

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JONATHAN N. WATERS	)	
	)	Civil Action No. 14 CV 1704
Plaintiff,	)	
	)	Judge James Graham
v.	)	Magistrate Judge Kemp
	)	
MICHAEL V. DRAKE, M.D., et al.	)	<b>JURY DEMAND</b>
	)	<b><u>ENDORSED HEREON</u></b>
Defendants	)	

**ANSWER OF DEFENDANTS MICHAEL V. DRAKE, M.D.,  
JOSEPH E. STEINMETZ, PH.D. AND THE OHIO STATE UNIVERSITY**

Defendants Michael V. Drake, M.D. (“President Drake”), Joseph E. Steinmetz, Ph.D. (“Dr. Steinmetz”) and The Ohio State University (“Ohio State”) (collectively “defendants”), for their answer to plaintiff Jonathan N. Waters’ Complaint, state the following:

**PRELIMINARY STATEMENT**

Ohio State is a land grant institution of higher learning founded in 1870. Its mission is “to advance the well-being of the people of Ohio and the global community through the creation and dissemination of knowledge.” In furtherance of that mission, certain of its students participate in The Ohio State University Marching Band (the “Band”). The Band is a class within the School of Music for which Band members receive grades and academic credit. As such, the Band is subject to the same codes of conduct as other academic programs at Ohio State, and its staff and members are required to comply with Ohio State’s policies.

Plaintiff Jonathan N. Waters was an unclassified, at-will employee of Ohio State whose employment could be ended anytime by either him or Ohio State. *See* January 30, 2013 Employment Letter to Jonathan N. Waters (attached as Exhibit A). He was not a tenured professor. Instead, he was an untenured staff member of the School of Music who was paid at a rate of \$150,000 per year for his services as Director of the Marching and Athletic Bands at the time of his termination on July 24, 2014. All amounts owing to him as an at-will employee were fully paid.

Mr. Waters was himself a former member of the Band from 1995-1999. Then, for approximately twelve years, Mr. Waters was part of the Band's leadership or "core power structure." *See* Ex. B to Pl.'s Compl., at Attachment 9, Page ID 442. He was Assistant Director from 2002 to 2012, Interim Director in 2012, and announced as permanent director in October 2012, under terms that were finalized by letter on January 30, 2013 and made effective February 1, 2013. Mr. Waters was both a product, and a leader, of the culture of the Band as it was found to exist at the time of his termination. That culture was permeated by highly sexualized and improper conduct, including hazing and harassment that no student member should be subjected to, legally or morally. Among other things, the following occurred:

- 1) In 2007, a calendar was created in which male Band members were pictured almost fully nude, with strategically placed band equipment, and engaged in what Mr. Waters describes as "seductive poses." *See* Mr. Waters' Complaint at ¶ 33. Mr. Waters kept a copy of the calendar in his personal office on campus, and it was found there after his termination. The first page of the calendar reads "***For Jon Waters' eyes only.***"
- 2) During a Band event known as "Fesler Night," videos were shown to Band students and staff, including Mr. Waters, which had been created by different sections, or "Rows," of the Band. Fesler Night occurs at the start of each new academic year immediately after selection of Band members for the coming season. The event serves to introduce new members to the Marching Band, its staff, and the particular rows and their traditions. In the words of a student speaking to Mr. Waters on camera, "for F-Night, we always have videos, and often those videos have

- inappropriate content.” These videos include passages showing such things as: (1) in 2010 and 2013, male T-Row and H-Row members virtually nude, with strategically placed band equipment, much like the 2007 calendar found in Mr. Waters’ office; (2) in 2012, a topless female Band member opening the door for an unsuspecting pizza deliveryman; (3) in 2011, a video involving inappropriate nicknames and partial nudity being presented for approval to Mr. Waters, who himself appeared in the video; and (4) in 2010, a female Band Member on her knees in front of two male Band members simulating performing oral sex on them, while singing “Hang on Sloopy.” Mr. Waters did not disclose the existence of these videos during the Title IX investigation, and they were only discovered after his termination.
- 3) Members of the Band published and republished a Songbook. The Songbook was titled the “Unofficial OSU Marching Band School Songs.” It contained songs which are grossly sexual, homophobic, and anti-Semitic. One of the songs was actually titled, “*Jon Waters*,” sung to the tune of Green Acres. *See* 2010 Version of “Unofficial OSU Marching Band School Songs” at 25 (attached as Exhibit B); *see also* 2006 Version of “Unofficial OSU Marching Band School Songs” (attached as Exhibit C).
  - 4) Members of the Band gave a “Rookie Midterm” to freshman on bus trips. The Rookie Midterm contained grossly sexual content, including, but not limited to, instructions to “draw female reproductive organs with arrows detailing what each part is used for” and a “Boner Question: List all of the Members of \_\_\_ Row in descending order from deepest box to largest penis. Explain your reasoning in 2 to 3 sentences.” *See* “Rookie” Midterm Examination at 3 (attached as Exhibit D).
  - 5) The publication of a “Trip Tic” newsletter for away game trips which included sexually explicit content and identified sexual conduct occurring between Band members.
  - 6) The occurrence of Midnight Ramp, a Band activity in which certain student members wearing only their underwear marched into the football stadium through the ramp. Mr. Waters authorized and watched the Midnight Ramp in 2012 and 2013, as Interim Director and Director, and in prior years. Band staff stated that he canceled the event in June, 2014, after learning of the University’s Title IX investigation into the Marching Band’s culture. Upon seeing the Midnight Ramp event for the first time in 2013, a recently-hired staff member stated he remembered thinking, “I don’t believe I just witnessed that.”
  - 7) In September, 2013, Ohio State played the University of California in football in Berkeley, California. During the Title IX investigation, Mr. Waters denied there had been misconduct at that time. A physical therapist from Student Health Services, who also was a long-time volunteer for the Band, accompanied the Band on the trip in her volunteer role. During the trip, she reported inappropriate conduct to Mr. Waters. Due to the extent of the conduct, and her belief Mr. Waters would not take action to stop it, she resigned her position with the Band after she had volunteered for eighteen

years. Among other things, students were performing “Flying 69’s” on at least one bus. A “Flying 69” consisted of Band members posing in a “69” position while holding themselves in the air from luggage racks. Mr. Waters was on the bus where this conduct occurred.

- 8) The use of nicknames for Band members, 50% of which Mr. Waters estimated were sexual during the 2013-2014 academic year. Nicknames included, but were not limited to, Ballsacagawea, Bater, Captain Dildo, Fleshlight, Jizzy, Pat Fenis, Testicles, Triple Crown, Twat Thumper, and Twinkle Dick. When asked by the investigators whether he thought such nicknames are appropriate, Mr. Waters answered, “No.” When asked why he therefore tolerates such sexual nicknames, Mr. Waters replied, “Good point.”
- 9) The use of “Rookie Introductions.” These occurred at the front of a moving bus enroute to away games and often included sexually explicit questioning and sexual jokes.
- 10) New members were required to perform “Tricks” in connection with nicknames, such as:
  - A Band member, whose nickname was Captain Dildo, chanting, “haaaay, we want some p\*\*\*\*aay.”
  - A Band member, whose nickname was Barker, acting as if he was outside a strip club soliciting clientele, saying “girls, girls, we have these types of girls.”
  - A female Band member, whose nickname was Squirt, sitting on male students’ laps and pretending to orgasm. On “make the Band night,” the same female student was asked to sit on her own younger brother’s lap and pretend to orgasm.
  - A male Band member, whose nickname was Jizzy, conducting a full-body demonstration of a flaccid penis becoming erect and spitting candy. This trick was occasionally performed with another female student who pretended to stimulate the male student.
- 11) Immediately following a sexual harassment training for the Band on January 22, 2014, Mr. Waters received a complaint from a female student that she felt harassed by inappropriate, offensive, and sexist comments certain male Band members were tweeting *during* the sexual harassment training session.

Unfortunately, given the sexualized culture of the Band, additional improper conduct occurred, including at least three allegations of sexual assault on female members of the Band and the Athletic Band:

- a. In March, 2012, a female member of the Band reported a sexual assault by a male Band member.

- b. In March, 2013, a female member of the Athletic Band reported to Mr. Waters an incident of sexual assault by a male member of the Athletic Band. Mr. Waters' decision was to punish both the female and male members by preventing them from traveling on an upcoming Athletic Band trip. Ohio State's Office of Legal Affairs and the Compliance Office had to intervene to prevent Mr. Waters from punishing the female student after she reported sexual assault, which would have clearly contravened Title IX.
- c. In October, 2013, a third female Band member reported to Mr. Waters she had been sexually assaulted by a male Band member. The male Band member was ultimately expelled from Ohio State.

Much of the foregoing conduct came to light after the parent of the female student who was sexually assaulted in October, 2013, complained about the sexualized culture of the Band. This legally constituted a Title IX complaint, and prompted Ohio State and its Office of University Compliance and Integrity ("Compliance Office") to conduct the required investigation. As the investigation proceeded, a new President, Dr. Michael V. Drake, M.D., arrived at Ohio State on June 30, 2014. President Drake, after a review of the hazing and harassing culture of the Band, and after consultation with senior leaders of the University and apprising the Board of Trustees, determined Mr. Waters should no longer be the Director of the Band. The Board of Trustees has since firmly supported the decision to terminate Mr. Waters due to his failure to satisfy Ohio State's expectations.

After Mr. Waters' termination, a larger question faced President Drake: What to do going forward? It was in this context that he spoke to the newly installed members of the 2014 Band on August 21, 2014. Consistent with the hazing and intimidation culture which Mr. Waters oversaw, Mr. Waters has now selectively quoted from the tape recording in a transparent attempt to paint President Drake in a false light and in an attempt to intimidate him into reinstating Mr. Waters. When the passage quoted by Mr. Waters is read in context, it is evident President Drake was merely confirming that neither he nor Ohio State would condone the "offensive," "inappropriate," "vulgar," and "demeaning" conduct which prior leadership, including Mr.

Waters, had failed to stop. President Drake further confirmed he and Ohio State are proud of the newly installed members of the 2014 Band and believe they will enjoy success on and off the field. Plaintiff's misuse of President Drake's words and deeds of encouragement to the current members of the Band, which were spoken after the termination of Mr. Waters and focused on the Band's future, is disappointing.

Not content to quote Dr. Drake out of context, Mr. Waters also names him personally in this lawsuit as the first named defendant. In furtherance of his approach, Mr. Waters' Complaint attempts to ridicule Ohio State's Compliance Office by, among other things, calling the legally required Title IX report by the last name of one of its authors and belittling the investigators whose federally required work unearthed the culture of hazing and harassment within the Band.

Additionally uncovered by the investigators, and others, was a pattern of concealment which existed both before and during the investigation, and continues currently. For example, after three reported sexual assaults by male Band members on female Band members, Mr. Waters was asked in October and November of 2013 by multiple persons if problems existed with the Band's culture. He denied the existence of any problems as "rumors" and stated problems existed in the Band's culture fifteen years ago, but no longer did. It was not until confronted with information uncovered by the investigation, that Mr. Waters finally admitted in his July 14, 2014, written culture statement that the Band's culture was in "dire need of change" and "not . . . in a 'good place' currently."

