SHANTA DRIVER, Michigan Bar No. P65007*
RONALD CRUZ, State Bar No. 267038
MONICA SMITH, Michigan Bar No. P73439*
United for Equality and Affirmative Action Legal Defense Fund (UEAALDF)
1019 South Westmoreland, Apt. 213
Los Angeles, CA 90006
(510) 384-8859 Fax: (313) 586-0089
ronald.cruz@ueaa.net
Attorneys for Plaintiff
* Appearing *pro hac vice*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AAREFAH MOSAVI,

Plaintiff,

vs.

MT. SAN ANTONIO COLLEGE, et al.,

Defendants.

CASE NO. 2:15-CV-04147-MWF (AFM)

PLAINTIFF'S OPPOSITION TO THE MT. SAC DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Hearing: May 7, 2018
Trial: June 19, 2018
Courtroom: 5A
Judge: Hon. Michael W. Fitzgerald

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

TABLE OF EXHIBITS v

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION 1

STATEMENT OF FACTS 3

ARGUMENT 6

I. Summary judgment is improper when there are genuine disputes of material facts after viewing the evidence in the light most favorable to the non-movant (Plaintiff). 6

II. The Mt. SAC Defendants were deliberately indifferent in failing to protect Plaintiff from sexual harassment. 6

A. The Mt. SAC Defendants adhere to an illegal definition of sexual assault that violates Title IX and which led to their inaction against Defendant Brown. 7

1. Brown's own story described a sexual assault under Title IX, but not a sexual assault as defined in Mt. SAC's written policies. 9

2. Defendant Jones repeatedly interrogated Mosavi and asked her to reenact the rape on another person, pursuant to an investigation to determine the incident met Mt. SAC's illegal definition of sexual assault. 11

B. A genuine dispute exists over whether the Mt. SAC Defendants' dismissal of Plaintiff's credibility, while accepting Brown's implausible and self-contradictory story, was clearly unreasonable. 13

1. The Mt. SAC Defendants knew that Mosavi was traumatized by Brown on December 12, 2013. 14

2. The Mt. SAC Defendants' fail to disclose notes that are material to their claims against Ms. Mosavi used to justify ruling against her. 14

3. Brown's accounts were implausible and inconsistent. 16

4. Mosavi's account was consistent and credible, despite Mt. SAC's effort to sabotage her by requiring her to repeat it and to reenact the rape. 17

C. Mt. SAC's investigation treated Mosavi differently based on sex by discrediting her, ignoring her witnesses, and denying her any meaningful opportunity to rebut Brown or appeal the findings. 19

D. The Mt. SAC Defendants failed to take interim measures to protect Mosavi from seeing her rapist and took no disciplinary action against Brown, and were therefore deliberately indifferent in protecting Plaintiff from further harassment. 21

E. Mt. SAC's actions denied Plaintiff equal access to education. 23

III. Defendants Scroggins, Czaja, Jones, and Smith are individually liable under 42 U.S.C. § 1983. 24

IV. The timely notice and lack of prejudice to Defendants, and Plaintiff's diligent pursuit of her claims in good faith despite the Mt. SAC's failure to inform her of her options for administrative relief, entitle Plaintiff to equitable tolling on her state-law claims. 25

A. