

1 IRWIN M. ZALKIN, ESQ. (#89957)  
2 DEVIN M. STOREY, ESQ. (#234271)  
3 ALEXANDER S. ZALKIN, ESQ. (#280813)  
4 The Zalkin Law Firm, P.C.  
5 10590 West Ocean Air Drive, Ste 125  
6 San Diego, CA 92130  
7 Tel: 858-259-3011  
8 Fax: 858-259-3015  
9 Email: [Irwin@zalkin.com](mailto:Irwin@zalkin.com)  
10 [dms@zalkin.com](mailto:dms@zalkin.com)  
11 [alex@zalkin.com](mailto:alex@zalkin.com)  
12 [ryan@zalkin.com](mailto:ryan@zalkin.com)

13 AMY POYER, ESQ. (#277315)  
14 California Women's Law Center  
15 360 N. Pacific Coast Hwy, Ste 2070  
16 El Segundo, CA 90245  
17 Tel: 323-951-1041  
18 Email: [amy.poyer@cwlc.org](mailto:amy.poyer@cwlc.org)

19 Attorneys for Plaintiff

20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 Courtney Whittier, Individually,

23 Plaintiff,

24 vs.

25 The University of Southern  
26 California,

27 Defendant.

28 **Case No.: 2:20-cv-09539**

**COMPLAINT FOR DAMAGES**

- 1) **Violation of Title IX – Pre-Assault**
- 2) **Violation of Title IX – Post Assault**
- 3) **Violation of Title IX – Intentional Discrimination**
- 4) **Violation of Title IX – Erroneous Outcome**

**[Demand for Jury Trail]**

**PRELIMINARY ALLEGATIONS**

1. Plaintiff Courtney Whittier was, at all times relevant, a student at the University of Southern California, Gould School of Law (“Gould”).
2. Defendant University of Southern California (“USC”) is, and at all times relevant hereto was a not-for-profit corporation organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. Plaintiff is informed and believes, and on that basis alleges that at all times relevant hereto, USC was the owner of a business and/or facility licensed to do business and actually doing business in the State of California.
3. USC receives federal financial assistance and is therefore subject to the dictates of 20 U.S.C. § 1681. (“Title IX”)
4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.
5. Venue in this Court is proper under 28 U.S.C. § 1391 (b) because the events giving rise to this claim took place in this judicial district, and Defendants reside in this judicial district.

**USC’s Sexual Misconduct Policies**

6. USC claims that its policies “have been established to create a safe and productive academic and work environment. All university employees and students are expected to be familiar with these policies and to follow them.”
7. At all times relevant herein, USC maintained a policy on sexual misconduct entitled Student Misconduct – Sexual, Interpersonal and Protected Class Misconduct (“Policy”).
8. The Policy stated that USC was, “...committed to stopping prohibited conduct, preventing its recurrence, addressing its effects, and eliminating hostile environments.” The Policy also stated that among USC’s goals was, a fair and impartial process afforded

1 to all parties. To that end, the Policy stated, “The university’s response to prohibited  
2 conduct is grounded in the fair application of policy and procedure.”

3 9. The Policy stated that USC, “...seeks compliance with all statutes prohibiting  
4 discrimination in education, including...Title IX of the education amendments of  
5 1972...the Jeanne Clery Disclosures of Campus Security Act (as amended by the  
6 Violence Against Women Reauthorization Act of 2013)...”

7  
8 10. According to the Policy, “Consent must be affirmative. ‘Affirmative consent’ means  
9 affirmative, conscious, and voluntary agreement to engage in sexual activity.” The  
10 Policy further states, “It is the responsibility of each person involved to ensure that they  
11 have affirmative consent of the other(s) to engage in sexual activity...Lack of protest or  
12 resistance does not mean consent, nor does silence mean consent...Consent cannot be  
13 inferred from an existing or previous dating relationship. Previous sexual activity  
14 between the parties cannot, by itself, be assumed to be an indicator of consent. There  
15 must be mutual consent to engage in the sexual activity each time it occurs. Consent to  
16 engage in sexual activity at one time is not consent to engage in the same or different  
17 sexual activity at a different time.”

