UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-cv-20018-GAYLES

DAVID JIA,

Plaintiff,

v.

UNIVERSITY OF MIAMI, *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE comes before the Court on Defendant University of Miami's ("the University") Motion to Dismiss Third Amended Complaint [ECF No. 127] and Defendant Katherine Westaway's ("Westaway") Motion to Dismiss Third Amended Complaint [ECF No. 128]. The Court has carefully considered the Motions and the record and is otherwise fully advised. For the reasons that follow, the Motions are granted in part and denied in part.

I. PROCEDURAL BACKGROUND

Plaintiff David Jia ("Plaintiff") filed his initial Complaint on January 3, 2017. [ECF No. 1]. On May 12, 2017, Plaintiff filed his first Amended Complaint. [ECF No. 37]. The first Amended Complaint brought eleven counts against four defendants, William Anthony Lake ("Lake"), the University, Westaway, and Angela Cameron ("Cameron") (collectively "Original Defendants"). *Id.* Each of the Original Defendants moved to dismiss. [ECF Nos. 44, 51 & 56]. Following a hearing, the Court dismissed all counts of the first Amended Complaint—except Count I for breach of contract—with leave to amend. [ECF No. 116]. On February 7, 2018,

Plaintiff filed the operative Third Amended Complaint. [ECF No. 121].[1] The Third Amended Complaint dropped Lake as a defendant in this action and consolidated the claims into eight counts. The University, Westaway, and Cameron (collectively "the Defendants"), filed the instant motions to dismiss on March 12, 2018. [ECF Nos. 127 & 128].[2] The Court held a hearing on the Motions on January 2, 2019.

II. FACTUAL BACKGROUND[3]

Plaintiff and Cameron met in class at the University in 2014, and later began a consensual sexual relationship. Compl. at ¶¶ 47, 49 [ECF No. 121]. On April 11, 2014, Plaintiff and Cameron attended a party together where they both consumed alcohol and became intoxicated. *Id.* at ¶ 50. After the party, they returned together to Plaintiff's apartment where they had consensual sexual intercourse that night and again the following morning. *Id.* at ¶¶ 52, 55-56. They continued to see each other over the following week, but Plaintiff began to have second thoughts about continuing the relationship. *Id.* at ¶¶ 56, 62. On April 19, 2014, Plaintiff posted on Facebook that he was hosting a party that evening; Cameron was not invited. *Id.* at ¶ 63. On April 20, 2014, Cameron wrote to the University claiming that Plaintiff had sexually assaulted her on April 11, 2014. *Id.* at ¶ 64.

On May 2, 2014, Plaintiff met with Lake who informed Plaintiff of the complaint brought against him by Cameron. *Id.* at ¶ 68. During this meeting, Plaintiff explained his version of the events and requested to file his own counter complaint against Cameron. *Id.* at ¶ 69. Lake told Plaintiff that he was not able to file a counter complaint and that Plaintiff needed to be

[1] Although the operative complaint is titled "Third Amended Complaint," it is technically only the second *amended* complaint filed in this action. For ease of reference, the Court will refer to it as the Third Amended Complaint consistent with the parties' briefs.

[2] Defendant Angela Cameron adopted the arguments set forth in the University and Westaway's Motions and Replies. [ECF No. 142].

[3] The following facts are taken from the Third Amended Complaint [ECF No. 121] and are accepted as true for purposes of a motion to dismiss. *Brooks v. Blue Cross Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997).

"compassionate" towards Cameron. *Id.* Plaintiff was not given notice of his rights during the proceedings and not allowed to have an attorney present. *Id.* at ¶ 71. Plaintiff alleges that Lake was biased against him and that he told Plaintiff that he "was the one who had caused the situation" in which he found himself. *Id.* at ¶ 75.

