

# Confidential Investigation Report

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March 29, 2017

TO: UC Davis Title IX Compliance Officer (Wendi Delmendo)

FROM: University Investigator (Carl L. Reed II)

SUBJECT: Report of Investigation – Case No. HDAC160405

## I. Introduction

Complainant alleges Respondent, her [REDACTED] supervisor at the time, made inappropriate comments of a sexual and flirtatious nature towards her on two different occasions, which made her feel uncomfortable.

On or about January 6, 2017, you appointed me in your capacity as the Title IX Compliance Officer to investigate the above referenced allegations under the UC system-wide policy on Sexual Violence and Sexual Harassment Section II. B. 2. (Sexual Harassment). You directed me to submit a written report to you no later than April 6, 2017 containing facts sufficient to enable you to determine based on a preponderance of the evidence whether the allegations against Respondent are substantiated and whether the policy provision in Section III below has been violated.

## II. Executive Summary of Findings

The following three findings were made:

- *The preponderance of the evidence does support that Respondent made inappropriate comments to Complainant in or around October 2016 that were of a sexual and flirtatious nature.*

Although Respondent denied the occurrence of the conversation and comment, the weight of the evidence supports that Respondent made a comment to Complainant of a sexually suggestive and flirtatious nature when Respondent insinuated that he would loan Complainant money in return for sex while they were engaged in a conversation [REDACTED]

- *The preponderance of the evidence does support that Respondent made inappropriate comments to Complainant in or around December 2016 that were of a sexual and flirtatious nature.*

Although Respondent denied the occurrence of the situation and comment, the weight of the evidence supports that Respondent made a comment to Complainant of a sexually suggestive and flirtatious nature when Respondent leaned over to Complainant, got close

to her face, and asked her if she wanted to take care of wiping off his upper lip after he was told there was something on it.

- *The preponderance of the evidence does support that Respondent's Conduct towards Complainant Violated the University's Sexual Violence and Sexual Harassment Policy.*

The weight of the evidence supports that Respondent's conduct, under the totality of the circumstances created a hostile working environment for Complainant.

As such, the weight of the evidence supports that Respondent's conduct more likely than not was sufficiently "severe or pervasive" that it "adversely limit[ed]" and/or "interfere[d] with" Complainant's participation in or benefit from her employment.

Moreover, the weight of the evidence supports that Respondent's conduct towards Complainant has created a work environment that a reasonable person would find to be intimidating or offensive. Respondent's decision to make sexually suggestive comments to her on two different occasions created an intimidating and offensive working environment. Also considered were (1) the hierarchical relationship that existed between Respondent and Complainant at the time of the conduct, (2) [REDACTED], (3) that Respondent's first comment alluded to sex for money, and (4) that the second incident invaded her personal space and appeared designed to intentionally flirt or make a sexually suggestive comment to her, with the result of making her feel uncomfortable. Taken as a whole, it is more likely than not that Respondent's conduct created an environment that a reasonable person would find intimidating and offensive.

### **III. Methodology**

#### **A. Standard of Review**

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" as defined in the relevant policy is "[a] standard of proof that requires that a fact be found when its occurrence, based on evidence, is more likely than not."

#### **B. Applicable Policy Provisions**

The following policy statements and sections from *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 law<sup>1</sup> and University policy. . . .

. . .

**II B. 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. *Quid Pro Quo*: a person’s submission to such conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a University program; or
  - 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.
- 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. Witnesses Interviewed**

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.

	Name/Role	Referenced Title in Report	Date Interviewed
1	[REDACTED], UC Davis Health: [REDACTED]	Complainant	March 2, 2017

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<sup>1</sup> 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.

	Name/Role	Referenced Title in Report	Date Interviewed
2	██████████, ██████ Supervisor, UC Davis Health: ██████████	Respondent	March 15, 2017
3	██████████, Assistant Manager, ██████, UC Davis Health: ██████████	Assistant Manager	March 3 and March 16, 2017
4	██████████, ██████████ (formerly Lead ██████████, UC Davis Health: ██████████	Lead ██████████	March 6, 2017

#### D. Other Evidence Considered

Attachment	Description	Number of Pages
1	[REDACTED]	1
2	[REDACTED]	1
3	[REDACTED]	1

#### IV. Summary of the Evidence

### A. Complainant Interview Summary

[REDACTED]

Complainant stated there have been two sexually suggestive instances that occurred between her and Respondent, who was her [REDACTED] supervisor before these incidents were reported. After the second incident, she told Assistant Manager what had happened and he told her that he was required to report the conduct as potential sexual harassment.

Incident #1

In mid-October 2016, [REDACTED] Complainant [REDACTED], she had a conversation at the supervisor's desk with Assistant Manager and Respondent.

