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VIA ECF ONLY

July 12, 2022

Hon. P. Kevin Castel
Daniel P. Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: **Jane Doe v. Yeshiva University, et al.: Case No: 1-22-cv-05405-PKC**

Dear Judge Castel:

I write in response to the Court's June 28, 2022 Order (ECF No. 8).

Kindly be advised that on July 12, 2022, Plaintiff has filed a motion for Leave to File Documents Under Seal and Leave to Proceed Under a Pseudonym (ECF No. 11), with an accompanying Memorandum of Law (ECF. No. 12), Declaration of Kevin T. Mulhearn, dated July 12, 2022 (ECF. No.15), Proposed Protective Order (ECF No. 15-1), and filed "Under Seal," the Supporting Affidavit of Jane Doe (under her real name), sworn to on July 12, 2022 (ECF No. 13). Plaintiff has also filed "Under Seal" on July 12, 2022, an Amended Complaint (ECF No. 16).

The amended pleading has stricken the "Overview" section and removed a number of redundant and/or conceivably irrelevant paragraphs from the initial Complaint (ECF No. 3). Plaintiff has also removed exhibits "C" through "G" from her amended pleading. Plaintiff has also included a few additional allegations with respect to her Fraud cause of action (Count Fourteen).

Despite the unusual length of the Amended Complaint (124 pages and 419 paragraphs), Plaintiff respectfully submits that this pleading is in compliance with Federal Rule 8(a)(2). The Amended Complaint, indeed, permits both the Defendants and the Court to form a fair understanding of the Plaintiff's allegations and in no way will prejudice Defendants in responding to the pleading. *See Green v. City of Mount Vernon*, 96 F. Supp. 3d 263, 281 (SDNY 2015).

The Amended Complaint is well-organized and coherently structured. It cannot fairly be construed as "confused, ambiguous, vague, or otherwise unintelligible," to the extent that it disguises its "true substance." *See Cohn v. Capers*, 2017 U.S. Dist. LEXIS 86506, *3 (SDNY 2017). The Amended Complaint does not contain any "unnecessary prolixity" and does not require either the Defendants or the Court "to select the relevant material from a mass of verbiage." *See Salahuddin v. Cuomo*, 861 F.2d 40, 41-42 (2d Cir. 1988).

The Amended Complaint is lengthy because the facts of this case, in which Plaintiff alleges a bad faith conspiracy and multi-level cover-up of her rape by a fellow Yeshiva University student, are complex, involve six separate Defendants, and invoke fourteen separate causes of action.

The Amended Complaint includes a detailed examination of the 2020 Title IX regulations, which were enacted about four months prior to Plaintiff's alleged rape. These regulations require a district court to consider numerous factors in determining whether a sexual assault that occurred in a university student's "off-campus" apartment meets Title IX's threshold "education program or activity" jurisdictional requirement. According to the U.S. Department of Education, none of these factors is by itself dispositive. The Amended Complaint thus pleads numerous facts which speak to this element, which raises an issue of first impression in this Circuit.

Plaintiff also asserts a Fraud cause of action (Count Fourteen), which, pursuant to Federal Rule 9(b), must be pled with specificity. Defendants' alleged fraud includes allegations that—in violation of The Clery Act—Yeshiva University failed to report any rapes or forcible fondling sexual assaults on or near its main campuses for 20 years (2001 through 2020). The facts necessary to support Plaintiff's Fraud cause of action, including references to specific sexual assaults that were reported to Yeshiva University administrators but not disclosed by the school in its annual Clery Act Reports to the U.S. Department of Education, or annual Campus Safety Reports distributed to students and prospective students, are pleaded in as much detail as is now available to Plaintiff.

Plaintiff also asserts a cause of action for Breach of Contract (Count Thirteen), which requires the detailed and specific pleading of the alleged contractual promises made and breached by Defendants. The Amended Complaint provides the required level of detail and includes numerous facts related to the promises made by Yeshiva University in its school-wide sexual harassment policy which are subject to quantification or objective evaluation.

The Amended Complaint also asserts several causes of action against Yeshiva University (Counts Three and Four) and the individual Defendants (Count Five) pursuant to The New York City Human Rights Law, which, just a month ago, the New York Supreme Court held applies to Yeshiva University. *See YU Pride Alliance v. Yeshiva Univ.*, 2022 NYLJ LEXIS 684 (Sup. Ct., N.Y. Cty., July 5, 2022) (Kotler, J.).

As required in the wake of *Twombly* and *Iqbal*, the Amended Complaint pleads facts which are relevant and which meet the elements of each of Plaintiff's fourteen causes of action. This amended pleading thus alleges "enough facts to state a claim to relief that is plausible on its face, such that the court [can] draw the reasonable inference that the [D]efendant[s] [are] liable for the misconduct alleged." *E.E.O.C. v. Port Authority of N.Y. and N.J.*, 768 F.3d 247, 253 (2d Cir. 2014) (quoting, *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556.662, 678 (2009)). Any further editing of this pleading would potentially sacrifice substance and could unfairly jeopardize Plaintiff's causes of action in the face of any "plausibility" challenges.

Very best regards,
Kevin T. Mulhearn /S
KEVIN THOMAS MULHEARN