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15 Attorneys for Plaintiff

16 IN THE UNITED STATES DISTRICT COURT  
17 FOR THE DISTRICT OF ARIZONA

18 ANNA L. BABLER, a single woman,  
19 Plaintiff,

20 v.

21 ARIZONA BOARD OF REGENTS, a  
22 public entity.

23 Defendant.

Cause No.:

COMPLAINT

(Jury Trial Demanded)

24 Plaintiff Anna L. Babler (“Ms. Babler”), for her Complaint against Defendant  
25 Arizona Board of Regents (“ABOR”), states as follows:  
26



1 endangering, threatening, or causing physical harm to other students such as Ms. Babler ,  
2 misconduct involving alcohol and drugs , sexual harassment , sexual discrimination , and  
3 sexual offenses including sexual assault .  
4

5 7. The Sigma Chi house where Ms. Babler was sexually assaulted is located on  
6 the ASU campus at Alpha Drive and East 6<sup>th</sup> Street, and is operated by Sigma Chi subject  
7 to its agreements with and recognition by ASU.  
8

9 8. Sigma Chi is subject to the authority of and control by ASU, which can  
10 withdraw recognition of it, place it on probation, and suspend or revoke its rights,  
11 privileges, recognition, and/or support for misconduct by its members, including sexual  
12 misconduct.  
13

14 9. The ASU University Initiatives Manual, USI 1301-01, sets forth the  
15 conditions and minimum expectations ASU had of Sigma Chi in exchange for the  
16 university's recognition and support. These included, without limitation, that Sigma Chi  
17 and its members, including Mr. Gallagher and Mr. Potter, comply with the ASU Student  
18 Code of Conduct and all applicable federal, state, and local laws; maintain chapter liability  
19 insurance; follow ASU risk management policies; participate in risk management and  
20 alcohol education programs; report critical incidents and Code of Conduct violations; and  
21 minimize the risk of harm to others while accepting accountability for actions of the  
22 chapter.  
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1           10.     Sigma Chi was also subject to ASU policies prohibiting hazing, including  
2 USI 104-03.

3  
4           11.     As a sanctioned ASU residence on the ASU campus where ASU students  
5 lived subject to ASU policies and control, the operation and activities of the Sigma Chi  
6 house were educational programs or activities as contemplated by Title IX and regulations  
7 promulgated thereunder.

8  
9           12.     ASU had control over the harassers and the context of the harassment  
10 complained of herein.

11                           **ASU's Deliberate Indifference to the Sexual Assault of**  
12                           **Anna Babler at the Sigma Chi House**

13           13.     On February 1, 2008, Ms. Babler was an ASU freshman who had resided for  
14 roughly two weeks at ASU's Pi Beta Phi sorority house.

15           14.     Ms. Babler attended a party given by Sigma Chi the evening of February 1,  
16 2008. The party was a Sigma Chi "bid night" "toga party" at which new Sigma Chi  
17 pledges were present, and partygoers wore costumes based on Roman Empire themes.  
18 The party was a social function approved by ASU.

19  
20           15.     On information and belief, members and pledges of Sigma Chi contributed  
21 money to pay for alcohol to be served at the toga party, either individually or through  
22 social dues. Sigma Chi and its members and pledges knew that many of the female guests  
23 at the toga party would be underage, but followed the Sigma Chi practice of serving them  
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1 alcohol and encouraging their drunkenness, in violation of Sigma Chi's agreements with  
2 ASU.

3  
4 16. At the toga party at the restaurant, and later at the Sigma Chi house, Sigma  
5 Chi and its members and pledges illegally served alcoholic beverages to underaged  
6 minors, including Ms. Babler, who was 19 years old at the time, in violation of agreements  
7 with ASU.

8  
9 17. At the restaurant, Matthew Potter or another Sigma Chi member prepared  
10 and gave Ms. Babler an adulterated alcoholic drink that had been spiked with a drug  
11 designed to incapacitate her and impair her memory.

12  
13 18. Ms. Babler's memory is impaired about events after the spiked drink until  
14 waking on February 2, 2008, at the Sigma Chi house, missing her purse and some of her  
15 clothes, and in severe rectal pain.

16  
17 19. After she awoke in pain at the Sigma Chi house, Ms. Babler returned to the  
18 Pi Beta Phi house, and was taken to the Tempe St. Luke's Hospital Emergency  
19 Department by two friends and the president of the ASU Panhellenic Council.

