

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Kellen Smith, by and through undersigned counsel, hereby files this Complaint against the University of Michigan (“UM”), its Board of Regents, former UM Title IX Coordinator Pam Heatlie, former UM Title IX Investigator Daniel Ferency, UM Associate Dean of Students Sarah Daniels, UM Women’s Track and Field Coach James Henry, and UM Athletic Director Warde Manuel (collectively “Defendants”) for their individual and collective deliberate indifference towards the hostile educational environment created and perpetuated by fellow student-athlete Blake Washington’s repeated sexual harassment and stalking of Ms. Smith. For these state and federal law violations, Ms. Smith hereby sues the Defendants and seeks just compensation.

JURISDICTION & VENUE

1. Pursuant to 28 U.S.C. § 1331, this Court has subject matter jurisdiction over this action because Plaintiff asserts federal questions under 42 U.S.C. § 1983 and Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §§ 1681, *et seq.*

2. Pursuant to 28 U.S.C. § 1343(a), this Court has subject matter jurisdiction over this action because Plaintiff seeks redress for the deprivation of her Constitutional rights and federal rights pursuant to 42 U.S.C. § 1983, including through damages and equitable relief.

3. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiff’s state law claims because they are so related to the federal law claims in this action that they form part of the same case and controversy.

4. Pursuant to Fed. R. Civ. P. 4(k)(1), this Court has personal jurisdiction over Defendants as they regularly conduct business in this jurisdiction and because the conduct giving rise to the claims occurred within this judicial district.

5. Pursuant to 28 U.S.C. § 1391, venue in this District is proper because a substantial part of the acts and omissions which form the basis of this Complaint occurred within this District and some or all of the Defendants reside within the State of Michigan.

PARTIES

6. Plaintiff, Kellen Smith (“Ms. Smith”), is a 22-year-old college student and citizen of the State of Michigan who resides in Washtenaw County, Michigan.

7. Defendant UM is a public educational facility subject to the Michigan Elliott-Larsen Civil Rights Act (“ELCRA”) and a state-funded institution of higher education located in Ann Arbor, Michigan. *See* M.C.L. Const. Art. 8, § 4. Defendant UM is also a recipient of federal funding subject to Title IX.

8. Defendant Board of Regents of UM (“Board”) is the constitutionally designated corporate body with final policymaking authority over UM located in

Ann Arbor, Michigan. *See* M.C.L. Const. Art. 8, § 5. Upon information and belief, Board is a recipient of federal funding subject to Title IX.

9. Defendant Pam Heatlie, at all times relevant to this Complaint, acted under color of state law and within the scope of her employment as UM's Title IX Coordinator to work in the City of Ann Arbor in Washtenaw County, Michigan. Defendant Heatlie is sued in her individual capacity.

10. Defendant Daniel J. Ferency, at all times relevant to this Complaint, acted under color of state law and within the scope of his employment as UM's Title IX Investigator working in the City of Ann Arbor in Washtenaw County, Michigan. Defendant Ferency is sued in his individual capacity.

11. Defendant Sarah Daniels, at all times relevant to this Complaint, acted under color of state law and within the scope of her employment as UM's Associate Dean working in the City of Ann Arbor in Washtenaw County, Michigan. Defendant Daniels is sued in her individual capacity.

12. Defendant James Henry, at all times relevant to this Complaint, acted under color of state law and within the scope of his employment as the UM Women's Track and Field Coach working in the City of Ann Arbor in Washtenaw County, Michigan. Defendant Henry is sued in his individual capacity.

13. Defendant Warde Manuel, at all times relevant to this Complaint, acted under color of state law and within the scope of his employment as the UM Athletic

Director working in the City of Ann Arbor in Washtenaw County, Michigan. Defendant Manuel is sued in his individual capacity.

FACTS

14. While attending Southfield Christian School, Ms. Smith and Blake Washington became close, platonic friends and co-captains of their high school track team.

15. During their senior year, Blake Washington expressed a sexual interest in Ms. Smith, but she did not reciprocate. The two remained close friends.

16. Later that year, while on the track team bus together, Blake Washington engaged in the unwanted “tickling” of Ms. Smith. She repeatedly told him “no” and “stop” while he kept trying to touch under her spandex uniform.

17. After graduating high school, Ms. Smith and Mr. Washington attended UM and joined its Track and Field Team (hereinafter “track”) where they both competed in sprints. As student-athletes, they also participated in the religiously affiliated student group Athletes in Action (“AIA”).¹

18. While attending UM, Ms. Smith declared dual majors in Naval Architecture and Marine Engineering (“NAME”) and Computer Science. She also redshirted in track her first year to prioritize her academics.

Fall 2016–Winter 2017 Terms

¹ See <https://maizepages.umich.edu/organization/AthletesinAction> (last visited May 5, 2020).

19. During the Fall 2016 term, Ms. Smith and Blake Washington frequently studied together for a shared course. These study sessions often occurred in Ms. Smith's dorm room, which was located in Stockwell Hall on UM's campus.

20. On a few occasions, exhausted by her rigorous academic and athletic schedules, Ms. Smith would fall asleep during study sessions with Mr. Washington.

21. Despite her challenging schedules, Ms. Smith ended the Fall 2016 term with an above 3.0 GPA and maintained a 3.0 GPA during the Winter 2017 term.

Spring 2017 Term

Blake Washington Discloses Repeated Sexual Abuse of Ms. Smith

22. During the Spring 2017 term, around early April 2017, Blake Washington sent a text message asking to speak with Ms. Smith. Concerned by the vagueness of this message, Ms. Smith agreed to meet later that evening.

23. Upon arriving at Ms. Smith's dorm room, Blake Washington confessed a "long moral struggle" with a "porn addiction" since middle school. Confused, Ms. Smith inquired why he had disclosed this to her. Mr. Washington replied that he had sexually assaulted Ms. Smith when she had fallen asleep during their previous study sessions together. In shock, Ms. Smith demanded that Mr. Washington leave.

24. Ms. Smith was so emotionally devastated by this sexual abuse, and afraid of Mr. Washington returning to her dorm room, that she slept on the floor of

a friend's dorm room with the lights on for months following this disclosure. She also struggled with thoughts of self-harm.

25. Due to this ongoing emotional distress, Ms. Smith's academics started to suffer, and she stopped attending church and AIA to avoid Blake Washington.

26. Around this time, Ms. Smith disclosed the sexual abuse and ongoing emotional distress to a track teammate, C.H., who encouraged Ms. Smith to speak with UM's Sexual Assault Prevention and Awareness Center ("SAPAC").

27. Ms. Smith reported the sexual abuse to SAPAC, which assigned Case Manager Jim McEvelly to assist her in seeking reasonable accommodations, such as protective measures.² Mr. McEvelly developed a safety plan for Ms. Smith to follow should she encounter Mr. Washington on UM's campus.

28. Ms. Smith also disclosed the sexual abuse to the staff of AIA, which responded that Blake Washington could remain in the student group because he deserved a "second chance" despite this sexual abuse. As a result, Ms. Smith stopped attending AIA.

² The Clery Act requires UM to provide victims with reasonable accommodations and protective measures upon request. 20 U.S.C. § 1092(f)(8)(B)(vii); 34 C.F.R. § 668.46(b)(11)(v); U.S. DEP'T OF EDUC., OFFICE OF POSTSECONDARY EDUC., THE HANDBOOK FOR CAMPUS SAFETY AND SECURITY REPORTING, at 8–15 (2016) ("Protective measures should minimize the burden on the victim . . . [and] not, as a matter of course, remove the victim . . . while allowing the alleged perpetrator to remain . . ."), available at <https://www2.ed.gov/admins/lead/safety/handbook.pdf>.

29. On April 13, 2017, the UM Health Center (“UMHC”) diagnosed Ms. Smith with Post-Traumatic Stress Disorder (“PTSD”).

30. Ms. Smith wanted to formally report Blake Washington for the sexual abuse, so she confronted him by text message in hopes of obtaining additional evidence. On April 20, 2017, Blake Washington admitted to sexually assaulting Ms. Smith “three times” after she had fallen asleep.

31. Armed with this confession, Ms. Smith enlisted SAPAC to help facilitate her formal reports to both UM and UM’s Police Department (“UMPD”).

32. While Blake Washington denied sexually penetrating Ms. Smith, this did not assuage her fears, so she promptly obtained STI/STD testing from UMHC. Ms. Smith repeatedly requested that UMHC bill her directly for this care.

33. However, upon information and belief, UMHC billed Ms. Smith’s mother. Upon inquiry into the reason for this bill, her deeply religious mother blamed Ms. Smith for the sexual assaults occurring. Ms. Smith now is estranged from her mother to lose all related financial support and health insurance coverage.

UM Receives Actual Notice of the Severe and Pervasive Sexual Abuse

34. On May 9, 2017, Ms. Smith formally reported to UM that Blake Washington had repeatedly sexually assaulted her on campus. *See* Exhibit 1.

