalie Plummer and Ryan McConnell bring this action for a declaratory judgment, violation of 42 U.S.C. §1983, violation of Title IX, and injunctive relief
2. This case arises out of the decision of the University of Houston (“UH”) to impose disciplinary sanctions against Plummer and McConnell in violation of the Plaintiff’s Constitutional and federal statutory rights.

PARTIES

3. Plaintiff Natalie Plummer (“Plummer”) is a student at the University of Houston.
 - a. Plummer is a Texas resident with a residence at 1620 Hawthorne, Unit 1, Houston TX 77006. Plummer has completed two years of coursework at UH.
 - b. Plummer has a history of political activism. In 2012 she received media attention after she was arrested for attempting to protest police actions. She was jailed for 12 hours before she was released. She has subsequently appeared at protests against police brutality.
4. Plaintiff Ryan McConnell (“McConnell”) is a former student at the University of Houston.
 - a. McConnell is a Texas resident with a residence at 1620 Hawthorne, Unit 1, Houston TX 77006. McConnell has completed his coursework and graduated from UH.
 - b. McConnell plans to pursue certification as a CPA.
5. Defendant University of Houston (“UH”) is a public university.
 - a. UH Was Founded In 1927. IN 1961, the Texas Legislature enacted legislation enabling the university to enter the state system in 1963. In 1977, the Texas Legislature established the University of Houston System. The organization and control of the University of Houston is vested in the Board of Regents of the University of Houston System.

- b. UH has a principal place of business at 4800 Calhoun Rd., Houston, TX 77004.
6. Defendant Richard Baker (“Baker”), is the Assistant Vice Chancellor and Voce President of the UH Office of Equal Opportunity Services (“EOS”). He has a principal place of business at 153 Student Service Ctr 2, Houston, TX 77204.
 - a. Defendant Baker is sued in his official capacity for declaratory and injunctive relief, and in his personal capacity for damages.
 - b. On information and belief, Baker is acting under the policies, procedures, and practices of UH.
 7. Defendant Richard Walker (“Walker”) is the UH Vice President and Vice Chancellor for Student Affairs and Enrollment Services.
 8. Baker and Walker have responsibility for the administering and operating the UH Sexual Misconduct Policy.

JURISDICTION AND VENUE

9. This case arises, in part, under the United States Constitution and 42 U.S.C. §§ 1983 and 1988. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343.
10. The declaratory and injunctive relief sought in this matter is authorized by 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983, and Federal Rules of Civil Procedure 57 and 65.
11. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. § 1391. The defendants are residents of the State in which this district is located and a substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTS

A. The UH Sexual Misconduct Policy

12. After years of criticism for being too lax on campus sexual assault, colleges and universities are relying on Title IX to crackdown on alleged perpetrators. Unfortunately, this crackdown has gone too far.

- a. Problems include: accused students effectively are presumed guilty; instead of requiring accusers to prove they were assaulted, the accused students have to prove they had consent; and schools apply the very lowest standard of proof — preponderance of the evidence.
- b. Administrators have been trained that false accusations are rare and that due process will only serve to harm alleged victims.

13. On April 11, 2011, the U.S. Education Department's Office of Civil Rights sent a “Dear Colleague” to colleges and universities.

- a. The Dear Colleague Letter indicated that, in order to comply with Title IX, colleges and Universities must have transparent, prompt procedures to investigate and resolve complaints of sexual misconduct.
- b. Most notably, the Dear Colleague Letter required schools to adopt a relatively low burden of proof—“more likely than not”—in cases involving sexual misconduct, including assault. Several colleges had been using “clear and convincing,” and some, like Stanford, applied the criminal standard, “beyond a reasonable doubt.”
- c. The Dear Colleague Letter states that schools should “minimize the burden on the complainant,” transferring alleged perpetrators, if necessary, away from shared courses or housing.

- d. The Dear Colleague Letter, while not completely ignoring due process concerns, suggested that schools should focus more on victim advocacy.
 - e. The Dear Colleague Letter states that schools should give both parties the right to appeal a decision, which amounts to double jeopardy for an accused student.
 - f. After the Dear Colleague Letter was published, many schools changed their sexual assault and sexual harassment policies and procedures.
14. The Federal Government, through the Department of Education, has been pressuring colleges and universities to aggressively pursue investigations of sexual assaults on campuses.
- a. The Dear Colleague letter was a step in the increased enforcement of Title IX on college and universities. NPR described the Dear Colleague Letter as the government's "first warning shot." Source: *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014.
 - b. In May 2014, the federal Department of Education disclosed for the first time the names of colleges — 55 in all, including Hobart and William Smith — under investigation for possibly violating federal rules aimed at stopping sexual harassment.
 - c. The Federal government is investigating at least 74 colleges for possible Title IX violations. Source: <http://media.npr.org/assets/news/2014/08/investigations.pdf>. The Department has negotiated settlements with many schools.
 - d. In February 2014, Catherine E. Lhamon, the assistant secretary of education who heads the department's Office for Civil Rights, told college officials attending a conference at the University of Virginia that schools need to make "radical" change. According to the Chronicle of Higher Education, college presidents suggested afterward that there were "crisp marching orders from Washington." Source: *Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases*, Chronicle of Higher Education, February 11, 2014.

