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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Jane Doe 1	:
Jane Doe 2	:
Jane Doe 3	:
	:
Plaintiffs	:
	:
VS.	:
	:
Swarthmore College	:
Myrt Westphal	:
Thomas Elverson	:
Owen Redgrave	:
David Ramirez	:
	:
Defendants	:

FILED OCT 28 2013

Civil Action

NO. 13-6122

Judge Restrepo

FILED

OCT 28 2013

MICHAEL E. KONE, Clerk
By KK

FILED UNDER SEAL

Jury Trial Demanded

FIRST AMENDED COMPLAINT AND JURY DEMAND

This cause of action arises from Defendant's deliberately indifferent response to three events of student-on-student sexual assault on school premises and subsequent sex-based harassment. Defendants' failure to promptly and appropriately investigate and respond to the assault subjected Plaintiffs to further sexual harassment and a hostile environment, effectively denying them access to educational opportunities. This action alleges violations of Title IX and the Clery Act and a civil conspiracy in violation of them. This

action alleges additional pendent claims under Pennsylvania law including underage drinking, social guest, landlord/tenant and breach of contract.

Plaintiffs, Jane Doe 1, Jane Doe 2 and Jane Doe 3, by and through their attorney, Raul Jauregui, hereby file the following complaint against Defendants as captioned above.¹

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, which gives district courts jurisdiction over all civil actions arising under the Constitution, laws, and treaties of the United States.

2. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1343, which gives district courts original jurisdiction over (a) any civil action authorized by law to be brought by any person to redress the deprivation, under color of any State Law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; and (b) any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of the civil rights.

¹ “Jane Doe” has been substituted for Plaintiffs’ names for all causes of action brought through this Complaint which would otherwise publish important privacy interests of all parties. Plaintiffs fear for their personal safety as well as that of their family and friends as a result of this complaint. The two Swarthmore College students who have made their names publicly known in connection with these same allegations have received death threats, have been stalked including being assaulted while on the Swarthmore College campus and have been subject to an internet social media harassment and defamation campaign. Fairly applying this concern, the Complaint also identifies the perpetrators, one of whom is still enrolled at Swarthmore College, as Perpetrator 1, 2 and 3. Finally, the Complaint in fact limits the conspiracy claim just to those four named administrators as opposed to naming the entire management-level staff of Swarthmore College and the members of its Board of Managers as defendants. All the names of the parties confidentially identified have been disclosed to Swarthmore College’s attorney during extensive privileged and confidential conversations.

3. Plaintiffs bring this action to redress a hostile educational environment pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), as more fully set forth herein.

4. Plaintiffs further invoke the supplemental jurisdiction of this Court, pursuant to 28 U.S.C. § 1367(a), to hear and decide claims arising under the civil conspiracy, underage drinking, social guest, landlord tenant and contract laws of the Commonwealth of Pennsylvania.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), since all defendants reside or resided in this district and the events giving rise to the claims occurred in this district.

II. THE PARTIES

6. Plaintiff **Jane Doe 1** is a cisgender female.

7. At all material times Jane Doe 1 was a resident of the County of Delaware, State of Pennsylvania.

8. At the time of events complained of herein, Jane Doe 1 was a student attending Swarthmore College as well as a tenant of Swarthmore College.

9. Plaintiff **Jane Doe 2** is a cisgender female.

At all material times Jane Doe 2 was a resident of the County of Delaware, State of Pennsylvania.

10. At the time of events complained of herein, Jane Doe 2 was a student attending Swarthmore College as well as a tenant of Swarthmore College.

11. Plaintiff **Jane Doe 3** is a cisgender female.

At all material times Jane Doe 3 was a resident of the County of Montgomery, State of Pennsylvania.

12. At the time of events complained of herein, Jane Doe 3 was a student attending Bryn Mawr College as well as a guest and tenant of Swarthmore College.

13. The **Defendant Swarthmore College** is an educational institution located in the County of Delaware, State of Pennsylvania. During all material times, Swarthmore College received federal funding for its academic programs and activities.

14. At all material times, **Defendant Myrt Westphal** (hereinafter "**Administrator 1**"), in her official and individual capacities, worked for Defendant Swarthmore College and administered its internal grievance and disciplinary mechanisms including the College Judiciary Committee ("CJC") which is the organ that must investigate and adjudicate internal rape complaints.

15. During all material times, Administrator 1 was an agent and/or employee of Defendant Swarthmore College, acting or failing to act within the scope, course, and authority of her employment including providing an academic environment free from sexual hostility and reporting events of sexual hostility. Administrator 1 is not a current employee of defendant Swarthmore College.

16. At all material times, **Defendant Thomas Elverson**, (hereinafter "**Administrator 2**"), in his official and individual capacities, worked for Defendant Swarthmore College and administered its "drinking policy" its "party policy" and liaised between the College and its two Fraternities.

17. During all material times, Administrator 2 was an agent and/or employee of Defendant Swarthmore College, acting or failing to act within the scope, course, and

authority of his employment including providing an academic environment free from sexual hostility and reporting events of sexual hostility. Administrator 2 is not a current employee of defendant Swarthmore College.

18. At all material times, **Defendant Owen Redgrave**, (hereinafter, “**Administrator 3**”), in his official and individual capacities, worked for Defendant Swarthmore College as the Chief of its internal security force (“Public Safety”) which provided security for persons present at the Swarthmore College campus activities, facilities and residences relevant to this complaint.

19. At all material times, Administrator 3 was an agent and/or employee of Defendant Swarthmore College, acting or failing to act within the scope, course, and authority of his employment including providing an academic environment free from sexual hostility and reporting events of sexual hostility. Administrator 3 is not a current employee of defendant Swarthmore College.

20. At all material times, **Defendant David Ramirez**, (hereinafter “**Administrator 4**”), in his official and individual capacities, worked for Defendant Swarthmore College as a director for Counseling and Psychological Services (“CAPS) which provided counseling for persons enrolled at the Swarthmore College campus at the times relevant to this complaint. Administrator 4 is currently an employee of defendant Swarthmore College.

21. At all material times, Administrator 4 was an agent and/or employee of Defendant Swarthmore College, acting or failing to act within the scope, course, and authority of his employment including providing an academic environment free from sexual hostility and reporting events of sexual hostility.

22. At all material times, Jane Doe's 1 attacker, "**Perpetrator 1**," was a male student attending Swarthmore College as well as a resident tenant of Swarthmore College.

23. At all material times, Jane Doe's 2 attacker, "**Perpetrator 2**," was a male student attending Swarthmore College as well as resident tenant of Swarthmore College.

24. At all material times, Jane Doe's 3 attacker, "**Perpetrator 3**" was and still is a male student attending Swarthmore College as well as a resident tenant of Swarthmore College. On information and belief, there may be more as of yet unidentified participants in the rape of Jane Doe 3 all of whom are believed to be members of the Swarthmore Men's Lacrosse Team as well as members of Swarthmore's PhiPsi Fraternity.

III. APPLICABLE LAW AND POLICY

25. Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. § 1681(a), states that:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . ."

26. Title IX is implemented through the Code of Federal Regulations. See 34

C.F.R. Part 106. 19. 34 C.F.R. § 106.8(b) which provides:

". . . A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part."

