

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

ARIANA QAYUMI,
Plaintiff,
v.
DUKE UNIVERSITY,
Defendant.

1:16-cv-01038-CCE-JLW

**FIRST AMENDED COMPLAINT
JURY TRIAL DEMANDED**

Plaintiff hereby amends her original pleading as a matter of course pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure by filing this First Amended Complaint within 21 days after service of Defendant's motion under Rule 12(b) of the Federal Rules of Civil Procedure. For her First Amended Complaint, Plaintiff alleges upon information and belief that:

THE PARTIES

1. Plaintiff, Ariana Qayumi, is a citizen and resident of California.
2. Defendant, Duke University, was formed under the laws of North Carolina. Its principal office and place of business is in Durham, North Carolina, and it regularly conducts business there.
3. Duke University is an "educational institution" that operates "education program[s] . . . receiving Federal financial assistance" as those phrases are used in 20 U.S.C. § 1681.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Duke University under N.C. Gen. Stat. § 1-75.4 because Duke University is a domestic corporation; it is

engaged in substantial activity within this State; and this is an action claiming injury arising out of an act or omission within this State by Duke University.

5. This Court has subject matter jurisdiction over this action. Plaintiff's claims arise under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, *et seq.*, and the laws of the State of North Carolina.

6. Venue is proper in Durham County under G.S. § 1-82 because Defendant regularly conducts business there.

7. The Superior Court is the proper division of the General Court of Justice to adjudicate this action because the amount in controversy exceeds \$25,000 exclusive of interest and costs.

FACTS

8. Plaintiff was subjected to a drug-facilitated rape by fellow students, Colby Leachman, Brian Self, and Frank Jones while all of them were enrolled as undergraduate students at Duke University and while Leachman's step-father, Peter Lange, was Duke University's Provost.

9. At all times relevant to this action, the Provost was the highest-ranking official, administrator, and managing employee of Duke University. Among other powers, the Provost had plenary authority over all decisions and functions of Duke University, including decisions relating retention and dismissal of employees and students.

10. The sexual assault of Plaintiff occurred shortly after Plaintiff moved into a new dorm on Duke University's East Campus, where Leachman and Self were living at the time.

11. When Plaintiff encountered Leachman before the sexual assault, the dorm was largely empty and Plaintiff was not familiar with it. The dorm was very close to the Provost's house, where his mother and step-father lived. Upon information and belief, Leachman had unlimited access to the Provost's house, regardless of whether it was occupied or not.

12. Upon information and belief, Leachman surreptitiously spiked Plaintiff's drink or food with a substance used to facilitate compliance with sexual assault and impair memory (sometimes referred to as date-rape drugs). Leachman then took Plaintiff to an empty house. Upon information and belief, the house was the Provost's house. There, Leachman prepared a drink for Plaintiff, handed it to her, and insisted that she drink it. Upon information and belief, Leachman had spiked the drink with a date-rape drug. Shortly thereafter, Plaintiff experienced symptoms caused by commonly used date-rape drugs.

13. Leachman then engaged in sexual intercourse with Plaintiff. Shortly thereafter, Leachman invited Brian Self and Frank Jones to join them. Self agreed, and, upon information and belief, Leachman took Plaintiff to Self's dorm room. There, Leachman and Self engaged in sexual intercourse with Plaintiff, who was still incapacitated. During that time, Jones joined them. While Plaintiff was still incapable of giving consent or permission, Leachman, using his cell phone, secretly videotaped the sexual assault of Plaintiff.

14. Upon information and belief, Leachman showed the video to other students enrolled at Duke University, including but not limited to members of his fraternity.

15. After their sexual assault of Plaintiff, Leachman and Self harassed Plaintiff further by making sexually provocative comments directly to Plaintiff

and about Plaintiff to their peers, and by engaging in further, unwanted and offensive sexual touching of Plaintiff's body.

16. Months later, Mr. Leachman was confronted by police officers who asked him to produce the video. Leachman falsely told police no such video existed, but police subsequently seized Leachman's cell phone and found the video still there.

17. Upon information and belief, at the time they sexually assaulted Plaintiff, Leachman and Self knew that, by reason of the substance surreptitiously caused Plaintiff to ingest, Plaintiff lacked the capacity to consent, would be completely suggestible, would engage in conduct against her own interest, and would have little or no memory of the events taking place.

