

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TERIANA BAGLEY,

Plaintiff,

V.

**THE UNIVERSITY OF NEW
MEXICO BOARD OF REGENTS,**

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff Teriana Bagley, by and through her attorneys of record, for her Complaint states:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a resident of Maricopa County, Arizona.
2. During the school year 2015-2016, Plaintiff was a student at UNM, studying to be a nurse with the assistance of the New Mexico Lottery Scholarship.
3. Defendant University of New Mexico Board of Regents (“UNM”) is a public body and instrumentality of the State of New Mexico and the empowered governing authority for UNM, an educational institution, with its primary campus in Bernalillo County, New Mexico. (“Defendant” and “UNM” are treated synonymously herein).
4. UNM receives federal funding and financial assistance within the meaning of 20 U.S.C. § 1681(a) and is otherwise subject to Title IX.
5. Defendant maintains an Office of Equal Opportunity pursuant to Title IX (hereinafter referred to as “UNM OEO”).

6. Pursuant to Title IX, UNM is supposed to have a trained UNM OEO investigator and Title IX Coordinator.
7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as all acts complained of occurred in Bernalillo County, New Mexico.

II. BACKGROUND FACTUAL ALLEGATIONS

9. At approximately 2:00 a.m. on February 19, 2016, Plaintiff was raped by UNM student and football player Nias Martin (“Martin”).
10. The rape occurred in Martin’s bedroom, in his housing unit at Lobo Village.
11. Plaintiff was horrified, outraged, and emotionally and psychologically devastated by this rape.
12. The next day, Plaintiff sent Martin a text message accusing Martin of raping her.
13. Martin did not respond to this text message.
14. On the afternoon of February 19, 2016, Plaintiff underwent a sexual assault nurse examination (SANE) where DNA evidence was collected from her body and her bruising and injuries were documented.
15. The SANE exam corroborated Plaintiff’s report of a sexual assault by Martin.
16. On February 20, 2016, Plaintiff reported the rape by Martin to officers from the UNM Police Department (UNMPD). The first UNMPD report in this case is dated February 20, 2016.
17. After Plaintiff reported the rape, UNMPD went to Martin’s apartment at Lobo Village, obtained a search warrant, searched the apartment, and interviewed Martin.

18. In his interview with UNMPD, Martin lied to UNMPD.
19. In his interview with UNMPD, Martin provided contradictory information to UNMPD.
20. Martin eventually admitted to UNMPD that Plaintiff repeatedly told him “no” and “stop” while he was having sex with her.
21. Martin eventually admitted to using physical force against Plaintiff to perpetuate the sexual assault.
22. UNMPD reviewed the text message from Plaintiff to Martin where Plaintiff accused Martin of subjecting Plaintiff to non-consensual sexual activity.
23. UNMPD noted that Martin did not respond to this text message.
24. Despite Martin’s admission that he had sex with Plaintiff without her consent, UNMPD did not arrest Martin at this time.
25. UNMPD never arrested Nias Martin for raping Plaintiff.
26. Upon information and belief, no law enforcement agency ever arrested Nias Martin for raping Plaintiff on February 19, 2016.
27. The UNMPD report in this case (#16-3835) was provided to UNM’s Office of Equal Opportunity (“UNM OEO”) on February 22, 2016.
28. UNM did not initiate contact with Martin at this time.
29. UNM did not initiate any sort of investigation at this time.
30. UNM did not initiate any sort of disciplinary proceedings against Martin at this time.
31. Upon information and belief, after UNMPD searched Martin’s apartment and interviewed Martin, Martin and/or other UNM football players immediately contacted

UNM football coach Robert Edwin Davie, Jr. (“Coach Davie”) and informed Coach Davie of the allegations against Martin.

32. Upon information and belief, Coach Davie did not report this information to OEO within 24 hours of receiving it.

33. After receiving news of the allegations against Martin, Coach Davie called a team meeting for all UNM football players.

34. At this meeting, Coach Davie engaged in the following conduct:

- a. Coach Davie informed all of the UNM football players present that there was an investigation involving a UNM football player.
- b. Coach Davie informed all of the UNM football players present of Plaintiff’s identity as the accuser.
- c. Coach Davie told all of the UNM football players present that Plaintiff’s allegations against the player were false.
- d. Coach Davie told all of the UNM football players present that they needed to protect the player, as one of their teammates.
- e. Coach Davie told all of the UNM football players present to “get some dirt on this whore,” referring to Plaintiff.
- f. Coach Davie ordered any football player who currently had or who subsequently discovered information about the Plaintiff to report that information to Coach Davie, rather than UNM OEO or law enforcement.