35. UM had designated Defendant Heatlie as its Title IX Coordinator to ensure its compliance with Title IX and to oversee the Title IX grievance process on

campus. *See* 34 C.F.R. § 108.6. Defendant Heatlie assigned Defendant Ferency to investigate the sexual assaults reported by Ms. Smith. *See* Exhibit 1.

36. Upon reporting the student-on-student sexual assaults, Ms. Smith requested that UM issue protective measures to keep Blake Washington away from her while on campus, especially during classes and track practices.

37. Defendant Ferency responded that Ms. Smith would have to stay away from Mr. Washington and, in front of Mr. McEvelly, he charged her with the “responsibility” not to (i) contact Mr. Washington; (ii) discuss the Title IX grievance process or underlying sexual assaults with anyone; or (iii) come into proximity to Mr. Washington by requiring her to avoid him and leave anywhere he was present first on campus. Ms. Smith understood that Defendant Ferency had imposed a no-contact directive against her through this verbal instruction.

38. Ms. Smith responded that such a directive was unnecessary because she did not want anything to do with Blake Washington. Defendant Ferency replied that it should be easy for Ms. Smith to “follow the rules” (in reference to the directive) if she did not want to be near Mr. Washington.

39. Immediately following this interaction, Mr. McEvelly spoke one-on-one with Ms. Smith and expressed concerns that Defendant Ferency had incorrectly burdened her with the obligation of avoiding Blake Washington, contrary to the

requirements of Title IX. Mr. McEvelly promised that SAPAC would follow up with UM to obtain appropriate protective measures.

40. According to UM's 2016-2017 Title IX policy, protective measures are "typically" issued only against respondents. This policy also states that any violation of a protective measure is "a separate and independent violation of this Policy."

41. Upon information and belief, about a week after her report, UM informed Blake Washington about the sexual assault complaints and issued a no-contact directive against him similar to the one issued against Ms. Smith.

42. On May 15, 2017, Mr. McEvelly requested that UMPD take Ms. Smith's sexual assault reports that week. UMPD declined stating it would not take the report unless she was in "immediate need" because they were "short-staffed" due to officers being out on summer vacations. Mr. McEvelly informed Ms. Smith that he would follow up to schedule a time for her to report to UMPD the following week.

Inequitable Interim Measures Inadequately Enforced by UM

43. On May 26, 2017, SAPAC requested that UM bar or otherwise limit Blake Washington's access to North Campus as a protective measure because he had no known reason to be in that area of campus, whereas Ms. Smith had all her courses on North Campus given her dual majors.

44. Specifically, upon information and belief, Mr. Washington lived in South Campus near UM's Athletic Department for his entire undergraduate career and attended classes in Central Campus given his major in Cognitive Science.

45. Mr. McEvilly conveyed to Ms. Smith his belief that UM would grant this requested protective measure as it was clearly reasonable under the known facts.

46. Defendant Daniels responded to SAPAC stating that Defendant Ferency would discuss the requested protective measure with Defendant Heatlie, but no UM official made a decision about the request during the Spring 2017 term.

47. Without this protective measure, Ms. Smith routinely encountered Blake Washington on her commuter bus headed to North Campus. As a result, she suffered panic attacks and hyperventilated, which caused her to leave the bus and often arrive late to her classes. On some occasions, Ms. Smith stayed on the commuter bus long enough to observe that Mr. Washington was taking it to North Campus, despite having no known reason to be in that area of campus.

48. Due to the no-contact directive imposed against her, Ms. Smith routinely waited until Blake Washington left the track before she would enter it, thus impeding her ability to practice with her teammates at the scheduled times.

49. Whenever Ms. Smith entered the track, and then Blake Washington appeared in violation of the no-contact directive imposed against him, Ms. Smith

would exit the track and wait for him to leave before continuing her own practice. This also impeded her ability to practice with her teammates at the scheduled times.

50. On a few occasions, fearing that Blake Washington would be present at track practice, Ms. Smith became so emotionally distressed that she was unable to attend practice with her teammates at the scheduled times.

51. Ms. Smith reported this interference with her ability to attend track practices to SAPAC, which agreed to alert the appropriate UM officials. Due to his concerns with Defendant Ferency previously issuing inappropriate protective measures, Mr. McEvelly encouraged Ms. Smith to speak directly to seek support from her track coach, Defendant Henry. Mr. McEvelly then stated that Ms. Smith would need consent from UM to discuss the situation with Defendant Henry given the confidentiality provision of the directive imposed against her.

52. Upon information and belief, despite SAPAC agreeing to discuss Ms. Smith's track practice concerns with appropriate officials, UM failed to address this inequitable access. Thus, UM left Ms. Smith continually avoiding Mr. Washington within its athletic facilities to impede her access as a student-athlete.

53. Due to Blake Washington's repeated proximity to Ms. Smith, both on North Campus and during her track practice, she expressed concern to SAPAC that Mr. Washington might be stalking her.

54. Due to the ongoing hostile educational environment on campus, by the end of the Spring 2017 term, Ms. Smith's GPA had dropped a full point to a 2.0.

Summer 2017 Term

Increasingly Hostile Educational Environment on UM's Campus

55. On June 12, 2017, 17 days after the initial request, Defendant Daniels arranged a call with Mr. McEvilly about the requested protective measures. Upon information and belief, UM denied any protective measures that would limit Blake Washington's access to North Campus despite him not having a known reason to be in that area of campus where Ms. Smith was known to attend classes.

56. That same day, due to the confidentiality provision of the no-contact directive imposed against Ms. Smith, SAPAC requested that Defendant Ferency allow her to discuss Blake Washington's sexual abuse and the ongoing Title IX grievance process with Defendant Henry.

57. While Defendant Ferency granted Ms. Smith this permission at first, he then expressed concerns to reconsider this permission. This delayed Ms. Smith's ability to request that Defendant Henry prevent Blake Washington from coming into proximity with her during scheduled track practices, which continued to occur.

58. On June 30, 2017, SAPAC asked UMPD to receive Ms. Smith's sexual assault reports again and offered times for the following week. Despite this, UMPD continued to delay its receipt of Ms. Smith's sexual assault report until August 8,

2017, which was 74 days after SAPAC's initial outreach and 39 days after this additional outreach effort.

59. On July 10, 2017, 62 days after her formal reports to UM, and prior to UMPD taking her report, Defendant Ferency completed the Title IX investigation and promised to send a draft investigative report within the week to Ms. Smith. Despite this representation, UM did not issue any investigative report in July 2017, thus delaying the Title IX grievance process.

Increasingly Hostile Environment on UM's Track Team

60. On July 31, 2017, 49 days after the initial request from SAPAC, Defendant Ferency confirmed that Ms. Smith had permission to speak with Defendant Henry about the sexual assaults and Title IX grievance process.

61. When Ms. Smith met with Defendant Henry, he claimed that no UM officials had ever contacted him about her pending Title IX complaint against Blake Washington, thus he had been unaware of the situation the whole time.

62. Given his lack of knowledge, Ms. Smith explained to Defendant Henry that Mr. Washington had repeatedly sexually assaulted her and that his ongoing presence during her scheduled practice times violated the no-contact directive and caused her so much emotional distress it impeded her ability to participate on the track team.

63. Ms. Smith requested that Defendant Henry exercise his authority as a track coach to keep Blake Washington away from her during practices, especially since UM had planned to combine the men's and women's track programs so that they would be practicing together on a more regular basis. Defendant Henry declined to do so.

64. Instead, Defendant Henry callously responded that several female track athletes had disclosed being sexually assaulted to him over the years and most were unable to "handle" being on the track team afterwards. He also reported that some had become suicidal and stated Ms. Smith should say something before "hurling herself off a bridge" if she became suicidal too. Defendant Henry then continued to express his disbelief that Ms. Smith could participate successfully on the track team as a victim of sexual assault.

65. Upon information and belief, Defendant Henry had a history of making offensive comments regarding the mental health of female track team athletes, especially with regard to issues of depression and suicide. On at least one occasion, three female athletes reported that Defendant Henry disclosed to them that one of their teammates suffered from depression without her knowledge or consent. Upon information and belief, his callous comments continued even after a female track athlete did commit suicide, which offended many student-athletes.

66. Defendant Henry also told Ms. Smith she should be “flattered” that Blake Washington had expressed a sexual interest in reference to the sexual abuse.

67. Upon information and belief, Defendant Henry has a well-known reputation for making sexually offensive comments and engaging in victim-blaming. Upon information and belief, Defendant Henry openly suggested to female track athletes that he has taken “advantage of women” in the past and promoted the mantra “boys will be boys” when discussing sexual violence with them. Upon information and belief, in front of several members of the women’s track team, Defendant Henry also stated that they should not go out and party at fraternities unless they wanted to end up “raped in a ditch” somewhere.

