



Via EEOC Respondent Portal

September 29, 2017

Equal Employment Opportunity Commission
Nelida Sanchez
John F. Kennedy Federal Building

Redacted

Re: *Dr. Richard N. Aslin v. University of Rochester*
Charge No.: 523-2017-00849

Dear Ms. Sanchez:

This Position Statement is submitted on behalf of Respondent the University of Rochester ("the University"). In submitting this Position Statement, Respondent does not waive any defenses it may have to Charging Party's claim. Moreover, since this Position Statement is based on information presently known, and since an additional external investigation is currently underway of claims, including those brought by Charging Party, Respondent reserves the right to amend its response should it become necessary and appropriate to do so.

PRELIMINARY STATEMENT

Beginning in March 2016, Charging Party Richard Aslin ("Aslin") and his colleague, Jessica Cantlon ("Cantlon"), both professors in the University's Department of Brain and Cognitive Sciences, made allegations concerning potential misconduct by Professor Florian Jaeger ("Jaeger"), a professor in the same department.

The University conducted an investigation of these allegations, and an external investigator examined subsequent allegations brought by Celeste Kidd ("Kidd"). Ultimately, although Jaeger's alleged conduct did not rise to the level of a policy violation under existing University policies, the University took appropriate remedial steps to address all of the concerns raised.

Aslin now claims that the University retaliated against him by taking actions that created the impression that he spread rumors or misinformation during and after the investigation, and that these actions created an intolerable work environment, such that he was forced to involuntarily leave his employment. To the contrary, the University's

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investigation to date of these allegations establishes that Aslin repeatedly threatened to leave the University, even prior to the alleged retaliatory conduct. Moreover, the purported acts of retaliation cited by Aslin are largely premised on the alleged reactions of others to Aslin's own words and actions. As set forth below, Respondent denies any unlawful retaliation against Aslin, and respectfully requests that the Aslin Charge be dismissed in its entirety with a finding of no probable cause.

PROCEDURAL BACKGROUND

A. Communications from this Agency Regarding Charges of Alleged Retaliation Filed by Some Complainants.

On September 5, 2017, Respondent received a Charge of Discrimination filed with the Boston Area EEOC Office by Aslin ("Aslin Charge").¹ The Charge Form itself did not contain the particulars of the charge. Instead, the form referenced an attached 111-page document. The attached document, entitled "Particulars of Charge of Discrimination" (hereinafter "Complaint") is captioned with the names of eight separate complainants ("Complainants"), one of whom is Aslin, and includes five parties, described in the body of the Complaint as "Defendants" [Complaint, p. 8]. One of these "Defendants" is the University. The remaining four "Defendants" are individuals.² As detailed below, the Complaint is clearly styled for an audience other than this Agency, as demonstrated in part by the Complainants' decision to release the document to the media, and their wide-ranging publicity efforts.

On September 6, 2017, Respondent also received a Notice of Charge (EEOC Form 131) from the Washington, DC Field Office, indicating that a charge of employment discrimination had been filed by Elissa L. Newport. As noted below, Newport was last employed by the University in 2012. Newport is also one of the eight captioned "Complainants." Respondent never received the actual charge from the EEOC, and the Notice of Charge indicated that no action was required by Respondent at that time. Roughly one week later, on September 14, 2017, Respondent received a Dismissal and Notice of Rights letter, indicating in part that the EEOC was "unable to conclude that the information obtained established violations of the statutes."³

On September 13, 2017, Respondent received three separate Notices of Charge from the Buffalo Local Office, separately indicating that a Charge had been filed by Bradford Z. Mahon, Benjamin Y. Hayden, and Steven T. Piantadosi, respectively. All three Notices indicated that no action was required of Respondent at the time, and to date, Respondent

¹ The charge form includes check marks next to "retaliation" and also notes "other," "sexual harassment." Respondent has not been able to ascertain any allegations that Aslin himself was subjected to sexual harassment. This response assumes that the charge form is meant to indicate that Aslin is raising a claim of retaliation based on protected activity, namely raising claims of alleged sexual harassment on behalf of others.

² As there is no individual liability under Title VII, this response is submitted on behalf of the only party properly before the EEOC, the University.

³ A copy of this letter (Form 161) is attached hereto as Exhibit A. Presumably the Newport Charge also attached the Complaint. However, Respondent cannot confirm this, as the EEOC dismissed the Charge before relaying a copy to Respondent.

does not know the particulars of those charges. Mahon, Hayden, and Piantadosi are also among the eight captioned Complainants.

Finally, the Complaint lists three additional Complainants, Cantlon, Kidd, and Dr. Keturah Bixby. Media accounts have suggested that Cantlon, Kidd, and Bixby have also filed complaints with the EEOC. However, Respondent has received nothing from the EEOC confirming that these complaints have been filed.

B. The Complaint is Styled for a Forum Other than This Agency.

The Complaint, which purportedly forms the particulars of the Aslin Charge, makes clear that Complainants' intended audience is not this Agency. Complainants openly state that the document "sets out these charges in much greater detail than is customary" and suggests that it will assist "the University and those involved" in understanding "how their conduct has violated the law" [Complaint, p. 3].

The Complaint contains a series of allegations, some of which were never disclosed or alleged during the internal investigations and/or include references to purported "testimony" that differs substantially from the statements offered previously. The document offers salacious details that appear intended to incite the wider public audience to which the document was distributed.⁴ While the Complaint purports to state claims of retaliation under Title VII and the New York Human Rights Law, it also focuses in detail on purported Title IX claims and professed violations of New York law, such as negligent hiring and defamation, all claims over which this Agency has no jurisdiction. Much of these allegations are also irrelevant to Aslin's putative Title VII claim. As a result, this response will only briefly address the broader allegations in the Complaint as necessary to frame Aslin's specific claims of retaliation under Title VII.

The Complaint itself contains numerous citations to over 15 fictitious names, purportedly to protect these individuals' identities [see, e.g. Complaint, p. 17, n. 64]. In some instances, this tactic obscures the fact the testimony (presumably gathered by Complainants) is not from the individual whose experiences are described. Likewise, the Complaint is in most instances purposefully temporally vague, perhaps in an effort to suggest that certain alleged conduct occurred recently or at the very least, within the applicable statute of limitations. In fact, the vast majority of the allegations and alleged events are from years earlier.