35. Coach Davie admitted to UNMPD that he had called this meeting.

36. Coach Davie admitted to UNMPD that he had used this meeting to tell the UNM football players present about an allegation against one of their teammates.

37. Coach Davie admitted to UNMPD that he had told the UNM football players present at this meeting that they needed to protect their teammate.
38. Other individuals present at the meeting subsequently confirmed that Coach Davie had told the UNM football players present at the meeting that they needed to protect their teammate.
39. At the time of this football team meeting, Coach Davie was an agent of UNM.
40. Calling and conducting a football team meeting was within the scope of Coach Davie's employment as an agent of UNM.
41. At the time of this football team meeting, Coach Davie was acting within the scope of his employment as an agent of UNM.
42. After this football team meeting with Coach Davie, Martin and/or other UNM football players immediately began spreading the message that Plaintiff was "crazy" and that Plaintiff had falsified rape allegations against Martin.
43. After this football team meeting with Coach Davie, Plaintiff began to get requests from UNM football players to add them as friends on SnapChat.
44. Through a UNM football player, Coach Davie obtained a video from Plaintiff's SnapChat.
45. Coach Davie brought this SnapChat video to UNMPD.
46. Coach Davie argued to UNMPD officers that the video undermined Plaintiff's credibility.
47. Coach Davie otherwise used the video to advocate with UNMPD officers on Martin's behalf.

48. When UNMPD officers informed Coach Davie that they needed to know where Martin was so that they could take a buccal swab, Coach Davie told them that he had dropped Martin off at an attorney's office.
49. By taking Martin to an attorney's office, Coach Davie interfered with UNMPD's investigation of the sexual assault.
50. By taking Martin to an attorney's office, Coach Davie interfered with UNM OEO's subsequent investigation.
51. By admitting to taking Martin to an attorney's office, Coach Davie admitted to interference with UNMPD's investigation of the sexual assault.
52. By admitting to taking Martin to an attorney's office, Coach Davie admitted to interference with UNM OEO's subsequent investigation of the sexual assault.
53. As the semester progressed, Plaintiff began to hear that Martin and other UNM football players were spreading the word around campus that Plaintiff had falsified rape allegations against Martin.
54. On multiple occasions during the semester, Plaintiff was pulled out of her classes by UNMPD officers for questioning regarding the rape by Nias Martin.
55. Upon information and belief, Nias Martin was never pulled out of his classes for questioning by UNMD officers for questioning regarding his rape of Plaintiff.
56. Plaintiff began to hear that Coach Davie was going to "take care of" her allegations against Martin, which she understood to mean that Coach Davie was going to interfere with the investigation of her allegations against Martin.
57. As a result of the campaign of misinformation, intimidation, and retaliation being conducted by and through Coach Davie and the UNM football program, Plaintiff

- began altering her schedule at UNM because she was afraid of meeting up with Martin or other UNM football players at different locations around the University.
58. Plaintiff began leaving at least one class early because she would see Martin after that particular class. Plaintiff began avoiding school settings altogether. Plaintiff missed various classes as a result of being sexually assaulted by Martin. Plaintiff's grades began to drop.
59. Plaintiff was repeatedly harassed, intimidated, and retaliated against by UNM football players as she moved around campus.
60. The insulting, threatening, intimidating, and retaliatory behavior of these UNM football players eventually prompted Plaintiff to make a formal complaint to UNM OEO on or about March 17, 2016.
61. In making her formal complaint to UNM OEO on or about March 17, 2016, Plaintiff described the rape by Nias Martin.
62. In making her formal complaint to UNM OEO on or about March 17, 2016, Plaintiff described the insults, threats, intimidation, and retaliation she had experienced from members of the UNM football program after reporting the rape to UNMPD.
63. On or about March 17, 2016, UNM was aware of past instances where members of the UNM football program had insulted, threatened, intimidated, and/or retaliated against individuals who made allegations of misconduct against members of the UNM football program.
64. On or about March 17, 2016, UNM did not institute any measures designed to protect Plaintiff from insults, threats, intimidation, and/or retaliation from members of the UNM football program.

