IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

DR. MUKUND VENGALATTORE	:	
	:	CIVIL ACTION NO.: 3:18-CV-01124
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CORNELL UNIVERSITY, ET AL.	:	
	:	
Defendants.	:	

PLAINTIFF'S MEMORANDUM OF LAW
IN OPPOSITION TO CORNELL UNIVERSITY'S
MOTION FOR SUMMARY JUDGMENT

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March 13, 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

GLOSSARY v

INTRODUCTION 1

ARGUMENT 2

I. THE EVIDENCE SUPPORTS DR. VENGALATTORE'S TITLE IX CLAIM 2

A. Cornell's Procedural Violations, Policy Manipulations, and Failures to Meaningfully Pursue Inquiries Supportive of Dr. Vengalattore Fatally Undermine Its Findings 3

1. Cornell Engaged in Rampant Procedural Irregularities and Deviations 4

2. Cornell Failed to Meaningfully Pursue Inquiries and Witnesses Supportive of Dr. Vengalattore's Case 14

3. Dean Ritter Lacks Credibility and Had Questionable Motivations 15

4. Roe Had Vengeful Motivations 17

B. Gender Bias Motivated Cornell's Misconduct 18

1. Cornell Faced External Pressure to Reduce Protections for Males Accused of Sexual Misconduct 18

2. Cornell Aggressively Responded to Pressure to Reduce Due Process Protections for Males Accused of Sexual Misconduct 20

3. Cornell's Policy 6.4 and RSR Policy Investigations Are Overwhelmingly Against Men and Its Investigation in This Case Revealed Gender Bias 22

4. Dean Ritter Exhibited Bias 23

II. CORNELL DEFAMED DR. VENGALATTORE 25

A. Evidence Supports Dr. Vengalattore's Defamation Claim 25

B. Dr. Vengalattore's Alleged "Self-Publication" Is Protected by Privilege 29

CONCLUSION 30

TABLE OF AUTHORITIES

Page(s)

Cases

Albert v. Loksen,
239 F.3d 256 (2d Cir. 2001) 26

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986).. 3

Brooks v. Arquitt,
No. 21-cv-963, 2023 WL 3821353 (N.D.N.Y. May 19, 2023) 27

Chambers v. TRM Copy Ctrs. Corp.,
43 F.3d 29 (2d Cir. 1994) 3

Church of Scientology of Cal., Inc. v. Green,
354 F. Supp. 800 (S.D.N.Y. 1973) 29

Conti v. Doe,
535 F. Supp. 3d 257 (S.D.N.Y. 2021) 30

Doe v. Colgate Univ.,
457 F. Supp. 3d 164 (N.D.N.Y. 2020).. 24

Doe v. Quinnipiac Univ.,
404 F. Supp. 643 (D. Conn. 2019).. 22

Doe v. Siena Coll.,
No. 1:22-cv-1115, 2023 WL 197461 (N.D.N.Y. Jan. 17, 2023) 24

Doe v. Syracuse Univ.,
457 F. Supp. 3d 178 (N.D.N.Y. 2020).. 4, 17, 24

Front, Inc. v. Khalil,
28 N.E.3d 15 (N.Y. 2015).. 30

Gallo v. Prudential Residential Servs.,
22 F.3d 1219 (2d Cir. 1994) 3

Kirkland v. Cablevision Sys.,
760 F.3d 223 (2d Cir. 2014) 25

Lipin v. Hunt,
No. 14-cv-1081, 2015 WL 1344406 (S.D.N.Y. Mar. 20, 2015).. 30

McDonnell Douglas Corp. v. Green,
411 U.S. 792 (1973).. 2

Menaker v. Hofstra Univ.,
935 F.3d 20 (2d Cir. 2019) 6, 13

Nora Beverages, Inc. v. Perrier Grp. of Am., Inc.,
164 F.3d 736 (2d Cir. 1998) 27

Ostrowe v. Lee,
256 N.Y. 36 (N.Y. 1931) 26

Palin v. N.Y. Times Co.,
940 F.3d 804 (2d Cir. 2019) 25

Pasternack v. Lab. Corp. of Am. Holdings,
807 F.3d 14 (2d Cir. 2015) 28

Phillip v. Sterling Home Care, Inc.,
103 A.D.3d 786 (N.Y. App. Div. 2013) 29

Porter v. Dartmouth-Hitchcock Med. Ctr.,
92 F.4th 129 (2d Cir. 2024) 27

Powell v. Jones-Soderman,
849 Fed. Appx. 274 (2d Cir. 2021).. 28

Roe v. St. John's Univ.,
91 F.4th 643 (2d Cir. 2024) 2

Tolbert v. Smith,
790 F.3d 427 (2d Cir. 2015) 12

Vega v. Hempstead Union Free Sch. Dist.,
801 F.3d 72 (2d Cir. 2015) 18

Vengalattore v. Cornell Univ.,
36 F.4th 87 (2d Cir. 2022) 2, 4

Weinstock v. Columbia Univ.,
224 F.3d 33 (2d Cir. 2000) 2

Weintraub v. Phillips, Nizer, Benjamin, Krim, & Ballon,
172 A.D.2d 254 (N.Y. App. Div. 1991) 29

Yesner v. Spinner,
765 F. Supp. 48 (E.D.N.Y. 1991) 28, 29

Youmans v. Smith,
153 N.Y. 214 (1897) 30

Yusuf v. Vassar Coll.,
35 F.3d 709 (2d Cir. 1994) 2, 3, 4, 17, 18

Zahorik v. Cornell Univ.,
729 F.2d 85 (2d Cir. 1984) 12

GLOSSARY

CAFPS – Cornell's Committee for Academic Freedom and Professional Status

CCC – Cornell's Campus Code of Conduct

CSF – Plaintiff's Counter Statement of Facts

DCL – 2011 DOE OCR Dear Colleague Letter

DOE – United States Department of Education

FACTA – Cornell's Faculty Advisory Committee on Tenure Appointments

OCR – DOE's Office of Civil Rights

RSR – Cornell's Romantic and Sexual Relations Policy

SJFM – Cornell's Policy on Sanctions for Job-Related Faculty Misconduct

SMF – Cornell's Statement of Material Facts

TAC – Cornell's Tenure Appeals Committee

WPLR – Cornell's Office of Workforce Policy and Labor Relations

INTRODUCTION

After years of achievement and sacrifice, Dr. Vengalattore was on the verge of obtaining tenure at Cornell University, where he had received glowing reviews only a few years prior. Then, as the result of a few Cornell employees' discriminatory and defamatory actions, his academic career and reputation were destroyed. Following a former student's (Ms. Roe's) suspiciously-timed allegations of sexual misconduct—reported within days of Roe's learning that Vengalattore's department had voted to recommend him for tenure—Cornell launched a biased, faulty Title IX "investigation." Cornell obscured Roe's allegations from Vengalattore for months, inappropriately introduced her allegations into his tenure review, manipulated its own policies and procedures to strip Vengalattore of rights intended to insure a fair and accurate outcome, provided counsel to Roe while discouraging Vengalattore from seeking counsel, and disregarded evidence and common sense to reach its preferred outcome against him. Cornell's malfeasance was driven by a Title IX office that succumbed to pressure applied by the Department of Education's (DOE) aggressive, anti-male sexual harassment directives, and by a biased dean who pre-judged the outcome of the investigation in favor of the female complainant.

Following its flawed and biased investigation, Cornell widely published its findings against Dr. Vengalattore, spreading false claims that he had engaged in an inappropriate sexual relationship with his student. Cornell shared the false findings with the faculty of its Physics Department, various administrators, others within Cornell, and certain professors outside of Cornell. Cornell's salacious rumors spread like wildfire among Vengalattore's peers and the academic community, precluding him from a continued career in academia.

After enduring a biased, slipshod, "she-said" Title IX investigation and defamation, Vengalattore filed this lawsuit to expose Cornell's wrong-doing and clear his name.