27. In Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1988), the United States Supreme Court recognized that a recipient of federal educational funds

intentionally violates Title IX, and is subject to a private damages action, where the recipient is “deliberately indifferent” to known acts of teacher-student discrimination.

28. In Davis v. Monroe County Board. of Education, 526 U.S. 629 (1999), the United States Supreme Court extended the private damages action recognized in Gebser to cases where the harasser is a student, rather than a teacher.

29. Davis held that a complainant may prevail in a private Title IX damages action against a school district in cases of student-on-student harassment where the funding recipient is:

- a) deliberately indifferent to sexual harassment of which the recipient has actual knowledge, and
- b) the harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school. Davis, 526 U.S. at 1669–76.

30. Title IX jurisprudence as well as Department of Education regulations have long recognized that a single event of rape constitutes harassment so severe, pervasive and objectively offensive that it deprives its victims of access to the educational opportunities provided by the school:

“The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. **For instance, a single instance of rape is sufficiently severe to create a hostile environment.**”

US Department of Education, Office of Civil Rights, “Dear Colleague” Letter of April 4, 2011.

31. Title IX jurisprudence adopts the statutory limitation of the state law for the underlying and pendent claims of two years for tort and four years for contract based counts yet, crucially, Pennsylvania defendants are estopped from raising that limitation as a defense “if through fraud or concealment the defendant causes the plaintiff to relax his or her vigilance or deviate from his or her right of inquiry, the defendant is estopped from invoking the bar of the statute of limitations” Molineux v. Reed, 516 Pa. 398, 403, 532 A.2d 792, 794 (1987) which is exactly what the defendants did to the plaintiffs in this case.

32. Pennsylvania Common Law recognizes a private right of action for civil conspiracy when two or more persons combine or agree intending to commit an unlawful act or do an otherwise lawful act by unlawful means. Weaver v. Franklin County, 918 A.2d 194, 202 (Pa.Cmwlt. 2007). The statute of limitations for Pennsylvania civil conspiracy claims is the same as the statute of limitations for the underlying tort or contract action. Kingston Coal Co. v. Felton Mining Co., Inc., 690 A.2d 284, 287 (Pa. Super. Ct. 1997); Ammlung v. City of Chester, 494 F.2d 811, 814 (3d Cir. 1974).

33. However, in this case the conspiracy is alleged to commit violations of Title IX and the Clery Act which themselves have no statutory limitation; the jurisprudence has adopted the local state’s statutory limitation for the tort or contract-based claims, but there is nothing in the Title IX or Clery Act statutes identifying a set time to file violations under those statutes. The state’s statutory limitation cannot control a federal law that is specifically silent on the point.

34. Plaintiffs Jane Doe 1, 2 and 3 allege the following to invoke the doctrine of equitable tolling: "(1) that the defendant[s] actively misled the plaintiff[s]; (2) which prevented the plaintiff[s] from recognizing the validity of [their] claim within the limitations period; and (3) where the plaintiff[s'] ignorance is not attributable to [their] lack of reasonable due diligence in attempting to uncover the relevant facts." Cetel v. Kirwan Fin. Group, Inc., 460 F.3d 494, 509 (3d Cir. 2006). "Because the question whether a particular party is eligible for equitable tolling generally requires consideration of evidence beyond the pleadings, such tolling is not generally amenable to resolution on a Rule 12(b)(6) motion." Drennan v. PNC Bank, NA, 622 F.3d 275, 301-02 (3d Cir. 2010).

35. Pennsylvania has significantly clear statutes that regulate the drinking of alcoholic beverages including the age of person who may consume or be served them which are codified in part at 18 Pa. C. S. § 6308.

36. Defendant Swarthmore College's third-party liability for two of these horrid events also attaches under current 3rd Circuit law because third parties who help in the intoxication of minors in the criminal liability context Congini v. Portersville, 504 Pa. 157 (1983) and in the civil liability context Fassett v. Delta Kappa Epsilon, 807 F.2 1150 (1986) are liable for sponsoring the parties at which a minor guest is served alcohol and thus becomes illegally intoxicated. This is exactly what happened to Jane Doe 2 and 3.

37. In Pennsylvania landlords are specifically liable to third parties who can establish that the landlord tried but failed to protect adequately the premises with security. Feld v. Merriam, 506 Pa 383 (1984) and Reider v. Martin, 519 A2d 507 (1987).

38. Defendant Swarthmore College Breach of Contract involves both the educational contract established with Jane Doe 1 and Jane Doe 2 as part of their academic enrollment

as students at the college as well as the existence of a contract that Jane Doe 1 and Perpetrator 3 entered into and paid for in terms of their housing at defendant Swarthmore College which imposed the contractual duty on defendant Swarthmore College's campus to provide security for the housing premises, the breach of which duty caused the damages alleged in this Complaint. J.F. Walker Co., Inc. v. Excalibur Oil Group, Inc., 792 A.2d 1269 (Pa.Super.2002). Provisions of the Pennsylvania Landlord and Tenant Act of 1951, 68 P.S. §§ 250.101-250.602, also apply.

39. At all times relevant to this action Swarthmore College had also adopted and made all the student parties of this action subject to its own anti-harassment policy. (Contained in the "Student Handbook" which has changed for every year relevant to this complaint and is available at <http://www.swarthmore.edu/Documents/Student%20Handbook%202011-2012/Swat%20Handbook%20comp.pdf> at P. 58 II A).

40. That policy defines the handling of sexual harassment to mean "A victim of sexual misconduct is never required to engage in informal procedures, and informal procedures are never appropriate where sexual assault is involved." (Handbook at P. 37 Section E).

41. At all times relevant to this action Swarthmore College had in effect an "alcohol" policy for students in activities held on campus with alcohol. This policy was revised starting in the Fall Semester, 2013 and the policies that were in effect at the times relevant to this Complaint are no longer available on the Swarthmore College web site.

42. At all times relevant to this action Swarthmore College had also adopted and made Jane Doe 1, Jane Doe 2, Perpetrator 1, Perpetrator 2 and Perpetrator 3 subject to a landlord-tenant relationship and to the regulation of its Dean of Housing.

43. At all times relevant to this action Swarthmore College had also adopted and made Jane Doe 2, Jane Doe 3 as well as Perpetrator 2 and Perpetrator 3 (and other suspected perpetrators in the case of Jane Doe 3) subject to a its own Party Policy. This policy was revised starting in the Fall Semester, 2013 and the policies that were in effect at the times relevant to this Complaint are no longer available on the Swarthmore College web site.

IV. COMMON ALLEGATIONS

44. At all material times, the defendant Swarthmore College was receiving federal funding, as contemplated by Title IX, 20 U.S.C. § 1681, et seq. for its activities including financial aid and some research grants among other sources of federal funds.

43. Swarthmore College implemented and executed policies and customs in regard to the events that resulted in the deprivation of Plaintiffs' constitutional, statutory, and common-law rights.

45. Swarthmore College is responsible for providing the security of its students and guests which it does through "Public Safety" in effect a private police force.

46. Swarthmore College is responsible for ensuring that all its employees are properly trained and supervised to perform their jobs.

47. Swarthmore College is responsible for the acts and omissions of its employees, agents, part-time student workers and tenants.