On May 7, 2014, Plaintiff was charged with sexual assault/battery and relationship and/or intimate partner violence, to which Plaintiff responded "Not Responsible." *Id.* at ¶ 77. The University set a student conduct hearing relating to the charge for June 24, 2014, when the University was not in regular session. *Id.* at ¶ 86. Plaintiff informed Lake, via email, that Plaintiff's two roommates, Michael Gardell ("Gardell") and Merrick Stein ("Stein"), both present in the apartment on the night in question, would be willing to give sworn testimony in Plaintiff's defense. *Id.* at ¶ 78. On May 27, 2014, Plaintiff emailed Lake again to request that Stein be invited to testify in person at the June 24th hearing. *Id.* at ¶ 79.

Plaintiff specifically points to several failures relating to the hearing itself. First, the University failed to call Stein and instead called Gardell, despite knowing that he was unavailable. *Id.* at ¶ 80. The University did, however, accept written statements from both Gardell and Stein. *Id.* at ¶ 78. Second, a witness who was not present on the night of the incident was permitted to testify (telephonically) on Cameron's behalf. *Id.* at ¶ 81. Third, Plaintiff was not provided with a witness list in advance of the hearing as required by the Student Rights & Responsibilities Handbook ("the Handbook"). *Id.* at ¶¶ 82-83. Fourth, Plaintiff received a one-member panel despite his request for a three-member panel. *Id.* at ¶ 85. Fifth, Plaintiff was not permitted to question Cameron or her witness. *Id.* at ¶ 96. Lastly, Plaintiff was not permitted to introduce his text messages with Cameron. *Id.* The sole panel member, Dean Steve Priepke, found Plaintiff responsible for sexual assault/battery and relationship and/or intimate partner

violence because Cameron could not consent as she was "more drunk" than Plaintiff. *Id.* at ¶¶ 85, 97, 99. Plaintiff was suspended from the University for one semester. *Id.* at ¶ 98. Plaintiff appealed the panel's finding and his suspension, but his appeal was denied. *Id.* at ¶¶ 111-12. No criminal charges were brought against Plaintiff. *Id.* at ¶ 38.

Plaintiff returned to the University during the spring semester of 2015. *Id.* at ¶ 132. During his absence, Cameron emailed Westaway—then a University professor—confidential information and documents from the student conduct hearing. *Id.* at ¶ 130. Thereafter, Westaway and Cameron emailed that confidential information to the press. *Id.* Westaway and Cameron also gave false stories to 100 news outlets and spoke publicly about the alleged incident and the June 24th hearing in an effort to expel Plaintiff. *Id.* On April 6, 2015, and again on April 9, 2015, Cameron falsely accused Plaintiff of two additional incidents of sexual assault and battery (the "April 2015 allegations"). *Id.* at ¶¶ 133-34. On April 21, 2015, Cameron and Westaway, along with a student organization called "Canes Consent," held a "Justice for Angela" event on the University's campus. *Id.* at ¶ 138.

Around the same time, an online petition—which included a statement by Cameron—was being circulated by Canes Consent and Westaway to get Plaintiff expelled from the University. *Id.* at ¶¶ 141, 143-45. In that statement, Cameron alleged that Plaintiff caused severe physical injuries to her back that were not previously alleged during the 2014 investigation. *Id.* at ¶ 141. The investigative reports made by the University and the Coral Gables Police Department in August and September 2014 indicate that Cameron was diagnosed with multiple sclerosis ("MS") and suffered from episodes of seizures and falling which caused Cameron's back pains and pains throughout her body. *Id.* at ¶ 142. An independent medical examiner also determined that Cameron's wounds were inconsistent with her claims and were likely self-inflicted. *Id.* at ¶¶

137, 156. Despite these findings, the University still permitted Cameron, Westaway, and Canes Consent to promote the false claims that Cameron's back injuries were caused by Plaintiff. *Id.* at ¶ 142.[4]

