

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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JOHN DOE,	)	
Plaintiff	)	CIVIL ACTION NO.: 3:16cv-30184-MAP
v.	)	
	)	
WILLIAMS COLLEGE,	)	
	)	
Defendant.	)	
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**PLAINTIFF’S MOTION FOR IMMEDIATE EX PARTE HEARING ON  
PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER AND  
MEMORANDUM OF LAW IN SUPPORT THEREOF**

Plaintiff, John Doe<sup>1</sup> (“John” and “Plaintiff”), through counsel, Stacey Elin Rossi, files this Motion for Immediate Ex Parte Hearing on Plaintiff’s Motion for Temporary Restraining Order and in support thereof, states:

**INTRODUCTION**

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests this Court immediately preserve the last, actual, peaceable, uncontested status which preceded the pending controversy by:

1. Enjoining Defendant Williams College (“Williams,” “Defendant Williams,” and “College”) from adjudicating and sanctioning Plaintiff;
2. Ordering the College to allow Plaintiff to earn his degree;
3. Expunging Plaintiff’s disciplinary records from all College records;

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<sup>1</sup> All personally identifying information has been redacted to protect the privacy of the party herein referred to as John Doe, the complainant, and of his accuser whom is referred to as Susan Smith.

4. Enjoining Defendant from violating Plaintiff's right to privacy under the Family Educational Rights and Privacy Act (FERPA) and Massachusetts Privacy Act (M.G.L. C. 214, § 1B), and
5. Representing Plaintiff's good standing to third parties.

John, a student who completed all the coursework and credit requirements for earning a bachelor degree and who attended graduation on June 5, 2016, but was not given his degree, requests Defendant be enjoined from adjudicating, sanctioning, and denying John his degree. Immediate injunctive relief via a Temporary Restraining Order is warranted here as John will suffer immediate and irreparable injury if the status quo is not preserved until a hearing can be held on a preliminary injunction.

### **BACKGROUND**

This breach of contract, negligence, and defamation action was filed on November 23, 2016, based on diversity jurisdiction under 28 U.S.C. §§ 1331 and 1332<sup>2</sup> and arises out of Defendant's handling of a complaint of sexual misconduct against Plaintiff. (Doc. 1 [Compl.]) Plaintiff asserts Williams' investigation and decisions were biased, unfair, and discriminatory and in violation of Williams' policies as written and implemented.

Plaintiff's action for injunctive relief, declaratory judgment, and damages arises from Defendant's wrongful and negligent denial of Plaintiff's degree resulting from the application of "disciplinary procedures" that were in violation of the College's rules and policies, hence its contractual obligations as written and implemented; the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688 [2011])(commonly known as "Title IX") and its implementation of regulation at 34 C.F.R. 106; Massachusetts Civil Rights Act

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<sup>2</sup> John, a United States citizen, is not a Massachusetts resident. (Compl. ¶ 1.) Williams is a private liberal arts college in Williamstown, Massachusetts. (Id. ¶ 2.)

(M.G.L. C. 12, §§ 11H, 11I); Massachusetts Unfair and Deceptive Practices Act (M.G.L. C. 93A and M.G.L. C. 93 §102); principles of good faith, fair dealing, due process and fundamental fairness; negligence, assault, and defamation. Defendant also violated Plaintiff's right to privacy under the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99) and Massachusetts Privacy Act (M.G.L. C. 214, § 1B). Plaintiff seeks injunctive relief, expungement of his record, damages, and attorney fees.

### **STATEMENT OF FACTS**

John relies upon his Verified Complaint and Jury Trial Demand (Doc. 1 ["Compl."]), Motion for Emergency Temporary Restraining Order and Memorandum of Law in Support Thereof (Doc. 3), Motion for Preliminary Injunction (Doc. 4), and Memorandum of Law in Support of Plaintiff's Motion for Preliminary Injunction (Doc. 6) filed concurrently on November 23, 2016 in the above-captioned proceeding, which sets forth facts demonstrating Plaintiff's entitlement to immediate injunctive relief. This motion re-alleges and reasserts the allegations and arguments set forth in the Verified Complaint, Motion for Emergency Temporary Restraining Order and Memorandum of Law, Motion for Preliminary Injunction, and Memorandum of Law in Support of Plaintiff's Motion for Preliminary Injunction as if fully set forth herein.