48. Swarthmore College received reports from each of the plaintiffs concerning the events of sexual abuse and the sexual harassment they experienced while at an academic activity at Swarthmore College within days of the underlying rape.

49. Swarthmore College and the individual defendants failed to investigate each and every of the events the plaintiffs reported in violation of both its own Student Handbook and Title IX.

50. Swarthmore College failed to investigate each and every of the rapes the plaintiffs endured of which Swarthmore had either actual or constructive notice at the time they happened.

51. Swarthmore College and the individual defendants failed to report the criminal acts involved in the reports it received from each of the plaintiffs in violation of its obligations under the Clery Act.

52. Swarthmore College and defendants Administrators 1 -4 lied, misled, misrepresented and/or concealed matters to each of the plaintiffs as part of the timely report the plaintiffs made of their individual experiences of sexual abuse and sexual harassment.

53. Swarthmore College and Administrators 1-4 used their student handbook, their prestige, the high-stress and cyclical nature of life for a Swarthmore student, the well known fact that the CJC was a “nightmare”, the general sense of shame that accompanies rape, and the entire artifice of a seemingly legitimate educational administrative endeavor, to affirmatively mislead the plaintiffs and the other survivors about their rights to a sexual hostility free environment, to a formal investigation, to press criminal charges, to obtain civil and equitable relief, and instead defendant Swarthmore College and Administrators 1-4 represented to each of the plaintiffs, in different manners, that their complaints were being handled at optimal levels when they were not.

54. Swarthmore College failed to provide a safe academic environment for the plaintiffs; faced with the plaintiffs’ reports of rape, Swarthmore College’s response and its officials’

conduct was such that future reasonable students in Plaintiffs' circumstances would be and in fact were chilled from reporting sexual harassment and those who did were treated worse because of having done so.

55. Swarthmore College failed to implement and follow its own rules in terms of investigation and disciplinary action on sexual assault variously included in the "Student Handbook" which applied at the particular year of the events in this complaint.

56. Swarthmore College failed to implement and follow its own rules in terms of its party and alcohol policies variously included in the policy which applied at the particular year of the events in this complaint.

57. Swarthmore College and its employees, defendants Administrators 1, 2, 3 and 4 conspired amongst themselves and probably with other Swarthmore College employees with the common purpose of violating the Clery Act in relation to the reports of sexual assault that the plaintiffs provided them with in a timely manner and which were never reported out as part of the College's statistics.

58. The extensive detail of the plaintiffs' reports of sexual assault which included dates, nature of the assault, location of the assault, name of the perpetrator and request to have the matter investigated given to these Administrators Nos. 1-4, all of whom were high-level, policy-setting employees of defendant Swarthmore College, did not cause any change in the sexually hostile environment at the college as is averred throughout this complaint.

59. The extensive detail of the knowledge defendants had of the sexually hostile nature of the environment at both fraternities and at most parties where alcohol was served, as is

averred throughout this complaint, did not cause any change in the academic environment nor did it suggest that an investigation of the plaintiffs' claims was required.

60. Plaintiffs could not, despite the exercise of due diligence in filing reports of their assaults, have discovered the underlying basis for their claims at the time of their experiences of sexual assault or at the time of their reports of these experiences to defendants Swarthmore College and Administrators 1-4.

61. Causing this lack of ability for the plaintiffs to discover their rights was exactly the goal of defendants' conspiracy. The defendants knowingly and actively concealed the basis for each and every one of the Plaintiffs' claims during each and every one of the plaintiffs' reports by engaging in a scheme that was, by its very nature and purposeful design, self-concealing, discriminatory and in violation of Title IX and the Clery Act.

62. Plaintiffs' delay if any at all in filing this litigation was excusable because they did not discover, and reasonably could not have discovered, Defendants' conduct as alleged through out this complaint because the plaintiffs lacked specialized knowledge of education law and/or assistance of counsel and were actively misled by defendants.

63. In fact the plaintiffs as well as the rest of the Swarthmore College community did not become aware of this sexual assault crisis and the conspiracy to hide it until two current Swarthmore College students, Mia Ferguson and Hope Brinn, sitting as they were behind the veil of administrative conspiracy in their student-volunteer roles, identified the defendants' administrative concealment and documented at least 24 different instances of violations of Title IX and the Clery Act over a period of only four semesters.

64. Once Ferguson and Brinn saw that pattern, of which they are themselves victims, and realized that the defendants were routinely violating Title IX and the Clery act they

compiled information, including some of what is averred in this complaint, which led to the current investigation of these very same violations by the Department of Education's Office of Civil Rights.

65. Defendants Swarthmore College and Administrators 1, 2, 3 and 4 conspired amongst themselves and probably with other Swarthmore College employees with the common purpose of violating the plaintiffs' rights under Title IX including but not limited to failing to provide an academic environment free of sexual harassment, failing to investigate the plaintiffs' sexual assault claims, failing to follow the Swarthmore Student Handbook's provisions relating to the mandatory investigation of any report of sexual abuse such as the ones the plaintiffs' reported, violating the plaintiffs' right to be informed that they could and should report the sexual assault allegations to the police and the breaching the defendants' duty to report the offense.

66. Defendant Swarthmore College along with administrators 1, 2, 3 and 4 took several overt acts in furtherance of their common goal as stated in Nos. 69-72, 76, 77, 85, 86, 88, 89, 100, 103-105, 108, 110 and 112 including misleading the plaintiffs, lying to the plaintiffs, misrepresenting their actions to the plaintiffs, failing to prosecute, investigate and report the plaintiffs' claims as well as the related crimes and generally failing to provide the plaintiffs with a safe academic environment free from sexual harassment. Weaver, id. These covert acts continue to the date of this First Amended Complaint.

67. At all times relevant to this complaint Swarthmore college participated in the activities that led to Jane Doe 2 and Jane Doe 3's rapes by providing funding for the alcohol that was served at these events, by authorizing the events, by providing security

at the events and by providing a specific, designated, uniformed employee to monitor the party called a party associate (“PA”) as well as a private police force “PS” for the event.

68. At all times relevant to this complaint Swarthmore College failed to protect Jane Doe 1 and Jane Doe 3 as it negligently discharged its duty to provide safety to the residents and guests of its residence halls where their rapes took place in spite of having a specific employee, a residential associate (“RA”) at each wing of each floor of each dormitory and an office dedicated to the management of the residences, the Dean of Housing.

69. As a result of the acts averred in this complaint, the plaintiffs have incurred actual legal damage.

70. The facts alleged to meet the deliberate indifference standard of the plaintiffs’ Title IX claim inherently proves that Swarthmore College and Administrators 1, 2, 3 and 4 acted with the malice required for a civil conspiracy claim. Reading Radio, Inc. v. Fink, 833 A.2d 199, 212 (Pa.Super. 2003).

71. As a direct and proximate result of the harassing educational environment created by Defendants’ deliberately indifferent response to the sexual assault and subsequent harassment of each and all of the plaintiffs, as well as violations of their state law rights, Plaintiffs have suffered and continue to suffer untold psychological damage, profound emotional distress, permanent loss of standing in their community and damage to their reputations, and their future relationships have been negatively affected.

72. Plaintiffs have required ongoing counseling and high levels of medication to address their depression and anxiety caused by Defendants’ conduct and the resulting harassing educational environment.

73. Plaintiffs have also been deprived of a normal college education due to Defendants' conduct and the resulting educational environment which they caused.

74. Plaintiffs have also been damaged by missed educational opportunities and their future earning capabilities have been damaged by Defendants' conduct and the resulting hostile educational environment which they caused.

V. INDIVIDUAL ALLEGATIONS

a. Allegations by Jane Doe 1.

75. Jane Doe 1 was sexually assaulted several times by her boyfriend (Perpetrator 1) while they were both students at Swarthmore.

76. The assaults took place at both their dorms which were owned and made secure by Swarthmore College.

77. Jane Doe 1 first reported her assaults to Administrator 1 on May 5, 2011, that is within one year after the last rape. Two other Swarthmore College female students also reported sexual assault allegations against Perpetrator 1 at the time.

78. During the May 5, 2011 meeting Jane Doe 1 specifically told Administrator 1 "we want to file a joint case showing a pattern of abuse."

79. Jane Doe 1 alleges that in one of many instances of what now constitutes a pattern of grossly inadequate action, deliberate indifference, conspiracy as well as violation of the Swarthmore Student Handbook, Administrator 1 specifically stated to Jane Doe 1 that "she would start the process for a joint case against Perpetrator 1" only to later completely change her promise by not invoking a CJC process and not requiring Perpetrator 1 to undergo psychological counseling which completely misled Jane Doe 1.

80. The process involved Administrator 1's collusion with other Swarthmore College staff to commit the unlawful act of violating both Jane Doe 1's Title IX and other rights as well as to violate their duties under the Clery Act to report this event.

81. Jane Doe 1 did not report her concerns that Perpetrator 1 was sexually preying on her from the start of the sexual assaults in part because Jane Doe 1 had the experience common to all the rape survivors currently bringing these claims against defendant Swarthmore College.

82. Jane Doe 1 knew that there was an emotional and procedural nightmare to face in dealing with the administration and specifically with Administrators 1, 2 and others who took every effort to deter and conceal complaints of sexual assault and to not punish rapists.

83. Jane Doe 1's knowledge of the failed grievance mechanism, coupled with her personal history of abuse, led her to endure a sexually harassing environment for 16 months of extremely demanding studies and repeated rape.

84. In full knowledge of this, Administrator 1 lied and misled Jane Doe 1 into not pressing any civil or criminal claims against either Perpetrator 1 or Swarthmore College starting on May 9, 2011, that is also within one year after the last rape. This is documented in emails between Administrator 1 and Jane Doe 1.

85. Jane Doe 1 realized she had been lied to, subjected to a conspiracy and manipulated away from her legal rights well after July 22, 2011 which is safely within the expiration of the two year statute of limitations to her tort-based claims which are under a tolling agreement until the day after the date of this complaint.

86. Jane Doe 1's allegations against the defendants are contained in the Counts below in the following manner: Against defendant Swarthmore College only, violation to Title IX, Retaliation under Title IX and Civil Conspiracy, against Administrators 1, 2 and 3 civil conspiracy, landlord tenant liability for breach of duty to provide safety to the premises against defendant Swarthmore College, breach of contract violation of lease agreement and of educational agreements against defendant Swarthmore College.

b. Allegations by Jane Doe 2.

87. Jane Doe 2 was publicly raped by Perpetrator 2 at the basement of the DU Frat House during a College-sponsored and approved party during her freshman year.

88. Defendant Swarthmore College provided funding for the party and for the alcohol served at the party.

89. Defendant Swarthmore College provided security at the party both through its Public Safety department and through its Party Associate, (PA) who needed to have policed the party at DU itself under the terms of Swarthmore's Party Policy to prevent underage drinking and sexual assault.

90. Defendant Swarthmore College was the landlord as it rents DU house out to the fraternity on information and belief for one dollar per year.

91. Jane Doe 2's rapist was enrolled in Swarthmore at the time of her assault.

92. Perpetrator No. 2 was underage and drunk at the time of the assault.

93. Within no more than five days of the event, Jane Doe 2 reported this atrocious crime to a CAPS counselor, an unidentified female employee under the direct supervision and management of defendant Administrator 4, who violated Title IX when she as a counselor employed under Administrator 4 and who was specifically asked by a rape

victim for information on how to report the rape, during a report of rape, refused to provide Jane Doe 2 with information on how to pursue and further report her rape which Jane Doe 2 requested specifically from this female CAPS counselor at that time.

94. Jane Doe 2 alleges that Administrator 4's and his employee's refusal to provide her with information on how to report her rape and actual attempts to dissuade her from reporting this rape are part of the civil conspiracy that all the named defendant Administrators perpetrated to violate both the plaintiff's legal rights under Title IX and the administrator's duties under the Clery Act to report the offenses.

95. Jane Doe 2 graduated in May, 2013 but was exposed to the pervasive hostility that Perpetrator 2's presence created from the time of her rape, at the start of her college career, up to and including the year after Perpetrator 2 had graduated and Jane Doe 2 was a senior because Perpetrator 2 continued to visit the Swarthmore College campus and live in it as a guest up and until the Spring 2013 semester.

96. Jane Doe 2 alleges that in one of many instances of what now constitutes a pattern of grossly inadequate action, deliberate indifference, conspiracy as well as violation of the Swarthmore Student Handbook, the handling of her rape and of her report of it violated her rights under Title IX.

97. Jane Doe 2 alleges that under the Party Policy and because there was substantial assistance from defendant Swarthmore College in the funding and policing of the party through a PA at the scene and a PS supposedly patrolling the scene, under a system that defendant Administrator 2 handled, defendant Swarthmore College had actual and constructive knowledge of the rape and did not report it under the Clery Act.

98. Jane Doe 2's allegations against the defendants are contained in the Counts below in the following manner: Against defendant Swarthmore College only, violation to Title IX, Retaliation under Title IX and civil conspiracy, against Administrators 1, 2, 3 and 4 civil conspiracy, liability as a third party accomplice to the service of alcohol to a minor against defendant Swarthmore College, landlord tenant liability for breach of duty to provide safety to the premises against defendant Swarthmore College and breach of contract violation of educational agreements against defendant Swarthmore College.

c. Allegations by Jane Doe 3.

99. Jane Doe 3, a social guest of the College, was served alcohol as a minor at a College-sponsored and controlled party at the PhiPsi Fraternity on or about October 2, 2010.

100. The PhiPsi house is on the Swarthmore campus and the fraternity rents from its landlord Defendant Swarthmore College on information and belief for one dollar per year.

101. By the time Jane Doe 3 reached PhiPsi there was no Party Associate (PA) at the door and her Bryn Mawr ID was not checked.

102. Jane Doe 3 saw no posted sign concerning the non-consumption of alcohol by minors and she saw no permit for the party posted anywhere.

103. Jane Doe 3 had no notice of any of the regulations that applied to that gathering.

104. Jane Doe 3 then received a red plastic cup with beer from Perpetrator 3 and was invited by him to play beer pong next to the beer keg in the middle room of PhiPsi.