20  
21 20. At the hospital, Ms. Babler underwent a sexual assault examination. The  
22 examination findings were that she had been sodomized with significant "anal injury" with  
23 rectal and vaginal pain, bloody stool, and exposure to bodily fluids. The diagnosis was  
24 "sexual assault" and "exposure to bodily fluids" through "forced anal penetration" and  
25 possible vaginal penetration also. She had visible bruising around her anus.  
26

1           21.    At 1:58 p.m., February 2, 2008, the Emergency Department contacted the  
2 ASU police department to request that an officer be dispatched to the Emergency  
3 Department to open a sexual assault investigation.  
4

5           22.    ASU Officers Janda and Brunatti arrived at the hospital. Officer Janda  
6 spoke briefly to Ms. Babler about her report of rape, asking whether she remembered  
7 saying “no,” and whether she had been drinking. Ms. Babler told him that she had no  
8 memory of the incident, and that she had been drinking.  
9

10          23.    Despite Ms. Babler’s obvious physical injuries and rectal pain, Officer Janda  
11 refused to authorize either a drug screen, rape kit for DNA analysis, or SANE  
12 examination, and obstructed and shut down the investigation that should have begun at  
13 that time.  
14

15          24.    The attending emergency room physician argued with Officer Janda that a  
16 SANE examination was required because of Ms. Babler’s injuries, but Officer Janda  
17 refused to allow it.  
18

19          25.    On information and belief, the reason Officer Janda would not conduct a  
20 proper investigation of Ms. Babler’s sodomy and sexual assault because she had consumed  
21 alcoholic beverages before the assault, was a pretext to minimize ASU’s liability.  
22

23          26.    Either Officer Brunatti or Officer Janda briefly spoke with the three women  
24 who had taken Ms. Babler to the emergency room, but took no notes. The officer  
25  
26

1 expressed disbelief in what they and Ms. Babler had said, and blamed Ms. Babler for  
2 having been forcibly sodomized.

3  
4 27. One of the women tried to report that she had barely escaped being raped at  
5 the Sigma Chi house in 2006, but the officer said he was not interested in hearing about it.

6 28. The president of the Panhellenic Council asked one of the ASU police  
7 officers to allow a rape kit in light of Ms. Babler's injuries, but he refused.

8  
9 29. Ms. Babler's sister Sara Babler had driven with a friend from Tucson to be  
10 with Ms. Babler in the emergency room. Sara Babler also asked for a rape kit to be done  
11 and was told that it had not been authorized.

12 30. Ms. Babler spoke with her father by telephone from the Emergency  
13 Department and said that a forensic investigation was not going forward. Her father then  
14 spoke with the Emergency Department physician to request a drug screen and rape kit.  
15 The physician told Mr. Babler neither could be done because "ASU refused to authorize"  
16 them.  
17

18  
19 31. ASU policy in 2008 was that no rape kits for ASU students would be  
20 allowed without ASU campus police authorization, regardless of the wishes of the student  
21 or physicians.

22 32. After Ms. Babler was discharged, Sara Babler drove her to her house in  
23 Tucson, where they were joined by their mother, who flew from Indiana to be with Ms.  
24 Babler. The next day they took Ms. Babler to the Northwest Medical Center Hospital in  
25  
26

1 Tucson, where Anna was evaluated by the attending physician as a “crime victim” of  
2 “sexual assault.” By then, however, it was too late to perform a drug screen or rape kit.

3  
4 33. Sigma Chi member David Gallagher has been identified by both Pi Beta Phi  
5 and Sigma Chi members as an assailant of Ms. Babler.

6 34. Mr. Gallagher and/or other Sigma Chi members raped and forcibly  
7 sodomized Ms. Babler at the Sigma Chi house without her consent and when she was  
8 incapable of consent.  
9

10 35. On information and belief, Mr. Gallagher had a history of attempted sexual  
11 assault that was known to Sigma Chi and perhaps to ASU.

