

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE No.:**

DESTINI FEAGIN

Plaintiff,

vs.

MARLIN CHINN, in his individual capacity and as Head Coach of the Florida International University Women's Basketball Team, MARK B. ROSENBERG, individually and as President of Florida International University, PETE GARCIA, individually and as Athletic Director for Florida International University, JULIE BERG, individually and as Senior Associate Athletic Director for Florida International University, SHIRLYON MCWHORTER, Individually and as Title IX Coordinator of Florida International University, TIARA MALCOLM, individually and as Assistant Coach of the Florida International University Women's Basketball Team, FLORIDA INTERNATIONAL UNIVERSITY

Defendants.

---

**PLAINTIFF'S COMPLAINT**

Comes Now, Plaintiff, DESTINI FEAGIN, by and through the undersigned attorneys and hereby files her Complaint against MARLIN CHINN, in his individual capacity and as Head Coach of the Florida International University Women's Basketball Team, MARK B. ROSENBERG, individually and as President of Florida International University, PETE GARCIA, individually and as Athletic Director for Florida International University, JULIE BERG, individually and as Senior Associate Athletic Director for Florida International University, SHIRLYON MCWHORTER, Individually and as Title IX Coordinator of Florida

International University, TIARA MALCOLM, individually and as Assistant Coach of the Florida International University Women's Basketball Team, FLORIDA INTERNATIONAL UNIVERSITY, for acts that occurred during the course and scope of their employment with Defendant, Florida International University, (hereinafter FIU).

## **INTRODUCTION**

1. This is a case that involves a pattern and practice of blatant sexual harassment and sexual assault by defendant Marlin Chinn ("Chinn"), acting in his capacity as Head Coach of the Florida International University women's basketball team (the "Basketball Team," or the "Team"). This activity took place throughout the course of the 2015-2016 academic school year at defendant Florida International University ("FIU"), and in connection with FIU-sanctioned activities.

2. The outrageous conduct of Chinn includes, without limitation, routinely commenting on Plaintiff's physical attributes, having sexually explicit conversations with Plaintiff, sending sexually explicit text messages to Plaintiff, attempting to persuade Plaintiff to engage in sexual relations with him, both giving and withholding benefits designed in such a way as to influence Plaintiff's responses to his sexual advances, and explicitly physically contacting Plaintiff in a sexually inappropriate manner.

3. FIU, through its administration and athletic department, discriminated against Plaintiff when she complained about Chinn's outrageous conduct in connection with Plaintiff.

4. In addition to bringing claims for sexual discrimination arising under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 et. seq., ("Title IX") and 42 U.S.C. § 1983, Plaintiff also brings claims under common law against Chinn and FIU for battery,

intentional and negligent infliction of emotional distress, negligent hiring, negligent supervision and negligent retention.

### **JURISDICTION AND VENUE**

5. Jurisdiction is present under 28 U.S.C. § 1331 and 28 U.S.C. § 1343. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a)

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred in Miami, Miami-Dade County, Florida.

### **PARTIES**

7. Plaintiff Destini Feagin is an adult resident of the State of Jersey and resides in Essex County, New Jersey. At the time of the incidents described in this complaint, Plaintiff was attending FIU and residing in Miami-Dade County, Florida. Currently, and at the time of the incidents alleged in this complaint, Plaintiff is and was a student at FIU. At the time of the incidents alleged in this complaint, Plaintiff was a member of the Basketball Team, a member team of Division I of the National Collegiate Athletic Association ("NCAA").

8. FIU is an educational institution receiving federal financial assistance as defined in 20 U.S.C. § 1681(c).

9. At all times relevant to this action, Chinn resided in the State of Florida, and was employed by FIU as Head Coach for the Basketball Team.

10. At all times relevant to this action, defendant Mark R. Rosenberg ("Mr. Rosenberg") was and remains the President of FIU. As President, Mr. Rosenberg had the authority to implement corrective measures on FIU's behalf for violations of Title IX. His

responsibilities included creating, implementing and correcting policies under Title IX, and to avoid and eliminate sexual harassment within the athletic programs at FIU.