18. Plaintiff awoke the next morning in her dorm room with a tears and blood in her genital area and bruises all over her body, including bruises on her neck and rib cage. Plaintiff notified her Resident Advisor, and subsequently went to student health.

19. Plaintiff reported the rape and sexual assault to the proper University officials, including those responsible for ensuring that the University complies with the requirements of Title IX, and to the Duke Police Department.

20. Around the same time, other students made similar reports to the proper University officials, including multiple reports that Leachman and Self engaged in similar sexual misconduct with other, similarly isolated and incapacitated female students.

21. Within weeks of Plaintiff's sexual assault, a male student reported to Assistant Dean Christine Pesetski, an Assistant Dean in Duke's Office of Student Conduct, that he personally witnessed Leachman, Self, and another male student, Frank Jones, employ the same *modus operandi* that was used in the drug-facilitated rape of Plaintiff to sexually assault a female student from another university who was visiting Duke at the time of the assault.

22. According to the student's report, the young woman was, like Plaintiff, clearly impaired, isolated, and unfamiliar with the dorm. The student reported that the woman was clearly impaired and incapable of consenting to sexual contact of any kind when Leachman took the young woman into his room and shut the door. Soon thereafter the student could hear sounds of sexual activity in the room. Roughly 30 to 45 minutes later, the student observed Brian Self and Frank Jones appear on the hall, and walk into Leachman's room without knocking or announcing themselves. All three men remained in the room with the young woman. Soon after, the student witness heard the sounds of sexual activity inside the room, and all three men remained inside the room with the young woman for another 30 to 45 minutes.

23. Dean Pesetski advised the student witness that the Office of Student Conduct would open a file based on his report, close it immediately, and that the Office of Student Conduct would notify him if it received any other report of sexual misconduct involving Leachman, Self, or Jones.

24. Although Plaintiff reported a sexual assault committed by the same people employing the same *modus operandi* within weeks of that student's report, no one from the OSC or any law enforcement agency, including Duke and Durham Police, contacted the student-witness.

25. The male student witness's report was concealed from Plaintiff, including the fact of the report and all of the detail the student-witness provided in his report to OSC.

26. Duke University officials received at least one other report of sexual misconduct involving Leachman, Self, and Jones that occurred around the same time Plaintiff was assaulted. Upon information and belief, in this report, a female student reported that Leachman, Self, and Jones engaged in sexual misconduct with another incapacitated young woman pursuant to a similar *modus operandi* as the one they employed in the sexual assault of Plaintiff and the sexual assault of the visiting student described above. Duke's investigating officer characterized the reported incident as a "gang rape."

27. Upon information and belief, the sexual assault reported by the female student involved a different, though similarly incapacitated female student victim, and was distinct from the sexual assault of Plaintiff and the sexual assault of the visiting student reported by the male student-witness described above.

28. The details of the female student's report were not disclosed to Plaintiff.

29. To investigate the allegations of sexual misconduct, the University appointed Celia Irvine to serve as an "independent investigator" Upon information and belief, Ms. Irvine had no affiliation with Duke University and was not an employee of Duke University.

30. Ms. Irvine was never licensed to conduct investigations in North Carolina.

31. Chapter 74C of the North Carolina General Statutes codifies the Private Protective Services Act, which was enacted for the express purpose of “increase[ing] the level of integrity, competency, and performance of Private Protective Service Professions in order to safeguard the public health, safety, and welfare.” N.C. Gen. Stat. § 74C-1.

32. N.C. Gen. Stat. § 74C-2 prohibits any person from engaging in, performing any services as, or in any way representing or holding himself or herself out as engaging in a private protective services profession or activity in the State of North Carolina unless they possess the required license.

33. N.C. Gen. Stat. § 74C-3 provides that private protective service professions includes a “private investigator.” A “private investigator is defined as “any person who engages in the profession of or accepts employment to furnish, agrees to make or makes inquiries or investigations concerning any of the following on a contractual basis:

The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person . . . [and] [s]ecuring evidence to be sued before any court, board, officer, or investigative committee

34. Ms. Irvine is a psychologist with no training, education, or experience in properly conducting an investigation of criminal conduct, in properly investigating sexual assaults, in properly investigating drug-facilitated sexual assaults. Likewise, Ms. Irvine had no training, education or experience in the medical symptoms and effects of drugs used to facilitate sexual assaults.