15. Schools are scared of being investigated or sanctioned by the Department of Education.

- a. The Federal government has created a significant amount of pressure on colleges and universities to treat all those accused of sexual misconduct with a presumption of guilt. The Chronicle of Higher Education noted that “Colleges face increasing pressure from survivors and the federal government to improve the campus climate.” Source: *Presumed Guilty: College men accused of rape say the scales are tipped against them*, Chronicle of Higher Education, September 1, 2014. In the same article, the Chronicle noted that different standards were applied to men and women: “Under current interpretations of colleges’ legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically able to initiate sex, and therefore responsible for gaining the woman’s consent.”
- b. Lhamon told a national conference at Dartmouth in the summer of 2014, “I will go to enforcement, and I am prepared to withhold federal funds.” Source: *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014. In that same article, Anne Neal of the American Council of Trustees and Alumni was quoted as follows: “There is a certain hysteria in the air on this topic, . . . It’s really a surreal situation, I think.” She explained that schools are running so scared of violating the civil rights of alleged victims that they end up violating the due process rights of defendants instead.
- c. Robert Dana, dean of students at the University of Maine, told NPR that some rush to judgment is inevitable. “I expect that that can’t help but be true,” he says. “Colleges and universities are getting very jittery about it.” Source: *Some Accused Of Sexual Assault On Campus Say System Works Against Them*, NPR, September 3, 2014.

16. On November 29, 2012, UH adopted the “Sexual Misconduct Policy.” The Sexual Misconduct Policy was revised on August 7, 2013. A copy of the Sexual Misconduct Policy is attached as Exhibit A.
 - a. On information and belief, the Sexual Misconduct Policy was adopted in direct response to the pressure from the Department of Education.
 - b. The stated purpose of the Sexual Misconduct Policy is to “eradicate Sexual Misconduct through education, training, clear policies and serious consequences for violations . . .”
17. The Sexual Misconduct Policy defines “sexual misconduct,” as a form of sex discrimination prohibited by Title IX. The Sexual Misconduct Policy “provides the exclusive mechanism for handling the non-criminal investigation of any alleged Sexual Misconduct, the determination of whether this Policy was violated, and the appeal of Equal Opportunity Services’ (EOS) finding as to violation/no violation of this Policy.”
18. Sexual Misconduct Policy promises to provide those accused of “a prompt, fair, and impartial investigation and resolution.”
 - a. “Sexual activity” under the Sexual Misconduct Policy is broadly defined to include “any intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, . . .”
 - b. “Sexual Misconduct” is defined as “a broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature.”
 - c. The Sexual Misconduct Policy provides that consent “is an informed and freely and affirmatively communicated willingness to participate in a particular sexual activity.”
 - i. According to the Sexual Misconduct Policy, consent can be expressed either by words or by clear and unambiguous actions, as long as those words or actions

create mutually understandable permission regarding the conditions of each instance of sexual activity.”

- ii. According to the Sexual Misconduct Policy, a person may be unable to consent when the person is mentally or physically incapacitated due to the influence of drugs, alcohol, or medication and as a result is rendered temporarily incapable of understanding, appraising or controlling his or her conduct.
 - d. Sexual assault is defined as “any form of non-consensual sexual activity.” The Sexual Misconduct Policy further provides that “Sexual assault represents a continuum of conduct from forcible rape to non-physical forms of pressure that compel individuals to engage in sexual activity against their will.” The Sexual Misconduct Policy references Texas law.
19. The Sexual Misconduct Policy requires the Title IX coordinator to undertake two distinct, and, often contradictory, roles. This leads to a conflict of interest.
- a. The Title IX coordinator is responsible for conducting an administrative investigation of reports of Sexual Misconduct. In this role, the Title IX Coordinator is expected to act as a fair and impartial finder of facts.
 - b. The Title IX coordinator is also supposed to “provide support . . . on relevant issues.” In this role, the Title IX coordinator is expected to act as an advocate for alleged victims of sexual misconduct.
 - c. Defendant Baker is identified as the Title IX Coordinator for the University of Houston System/UH.
20. The Sexual Misconduct Policy provides that UH will, after the report of an alleged violation, “consider interim accommodations to protect the alleged victim while the incident is

investigated and adjudicated. . .” The Sexual Misconduct Policy also permits UH to pursue alleged violation of the Sexual Misconduct Policy even if no complaint is made or pursued.