65. At no time did UNM take any measures to protect Plaintiff from insults, threats, intimidation, and/or retaliation from members of the UNM football program.
66. At no time did UNM instruct the members of its football program to refrain from all contact with Plaintiff.
67. At no time did UNM instruct the members of its football program not to retaliate against Plaintiff for bringing rape allegations to UNMPD.
68. At no time did UNM instruct the members of its football program not to retaliate against Plaintiff for bringing rape allegations to UNM OEO.
69. The campaign of misinformation, intimidation, and retaliation being conducted by and through Coach Davie and the UNM football program escalated on or about the night of March 26, 2016, when Plaintiff was at a private, off-campus gathering at a friend's house. The gathering was interrupted by a group of at least four UNM football players banging on the door, stating that they knew that Plaintiff was inside, insulting and threatening Plaintiff, and demanding that Plaintiff's friends "send [Plaintiff] out here."
70. Another UNM football player was present with this group, but did not participate in the insulting, threatening, intimidating, and retaliatory behavior of his teammates. This football player was briefly allowed into the house, where he apologized to Plaintiff for the behavior of his teammates.
71. Sometime between March 26, 2016 and April 11, 2016, Plaintiff reported this incident at the private, off-campus gathering to UNM OEO.
72. On April 11, 2016, Plaintiff confirmed the issues to be investigated by UNM OEO in a Confirmation Letter.

73. Upon information and belief, UNM OEO took no action in response to Plaintiff's complaint until April 22, 2016.
74. On April 22, 2016, and again on April 27, 2016, UNM OEO emailed Martin to attempt to schedule a meeting with him.
75. Martin did not respond to these emails.
76. On May 6, 2016, UNM OEO emailed Martin a letter of Plaintiff's allegations, along with instructions as to how to respond to the allegations.
77. Martin did not respond to this email.
78. Despite Martin's repeated failures to respond to UNM OEO's communications or to cooperate with UNM OEO's investigation, UNM took no disciplinary action against Martin between May 6, 2016, and September 15, 2016.
79. The Spring 2016 semester ended in mid-May.
80. By the time the Spring 2016 semester ended, UNM had been aware of Martin's sexual assault of Plaintiff for nearly three months, and had not disciplined Martin in any way.
 - a. By the time the Spring 2016 semester ended, Martin had not been suspended from UNM.
 - b. By the time the Spring 2016 semester ended, Martin had not been suspended from participation in UNM football program activities.
 - c. By the time the Spring 2016 semester ended, Martin had not been ordered to avoid contact with Plaintiff.
 - d. By the time the Spring 2016 semester ended, Martin had not been disciplined by UNM in any other way, shape, or form.

81. By the time the Spring 2016 semester ended, UNM's most substantive response to Plaintiff's rape had been the implementation of a campaign of misinformation, intimidation, and retaliation being conducted by and through Coach Davie and the UNM football program.
82. Correctly sensing that UNM was not properly handling her allegations against Martin, and beginning to buckle under the strain of the campaign of misinformation, intimidation, and retaliation being conducted by and through Coach Davie and the UNM football program, Plaintiff withdrew from life at UNM over the course of the spring and summer of 2016.
83. Plaintiff did not re-enroll at UNM for the Fall 2016 semester.
84. Plaintiff eventually enrolled in the nursing program at Brookline College in Phoenix, which cost approximately \$78,000. Plaintiff received no financial aid or scholarship assistance for this degree, and had to work three jobs simultaneously to pay for it.
85. The first UNM football game of the 2016 season was September 1, 2016.
86. Martin played in this game.
87. Martin played in this game despite the fact that UNM had known of a rape allegation against Martin for over six months.
88. On September 16, 2016, UNM OEO finally received a response to its numerous emails to Martin, in the form of an email from attorneys representing Martin.
89. The attorneys representing Martin worked for the law firm where Coach Davie had dropped off Martin after learning of Plaintiff's allegations against Martin.

90. The attorneys representing Martin worked for a law firm that had previously represented other UNM football players accused of sexually assaulting female UNM students.
91. On November 1, 2016, Martin's attorneys provided UNM OEO with a written response to Plaintiff's allegations.
92. On December 8, 2016 – nearly ten months after UNM was alerted to Martin's sexual assault of Plaintiff – UNM OEO indicated in its Preliminary Letter of Determination that it was “prepared to issue findings of probable cause with regard to [Plaintiff]’s allegations of non-consensual sexual activity against [Martin].”
93. UNM OEO attempted to inform Plaintiff of this probable cause determination by emailing it to Plaintiff's UNM email address – either deliberately or negligently disregarding the fact that Plaintiff was no longer an enrolled student at UNM, and could no longer access her UNM email account.
94. As such, Plaintiff did not receive notice of the probable cause determination until approximately February of 2018.
95. Nonetheless, under UNM OEO Discrimination Claims Procedure, UNM OEO should have issued a Final Letter of Determination within four business days of sending the Preliminary Letter of Determination to Plaintiff.
96. The Gildan New Mexico Bowl was played on December 17, 2016.
97. UNM played in the Gildan New Mexico Bowl.
98. Nias Martin played for UNM in the Gildan New Mexico Bowl.
99. Upon information and belief, Martin graduated from UNM in the Spring of 2017.