12 36. In April 2008, after Ms. Babler’s assault, Mr. Gallagher attempted to  
13 digitally sexual assault a Pi Beta Phi member at the Sigma Chi house while she was  
14 sleeping.  
15

16 37. At the time of Ms. Babler’s assault, Mr. Gallagher’s nickname among Sigma  
17 Chi members was “Therapist” – which stood for “The Rapist” – which was written on the  
18 door of his room.  
19

20 38. On February 4, 2008, two days after Ms. Babler was sodomized, ASU  
21 received and communicated to its Judicial Affairs officers a report that “Anna Babbler  
22 [sic] anally assaulted at ΣX but police said that because she was drunk they were dropping  
23 it. ΣXs have hired legal counsel.”  
24  
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1           39. ASU was required by the Clery Act, 20 U.S.C. § 1092(f)(2000), to report to  
2 the U.S. Department of Education, and to post publically, all reports of sexual assaults  
3 made to its police or its Judicial Affairs or other personnel.  
4

5           40. ASU has never reported and posted Ms. Babler's rape and sodomy in an  
6 Annual Security Report.  
7

8           41. ASU has in recent years systematically and severely underreported sexual  
9 assault reports. For 2008, ASU reported and posted only four forcible sexual assault  
10 reports in its 2009 Annual Security Reports, despite, on information and belief, having  
11 received at least several dozen reports.  
12

13           42. On information and belief, the motivations of ASU police for refusing to  
14 investigate Ms. Babler's rape and sodomy included ASU's pressure or policy to minimize  
15 sexual assault reports to make ASU appear safer than it was.  
16

17           43. ASU's Office of Student Life – Judicial Affairs' limited investigation of Ms.  
18 Babler's rape consisted only of one interview of Ms. Babler and one interview of one of  
19 her sorority sisters. No Sigma Chi members were ever questioned.  
20

21           44. After her March 5, 2008, interview, the single sorority sister who was  
22 interviewed spoke with Ms. Babler, then recontacted the Judicial Affairs investigator. She  
23 told the investigator that Ms. Babler told her important new information Judicial Affairs  
24 should hear, and gave the investigator the name of a witness Judicial Affairs should  
25 interview.  
26

1 45. During the following days, Judicial Affairs never returned the sorority  
2 sister's telephone messages about this important information and witness. Indeed, after  
3 March 5, 2008, Judicial Affairs never did anything more to investigate Ms. Babler's rape.  
4

5 46. On March 28, 2008, ASU discontinued the Judicial Affairs investigation of  
6 Ms. Babler's rape, converting the proceeding from an active investigation to an "FYI" –  
7 for your information – file.  
8

9 47. Having lost faith in ASU's police and Judicial Affairs investigations, fearful  
10 of retaliation by Sigma Chi members, and traumatized by the rape, Ms. Babler, on the  
11 advice of her therapist, left ASU permanently near the end of March without finishing the  
12 spring 2008 semester of her freshman year.  
13

14 48. On information and belief, no action or discipline of any kind has ever been  
15 taken against Mr. Gallagher or Mr. Potter by either Sigma Chi or ASU because of Ms.  
16 Babler's rape.  
17

18 49. On information and belief, no action has ever been taken by ASU against  
19 Sigma Chi as a result of Ms. Babler's rape, even though Sigma Chi had been placed on  
20 probation — again — the day before Ms. Babler's rape.  
21

22 **Ms. Babler's Losses of Educational Opportunities and Benefits and ASU's**  
23 **Continuing Deliberate Indifference**

24 50. Ms. Babler was severely traumatized by having been raped and sodomized at  
25 the Sigma Chi house February 2, 2008.  
26

1           51. Ms. Babler had to leave the Phoenix area immediately afterwards, going to  
2 her sister's Tucson home and receiving counseling in Tucson.

3           52. Ms. Babler attempted to return to ASU but was beset by panic attacks and  
4 uncontrollable fear on campus, especially at night. She was terrified of being alone at  
5 night. She had great difficulty attending classes. She felt helpless and isolated.

6           53. ASU did nothing to accommodate Ms. Babler's fears and needs, and took no  
7 steps to ensure that Mr. Gallagher and his friends would not encounter her.