- a. Following the filing of a complaint or the receipt of other notice of an alleged violation, the Sexual Misconduct Policy requires UH to begin an investigation.
- b. The investigator is supposed to gather and review “any information it deems pertinent, as well as any information submitted by the Complainant, the Respondent and/or any witnesses.”
- c. The investigator is required to contact the alleged respondent and obtain a response.
- d. The Sexual Misconduct Policy suggests that a finding should be made “as soon as practicable” and that “every effort” should be made to issue a “finding within 60 business days.”

21. Sexual Misconduct Policy provides that UH will apply a preponderance of the evidence standard.

22. If a student is found to have violated the Sexual Misconduct Policy, the EOS will recommend appropriate university action, and any sanction imposed on the student will be determined by and imposed by the Dean of Student’s Office.

23. An appeal of a finding of responsibility under the Sexual Misconduct Policy is made to the “appellate board.” Members of the appellate board receive training on “how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

“ The Sexual Misconduct Policy does not require that members of the appellate board receive training on due process requirements.

- a. A hearing should be held within 30 days of the filing of an appeal.
- b. The appellate board applies the preponderance of evidence standard.

- c. At the hearing the appellate board is able to receive testimony and evidence. The appellate board also receives a copy of the investigative report.
 - d. The appellate board prohibits direct and effective cross examination of witnesses. Instead, a party must request that the Panel chairperson ask questions of the other witnesses, who may modify or decline to ask the question.
 - e. The appellate board is permitted to rely on hearsay, including written statements from witnesses who are not subject to cross examination.
 - f. The Sexual Misconduct Policy provides that the hearing procedure is not intended to be “adversarial” and “will be conducted accordingly.” A student accused of violating the policy may bring an advisor, but the advisor is prohibited from participating in the hearing.
24. A number of provisions of the Sexual Misconduct Policy raise significant due process and self-incrimination concerns, including:
- a. A student is permitted to have an attorney present at the hearing, but the attorney may not actively participate as a spokesperson or vocal advocate in the hearing.
 - b. The hearing board may review written statements without providing the student with the opportunity for cross-examination.
 - c. A student may cross-examine an accuser and adverse witnesses only through the use of written questions. However, the hearing chair has the right to review and determine which written questions will be asked.
 - d. A student does not have ability to compel other students or UH employees to attend the hearing.
25. Both sides are permitted to appeal the decision of the appellate board hearing.

B. The November 19, 2011 Incident

26. On November 19, 2011, McConnell attended a UH event, and then went with some friends to a bar called the “Den.” While at the bar, McConnell met the female UH student at the center of the events of November 19, 2011 (the “Female UH Student”).
 - a. McConnell had never previously met the Female UH Student.
 - b. McConnell and the Female UH student talk and then started kissing.
 - c. McConnell and the Female UH Student were both drinking heavily and were intoxicated.
27. McConnell and the Female UH Student walked back to McConnell’s dorm room. They were accompanied by a friend of the Female UH Student.
 - a. The Female UH Student voluntarily accompanied McConnell.
 - b. McConnell and the Female UH Student intended to have sex in McConnell’s dorm room.
 - c. During the walk, the Female UH Student fell and had to be helped up by McConnell. On information and belief, she suffered some minor injuries – bruises and scrapes – from the fall.
28. After arriving at McConnell dorm room, McConnell and the Female UH Student engaged in consensual sexual activity.
 - a. Neither McConnell nor the Female UH Student are able to remember exactly what occurred. However, the activity left “passion marks” or “hickeys” on McConnell’s neck.
 - b. The Female UH Student has never stated that she did not consent to any sexual activity.
 - c. Both McConnell and the Female UH Student fell asleep, naked, on the floor. The Female UH Student consented to lying naked with McConnell, with her head and hands near McConnell’s lap.
29. Plummer arrived at the apartment and found McConnell and the Female UH Student asleep.