35. Ms. Irvine was required to be licensed to conduct the investigation of the reports of sexual misconduct committed by Leachman, Self, and Jones against Plaintiff and their other victims.

36. Ms. Irvine has never been licensed as a “private investigator” or in any other capacity under North Carolina’s Private Protective Services Act. Holding oneself out as or entering a contract as a private investigator without a license is a criminal offense in

37. Nevertheless, Duke University and Ms. Irvine contracted with each other for Ms. Irvine to conduct an investigation of the reports of sexual misconduct committed by Leachman, Self, and Jones against Plaintiff and their other victims.

38. Knowing that Ms. Irvine was not licensed, qualified, or competent in conducting investigations of sexual misconduct, Duke University officials and employees falsely held Ms. Irvine out as a competent, qualified private investigator.

39. Ms. Irvine published a report of her “investigation” that was to be used by University decision makers in determining the University’s response to Plaintiff’s report of sexual assault and the University’s response to the evidence of the highly similar, predatorial conduct of Plaintiff’s assailants with other, similarly incapacitated female students during the same time period.

40. Ms. Irvine’s report concealed evidence of drug-facilitated sexual assaults committed by the same students who assaulted Plaintiff according to the same *modus operandi*; concealed the evidence that Plaintiff was subjected to a drug-induced sexual assault; falsely suggested that Plaintiff was not

incapacitated during the sexual assault and that Plaintiff's drug-induced conduct was evidence of her consent.

41. Ms. Irvine did so by, among other things, falsely reporting that Plaintiff did not report or exhibit symptoms of having ingested any drug used to facilitate sexual assaults, when, in fact, Plaintiff did report such symptoms. Ms. Irvine also concealed the fact that she was not competent or qualified by education, training, or experience to opine or conclude that Plaintiff's symptoms could not have been produced by any particular substance.

42. Upon information and belief, Ms. Irvine's report was commissioned and designed to fabricate a false basis to support the University's decision to do nothing in response to the reported sexual assaults of Plaintiff and other similarly incapacitated students committed by Leachman; to not suspend, expel, or remove Leachman from the University; and to not do many other things that the University was required to pursue under federal law in order to remedy the hostile educational environment created by the sexual assaults of Plaintiff and the other incapacitated female students described above.

43. The foregoing are precisely the harms to Plaintiff's health, welfare, and safety that the Private Protective Services Act was intended to prevent.

44. A Duke Police Officer confronted Leachman about the accusation that he had a video recording of the sexual assault of Plaintiff on his phone. Leachman lied to the investigator, denying that any such video ever existed. However, a copy of the video was subsequently found on Leachman's phone and delivered to OSC.

45. Leachman then admitted that he secretly videotaped a portion of his and Brian Self's sexual assault of Plaintiff, and that he made the recording without Plaintiff's consent.

46. The Duke Police investigator advised University officials that the conduct Leachman admitted to was a felony under North Carolina law. It was also a violation of Duke's sexual misconduct policy.

47. At the time, Duke University routinely suspended or expelled students who engaged in similar or less egregious violations of its sexual misconduct policy.

48. On July 12, 2013, the University placed Leachman on probation for his violation of the University's sexual misconduct policy. That sanction was not to be disclosed to any person or entity outside of the University.

49. That sanction was the University's only response to Plaintiff's and other students' reports and evidence of Leachman's sexual misconduct.

50. Plaintiff then complained to Duke University's Office of Institutional Equity (OIE), asserting that Title IX required the University do much more than placing one of her assailants on probation, and that, if additional measures were not taken by OIE, the University would be in violation of Title IX.

51. On or about September 30, 2013, OIE determined, on behalf of Duke University, concluding that, among other things: (1) placing Leachman on probation was sufficient to remedy the hostile educational environment that Plaintiff suffered as a result of Leachman's sexual misconduct; (2) that the University's response to the sexual assault of Plaintiff and Leachman's secret

recording of it were sufficient to meet its obligations under Title IX; and (3) that the University would do nothing more to address the reports and evidence of the sexual misconduct of Leachman, Self, and/or Jones.