68. On other occasions, upon information and belief, Defendant Henry would use *double entendres* while coaching to create a hostile environment. Upon information and belief, in reference to stretching, Defendant Henry told female track athletes that they should let him know whether he should “put my hands on you to make you a loose woman” (referencing female chastity) and even told one track team member, C.B., “don’t spit, girl, swallow it” during practice (in reference to fellatio).

69. Upon information and belief, several female track athletes reported Defendant Henry’s offensive comments to UM’s Athletic Department during their exit interviews. In response, upon information and belief, some employees of UM’s

Athletic Department responded with intimidation to create a fear of retaliation amongst members of the UM Women's track team.

70. For example, after A.H.'s exit interview, Defendant Henry confronted her and demanded to know whether she had been trying to get him fired. On another occasion, Coach Steven Rajewski contacted several student-athletes in an attempt to identify who had made these reports to UM's Athletic Department.

71. Upon information and belief, towards the end of the Summer 2018 term, several female track athletes met with UM Athletic Director Warde Manuel about Defendant Henry's offensive comments. Upon information and belief, at the start of this meeting, Director Manuel made it clear to these student-athletes that he was close personal friends with Defendant Henry since they had attended UM together. Director Manuel then stated, upon information and belief, that Defendant Henry was a "good person" and "good coach" to make it clear to the complaining student-athletes that the meeting would make no difference.

72. Undeterred by his offensive comments and behavior, Ms. Smith again requested that Defendant Henry exercise his authority as a track coach to keep Blake Washington away from her during track practices so that she could participate without concern. Defendant Henry again declined to do so by stating it was not his responsibility and that Ms. Smith could always quit the team if she wanted to avoid being around Mr. Washington.

73. Shortly after this meeting, a conflict arose between Ms. Smith's academic and track practice schedule, so she informed Defendant Henry that she would have to miss track practice while offering to practice later that day with two other teammates that also had a conflict, as was common practice.

74. In response, Defendant Henry stated that Ms. Smith could not schedule an alternative practice time and her missing practice meant that he could not compare her to peers and thus she risked being removed from the track team.

75. Given the failure of UM officials to enforce the no-contact directive against Blake Washington, he was regularly present during Ms. Smith's track practices during the Summer 2017 term. On a few occasions, Ms. Smith witnessed him staring at her during practice and pointing her out to his teammate, S.H. Despite being a sprinter, Mr. Washington would start running laps around the track in order to come near Ms. Smith while she stretched away from him on the field. Ms. Smith would then have to move her stretching location to avoid him. This stalking behavior concerned Ms. Smith as there were several other locations where he could warmup without coming near her and several other times he could be at the track.

76. Mr. Washington's ongoing stalking of Ms. Smith exacerbated her condition of PTSD. Specifically, she suffered repeated panic attacks, which resulted in her crying, hyperventilating, and sometimes even missing classes or practices. She also struggled to sleep at night given her frequent nightmares about him sexually

abusing her, which left her struggling to wake up in the morning. As a result of her ongoing emotional distress, Ms. Smith continued to suffer academically. She also developed worsening PTSD symptoms that included debilitating social anxiety. This left her rarely able to leave her room or access public transportation, which she relied upon to commute to and from classes and track practices on time.

77. During the summer term, Ms. Smith learned that UM had allowed Blake Washington to work with children at its Track and Cross-Country Camp despite a pending campus and criminal investigation against him for sexual abuse. Ms. Smith reported her concerns to SAPAC, which agreed to alert the appropriate UM officials. Upon information and belief, UM took no action upon this concern.

78. Ms. Smith had been unable to sleep in her dorm room at Stockwell Hall for months, so she requested that UM provide her housing accommodation for the Summer 2017 term. UM allowed Ms. Smith to move into Couzens Hall but failed to prohibit Blake Washington from entering this residence hall, which resulted in him discovering where she lived towards the end of the term. Terrified, Ms. Smith moved off-campus at great personal expense to ensure her safety and well-being.

79. Sometime during the summer term, UM represented to Ms. Smith that Blake Washington would be prohibited from enrolling in any courses with her.

Fall 2017 Term
UM's Ongoing Deliberate Indifferent to Directive Violations

80. On August 3, 2017, 86 days after her formal report to UM, Defendant Ferency stated that Ms. Smith would receive the draft investigative report the next day. Despite this representation, UM delayed the release of this report for another 17 days, until August 21, 2017.

81. That same day, SAPAC again requested that UM issue a protective measure limiting Blake Washington's access to North Campus so that Ms. Smith could attend courses for her major without concern.

82. On August 15, 2017, 12 days after this renewed request, Defendant Daniels informed SAPAC that Defendant Heatlie had denied the requested protective measure. In this reply, Defendant Daniels recommended that SAPAC have a "proactive conversation with [Ms. Smith] about her potential enrollment" in the computer science course EECS 203 to determine if it was the "best course of action" for her because Blake Washington was enrolled in it for the Fall 2017 term.

83. Upon information and belief, Blake Washington had no known reason to enroll in this foundational course as he was not a computer science major.

84. Ms. Smith had planned to retake EECS 203 in an effort to improve her grade, which suffered last term due to the detrimental impact from the ongoing hostile educational environment on campus. Therefore, she remained enrolled in this course while seeking placement in a separate section to avoid Mr. Washington.

85. Given the known risk that Blake Washington could come into regular proximity with Ms. Smith on North Campus that term, SAPAC pushed UM to issue protective measures of separate routes so that Ms. Smith could maintain priority use of the campus as a dual NAME and Computer Science major. SAPAC impressed upon UM the need for this accommodation to “increase the ability of the survivor to attend her coursework” given the negative impact the ongoing hostile educational environment had on Ms. Smith’s academic participation and performance.

86. Defendant Daniels responded to SAPAC that UM would only limit Mr. Washington’s route to and from one course on Friday, thus allowing him free range of North Campus otherwise. When Ms. Smith asked SAPAC about his route, so that she could avoid it, Mr. McEvilly responded that he did not know and thought it likely that UM may not have even made one as it did not share it with SAPAC.

87. On September 6, 2017, due to UM’s ongoing refusal to limit Blake Washington’s access to North Campus, he freely attended EECS 280, which is a computer science course that Ms. Smith had enrolled in as part of her major.

88. Ms. Smith immediately left her class, as required by the no-contact directive imposed against her. She then suffered a panic attack in the bathroom – which included crying, hyperventilating, and vomiting – before leaving North Campus to miss the rest of her class. Once safely back at her off-campus apartment,

Ms. Smith called SAPAC's crisis line to report Mr. Washington's violation of the no-contact directive by attending her class.

89. Upon information and belief, despite Ms. Smith's report to SAPAC, UM did not enforce the no-contact directive against Mr. Washington, nor did it implement additional protective measures on North Campus to prevent such violations from occurring in the future.

90. In response, upon information and belief, SAPAC strategized on how best to advocate for Ms. Smith to ensure UM would provide reasonable protective measures under the known circumstances. After this meeting, on September 7, 2017, Mr. McEvelly impressed upon UM the need to issue further protective measures to prevent Blake Washington's ongoing proximity to Ms. Smith on North Campus given the substantial emotional distress it kept causing her. Specifically, he reported to Defendants Daniels, Heatlie and Ferency that "Kellen has experienced a strong physiological response when she has encountered the Respondent in the past," which included "feelings of panic and intense fear" to include "sweating," shaking, and "difficulty completing a whole thought" and resulted in her "strong urge to 'run' from the classroom and leave the North Campus area entirely."

91. Upon information and belief, despite ongoing notice of a hostile educational environment to disrupt Ms. Smith's access to educational opportunities

and benefits, UM refused to enforce the no-contact directive against Blake Washington or implement additional protective measures, as requested by SAPAC.

92. Due to UM's lack of response, Ms. Smith worked to avoid Blake Washington on her own, first by seeking to switch EECS 280 sections, which did not work, and then by trying to learn course materials online without attending her section, which proved untenable. Ms. Smith ultimately dropped the course.

93. On September 14, 2017, in response to Ms. Smith's prior request that SAPAC advocate for UM to keep Blake Washington away from her during track practice, UM issued separate track practice schedules.

94. The new track practice schedule issued to Ms. Smith was not equitable and instead required her to choose between classes and track practice at least three times a week. It also prevented her from practicing alongside her teammates for comparison, which Defendant Henry stated was necessary for Ms. Smith to maintain her spot on the track team.

95. Ms. Smith promptly asked SAPAC to advocate with UM again for a more equitable track practice schedule that accommodated her academics.

96. Despite the separate track practice schedules and no-contact directives, Defendant Henry and other UM Athletic Department employees, including the head team trainer, Christina "Chris" Fanning, failed to enforce these protective measures when witnessing Blake Washington in violation. Instead, they routinely asked Ms.

