JAYESH PATEL, (SBN 132939)
jpatel@zuberlaw.com
ROBERT W. DICKERSON JR. (SBN 89367)
rdickerson@zuberlaw.com
ZUBER LAWLER & DEL DUCA LLP
777 S. Figueroa Street, 37th Floor
Los Angeles, California 90017
Telephone: (213) 596-5620
Facsimile: (213) 596-5621

Attorneys for Plaintiffs **HALEY VIDECKIS** and **LAYANA WHITE**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

HALEY VIDECKIS and LAYANA WHITE, individuals,

Plaintiffs,

v.

PEPPERDINE UNIVERSITY, a corporation doing business in California,

Defendant.

CASE NO. 2:15-CV-00298-DDP (JCx)

[Assigned to the Hon. Dean D. Pregerson – Courtroom 9C]

PLANTIFFS' OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 7 TO EXCLUDE TESTIMONY AND/OR EVIDENCE OF COACH RYAN WEISENBERG'S DISCIPLINARY ACTIONS RELATING TO FORMER PEPPERDINE BASKETBALL PLAYER ERICA CHANDLER; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed Concurrently with Oppositions to Defendant's Motions in Limine Nos. 1 thru 14; Declaration of Jayesh Patel In Opposition]

Date:	June 12, 2017
Time:	10:00 a.m.
Courtroom:	9C
Pre-Trial Conf.:	July 10, 2017
Trial Date:	July 18, 2017

I. INTRODUCTION

Pepperdine cannot parse out individual facts in this case by trying to isolate them out of context. Coach Ryan's disciplinary actions against one of Plaintiffs' former teammates at Pepperdine, Erica Chandler ("Chandler") is germane to: a) the environment he created, b) Plaintiffs' state of mind when later targeted in a similar manner, and c) how this Pepperdine employee utilized the school's broader environmental influences to shield or disguise his treatment of Plaintiffs. When a hostile environment is claimed, an inquiry into the merits requires careful consideration of the social context and other surrounding circumstances in which the behavior occurred. Each act cannot be assessed in isolation.

When Plaintiffs were at Pepperdine, Coach Ryan humiliated Chandler in demeaning and inappropriate ways in front of the entire team because she had trouble learning plays. Coach Ryan told Chandler to take a week off the team due to an academic issue she was having. Concerned for their daughter, Chandlers' parents flew to California to meet with Coach Ryan. Coach Ryan said he wanted Chandler off the team, but that the ultimate decision was Dr. Potts'. After Chandler's parents flew home, Coach Ryan notified Chandler that she was no longer on the women's basketball team and told her it was his decision. Coach Ryan was ultimately forced by Dr. Potts to write an apology letter for lying to Chandlers' parents.

All these details were known, discussed and shared amongst Plaintiffs and their teammates, forming the environment and circumstances under which Plaintiffs experienced their own treatment by this Pepperdine employee and his staff.

II. COACH RYAN'S DISCIPLINARY ACTIONS AGAINST CHANDLER IS RELEVANT

Title VII principles apply to hostile environment claims under Title IX. *Oona R.-S.- by Kate S. v. McCaffrey*, 143 F.3d 473, 476 (9th Cir. 1998) (applying Title VII standards in a Title IX suit brought by a female student claiming school officials were responsible for permitting sexual harassment by a student teacher and by boys

in her class); see e.g., *Franklin v. Gwinnett County Pub. Schs.*, 503 U.S. 60, 75 (1992) (stating that teacher's sexual harassment of student is covered by Title IX); *Emeldi v. University of Oregon*, 673 F.3d 1218, 1223 (9th Cir.2012) (applying Title VII standards to a Title IX retaliation case).

An inquiry into the objective severity of harassment "requires careful consideration of the social context in which particular behavior occurs and is experienced by its target... The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed." *Oncole v. Sundowner Offshore Serv., Inc*., 523 U.S. 75, 82 (1998); *see also Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 270 (2001) (stressing workplace conduct "is not measured in isolation" and the need to consider all circumstances in hostile work environment cases).

Coach Ryan's treatment of Chandler is one element of the "social context" described in *Oncole*, which helps paint the picture of the hostile environment Plaintiffs experienced at Pepperdine. *Oncole* at 82. Evidence surrounding Coach Ryan's treatment of Chandler is relevant because it goes to Plaintiffs' state of mind: having seen the lengths Coach Ryan would take to kick a player he did not like off the team (here, blatantly lying to manipulate Chandler's family) influenced how the Plaintiffs reacted when Coach Ryan tried to kick them off the team. Plaintiffs knew, after the events with Chandler, that Coach Ryan did not feel he needed to play by the rules when it came to players he wanted off the team.