105. Jane Doe 3 alleges that this red plastic cup with beer contained a near fatal dose of valium or some similar drug because she completely lost consciousness for at least 12 hours after consuming its contents and continued to feel "drugged" for the next 24 hours.

106. Jane Doe 3 alleges she was surreptitiously drugged at that time, then publicly dragged to the “PPR” dorm of the Swarthmore College Campus.

107. Jane Doe 3 alleges that she never saw the PA who was supposed to guard for the safety of minors like her at the party and that this PA should and in fact must have seen her, unconscious, in the middle of the main room of the PhiPsi fraternity house.

108. Jane Doe 3 alleges that had this PA, or defendant Administrator 2 who handled the policies and regulations of the party, or defendant Administrator 3 who provided safety for the premises, and for the party adequately protected Jane Doe 3 at the time of her drugging she would at least not have been raped.

109. Jane Doe 3 alleges that Perpetrator 3 (and most likely others) then dragged her unconscious body clear across campus from the Phi Psi house to one of the three contiguous dormitories on the Swarthmore College campus called “PPR.”

110. Jane Doe 3 alleges that once at the room of Perpetrator 3 in one of the PPR buildings, she was raped while unconscious by Perpetrator 3 who is still a student at Swarthmore and possibly others including his sports team members and his roommate.

111. Jane Doe 3 alleges that this tragedy took place because of the deliberate indifference of her rights to attend a sexual hostility free academic event such as a college sponsored party at the PhiPsi fraternity demonstrated in the actions of the PA who needed to have saved Jane Doe 3, as well as the party’s sponsors, Administrator 2 who authorized the party and Public Safety who did nothing to avoid this rape.

112. Jane Doe 3 alleges that the Public Safety employee who took her telephonic report of this atrocity—specifically that she had been drugged at PhiPsi and then raped by Perpetrator 3--twenty four hours after it took place has yet to return her call.

113. Jane Doe 3 alleges that the misleading and indifferent manner in which Administrator 3 or those working under his leadership handled her actual report fits the pattern of misleading administrative actions that toll the statute's limitation.

114. Jane Doe 3 alleges that the assistance rendered by defendant Swarthmore College in the provision of alcohol to her as a minor was "substantial" making defendant Swarthmore College an accomplice.

115. In this situation it is clear that absent Swarthmore College's regulatory and financial assistance the party, including its alcohol service, would not have taken place at all.

116. It is also clear that defendant Swarthmore College indeed encouraged these parties at PhiPsi which it knew or should have known led to extraordinary events of sexual assault as well as quotidian events of underage drinking.

117. The fact that the administration should have been present under its own rules, and basically was not effectively there, either as landlord, administrator, educator, or provider of public safety, further adds to the determination that the assistance was substantial because what defendant Swarthmore College did do was pay for the beer, thus attaching liability under that theory as well as under its duties to Jane Doe 3 for premises and social guest liability.

118. Similarly the fact that at the very least defendants Administrator 1 and Administrator 2 handled the policies and paid for the event and its alcohol, including paying and supervising the PA at this particular event, proves the defendants had notice of the event, the defendants acted with deliberate indifference to sexual hostility that took place at it and the defendants colluded to violate Jane Doe 3's rights to press criminal

charges and to file civil claims and with their duty to report this atrocious event as part of the defendant Swarthmore College's crime statistic report required under the Clery Act.

119. Jane Doe 3 alleges that defendant Swarthmore College has acted with deliberate indifference to her report as evidenced in the simple fact that Perpetrator 3 has never been disciplined and is still enrolled at Swarthmore College.

120. Jane Doe 3 alleges that Administrator 3's refusal to provide her with information on how to report her rape and misleading statement that the rape would be investigated and that PS would "get back to her" are part of the civil conspiracy that all the named defendant Administrators perpetrated to violate both the plaintiff's legal rights and the administrator's duties under the Clery Act to report the offenses.

121. Jane Doe 3's allegations against the defendants are contained in the Counts below in the following manner: Against defendant Swarthmore College only, violation to Title IX, Retaliation under Title IX and civil conspiracy, against Administrators 1, 2, and 3 civil conspiracy, liability as a third party accomplice to the service of alcohol to a minor against defendant Swarthmore College, landlord tenant liability for breach of duty to provide safety to the premises against defendant Swarthmore College, social guest liability against defendant Swarthmore College.

COUNT I

VIOLATION OF TITLE IX: PLAINTIFFS JANE DOE 1, 2 and 3 AS TO DEFENDANT SWARTHMORE COLLEGE

(20 U.S.C. § 1681, et seq.)

(The School's Deliberate Indifference to Alleged Sexual Harassment)

122. Paragraphs one through 121 are incorporated by reference as if stated in full herein.

123. The sex-based harassment articulated in the Plaintiffs' General Allegations was so severe, pervasive, and objectively offensive that it deprived Plaintiffs of access to educational opportunities or benefits provided by the school.

124. The Defendant Swarthmore College created and/or subjected Plaintiffs to a hostile educational environment in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) ("Title IX"), because:

- a) Plaintiffs were members of a protected class;
- b) plaintiffs were subjected to sexual harassment in the form of a sexual assault by another student;
- c) plaintiffs were subjected to harassment based on their sex; and
- d) plaintiffs were subjected to a hostile educational environment created by the Defendants' lack of policies and procedures and failure to properly investigate and/or address the sexual assault and subsequent harassment.

125. Defendant Swarthmore College and its officials had actual knowledge of the sexual assault and the resulting harassment of Plaintiffs created by its failure to investigate and discipline Plaintiffs' attackers in a timely manner and consistent with its own policy and federal and state law.

126. The Defendant Swarthmore College's failure to promptly and appropriately respond to the alleged sexual harassment resulted in Plaintiffs, on the basis of their sex, being excluded from participation in, being denied the benefits of, and being subjected to discrimination in Swarthmore College's education program in violation of Title IX.

127. Defendant Swarthmore College failed to take immediate, effective remedial steps to resolve the complaints of sexual harassment and instead acted with deliberate indifference toward Plaintiffs.

128. Defendant Swarthmore College persisted in its actions and inaction even after it had actual knowledge of the harm suffered by Plaintiffs.

129. Defendant Swarthmore College engaged in a pattern and practice of behavior designed to discourage and dissuade students and guest students who had been sexually assaulted from seeking prosecution and protection and from seeking to have sexual assaults from being fully investigated.

130. This policy and/or practice constituted disparate treatment of females and had a disparate impact on female students.

131. Plaintiffs have suffered emotional distress and psychological damage, and their character and standing in the community has suffered from the harassment fostered as a direct and proximate result of Defendant Swarthmore College's deliberate indifference to their rights under Title IX.

COUNT II

VIOLATION OF TITLE IX: PLAINTIFFS JANE DOE 1, 2 and 3 AS TO

DEFENDANT SWARTHMORE COLLEGE

(20 U.S.C. § 1681, et seq.)

(Retaliation by Withholding Protections Otherwise Conferred by Title IX)

132. Paragraphs one through 131 are incorporated by reference as if stated in full herein.

133. Immediately after Plaintiffs advised defendant Swarthmore College of the sexual violent attacks, defendant Swarthmore College discouraged the plaintiffs from referring the matter to law enforcement for criminal investigation.