According to Complainant the tone of the conversation was initially jovial and consisted of small talk. Assistant Manager asked Complainant whether or not Complainant was still working [REDACTED]. At that time, Respondent wanted to know why Complainant was working [REDACTED]. Complainant responded "I need to pay my bills." Respondent said to her "You don't need to work [REDACTED]." Complainant said "Unless I hit the lotto for a million dollars or something I do." Respondent stated "Oh is that all you need?" Complainant replied in a joking manner "A million dollars would be nice. What do you have a million dollars?" Respondent stated "Umm well" which Complainant took to mean as Respondent insinuating that he had a million dollars.

Complainant replied jokingly "Cool. What's up with a loan or something?" Then Respondent stated "What's up with you and me?" According to Complainant, the Respondent's statement led to an awkward pause in the conversation. The tone of the conversation turned from joking to one that was immediately serious. She stated "had the conversation just gone on seamlessly and we kept talking, that would be one thing, but he paused after that."

Complainant took Respondent's comment to mean that he wanted her to do something for him sexually in return to loaning her money. Complainant stated that she and Assistant Manager just looked at each other in disbelief that Respondent had just insinuated such a thing. After Respondent made the comment, Complainant stated "Oh my gosh, you didn't mean it like that did you?" and Respondent replied "I am just saying."

[REDACTED]

Complainant stated that sometime later she and Assistant Manager discussed how surprising it was that Respondent would make such a suggestive statement when Respondent just had a complaint made against him the week prior. She stated "It literally just happened, and he is still talking suggestively."

Incident #2

On December [REDACTED] 2016 Complainant was working and walked over to another part of the department to speak to Lead [REDACTED] in order to ask her a question. Lead [REDACTED] and Respondent were in a conversation and when Complainant approached them, they stopped their conversation. Complainant asked a question to Lead [REDACTED] who then promptly answered her. Then Lead [REDACTED] told Respondent that he had some crumbs or something on his upper lip from a pastry he had just eaten. At that point, Respondent, who is much taller than Complainant, leaned over and got close to Complainant's face and said to her "Oh, would you like to get it for me." Respondent then laughed and walked away.

Complainant stated this incident made her feel really uncomfortable. She stated that Respondent had intruded into her personal space and got too close to her. Complainant does not believe Lead [REDACTED] overheard the comment because she was walking away from the two of them at the time.

Initially, Complainant tried to brush off what had happened, but then she felt that she needed to tell Assistant Manager about what had happened. Assistant Manager told Complainant that he was required to file the complaint on her behalf, and she told him she understood.

Complainant stated that these two instances have made it uncomfortable for her at work because she does not want to say anything in front of Respondent that could possibly open up to a “joke” turned sexual “insinuation”. She stated that instead of going to Respondent for assistance at work, she seeks out another [REDACTED] supervisor when she needs assistance.

Complainant has not discussed the two incidences with Respondent. She stated that she spoke to Assistant Manager when the first incident occurred, and which he had witnessed, and the two of them decided that maybe Respondent’s statement was just a joke. However, when Complainant made a second statement, she went to talk to Assistant Manager and he told her he had to report it as possible sexual harassment. Complainant stated that the first incident made her uncomfortable, but [REDACTED], she did not want to be in a spotlight and make a complaint. Complainant stated there has been no other inappropriate conduct by Respondent towards her, other than these two occurrences.

Complainant stated that the two incidences have caused her to feel uncomfortable at work, but has not affected her working environment beyond that. Also, she does not believe she is being treated any differently than anyone else in the department because the complaint was filed. Complainant stated that she hopes the complaint results in her not feeling uncomfortable at work in the future. She said that she does not want inappropriate or suggestive comments by Respondent to be spun like it is a joke when it is not.

## **B. Respondent Interview Summary**

[REDACTED]

[REDACTED] . Initially Respondent was the [REDACTED] supervisor for Complainant, however in [REDACTED] 2017 two additional [REDACTED] supervisors were hired for [REDACTED] and Complainant is now supervised by one of the new supervisors.

Respondent was asked if he recalled the two instances Complainant alleged occurred and that were referred to in the notification letter he had received. Respondent stated he did not.

Incident #1

Respondent was asked if he recalled a conversation that occurred in October or November of 2016 between Assistant Manager, Complainant, and Respondent in which money was discussed. Respondent shook his head.

Respondent was asked if he recalled the three of them ever discussing Complainant's [REDACTED] and her need to pay her bills. Respondent again shook his head.

Respondent was asked if he recalled if he had a conversation with Complainant where she expressed her desire to win the lottery or a million dollars. Then Respondent implied to Complainant that he had money, which prompted Complainant to ask him "What's up with a loan or something?" and Respondent said something to the effect of "What's up with you and me?" Respondent stated "I absolutely do not recall" that conversation.

Respondent stated that there are multiple assistant managers and that Assistant Manager is not his assistant manager, so he does not really have much contact with him. Respondent then stated "That conversation would not have happened. I don't have any contact with him." Respondent then added that Assistant Manager is present where he works if Assistant Manager is training employees and needs to coordinate their training with him.