During the investigation, Mr. Waters claimed it was up to the students to change the culture, and not him as a leader of the Band, and now alleges in his Complaint that he did this because he did not want to "damage the morale and feelings" of Band members. He also told investigators that he never yelled or cursed at students. The investigation uncovered this was not

the case. In a tape recording documenting a discussion between Mr. Waters and a Band member, Mr. Waters can be heard yelling at a Band member: “You f\*\*\*ing better realize who you’re dealing with . . . . We tell you to stand on your head . . . you’ll stand on your Godd\*\*\* head.” Mr. Waters also claimed during the investigation he had not seen a copy of the Songbook since he was a student. Yet, in a written statement he incorporates into his Complaint, Band Squad Leaders state he saw a copy as late as 2012.

Also in the midst of the investigation, Mr. Waters called the Title IX investigators to inform them that a former Band member, and current high school Band director, had been arrested for having sex with a high school band student. Mr. Waters informed the investigators that one of the Title IX Complainants had posted a comment to a reporter’s Facebook page linking the arrest to the sexualized culture of the Band. Mr. Waters was cautioned not to interfere or contact the reporter. The comment was subsequently removed from Facebook by the reporter. Mr. Waters initially denied to the Title IX investigators that he had contacted the reporter. He subsequently admitted, however, that he had misled the investigators and had in fact contacted the reporter.

Unfortunately, the concealment did not end with the release of the investigation report. Mr. Waters states in his Complaint that the 2007 calendar depicting almost nude male Band members with strategically placed band equipment “was no longer published when [he] became Director.” As discussed above, however, the Fesler Night videos showcase the same partially nude calendar images and sexually suggestive poses with different students in 2010 and 2013.

Hazing is never viewed as objectionable by the leaders of the hazing. Those who are subject to it often come to believe it is proper conduct, and in turn, inflict it upon the next generation of victims. It takes an independent assessment by those not themselves embedded in

the culture to break the chain. Thanks to the work of the Compliance Office, and the courage of President Drake, the Ohio State Board of Trustees, and other University leaders, that chain has now been broken at the Band.

### **FIRST DEFENSE**

1. State that the unnumbered paragraphs pled by Mr. Waters on page 2 of his Complaint, and the unnumbered heading “A” on page 3 of his Complaint, fail to state any allegations which require a response, but, to the extent allegations are being made, defendants deny the same. In response to the allegations in paragraph 1 of the Complaint, defendants admit that Mr. Waters’ position as full-time Director of the Band officially began on February 1, 2013, having been announced by Provost Steinmetz on October 10, 2012. Defendants state that Mr. Waters was not faculty; rather, his position was an unclassified, at-will position. *See* January 30, 2013 Employment Letter to Jonathan N. Waters (attached as Exhibit A). Prior to becoming Director, Mr. Waters was a Band member from 1995 through 1999, a graduate assistant from October 1, 2000 to 2002, Assistant Director from June 1, 2002 through May 31, 2012, Interim Director in 2012, and was announced as permanent director in October, 2012, under terms that were finalized by letter on January 30, 2013 and made effective February 1, 2013. *See* January 30, 2013 Employment Letter to Jonathan N. Waters (attached as Exhibit A). During that entire time, he was part of the Band’s “core power structure.” *See* Ex. B to Pl.’s Compl., at Attachment 9, Page ID 442. Defendants also admit that, throughout its history, including during the period Mr. Waters was Director, the Band received national and international attention for its performances. That attention has continued after Mr. Waters’ termination. Defendants additionally admit that Mr. Waters traveled throughout Ohio and elsewhere to fundraise on behalf of Ohio State, but deny he raised tens of millions of dollars for the *But For Ohio State*



campaign. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 1 of the Complaint, and therefore deny the same.

2. Deny that defendants, or anyone employed by or acting on behalf of Ohio State, “destroy[ed]” Mr. Waters’ good name. Defendants admit Mr. Waters received a performance review signed by Dr. Richard Blatti on or about June 2, 2014, but state Dr. Blatti did not know about the conduct uncovered by the Title IX investigation at that time. Defendants state Mr. Waters was terminated from his unclassified, at-will position on July 24, 2014, after it was discovered that, despite holding leadership positions in the Band for over twelve years, he permitted conduct he now pleads in his Complaint was “offensive,” “inappropriate,” “vulgar,” and “demeaning,” and a culture he admits was “in dire need of change” and “not . . . in a ‘good place’ currently,” in his July 14, 2014 culture statement. *See* July 24, 2014 Termination Letter Addressed to Jonathan N. Waters (attached as Exhibit E); July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program,” at 1 (attached as Exhibit F). Defendants admit the Band was successful on the field, but state the Band continues to receive accolades after Mr. Waters’ termination. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 2 of the Complaint, and therefore deny the same.

3. State the unnumbered allegations pled by Mr. Waters in heading “B” on page 4 of his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 3 of the Complaint, defendants deny that “troubling issues were brewing” for Ohio State and that

the United States Department of Education, Office for Civil Rights (“OCR”) had started an investigation of Ohio State on or about May 1, 2014 over the handling of sexual harassment complaints. Instead, defendants state that OCR and Ohio State commenced a proactive compliance review of the University’s Title IX program on June 23, 2010, almost four years before the Title IX investigation of the Band began and over four years before Mr. Waters’ termination. *See* September 11, 2014 Letter from OCR to President Drake at 1 (attached as Exhibit G). Defendants also state that on May 22, 2014, a female Band member and her parent claimed Mr. Waters had retaliated against her for reporting a sexual assault by a male Band member. *See* July 22, 2014 Investigation Report at fns. 2 and 7 (attached as Exhibit H). Defendants admit that on May 23, 2014, the parent spoke with Ohio State’s Compliance Office and requested an investigation into the Band’s culture, citing a sexualized culture, and, by way of example, an activity known as Midnight Ramp, in which certain Band members march into the stadium in their underwear. *Id.* at 3. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 3 of the Complaint, and therefore deny the same.

4. State the allegations made by the Band member and her parent constituted complaints under Ohio State’s Sexual Harassment Policy 1.15 (attached as Exhibit I) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*, and required an investigation of the complaints as a matter of federal law. Defendants deny the investigation was deeply flawed, incomplete, skewed, contained factual errors or material omissions, was result-driven, was distorted to appease OCR or denied Mr. Waters due process. Defendants admit Chris Glaros, Assistant Vice President of Compliance Operation and Investigations for the Ohio State Compliance Office, and former First Assistant Attorney General in the Ohio Attorney

General's Office, oversaw the Title IX investigation into the Band's culture. Defendants also state that Mr. Glaros formerly assisted with corporate investigations while an attorney with Jones Day and additionally oversaw the part of the Title IX investigation relating to the claim of retaliation lodged against Mr. Waters, which did not find evidence to substantiate the claim of retaliation. Defendants additionally state the Title IX investigation also was overseen by Gates Garrity-Rokous, a former Assistant U.S. Attorney with the United States Department of Justice, with previous experience investigating civil and criminal healthcare fraud in the state of Connecticut. Defendants further state that, after the investigation was complete, and prior to Mr. Waters' termination, Mr. Glaros issued letters to Mr. Waters detailing the findings of the Title IX investigation, as to each Title IX complaint. *See* July 22, 2014 Letters From Christopher Glaros to Jonathan N. Waters (attached as Exhibits J and K).

Further answering, defendants admit Mr. Waters received a performance review signed by Dr. Richard Blatti on or about June 2, 2014, and state Dr. Blatti did not know about the conduct uncovered by the Title IX investigation at that time, but deny Mr. Waters has accurately quoted the review. Instead, Mr. Waters has out of context inserted the phrase "of the OSU Band" into the quote. Defendants also admit Mr. Waters was terminated from his unclassified, at-will position on July 24, 2014, after it was discovered that, despite holding leadership positions in the Band for over twelve years, he failed to eliminate conduct he admits was "offensive," "inappropriate," "vulgar," and "demeaning," and a culture he admits was "in dire need of change" and "not . . . in a 'good place' currently," in his July 14, 2014 culture statement. *See* Plaintiff's Complaint at ¶¶ 25, 33; July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, "An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program," at 1 (attached as Exhibit F). Further answering, defendants state they

are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 4 of the Complaint, and therefore deny the same.

5. Deny the allegations contained in paragraph 5 of Mr. Waters' Complaint, and further answering, state OCR called the Title IX investigation into the Band's culture "comprehensive." See <http://www.ed.gov/news/press-releases/us-department-education-reaches-agreement-ohio-state-university-address-and-prev>. Defendants also state that Mr. Waters, and his attorney, have since confirmed the findings of the report. See Columbus Dispatch, *Ohio State Band Director Jonathan Waters May Fight Firing* (published July 25, 2014) ("Jonathan tried . . . to change that culture."); The Today Show (August 5, 2014) ("Indeed this is a culture, an entrenched culture, that dates back to the 1930's.").

6. State Mr. Waters failed to attach the statements to which he refers or to identify the persons making the statements, and accordingly, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint, and therefore deny the same.

7. State Mr. Waters failed to attach the statements to which he refers or to identify the person making the statement, and accordingly, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint, and therefore deny the same.

8. Deny that the investigation was deeply flawed, careless, or executed without concern for the truth. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 8 of the Complaint, and therefore, deny the same.

9. State the unnumbered allegations pled by Mr. Waters in heading "C" on page 6 of

his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 9 of Mr. Waters' Complaint, defendants admit President Drake stands by the Title IX investigation's findings related to the Band's culture and the decision to terminate Mr. Waters. Defendants also admit President Drake addressed the Columbus Metropolitan Club on August 13, 2014, regarding the termination of Mr. Waters' unclassified, at-will employment with Ohio State, but state that his comments at that time speak for themselves. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 9 of the Complaint, and therefore, deny the same.

10. Admit President Drake spoke to Band squad leaders on August 21, 2014, and state that the transcript attached to the Complaint speaks for itself, but deny Mr. Waters has accurately, and in context, portrayed the statements by President Drake, and deny that this event was a private meeting. Defendants also deny that problems existed with the Title IX investigation or report. Defendants state that, on August 21, 2014, President Drake proactively reached out to the student leaders of the newly constituted 2014 Band to inspire them and convey that the current student members of the Band need not be defined by the culture and actions of the past, so in that sense, the investigation report was "historical" to them. Further answering, defendants deny all remaining allegations contained in paragraph 10 of the Complaint.

11. State the unnumbered allegations pled by Mr. Waters in heading "D" on page 7 of his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 11 of Mr. Waters' Complaint, defendants deny the Title IX investigation report related to the

Band's culture was deeply flawed and deny that July 23, 2014 was the first time Mr. Waters and his counsel learned of the findings and conclusions of the Title IX investigation into the Band's culture, given that on July 22, 2014, Mr. Glaros issued letters to Mr. Waters outlining the findings related to both Title IX complaints. *See* July 22, 2014 Letters From Christopher Glaros to Jonathan N. Waters (attached as Exhibits J and K). Additionally, defendants state that Mr. Waters was informed of the allegations against him and the possibility of termination prior to July 23, 2014, at a prior meeting with Provost Steinmetz which occurred on July 14, 2014.

Defendants admit Provost Steinmetz met with Mr. Waters on July 23, 2014 related to the findings of the Title IX investigation and offered Mr. Waters the opportunity to resign by 5:00 p.m., and that Mr. Waters' counsel, David Axelrod, was present for the meeting. Defendants also admit Mr. Waters was provided with a copy of the report related to the Title IX investigation of the Band's culture on July 23, 2014. Defendants further admit Mr. Waters' counsel requested an extension of the 5:00 p.m. deadline for Mr. Waters to resign, but deny that request was refused and, instead, state Ohio State extended the time for Mr. Waters to resign to approximately mid-morning on July 24, 2014. Defendants additionally admit a letter was sent to Mr. Waters dated July 24, 2014, which terminated Mr. Waters' unclassified, at-will employment with Ohio State. *See* July 24, 2014 Letter to Jonathan N. Waters. Further answering, defendants deny any remaining allegations contained in paragraph 11 of the Complaint.