III. UNM'S FAILURE TO COMPLY WITH TITLE IX

100. Prior to February 19, 2016, UNM students had reported being harassed by a group of student athletes after making a sexual harassment complaint to the University against one of the student athletes' teammates.
101. UNM was aware of these reports at the time Plaintiff reported the sexual assault by Nias Martin to UNMPD.
102. Prior to February 19, 2016, UNM students had reported witnessing retaliation against the alleged victim of a sexual assault by Crusoe Gongbay and Saquan Edwards.
103. UNM was aware of these reports at the time Plaintiff reported the sexual assault by Nias Martin to UNMPD.
104. Prior to February 19, 2016, UNM had been under investigation by the US Department of Justice Civil Rights Division since December 2014.
105. UNM was aware of this investigation at the time Plaintiff reported the sexual assault by Nias Martin to UNMPD.
106. The Civil Rights Division initiated its investigation of UNM after receiving complaints from multiple UNM students alleging that UNM did not adequately respond to their reports of sexual assault.
107. UNM was aware of these complaints at the time Plaintiff reported the sexual assault by Nias Martin to UNMPD.
108. The Civil Rights Division initiated its investigation of UNM due in part to complaints from UNM students that UNM's campus culture afforded preferential treatment to certain students (including student athletes) while approaching reports of sexual assault with skepticism or indifference.

109. UNM was aware of these complaints at the time Plaintiff reported the sexual assault by Nias Martin to UNMPD.
110. In 2015, UNM had been sued under Title IX for its alleged failure to prevent retaliation by student athletes against a UNM student who had allegedly been raped by UNM football players Crusoe Gongbay and Saquan Edwards.
111. The 2015 Title IX lawsuit also alleged that Coach Davie and other employees of the UNM football program sought to interfere in law enforcement investigations of Crusoe Gongbay and Saquan Edwards.
112. UNM was aware of this lawsuit at the time Plaintiff reported the sexual assault by Nias Martin to UNMPD.
113. On February 19, 2016, and at all times material to this Complaint, UNM knew or should have known that UNM students who reported sexual assault against UNM student athletes faced a heightened risk of retaliation by UNM student athletes.
114. According to the US Department of Justice, and at all times material to this Complaint, incidents of sexual harassment, including sexual assault, had created a hostile environment for affected students at UNM.
115. Plaintiff was one of these affected students at UNM.
116. At all times material to this Complaint, UNM had numerous duties to Plaintiff, including (among other things):
 - a. A duty to respond to and investigate the sexual assault that she reported on February 19 and 20, 2016;
 - b. A duty to mitigate the impact of the sexual assault on Plaintiff and protect her safety;

- c. A duty to eliminate the ongoing effect of the assaults on Plaintiff; and
- d. A duty not to retaliate against Plaintiff for reporting a sexual assault.

117. All of these duties listed above were triggered on or about February 19, 2016, when UNMPD and the UNM Sexual Assault Response Team (SART) became aware of the rape that Martin had inflicted on Plaintiff.
118. The rape reported to UNM OEO by UNMPD on February 22, 2016, constituted a violation of UNM's sexual violence and sexual misconduct policy (University Policy #2740).
119. When he first became aware of an alleged sexual assault perpetrated by Martin, Coach Davie was required under UNM OEO policy to immediately report the allegation to the UNM's Title IX Coordinator.
120. Upon information and belief, Coach Davie made no such report.
121. After he first became aware of an alleged sexual assault perpetrated by Martin, Coach Davie began to interfere with ongoing investigations into the reported sexual assault.
122. After he first became aware of an alleged sexual assault perpetrated by Martin, Coach Davie began to advocate for the innocence of Martin.
123. After he first became aware of an alleged sexual assault perpetrated by Martin, Coach Davie began to coordinate a smear campaign against Plaintiff by instructing the football team to "dig up dirt on [Plaintiff]."
124. Through the head of its football program, Coach Davie, UNM's first response to Plaintiff's report of a sexual assault by Nias Martin was to initiate and maintain a campaign of misinformation, intimidation, and retaliation against Plaintiff.

125. Despite being on notice that Nias Martin had nonconsensual sex with Plaintiff at approximately 2:00 a.m. on February 19, 2016, UNM never imposed a “no contact” order on Nias Martin.

126. Even if UNM had imposed a “no contact” order on Martin, UNM lacked the proper procedures to adequately enforce its “no contact” orders at all times material to this Complaint.

127. Despite being on notice that Nias Martin had nonconsensual sex with Plaintiff at approximately 2:00 a.m. on February 19, 2016, UNM took no steps to determine whether or not Nias Martin posed a safety threat to Plaintiff during the pendency of the UNM OEO investigation.