In addition, John asserts facts concurrent and subsequent to the November 23, 2016 filings. In his pursuit to continue his education, in the hope that he obtain his bachelor degree as result of this litigation, John inquired into the law school application deadlines for entry in Fall 2017. As stated in his Verified Complaint, John took the LSAT in February 2016. (Compl. ¶ 45) His plan had been to apply to law school for entry in Fall 2016, but was derailed by the disciplinary proceedings at the College.

In mid November, after nearly one month had passed since the College Hearing Panel had its October 21, 2016 “hearing,” John discovered that the continued delay in receiving his degree caused him to miss nearly all the early decision deadlines at law schools he was exploring. Brooklyn Law School’s early decision deadline was December 1, 2016. NYU Law School’s early admission deadline was November 15, 2016. The deadline for Columbia Law School’s Early Decision Plan (EDP) was November 15, 2016. One exception is the University of Connecticut’s early action application program which has a deadline of February 1, 2017.

Regular decision deadlines follow soon thereafter. For example, the regular decision deadline at Columbia Law is February 15, 2017. Continued delay in receiving his degree will cause him to miss upcoming regular decision deadlines as well as the February 1 early decision deadline at UConn. Consequently, he will “lose” another academic year of his life in addition to the one year he has already lost. He cannot afford to continue to suffer these grave harms to his academic and professional life. This irreparable injury is imminent, not speculative, and an emergency.

## **ARGUMENT**

### **I. FEDERAL PRACTICE REQUIRES THE PLAINTIFF’S ATTORNEY TO SUBMIT A DECLARATION INDICATING THE STEPS TAKEN TO ATTEMPT TO NOTIFY THE OPPOSING PARTY OF THE MOTION FOR TEMPORARY RESTRAINING ORDER. FRCP 65(B).**

On November 23, 2016, Plaintiff’s attorney submitted a declaration indicating the steps taken to attempt to notify the opposing party on page 22 of Plaintiff’s Motion for Emergency Temporary Restraining Order and Memorandum of Law in Support Thereof (Doc. 3). This Certification of Notice on Motion for Temporary Restraining Order indicated that Plaintiff’s attorney sent an email to and telephoned Defendant Williams College’s attorney Jeffrey F. Jones on November 22, 2016 at 4:00pm informing him that Plaintiff John Doe would be filing a

Verified Complaint and requesting a Temporary Restraining Order and Preliminary Injunction from the Federal District Court of Massachusetts against Defendant on November 23, 2016.

(Doc. 3 at 22.)

Both Williams College and Defendant's Attorney Jones's Office, VP Office of Finance and Administration at Williams College, are registered participants of the Electronic Case Filing System (CM/ECF). In filing the initiating documents in CM/ECF on November 23, 2016, Plaintiff's attorney selected the College and the VP Office of Finance and Administration at the College to receive notices of all the documents. Receipt of the notices was confirmed by Defendant's attorney in an email to Plaintiff's attorney on November 27, 2016 in which Defendant's attorney refers to reviewing the docket of this case.

The court issued the summons for Plaintiff's attorney to download and serve upon Defendant on November 29, 2016. Personal, in hand service, of the summons and initiating documents was made to the College via the VP Office of Finance and Administration on December 1, 2016. Therefore, service of process was made twice, one time electronically on November 23, 2016 and the other in hard copy on December 1, 2016. (See attachment.)

On December 9, 2016, per the December 8, 2016 Order of the court, a copy of said Order was conveyed to Defendant's counsel.

In conclusion, the request for a Temporary Restraining Order has been with adequate notice to Defendant.

## **II. THE COURT MAY ISSUE A TEMPORARY RESTRAINING ORDER.**

Rule 65(b) of the Federal Rules of Civil Procedure provides that "the court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and

irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.”