12. State the unnumbered allegations pled by Mr. Waters in heading "E" on page 7 of his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 12 of Mr. Waters' Complaint, defendants deny they embarked on a "calculated public relations campaign" regarding the termination of Mr. Waters' at-will employment, deny they intended to,

or did, disparage Mr. Waters, and deny they “dragged” Mr. Waters’ name “through the mud.” Defendants also deny they “escalated” negative publicity via press releases issued by Chris Davey or that any statements Mr. Davey made were false or incendiary. Defendants state that it was Mr. Waters and his attorneys, not defendants, who engaged in a public relations campaign, including nationally televised appearances on the Today Show and Good Morning America, an appearance in a nationally broadcast Ohio State football game on Band Alumni Weekend, public statements in St. John’s Arena on Ohio State’s campus the same weekend, and public statements in newspapers and press conferences.

Defendants admit that as a public entity subject to the Ohio Public Records Act requirements, the Title IX investigation report into the Band’s culture was a public record, and, thus, publicly available to anyone, and, that Dr. Drake issued a video statement regarding the Title IX investigation findings. Defendants state that Mr. Waters’ allegations about the claimed effect of the Title IX investigation’s findings on the Band, and its current or former members, fail to assert any allegations about defendants which require a response, but to the extent allegations are being made, defendants deny the same. Defendants also state they are without knowledge or information sufficient to form a belief as to the truth of Mr. Waters’ allegation that news reports relating to the Title IX investigation were widely read, and therefore deny the same.

To the extent Mr. Waters refers to the Investigative Committee Report of TBDBITL Alumni Club, Inc., and/or its attachments (the “TBDBITL Report”), attached as Exhibit B to his Complaint, defendants state the Report speaks for itself. Defendants deny any area of the report upon which Mr. Waters relies as a basis for his claims in his Complaint. Defendants state the TBDBITL Report attempts to explain and justify conduct Mr. Waters himself has described as “offensive,” “inappropriate,” “vulgar,” and “demeaning” (for instance, in the alumni club’s view,

nicknames like “Tits McGee” were “not sexual,” *see* Ex. B to Pl.’s Compl. at Page ID 144). As Mr. Waters stated in writing during the Title IX investigation in his July 14, 2014 culture statement, the culture of the Band was “not . . . in a ‘good place’ currently.” *See* July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Change in The Ohio State University Marching & Athletic Band Program,” at 1 (attached as Exhibit F). When compared to Mr. Waters’ own statements about the Band culture, the TBDBITL Report is at odds with Mr. Waters’ own assessment of the Band culture. Further answering, defendants deny any remaining allegations in paragraph 12.

13. State the unnumbered allegations pled by Mr. Waters in heading “F” on page 8 of his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 13 of the Complaint, defendants deny Mr. Waters was a scapegoat, and deny Mr. Waters’ characterization of OCR’s compliance review. *See* September 11, 2014 Letter From OCR to President Drake at 1 (attached as Exhibit G). Defendants state the review did not end “earlier than expected,” but rather had been going on for four years, starting in 2010, and Ohio State had been discussing a voluntary Resolution Agreement to conclude the compliance review since August, 2013; OCR had been finalizing the Agreement before the investigation of the Marching Band, and then incorporated the Band issues into the Agreement after the investigation report was shared with OCR on July 24, 2014, the day Mr. Waters was terminated; and OCR has never indicated that it was ending the review because of the Band issues. *See* September 11, 2014 Letter From OCR to President Drake at 1 (attached as Exhibit G). Defendants admit the letter sent by OCR, ending the compliance review, referred to the culture of the Band. *See* September 11, 2014 Letter From OCR to President Drake at 20-21 (attached as Exhibit G). Further



answering, defendants deny any remaining allegations contained in paragraph 13 of the Complaint.

14. Deny the allegations stated in paragraph 14.

15. State they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, and therefore deny the same.

16. Deny Mr. Waters was terminated on July 23, 2014, and state Mr. Waters' termination letter was dated July 24, 2014. *See* July 24, 2014 Letter to Jonathan N. Waters. Defendants admit Mr. Waters was an unclassified, at-will employee of Ohio State who held the position of Director of Marching and Athletic Bands within the School of Music at the time of his termination and that his employment could be ended at any time by either Mr. Waters or Ohio State. *See* Employment Letter to Jonathan N. Waters dated January 30, 2014 (attached as Exhibit A). Defendants also admit Mr. Waters held leadership positions in the Band dating back to 2002, including Assistant Director from 2002 to 2012, Interim Director in 2012, and Director from 2012 to 2014. Further answering, defendants deny any remaining allegations in paragraph 16.

17. Deny President Drake was acting as President of Ohio State at all times material to the Complaint and state President Drake did not become the President of Ohio State until June 30, 2014. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 17 of the Complaint, and therefore deny the same.

18. Deny Joseph E. Steinmetz acted as Executive Vice President and Provost at all times material to the Complaint and state Provost Steinmetz did not become Provost of Ohio

State until July 1, 2013. Prior to that, he was Vice Provost for Arts and Sciences and Executive Dean of the College of Arts and Sciences, which encompassed the School of Music. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 18 of the Complaint, and therefore deny the same.

19. Admit that Ohio State is a federally-funded institution of higher education, and as such, is subject to the parameters of Title IX and the Title IX guidance promulgated by the Office for Civil Rights, which, among other things, requires Ohio State to take “immediate” action to eliminate sexual harassment and any sexually hostile environment in which students learn, work, or live. Further answering, defendants state they are without knowledge or information sufficient to form a belief as the truth of any remaining allegations contained in paragraph 19 of the Complaint, and therefore deny the same.

20. State they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint, and therefore deny the same.

21. Admit this Court has jurisdiction for the claims currently pled in Mr. Waters’ Complaint, but deny any remaining allegations contained in paragraph 21 of the Complaint.

22. Admit venue lies in this Court related to the claims currently pled in Mr. Waters’ Complaint, but deny any remaining allegations contained in paragraph 22 of the Complaint.

23. State the unnumbered allegations pled by Mr. Waters in the unlabeled heading and heading “A” on page 23 of his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 23 of Mr. Waters’ Complaint, defendants state that Mr.

Waters was announced as Director of the Band on October 10, 2012, with terms further codified through a letter dated January 30, 2013, and effective February 1, 2013; that the letter states Mr. Waters was an unclassified, at-will employee within the School of Music, who, among other things, was expected to “[i]nstill in the students the highest standard for their personal conduct, on and off the field, and in their interactions with internal and external constituencies,” and comply with all policies, including Ohio State’s Sexual Harassment Policy, which specifically includes a “duty to act” and required Mr. Waters to take immediate action and report all sexual harassment and misconduct within five working days of awareness. *See* January 30, 2014 Employment Letter to Jonathan N. Waters (attached as Exhibit A); Sexual Harassment Policy 1.15 (attached as Exhibit I); Office for Civil Rights, 2001 Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties (attached as Exhibit L). Defendants state the Band is an academic program within the School of Music for which students receive course credit and a grade, and that all Band members are required to comply with Ohio State’s Code of Student Conduct. *See* Ex. B to Pl.’s Compl., TBDBITL Report, at Attachment 9, Page ID 441, 444; Office of Student Life, *Code of Student Conduct*, Section 3335-23-02, at 1 (attached as Exhibit M). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 23 of the Complaint, and therefore deny the same.<sup>1</sup>

24. Admit Mr. Waters received a performance review signed by Dr. Richard Blatti on or about June 2, 2014, but state that Dr. Blatti did not know about the conduct uncovered by the Title IX investigation at that time. Defendants also admit that throughout the Band’s history, including during the period Mr. Waters was Director, the Band was successful on the field with

---

<sup>1</sup> All references to Page ID within the TBDBITL Report attached to and incorporated in Mr. Waters’ Complaint, refer to the “Page ID” number identified in the top right corner of the attachment.

its creative performances. Defendants state that the on-the-field success of the Band has continued after Mr. Waters' termination and the investigation did not concern the musical or creative aspects of the Marching Band program. Further answering, defendants deny any remaining allegations contained in paragraph 24 of the Complaint.

25. Admit that activities which were "demeaning" and created a hierarchy among members existed in the Band, that such activities continued during the twelve years Mr. Waters served as Assistant Director, Interim Director, and Director, and, that Mr. Waters had failed to eradicate them at the time of his termination on July 24, 2014. Further answering, defendants deny any remaining allegations contained in paragraph 25 of the Complaint.

26. Admit Mr. Waters received a performance review signed by Dr. Richard Blatti on or about June 2, 2014, but state that Dr. Blatti did not know about the conduct uncovered by the Title IX investigation at that time. Further answering, defendants deny any remaining allegations contained in paragraph 26 of the Complaint.

27. Admit the Band started as a quasi-military entity, but deny it still is. Defendants also state that Mr. Waters, regardless of the methodology he implemented, tolerated and failed to eradicate activities he himself believed were "offensive," "inappropriate," "vulgar," and "demeaning" at the time of his termination on July 24, 2014. Answering further, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 27, and therefore deny the same.

28. Deny Mr. Waters undertook "extensive" efforts to change the Band's culture, and state that despite holding leadership positions in the Band for over twelve years, Mr. Waters failed to eradicate the activities he, himself, pleads in his Complaint were "offensive," "inappropriate," "vulgar," and "demeaning," or that he had changed the culture of the Band

which he admitted in his July 14, 2014 culture statement, submitted during the investigation, was “in dire need of change” and “not . . . in a ‘good place’ currently.” *See* Plaintiff’s Complaint at ¶ 25, 33; July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program,” at 1 (attached as Exhibit F). Defendants also deny the TBDBITL Report in any way establishes that, as of the date of his termination, Mr. Waters had eradicated conduct that Mr. Waters himself admits was “offensive,” “inappropriate,” “vulgar,” and “demeaning,” or changed the culture in the Band which he indicated was “in dire need of change” and “not . . . in a ‘good place’ currently” in his July 14, 2014 culture statement. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 28, and therefore deny the same.

29. Deny Mr. Waters ended hazing in the Band. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29, and therefore deny the same.

30. Deny Mr. Waters “implemented” a policy prohibiting hazing or eradicated hazing in the Band. Defendants state the policy had existed for years, but had not been enforced. By way of example, defendants state that new Band members were assigned “Tricks” and were required to perform them on command, including, but not limited to, in 2013, when one Band member, whose nickname was “Captain Dildo,” was required to chant, “haaaay, we want some p\*\*\*\*aay,” and another Band member, whose nickname was “Barker,” was required to act as if he was outside a strip club soliciting clientele, saying “girls, girls, we have these types of girls,” and, in 2006, a female Band member, whose nickname was “Squirt,” was required to sit on male students’ laps and pretend to orgasm. On “make the Band night,” the same female student was

asked to sit on her own younger brother's lap and pretend to orgasm. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 30 of the Complaint, and therefore deny the same.

