

In Strict Confidence

TO: Wendi Delmendo, Chief Compliance Officer
FROM: Enriqueta Rico, University Investigator
DATE: June 6, 2017
RE: Report of Investigation [REDACTED] - [REDACTED] Sexual Harassment, HDAC 170024

I. INTRODUCTION

Complainant, [REDACTED], alleges that while working for Respondent, [REDACTED], he inappropriately touched her on multiple occasions. Specifically, [REDACTED] alleges that: (1) in or about October 2016, [REDACTED] slapped [REDACTED] on the buttocks, and (2) in or about and between November and December 2016, [REDACTED] poked [REDACTED] in the stomach and/or ribs on more than one occasion.

On or about March 9, 2017, you appointed me in your capacity as UC Davis Chief Compliance Officer to act as University investigator to investigate the above referenced allegations under the UC system-wide policy on Sexual Violence and Sexual Harassment Section II.B.2. (Sexual Harassment) [REDACTED].¹ You asked that I provide this written report no later than June 5, 2017, finding facts sufficient to enable you to determine based on a preponderance of the evidence whether the policy provision in Section II below has been violated.

II. SUMMARY OF FINDINGS

The preponderance of the evidence *does substantiate* that [REDACTED] engaged in sexual harassment in violation of the Sexual Violence and Sexual Harassment policy. The weight of the evidence supports that [REDACTED] engaged in unwelcome physical conduct toward [REDACTED] on multiple occasions; [REDACTED] conduct was sexual in nature; the conduct was sufficiently severe or pervasive that it interfered with [REDACTED]'s employment and would be perceived as offensive or intimidating to a reasonable person.

The evidence supports that [REDACTED] engaged in unwelcome physical conduct of a sexual nature when he slapped [REDACTED] on the buttocks and poked [REDACTED]'s stomach/ribs on more than one occasion. The weight of the evidence supports that [REDACTED] engaged in the alleged unwelcome physical conduct. The slap on the buttocks was witnessed by an independent witness who I found credible. I did not find [REDACTED] denial credible, nor did I find his proffered explanation that the contact was incidental and in response to his attempt to "brush" [REDACTED] and "rush"² her out of the way, credible. The independent witness credibly stated the slap was "purposeful" and [REDACTED] looked at her (the student) and smiled, which suggested both an awareness and deliberateness of his conduct.

The weight of the evidence also supports a finding that the conduct was sexual in nature. I considered the locations of where the relevant touching was done, the buttocks and the abdomen region. I found that [REDACTED] touched [REDACTED] in one intimate area of her body, the buttocks. The weight of the evidence also supports a finding that the touching of [REDACTED]'s stomach/ribs was more likely than not also sexual in nature.

¹Section II (B)(1)(b) Sexual Assault Contact provides guidance regarding those body parts that would be considered "intimate." Those body parts are: genitals, anus, groin, breast, or buttocks (i) unclothed or (ii) clothed.

² In his interview, [REDACTED] demonstrated this motion by holding his open hand palm facing forward and down as if he might be guiding someone out of his way.

Further, I found that the preponderance of the evidence ***does support*** a finding that the above conduct was sufficiently severe or pervasive to impede or interfere with [REDACTED]'s employment. I considered the following factors in making this finding: (1) The nature and extent of the relevant conduct; (2) [REDACTED] reported ongoing physical symptoms, including gastrointestinal issues, nervousness and sleeplessness; (3) [REDACTED] refrained from going to [REDACTED] for three months [REDACTED] and after her disclosure of the relevant conduct; and (4) although [REDACTED] indicated her departure from the lab was motivated by the parties' inability to work together, the relevant conduct was a motivating factor for her departure.

Analyzing the totality of the circumstances, the preponderance of the evidence ***does support*** that a reasonable person would have found the conduct to be offensive. In making this finding, I considered the manager-subordinate relationship that existed between the parties, the nature and manner of the physical conduct, and the overall lab environment that existed at the time the relevant conduct occurred. I found that the aforementioned factors made it more likely than not that a reasonable person would have found the conduct to be intimidating or offensive.



III. METHODOLOGY

A. Standard of Proof

Each of the factual findings and policy conclusions reflected in this report is made on a preponderance of the evidence basis. "Preponderance of the evidence" means that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side.

B. Relevant Policy Provision(s):

The following policy statements and sections from the *University of California's Sexual Violence and Sexual Harassment Policy* (SVSH Policy), effective 1/1/16, are applicable to this investigation:

"The University of California is committed to creating and maintaining a community free of sexual violence and sexual harassment. Sexual violence and sexual harassment violate both law³ and University policy...

...

II.B.2. Sexual Harassment:

³ Although some of the behaviors addressed in the SVSH policy are prohibited by law, the present report analyzes Respondent's conduct under the University's policy and does not purport to conduct a legal analysis.

- a. Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature when:
 - ...
 - i. *Hostile Environment*: such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive.
- b. Consideration is given to the totality of the circumstances in which the conduct occurred. Sexual harassment may include incidents:
 - i. between any members of the University community . . . ;
 - ii. in hierarchical relationships and between peers; and
 - iii. between individuals of any gender or gender identity. . . .”

C. Interviews

I interviewed the following individuals in the course of this investigation:⁴

Complainant, [REDACTED], March 27, 2017 and June 1, 2017 (by phone) ⁵

Respondent, [REDACTED], May 19, 2017

[REDACTED], April 25, 2017

[REDACTED], April 28, 2017 and May 22, 2017

[REDACTED], May 12, 2017 and May 19, 2017 (by phone)

[REDACTED], May 15, 2017

[REDACTED], May 15, 2017

[REDACTED], May 18, 2017

[REDACTED], May 19, 2017

[REDACTED], May 23, 2017 and May 30, 2017 (both by phone).

[REDACTED], May 24, 2017

⁴ All witnesses were interviewed in person unless otherwise indicated. All witnesses were advised of the confidential nature of the investigation, the expectation of honest and complete responses to all questions, and the University's prohibition of retaliation for cooperating with an official investigation.

⁵

[REDACTED]

D. Other Evidence Considered

Attachment A: [REDACTED]
Attachment B: [REDACTED]
Attachment C: [REDACTED]
Attachment D: [REDACTED]
Attachment E: [REDACTED]
Attachment F: [REDACTED]
Attachment G: [REDACTED]
Attachment H: [REDACTED]

IV. SUMMARY OF THE EVIDENCE

A. Complainant – [REDACTED] Interview Summary

Complainant, [REDACTED]

While working for [REDACTED], [REDACTED] was responsible for supervising project investigations, evaluating quality analysis and preparing reports for various [REDACTED] described [REDACTED] as “micro-managing” her time.

[REDACTED] described being “verbally abused” by [REDACTED]. The verbal abuse started in March 2016 and continued until December 2016. She provided examples of this, including a time they were reviewing results and he grabbed a garbage can and told her that her research was “trash.” [REDACTED] would say [REDACTED] wasn’t educated enough for the investigation and that [REDACTED] failed and didn’t train [REDACTED] well. He would say these things in front of the students who worked in the lab to make a point. The verbal abuse occurred in front of the lab manger.⁶ [REDACTED] threatened to fire [REDACTED] in front of the lab manager and students. In her interview, [REDACTED] said if [REDACTED] didn’t like the data or if he ordered her to do twenty things in a day and she only did nineteen, [REDACTED] would point out the one thing [REDACTED] didn’t do. When [REDACTED] would ask for experimental details, [REDACTED] would say that she looked like a 5 year old little girl. [REDACTED] would always say something to offend her. [REDACTED] would have contact with [REDACTED] multiple times throughout the day. [REDACTED] reported she

⁶ [REDACTED]

was working nearly eighteen hours a day and [REDACTED] was only paying [REDACTED] % of her salary. According to [REDACTED], [REDACTED] was never satisfied.

[REDACTED] described the lab environment as “hostile.” [REDACTED] would yell a lot. Although the students didn’t complain, they were “surprised with fear.” The students would ask her why she ([REDACTED]) would permit this. When [REDACTED] would yell at [REDACTED], there were many times she wanted to get up and walk out. [REDACTED] talked to the lab manager and told her everything was “very aggressive.” The lab manager would explain that [REDACTED] had a lot of pressure on him.

Touching on Buttocks:

In her interview, [REDACTED] said the “worst” was when [REDACTED] was physical. This started in the second half of October. On one particular date, [REDACTED] and [REDACTED] were discussing data and logging information into the computer. [REDACTED] was bending over the cabinet drawer getting a file or putting a document in the file. She recalled she was in the second drawer from the bottom. [REDACTED] didn’t know when [REDACTED] entered the lab. [REDACTED]’s back was facing everyone in the lab and out of nowhere [REDACTED] hit her on the bottom. [REDACTED] hit her on the right side of her butt, pretty hard, enough to surprise her. She described it as a slap. [REDACTED] recalled saying, “No, doctor, please!”