Smith whose scheduled practice time it was, thus indicating their lack of knowledge and commitment to ensuring proper enforcement of the protective measures.

97. On at least one occasion, Defendant Henry actually instructed Ms. Smith to stay away from Blake Washington during *her* scheduled practice time.

98. On September 22, 2017, 136 days after her formal sexual assault reports to UM, Defendant Ferency stated he would “soon” release the final investigative report, which would provide the outcome of the Title IX grievance process. Despite this representation, Defendant Ferency did not release the report in September 2017.

99. On October 2, 2017, without making any specific allegation, Defendant Daniels falsely alleged to SAPAC that Ms. Smith had violated the separate track practice schedules and needed to come into compliance. SAPAC internally flagged this message as “accusatory” and, upon information and belief, held an internal strategy meeting regarding ongoing advocacy for Ms. Smith in light of this hostility.

100. Later that day, Mr. McEvelly informed Defendant Ferency that Defendant Henry had added Ms. Smith to the jump team, which had practice times overlapping with the men’s team to result in regular proximity to Blake Washington. Mr. McEvelly therefore requested that UM promptly issue a new, equitable track practice schedules to ensure her ongoing ability to participate on the track team.

101. Defendant Ferency ignored Mr. McEvelly’s request, thus leaving Ms. Smith in regular proximity to Mr. Washington during track for weeks on end.

102. On several occasions, Ms. Smith had practice in the weight room at the same time as Blake Washington and he would walk right up to and speak with C.B., her lifting partner spotting her on the weights. Upon information and belief, Mr. Washington sought to intimidate and harass Ms. Smith through this conduct, as he knew it violated the no-contact directive imposed against him. At one point, he even used equipment directly facing Ms. Smith to further harass, intimidate and stalk her.

103. On October 3, 2017, Defendant Ferency informed SAPAC that he was choosing to wait on information from UMPD before issuing the final investigative report, thus further delaying the outcome of the Title IX grievance process.

104. On October 10, 2017, Ms. Smith reported Blake Washington's ongoing violations of the no-contact directive and separate track practice schedules to SAPAC and noted that several employees of UM's Athletic Department had witnessed these violations without taking any action to enforce the protective measures.

105. Ms. Smith also reported to SAPAC that Mr. Washington had violated the confidentiality provision of the directive, as several members of the men's track team, including G.C., were asking questions about the "situation" between him and Ms. Smith. Ms. Smith had been alerted to this violation after Trainer Fanning had falsely accused her of violating the confidentiality provision.

106. In response, Mr. McEvilly stated that Blake Washington practicing during her scheduled times was a “significant issue,” so he would alert Defendant Ferency. Upon information and belief, Defendant Ferency did not respond to any of SAPAC’s outreach about these concerns at that time.

107. Later that same day, on October 10, 2017, 154 days after her formal sexual assault report to UM, Defendant Ferency reported that UMPD asked him to pause the Title IX grievance process pending a prosecutorial decision on the criminal charges of criminal sexual conduct in the fourth degree.

108. Three days later, on October 13, 2017, UMPD submitted an arrest warrant for Blake Washington and sent the criminal case to the Washtenaw County Prosecutor’s office. UMPD Detective Margie Pillsbury informed Ms. Smith that there would be a prosecutorial decision in about two weeks.

109. On October 25, 2017, 23 days after SAPAC reported Blake Washington for violating the protective measures during track practice, Mr. McEvilly followed up with Defendant Ferency to request a response.

110. Defendant Ferency replied that same day to dismiss the need for a new track practice schedule out-of-hand and request that Ms. Smith meet in person to report the violations, which did not occurred until November 3, 2017, 32 days after the violations were initially reported by SAPAC.

UM Removes Ms. Smith from its Track Team

111. Having been estranged from her mother, Ms. Smith depended upon her student-athlete benefits to afford attendance at UM. These benefits allowed her to obtain required textbooks, course software, academic tutors, various athletic gear, including winter coats, and high-quality healthcare free of charge.

112. Due to Defendant Henry's threat that Ms. Smith could be removed from the track team if she did not practice with her peers for comparison, and UM's separate track practice schedules that prevented her from practicing with her peers while Mr. Washington disregarded the protective measure with impunity, she requested that UM end the separate track practice schedules in an effort to ensure her spot on the team, and thus her ongoing access to student-athlete benefits.

113. In early November 2017, Ms. Smith alerted SAPAC to the fact that Blake Washington was volunteering with the C.S. Mott Children's Hospital while there remained pending campus and criminal sexual assault investigations against him. Upon information and belief, despite SAPAC alerting the appropriate officials, UM did not take action to address this concern.

114. On November 6, 2017, UMHC recorded Ms. Smith's ongoing PTSD symptoms, which included "hypervigilance, insomnia, flashbacks, panic symptoms, and nightmares" due to Blake Washington's regular proximity to her on campus.

115. In mid-November 2017, Defendant Henry conducted an *ad hoc* "trial week" for female sprinters. Upon information and belief, there was no legitimate

need for this trial week, as the track team had a limited number of sprinters, and there had been no previous trial weeks before for the women's track team.

116. Per UM's Athletic Department, Ms. Smith was too sick to participate in this trial week and instead directed to UMHC for the appropriate medical care. Due to Ms. Smith's fear that Defendant Henry would remove her from the track team if she did not participate in the trial week, and because he would not allow her to compete after a period of recovery for her illness when she inquired, Ms. Smith competed to the best of her ability during trial week.

117. The following week, right before the Thanksgiving holiday break, Defendant Henry sent a text message requesting to meet with Ms. Smith. As she was unable to meet, Defendant Henry called and stated that Ms. Smith had been cut from the women's track team and could no longer participate.

118. Upon information and belief, Defendant Henry did not cut any other female sprinters.

119. When Ms. Smith requested a reason for this decision, Defendant Henry suggested that her previous inability to practice with the team earlier on in the term had impacted his decision without further explanation. At no point did Defendant Henry cite a concern with her actual athletic abilities or performance to justify his decision to cut her from the track team.

120. When Ms. Smith requested another opportunity to physically compete against her teammates and earn reinstatement to the track team, Defendant Henry replied, “I don’t think it will make a difference.”

121. Ms. Smith promptly reported her terminated student-athlete status to SAPAC, which facilitated her retaliation report to UM based upon Defendant Henry citing her inequitable track practice schedule as a reason for this decision. In response to this complaint, UM assigned Defendant Ferency to investigate.

122. Ms. Smith also contacted UM’s Senior Associate Athletic Director Bitsy Ritt and Director Manuel about this retaliation complaint, but no one from UM’s Athletic Department responded to her outreach throughout December 2017.

123. Despite the pending retaliation investigation, UM terminated Ms. Smith’s student-athlete status and related benefits, including her healthcare access.

124. On December 8, 2017, 59 days after pausing the Title IX grievance process, UMPD authorized Defendant Ferency to proceed and provided additional evidence supporting Blake Washington’s confession to sexual abuse.

125. Despite Mr. McEvelly helping Ms. Smith promptly respond to this new evidence, UM did not complete the final investigative report in December 2017 to further delay the outcome of the Title IX grievance process.

126. Due to the ongoing delays of the Title IX grievance process and her termination from the track team in retaliation for her seeking protective measures,

Ms. Smith reported to SAPAC that thoughts about self-harm were occurring again. In response, Mr. McEvilly provided support resources and acknowledged that UM's ongoing delay of the Title IX grievance process was detrimental to her well-being.

127. On December 19, 2017, about a month after Ms. Smith's retaliation report, Defendant Ferency first interviewed Defendant Henry.

128. By the end of the Fall 2017 term, given the detrimental impact of the ongoing hostile educational environment on her, Ms. Smith's GPA had plummeted to below a 0.5 (over point and a half lower than the previous semester).

Winter 2018 Term
UM's Ongoing Retaliation Against Ms. Smith

129. Due to the stress of losing her student-athlete benefits at the start of a new academic term, Ms. Smith struggled with depression and suicidal ideation.

130. During January 2018, Ms. Smith kept contacting Directors Ritt and Manuel to discuss the retaliation complaint and seek reinstatement, but no one from UM's Athletic Department respond to her.

131. On January 2, 2018, about a month and a half after Ms. Smith made her retaliation complaint, Mr. McEvilly asked Defendant Ferency for an update. Defendant Ferency responded the investigation would be concluded that week.

132. On January 4, 2018, Defendant Ferency interviewed Defendant Henry again, but did not conclude the investigation as previously represented.

133. The next day, Ms. Smith petitioned UM to permit her dual enrollment at a community college so that she could take prerequisite courses without the ongoing possibility of running into Blake Washington on campus to suffer further emotional distress that interfered with her academics and her mental health.

134. On January 12, 2018, SAPAC internally flagged that Ms. Smith was still struggling with suicidal ideation.

135. On January 18, 2018, 254 days after her sexual assault report to UM, it found Mr. Washington responsible for sexually assaulting Ms. Smith.

