



CAMPUS COMPLIANCE
Title IX, EEO, AA
UNIVERSITY OF CALIFORNIA, MERCED
5200 N Lake Rd
MERCED, CALIFORNIA 95344-0039
(209) 228-4620

Investigation Report



CONFIDENTIAL

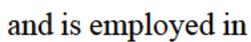
Prepared by: Jim O’Connell
Lead Investigator
Office of Campus Compliance
joconnell@ucmerced.edu

June 16, 2016

INTRODUCTION:

The University of California is committed to creating and maintaining a community where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of sexual violence, sexual harassment and all forms of harassment.

SUMMARY OF ALLEGATIONS:

 herein referred to as Complainant, is a full time UC Merced  and is employed in 



During a subsequent meeting, Complainant alleged that Respondent would frequently make derogatory comments to many of the female student employees, including calling them “Mama”, “ Girlfriend”, and “Ms. Thang”, and would comment inappropriately about the appearance of the female student employees.



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NOTICE OF PARTIES:

On February 16, 2016, Director of Compliance Salvador sent Complainant an “Acknowledgement of Complaint” letter, including attached documents related to University policies and procedures.

On March 30, 2016, Complainant agreed to meet with me to discuss the complaint. That meeting took place on March 31, 2016.

On April 12, 2016, Director Salvador sent a “Charge Notice” to Respondent, including documents related to University policies and procedures.

On April 12, 2016, I sent Respondent an email, asking to meet with him regarding the allegations. I did not receive a response, and subsequently sent him another email on April 20, 2016. He responded on April 22, 2016 and our meeting took place on April 25, 2016.¹

POLICY AND SCOPE:

Based upon the information provided in the initial complaint, and subsequent information developed throughout the investigation, the following policies were examined:

University of California Sexual Violence and Sexual Harassment Policy:

In pertinent part, this policy states:

The University of California is committed to creating and maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior (“Prohibited Conduct”) that violates law and/or University policy.

¹ Management personnel advised me that Respondent had been on leave during my second request to meet, and no inference should be drawn from the delay.



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Sexual Harassment:

Sexual harassment is unwelcome sexual advance, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature.

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. Consideration is given to the totality of the circumstances in which the conduct occurred. Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non- employee participants in University programs (e.g., vendors, contractors, visitors, and patients); in hierarchical relationships and between peers; and between individuals of any gender or gender identity.

[Redacted]

[Redacted]

[Redacted]

Sexual Harassment:

The University of California is committed to creating and maintaining a community in which all persons who participate in University programs and activities can work together in an atmosphere free of all forms of harassment, exploitation, or intimidation, including sexual. Specifically, every member of the University community should be aware that the University is strongly opposed to sexual harassment and that such behavior is prohibited both by law and by University policy. It is the intention of the University to take whatever action may be needed to prevent, correct, and, if necessary, discipline behavior which violates this policy.



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All findings in this matter were determined by a preponderance of the evidence standard.²

STATEMENTS OF PARTIES AND WITNESSES:

[REDACTED]

On March 31, 2016, I met with Complainant in KL321. [REDACTED] told me that [REDACTED] was a student at UC Merced and had worked for [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In addition to the concerns [REDACTED] Complainant said that Respondent used inappropriate language in the workplace related to women. [REDACTED] said that Respondent used to call a former student employee [REDACTED] "Mama". Complainant went on to say that Respondent had also called [REDACTED] "Mama" in the past. I asked Complainant how this made [REDACTED] feel, to which [REDACTED] said that it left [REDACTED] feeling "uncomfortable". [REDACTED] went on to say that Respondent had called another student employee, [REDACTED] "Ms. Thang".

Complainant told me that, "just today [REDACTED] was wearing a tank top. He made a comment about a string in [REDACTED] cleavage area", asking [REDACTED] "Did someone mark highlighter".

² A standard of proof that requires that a fact be found when its occurrence, based upon the evidence, is more likely than not.



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[REDACTED]

[REDACTED] said that Respondent was discriminatory toward women and would make comments based upon sex. Complainant told me that [REDACTED] had told [REDACTED] that Respondent, while at a work event with [REDACTED] had pointed out a woman to [REDACTED] and told [REDACTED] "If I were young again". Complainant said that [REDACTED] told [REDACTED] that the comment made [REDACTED] feel 'uncomfortable'.

I asked Complainant what [REDACTED] considered a good resolution to [REDACTED] complaint. [REDACTED] told me, "He should not be responsible for us (students). He doesn't have the quality of a leader".