While a charging party is not prohibited from publicizing their allegations, EEOC proceedings are not open to the public, and the Commission is prohibited from making any

⁴ Indeed, the Complaint specifically refers to Florian Jaeger as a "sexual predator," and this inflammatory term has permeated the media coverage. While Complainants have not defined this term, it appears that media coverage focused the dictionary definition: "a person who had committed a sexually violent offense and especially one who is likely to commit more sexual offenses" [Sexual predator. (n.d.). Retrieved September 27, 2017, from [https://www.merriam-webster.com/dictionary/sexual predator](https://www.merriam-webster.com/dictionary/sexual%20predator)]. Media reports and social media postings have repeatedly mischaracterized Jaeger as having engaged in sexual assault, when no such allegations were ever made. Notably, Complainants have taken no apparent steps to dispel this supposition.

party's submission public during the course of the investigation. See 42 U.S.C. §§ 2000e-5(b); 2000e-8(e). Given the University's well-founded concern that Complainants will publicly release confidential documents, as noted herein, the University will make certain exhibits referenced herein available to the EEOC, but has not attached those documents to this response.

C. Scope of the University's Response.

As noted above, the purpose of this Position Statement is to address the only pending EEOC charge known to Respondent – the charge filed by Aslin. As a result, the factual background below is offered to provide context to Aslin's claims. Procedurally, this particular response cannot be a vehicle for a point-by-point refutation of the 398-paragraph Complaint. The University will provide responses with respect to the other Complainants (with the exception of Newport, whose charge has been dismissed) when it receives those charges, and when asked to do so by this Agency.

Finally, University Policy 106 (attached hereto as part of Exhibit B), specifically prohibits retaliation "against any person who complains of or opposes perceived unlawful discrimination or harassment, including those who participate in any investigation under this policy...." A separate, independent investigation conducted by outside counsel and overseen by a Special Committee of the University of Rochester Board of Trustees, which will encompass Aslin's retaliation allegations, is currently underway. The University reserves and specifically requests the right to supplement this response.

FACTUAL BACKGROUND

The University operates a not-for-profit academic institution and health sciences center located in the greater Rochester, New York area that provides education, research, and patient care services. The Complainants and Florian Jaeger all are, or were, faculty members of the University's Department of Brain and Cognitive Sciences ("BCS"), which is part of the University's School of Arts & Sciences.

A. Overview of the Aslin, Cantlon, and Kidd Internal Complaints; the Resulting Investigations and Determinations; and the Departmental Aftermath.

In early 2016, the BCS faculty began discussing the recruitment of two potential faculty members who were married to each other. At that point, BCS faculty included four married or otherwise committed couples, including Complainants Kidd and Piantadosi, and Cantlon and Mahon. A question was raised as to whether the potential faculty members' relationship developed while the junior party was a student or trainee.

In evaluating these candidates, the BCS Chair made it clear that delving into the personal details of this couple's relationship was not appropriate. Jaeger spoke up in agreement, indicating that he felt they should not be discussing the relationship of these individuals in the context of recruitment.

This faculty meeting led to a series of discussions among the BCS chair, Aslin, and Cantlon about faculty-graduate student dating and whether it could ever be appropriate in any circumstance for a faculty member to have a relationship with his or her former student, or with any graduate student for that matter. The group discussed varying opinions on the appropriateness of such relationships, with Aslin suggesting that such a relationship may be appropriate if it began some length of time after the student completed the academic program, thus ameliorating any potential for abuse of power in the relationship. Cantlon offered the opinion that it was never appropriate for any faculty member to date or marry any current or former student, regardless of whether that student had ever worked with the faculty member, since any relationship would call into question the student's ultimate body of work [see Confidential Exhibit C,⁵ Recruitment/Spousal Hiring Discussion].

Shortly thereafter, Cantlon contacted Aslin to indicate that part of her concerns about the recruitment of the potential faculty stemmed from past alleged behavior by Jaeger, who joined the faculty in 2007 and was awarded tenure in 2014. Cantlon then shared a list with Aslin of women whom Cantlon thought Jaeger had either had a sexual relationship with or had otherwise "harassed." It was later learned that Aslin immediately shared that list with Newport, who by then had not been a member of the BCS faculty for several years [see Confidential Exhibit C].

Aslin then made a verbal complaint to a member of the Office of Counsel, on March 10, 2016. The complaint was assigned to the University's HR investigator for Policy 106 complaints ("Investigator") for investigation.⁶ In his intake conversation with the Investigator, Aslin indicated he had no firsthand knowledge and that all of the information he had received came from Cantlon. The Investigator explained how the investigation would work and emphasized the need for confidentiality, due in part to concerns about claims of witness bias or pressure. Aslin informed the Investigator that, in addition to Cantlon and the BCS Chair, he had spoken with former BCS chair Newport, who had left the University in 2012 and was now at Georgetown University. As detailed below, both Aslin's allegations and additional allegations made by Cantlon were then investigated.

Over the course of the next two months, the Investigator interviewed over 30 individuals; several individuals were interviewed more than once. Policy 106 protects all

⁵ Confidential Exhibit C contains numerous sensitive documents that reveal the names of nonparties and witnesses. As noted above, there is a well-founded concern that Complainants will publicize certain information. Likewise, there is a legitimate concern that some Complainants, who have identified themselves as leading scholars in their field, will take action to affect the professional status of those who they believe do not embrace their version of events. Indeed, Aslin promised damaging actions against both Jaeger and the University if his demands were not met. Moreover, although Complainants have taken pains to obscure the identities of certain witnesses, they have chosen to publicly name an individual sympathetic to Jaeger, his longtime partner. They have openly besmirched her name and claimed that her professional accomplishments were far below the level of typical BCS hires, also implying that she would not have been hired had faculty known that purported rumors were circulated about her. Therefore, this exhibit is available for inspection by the EEOC, and Respondent will also seek additional instruction from the Agency on confidentially submitting this exhibit.

⁶ In addition to her HR role, the investigator, who is an attorney, is also a member of the University of Rochester's Office of Counsel.

parties involved – complainants, witnesses, and the respondent (accused).⁷ Although, as noted in the Policy itself, confidentiality cannot be guaranteed entirely, it is maintained to the best degree possible and information is shared only with those with a need to know, and in order to investigate as it relates to specific allegations. The Investigator respected these boundaries to the extent that she could during the investigation; on occasion, when a witness offered a secondhand report that differed from the firsthand report of another witness, it was necessary to explore the issue. The Investigator gave almost all witnesses a typed copy of the information they provided, so that they could review for accuracy and make any needed corrections. The Investigator also recognized the sensitivity of the investigation, not only for former and current students and post-doctoral researchers who might wish to provide information, but also for any woman who may have had a sexual relationship with Jaeger.