Respondent stated he and Complainant "never had a conversation about a lottery" or anything like that. He added, "Absolutely not, it never happened." Respondent stated that if Assistant Manager said the conversation occurred then he would be mistaken. When the conversation as alleged by Complainant and Assistant Manager<sup>2</sup> was recounted to Respondent, Respondent stated "I did not have that conversation. That is false."

Later in the interview, Respondent was again asked about the alleged October conversation involving the lottery and money, Respondent stated "that did not happen. I would have remembered something like that." Further, Respondent stated "the fact is that everything that was going on with [REDACTED] I would not have entertained it." "I am blown away by the [Complainant] thing because I am in the middle of completing my obligations with the classes with the [other complainant]. I am not in that mode of having any type of unwork-related conversations with nobody." "I don't know [Complainant] well enough to have that type of conversation with her anyway. Why would she be in my office anyway?"<sup>3</sup>

When asked why he believed Assistant Manager would say Respondent did engage in such a conversation with Complainant, Respondent stated "He is wrong." Respondent stated "I barely have conversations with him. I wouldn't do that."

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<sup>2</sup> [REDACTED]

<sup>3</sup> [REDACTED]



Incident #2

Respondent was asked about the incident that Complainant stated occurred in December 2016 between Complainant and Respondent, with Lead [REDACTED] present. In that instance, Complainant alleged that Respondent had some crumbs or powdered sugar on his upper lip. Lead [REDACTED] informed him of the crumbs or powdered sugar on his upper lip. According to Complainant, a moment later Respondent bent over to Complainant and said to her "Oh, would you like to get it for me?" or words to that effect. Respondent denied the incident and stated nothing like that, or even similar to that, ever occurred between him and Complainant.

Later in the interview, Respondent was again asked about the alleged December incident involving powdered sugar or crumbs on Respondent's upper lip. Respondent stated "that absolutely did not happen and is a lie. That is just a lie." Respondent stated he hated labeling someone like that, but said "It is not true, a lie, a fabrication. I just don't know what to say about that or what her ulterior motive is, if she has one. For some reason she wants to get me in trouble. I have no clue why she would make that type of allegation towards me. I can guarantee you without a shadow of a doubt that conversation never happened."

In response to a question of why Complainant would make allegations that he characterized as false, Respondent speculated that maybe Complainant's false accusations against him were because Respondent would not change Complainant's lunch schedule when she asked him to do so. Respondent did not recall when the request from Complainant occurred and said "I don't want to speculate when that happened." Further, Respondent stated "I have never did anything to her. Have never had any unwork-related conversations with her. Never."

Respondent described [REDACTED] as a very busy work environment. He stated "there is no down time to sit around and flirt or make sexual allegations towards anybody." He also stated "I do not have time for the stuff that I am being accused of saying."

When asked, Respondent stated that he was accused of sexual harassment about [REDACTED] by another female [REDACTED] employee [REDACTED]. He stated that he wanted to see if she had any questions about work. He stated he walked up and tapped her on the shoulder and said to her "Are you alright baby girl?" Respondent stated "it was a mistake." Respondent elaborated that in his department there are a lot of [REDACTED] and she took it personally. Respondent stated that after he tapped her on the shoulder, and said "you alright baby girl" she stated "Yeah, I am fine", so he went on with his work. Later, Respondent found out she was offended.

[REDACTED] Respondent stated "I told them "yes" I did that, but I did not realize it offended her." [REDACTED], Respondent was directed to take sexual harassment and culture awareness courses.

[REDACTED] He stated he was



[REDACTED]

When asked about his observations of Complainant's current demeanor in the workplace, he stated "she is still bubbly, laughy, in the workplace. I don't see any difference in her. She is the same person. I say 'good morning' and she says 'good morning'. She says 'goodbye' when she leaves, and I say 'Have a good day'. That is the extent of our conversations both before and after the alleged incidents, everything else is work-related only."

[REDACTED]

Respondent stated that since the incident with the other [REDACTED] employee occurred, he has taken cultural awareness classes and "they are a big help." Respondent reported that he was scheduled to attend another class in Davis the day after the interview. He had also completed sexual harassment training online. Respondent stated that part of the class he took in [REDACTED] 2017 involved how people can be misunderstood and that sometimes people may say something, but something different is heard. Respondent stated that as a supervisor he really needs to be careful about how people perceive him. "We have a rainbow of cultures in my department which is really cool." Respondent stated that the culture he grew up with used the terms "baby girl" "baby boy", much like older women in the workplace will call someone "sweetie". Respondent stated "the classes are awesome, I wish I had known about them before. They have tons of classes you can take. Good guidance. They really make you think."