On April 24, 2015, Cameron obtained a temporary restraining order which prevented Plaintiff from being able to step foot on the University campus. *Id.* at ¶ 146. In the following weeks, Westaway continued to make untrue statements about Plaintiff to Miami Local 10 News and other news outlets. *Id.* at ¶¶ 149-50. During the fall of 2014 and spring of 2015, Westaway and Cameron published numerous alleged defamatory statements about Plaintiff in various forms.[5]

On May 4, 2015, Plaintiff filed a complaint with the University against Cameron for, *inter alia*, false information, harassment, and interference with University investigations, disciplinary proceedings, or records. *Id.* at ¶ 151. On May 6, 2015, the University determined that Cameron's April 2015 allegations against Plaintiff were "unfounded." *Id.* at ¶¶ 152, 153, 155. Despite the University's findings, Westaway and Cameron continued to promote their petition and called for a protest against Plaintiff walking during his graduation. *Id.* at ¶ 153.

On May 13, 2015, after an investigation, the Coral Gables Police Department released an official report finding that Cameron's April 2015 allegations were unfounded, noting that Plaintiff was not on campus at the time of one of the alleged assaults. *Id.* at ¶¶ 133-34, 156. On May 16, 2015, when asked to comment on the police report, Westaway maintained that the report "does not shake [her] faith on [*sic*] Angela at all." *Id.* at ¶ 157; *see also Id.* at Exhibit 16.

[4] On one such occasion, Westaway circulated the petition via email signed, "[i]n solidarity, Dr. Katherine Westaway and the students of Intro to Women's and Gender Studies." Compl. at ¶ 143. Canes Consent also promoted the petition by creating a public Facebook page dedicated to the petition. *Id.* at ¶ 145.

[5] Westaway circulated the petition on her Instagram account stating "[a] student was raped on my campus and the rapist only got a one-semester suspension. Please sign the petition in my bio to get this predator expelled[.]" *Id.* at ¶ 212. Cameron also made numerous public statements calling Plaintiff a "rapist," a "batterer," and stating that he broke her vertebrae, and that he stalked her. *Id.* at ¶ 228.

After graduation, Plaintiff filed a second complaint with the University against its faculty and administrators involved with the 2014 and 2015 hearings for misconduct and Title IX violations. *Id.* at ¶ 160. The complaint was quickly dismissed by the University with no investigation. *Id.* at ¶¶ 161-62.

Plaintiff ultimately claims that the mounting pressure by the Government on the University to prosecute allegations of student sexual assault resulted in an irregular and gender biased investigation process into the claims made against him. *See generally*, ¶¶ 15, 18, 22, 34. The Third Amended Complaint brings eight counts against three defendants for breach of contract (against the University)—Count I, violations of Title IX (against the University)—Count II, defamation (against all Defendants)—Counts III and IV, intentional infliction of emotional distress (against all Defendants)—Counts V and VI, invasion of privacy (against Westaway and the University)—Count VII, and civil conspiracy (against Westaway and Cameron)—Count VIII. Defendants now move to dismiss each count against them.

III. LEGAL STANDARD

To survive a motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6), a claim "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" meaning that it must contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). While a court must accept well-pleaded factual allegations as true, "conclusory allegations . . . are not entitled to an assumption of truth—legal conclusions must be supported by factual allegations." *Randall v. Scott*, 610 F.3d 701, 709-10 (11th Cir. 2010). "[T]he pleadings are construed broadly," *Levine v. World Fin. Network Nat'l Bank*, 437 F.3d 1118, 1120 (11th

Cir. 2006), and the allegations in the complaint are viewed in the light most favorable to the plaintiff, *Bishop v. Ross Earle & Bonan, P.A.*, 817 F.3d 1268, 1270 (11th Cir. 2016). At bottom, the question is not whether the claimant "will ultimately prevail . . . but whether his complaint [is] sufficient to cross the federal court's threshold." *Skinner v. Switzer*, 562 U.S. 521, 530 (2011).

