

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SERGIO VERDU,

Plaintiff,

v.

THE TRUSTEES OF
PRINCETON UNIVERSITY, *et al.*,

Defendants.

Civ. Action No. 19-12484 (FLW)

OPINION

I. INTRODUCTION

Plaintiff Sergio Verdu (“Plaintiff”), a former professor in the Department of Electrical Engineering at Princeton University (the “University”), was terminated from his employment with the University in September 2018. His termination followed two separate investigations by the University, which concluded that Plaintiff had violated the University’s rules and policies governing sexual misconduct, prohibiting certain relationships between teachers and students, and requiring faculty members to be honest during interviews with investigators. In this action, Plaintiff sues the University, the University’s Board of Trustees, and certain administrators of the University who were involved in the investigations (collectively, “Defendants”),¹ claiming, among other things, that the University’s proceedings were tainted with gender bias against him. The Complaint asserts claims for violations of Title IX of the Education Amendments of 1972

¹ The Complaint names the following administrators of the University as defendants: Christopher L. Eisgruber, Deborah A. Prentice, Regan Crotty, Toni Marlene Turano, Lisa Michelle Schreyer, Michele Minter, Claire Gmachl, Cheri Burgess, Lynn William Enquist, Susan Tufts Fiske, Carolina Mangone, Harvey S. Rosen and Irene Small.

(Counts I thru III) and of Title VII of the Civil Rights Act of 1964 (Count IV). The Complaint also asserts a host of state statutory and common law claims (Counts V thru XIV).

Presently before the Court is Defendants' motion to dismiss the Complaint pursuant Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, Defendants' motion is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff's federal claims (Counts I thru IV) are dismissed for failure to state a claim, and the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims (Counts V thru XVI) at this time. Plaintiff is given leave to file an amended complaint to replead his federal claims, in a manner consistent with this Opinion, within forty-five (45) days. In lieu of filing an amended complaint, Plaintiff may pursue his state law claims in state court.

II. BACKGROUND²

Plaintiff taught at the University as a professor for nearly 35 years without incident until 2017. (Compl. ¶¶ 2, 49-50.) In April 2017, a twenty-five-year-old female graduate student, Yeohee Im ("Im"), reported to the University's Title IX Office that Plaintiff had sexually harassed her. (*Id.* ¶¶ 118-119.) The University convened a Title IX panel ("Panel") to conduct an investigation pursuant to its Sexual Misconduct Policy (the "First Investigation"). (*Id.* ¶¶ 76-91, 125.) The Panel ultimately found Plaintiff responsible for sexual harassment. (*Id.* ¶¶ 11, 164.) On June 9, 2017, the Dean of the Faculty disciplined Plaintiff for violating the Sexual Misconduct Policy by, among other things, placing him on a one-year probation. (*Id.* ¶¶ 165, 167.)

Plaintiff alleges that, following the conclusion of the First Investigation, Im believed that the sanction Plaintiff received was inadequate and, as a result, waged a public campaign against

² In this Background section, I provide a brief overview of the facts that are pertinent to this motion. In the Discussion section, *infra*, I set forth a more detailed recitation of the relevant facts that are alleged by Plaintiff in support of each of his claims.

him and the University. (*Id.* ¶¶ 177-208.) In the course of Im’s campaign, Plaintiff alleges that Im committed numerous violations of the University’s policies. For example, Plaintiff alleges that Im disclosed confidential records to news outlets, commented on the case to journalists who published articles about it, encouraged social media posts against Plaintiff, and filed complaints with professional associations to which Plaintiff belonged. (*Id.* ¶¶ 12, 177-226.) Plaintiff alleges that these efforts ultimately led to calls for his termination. (*Id.* ¶ 13.) Plaintiff further alleges that the University refused to address Im’s violations of the University’s Title IX policies or remedy the increasingly aggressive harassment and hostile environment caused by Im’s activities. (*Id.* ¶¶ 209-211, 215.)