128. Even if UNM had determined that Martin posed a safety threat to Plaintiff, and at all times material to this Complaint, UNM lacked the proper procedures to adequately enforce any interim safety measures that UNM might have imposed on Martin during the pendency of the UNM OEO investigation.

129. Despite being on notice that Nias Martin had nonconsensual sex with Plaintiff at approximately 2:00 a.m. on February 19, 2016, UNM never placed Nias Martin on any sort of disciplinary probation.

130. Despite being on notice that Nias Martin had nonconsensual sex with Plaintiff at approximately 2:00 a.m. on February 19, 2016, UNM never restricted Nias Martin’s involvement in the football program in any way.

131. Despite being on notice that Nias Martin had nonconsensual sex with Plaintiff at approximately 2:00 a.m. on February 19, 2016, UNM never suspended Nias Martin in any way.

132. Despite being on notice that Nias Martin had nonconsensual sex with Plaintiff at approximately 2:00 a.m. on February 19, 2016, UNM never dismissed Nias Martin from UNM for any length of time.
133. Despite being on notice that Nias Martin had nonconsensual sex with Plaintiff at approximately 2:00 a.m. on February 19, 2016, UNM never barred Nias Martin from campus.
134. Despite being on notice that Nias Martin had nonconsensual sex with Plaintiff at approximately 2:00 a.m. on February 19, 2016, UNM never took any disciplinary action of any kind against Nias Martin.
135. Despite being on notice that Nias Martin had nonconsensual sex with Plaintiff at approximately 2:00 a.m. on February 19, 2016, UNM did not provide Plaintiff with appropriate academic accommodations.
136. Even if UNM had attempted to provide Plaintiff with appropriate academic accommodations, UNM lacked adequate procedures to institute those appropriate academic accommodations at all times material to this Complaint.
137. UNM, with knowledge of the apparent sexual violence perpetrated upon Plaintiff by a UNM football player, permitted the continuation of the sexual harassment of Plaintiff through its deliberate indifference to her assault, through its lack of diligence in pursuing an investigation of her allegations, and through a smear campaign initiated and maintained against Plaintiff by Coach Davie and the UNM football program, as set forth in greater detail in Counts I and II below.
138. UNM did not open a Title IX investigation until March 17, 2016, when Plaintiff expressly requested that an investigation be conducted.

139. Federal guidelines suggest that Title IX investigations should be completed within sixty calendar days following the receipt of a complaint.
140. UNM OEO Discrimination Claims Procedure indicates that investigations should typically take approximately sixty business days from the date that a complainant perfects and signs a statement of allegations.
141. Plaintiff perfected and signed a statement of allegations on March 17, 2016.
142. In the alternative, Plaintiff perfected and signed a statement of allegations on April 11, 2016.
143. Based on the relative simplicity of the investigation required after Nias Martin's admissions to UNMPD, there was no reason that UNM's Title IX investigation in this case should have taken longer than sixty days.
144. Nonetheless, and for reasons unknown, UNM OEO did not receive responses from Nias Martin regarding Plaintiff's allegations until November 1, 2016 – nearly ten months after Plaintiff reported the rape to UNM – and even then only received a written response to its questions from Nias Martin's criminal defense lawyers.
145. Between April 11, 2016, and November 1, 2016, Martin suffered no discipline from UNM for his refusal to respond to UNM OEO.
146. Upon information and belief, Coach Bob Davie and Athletic Director Paul Krebs determined that the DA's office's decision to not move forward with a criminal prosecution meant that Nias Martin was cleared of the Title IX investigation and should therefore receive no discipline.
147. Title IX regulations require that a Title IX investigation be independent.
148. Title IX regulations require that a Title IX investigation be impartial.

149. Title IX guidance indicates that the outcome of a Title IX investigation should not be based on the fact that a criminal prosecution will not go forward.
150. Title IX guidance indicates that a school's response to allegations of sex-based discrimination should not depend on the presence or absence of criminal charges against the alleged perpetrator.
151. Title IX guidance indicates that conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation.
152. The decision not to prosecute Nias Martin in criminal court should not have been used as a reason not to discipline Martin under Title IX.
153. The decision not to prosecute Nias Martin in criminal court was used as a reason not to discipline Martin under Title IX.
154. Coach Davie allowed Martin to remain in good standing on the UNM football team because no criminal charges had been filed against him.
155. Coach Davie stated that allowing Martin to remain in good standing on the UNM football team in the absence of criminal charges was a matter of team policy.
156. This team policy was in direct violation of Title IX guidance.
157. Upon information and belief, the criminal charges against Martin were dropped in part due to pressure lodged by the UNM Athletic Department, or proxies, and by intentional interference and failure to cooperate by the UNM Athletic Department with UNMPD.
158. UNM OEO emailed Nias Martin on April 22, 2016 and April 27, 2016, to schedule a meeting to review the Plaintiff's allegations against Martin.