[REDACTED]

On April 4, 2016, I spoke with [REDACTED] the phone. [REDACTED] told me that [REDACTED] was a [REDACTED] UCM student and had been employed [REDACTED]

[REDACTED]

[REDACTED]

I asked [REDACTED] to tell me how Respondent spoke to the female employees. [REDACTED] told me that [REDACTED] had heard Respondent call female co-workers, "Mama" in the office and further told me that it had happened twice. One of those incidents had occurred in the break room. [REDACTED] said that the other comment had been made to [REDACTED] and that Respondent had called [REDACTED] "Mama". I asked [REDACTED] if [REDACTED] recalled Respondent making a comment while outside with [REDACTED] about if he were younger while viewing a young woman. [REDACTED] said that [REDACTED] did not specifically recall, but that it was possible that Respondent had made that comment.

[REDACTED]

I asked [REDACTED] how [REDACTED] felt Respondent treated male student employees compared to female student employees, [REDACTED] told me, "I have noticed men get the outside work, while women get the office work". [REDACTED] added that men normally performed the manual labor, and that, "office work for men is rare".



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█ told me that █ felt as if Respondent favored some students, specifically █
█

On April 5, 2016, I met with █ in KL321. █ told me that █ was a █ at UCM
and that █ had worked █

█

I asked █ to talk about how Respondent managed the employees. █ told me, “He has issues with not
being professional. He makes comments that are not professional”.

█ explained that Respondent frequently called █ “Mama”, “Ms. Thang” and “Girlfriend”. █
said that he also called █ female student employees “Mamas”. I asked █ tell me how this made
█ feel, to which █ responded, “It’s awkward. It catches you off guard”.

█ said that “recently” █ was showing a picture of the parking lot to Respondent and others. █ told
me that Respondent, standing very near to █ asked █ if someone had highlighted █ shirt in the area
of █ cleavage. I asked █ how this comment made █ feel, to which █ responded, “Awkward”. █
told me, “Because of █ I have to think about what I wear”. █ said that he often comments on the
women’s clothing, and that he stares at █ and comment about what █ is wearing. █ said, “the
tone makes it creepy”.

I asked █ to share with me █ observations about how men were treated in the TAPS workplace
compared to women. █ told me that the treatment was different, noting that the student citation officers
were all men. █ said that the Student Leads were all men, naming █
█

█ told me that █ believed that █ had been treated with favoritism by Respondent,
adding that █ went on to
say, “█ is █ pet. █ is in the office all the time”.

█ told me that █ believed that █



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I asked [redacted] to tell me the biggest issue [redacted] had with Respondent, to which [redacted] told me that it was Respondent, "Making [redacted] feel uncomfortable as a woman". [redacted] told me that the incident involving Respondent's comments about [redacted] cleavage occurred on the same day that [redacted] received Sexual Harassment training.

I asked [redacted] what would make things better with Respondent and the student staff in TAPS. [redacted] told me, "He shouldn't be involved with students at all".

[redacted]

On April 18, 2016, I met with [redacted] in KL321. [redacted] told me that [redacted] and had worked at [redacted]

[redacted]

I asked [redacted] to tell me about the environment at work. [redacted] told me, "Between guys and girls there is a difference". When asked to elaborate, [redacted] said that women do "easier tasks like clearing trash pickups, guys do car inspections and fleet".

When asked how this made [redacted] feel, [redacted] shared that this perceived treatment made [redacted] "Feel held back", and that [redacted] has not been able to do events. [redacted] said that [redacted] believed that Respondent's "top guys" were [redacted]

I asked [redacted] about any comments that [redacted] may have heard Respondent make in the workplace. [redacted] told me that [redacted] has heard him call the female student employees in the office, "Mama". She told me that Respondent had never made an inappropriate comment to [redacted] but had heard such comments directed at Complainant and [redacted]. I asked [redacted] how these comments made [redacted] feel, to which [redacted] told me, "I'm not ok with it, I think it's casual". [redacted] said that the comments had not been offensive to [redacted] but that Complainant and others had said that the comments were "Offensive, weird and awkward".

[redacted] said that office staff members, mostly women, were allowed to wear non-uniform clothing, while those who work outdoors wear a uniform.

[redacted] said that there were only male student leads, adding, "there is always an unfairness. I feel there should be a girl lead". [redacted] told me that the only female lead had been [redacted]



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[REDACTED]

[REDACTED]

On April 25, 2016, I met with Respondent in KL321. He told me that he has been employed by UC Merced for [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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[REDACTED]

[REDACTED]

I advised him that student employees had told me that he regularly called female students “Mama”, to which he responded, “That’s true”. He told me that he considered this to be a term of endearment and that was what he called people at home.

I asked Respondent about the frequency of this comment to student employees, to which he told me, “I may have said it more than once or twice”. He could not recall which students he had called “Mama” but that he only called female student employees that name. He then told me that he called male student employees, “Papachulio”.

I asked him if he ever called a female student “Ms. Thang”. I advised him that the student I was referencing [REDACTED]. He then told me, “Honestly, I can’t remember. But [REDACTED] is straightforward, so if [REDACTED] said it, I may have”. He then added, “I probably did say it”.

I asked him about whether or not he had commented about something he had observed [REDACTED] cleavage. Respondent told me, “I don’t look at my students that way”, then suggested, “Maybe it was a miscommunication”. I asked him if he thought [REDACTED] would lie about it, to which he told me, “Honestly I don’t remember. If it did, it happened on a whim”.

I asked Respondent how he thought the female student employees feel when he calls them “Mama” and Ms. Thang”, to which he answered, “Not good”. He told me that these comments were not intended to be sexist.

He said that “Ms. Thang” means sassy, and that he has tried to not say it.

I asked him if he recalled making a statement to a [REDACTED] student employee similar to “If I were younger”, while looking at a younger female. He told me that he recalled making that comment.

[REDACTED]

[REDACTED]



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[REDACTED]



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ANALYSIS:

Did Respondent’s Comments and Actions Amount to Sexual Harassment?

With respect to the allegations that Respondent called female student-employees names such as “Mama”, “Girlfriend” and “Ms. Thang”, there appears to be no dispute that this occurred. With that established, an examination of the impact of these statements must follow.

When asked how these comments made them feel, Complainant and witnesses stated the following:

“Uncomfortable”

“The tone makes it creepy” (Respondent’s frequent comments about the clothing worn by one of the [REDACTED] witnesses).

“Because of [REDACTED] I have to think about what I wear”.

“It’s awkward. It catches you off guard”.

“Making me feel uncomfortable as a woman”.

“I’m not ok with it, I think it’s casual”.

“Offensive, weird and awkward”.

According to Complainant and [REDACTED] witnesses, Respondent’s comments have made them feel uncomfortable in the workplace and have had a negative impact on their employment. Although not necessarily the intent of Respondent, the impact is clear and irrefutable.

Comments with respect to the bra and cleavage area of a female employee, as described by witnesses and attributed to Respondent, contribute to an environment in which women felt that they were looked at, and spoken to, in a significantly different manner than the male employees.



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FINDINGS:

The findings throughout this report do not reach questions of law, but instead address the University's policies, contracts and/or standards.

[REDACTED]

However, based upon a totality of the evidence in this case, **a preponderance of the evidence supports a finding** that the actions of Respondent with respect to his commentary to some female student employees was severe or pervasive, and as such, violated the University policies related to sexual



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harassment.

This finding is based upon a review of the evidence, which makes it more likely than not that the behavior and treatment of women by Respondent was of a continuing and pervasive nature. These comments made by Respondent and directed toward women, created a workplace where many female student-employees were made to experience language and looks from Respondent exponentially different from the male student-employees. Comments from Respondent related to the bra and cleavage of a female student-employee, compounded with the hierarchical imbalance, have had a profoundly negative impact on the work environment for many women in [REDACTED]

The policy is noted below:

University of California Sexual Violence and Sexual Harassment Policy:

In pertinent part, this policy states:

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Sexual Harassment:

Sexual harassment is unwelcome sexual advance, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature.

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. Consideration is given to the totality of the circumstances in which the conduct occurred. Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors,



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contractors, visitors, and patients); in hierarchical relationships and between peers; and between individuals of any gender or gender identity.

[Redacted]

[Redacted]

[Redacted]

Sexual Harassment:

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UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE RD
MERCED, CALIFORNIA 95343

Date: December 2, 2016

To: [Redacted]

From: [Redacted]

RE: Letter of Intent for 2 Day Suspension

Per PPSM 62: Corrective Action policy, you are being issued this Letter of Intent for a 2 day suspension for unsatisfactory performance. The proposed suspension dates are for the following normally scheduled work days: December 20th and 21st, 2016.

On 8/17/2016, the Office of Campus Compliance notified [Redacted] of their findings that you were in violation of the Sexual Violence and Sexual Harassment policy, section 2., a, ii: Sexual Harassment / Hostile Work Environment:

2. Sexual Harassment:

- 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. ...
 - ii. *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.

During our review of the incident, that included yourself and your supervisors, it was determined that your interaction with your employees was not professional and did not meet the requirements of a supervisor. The specific requirements, per your job description, that were found in violation include:

- Lead by example and demonstrate a professional and respectful approach to dealing with employees and customers at all times
- Assure that appropriate customer service standards and behaviors are maintained and performance excellence is fostered and maintained
- Requires full knowledge of own area of functional responsibility
- Participates in the continued development of student staff

You have the right to respond orally or in writing within 10 calendar days from the issuance date of the notice to request a review of this action, in accordance with university provisions, for example, PPSM 62: Corrective Action, PPSM 70: Complaint Resolution and the Sexual Violence and Sexual Harassment policy.

Contact the Director of Compliance, Michael Salvador at 209-285-9510 or msalvador2@ucmerced.edu, for a copy of the findings by the Office of Compliance.

Per PPSM 62: Corrective Action policy:

B. Notice of Intent to Take Corrective Action

... The notice of intent will also include a copy of the documents on which the corrective action is based (if any), and it will state that the employee has the right to respond orally or in writing within 10 calendar days from the issuance date of the notice. After consideration of the employee's response, if any, corrective action may or may not be taken. If any action is taken, the employee will be notified in writing of the corrective action to be taken, the effective date(s) of the action and the employee's right to file a complaint under *Personnel Policies for Staff Members 70 (Complaint Resolution)*.

It is imperative that you understand that failure to show immediate and sustained improvement in your performance may result in further disciplinary action, up to and including your dismissal from employment with the University. If you have any questions regarding this matter, feel free to discuss them with me.

While such action is not a condition of employment, if you are having personal difficulties that affect your ability to meet University and departmental work expectations, I encourage you to reach out to the Employee Assistance Program (EAP), <http://hr.ucmerced.edu/benefits/other-benefits/insight-eap>.

Attachments (3): PPSM 62, PPSM 70, Sexual Violence and Sexual Harassment policy

cc: Personnel File

ON MONDAY, DECEMBER 5TH @ 1:45 PM, A LETTER OF INTENT FOR 2-DAY SUSPENSION WAS PROVIDED TO [REDACTED] HE WAS GIVEN THE OPPORTUNITY TO REVIEW WITH A 10-DAY PERIOD, AND HE WAIVED HIS RIGHT TO CONTEST. AT THIS TIME, [REDACTED] WAS GIVEN THE CORRECTIVE ACTION LETTER, TO WHICH HE SIGNED. [REDACTED]



UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE RD
MERCED, CALIFORNIA 95343

Date: December 3, 2016

To: [Redacted]

From: [Redacted]

RE: Corrective Action

Per PPSM 62: Corrective Action policy, you are being issued a 2 day suspension for unsatisfactory performance. You will be on leave without pay for the following normally scheduled work days: December 20th and 21st, 2016.

On 8/17/2016, the Office of Campus Compliance notified [Redacted] of their findings that you were in violation of the Sexual Violence and Sexual Harassment policy, section 2., a, ii: Sexual Harassment / Hostile Work Environment:

2. Sexual Harassment:

- 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. ...
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During our review of the findings, that included yourself and your supervisors, it was determined that your interaction with your employees was not professional and did not meet the requirements of a supervisor. The specific requirements, per your job description, that were found in violation include:

- Lead by example and demonstrate a professional and respectful approach to dealing with employees and customers at all times
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It is imperative that you understand that failure to show immediate and sustained improvement in your performance may result in further disciplinary action, up to and including your dismissal from employment with the University. If you have any questions regarding this matter, feel free to discuss them with me.

While such action is not a condition of employment, if you are having personal difficulties that affect your ability to meet University and departmental work expectations, I encourage you to reach out to the Employee Assistance Program (EAP), <http://hr.ucmerced.edu/benefits/other-benefits/insight-eap>.

You have the right to request a review of this action, including accordance with university provisions, for example, PPSM 62: Corrective Action, PPSM 70: Complaint Resolution and the Sexual Violence and Sexual Harassment policy. Contact the Director of Compliance, Michael Salvador, for information from the findings.

cc: Personnel File