- a. Plummer attempted to wake McConnell and the Female UH Student.
 - b. Plummer videotaped the scene. She did this because she was mad that McConnell was cheating on her and wanted to be able to confront him about his behavior later.
 - c. McConnell attempted to wake the Female UH Student by pushing on her leg.
 - d. McConnell did not attempt to engage in sexual conduct with the Female UH Student.
 - e. Plummer did not assault the Female UH Student.
 - f. The Female UH Student woke and asked Plummer to have sex with her. She stated, “You’re hot” and “I want to sex you.” The Female UH Student followed Plummer into the hallway and continued to solicit sex from Plummer by asking Plummer to “sex her.” Plummer declined and led the Female UH Student away. She then guided the Female UH Student into the hallway and an elevator.
30. Plummer took two videos.
- a. The first video, the “Dorm Room Video,” depicts McConnell and the Female UH Student waking up.
 - b. The second video, the “Elevator Video,” depicts the Female UH Student in the hallway outside of the dorm room.
31. The Female UH Student was found naked and intoxicated in the elevator by other students. The UH Police were contacted.
32. The UH Police conducted an investigation of the November 19, 2011 Incident.
- a. The UH Police, along with the prosecutor, determined that there was insufficient evidence that any criminal conduct occurred.
 - b. At one point, the investigating officer indicated that there was not even sufficient evidence to get a search warrant for McConnell’s DNA because the Female UH Student “has no memory” of the incident.

33. McConnell did not sexually assault Female UH Student.
 - a. The Female UH Student consented to all sexual activity.
 - i. This consent was expressed through her actions during the evening.
 - ii. At no time did the Female UH Student indicate that she did not want to engage in sexual activity with McConnell.
 - iii. After waking, the Female UH Student solicited Plummer to engage in sexual activity.
 - b. None of McConnell's actions after he and the Female UH Student were awakened constitute sexual assault or attempted sexual assault.
34. Plummer posted a picture on Facebook to expose McConnell as a cheating boyfriend. The picture was deleted a few days later.
35. Plummer shared the photograph she took and the videos with a friend because she wanted to expose McConnell as a cheating boyfriend.
36. McConnell and Plummer did not commit any violations of the Sexual Misconduct Policy.
37. On February 26, 2012 – nearly three months after the November 19, 2011 incident – the Female UH Student submitted a complaint to UH. A copy of the Complaint is attached as Exhibit B.
 - a. The Female UH Student stated, “I believe my Title 9 [sic] rights were violated.”
 - b. The Female UH Student stated, “I . . . believe that I was the victim of a sexual assault” on November 19, 2011
 - c. The Female UH Student describes medical examinations that she received following the November 11, 2011 incident. However – significantly – the Female UH Student does not include any description of any conduct by McConnell that could be described as a violation of the Sexual Misconduct Policy. The only actions of McConnell described in

the Complaint is that McConnell guided and held her through the main entrance of the dorm.

d. The Complaint does not contain any allegations against Plummer.

38. On information and belief, Baker traveled to College Station, TX, to obtain the Complaint from the Female UH Student.

39. On information and belief, Baker encouraged the Female UH Student to file the Complaint.

C. The UH Investigation and Hearing Process

40. On March 12, 2012, Baker sent to McConnell a letter notifying him that Baker's office "is reviewing an incident of alleged sexual misconduct that occurred . . . on November 19, 2011." A copy of the letter is attached as Exhibit C.

a. The letter does not indicate when Baker's office first was made aware of the alleged sexual misconduct by McConnell.

b. The UH police was aware of the November 19, 2011 incident shortly after the events.

c. The UH police had identified Ryan McConnell as an individual involved in the November 19, 2011 incident on or before December 6, 2011.

d. The March 12, 2012 Baker letter, unfairly, did not let McConnell know that he is the target of an investigation. Rather, the letter stated that McConnell had "been identified as someone who may have information pertinent to the investigation" and requested a meeting.

41. A witness, Adam Pruett, provided information to Baker on March 22, 2012.

a. According to the investigator's notes, the witness observed McConnell and the Female UH Student kissing during the evening. The witness used the term, "sloppy making out."