159. Martin did not respond to these emails.
160. UNM OEO emailed Martin again on May 6, 2016, including in the email a letter of allegations, OEO Discrimination Claims Procedure, and OEO Analysis of Claims handouts.
161. UNM OEO's email to Martin on May 6, 2016, also included instructions for how to respond to the specific allegations.
162. Martin did not respond to this email.
163. According to UNM OEO Discrimination Claims Procedure, UNM OEO should have moved forward with its investigation even though it did not have a response from Martin.
164. UNM OEO did not move forward with its investigation.
165. Nias Martin was allowed to play football for UNM in the Fall 2016 season.
166. Nias Martin played football for UNM in the Fall 2016 season.
167. Nias Martin played in thirteen games for UNM football in the Fall 2016 season.
168. Nias Martin played in thirteen games for UNM football in the Fall 2016 season despite the fact that he had admitted to having non-consensual sex with Plaintiff in February 2016.
169. Nias Martin played in thirteen games for UNM football in the Fall 2016 season despite the fact that he did not respond to UNM OEO inquiries until November 1, 2016 – and even then did so only through his attorneys.
170. UNM football's last regular season game for the Fall 2016 season was played on November 26, 2016, against Wyoming.
171. Nias Martin played in the game against Wyoming on November 26, 2016.

172. On December 8, 2016, UNM OEO issued a preliminary letter of determination finding probable cause that Nias Martin violated University Policy #2740 regarding Sexual Violence and Sexual Misconduct.
173. UNM could have disciplined Martin for his failure to respond to UNM OEO between May 6, 2016, and November 1, 2016.
174. UNM did not discipline Martin for his failure to respond to UNM OEO between May 6, 2016, and November 1, 2016.
175. Based on Martin's failure to respond to UNM OEO's letter of allegations, UNM OEO could have concluded its investigation into Plaintiff's allegations sometime between May 6, 2016, and September 1, 2016.
176. Despite Martin's failure to respond to its letter of allegations, UNM OEO did not conclude its investigation into Plaintiff's allegations at any time between May 6, 2016, and September 1, 2016.
177. In the alternative, based on Martin's failure to respond to UNM OEO's letter of allegations, UNM OEO could have concluded its investigation into Plaintiff's allegations sometime between May 6, 2016, and November 1, 2016.
178. Despite Martin's failure to respond to its letter of allegations, UNM OEO did not conclude its investigation into Plaintiff's allegations at any time between May 6, 2016, and November 1, 2016.
179. UNM delayed its OEO investigation to allow Martin to play football for UNM during the Fall 2016 season.
180. As such, UNM's Title IX investigation into Plaintiff's allegations was not impartial.

181. Title IX investigations require equal communications of outcomes to both complainant and accused, including simultaneous disclosure of an investigation determination.
182. UNM failed to notify Plaintiff of the outcome of its Title IX investigation until February 2018, when Plaintiff returned to New Mexico from Phoenix to investigate the matter for herself.
183. UNM knew or should have known that Plaintiff, who was no longer enrolled at UNM as of the start of the Fall semester in September 2016, could not be contacted at her UNM email address as of December 2016.
184. UNM nonetheless chose this email method to attempt to contact Plaintiff to communicate UNM OEO's Title IX findings.

V. PLAINTIFF DOES NOT RETURN TO UNM, LOSES HER UNM SCHOLARSHIP, AND SUFFERS RE-VICTIMIZATION BY UNM'S WILLFUL INDIFFERENCE IN THE PERFORMANCE OF ITS INVESTIGATION AND LEGAL OBLIGATIONS

185. After the rape by Nias Martin, Plaintiff's life began to deteriorate. She lived in a state of constant stress and fear of retaliation from Martin and/or other members of the UNM football program. Her grades began to drop. Her relationship with her boyfriend was destroyed.
186. Plaintiff's stress and fear of retaliation intensified after being intimidated and threatened by the group of UNM football players, including Nias Martin, at the house party on or about March 16, 2016.
187. Due to constant stress and fear of retaliation (stemming in part from the smear campaign initiated and maintained against her by Coach Davie and the UNM football

program), coupled with the lack of any meaningful response by UNM to her allegations of sexual assault against Nias Martin, Plaintiff withdrew from life at UNM over the course of the spring and summer of 2016, and did not re-enroll at UNM for the Fall 2016 semester.