ARGUMENT

I. THE EVIDENCE SUPPORTS DR. VENGALATTORE'S TITLE IX CLAIM

The evidence supports Dr. Vengalattore's Title IX claim and raises numerous genuine issues of disputed material facts that preclude summary judgment. To establish a prima facie discrimination case, a plaintiff must show that: (1) he is a member of a protected class, (2) qualified for his position, (3) who suffered an adverse employment action, and (4) circumstances give rise to an inference of discrimination. *See, e.g.*, *Weinstock v. Columbia Univ.*, 224 F.3d 33, 42 (2d Cir. 2000) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)).

Further, the Second Circuit generally requires that Title IX plaintiffs asserting a bias-driven erroneous outcome of a disciplinary action provide (1) evidence "sufficient to cast some articulable doubt on the accuracy of the outcome of the disciplinary proceeding" and (2) "particular circumstances suggesting that gender bias was a motivating factor behind the erroneous finding." *Yusuf v. Vassar Coll.*, 35 F.3d 709, 715 (2d Cir. 1994). In this case, the Second Circuit already determined that Dr. Vengalattore pleaded facts to establish a prima facie case because he alleged, *inter alia*, that Cornell: (a) failed to act in accordance with its own procedures, including "using parts of a policy known to be inapplicable," (b) failed to meaningfully pursue potential witnesses and "inquiries that might support Vengalattore's denial of a sexual relationship," (c) was under pressure by the DOE, and, (d) was, as a result, "working very aggressively" to address Title IX issues, including "culture change." *Vengalattore v. Cornell Univ.*, 36 F.4th 87, 106–09 (2d Cir. 2022); *see Roe v. St. John's Univ.*, 91 F.4th 643, 653 n.9 (2d Cir. 2024) (erroneous outcome and selective enforcement are not the only ways to prove a Title IX claim).

Dr. Vengalattore's key allegations are now supported with evidence. There is no dispute that Vengalattore is a male, who was qualified to be a professor at Cornell, and who was suspended

for two weeks without pay, prohibited from attending professional conferences, denied tenure, and subsequently not renewed in his position at Cornell, CSF ¶¶ 1–4, 7–18, 21–25, 123, 210, 262, 336–341, 384, 363, 405. As detailed below, Vengalattore also presents evidence of circumstances that "give rise to an inference of discrimination," including Cornell's numerous violations and evasions of its own policies, its refusal to meaningfully investigate evidence, the significant influence of a biased dean who favored the female complainant, a Title IX office working aggressively to placate DOE, and Cornell's persistent efforts to disguise its machinations.

When evaluating the evidence at issue in Cornell's motion for summary judgment, "'the court is required to resolve all ambiguities and draw all factual inferences in favor of the party against whom summary judgment is sought[.]'" *Nationwide Life Ins. Co. v. Bankers Leasing Ass'n, Inc.*, 182 F.3d 157, 160 (2d Cir. 1999) (quoting *Cronin v. Aetna Life Ins. Co.*, 46 F.3d 196, 202 (2d Cir. 1995)). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions[.]" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *see also Chambers v. TRM Copy Ctrs. Corp.*, 43 F.3d 29, 37 (2d Cir. 1994) ("If ... there is any evidence … from which a reasonable inference could be drawn in favor of the nonmoving party, summary judgment is improper."). Moreover, when evaluating intent in a claim of discrimination, "[a] trial court must be cautious about granting summary judgment to an employer[.]" *Gallo v. Prudential Residential Servs.*, 22 F.3d 1219, 1224 (2d Cir. 1994).

The troubling facts of this case preclude Cornell's efforts to avoid trial on Dr. Vengalattore's Title IX claim.

A. Cornell's Procedural Violations, Policy Manipulations, and Failures to Meaningfully Pursue Inquiries Supportive of Dr. Vengalattore Fatally Undermine Its Findings

The evidence here more than "cast[s] … articulable doubt on the accuracy of the outcome of" Dr. Vengalattore's disciplinary proceeding. *Yusuf*, 35 F.3d at 715. To establish articulable

doubt, a plaintiff may prove "particular procedural flaws affecting the proof," or "particular evidentiary weaknesses behind the finding of an offense such as motive to lie on the part of a complainant or witnesses, particularized strengths of the defense, or other reason to doubt the veracity of the charge." *Doe v. Syracuse Univ.*, 457 F. Supp. 3d 178, 200 (N.D.N.Y. 2020) (citing *Yusuf*, 35 F.3d at 715). As the Second Circuit found, Dr. Vengalattore pleaded that Cornell (a) failed act in accordance with its procedures and (b) failed to meaningfully pursue potential witnesses and "inquiries that might support Vengalattore's denial of a sexual relationship with Roe." *Vengalattore*, 36 F.4th at 108. The evidence supports these allegations and more.

1. *Cornell Engaged in Rampant Procedural Irregularities and Deviations*

When acting against Dr. Vengalattore, Cornell repeatedly failed to follow its policies.

a. Cornell Disregarded the Applicable Procedure: Policy 6.4

Cornell's Policy 6.4 governed claims of sexual assault, harassment, and retaliation. ECF No. 112-22 (Mittman Decl. Ex. B). The November 2013[1] version of Policy 6.4, provided:

- Sexual harassment broadly included "unwelcome sexual advances," "requests for sexual favors," and other "conduct of a sexual nature" that unreasonably interfered with an individual's academic or work performance or created "an intimidating, hostile, or offensive educational environment." *Id*. at 9–10.
- Sexual harassment included sexual assault and coercion. *Id*. at 11.
- Cornell would not tolerate "rape, sexual assault, ... sexual coercion, or other forms of sexual violence ... and aims to respond to such incidents when they occur within its authority to act." *Id.* at 9
- Sexual violence included, "physical acts perpetrated without consent …" *Id.* at 12
- Cornell "prohibit[s] any form of retaliation against a person who files" a sexual harassment complaint. *Id*. at 14.
- Where the respondent was a Cornell faculty member, Policy 6.4's procedures for prohibited discrimination and harassment applied. *Id.* at 15.
- Investigators had discretion to dismiss untimely complaints. *Id*. at 22 ("The Investigator *may* dismiss a complaint and close the case where the complaint: Is not reported or filed in a timely manner.") (emphasis added). *Id*. at 22.

[1] Unless indicated otherwise, all references to "Policy 6.4" invoke the November 2013 version.

- In circumstances such as "coerced sexual acts," Cornell could investigate allegations against the complainant's wishes. *Id*. at 17, 45.

If (as here) a sexual harassment complaint was filed against a faculty member in the context of a subordinate-supervisory relationship, additional procedures applied, including:

- The designation of a faculty member co-investigator in connection with any investigation of the alleged misconduct. *Id*. at 23.
- A *de novo* hearing of the charges before the Committee on Academic Freedom and Professional Status (CAFPS), which would make its own determination as to the charges. *Id*. at 25.
- A right to confront and cross-examine witnesses, *id*. at 55–56; the application of a "clear and convincing" standard of proof, *id*. at 57–58; and a requirement that the dean accept the findings of the CAFPS. *Id*. at 26.

Cornell admits that "Policy 6.4 was implicated by Roe's allegation that the first sexual encounter ... was not consensual." SMF ¶ 28. By its terms, Policy 6.4 also governed Roe's sexual harassment, coercion, and retaliation claims. Indeed, Policy 6.4 was the *only* policy that could permissibly govern Roe's sexual misconduct allegations. As Cornell's designated representative testified, if an alleged relationship between a faculty member and a subordinate "triggers *any* of the conduct covered by 6.4," Policy 6.4 would apply. CSF ¶ 113.

According to Cornell's representative, a complaint concerning an alleged sexual relationship between a student and a faculty member could fall into one of two "different pathways of adjudication": (1) if "purely consensual," the alleged relationship would be investigated under the Romantic and Sexual Relationships (RSR) provision; but (2) if involving "something that constitutes sexual harassment," it would be investigated according to Policy 6.4. CSF ¶ 110. Roe's claims unequivocally "triggered" Policy 6.4. *See* CSF ¶ 255 (Roe claiming Vengalattore raped her and threatened that if she told anyone about the relationship, her career would be ruined (coercion)); ECF No. 112-23 at 2 (Mittman Decl. Ex. C) (Roe claims harassment and retaliation).

