

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

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PAMELA FINE, : Civil Case No.: 1:17-CV-2140
: Plaintiff, : **COMPLAINT**
v. :
JOSEPH M. TUMPKIN, :
MIKE MACINTYRE, : **JURY TRIAL DEMANDED**
RICK GEORGE, :
PHILIP DISTEFANO :
and BRUCE BENSON, :
Defendants. :
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Plaintiff Pamela Fine (“Plaintiff”), by her undersigned counsel, for her Complaint against Defendants Joseph M. Tumpkin (“Tumpkin”), Mike MacIntyre (“MacIntyre”), Rick George (“George”), Philip DiStefano (“DiStefano”) and Bruce Benson (“Benson”) (collectively, “Defendants”), alleges as follows:

NATURE OF THE ACTION

1. By this action, Plaintiff seeks to recover for injuries she sustained as a result of Defendants’ wrongdoing, including, *inter alia*, Tumpkin’s physical, psychological and verbal abuse of Plaintiff, Tumpkin’s supervisors’ disgraceful reaction and inaction following learning of Tumpkin’s abuse of Plaintiff and the danger he posed to Plaintiff as well as to the entire University community and beyond, and all Defendants’ willful and wanton lack of care, including MacIntyre’s decision, rather than to protect Plaintiff once she notified him of Tumpkin’s abuse, instead to cover up the abuse, protect his football program and, in doing so, jeopardize Plaintiff’s safety and well-being, all with the knowledge and complicity of the other Defendants. Individually and collectively, Defendants placed their concern for the University’s football program, post-

season bowl prospects, post-season coaching awards, and reputational interests of the University Athletic Program before and above their legal and ethical obligations owed to Plaintiff.

2. Plaintiff and Tumpkin were in a relationship from approximately December 8, 2013 until November 20, 2016. During much of that time, Tumpkin exhibited violent and abusive behavior, physically and emotionally damaging Plaintiff and, when the other Defendants learned of the abuse, as well as Tumpkin's other conduct which placed not only Plaintiff but others, including the entire University community, in danger, Defendants, individually and collectively, chose to ignore and otherwise cover up Tumpkin's conduct up until the time it became public and, in doing so, breached their obligations to abide by University policies and common law duties of care.

3. The University Athletic Program has been under a shadow as a consequence of prior activities by University officials and representatives which, like the activities involving Plaintiff, violated legal and ethical duties and obligations. As an example, the University has been plagued by sex-based harassment and assaults being committed and alleged to have been committed by people associated with the Athletic Department, and by acts undertaken by University officials to cover up and otherwise fail to report such events in a manner consistent with their employment obligations, other legal obligations or ethical duties.

4. On or about February 2, 2015, the University hired Tumpkin as an assistant football coach. Pursuant to the terms of his contract with the University, the University provided Tumpkin with temporary lodging, as well as other accommodations.

5. On or about February 27, 2015, in the Renaissance Hotel in Broomfield, Colorado, the temporary lodging the University provided to Tumpkin, Tumpkin began physically, psychologically and verbally abusing Plaintiff. A pattern of abuse followed thereafter, through

November 20, 2016. The abuse at times took place during University-sponsored activities and travel, in University-provided accommodations and on the University campus.

6. When University employees and supervisors became aware of Tumpkin's abuse of Plaintiff, they failed properly to report or address these issues as required by law and in violation of the duties they owed to Plaintiff, as detailed below, as well as in violation of their own employment contracts and contrary to University procedures, including procedures established – ironically – by one of the Defendants, DiStefano, who later claimed “confusion” over the proper procedures to follow.

7. Tumpkin's abusive behavior was aggravated by a drinking problem. Other members of the football program experienced Tumpkins' abuse of alcohol firsthand. Although University employees were aware that Tumpkin had issues with alcohol abuse and with driving while intoxicated, they failed properly to report or address these issues.

8. University personnel were not adequately trained, supervised, educated or caring about their duties and obligations, as detailed below.

9. As a result of Tumpkin's physical, psychological and verbal abuse, and as a result of Defendants' failure to abide by their legal obligations and duties, including their duty to report such abuse by a University employee and their duties owed to Plaintiff, Plaintiff has suffered physical and psychological injuries, trauma and other damages.

10. Tumpkin's abuse, and the other Defendants' failures to report, address and stop such activity, is a part of a University pattern of ignoring and, indeed, covering up, abusive behavior by people associated with the University Athletic Department.

THE PARTIES

11. Plaintiff is an individual residing in, and a citizen of, the State of Michigan.

12. Upon information and belief, Tumpkin is an individual residing in, and a citizen of, the State of Colorado.

13. The University of Colorado, although not a Party to this lawsuit as a consequence of the State's immunity laws, which allow the University to escape properly answering for its failure to supervise and discipline its leaders and employees, is a public university system consisting of four campuses, all located in Colorado, with the flagship location in Boulder, Colorado.

14. The Board of Regents, although not a Party to this lawsuit as a consequence of the State's immunity laws, which allow the Board of Regents to escape properly answering for its failure to instill in its leaders a true sense of, and obligation for, leadership and responsibility, is the governing board of the University. While in theory the Board of Regents bears ultimate responsibility for University affairs, those State immunity laws conflict with the University's "Board of Regents" web page, available at <http://www.cu.edu/regents>, which contends that "the Board is charged constitutionally with the general supervision of the university[.]"

15. MacIntyre is the head coach of the University's men's football team. Upon information and belief, MacIntyre is an individual residing in, and a citizen of, the State of Colorado. Following the facts alleged below, the University, with the consent of the Board of Regents, signed MacIntyre to a new \$16.5 million contract extension to continue as the University's head football coach through the 2021 season.

16. George is the University's Athletic Director. Upon information and belief, George is an individual residing in, and a citizen of, the State of Colorado.