When the Investigator interviewed Cantlon, whom Aslin indicated had given him the information, she too had almost no firsthand knowledge of anything, indicating that almost all her information had come from Kidd. The Investigator interviewed Kidd on March 18, 2016. Over the course of the next several weeks, the Investigator interviewed current and former students and post-docs, and current and former leadership in the department. During the course of her investigation, both Aslin and Cantlon (who initially had said she did not wish to be a complainant) also submitted additional, more detailed written complaints.

Based on information that came to the attention of the Investigator during the investigation (from Cantlon herself, and from former students and witnesses as interviews progressed), repeated reminders had to be issued to Aslin and Cantlon about contacting witnesses [see Confidential Exhibit C, Witness Contact]. Jaeger, who had not been notified of the investigation – at the request of the complainants – unfortunately first learned about the investigation from others.

Meanwhile, unknown to the University at the time, Cantlon communicated with at least two potential witnesses and told them that an investigation had been prompted by complaints from “current students.” Yet despite these representations, neither Aslin nor Cantlon had brought forth any complaints from “current students,” beyond mentioning that one current student had complained to the BCS Chair about Jaeger in 2013.⁸

The bulk of the information brought forth during the investigation involved behavior which did not occur on campus or in the classroom (i.e., Jaeger’s 2007-2008 roommate relationship with Kidd – who was not his student, Jaeger attending non-University sponsored graduate student parties, most if not all of which Jaeger had indicated he was invited to (and many others agreed), and socially engaging with graduate students). Jaeger came to the University in 2007 at the age of 30. The vast majority of events alleged were early in Jaeger’s

⁷ The protection of all involved in the process is endorsed by this Agency: “An effective [internal EEO] process necessitates that employees be willing to participate, whether by providing information that is pro-employer, pro-employee, or neutral. Such participation enables an employer to take prompt corrective action where needed...” [*EEOC Enforcement Guidance on Retaliation and Related Issues*, Section II(A)(1) (August 25, 2016)].

⁸ That complaint was about unprofessional conduct and was about behaviors that were described by the witness as nonsexual. Jaeger was counseled about these concerns at the time by the Chair and the complaining individual was informed that Jaeger had been counseled.

employment, and many allegations were based on hearsay. Much of the other allegations related to Jaeger's alleged reputation of being difficult or a jerk, but the investigation did not reveal this to be a gender issue (both males and females shared this observation). Certain allegations were total speculation, but kept being repeated as fact.

The Investigator submitted her report to the Dean of School of Applied Sciences and Engineering, who on June 2, 2016, issued separate determination letters to Complainants Aslin and Cantlon and to Respondent. The Dean was unable to conclude that there was a policy violation, particularly given the absence of any complaints about behavior of a sexual nature or of behavior found to be offensive by female students in recent years, and given that there were no complaints from current students (beyond the 2013 concerns reference above). Nonetheless, the Dean specifically noted that aspects of Jaeger's past behavior warranted addressing by the Chair and stated "Please know that I appreciate your bringing your concerns to the University's attention" [Confidential Exhibit D, 6/2/2016 Determination Letter to Respondents].

On July 15, 2016, Aslin and Cantlon appealed this determination [see Policy 106, p. 5 (noting appeal process)]. That same day, Jaeger raised specific concerns that some of the Complainants were spreading rumors within the department that were untrue and that Aslin had indicated that these allegations should be shared with the faculty.

Shortly thereafter, on July 21, 2016, Kidd submitted a separate complaint, alleging that Jaeger was spreading rumors about her honesty and reliability. She separately challenged the investigation, taking issue with the fact her name was mentioned in the confidential investigative report, as opposed to assigning a witness number, and that the investigation itself was biased.

On July 26, 2016, the Dean of the Faculty of Arts, Sciences and Engineering and the Dean of the College of Arts and Sciences circulated a memorandum to BCS faculty regarding the University's Policy Against Discrimination and Harassment. By that point, multiple sources had expressed concerns about the degree of gossip circulating through the department. The memorandum cautioned against the repeating of rumors without firsthand knowledge. It also made clear that the University respects the rights of individuals who make complaints or otherwise participate in the University's investigative process, and prohibits retaliation [Confidential Exhibit D, 7/26/16 Memorandum].

On August 15, 2017, the senior officer designated to hear the appeal issued a five-page letter, upholding the original determination. In that letter, he expressly informed Complainants that he had met with the BCS chair and was confident that "appropriate and reasonable steps are being taken to address the concerns and ensure that similar behavior does not recur in the future. This is precisely the purpose of reporting these concerns and I appreciate your having brought the concerns forward so the University has an opportunity to address the concerns" [Confidential Exhibit D, 8/15/2016 Appeal Determination].

Thereafter, on August 29, 2016, the BCS Chair issued a four-page counseling letter to Jaeger. In that letter, the Chair set forth his expectations with respect to Jaeger's conduct

going forward. Jaeger was also required to undergo individualized one-on-one training on respectful workplace behavior (sexual and otherwise) through Human Resources. This training was also designed to address the dangers and risks inherent in entering into even consensual relationships. The letter also noted that it was critical that personal and professional boundaries are always respected in his interactions with students and other trainees, and addressed how such behaviors may make students avoid him, leading to contentions that students missed out on educational opportunities.⁹

By this time, a second investigation had commenced based on Kidd's July 21, 2016 complaint. Given Kidd's allegations, and claims of bias, the University hired an external investigator, recommended as a professional who specialized in investigations of this nature. This external investigator had no pre-existing relationship with the University.

Due to the serious nature of these allegations brought by Kidd, and the concerns raised by others in the department about the spreading of some misinformation, the investigator also requested University email communications involving the Complainants, Jaeger and others, to aid in determining the sources of circulating information. She requested emails dating from both before and after release of the investigative report.

During the course of this second investigation, due in part to review of the relevant emails, the University learned of multiple instances of Complainants sharing information, allegations, and speculation amongst themselves and with others both inside and outside the Department. The University also learned of contact the Complainants had with witnesses both during the first investigation and after the investigation (in an effort to buttress their case). Some of these communications are detailed below.