- b. Both McConnell and the Female UH Student were described as “stumbling” and “slurring their words.”
42. In March 2012, Plummer and McConnell met with Baker to discuss the matter.
- a. Plummer provided Baker with a copy of the Elevator Video, a photograph, and other information. This was all of the evidence in their possession (a second video, later referred to as the “Dorm Room” video, had been deleted from Plummer’s phone).
 - b. No further action was taken by UH after this meeting. McConnell and Plummer believed that the matter had been resolved.
43. On September 30, 2013 – almost two years after the November 19, 2011 incident – Baker sent a letter to McConnell and Plummer indicating that UH “is serving as a complainant in a formal complaint of misconduct . . .” A copy of the September 30, 2013 letter to McConnell is attached as Exhibit D.
- a. The letter indicates that Baker’s office considered the information provided by Plummer and McConnell in March, 2012.
 - b. The letter indicates that on August 28, 2013, Baker’s Office received additional information from the Harris County Sheriff’s Office, including the Dorm Room Video.
 - i. The letter falsely characterizes the Dorm Room Video, including stating that “the nude male is attempting to make sexual contact with the” Female UH Student.
 - ii. The letter falsely states that Plummer encouraged McConnell “to make sexual contact with” the Female UH Student, and further falsely states that “there is audio footage of what may be a physical assault on” the Female UH Student.
 - iii. The letter indicates that Baker’s office will be conducting an investigation then issue a finding “by a preponderance of the evidence.”
 - iv. The letter stated that McConnell was accused of the following:

1. Sexual assault
2. Taking abusive sexual advantage of another
3. Non-consensual electronic recording and transmitting sexual images without the knowledge or consent of all parties involved; and
4. Engaging in behavior of a sexual nature that was severe and had the purpose or effect of substantially interfering with another's educational performance by creating an intimidating or hostile environment for education, on-campus living or participation in a University-affiliated activity.

v. McConnell and Plummer were instructed to provide a response within ten business days. The letter did not provide McConnell and Plummer with a copy of the evidence, but stated that it may be viewed by appointment.

44. McConnell, through his attorney, Monique Sparks, submitted a written response to Baker on October 25, 2013. A copy of the Response is attached as Exhibit E.

- a. The Response states that McConnell "is innocent of the accused alleged sexual misconduct."
- b. The Response indicates that the Female UH Student's "actions were consistent with consensual activity" and points out that the injuries suffered by the Female UH Student were likely caused by a fall, and not any abuse.

45. Plummer, through her attorney, submitted a written response on October 28, 2013.

46. On November 8, 2013, Plummer met with Baker.

- a. Plummer appeared with her attorney. Baker made several attempts to exclude the attorney from the interview.

- b. The meeting was expected by Plummer to be for the purpose of gathering information. Instead, Plummer was subjected to a vigorous examination by Baker and other UH employees, including an attorney.
 - c. On information and belief, Baker initiated an investigation against Plummer solely for the purpose of coercing her to provide information against McConnell. This is based in part upon the fact that Baker seemed interested in obtaining from Plummer information to incriminate McConnell.
 - d. It was clear from this meeting that Baker did not intend to conduct a full and fair investigation. Instead, it was apparent that he had already concluded that McConnell and Plummer had violated UH policy and he was seeking, like a prosecutor, to gather additional evidence.
 - e. During the interview, Baker asked about evidence that had not previously been provided to McConnell or Plummer, despite numerous requests from their attorneys.
47. On February 17, 2014, Baker submitted a "Report of Finding" to the Dean of Students. A copy of the Report of Finding is attached as Exhibit F.
48. The Report of Finding states that an incident report was submitted to the Associate Dean of Students by the UH Police on November 21, 2014.
- a. The Report of Finding notes that the Female UH Student was found nude in an elevator and that she appeared to be intoxicated and disoriented. The Report of Finding includes the statement by the Female UH Student that "nobody [had] touched or hit [her]."
 - b. The Report of Finding states that on August 23, 2013 the EOS received a photograph and two videos: the Elevator Video and the Dorm Room Video.

- c. The Report of Finding falsely characterized the Dorm Room Video as follows: “it appeared to capture Mr. McConnell physically touching [the Female UH Student] in a sexual manner and, his girlfriend, Natalie Plummer, striking her.”
 - i. The Dorm Room video does not show McConnell touching the Female UH Student in a sexual manner.
 - ii. The Dorm Room Video does not show Plummer striking the Female UH Student.
 - d. The Report of Finding later falsely characterized the Dorm Room Video as follows: “Based on Mr. McConnell’s position/posture, and conduct/movement (masturbating to erect his penis) in the video, Mr. McConnell appeared to attempt to penetrate [the Female UH Student] while Ms. Plummer recorded it.”
 - i. The Dorm Room video does not show McConnell masturbating.
 - ii. The Dorm Room Video does not show McConnell attempting to penetrate the Female UH Student.
 - e. The Report of Finding focused not only on the November 19, 2011 Incident, but also conduct that occurred later, including:
 - i. The allegation that McConnell and Plummer “took abusive sexual advantage” of the Female UH Student by taking a photograph and the two videos
 - ii. The allegation that McConnell and Plummer created an intimidating or hostile environment for the Female UH Student by “preserving then destroying” and “sharing” the Dorm Room Video.
49. The Report of Finding concluded that McConnell violated the Sexual Misconduct Policy by “engaging in sexual activity with [the Female UH Student] at a time when she could not provide

consent due to her intoxication.” The Report of Finding further concluded that McConnell’s actions constituted sexual assault.