136. Mr. McEvelly followed up with Defendant Ferency about the retaliation complaint the next day and requested that UM reinstate Ms. Smith to the track team so that she could obtain the student-athletes benefits essential to her enrollment.

137. Defendant Ferency responded that a draft outcome regarding the retaliation complaint was under review with Defendant Heatlie and Director Ritt.

138. Later that day, Defendant Ferency declined to provide the outcome of the retaliation complaint. Instead, he stated that Ms. Smith's removal from the track team was due to a "miscommunication" involving Defendant Henry and that Ms. Smith should meet and discuss the situation with Director Ritt.

139. Mr. McEvelly shared this response with Ms. Smith, and she recalls him stating "miscommunication my ass" to infer his belief that retaliation had occurred.

140. Upon information and belief, Defendant Ferency failed to make any finding regarding whether retaliation had in fact occurred against Ms. Smith to shield both UM and Defendant Henry from liability.

141. On January 22, 2018, Mr. McEvelly requested that Director Ritt promptly meet with Ms. Smith and reinstate her to the track team.

142. During this meeting, Director Ritt claimed that Defendant Henry was a “good person” and that the situation was a “miscommunication,” so Ms. Smith should speak with Defendant Henry. At no point did Director Ritt address Ms. Smith’s concern about the reported retaliation or reinstate her to the track team.

143. When Ms. Smith met with Defendant Henry, he claimed not to have understood how much the sexual assaults had impacted her. When Ms. Smith asked about reinstatement, Defendant Henry stated that she would have to check in with the academic success program offered through UM’s Athletic Department before any decision would be made. Ms. Smith complied with this request that same day.

144. Upon information and belief, at some point thereafter, when Defendant Henry had a stretching session with C.J., a female track athlete, he stated that another female track athlete was like “AIDS” because “every time I try to get rid of her, she comes back.” C.J. understood Defendant Henry to be talking about a sprinter. Upon information and belief, this offensive statement is about Ms. Smith as she is the only sprinter that was cut and reinstated to the track team.

145. On January 29, 2018, UM provided Ms. Smith a sanction memorandum dated four days before, on January 25, 2018. This memorandum imposed the “sanction” of probation against Blake Washington in response to his repeated sexual assaults of Ms. Smith. *See Exhibit 2*

146. This memorandum allowed Mr. Washington to remain on the track team and claimed that: “Should you be found responsible for any further violations while enrolled at the University of Michigan . . . this probationary status will be taken into consideration in the deliberation of any future sanctions.” *See id.* (listing suspension, but not expulsion as a penalty for further misconduct).

147. While this memorandum contained another no-contact directive imposed against Blake Washington, the terms of the directive failed to explicitly prohibit his physical proximity to Ms. Smith while on campus. *See id.*

148. Regarding his ongoing student-athlete status, the memorandum required Mr. Washington to do “everything reasonably possible to avoid contact with Kellen Smith” and stated that any failure to do so “could result in additional complaints with the University of Michigan.” *See id.* (emphasis added) (conspicuously failing to suggest any penalty could result from such a violation).

149. The memorandum also requested (rather than guaranteed) that UM issue ongoing “no-contact measures” to separate Ms. Smith and Blake Washington during track practice. *See id.* Thus, through the sanctions issued against Mr.

Washington, UM sought to continue limiting Ms. Smith's athletic access rather than merely limiting Mr. Washington's athletic access. This provision stands in sharp contrast to the memorandum's requirement Mr. Washington disenroll in any courses that Ms. Smith had been enrolled in to prioritize her academic access. *See id.*

150. That same day, January 29, 2018, over two months after being cut from the track team, UM reinstated Ms. Smith and restored her student-athlete benefits.

151. Due to ongoing concerns that she could lose her student-athlete status and benefits again if UM were to continue imposing separate track practice schedules against her, as suggested by the memorandum, Ms. Smith rejected these remedial measures to prevent UM from continuing to limit or otherwise interfere with her athletic access.

UM's Ineffective Sanctions Leave an Unremedied Hostile Environment

152. On January 30, 2018, SAPAC forwarded the sanction memorandum to Ms. Smith. In response to these lax sanctions, Ms. Smith worked with SAPAC on an appeal, which was due on February 4, 2018.

153. On February 5, 2018, Ms. Smith submitted this appeal to UM citing that she had been ill to delay her timely submission. In response, UM denied her submission and required her to petition for late acceptance.

154. On February 7, 2018, UM provided a copy of Blake Washington's appeal to Ms. Smith and informed her that the sanctions would be held in abeyance

pending the outcome of that appeal. UM allowed Ms. Smith a response to this appeal, due February 13, 2018.

155. On February 8, 2018, Ms. Smith submitted her original appeal again along with a petition for late acceptance. Without any meaningful explanation, UM denied Ms. Smith's petition for late acceptance on February 12, 2018. UM therefore failed to consider her appeal, even as a response to Mr. Washington's appeal.

156. Around this same time, Ms. Smith tore her hamstring. For this injury, she required daily rehabilitation in the UM Athletic Department's training room. One day, while Ms. Smith was compressing her hamstring, which required her to stay immobile for a half-hour at a time, Trainer Fanning saw Blake Washington enter the training room and demanded that Ms. Smith move to accommodate him. This upset Ms. Smith and she struggled to move given the constricted of her leg.

157. Shortly thereafter, another sexual assault occurred on the track team and two male student-athletes, were suspended.

158. Confused by UM removing these student-athletes while allowing Blake Washington to remain on the track team, Ms. Smith expressed her frustration to team captain, M.M. M.M. suggested that Ms. Smith reach out to discuss the situation with Coach Rajewsky rather than continuing to speak with Defendant Henry.

159. Despite Ms. Smith's outreach to Coach Rajewsky, he never responded. Eventually Ms. Smith went Coach Rajewsky's office. He responded by immediately

called in a female track coach, Jenni Ashcroft, to chaperone the conversation. When Coach Ashcroft entered his office and saw Ms. Smith, she gave a knowing grin to suggest that she knew about Ms. Smith's concerns already.

160. Ms. Smith explained her concern that Blake Washington had not been removed from the track team despite being found responsible for repeatedly sexually assaulting her despite the other track athletes being suspended. Coach Rajewsky dismissively responded "yeah, I know" and directed her to talk with Defendant Henry since it was "not his job" to reconcile the two situations.

161. Ms. Smith then met with Defendant Henry to inquire about UM's failure to remove Blake Washington from the track team after he had been found responsible for repeatedly sexually assaulting Ms. Smith. She emphasized that UMPD had sought criminal charges against Mr. Washington for this sexual abuse, which were still pending.

162. Defendant Henry declined to remove Blake Washington from the track team and said "well, there are separation measures in place so you two should not be seeing each other anyways." Ms. Smith retorted that she actually saw him nearly every day in UM's Athletic Department and even had to move in the training room recently to accommodate him. Defendant Henry responded that he did not know what else to say and that Ms. Smith should "feel free" to leave his office.

163. On March 2, 2018, 297 days after her initial sexual assault report, UM denied Blake Washington's appeal and imposed the "sanctions" against him to conclude the Title IX grievance process.

164. Contrary to the memorandum, and true to form, Blake Washington continued to violate the no contact directive to interfere with Ms. Smith's ability to participate on the track team or attend her classes.

165. On one such occasion, Mr. Washington entered the dining area of the Fireside Café in Pierpoint Commons on UM's North Campus. He made eye contact with Ms. Smith and then proceeded to select a table facing her as part of his ongoing harassment, intimidation and stalking efforts. Ms. Smith was deeply shaken by this conduct and immediately left the Café to report this violation to SAPAC.

166. Upon information and belief, contrary to the sanction memorandum and UM policy, UM failed to take any enforcement action or otherwise investigate the reported violation.

167. Around this time, UM's Athletic Department continued to schedule the men's and women's track team practices together, thus knowingly placing Ms. Smith in immediate proximity to Mr. Washington without regard to her wellbeing.

168. As a result, during one track practice, Blake Washington cavalierly approached Ms. Smith to talk to T.L., a teammate standing immediately next to her.

Upon information and belief, Mr. Washington engaged in this conduct as part of an ongoing pattern of harassment, intimidation and stalking.

169. In response to Mr. Washington's violation of the no contact directive, Ms. Smith left track practice and suffered a panic attack in the bathroom for 20-30 minutes. After calming down, Ms. Smith waited for warmups to end so that the men's and women's team would separate before she returned to practice.

170. On April 23, 2018, acting on Ms. Smith's behalf, SAPAC reported Blake Washington's violations of the sanction memorandum's protective measures to the appropriate officials at UM. Upon information and belief, UM failed to take any enforcement action or otherwise investigate the reported violations.