Roe's sexual misconduct complaint, made well after the one-year time limitation in Policy 6.4, should have been dismissed with notice to Roe that she could appeal or seek resolution externally. CSF ¶ 99k; Mittman Decl. Ex. B at 19, 22. Alternatively, once Cornell determined that Roe's complaint described a Policy 6.4 violation that it would investigate, it should have notified Vengalattore and proceeded consistently with Policy 6.4. *Id.* at 19. Cornell did neither of these. Cornell instead purported to rely on its own "discretion," using portions of Policy 6.4 that it found acceptable while discarding portions that afforded protections to the male accused.

b. Cornell Resorted to the RSR Non-Policy

Rather than apply Policy 6.4's procedures, Cornell cloaked its Title IX investigation in the RSR "Policy"—a statement of principle without a single reference to procedures, time limitations, sanctions, or the rights of the accused—and fashioned patchwork procedures to suit its whim. ECF No. 112-21 at 2 (Mittman Decl. Ex. A). Indeed, according to Cornell, in the absence of procedures or any semblance of a process for handling violations, enforcement of the RSR Policy simply "default[ed] to the general supervisory authority" of the dean by which she could exercise "general discretion" in how she wished to proceed and investigate. CSF ¶ 120.

Cornell's claim that the RSR Policy applied to Roe's complaint, but Policy 6.4 did not, "defies common sense." *See Menaker v. Hofstra Univ.*, 935 F.3d 20, 36 (2d Cir. 2019) (procedural protections safeguard the rights of the accused based on what he is *accused of*, not the outcome of an investigation). Under Cornell's theory, when a complainant waits too long to file a complaint—including a complaint alleging potentially career-ending charges of sexual assault or harassment—Cornell cannot apply Policy 6.4, but may instead proceed with a less rigorous investigation and adjudication, which has no statute of limitations and no procedures. Yet Policy 6.4 recognizes that the greater the lapse of time, the greater the difficulty in obtaining evidence, information, and witnesses with fresh memories. Mittman Decl. Ex. B. at 19.

In fact, there was nothing mutually exclusive about the RSR Policy and Policy 6.4, and, until Dr. Vengalattore's case, Cornell appears to have investigated complaints raising RSR Policy concerns under Policy 6.4's procedures. Mr. Mittman's testimony supports this conclusion. During his many years at Cornell, Mittman was aware of and/or involved in other investigations concerning alleged RSR Policy violations. CSF ¶¶ 121, 124–133. In a 2006 memorandum that he recirculated in 2015, Mittman detailed prior Cornell cases that had "raised issues under [the RSR Policy]." CSF ¶ 126. The first two cases concerned complaints of female students alleging that a male professor had committed sexual assault or harassment, in addition to engaging in a romantic and sexual relationship with the student; both complaints were investigated under Policy 6.4. *Id.* at 1–2.[2] Moreover, in 2011, during the time that Roe claimed to have been in a sexual relationship with Dr. Vengalattore, the RSR Policy was literally part of Policy 6.4, attached in full as "Appendix D." CSF ¶ 117. Plaintiff is unaware of evidence that Cornell *ever* investigated a complaint asserting assault, harassment, and/or retaliation, as well as RSR Policy concerns, outside of Policy 6.4 until it was under pressure by the DOE and confronted with Vengalattore's case.

c. The "Why" and "So What" of Cornell's Sham

Cornell had incentive to deny Dr. Vengalattore the protections of Policy 6.4. As explained below, DOE had pressured universities to aggressively pursue female students' claims of sexual harassment or assault. That pressure was a significant motivating factor in Cornell's revision of Policy 6.4 to make it stricter against students accused of sexual misconduct. CSF ¶¶ 59–91.

Throughout the years at issue, however, Policy 6.4 retained unique safeguards for faculty. CSF ¶ 105. If Cornell had admitted the obvious—that it was investigating allegations of sexual assault, harassment, and retaliation, conduct governed by Policy 6.4—Vengalattore would have

[2] The third case, a relationship between faculty members, implicated neither policy. *Id.* at 3.

been entitled to appointment of a faculty co-investigator (who could have ensured that the rights of a fellow faculty member were fully protected), a *de novo* hearing before the CAFPS (at which he a could have cross-examined witnesses, including Roe), and a "clear and convincing" evidentiary standard. CSF ¶¶ 100–07. Three of those—namely, (1) an appeal afforded to one party and not the other, (2) cross examination of the overwhelmingly female complainants, and (3) a standard beyond mere preponderance of the evidence—were not acceptable under DOE's Title IX investigatory requirements. CSF ¶¶ 61–63, 74–75, 82.

DOE required universities to investigate and remedy claims of harassment, even when they had not been on notice of the harassment at the time it occurred. CSF ¶¶ 70–72 (DOE guidance repeatedly referring to ongoing duty of university to provide a remedy once on notice of even past harassment/assault conduct). Cornell had a duty, in DOE's opinion, to investigate and, if necessary, remediate Roe's claim. But DOE would not have accepted Policy 6.4's faculty protections. So, Cornell disregarded parts of Policy 6.4 and claimed it was acting simply under the dean's discretion. The inference that Cornell's Title IX office, elected to shun Policy 6.4, however, is supported by November 3, 2014 notes that Cornell produced, indicating that members of the Title IX office recognized that if they followed part of Policy 6.4, for example by appointing a faculty co-investigator, all the other elements of Policy 6.4 would apply as well. CSF ¶ 222 ("If a 'Fac Co-inv' – all else kick in").

In accordance with DOE's demands, Cornell conducted an investigation that severely curtailed Dr. Vengalattore's procedural rights. In doing so, however, it sidestepped its own policies and denied Dr. Vengalattore protections that would have resulted in a different outcome.

d. Cornell Failed to Adhere to Other Applicable Policies As Well

The procedural violations detailed above offer ample evidence that Cornell violated its policies and denied Dr. Vengalattore the protections to which he was entitled, such that the

investigation outcome is subject to articulable doubt. Those described above were not, however, the only policies that Cornell circumvented. Cornell also failed to adhere to Section 4.3 of the Faculty Handbook (Dismissal/Suspension Policy)—the very policy that Cornell contends governed the procedures applicable to Vengalattore's case. ECF No. 112-90 at 1-2, 6; CSF ¶¶ 151–52. The Dismissal/Suspension Policy provided that "when [a] complaint ... is made against a [faculty member] ... which *might* lead to his or her dismissal or suspension for the period of one semester or more[,]" the faculty member was entitled to procedural protections, including, again, the right to a hearing and to cross-examine witnesses. CSF ¶ 148 (emphasis added).[3]

Ritter testified during her deposition that a violation of the RSR policy could lead to serious penalties and that she believed at the outset of the investigation that the allegations against Vengalattore were serious and might lead to his dismissal. CSF ¶ 157. She confirmed that belief at the conclusion of the investigation. Indeed, Dean Ritter's October 2015 determination that Vengalattore violated the RSR Policy explicitly stated her intent to impose "significant sanctions," unless Dr. Vengalattore mooted the issue by leaving Cornell. ECF No. 112-50 (Ritter Decl. Ex. K); CSF ¶ 338–39. Ritter's belief that the allegations could lead to dismissal or a lengthy suspension precluded her from performing anything more than an advisory role in resolving Roe's allegations.

The Dismissal/Suspension Policy analysis of the potential penalty is *prospective* and required that the "might lead to" determination be made at the outset. *See Menaker*, 935 F.3d at 36 (procedural protections safeguard the rights of the accused based on what he is *accused of*, not the

[3] Cornell also failed to apply its Policy on Sanctions for Job-Related Faculty Misconduct (SJFM Policy), which defined any suspension as a "severe" sanction. CSF ¶¶ 161–62. Under that policy even the recommendation of a two-week suspension would trigger the accused's right to a hearing and the ability to question adverse witnesses. CSF ¶¶ 163–165.

outcome of an investigation). As Cornell's designated representative confirmed, "[i]f the dean determines that the conduct in question *may* involve a suspension of a semester or greater it goes through the really complicated process." CSF ¶ 155 (emphasis added). He further testified that if a professor was found to have violated the RSR Policy, suspension or dismissal may result. CSF ¶ 159. Yet Cornell did not follow its Dismissal/Suspension procedures in Dr. Vengalattore's case as this would have afforded Vengalattore with procedural rights counter to DOE's directives.