IV. DISCUSSION

Defendants first move to dismiss the Third Amended Complaint arguing it is a shotgun pleading. As evidenced by the extensive facts set forth in the Third Amended Complaint, the Court finds that the Complaint is not a shotgun pleading. Defendants have "adequate notice of the claims against them and the grounds upon which each claim rests." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1323 (11th Cir. 2015). Defendants also move to dismiss each count for failure to state a claim.

A. Count I: Breach of Contract (against the University)

In Count I, Plaintiff asserts a breach of contract claim based on the University's purported violations of the Handbook. To state a claim for breach of contract, a plaintiff must allege "(1) a valid contract; (2) a material breach; and (3) damages." *Brown v. Cap. One Bank (USA), N.A.*, No. 15-60590-cv-BB, 2015 WL 5584697, at *3 (S.D. Fla. Sept. 22, 2015) (internal citations and quotations omitted). "[T]o allege a material breach . . . the plaintiff must allege which provision of the contract has been breached." *Id.*

Plaintiff's breach of contract claim in his first Amended Complaint [ECF No. 37] was the only remaining count after the Court granted Defendants' motions to dismiss. [ECF No. 116]. For some reason, Plaintiff chose to amend this count in his Third Amended Complaint. However, Plaintiff's amended breach of contract claim no longer states a claim because it fails to identify

within the count which provisions of the Handbook the University breached and in what manner. *See Brown*, 2015 WL 5584697, at *3. Even in his Response in Opposition to the University's Motion, Plaintiff fails to identify how the contract was breached. [ECF No. 140]. Plaintiff's Response points to several paragraphs from the general allegations section of the Complaint as the basis for his claim. *Id.* at *8. But, as the alleged violations are not identified within Count I, Plaintiff's mere re-allegation of paragraphs 12 through 165 is not enough to put the University, or the Court, on notice of how the Handbook was breached. Therefore, Count I of the Third Amended Complaint is dismissed without prejudice.

B. Count II: Title IX Claims (against the University)

Plaintiff's Title IX claim against the University is based on alleged procedural irregularities that occurred during the disciplinary proceedings against him. To state a Title IX claim, "a plaintiff must allege (1) that []he was excluded from participation in, denied benefits of, or subjected to discrimination in an educational program; (2) that the exclusion was on the basis of sex; and (3) that the defendant receives federal financial assistance." *Palmer ex rel. Palmer v. Santa Rosa Cty., Fla., Sch. Bd.*, No. 05-218, 2005 WL 3338724, at *4 (N.D. Fla. Dec. 8, 2005); 20 U.S.C. § 1681(a). Neither the Supreme Court nor the Eleventh Circuit have expressly adopted a framework for analyzing Title IX challenges to university proceedings, so courts in this Circuit have instead taken guidance from and relied upon *Yusuf v. Vassar College*, 35 F.3d 709, 715 (2d Cir. 1994). *See Doe v. Valencia College*, 903 F.3d 1220, 1236 (11th Cir. 2018). In *Yusuf*, "[t]he Court identified two general categories of Title IX challenges to university disciplinary proceedings. Some plaintiffs allege that, guilt or innocence aside, the student's gender affected the penalty imposed, the decision to initiate the proceeding, or both—these are selective enforcement challenges. Other plaintiffs allege that gender bias played a role

in the wrongful conviction of an innocent student—these are erroneous outcome challenges." *Doe v. Lynn University, Inc.*, 235 F. Supp. 3d 1336, 1339 (S.D. Fla. 2017) ("*Lynn University II*") (citing *Yusuf*, 35 F.3d at 715). "[A] plaintiff bringing an erroneous outcome challenge must plead two elements: (1) facts sufficient to cast doubt on the accuracy of the proceeding and (2) a causal connection between the flawed outcome and gender bias." *Id.*

Plaintiff brings this "erroneous outcome" claim under Title IX against the University for alleged procedural irregularities that occurred during his disciplinary proceedings. The alleged irregularities include: (1) allowing witnesses without first-hand knowledge to testify for Cameron; (2) failing to call Plaintiff's available witness; (3) providing for a one-person panel instead of a three-person panel; and (4) failing to give Plaintiff notice of his rights or permit him to have legal counsel present.