31. Deny Mr. Waters eradicated inappropriate behavior on buses. Defendants state that in the written statement Mr. Waters provided to Ohio State as part of the Title IX investigation into the Band's culture, Mr. Waters denied that any "questionable behavior" on buses had been reported to him in 2013. *See* Investigation Report at 10-11, 17 (attached as Exhibit H); Pl.'s Compl., Ex. B, Attachment 9, at Page ID 431. Defendants also state that a physical therapist, who had volunteered with the Band for 18 years, stated during the Title IX investigation that bus misconduct, including "Flying 69's" (which involved Band members posing in a "69" position while holding themselves in the air from luggage racks), occurred in 2013 on a trip to the University of California in Berkeley, on a bus being monitored by Mr. Waters. Defendants also state that the physical therapist reported the conduct to Mr. Waters and resigned from the Band due to her belief Mr. Waters would not address the misconduct. *See* Investigation Report at 10-11, 17 (attached as Exhibit H). Defendants additionally state that during the Title IX investigation into the culture of the Band, a witness described the use of "Rookie Introductions," which occurred at the front of a moving bus enroute to away games and often included sexually explicit questioning and dirty jokes. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 31 of the Complaint, and therefore deny the same.

32. Deny that Mr. Waters became aware of Trip Tics for the first time in 2012. Defendants state that as part of the Title IX investigation, a student witness disclosed that Band

members would typically provide Mr. Waters with a copy of Trip Tics. Defendants admit Trip Tics made fun of and insulted students and staff of the Band and that Mr. Waters banned Trip Tics in 2012 and suspended one student related to a Trip Tic in 2012. Defendants state, however, that as part of the Title IX investigation, a student witness disclosed that the only reason Trip Tics were banned in 2012 was because a female student who was disparaged in a 2012 Trip Tic was dating a Band instructor and the instructor asked Mr. Waters to ban them. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 32 of the Complaint, and therefore deny the same.

33. Admit that former members of the Band created and published an “offensive” and “inappropriate” “Boys of T Row Calendar” containing photographs of male members of the Band in various levels of undress, while holding strategically placed band equipment. *See Redacted Version Of “Boys of T Row Calendar”* (attached as Exhibit N). Defendants state the 2007 calendar appears to have been created for Mr. Waters during the time he held the leadership position of Assistant Director, as its first page reads, “*For Jon Waters’ Eyes Only.*” *Id.* Defendants also state that Mr. Waters concealed and failed to disclose the existence of the calendar during the Title IX investigation into the Band’s culture; that Mr. Waters kept this calendar in his on-campus office; and that the calendar was discovered there after his termination. Defendants deny Mr. Waters took steps to prohibit such conduct and state, after his termination, videos were discovered depicting T-Row and H-Row students engaged in similar conduct involving nude male students and strategically placed band equipment. Defendants state that during an event known as “Fesler Night,” those videos, and others created by different sections, or “Rows,” of the Band, were shown, with Mr. Waters’ authorization and knowledge, in

front of students and Band Staff, including Mr. Waters himself. Fesler Night occurs each year around the start of the new academic year, immediately after selection of the new Band for the coming season, and is intended to introduce and orient new members to the Band, its staff, and the particular rows and their “traditions.” Videos played on Fesler Night include such things as: (1) in 2010 and 2013, male H and T-Row members almost nude, with strategically placed band equipment, much like the 2007 calendar found in Mr. Waters’ office; (2) in 2012, a topless female Band member opening the door for an unsuspecting pizza deliveryman; (3) in 2011, a video involving inappropriate nicknames and partial nudity being presented for approval to Mr. Waters, who himself appeared in the video; and (4) in 2010, a female Band Member on her knees in front of two male Band members simulating performing oral sex on them, while singing “Hang on Sloopy.” Mr. Waters concealed and did not disclose the existence of the videos during the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 33 of the Complaint, and therefore deny the same.

34. Deny Mr. Waters banned alcohol during all Band activities before the Title IX complaint related to the Band’s culture was made. Defendants state that during the Title IX investigation, the physical therapist stated that Band members were drinking excessively during the University of California game trip. Defendants also state that, by Mr. Waters’ own admission in the culture statement he submitted to the University for consideration as part of the Title IX investigation, he did not ban alcohol during Band activities until after the Title IX investigation into the culture of the Band began: “Drinking on all band trips **will be** forbidden for anyone, even of legal drinking age for the 2014 season.” *See* Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Changes in The Ohio State University



Marching & Athletic Band Program,” at 5 (attached as Exhibit F). Defendants also state that many of the Fesler Night videos from 2012 and 2013, during which time Mr. Waters served as Interim Director and Director, glorify drinking with images such as students passed out. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 34 of the Complaint, and therefore deny the same.

35. Deny Mr. Waters demonstrated firm adherence to the alcohol and substance abuse policy of the Band and Ohio State. Defendants state that Mr. Waters did not ban alcohol during Band activities until after the Title IX investigation into the culture of the Band began: “Drinking on all band trips *will be* forbidden for anyone, even of legal drinking age for the 2014 season.” See Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program,” at 5 (attached as Exhibit F). Defendants state students received alcohol and substance abuse training from Ohio State resources. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 35 of the Complaint, and therefore deny the same.

36. Admit that during the over twelve years Mr. Waters held leadership positions in the Band, older Band members created “offensive” nicknames for younger members and, often, the nicknames were published in the Alumni Directory compiled by the TBDBITL Alumni Club, a 501(c)(3) organization separate and distinct from Ohio State. Defendants deny, however, that only “some” of the nicknames were offensive, because Mr. Waters indicated during the Title IX investigation fifty percent of current Band nicknames were inappropriate and should not have been permitted. See July 22, 2014 Investigation Report at 7 (attached as Exhibit H). Defendants

also deny that Mr. Waters took effective steps to eradicate all inappropriate and offensive nicknames and state it was not until after he was confronted with the Title IX investigation that Mr. Waters finally indicated a willingness to take steps to end the use of inappropriate nicknames for the 2014 season. *See* July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program,” at 3-4 (attached as Exhibit F). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 36 of the Complaint, and therefore deny the same.

37. Defendants admit the version of the Songbook attached to the Title IX investigation report was from 2006, but state, after Mr. Waters’ termination, newer versions of the Songbook were discovered from 2010, 2011, and 2012, which included new songs of an anti-Semitic, homophobic, and highly sexualized nature, including a song titled “*Jon Waters*,” sung to the tune of Green Acres. *See* 2010 Version of “Unofficial OSU Marching Band School Songs” at 25 (attached as Exhibit B). Defendants also state that during the course of the Title IX investigation, Mr. Waters denied having seen a version of the Songbook during his twelve years holding leadership positions in the Band and indicated he would be shocked if the Songbook was still circulated. On August 26, 2014, however, Band Squad Leaders stated Mr. Waters did in fact know about and saw a copy of the Songbook in at least 2012 when he was Director. *See* Ex. B to Pl.’s Compl., Attachment 9, at Page ID 431. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 37 of the Complaint, and therefore deny the same.

38. Deny Mr. Waters eliminated Midnight Ramp on May 9, 2014, and state that Assistant Director Michael Smith and Associate Director Chris Hoch stated during the Title IX

investigation that Mr. Waters did not announce Midnight Ramp would no longer take place until a meeting during the week of June 9, 2014, after Mr. Waters had been informed of the Title IX investigation. *See* Investigation Report at 5 (attached as Exhibit H). Defendants also deny that forms of clothing other than swimwear were eliminated in 2012, as Assistant Director Michael Smith stated during the Title IX investigation that during the 2013 Midnight Ramp event, some students still marched in their underwear and he recalled thinking at the time, “I don’t believe I just witnessed that.” *Id.* Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 38 of the Complaint, and therefore deny the same.

39. Defendants state they are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39, and therefore deny the same.

40. Deny the allegations contained in paragraph 40 of the Complaint. Defendants state Mr. Waters berated at least one student with threatening and profane language and another for giving Mr. Waters a bad review. Defendants also state that Mr. Waters denied ever yelling or cursing at students in the course of the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 40 of the Complaint, and therefore deny the same.

41. Deny that Mr. Waters had shaped the culture of the Band to eradicate the inappropriate culture, and state that Mr. Waters admitted the Band’s culture was “not . . . in a ‘good place’ currently” as of July 14, 2014, in his own written statement. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 41 of the Complaint and its subparts, and therefore deny the same.

42. Deny that Mr. Waters eradicated the inappropriate culture of the Band, and state that Mr. Waters has admitted the Band's culture was "not . . . in a 'good place' currently" as of July 14, 2014. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegation contained paragraph 42 contained in the Complaint, and therefore deny the same.

43. Deny that Mr. Waters eradicated the inappropriate culture of the Band, and state that Mr. Waters has admitted the Band was "not . . . in a 'good place' currently" as of July 14, 2014. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegation contained paragraph 43 of the Complaint, and therefore deny the same.

44. Deny Mr. Waters "instituted" the trainings alleged in paragraphs (a)-(d). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegation contained paragraph 44 of the Complaint and its subparts, and therefore deny the same.

45. Deny Mr. Waters "instituted" the trainings alleged in paragraphs (a)-(c). Defendants also deny the training in paragraph (c) focused on the culture issues identified by the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 45 of the Complaint and its subparts, and therefore deny the same.

46. Deny that Mr. Waters ensured there was a meaningful focus on sexual harassment and misconduct in the training of the Band. Answering further, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegation contained paragraph 46 of the Complaint, and therefore deny the same.

47. Deny Mr. Waters “instituted” the trainings alleged in paragraphs (a)-(b) and state the presentations in paragraphs (a)-(b) refer to the same training session, which was initiated by Andrea Goldblum, Ohio State’s Title IX coordinator at the time, and included presentations by Ms. Goldblum and the Office of Student Life, who initiated and pursued this training, despite Mr. Waters’ unresponsiveness to efforts to schedule such training, even after concerns about sexual assaults had been reported within the Band. Defendants also deny the training in paragraph (c) was instituted by Mr. Waters and state this training was instituted, instead, by the Athletics Department. Defendants additionally deny Mr. Waters instituted the training sessions alleged in paragraphs (d)-(f) and state Mr. Waters initially ignored multiple requests from the Office of Student Life related to such training, and only scheduled the trainings after learning of the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained paragraph 47 of the Complaint and its subparts, and therefore deny the same.

48. Deny Mr. Waters “instituted” the trainings alleged in paragraph (a) and state this training was, instead, instituted by the Athletics Department. Defendants also state that after Mr. Waters was terminated, it was discovered that on January 22, 2014, Mr. Waters received a complaint from a female Band member stating she felt harassed by the conduct of certain male Band members during the training session alleged in paragraph (a). Defendants also deny that Mr. Waters “instituted” the trainings alleged in (b)-(c), and state the trainings alleged in paragraphs (b)-(c) had not yet occurred at the time of the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 48 of the Complaint, and therefore deny the same.

49. Deny that the training alleged in (d) related to sexual harassment training. Defendants also state that the training alleged in (d) did not address the topic of culture issues and instead related to a discussion of the meaning and impact of the Band's performances to Ohio State. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth any remaining allegations contained paragraph 49 of the Complaint and its subparts, and therefore deny the same.

50. Defendants state they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint and its subparts, and therefore deny the same.

51. Deny that Mr. Waters engaged in "constant monitoring and situational awareness," and state that three reports of sexual assault occurred which involved female Marching and/or Athletic Band members reporting being assaulted by male Marching and/or Athletic Band members. Defendants state that in March, 2012, a female Band member reported a sexual assault by a male Band member. Defendants also state that in March, 2013, a second female Athletic Band member reported to Mr. Waters an incident of sexual assault by a male Athletic Band member and Mr. Waters' decision was to punish both the female and male members by preventing them from traveling on a Band trip. Ohio State's Office of Legal Affairs and the Compliance Office had to intervene to prevent Mr. Waters from punishing this female student for reporting sexual assault, in clear contravention of Title IX. Defendants additionally state that in October, 2013, a third female Band member reported to Mr. Waters she had been sexually assaulted by a male Band member. The male Band member was ultimately expelled from Ohio State. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth any remaining allegations contained paragraph 51 of the

Complaint and its subparts, and therefore deny the same.