- On March 9, 2016, Aslin immediately began sharing information with Newport, including sharing the names of individuals with whom Jaeger had allegedly engaged in sexual relations [see Confidential Exhibit C, 3/9/16 Aslin/Newport email chain].
- Beginning March 8, 2016, Cantlon engaged in a series of contacts with a witness, incorrectly informing her that she and Aslin has "heard some things from current students." Ironically, she assured the witness that the investigation would not be specifically about teacher-student relationships, that Aslin only knew about her as part of a larger group, and that she did not think that Newport knew the names of any individuals. Cantlon had already forwarded the witness' name to Aslin, who forwarded it to Newport [*id.*, 3/10/16-Cantlon/Witness email chain, 3/11/16 Cantlon/Witness email].
- On March 19, 2016, Cantlon shared with several other faculty members specific details she had obtained from Kidd's interview about a sexual comment Jaeger allegedly made to Kidd about a specific person (which was then promptly forwarded on to others, including Ben Hayden and his spouse) [*id.* at 3/19/16 Cantlon/Haydon email chain].

⁹ A copy of this letter is available for the Agency's review.

- On March 19, 2016, Cantlon asked Kidd whether a potential witness knew that Jaeger made comments about that witness' body and wanting to sleep with her. She wanted the witness to "write about that and send it." Kidd noted that the witness was not aware of any such comment, but said she would "make sure she [the witness] knows to mention that. We're chatting tonight [*id.* at 3/19/16 Cantlon/Kidd email chain].
- On July 11, 2016, Aslin reported that he met with two other senior faculty members, and brought them up to speed by sharing details of the investigative report, and that these faculty members "got the message." Aslin noted that Mahon and Cantlon were going speak with three other members of the BCS faculty. Mahon noted that he had spoken with one of these individuals, who is now "in the know" [*id.* at 7/12/17 Mahon/Aslin email chain].
- Most significantly, as detailed below, in late June, Aslin emailed his own former advisee, whom he heard had a relationship with Jaeger, and suggested that she had been "enmeshed in Florian's power-relationship over [her]" and that she should tell the truth to the investigator [see Confidential Exhibit D].

The outside investigator issued her report to the Dean on September 26, 2016. In her determination based on that report, the Dean cited to the outside investigator's finding that the first investigation was widely discussed by Kidd, Aslin, Cantlon, Jaeger, and others in the department. The report concluded that comments made by Jaeger to defend his own reputation after others approached him about the investigation, the allegations, or its conclusions, were not retaliatory.

From mid-August and continuing into September and October, leadership was undertaking efforts toward some type of mediation or facilitation, in an effort to heal divisions in the department. After much discussion, it became clear that in order to move forward, some limited airing of the allegations against Jaeger, allowing Jaeger to share his perspective with faculty (most of whom had never discussed the matter with him), was necessary, as was a limited airing of the resulting remedial actions taken by the University to address the concerns. All of this required Jaeger's consent.

In early November, Jaeger shared with the University Intercessor a letter dated November 2, 2016 from Aslin, which Jaeger found threatening. This letter, discussed in detail below, stated that unless Jaeger either publicly admitted that Aslin's allegations were true or resigned, Aslin and others would essentially ruin Jaeger's professional reputation [Confidential Exhibit D, 11/2/16 Aslin Letter; see also pp. 16-17, *infra*].

On November 29, 2016, after learning of the threats by Aslin, and hoping to move the department toward facilitation, the Provost sent a Confidential Memorandum to the BCS faculty, noting that the investigation and related proceedings had concluded in August of 2016. Given the personnel issues involved, such investigations and the resulting findings are confidential. However, the memorandum noted that the investigation and the subject of the investigation, Jaeger, had been widely discussed. Thus, with the consent of Jaeger, the University would make available a summary of key findings, in order to clarify what had occurred, and to help the department to move forward. Given the unusual circumstances, the

summary would be shared with an expectation of, and subject to, an agreement of confidentiality. Due to the amount of negative information circulating about Jaeger, and what appeared to be a clear campaign to force him to leave the University, the memorandum affirmed Jaeger, who was (and is) tenured, to be a valuable member of the faculty [Confidential Exhibit D, 11/29/16 Memorandum]. Thereafter, faculty members began viewing the summary of findings at the University Intercessor's office.

As also discussed below, during the course of the investigation, Aslin made numerous threats to resign if the outcome of the investigation was not to his satisfaction. At the end of a December 2, 2016 faculty meeting, Aslin made good on these threats and announced his resignation.

In mid-December, Jaeger, who had already issued an apology letter to the department, informed BCS faculty members that he had provided to the Intercessor his own lengthy statement. This statement both addressed the allegations and apologized to the faculty. Individuals who had already read the summary of findings had to return to the Intercessor's office to read Jaeger's statement. Upon information and belief, none of the Complainants chose to read Jaeger's letter. Jaeger also made available a copy of Aslin's letter, if anyone wished to read it. Not everyone did so.

Although divisions in the department clearly remained, no further allegations of misconduct or retaliation were raised until the filing of the instant Complaint.

B. Conclusions of the First Investigation.

In order to frame the specific allegations raised by Aslin, a brief recitation of both the specific consensual relationships at issue in the initial investigation is necessary. The Complainants alleged that Jaeger had three relationships with graduate students. Two of these relationships were acknowledged, and one was specifically denied by both Jaeger and the individual purportedly involved. Despite this specific denial, noted in the initial report, Aslin continued to maintain, long after the investigation concluded otherwise, that others believe this relationship occurred, hence this former student (and Jaeger) must be lying.

In 2007, Jaeger was involved in brief relationship with a woman who later became a graduate student at the University (hereinafter "Relationship 1"). When interviewed, she was adamant that her decision to come to the University had nothing to do with Jaeger; indeed, at that point she was already actively engaged in research with two other members of the department. She raised no concerns that the relationship with Jaeger had not been consensual, and stated that the past relationship was consensual, and that Jaeger in no way coerced her to come to the University. Moreover, she had previously been admitted to the program in 2003, but had initially elected to pursue other opportunities. Again, her relationship with Jaeger ended before she became a BCS graduate student, and Jaeger was not her advisor. Jaeger did eventually serve on her PhD committee.