[REDACTED] described [REDACTED] as having a “surprised” reaction. [REDACTED] recalled making a facial expression after [REDACTED] did this. [REDACTED] did not talk to [REDACTED] immediately, but spoke to her much later, and [REDACTED] told her to report what happened. When [REDACTED] had to report, she told [REDACTED] she was nervous. [REDACTED] remained quiet for about 3-4 weeks. She described the event as emotionally “painful.” She had never been treated like this before. During this time, [REDACTED] reported being “quiet from her husband and the whole world.”

In November, [REDACTED] saw [REDACTED]. [REDACTED] asked [REDACTED] how things were going and how her experience with [REDACTED] had been. In that moment, [REDACTED] told [REDACTED] about both the verbal abuse and the “hit on her butt,” which she described at the “worst” part of her experience. [REDACTED] said he would notify HR without giving [REDACTED]’s name. After [REDACTED] spoke to [REDACTED], she went to work for [REDACTED]. She told [REDACTED] what happened and he asked [REDACTED] to report to HR because he was on his way out of the country. [REDACTED] spoke to [REDACTED]. [REDACTED] was very worried because [REDACTED] had not said anything the whole year.⁷ [REDACTED] asked [REDACTED] to make a formal report to HDAAP. [REDACTED] left a message for HDAAP the following morning. [REDACTED] later followed up with [REDACTED]. [REDACTED] told [REDACTED] if she gave [REDACTED] permission she ([REDACTED]) could make the report. [REDACTED] told [REDACTED] it was okay for her to make the report.

On January 25, 2017, [REDACTED] was contacted by HDAAP. At that time [REDACTED] told HDAAP she wanted to educate herself prior to filing a formal complaint. On March 9, [REDACTED] received the charge letter for this investigation [REDACTED]

⁷ [REDACTED] recalled the conduct occurring October – December 2016. By her own report, she did not wait a year to report the conduct.

After her report, [REDACTED] said [REDACTED] told [REDACTED] that a student had made a report that [REDACTED] had violated a student's "close space." [REDACTED] knew it was her and not a student. [REDACTED]'s perception was that [REDACTED] didn't think he did anything wrong. [REDACTED] offered that there were cultural differences and it was in their culture to get close. [REDACTED] and [REDACTED] told her, "We come from a different culture." [REDACTED], but they discussed that it was wrong. [REDACTED] was surprised by his response to the complaint, particularly his explanation of cultural differences as an apparent justification.

Poking:

During November and/or December, [REDACTED] poked [REDACTED]'s stomach and ribs. She said he would just come up and poke her ribs. [REDACTED] recalled one of these instances occurred on November 15. [REDACTED] was standing at her desk and [REDACTED] came up and touched her on the stomach. [REDACTED] didn't say anything. No one else was there.

[REDACTED] described the next time, [REDACTED] did this as a form of "affection," which she referenced as [REDACTED]⁸ recalled the second time [REDACTED] poked her in the ribs was on November 28, 2016. [REDACTED] said she was walking away from the lab table and he poked her. She said sometimes when he did this, she would tell him "no." In her interview, [REDACTED] said she stopped working with [REDACTED] for this reason. [REDACTED] said she was ready to leave. She also wanted to leave because of the amount of pressure [REDACTED] was putting on her at work. After [REDACTED] told [REDACTED] and [REDACTED], she told her husband. [REDACTED] wanted to tell her husband because she didn't want her husband to put pressure on her to make a report.⁹

In response to whether [REDACTED] was aware of [REDACTED] engaging in any other instances of this behavior, [REDACTED] shared that the student witness, [REDACTED], from the October incident told [REDACTED] that [REDACTED] would pull her hair.¹⁰ [REDACTED] said [REDACTED] is very thin and the whole year [REDACTED] would tell [REDACTED] she was sick. [REDACTED] was close to [REDACTED]. [REDACTED] told [REDACTED] she felt like she was being bullied by [REDACTED].

[REDACTED] said another situation involved a visiting [REDACTED]. [REDACTED] would flirt with [REDACTED] and touch her shoulder. [REDACTED] believed when [REDACTED] left she made a complaint. [REDACTED] said she heard [REDACTED] indirectly mentioned her experience working with [REDACTED]. [REDACTED] said she was told that UC Davis did not permit verbal and physical abuse. [REDACTED] learned this information from a co-worker.

[REDACTED] has seen [REDACTED] hug women around the waist on a couple of occasions. She wasn't aware if any of these women made complaints.

In response to a question about how the conduct has impacted her employment, [REDACTED] said she didn't want to go back to [REDACTED] Hall. [REDACTED] said she was told by an ASAP counselor that she had to continue to live her life so, after three months, [REDACTED] went back into the building. [REDACTED]

⁸ [REDACTED]

¹⁰ [REDACTED]

[REDACTED]. She said these things became worse after the physical conduct. She said she experienced tremendous pressure while working for [REDACTED], although she did not miss any work. [REDACTED] admitted to conflict with [REDACTED] surrounding her schedule. [REDACTED] wanted her to show up at [REDACTED] a.m. but they had agreed [REDACTED] could show up at [REDACTED] a.m. When [REDACTED] was angry he would mention [REDACTED] was showing up late.

[REDACTED] said most of the student lab assistants who worked with her in [REDACTED] lab are gone.¹¹ In response to questioning regarding her delay in reporting, [REDACTED] said she was worried about something bad happening to [REDACTED]. She also said she was not aware of the rules on these things (sexual harassment complaints). She wanted to educate herself before making a complaint. [REDACTED] said she doesn't want her complaint to affect [REDACTED] life.

I re-contacted [REDACTED] on June 1, 2017 regarding issues that were raised in the investigation requiring clarification. [REDACTED] admitted to owing [REDACTED] hours, but denied it was because she did not complete the [REDACTED] binder translation. [REDACTED] said she and [REDACTED] had an understanding that [REDACTED] would work on the [REDACTED] binder during her vacation, but there was no deadline for completing the work. [REDACTED] believed she had several e-mails demonstrating their ongoing contact during this period.¹²

[REDACTED] admitted that she and [REDACTED] talked about his being unhappy with her work. [REDACTED] told her that her lack of education was [REDACTED]'s failure to train her. [REDACTED] never intended to continue working for [REDACTED] and he was aware of this. [REDACTED] was 100% sure she never asked [REDACTED] to keep her on. She admitted that [REDACTED] told her he didn't intend to keep her and she said she was able to accept this. When [REDACTED] terminated her contract, he told her there were no more [REDACTED]. [REDACTED] denied her complaint was in retaliation for [REDACTED] not extending her contract. She reported that at the time she left, she was fairly certain she would be funded 100% by February 2017, only a month after her contract ended with [REDACTED].

B. Respondent – [REDACTED] Interview Summary

Respondent, [REDACTED]
[REDACTED]

[REDACTED] knew [REDACTED] on a personal level. He described having a "friendly relationship" with [REDACTED] where they discussed the preparation of her merit package and career expectations... According to [REDACTED], [REDACTED] was not in a permanent position and was always looking for somebody to hire her

¹¹ [REDACTED]

¹² [REDACTED]

¹³ [REDACTED]

part time. [REDACTED] first came to work for [REDACTED] in November or December of 2015. [REDACTED] agreed to hire [REDACTED] for [REDACTED] time to help her out.

[REDACTED] denied engaging in any verbal berating of [REDACTED]. In response to whether or not he ever told [REDACTED] her research was “trash” or that she was like a five year old girl when she would ask for experimental details, [REDACTED] said those comments didn’t sound like something he would say. [REDACTED] said he would have told [REDACTED] they would have to re-run data. [REDACTED] denied getting upset with people. He said he doesn’t get upset with people. He admitted to being demanding but not to the point that he gets upset. He also admitted to being a “micro-manager.”

The only negative comment he recalled making to [REDACTED] was that the work situation was not working, and it was “killing him.” In that same conversation, [REDACTED] told [REDACTED] this was his “worst season ever.” [REDACTED] remained calm and did not yell. He described treating [REDACTED] like a friend during the conversation. According to [REDACTED], [REDACTED] was upset with the system. She was having problems paying her mortgage. She was experiencing stomach and dental problems and he began noticing [REDACTED] was not in the best mood. [REDACTED] provided me a photo that he felt demonstrated [REDACTED]’s [REDACTED] mood [REDACTED]).

Touching on Buttocks:

[REDACTED] denied hitting [REDACTED] on the buttocks. He confirmed the location of the file cabinet in the lab.¹⁴ He described the file cabinet as a place where [REDACTED] might keep things. [REDACTED] described himself going in and out of the lab. Regarding the instant allegation, he said it was possible he was in the lab and was inquiring about data at the time. [REDACTED] recalled in October they were running a [REDACTED] experiment that required him to go into the lab every hour to take measurements. [REDACTED] said he was taking the measurements because [REDACTED]’s measurements were not reliable.

[REDACTED] further described the lab space. He said there was a “narrow bench” in the lab and it was possible he may have “brushed” [REDACTED] “rushing” her to get out of the way. If he did “brush” her, he said he never had any sexual intention to touch her. [REDACTED] said his [REDACTED] and it didn’t make sense to him that he would hit [REDACTED] on the butt. In his interview, [REDACTED] said [REDACTED] is a [REDACTED] year old person, if he had done something like this, he thought she should’ve told him she didn’t like it. [REDACTED] said he thought they were peers, but he was aware of the power situation. [REDACTED] denied having any intention of “making a move” on [REDACTED].