52. Admit that Mr. Waters was aware of Ohio State's Sexual Harassment Policy, which requires staff members to report sexual harassment within five working days. Answering further, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained paragraph 52 of the Complaint and its subparts, and therefore deny the same.

53. Defendants state they are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 of the Complaint, and therefore deny the same.

54. Deny Mr. Waters requested a culture survey and deny there was no follow-up with Mr. Waters related to the culture of the Band. Further answering, defendants state Mr. Waters met with Provost Steinmetz on November 20, 2013, to discuss Mr. Waters' handling of a reported sexual assault by a female band member in October, 2013, and at that time, was asked about the culture of the Band by Provost Steinmetz. Defendants also state Mr. Waters denied the existence of an inappropriate culture and claimed that such issues existed fifteen years ago but no longer existed, consistent with his prior dismissal of such concerns as "rumors." *See* October 31, 2013 E-mail from Jonathan N. Waters to Gayle Saunders (attached as Exhibit O). Defendants admit the next day, Mr. Waters sent an e-mail to Provost Steinmetz indicating he would go along with Provost Steinmetz's suggestion that a culture survey be conducted. Defendants state that given the 2013 season was almost over, and in reliance on Mr. Waters' statement no culture issues existed, Provost Steinmetz believed it would be better to conduct the survey after the 2014 Band had been selected, and, in the meantime, proceed with sexual harassment training. Defendants also state that Provost Steinmetz believed it would be better to conduct the survey at

a later date to provide adequate time to ensure that the right firm was selected to perform the survey, given the Band's character as an academic program, not an Athletic team. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 54 of the Complaint, and therefore deny the same.

55. Deny Provost Steinmetz instructed Mr. Waters not to make Title IX training mandatory for Band members. Defendants admit Mr. Waters and Provost Steinmetz exchanged e-mails on January 16, 2014 and January 21, 2014. Defendants state Provost Steinmetz expressly stated it was "ok" for Band members to attend Title IX training being conducted by the Athletic Department, but did not want to make the Athletic Department training mandatory as he did not want Band members to miss class. Defendants also state Provost Steinmetz was concerned that Title IX training focused on athletes and athletic teams may not be applicable to the Band. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 55 of the Complaint, and therefore deny the same.

56. State that the unnumbered heading "B" on page 20 of Mr. Waters' Complaint fails to state any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 56 of Mr. Waters' Complaint, defendants deny OCR started an investigation of Ohio State on or about May 1, 2014, and instead, state Ohio State and OCR initiated a proactive compliance review of Ohio State on June 23, 2010, approximately four years before the Title IX investigation began and over four years before Mr. Waters' termination. *See* September 11, 2014 Letter from OCR to President Drake (attached as Exhibit G). Defendants state Mr. Waters is quoting passages from



OCR out of context and with additional language omitted, and therefore, deny any allegations relating to the OCR statement. For example, defendants state that Mr. Waters omitted from his Complaint additional language indicating that the OCR list contained two kinds of investigations—those opened because of complaints received and those initiated as compliance reviews. *See* September 11, 2014 OCR Statement Titled, “U.S. Department of Education Reaches Agreement with The Ohio State University to Address And Prevent Sexual Assault And Harassment Of Students” available at <http://www.ed.gov/news/press-releases/us-department-education-reaches-agreement-ohio-state-university-address-and-prev> (last visited October 7, 2014). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 56 of the Complaint, and therefore deny the same.

57. Deny OCR started an investigation of Ohio State on or about May 1, 2014, and instead, state Ohio State and OCR initiated a proactive compliance review of Ohio State on June 23, 2010, approximately four years before the Title IX investigation began and over four years before Mr. Waters’ termination. *See* September 11, 2014 Letter from OCR to President Drake (attached as Exhibit G). Defendants state that on May 22, 2014, a female Band member and her parent claimed Mr. Waters had retaliated against the Band member for reporting a sexual assault by a male Band member. *See* July 22, 2014 Investigation Report at fn. 2 (attached as I). Defendants admit that on May 23, 2014, the parent came back and requested an investigation into the Band’s culture, citing sexual misconduct such as Midnight Ramp, an activity where certain Band members march into the stadium in their underwear. *Id.* at 3. Both constituted Title IX complaints and required an investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining

allegations contained in paragraph 57 of the Complaint, and therefore deny the same.

58. Admit one of the Title IX complaints arose from a report that a female Band member had been sexually assaulted by a male Band member, but out of respect for the victim, Ohio State has refrained from describing the assault in detail. Defendants state the male Band member was then expelled from Ohio State. Defendants also state that the other Title IX complaint related to the Band's culture. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 58 of the Complaint, and therefore deny the same.

59. Admit the victim reported the sexual assault to Mr. Waters in October, 2013, and admit that Mr. Waters reported the incident to Ohio State's Title IX Coordinator. Defendants also admit that a Student Conduct inquiry occurred and the male Band member was expelled from Ohio State. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 59 of the Complaint, and therefore deny the same.

60. Admit the Title IX investigation into the culture of the Band was required due to a Title IX complaint made on May 23, 2014, about the sexualized nature of the Band's culture and that Mr. Glaros oversaw the investigation along with Gates Garrity-Rokous. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 60 of the Complaint, and therefore deny the same.

61. Deny the allegations contained in paragraph 61 of the Complaint.

62. Admit the Title IX investigators interviewed sixteen individuals, comprising ten current and former members of the Band, the parent, and five Ohio State staff members. Further

answering, defendants deny the remaining allegations contained in paragraph 62 of the Complaint.

63. Deny the Title IX investigation into the Band's culture was conducted in an inappropriate manner, distorted interviews or ignored information. Defendants also deny that investigation was deeply flawed, careless, or executed without concern for the truth. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 63 of the Complaint, and therefore, deny the same.

64. Deny the Title IX investigation into the Band's culture was conducted in an inappropriate manner, distorted information, or ignored information. Further answering, defendants state Mr. Waters failed to attach the letter to which he refers or to identify the person(s) who wrote the letter, and accordingly, defendants are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 64 of the Complaint, and therefore deny the same.

65. Deny the Title IX investigation into the Band's culture was conducted in an inappropriate manner, distorted information, or ignored information. Further answering, defendants state Mr. Waters failed to attach the letter to which he refers or to identify the person(s) who wrote the letter, and accordingly, defendants are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 65 of the Complaint, and therefore deny the same.

66. Deny the Title IX investigation into the Band's culture was "shoddy" or made assumptions. Further answering, defendants state Mr. Waters failed to attach the letter to which he refers or to identify the person(s) who wrote the letter, and accordingly, defendants are

without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 66 of the Complaint, and therefore deny the same.

67. Deny that Andrea Goldblum, Ohio State's former Title IX and Clery Act Coordinator, indicated in any way that she believed the Title IX investigation's findings related to the Band's culture were incorrect. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 67 of the Complaint, and therefore deny the same.

68. State that the unnumbered heading "C" on page 24 of the Complaint, fails to state any allegations which require a response, but, to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 68 of Mr. Waters' Complaint, defendants deny problems existed with the manner in which the Title IX investigation into the Band's culture was conducted. Defendants admit that President Drake stands behind the Title IX investigation Report and the termination of Mr. Waters' unclassified, at-will employment. Defendants deny any remaining allegations contained in paragraph 68 of the Complaint.

69. Admit President Drake spoke at the Columbus Metropolitan Club on August 13, 2014, but state that his comments at that time speak for themselves. Further answering, defendants deny any remaining allegations contained in paragraphs 69 of the Complaint.

70. Admit President Drake spoke to Band squad leaders on August 21, 2014 and state the transcript attached to the Complaint speaks for itself, but deny Mr. Waters has accurately, and in context, portrayed the passage by President Drake. Defendants deny President Drake's statements "told an entirely different story" or that President Drake's statement was intended to be private when addressed to all squad leaders and Band leadership. Defendants state that, on

August 21, 2014, President Drake proactively reached out to the student leaders of the newly constituted 2014 Band to inspire them and convey that the current student members of the Band need not be defined by the culture and actions of the past. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 70 of the Complaint, and therefore deny the same.

71. Admit President Drake spoke at the Columbus Metropolitan Club on August 13, 2014, but state that his comments at that time speak for themselves. Further answering, defendants deny any remaining allegations contained in paragraphs 71 of the Complaint.

72. Admit President Drake spoke to Band squad leaders on August 21, 2014, and state the transcript attached to the Complaint speaks for itself, but deny Mr. Waters has accurately, and in context, portrayed the passage by President Drake. Defendants also deny President Drake's statements "told an entirely different story" or that President Drake's statement was intended to be private when addressed to all squad leaders and Band leadership. Defendants state that, on August 21, 2014, President Drake proactively reached out to the student leaders of the newly constituted 2014 Band to inspire them and convey that the current student members of the Band need not be defined by the culture and actions of the past, so in that sense, the investigation report was "historical" to them. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 72 of the Complaint, and therefore deny the same.

73. Admit President Drake spoke at the Columbus Metropolitan Club on August 13, 2014, but state that his comments at that time speak for themselves. Further answering, defendants deny any remaining allegations contained in paragraphs 73 of the Complaint.

74. Admit President Drake spoke to Band squad leaders on August 21, 2014, and

state the transcript attached to the Complaint speaks for itself, but deny Mr. Waters has accurately, and in context, portrayed the statements by President Drake. Defendants also deny President Drake's statements "told an entirely different story" or that President Drake's statement was intended to be private when addressed to all squad leaders and Band leadership. Defendants state that, on August 21, 2014, President Drake proactively reached out to the student leaders of the newly constituted 2014 Band to inspire them and convey that the current student members of the Band need not be defined by the culture and actions of the past. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 74 of the Complaint, and therefore deny the same.

75. Deny that President Drake believes the Title IX investigation report was "biased," "tainted" or "sensationalized." Defendants admit President Drake spoke to Band squad leaders on August 21, 2014, and state the transcript attached to the Complaint speaks for itself, but deny Mr. Waters has accurately, and in context, portrayed the statements by President Drake. Defendants state that, on August 21, 2014, President Drake proactively reached out to the student leaders of the newly constituted 2014 Marching Band to inspire them and convey that the current student members of the Band need not be defined by the culture and actions of the past, but, also, that the totality of the Title IX investigation report required that action be taken. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 75 of the Complaint, and therefore deny the same.

76. State that the unnumbered heading "D" on page 26 of the Complaint, fails to state any allegations which require a response, but to the extent allegations are being made, defendants

deny the same. In response to the allegations contained in paragraph 76 of Mr. Waters' Complaint, defendants deny the allegations contained in paragraph 76 of the Complaint.

77. Deny the allegations contained in paragraph 77 of the Complaint.

78. Deny the allegations contained in paragraph 78 of the Complaint. Defendants state Mr. Waters did order that Midnight Ramp occur immediately after Fesler Night, and, he or his staff oversaw Midnight Ramp, as documented by emails to The Ohio State University Police Department in 2009. *See* September 11, 2009 E-mail from Jonathan N. Waters to Eric Whiteside (attached as Exhibit P). Defendants also state the Title IX investigation report does not state that Midnight Ramp was eliminated on May 9, 2014. Assistant Director Michael Smith and Associate Director Chris Hoch stated during the Title IX investigation that Mr. Waters did not announce Midnight Ramp would no longer take place until a meeting during the week of June 9, 2014, after Mr. Waters had been informed of the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 78 of the Complaint, and therefore deny the same.