Cornell claims that Ritter's eventual February 2017 determination to sanction Vengalattore with a two-week suspension precludes application of the Dismissal/Suspension protections reserved for faculty members potentially facing lengthier suspensions. *See* ECF No. 112-90 at 6. However, Cornell relies *purely* on *post hoc* reasoning, which the text of the Dismissal/Suspension Policy precludes. There is no evidence that Ritter, or anyone else, evaluated the sanctions that could potentially be imposed when Roe's complaint was investigated. Indeed, during her deposition, Dean Ritter testified that she did not apply the Dismissal/Suspension Policy in handling the complaint against Dr. Vengalattore and stated that she was not familiar with the policy. CSF ¶ 156. Ritter's tactical choice to impose a two-week suspension in February 2017—over two years after the charges were first brought—is irrelevant in determining which procedures to apply under the Dismissal/Suspension Policy.

Cornell's failure to abide by the requirements of Policy 6.4 and/or the Dismissal/Suspension Policy, combined with the ambiguity of the ad-lib procedures that it applied instead, negatively impacted Vengalattore in other respects. For example, when Dean Ritter announced her intent to impose a two-week suspension, Dr. Vengalattore sought to appeal to the

CAFPS. Believing that Ritter had already followed the process for imposing a "severe sanction,"[4] however, the CAFPS refused to consider the matter. CSF ¶ 390–91. Had the CAFPS taken Vengalattore's appeal, Dr. Vengalattore would have—and should have—been afforded procedural protections that he was ultimately denied. CSF ¶¶ 104–07.

e. The Title IX Investigation Had an Inappropriate Influence on Dr. Vengalattore's Tenure Review and Appeal

Cornell's decision to conduct its investigation of Dr. Vengalattore in blatant violation of its own procedural rules creates an inference that it did so for discriminatory reasons. That inference is strengthened considerably by the inappropriate manner in which it disclosed the nature and substance of its supposedly confidential investigation of Roe's allegations. For example, in July 2015, while the investigation was ongoing, Dean Ritter informed the Tenure Appeal Committee (TAC) and Dean of Faculty that, "[p]rior to the commencement of Professor Vengalattore's tenure review, a series of complaints were raised by his previous student including an accusation that there had been an inappropriate sexual relationship[.]" CSF ¶ 304. Dean Ritter also gratuitously shared her prejudged opinion that the student's accusations were "serious" and "not frivolous." *Id.* It was highly inappropriate for Dean Ritter to make those prejudicial statements to the TAC, given that they were irrelevant to the TAC's assigned task: to determine whether Ritter and the Physics Department had adhered Cornell's tenure procedures during Dr. Vengalattore's tenure review.

[4] A faculty member was generally required to submit his grievance to a grievance committee. ECF No. 112-58 (Ritter Decl. Ex. S). However, if the dean was being grieved, the faculty could appeal directly to the CAFPS. *Id*. Vengalattore contacted the CAFPS to appeal. CSF ¶ 169. Noting the two-week suspension and citing the SJFM which defines *any* suspension as "severe", the CAFPS informed Vengalattore that it had no "standing" in cases involving "severe" sanctions, in which a faculty member would be entitled to a hearing before a faculty panel appointed by the provost (as opposed to CAFPS review). CSF ¶¶ 161–62, 390–91.

When Dr. Vengalattore asked whether such information had been shared with the TAC, Cornell misled him. The Dean of Faculty obfuscated, stating that *his* office had not made such a revelation, but he omitted his knowledge that Ritter had shared such information with the TAC. CSF ¶ 302–13. Further, Ritter instructed Roe not to meet with the TAC, blocking the TAC's attempts to question Roe. CSF ¶ 318. In October 2015, while the TAC's review of Vengalattore's appeal was ongoing, Ritter shared the Investigation Report and her findings with the TAC and opined that these documents were pertinent to Vengalattore's tenure appeal. CSF ¶¶ 331–33. The TAC noted that the "misconduct charges ... were not part of the tenure deliberations" but could not be ignored. CSF ¶ 349. The TAC concluded that a new tenure review should be conducted, this time excluding Roe's letter. CSF ¶ 352–53. The TAC also requested that an independent panel of experts outside of Cornell be appointed to review Dr. Vengalattore's tenure dossier to address any conflicts of interest. CSF ¶ 374. In her initial response to the TAC, Dean Ritter requested that a special ad hoc committee review Vengalattore's new tenure dossier, with all references to Roe removed. However, in doing so, Ritter yet again colored the review when she informed the committee that the TAC had "found that the existence of a personal relationship between the candidate and his (now former) graduate student constituted a conflict of interest that should have prevented the inclusion of material from this student in the tenure file." CSF ¶ 358.

***

Departures from procedural regularity "can raise a question as to the good faith of the process where the departure may reasonably affect the decision." *Zahorik v. Cornell Univ.*, 729 F.2d 85, 93 (2d Cir. 1984); *see also Tolbert v. Smith*, 790 F.3d 427, 438, n.9 (2d Cir. 2015) (denying defendant's motion for summary judgment and concluding that it is for jury to decide whether defendant's explanation for procedural irregularities rebuts inference of

discrimination). Moreover, an employer "cannot escape its promise of procedural protections by recharacterizing accusations of sexual misconduct in more generic terms." *Menaker*, 935 F.3d at 37 (2d Cir. 2019). "Nor can it deny an inference of procedural irregularity through post-hoc rationalization." *Id.*

Despite Cornell's argument to the contrary, ECF No. 112-90 at 5–6, 12, 17, this case is analogous to *Menaker*. In *Menaker*, the Second Circuit concluded that the plaintiff had pleaded facts reflecting a "clearly irregular investigative and adjudicative process," which, if taken as true, established a prima facie case of sex discrimination. *Id.* Like the case at hand, the plaintiff in *Menaker* was accused of sexual misconduct by a student of questionable credibility and deprived of procedural rights guaranteed by the university's governing policy. At the conclusion of the university's investigation, the university informed the plaintiff that he was being terminated for "unprofessional conduct." *Id.* at 29.

The university contended that, "regardless of the offense of which [the plaintiff] was *accused*," its Harassment Policy did not apply because the university found the plaintiff responsible for "unprofessional conduct," rather than sexual harassment. *Id.* at 36. The Second Circuit rejected this argument, concluding that: (1) it "defie[d] common sense," (2) was "contrary to the written terms of the Harassment Policy," and (3) that the university's finding of unprofessional conduct "derive[d] from—and simply recharacterize[d]—the sexual harassment accusations[.]" *Id.* The university's Harassment Policy applied to "complaints alleging harassment," and the student's complaint expressly alleged "sexual harassment violations." Therefore, the Second Circuit held, the Harassment Policy applied—"regardless of how the University chooses to characterize its ultimate findings." *Id.*

Likewise, Cornell's circumvention of its own procedures (1) "defies common sense," (2) is contrary to the written terms of the policies that plainly governed (Policy 6.4, Dismissal/Suspension Policy), and (3) "simply recharacterize[d]" Roe's allegations of sexual assault and harassment. Given the above, Cornell's contention that the "procedures followed by Cornell are in stark contrast to the definition of a 'clearly irregular investigative or adjudicative process' identified by the Second Circuit in *Columbia* and *Menaker*," ECF No. 112-90 at 12, is plainly inaccurate. *See also*, *id.* at 6 ("[u]nlike in *Menaker*, the record here shows that Cornell followed applicable policies and conducted a thorough and impartial investigation"). Cornell's numerous violations and manipulations of its procedures create "articulable doubt" and provide circumstances that, at minimum, "give rise to an inference of discrimination."