171. Despite her severe struggles with ongoing emotional distress and PTSD throughout the Winter 2018 term, Ms. Smith had worked to increase her GPA a full point to over a 1.5, thus bringing her average GPA right below a 2.0.

Spring 2018 Term

UM Denies Ms. Smith Equal Access to Education

172. On April 25, 2018, Lisa Kisabeth reached out to SAPAC stating that the NAME Department was "very concerned about what Kellen has gone through and what appears to be a lack of response by the University." Ms. Kisabeth observed that "Kellen is suffering emotionally and academically" and said, "it is difficult for us to stand by and watch this continue."

173. The following day, NAME Undergraduate Program Advisor Warren Noone reached out to SAPAC and confirmed that both he and the NAME Department Chair felt the same way as Ms. Kisabeth.

174. Mr. McEvilly responded with an offer to coordinate advocacy efforts on Ms. Smith's behalf by SAPAC and the NAME Department with UM and its Athletic Department.

175. On April 30, 2018, 163 days after seeking a prosecutorial decision, Prosecutor Amy Reiser declined to prosecute Blake Washington by informing UMPD: "Although the suspect, Blake Washington, admits to a committing a crime (Criminal Sexual Conduct 4th Degree contrary to MCL 750.520E1B), the victim who was sleeping at the time of the assault, has no recollection of the assault and therefore, independent of the suspect's admission and/or confession, there is no corpus." *See* Exhibit 3.

176. On May 1, 2018, the NAME Department informed SAPAC that UM had placed Ms. Smith on a mandatory leave due to her failure to maintain a 2.0 GPD. As a result, UM withdrew her from enrollment and she did not attend any courses during the Spring and Summer 2018 terms.

177. Around that same time, Ms. Smith learned from UMPD that Blake Washington would not be criminally prosecuted for the pending charges.

178. Given this double-blow, Ms. Smith suffered ongoing and substantial emotional distress and exacerbated PTSD, anxiety, depression, and suicidal ideation.

179. In mid-May 2018, Mr. McEvelly reached out to Ms. Kisabeth to confirm that SAPAC had worked with Ms. Smith for over a year and could attest that “the entirety of Kellen’s case has had a significant impact on her emotionally, academically, and in other ways as well” and UM’s ongoing failure to support her was “incredibly frustrating.”

180. As part of her efforts to seek academic reinstatement at UM, Ms. Smith worked with both SAPAC and the NAME Department to appeal her academic standing.

181. Upon information and belief, on May 16, 2018, Mr. McEvelly and NAME’s Department Chair also advocated on Ms. Smith behalf with UM’s Athletic Department given that it had fostered an ongoing hostile environment on the track team by failing to enforce any protective measures or sanction issued against Blake Washington. Upon information and belief, this advocacy effort was not successful.

182. On May 29, 2018, SAPAC requested that Defendant Daniels implement improved protective measures that would prevent Blake Washington’s ongoing proximity to Ms. Smith on North Campus and UM’s Athletic Department.

183. On July 5, 2018, over 38 days later, Defendant Daniels responded to decline implementation of any additional protective measures. Instead, she informed

Mr. Evilly that Ms. Smith was ineligible to participate on the track team given her mandatory leave. Despite this mandated leave having occurred two months before, no UM official had informed Ms. Smith that she was athletically ineligible.

184. When Ms. Smith received notice of her athletic ineligibility from SAPAC, she suffered severe emotional distress because the loss of student-athlete benefits would create an additional barrier to her re-enrollment at UM. As a result, Ms. Smith stopped communicating with UM officials, including SAPAC.

185. Upon information and belief, during the Summer 2018 term, Blake Washington continued to work with children as part of a summer coding camp called Journi, which is located in Detroit, Michigan.

Fall 2018 Term
Ms. Smith Seeks Re-Enrollment at UM

186. While on mandatory leave, due to her ineligibility for student-athlete benefits, Ms. Smith had to pay out-of-pocket for ongoing PTSD treatments.

187. During the Fall 2018 term, Ms. Smith audited some courses at UM while working with the NAME Department to improve her academic standing. As she was regularly on UM's North Campus for her academics, Blake Washington continued to come into regular proximity with her to perpetuate the hostile educational environment and cause her ongoing emotional distress

188. On one such occasion, Ms. Smith entered the aerospace engineering building on her regular route to the NAME Department when Blake Washington

made eye contact with her and refused to leave. Ms. Smith fled to the bathroom where she suffered a panic attack and vomited. She promptly reported this incident to SAPAC's crisis line. Upon information and belief, despite this reported violation of the no contact directive, UM took no enforcement action in response.

189. On another occasion, Ms. Smith entered the electrical engineering building on her regular route to the NAME Department and saw Blake Washington walking towards her. He made eye contact and refused to change routes to instead walk within inches of Ms. Smith. Upon information and belief, Mr. Washington engaged in this conduct to harass and intimidate Ms. Smith. In response, she immediately located the nearest bathroom where she suffered another panic attack for around 20 minutes and again vomited given her severe emotional distress. When she finally calmed down, Ms. Smith peered into the hallway to first ensure Mr. Washington was not nearby before leaving the building and heading back to the safety of her off-campus apartment. Despite promptly reporting the incident to SAPAC's crisis line, upon information and belief, UM took no enforcement action.

Winter, Spring and Summer 2019 Terms

Ongoing Damages due to Ms. Smith's Deprivation of Educational Access

190. During the Winter 2019 term, Ms. Smith remained on mandatory leave from UM, so she enrolled full-time at a community college and sought federal funding to pay for her courses.

191. Given ongoing struggles with PTSD, Ms. Smith ended up dropping out of that college to focus on her ongoing treatment needs. As a result, she had to pay back the federal funding out-of-pocket at significant personal expense.

192. For the rest of the Winter 2019 term, Ms. Smith continued attending therapy and paying out-of-pocket for ongoing PTSD-related treatments.

193. Given these significant expenses, during the Spring and Summer 2019 terms Ms. Smith could not financially afford to attend courses anywhere, so she fell further behind in obtaining her undergraduate degree.

UMPD's Infliction of Emotional Distress on Ms. Smith

194. In August 2019, Ms. Smith sought an unredacted copy of UMPD's records regarding her sexual assault complains against Blake Washington. In response, Det. Pillsbury requested that Ms. Smith meet with her in person and suggested a local coffee shop.

195. Det. Pillsbury and another UMPD female officer arrived at the coffee shop to meet with Ms. Smith and her SAPAC advocate. There, in this public location, Det. Pillsbury shared previously unknown information about the criminal investigation, which caused Ms. Smith significant emotional distress. Det. Pillsbury then apologized for the lack of prosecution in her case before leaving.

196. Ms. Smith became extremely distressed and started crying, repeating over and over "I can't do it anymore" to the SAPAC advocate, and started engaging

in self-harm behaviors including repetitively scratching the inside of her arm, rubbing her shoe against her leg, and hitting her head against the table.

197. The SAPAC advocate assessed that Ms. Smith was a potential danger to herself, so she called an Uber driver to take her to the UM Hospital, where she was involuntarily hospitalized for a week to result in lost wages for Ms. Smith.

198. After this hospitalization, Ms. Smith continued attending therapy while paying out-of-pocket for ongoing PTSD-related treatments.

Fall 2019 Term

199. When Ms. Smith's mandatory leave had ended, she returned to full-time enrollment at UM for the Fall 2019 term.

200. Having been estranged from her mother, Ms. Smith qualified for the Go Blue Guarantee and thus did not have to pay for tuition, housing or books at UM.

201. While Ms. Smith started out academically strong, her academics suffered again after she ran into Blake Washington on campus. Up until that point, Ms. Smith had thought that he had moved away after graduation. After seeing him again on campus, she became fearful he would continue to stalk, intimidate or otherwise harass her. This ongoing fear exacerbated her PTSD, which in turn made it challenging for her to attend classes and succeed academically.

202. Upon information and belief, despite graduating in May 2019, Blake Washington regularly accesses UM's campus now as an AIA staff member.

203. Ms. Smith did not complete any of her courses for the Fall 2019 term, and thus she did not achieve the required GPA to continue her enrollment at UM.

Winter, Spring and Fall 2020 Term

204. For the Winter and Spring 2020 term, Ms. Smith enrolled full-time at a community college and took out student loans to pay for her courses.

205. Ms. Smith continued attending therapy while paying out-of-pocket for ongoing PTSD-related treatment.

206. To date, Ms. Smith is six semesters behind in obtaining her dual undergraduate degrees. This delay has prevented her from obtaining a well-paying career in the NAME field, thus resulting in lost future wages.

207. Upon information and belief, given the limitations on NCAA student-athlete eligibility, Ms. Smith may no longer be eligible to compete on the UM Women's track team despite her re-enrollment at UM for the Fall 2020 term. As a result, she would not be eligible to receive the student-athlete benefits that she relied upon in the past to afford her enrollment.