11. At all times relevant to this action, defendant Pete Garcia (“Mr. Garcia”) was and remains FIU’s Athletic Director. Upon information and belief, Mr. Garcia hired Chinn. Upon information and belief, Mr. Garcia was present for and/or witnessed Chinn’s misconduct. Upon information and belief, Mr. Garcia had actual knowledge of conduct that violated Title IX. As Athletic Director, Mr. Garcia had the authority to implement corrective measures on FIU’s behalf for violations of Title IX. His responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at FIU.

12. At all times relevant to this action, defendant Julie Berg (“Ms. Berg”) was and remains FIU’s Senior Assistant Athletic Director. Upon information and belief, Ms. Berg hired Chinn. Upon information and belief, Ms. Berg was present for and/or witnessed Chinn’s misconduct. Upon information and belief, Ms. Berg had actual knowledge of conduct that violated Title IX. As Senior Assistant Athletic Director, Ms. Berg had the authority to implement corrective measures on FIU’s behalf for violations of Title IX. Her responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at FIU.

13. At all times relevant to this action, defendant Shirlyon McWhorter (“Ms. McWhorter”) was and remains FIU’s Title IX Coordinator. Upon information and belief, Ms. McWhorter was present for and/or witnessed Chinn’s misconduct. Upon information and belief, Ms. McWhorter had actual knowledge of conduct that violated Title IX. As Title IX Coordinator, Ms. McWhorter had the authority to implement corrective measures on FIU behalf for violations

of Title IX. Her responsibilities included creating, implementing and correcting policies under Title IX, to avoid and eliminate sexual harassment within the athletic programs at FIU.

14. During the 2015-16 academic year, defendant Tiara Malcolm (“Ms. Malcolm”) was the Assistant Coach for the Basketball Team. Ms. Malcolm was present for and/or witnessed Chinn’s misconduct. Ms. Malcolm had actual knowledge of conduct that violated Title IX.

### **FACTUAL ALLEGATIONS**

15. As Head Coach of the women’s Basketball Team, Chinn enjoyed a position of authority and trust among the team members, including Plaintiff. As Head Coach, Chinn had the controlled team membership, positions, playing time and the power to grant or withhold lucrative scholarships for members of the Basketball Team.

16. Beginning in or about April, 2015 until on or about March, 2016, during the fall and spring semesters at FIU, Chinn had nearly constant contact with members of the Basketball Team, including Plaintiff. Chinn supervised the Basketball Team during daily practices, hosted numerous mandatory social gatherings for team members and made frequent after-hours contact with team members via telephone, text messages and/or internet messaging.

17. On multiple occasions, Chinn made unwanted and unwelcome verbal and/or physical sexual advances toward Plaintiff individually. These pervasive and unwanted sexual advances included, without limitation, the following:

a) In or about June, 2015, at the beginning of the coach/player relationship between Chinn and Plaintiff, Chinn told Plaintiff that “a little birdie told me you like older men.” At about that time, Chinn made the announcement that Plaintiff would be the team captain, and face of the team on promotional materials published by FIU, despite the fact that other players on the team were more qualified;

b) Beginning in or about June, 2015, Chinn began constantly asking Plaintiff for details of her love life, which men she was dating and what kind of men she liked. Chinn advised her of the techniques she should be familiar with in order to please a man, which included “being open-minded,” performing “oral sex and massages” and cooking good meals;

c) In or about December, 2015, Plaintiff learned that she needed to take remedial academic sessions and Chinn “loaned” her \$600.00 for the session fee. When Plaintiff thanked Chinn, he responded that “you’re going to pay me back, trust me” in a manner that clearly conveyed he expected the pay-back would be sexual in nature;

d) Beginning in or about December, 2015, Chinn began routinely making sexual remarks about Plaintiff’s body and, in or about the middle of January, 2016, Chinn told Plaintiff that he was having sexual fantasies about her and desired to have a sexual relationship with her; shortly thereafter, during an away game in which the team was staying at a hotel, Chinn called Plaintiff in her hotel room and tried to convince her to come to his hotel room under the pretense of discussing basketball;

e) On Valentine’s Day, 2016, Chinn left a message on Plaintiff’s answering machine telling her that he knew she was alone and that he was thinking about her and that he hoped she was thinking about him;

f) In or about February, 2016, while Plaintiff was boarding a university bus, Chinn, in the presence of assistant coaches, said to Plaintiff: “Oh, when are you going to let me get some of that ‘candy’;”