When ending the interview, Respondent stated that he admitted to the allegation concerning the other [REDACTED] employee and that he was "not trying to hit on her or anything and wanted to make sure she was okay and used the wrong choice of words, and I am paying the price for that." As a result, Respondent stated that "there is no way I would have that type of conversation with [Complainant]. "She is the same age as my [REDACTED] and I would not disrespect her like that. [REDACTED]. That is not who I am. I admitted to 'baby girl' when asked, and that I had tapped her on the shoulder. I told him 'yeah' when asked if I did it. This is a habit I was forced to break because of someone taking offense by that."

[REDACTED]

[REDACTED]

“As far as the accusations that [Complainant] has made against me, they are totally false. There is no ‘I don’t recall’ or ‘no I don’t think so’, the allegations are just not true. Absolutely not true. I want to make that clear, there is ‘no I don’t recall’ situation. They are totally false.”

**C. Assistant Manager Interview Summary**

[REDACTED]

Assistant Manager supervised Complainant as a [REDACTED] employee until [REDACTED] [REDACTED] [REDACTED]. In [REDACTED] and [REDACTED] 2016, Complainant was still in [REDACTED] and Assistant Manager was her direct supervisor.

He stated Complainant came to him on two occasions about situations that had made her feel uncomfortable because of statements Respondent made to her. Assistant Manager stated that after the second incident, he forwarded the complaints to his Manager. He believed the first incident occurred sometime around November 2016 and the second incident was in December 2016.

*Incident #1*

Assistant Manager stated that he was present and that at first Complainant did not say anything to him about it. He had been speaking with Complainant at one of the supervisors’ desks. “We were having a conversation. Me, [Complainant], and [Respondent] were talking about money. The conversation was a regular conversation and Respondent said “I have a lot of money” and Complainant said “What’s up, can I have some?” Respondent replied “What’s up with me and you.” We kind of looked at each other and never mentioned anything about it at that time. “She kind of let it go.” He does not recall any other statements made by either Complainant or Respondent at that time.

Assistant Manager stated he did not know what Respondent meant by this statement “but those are the words he used.” After Respondent made the statement, there was a pause and nothing further was said right after that. He believed Complainant felt uncomfortable by what Respondent had just said. He stated he was thinking “I can’t believe he just said that.” When asked what he thought it meant, Assistant Manager stated “of course I thought something.” Assistant Manager stated that when Complainant asked for money and Respondent replied “what’s up with me and you” it meant to him that Respondent was suggesting to exchange money for sex or “a hook up”. Assistant Manager stated “I don’t know what his intentions were. It made me feel uncomfortable.” Assistant Manager stated he left the area right after that and that as a part of management he wanted no part of it.

About a week or two later, Complainant and Assistant Manager discussed the incident. Complainant brought the incident up and said “What’s up with that?” and he told her “I don’t know.” They both thought Respondent’s statement was awkward and sexually suggestive.

### Incident #2

According to Assistant Manager, the second incident occurred around [REDACTED] time. On that day, he said he was walking in the department and Complainant approached him and said “Hey, he did it again.” Assistant Manager asked her what had happened. She replied “[Respondent], I am done, I’ve had enough.”

Complainant then told Assistant Manager that Respondent was eating a pastry that had powdered sugar on it, and Complainant, Respondent, and Lead [REDACTED] were present at the time. According to her, Lead [REDACTED] told Respondent he had something on his face, and told him to wipe it off. According to Complainant, Respondent then said to Complainant “Hey you want to get it off for me.” This made her feel uncomfortable.

Assistant Manager informed Complainant that he was legally required to report the incident and she replied she would handle it. However, he explained that it would not look right and he would report it to the Manager. Complainant stated she understood.

Prior to reporting the incident to the Manager, Assistant Manager stated that he called Lead [REDACTED] at home to get her story because she had already left work for the day. Lead [REDACTED] told Assistant Manager that she did not hear any comment from Respondent to Complainant because she had walked away.

When asked whether or not Lead [REDACTED] acknowledged whether or not she had made a comment to Respondent concerning wiping powdered sugar off of his face, Assistant Manager said “I do believe she acknowledged that she had said to [Respondent] that he had something on his face. I am not 100%, but I believe she said she knew he had something on his face.” Lead [REDACTED] then told Respondent this and walked away, all in Complainant’s presence. When asked whether or not it was common for him to call Lead [REDACTED] at home, Assistant Manager stated “We may text someone, but we don’t ordinarily call. We had a full blown conversation about it.”

[REDACTED]

Since Complainant reported Respondent’s conduct, she has missed work a lot and calls in more often. He does not know the reason for the absences. Assistant Manager no longer supervises

Complainant. [REDACTED]  
[REDACTED]

Respondent was Assistant Manager's supervisor before he became an Assistant Manager in [REDACTED].

[REDACTED] Assistant Manager stated "in my honest opinion I don't think he meant anything by that—I thought it was very unfair." He added "I just have something to get off my chest. I have been working with [Respondent] for roughly [REDACTED]. I don't think he has done anything intentionally." He added that Respondent is "old school" and his personality is misunderstood by the people he interacts with. However, Assistant Manager did reiterate his understanding and support for the process and an inquiry when these types of situations arise.