Plaintiff satisfies both A and B of Rule 65(b), even though Defendant has been given notice on the Motion for Restraining Order. Regarding (A), as established in its Motion for Emergency Temporary Restraining Order and Memorandum of Law in Support Thereof, its Verified Complaint, and with the additional facts in the background above, Plaintiff has shown that it meets the standard for issuance of a Temporary Restraining Order. John adequately pled:

1. He has a clearly ascertainable need of protection. The circumstances are very grave.
2. There is a strong likelihood that he will succeed on the merits.
3. He will suffer irreparable harm if an injunction does not issue.
4. He has no adequate remedy at law or in equity other than an injunction.
5. The balance of equities weighs in John’s favor.
6. Injunctive relief is in the public interest.

Regarding (B), as set forth above, the movant's attorney has certified in writing not only that efforts were made to give notice but that notice was actually given and received. In fact, Defendant has had 14 days to file responses to the Motions (Doc. 3 and Doc 4.) and as little as “same-day notice...suffices for the issuance of a TRO” in federal court. *CIENA Corp. v. Jarrad*, 203 F.3d 312, 319 (4<sup>th</sup> Cir. 2000).

Immediate injunctive action by this court would not run counter to the notion that court action may only be taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute. This is because reasonable notice and an opportunity to be heard has been granted to Defendant.

In conclusion, the court should grant Plaintiff's request for an immediate ex parte hearing on this Motion, as Plaintiff has set forth compelling reasons for immediate court action herein.

### **CONCLUSION**

WHEREFORE, this Court should enter a Temporary Restraining Order staying imposition of the College's ongoing adjudication and sanction of Plaintiff and from entering any notations or information concerning Plaintiff's disciplinary proceedings from the College or other changes in his student status resulting from the disciplinary proceedings. Such Order is warranted here because specific facts in Plaintiff's Verified Complaint clearly establish immediate and irreparable injury, loss, and damage required under Fed. R. Civ. P. Rule 65.

Plaintiff is willing to post bond; however, it suggests no bond be imposed as no potential costs or damages to the enjoined party exist if found to be wrongfully enjoined.

Plaintiff respectfully requests this Court issue a Temporary Restraining Order as provided in its attached proposed order without delay as any further delay will compromise Plaintiff's ability to proceed with his educational and career endeavors. Plaintiff also requests that the temporary restraining order remain in effect until such time as the Court dissolves it or grants Plaintiff's motion for preliminary injunction or other requested relief.

Date: December 12, 2016

**JOHN DOE  
PLAINTIFF**

By:           /s/ Stacey Elin Rossi            
STACEY ELIN ROSSI, BBO# 681084  
ROSSI LAW FIRM  
P.O. Box 442  
Hoosick Falls, New York 12090  
(413)248-7622

**CERTIFICATE OF SERVICE**

I, Stacey Elin Rossi, Attorney for Plaintiff John Doe, HEREBY CERTIFY that this document in connection with the above-captioned proceeding, filed through the Electronic Case Filing System (CM/ECF), will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on December 12, 2016.

/s/ Stacey Elin Rossi  
STACEY ELIN ROSSI, BBO# 681084  
ROSSI LAW FIRM  
P.O. Box 442  
Hoosick Falls, New York 12090  
(413)248-7622

## CERTIFICATE OF SERVICE

I, Stacey Elin Rossi, Attorney for Plaintiff John Doe, HEREBY CERTIFY that I caused a copy of the following documents in connection with docket 3:16cv-30184, filed through the Electronic Case Filing System (CM/ECF) on November 23, 2016: Summons, Verified Complaint and its Exhibits; Civil Cover Sheet, Motion to Seal Case (Motion to Proceed Under Pseudonym and For Protective Order) and its Proposed Order; Motion for Temporary Restraining Order, its Memo, and Attachments; and Motion for Preliminary Injunction, its Memo and Attachments, to be served upon the following individual on December 1, 2016 at 12:59pm via personal in-hand delivery by process server:

Jeffrey F. Jones  
College Counsel  
c/o VP Office of Finance and Administration  
Williams College  
Hopkins Hall  
880 Main Street  
Williamstown, MA 01267



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