In September 2017, officials at the University told Plaintiff that it was commencing a second investigation into reports that Plaintiff may have had a romantic relationship with a different graduate student (the “Second Investigation”). (*Id.* ¶ 239.) The student, E.S., had been a student in two of Plaintiff’s classes in 2011, and Plaintiff had served as a reader on her dissertation committee in Fall 2015. (*Id.* ¶¶ 235-236.) Witnesses reported that they had seen Plaintiff and E.S. kissing at a bar in Hong Kong during a conference, and photographs emerged of a man and woman kissing who appeared to be Plaintiff and E.S. (*Id.* ¶ 227.) Plaintiff alleges that Im unearthed this evidence because she was dissatisfied with the outcome of the First Investigation. (*Id.* ¶ 226.)

The University’s *Rules and Procedures of the Faculty*, at the time, prohibited “sexual or romantic relationship[s] involv[ing] individuals in a teacher-student relationship (e.g. being directly or indirectly taught, supervised or evaluated).” (*Id.* ¶ 229.) Plaintiff and E.S. both denied that any relationship had occurred during interviews with investigators. (*Id.* ¶¶ 124, 250, 299.) Notwithstanding those denials, the investigators ultimately concluded that Plaintiff and E.S. had

engaged in a romantic relationship during the time when he evaluated her dissertation. (*Id.* ¶ 261.) Plaintiff now admits in the Complaint that he and E.S. commenced a relationship in Spring 2014. (Compl. ¶ 235.) That relationship was ongoing during the period when Plaintiff evaluated E.S.'s dissertation. (*Id.* ¶ 298(h).)

On May 21, 2018, the University's President issued a memo to the University's Board of Trustees recommending that Plaintiff be dismissed. (*Id.* 304.)³ The memo concluded that Plaintiff lied during the Second Investigation; his lies were substantial and material under the University's rules and policies; the lies justified dismissal; Plaintiff also violated the University's policies on consensual relations; and neither Im nor Cuff (a former Assistant Professor who allegedly blamed his failure to obtain tenure on Plaintiff, *see* Compl. ¶ 4) influenced the proceedings in a manner that could excuse Plaintiff's conduct. (*See* Recommendation Memo, ECF 20-3.) On September 24, 2018, Plaintiff was notified that the University had terminated his employment effective immediately. (Compl. ¶ 324.)

Plaintiff alleges that, in the course of the Second Investigation, the University and its administrators violated numerous provisions of the University's *Rules and Procedures of the Faculty* and expanded the investigation to include baseless claims against him. (*Id.* ¶¶ 238-331.) Plaintiff further alleges that the University and other defendants relied on gender stereotypes,

³ Defendants attach this recommendation memo as an exhibit to their motion papers. (*See* Exhibit 1 to Declaration of Christine E. Gage, ECF 20-3 ("Recommendation Memo").) Because the Complaint quotes extensively from the recommendation memo and relies on it as the basis for multiple claims, this Court may consider the memo for the purposes of this motion to dismiss. *See Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006) ("In evaluating a motion to dismiss, we may consider documents . . . and any 'matters incorporated by reference or integral to the claim[.]'" *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993) (citing 5B Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (3d ed. 2004)); *see also Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993) (holding "that a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document."))

distorted the evidence and the applicable standards, and improperly relied upon Plaintiff's probation as a basis for his termination. (*Id.*) Plaintiff asserts that the University and other defendants were motivated by external pressure and the need to repair the University's tarnished reputation, which resulted from: (i) numerous investigations by the Department of Education's Office of Civil Rights for the University's alleged failure to properly respond to female students' claims of sexual assault and harassment (*id.* ¶¶ 66-73); (ii) public criticism over the alleged sexual harassment of a number of female students in the University's German Department (*id.* ¶ 75); (iii) criticism of the University by Im and Cuff for the results of the First Investigation (*id.* ¶¶ 180-187, 191-201, 208, 216-220); and (iv) the rebirth of the #MeToo movement, which had gained momentum during the timeframe of the Second Investigation and contributed to further criticism of the University and public calls for Plaintiff's termination (*id.* ¶¶ 188-190, 202-207, 212-214, 221-225).

III. LEGAL STANDARD

Rule 12(b)(6) authorizes a defendant to move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* This "plausibility standard" requires that the plaintiff allege "more than a sheer possibility that a defendant has acted unlawfully," but it "is not akin to a 'probability requirement.'" *Id.* (citing *Twombly*, 550 U.S. at 556). Although the court must accept the allegations in the complaint as true, it is not compelled to accept "unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation," *Morrow v. Balaski*,

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