In his interview, [REDACTED] said because there were no specific dates alleged, it was possible he was not even in the lab during this time. After our interview, [REDACTED] provided me the calendars contained in [REDACTED]. I requested and was provided more specific information regarding his calendar entries [REDACTED].

¹⁴ [REDACTED]

Poking:

In response to the allegations regarding poking [REDACTED] in the ribs or stomach, [REDACTED] denied this, but also said he didn't recall this conduct. He recalled Ms. [REDACTED] discussing her [REDACTED] problems and he commented that she should not be [REDACTED]. [REDACTED] demonstrated that when he said this, he made a poking motion with his forefinger at [REDACTED]'s stomach, but he didn't actually touch her. [REDACTED] admitted to talking with his hands. In the interview, [REDACTED] said he has a lot of friends that he's "very friendly" with, but now he has to ask permission to even shake hands.

[REDACTED] recalled sometime between June and November 2016, [REDACTED] told him that somebody or some peer called about [REDACTED] getting into a student's personal space. [REDACTED] didn't provide details and [REDACTED] didn't know who [REDACTED] was talking about. [REDACTED] told [REDACTED] not to get too close and keep his hands in his pockets. [REDACTED] was worried because sometimes he pats people on the shoulder. He said he was also kind of worried because he was "having all these undergrads" from other cultures working in the lab. During this time, [REDACTED] recalled a student¹⁵ came in almost crying because her grandmother had passed away. The student seemed to be getting close to him and [REDACTED] in an effort to comfort her, hugged her. He immediately asked if he did anything or offended her.

In response to the instant allegations, [REDACTED] was required to re-take the sexual harassment training. He thought he did this after his talk with [REDACTED]. He took the on-line training as well as the [REDACTED] presentation. During the [REDACTED] presentation, [REDACTED] tried asking a question and one of the presenters touched his leg. He thought that was odd given the substance of the presentation. [REDACTED] seemed to raise this point as a way to illustrate how normal or innocuous touching could be.

Prior to the interview, [REDACTED] provided me a written summary regarding the background of his relationship with [REDACTED].¹⁶ I asked him about a specific portion of the summary where he discussed not wanting to supervise the students because of his "friendly" nature. [REDACTED] clarified the timing of this. He said it was right after [REDACTED] talked to him about personal space issues.

[REDACTED] did not recall any prior complaints or discussions specifically regarding sexual harassment. After the interview, he sent me an e-mail [REDACTED] regarding two previous complaints. The first complaint was regarding a personal space issue.¹⁷ The second was non-sexual and involved [REDACTED] contacting a former employee regarding a UC Davis issued phone. Both times [REDACTED] gave [REDACTED] advice on handling these issues in the future.

I gave [REDACTED] the opportunity to respond to other issues that were raised in the investigation. I asked [REDACTED] about whether or not the issue of him "patting" someone on the head was ever raised with him. [REDACTED] did not recall "patting" anyone on the head. [REDACTED] was also asked about grabbing

¹⁵ [REDACTED]

someone's hand to look at their ring. [REDACTED] said he probably did do this. His only intention would be to look at the ring. In response to his interactions with [REDACTED], [REDACTED] did not recall joking with her, poking her or otherwise touching her. [REDACTED] recalled [REDACTED] was from [REDACTED]. [REDACTED] approached [REDACTED] several times about working in post-harvest and designing an experiment for her. He recalled they collected field data. [REDACTED] said [REDACTED] was never available and he may have seen her three times at most.

In response to why he thought [REDACTED] might bring these allegations, [REDACTED] highlighted several reasons why [REDACTED] might have been motivated to make a false complaint against him, including: (1) she was upset about her contract ending; (2) she was unhappy about [REDACTED] telling her that she didn't perform well; (3) she was concerned [REDACTED] would share her performance issues with [REDACTED]; (4) she was retaliating against him; and (5) prior to her contract ending, and [REDACTED]'s leaving on vacation in December 2016, [REDACTED] gave her a list of things he wanted completed and he thought [REDACTED] didn't like that and didn't want to follow through.

In his interview, [REDACTED] also highlighted several items of concern during [REDACTED]'s employment that led to his decision not to renew her contract. Specifically, [REDACTED] recalled the following: (1) [REDACTED] failed to complete a translation on a [REDACTED] binder; (2) she failed to timely submit purchase orders for necessary equipment to run experiments; (3) she developed "faulty" data; (4) she lost track of data; and (5) she didn't move as fast as expected. [REDACTED] said all of these things resulted in him having his "worst" season ever.

In response to whether or not he discussed [REDACTED]'s performance issues with anyone, [REDACTED] recalled these conversations with [REDACTED] and other people. [REDACTED] had a conversation with [REDACTED] about not renewing [REDACTED]'s contract. [REDACTED] thought it was probably during the September time frame. [REDACTED] thought the conversation may have come up in relation to running [REDACTED]. He thought maybe [REDACTED] asked about [REDACTED] running the center. He recalled the conversation was not specific to [REDACTED]. [REDACTED] may have told [REDACTED] they couldn't give [REDACTED] the money she would be expecting. Other than [REDACTED], [REDACTED] could not recall other conversations with others about [REDACTED]. [REDACTED] denied sharing with [REDACTED] that he was not satisfied with [REDACTED]'s work. Nor did [REDACTED] recall discussing [REDACTED]'s contract with [REDACTED]. [REDACTED] emphasized he didn't have any commitment to keep [REDACTED]'s contract and it was going to expire [REDACTED]. By not extending the contract, [REDACTED] said he had no intention of hurting [REDACTED] and she told him she was looking for a job.

[REDACTED] said [REDACTED]'s complaint came completely out of the blue for him. Prior to the complaint, [REDACTED] described their relationship as "friendly."

C. [REDACTED] Interview Summary

[REDACTED]

[REDACTED] described [REDACTED] as having "two faces." He was both super nice and super rude. [REDACTED] would smile all the time, but then make you feel like you were stupid. An example of his rudeness

was he would tell ██████████ her English was so bad and she was a bad researcher. ██████████ started to feel stupid because of her English skills.¹⁸ ██████████ was working very hard, weekends, afternoons and evenings and despite this, ██████████ told her that her work was bad and it was wrong. ██████████ told ██████████ she was “lazy.” He would tell ██████████ to go the lab at ██████████ a.m. because he was the boss. ██████████ sent her lots e-mails constantly asking ██████████ where she was.¹⁹ In her interview, ██████████ said it was hard to be here (UC Davis). This was difficult for her because it was a dream to be at UC Davis. ██████████ felt like ██████████ working with ██████████ because it was a bad experience.

acknowledged not having a lot of time to meet with [REDACTED] because she [REDACTED]. [REDACTED], [REDACTED] recalled when people found out she was working with [REDACTED]. they told her "good luck." [REDACTED] took that to mean he was hard to work with. [REDACTED] felt that in general [REDACTED] had problems with ladies and not with guys. She recalled a [REDACTED] was fighting with [REDACTED] but she was not aware of the details. [REDACTED] described [REDACTED] as "super rude" with her, [REDACTED] and his [REDACTED]. [REDACTED] didn't put [REDACTED] in a publication they were both working on, despite [REDACTED]'s initial work on the experiment.

In response to a question regarding any physical contact by [REDACTED] toward her, [REDACTED] reported incidents of “poking.”²⁰ In response to a question regarding the frequency of the poking, [REDACTED] said she didn’t want to say something wrong, but said he might have poked her a couple of times. She said one time when he poked her she was “super” uncomfortable. [REDACTED] said “hey, excuse me” and she left. [REDACTED] said this really took her by surprise and she felt like she wanted to run. [REDACTED] would say he liked Argentinian ladies and [REDACTED]. When he said this he would be laughing. [REDACTED] felt when he said this he was “playing.”

One time she was working and he came up from behind her and poked her. [REDACTED] would say hello and then poke her. She said this would usually happen in the mornings. [REDACTED] said when [REDACTED] “poked” her it was not sexual, but she didn’t like it and it made her feel uncomfortable. She thought maybe the poking was normal for him as part of his Latin culture. In response to the poking, [REDACTED] would move her body.²¹ [REDACTED] never hit [REDACTED] on the butt. If he had, [REDACTED] said she would have said something.