8           54. ASU's failures to investigate the rape and to protect and accommodate Ms.  
9 Babler violatd the following requirements of federal law as set forth in 20 U.S.C. §§ 1681,  
10 et seq.; 34 C.F.R. § 106.31; and *The Revised Sexual Harassment Guidance: Harassment of*  
11 *Students by School Employees, Other Students, or Third-Parties — Title IX*, U.S. Dep't of  
12 Educ., Office of Civil Rights (2001):  
13  
14  
15

- 16           ▪ The school must take "immediate effective action to *eliminate the hostile*  
17 *environment.*" 34 C.F.R. § 106.31(b) (emphasis added).
- 18           ▪ The school must take "corrective actions to stop the harassment, prevent  
19 its recurrence, and *remedy the effects on the victim.*" (Emphasis added).
- 20           ▪ The school must protect and accommodate the victim by:
  - 21           ▪ Placing her and the harasser(s) in separate classes.
  - 22           ▪ "Directing the harasser to have no further contact."
  - 23           ▪ "[M]inimiz[ing] the burden on the student who has been harassed."
  - 24           ▪ Conducting "special interventions" with the harassing *group*.
  - 25
  - 26

- 1                   ▪ “[A]ssisting the student in making program or schedule changes”  
2                   such that her academic record is unaffected.
- 3                   ▪ The school must “communicate the message that the school does not  
4                   tolerate harassment and will be responsive to any student who reports  
5                   that conduct.”
- 6                   ▪ The school should “train the larger school community.”
- 7                   ▪ The school must “investigat[e] the complaint to the extent possible  
8                   including by reporting it to the Title IX coordinator” or officer.

9  
10           55. Ms. Babler will be returning to a 4-year college for the first time in August  
11 2010 when she begins classes at the University of Arizona.

12           56. Ms. Babler has been diagnosed with ongoing severe post traumatic stress  
13 disorder caused and exacerbated by her callous treatment by ASU after the rape.

14           57. Ms. Babler’s college education has been severely disrupted by ASU’s  
15 deliberate indifference and failures to investigate her rape and protect and accommodate  
16 her thereafter. As a direct and proximate result, she has and will suffer past and future lost  
17 educational opportunities and benefits, additional costs of education, severe emotional and  
18 psychological distress which has and will interfere with her life, relationships, and  
19 education in countless ways, and the expenses of medical and psychological rehabilitation  
20 and treatment.  
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1 **ASU's Prior Actual Knowledge of and Deliberate Indifference to the Risk of Sexual**  
2 **Assault and Harassment by Sigma Chi and its Members**

3 58. For more than five years preceding Ms. Babler's rape, ASU had been on  
4 notice of the risk of sexual harassment by Sigma Chi and its members, but had taken no  
5 actions that eliminated that risk.

6 59. ASU had prior knowledge that, for more than five years preceding Ms.  
7 Babler's rape, Sigma Chi and its members committed continual Code of Conduct  
8 violations as well as violent offenses in a series of incidents that, taken together, created a  
9 hostile sexual environment for female students like Ms. Babler.

10 60. ASU also had prior knowledge of acts by Sigma Chi and its members of  
11 physical aggression, intimidation, humiliation, or hostility based on or related to sex that,  
12 combined with incidents of direct sexual harassment, created a sexually hostile  
13 environment of which ASU was aware.

14 61. ASU recognized and materially supported Sigma Chi even though it knew  
15 its activities involving women and alcohol encouraged its members to engage in  
16 opprobrious acts that put female students at risk of sexual harassment and assault.

17 62. ASU's failures to act to end or remedy these risks amounted to a policy of  
18 deliberate indifference to providing the adequate guidance, supervision, training, and  
19 control that were obviously necessary to eliminate sexual discrimination by Sigma Chi in  
20 the form of obvious risks of sexual harassment and assault.  
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1           63. ASU officials with authority to take corrective action to end these risks and  
2 discrimination knew of the serious, actual, or obvious risks of sexual harassment and  
3 assault created by Sigma Chi activities and members, both through reported incidents and  
4 the obvious risks presented by an out-of-control fraternity.  
5

6           64. On August 23, 2003, the director of the Office of Student Life – Judicial  
7 Affairs, who had the authority to take corrective action to remedy sex discrimination at  
8 and by Sigma Chi, wrote  
9

10                   Isn't Sigma Chi supposed to not be having these parties  
11 unless approved through you all and DPS. If all of these  
12 parties took place and clearly alcohol was flowing, isn't that a  
13 policy violation we (or GRB) should act on? **If we later  
were to get a report of sexual assault, etc., and we all took  
no action on these parties, that would be problematic.**

14 (Emphasis added.)