CLAIMS FOR RELIEF

COUNT I

***(Sex Discrimination and Deliberate Indifference in violation of Title IX,
20 U.S.C. §§ 1681, et seq., against Defendants UM and Board)***

208. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs, as if fully set forth herein.

209. Upon information and belief, Defendants UM and Board are federal funding recipients subject to Title IX.

210. At all times relevant, Defendants UM and Board exercised substantial control over Blake Washington, first as a UM student-athlete and now as a UM student group employee.

211. Between the Fall 2016 and Spring 2017 terms, Blake Washington sexually assaulted Ms. Smith on at least three occasions after she fell asleep while studying with him in Stockwell Hall. This sexual abuse constituted severe, pervasive and objectively offensive sexual harassment.

212. This sexual harassment caused Ms. Smith to suffer severe emotional distress to result in the diagnosis of PTSD. It also created an ongoing hostile educational environment on UM's campus to deprive her access to educational opportunities and benefits, such as student groups, track practices, and classes.

213. At all times relevant, Defendants UM and Board exercised substantial control over UM's campus, residence halls, and athletic facilities.

214. On May 9, 2017, Defendants UM and Board received actual notice of Blake Washington's repeated sexual assaults against Ms. Smith, by and through her report to appropriate UM officials. *See* Exhibit 1.

215. Upon this actual notice, Defendants UM and Board, by and through Defendant Ferency, directly discriminated against Ms. Smith on the basis of sex by

issuing a no contact directive against her, which constituted differential treatment of her as compared to her female peers who were able to freely access campus without limitation, absent a good faith accusation that they had committed a crime and/or misconduct to justify such a limitation on their access to educational opportunities and benefits on campus.

216. Defendants UM and Board, by and through Defendants Heatlie, Ferency, Daniels, and Henry, also directly discriminated against Ms. Smith on the basis of sex through inequitably limiting her track practices access, which constituted differential treatment of her as compared to her teammates who were able to freely access UM's track and athletic facilities without limitation, absent a good faith accusation that they had committed a crime and/or misconduct to justify such a limitation on her access to educational opportunities and benefits on campus.

217. Defendants UM and Board, by and through UMPD, also demonstrated deliberate indifference towards Ms. Smith's reports of repeated student-on-student sexual assaults by delaying efforts to take her criminal report for 74 days.

218. Despite Defendants UM and Board issuing a no contact directive and separate track practice schedules to prohibit Blake Washington's ongoing proximity to Ms. Smith during the pending Title IX grievance process, he repeatedly violated these protective measures to intimidate, harass and stalk Ms. Smith on campus. Such conduct qualifies as actionable sexual harassment.

219. With assistance from SAPAC, Ms. Smith reported Blake Washington's repeated protective measures violations to appropriate UM officials, which included Defendants Heatlie, Ferency, Daniels, and Henry.

220. In response to actual notice of ongoing, actionable sexual harassment, Defendants UM and Board responded with deliberate indifference, which was demonstrated by their:

- a. failure to investigate these reported violations;
- b. failure to enforce the protective measures through additional misconduct charges against Mr. Washington, as appropriate under UM's then-current Title IX policy; and
- c. their failure to issue more effective protective measures to prevent Mr. Washington's ongoing harassment, intimidation and stalking of Ms. Smith on campus.

221. By and through this deliberate indifference, Defendants UM and Board effectively caused Ms. Smith to undergo, or left her more vulnerable to, continued harassment, intimidation and stalking by Blake Washington.

222. Despite having Blake Washington's verbal and written confessions, Defendants UM and Board demonstrated deliberate indifference towards his sexual abuse of Ms. Smith by taking 297 days to complete its Title IX grievance process.

223. Defendants UM and Board also demonstrated deliberate indifference towards the ongoing hostile educational environment created and perpetuated by Blake Washington's sexual harassment by, among other things:

- a. refusing to limit Mr. Washington's access to North Campus to prevent the known risk of his ongoing proximity to Ms. Smith when he had no legitimate reason to be in that area of the campus;
- b. failing to enforce the no contact directive against Mr. Washington when he attended Ms. Smith's class in violation of the directive to deprive her of educational access;
- c. failing to investigate and resolve repeated violations of the directive and separate track practice schedules despite receiving Ms. Smith's reports of the same; and
- d. allowing Mr. Washington to continue accessing campus and track practices without effective protective measures in place despite its finding him responsible for sexually assaulting her on three occasions.

224. As a direct and natural consequence of their discrimination and deliberate indifference towards the ongoing hostile educational environment, Defendants UM and Board deprived Ms. Smith of educational access, which included them removing her from the track team and academic enrollment.

225. As a direct and natural consequence of the discrimination and deliberate indifference demonstrated by Defendants UM and Board towards the ongoing hostile educational environment, Ms. Smith suffered and continues to suffer injuries, including, without limitations, emotional distress, psychological trauma, and mortification to require ongoing treatment and care.

226. As a direct and natural consequence of the discrimination and deliberate indifference demonstrated by Defendants UM and Board towards the ongoing

hostile educational environment, Ms. Smith sustained and continues to sustain injuries for which she is entitled relief, including but not limited to:

- a. Compensation for past, present, and future physical and psychological pain, suffering, and impairment;
- b. Compensation for medical bills, counseling, and other costs and expenses for past, present, and future medical and psychological care;
- c. Compensation for loss of educational access and opportunity, including loss of athletic eligibility;
- d. Compensation for past, present, and future economic losses, including lost wages;
- e. Injunctive and equitable relief to ensure ongoing access to educational opportunities and benefits without limitation;
- f. Attorneys' fees and costs; and
- g. Such other and further relief that this Court deems just and proper.

COUNT II

(Sex Discrimination in Violation of the Michigan Elliot-Larson Civil Rights Act, M.C.L. § 37.2402, against all Defendants)

227. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs, as if fully set forth herein.

228. As a direct and natural consequence of the discrimination demonstrated by Defendants, which includes their deliberate indifference towards the ongoing hostile educational environment on campus, Ms. Smith was deprived of access to educational opportunities and benefits at UM.

229. As a direct and natural consequence of the discrimination demonstrated by Defendants, including their deliberate indifference towards the ongoing hostile educational environment arising from Mr. Washington's ongoing sexual harassment of Ms. Smith, she suffered and continues to suffer injuries, including, without limitations, emotional distress, psychological trauma, and mortification to require ongoing treatment and care.

230. As a direct and natural consequence of the discrimination demonstrated by Defendants, including their deliberate indifference towards the ongoing hostile educational environment arising from Mr. Washington's ongoing sexual harassment of Ms. Smith, she sustained and continues to sustain injuries for which she is entitled relief, including but not limited to:

- a. Compensation for past, present, and future physical and psychological pain, suffering, and impairment;
- b. Compensation for medical bills, counseling, and other costs and expenses for past, present, and future medical and psychological care;
- c. Compensation for loss of educational access and opportunity, including loss of athletic eligibility;
- d. Compensation for past, present, and future economic losses, including lost wages;
- e. Injunctive and equitable relief to ensure ongoing access to educational opportunities and benefits without limitation;
- f. Attorneys' fees and costs; and

- g. Such other and further relief that this Court deems just and proper.

COUNT III

***(Retaliation in Violation of the Michigan Elliot-Larson Civil Rights Act,
M.C.L. § 37.2402, against all Defendants)***

231. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs, as if fully set forth herein.

232. Ms. Smith engaged in protected activity and conduct when she reported Blake Washington's sexual abuse to UM to initiate the Title IX grievance process. She also engaged in protected activity and conduct when she requested protective measures and accommodations from UM pursuant to her rights under the Clery Act.

233. Defendants UM, Board and Ferency took adverse action against Ms. Smith by issuing a no contact directive against her despite the fact that she has never been accused of any crime or misconduct to warrant such an imposed limitation on her educational access guaranteed by Title IX.

234. Upon information and belief, Defendants Healtie and Daniels had notice of this imposed directive and its detrimental effects on Ms. Smith's educational access whenever Blake Washington was present on North Campus or UM's Athletic Department, yet they failed to remove the directive to effectively ratify this adverse action.

235. Upon information and belief, Ms. Smith's sexual assault reports and requests for protective measures were the reason for, or at least a significant factor

in, Defendants subjecting her to adverse action through the imposition of a no contact directive against her.

236. Defendants also took adverse action against Ms. Smith by providing her with inequitable access to track practice despite the fact that she has never been accusation of any crime or misconduct to warrant such an imposed limitation on her educational access guaranteed by Title IX.

237. Upon information and belief, Ms. Smith's sexual assault reports and requests for protective measures were the reason for, or at least a significant factor in, Defendants subjecting her to inequitable track practice access, thus impeding her ability to attend either classes or track practice at least three times a week, and also preventing Ms. Smith from practicing with her peers, as required by Defendant Henry to maintain her standing as a student-athlete.