18  
19 11. With respect to investigation of a report of prohibited conduct, the Policy stated that  
20 both the reporting and responding party were entitled to several procedural safeguards,  
21 including but not limited to, “[e]qual treatment”, and, “[a] fair, thorough, reliable,  
22 neutral and impartial investigation by a trained and experienced investigator.”

23  
24 12. With respect to timing, the Policy stated that investigations were to be completed within  
25 60 calendar days. If an extension of the 60 days was needed, the parties were to be  
26 provided, in writing, of a justification for any such extension as well as notified of an  
27 anticipated completion date.  
28

1 13. The Policy required USC to engage in a fact gathering investigation following a report  
2 of sexual misconduct. At the conclusion of an investigation, both the reporting and  
3 responding party were to be given equal time and opportunity to review all of the  
4 evidence gathered by the USC investigator.

5 14. Upon completion of the investigation and hearing, the Policy required USC to provide a  
6 Summary Administrative Review to both parties outlining its findings.  
7

### 8 **USC's History of Indifference To Sexual Misconduct On Campus**

9 15. USC has a history of covering up, and/or responding with indifference to sexual  
10 misconduct on campus.

11 16. Based on information and belief, USC knew since as early as 1988 that one of its student  
12 health physicians, Dr. George Tyndall, was sexually abusing female students at USC's  
13 student health center. Despite such knowledge, USC covered up Dr. Tyndall's abuse for  
14 decades, failing to report him to law enforcement or the California Medical Board. As a  
15 result, Dr. Tyndall continued to sexually abuse female USC students for approximately  
16 30 years.  
17

18 17. In 2019, USC settled a federal class action lawsuit brought on behalf of Dr. Tyndall's  
19 victims for \$250 million. Currently, hundreds of Dr. Tyndall's victims are proceeding  
20 with lawsuits against USC in California Superior Court as well.  
21

22 18. Prior to Plaintiff's sexual assault, USC's failures with respect to compliance with Title  
23 IX were so widespread that the United States Department of Education, Office for Civil  
24 Rights ("OCR") initiated several investigations into its Title IX compliance.

25 19. During one investigation in 2018, the OCR found several instances in which USC failed  
26 to comply with federal guidelines interpreting IX. As a result of this investigation, USC  
27 entered into a resolution agreement with the OCR. In the Resolution Agreement, USC  
28 agreed to, among other items:

- a. Overhaul its Title IX Office and reporting requirements;
- b. Ensure that the Title IX Office has the appropriate authority to coordinate compliance;
- c. Revise the system of complaint tracking so that all complaints will be accessible;
- d. Issue a directive mandating that all appropriate employees will report sex discrimination to the Title IX Office;
- e. Accurately and completely keep records of complaints;
- f. Upon receipt of a complaint against an employee, run a search through the system to find any other similar complaint;
- g. Report to OCR self-monitoring;
- h. Review Title IX procedures to provide notice to parties;
- i. Provide notice to faculty of Title IX and this investigation;
- j. Provide Title IX training to students and staff.

### **Background Facts Related To Plaintiff**

20. Plaintiff enrolled at USC Gould School of Law in August of 2015.

21. In December of 2017, when Plaintiff was a third year law student, she attended a school sponsored and/or sanctioned social event at a local bar. Plaintiff had several drinks that night to the point that she became incapacitated.

22. While incapacitated, Plaintiff was raped by Perpetrator Doe, another USC student at Perpetrator's apartment.

23. On April 13, 2018, Plaintiff reported the rape to the Dean of the law school who in turn reported it to USC's Title IX Office.

24. Shortly thereafter, Plaintiff had an in-person meeting with Gretchen Means (USC's Title IX Coordinator), Kegan Allen (a note taker), and a third unknown person. Means took

1 Plaintiff's statement, and explained the complaint procedures. Plaintiff then indicated  
2 that she wanted to initiate a formal investigation.