134. Administrators 1 as concerns Jane Doe 1 and Administrator 3 as concerns Jane Doe 3 reassured Jane Doe 1 and Jane Doe 3 that they would investigate the attacks regardless of whether the matter was referred to law enforcement.

135. Once Jane Doe 1, Jane Doe 2 and Jane Doe 3 insisted upon involving law enforcement for a criminal investigation, however, defendant Swarthmore College retaliated against Plaintiffs by declining to investigate the matters or to otherwise comply with their responsibilities as mandated by Title IX.

136. Swarthmore College students, friends with Perpetrator 3, harassed Jane Doe 3 for reporting her attack to defendant Swarthmore College and to the police.

137. Plaintiffs have suffered emotional distress and psychological damage, and their character and standing in the community has suffered from the harassment fostered as a direct and proximate result of Defendant Swarthmore College's deliberate indifference to their rights under Title IX.

COUNT III

CIVIL CONSPIRACY: PLAINTIFFS JANE DOE 1, 2 and 3 AS TO DEFENDANT SWARTHMORE COLLEGE and DEFENDANT ADMINISTRATOR 1, 2, 3 and 4.

(Weaver v. Franklin County, 918 A.2d 194, 202 (Pa.Cmwlth. 2007).

(Collusion to Violate Plaintiffs' Rights Under Title IX and Breach Defendants' Duties under the Clery Act)

138. Paragraphs one through 137 are incorporated by reference as if stated in full herein.

139. Defendant Swarthmore College and defendants Administrators 1 – 4 have a duty to report statistics of crimes that take place on its campus under the Clery Act 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R. 668.46.

140. Defendants Swarthmore College and Administrators 1-4 also have duties under the Swarthmore College Student Handbook policies as well as under other internal staff and faculty policies and procedures to report awareness of crimes that take place on campus.

141. Each of the plaintiffs, Jane Does 1, 2 and 3 reported to different Administrators their sexual assaults.

142. In the case of defendants Swarthmore College and Administrators 1, 2 and 3 they also had constructive and actual notice of the sexual assaults of Jane Doe 2 and 3 because these assaults took place as a result of parties where alcohol was served to minors, areas that defendants Administrators 1 and 2 managed for the defendant Swarthmore College as part of their employment.

143. Defendant Swarthmore College and defendant Administrator 1 had direct and extensive notice from Jane Doe 1 as well as from two other victims of Perpetrator 1 that he had sexually assaulted them in the campus of defendant Swarthmore College and actively misled her with the objective of violating her rights under Title IX and her obligations under the Clery Act.

144. Defendant Swarthmore College and defendant Administrator 2 is alleged on information and belief had direct notice from the people involved in his department, which were supposed to supervise and provide safety at the parties involved in this complaint, of the assaults that Jane Doe 2 and 3 experienced. It is alleged on information

and belief that that defendant Swarthmore College and Administrator 2 failed to investigate, report and otherwise perform the duties of his office actively misleading the plaintiffs in the process with the objective of violating their rights under Title IX and his obligations under the Clery Act.

145. Defendant Swarthmore College and defendant Administrator 3 is alleged on information and belief had direct notice from the people involved in his department, which were supposed to supervise and provide safety at the dormitories, frat houses and parties involved in this complaint, of the assaults that Jane Doe 1, 2 and 3 experienced. Notice also came from Jane Doe 3's telephone call to Administrator 3 describing her assault 24 hours after it happened. It is alleged on information and belief that defendant Swarthmore College and defendant Administrator 3 failed to investigate, report and otherwise perform the duties of his office actively misleading the plaintiffs in the process with the objective of violating their rights under Title IX and his obligations under the Clery Act.

146. Defendant Swarthmore College and Administrator 4 had direct notice from Jane Doe 2 of the assault she experienced and actively misled her with the objective of violating her rights under Title IX even though Jane Doe 2 specifically asked what she should do to further report the crime.

147. In each of these instances of reports of the crime of sexual assault from Jane Does 1, 2, and 3 defendants Swarthmore College and Administrators 1, 2, 3, and 4 took several overt acts in furtherance of their common goal as stated in Nos. 51-55, 57-59, 61, 63-67, 79, 80, 84, 93, 94, 96, 97, 108, 112, 113, 118 and 120 including misleading the plaintiffs,

lying to the plaintiffs, misrepresenting their actions to the plaintiffs and violating the Swarthmore Student Handbook which demanded that investigations take place.

148. The defendant Swarthmore College and Administrators 1 – 4’s common goal was a conspiracy to violate their duties under the Clery Act to report crimes on campus as well as a conspiracy to fail to prosecute and investigate the plaintiffs’ claims of sexual assault in violation of Title IX which guarantees them an academic environment free of these events of sexual hostility.

149. The defendants Swarthmore College and Administrators 1 – 4 also conspired to fail to provide the plaintiffs with a safe academic environment free from sexual harassment in violation of defendant Swarthmore College’s own policies and procedures which apply to administrators and students.

150. Plaintiffs have suffered emotional distress and psychological damage, and their character and standing in the community has suffered from the harassment fostered as a direct and proximate result of the defendants Swarthmore College and Administrators 1 – 4’s conspiracy and deliberate indifference to the plaintiffs’ rights under Title IX and the defendants Swarthmore College and Administrators 1 – 4’s Clery Act duties.

COUNT IV

VIOLATION OF RESIDENTIAL LANDLORD DUTY TO PROVIDE ADEQUATE SAFETY TO PREMISES: PLAINTIFFS JANE DOE 1 and 3 AS TO DEFENDANT SWARTHMORE COLLEGE

(Feld v. Merriam, 506 Pa 383 (1984) and Reider v. Martin, 519 A2d 507 (1987))

(Breach of Duty to Provide Safety by Landlord)

151. Paragraphs one through 150 are incorporated by reference as if stated in full herein.

152. In Pennsylvania landlords are specifically liable to third parties who can establish that the landlord tried but failed to protect adequately the premises with security and Jane Doe 1 and Jane Doe 3 were each raped by Perpetrator 1 and Perpetrator 3 respectively in the dormitories of Swarthmore College.

153. Swarthmore College leases these dormitories for its students and is the landlord.

154. Swarthmore College provides the security for these premises as leased to the tenants including Jane Doe 1 and Perpetrator 3.

155. Swarthmore College is heavily involved in the provision and maintenance of the safety mechanisms of the dormitories involved in these assaults.

156. Swarthmore College provides a student Resident Assistant "RA" who lives in each hall along with the residents and provides counseling, emergency and other residential-related assistance.

157. Swarthmore College also assigns the residents to the individual rooms they inhabit as part of an elaborate lottery system which is administered by its Dean of Housing.

158. Swarthmore College also provides elaborate locking mechanisms as well as the physical maintenance of the dormitories for which it also provides utilities such as water, heat, common kitchens, lounges, common bathrooms, showers and internet services.

159. Crucially, Swarthmore College maintains a private security force, PS, which is the sole mechanism the residents have to obtain live police protection.

160. Defendant Swarthmore's voluntary provision of private police security for these buildings, as well as the others on campus, imposes a duty of reasonableness in the provision of this security. Bryan v. Acorn Hotel Inc., 931 F. Supp. 394 (EDPa 1996).