§ 87(2)(b) said she never told her boss, § 87(2)(b), about her experiences with § 87(2)(b) because § 87(2)(b) and § 87(2)(b) were friends. In the beginning, § 87(2)(b) was nice although § 87(2)(b) recalled in their first meeting § 87(2)(b) spoke badly about a co-worker from § 87(2)(b) which § 87(2)(b) said was unprofessional. § 87(2)(b) told the § 87(2)(b) § 87(2)(b) not to place § 87(2)(b) with § 87(2)(b) because he's not a good person. § 87(2)(b) denied she complained about anything sexual, but merely told § 87(2)(b) that § 87(2)(b) was rude. § 87(2)(b) never complained to anyone about § 87(2)(b) treatment of her but she said she

[illegible]

[REDACTED] spoke to [REDACTED] all the time about her experiences. At the end of her time in [REDACTED] lab, she told [REDACTED] thank you and gave him a hug. [REDACTED] respected [REDACTED] as a professional. However, in her interview she said she was afraid to see him on the campus.²²

[REDACTED] described the working conditions in [REDACTED] lab as "super stressed." [REDACTED] last communicated with [REDACTED] one week before [REDACTED] arrived back [REDACTED]. [REDACTED] contacted her by e-mail and told [REDACTED] she wanted to share something with her. [REDACTED] said [REDACTED] shared that [REDACTED] was rude to her, it was the worst year in her life as a researcher and he had hit her on the butt. [REDACTED] told [REDACTED] the good thing was that a student saw the situation which meant [REDACTED] was not crazy. [REDACTED] was surprised and shocked [REDACTED] did this. [REDACTED] said she could maybe see him doing that to [REDACTED]. [REDACTED] described [REDACTED] as "disgusting." When asked what she meant by "disgusting," [REDACTED] said rude and the touching.

In her interview, [REDACTED] said she wanted to support [REDACTED]. [REDACTED] said [REDACTED] never used derogatory references or verbally berated her with the exception of the comments about [REDACTED]. [REDACTED] has had no further professional contact with [REDACTED]. She said she would not feel comfortable working with him again.

[REDACTED] Interview Summary

[REDACTED] described [REDACTED] as being "very nice" in his interactions with her ([REDACTED]). [REDACTED] described [REDACTED] as very "personable" and one of those people that thinks everyone is his best friend. [REDACTED] described [REDACTED] as a very large personality.

This is contrasted with how he interacted with [REDACTED]. She described [REDACTED] and [REDACTED] as "passive aggressive" and not working well together. Their working relationship was "unprofessional." An example of this was when something went wrong, [REDACTED] would show less than "hidden enthusiasm" with [REDACTED]. [REDACTED] recalled a lab meeting where [REDACTED] was supposed to do something or forgot to do something. [REDACTED] critiqued her "awkwardly." In response to what made it "awkward," [REDACTED] said it was obvious criticism that you would have in a private meeting. [REDACTED] did not recall the specific criticism. [REDACTED] recalled she tried to zone out and she felt like she shouldn't be there. [REDACTED] noticed this lack of professionalism during the 2016 summer session. The unprofessionalism on [REDACTED]'s part was a comment [REDACTED] made to [REDACTED] about needing to get something done "now," which understood to be a reference to [REDACTED] demands. [REDACTED] wanted things done his way. [REDACTED] described [REDACTED] and [REDACTED] working relationship like watching two people who didn't like each other having to work together.

[REDACTED] and [REDACTED] had different lab styles. In response to whether or not [REDACTED] observed [REDACTED] verbally berate [REDACTED], [REDACTED] said she recalled [REDACTED] did not complain about outcomes but how [REDACTED] went about doing things. In response to how [REDACTED] responded, [REDACTED] said [REDACTED] would be affirmative, find a solution and avoid the situation. She referred to [REDACTED] as the "peacekeeper." [REDACTED] did not observe these type of things in [REDACTED]'s and [REDACTED]'s working relationship.

[REDACTED] thought [REDACTED] was an effective supervisor and was accessible. [REDACTED] noted that it was a little harder to get into contact with [REDACTED] in [REDACTED] lab, primarily because she was splitting her time [REDACTED]. [REDACTED] was typically in the lab with [REDACTED] on [REDACTED]. Sometimes they would have an experiment running and they would come in late, but that didn't happen too often. In response to a question regarding who was responsible for supervision of the students, [REDACTED] said she was not aware of who was ultimately responsible for supervising the lab students, although she thought [REDACTED] felt a responsibility for this.

Touching on Buttocks:²³

[REDACTED] was working in the lab with [REDACTED] in October 2016. [REDACTED] was seated at a desk doing data entry. Immediately next to the desk was a file cabinet. [REDACTED] came through the door and asked what they were doing. [REDACTED] along with [REDACTED] and [REDACTED] were monitoring a [REDACTED] experiment under the hood at the back of the lab. [REDACTED] was at the file cabinet and was bent over from the waist looking for a file on [REDACTED] titration. While [REDACTED] was bent over, [REDACTED] came up behind her and "smacked" her on the butt.²⁴ It wasn't a hard slap and it was "purposeful." In response to whether or not it was incidental contact, [REDACTED] said there is no real struggle for multiple people to pass in the hallway and so she didn't think it was accidental. [REDACTED] has used the sink and has not had an issue with people passing and making incidental contact with her. [REDACTED] could not recall which hand [REDACTED] used. [REDACTED] and [REDACTED] looked at each other and exchanged "confused" looks. [REDACTED] then looked at [REDACTED] and he smiled as if it was a joke. [REDACTED] believed it was not [REDACTED] intention to hurt [REDACTED]. [REDACTED] said the slap was "maybe not sexual" and she didn't think [REDACTED] was doing it to "get at" [REDACTED].

[REDACTED] had a conversation with [REDACTED] about this incident at a later time. In her interview, [REDACTED] said she was going through a hard time in her personal life. [REDACTED] asked to speak to [REDACTED] and asked if [REDACTED]'s problems were with either her ([REDACTED]) or the lab. It was then that [REDACTED] said there was one other thing, but [REDACTED] didn't know how to put it in to words. [REDACTED] asked [REDACTED] if she remembered "that" time and [REDACTED] said yes and it was "very strange." [REDACTED] understood [REDACTED] to be talking about the time that [REDACTED] hit [REDACTED] on the buttocks. [REDACTED] asked if [REDACTED] made advances on [REDACTED] or others. [REDACTED] denied any advances but shared that [REDACTED] one time had tugged on [REDACTED]'s ponytail. He said "[REDACTED]" in what [REDACTED] described as an "over the top" greeting. [REDACTED] thought the idea of this happening to others made [REDACTED] feel guilty. [REDACTED] told [REDACTED] she wasn't sure what to do, was feeling really anxious, and she hadn't told her husband or her kids.

²³ [REDACTED]

²⁴ [REDACTED]

[REDACTED] wasn't sure about her next steps. [REDACTED]. Ms. Bal offered to pass the information along to [REDACTED] and she encouraged [REDACTED] to go to HR. [REDACTED] told [REDACTED] if she felt like she needed to leave the lab, [REDACTED] should bring it up. [REDACTED] expressed concern about [REDACTED] doing this to another student. [REDACTED] tried to provide [REDACTED] reassurance, but [REDACTED] was having a hard time coming to terms with it herself. [REDACTED] was worried about [REDACTED] finding out because [REDACTED] and [REDACTED] are friends. [REDACTED] reported losing sleep over the situation.

[REDACTED] was not aware of any similar conduct by [REDACTED]. [REDACTED] at the lab, who only stayed a quarter and a half. [REDACTED] talked to her friend and made a general inquiry about if she (the friend) liked the lab. [REDACTED] avoided bringing up [REDACTED]'s situation. [REDACTED] thought her questioning of her friend gave her friend an avenue to say whether or not anything in the lab made her uncomfortable. [REDACTED] said her friend told her the lab wasn't the issue, it was her class load. [REDACTED] was not aware if [REDACTED] was spoken to about his interactions with students in the lab. [REDACTED] would comment about [REDACTED]'s weight but she felt the comments were not meant to be insulting. [REDACTED] said he made references to her weight that were unprofessional for a workplace, specifically about her being thin.

Poking:

[REDACTED] told [REDACTED] that [REDACTED] would poke [REDACTED] in the ribs when he would ask her questions. [REDACTED] told [REDACTED] he did this to a point where [REDACTED] wasn't comfortable. [REDACTED] did not witness any of these incidents, although she said she could definitely see that happening. [REDACTED] described [REDACTED] as "barrier" free. Once [REDACTED] was trained in post-harvest, she was not in the lab. [REDACTED] noted there were cultural differences between [REDACTED] and [REDACTED] that might explain his conduct that would make it "weird" but not right. In response to whether or not [REDACTED] act this way with other Latin individuals in the lab, [REDACTED] said there was one other [REDACTED] in the lab but [REDACTED] wouldn't do that to her. When [REDACTED] said when she would be standing next to [REDACTED] [REDACTED] would instinctively take a half step back.

[REDACTED] told [REDACTED] she wasn't going to continue in the lab and asked if [REDACTED] was. [REDACTED] did not recall when it was [REDACTED] told her this. [REDACTED] thought it was in a second discussion they had in December 2016. [REDACTED]'s contract was ending. [REDACTED] wanted to make sure [REDACTED] would be comfortable being a witness. [REDACTED] felt that [REDACTED] told her she wasn't going to continue in the lab not just because of the incident but her and [REDACTED] didn't work well together. In response to whether or not [REDACTED] discussed her own financial difficulties, [REDACTED] said [REDACTED] mentioned that she was waiting to hear back on funding for [REDACTED]. [REDACTED] knew [REDACTED]'s contract was set to end in December.

