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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STUDENT DOE,	}	CASE NO. <u>'17CV1365 WQHJMA</u>
Plaintiff,		COMPLAINT FOR DECLARATORY RELIEF
vs.	}	
CALIFORNIA STATE UNIVERSITY		
SAN MARCOS; and DOES 1 through 20, inclusive,		
Defendants.)	

I.

INTRODUCTION

1. This lawsuit seeks a declaration that the State of California has failed to comply with its obligations under the Fifth and Fourteenth Amendments, federal laws implementing the guarantees of Due Process and Equal Protection in regards to equal access to higher education and protections from campus rape and false accusations of rape, and obligations mirroring

1 these federal guarantees in the Constitution of the State of California,
2 Article 1, §7(a).

3 2. In seeking to implement these guarantees and Title IX of the Education
4 Amendments Act of 1972, defendant created, adopted and mandated
5 Chancellor's Orders 1095, 1097, and 1098, to deal with allegations of sexual
6 misconduct between students.
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9 3. Plaintiff has been falsely accused of sexual misconduct and has sought
10 redress under the Chancellor's Orders mentioned above. The procedure
11 detailed there, and subsequently carried out by defendant, denied plaintiff
12 any access to the investigatory reports, the details of the false accusation
13 against him, or the opportunity to adequately prepare a defense to the
14 allegations against him, and the opportunity for a fair and unbiased
15 process, and under an inadequate preponderance of evidence standard.
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19 4. This procedure has resulted in the denial of all the rights he earned at the
20 defendant institution in violation of the Fifth and Fourteenth
21 Amendments.
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II.

PARTIES

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3 5. Plaintiff, identified as “Student Doe”, in order to preserve his anonymity,
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5 was a student at California State University San Marcos (“CSUSM”)
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7 earning a post-graduate degree in 2016. He was and is a resident of the
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9 County of San Diego.

10 6. Defendant CSUSM, is a public university, one of the 23 campuses of the
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12 California State University system, funded by and state and federal funds,
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14 and operated by the State of California and its designated Chancellor.

III

JURISDICTION AND VENUE

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17 7. Plaintiff’s cause of action arises under 42 U.S.C. § 1983, and 28 U.S.C.
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19 §2201. This Court has original jurisdiction under 28 U.S.C. § 1331 and 1343.

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21 8. Venue is proper in the Southern District of California because a substantial
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23 part of the events and omissions giving rise to this claim occurred with
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25 this District, and because both parties reside in, maintain offices in, or does
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27 business in this District. Further, defendant is responsible for enforcing the
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laws relevant to this litigation in this District. 28 U.S.C. § 1391.

IV.

FACTUAL ALLEGATIONS

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3 9. In 2016, Student Doe was completing his master’s degree at California
4 State University San Marcos (“CSUSM”). He saw an advertisement for a
5 summer study abroad program in Germany and decided to attend.
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8 10. At the German university he met students from other CSU campuses,
9 as well as German university students. During the term students
10 frequently socialized in groups at pubs where alcohol was consumed. It
11 was in such a setting that Student Doe met a female student from another
12 CSU campus, identified here as “Accuser.”
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16 11. The study abroad program wrapped up in the middle of June. On June
17 18, 2016, Accuser’s roommates left for the airport around mid-day. Student
18 Doe’s roommates were all gone as well, and he planned to travel a bit in
19 Europe before returning home. One of the German students mentioned to
20 both Accuser and Student Doe that he was going to a party later that
21 evening. They agreed that the German student would send Student Doe
22 and Accuser a text with the location of the party.
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27 12. Student Doe and Accuser planned to get together after dinner to have a
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1 drink and wait for the German student's text. Neither had previously
2 socialized together, apart from the group settings.