#### D. Lead [REDACTED] Interview Summary

[REDACTED]  
[REDACTED] She became Complainant's direct supervisor in [REDACTED] and has known Respondent since she trained him many years ago when he began working at [REDACTED].

When asked whether or not she had a sense of why she was being interviewed, she replied "No, not at all." Lead [REDACTED] was asked whether or not she recalled an interaction between Complainant and Respondent at work in December 2016 where in the presence of Complainant, Respondent had bread crumbs or a powdered sugar on his upper lip and Lead [REDACTED] told him to wipe it off. Lead [REDACTED] said she did not recall anything of that nature at all. She then stated that she would have been training Complainant around that time in "case picking" so they would have been working together. However she stated "I honestly do not remember any interaction between the two of them where he had something on his face, or I commented on it, and he made a comment to [Complainant]."

When asked, Lead [REDACTED] stated that she was not aware of any complaint filed on Complainant's behalf against Respondent, or anything of such a nature.

[REDACTED]

[REDACTED]

Lead [REDACTED] stated that Complainant never confided in her about the incident alleged to have occurred between Complainant and Respondent.

[REDACTED]

[REDACTED]

[REDACTED]

Lead [REDACTED] has known Respondent for [REDACTED] years and described him as “a nice man.” She added he had always been respectful to her and never acted inappropriate towards her in that time.

## **V. Findings and Analysis**

Complainant alleges that Respondent made inappropriate comments of a sexual and flirtatious nature on two occasions while at work. These alleged actions, if substantiated, may violate the University of California’s Sexual Violence and Sexual Harassment Policy (SVSH Policy), effective 1/1/16, and constitute sexual harassment as defined in the policy.

**A. The preponderance of the evidence does support that Respondent made inappropriate comments to Complainant in or around October 2016 that were of a sexual and flirtatious nature.**

There is a dispute of material facts in this instance. Respondent denied that the conversation ever took place, not just as alleged, but at all. Respondent's denials include the following:

- "I did not have that conversation. That is false."
- "That did not happen. I would have remembered something like that."
- "That conversation would not have happened. I don't have any contact with [Assistant Manager]."<sup>4</sup>
- "The fact is that everything that was going on with [REDACTED] [REDACTED] [REDACTED] [REDACTED] I would not have entertained it."
- "I do not have time for stuff that I am being accused of saying."
- "I don't know [Complainant] well enough to have that type of conversation with her anyway."
- "I have never did anything to her. Have never had any unwork related conversations with her. Never."

Complainant stated otherwise. She described a conversation that began lightheartedly, but ended abruptly with a comment from Respondent to Complainant with sexualized overtones. Assistant Manager corroborated the content of the conversation, the comment that was made, and the tone as described by Complainant.

Both Complainant and Assistant Manager agreed the conversation with Respondent involved a discussion about money with Respondent having suggested or saying to both of them that he had a lot of money, and that Complainant said to Respondent words to the effect of "What's up, can I have some?" with Respondent replying "What's up with me and you?" or words to that effect. Both Complainant and Assistant Manager then described an awkward pause in the conversation caused by Respondent's comment. The tone of the conversation turned from joking to serious immediately. Both Complainant and Assistant Manager described looking at each other in disbelief immediately after Respondent's comment to Complainant.

Complainant took Respondent's comment to suggest that Respondent wanted something sexual from her in return for loaning her money. Likewise, Assistant Manager stated he believed Respondent's comment meant that Respondent was suggesting to exchange money for sex or "a hook up" with

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<sup>4</sup> [REDACTED]



Complainant. Both felt uncomfortable after Respondent made the comment and perceived the comment to be sexually suggestive.

Based on the preponderance of the evidence, I find that Complainant's allegation that in or around October 2016 Respondent made inappropriate comments of a sexual and flirtatious nature towards Complainant is substantiated. I make this finding for the following reasons.

First, I find Assistant Manager's corroboration of Complainant's account compelling. Both Complainant and Assistant Manager recall the material aspects of the conversation that occurred, when it occurred, and the effect Respondent's comment had on both of them. Both perceived Respondent's comment to be sexual in nature. I also find that a reasonable person would find Respondent's comment taken in context of the conversation that was ongoing to be sexually suggestive in nature and inappropriate.

Additionally, when Respondent was asked what motive Assistant Manager would have to fabricate statements about the conversation, he struggled to come up with an answer and stated that Assistant Manager was just "wrong". The weight of the evidence is that Assistant Manager and Respondent have worked together for years and have no animus towards one another. In fact, Assistant Manager volunteered that he believed Respondent was unjustifiably suspended in connection with another incident. It is not likely that Assistant Manager is wrong or mistaken about the parties to the conversation that he recounted. Further, Respondent was unable to explain why the Assistant Manager would fabricate statements against him.