For a period of one year (2008 through 2009) Jaeger was involved in a relationship with a graduate student in BCS (hereinafter "Relationship 2"). This graduate student was not

his advisee, Jaeger was not a member of her thesis committee, and she never took a class from Jaeger. Both Jaeger and the woman admitted to the existence of the relationship. When interviewed, the woman stated that the relationship was consensual and that Jaeger had “no direct effect” on her education.¹⁰

Finally, the Complainants also alleged that Jaeger was involved in a third relationship with a former female graduate student who was his advisee. The individual, who was named by the Complainants in the investigation, was interviewed. At the time of the interview, the witness was no longer a graduate student at the University and had not been so for some time. The witness adamantly denied any sexual relationship with Jaeger. Jaeger likewise denied any sexual relationship.

During the course of the investigation, Jaeger confirmed a romantic relationship with a former staff member, that began sometime in 2011 (“Relationship 3”). This staff member was not supervised by Jaeger. This relationship was not addressed in the report. The existence of a consensual relationship between employees, in the absence of a supervisory relationship, does not violate Policy 106. This relationship was, however, discussed in the appeal process. Importantly, the former staff member confirmed that the relationship was consensual. The staff member had previously been an undergraduate student, but confirmed that no sexual relationship of any kind existed between her and Jaeger at that time, and that the relationship began after she became a staff member.

When contacted by Aslin in June of 2016, this witness directly confirmed the existence of a consensual relationship with Jaeger, which began only after she became a staff member. As discussed below, the circumstances of Aslin’s contact with the witness are troubling best, and notwithstanding her direct representations to Aslin, he insisted that Jaeger had a sexual relationship with an undergraduate student [see discussion, *infra*, pp. 16-17].

Importantly, none of the above relationships violated the provisions of the Faculty Handbook that were in place at the time relating to faculty relationships with students. Those provisions stated:

The University of Rochester strongly discourages any sexual or amorous relationships between members of the University community and those students over whom they have a direct, current supervisory or evaluative relationship. Such relationships, even when consensual, are problematic because they may result in favoritism or the perception of favoritism which

¹⁰ The Complaint contains numerous allegations apparently attributed to this witness. Cantlon specifically reached out to this witness before the witness was interviewed. Kidd reached out to this this witness after the witness’ interview. When this witness initially communicated with Cantlon in March of 2016, she noted that she did not “want to conflate my personal and professional/academic experience in BCS.” Likewise, during her first discussion with the Investigator, she specifically noted that Jaeger had “no direct effect” on her education. In a subsequent interview, this witness revealed that she had since spoken with Kidd. While her testimony then became more critical of Jaeger, she continued to maintain that Jaeger had “no direct effect” on her academics and he was not involved in her education.

imperils the integrity of the educational environment. Such relationships may also lead to charges of sexual harassment.

[Exhibit E, February 2007 and July 2008 Handbook excerpts]

Jaeger did not have a “sexual or amorous relationships” with any graduate student “over whom [he had] a direct, current supervisory or evaluative relationship.” Indeed, although he did serve on the dissertation committee of one witness, his amorous relationship with that witness ended before she attended the University, and several years prior to defending her dissertation.¹¹

The policies articulated in the Faculty Handbook are not created solely by University administration, but rather through a collaborative process that involves the faculty. The above Policy was changed in 2014, with approval of the Faculty Senate, and states in part that:

Faculty members shall not accept supervisory, evaluative or advisory authority over any student or postdoc with whom they currently share an intimate personal relationship, or with whom they have shared such a relationship in the past.

Faculty members shall not enter into romantic or sexual relations with undergraduate students of the University, or with any members of the University community (including graduate students and postdocs) over whom they exercise the authority of their faculty position.

[see Exhibit E, May 2014 Handbook excerpt]

The current handbook, which was updated in May of 2017, now states in part:

Faculty members shall not accept academic authority over any student or postdoc with whom they currently share an intimate personal relationship, or with whom they have shared such a relationship in the past. Some examples of exercising academic authority include teaching, mentoring, supervising, making professional recommendations, and taking actions to affect grades, grants, honors, and admission to academic programs. Questions regarding what constitutes academic authority, as well as other aspects of this policy, should be directed to the University Intercessor.

Faculty members shall not enter into romantic or sexual relationships with undergraduate students of the University, nor shall they enter into such relationships with any members of the University community (including all students and postdocs and prospective students and postdocs) over whom they exercise academic authority. Faculty members should err on the side of disclosing a relationship to the Intercessor if there is any doubt about whether they exercise academic authority.

¹¹ Moreover, the existence of this previous relationship was disclosed to Jaeger’s mentor, a senior faculty member.

[see Exhibit E, May 2017, Handbook excerpt]

The current Complaint espouses the view that even the above policy is not sufficiently protective, and that due to the inherent asymmetrical power dynamic in such relationships, any relationship between a faculty member a graduate student is *per se* inappropriate. However, it is not disputed that Jaeger's alleged conduct in 2007-2011 did not violate the policy in existence at that time.

Finally, in addition to the alleged relationships, the underlying investigation centered a great deal on allegations of sexual harassment, which were primarily focused in the 2007-2011 time period, as well as less numerous, but more recent, speculative claims. The investigation revealed no information suggesting current harassment, and the only "recent" allegation involved a prospective graduate student from 2015, which was later determined to be the product of utter conjecture by Cantlon. Indeed, even the most salacious allegations, raised by Kidd, occurred during Jaeger and Kidd's platonic roommate relationship, which ended in 2008 [see *also* Confidential Exhibit D, 6/2/2016 Determination Letter to Respondents (discussing additional conclusions)].

RESPONSE TO ASLIN'S CLAIM OF RETALIATION

Aslin alleges that the University retaliated against him in two ways. First, Aslin alleges that the University "harmd his reputation and status" by falsely characterizing his motives and activities in connection with his allegations against Jaeger. Second, Aslin alleges that he was subject to a hostile work environment, such that he was constructively discharged.

A. Allegations that the University retaliated against Aslin by harming his reputation.

To establish a *prima facie* case of retaliation, Aslin must show: "(1) his participation in protected activity; (2) defendant's knowledge thereof; (3) materially adverse employment action; and (4) a causal connection between the protected activity and the adverse employment action." *Tepperwien v. Entergy Nuclear Operations, Inc.*, 663 F.3d 556, 568 (2d Cir. 2011). If this burden is met, then the employer must "articulate a legitimate, non-discriminatory reason for its adverse employment action." *Id.* The burden then "shifts back to the [claimant] to prove that retaliation was a substantial reason for the adverse action." *Id.* Indeed, "for an adverse retaliatory action to be 'because' a plaintiff made a charge, the plaintiff must plausibly allege that the retaliation was a 'but-for' cause of the employer's adverse action." *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 90 (2d Cir. 2015) (citing *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533 (2013)).