g) On or about February 6, 2016, while alone with Plaintiff in his office, Chinn hugged Plaintiff and without Plaintiff’s consent kissed her neck and put his hands on her buttocks and vagina;

h) During university basketball games, Chinn would routinely slap and touch Plaintiff's buttocks;

i) During the entire basketball season, Chinn's conversations with and text messages to Plaintiff would regularly include various, inappropriate sexual content;

j) In or about February, 2016, Chinn threatened to remove Plaintiff from the basketball team for using a teammate's university meal card without permission and explicitly advised her that she would have to have sex with him whether she was on the team or not, but that it might be more appropriate if the player/coach relationship was terminated; thereafter, Chinn demanded that Plaintiff tell him whether they were going to have sex;

k) In or about February 25, 2016, Chinn asked Plaintiff if she "wanted to move forward with us" and told Plaintiff that "when you decide that we lay down together, I want you to want it more than I do."

l) In or about February 25, 2016, Chinn told Plaintiff that he realized he was married with a child on the way and he had no business pursuing one of his players, but that he was "putting everything on the line because of how I feel about you" and further explaining that looking at his family history, having adulterous affairs "was in the Chinn blood;"

m) In or about February 25, 2016, Chinn confessed his love for Plaintiff and told her "I want to hold you, I want to hug you, I can show you [my love] better than I can tell you;"

18. On or about February 25, Plaintiff confronted Mr. Rosenberg, Ms. McWhorter and Ms. Julie Berg, Senior Associate Athletic Director to complain of Chinn's harassment. Plaintiff showed them sexually inappropriate texts received by Plaintiff from Chinn and

produced an audio recording of Chinn expressing his desire to have sexual relations with Plaintiff.

19. FIU responded to Plaintiff's complaints by retaliating against her by immediately cutting Plaintiff from the Basketball Team and as a result, Plaintiff did not play in the remaining games of the season and was not permitted to attend the end of the season dinner honoring the players. Plaintiff was essentially totally erased from the Basketball Team roster.

20. Chinn, on the other hand, continued performing his normal duties as coach of the Team after February 25, 2016, despite the complaint of sexual harassment made by Plaintiff as outlined above. Eventually, only after news of his sexual harassment was reported in the media, did FIU terminate Chinn's employment.

21. As Spring, 2016 graduation day approached, FIU had not reached any conclusion or resolution in connection with Plaintiff's sexual harassment complaints, but instead engaged in a pattern of retaliatory actions against Plaintiff designed to further retaliate against, punish, harass, intimidate, antagonize and humiliate Plaintiff.

**Count I**  
**VIOLATION OF 20 U.S.C. § 1681 (Title IX) BY FIU**

22. Plaintiff repeats and re-alleges Paragraphs 1 through 21, above.

23. FIU is a recipient of federal funding under Title IX.

24. From in or about April, 2015 through and including in or about March, 2016, FIU employed Chinn as Head Coach for the Basketball Team.

25. Chinn harassed Plaintiff based on her sex by, without limitation, subjecting Plaintiff to sex-specific physical contact and language intended to humiliate, ridicule and/or intimidate by providing and withholding benefits based on inappropriate sex-related reasons.

26. Chinn's sexual harassment of Plaintiff was sufficiently severe and pervasive to



create what a reasonable person would consider a hostile environment in FIU's women's basketball program. Chinn's sexual harassment of Plaintiff so undermined and detracted from Plaintiff's experience in FIU's women's basketball program that it effectively denied Plaintiff equal access to FIU's institutional resources and/or opportunities. Furthermore, Chinn's harassment had a concrete, negative effect on Plaintiff's ability to participate in FIU's women's basketball program.

27. Plaintiff in fact found the environment created by Chinn's sexual harassment to be hostile and abusive.

28. FIU had actual notice of Chinn's sexual harassment of Plaintiff through defendants Rosenberg, Garcia, Berg, McWhorter and Malcolm, whom had the authority to implement corrective measures on behalf of FIU.

29. FIU acted with deliberate indifference to the harassment by, without limitation, ignoring Chinn's sexual harassment and terminating Plaintiff's status as a member of the basketball team while retaining Chinn as Head Coach despite his actions.

30. As a direct and proximate result of FIU's actions, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, economic loss and alienation both academically and socially from school activities.