2. *Cornell Failed to Meaningfully Pursue Inquiries and Witnesses Supportive of Dr. Vengalattore's Case*

The record shows that Cornell also failed to meaningfully pursue or consider inquiries and witnesses that might support Dr. Vengalattore's denial of sexual misconduct. At the same time, Cornell disregarded strong evidence calling Roe's credibility into question. For instance, contrary to its claim otherwise, ECF No. 112-90 at 15, Cornell failed to interview at least nine of the 20 witnesses identified by Vengalattore. CSF ¶¶ 293–94. Additionally, the investigators:

- did not find a single person who personally witnessed the alleged yearlong romantic relationship between Roe and Dr. Vengalattore. CSF ¶ 328.
- based the conclusion that Vengalattore had sex with Roe on December 30, 2010 (nearly four years earlier) on Roe's report of timing of sex during a pregnancy test and Vengalattore's inability (improper burden) to prove that Roe "could have had sex with anyone else" on December 30, 2010, which, in their view, made Roe's allegation "more plausible." CSF ¶ 329.
- expressly disregarded witnesses familiar with Vengalattore's lab environment, as well as evidence suggesting that Roe struggled academically in the lab, concluding that such considerations were "not the issue in this investigation." CSF ¶ 327.
- concluded that Professor Schwab, one of Vengalattore's witnesses who had worked extensively with Vengalattore and met Roe on multiple occasions, would most likely not

provide "particularly meaningful information" because "we have [no] reason to believe that he know[s] the nature of this investigation or any information about a romantic relationship." CSF ¶ 286. Accordingly, the investigators planned simply to "humor" Professor Schwab and "have a nice short interview." CSF ¶ 287.

Moreover, the investigators were well aware of Roe's vendetta against Vengalattore following her departure from his lab, including her authorship dispute and her expressly stated intention to prevent Vengalattore from getting tenure. *See* CSF ¶¶ 27–32. They were also aware of the inconsistencies in Roe's various allegations, yet the investigators nevertheless deemed Roe's allegations of sexual assault—lodged over three years after the fact and just *days* after Dr. Vengalattore was recommended for tenure—credible.[5] *See* CSF ¶¶ 199–200; Mittman Decl. Ex. G at 007763–64.

Based on the Second Circuit's prior analysis in this case, the evidence above is more than sufficient to establish material facts concerning Cornell's violation of its own policies and its lopsided investigation, supporting the inference that Cornell's investigation reached an erroneous conclusion. Even so, additional evidence supports Dr. Vengalattore's claim.

3. *Dean Ritter Lacks Credibility and Had Questionable Motivations*

Dean Ritter is central to both Dr. Vengalattore's case and Cornell's defense, and a jury may find that her statements lack credibility. On October 18 (or 28),[6] 2014, following the Physics Department's vote in favor of Vengalattore's tenure and Roe's subsequent claim of sexual assault, Professors Patterson and Thom of Cornell's Physics Department, and Pam Strausser discussed Roe's allegations with Mittman. CSF ¶ 206. On October 29, 2014, Ritter documented her preliminary decision to deny Vengalattore's tenure. ECF No. 112-43 (Ritter Decl. Ex. D). On

[5] Cornell spends a great deal of its motion addressing the alleged credibility of witnesses and facts cited in its Investigation Report. *See* ECF No. 112-90 at 16–23. Plaintiff disagrees with Cornell's allegations, but the credibility issues Cornell raises are either collateral to Cornell's faulty and biased procedures or raise issues of fact for a jury. Plaintiff thus does not address them here.

[6] The hand-written date on the document is ambiguous. CSF ¶ 207.

December 8, 2014, Ritter affirmed her preliminary decision to deny tenure, rejecting the Physics Department's appeal to reconsider. ECF No. 112-44 (Ritter Decl. Ex. E).

Ritter claims that during her deliberations over Dr. Vengalattore's tenure, she was unaware of Roe's sexual misconduct allegations until 2015. ECF No. 112-49 at 13 (Ritter Decl. ¶ 48); CSF ¶ 235. Ample evidence, however, belies this assertion:

- Mittman's handwritten October 18 (or 28), 2014 notes describe Roe's claim of nonconsensual sex, followed by the note: "OK to confront [Vengalattore] w/ info – Dean OK too." CSF ¶ 208.
- A Title IX form drafted by Mittman and dated November 2, 2014, described Roe's allegations. CSF ¶ 212. The "sexual harassment" box is checked, and, under "Summary:" it states, "after consultation with Dean, … we are postponing investigation into that pending further notification from the Dean on the tenure case." CSF ¶ 213–14. Under "Outcome of Inquiry:" the "closed" box is checked followed by the note "Pending further advice from dean." CSF ¶ 216.
- By November 3, 2014, Mittman had spoken with Roe directly and was scheduled to meet with Ritter to discuss. CSF ¶¶ 217–18.
- On November 12, 2014, Roe wrote Mittman claiming that she felt "harassed" and that she was seeking "protection from retaliation." ECF No. 112-23 at 2 (Mittman Decl. Ex. C). The next day, Mittman responded that he had met with the Dean about the matter and that he would soon meet with her again. *Id*.
- On December 8, 2014, Ritter confirmed her preliminary decision to deny Vengalattore tenure, citing the alleged "shocking" and "borderline unethical" lab environment. CSF ¶¶ 245–47.
- On December 11, 2014, Roe requested an update from Mittman. CSF ¶ 250. She states that her "previous information [was] that [he] had brought the information to the dean and that [Mittman was] working with her to decide what to do." CSF ¶ 251. Mittman assured Roe that he had been consulting with the Dean who had been apprised of Roe's concerns. CSF ¶ 253.

The record thus contradicts Dean Ritter's repeated claims that she was unaware of Roe's allegations until 2015. Rather than informing Dr. Vengalattore of the charges against him, Ritter, along with members of Cornell's Title IX office, HR department, and Physics Department, kept Roe's sexual misconduct allegations hidden from Vengalattore for months while working to defeat his tenure application. CSF ¶¶ 271–75; 202–210; 220–222, 238, 246.

4. *Roe Had Vengeful Motivations*

Cornell's failure to even acknowledge Roe's motivation to damage Dr. Vengalattore's career further undermines the credibility of its investigation. *See Syracuse Univ.*, 457 F. Supp. 3d, at 200 (citing *Yusuf*, 35 F.3d at 715) ("particular evidentiary weaknesses behind the finding of an offense such as motive to lie on the part of a complainant or witnesses" may lead one to "doubt the veracity of the charge"). First, Roe admitted to another student that she was "sexist against men." CSF ¶ 179. Second, Roe struggled with her work in Vengalattore's lab and repeatedly called attention to the fact that she was the only female graduate student in the group. CSF ¶ 178. Third, in April 2013, Roe vowed, "[i]f I have my way, [Vengalattore] will have a hard time getting tenure." CSF ¶ 27. Fourth, from April through October 2014, a conflict existed between Roe and Vengalattore regarding her role in and credit for a published research paper. CSF ¶¶ 28, 32, 35. During this time, Roe submitted a scathing letter to the tenure committee, accusing Vengalattore of being "abusive," "degrading[,]" and of having thrown a five-pound power supply at her in anger. ECF No. 112-42 at 4–5 (Ritter Decl. Ex. C). Finally, within days of being informed of the department's vote in favor of Vengalattore's tenure, Roe first reported her sexual assault claim to Professor Patterson, CSF ¶¶ 199–200; Mittman Decl. Ex. G, at 30, one of three faculty members who led the physics department's review of Dr. Vengalattore's tenure application. CSF ¶ 46.[7] These circumstances should have given Cornell pause with respect to Roe's credibility. Dean Ritter nonetheless chose to ignore existing Cornell procedures to ensure that Dr. Vengalattore would be denied tenure as well as being denied a fair investigation.

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[7] Professor Patterson also became a CAFPS member in 2015 and remained on the CAFPS committee while Vengalattore's appeal efforts were thwarted. CSF ¶ 48.

B. Gender Bias Motivated Cornell's Misconduct

The evidence supports Dr. Vengalattore's claim that gender bias was a motivating factor behind Cornell's misconduct. Allegations supporting an inference of gender bias "might include, *inter alia*, statements by members of the disciplinary tribunal, statements by pertinent university officials, or patterns of decision-making that also tend to show the influence of gender." *Yusuf*, 35 F.3d at 715. Particular facts may serve "both to cast doubt on the accuracy of the disciplinary adjudication and to relate the error to gender bias." *Id*. Moreover, because discrimination claims "implicate an employer's usually unstated intent and state of mind," rarely is there "direct, smoking gun, evidence of discrimination." *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 86 (2d Cir. 2015) (citation omitted); *see also Simons v. Yale Univ*., 2024 WL 182208, at *13 (D. Conn. Jan. 17, 2024) (citing *Doe v. Columbia Univ.*, 831 F.3d at 55–56) (a plaintiff may "rely upon circumstantial evidence" to show gender bias).

1. *Cornell Faced External Pressure to Reduce Protections for Males Accused of Sexual Misconduct*

From at least 2011 through 2015, Cornell was under pressure from DOE to employ procedures that would disadvantage the overwhelmingly male population accused of sexual assault or harassment, and Cornell gave way to that pressure. In April 2011, DOE released a Dear Colleague Letter (DCL) laying out the aggressive steps it felt were necessary to adequately investigate claims. CSF ¶ 59. The DCL mandated a mere "preponderance of the evidence" standard, discouraged cross-examination of complainants, and demanded that schools take "prompt and effective steps." CSF ¶ 62–64.

Cornell has admitted that the DCL was an "instigating cause" of Cornell's revision of its policies regarding sexual assault and harassment allegations. CSF ¶ 97. Prior to 2012, complaints of sexual misconduct between students had been governed by Cornell's Campus Code of Conduct

(CCC), which applied a "clear and convincing" standard of proof. CSF ¶ 98. Subsequently, Cornell moved the regulation of sexual misconduct from the CCC to a separate policy to govern all sexual misconduct claims (Policy 6.4), which applied a mere "preponderance of the evidence" standard for students and denied students the right to a hearing with witnesses. Mittman Decl. Ex. B at 20. Cornell uniquely disadvantaged those accused of sexual misconduct, a group that is overwhelmingly male.

By September 2011, Cornell's Title IX office, specifically Mr. Mittman, recommended that Cornell also change the RSR Policy because he believed romantic relationships between students and faculty supervisors could be "exploitive" and "discriminatory." CSF ¶¶ 65–66. After discussing these concerns with Professor Siliciano and others, Mittman began pursuit of revisions to the RSR Policy, involving Joe Burns, Pam Strausser, and Professor Patterson, all of whom were also involved in Vengalattore's tenure process. CSF ¶¶ 124, 134–36, 139–41, 46–54.

On April 29, 2014, DOE released further guidance. *Id.* ¶ 68. DOE reinforced its mandate for a "preponderance of the evidence" standard and its recommendation against allowing complainants to be cross examined. CSF ¶¶ 74–75. The 2014 Guidance further specified that DOE expected schools to apply a "strong presumption" that sexual activity between an adult student and a faculty member was not consensual and that schools were responsible for "remedying any effects" of sexual harassment, even when the school was not aware of the harassment when it was occurring. CSF ¶¶ 69–73.

On May 1, 2014, DOE began a new practice of publicly identifying schools it was investigating for failure to adequately address sexual assault or harassment claims. CSF ¶ 77. DOE updated the list of schools under investigation weekly, and Cornell appeared on the list by May 2015. CSF ¶¶ 78, 91. DOE also began a practice of publishing its complaints against and

resolutions with colleges investigated for failure to adequately address sexual assault or harassment claims. CSF ¶ 79. A complaint and resolution published in December 2014 made clear that DOE considered a college's application of the clear-and-convincing standard of proof, as well as appeal opportunities that the college afforded a respondent that were not available to the complainant to each be violations of Title IX. CSF ¶¶ 80-82. As explained above, Cornell's policies in place in 2014–2015 (including Policy 6.4 and Section 4.3) entitled faculty members to the very same protections deemed problematic by DOE.

2. *Cornell Aggressively Responded to Pressure to Reduce Due Process Protections for Males Accused of Sexual Misconduct*

As a result of the pressure that Cornell faced to address female students' complaints of sexual misconduct more seriously, Cornell made aggressive efforts, including substantively diminishing the procedural rights and protections of (the usually male) respondents. Indeed, in 2014, Mittman recommended that Cornell leadership "actively create a climate that demonstrates zero tolerance" for sexual assault. CSF ¶ 87.

Mittman, Burns, Siliciano, Patterson and numerous other Cornell administrators sought to align Cornell's policies with DOE's demands. While Cornell was investigating Dr. Vengalattore, it was also in the process of revising the RSR Policy. For instance:

- On February 15, 2015, days before Dr. Vengalattore submitted an appeal to Burns, Mittman sent Burns an email with the subject: "Romantic relations policy" with the RSR Policy attached. CSF ¶ 263.
- In February 2015, Mittman wrote to Strausser that they were "charged to press ahead with a ban" of faculty/student relationships. CSF ¶ 124.
- On August 7, 2015, Mittman was proposing a revised version of the RSR Policy. CSF ¶ 136. Burns was copied on the proposal and Mittman noted his support. CSF ¶ 138. Just a few hours later, Burns, this time copying Mittman, obfuscated in response to Vengalattore's question as to whether the TAC had been inappropriately informed of the RSR investigation. CSF ¶¶ 311–13.

- On September 8, 2015, the CAFPS, which now included Professor Patterson, met to discuss Mittman and Burn's proposed RSR policy changes. CSF ¶ 139.

- On September 23, 2015, Mittman, copying Burns, wrote to one of the CAFPS members regarding her upcoming presentation to the Faculty Senate concerning the proposed changes to the RSR policy. CSF ¶¶ 141–42. The draft policy continued to state that discipline against faculty members found to have engaged in a romantic relationship with a student that they supervised should be subject to severe discipline that could include termination. *Id.*

- Two days later, on September 25, 2015, Mittman sent his final Investigation Report regarding Roe's allegations to Ritter. The Report noted that Cornell was "guide[d]" by DOE, particularly with respect to the presumption that a faculty/student relationship constituted sexual harassment. CSF ¶ 321.

Notwithstanding Mr. Mittman's advocacy for and apparent belief that Cornell's Faculty Senate would vote in favor of his proposed revisions of the RSR Policy, which would provide for significant sanctions and strict enforcement mechanisms against accused faculty, in November 2015, the Faculty Senate took a vote and rejected the proposal. CFS ¶ 141 n. 2. The evidence indicates that Dean Ritter was also operating under the assumption that the revised RSR Policy would be adopted that year. Indeed, Ritter testified during her deposition that the investigation into Roe's allegations against Dr. Vengalattore was conducted under "Policy 6.3," a revised version of the RSR Policy that was not adopted until 2018. CSF ¶¶ 143–44.

Given the above, Cornell's contention that the "record is devoid of *any* evidence that outside pressures influenced the investigation" must be rejected. ECF No. 112-90 at 16. Dr. Vengalattore has offered abundant evidence not only of the influence of external pressure on the Title IX investigation itself, but also the influence of such pressure on Cornell's application—or, more accurately, *mis*application—of its own policies, resulting in the severe procedural deviations and manipulations detailed herein.

3. *Cornell's Policy 6.4 and RSR Policy Investigations Are Overwhelmingly Against Men and Its Investigation in This Case Revealed Gender Bias*

Cornell's investigations of sexual misconduct overwhelmingly targeted men, and Cornell knew this when it revised Policy 6.4, when it sought to revise the RSR Policy, and when it refused to permit Cornell's applicable policies to afford Dr. Vengalattore proper protections. For example, the only evidence in the record of Cornell's investigations of purported violations under the RSR Policy involved claims against men. CSF ¶¶ 122, 125–33. An overwhelming majority of those charged with sexual misconduct under Policy 6.4 were also male. CSF ¶114 (19 males found responsible for violating Policy 6.4 during 2014–16 and only 1 female; only 3 of 24 respondents investigated were female); ¶114 (17 of 18 respondents in 2016–2017 were male, and no female was found to have violated Policy 6.4). Further, in the one recorded instance of Policy 6.4 being applied against a faculty member, the respondent was male. CSF ¶ 115.