As detailed below, Aslin does not allege any materially adverse employment actions. Moreover, even if his allegations could be deemed materially adverse, there are clear legitimate, nonretaliatory reasons for the purported harm he alleges. In fact, this alleged harm results from perceptions formed by others based on Aslin's own conduct. Likewise, to the

extent that any alleged action was materially adverse, Aslin cannot show that retaliation was a substantial reason for any such actions.

1. Allegedly harming Aslin's reputation through two written communications and damaging Aslin's reputation during a January 2017 faculty meeting.

Aslin claims that the University harmed his reputation through two written communications which construe complaints against Jaeger as rumors or gossip [Complaint, ¶¶306a-b].

In a July 26, 2016 three paragraph memorandum to BCS faculty, the Dean of the Faculty of Arts, Sciences, and Engineering and the Dean of the College of Arts and Sciences referenced an investigation conducted in the spring of that year, which was based on allegations that a member of the department had violated the University's policy against discrimination and harassment [Confidential Exhibit D, 7/27/16 Memorandum]. The memorandum noted that the investigation had concluded, that the findings were confidential, and that the University's policy would drive the remainder of the process, including a pending appeal.

The Complaint repeatedly characterizes this memorandum as publicly portray[ing] the complaints against Jaeger as 'rumors' and 'misinformation'" [Complaint, ¶ 27; see also *id.* at 210, 212], which Aslin claims constitutes a "retaliatory action against him" [*id.* at ¶¶ 306, 306a]. The memorandum makes no such assertion. Indeed, even Aslin himself did not construe the memorandum as directed to him [see Confidential Exhibit C, 6/26/16 Aslin email]. Instead, it notes that over the past weeks, several sources expressed concerns about continued gossip, defined as "the repeating of information or rumors of which you do not have first-hand knowledge," about the claims in the investigation [7/27/16 Memorandum]. The memorandum asked that the Policy 106 process be allowed to continue to its conclusion, and went on to "fully endorse the rights of individuals to make good faith complaints" [*id.*]

Likewise, the November 29, 2016 Provost letter, labeled a "Confidential Memo," did characterize complaints against Jaeger in the manner Aslin alleges. As discussed above, the Provost sent a Confidential Memorandum to the BCS faculty, noting that the investigation, related proceedings, and the subject of the investigation, Jaeger, had been widely discussed. With the consent of Jaeger, the University would make available a summary of key findings, in order to clarify what had occurred, and to help the department to move forward. Again, given the amount of negative and unsupported information circulating about Jaeger, and what appeared to be a clear campaign to force him to leave the University, the memorandum affirmed Jaeger was a valuable member of the faculty [Confidential Exhibit D, 11/29/16 Memorandum].

It is Aslin's assertion that this communication was retaliatory, because "department faculty knew that Aslin was a principal figure among the faculty who had complained about Jaeger." Yet the memorandum did not accuse any particular individual of spreading rumors and misinformation. Ironically, as detailed below, Aslin was in fact actively engaged in informing others of Jaeger's alleged conduct, and inexplicitly threatened to inform others of

Jaeger's alleged misconduct if Jaeger did not admit to Aslin's version of the facts, even though individuals with direct knowledge of some of those allegations had directly refuted them.

Aslin alleges that at a January 2017 faculty meeting, the BCS Chair announced that some faculty had been bullying Jaeger, and announced that he had emails that proved that these same faculty members spread rumors, and had been deceitful and manipulative. Aslin does not allege that the BCS Chair mentioned any individual by name, including him. Instead, he claims that department faculty knew that the Chair was referring to him.¹²

None of the above allegations are materially adverse, and do not constitute retaliation. Even if these neutral actions could be construed as retaliation, there is certainly a legitimate, non-retaliatory reason for these neutral actions – Aslin did interject himself into the investigation, he did engage in subterfuge to obtain information, he did threaten to widely spread his version of Jaeger's conduct, and he did share his account of the allegations with others outside the University [see discussion, *infra*, and Confidential Exhibit C].

In one example, Aslin and others discussed contacting the individual discussed in Relationship 3, based on their belief that she was not interviewed during the investigation, in an effort to add to their allegations against Jaeger and buttress the appeal. Roughly one month before, this witness wrote to Aslin, sharing her future plans, including announcing her acceptance of a post-doctoral position. After discussing strategies to approach this witness and deliberating with some of the Complainants as to who should contact her, Aslin himself reached out to the University's undergraduate coordinator to gain information about this individual's academic record [see Confidential Exhibit C, Relationship 3].

Notwithstanding his present knowledge that the witness had already accepted a post doctorate position, Aslin asked for information regarding this witness' academic transcript, stating "[s]he is applying for postdocs and it would be helpful if I could see her transcript to refresh my memory about her coursework" [*id.*] In response to that email, Aslin received a copy of her transcript and BCS record.

Five days later, Aslin contacted that witness. He then went on to discuss the BCS investigation regarding Jaeger. Aslin described the witness as someone who was "enmeshed in [Jaeger's] power-relationship over [her], and told her that the future of BCS depended on "people being truthful" and exposing inappropriate behaviors:

...it is important for you to know that key faculty like myself are on your side and will do everything we can to protect you from negative professional and personal consequences. At the same time, the future of our department depends on people being truthful and not allowing inappropriate behaviors to remain hidden and rules to be violated, especially going forward. I want to personally thank you for whatever you have conveyed to the investigator. (If

¹² Notably, one of these emails involved Aslin forwarding a confidential email between Aslin and the BCS Chair to junior faculty. Aslin later apologized to the Chair, admitting it had been inappropriate.

there's anything that you didn't convey to her but would like to talk with me about, please let me know.)

And if you feel people are putting undue pressure on you, please let me know so I can intervene. Our goal is not to make life difficult for the students who were enmeshed in Florian's power-relationship over them [*id.*].