31. As a direct result of FIU's failure to implement prompt and appropriate corrective action, Plaintiff has been deprived of the rights guaranteed to her under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution in violation of 20 U.S.C. Sec. 1681.

## **COUNT II**

**VIOLATION OF 20 U.S.C. § 1681 (Title IX) –RETALIATION BY FIU**

32. Plaintiff repeats and re-alleges Paragraphs 1 through 31, above.

33. Plaintiff engaged in a protected activity by, without limitation, complaining to school officials about Chinn’s sexual harassment.

34. FIU had knowledge of the protected activity.

35. FIU subjected Plaintiff to adverse school-related actions, including without limitation those actions set forth above.

36. There is a causal connection between the protected activity and the adverse school-related actions, as set forth above.

37. As a direct and proximate result of FIU’s actions, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, economic loss and alienation both academically and socially from school activities.

38. As a direct result of FIU’s actions, Plaintiff has been deprived of the rights guaranteed to her under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution in violation of 20 U.S.C. Sec. 1681.

**COUNT III**  
**VIOLATION OF 42 U.S.C. § 1983 BY FIU**

39. Plaintiff repeats and re-alleges Paragraphs 1 through 38, above.

40. Chinn’s conduct directly and unreasonably interfered with Plaintiff’s education and participation in the women’s basketball program at FIU and created an intimidating, hostile and offensive environment that affecter her psychological well-being and deprived her of the

rights guaranteed to her under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution in violation of 42 U.S.C. Sec. 1983.

41. As a direct result of the failure of FIU to intervene, report or prohibit the inappropriate and harassing conduct of Chinn, Plaintiff has been deprived of the rights guaranteed to her under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution in violation of 42 U.S.C. Sec. 1983.

**COUNT IV**  
**NEGLIGENT HIRING BY FIU**

42. Plaintiff repeats and re-alleges Paragraphs 1 through 41, above.

43. At all times relevant to this action, FIU and Chinn engaged in an employer-employee relationship.

44. FIU was negligent in its hiring of Chinn. As set forth above, FIU knew or should have known of Chinn's propensity for tortious conduct, including without limitation sexual harassment.

45. Chinn's sexual harassment of Plaintiff occurred during the course and within the scope of his employment as Head Coach of the Basketball Team.

46. As a direct and proximate result of FIU's negligent hiring, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, economic loss and alienation both academically and socially from school activities.

**COUNT V**  
**NEGLIGENT SUPERVISION BY FIU**

47. Plaintiff repeats and re-alleges Paragraphs 1 through 46, above.

48. At all times relevant to this action, FIU and Chinn engaged in an employer-employee relationship.

49. FIU was negligent in its supervision of Chinn. As set forth above, FIU knew or should have known of Chinn's propensity for tortious conduct, including without limitation sexual harassment.

50. Chinn's sexual harassment of Plaintiff occurred during the course and within the scope of his employment as Head Coach of the women's Basketball Team.

51. Chinn's sexual harassment of Plaintiff occurred on FIU's campus and/or with FIU's chattels, in connection with activities that were sanctioned by or on behalf of FIU.

52. As a direct and proximate result of FIU negligent supervision, Plaintiff suffered damages, including without limitation emotional trauma, mental, anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, economic loss and alienation both academically and socially from school activities.

**COUNT VI**  
**NEGLIGENT RETENTION BY FIU**

53. Plaintiff repeats and re-alleges Paragraphs 1 through 52, above.

54. At all times relevant to this action, FIU and Chinn engaged in an employer-employee relationship.

55. FIU was negligent in its retention of Chinn. As set forth above, FIU knew or should have known of Chinn's propensity for tortious conduct, including without limitation sexual harassment.

56. Chinn's sexual harassment of Plaintiff occurred during the course and within the

scope of his employment as Head Coach of the Basketball Team.

57. Chinn's conduct made him unfit to hold the position of Coach and created a danger of imminent harm to female members of FIU's women's basketball team.

58. Notwithstanding FIU's actual knowledge of Chinn's unfitness for the position of Head Coach, FIU retained Chinn and failed to take immediate and appropriate action to protect the female members of his basketball team.

59. As a direct and proximate result of FIU's negligent retention, Plaintiff suffered damages, including without limitation emotional trauma, mental, anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, economic loss and alienation both academically and socially from school activities.

**COUNT VII**  
**INTENTIONAL INFLICTION OF EMOTIONAL  
DISTRESS BY ALL DEFENDANTS**

60. Plaintiff repeats and re-alleges Paragraphs 1 through 59, above.

61. Chinn engaged in extreme and outrageous conduct by his sexual harassment of Plaintiff.

62. Through his extreme and outrageous conduct, Chinn intended to cause Plaintiff severe emotional distress.

63. As a result of Chinn's extreme and outrageous conduct, Plaintiff experienced severe emotional distress.

64. FIU is vicariously liable as Chinn's employer for his conduct.

65. As a direct and proximate result of Chinn's extreme and outrageous conduct,

Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, economic loss and alienation both academically and socially from school activities.

**COUNT VIII**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
**BY ALL DEFENDANTS**

66. Plaintiff repeats and re-alleges Paragraphs 1 through 65, above.

67. Chinn, as an employee of FIU, owed a duty of care to Plaintiff as a student at FIU.

68. Chinn's extreme and outrageous conduct unreasonably endangered Plaintiff's safety and/or caused Plaintiff to fear for her safety.

69. As a result of Chinn's extreme and outrageous conduct, Plaintiff experienced severe emotional distress.

70. FIU is vicariously liable as Chinn's employer for his conduct.

71. As a direct and proximate result of Chinn's negligence, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, economic loss and alienation both academically and socially from school activities.

**COUNT IX**  
**BATTERY BY MARLIN CHINN**

72. Plaintiff repeats and re-alleges Paragraphs 1 through 71, above.

73. On multiple occasions as alleged above, Chinn intended to make bodily contact

with Plaintiff.

74. On multiple occasions, Chinn abused his position of trust and confidence, in that he intentionally made uninvited, unauthorized, offensive physical contact with Plaintiff in that he placed his arms, hands and lips on her body.

75. FIU is vicariously liable as Chinn employer for his conduct.

76. As a direct and proximate result of Chinn's unwanted harmful and/or offensive bodily contact, Plaintiff suffered damages, including without limitation, emotional trauma, mental anguish and suffering, impairment of reputation, personal humiliation, embarrassment, anxiety, economic loss and alienation both academically and socially from school activities.

WHEREFORE, Plaintiff prays for the following relief:

- a. Judgment for compensatory damages;
- b. Judgment for exemplary or punitive damages;
- c. Cost of suit;
- d. Reasonable attorney's fees;
- e. Trial by jury as to all issues so triable; and,
- f. Such other relief as this Honorable Court may deem just and appropriate.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court:

- (a) Declare that Defendants' acts and conduct constituted violations of the First, Fourth, Fifth and Fourteenth Amendments of the U. S. Constitution under 20 U.S.C. § 1681.
- (b) Declare that Defendants' acts and conduct constituted violations of the First, Fourth, Fifth and Fourteenth Amendments of the U. S. Constitution under 42 U.S.C. §§ 1983.

- (c) Judgment in Plaintiff's favor as to all claims for relief.
- (d) Award compensatory damages for the injuries Plaintiff sustained due to Defendants' conduct for all economic and non-economic damages for medical costs, pain, suffering, humiliation and emotional distress.
- (e) Award punitive and exemplary damages, pre-judgment interest, post-judgment interest, costs, and other reasonable expenses incurred in maintaining this action, and the reasonable attorney's fees and costs incurred in maintaining this action.
- (f) All other relief in law or equity to which Plaintiff is entitled and that the Court deems equitable, just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues within this Complaint.

Respectfully Submitted this 22nd day of September, 2016.

**KAPLAN SCONZO & PARKER, P.A.**

PGA Financial Plaza  
3399 PGA Boulevard, Suite 180  
Palm Beach Gardens, Florida 33410  
Telephone: (561) 296-7900  
Facsimile: (561) 296-7919

By: **/S/ Stuart N. Kaplan**

STUART N. KAPLAN, ESQUIRE

Florida Bar No.: 0647934

**skaplan@ksplaw.com**

ELIZABETH L. PARKER, ESQUIRE

Florida Bar No.: 0154059

**eparker@ksplaw.com**

Secondary Email: **jwise@ksplaw.com**