3 25. In response, Means pressured Plaintiff not to initiate a formal investigation. Means  
4 asked Plaintiff to wait 24 hours and then decide if she indeed wanted to initiate formal  
5 investigation. After 24 hours, Plaintiff called the Title IX Office and left a message  
6 indicating she wanted to initiate a formal investigation. Nobody returned her call. On the  
7 next business day, Plaintiff went to the Title IX Office to tell Means that Plaintiff  
8 wanted to initiate a formal investigation. Means was unavailable at that time. Finally,  
9 Plaintiff met with the Dean of the law school to report what was happening. The Dean  
10 contacted Means directly who confirmed that a formal investigation would be  
11 commenced.  
12

13 26. The Title IX Office assigned Investigator Doe to investigate Plaintiff's report.<sup>1</sup> Based  
14 on information and belief, Investigator Doe had, at the time of the assignment, only  
15 recently been hired by USC and had no training as a Title IX investigator.  
16

17 27. Plaintiff met with Investigator Doe multiple times and submitted several pieces of  
18 evidence to Investigator Doe.

19 28. Perpetrator chose not to provide an initial statement. Instead, Perpetrator hired a private  
20 attorney named Mark Hathaway to represent Perpetrator during USC's investigation and  
21 resolution process.  
22

23 29. Based on information and belief, at the time, Mr. Hathaway had represented several  
24 male USC students who had been accused of sexual misconduct in civil lawsuits against  
25 USC. Mr. Hathaway had been very successful in these civil lawsuits against USC on  
26 behalf of accused male students.  
27

---

28 <sup>1</sup> Investigator Doe has filed a federal whistleblower lawsuit against USC in the District Court for the Central District of California, Case No. 2:20-cv-06098. In order to protect Investigator Doe's identity, Plaintiff will refer to him/her only using the pseudonym "Investigator Doe."

1 30. Based on information and belief, because of Mr. Hathaway's representation of  
2 Perpetrator, USC violated its own policies in favor of Perpetrator. Specifically, in  
3 violation of its Policy, USC allowed Perpetrator to review all of Plaintiff's submitted  
4 evidence before submitting his own evidence. This allowed Perpetrator to tailor his  
5 evidence to specifically respond to Plaintiff's submitted evidence. Additionally, in  
6 violation of the Policy, Perpetrator was allowed to submit additional evidence after  
7 providing his initial evidence. Plaintiff was never told about the additional evidence, and  
8 therefore did not have an opportunity to address the additional evidence during her  
9 hearing.  
10

11 31. Most egregiously, based on information and belief, USC predetermined the outcome of  
12 Plaintiff's complaint in favor of Perpetrator before finishing its investigation. In fact,  
13 based on information and belief, once Means heard that Mr. Hathaway was representing  
14 Perpetrator, Means told Investigator Doe that USC would resolve the investigation in  
15 favor of Plaintiff, "over [her] dead body."  
16

17 32. Following its "investigation," on October 19, 2018, USC resolved Plaintiff's complaint  
18 consistent with its predetermination: in favor of Perpetrator. USC issued a Summary  
19 Administrative Review ("SAR") in which it concluded that on the evening of Plaintiff's  
20 assault: (1) Plaintiff and Perpetrator engaged in sexual relations, (2) Plaintiff was  
21 incapacitated at the time, but (3) Perpetrator did not know, nor had reason to know that  
22 Plaintiff was incapacitated.  
23

24 33. USC's SAR failed to disclose that it allowed Perpetrator to submit evidence after  
25 reviewing Plaintiff's evidence, in violation of its own Policy.  
26

27 34. The SAR was signed by Investigator Doe.  
28

## Investigator Doe's Federal Lawsuit Against USC

1  
2 35. On July 8, 2020, Investigator Doe filed a federal lawsuit against USC asserting several  
3 causes of action.

4 36. In Investigator Doe's lawsuit, he/she alleged that he/she was hired as a Senior  
5 Investigator in USC's Office of Conduct, Accountability, and Professionalism.