At the hearing on the University's Motion to Dismiss the first Amended Complaint, the Court dismissed Plaintiff's Title IX counts with leave to amend in order to clarify that the alleged discrimination occurred "on the basis of sex." That is, that Plaintiff was discriminated against because he is a male. The Court finds that Plaintiff has sufficiently amended this count to include the requisite allegations. However, the University now argues that Plaintiff fails to plead a causal connection relying on *Doe v. Lynn University, Inc.*, 224 F. Supp. 3d 1288 (S.D. Fla. 2016) ("*Lynn University I*"). In *Lynn University I*, the court held that the plaintiff had not sufficiently plead the "causal connection" element where he had not alleged any specific factual allegations supporting "the inference that the national media focus on sexual assault resulted in gender biased disciplinary proceedings." *Id.* at 1295. This is not the case here.

This action is more analogous to *Lynn University II*. There, following a disciplinary proceeding, the university found a male student guilty of sexually assaulting a female student.

235 F. Supp. 3d at 1337-38. In his Title IX claims against the university, plaintiff alleged procedural irregularities in the disciplinary proceedings that resulted in a biased and flawed outcome. *Id.* In addition to certain negative media coverage relating to the university, he alleged general mounting pressures against the university system that resulted in administrators being forced to take "a hard line toward male students accused of sexual battery by female students, while not prosecuting any female students for similar alleged offenses." *Id.* at 1341. The court found that where plaintiff "alleged that Defendant's representatives were cognizant of criticism levied at Defendant's handling of sexual assault complaints by female students against males and having coupled those allegations with (albeit more general) assertions about similar nationwide pressure," the amended complaint "supports the plausible inference of a causal connection between the flawed outcome and gender bias." *Id.* at 1341-42.

Here too, Plaintiff's Third Amended Complaint states that the University was aware of the public pressures by the media and the U.S. Department of Education such that this could plausibly affect its disciplinary proceedings against Plaintiff. Compl. at ¶¶ 14-16, 177. Further, Plaintiff has alleged statements made by University administrators that would support such a finding. *Id.* at ¶¶ 69, 75, 92-93. As a result, the Third Amended Complaint sufficiently states a claim for erroneous outcome under Title IX and the University's Motion is denied with respect to Count II.

C. Counts III & IV: Defamation (against all Defendants)

In Counts III and IV, Plaintiff brings defamation claims against all defendants in this action for untrue statements made by Westaway and Cameron from 2014 through 2016. To state a claim for common law defamation, a plaintiff must allege that "(1) the defendant published a false statement (2) about the plaintiff (3) to a third party and (4) that the falsity of the statement

caused injury to the plaintiff." *Turner v. Wells*, 198 F. Supp. 3d 1355, 1364 (S.D. Fla. 2016) (quoting *Alan v. Wells Fargo Bank, N.A.*, 604 Fed. App'x 863, 865 (11th Cir. 2015)). Additionally, all defamation claims must be brought within the two-year statute of limitations. Fla. Stat. § 95.11(4)(g).

Here, Plaintiff relies, in part, on allegedly defamatory statements that were made on or before January 3, 2015. Compl. at ¶¶ 205-06, 229-30. The Plaintiff has not set forth any basis for the Court to justify an equitable tolling of the statute of limitations on these claims. Thus, the Court finds that each of the alleged defamatory statements made prior to January 3, 2015, are time-barred and dismissed with prejudice. However, Plaintiff has sufficiently alleged a defamation claim as to the non-time-barred statements. The Defendants' remaining arguments relating to qualified privilege, pure opinion, and *respondeat superior* are properly decided at a later stage, either at summary judgment or trial.