[REDACTED] didn't think [REDACTED] talked to anyone else in the lab. [REDACTED] described [REDACTED] as "emotional." [REDACTED] believe [REDACTED] not only felt violated but worried and guilty because [REDACTED] felt it was her responsibility to make sure [REDACTED] didn't touch anyone else. In the interview, [REDACTED]

said it was [REDACTED] responsibility to make sure he didn't do that. [REDACTED] said she was more than willing to come forward and be a witness to what she saw.

D. [REDACTED] Interview Summary

[REDACTED]
[REDACTED] was the initial reporting party of the instant allegations. On December 8, 2016, [REDACTED] met with [REDACTED]. [REDACTED] reported that [REDACTED] had mistreated her and had done things to her that [REDACTED] found offensive. [REDACTED] told [REDACTED] about a meeting in front of others where [REDACTED] picked up a garbage can and said [REDACTED]'s work was trash. On another occasion, [REDACTED] said [REDACTED] patted her on the bottom. [REDACTED] told [REDACTED] that some students asked [REDACTED] what if anything she was going to do about it. [REDACTED] said she felt she had to tell someone but at the same time, she didn't want to say anything.

[REDACTED] thought [REDACTED] called the HDAAP office to report the conduct anonymously. [REDACTED] didn't think at that point in time [REDACTED] was comfortable going to HDAAP. [REDACTED] made the call to HDAAP during the holidays and no one got back to her. [REDACTED] followed up with HDAAP in January and found out what she needed to do. [REDACTED] contacted [REDACTED], left a message and followed up with her.²⁶ [REDACTED] informed the Chair of the Department of [REDACTED], about the complaint. To her knowledge, [REDACTED] spoke with [REDACTED]. [REDACTED] said Prof. [REDACTED] instructed [REDACTED] to take a refresher sexual harassment course, which he did.²⁷ [REDACTED] said after this event, [REDACTED], disclosed hearing from others that they were not happy in that lab. [REDACTED] said there was no indication that the complaints were sexual in nature but were more about [REDACTED] treatment of employees.

[REDACTED] said in October 2016, she addressed a complaint brought to her attention by the [REDACTED], regarding how [REDACTED] conducted himself with [REDACTED].²⁸ The allegation was that [REDACTED] "patted" [REDACTED] on the head. [REDACTED] told [REDACTED] it was inappropriate and he needed to keep his hands to himself and act "professional" when working with staff. She told [REDACTED] people didn't like him [REDACTED] in their space. Prior to this, [REDACTED] recalled way back another staff person made a complaint, but she was unsure of the specifics.

[REDACTED] said [REDACTED] never brought [REDACTED]'s performance issues to her. In response to whether or not [REDACTED] discussed [REDACTED]'s personal issues affecting her employment, [REDACTED] recalled this coming up after [REDACTED]'s disclosure, but she did not recall anything before that.

²⁶ [REDACTED]

²⁸ [REDACTED]

[REDACTED] thought that it was only after [REDACTED] complained that [REDACTED] ever said that [REDACTED] didn't have the requisite skills and wasn't doing the work she needed to be doing. [REDACTED] said [REDACTED] had taken employee performance issues to her before. [REDACTED] recalled bringing a performance issue with a contract employee to her. [REDACTED] said [REDACTED] never had a conversation with her about [REDACTED] being full time. [REDACTED] was going back to [REDACTED], who [REDACTED] describes as [REDACTED]'s main employer. [REDACTED] said if [REDACTED] had the need to fill a full-time spot, he would go to [REDACTED], his assigned personnel specialist. He would let [REDACTED] know he had work that needed to be done and they would work on a position description.

E. [REDACTED] Interview Summary

[REDACTED]
[REDACTED]²⁹

[REDACTED] recalled one HR situation with [REDACTED] about a month ago. [REDACTED] described it as "just" an allegation that [REDACTED] "poked" someone in the department in the ribs and "patted" them on the butt. [REDACTED] later got the charge letter that that identified [REDACTED] as the complaining party. [REDACTED] couldn't recall if there was a third allegation.³⁰ Prior to this, [REDACTED] was not familiar with [REDACTED]. [REDACTED] was asked to meet with [REDACTED] to discuss everything, put it on record and send [REDACTED] a letter. [REDACTED] worked with HDAAP on the substance of the letter that was eventually sent to [REDACTED].

When asked about [REDACTED] response to the allegations, [REDACTED] said [REDACTED] told [REDACTED] that he didn't ever remember poking or slapping anyone on the butt and he didn't have any idea what [REDACTED] was talking about. [REDACTED] told [REDACTED] if he knew he would apologize for the perception he gave the person. [REDACTED] denied the behavior, saying he worked with his [REDACTED] and he would not do that.

After [REDACTED] got the letter [REDACTED] and discovered [REDACTED]'s identity, [REDACTED] explained his story to [REDACTED]. [REDACTED] told [REDACTED] that [REDACTED] needed extra work time, but she didn't perform what [REDACTED] wanted. [REDACTED] told [REDACTED] he couldn't keep [REDACTED] on and let her go. In response to his knowledge of [REDACTED]'s work situation, [REDACTED] thought [REDACTED] was working for [REDACTED]. [REDACTED] was not sure why [REDACTED] felt [REDACTED] would be qualified to do something that she didn't do normally.

[REDACTED] told [REDACTED] he believes this complaint was retaliation for [REDACTED] decision not to keep [REDACTED]. [REDACTED] told [REDACTED] he probably hugged [REDACTED] like he hugged everyone else. [REDACTED] reiterated he didn't remember poking her in the ribs/stomach. [REDACTED] was very worried because he tends to be very friendly and pats people on the back or shoulder. In his interview, [REDACTED] said [REDACTED] is from [REDACTED], is [REDACTED], and very emotional. He described [REDACTED]

[REDACTED] as an animated person, who hugs everyone in his lab and it's not sexual. [REDACTED] told [REDACTED] he can't be the boss "hugging" everyone. [REDACTED] acknowledged understanding this. He told [REDACTED] he was never going to be nice to anyone.

[REDACTED] never spoke to [REDACTED] about [REDACTED]'s lack of performance. [REDACTED] was not aware of any prior issues of this type with [REDACTED]. The only prior issues [REDACTED] recalled involved [REDACTED] not following proper hiring procedures. [REDACTED] vaguely recalled an incident involving [REDACTED] "patting" someone on the head.

F. [REDACTED]

[REDACTED]

In his interview, [REDACTED] said he was hoping [REDACTED] would do a good job and he was disappointed [REDACTED] was not happy. Prior to these allegations, [REDACTED] had no idea about [REDACTED] unhappiness with [REDACTED]. The first he learned about this was when he just happened to stop by [REDACTED] office. [REDACTED] thought this happened in December. [REDACTED] recalled in that conversation, [REDACTED] told him he was finishing up with [REDACTED] and he had told her he wasn't going to keep her on. When asked if [REDACTED] said why he wasn't happy, [REDACTED] thought it was the work she wasn't doing with him. [REDACTED] expressed his own concerns with [REDACTED]'s time accountability and her inability to work independently.

[REDACTED] described both a professional and "good" personal relationship with [REDACTED]. Personally, [REDACTED] and [REDACTED] spend time socializing outside of the [REDACTED] department together. [REDACTED] also has lots of joint publications with [REDACTED].

[REDACTED] recalled [REDACTED] came into his office prior to him leaving to [REDACTED]. Initially, [REDACTED] thought [REDACTED] came to talk to him in October. Later, [REDACTED] confirmed that he left for [REDACTED] on November 28, 2016. He recalled she came to see him one to two weeks before he left. Because he was leaving for [REDACTED], he told [REDACTED] to talk to [REDACTED]. [REDACTED] told [REDACTED] about some inappropriate sort of touching. [REDACTED] pointed out two things to [REDACTED], first, [REDACTED] was verbally abusive, and second, [REDACTED] slapped her.³¹ [REDACTED]'s opinion was that it wasn't sexual or didn't appear to be. He told [REDACTED] she needed to talk to someone.

[REDACTED] was made aware of the instant complaint by both [REDACTED] and [REDACTED]. [REDACTED] mentioned the allegations and [REDACTED] updated him after she made her complaint. [REDACTED]

³¹ [REDACTED]

[REDACTED] is not aware of any prior complaints involving [REDACTED]. He has known [REDACTED] for a long time. [REDACTED] said [REDACTED] does not have a reputation for being verbally abusive.

G. [REDACTED]

[REDACTED] provides [REDACTED].³² In her capacity she has regular interaction with [REDACTED].

In response to a question regarding her interactions with [REDACTED], [REDACTED] recalled two interactions with [REDACTED], neither of which caused her to feel threatened or harassed. [REDACTED] didn't feel the need to report either incident to a supervisor. The first incident was between January and February of 2016, after [REDACTED] got engaged. [REDACTED] came into [REDACTED]'s office. He noticed [REDACTED]'s [REDACTED] ring, picked up her hand, brought her hand close to his face, looked at the ring for two to three seconds and said "oh, that's nice." [REDACTED]'s co-worker saw this and told the supervisor, [REDACTED] that [REDACTED] was in the office and touched [REDACTED] hand. [REDACTED] said she considered that conduct "weird."