50. An appeal hearing was held for McConnell on March 26, 2014.

a. This hearing did not provide McConnell with adequate due process.

i. McConnell was permitted to have an attorney present at the hearing, but the attorney could not actively participate as a spokesperson or vocal advocate in the hearing.

ii. The hearing board relied upon written statements and hearsay without providing the student with the opportunity for cross-examination.

iii. McConnell was permitted to cross-examine adverse witnesses only through the use of written questions. However, the hearing chair reviewed the questions and determined which written questions would be asked.

iv. McConnell did not have ability to compel other students or UH employees to attend the hearing.

b. The Female UH Student did not attend the hearing. As a result, McConnell did not have the ability to cross-examine her about the events of that evening.

c. Baker acted as the complainant. In putting on his case, Baker relied upon evidence that McConnell was not aware of or provided prior to the hearing, including:

i. Offense reports from the UH Police.

ii. The names of witnesses who provided statements to UH officials and the police, including witnesses who provided information that could have been helpful to McConnell.

iii. Surveillance footage of McConnell, the Female UH Student, and the friend of the Female UH Student walking to McConnell’s room from the Den.

- iv. A partial transcript of the interrogation of Plummer.
 - d. At the hearing, no direct evidence of misconduct by McConnell was presented.
 - i. Nobody testified that McConnell did anything wrong.
 - ii. Nobody testified that McConnell's conduct actually had any effect on the Female UH Student.
51. An appeal hearing was held for Plummer on April 3, 2014.
- a. This hearing did not provide Plummer with adequate due process.
 - i. Plummer was permitted to have an attorney present at the hearing, but the attorney could not actively participate as a spokesperson or vocal advocate in the hearing.
 - ii. The hearing board relied upon written statements and hearsay without providing the student with the opportunity for cross-examination.
 - iii. Plummer was permitted to cross-examine adverse witnesses only through the use of written questions. However, the hearing chair reviewed the questions and determined which written questions would be asked.
 - iv. Plummer did not have ability to compel other students or UH employees to attend the hearing.
 - b. The Female UH Student did not attend the hearing. As a result, Plummer did not have the ability to cross-examine her about the events of that evening.
 - c. Baker acted as the complainant. In putting on his case, Baker relied upon evidence that Plummer was not aware of or provided prior to the hearing, including:
 - i. Offense reports from the UH Police

- ii. The names of witnesses who provided statements to UH officials and the police, including witnesses who provided information that could have been helpful to Plummer.
 - iii. A partial transcript of the interrogation of Plummer.
 - d. At the hearing, no direct evidence of misconduct by Plummer was presented.
 - i. Nobody testified that Plummer did anything wrong.
 - ii. Nobody testified that Plummer conduct had any effect on the Female UH Student.
- 52. Baker stated during the hearings that, as the Title IX Administrator for UH, his interpretation of the evidence was all that mattered.
 - a. Baker did not make any effort to act as a neutral investigator or to present the evidence in a fair and impartial manner. Instead, he attempted to guide the hearing panel to a forgone conclusion..
 - b. Baker attempted to convince the hearing board that McConnell and Plummer planned the rape of the Female UH Student, even though he had no evidence to support this allegation. He theorized, again, without any evidence, that Plummer was mad because her plan to film McConnell and the Female UH Student having sex had fallen through, and that Plummer was using McConnell “as a weapon” against the Female UH Student..
 - c. Baker mischaracterized much of the evidence in order to support a false theory that the Female UH Student was incapacitated but that McConnell was awake and alert. For example:
 - i. Baker suggested that the surveillance footage shows McConnell and another person carrying the Female UH Student. In reality, the images are too blurry to clearly make out what is happening.

- ii. Baker suggested that the Dorm Room Video showed McConnell to be awake and attempting to have sex with the Female UH Student. In reality, McConnell was barely awake and was still intoxicated.

53. On information and belief, UH made accommodations available to the Female UH Student.

These accommodations were not disclosed to Plummer or McConnell or the hearing panel.

54. McConnell has requested a copy of the UH hearing panel proceedings. Baker has indicated that a copy can not be made available, but only that McConnell may come and listen to the hearing.