D. Counts V & VI: Intentional Infliction of Emotional Distress (against all Defendants)

In Counts V and VI, Plaintiff claims he has suffered profound and ongoing mental anguish and distress as a result of Cameron and Westaway's dissemination of false statements regarding Plaintiff. To prevail on his claim for intentional infliction of emotional distress ("IIED"), Plaintiff must allege facts to plausibly show "(1) [the defendants'] conduct was intentional or reckless, that is, he or she intended his or her behavior when he or she knew or should have known that emotional distress would likely result; (2) [the defendants'] conduct was extreme and outrageous; (3) [the defendants'] conduct caused emotional distress to him; and (4) his emotional distress was severe." *Forrest v. Pustizzi*, No. 16-cv-62181-DPG, 2017 WL 2472537, at *7 (S.D. Fla. June 7, 2017) (citing *Stewart v. Walker*, 5 So. 3d 746, 749 (Fla. 4th DCA 2009)). "To qualify as 'extreme and outrageous,' a defendant's conduct must have 'been so

outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, as to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Id.* at *8 (quoting *Metro. Life Ins. Co. v. McCarson*, 467 So. 2d 277, 278-79 (Fla. 1985)).

Plaintiff alleges that Defendants' intentional publication of false information about him to multiple news outlets, calling him a rapist and a batterer, was "outrageous" and caused him to suffer "profound and ongoing psychological and mental anguish." Compl. at ¶¶ 246, 248, 252, 254, 256. The University argues that the alleged conduct is not outrageous.[6] Plaintiff opposes the Motion but makes no meaningful argument in response to the University's case law or arguments as to the level of outrageousness of the conduct.[7]

Courts in this circuit have recognized Florida's single action (also known as the single publication) rule which "prohibits defamation claims from being re-cast as additional, separate torts, e.g., intentional infliction of emotional distress, if all of the claims arise from the same defamatory publication." *Kinsman v. Winston*, No. 6:15-cv-696-ORL-22GJK, 2015 WL 12839267, at *5 (M.D. Fla. Sept. 15, 2015) (citing *Tobinick v. Novella*, No. 9:14-cv-80781-RLR, 2015 WL 328236, at *11 (S.D. Fla. Jan. 23, 2015)). "When claims are based on analogous underlying facts and the causes of action are intended to compensate for the same alleged harm, a plaintiff may not proceed on multiple counts for what is essentially the same defamatory publication or event." *Tobinick*, 2015 WL 328236 at *11 (quoting *Klayman v. Judicial Watch, Inc.*, 22 F. Supp. 3d 1240, 1256 (S.D. Fla. 2014)).

Here, as in *Tobinick*, Plaintiff's IIED claims only involve allegedly false and/or defamatory statements made by Cameron and Westaway. *See e.g.*, Compl. at ¶¶ 246, 252. Thus,

[6] Westaway adopted the University's arguments on this issue. [ECF No. 128] at n.1.
[7] Plaintiff's arguments relating to his IIED claims are found in his Response in Opposition to Westaway's Motion to Dismiss [ECF No. 139]. The Court notes that Plaintiff's response is not properly considered a memorandum of law. Plaintiff merely cited to the elements of an IIED claim and stated in a conclusory manner that he sufficiently alleged those elements.

Plaintiff's IIED Claims against all Defendants (Counts V & VI) are barred by the single action rule and are dismissed with prejudice.

E. Count VII: Invasion of Privacy (against Westaway and the University)

Plaintiff's claim for invasion of privacy is similarly premised on Westaway's dissemination of false information about Plaintiff. A claim for invasion of privacy requires a plaintiff to allege that "(1) the disclosure was public; (2) private facts were discussed; (3) the matter publicized was highly offensive to a reasonable person[; and] (4) the matter is not a legitimate concern to the public." *Morrison v. Morgan Stanley Properties*, No. 9:06-cv-80751-JAL, 2007 WL 2316495, at *5 (S.D. Fla. Aug. 9, 2007). Further, under Florida law, the disclosed facts must be *true* but non-public. *Cape Publ'ns. v. Hitchner*, 549 So. 2d 1374, 1379 (Fla. 1989).