17. DiStefano is the University Chancellor. Upon information and belief, DiStefano is an individual residing in, and a citizen of, the State of Colorado.

18. Benson is the University President. Upon information and belief, Benson is an individual residing in, and a citizen of, the State of Colorado.

JURISDICTION AND VENUE

19. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332(a)(1), because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

20. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2), because Defendants reside in Colorado, and because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in Colorado.

21. Plaintiff has complied with the Notice requirements set forth in C.R.S. § 24-10-109 by serving a written notice upon the Colorado Attorney General and University Counsel via certified mail within 182 days after being injured by the wrongdoing of the University and its employees. Plaintiff is now authorized to bring this action under C.R.S. § 24-10-109(6), as more than 90 days have passed since the service of such notice.

FACTUAL ALLEGATIONS

The University's History of Mishandling Sex-Based Harassment and Assault

22. The University's disturbing history of mishandling and covering up incidents involving sexual assaults and discriminatory actions were detailed by two law firms who were provided with access to University files, and by media disclosures.

23. In 1997, a female high-school student was assaulted by University recruits at a party hosted by a University football player. The local district attorney initiated a meeting with top University officials, telling them that the University needed to develop policies for supervising recruits and to implement sexual assault prevention training for football players. However, the

University did little to change its policies or training following that meeting. In particular, player-hosts were not instructed on the limits of appropriate entertainment.

24. In 1999, a University placekicker Katie Hnida was verbally abused and molested by teammates, and even raped by one of them. During the 2000 season Hnida's father went to the Athletic Director, Dick Tharp, and the team's coach, Gary Barnett, and reported the abuse, including "the cornering, the groping, the name-calling and the football at-the-head thing," and was frustrated by his efforts: "Talking to Barnett was like talking to a wall." Following these incidents, Hnida says she was depressed, suffered from insomnia and gave up kicking. She eventually dropped out of the University after her sophomore year.

25. In 2001, Lisa Simpson and Anne Gilmore were sexually assaulted by University football players and recruits. Following an investigation, the University's Office of Judicial Affairs charged several of the involved football players with code of conduct violations, but declined to pursue sexual assault charges against the students involved, and none of the University football players lost his eligibility to play in any subsequent football games. The district attorney's office pressed felony charges against several of the football players and imposed a "no contact order" against two of them, prohibiting any contact with Simpson. Despite these events, the University's head football coach continued to recruit one of the assailants. This case lead to the 2005 resignation of then-president Elizabeth Hoffman, but the head football coach, Athletic Director and Chancellor all retained their jobs. The University finally settled for \$2.85 million in 2007. DiStefano served as the University's Provost at that time.

26. In 2003, Vance Joseph, an assistant football coach who worked under then-Coach Gary Barnett, sexually assaulted two female trainers. One of the victims told Boulder police that she and her friend were "not the only women that Joseph was getting in trouble for." Joseph was

suspended from the University for an “unspecified reason.” However, the University did not terminate Joseph. In 2004, Joseph voluntarily resigned from the University for a position at Bowling Green University. The scandal culminated in the resignations or terminations of President Hoffman, Coach Barnett, Athletic Director Tharp, Chancellor Richard Byyny and others.

27. In 2006, a University head coach failed to report alleged sexual harassment by an assistant coach. The head coach issued a letter of reprimand to the assistant coach, but did not report the allegation to the University’s Office of Institutional Equity and Compliance (“OIEC”).

28. There are also many instances in which sex-based harassment and assault occurred outside the Athletic Department and was mishandled, including the following:

- a. In 2006, a female student reported to a University employee that she had been sexually assaulted. The University employee did not report the alleged assault to any University officials.
- b. In 2007, a University faculty member reported race-based and gender-based discrimination to the Dean, who failed to report the allegations to the OIEC.
- c. In 2009, two female University students reported concerns of sexual harassment by their supervisor to a male faculty member, who was unresponsive, told them there was “no issue,” and failed to report the allegations to the OIEC.
- d. In 2010, a female University employee was harassed by a male University employee about her disability. A supervisor saw the harassment, did not intervene, and did not report the incident to the OIEC.
- e. Also in 2010, a University student-employee reported to her supervisor that she felt sexually harassed by a manager. The supervisor did not report her allegations to the OIEC.

- f. Again in 2010, despite previously having been disciplined for a failure to report an incident to the OIEC, a supervisor did not report a student-employee's allegation that she felt sexually harassed by a manager for over a year.
- g. In 2013, a University supervisor made harassing comments about an employee's race, color, and national origin and then fired him after he complained to a higher office. The University employee who received the employee's complaint failed to file a report with the OIEC.
- h. Also in 2013, a University student reported gender-based and sexual-orientation-based harassment by another student to a University employee who did not effectively address the alleged harassment or report the issue and then retaliated against the student.
- i. Again in 2013, a University employee became aware of rumors that another employee was being subjected to sexual harassment in November, but did not report it to the OIEC until the following February.
- j. In 2013, Sarah Gilchriese, a female University student, filed a grievance against the University under Title IX for delaying and insufficiently sanctioning a male student who sexually assaulted her. Gilchriese's Complaint sparked a federal investigation into the way the Boulder campus sanctions sexual violence and otherwise handles sexual violence complaints.

29. As a result of the recurring issues involving sexual harassment and discriminatory activities that went unreported to proper authorities, in 2014, DiStefano ordered an audit of the University's compliance with Title IX, supervised the creation of new policies for following the federal gender-equity law, and hired Valerie Simons as head of the OIEC. DiStefano stated:

We're doing a very good job, but there's always room for improvement. As I look at things, I want to make sure we continue to improve what we're doing and really become a national leader. There is room for improvement, although I feel that we're doing much more than we've done in the past.

We need to make sure that, first of all, we're in compliance with federal law, but I wanted to move beyond just simple compliance and become a national leader in education, programming and investigations.

Tumpkin's Relationship with Plaintiff

30. Plaintiff met Tumpkin in or about March 2012, while Tumpkin was employed as Defensive Coordinator at Central Michigan University. They became involved in a romantic relationship in December 2013.

31. On February 2, 2015, the University hired Tumpkin as an assistant football coach. The University's offer included the following: "As an employee with the Department of Intercollegiate Athletics, you should be aware that you will be held accountable for and must abide by the University of Colorado, the Pac-12 Conference, and the NCAA Rules and Regulations in your position on a daily basis. The University of Colorado is committed to fostering an atmosphere of compliance and expects integrity, attendance in all rules education opportunities and a genuine commitment to reporting violations you become aware of." Upon information and belief, Tumpkin's employment contract – like the other Defendants' employment contracts – includes a provision allowing termination in the event of misconduct as well as a failure to abide by legal obligations and duties and University policies.

32. On February 4, 2015, Tumpkin moved to Broomfield, Colorado – specifically, to temporary lodging the University provided at the Renaissance Hotel.

33. When Tumpkin moved to Colorado, Plaintiff and Tumpkin remained in a long-distance, supposedly committed relationship. Their long-term plans included plans for Plaintiff to move to Colorado and marry Tumpkin.

Tumpkin's Physical, Psychological and Verbal Abuse of Plaintiff

34. On February 26, 2015, Plaintiff traveled to Colorado to visit Tumpkin at the Renaissance Hotel.

35. Tumpkin's abuse of Plaintiff commenced on February 27, 2015. Among other physical acts of violence which occurred over the course of several hours, Tumpkin grabbed Plaintiff, threw her against the wall, threw her on the bed, choked her and blocked her ability to leave the hotel room. At one point, Tumpkin held Plaintiff's fully-packed suitcase over her head and threatened to throw it down on her head.

36. Plaintiff suffered bruises on both wrists and forearms, and on her legs, from the physical abuse.

37. Similar events occurred in March 2015, at another University-provided hotel, and, from March 2015 through November 20, 2016, multiple times at a local apartment Tumpkin rented, and multiple times during trips sponsored by or undertaken on behalf of the University for, among other things, events with boosters and recruiting events for the University football program. Over the course of this time period, Tumpkin choked Plaintiff approximately one hundred times.

38. Following each abusive episode, Tumpkin apologized for his actions, begged forgiveness and attempted reconciliation. Over this prolonged time period, there were some periods during which Plaintiff would stay away from Tumpkin and other periods during which she was enticed to give their relationship an opportunity to improve.

39. As another example of an abusive event, on April 3, 2015, Plaintiff accompanied Tumpkin on a University-sponsored trip to the Broadmoor Hotel and Resort to attend a team dinner with Boosters, Regents and members of the Athletic Department – including George,

MacIntyre and assistant coaches – and their wives. As he had done on multiple other occasions, Tumpkin physically, psychologically and verbally abused Plaintiff during their stay at the Broadmoor Hotel and Resort.

40. Plaintiff returned to Michigan on April 5, 2015.

41. Tumpkin attempted to reconcile with Plaintiff, and his efforts included attending a counseling session on April 14, 2015.

42. Tumpkin spent the first three weeks of May 2015 in Florida recruiting football prospects for the University. On May 15, 2015, Plaintiff traveled to Fort Lauderdale, Florida, to visit Tumpkin while he was on University-related business and staying in accommodations paid for by the University.

43. On May 16, 2015, Tumpkin engaged in even more severe physical abuse of Plaintiff, including grabbing Plaintiff's wrists, arms, legs and chest, throwing Plaintiff on the ground, pulling her by the hair, and choking her. At one point, Plaintiff lost consciousness. Shortly after Plaintiff regained consciousness, Tumpkin went to his mother's house. Plaintiff felt ill and vomited blood. While Tumpkin was away, Plaintiff left the hotel and returned to Michigan.

44. Thereafter, Tumpkin continued attempting to reconcile with Plaintiff.

45. During the months of August through December 2015, Plaintiff did not see Tumpkin, despite his ongoing efforts to reconcile. Tumpkin's efforts to reconcile with Plaintiff during this time frame included contacting Plaintiff, by text messages, voice messages and other means on a near-daily basis, repeatedly asking for another chance and promising he had changed, and sending gifts to her office.

46. On January 9, 2016, Plaintiff traveled to San Antonio, Texas, to visit Tumpkin while he attended a conference as a representative of the University.

47. On January 11, 2016, Tumpkin became enraged after seeing another man talking to Plaintiff in the hotel bar. His physical, psychological and verbal abuse of Plaintiff started up again in her hotel room that evening.

48. After Plaintiff returned to Michigan on January 12, 2016, Tumpkin continued attempting to reconcile with Plaintiff. Before she returned to Michigan, he reiterated that he wanted to marry her.

49. On February 5, 2016, Tumpkin traveled to Michigan to visit Plaintiff. The physical, psychological and verbal abuse of Plaintiff continued. On this occasion, the physical abuse included choking Plaintiff, biting Plaintiff, lifting Plaintiff over his head, throwing Plaintiff onto a bed and throwing Plaintiff into the wall. At one point, Tumpkin grabbed Plaintiff's dog and refused to give the dog back to Plaintiff. Plaintiff was afraid to leave, fearing that Tumpkin would harm the dog if she left.

50. On the same evening, Plaintiff spoke to Tumpkin's ex-wife and learned that Tumpkin had been physically abusive to her as well, including by throwing her against a wall and choking her. In addition, Tumpkin even was physical with his ex-wife's son – Tumpkin's stepson – at one point when he intervened.

51. Tumpkin returned to Colorado on February 8, 2016 and continued attempting to reconcile with Plaintiff.

52. On March 11, 2016, Plaintiff traveled to Colorado to visit Tumpkin.

53. On March 12, 2016, Tumpkin's physical, psychological and verbal abuse of Plaintiff continued. On this occasion, the physical abuse included throwing Plaintiff onto a bed, getting on top of her and choking her, pulling her by the hair, throwing her against walls and onto the ground. A neighbor heard violent-sounding noise, as well as a man repeatedly saying, "I'm

going to fucking kill you” and a woman begging him to stop, and called 911. Police arrived sometime after midnight, but Plaintiff did not reveal to them that abuse was occurring.

54. Tumpkin’s physical, psychological and verbal abuse of Plaintiff continued in Plaintiff’s home on March 22, 23, 25 and 26, 2016, when Tumpkin decided to visit Plaintiff. On March 22, 2016, the physical abuse included choking Plaintiff, throwing her and pulling her by the hair. At one point, Tumpkin pushed his cellular telephone into Plaintiff’s jaw, where she had recently had a tooth extracted and a dental implant and a post placed, along with stitches. Tumpkin pressed the phone with such force and pressure into Plaintiff’s jaw that the dental implant was moved and failed, and Plaintiff suffered tremendous pain and sustained trauma, which later required the failed dental implant to be removed, leaving Plaintiff with a tooth missing for more than three months while her injuries healed. Tumpkin’s physical abuse of Plaintiff increased in duration and intensity.

55. Their on-again, off-again relationship continued but, each time Plaintiff was led to believe that Tumpkin was in control of his violent tendencies, she was proved wrong.

56. Even after Tumpkin agreed to attend a couples counseling session with Plaintiff on April 4, 2016, the physical, psychological and verbal abuse continued.

57. After the counselor learned that Tumpkin had been physically abusing Plaintiff, he refused to help them stay together as a couple. The counselor advised Tumpkin to continue individual counseling in separate sessions, but Tumpkin refused or failed to do so.

58. On May 13, 2016, Plaintiff and Tumpkin traveled to Tampa, Florida for a University-sponsored football recruiting trip.

59. On May 14, 2016, Plaintiff’s physical, psychological and verbal abuse of Plaintiff started up again. On this occasion, the physical abuse included pushing Plaintiff against a glass

closet door and choking her, biting Plaintiff's face so forcefully that it left a welt, and throwing Plaintiff and choking her numerous times.

60. Tumpkin's physical, psychological and verbal abuse of Plaintiff continued on the morning of May 15, 2016.

61. During the months of June through October, 2016, Plaintiff did not see Tumpkin, despite his efforts to reconcile.

62. On November 18, 2016, Plaintiff traveled to Colorado to visit Tumpkin.

63. Tumpkin drove home drunk around midnight on the evening of November 18 or morning of November 19, and his physical, psychological and verbal abuse of Plaintiff continued. On November 19, 2016, the physical abuse included pushing Plaintiff against the wall, choking her, and throwing her on the bed. On November 20, 2016, the physical abuse included throwing Plaintiff into a wall, choking her, pulling her hair very forcibly, dragging her across the floor by her hair, and pushing Plaintiff. Tumpkin repeatedly told Plaintiff to leave and assaulted her when she tried to do so. Finally, Tumpkin opened the door, threw Plaintiff's suitcase out, and pushed her out.

64. On November 20, 2016, Plaintiff returned to Michigan and finally ended her relationship with Tumpkin. During that relationship, Tumpkin had choked Plaintiff over one hundred times, pushed her, grabbed her, threw her against walls, dragged her, banged her head against furniture and threatened her life in both deed and words.

65. Throughout the same periods of time when Tumpkin engaged in physical abuse of Plaintiff, he also engaged in psychological and verbal abuse.

66. At all times relevant to Tumpkin's physical, psychological and verbal abuse of Plaintiff, Tumpkin was being supervised by, and reporting to, University officials.

67. As a result of Tumpkin's abuse, Plaintiff was diagnosed with post-traumatic stress disorder ("PTSD") on or about December 9, 2016.

Plaintiff Reported Tumpkin's Physical Abuse to MacIntyre

68. Plaintiff made multiple attempts throughout December 2016 to report Tumpkin's abuse and violence to MacIntyre, the University's head football coach, in order to obtain guidance regarding how best to protect herself and others who had contact with Tumpkin and regarding how to obtain help for Tumpkin. Plaintiff believed she had a strong personal relationship with MacIntyre and could trust him to provide help and protection.

69. First, on or about December 7, 2016, Plaintiff emailed MacIntyre to ask that he telephone her regarding a "very confidential concern" about Tumpkin.

70. Because Plaintiff received no response to her email to MacIntyre, on or about December 9, 2016, she sent a Facebook message to MacIntyre's wife, asking her to have MacIntyre telephone Plaintiff to discuss a "sensitive and confidential" issue regarding Tumpkin.

71. Later that day, MacIntyre telephoned Plaintiff. MacIntyre and Plaintiff had a telephone call lasting more than 30 minutes, and Plaintiff detailed for MacIntyre the history, pattern and specifics about Tumpkin's violence and abuse. Plaintiff also discussed with MacIntyre during that conversation Tumpkin's abuse of alcohol and pattern of driving while intoxicated.

72. During that conversation, Plaintiff specifically told MacIntyre that she feared that Tumpkin would kill himself or someone else, including perhaps herself, and that he was dangerous to women and to drivers and pedestrians on the road. Plaintiff also told MacIntyre that a mutual acquaintance of theirs who was aware of Tumpkin's abuse had warned Plaintiff that Tumpkin "will kill you" if she confided in anyone about Tumpkin's abuse.

73. Plaintiff also warned MacIntyre that she believed another woman also was in danger from Tumpkin.

74. At that time, Plaintiff did not intend to report the abuse to law enforcement. Plaintiff wanted MacIntyre to find professional help to assist Tumpkin to control his violent behavior and dangerous alcohol-driven behavior.

75. Plaintiff also expected MacIntyre's help to protect her and others from Tumpkin, and specifically warned MacIntyre about the danger Tumpkin presented to her.

The University and its Personnel Failed to Respond Responsibly or Properly to Tumpkin's Physical Abuse and to the Dangers Tumpkin Posed to Plaintiff and to the People in the University Community

76. MacIntyre specifically told Plaintiff that he believed what she told him about Tumpkin's abusive and violent behavior – seemingly both because of Plaintiff's credibility and because MacIntyre had nearly two years to work with and observe Tumpkin – and promised that he would exercise his authority to address the issue immediately.

77. By the explicit terms of MacIntyre's contract with the University, MacIntyre is required to administer the football program and supervise his staff in a manner that assures compliance with principles of "integrity" and conduct consistent with "high moral standards." MacIntyre also is required, both by contract and University policy, to act in a manner to assure that he and his staff comply with University policies and the law.

78. Rather than satisfy his legal duties and obligations, including duties and obligations he owed to Plaintiff, to the University and to the University community, MacIntyre willfully and wantonly did the opposite.

79. Deciding to ignore his obligation to report Tumpkin's abuse to designated University authorities and to law enforcement, MacIntyre instead turned to his own sports agent

and outside legal counsel in an effort to protect himself, to take measures not to jeopardize his upcoming multimillion dollar contract extension with the University and to safeguard his own position within the Athletic Department.

80. The legal counsel to whom MacIntyre turned had acted on multiple occasions on behalf of University student athletes who had been accused of Title IX violations, including complaints of sexual assault.

81. On December 10, 2016, MacIntyre told Plaintiff that he had communicated at least some of the information Plaintiff had provided to George, the University's Athletic Director as well as MacIntyre's direct supervisor, and that MacIntyre and George had made plans to meet in person to discuss the situation.

82. George is required contractually and by University policy to administer the Athletic Department and supervise his staff in a manner that assures compliance with principles of "integrity" and conduct consistent with "high moral standards." George also is required, both by contract and University policy, to act in a manner to assure that he and his staff comply with University policies and the law.

83. As a result of their communications and discussions about how best to protect themselves and the Athletic Department, including the football program, neither MacIntyre nor George properly addressed the issue in a manner consistent with their legal obligations, ethical obligations or employment obligations.

84. In addition to deciding not to report Tumpkin's abuse to the proper University authorities or to law enforcement authorities, and instead to keep the information within a small group of people which only included people they felt confidant would place the football team's

interests over their legal and ethical duties and obligations, MacIntyre and George, and ultimately DiStefano and Benson, also failed to refer Plaintiff to anyone for support, resources or protection.

85. Despite MacIntyre's assurances to Plaintiff that he would use his position and authority to pursue an appropriate way to handle the situation, MacIntyre instead blocked Plaintiff's calls without advising her of that fact. For a period of time after her December 9 and 10 conversations with MacIntyre, Plaintiff sent text messages and left voice messages for MacIntyre seeking support and assistance without realizing that no one was receiving her messages.

86. Rather than taking measures to protect Plaintiff, to fulfill his duties and responsibilities to the University community, and to report Tumpkin's abuse and violence to proper authorities, instead MacIntyre communicated directly with Tumpkin to warn him about Plaintiff's communications to him and to help Tumpkin protect himself. On or about December 12 or 13, 2016, MacIntyre gave to Tumpkin the contact information for Jon Banashek, a University booster and an attorney who routinely represents University student-athletes in legal matters involving violence, sexual assaults and narcotics and alcohol-related violations.

87. As a result of MacIntyre informing Tumpkin about his communications with Plaintiff, MacIntyre greatly increased the danger presented to Plaintiff.

88. Tumpkin engaged Banashek as counsel.

89. In addition to representing Tumpkin, Banashek, upon information and belief, regularly communicated and provided advice to George regarding how to handle the situation.

90. Alarmingly, Banashek also communicated directly with Plaintiff. On December 13, 2016, Banashek telephoned Plaintiff directly and, among other things, offered her money, including money to obtain PTSD therapy, and an apology from Tumpkin. Banashek also asked

Plaintiff if she would notify him beforehand if she decided to report Tumpkin's abuse to law enforcement because "it would make my job easier." When Plaintiff told Banashek that she would feel more comfortable speaking with MacIntyre about the situation than him, Banashek informed her that MacIntyre would not take her calls anymore.

91. Banashek telephoned Plaintiff again on December 15, 2016, to tell her that she had "a lot of people on pins and needles" about whether she was going to report Tumpkin's abuse to law enforcement. Banashek specifically identified Tumpkin, MacIntyre and George as those people who were anxious about Plaintiff's actions in that regard. Banashek also said that he wanted to work things out without Plaintiff going to the police. Banashek also told Plaintiff that he had again talked with George that evening about the Tumpkin situation. Plaintiff responded: "So, let me get this straight. Mac says he believes every word, you aren't denying anything and offering to get him help, no one questions that they have an abusive man on their staff, but everyone is on pins and needles because I may go to the police?"

92. During this period of time, and no later than December 11, 2016, George also informed DiStefano, the Chancellor at the University of Colorado Boulder, about the details of the situation. George willfully and wantonly failed to report the situation to anyone else, including the University's Title IX Coordinator.

93. By his own admission, and at least by December 14, 2016, DiStefano also made the willful and wanton decision not to report the issues raised by Tumpkin's abuse of Plaintiff, Tumpkin's violent proclivities and issues of alcohol to the University's Title IX Coordinator. DiStefano's failure to report the abuse to proper authorities not only is alarming but ironic. DiStefano later told counsel that he was confused regarding what steps to take. That "excuse" is either preposterous or a blatant lie, because DiStefano, who has more than 40 years of experience

at the University, supervised the University's 2014 audit of Title IX compliance; supervised the creation of new policies for following the federal gender-equity law; hired a new head for the OIEC; and, as the Chancellor of the NCAA Football Bowl Subdivision, has sufficient knowledge and experience to take a leading role in working to develop a "uniform policy" for dealing with recruits and transfers with a history of sexual violence.

94. Instead of acting legally and responsibly, MacIntyre, George and DiStefano willfully and wantonly confined the information to a small group of University officials that included themselves and ultimately Benson, people whom they could trust to place the football program ahead of appropriately and legally handling Tumpkin's abuse.

95. On December 15, 2016, Plaintiff left a voicemail message for MacIntyre to inform him that she planned to come to Boulder to make a police report and seek a temporary protective order.

96. On the very next day after Plaintiff informed MacIntyre about her decision to seek a temporary protective order and Banashek informed Plaintiff that everyone was "on pins and needles" about what steps she was going to take, December 16, 2016, and a week after MacIntyre learned of Tumpkin's abuse of Plaintiff, and with the advice and consent of George, MacIntyre held a press conference to announce that he had promoted Tumpkin to be the Defensive Coordinator for the Alamo Bowl.

97. A victory in the Bowl Game would have meant significant monetary awards to members of the Athletic Department and helped MacIntyre secure the Coach of the Year Award.

98. Sometime during the week of December 16, 2016, DiStefano informed Benson, the University President, about the issues raised by Tumpkin's abuse of Plaintiff. Benson made the willful and wanton decision not to address the situation himself or to take any responsibility for

assuring that the University's Title IX Coordinator and law enforcement authorities were addressing the issue properly or that Plaintiff and others in the University community were protected from Tumpkin. Benson, sensitive to the pecuniary and reputational benefits of a post-season bowl victory, also took no steps to block, or even apparently to question, the promotion of Tumpkin to be Defensive Coordinator for the Alamo Bowl.

99. On December 28, 2016, DiStefano informed University Counsel Patrick O'Rourke about Tumpkin's abuse of Plaintiff and the details of Plaintiff's telephone communications with MacIntyre. Like the Defendants, O'Rourke did not address the situation or take responsibility for assuring that the University's Title IX Coordinator and law enforcement authorities were addressing the issue properly or that Plaintiff and others in the University community were protected from Tumpkin. O'Rourke did, however, discuss with DiStefano the fact that MacIntyre and George were considering permanently promoting Tumpkin and extending his contract.

Tumpkin was Placed on Leave and Resigned Only After Media Reports

100. On December 19, 2016, Plaintiff reported Tumpkin's abuse to the Broomfield Police Department and, on December 20, 2016, she sought a civil protection order.

101. A temporary protection order was issued on December 20, 2016. Banashek immediately received notice of the protection order. Upon information and belief, Banashek was in constant communication with George during this time period, keeping him apprised of developments. On December 21, 2017, Banashek told law enforcement that Tumpkin would not provide police with any information and, seemingly based on his own communications with MacIntyre, who was not his client, informed law enforcement that MacIntyre would not speak to law enforcement about the situation.

102. Despite all of the information Defendants knew regarding Tumpkin's abuse of Plaintiff and, at least by the third week of December, apparently knowing about the protection

order, Tumpkin continued in his employment with the University and heightened role with the football program. None of the Defendants warned the University community that Tumpkin had been determined to be sufficiently dangerous that a protection order was needed in order to help safeguard at least one of his victims. Instead, MacIntyre, George, DiStanfano and Benson, seemingly with O'Rourke's complicity, took measures to assure that information and warnings about Tumpkin were not disseminated to the University community.

103. Finally, the media learned of the restraining order imposed on Tumpkin. On January 6, 2017, the *Boulder Daily Camera* contacted the University to request its reaction to the temporary protection order. The University placed Tumpkin on administrative leave only after the abuse and the law enforcement action became public.

104. On January 25, 2017, a permanent protection order was issued.

105. Finally, more than six weeks after MacIntyre was informed about Tumpkin's abuse of Plaintiff and issues with alcohol and drinking and driving, on or about January 26, 2017, University officials requested Tumpkin's resignation – rather than terminating him. Tumpkin resigned from the University on or about January 27, 2017, after first negotiating the terms of his severance.

106. Tumpkin's severance included two months' pay and additional salary for coaching in the University's Alamo Bowl game.

107. On January 31, 2017, the Broomfield Police Department charged Tumpkin with five felony charges, including assault with a deadly weapon, and three misdemeanors.

The University and its Representatives Belatedly Investigate, and Inadequately Address, the Failure to Respond Properly to Tumpkin's Abuse

108. On February 14 and 16, 2017, the University engaged outside counsel to investigate its failures and the failures of its personnel in this matter, especially the failure to report Tumpkin's

abuse of Plaintiff to proper authorities as required by University policy and governing law, and to provide recommendations and advice to the Board of Regents. Specifically, the University engaged counsel from Cozen O'Connor on February 14 and, seemingly as a filter and measure of protection for the University, the University also engaged counsel from WilmerHale on February 16.

109. On March 27, 2017, Cozen O'Conner submitted preliminary findings to the Board of Regents. On May 10, 2017, Cozen O'Conner submitted to the University a summary of the facts and evidence. On May 19, 2017, Cozen O'Conner submitted a final written report to the Board of Regents. On June 12, 2017, the Board of Regents made a redacted, truncated version of the final report publicly available. Cozen O'Connor's report, among other poignant and sobering findings, found that University officials' cover up or failure to report Tumpkin's abuse could not be justified, not even by good intent, mistaken application of the policy, or simple ignorance.

110. Cozen O'Conner made clear that University personnel – specifically, MacIntyre, George and DiStefano – failed to report Tumpkin's abuse in violation of their employment and legal obligations, and, by acting in this manner, prevented the University from responding appropriately. Further, in addition to the other breaches of their legal and moral obligations detailed in the report, the Cozen O'Connor report concluded specifically with regard to MacIntyre and George that those Defendants were subject to termination as a result of violations of their employment contracts.

111. WilmerHale prepared a report in a similar time frame. Although that firm did not conduct an independent investigation, did not interview witnesses, and received no information that differed or added to Cozen O'Connor's investigation, and instead relied on Cozen O'Conner's investigation, WilmerHale fulfilled its role as protector of the University by casting doubt about

whether Defendants' failures to comply with their obligations "were intentional or for an unethical purpose," apparently attempting to minimize Defendants' legal and ethical breaches. Seemingly in an effort to attempt to diffuse the impact of Cozen O'Connor's findings, the University also arranged for the WilmerHale report also to be released publicly on June 12, 2017.

112. Despite finding and acknowledging Defendants' failures, both the University and its Board of Trustees failed to impose appropriate or adequate discipline or punishment, instead making a mockery of the University's duties and obligations, the duties and obligations of the University's top representatives, the concept of supervisory responsibility and the duties and responsibilities that University representatives owe to society generally and the University community specifically. MacIntyre, George and DiStefano received letters of reprimand, directives to issue reforms and remedial measures detailed in the reports described above, and training on the subjects of sexual misconduct, intimate partner violence and associated reporting requirements. MacIntyre and George agreed to make \$100,000 tax-deductible contributions to programs supporting victims of domestic or dating violence in the University community. DiStefano agreed to take 10 days of unpaid leave from his position, and the University agreed to donate the salary that DiStefano otherwise would have earned during that period to programs supporting victims of domestic or dating violence in the University community. Benson was not held responsible for his inaction. O'Rourke was unscathed. No one lost his job.

Plaintiff's Damages

113. Plaintiff seeks damages in an amount to be determined at trial for the pain, suffering and distress caused by the Defendants, individually and collectively.

114. Plaintiff is entitled to all relief necessary to make her whole, including compensatory damages, damages for pain, suffering and distress, exemplary damages and special damages, including litigation costs and reasonable attorneys' fees.

CLAIMS

COUNT I
(Assault Claim Against Tumpkin)

115. Plaintiff alleges and incorporates the allegations set forth in paragraphs 1 through 114 above.

116. From February 27, 2015 through and including November 20, 2016, Tumpkin intended to cause harmful or offensive physical contact with Plaintiff and intended to place Plaintiff in apprehension of such contact.

117. From February 27, 2015 through and including November 20, 2016, Tumpkin's conduct placed Plaintiff in apprehension of imminent contact with her person, which both appeared to be, and was, harmful and offensive.

118. As a result, Plaintiff suffered damages in an amount to be determined at trial.

COUNT II
(Battery Claim Against Tumpkin)

119. Plaintiff alleges and incorporates the allegations set forth in paragraphs 1 through 114 above.

120. From February 27, 2015 through and including November 20, 2016, Tumpkin intended to cause harmful or offensive physical contact with Plaintiff, and intended to place Plaintiff in apprehension of such contact

121. From February 27, 2015 through and including November 20, 2016, Tumpkin engaged in harmful and offensive contact with Plaintiff.

122. As a result, Plaintiff suffered damages in an amount to be determined at trial.

COUNT III
(False Imprisonment Claim Against Tumpkin)

123. Plaintiff alleges and incorporates the allegations set forth in paragraphs 1 through 114 above.

124. From February 27, 2015 through and including November 20, 2016, Tumpkin intentionally restricted Plaintiff's freedom of movement for various periods of time.

125. As a result of Tumpkin's conduct, Plaintiff was aware that her freedom of movement was restricted for these periods of time.

126. As a result, Plaintiff suffered damages in an amount to be determined at trial.

COUNT IV
(Intentional Infliction of Emotional Distress Claim Against Tumpkin)

127. Plaintiff alleges and incorporates the allegations set forth in paragraphs 1 through 114 above.

128. From February 27, 2015 through and including November 20, 2016, Tumpkin engaged in extreme and outrageous conduct towards Plaintiff.

129. From February 27, 2015, through and including November 20, 2016, Tumpkin acted recklessly or with the intent to cause Plaintiff severe emotional distress.

130. As a result, Plaintiff suffered severe emotional distress.

131. As a result, Plaintiff suffered damages in an amount to be determined at trial.

COUNT V
(Negligence Claim Against MacIntyre)

132. Plaintiff alleges and incorporates the allegations set forth in paragraphs 1 through 114 above.

133. MacIntyre owed a duty of ordinary care to Plaintiff.

134. MacIntyre wantonly and willfully breached his duty of care by failing to respond properly to the information he learned concerning Tumpkin's physical, psychological and verbal abuse of Plaintiff.

135. MacIntyre wantonly and willfully breached his duty of care by failing to respond properly to the facts he observed and information he learned concerning Tumpkin's alcohol abuse.

136. MacIntyre wantonly and willfully breached his duty of care by failing adequately to supervise his subordinates, including Tumpkin, at University events, during University travel and in University-provided lodging.

137. MacIntyre wantonly and willfully breached his duty of care by failing to follow University Policy and his legal obligations to report the information he learned from Plaintiff about Tumpkin's physical, psychological and verbal abuse to designated University authorities and law enforcement.

138. MacIntyre wantonly and willfully breached his duty of care by failing to take responsibility to assure that his subordinates followed University Policy to report the information about Tumpkin's physical, psychological and verbal abuse to designated University authorities.

139. MacIntyre wantonly and willfully breached his duty of care by informing Tumpkin that Plaintiff had reported his history of abusing her, leaving Plaintiff in a highly dangerous position.

140. MacIntyre wantonly and willfully breached his duty of care by blocking Plaintiff's calls without advising her of that fact or referring her to anyone else for her safety, support or resources.

141. MacIntyre wantonly and willfully breached his duty of care by promoting Tumpkin to assume the responsibilities of Defensive Coordinator without appropriately investigating, reporting or responding to the information he learned from Plaintiff about Tumpkin's abuse.