The manner in which the investigation into Roe's complaint was conducted demonstrates gender bias. As one telling example, on March 3, 2015, when Cornell first informed Dr. Vengalattore of the assault allegation against him, in response to Dr. Vengalattore's inquiry, the Title IX investigators told him that he did not need counsel. CSF ¶ 277. In contrast, on March 10, 2015, after telling Roe that Vengalattore denied her allegations, Cornell supplied Roe with a Cornell-paid advisor and advocate, Ms. Karns, who also had a law degree. CSF ¶¶ 278-81, 58. Ms. Karns repeatedly met and corresponded with the investigators, was informed of upcoming steps in the investigation process, including topics for Roe's interviews, and advocated on Roe's behalf. CSF ¶¶ 280–81, 319–20. Cornell slanted the investigation in favor of Roe, suggesting gender bias. *See Doe v. Quinnipiac Univ.*, 404 F. Supp. 643, 662 (D. Conn. 2019) (uneven application of procedures to favor females supported inference of bias).

4. *Dean Ritter Exhibited Bias*

Finally, the evidence supports an inference that Dean Ritter was predisposed to support Roe's claims because of her longstanding belief in the need to support women alleging that they have been treated unfairly by men. First, a jury could find that Ritter's involvement and views were logically impacted by her former role as the Director of the Center for Women and Gender Studies, her other professional and academic work focusing on gender studies, and her perception of women's inequality in society. CSF ¶¶ 39–41. Second, the evidence supports an inference that Ritter prejudged the outcome of the case in favor of Roe. Ritter overturned the Physics Department's recommendation that Vengalattore be granted tenure in October 2014, within days after Roe's sexual assault allegations had been discussed at Cornell. CSF ¶¶ 206–210. Ritter issued a "no contact" order to Vengalattore in April 2015, well before the completion of the investigation, demanding that he stay away from Roe and not attend any professional conference she planned to attend. CSF ¶¶ 282–84. Further, in an effort to persuade the TAC to uphold her tenure decision, Ritter improperly and surreptitiously informed the TAC of Roe's sexual misconduct allegations in July 2015, along with her judgment that the allegations were "serious" and "not frivolous." CSF ¶¶ 302–04. And when presented with an impartial way to remedy the procedural defects and improper considerations that the TAC had identified in her initial tenure review, CSF ¶¶ 347, 353, 356–58, Ritter rejected the proposal and instead maintained control over Dr. Vengalattore's tenure appeal, thus ensuring her ability to overturn yet another faculty recommendation that MV be granted tenure. CSF ¶¶ 363–63, 374–78. In short, a jury could reasonably find that Dean Ritter's prejudgment was a product of her bias.

In sum, the overlapping roles and actions of Ritter, Mittman, Strausser, Burns, Siliciano, and Patterson support an inference that these individuals, "w[ere] not [] impartial factfinder[s]" and that the Title IX investigation was "entangled" with Mittman's advocacy for a "zero tolerance"

stance towards males accused of sexual misconduct at Cornell, along with his efforts to impose harsher procedures and penalties for violations of the RSR Policy. *See Doe v. Colgate Univ.*, 457 F. Supp. 3d 164 (N.D.N.Y. 2020) (summary judgment denied where plaintiff produced evidence that investigator was not impartial factfinder, was entangled in criminal investigation of respondent, and failed to investigate inconsistencies in complainant's account).

Moreover, Mittman's—and, by inference, Ritter's—adoption of DOE's presumption that any supervisory-subordinate relationship (*i.e.,* like the alleged Vengalattore-Roe relationship) was nonconsensual negates the agency of the female accusers and further supports an inference of gender bias, as do Ritter and Mittman's procedural machinations to deny Vengalattore the multiple opportunities for hearing and cross-examination that should have been available to him. *See Doe v. Siena Coll.*, No. 1:22-cv-1115, 2023 WL 197461, at *16 (N.D.N.Y. Jan. 17, 2023) (finding plaintiff made showing of gender bias where evidence showed procedural irregularities and that university administrator heavily involved in investigation made statements indicating opposition to procedural protections of males accused of sexual misconduct).

Cornell's explicit and contemporaneous responsiveness to DOE's pressure and the significant overlap of individuals who were involved in Dr. Vengalattore's tenure and Title IX cases as well as the efforts to toughen Cornell's RSR and other policies, distinguishes this case from others in which plaintiffs failed to provide adequate evidence of bias. *See Syracuse Univ.*, 457 F. Supp. 3d at 201 (plaintiff failed to show that witnesses involved in investigation were part of, or even more than generally aware of, university task force on sexual and relationship violence; plaintiff had not pointed to directives from university administration). The evidence also satisfies the burden as articulated by Cornell: "'the employee's admissible evidence must show circumstances that would be sufficient to permit a rational finder of fact to infer that the employer's

employment decision was more likely than not based in whole or in part on discrimination.'" ECF No. 112-90 at 6 (quoting *Kirkland v. Cablevision Sys*., 760 F.3d 223, 225 (2d Cir. 2014)). This evidence defeats Cornell's motion for summary judgment.

II. CORNELL DEFAMED DR. VENGALATTORE

Cornell defamed Dr. Vengalattore by causing Dean Ritter's faulty investigation finding to be circulated widely within Cornell and to individuals outside of Cornell. To establish defamation, a plaintiff must show: a defamatory statement, published to a third party, fault, falsity, and special or per se damages. *Palin v. N.Y. Times Co.*, 940 F.3d 804, 809 (2d Cir. 2019).

A. Evidence Supports Dr. Vengalattore's Defamation Claim

Cornell does not dispute that, if false, a statement that Vengalattore violated university policy by engaging in an inappropriate sexual relationship with a student under his supervision, and then lied about it, would qualify as defamatory. ECF No. 112-90 at 23–32. Dean Ritter's October 2015 determination contains each component of this statement, as does her February 2017 letter imposing a suspension. CSF ¶¶ 336, 384.[8]

Nor can there be any dispute that Cornell published these statements to the TAC, senior physics faculty, the Dean of Faculty, and other administrators. CSF ¶ 342; ECF No. 112-2 at 10–11 (Flanagan Decl. ¶¶ 36–37). These disclosures make a mockery of Ritter's claim that findings regarding Roes's allegations would be kept confidential. CSF ¶ 301 (Ritter testifying tenure and the investigation should be confidential). For example, she had no legitimate basis to share her findings with the TAC—other than to improperly influence the TAC's pending ruling on her tenure denial decision. A defamatory statement is published "as soon as [it is] read by anyone else."

[8] Other defamatory statements are found in the Investigative Report Ritter invited the TAC and others to review. *See* CSF ¶ 342; Ritter Decl. Ex. G at 53 ("[Roe] has painted [Vengalattore] as verbally abusive …., giving harsh criticisms, yelling …, and causing students to cry.").

Ostrowe v. Lee, 256 N.Y. 36, 38 (N.Y. 1931). Under New York law, the publication rule "applies even to statements made by one employee to another." *Albert v. Loksen*, 239 F.3d 256, 269 (2d Cir. 2001).