III. EVIDENCE OF COACH RYAN'S DISCIPLINARY ACTION AGAINST CHANDLER IS MORE PROBATIVE THAN PREJUDICIAL

The highly probative value of evidence of Coach Ryan's treatment of Plaintiffs' former teammate Chandler substantially outweighs any risk of prejudice alleged and does not require an undue consumption of time, since it bears directly

on Plaintiffs' state of mind. Rule 403 gives the court discretion to "exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." FED. R. EVID. 403. *See United States v. Mende, 43 F.3d 1298* (9th Cir. 1995) ("*Rule 403*, however, is 'an extraordinary remedy to be used sparingly because it permits the trial court to exclude otherwise relevant evidence.' . . . [u]nder the terms of the rule, the danger of prejudice must not merely outweigh the probative value of the evidence, but *substantially* outweigh it.") (citing *United States v. Patterson*, 819 F.2d 1495, 1505 (9th Cir. 1987); *see also United States v. Meester*, 762 F.2d 867, 874-75 (11th Cir. 1985)).

Evidence surrounding the incident between Coach Ryan and Chandler is substantially more probative than prejudicial in that it shows a pattern of behavior of one of the key witnesses in the case. Not long after Coach Ryan broke the rules or removing Chandler from the team, Plaintiffs contend that Coach Ryan engaged in similar, egregious, conduct in seeking to remove Plaintiffs from the team. In the midst of Coach Ryan's discriminatory actions against Haley and Layana, Coach Ryan and Assistant Coach Trisha Raniewicz ("Coach Trish") had a conversation via text message about different ways to cut Haley, where Coach Ryan says, "How do I cut her then?" Decl. of Jayesh Patel ("Patel Decl."), ¶ 2, Ex. 1 (PEP04074-PEP04077). Coach Ryan's interactions with Chandler are substantially more probative than prejudicial as they add context to Coach Ryan's pattern of trying to remove players in indirect or surreptitious ways.

/ / /

/ / /

/ / /

/ / /

/ / /

IV. CONCLUSION

Based on the forgoing, the Court should permit the presentation of evidence and testimony of Coach Ryan's disciplinary actions relating to former Pepperdine basketball player Chandler.

Dated: May 30, 2017

Respectfully submitted,

ZUBER LAWLER & DEL DUCA LLP
JAYESH PATEL
ROBERT W. DICKERSON

By: */s/ Jayesh Patel*
Attorneys for Plaintiffs HALEY VIDECKIS and LAYANA WHITE

JAYESH PATEL, (SBN 132939)
jpatel@zuberlaw.com
ROBERT W. DICKERSON JR. (SBN 89367)
rdickerson@zuberlaw.com
ZUBER LAWLER & DEL DUCA LLP
777 S. Figueroa Street, 37th Floor
Los Angeles, California 90017
Telephone: (213) 596-5620
Facsimile: (213) 596-5621

Attorneys for Plaintiffs **HALEY VIDECKIS** and **LAYANA WHITE**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

HALEY VIDECKIS and LAYANA WHITE, individuals,

Plaintiffs,

v.

PEPPERDINE UNIVERSITY, a corporation doing business in California,

Defendant.

CASE NO. 2:15-CV-00298-DDP (JCx)

[Assigned to the Hon. Dean D. Pregerson – Courtroom 9C]

DECLARATION OF JAYESH PATEL IN SUPPORT OF PLANTIFFS' OPPOSITION TO DEFENDANT'S MOTION IN LIMINE NO. 7

[Filed Concurrently with Oppositions to Defendants' Motions in Limine Nos. 1 thru 14]

Date:	June 12, 2017
Time:	10:00 a.m.
Courtroom:	9C
Expert Cut-Off:	June 23, 2017
Pre-Trial Conf.:	July 10, 2017
Trial Date:	July 18, 2017

DECLARATION OF JAYESH PATEL

I, Jayesh Patel, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Zuber Lawler & Del Duca LLP, attorneys of record for Plaintiffs HALEY VIDECKIS and LAYANA WHITE. I have personal knowledge of the facts stated herein, and if called to testify, I could competently do so.

2. Attached hereto as **Exhibit 1** is a true and correct copy a document produced by Defendant Pepperdine University and Bates stamped as PEP04074-PEP04077.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 30th day of May, 2017, at Los Angeles, California.

/s/Jayesh Patel
Jayesh Patel

EXHIBIT 1

Messages Trisha Details

2 pre-seasons in a row we are down to 8 people. Our roaster should be 14 deep next year. Cus ya know [redacted] will be injured at some point and Layana

Was Layana there?

Yes

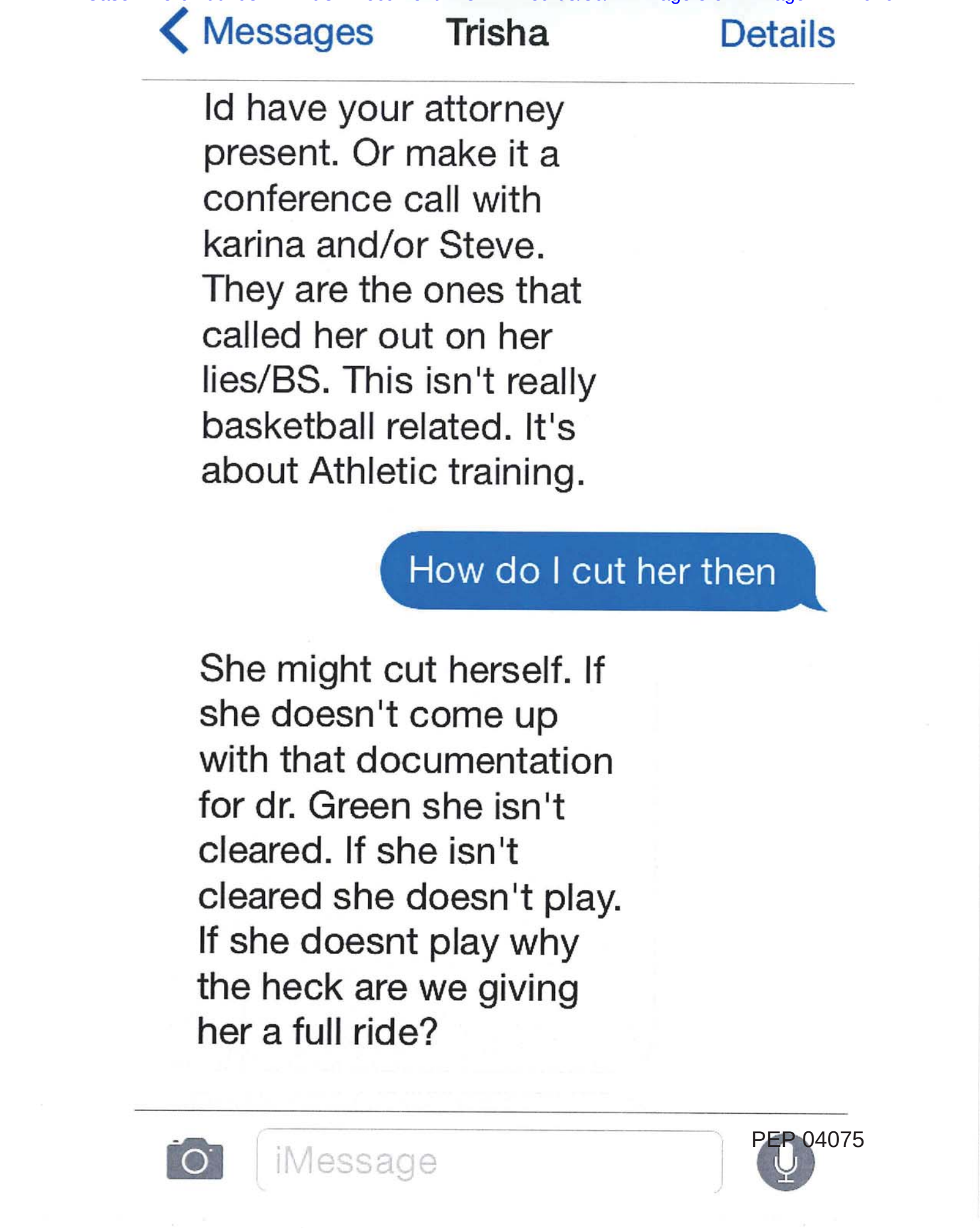
Everyone but Haley.

What are your thoughts on calling mrs Videkis about dismissing her

What are your thoughts on calling mrs Videkis about dismissing her

Sent as Text Message

iMessage


Messages
Trisha
Details
Id have your attorney present. Or make it a conference call with karina and/or Steve. They are the ones that called her out on her lies/BS. This isn't really basketball related. It's about Athletic training.
How do I cut her then
She might cut herself. If she doesn't come up with that documentation for dr. Green she isn't cleared. If she isn't cleared she doesn't play. If she doesnt play why the heck are we giving her a full ride?
iMessage

Messages Trisha Details

It's gna be the whole year with her. It's gna be constant. She's high maintenance. And fabricates the truth.

Did she call you yesterday?

No

Sent as Text Message

So she succeeded in dragging it out. I mean she's basically self-suspending herself. Logically she would have enough time to get the paperwork in order.

It's like...defiance. If you were her boss she just wouldn't call you? I

iMessage

No Service 3:24 PM

Messages Trisha Details

It's like...defiance. If you were her boss she just wouldn't call you? I mean, come on. This behavior is not going to fly out in the real world.

Sep 23, 2014, 3:27 PM

Practice went well. [redacted] couldn't do any contact so Reyes stepped in 5 on 5.

I received the following text from Layana at 137:

Hey Coach I'm not feeling good again and my head is pounding very badly so I can't make it to practice today. I let Karrissa

iMessage