The witness specifically revealed to Aslin personal details about her relationship with Jaeger, and indicated that she had in fact been truthful when speaking to the Investigator. Yet Aslin continued to misrepresent this relationship, and indeed, in his July 15, 2016 appeal, he omitted his direct conversation with this witness and falsely characterized the relationship as involving an undergraduate student who was, at the time of the relationship, working in Jaeger's lab. Rather than reveal his own subsequent direct contact with the witness (which refuted this characterization), the Appeal, signed by Aslin and Cantlon, attributed the account of the relationship to Newport [Confidential Exhibit D, 7/15/16 Appeal Letter, p. 13 ("an undergraduate student...had a sexual relationship with Jaeger while she was in his lab"), p. 17 (bearing signatures)].

Importantly, the witness also shared with Aslin that some of the things people told he Investigator "were just plain lies." This was "more bothersome to [her] than anything because I don't quite understand what would motivate people to make things up" [Confidential Exhibit C, Relationship 3]. Notwithstanding her expressed concern, Aslin continued to spread misinformation the situation between her and Jaeger.

2. Disclosing a "private" letter from Aslin to Jaeger.

On November 2, 2106, Aslin wrote a detailed letter to Jaeger, demanding that Jaeger publicly admit that he engaged in a litany of inappropriate conduct, and allow the faculty to judge his sincerity. Aslin said that if Jaeger did not do so, the only option was to "tough it out" and hope that BCS faculty "gets over it." Aslin, however, made clear that option two could never be successful, stating there is "already lots of talk among faculty and student about what alleged happened" and "inquiring minds want to know" [Confidential Exhibit D, 11/2/16 Aslin Letter].

In spite of Aslin's threatening language, significant allegations in the letter were untrue, as demonstrated by statements made directly to Aslin by the individual involved in Relationship 3. For example, with respect to Relationship 3, Aslin noted that the individual "felt powerless to end the relationship because of fear of retribution." But this individual had specifically told Aslin, in writing, that the relationship was consensual, and although she not had talked to Jaeger in years, she would still feel comfortable interacting or collaborating with him [Confidential Exhibit C, Relationship 3].

Likewise, Aslin demanded that Jaeger admit a relationship with a former graduate student, which both Jaeger and the former student had explicitly denied. Since these denials did not fit Aslin's narrative (founded initially on rumors by Kidd that the two had a relationship),

Aslin insisted that Jaeger was lying, because Aslin had learned through hearsay that this student told others that she and Jaeger were engaged in a relationship.

Importantly, Aslin appears to suggest that Jaeger's failure to agree with and admit all the allegations against him is both dishonest and, according to the instant Complaint, retaliatory. Yet Aslin willingly discounts the alleged partner's actual representations of the extent of her relationship with Jaeger, notwithstanding the fact his own disbelief is founded entirely on hearsay. Aslin also chastised Jaeger, noting that no relationship with a graduate student was ever appropriate, that no female graduate student could be considered a consenting adult in a faculty relationship, and likened female students to his "90-year-old mother . . . who is preyed upon by scammers" [Confidential Exhibit D, 11/2/16 Aslin Letter].¹³

In short, Aslin demanded that Jaeger agree with and publicly admit to Aslin's narrative. If he did not, Aslin would "go public" and ensure that Jaeger could never leave the University, "because no other institution will hire you" [*id.*]. Aslin noted that Jaeger's "ties with Linguistics have already been largely burned, and you can be assured that future 'warnings' will be raised whenever you try to engage with unsuspecting faculty" [*id.*]. Aslin likewise made clear that the letter should not be interpreted as a mere threat. Instead, the letter was a "plan of action" [*id.* ("Please do not interpret this letter as a threat. It is not a threat; it is a plan of action.")].

Aslin's claim that the University disclosed this letter "to give the wrong impression that Aslin bullied Jaeger" strains credulity. It was within Jaeger's rights to share this letter and to demonstrate to others the types of behavior to which he was being subjected. Further, the impression that Jaeger was being bullied was hardly an inaccurate one. Aslin certainly cannot establish that the University engaged in retaliation based on others' interpretations of his own words.

3. Suggesting Aslin played a role in Jaeger's disinvitation to a conference at Georgetown University.

Aslin claims that the University falsely blamed Aslin for Jaeger's December 11, 2016 disinvitation to a conference at Georgetown University, where Newport is a faculty member [Complaint, ¶ 306e]. The University denies this allegation. However, Aslin did inform Newport of the allegations against Jaeger, informed Newport of the path forward and openly stated a month earlier that his plan of action was to ensure that future "warnings" would be raised whenever Jaeger tried "to engage with unsuspecting faculty" [Confidential Exhibit D, 11/2/16 Aslin Letter]. Drawing the conclusion that Aslin may have played a role in this disinvitation can in no way be considered retaliatory.

¹³ Aslin clearly views the issue of faculty/student relationships as inappropriate where the junior partner is female. Subsumed within this narrative is the premise that male faculty members and/or female graduate students should be treated differently, both as to their abilities to consent, and as to whether a relationship creates an asymmetrical power dynamic. Indeed, this narrative permeates the Complaint. Yet Newport was apparently involved in her husband's doctorate education, as both an apparent mentor, advisor, and collaborator, and later, as his spouse. Newport's husband's kind tribute to her in his 1982 dissertation (which is publicly available on the Internet) attests to this relationship [Retrieved from <http://www.ai.mit.edu/projects/dm/theses/more/supalla82.pdf>, September 29, 2017].

4. Maintaining a “narrative” that Aslin violated confidentiality by engaging in protected activity stating that complaints against Jaeger were a smear campaign, and that emails proved wrongdoing by Aslin.

Aslin’s conduct both before, during, and after the investigation is documented above. The University did not create a retaliatory “narrative” that Aslin violated confidentiality through protected activity [Complaint, ¶ 306f]. Likewise, the University denies that it described “the complaints against Jaeger as a smear campaign run by BCS faculty” [*id.* at ¶306h]. The University expressly “prohibits retaliation against any person who complains of or opposes perceived unlawful discrimination or harassment...” [Policy 106]. Aslin suffered no adverse action based on his protected activity.

5. Violating Aslin’s confidentiality by allowing Kidd to view a copy of the Investigator’s report of his complaint.

As detailed above, on July 21, 2016, Kidd made a separate complaint, which was investigated by an outside investigator. Following the October 4, 2016 determination of this complaint, Kidd was given an opportunity to view this report. When Kidd arrived to view the report, she was mistakenly allowed by an administrative assistant to review a copy of the report from the first investigation. Kidd was informed of the mistake, and provided a copy of the appropriate report.