Cornell has contradicted itself in this litigation with respect to what information it shared with professors outside of Cornell during its *de novo* tenure review. In its answer, Cornell claimed that it was Vengalattore who compiled the tenure dossier that was ultimately circulated to external faculty reviewers at a number of universities. ECF No. 40 at 50 ¶ 158. According to Cornell, "[t]rue and correct copies of the relevant excerpts" of the packet disseminated to "external reviewers at other universities" were attached to the answer as Exhibit 31. *Id.* at 53 ¶ 174. Exhibit 31 begins with an index to the tenure dossier. ECF No. 40-31 at 2–4. On the second page of that index, under item eight, there is an entry for "Ltr. to MV from Dean Ritter 2-6-17." *Id.* at 3. The February 6, 2017 letter from Ritter to Vengalattore reiterates her October 6, 2015 finding that Vengalattore had violated the RSR Policy and "subsequently den[ied] that the relationship occurred." ECF No. 112-56 at 2 (Ritter Decl. Ex. Q). It also reiterated Dr. Ritter's intention to "impose significant sanctions ... that may include restrictions on [Dr. Vengalattore's] ability to accept or supervise female graduate students." *Id.* Thus, Cornell's own prior pleading indicates that the dossier circulated to outside reviewers included Ritter's finding.[9]

Now Cornell offers a different story, claiming that there were two versions of the dossier and that the more extensive version, the one with Ritter's letter, was published only *within* Cornell. *See* ECF No. 112-2 at 10–11(Flanagan Decl. ¶¶ 35–36). A jury, however, is not required to accept this alleged "correction," particularly given that Cornell's Exhibit 31, purportedly reflecting a true

[9] Cornell claims that the citation to the February 6, 2017 letter was an error and that where a letter was included, it was the October 6, 2015 letter. Flanagan Decl. ¶ 37. Either letter is defamatory.

and correct copy of what was sent externally, affixed the more fulsome dossier index to a letter sent to an external reviewer. ECF No. 40-31 at 2–5 (tenure dossier sent to Brian Anderson at the University of Arizona). Cornell's transmission of the larger dossier would have resulted in Cornell directly publishing Ritter's findings externally. It is for the jury to decide which version of Cornell's story to accept.

Moreover, even if Cornell did not provide Ritter's letters to other institutions during the *de novo* review, common sense dictates that the salacious findings widely circulated within Cornell made their way from Cornell to individuals at other universities. Indeed, in his deposition, Vengalattore recounted that faculty at other universities informed him that they had heard defamatory statements from individuals at Cornell. RSF ¶ 135.

Cornell's suggestion that parties outside of Cornell learned about the investigatory findings from Roe, a website, the media, or even Vengalattore himself is countered by the evidence above and should be rejected at the summary judgment stage. ECF No. 112-90 at 28–31 (stating that Vengalattore published the defamatory statement when he filed his lawsuit); *id.* at 32 (blaming Roe). *See Brooks v. Arquitt*, No. 21-cv-963, 2023 WL 3821353, at *2 (N.D.N.Y. May 19, 2023) ("When considering a motion for summary judgment, the court must resolve all ambiguities and draw all reasonable inferences in favor of the non-movant.") (citing *Nora Beverages, Inc. v. Perrier Grp. of Am., Inc.*, 164 F.3d 736, 742 (2d Cir. 1998)); *Porter v. Dartmouth-Hitchcock Med. Ctr.*, 92 F.4th 129, 147 (2d Cir. 2024) ("Thus, while the court is required to review the record as a whole, it *must disregard all evidence favorable to the moving party that the jury is not required to believe*.") (quotations and citations omitted). A reasonable jury could infer that it was Cornell, not Roe, who leaked the damning information that tarnished Vengalattore's reputation.

The evidence, at minimum, raises an inference that Cornell bears fault for publishing the defamatory statements. *See Powell v. Jones-Soderman*, 849 Fed. Appx. 274, 278 (2d Cir. 2021) (negligence is requisite fault) (citation omitted); *see also Pasternack v. Lab. Corp. of Am. Holdings*, 807 F.3d 14, 19 (2d Cir. 2015) (elements of negligence, including breach of duty) (citation omitted). Ritter was required under Policy 6.4 and Cornell's tenure procedures to maintain confidentiality and to keep the investigation sequestered from the TAC, as well as from the broad swath of Cornell faculty and staff to whom Ritter nevertheless conveyed the defamatory information. Mittman Decl. Ex. B at 13 ("[N]o one participating in the procedures under this policy may reveal any information learned in the course of so doing."); *id*. at 12 (Cornell was required to "take reasonable measures" to "protect" confidentiality). In late 2015, the TAC noted in its report that "[t]he *misconduct charges were not part of the tenure deliberations*, but *we could not ignore them*[.]" ECF No. 112-51 at 113 (Ritter Decl. Ex. L) (emphases added). Likewise, the Physics Department breached its duty when it shared Ritter's findings with the faculty during the *de novo* review, and potentially published the findings outside of Cornell. *See* Flanagan Decl. ¶¶ 35–36.

The statements that "an inappropriate sexual relationship" occurred between Vengalattore and Roe and that he lied about such a relationship are false. Dr. Vengalattore has repeatedly denied engaging in any relationship with Roe. CSF ¶ 274; ECF No. 1 ¶ 719. As detailed above, Cornell's investigation tactics and defective procedures resulted in a dubious and unfounded finding, thereby establishing the falsity of Cornell's claim that it determined Dr. Vengalattore's guilt after conducting a procedural proper and fair investigation.

"[A] defamatory statement that is a direct attack upon the business, trade or profession of the plaintiff is considered defamation 'per se', and is therefore actionable without any proof of special damages[.]" *Yesner v. Spinner*, 765 F. Supp. 48, 52 (E.D.N.Y. 1991). The accusations

against Vengalattore "impugn the [P]laintiff's integrity, and allege misconduct, [and] unfitness ... in connection with his business" and constitute defamation per se. *Id.* Indeed, in stating why Vengalattore had a hard time "finding employment at these other universities outside of the Cornell community[,]" Professor Schwab explained, "my understanding is that ... he's basically untouchable; he's radioactive because of this allegation. And until it's resolved, academia cannot employ him. ... the deans and the senior people cannot employ him; they will never sign off." *Id.* at 84–85. Even if Cornell's statements were not defamation per se, Dr. Vengalattore has suffered significant financial harm as a result of Cornell's conduct. CSF ¶ 409.

At minimum, the evidence raises material disputed questions of fact as to whether Dr. Vengalattore was defamed as a result of Cornell's loose-lipped investigation.

B. Dr. Vengalattore's Alleged "Self-Publication" Is Protected by Privilege

Cornell's theory that Dr. Vengalattore's self-publication of defamatory information defeats his claim fails for at least two reasons. ECF No. 112-90 at 28. First, in contrast to the plaintiffs in Cornell's cited cases, Vengalattore is not resting on an allegation that Cornell forced him to self-publish. *See id.* at 28 (citing *Phillip v. Sterling Home Care, Inc.*, 103 A.D.3d 786, 787 (N.Y. App. Div. 2013) (where the plaintiff claimed she was defamed through "compelled self-publication" by being forced to disclose allegations of theft on her job applications); *id.* (citing *Weintraub v. Phillips, Nizer, Benjamin, Krim, & Ballon*, 172 A.D.2d 254, 254–55 (N.Y. App. Div. 1991)) (where plaintiff did not allege defendant published statement to a third party); *id.* (citing *Church of Scientology of Cal., Inc. v. Green*, 354 F. Supp. 800, 801 (S.D.N.Y. 1973) (where plaintiff self-published to wife and could not identify a non-privileged publication by defendant).

Second, Dr. Vengalattore's New York state court proceeding does not invalidate his defamation claim as "statements made by parties, attorneys, and witnesses in the course of a judicial or quasi-judicial proceeding are absolutely privileged, … so long as they are material and

pertinent to the issue to be resolved in the proceeding.'" *Conti v. Doe*, 535 F. Supp. 3d 257, 280 (S.D.N.Y. 2021) (citation omitted)). This privilege prevents "'an impediment to justice'" because its absence would "hamper the search for truth ....'" *Front, Inc. v. Khalil*, 28 N.E.3d 15, 18 (N.Y. 2015) (quoting *Youmans v. Smith*, 153 N.Y. 214, 220 (1897)). Such reasoning applies as logically to a defamed plaintiff as it does to an employer. An employee should not be discouraged from pursuing discrimination claims against an employer whose wrongdoing rests on false information merely because articulating the false information in a lawsuit would preclude a claim of defamation. Dr. Vengalattore's search for justice through a court cannot shield Cornell from liability for its own defamatory statements.

CONCLUSION

The evidence and properly drawn inferences support Dr. Vengalattore's claims that Cornell subjected him to a biased investigation in violation of Title IX and defamed him. Cornell's motion for summary judgment should be denied.

March 13, 2024

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to all counsel of record.

Respectfully,

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