188. As a result, Plaintiff lost her New Mexico lottery scholarship funding.
189. Plaintiff was subsequently forced to incur substantially higher costs to re-enroll at another college.
190. The subjection of a victim of sexual assault (like Plaintiff) to a campaign of misinformation, intimidation, and retaliation by and through a university's football team and its head coach is exactly the type of result that Title IX was designed to prevent.
191. Plaintiff was re-victimized by UNM's unwillingness to discipline by Nias Martin for sexually assaulting Plaintiff.
192. Upon information and belief, Nias Martin graduated on schedule while Plaintiff was forced to restart her college education in Arizona.
193. On or about August 11, 2017, UNM received a letter dated August 11, 2017 from a former UNM football player.
194. The former UNM football player identified specific concerns about the football program and culture.
195. Upon information and belief, the former UNM football player identified specific concerns about Coach Davie's handling of Plaintiff's allegations against Nias Martin.

196. In the fall of 2017, UNM retained a retired federal judge, the Honorable Bruce Black, to conduct a preliminary investigation related to the UNM Athletic Department.
197. Witnesses who spoke to Judge Black on the condition of confidentiality claimed that Coach Davie had held an all team meeting in which he told UNM football players to “get some dirt on this whore,” referring to Plaintiff.
198. Judge Black’s preliminary investigation led to UNM retaining the law firm of Hogan, Marren, Babbo & Rose, LTD, to conduct a follow-up investigation.
199. Based on the findings of Judge Black’s preliminary investigation and the follow-up investigation by Hogan, Marren, Babbo & Rose, LTD, UNM suspended Coach Davie for thirty days without pay on February 8, 2018.

COUNT I

**VIOLATION OF TITLE IX – 20 U.S.C. § 1681(A)
(CLEARLY UNREASONABLE RESPONSE)**

Plaintiff re-alleges and incorporates herein all allegations set forth above.

200. Plaintiff’s sexual assault at the hands of Nias Martin constituted sex discrimination under Title IX.
201. UNM had actual knowledge of Plaintiff’s sexual assault at the hands of Nias Martin on or about February 22, 2016.
202. Coach Davie had actual knowledge of Plaintiff’s sexual assault at the hands of Nias Martin shortly after February 20, 2016.
203. Numerous persons within UNM had authority to address the alleged sex discrimination against Plaintiff and to institute corrective measures on Plaintiff’s behalf.

204. Coach Davie had authority to address the alleged sex discrimination against Plaintiff and to institute corrective measures on Plaintiff's behalf.
205. Coach Davie was a person who had the power to determine the extent of Martin's activity within the UNM football program.
206. Coach Davie was a person who had power to discipline Nias Martin.
207. Coach Davie was a person who had power to tell Nias Martin not to contact or retaliate against Plaintiff.
208. Coach Davie was a person who had the power to determine the extent of all UNM football players' activity within the UNM football program.
209. Coach Davie was a person who had the power to discipline all members of the UNM football team.
210. Coach Davie was a person who had the power to tell all other members of the football team not to contact or retaliate against Plaintiff.
211. Coach Davie was a person who had the power to protect Plaintiff from insults, threats, intimidation, and/or other retaliatory actions by all members of the UNM football team, including but not limited to Nias Martin.
212. Coach Davie was a person who had the power to take any and all of these actions independent of UNM OEO.
213. Coach Davie was a person who had the power to take any and all of these actions as soon as he was alerted to Plaintiff's rape allegations against Nias Martin.
214. Coach Davie's actions as head of the UNM football program are attributable to UNM.

215. Rather than discipline Nias Martin or use his power as head football coach to protect Plaintiff from retaliation, Coach Davie's responded to Plaintiff's allegations by taking Nias Martin to an attorney.
216. Rather than discipline Nias Martin or use his power as head football coach to protect Plaintiff from retaliation, Coach Davie's responded to Plaintiff's allegations by referring to her as a "whore" and telling the entire football team to "get some dirt on [Plaintiff]."
217. Rather than discipline Nias Martin or use his power as head football coach to protect Plaintiff from retaliation, Coach Davie's responded to Plaintiff's allegations by attacking Plaintiff's credibility.
218. Rather than discipline Nias Martin or use his power as head football coach to protect Plaintiff from retaliation, Coach Davie's responded to Plaintiff's allegations by advocating on Nias Martin's behalf with other UNM investigators.
219. Rather than discipline Nias Martin or use his power as head football coach to protect Plaintiff from retaliation, Coach Davie's responded to Plaintiff's allegations by using information obtained from his football players to argue to UNM investigators that Plaintiff's allegations of sexual assault were not credible.
220. As a result of Coach Davie's actions as head of the UNM football program, UNM's investigation of the rape suffered by Plaintiff was not impartial.
221. Furthermore, UNM OEO took over nine months to complete its investigation of Plaintiff's allegations of sexual assault by Nias Martin.
222. In the alternative, UNM OEO took over seven months to complete its investigation of Plaintiff's allegations of sexual assault by Nias Martin.