55. On September 24, 2014, McConnell received a letter from Walker. The letter indicated that Walker had reviewed McConnell's appeal of the Dean of Student's sanctions for alleged violations of the UH Sexual Misconduct Policy. A copy of the letter is attached as Exhibit G.

- a. Walker affirmed the decision of the Dean of Students.
- b. Walker imposed the following sanctions:
 - i. Expulsion from the University;
 - ii. A ban from future enrollment in the UH system; and
 - iii. A ban from attending or being present at any UH activities.
- c. Walker agreed to modify the sanction by removing any note on McConnell's transcript that discipline had been imposed.
- d. This discipline has a significant impact on McConnell.
 - i. He still wishes to take courses at UH.
 - ii. His potential career as a CPA has been impacted. In particular, Texas will only grant a CPA to someone who is of good moral character, and this decision calls that character unfairly and falsely into doubt.

56. On September 24, 2014, Plummer received a letter from Walker. The letter indicated that Walker had reviewed Plummer's appeal of the Dean of Student's sanctions for alleged violations of the UH Sexual Misconduct Policy. A copy of the letter is attached as Exhibit H.
- a. Walker affirmed the decision of the Dean of Students.
 - b. Walker imposed the following sanctions:
 - i. Expulsion from the University;
 - ii. A ban from future enrollment in the UH system; and
 - iii. A ban from attending or being present at any UH activities.
 - c. Walker agreed to modify the sanction by removing any note on Plummer's transcript that discipline had been imposed.
 - d. This discipline has a significant impact on Plummer.
 - i. She still wishes to take continue her academic career at UH. Transferring to another school will be made significantly more difficult because of this decision.
 - ii. Her potential career has been impacted.

**COUNT I
(DECLARATORY JUDGMENT – VIOLATION OF DUE PROCESS PROVISIONS
OF UNITED STATES CONSTITUTION)**

57. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.
58. The Fifth Amendment to the United States Constitution, made applicable to the State of Texas by the Fourteenth Amendment, provides that no person shall "be deprived of life, liberty, or property, without due process of law."
59. The Fourteenth Amendment to the United States Constitution provides that no state shall deprive "any person of life, liberty, or property, without due process of law."

60. The Due Process Clause of the United States Constitution is implicated by higher education disciplinary decisions, including the disciplinary decisions under the UH Sexual Misconduct Policy.
61. UH applied the Sexual Misconduct Policy to Plummer and McConnell even though the policy was not in effect on November 19, 2011.
 - a. The Interim Sexual Misconduct Policy was approved on November 29, 2012.
 - b. The revised, or Interim 2, Sexual Misconduct Policy was approved on August 7, 2013.
62. UH has a constitutional obligation to provide a fundamentally fair and reliable hearing process.
63. UH has an obligation to undertake a full, fair, and impartial investigation.
64. Plummer and McConnell are entitled under the Constitution of the United States the opportunity to be heard in a meaningful manner at the ARC Hearing.
65. Plummer's and McConnell's interests in the results of the investigative and hearing process are significant.
 - a. Dismissal from UH would deny Plummer and McConnell the benefits of education at their chosen school.
 - b. Dismissal and other sanctions would also damage Plummer's and McConnell's academic and professional reputation.
 - c. Dismissal or other sanctions are likely to affect Plummer and McConnell's ability to enroll at other institutions of higher education and to pursue a career.
66. The Defendants have violated Plummer's and McConnell's due process rights in the following manner:
 - a. The Defendants did not undertake a full, fair, and impartial investigation.
 - b. The Defendants did not permit Plummer and McConnell to be fully represented by counsel.

- c. The Defendants permitted the use of hearsay evidence at the hearing without providing Plummer and McConnell with the opportunity to effectively cross-examine witnesses.
 - d. The Defendants relied upon a “preponderance of the evidence” standard.
67. Plummer and McConnell and the Defendants have a dispute about whether the UH Sexual Misconduct Policy, both facially and as applied to Plummer and McConnell, violates the Due Process Clause of the United States Constitution.
68. Plummer and McConnell are entitled to a declaration that the UH Sexual Misconduct Policy violates the Due Process Clause of the United States Constitution.

COUNT II
(VIOLATION OF CIVIL RIGHTS – 42 U.S.C. §1983)

69. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.
70. The Defendants have acted under color of law in violating Plummer's and McConnell's rights under the Fifth and Fourteenth Amendments to the United States Constitution.
71. The Defendants have acted intentionally and with callous disregard for Plummer's and McConnell's clearly established constitutional rights.
72. As a direct and proximate result of the Defendants' violations of Plummer's and McConnell's constitutional rights, they have suffered severe and substantial damages. These damages include diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.
73. Pursuant to 42 U.S.C. §1983, the Defendants are liable to Plummer and McConnell for their damages.
74. Pursuant to 42 U.S.C. §1988, Plummer and McConnell are entitled to their attorney's fees incurred in bringing this action.