6 37. However, shortly after Investigator Doe was hired, he/she alleged that USC assigned  
7 him/her to investigate two Title IX complaints even though he/she had informed USC  
8 that he/she had no training as a Title IX investigator. This assignment, Investigator Doe  
9 alleged, violated USC's consent decree with the OCR.  
10

11 38. Investigator Doe's lawsuit further outlines several disturbing practices engaged in by  
12 USC to protect perpetrators, influence outcomes of investigations, and ignore USC  
13 policies.

14 39. For example, Investigator Doe alleged that he/she began an investigation into two high  
15 ranking employees at USC. Prior to the investigation, Means informed Investigator Doe  
16 that the complaining party had anticipated termination and therefore made the report  
17 against these USC employees as an attempt to avoid termination. This statement  
18 indicated Means' prejudgment of the complaint. Further, during the investigation,  
19 Investigator Doe reported to Means that even though the investigation was ongoing,  
20 Investigator Doe had discovered corroborating evidence that these employees had  
21 indeed violated USC policy. In response to this report, USC removed Doe from this  
22 investigation and placed him/her on leave. Even more egregiously, USC subsequently  
23 promoted the two employees who were the subjects of the investigation.  
24

25  
26 40. Investigator Doe's lawsuit also alleges several troubling allegations regarding Plaintiff's  
27 investigation in particular. Investigator Doe alleges that he/she opposed Means'  
28 decision to allow John Doe to review all of Plaintiff's evidence prior to submitting his

1 evidence – a decision that directly violated USC’s own Policy. Investigator Doe’s  
2 opposition was ignored and overruled. In response to Investigator Doe’s opposition,  
3 Means’ retaliated against and harassed Doe.

4 41. Doe also alleged that the SAR received by Plaintiff failed to disclose that Perpetrator  
5 Doe was allowed to review all of Plaintiff’s evidence before submitting his own. What’s  
6 more, despite his/her opposition, and despite the fact that Investigator Doe was removed  
7 from Plaintiff’s investigation after raising concerns over policy violations, Investigator  
8 Doe’s signature was affixed to the SAR by USC without his/her consent.

9  
10 42. Investigator Doe alleged that he/she made a formal complaint to USC alleging that  
11 Means was retaliating against Investigator Doe for insisting that USC comply with its  
12 written Title IX procedures, including the Policy.

13 **USC’s Culture Of Sexual Violence At The Gould School of Law**

14 43. While Plaintiff was a student at Gould, Gould was replete with sexual misconduct.

15 44. Based on information and belief, while Plaintiff was enrolled at Gould, one male Gould  
16 student had sexually assaulted three different Gould female students.

17 45. Based on information and belief, while Plaintiff was enrolled at Gould, a second male  
18 Gould student had sexually assaulted two different females, at least one of which was  
19 another Gould student.  
20

21 46. Based on information and belief, while Plaintiff was enrolled at Gould, Perpetrator not  
22 only sexually assaulted Plaintiff, but also sexually harassed other female Gould students.

23 47. The culture of sexual violence at Gould was so prominent, that one female Gould  
24 student conducted an informal survey of the female Gould students in her class. The  
25 survey asked whether the survey respondent had ever experienced sexual misconduct by  
26 a male Gould student. Several student respondents reported experiencing some form of  
27 sexual misconduct.  
28

1 48. Based on information and belief, administrators at Gould were aware of the culture of  
2 sexual violence that existed at Gould during all times relevant herein.

3 49. Based on information and belief, Gould administrators did nothing in response to the  
4 prevalent culture of sexual misconduct at Gould.

5  
6 **COUNT I**  
**VIOLATION OF TITLE IX – PRE ASSAULT**

7 50. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as if fully set forth  
8 herein.

9 51. USC maintained a policy of indifference to sexual misconduct both campus-wide, as  
10 well as at Gould in particular.

11  
12 52. USC's policy of indifference created a heightened risk of sexual misconduct on campus  
13 that was known and/or obvious to USC.