Moreover, when asked why Complainant, a [REDACTED] employee, would make false statements about him just months after beginning to work in [REDACTED], the only reason he offered was that he had declined her request to change her lunch schedule to a different time. Respondent did not say when that conversation occurred in relation to the alleged conversation. While I considered the suggested motive, I ultimately gave little weight to it because the evidence does not support the motive, nor is it likely or plausible that a person would fabricate such a serious allegation for such a trivial reason.

Furthermore, Respondent's suggestion that Complainant, a [REDACTED] employee that worked [REDACTED] a [REDACTED], along with Assistant Manager with [REDACTED] years of experience at UC Davis, both decided to fabricate a story about a conversation they had with Respondent is not plausible. It is even less plausible when one considers that Complainant and Assistant Manager did not immediately report Respondent's comments to the Manager, but rather reported them only after a second incident allegedly occurred, one that Assistant Manager did not directly witness.

Finally, I considered Respondent's outright denials that the conversation or any conversation like the one above ever occurred. The denials were unequivocal and in direct contradiction to the statements of Complainant and Assistant Manager and therefore necessitate a comment on their credibility. Certainly, Respondent has a motive to deny that the conversation giving rise to the sexualized comment

ever occurred. Respondent made clear that this is not a case of not being able to recall the conversation, but rather a case where the entire conversation did not occur. Respondent's denials, including "I do not have time for stuff that I am being accused of saying" and that the conversation would not have happened because "I don't have any contact with [Assistant Manager]" are not credible in light of the available evidence, as well as the statement of Complainant and corroborating statement of Assistant Manager, which when taken together meet the threshold that more likely than not the conversation and the sexual innuendo by Respondent did occur as alleged.

As a result of the above, I find the allegation that in or around October 2016 Respondent made inappropriate comments of a sexual and flirtatious nature towards Complainant is substantiated.

**B. The preponderance of the evidence does support that Respondent made inappropriate comments to Complainant in or around December 2016 that were of a sexual and flirtatious nature.**

Like the above, there is a dispute of material facts in this instance. Respondent again denied that the conversation ever took place, not just as alleged, but at all. Respondent's denials include the following:

- "That absolutely did not happen and is a lie. That is just a lie."
- "It is not true, a lie, a fabrication. . . . I can guarantee you without a shadow of a doubt that conversation never happened."
- "As far as the accusations that [Complainant] has made against me, they are totally false. There is no 'I don't recall' or 'no I don't think so', the allegations are just not true. Absolutely not true. I want to make that clear, there is 'no I don't recall' situation. They are totally false."

Complainant stated otherwise. She stated that on December 7, 2016 Complainant was working and walked over to another part of the department to speak to Lead [REDACTED] in order to ask her a question. At the time, Lead [REDACTED] and Respondent were in a conversation and when Complainant approached them, they stopped their conversation. Complainant asked a question to Lead [REDACTED] who then promptly answered her. Then Lead [REDACTED] told Respondent that he had some crumbs on his upper lip from a pastry he had just eaten. At that point, Respondent, who is much taller than Complainant, leaned over and got close to Complainant's face and said to her "Oh, would you like to get it for me." Complainant stated Respondent then laughed and walked away. This made her feel "really uncomfortable" because Respondent had intruded into her personal space and got too close to her. Also, she believed the incident was similar to the October incident and another example of sexual suggestiveness by Respondent towards her.

That same day, Assistant Manager stated Complainant approached him and said "Hey, he did it again." Not knowing what she was referring to, Assistant Manager asked her what had happened. She replied "[Respondent], I am done, I've had enough." Complainant said she was going to report

Respondent's conduct, and Assistant Manager informed her that as management he would make a sexual harassment complaint on her behalf.

Because Lead [REDACTED] was a witness, Assistant Manager decided to call Lead [REDACTED] at home and get her story before reporting it to Manager. Although not absolutely certain, Assistant Manager was confident in his belief that Lead [REDACTED] told him that she did not hear any comment from Respondent to Complainant because she had walked away after telling Respondent that he had something on his upper lip in Complainant's presence. However, Assistant Manager was certain that he and Lead [REDACTED] "had a full blown conversation about it."

[REDACTED] She said "I honestly do not remember any interaction between the two of them where he had something on his face, or I commented on it, and he made a comment to [Complainant]". Also, Lead [REDACTED] stated she was not aware of any complaint against Respondent filed on Complainant's behalf or by Complainant.

Based on the preponderance of the evidence, I find that Complainant's allegation that in or around December 2016 Respondent made inappropriate comments of a sexual and flirtatious nature towards her is substantiated. I make this finding for the following reasons.

First, I find Complainant's behavior after the incident circumstantially supports her account of the events. After trying to "brush off what had happened" Complainant decided to go and report Respondent's conduct to Assistant Manager, also her direct supervisor, that same day. Assistant Manager recounted the interaction he had with Complainant when she reported the incident to him. He described Complainant in an emotional and exasperated state. Complainant approached him and said "Hey, he did it again." Not knowing what she was referring to, Assistant Manager asked her what had happened. She replied "[Respondent], I am done, I've had enough." Complainant then recounted the incident to Assistant Manager. After doing so, Complainant informed Assistant Manager that she was going to report the incident. When Assistant Manager told her he was required to report it and would do so, she readily agreed. Her actions, statements, and perceived emotions are consistent with someone having just received an unwanted inappropriate and sexually suggestive comment from Respondent. Moreover, I find in light of the October incident it was reasonable for Complainant to perceive Respondent's comment as intentionally sexually suggestive and flirtatious in nature.

More importantly, I find Assistant Manager's statements about the phone conversation he had with Lead [REDACTED] the day of the incident an indication that Lead [REDACTED] lack of memory or recall of the event is less credible. More compelling is the corroboration Assistant Manager provided in support of Complainant's allegation. Assistant Manager recalled that he and Lead [REDACTED] had a "full blown" conversation about what Complainant had reported to him about her encounter with Respondent that day. He wanted to speak to her before he made the report to his Manager and boss. Assistant Manager called Lead [REDACTED] at her home to verify the incident. Calling Lead [REDACTED] at her home is not something that ordinarily occurs. Therefore, it is unlikely Lead [REDACTED] would forget the alleged

crumb incident after receiving an unusual phone call from Assistant Manager to discuss it. During that conversation, Lead [REDACTED] denied having overheard that day any conversation between Respondent and Complainant. However, Assistant Manager was confident Lead [REDACTED] acknowledged she told Respondent that day, in the presence of Complainant, that Respondent had something on his upper lip before walking away. This provides further corroboration for Complainant's version of events who also recalled Lead [REDACTED] leaving following her comment to Respondent.

Next, I considered evidence that potentially weighed against Complainant's account. This required an evaluation of Lead [REDACTED] and Respondent's credibility.

Lead [REDACTED]

During the interview, [REDACTED]

[REDACTED] Moreover, Lead [REDACTED] declared lack of knowledge concerning the existence of Complainant's complaint against Respondent does not seem plausible given that she is Complainant's supervisor. In contrast to the statements about Complainant, towards the end of the interview, Lead [REDACTED] appeared frustrated and asked "Aren't you going to ask me about [Respondent]?" At which point, she provided supportive statements of Respondent.

[REDACTED] Assistant Manager recalled that he had "a full blown" telephone conversation with Lead [REDACTED] about these circumstances as a potential witness to Respondent's comment to Complainant the day it occurred. Because I find Assistant Manager to be credible in his statements concerning this, I gave little weight to Lead [REDACTED] statements that she has no recollection or knowledge about the event, circumstances, or complaint at all. This also reduced the corroborative value of Lead [REDACTED] statement that she did not recall a situation where Respondent had food on his lip and should wipe it off.

Respondent

In addition to that discussed in Section V. A. above, I also do not find Respondent's outright denials of the circumstances leading to the comments as alleged in December credible. In order to determine whether or not Respondent was providing complete and honest answers during the interview I reviewed Respondent's disciplinary history. The review was to determine if Respondent's disclosure that prior to fall 2016 the only other discipline he had received for inappropriate comments was in [REDACTED] for a conversation that occurred in a breakroom. However, the discipline review did not uncover a [REDACTED] incident at all. [REDACTED]

Moreover, I also considered Respondent's multiple statements during the interview that when management asked him in October 2016 about Respondent addressing another [REDACTED] employee as "baby girl", he immediately acknowledged that he addressed the employee as "baby girl". In fact, Respondent went over the scenario in his interview several times in which he called the employee "baby girl" with complete apparent recollection. [REDACTED], it is clear that Respondent told management that he "had no recollection of calling [his] direct report 'baby girl'." Therefore, although Respondent cited the "baby girl" incident as an example of his forthright acknowledgement of past conduct, I find these statements of Respondent during the interview adversely affect his credibility rather than bolster it.

To be clear, the review of Respondent's discipline file was for the sole purpose of determining the credibility of Respondent's specific statements during his interview as noted above and for no other purpose. In reaching my conclusions, I did not rely on the prior misconduct. However, I did compare Respondent's express statements about past events with the documentation of those events in assessing Respondent's willingness to be truthful and forthcoming during his interview.

As a result of the above, and taking the totality of circumstances into consideration, I find the allegation that in or around December 2016 Respondent made inappropriate comments of a sexual and flirtatious nature towards Complainant is substantiated.

**C. The preponderance of the evidence does support that Respondent's Conduct towards Complainant Violated the University's Sexual Violence and Sexual Harassment Policy.**

Based on the factual findings detailed above, I conclude that Respondent engaged in sexual harassment in violation of *University of California's Sexual Violence and Sexual Harassment Policy*. I analyzed the policy under its plain text meaning and not under the law of sexual harassment, the latter of which is not within my purview.

UC policy prohibits unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature when it is either *quid pro quo* or creates a hostile working environment. As was discussed above, the preponderance of the evidence substantiates that Respondent engaged in two instances of conduct toward Complainant that was sexual in nature. The remaining question is whether the conduct was either *quid pro quo* or created a hostile working environment. Even though the October 2016 incident was of a nature of a *quid pro quo* (sex for money), the conduct was not implicitly or explicitly made as basis for employment decisions, and therefore is not analyzed as that type of conduct. I do not find *quid pro quo* harassment existed.

A hostile working environment occurs when such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from employment and creates an environment that a reasonable person would find to be intimidating or offensive. Additionally, consideration is given to the totality of the circumstances in which the conduct occurred, including hierarchical relationships. I find that Respondent's conduct created a hostile working environment for Complainant.

In making this determination, I considered the totality of the circumstances, including the following:

- Complainant began working at UC Davis Health in [REDACTED].
- Respondent had been working at UC Davis Health for [REDACTED]. At the time of the relevant incidents, Respondent was Complainant's [REDACTED] supervisor.
- [REDACTED], [REDACTED], [REDACTED] Respondent made a comment to Complainant in which he implied an exchange of sex for money.

- [REDACTED]  
[REDACTED]  
[REDACTED]



- Complainant discussed Respondent's October comment alluding to sex for money with Assistant Manager approximately a week or two later because it bothered Complainant and was still on her mind.
- In December 2016 Complainant experienced a second comment of a sexual nature by Respondent. This second comment left her exasperated and she stated "I've had enough" to Assistant Manager.
- Complainant reported that both the October and December comments made her feel uncomfortable and she considered each to be inappropriate and sexually suggestive.
- Complainant stated that she no longer seeks employment-related advice or guidance from Respondent, one of the [REDACTED] supervisors.
- Complainant stated that while working she avoids situations with Respondent as she does not want to say anything in front of him for fear that it could possibly open up a "joke" turned "insinuation".
- Complainant stated that she still feels uncomfortable at work as a result of the statements Respondent made to her.
- Complainant stated that after the complaint was filed on her behalf in this case, she spoke with the [REDACTED] [REDACTED] [REDACTED]. Based on that conversation, she now believes that Respondent has a more extensive history of sexual harassment.<sup>7</sup>

I find the weight of the evidence, as stated above, supports that Respondent's conduct more likely than not was sufficiently "severe or pervasive" that it "adversely limit[ed]" and/or "interfere[d] with" Complainant's participation in or benefit from her employment. Currently, Complainant remains uncomfortable at work because of Respondent's conduct. She goes out her way to avoid seeking advice from Respondent, who was her [REDACTED] supervisor and remains a more experienced employee on the same shift at UC Davis Health. Instead, she seeks out others in similar positions as Respondent. Also, she actively avoids engaging in any conversations with Respondent in order to avoid providing him any opportunities for additional sexually suggestive comments towards her. Moreover, Complainant reasonably perceived Respondent's conduct as more brazen in that it occurred with an Assistant Manager present soon after another incident that led to a separate sexual harassment complaint against Respondent. Complainant described looking at the Assistant Manager in disbelief and being surprised that Respondent would make such suggestive comments just a week after a complaint by another coworker. In addition, Complainant was reluctant to report Respondent's conduct after the first incident because she had [REDACTED] [REDACTED] and believed making a complaint would result in her being "in a spotlight".

Likewise, Complainant's interview statement and statement to the Assistant Manager at the time of the second event reflected that Complainant perceived Respondent's conduct as pervasive and as

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<sup>7</sup> [REDACTED]

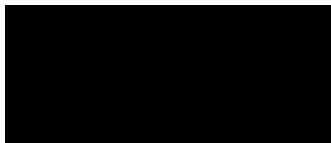
impacting her work experience. Complainant reported that Respondent “did it again” and that she had “had enough” and was “done.” I found Complainant’s reasonable perception relevant to finding that Respondent’s conduct has unreasonably interfered with Complainant’s participation in or benefit from employment.

I also find that Respondent’s conduct towards Complainant has created a work environment that a reasonable person would find to be intimidating or offensive. In making this finding, I considered (1) the hierarchical relationship that existed between Respondent and Complainant at the time of the conduct, (2) [REDACTED] [REDACTED] work at UC Davis, (3) that Respondent’s first comment alluded to sex for money, and (4) that the second incident invaded her personal space and appeared designed to intentionally flirt or make a sexually suggestive comment to her, resulting in making her feel uncomfortable. Taken as a whole, it is more likely than not that Respondent’s conduct created an environment that a reasonable person would find intimidating and offensive.

## **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 Respondent engaged in sexual harassment towards Complainant in violation of University of California’s Sexual Violence and Sexual Harassment Policy.

Respectfully submitted,



Carl L. Reed II  
University Investigator  
Office of the Provost and Executive Vice Chancellor