79. Deny the allegations contained in paragraph 79 of the Complaint. Defendants state Assistant Director Michael Smith and Associate Director Chris Hoch stated during the Title IX investigation that Mr. Waters did not announce Midnight Ramp would no longer take place until a meeting during the week of June 9, 2014, after Mr. Waters had been informed of the Title IX investigation into the Band culture. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 79 of the Complaint, and therefore deny the same.

80. Deny that the investigators knew about the presence of other Ohio State officials

at the Midnight Ramp. Defendants also deny that Russ Mikkelson witnessed or was aware that Band members were marching in their underwear. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 80 of the Complaint, and therefore deny the same.

81. Deny that the Title IX report misstated that a witness had reported that “Rookie Midterms” were given to new Band members, deny that any statement in the Title IX report related to the Rookie Midterms was misleading, deny that mention of Rookie Midterms in the Title IX report was intended to disparage, or did disparage, Mr. Waters, and deny that the Title IX report failed to mention that Mr. Waters claims to have told Band members that Rookie Midterms needed to stop. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 81 of the Complaint, and therefore deny the same.

82. Deny that the Title IX report misstates that witnesses indicated Band members would prepare a newsletter for away game trips known as “Trip Tic,” deny that mention of the Trip Tic in the Title IX report was intended to disparage, or did disparage, Mr. Waters, deny that the Title IX report was misleading, and deny that the Title IX report failed to mention that Mr. Waters claims to have informed Band members in 2012 that the Trip Tic should no longer be published. Defendants state that as part of the Title IX investigation, a student witness disclosed that Band members would typically provide Mr. Waters with a copy of the Trip Tic. Defendants also state that as part of the Title IX investigation, a student witness disclosed that the reason the Trip Tic was banned was that a female student who was disparaged in a 2012 Trip Tic was dating a Band instructor and the instructor asked Mr. Waters to ban Trip Tic as a result. Further answering, defendants state they are without knowledge or information sufficient to form a belief



as to the truth of any remaining allegations contained in paragraph 82 of the Complaint, and therefore deny the same.

83. Deny that statements in the Title IX report related to the Band Songbook were misleading and deny that the Songbook was drafted “long ago.” Defendants admit the Songbook contained “misogynistic and alternate sexual lyrics.” Defendants also state that the version attached to the Title IX report was published in 2006, but that after Mr. Waters’ termination, newer versions of the Songbook were discovered which were published in 2010, 2011, and 2012 and which include new songs of a highly sexualized and anti-Semitic nature. *See* 2010 Version of “Unofficial OSU Marching Band School Songs” at 25 (attached as Exhibit B); *see also* 2006 Version of “Unofficial OSU Marching Band School Songs” (attached as Exhibit C). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 83 of the Complaint, and therefore deny the same.

84. Deny that mention of the Songbook in the Title IX report was intended to disparage, or did disparage, Mr. Waters and deny that attaching the Songbook to the Title IX report was egregious conduct. Defendants admit that the version of the Songbook attached to the Title IX report was published in 2006, when Mr. Waters was Assistant Director, but state that after Mr. Waters’ termination, newer versions of the Songbook were discovered which were published in 2010, 2011, and 2012 and which include new songs of a highly sexualized and anti-Semitic nature. *See* 2010 Version of “Unofficial OSU Marching Band School Songs” at 25 (attached as Exhibit B); *see also* 2006 Version of “Unofficial OSU Marching Band School Songs” (attached as Exhibit C). Defendants also admit the Title IX report stated that Mr. Waters claimed to have taken action to ban the Songbook, but state that Assistant Director Michael

Smith indicated when interviewed during the Title investigation, that during a Band trip to Put-in-Bay, Ohio on September 1, 2013, Band members were singing inappropriate songs. Defendants additionally state that during the course of the Title IX investigation, Mr. Waters denied having seen a version of the Songbook during his twelve years holding leadership positions in the Band and stated he would be shocked if it was still circulated. On August 26, 2014, however, Band Squad Leaders stated Mr. Waters did in fact see a version of the 2012 Songbook. *See* Ex. B to Pl.'s Compl., Attachment 9, Squad Leaders' Statement, at Page ID 431. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 84 of the Complaint, and therefore deny the same.

85. Deny that any statement in the Title IX report which references Mr. Waters texting dirty limericks to Band members was misleading, gratuitous, or a misstatement, deny that any mention of the texting of dirty limericks in the Title IX report was intended to disparage, or did disparage, Mr. Waters, and deny that Mr. Waters' denial of ever sending dirty limericks was uncontroverted. Defendants admit the Title IX report contained Mr. Waters' claim that he denied "texting dirty limericks." Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 85 of the Complaint, and therefore deny the same.

86. Deny that the Title IX report misstates that a student Band member described Mr. Waters raising his voice and swearing at her in response to her submitting what was supposed to be an anonymous evaluation of Mr. Waters and deny that the Title IX report "intentionally manipulated its presentation of "facts" to defame Mr. Waters." Defendants also state that the student's statements were corroborated by a physical therapist from Student Health Services,

who also was a long-time volunteer for the Band. *See* July 22, 2014 Investigation Report (attached as Exhibit H, at 20). Defendants admit the student has contacted President Drake since her interview, but state that the Title IX report contains facts described by the student and corroborated by others. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 86 of the Complaint, and therefore deny the same.

87. Deny that any statements made or released by Chris Davey were intended to disparage or defame, or did disparage or defame, Mr. Waters, and deny any statements made by Mr. Davey were false, incendiary or omitted key pieces of information. Defendants also deny Mr. Waters was denied a public name-clearing hearing. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 87 of the Complaint, and therefore deny the same.

88. Deny the Title IX report was flawed or that the Title IX report's conclusions are refuted and state the August 27, 2014 Press Release speaks for itself. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 88 of the Complaint, and therefore deny the same.

89. Deny any statements made by Mr. Davey, or any things not stated by Mr. Davey, in the August 27, 2014 Press Release were intended to be, or were, misleading. Admit that the August 27, 2014 Press Release states that "the 'Trip Tic,' a newsletter with sexual content has not been denied." Defendants state that Mr. Waters has himself admitted that the Trip Tic contained language that was "vulgar and inappropriate." *See* July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, "An Analysis & Review of Cultural Changes in The Ohio State

University Marching & Athletic Band Program,” at 5 (attached as Exhibit F). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 89 of the Complaint, and therefore deny the same.

90. Deny any statements made by Mr. Davey, or any things not stated by Mr. Davey, in the August 27, 2014 Press Release were intended to be, or were, misleading. Admit that the August 27, 2014 Press Release stated that “the Songbook, with 124 different songs full of grotesque lyrics, has not been denied . . .” Defendants state that Mr. Waters has himself admitted that the Songbook contained “offensive” lyrics. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 90 of the Complaint, and therefore deny the same.

91. Deny any statements made by Mr. Davey, or any things not stated by Mr. Davey, in his August 27, 2014 Press Release were intended to be, or were, misleading. Admit that the August 27, 2014 Press Release states “Rookie Midterms and Physical Challenges with sexual content have not been denied.” Defendants state Mr. Waters did not deny, either in his written statement or in his interviews during the course of the Title IX investigation, that Rookie Midterms took place during the years of his Band Leadership, and a Rookie Midterm from 2011 was provided to investigators during the Title IX investigation which detailed inappropriate and grossly sexual misconduct, such as:

- Instructions to “draw female reproductive organs with arrows detailing what each part is used for,” *See* Ex. D (Rookie Midterm, at 13).
- A “Boner Question: List all of the Members of \_\_\_ Row in descending order from deepest box to largest penis. Explain your reasoning in 2 to 3 sentences;” *See* Ex. D (Rookie Midterm, at 3).
- Fill-In The Blank Section, including “Dirty Sanchez – ‘he gave her a dirty sanchez and she never had anal sex again.’” *See* Ex. D (Rookie Midterm, at 14-15).

- Fill-In The Blank Section, including “Cleveland Steamer – ‘I was afraid of breaking up with Jen face to face, so I gave her a cleveland steamer after she fell asleep and ditched.’” *See* Ex. D (Rookie Midterm, at 15).
- Fill-In The Blank Section, including “Piston Fisting – ‘A double fisting that incorporates both anal and vaginal penetration. Fists are then pumped in and out in manner similar to that of pistons in a engine.’” *See* Ex. D (Rookie Midterm, at 15).
- Fill-In The Blank Section, including “Tossing Salad – ‘the act of placing your tongue in a male or female ass, and probing all around the circumference of the asshole, while aiding the person in masturbation.’” *See* Ex. D (Rookie Midterm, at 16).

*See* Rookie Midterm, Exhibit A to July 22, 2014 Investigation Report (attached as Exhibit D, at 14-15). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 91 of the Complaint, and therefore deny the same.

92. Deny that the Title IX report was inaccurate, mischaracterized facts, excluded material facts or contained material problems and, to the extent Mr. Waters alleges that the TBDBITL Report exposes inaccuracies in the Title IX investigation, deny the same. Defendants state the TBDBITL Report confirms many of the Title IX report’s factual findings, including, but not limited to, student participation in Midnight Ramp in undergarments and while naked; sexual nicknames; and a female student’s particularly sexualized Trick of sitting on male students’ laps, including her younger brother’s lap, and pretending to orgasm — all of which occurred during the over twelve years of Mr. Waters’ leadership of the Band. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 92 of the Complaint, and therefore deny the same.

93. State that the unnumbered heading “E” on page 32 of Mr. Waters’ Complaint, fails to state any allegations which require a response, but, to the extent allegations are being made, defendants deny the same. Defendants admit that on May 27, 2014, Mr. Glaros notified

Mr. Waters that two Title IX Complaints had been filed against him related to reported retaliation against a female Band member who had reported a sexual assault by a male Band member and a claim about the Band's sexualized culture. Defendants also admit Mr. Glaros told Mr. Waters he would have the opportunity to be interviewed and provide his version of events as part of the required Title IX investigation into the complaints. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 93 of the Complaint, and therefore deny the same.

94. Admit that Mr. Waters emailed Mr. Glaros and inquired about the Title IX investigation. Defendants also admit that Mr. Glaros informed Mr. Waters that Ms. Tobias would be in touch, and that Ms. Tobias did later contact Mr. Waters for an interview and conducted three interviews of Mr. Waters. Defendants also state that on June 5, 2014, a labor and employment partner with a Columbus law firm called the Associate Vice President and Deputy General Counsel with the Ohio State Office of Legal Affairs, on Mr. Waters' behalf, inquiring about the Title IX investigation, although stating he did not represent Mr. Waters. In response to questions from the partner, the Deputy General Counsel told him that Mr. Waters could retain and have legal representation during the investigation and was free to call the Office of Legal Affairs with any questions he had about the investigation process. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 94 of the Complaint, and therefore deny the same.