52. At the time the OIE ratified the foregoing clearly unreasonable response and deliberate indifference to the reports and evidence of Leachman's sexual misconduct involving Plaintiff and other female students at Duke, Leachman's step-father was the Provost of Duke University.

53. Throughout the events described herein, the individuals involved in determining the University's response to the reports and evidence of Leachman's sexual misconduct were all subordinates of Leachman's step-father, who, as Provost, was the University's most-senior official and had plenary authority over the University's response to the reports and evidence of his step-son's sexual misconduct.

54. The foregoing conduct of the University officials, employees, and agents was done in the course of and in furtherance of their employment or agency with Duke University. As such, the foregoing conduct is imputed to Duke University pursuant to the doctrine of *respondeat superior*.

55. As a result of the foregoing conduct, Plaintiff has compensable harms, including but not limited to economic losses, lost earning capacity, emotional harm, reputational harm, and other damages to be proven at trial.

I.
VIOLATIONS OF TITLE IX
(20 U.S.C. § 1681, *et seq.*)

56. All other allegations in this Complaint are incorporated by reference as though fully set out here.

57. Duke University is an educational institution that operates “educational program[s] and activitie[s]” and receives “Federal financial assistance” as those phrases are used in Title IX (20 U.S.C. § 1681).

58. Duke University is therefore obligated to comply with Title IX as well as the rules, regulations, and guidance promulgated by the United States Department of Education to implement and enforce Title IX.

59. The drug-facilitated rape that Plaintiff suffered constituted sexual harassment that was so severe and pervasive that it deprived Plaintiff of educational opportunities or benefits.

60. Officials and employees authorized to respond on behalf of Duke University received actual notice that:

- a. Plaintiff was subjected to a drug-facilitated rape by Leachman and Self;
- b. that Leachman admitted to secretly video recording a portion of the sexual assault of Plaintiff;
- c. that within weeks of the sexual assault of Plaintiff, a visiting student had been subjected to a drug-facilitated rape by Leachman, Self, and Jones;
- d. that the three men conducted the rape of the visiting student according to the same *modus operandi* as that employed in the rape of Plaintiff; and
- e. that there was at least one report what one Duke Police officer described as “a gang rape” involving Leachman, Self, and/or Jones.

61. Defendant's response to the foregoing reports of sexual harassment was clearly unreasonable, evinced the institution's deliberate indifference to severe and pervasive sexual harassment suffered by Plaintiff, and otherwise violated Title IX.

62. As a result of Defendant's deliberate indifference and clearly unreasonable response to the severe and pervasive sexual harassment Plaintiff suffered, Plaintiff was excluded from participation in, denied the benefits of, and was subjected to discrimination in Defendant's educational programs and activities. For example:

a. Plaintiff was unable to participate meaningfully in Defendant's educational and extracurricular programs and activities;

b. Plaintiff suffered a marked decline in her ability to learn and achieve academically;

c. Plaintiff ultimately could not participate in Defendants' educational programs and activities at all, and was forced to transfer to another educational institution in order to avoid the hostile educational environment at Duke University; and

d. Plaintiff's ability to learn was so completely interfered with during her enrollment at Duke University that, upon matriculating to another institution, she was required to start her undergraduate studies over again and matriculated to the new institution as a first year student.

63. As a direct and foreseeable result of the foregoing conduct, Plaintiff suffered and continues to suffer compensable harms, including but not limited to economic losses, lost earnings, lost earning capacity, lost tuition and

expenses, severe and disabling emotional harm, related medical and psychological expenses,

II.

INTERFERENCE WITH CIVIL RIGHTS

(N.C. Gen. Stat. § 99D-1, *et seq.*)

64. All other allegations in this Complaint are incorporated by reference as though fully set out here.

65. As alleged above, two or more persons, including but not limited to Duke University, Associate Dean Pesetski, Provost Lange, Leachman, Brian Self, Frank Jones, the student members of the hearing panel that adjudicated Plaintiff's allegations of sexual misconduct; and Celia Irvine, motivated by gender, conspired to interfere with Plaintiff's exercise or enjoyment of a right secured by the Constitution and laws of the United States or North Carolina, or of a right secured by a law of the United States, including Title IX, or North Carolina that enforces, interprets, or impacts on a constitutional right.