15           65. In 2003 ASU placed Sigma Chi on probation for one year, and the national  
16 fraternity suspended it for 45 days, for hazing, paddling that bruised naked buttocks, and  
17 forced drug use.  
18

19           66. During this first probationary period, the ASU Greek Life office received a  
20 report of screams for help and a possible violent sexual assault at the Sigma Chi house.  
21

22           67. Sigma Chi's probation was extended by ASU to November 2004 due to  
23 continuing incidents; however, ASU allowed Sigma Chi to continue its activities  
24 throughout the course of this and later probations and extensions.  
25  
26

1           68. In spring 2004, multiple incidents of hazing, abuse of pledges, and alcohol  
2 violations were reported to the ASU Office of Student Life – Judicial Affairs.

3  
4           69. On May 4, 2004, the mother of a female ASU student complained to the  
5 Office of Student Life – Judicial Affairs about coerced sexual acts together with nakedness  
6 and alcohol consumption at a Sigma Chi party, and her daughter’s fear of retaliation  
7 against her by Sigma Chi members. ASU took no action in response.

8  
9           70. On August 31, 2004, ASU notified Sigma Chi of ongoing probation  
10 violations, but took no further action.

11           71. On August 14, 2005, ASU received a report about Sigma Chi members  
12 threatening a woman with killing cats she had been feeding. The woman later found a  
13 mutilated and decapitated cat that had been killed and left for her as a warning by Sigma  
14 Chi members. ASU took no action against Sigma Chi.

15  
16           72. On September 24, 2005, a couple informed ASU President Michael Crow  
17 about harassment of hotel guests and thousands of dollars of damage to a San Diego hotel  
18 by Sigma Chi members, which was confirmed by the hotel. ASU took no action against  
19 Sigma Chi.

20  
21           73. In late 2005 and throughout 2006, ASU received continuing reports of  
22 hazing and “disturbing information” about Sigma Chi. ASU took no action.

23  
24           74. During the spring and summer of 2006, ASU received reports that Sigma  
25 Chi aided in the hazing of Alpha Phi sorority pledges by forced inappropriate dancing,  
26

1 simulated stripteases, and sexually suggestive “girl on girl” activities involving unwilling  
2 new female members. ASU determined not to pursue a complaint against Sigma Chi.

3  
4 75. In 2006-07, ASU received ongoing letter(s) and police reports about  
5 improper and illegal party activities at Sigma Chi. ASU took no action.

6 76. On August 19, 2007, ASU received a report of another sexual assault by  
7 Sigma Chi members. In response, ASU’s Judicial Affairs Director noted,

8  
9 **We know Sigma Chi well.**

10 77. ASU charted “no less than 10 alcohol related violations” at the Sigma Chi  
11 house in a 3-day period in August 2007.

12 78. ASU placed Sigma Chi on probation again January 31, 2008, *the day before*  
13 *Ms. Babler’s rape*, for the duration of spring semester 2008. This probation was for  
14 violations ASU had known about since September 15, 2007 – 4.5 months earlier –  
15 involving hazing, alcohol, threats of physical harm, bathrooms intentionally soiled with  
16 vomit and fecal matter, and improper activities at a “party house.”

17  
18 79. On December 8, 2007, ASU received a complaint about a partygoer who  
19 was assaulted by Sigma Chi members and hospitalized with a broken nose and bloodied  
20 face.

21  
22 80. On January 13, 2008, approximately 2 weeks before Ms. Babler’s assault,  
23 the ASU Office of Student Life – Judicial Affairs received a report from an alarmed  
24 female passerby who had observed inappropriate behavior, gestures, and comments,  
25  
26



1 alcohol and drugs, and mostly naked girls at the Sigma Chi house. The ASU Office of  
2 Student Life – Judicial Affairs commented, “I think we have done what we can.”

3  
4 81. Even though Sigma Chi was on probation at the time of Ms. Babler’s rape,  
5 on information and belief, no action was taken against the fraternity as a result of her rape.