Prior to this, [REDACTED] had never touched [REDACTED]'s hand. He previously "patted" her on the shoulder and she observed him "pat" other women in her office on the back. The second incident [REDACTED] discussed was when she was helping [REDACTED] with something on his cell phone. [REDACTED] cell phone wall paper was a photo of a female. [REDACTED] asked [REDACTED] if the photo was of his [REDACTED]. [REDACTED] said it was and he told [REDACTED] his [REDACTED] is "exotic" like her ([REDACTED]). [REDACTED] felt it was an "odd" comment, but nothing more. She told her supervisor about the comment only because she thought it was kind of "funny." [REDACTED] chalked the statement up to the fact that [REDACTED] was [REDACTED] and maybe the comment was lost in translation.

In response to whether or not [REDACTED] had ever "patted" her on the head, [REDACTED] denied this. [REDACTED] was aware of who the person was that [REDACTED] "patted" on the head. She identified this person as [REDACTED]. [REDACTED] no longer works for the [REDACTED]. [REDACTED]'s knowledge of this incident was not first-hand. The issue came up relative to an issue with [REDACTED]. At that time [REDACTED] left, [REDACTED] did not know about the "patting" incident. When [REDACTED] left, [REDACTED] asked her if she got a new job and she said "not necessarily." [REDACTED] got the sense that [REDACTED] was uncomfortable with her question.

[REDACTED] described [REDACTED] as "loud" and "boisterous." [REDACTED] recalled a time when she was walking over to [REDACTED] office [REDACTED] for a prescheduled meeting. As she approached his office, she could hear [REDACTED] speaking in a loud and angry tone. He was saying something about "undermining his authority." When [REDACTED] got to his office, she could see [REDACTED] was talking to [REDACTED].

³² [REDACTED]

H. [REDACTED]

[REDACTED] said she left [REDACTED] because "it wasn't the right fit for her." She provided several reasons for her departure including: (1) poor communication with [REDACTED]; (2) lack of training; and (3) lack of oversight. [REDACTED] said she thought that [REDACTED] would have a better understanding that [REDACTED] a new manager and she described [REDACTED] as being "overly critical" of her. [REDACTED] described [REDACTED] as a "more focused" employer. [REDACTED] noticed he was different as a teacher. [REDACTED] noticed then when [REDACTED] put on courses, he was always the "happy teacher."

[REDACTED] was not familiar with Complainant, [REDACTED]. [REDACTED] didn't observe any inappropriate touching by [REDACTED], although she recalled an event where [REDACTED] "patted" her on the head but it didn't feel like it was sexual. [REDACTED] didn't make a formal complaint about this. She said the topic came up in a conversation with [REDACTED]. [REDACTED] said she and [REDACTED] were discussing instances where they felt "looked down" upon or "belittled." [REDACTED] was not sure what happened to [REDACTED] that caused her to feel belittled. [REDACTED] said [REDACTED] only patted her on the head that one time. [REDACTED] said that incident didn't play any part of her decision to leave. [REDACTED] saw [REDACTED] hug researchers he's worked with in different areas. [REDACTED] never hugged [REDACTED].

[REDACTED] left the University because she was ready to move on to something new. When [REDACTED] left, she closed everything out with IT, but she did not recall any discussion with anyone in IT about her departure. [REDACTED] said there was nothing notable about [REDACTED] treatment of her that stood out.

I. [REDACTED]

[REDACTED] recalled late last year, in December, [REDACTED] told [REDACTED] she was going to leave the [REDACTED] lab and she just needed to move on. [REDACTED] didn't have an understanding that [REDACTED]'s contract was ending. [REDACTED] told [REDACTED] she was unhappy about things in general. [REDACTED] had to coax the real reason out of her. He directly asked [REDACTED] if it was a sexual harassment problem. She didn't want to talk about it but eventually she did. [REDACTED] wanted [REDACTED] to wait and not report it for a period of time until she was out of there. He got the sense she didn't want a complaint to have career consequences for her.

[REDACTED] told [REDACTED] that [REDACTED] hit her on the butt. He knew third hand that others have been upset working in [REDACTED] lab. In several cases people that have worked with [REDACTED] would say that he would make comments about people not knowing what they are doing or being lazy. [REDACTED] had heard. That people in the [REDACTED] lab were unhappy because [REDACTED] was "hands on" with people, in that he pushes people too hard. [REDACTED] took from [REDACTED]'s circumstances she was leaving because she was uncomfortable. [REDACTED] described [REDACTED] as a very "touchy feely" kind of guy. Personally, [REDACTED] likes more space than [REDACTED] gives. [REDACTED] has observed [REDACTED] hug others and pat others on the back. In his interview, [REDACTED] said [REDACTED] clearly "crossed the line."

In response to whether or not [REDACTED] complained about [REDACTED]'s performance, [REDACTED] said [REDACTED] would complain about anybody in the lab. [REDACTED] did not recall a time where [REDACTED] complained about [REDACTED]. [REDACTED] had no concerns about [REDACTED]'s work, although he has not worked directly with her. In [REDACTED]'s experience, [REDACTED] is a very hard worker and often in the lab in the evening hours. [REDACTED] was familiar with [REDACTED]'s work on [REDACTED]. He said [REDACTED] got the project done. [REDACTED] does not recall anything [REDACTED] did or didn't do that negatively impacted the project. In response to how [REDACTED] was put on this particular project, [REDACTED] said the funding came out of [REDACTED]'s Lab. [REDACTED] recalled a discussion with [REDACTED] where they talked about putting [REDACTED] on that project to evaluate [REDACTED] traits. [REDACTED] said it was a good idea and [REDACTED] would be a good person for the project. [REDACTED] thought there might be e-mails about these discussions, but it was entirely possible a lot of this talk was done in the hall.

[REDACTED] never got the sense [REDACTED] was retaliating against [REDACTED] by filing this complaint. In fact, [REDACTED] has since talked to [REDACTED] and she has expressed that she was strongly concerned that [REDACTED] not be overly punished. [REDACTED] told [REDACTED] her concern was that the same thing would happen in the lab to others. [REDACTED] didn't want to file suit for compensation. [REDACTED] was aware that another student had witnessed the incident.

J. [REDACTED]

[REDACTED] was shown an e-mail exchange between her and [REDACTED] dated September 27, 2016. [REDACTED] recalled the e-mail concerned [REDACTED]'s six month contract with [REDACTED] that was set to end on December 31, 2016. [REDACTED] recalled asking [REDACTED] about whether or not he was going to extend [REDACTED]'s contract. [REDACTED] was confirming if [REDACTED]'s appointment was ending. The reason she asked was because if [REDACTED] wasn't extending [REDACTED]'s contract, [REDACTED] had to provide [REDACTED] a 60 day notice. This was required because [REDACTED] was an academic, career appointment [REDACTED].

[REDACTED]'s understanding of [REDACTED]'s hire with [REDACTED] was that it went out for a full recruitment. During that particular time in 2016, [REDACTED] stepped up and said he could fund [REDACTED] for six months. In response to whether or not [REDACTED] raised any personnel issues regarding [REDACTED], [REDACTED] said [REDACTED] spoke about personnel issues with her, but never about [REDACTED]. [REDACTED] would either go to [REDACTED] or [REDACTED] with personnel issues. [REDACTED] vaguely recalled a comment [REDACTED] made that [REDACTED] was not working as hard as she did in other labs. [REDACTED] did not know if this comment was made before or after [REDACTED]'s contract expired. [REDACTED] never discussed more funding or keeping [REDACTED] on. [REDACTED] never talked about creating a position for [REDACTED]. If [REDACTED] was going to create a new position it would have to be updated and go out for a full recruitment.

[REDACTED] was not aware of any prior or existing complaints against [REDACTED] for inappropriate touching.

V. ANALYSIS

The University's Sexual Violence and Sexual Harassment policy prohibits "Sexual Harassment," which the policy defines as "unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature" when the conduct creates a hostile work environment.

A "Hostile Environment" is one in which the unwelcome sexual "conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive."³³

As discussed below, the preponderance of the evidence supports that [REDACTED] engaged in unwanted conduct of a sexual nature toward [REDACTED] in or about October 2016 and again in or about and between November and December 2016 in violation of the University's Sexual Violence and Sexual Harassment Policy.

A. Did [REDACTED] Engage In Unwelcome Conduct In or About and Between October and December 2016? If Yes, Was the Conduct Sexual In Nature?