14 53. USC knowingly and deliberately concealed the breadth of the problem of sexual  
15 misconduct on its campus, failed to enforce its own policies for responding to sexual  
16 misconduct, and often times predetermined outcomes of Title IX investigations in favor  
17 of respondents prior to their completion, creating an environment in which USC tacitly  
18 approved sexual misconduct, and sexual predators were able to operate with impunity  
19 and without fear of consequence.

20  
21 54. Based on information and belief, USC knowingly and deliberately failed to adhere to the  
22 guidelines and recommendations promulgated by the DOE in both its 2001 Guidance  
23 and DCL.

24 55. Based on information and belief, USC failed to properly train its employees, including  
25 its Title IX investigators. USC also failed to train its students with respect to identifying  
26 sexual misconduct, preventing its occurrence, and reporting its occurrence.  
27  
28

1 56. Prior to Plaintiff's assault, USC's Title IX policies and practices were so deficient that  
2 the OCR investigated and ultimately concluded that USC had violated Title IX in the  
3 manner in which it responded to reports of sexual misconduct.

4 57. The heightened risk created by USC's policy of indifference was subject to USC's  
5 control, and Plaintiff was sexually assaulted following a USC sanctioned and sponsored  
6 social event.

7 58. Plaintiff could not have reasonably known about USC's policy of indifference until she  
8 was contacted by the attorney representing Investigator Doe on July 8, 2020.

9 59. As a result of USC's policy of indifference, which created a heightened risk for sexual  
10 misconduct to occur, Plaintiff was sexually assaulted by Perpetrator.

11 60. As a result of the above-described conduct, Plaintiff has suffered, and continues to  
12 suffer, great pain of mind and body, physical injury, shock, emotional distress, physical  
13 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
14 humiliation, and loss of enjoyment of life; was prevented and will continue to be  
15 prevented from performing her daily activities and obtaining the full enjoyment of life;  
16 and/or has incurred and will continue to incur expenses for medical and psychological  
17 treatment, therapy, and counseling.  
18  
19

20  
21 **COUNT II**  
22 **VIOLATION OF TITLE IX – POST-ASSAULT**

23 61. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as if fully set forth  
24 herein.

25 62. USC is an educational institution and is the recipient of federal financial assistance.

26 63. Plaintiff reported her sexual assault to the Dean of Gould, who in turn reported it to  
27 USC's Title IX Office. Both of these individuals were/are responsible employees who  
28 had the ability to respond to Plaintiff's report.

1 64. USC acted with deliberate indifference in response to Plaintiff's report by failing to  
2 respond reasonably to Plaintiff's report. For example, USC intentionally deviated from  
3 its own policies in order to provide Perpetrator with an unfair advantage during its  
4 investigation of Plaintiff's complaint. USC showed further deliberate indifference by  
5 predetermining the outcome of Plaintiff's complaint in favor of Perpetrator prior to the  
6 conclusion of the investigation.

7  
8 65. As a result of USC's Title IX violation, Plaintiff suffered emotional distress in the form  
9 of a loss of educational opportunities and/or benefits, including:

- 10 a. A drop in grades;
- 11 b. Avoidance of school sponsored social events because Perpetrator was present;
- 12 c. Avoidance of certain areas of campus because Perpetrator was present;
- 13 d. Avoidance of certain courses in which Perpetrator was enrolled.
- 14

15 **COUNT III**  
16 **VIOLATION OF TITLE IX – INTENTIONAL DISCRIMINATION**

17 66. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as if fully set forth  
18 herein.

19 67. USC intentionally discriminated against Plaintiff based on her gender in the manner in  
20 which it responded to Plaintiff's complaint of sexual assault.

21 68. Even though USC represented to Plaintiff that it was following its policies, including  
22 providing a fair and neutral investigation into Plaintiff's report, in reality, USC's  
23 investigation process was nothing more than a charade intended to mislead Plaintiff into  
24 believing that she received a fair and proper investigation.