161. PS actually patrols all the buildings on the Swarthmore College campus including the dormitories where the rapes of Jane Doe 1 and 3 took place.

162. PS is the first responder to emergency situations on the Swarthmore College campus.

163. Defendant Swarthmore College through its PS and other means of providing for security in the dormitories where Jane Doe 1 and Jane Doe 3 were raped breached its duty to adequately protect these premises and prevent those rapes.

164. Plaintiffs Jane Doe 1 and Jane Doe 3 have suffered emotional distress and psychological damage, and their character and standing in the community has suffered from the harassment and assault as a direct and proximate result of the defendant Swarthmore College's breach of its duty to provide adequate protection for the dormitories.

COUNT V

VIOLATION OF THIRD PARTY DUTY TO PREVENT SERVICE OF ALCOHOL TO MINORS AS ACCOMPLICE PROVIDING ASSISTANCE: PLAINTIFFS JANE DOE 2 and 3 AS TO DEFENDANT SWARTHMORE COLLEGE

(Congini v. Portersville, 504 Pa. 157 (1983) and in the civil liability context Fassett v. Delta Kappa Epsilon, 807 F.2 1150 (1986))

(Participation and Assistance in the Provision of Alcohol to Minors)

165. Paragraphs one through 163 are incorporated by reference as if stated in full herein.

166. The rapes of Jane Doe 2 and Jane Doe 3 took place in the context of parties that were sponsored and authorized by defendant Swarthmore College including authorization of the service of alcohol in the College's premises while minors would be present.

167. Jane Doe 2, Jane Doe 3 and their assailants, Perpetrator 2 and Perpetrator 3 were minors for drinking age purposes at the time of their respective sexual assaults.

168. Perpetrator 2 and Perpetrator 3 were visibly intoxicated at the time of the respective assaults as a result of the alcoholic beverages they had consumed at the college-sponsored parties involved in these rapes.

169. At the time of his assault of Jane Doe 2 Perpetrator 2 was drinking beer he had procured from the alcohol that was being served in the DU Fraternity house as part of the party.

170. Perpetrator 2 then raped Jane Doe 2 in the basement of the DU Fraternity on the Swarthmore College Campus.

171. Perpetrator 2 was underage and visibly intoxicated at the time.

172. Perpetrator 3 (and possibly others in his cabal) raped Jane Doe 3 after drugging her unconscious.

173. Perpetrator 3 drugged Jane Doe 3 by handing her, a minor, a red plastic cup full of alcoholic beer which Perpetrator 3 served himself out of a beer keg that was in the middle of the main hall of the PhiPsi fraternity house on the campus of defendant Swarthmore College.

174. Both parties relevant to this count were academic activities that had come under the regulations of the defendant Swarthmore College's "Party Policy" which was administered at the time by Administrator 2.

175. As part of the defendant Swarthmore College's Party Policy the academic activity at which Jane Doe 2 was raped by a visibly intoxicated Perpetrator 2 as well as the academic activity at which Perpetrator 3 served Jane Doe 3 alcohol as a minor and drugged her to be raped, received financial funding from the College for the specific purpose of purchasing alcohol, occurred under an actual written agreement that the party hosts would have executed with Administrator 2, included a series of measures like the presence of a PA and the notification to PS that a party with alcohol service would take place at DU and at PhiPsi's Houses at that particular date and time.

176. Under the parties' agreements Administrator 2 was supposed to be notified of any incidents of underage drinking at each event as well as of any other crimes.

177. At both these events the service of alcohol took place through the substantial assistance of defendant Swarthmore College.

178. In fact, had defendant Swarthmore College not substantially assisted in the funding, hosting and authorization of these parties, the alcohol would have never been served to either minors or adults in the first place.

179. Swarthmore College made an academic policy decision to implement these party policies including provisions for the service of alcohol as part of its educational environment which is mostly composed of minors. In doing so defendant Swarthmore College participated substantially in the service of alcohol to minors which triggered these rapes. The courts will impose liability on Swarthmore as an accomplice relying on the six factors suggested in Restatement (Second) of Torts § 876(b) for making the determination of whether the assistance was "substantial".

180. The many instances of alcohol service in which defendant Swarthmore College participated in during the academic activities as a result of which Jane Doe 2 and Jane Doe 3 were raped constitute defendant Swarthmore College's substantial participation as a third party in the provision of alcohol to minors which is a violation of the underage drinking statute at 18 Pa. C. S. § 6308.

181. Third parties like defendant Swarthmore College who help in the intoxication of minors in the criminal context Congini v. Portersville, 504 Pa. 157 (1983) and in the civil context Fassett v. Delta Kappa Epsilon, 807 F.2 1150 (1986) are liable as accomplices for sponsoring the parties at which a minor guest is served alcohol and thus becomes illegally intoxicated.

182. Plaintiffs have suffered emotional distress and psychological damage, and their character and standing in the community has suffered from the harassment fostered as a direct and proximate result of the defendant Swarthmore College's substantial participation in the service of alcohol to minors.

COUNT VI

VIOLATION OF DUTY OF CARE TO A SOCIAL GUEST: PLAINTIFF JANE

DOE 3 AS TO DEFENDANT SWARTHMORE COLLEGE

(Midgette v. Wal-Mart Stores, Inc., 550 EDPa 2004)

(Duty of Reasonable Care as to Social Guests; knowledge of dangerous condition)

183. Paragraphs one through 182 are incorporated by reference as if stated in full herein.

176. Jane Doe 3 was surreptitiously drugged at the PhiPsi fraternity house on the Swarthmore College Campus and then raped at a room in the PPR dormitories on the Swarthmore College Campus.

184. Defendant Swarthmore College is the landlord in possession of both the building where PhiPsi held the party in question and the building where Perpetrator 3 (and likely others) raped Jane Doe 3.

185. At all times relevant to this complaint Jane Doe 3 had been personally invited to attend a party at the Phi Psi house.

186. Under defendant Swarthmore College's party policies these academic events are only open to members of the Swarthmore College community and to members of the "tri-co" community which includes Bryn Mawr College where Jane Doe 3 was a student at the time of the party.

187. On information and belief defendant Swarthmore College has been the landlord in possession of the PhiPsi and PPR buildings since at least 10 years prior to the events described throughout this complaint.

188. Plaintiff Jane Doe 3 alleges that defendant Swarthmore College had notice that social guests attended both academic activities in the PhiPsi house and private activities in the dormitories such as PPR.

189. Plaintiff Jane Doe 3 alleges that defendant Swarthmore College had notice that service of alcohol to minors took place during these academic activities both at the PhiPsi house and at the campus dormitories for a long time prior to her being served alcohol as a minor and being drugged without her knowledge which led to her being raped.

190. Plaintiff Jane Doe 3 alleges that defendant Swarthmore College had notice that sexual assaults and rapes of students and guests by students and/or guests had taken place both at the PhiPsi house and at the campus dormitories for a long time prior to her rape.

191. Plaintiff Jane Doe 3 alleges that under defendant Swarthmore College's party policy its PS had actual and specific knowledge that a party would take place at PhiPsi on the night of her being served alcohol as a minor, being drugged and being raped.