COUNT III
(DECLARATORY JUDGMENT – TITLE IX)

75. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.
76. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Title IX provides in pertinent part: "No person . . . shall, on the basis of sex, be excluded from

participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

77. Defendant UH is an education program or activity operated by recipients of Federal financial assistance.
78. Like many educational programs throughout the nation, UH is under pressure to impose discipline on students in order to avoid pressure from the Department of Education.
79. Title IX bars the imposition of university discipline where gender is a motivating factor in the decision to discipline.
 - a. Although McConnell and the Female UH Student allegedly both engaged in the same conduct – sexual contact with an intoxicated person – only the male, McConnell, was subject to discipline by UH.
 - b. Although Plummer is a female, she would not have been subject to any discipline except for her role with a male student, McConnell.
 - c. The gender of the alleged victim – not the gender of McConnell or Plummer – was the motivating factor in the decision to impose discipline.
80. UH committed impermissible gender bias against Plummer and McConnell in the investigation and adjudication of the November 19, 2011 Incident.
81. The decision of the ARC Hearing Panel was an erroneous outcome which was the direct result of a flawed proceeding.
82. Particular circumstances suggest that gender bias was a motivating factor behind the erroneous finding and the decision to impose discipline upon Plummer and McConnell. These circumstances include:
 - a. A general atmosphere at UH where those who lodge a complaint of sexual assault are immediately treated as “survivors.”

- b. The role of Baker as both an administrator and advocate for alleged victims.
 - c. The failure of UH to provide adequate due process in the hearing process.
83. The circumstances of the investigation and hearing cast doubt on the accuracy of the outcome of the disciplinary proceeding.
84. Plummer and McConnell and the Defendants have a dispute about whether the UH Sexual Misconduct Policy, both facially and as applied to Plummer and McConnell, violates Title IX.
85. Plummer and McConnell are entitled to a declaration that the UH Sexual Misconduct Policy violates Title IX.

**COUNT IV
(TITLE IX)**

86. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.
87. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Title IX provides in pertinent part: "No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."
88. Defendant UH is an education programs or activities operated by recipients of Federal financial assistance.
89. UH committed impermissible gender bias against Plummer and McConnell in the investigation and adjudication of the November 19, 2011 Incident.
90. As a direct and proximate result of the Defendants' violations of Plummer's and McConnell's rights under Title IX, Plummer and McConnell have suffered severe and substantial damages. These damages include diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment,

inconvenience, mental and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.

91. The Defendants are liable to Plummer and McConnell for damages.

92. Pursuant to 42 U.S.C. §1988, Plummer and McConnell are entitled to their attorney's fees incurred in bringing this action.

**COUNT V
(INJUNCTIVE RELIEF)**

93. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.

94. The Defendants continued actions violate the United States Constitution and Title IX.

95. The Defendants continued actions against Plummer and McConnell is causing substantial, immediate, and continuing damages..

96. Plummer and McConnell are entitled to an Injunction from this Court restoring them as students at UH and prohibiting any other actions under the UH Sexual Misconduct Policy in violation of the United States Constitution and Title IX.

Wherefore, Plaintiffs seek the following relief from the Court:

- On Counts I and III, Judgment in favor of Plummer and McConnell declaring that the Defendants have violated the United States Constitution and Title IX.
- On Counts II and IV, damages in an amount to be determined at trial;
- On Count V, an Injunction restoring McConnell and Plummer as students and prohibiting further disciplinary proceedings in a manner that violates the United States Constitution or Title IX.
- Court costs, other reasonable expenses incurred in maintaining this action, including reasonable attorney's fees.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

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VERIFICATION OF RYAN MCCONNELL

I, RYAN MCCONNELL, being duly sworn, state that I have reviewed the factual allegations contained in this Verified Complaint. All of the factual allegations in the Verified Complaint are true and accurate to the best of my knowledge.

State of Texas
Harris County

Ryan McConnell

Subscribed and sworn before me this _____ day of October, 2014.

Notary Public

VERIFICATION OF NATALIE PLUMMER

I, NATALIE PLUMMER, being duly sworn, state that I have reviewed the factual allegations contained in this Verified Complaint. All of the factual allegations in the Verified Complaint are true and accurate to the best of my knowledge.

State of Texas
Harris County

Natalie Plummer

Subscribed and sworn before me this _____ day of October, 2014.

Notary Public