95. Admit Mr. Waters was interviewed on June 12, 2014, but deny Mr. Waters' allegation that he was not informed he could have an attorney present during the interview, deny Mr. Waters was not asked questions about the culture of the Band and deny Mr. Waters was told

no further interviews would be necessary. Defendants admit Jessica Tobias, a Compliance Investigator who formerly worked for the Ohio State Bar Association and investigated misconduct by attorneys and judges for prosecution in the Ohio Supreme Court, conducted the June 12, 2014 interview. Defendants state that Ms. Tobias also formerly served as staff counsel to the Joint Task Force to Review the Administration of the Death Penalty in Ohio, and has extensive investigations training prior to and including her employment with Ohio State. Defendants also admit Ms. Tobias conducted the interview in the presence of Rebecca Dickson, Program Manager for Title IX and Clery Act compliance at Ohio State, who has extensive Title IX and related Clery Act training, including investigations training. Defendants also state that Ms. Dickson formerly served in the Office of Legal Affairs at Ohio State and as a Paralegal and Legal Investigator for the City of Columbus. Defendants further admit that Ms. Dickson took a second set of notes. Defendants state Mr. Waters asked if he could have counsel present and Ms. Tobias said he could. Defendants admit that Mr. Waters answered questions relating to both Title IX complaints for approximately 2½ hours, and state that on June 13, 2014, at his request, Ms. Tobias e-mailed Mr. Waters a copy of the questions he had been asked. *See* June 13, 2014 E-mail from Ms. Tobias to Jonathan N. Waters and List of Questions Appended Thereto (attached as Exhibit Q). During the interview, Mr. Waters was asked if he wanted the investigators to speak with anyone about the issues related to the Band's culture. He responded they should speak with Associate Director Chris Hoch and Assistant Director Michael Smith. Mr. Hoch and Mr. Smith were interviewed on June 20 and June 23, 2014, respectively.

Defendants also state that on June 13, 2014, Mr. Waters contacted the Compliance Office to inform the Title IX investigators that one of the Complainants had posted a comment to a reporter's Facebook page linking the Band's sexualized culture to the arrest of a TBDBITL

alumni, and current high school band director, for having sex with a high school student. Defendants further state that the post was taken down. Defendants state that Mr. Waters was cautioned not to contact the report. Mr. Waters initially denied to the Title IX investigators that he had contacted the reporter. He subsequently admitted, however, that he had misled the investigators and had in fact contacted the reporter. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 95 of the Complaint, and therefore deny the same.

96. Admit that Mr. Waters participated in a second interview in the course of the Title IX investigation on July 1, 2014, but deny he was not made aware it focused on the culture of the Band and deny the interview was hostile. Defendants admit Ms. Jessica Tobias conducted the interview, which lasted approximately three hours, and Ms. Dickson was present and took a second set of notes. Defendants state Mr. Waters promised at the July 1, 2014 interview that he would provide a list of the efforts he had made to address the Band's culture. Defendants also state that, at the end of the interview, Mr. Waters asked if the Title IX investigation was "career ending." Defendants additionally state that, on the same day, at Mr. Waters' request, he was e-mailed a list of the questions he had been asked at the second personal interview. *See* July 1, 2014 E-mail from Ms. Tobias to Mr. Waters (attached as Exhibit R). Defendants further state that, after the July 1, 2014 interview, the following actions took place:

- a. On July 2, 2014, the labor and employment partner from a Columbus law firm called the Deputy General Counsel for a second time. The Deputy General Counsel confirmed for the partner what Mr. Waters had been told previously, *i.e.*, the Title IX investigation was related to two issues, the claimed retaliation and the Band's culture. The partner asked the Deputy General Counsel if she would speak to Mr. Waters. She reiterated Mr. Waters was welcome to call her.
- b. Later on July 2, 2014, Mr. Waters called the Deputy General Counsel and complained about the number of times he had been interviewed, the length



of the interviews and the number of questions he had been asked. On the same day, Mr. Waters called Ms. Tobias and inquired if he could submit written answers to the questions he had been asked. Ms. Tobias indicated that he could. Mr. Waters, however, never submitted written answers to the questions.

- c. On July 3, 2014, Ms. Tobias e-mailed Mr. Waters to follow-up about the list of things he had done to address the Band's culture, which Mr. Waters had yet to forward. *See* July 3, 2014 E-mail from Ms. Tobias to Jonathan N. Waters (attached as Exhibit S).
- d. On July 11, 2014, Mr. Waters was interviewed for a third time by telephone related to a Songbook which investigators had learned about, but which Mr. Waters had failed to disclose in prior interviews. During the call, he was again asked about the list of cultural changes he had implemented, but had not yet provided. Plaintiff claimed his computer had malfunctioned and he did not have the list.
- e. On July 18, 2014, Mr. Waters' counsel, David Axelrod, contacted Ohio State's Deputy General Counsel to inquire about the investigation and was informed Mr. Waters was an at-will employee. *See* July 18, 2014 E-mail from David Axelrod to Alexandra Schimmer (attached as Exhibit T).

Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 96 of the Complaint, and therefore deny the same.

97. Admit that on July 14, 2014, Mr. Waters submitted a written statement detailing his purported efforts to change the sexualized culture of the Band, in which, he, for the first time, described the culture of the Band as "in dire need of change" when he became Director and "not . . . in a good place' currently." *See* July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, "An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program," at 1 (attached as Exhibit F). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 97 of the Complaint, and therefore deny the same.

98. Admit that on July 14, 2014, Mr. Waters met with Provost Steinmetz regarding

the two Title IX Complaints and Provost Steinmetz again informed Mr. Waters that an assessment of the culture of the Band would take place. Defendants admit Provost Steinmetz told Mr. Waters that he could be fired due to the current culture of the Band and that the Band was to have a zero tolerance policy related to inappropriate conduct, including retaliation against the Title IX complainant or her parent. Defendants deny that Provost Steinmetz presented Mr. Waters with options, *i.e.*, either resign or agree to zero tolerance and adherence to an assessment to be performed by a firm called Sports Conflict Institute. Defendants state the cultural assessment referred to by Provost Steinmetz was the same one he had discussed with Mr. Waters in November, 2013. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 98 of the Complaint, and therefore deny the same.

99. Admit that Mr. Waters was not given a copy of the Title IX investigation report on July 14, 2014, that Provost Steinmetz stated that a cultural assessment was scheduled to be performed and completed by August 25, 2014, and that Mr. Waters emailed a list of his upcoming media and speaking engagements to Provost Steinmetz at Provost Steinmetz's request. Defendants state that Provost Steinmetz told Mr. Waters that his future with Ohio State had not yet been determined and a decision would be made shortly, in light of the culture revealed by the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 99 of the Complaint, and therefore deny the same.

100. Admit that on July 23, 2014, Mr. Waters and his counsel, David Axelrod, met with Provost Steinmetz and during that meeting Provost Steinmetz gave Mr. Waters the opportunity to resign in lieu of termination at 5:00 PM. Defendants also admit that Mr. Waters

and his counsel received copies of the Title IX investigation report, which concluded that the Band's culture was not in line with the requirements of Title IX or Ohio State's policies, principles, or values. Defendants deny Mr. Waters was not given additional time to review the Title IX report and state that discussions with one of Mr. Waters' attorneys, James Petro, continued until mid-morning on July 24, 2014. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 100 of the Complaint, and therefore deny the same.

101. Deny that Mr. Waters was not informed of the reasons why he was being terminated. Admit that Mr. Waters refused to resign and received a letter of termination through his counsel on July 24, 2014, and that his counsel was informed Mr. Waters was being terminated for the reasons previously discussed and as set out in the Title IX report. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 101 of the Complaint, and therefore deny the same.

102. Deny the allegations set out in paragraph 102 of the Complaint. Defendants state Mr. Glaros issued the findings of the Title IX investigation to Mr. Waters on July 22, 2014, including, in regard to the Title IX investigation into the Band's culture, stating the following:

Based on all of the facts obtained, we make the following findings:

- 1) The Marching Band's culture facilitated acts of sexual harassment, creating a hostile environment for students.
- 2) Jonathan Waters knew or reasonably should have known about this culture but failed to eliminate the sexual harassment, prevent its recurrence, and address its effects.

*See* July 22, 2014 Letters From Christopher Glaros to Jonathan N. Waters (attached as Exhibits J and K). Defendants also state Mr. Waters was given notice of the Title IX complaints on May

27, 2014 by Mr. Glaros, and was given a meaningful opportunity to be heard in regard to them in the form of a local attorney calling Ohio State on behalf of Mr. Waters on two occasions (although indicating he did not represent Mr. Waters), including one call before the start of interviews, two personal interviews of Mr. Waters, one telephone interview of Mr. Waters, the written statement Mr. Waters provided setting out his purported changes to the culture of the Band, providing Mr. Waters the questions he was asked at the interviews in writing and giving Mr. Waters the opportunity to provide written responses, which he did not do, and Mr. Waters having retained counsel by at least July 18, 2014. *See* July 18, 2014 E-mail from David Axelrod to Alexandra Schimmer (attached as Exhibit T). Defendants additionally state that Mr. Waters' written statement acknowledges the issues addressed in the Title IX report, including, but not limited to, the Band's "caste system," hazing, bus behavior, alcohol issues during social functions and away game trips, nicknames, Trip Tics, Midnight Ramp and sexual harassment. *See* July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, "An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program," at 3-6 (attached as Exhibit F). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 102 of the Complaint, and therefore deny the same.

103. Deny the allegation set forth in paragraph 103 of the Complaint. Defendants state Mr. Waters never requested a name-clearing hearing from President Drake or Provost Steinmetz. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 103 of the Complaint, and therefore deny the same.

104. Admit that Mr. Waters' counsel, David Axelrod, sent a letter to Ohio State's

counsel on August 27, 2014, demanding that Ohio State provide a two-day hearing and make Ohio State officials and employees available for testimony and to be cross-examined. *See* August 27, 2014 Letter from David F. Axelrod to Fred G. Pressley, Jr. (attached as Exhibit U). Defendants state that Mr. Waters' counsel addressed the letter to Ohio State's counsel and that Mr. Waters did not request such a hearing from President Drake or Provost Steinmetz. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 104 of the Complaint, and therefore deny the same.

105. Deny the allegations set out in paragraph 105 of the Complaint. Defendants state that Ohio State through Mr. Davey issued a press release on August 27, 2014 which indicated the decision to terminate Mr. Waters would not be reconsidered, but deny Mr. Davey denied Mr. Waters' request for a "name-clearing hearing." Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 105 of the Complaint, and therefore deny the same.

106. Deny the allegations in paragraph 106 of the Complaint. Defendants state Ohio State did not deny Mr. Waters a name-clearing hearing and, in fact, on September 11, 2014, offered Mr. Waters a public name-clearing hearing at an on-campus forum. *See* September 11, 2014 Letter from Alexandra Schimmer to David Axelrod (attached as Exhibit V). Defendants also state that Mr. Waters failed to accept Ohio State's offer of a name clearing hearing, and instead, engaged in a public relations campaign which included nationally televised appearances on the Today Show and Good Morning America, an appearance in a nationally broadcast Ohio State football game on Band Alumni Weekend, public statements in St. John's Arena on Ohio State's campus the same weekend and public statements in newspapers and press conferences.

Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 106 of the Complaint, and therefore deny the same.

107. State that the unnumbered heading “F” on page 35 of Mr. Waters’ Complaint, fails to state any allegations which require a response, but, to the extent allegations are being made, defendants deny the same. Admit that, on July 24, 2014, Ohio State, a public entity, made available on its website the Title IX investigation report into the Band’s culture. Defendants also admit that Ohio State made publicly available an audio recording of an abusive exchange between Mr. Waters and a student which had been referenced in the Title IX report, but deny the presentation of the recording was skewed or that making the recording available to the public was intended to disparage, or did disparage, Mr. Waters. *See* July 22, 2014 Investigation Report at 20, fn. 9 (attached as Exhibit H). Defendants state that Mr. Waters can be heard to state on the tape: “You f\*\*\*ing better realize who you’re dealing with . . . . We tell you to stand on your head . . . you’ll stand on your Godd\*\*\* head.” *See* July 22, 2014 Investigation Report, at 20 fn. 9 (attached as Exhibit H). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 107 of the Complaint, and therefore deny the same.