1. October 2016 incident:

The preponderance of the evidence does support a finding that [REDACTED] engaged in unwelcome conduct in or about October 2016 when he slapped [REDACTED] on the buttocks. [REDACTED] provided a credible description of the manner in which [REDACTED] slapped her on the buttocks. She indicated she was in the lab, bending over either putting away or retrieving something from the second drawer of the filing cabinet. [REDACTED]'s backside was facing away from the file cabinet. [REDACTED] described [REDACTED] slapping her on the right side of her buttocks. He didn't say anything, and she immediately responded by saying, "please, Dr. no." This action was witnessed by a student assistant, [REDACTED]. [REDACTED] denied engaging in the conduct, but offered that he may have "brushed" against [REDACTED] while rushing her out of the way. [REDACTED] when asked if [REDACTED] could've made "incidental" contact said, "no, it was purposeful." After [REDACTED] hit [REDACTED] on the buttocks, he looked at [REDACTED] and smiled. [REDACTED] said he looked at her as if it was a joke. I considered and gave great weight to [REDACTED]'s corroboration of the incident, along with her description of [REDACTED] response. I considered that [REDACTED] response of smiling, was an apparent awareness of his purpose, which would negate his proffered explanation that the contact with [REDACTED]'s buttock was a "brushing," essentially incidental contact.

I also considered the photographs of the lab and [REDACTED]'s explanation of the lab layout. Based upon [REDACTED]'s and [REDACTED]'s description of where [REDACTED] was standing, I found it more likely than not that [REDACTED] would not make incidental, non-intentional contact with [REDACTED] buttocks in the way he described. Assuming [REDACTED] was walking away from the lab bench past the file cabinet depicted in Figures 1 and 2, it is unlikely without anyone else present, he would make incidental contact with [REDACTED]'s buttocks. Neither, [REDACTED] nor [REDACTED] identified anyone else in the lab at the time. Considering no other person was identified as being present, it would be unlikely that [REDACTED] would need to "brush"

³³ The policy also prohibits sexual conduct that "is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a University program." However, allegations of such conduct were not at issue here.

[REDACTED] out of his way. Further, [REDACTED]'s positioning directly in front of the filing cabinet depicted in Figure 1 also makes it unlikely that she would be impeding [REDACTED] egress that would require him to "brush" her or make incidental contact. Therefore, In light of the witness' observation as well as the photographs, I did not find [REDACTED] explanation of incidental contact credible.

Figure 1



Figure 2

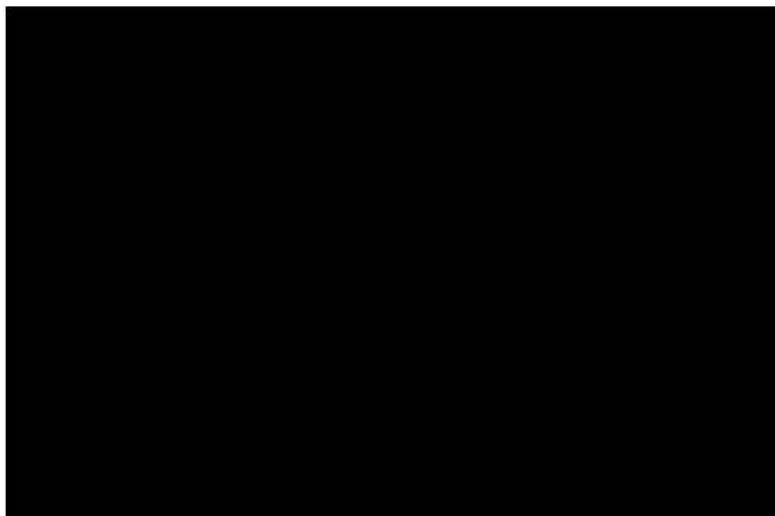
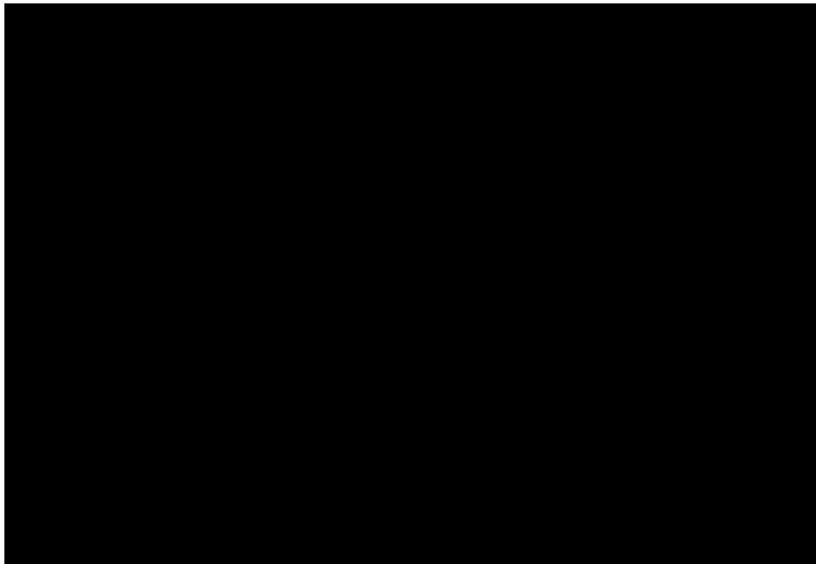


Figure 3



I considered the parties respective motives; ██████'s to lie and ██████ to deny or minimize. I concluded that each of the parties might harbor a motive to support each of their accounts. More significantly, I considered whether or not ██████, an independent witness, would be motivated to falsely corroborate ██████'s account. I did not find ██████ had any motivation to falsely corroborate. I considered that both ██████ and ██████ provided similar, yet separate accounts that did not suggest that the two of them got together to match their stories. I also considered ██████'s potential loyalty to ██████, and found that ██████ did not overly endorse ██████'s position. On the contrary, I found that ██████ had more incentive not to corroborate ██████'s account because ██████ had an ongoing work relationship with ██████. Further, in assessing ██████'s credibility, I considered that the parties respectively offered up ██████ as a witness. ██████ did not provide any basis upon which to challenge or question ██████'s credibility. Based upon the foregoing, I found that the weight of the evidence supports a finding that ██████ more than likely hit ██████ on the buttocks and the conduct was unwelcome.

2. November/December Poking Incidents

The weight of the evidence supports that ██████ engaged in unwelcome conduct in or about and between November and December 2016 when he poked ██████ in the ribs and/or stomach. ██████ did not recall ever physically poking ██████, rather he recalled a conversation where he cautioned ██████ against drinking Coke as an explanation for her stomach issues. ██████ said in saying this, he used his index finger and pointed toward ██████'s belly. ██████ described the poking occurring while she was standing in the lab. She credibly described that when ██████ poked her, she would sometimes say "no." I found ██████'s account more credible than ██████ account for the following reasons: (1) ██████ described similar conduct by ██████, specifically, poking; (2) several witnesses described ██████ in some manner touching them, including, "tugging" on hair, "patting" on the head, touching of hands, shoulders and hugging; (3) ██████ described ██████ as "barrier" free and although she did not witness the conduct, she said she could see ██████ engaging in the alleged conduct.

I considered that there were no witnesses to the alleged poking, but I did not find that fact significant to my finding that the conduct occurred. I found the fact that [REDACTED] had engaged in almost identical conduct with [REDACTED] relevant to my determination that he engaged in the alleged poking. Both [REDACTED] and [REDACTED] described poking that occurred in the abdominal region/ribs. I considered that the similarity of the conduct, made it more likely than not [REDACTED] would engage in similar conduct with [REDACTED].

I considered [REDACTED]'s friendship with [REDACTED], and did not find that friendship was a factor that motivated [REDACTED] to disclose in her interview that she was "poked" as well. Even though [REDACTED] did not report this conduct, I considered her reluctance to do so was motivated by the relationship that existed between [REDACTED] and [REDACTED]. In addition, I considered that she believed the conduct was not "sexual," but regardless she reported feeling "super uncomfortable", and she immediately objected and left right after one of the incidents. I found her description both compelling and credible. In light of these factors, I found that the preponderance of the evidence supports that the poking of [REDACTED] not only occurred, but was also unwelcome.

B. Was [REDACTED] October 2016 and November/December 2016 Conduct of a Sexual Nature?

The University's Sexual Violence and Sexual Harassment policy provides:

B. Prohibited Conduct

1. Sexual Violence:

...

b. Sexual Assault - Contact: Without the consent of the Complainant, touching an intimate body part (genitals, anus, groin, breast, or buttocks) (i) unclothed or (ii) clothed.³⁴

The weight of the evidence supports that the October 2016 and November and/or December 2016 conduct was sexual in nature. I considered the touching of [REDACTED]'s buttocks to be an "intimate body part." I used the existing policy as guidance in this regard. Further I considered that although multiple witnesses reported different manners of touching of non-intimate areas of the body, I considered that [REDACTED] thought [REDACTED] had "crossed the line." I considered this statement relevant to how the conduct was perceived by others.

I found the touching of [REDACTED]'s abdomen region also sexual in nature. Although, the abdomen/ribs are not defined by the above policy as an "intimate body part," both [REDACTED] and [REDACTED] objected to the touching and both reported feeling "uncomfortable" by this conduct. I also considered [REDACTED]'s description of the poking as "[REDACTED]" significant. By [REDACTED]'s own description, the poking was done

³⁴ [REDACTED]

[REDACTED]. I was charged with investigating this matter as sexual harassment under Section II(B)(2) of the policy.

“affectionately.” [REDACTED]’s characterization implies a sexual or romantic nature that would occur among individuals familiar with one another and not between manager and subordinate.

As previously discussed in Section A(2), I considered [REDACTED]’s description of the poking as not sexual and playing, but on balance, I found her immediate objection, emotional reaction and her sudden departure made it more likely than not sexual as opposed to friendly. For the aforementioned reasons, I found that the preponderance of the evidence supports that [REDACTED] conduct in or about and between October 2016 and December 2016 was sexual in nature.

C. **Did [REDACTED] Conduct Create a Hostile Work Environment as Defined by University Policy?**

1. **Was [REDACTED] Conduct Sufficiently Severe or Pervasive That it Unreasonably Denied, Adversely Limited, or Interfered with [REDACTED]’s Employment?**

The preponderance of the evidence *does support* a finding that the above conduct was sufficiently severe to impede or interfere with [REDACTED]’s employment. I considered the following factors in making this finding: (1) the nature, extent, and relative frequency of the relevant conduct; (2) that prior to the conduct, [REDACTED] was told to respect space, and keep his hands to himself by [REDACTED]; (3) [REDACTED] reported ongoing physical symptoms, including gastrointestinal issues, nervousness and sleeplessness; (4) [REDACTED] refrained from going to [REDACTED] for three months after her contract terminated and after her disclosure of the relevant conduct; and (4) although [REDACTED] indicated her departure from the lab was motivated by the parties’ inability to work together, the relevant conduct was a motivating factor for her departure. I did consider the discrepancies between [REDACTED], [REDACTED]’s and [REDACTED]’s statement regarding the “patting” of the head incident. I gave greater weight to [REDACTED] and [REDACTED]’s statements regarding this incident. I found the conduct relevant to the extent it placed [REDACTED] on notice regarding “space” and “touching issues.” I considered that [REDACTED] was employed from 2015 to March 2016 and thus [REDACTED] was on notice of this conduct at least nine months prior to the relevant conduct. In a follow up e-mail to me, [REDACTED] admitted to having a prior discussion with [REDACTED] between June 2016 and November 2016 wherein [REDACTED] advised him to keep his hands in his pockets. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The weight of the evidence supports a finding that [REDACTED]'s complaint to [REDACTED] occurred on December 8, 2016 and thus, the event addressed in [REDACTED] e-mail more likely than not pre-dated the relevant conduct and thus [REDACTED] was on notice regarding prior inappropriate conduct.

I also considered and found relevant the various witness descriptions of how [REDACTED] responded to the conduct in evaluating the impact on [REDACTED]'s employment. [REDACTED] thought that [REDACTED] was really bothered for a long time by the issue and she internalized it. [REDACTED] recalled trying to provide [REDACTED] reassurance, but [REDACTED] was having a hard time coming to terms with the situation herself. [REDACTED] reported losing sleep over the situation and not talking to her husband. [REDACTED] described [REDACTED] as "emotional." [REDACTED] believed [REDACTED] not only felt violated but worried and guilty because [REDACTED] felt it was her responsibility to make sure [REDACTED] didn't touch anyone else. [REDACTED] said it was hard listening to [REDACTED] discuss the events. [REDACTED] recalled [REDACTED] trying to figure out if she provoked [REDACTED]. [REDACTED] said [REDACTED] was trying to convince [REDACTED] it wasn't her ([REDACTED]) fault. I found these witness descriptions compelling in describing how [REDACTED] was impacted by the relevant conduct. I considered that the aforementioned witness statements corroborated [REDACTED]'s own description of the event as being "emotionally" painful.

I considered [REDACTED] proffered explanation for why [REDACTED] would make up the allegations and I did not find his proffered explanation credible. [REDACTED] believed [REDACTED] was retaliating against him for letting her go. The weight of the evidence supports that [REDACTED] contract with [REDACTED] was going to expire on [REDACTED]. Further, the parties both acknowledged that the working relationship was not going well. [REDACTED] did not have an expectation nor a desire to continue her employment with [REDACTED] and [REDACTED] admittedly wasn't happy with [REDACTED]'s work. I considered this apparent transparency and found that [REDACTED] retaliation theory was not credible.

I also considered that despite [REDACTED] claims that [REDACTED] was under performing, he continued to employ [REDACTED] between November 2015 and December 2016, admittedly after several performance issues. [REDACTED] said [REDACTED] completely failed to do work on a [REDACTED] from November 2015 to January 2016. As a result, [REDACTED] had to secure additional funding for the project, and then re-hired [REDACTED] for more work despite her stated failure to produce any work on the [REDACTED] binder. [REDACTED] said the parties' agreement was for [REDACTED] to work on the binder during her planned [REDACTED]. An e-mail produced by [REDACTED] dated December 4, 2015 confirms [REDACTED] had in fact began working on the binders, but [REDACTED] on December 3, 2015 instructs her not to work on sections 1:

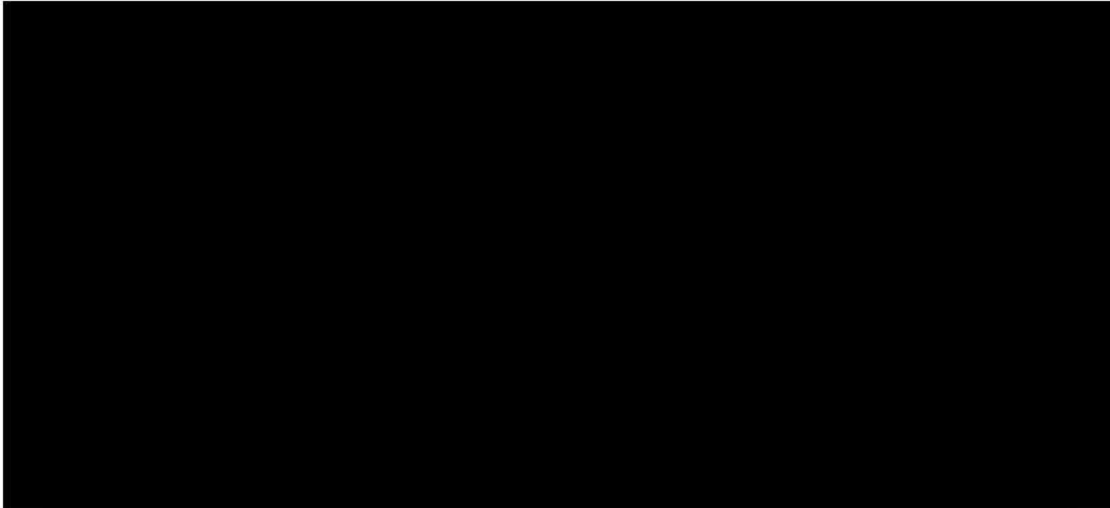
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Moreover, I considered that despite ██████ multiple concerns regarding ██████'s work performance, on June 24, 2017, ██████ made a request to continue her employment. The relevant portion of that e-mail reads as follows:



Again, I found ██████ request inconsistent with his stated dissatisfaction with ██████'s performance. Considering all of the above, I did not find ██████ explanation of why ██████ would make up these allegations credible. I also considered the absence of complaints to HR prior to ██████'s instant complaints. I found the timing of his complaints regarding her performance relevant. I did consider the several hundred pages of e-mails ██████ provided regarding various requests and inquiries of ██████ related to her work. I considered that at times the e-mails suggested an inability to reach ██████ when needed. Yet regardless, the e-mails do not support a motive for ██████ to fabricate the allegations as ██████ contends.

Absent a credible motive for ██████ to fabricate, the weight of the evidence supports that ██████ conduct was sufficiently severe and unreasonably interfered with ██████'s employment.

2. Did ██████ Conduct Create an Environment That a Reasonable Person Would Find to be Intimidating or Offensive?

In evaluating the totality of the circumstances, the weight of the evidence *does support* that ██████ October 2016 through December 2016 unwelcome physical conduct of a sexual nature created an environment that a reasonable person would find intimidating or offensive. Although others reported that they experienced non-sexual touching by ██████, including "tugging," "patting," and "hugging," the greater weight of the evidence supports that the manner as well as the location of the touching, buttocks and abdomen/ribs, would create an environment that a reasonable person would find intimidating or offensive.

I also considered the lab environment that existed at the time the touching occurred in analyzing whether or not a reasonable person would find the relevant conduct intimidating or offensive in this context. ██████

[REDACTED] credibly described several incidents where [REDACTED] did the following: (1) yelled at her, (2) said her data was “trash” and held up a trash can to illustrate the point; (3) told her she looked like a child when she would ask for experimental details; and (4) told her she was uneducated and improperly trained. I considered and found the verbal abuse in conjunction with the relevant sexual conduct would be both intimidating and /or offensive to a reasonable person. I also considered and found relevant the manager-subordinate relationship that existed between the parties at the time in making this finding.

VI. CONCLUSION

As a result of the above, and taking the totality of circumstances into consideration, I find by a preponderance of the evidence that [REDACTED] *did* engage in sexual harassment towards [REDACTED] in violation of University of California’s Sexual Violence and Sexual Harassment Policy.

Respectfully submitted,

[REDACTED]

Enriqueta Rico
University Investigator
Office of the Provost and Executive Vice Chancellor