3 13. The two students met, went to 3 bars over the course of the night and
4 consumed alcohol. The amounts consumed and respective symptoms of
5 alcohol exhibited reported by Student Doe and Accuser differs
6 significantly.
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9 14. Sometime between 2:00 a.m. and 4:00 a.m. they left the third bar and
10 made their way back to the hostel. Accuser fell or tripped and cut her leg.
11 Student Doe has night blindness and was leaning on Accuser.
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14 15. Unwittingly, they wandered into a restricted area and were confronted
15 by a group of armed German police officers. Scared, Accuser began to cry.
16 Student Doe explained they were lost American students. The officers,
17 realizing that neither was a danger to themselves or each other, allowed
18 them to continue and directed them back to the hostel.
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22 16. Student Doe's and Accuser's versions of what happened back at the
23 hostel differ even more sharply. Student Doe described a woman who was
24 a willing and responsive partner in sexual intimacy that was limited to
25 vaginal intercourse. She climbed into his top bunk, removed her own
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1 clothes and underwear, and showed no signs that she was too intoxicated
2 to give informed, adequate and affirmative consent.

3 17. Accuser described “fragmented memories” of oral, vaginal and anal rape,
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5 later adding she was too intoxicated to have given affirmative consent.

6 18. The following morning, Accuser apologized to Student Doe for getting
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8 blood on his sheets from the minor cut on her leg. She left to get her
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10 belongings ready for her return flight to the U.S., and returned to Student
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12 Doe’s room to nap before leaving. Accuser did not appear to be upset or
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14 angry with Student Doe. When it came time for Accuser to leave for the
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16 airport, they hugged, and wished each other safe travels.

17 19. When Accuser returned to the U.S. she waited until June 22, 2016 to
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19 report the alleged rape to a professor at her school. The professor informed
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21 the CSU authorities of the alleged sexual misconduct as required under the
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23 Chancellor’s Orders at issue here. The professor also alerted the director of
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25 the German university program of the allegations in violation of the
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27 Chancellor’s Orders policy of confidentiality. German police investigated
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and took no action to charge Student Doe criminally. CSU police took no
action because the allegations had occurred in Germany.

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20. Accuser chose not to file a formal complaint with the CSU until more than three months later on September 29, 2016. Student Doe first learned of the false allegations that he had raped a fellow student on October 28, 2016 – more than four months after the events. Student Doe’s academic transcripts and degree were placed on hold. To date, those rights, earned meritoriously, have not been restored.

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21. Most significantly, the investigation proceeded without Student Doe having access to any of the reports, memoranda, Accuser’s recorded statements, or other investigatory data, despite repeated requests.

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22. Following several interviews, the Notice of Investigation Outcome was released on March 16, 2017, finding Student Doe had committed sexual misconduct by a preponderance of the evidence. The investigation found Accuser credible. The investigation further found Student Doe lacked credibility. Such determination was based on biased and arbitrary evidence – the result of the denial to review the evidence against him.

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23. Student Doe appealed the findings to the Chancellor’s office. On May 10, 2017, his appeal was denied. Student Doe is now subject to disciplinary hearings based on his alleged sexual misconduct.

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24. Plaintiff has suffered injuries as a result of defendant's conduct, according to proof.

V.

CLAIM FOR DECLARATORY RELIEF

25. Plaintiff incorporates by reference paragraphs 1 through 23 above.

26. At all times relevant to this action, defendant acted under color of state and federal law.

27. Plaintiff raises this claim for declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201 and § 1983.

28. Plaintiff has been injured by defendant's unfair and biased manner of implementing Title IX of the Education Amendments Act of 1972 through Chancellor's Orders 1095, 107, and 1098.

VI.

PRAYER FOR RELIEF

29. WHEREFORE, Plaintiff requests:

- a. A declaratory judgment finding that Chancellor's Orders 1095, 1097, and 1098 violate the Fifth and Fourteenth Amendments to the United States Constitution, and the Constitution of the State of California,

Article 1, section 7(a);

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- b. An award of attorney’s costs and fees; and
- c. Such other relief to which Plaintiff is entitle as the Court deems just and appropriate, including, but not limited to, general relief.

Date: July 5, 2017

Respectfully submitted,

/s/Victor Manuel Torres
Attorney for Student Doe