108. Deny the allegations contained in paragraph 108 of the Complaint.

109. State the referenced articles speak for themselves. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 109 of the Complaint, and therefore deny the same.

110. State the referenced articles speak for themselves. Further answering, however,

defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 110 of the Complaint, and therefore deny the same.

111. State the referenced articles speak for themselves. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 111 of the Complaint, and therefore deny the same.

112. State the referenced articles speak for themselves. Defendants also state Mr. Waters' counsel, David Axelrod, is quoted in the article identified in paragraph 112. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 112 of the Complaint, and therefore deny the same.

113. State the referenced articles speak for themselves. Defendants also state Mr. Waters' counsel, David Axelrod, is quoted in the article identified in paragraph 113. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 113 of the Complaint, and therefore deny the same.

114. State the referenced articles speak for themselves. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 114 of the Complaint, and therefore deny the same.

115. State the referenced articles speak for themselves. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the

truth of any remaining allegations contained in paragraph 115 of the Complaint, and therefore deny the same.

116. State the referenced articles speak for themselves. Defendants also state Mr. Waters' counsel, David Axelrod, is quoted in the article identified in paragraph 116. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 116 of the Complaint, and therefore deny the same.

117. State the referenced articles speak for themselves. Defendants also state Mr. Waters' counsel, David Axelrod, is quoted in the article identified in paragraph 117. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 117 of the Complaint, and therefore deny the same.

118. Deny OCR started an investigation of Ohio State on or about May 1, 2014, and instead, state OCR initiated a proactive compliance review of Ohio State on June 23, 2010, approximately four years before the Title IX investigation began and over four years before Mr. Waters' termination. *See* September 11, 2014 Letter from OCR to President Drake at 1 (attached as Exhibit G). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 118 of the Complaint, and therefore deny the same.

119. State they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 119 of the Complaint, and therefore deny the same.

120. Deny the allegations in paragraph 120 of the Complaint. Defendants state Ohio



State had been negotiating a voluntary Resolution Agreement to conclude the proactive compliance review since August, 2013, and finalized that Resolution Agreement in September, 2014, wholly unrelated to Mr. Waters' termination. *See* September 11, 2014 Letter from OCR to President Drake at 1 (attached as Exhibit G). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 120 of the Complaint, and therefore deny the same.

121. State the September 11, 2014 letter forwarded by OCR, which closed the proactive compliance review, speaks for itself. *See* September 11, 2014 Letter From OCR to President Drake at 1 (attached as Exhibit G). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 121 of the Complaint, and therefore deny the same.

122. State the September 11, 2014 letter forwarded by OCR, which closed the proactive compliance review, speaks for itself. Further answering, state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 122 of the Complaint, and therefore deny the same.

123. Defendants restate, reallege, and incorporate by reference, as if fully set forth herein, paragraphs 1 through 122 of this Answer In response to the allegations contained in paragraph 123 of the Complaint.

124. State the Fifth Amendment speaks for itself. Further answering, state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 124 of the Complaint, and therefore deny the same.

125. State the Fourteenth Amendment speaks for itself. Further answering, state they are without knowledge or information sufficient to form a belief as to the truth of any remaining

allegations contained in paragraph 125 of the Complaint, and therefore deny the same.

126. State they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 126 of the Complaint, and therefore deny the same.

127. Deny Mr. Waters, an unclassified, at-will employee, had any protected property interest in his employment or was deprived of any procedural or substantive due process requirements. Defendants state any due process requirements are imposed by the United States Constitution. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 127 of the Complaint, and therefore deny the same.

128. Deny Mr. Waters, an unclassified, at-will employee, had any protected property interest in his employment or was deprived of any procedural or substantive due process requirements. State any due process requirements are imposed by the United States Constitution. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 128 of the Complaint, and therefore deny the same.

129. Deny Mr. Waters, an unclassified, at-will employee, had any protected property interest in his employment or was deprived of any procedural or substantive due process requirements. Defendants state any due process requirements are imposed by the United States Constitution. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 129 of the Complaint, and therefore deny the same.

130. Deny the allegations in paragraph 130 of the Complaint.

131. Deny the allegations in paragraph 131 of the Complaint.

132. Deny the allegations in paragraph 132 of the Complaint.

133. Deny the allegations in paragraph 133 of the Complaint.

134. Deny the allegations in paragraph 134 of the Complaint.

135. Deny the allegations in paragraph 135 of the Complaint.

136. Deny the allegations in paragraph 136 of the Complaint.

137. Deny the allegations in paragraph 137 of the Complaint.

138. Deny the allegations in paragraph 138 of the Complaint.

139. Restate, reallege, and incorporate by reference, as if fully set forth herein, paragraphs 1 through 138 of this Answer in response to the allegations contained in paragraph 139 of the Complaint.

140. Admit that Ohio State is a public university chartered by the Ohio legislature. Admit that Ohio State is a recipient of federal financial assistance for its educational programs and activities. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 140 of the Complaint, and therefore deny the same.

141. Admit that Mr. Waters is a former unclassified, at-will employee of Ohio State. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 141 of the Complaint, and therefore deny the same.

142. State Title IX, 20 U.S.C. § 1681, *et seq.*, is intended to eliminate discrimination and contains the language quoted by Mr. Waters, but deny Mr. Waters has been subject to any action due to his gender. Further answering, defendants state they are without knowledge or

information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 142 of the Complaint, and therefore deny the same.

143. State they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 143 of the Complaint, and therefore deny the same.

144. Deny the allegations in paragraph 144 of the Complaint.

145. Deny the allegations in paragraph 145 of the Complaint.

146. Deny the allegations in paragraph 146 of the Complaint.

147. Deny the allegations in paragraph 147 of the Complaint. Defendants state President Drake was not employed by Ohio State until June 30, 2014, and thus, could not have been played any role whatsoever in the decision making related to the termination of the female cheerleading coach which occurred in 2013. Defendants also state that cheerleading or “spirit squad” coaches do not report to the College of Arts or Sciences or the office of the Provost, as Mr. Waters did, but instead, to Gene Smith, Ohio State’s Athletic Director. *See* November 25, 2013 Termination Letter from Eugene Smith to Lenee Buchman (attached as Exhibit W); Athletic Department Organizational Chart (attached as Exhibit X). Defendants additionally state Mr. Smith made the decision to terminate the female cheerleading coach. *Id.*

148. Deny the allegations in paragraph 148 of the Complaint.

149. Deny the allegations in paragraph 149 of the Complaint.

150. Deny the allegations in paragraph 150 of the Complaint.

151. Deny each and every remaining allegation not expressly admitted herein, including any allegation contained in any demand or prayer for relief.

### **Second Defense**

152. State plaintiff fails to state a claim upon which relief can be granted.

**Third Defense**

153. State actions taken by defendants with respect to plaintiff and his employment, and the terms and conditions of his employment, if any, were taken for legitimate business considerations and have been taken in good faith, without any malice, intent to discriminate, or intent to cause injury or harm, and, therefore, are not in violation of any law.

**Fourth Defense**

154. State plaintiff is estopped by his own conduct from recovery for part or all of the relief as stated in the Complaint or for any purported cause of action alleged therein.

**Fifth Defense**

155. State plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

**Sixth Defense**

156. State plaintiff's claims for lost pay and benefits, compensatory damages, punitive damages, attorneys' fees, costs and other unspecified damages are barred in whole or in part by the limitations imposed by law as to the recovery of such damages.

**Seventh Defense**

157. State plaintiff has not alleged facts sufficient to entitle him to attorneys' fees or costs.

**Eighth Defense**

158. State plaintiff has not alleged facts sufficient to entitle him to equitable relief.

**Ninth Defense**

159. State plaintiff is not entitled to punitive damages and has failed to plead facts sufficient to entitle him to punitive damages.

**Tenth Defense**

160. State plaintiff's claims are barred in whole or in part as a result of plaintiff's failure to mitigate his alleged damages.

**Eleventh Defense**

161. State plaintiff's claim for declaratory relief is barred by the Eleventh Amendment.

**Twelfth Defense**

162. State plaintiff's claim for monetary relief from President Drake and Provost Steinmetz in their official capacities is barred by the Eleventh Amendment.

**Thirteenth Defense**

163. State plaintiff's claims are barred by a privilege or a qualified privilege.

**Fourteenth Defense**

164. State defendants exercised their lawful rights and/or ethical obligations in a lawful and permissible manner.

**Fifteenth Defense**

165. State plaintiff's claims are barred by unclean hands.

**Sixteenth Defense**

166. State *respondeat superior* liability does not apply, and cannot attach, to one or more claims.

**Seventeenth Defense**

167. State defendants' actions towards plaintiff were lawful and made in good faith compliance with duties imposed by applicable provisions of law, rules, and regulations.

**Eighteenth Defense**

168. State some or all of plaintiff's claims are be barred by the doctrine of governmental immunity.

**Nineteenth Defense**

169. State defendants acted in good faith and with a reasonable belief as to the lawfulness of their conduct.

**Twentieth Defense**

170. State as to plaintiff's Section 1983 claim, plaintiff has failed to allege any policy and/or practice for which the defendants may be held liable.

**Twenty-First Defense**

171. State any claim for punitive damages, interest or attorney's fees, is barred and/or limited by the United States Constitution, the Ohio Constitution, Federal law and/or Ohio law.

WHEREFORE, having fully answered plaintiff's Complaint, defendants Michael V. Drake, Joseph E. Steinmetz, and The Ohio State University pray that the same be dismissed with prejudice, that they recover their costs and expenses, including attorneys' fees, incurred herein, and that the Court grant such other and further relief as the Court may deem just and proper.

MICHAEL DeWINE  
ATTORNEY GENERAL OF OHIO

By: /s/ Michael H. Carpenter  
Michael H. Carpenter (0015733)  
Timothy R. Bricker (0061872)  
Caitlin E. Murphy (0090665)  
CARPENTER LIPPS AND LELAND LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, OH 43215  
E-mail:carpenter@carpenterlipps.com  
bricker@carpenterlipps.com  
murphy@carpenterlipps.com

Special Counsel for Defendants Michael V. Drake, Joseph  
E. Steinmetz, and The Ohio State University

**JURY DEMAND**

Defendants Michael V. Drake, M.D., Joseph E. Steinmetz, Ph.D. and The Ohio State University specifically demand a jury of the maximum number of jurors allowable by law on all issues so triable.

MICHAEL DeWINE  
ATTORNEY GENERAL OF OHIO

By: /s/ Michael H. Carpenter  
Michael H. Carpenter (0015733)  
Timothy R. Bricker (0061872)  
Caitlin E. Murphy (0090665)  
CARPENTER LIPPS AND LELAND LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, OH 43215  
E-mail:carpenter@carpenterlipps.com  
bricker@carpenterlipps.com  
murphy@carpenterlipps.com

Special Counsel for Defendants Michael V. Drake, Joseph E. Steinmetz, and The Ohio State University



**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was filed electronically on October 23, 2014. Notice was also sent by operation of the Court's electronic filing system to all other counsel who have entered an appearance and any parties who have entered an appearance through counsel. The parties may access this filing through the Court's ECF system.

/s/ Michael H. Carpenter

One of the Attorneys for Defendants Michael V. Drake, Joseph E. Steinmetz, and The Ohio State University

599471