223. During the pendency of the UNM OEO investigation, UNM did not impose interim restrictions of any kind on Nias Martin.
224. During the pendency of the UNM OEO investigation, UNM did not take adequate steps to protect Plaintiff from re-victimization or retaliation.
225. During the pendency of the UNM OEO investigation, UNM did not provide adequate academic accommodations to Plaintiff.
226. UNM's response to Plaintiff's allegations of sexual assault by Nias Martin constituted deliberate indifference to Plaintiff's rights under Title IX.
227. UNM demonstrated deliberate indifference to Plaintiff's rights under Title IX by, among other things, permitting Coach Bob Davie and other football coaches and other members of the UNM Athletic Department to participate in the decision whether to sanction perpetrator-players, and the decision as to when to remove the sanctions, when Coach Bob Davie and the Athletic Department had a conflict of interest, including but not limited to jobs to promote the UNM football program.
228. UNM demonstrated deliberate indifference to Plaintiff's rights under Title IX by, among other things, not completing its OEO investigation in a prompt manner.
229. UNM demonstrated deliberate indifference to Plaintiff's rights under Title IX by, among other things, not completing its OEO investigation in an impartial manner.
230. The success of the UNM football program was placed over the need for a prompt and impartial investigation of Plaintiff's allegations of sexual assault.
231. UNM's responses to the sexual assault of Plaintiff by Nias Martin were clearly unreasonable in light of the known circumstances.

232. The sexual assault by Nias Martin and the deliberate indifference to Plaintiff demonstrated by UNM's investigation and response to allegations of the rape, and other conduct by UNM, resulted in risks to Plaintiff's safety and the loss of her ability to continue attending UNM.
233. UNM's discrimination against Plaintiff was severe, pervasive, and objectively offensive, and it barred Plaintiff's access to educational opportunities and benefits.
234. Plaintiff was subjected to discrimination because of UNM's deliberate indifference to known acts of harassment, sexual violence, discrimination and retaliation, including without limitation, all of the allegations outlined above.
235. Because of UNM's deliberate indifference, Plaintiff suffered losses of educational opportunities and benefits, along with injuries, damages, and losses, including but not limited to: emotional distress, fear, anxiety, trauma, loss of future earnings, and earning capacity damage to and delays in her pursuit of higher education, loss of trust and hedonic damages, and other related damages.

COUNT II
VIOLATION OF TITLE IX – 20 U.S.C. § 1681(A)
(HOSTILE EDUCATIONAL ENVIRONMENT)

Plaintiff re-alleges and incorporates herein all allegations set forth above.

236. Plaintiff was subjected to physical sexual harassment, sexual assault, sexual discrimination and retaliation that were so severe, pervasive and objectively offensive that she was denied access to educational opportunities and benefits.
237. As a result of UNM's deliberate indifference to the sexual assault of Plaintiff, and its failure to prevent retaliation against her, a hostile educational environment

developed for Plaintiff, she was forced to leave campus, and she lost her educational opportunities at the University.

238. After reporting that she had been sexually assaulted by Nias Martin, Plaintiff was subjected to retaliation by members of the UNM football team.

239. Players from the UNM football team retaliated against Plaintiff at the direction of Coach Davie.

240. The retaliation that Plaintiff suffered from members of the UNM football team contributed to the creation of an ongoing sexually hostile environment at UNM.

241. Because of the ongoing sexually hostile environment that UNM deliberately failed to address, Plaintiff suffered losses of educational opportunities and benefits, along with injuries, damages and losses, including but not limited to loss of scholarship, cost of replacement education; lost future earnings and loss of earning capacity; damage to and delays in her pursuit of higher education, fear, anxiety, trauma, emotional distress, lack of trust and hedonic damages.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant awarding:

- a. Damages in amounts to be established at trial, including without limitation, reimbursement and prepayment for all of Plaintiff's tuition and related expenses; value of the loss of Plaintiff's UNM scholarship; expenses incurred by Plaintiff as a consequence of the sexual assault and harassment, such as therapy, medications, and any related psychological or medical issues; damages for deprivation of equal access to educational benefits and

opportunities provided by UNM; damages for past, present and future emotional pain and suffering, ongoing and severe mental anguish; loss of past, present and future enjoyment of life, and past and present lost earnings and earning capacity, if any, and any other damages proven during litigation;

- b. Pre-and post-judgment interest;
- c. Costs and expenses as allowed by law;
- d. Attorneys' fees pursuant to 42 U.S.C. § 1988(b);
- e. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury as to all matters so triable pursuant to the Federal Rules of Civil Procedure.

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