66. One or more of those persons engaged in the foregoing conspiracy used force, repeated harassment, and physical harm to commit an act in furtherance of the object of the conspiracy.

67. At least one of the foregoing acts in furtherance of the conspiracy constituted an attempt to interfere with Plaintiff's exercise or enjoyment of a right secured by Title IX, a law of the United States.

68. As a direct and foreseeable result, Plaintiff suffered and continues to suffer the compensable harms described above, including but not limited to economic losses, lost earnings, lost earning capacity, lost tuition and expenses,

severe and disabling emotional harm, related medical and psychological expenses,

69. Plaintiff is therefore entitled to an award of compensatory and punitive damages pursuant to N.C. Gen. Stat. § 99D-1, *et seq.*

III.
UNFAIR OR DECEPTIVE TRADE PRACTICES
(N.C. Gen. Stat. §§ 75-1, *et seq.*)

70. All other allegations in this Complaint are incorporated by reference as though fully set out here.

71. As alleged herein, Defendant, through its officers, employees, and agents, engaged in conduct that constitutes an act or practice that was unfair in that it was immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

72. As alleged herein, Defendant, through its officers, employees, and agents, engaged in conduct that constitutes a deceptive act or practice, within the meaning of in that it had the capacity or tendency to deceive.

73. Duke's unfair and deceptive acts and practices were in or affected commerce.

74. As a direct and foreseeable result, Plaintiff suffered and continues to suffer the compensable harms described in this Complaint, including but not limited to economic losses, lost earnings, lost earning capacity, lost tuition and expenses, severe and disabling emotional harm, related medical and psychological expenses, reputational harm, and other damages to be proven at trial.

IV. NEGLIGENCE

75. All other allegations in this Complaint are incorporated by reference as though fully set out here.

76. When undertaking to investigate Plaintiff's report of sexual misconduct, Duke University had an affirmative duty to exercise due care and comply with statutes enacted for the safety and welfare of citizens like Plaintiff and to avoid foreseeable harms to Plaintiff.

77. Duke breached those duties by failing to exercise due care and comply with statutes enacted for the safety and welfare of citizens like Plaintiff by contracting with Celia Irvine who was not licensed in violation of North Carolina's Private Protective Services Act investigate and report on Plaintiff's report of drug-facilitated rape committed by Leachman, Self, and Jones (and the other reports of virtually identical sexual assaults against at least two other young women).

78. Those breaches constitute negligence and negligence *per se*.

79. As a direct and foreseeable result, Plaintiff suffered and continues to suffer the compensable harms described in this Complaint, including but not limited to economic losses, lost earnings, lost earning capacity, lost tuition and expenses, severe and disabling emotional harm diagnosed by professionals trained to do so, related medical and psychological expenses, reputational harm, and other damages to be proven at trial.

JURY TRIAL DEMAND

80. Plaintiff respectfully demands a jury trial on all issues so triable in this action.

PRAYER FOR RELIEF

81. Therefore, Plaintiff respectfully prays that the Court enter a Judgment that includes:

- a. A declaration that Duke University violated Plaintiff's federally protected rights;
- b. An award of compensatory, treble, and punitive damages as allowed by law;
- c. Prejudgment and post-judgment interest on the award of damages;
- d. An award to Plaintiff of the costs of this action, including attorneys' fees allowed by law; and
- e. All other and further relief that the Court deems just and proper.

Respectfully submitted on this the 19th day of September, 2016.

/s/ Robert C. Ekstrand

Robert C. Ekstrand

N.C. Bar No. 26673

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UNITED STATES DISTRICT COURT
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CERTIFICATE OF SERVICE

I certify that, on 19 September 2016, the foregoing First Amended Complaint was served on all parties to this action via the Court's CM/ECF System, which will issue an electronic notice of filing to all counsel of record in this action, set out below.

DIXIE THOMAS WELLS
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CHRISTOPHER W. JACKSON
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THOMAS HAMILTON SEGARS
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I further certify that all counsel of record are registered to receive such notices in this action.

/s/ Robert C. Ekstrand

Robert C. Ekstrand
Counsel for Plaintiff