6 82. After Ms. Babler’s rape, throughout 2008 and 2009, Sigma Chi misconduct  
7 continued, including yelling obscenities at passersby, “girls stripping and beer bonging,”  
8 the resignation of the female Sigma Chi faculty sponsor, the harassment with gay slurs  
9 (“faggot” and “stupid gay loser”) of a family with three young children by Sigma Chi  
10 members at a basketball game, and telephone sexual harassment of residence hall advisors.  
11

12 83. Although ASU’s Karen Zorn noted that, “I believe this group really needs to  
13 sit out for a while,” the only sanction by ASU was another extension of Sigma Chi’s  
14 probation to May 16, 2009, and, as a result of the telephone sexual harassment while on  
15 extended probation, a warning letter from ASU, and Sigma Chi’s assistance at a football  
16 game.  
17

18 84. For over five years, ASU officials had actual knowledge of a stream of  
19 sexually discriminatory incidents at the Sigma Chi house involving sexual harassment,  
20 assault, humiliation, abuse, coercion, and violence. High-ranking ASU officials with the  
21 authority to end the discrimination by withdrawing recognition, prosecuting disciplinary  
22 proceedings, suspending and expelling members, and revoking the chapter’s rights,  
23  
24  
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1 privileges, and support, instead did nothing except place Sigma Chi on probations and  
2 extensions which allowed its misconduct to continue unabated.

3  
4 85. The out of control and sexually hostile environment at Sigma Chi, which  
5 was obvious to ASU officials, encouraged and promoted the improper sexual activity and  
6 alcohol and drug misconduct that led to Ms. Babler's rape.

7  
8 86. ASU, by consistently refusing to end sexual discrimination at Sigma Chi,  
9 created and fostered the sexually hostile environment that encouraged improper sexual  
10 activity and alcohol and drug misconduct that led to Ms. Babler's rape.

11  
12 **CLAIM FOR RELIEF**  
**(Sexual Harassment in Violation of Title IX)**

13 87. Plaintiff realleges and incorporates by this reference the allegations of  
14 paragraphs 1-86 hereof.

15 88. ASU was deliberately indifferent to the rape and sodomy of Ms. Babler,  
16 which was known to ASU officials with the authority to take corrective action, in  
17 numerous ways, including the following: the obstruction and improper performance of an  
18 appropriate investigation of Ms. Babler's rape by ASU's campus police; utilization of a  
19 sexually discriminatory campus police policy that prevented rape kit examinations unless  
20 authorized by police; the failures properly to investigate and discipline Sigma Chi and its  
21 members for Ms. Babler's rape; and ongoing failures to accommodate Ms. Babler's safety,  
22 emotional fragility, and academic and physical well-being as required by Title IX.  
23  
24  
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1           89. In response to Ms. Babler's rape, ASU failed to take immediate and  
2 appropriate steps to investigate and otherwise determine what occurred, and to take  
3 prompt and immediate steps to end any harassment, eliminate the hostile environment, and  
4 prevent harassment from occurring again.  
5

6           90. In response to Ms. Babler's rape, ASU failed to take steps to remedy the  
7 effects of the harassment on her, including explaining all avenues of formal and informal  
8 action, including procedures for sexual harassment complaints and how they work;  
9 separating her from her harassers and Sigma Chi members and pledges and directing them  
10 to have no contact with her; consideration of changing housing arrangements; protecting  
11 her privacy and physical safety; minimizing the academic burdens on Ms. Babler; assisting  
12 her in making program and schedule changes and other steps to ensure that her academic  
13 record was not adversely affected; and providing the full panoply of support services and  
14 protection to avoid her having to leave ASU.  
15  
16

17           91. In response to Ms. Babler's rape, ASU failed to undertake special training  
18 and interventions directed at Sigma Chi and other fraternities, changes of policies, and  
19 dissemination of information to ensure the safety of female students, and to communicate  
20 the message that ASU does not tolerate harassment such as Ms. Babler suffers, and will be  
21 responsive to any student who reports such conduct.  
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1           1.     An award of damages against Defendant to be determined at trial, including,  
2 without limitation, reimbursement and payment for all of Plaintiff's past and future tuition  
3 or related expenses; payment of Plaintiff's expenses incurred as a consequence of the  
4 sexual assault; damages for deprivation of equal access to the educational benefits and  
5 opportunities provided by ASU; and damages for past, present and future emotional pain  
6 and suffering, ongoing and severe mental anguish, and loss of past, present and future  
7 enjoyment of life in amounts to be determined by the jury;  
8

9  
10           2.     Statutory interest on all sums awarded;

11           3.     An award of costs and attorney fees pursuant to 42 U.S.C. § 1988(b); and

12           4.     Any other relief as is proper.  
13

14                           DATED this 12<sup>th</sup> day of July 2010

15   **HUTCHINSON BLACK AND COOK, LLC**

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17   Baine P. Kerr

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