142. MacIntyre wantonly and willfully breached his duty of care by coordinating his response to Tumpkin's abuse of Plaintiff and the existence of the Restraining Order with Banashek, Tumpkin's criminal defense attorney.

143. MacIntyre wantonly and willfully breached his duty of care by placing a higher priority on the success of the football team and his own financial and other awards than on his own duties and responsibilities regarding Tumpkin's abuse of Plaintiff.

144. MacIntyre's wanton and willful breaches of his duty of care caused Plaintiff to suffer damages in an amount to be determined at trial.

145. MacIntyre, Tumpkin, George, DiStefano and Benson are jointly and severally liable for Plaintiff's damages.

COUNT VI
(Negligence Claim Against George)

146. Plaintiff alleges and incorporates the allegations set forth in paragraphs 1 through 114 above.

147. George owed a duty of ordinary care to Plaintiff.

148. George wantonly and willfully breached his duty of care by failing to respond properly to the information he learned about Tumpkin's physical, psychological and verbal abuse, including the information MacIntyre communicated to him.

149. George wantonly and willfully breached his duty of care by failing to follow University Policy and his legal obligations to report the information he learned about Tumpkin's

physical, psychological and verbal abuse to designated University authorities and law enforcement.

150. George wantonly and willfully breached his duty of care by failing to take responsibility to assure that his subordinates followed University Policy to report the information about Tumpkin's physical, psychological and verbal abuse to designated University authorities.

151. George wantonly and willfully breached his duty of care by coordinating his response to Tumpkin's abuse of Plaintiff and the existence of the Restraining Order with Banashek, Tumpkin's criminal defense attorney.

152. George wantonly and willfully breached his duty of care by placing a higher priority on the success of the football team and his own financial and other awards than on his own duties and responsibilities regarding Tumpkin's abuse of Plaintiff.

153. George wantonly and willfully breached his duty of care by allowing, and not questioning, Tumpkin's promotion to assume the responsibilities of Defensive Coordinator for the Alamo Bowl.

154. George's wanton and willful breaches of his duty of care caused Plaintiff to suffer damages in an amount to be determined at trial.

155. George, Tumpkin, MacIntyre, DiStefano and Benson are jointly and severally liable for Plaintiff's damages.

COUNT VII
(Negligence Claim Against DiStefano)

156. Plaintiff alleges and incorporates the allegations set forth in paragraphs 1 through 114 above.

157. DiStefano owed a duty of ordinary care to Plaintiff.

158. DiStefano wantonly and willfully breached his duty of care by failing to respond properly to the information he learned about Tumpkin's physical, psychological and verbal abuse, including the information George communicated to him.

159. DiStefano wantonly and willfully breached his duty of care by failing to follow University Policy and his legal obligations to report the information he learned about Tumpkin's physical, psychological and verbal abuse to designated University authorities and law enforcement.

160. DiStefano wantonly and willfully breached his duty of care by allowing, and not questioning, Tumpkin's promotion to assume the responsibilities of Defensive Coordinator for the Alamo Bowl.

161. DiStefano's wanton and willful breaches of his duty of care caused Plaintiff to suffer damages in an amount to be determined at trial.

162. DiStefano, Tumpkin, MacIntyre, George and Benson are jointly and severally liable for Plaintiff's damages.

COUNT VIII
(Negligence Claim Against Benson)

163. Plaintiff alleges and incorporates the allegations set forth in paragraphs 1 through 114 above.

164. Benson owed a duty of ordinary care to Plaintiff.

165. Benson wantonly and willfully breached his duty of care by failing to follow University Policy and his legal obligations to report the information he learned about Tumpkin's physical, psychological and verbal abuse to designated University authorities and law enforcement.

166. Benson wantonly and willfully breached his duty of care by failing to take responsibility to assure that his subordinates, including DiStefano and Simons, the University's Title IX Coordinator, followed University Policy to report the information about Tumpkin's physical, psychological and verbal abuse to designated University authorities.

167. Benson wantonly and willfully breached his duty of care by allowing, and not questioning, Tumpkin's promotion to assume the responsibilities of Defensive Coordinator for the Alamo Bowl.

168. Benson, Tumpkin, DiStefano, MacIntyre and George are jointly and severally liable for Plaintiff's damages.

COUNT IX
**(Civil Conspiracy Claim Against MacIntyre,
George, DiStefano and Benson)**

169. Plaintiff alleges and incorporates the allegations set forth in paragraphs 1 through 168 above.

170. Two or more persons – including MacIntyre, George, DiStefano and/or Benson – agreed and conspired to cover up Tumpkin's abuse of Plaintiff and not to report it in order to protect the Athletic Program, the football program, MacIntyre's upcoming contract extension, each of the Defendants' own pecuniary and other interests, and Tumpkin.

171. MacIntyre, George, DiStefano and Benson were obligated by law and by University policy to report what they learned about Tumpkin's abuse of Plaintiff.

172. In furtherance of their agreement and conspiracy to protect the Athletic Program, the football program, MacIntyre's upcoming contract extension, each of the Defendants' own pecuniary and other interests, and Tumpkin, MacIntyre, George, DiStefano and Benson intentionally, willfully and wantonly disregarded and ignored their reporting obligations.

173. As a result, Plaintiff suffered damages in an amount to be determined at trial.

174. MacIntyre, George, DiStefano and Benson are jointly and severally liable for Plaintiff's damages.

REQUEST FOR RELIEF

Plaintiff demands a trial by jury on all issues triable as a matter of right.

Plaintiff respectfully requests that this Court enter judgment in her favor, granting the following relief:

- a. damages in an amount to be determined at trial, including compensatory and consequential damages, litigation costs and attorneys' fees; and
- b. such other and further relief as this Court deems just and equitable under the circumstances.

Dated: New York, New York
September 6, 2017

s/ Peter R. Ginsberg

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