

MICHAEL FEINBERG,

Plaintiff,

v.

KIPP, INC A/K/A KIPP HOUSTON,
N/K/A KIPP TEXAS INC. AND
KIPP FOUNDATION

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11TH JUDICIAL DISTRICT

DECLARATION OF BRUCE M. BERMAN

My name is Bruce M. Berman. I am over eighteen years of age and am competent to give the testimony contained in this declaration. I have personal knowledge of the facts stated herein, and they are true and correct. I am a partner at Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”). I oversaw the independent investigation WilmerHale conducted on behalf of KIPP Houston and the KIPP Foundation (together, the “KIPP Defendants”) in 2017-2018 of Michael Feinberg and allegations of sexual misconduct against him. I make this declaration in support of Defendants’ Motion to Dismiss pursuant to the Texas Citizens Participation Act (the “Motion”).

1. After graduating from Yale Law School in 1979 and completing a federal court clerkship, I joined the firm now known as WilmerHale as an associate in 1980. I have been a partner in the firm since 1987, and I have served as the firm’s general counsel since 2009. Among other things, I represent educational institutions in a variety of matters, including matters involving allegations of sexual misconduct.

2. In November 2017, WilmerHale was hired by the KIPP Defendants to conduct an independent investigation of an allegation of sexual misconduct against one of their co-founders, Michael Feinberg. Feinberg was employed by both entities in 2017.

3. The boards of directors for the KIPP Defendants gave WilmerHale full license to pursue any line of inquiry or evidence that WilmerHale believed to be relevant to the allegation against Feinberg, without any restrictions.

4. At the time WilmerHale was engaged, KIPP Houston's outside counsel, Ellen Spalding, had already conducted an investigation of an allegation against Feinberg. WilmerHale was provided with and reviewed the results of her investigation.

5. WilmerHale interviewed over 15 witnesses over the course of four months. WilmerHale also examined the contents of Feinberg's KIPP-issued computer, including web history, and various relevant documents.

6. WilmerHale interviewed the former student who accused Feinberg of sexually assaulting her while she was a minor. She provided a detailed account that was consistent with what she had told Ms. Spalding. She was able to accurately describe the interior of Feinberg's office at the time, where she said the assault had occurred. WilmerHale also interviewed two other witnesses—the former student's mother and one of her friends—both of whom confirmed that the former student had previously told them similar accounts of her assault by Feinberg. In the mother's case this occurred right after the assault; in the friend's case, it was several years prior to WilmerHale's investigation. Neither witness had been interviewed by Ms. Spalding.

7. WilmerHale also investigated incidents of inappropriate sexual overtures Feinberg had allegedly made to more recent KIPP graduates. These teenagers had been offered internships or employment by the organization not long after graduating from KIPP schools.

8. The first involved a young woman who had graduated from a KIPP school a short time earlier and, at Feinberg's invitation, had come to work for KIPP for a period of time due to a delay in her college enrollment. She had a longstanding, close relationship with Feinberg, whom she viewed as a father figure. She told WilmerHale that, several months after she started work, Feinberg invited her to a small room when school was not in session. In that meeting he allegedly proposed a relationship in which she would have sex with him and, in exchange, he would take care of her financially, which he described as a "tradition in the North." According to her account, she told him she would think about it and fled the meeting.

9. After the meeting, the young woman allegedly told her father what happened, and the two of them purchased a recording device from RadioShack and used it on a follow-up call between her and Feinberg. Among other things, the recording—which WilmerHale reviewed as part of its investigation—captured Feinberg inviting her to meet him later that day to run an errand. Feinberg further stated that he was home alone and suggested that they could head back to his place afterward. The young woman asked Feinberg to confirm that "this is a tradition," to which he said yes, they could talk more about it, but it was a "lifestyle" that others in his family had, although it is something that he did not think he would ever want to do. The young woman responded that she thought the tradition was "bullshit" and that she did not want to do it. Feinberg responded in turn "that's totally fair" and that he "didn't want to make her uncomfortable." The young woman also made a recording—which WilmerHale also reviewed—of a meeting with Feinberg and others at a restaurant at which Feinberg made certain admissions.

10. The young woman in question reported these allegations to others within KIPP Houston and eventually hired a lawyer. She and KIPP Houston reached a settlement before a case was filed. Feinberg personally paid part of the settlement, and he was suspended for a brief period by KIPP Houston.

11. In the course of investigating this allegation, WilmerHale learned of another young woman who had come forward with a similar accusation against Feinberg around the same time as the other young woman. The second woman in question never pursued legal action or made any demands on KIPP. However, Feinberg also paid her several thousand dollars. She declined WilmerHale's requests to be interviewed.

12. WilmerHale obtained additional information from other KIPP employees and representatives that was consistent with what we had learned from our interviews of the young woman who had reached a settlement.

13. During its investigation, WilmerHale interviewed Feinberg twice at length. Feinberg denied all of the accusations against him. With regard to the initial sexual abuse accusation, Feinberg denied having ever done anything inappropriate and said he could not recall any events that could have been misconstrued. With regard to the alleged sexual overture towards the more recent KIPP graduate, he claimed that the incident had been a "misunderstanding." He admitted, however, having at least put himself into a situation that could be misconstrued. He was also unable to explain various statements he made in the recorded conversations, despite being provided with the opportunity to do so.

14. WilmerHale also determined that Feinberg had accessed pornographic websites from his KIPP-issued computer on at least 30 occasions. He did not dispute that he had done so but said that he had only done so during business travel. This was a direct violation of KIPP policy.

15. After completing its work, WilmerHale made an oral presentation of its findings and assessments back to the KIPP Boards. Those findings included: 1) the allegation of sexual abuse by a then-minor student was credible; 2) at least one of the accusations of sexual harassment against Feinberg of an eighteen-year-old employee and recent KIPP graduate was credible and 3) Feinberg accessed pornography over 30 times on his KIPP-issued computer. As to the first incident, we reported that we found both Feinberg's denial and the victim's accusation to be credible, but on balance we found the victim to be more credible. As to the second incident, we reported that we did not find Feinberg's denials to be credible. We reported that we had learned of at least one other young woman who had previously come forward with a similar accusation of harassment against Feinberg, but she declined to be interviewed. We presented other evidence that supported our findings as well.

16. After receiving and discussing the reports of WilmerHale's findings, the KIPP Boards voted to terminate Feinberg. The KIPP Houston board voted 13-0 in favor, with one abstention. The KIPP Foundation board voted 13-0 in favor, with one director (Feinberg) recused.

17. In the KIPP Boards' statement regarding Feinberg's termination, they included contact information for WilmerHale and invited anyone who had suffered or had knowledge of sexual abuse or harassment to contact us, along with a promise to protect the confidentiality of anyone who came forward. Several persons subsequently contacted WilmerHale and raised potentially problematic behavior by Feinberg, but all callers wished to remain anonymous and/or were unwilling to provide any detailed allegations against Feinberg at that time.

My name is Bruce Martin Berman, my date of birth is August 9, 1954, and my address is 6416 Shadow Road, Chevy Chase, Maryland, 20815, and United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in MONTGOMERY County, State of MARYLAND, on the 17th day of November, 2019.



Bruce M. Berman

Unofficial Copy Office of Marilyn Burgess District Clerk