Aslin and Cantlon had already shared information and collaborated with Kidd both before, during, and after the investigation, including discussing the report in detail. Any suggestion that Kidd’s viewing of this report was somehow retaliatory, or even that it provided information to Kidd of which she was not already well aware, is nonsensical. Moreover, in order to state a claim for retaliation, Aslin must show that the University’s actions were intentional. Clearly, they were not.

B. Aslin’s Constructive Discharge claim.

Aslin summarily claims that the University constructively discharged him by “intentionally making his environment so hostile that any reasonable person in his position would have resigned” [Complaint, ¶ 307]. Presumably, Aslin is asserting that the specific retaliatory actions alleged in the preceding paragraphs [*id.* at ¶¶ 306a-306h] formed the basis for this purportedly hostile environment.

As detailed above, the majority of Aslin’s allegations essentially claim that the University portrayed him as a purveyor of gossip, a bully, and someone who violated confidentiality [Complaint, ¶¶ 306a-f,h]. As discussed above, these allegations cannot constitute retaliation. More importantly, Aslin had repeatedly threatened to resign prior to these events.

Over three years ago, Aslin began planning his transition from the University. In 2014, after a series of conversations with the prior Dean and the BCS Chair, and pursuant to Aslin’s

wishes, Aslin agreed that effective June 30, 2016, he would begin working half time and relinquish his tenure. As part of an October 1, 2014 Letter of Understanding, Aslin agreed to a three-year part-time appointment (from July 1, 2016 through June 30, 2019) as a non-tenure track BCS Professor [see Confidential Exhibit F, October 1, 2014 Letter of Understanding]. Consistent with this agreement, Aslin resigned his tenure effective June 30, 2016 and he was appointed Professor Emeritus effective July 1, 2016, while retaining his appointment as Director of the Rochester Center for Brain Imaging in the Center for Visual Science for one year, through June 30, 2017.

On June 7, 2016, roughly seven weeks before the July 26, 2016 Memorandum (the first purported retaliatory act [Complaint, ¶ 306a]), Aslin stated his resolve to resign if the appeal was not successful, and told the BCS Chair that the remaining faculty will not engage with Jaeger, thus destroying the department [see Confidential Exhibit F, 6/7/16 email, "I am pursuing the appeal, even if it means going head to head with [the Dean], and that if I fail I will resign. I also told him the rest of the faculty will simply not engage with Florian if he stays. So, it will literally destroy the dept."]. Aslin went on to muse about "writing a post-retirement-from-Rochester article for the Chronicle [presumably the Chronicle of Higher Education], authored anonymously so Florian cannot sue me, about this whole stinking affair" [*id.*]. He noted, "seriously, I have to consider leaving Rochester. I don't want my salary to crater to zero for a few more years" [*id.*].

Roughly two weeks later, Aslin forwarded to Newport an email from the BCS Chair, which asked the department to cast their vote with respect to a contested faculty recruitment matter. By way of commentary to Newport on that email, Aslin noted that he was ready to leave Geneva (his physical location) and "potentially Rochester" [*id.*, 6/22/16 email].

The remaining alleged retaliatory actions occurred on or after November 29, 2016 [Complaint, ¶¶ 306b-h]. Importantly, before those alleged actions, Aslin continued to assert his intention to leave the University, and even bragged that he was in negotiations with other universities, and had already secured a new affiliation with a lab in Connecticut. Specifically, in an August 11, 2016 email, sent four days before the appeal was even decided, Aslin lamented to a senior colleague, "It is, indeed, a shit-fest in the dept. I waffle every other day about whether I should just leave immediately and take a position at Haskins (I'm quite serious)" [*id.*, 8/11/16 email].

Likewise, in a September 5, 2016 letter to the Dean, Aslin made a series of demands, noted that he was already in negotiation with other universities, and stated a new affiliation with Haskins Labs in New Haven. Unless Jaeger "apologized to the affected students" and admitted "to the faculty that he behaved badly" or left the University entirely, Aslin predicted:

I will leave. Of course, I am already 1/2-time and my shelf-life is three more years when I become emeritus (with zero salary). No big deal, except that when I leave I will make a fuss (being careful not to get myself sued by Florian). I am already in negotiation with other universities to move into a research-only position, and I have a new affiliation with Haskins Labs in New Haven where I intend to run at least one grant project [*id.*, 9/5/16 letter].

In order to state a constructive discharge claim, Aslin must show that the University “intentionally create[d] a work atmosphere so intolerable that he [was] forced to quit involuntarily.” *Petrosino v. Bell Atl.*, 385 F.3d 210, 229 (2d Cir. 2004) (citation omitted). Thus, Courts examine both the alleged “intentional conduct” of the employer and “the intolerable level of the work conditions.” *Id.* As the Courts have made clear:

This standard “is a demanding one,” *Miller v. Praxair, Inc.*, 408 Fed.Appx. 408, 410 (2d Cir. 2010), *cert. denied*, 564 U.S. 1038, 131 S. Ct. 3067 (2011), because “[c]onstructive discharge cases ‘present [] a “worse case” harassment scenario, harassment ratcheted up to the breaking point,’” *Copantilla v. Fiskardo Estiatorio, Inc.*, 788 F. Supp. 2d at 301 (quoting *Pa. State Police v. Suders*, 542 U.S. 129, 147-48, 124 S. Ct. 2342, 2355 (2004)). The Second Circuit therefore has held that the constructive discharge “standard is higher than the standard for establishing a hostile work environment.” *Fincher v. Depository Tr. & Clearing Corp.*, 604 F.3d 712, 725 (2d Cir. 2010).

McCalla v. City of New York, 2017 U.S. Dist. LEXIS 130040, at *176 (S.D.N.Y. Aug. 14, 2017) (alteration in original), *aff’d* 2017 U.S. Dist. LEXIS 156161 (S.D.N.Y. Sept. 22, 2017) (adopting the report and recommendation).

Aslin cannot establish that he was subjected to any retaliatory activity. All he can establish is that he was dissatisfied with the outcome of the University’s investigation. This does not amount to retaliation. Even if he could establish that the University’s alleged actions were retaliatory, he cannot establish that his experience constituted “harassment ratcheted up to the breaking point.” Instead, Aslin threatened on several occasions that if his terms were not meet, he would leave the University. Most of these threats were made before Aslin experienced any of the alleged retaliatory activity.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that the Aslin Charge be dismissed in its entirety with a finding of no probable cause.

Respectfully submitted,



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Enclosures