192. Plaintiff alleges that even in spite of that knowledge PS never appeared at the party.

193. Plaintiff Jane Doe 3 alleges that all the safety provisions of its party policy were disregarded and not implemented during the party with her claims as sad result.

194. Jane Doe 3 alleges that defendant Swarthmore College is liable as a landlord for it had notice of the dangerous and criminal acts that took place at these parties at these locations and failed to prevent them.

195. This notice meant defendant Swarthmore College had a duty to protect its social guests such as Jane Doe 3 from likely dangers, namely Perpetrator 3 and his cabal.

196. Defendant Swarthmore College's breach of this duty of care endangered the safety of visitors to the College such as Jane Doe 3 who were guests at Swarthmore's premises. (See, e.g., *Midgett v. Wal-Mart Stores, Inc.*, 317 F. Supp. 2d 550 EDPa 2004).

197. The Swarthmore College administration was under a clear duty to take precautions against careless or criminal conduct at PhiPsi house and to provide a reasonable degree of security to afford protection to visitors like Jane Doe 3 under the party policies established in its own rules as well as under the common law. See, for example, Restatement Second Torts Sec. 344 Comment f.

198. Defendant Swarthmore College breached this duty to provide a reasonable degree of security against this well known danger including breaches in the implementation of its own rules.

199. Defendant Swarthmore College's voluntary provision of private police security for these buildings, as well as the others on campus, imposes a duty of reasonableness in the provision of this security. Bryan v. Acorn Hotel Inc., 931 F. Supp. 394 (EDPa 1996).

200. Defendant Swarthmore College breached this duty of reasonableness as the events alleged by Jane Doe 3 show that she was served alcohol as a minor, surreptitiously drugged, dragged clear across campus while unconscious from the PhiPsi house to the PPR dorm and then raped without the intervention of either PS or the PA.

201. At no point during that tragic chain of events did defendant Swarthmore College exercise its duty to protect Jane Doe 3 from these well known dangers.

202. Defendant Swarthmore College's own Party Rules' safety mechanisms were not implemented at any point during this tragic chain of events.

203. Plaintiff Jane Doe 3 has suffered emotional distress and psychological damage, and her character and standing in the community has suffered from the harassment fostered as a direct and proximate result of defendant Swarthmore College's duties of care to a social guest such as Jane Doe 3.

COUNT VII

VIOLATION OF RESIDENTIAL LEASE AGREEMENT AND ITS IMPLIED

WARRANTIES: PLAINTIFFS JANE DOE 1 and 2 AS TO DEFENDANT

SWARTHMORE COLLEGE

(Landlord and Tenant Act of 1951, 68 P.S. §§ 250.101-250.602)

(Promise to Provide a Safe Residential Living Environment)

204. Paragraphs one through 203 are incorporated by reference as if stated in full herein.

205. Jane Doe 1 was raped several times while at the dormitories she had rented from defendant Swarthmore College for the period between April 2, 2009 and August 2010.

206. Jane Doe 3 was raped (probably several times and by several people) at the dormitory that Perpetrator 3 had rented from defendant Swarthmore College for the Fall, 2010 semester on or about October 2, 2010.

207. On information and belief, as part of its residential housing services, defendant Swarthmore College promises to its tenants and their guests a safe living environment.

208. In exchange for this promise, the student tenants of defendant Swarthmore College, choose to live on the Swarthmore College campus and pay rent to Swarthmore College by entering into residential agreements with its Dean of Housing Office.

209. This promise of a safe residence extends to both the tenants of defendant Swarthmore College, like Jane Doe 1 and the persons they take to the dormitories they rent as Perpetrator 3 did to Jane Doe 3.

210. In part, Defendant Swarthmore College attempts to fulfill its promise of providing a safe living environment for its tenants and their guests through mechanisms such as its PS and other means of providing for security in the dormitories where Jane Doe 1 and Jane Doe 3 were raped because defendant Swarthmore College failed to fulfill this promise.

211. Swarthmore College also provides a live-in resident, the RA, basically on every wing of every floor of every dormitory at Swarthmore. This person is a student enrolled at Swarthmore and reports to the Dean of Housing any crimes and other matters.

212. The mechanisms that defendant Swarthmore College has in place to fulfill its promise of providing a safe living environment are useless and ineffective. They were so particularly in the context of the events described in this Count.

213. In addition, defendant Swarthmore College is obligated as a landlord under Section 250.502-A of the Landlord and Tenant Act of 1951 to discharge the duty of:

“...reasonable care for safety in use. This responsibility of the landlord extends not alone to the individual tenant, but also to his family, servants and employees, business visitors, social guests, and the like. Those who enter in the right of the tenant, even though under his mere license, make a permissible use of the premises for which the common ways and facilities are provided.”

214. Defendant Swarthmore College failed to discharge its statutory duty under the landlord tenant act with the sad result of the rapes described in this count.

215. Plaintiffs Jane Doe 1 and Jane Doe 3 have suffered emotional distress and psychological damage, and their character and standing in the community has suffered from the harassment and assault as a direct and proximate result of the defendant Swarthmore College’s failure to fulfill its promise to provide a safe living environment in the dormitories involved in these sexual assaults.

WHEREFORE, Plaintiffs respectfully request judgment in their favor and against Defendant Swarthmore College, and Defendants Administrator 1, 2, 3 and 4, as follows:

A. Compensatory damages for Plaintiffs’ physical pain and suffering, psychological and emotional distress and damages for diminished earnings capacity, loss of standing in their community, damage to their reputation, past and future medical and psychological expenses and their families’ unreimbursed out of pocket expenses incurred in response to these circumstances;

B. Punitive damages;

C. Injunctive relief requiring Defendant Swarthmore College to take effective steps to prevent sex-based discrimination and harassment, including sexual assault, in its education programs; fully investigate conduct that may constitute sex-based harassment and /or sexual assault; appropriately respond to all conduct that may constitute sex-based harassment and /or sexual assault; and mitigate the effects of harassment and/or assault including by eliminating any hostile environment that may arise from or contribute to it with a particular request that the defendant Swarthmore College's "Office of the Title IX Coordinator" and its employees be made independent of the administration of the college.

D. Statutory interest;

E. Costs; and

F. Reasonable attorney fees.

Respectfully submitted,



/s/ RAUL JAUREGUI

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Dated: October 27, 2013

PROOF OF SERVICE

Jane Doe 1 et al v. Swarthmore College et al.
Civil No. 13-6122

FIRST AMENDED COMPLAINT

I certify that I am over 18 years of age and that in accordance with the provisions of the Federal Rules of Civil Procedure and of the Commonwealth of Pennsylvania's rules for service of process, today I served on behalf of the plaintiff via first class certified US MAIL to the defendants' legal representative address, a true and correct copy of the above referenced documents addressed to:

Michael E. Baughman, Esq.
Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103

VIA E-MAIL <baughmam@pepperlaw.com>

Dated: October 28, 2013

/s/RAUL JAUREGUI
Raul Jauregui, Esq

JURY DEMAND

Now Come the Plaintiffs, Jane Doe 1, 2, and 3, by and through their attorney, Raul Jauregui, and demand a trial by jury.

Dated: October 27, 2013

/s/ RAUL JAUREGUI

Raul Jauregui, Esq.

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