238. Defendant Henry also took adverse action against Ms. Smith by cutting her from the track team.

239. Upon information and belief, Ms. Smith's sexual assault reports and requests for protective measures were the reason for, or at least a significant factor in, Defendant Henry removing her from the track team as he first threatened to remove her after she disclosed Blake Washington's sexual abuse and requested that Defendant Henry enforce the no contact directive by keeping Mr. Washington away from her during track practices.

240. After Defendant Henry removed Ms. Smith from the track team, Defendants UM and Board took further adverse action against her by denying Ms. Smith her student-athlete benefits pending her retaliation complaint against Defendant Henry, which did not resolve for two and a half months.

241. Defendants UM, Board and Ferency also took additional adverse action against Ms. Smith by denying her any outcome to her retaliation complaint.

242. Upon information and belief, Ms. Smith's retaliation report against Defendant Henry was the reason for, or at least a significant factor in, Defendants UM, Board and Ferency denying her any outcome from the retaliation investigation in an effort to avoid liability in this case.

243. Defendants UM and Board also took adverse action against Ms. Smith by placing her on a mandatory academic leave to withdraw her from enrollment on May 1, 2018, as well as subsequently prohibited Ms. Smith from participating on the track team by alleging that she no longer was eligible.

244. Upon information and belief, Ms. Smith's repeated reports of ongoing, actionable sexual harassment and ongoing requests for effective protective measures were the reason for, or at least a significant factor in, Defendants UM and Board withdrawing her from enrollment as they knew her academic difficulties stemmed from their own failure to remedy the hostile educational environment on campus.

245. As a direct and natural consequence of this retaliation by Defendants, Ms. Smith suffered and continues to suffer injuries, including, without limitations, deprived access to educational opportunities and benefits at UM, as well as ongoing and substantial emotional distress, psychological trauma, and mortification to require ongoing treatment and care.

246. As a direct and natural consequence of this retaliation by Defendants, Ms. Smith sustained and continues to sustain injuries for which she is entitled relief, including but not limited to:

- a. Compensation for past, present, and future physical and psychological pain, suffering, and impairment;
- b. Compensation for medical bills, counseling, and other costs and expenses for past, present, and future medical and psychological care;
- c. Compensation for loss of educational access and opportunity, including loss of athletic eligibility;
- d. Compensation for past, present, and future economic losses, including lost wages;
- e. Injunctive and equitable relief to ensure ongoing access to educational opportunities and benefits without limitation;
- f. Attorneys' fees and costs; and
- g. Such other and further relief that this Court deems just and proper.

COUNT IV

***(Retaliation in Violation of Title IX, 20 U.S.C. §§ 1681, et seq.,
against Defendants UM and Board)***

247. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs, as if fully set forth herein.

248. There is a causal link between Ms. Smith reporting Blake Washington's sexual abuse and requesting related protective measures, and Defendants UM and Board subjecting her to adverse action through the imposition of a no contact directive and separate track schedules.

249. There is also a causal link between Ms. Smith reporting Mr. Washington's ongoing, actionable sexual harassment and requesting effective protective measures, and Defendants UM and Board subjecting her to adverse action through removing her from the track team and enrollment at UM.

250. As a direct and natural consequence of this retaliation by Defendants, Ms. Smith suffered and continues to suffer injuries, including, without limitations, deprived access to educational opportunities and benefits at UM, as well as ongoing and substantial emotional distress, psychological trauma, and mortification to require ongoing treatment and care.

251. As a direct and natural consequence of this retaliation by Defendants of UM and Board, Ms. Smith sustained and continues to sustain injuries for which she is entitled relief, including but not limited to:

- a. Compensation for past, present, and future physical and psychological pain, suffering, and impairment;

- b. Compensation for medical bills, counseling, and other costs and expenses for past, present, and future medical and psychological care;
- c. Compensation for loss of educational access and opportunity, including loss of athletic eligibility;
- d. Compensation for past, present, and future economic losses, including lost wages;
- e. Injunctive and equitable relief to ensure ongoing access to educational opportunities and benefits without limitation;
- f. Attorneys' fees and costs; and
- g. Such other and further relief that this Court deems just and proper.

COUNT V

(Violation of Equal Protection Clause and Title IX pursuant to 42 U.S.C. § 1983 against all Defendant Board, Heatlie, Ferency, Daniel, Henry, and Manuel)

252. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs, as if fully set forth herein.

253. The Equal Protection Clause provides a well-established Constitutional right to women like Ms. Smith. Historically, this right has required state entities and actors to ensure their equal protection under the laws free from sex discrimination.

254. The Equal Protection Clause also provides students like Ms. Smith clear Constitutional rights, which are not amorphous or vague, to be free from sex harassment within state-funded educational institutions, such as UM.

255. Title IX is a well-established federal civil right intended to benefit female students like Ms. Smith. Historically, this right has ensured their equal educational access to programs and activities receiving federal funds, like UM.

256. Title IX provides students like Ms. Smith clear federal civil rights, which are not amorphous or vague, to be free from sexually hostile environments at educational institution in receipt of federal funding, like UM.

257. The U.S. Department of Education's Office for Civil Rights ("OCR") has provided Defendants regular guidance about their obligation to promptly and equitably address peer-perpetrated sexual harassment under Title IX since 1997.

258. As the governing body over UM, Defendant Board acted under color of state law to deprive Ms. Smith of her rights under Title IX and the Equal Protection Clause due to its widespread, pervasive practice and/or custom of deliberate indifference towards ongoing violations of no contact directives imposed against male students accused of sexual violence and the need for effective protective measures to remedy ongoing hostile educational environments.

259. Through its practice and/or custom of deliberate indifference, Defendant Board tacitly authorized its subordinates, including Defendants Heatlie, Ferency, Daniels, and Henry, to discriminate against Ms. Smith in violation of her rights under Title IX and the Equal Protection Clause.

260. In failing to enforce the no contact directive or otherwise implement effective protective measure to prevent Blake Washington's ongoing actionable harassment against Ms. Smith, Defendant Heatlie, Ferency, Daniels, Henry, and Manuel were plainly incompetent in their duties to knowingly violate Ms. Smith's Constitution right to equal protection.

261. In failing to address Defendant Henry's retaliation and sexual harassment of Ms. Smith, Defendant Heatlie, Ferency, Daniels, and Manuel were plainly incompetent in their duties to knowingly violate Ms. Smith's Constitution right to equal protection.

262. As a direct and natural consequence of Defendant Board's practice and/or custom of deliberate indifference, and the knowing violations of Ms. Smith's rights to equal protection by Defendants Heatlie, Ferency, Daniels, Henry, and Manuel, Ms. Smith suffered and continues to suffer injuries, including, without limitations, emotional distress, psychological trauma, and mortification to require ongoing treatment and care.

263. As a direct and natural consequence of Defendant Board's practice and/or custom of deliberate indifference, and the knowing violations of Ms. Smith's rights to equal protection by Defendants Heatlie, Ferency, Daniels, Henry, and Manuel, Ms. Smith sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. Compensation for past, present, and future physical and psychological pain, suffering, and impairment;
- b. Compensation for medical bills, counseling, and other costs and expenses for past, present, and future medical and psychological care;
- c. Compensation for loss of educational access and opportunity, including loss of athletic eligibility;
- d. Compensation for past, present, and future economic losses, including lost wages;
- e. Injunctive and equitable relief to ensure ongoing access to educational opportunities and benefits without limitation;
- f. Attorneys' fees and costs; and
- g. Such other and further relief that this Court deems just and proper.

REQUEST FOR RELIEF

WHEREFORE Plaintiff respectfully requests that this Court grant her a jury trial seeking: (a) compensatory and punitive damages in an amount which exceeds \$75,000.00, to be proven at trial; (b) injunctive relief requiring UM to (i) reinstate Ms. Smith's student-athlete benefits, (ii) enforce the no contact directive against Blake Washington that also prohibits his proximity to Ms. Smith, (iii) prohibit Mr. Washington's ongoing access to North Campus for the duration of Ms. Smith's enrollment, (iv) remove any directives or other limitations on Ms. Smith's access to educational opportunities and benefits, (v) waive Ms. Smith's tuition as part of the Go Blue Guarantee until she completes enough credits to earn her dual degree, and

(vi) cover Ms. Smith's housing costs as part of the Go Blue Guarantee until she completes enough credits to earn her dual degree; (c) all reasonable attorneys' fees, costs, and expenses; and (d) all other and further relief that justice may require.

JURY DEMAND

Plaintiff respectfully requests a trial by jury,

Dated: May 7, 2020

Respectfully,

/s/ Laura L. Dunn

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CERTIFICATE OF SERVICE

I hereby certify that on the date below, I mailed this Complaint first-class to serve counsel for Defendants:

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Date: May 7, 2019

Respectfully,

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