25  
26 69. USC's investigation into Plaintiff's complaint favored Perpetrator, a male, in every way  
27 possible. For example, Perpetrator was allowed to review Plaintiff's evidence prior to  
28 submitting his own evidence, providing him the opportunity to tailor the evidence he

1 submitted to directly respond to Plaintiff's evidence. Plaintiff was not given the same  
2 opportunity. Perpetrator was allowed to submit additional evidence, which Plaintiff  
3 never had an opportunity to respond to. Worse, USC predetermined the outcome of  
4 Plaintiff's complaint in favor of Perpetrator even before the investigation had concluded.

5 70. Based on information and belief, USC's decision to predetermine the outcome of  
6 Plaintiff's complaint was part of a de facto practice by USC to intentionally  
7 predetermine outcomes of Title IX investigations in favor of male respondents.  
8

9 71. As a result of the above-described conduct, Plaintiff has suffered, and continues to  
10 suffer, great pain of mind and body, physical injury, shock, emotional distress, physical  
11 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
12 humiliation, and loss of enjoyment of life; was prevented and will continue to be  
13 prevented from performing her daily activities and obtaining the full enjoyment of life;  
14 and/or has incurred and will continue to incur expenses for medical and psychological  
15 treatment, therapy, and counseling.  
16

17 **COUNT IV**  
18 **VIOLATION OF TITLE IX – ERRONEOUS OUTCOME**

19 72. Plaintiff incorporates paragraphs 1 through 46 as if fully set forth herein.

20 73. In resolving Plaintiff's complaint, USC came to an erroneous outcome.

21 74. The allegations incorporated herein cast some doubt on the accuracy of the outcome of  
22 Plaintiff's report. Specifically, USC had a practice of predetermining outcomes in favor  
23 of its desired resolution. And, USC predetermined the outcome of Plaintiff's complaint  
24 in favor of Perpetrator due to his attorney's involvement.  
25

26 75. USC also failed to follow its own policies in responding to Plaintiff's complaint. For  
27 example, USC allowed Perpetrator to review all of Plaintiff's submitted evidence before  
28 providing his own evidence.

1 76. A particularized causal connection existed between USC’s desired, flawed outcome and  
2 gender bias. Specifically, prior to the conclusion of USC’s investigation into Plaintiff’s  
3 report, Means explicitly stated that USC would find in favor of Plaintiff “over [her] dead  
4 body.” On information and belief, Means made this statement because Perpetrator hired  
5 an attorney who had successfully sued USC multiple times on behalf of accused, male  
6 students. USC also had a de facto practice of predetermining Title IX investigations in  
7 favor of the accused.  
8

9 77. As a result of the aforementioned erroneous outcome, Plaintiff suffered emotional  
10 distress, including but not limited to, emotional distress, fear, anxiety, and trauma; lost  
11 past and future earnings and earning capacity; and delays in pursuing her career.  
12

13 **WHEREFORE, PLAINTIFF** prays for a jury trial and for judgment against Defendant as  
14 follows:  
15

16 **FOR ALL CAUSES OF ACTION**

- 17 1. For past, present, and future non-economic damages in an amount to be determined  
18 at trial;
- 19 2. For past, present, and future special damages, including but not limited to past,  
20 present, and future lost earnings, economic damages and others, in an amount to be  
21 determined at trial;
- 22 3. Any appropriate statutory damages;
- 23 4. For costs of suit;
- 24 5. For interest based on damages, as well as pre-judgment and post-judgment interest as  
25 allowed by law;
- 26 6. For attorney’s fees pursuant to 42 U.S.C. § 1988 or as otherwise allowable by law;
- 27 7. For such other and further relief as the Court may deem proper.  
28

1 Date: October 16, 2020

Respectfully submitted,

2  
3 By: /s/ Alexander S. Zalkin  
4 Alexander S. Zalkin, Esq.  
5 THE ZALKIN LAW FIRM, P.C.  
6 10590 W. Ocean Air Dr., Ste. 125  
7 San Diego, CA 92130

8 Amy Poyer, Esq.  
9 **THE CALIFORNIA WOMEN'S LAW CENTER**  
10 360 N. Pacific Coast Hwy., Ste. 2070  
11 El Segundo, CA 90245

12 *Attorneys for Plaintiff*