Plaintiff's invasion of privacy claim fails. At the hearing on the first motions to dismiss, Plaintiff had agreed to dismiss this claim without argument. In this second iteration of the claim—which is nearly identical to the original—Plaintiff again fails to allege sufficient facts to support his claim. Plaintiff does not clearly identify which statements were true and only identifies those which are false. Moreover, Defendants correctly argue that where a plaintiff alleges that the facts disclosed were false, the proper claim is one for defamation, not invasion of privacy. *See Tyne ex rel. Tyne v. Time Warner Entertainment Co., L.P.*, 204 F. Supp. 2d 1338, 1344 (M.D. Fla. 2002). Plaintiff's only hope of saving this claim rests in paragraph 260 of the Third Amended Complaint which states: "This private information was *distorted into falsehoods* by WESTAWAY and CAMERON turning [Plaintiff] in[to] a felon rapist[] and batterer." (emphasis added). The Court finds that this allegation is insufficient to establish his cause of action. Thus, Count VII is dismissed without prejudice.

F. Count VIII: Civil Conspiracy (against Westaway and Cameron)

Plaintiff also alleges that Westaway and Cameron were engaged in a civil conspiracy to disseminate private and false information about Plaintiff. To state a claim for civil conspiracy, a plaintiff must allege: "1) a conspiracy between two or more parties; 2) the doing of an unlawful act or a lawful act by unlawful means; 3) the doing of some overt act in pursuance of the conspiracy; and 4) damage to the Plaintiff as a result of the acts done under the conspiracy." *Sonnenreich v. Phillip Morris, Inc.*, 929 F. Supp. 416, 419 (S.D. Fla. 1996) (citing *Florida Fern Growers Ass'n v. Concerned Citizens of Putnam County*, 616 So. 2d 562, 565 (Fla. 1st DCA 1993)). Further, "[t]he basis for the conspiracy must be an independent wrong or tort which would constitute a cause of action if the wrong were done by one person." *Kee v. Nat'l Reserve Life Ins. Co.*, 918 F.2d 1538, 1541 (11th Cir. 1990) (internal citations and quotations omitted). Thus, to properly plead a civil conspiracy claim, a plaintiff must allege that two or more persons conspired to commit an independent tort.

Plaintiff's civil conspiracy claim is supported by conclusory allegations of an agreement to "disseminate private and false information against [Plaintiff and] invade his privacy . . . ." Compl. at ¶ 270. Plaintiff further alleges that "[t]he purpose of this conspiracy was to unlawfully disseminate false statements about [Plaintiff] *and/or* to invade his privacy by publishing personal and confidential information about him . . . ." *Id.* at ¶ 271 (emphasis added). While Plaintiff refers generally to attachments to the Third Amended Complaint, which include several illegible pages, this claim fails as Plaintiff does not provide sufficient factual information, or the context, to support it. Thus, Plaintiff's civil conspiracy claim is similarly dismissed without prejudice.

V. CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED** that the Defendants' Motions to Dismiss [ECF Nos. 127 & 128] are GRANTED IN PART AND DENIED IN PART. Counts I, VII, & VIII of Plaintiff's Third Amended Complaint [ECF No. 121] are DISMISSED WITHOUT PREJUDICE. Counts V & VI are DISMISSED WITH PREJUDICE. The University's Motion with respect to Count II is DENIED. As to Counts III and IV, the Motions are GRANTED IN PART as to the time-barred statements, but otherwise DENIED.

The parties shall submit a proposed Joint Scheduling Report indicating new trial dates and pre-trial deadlines, within 14 days of this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of February, 2019.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE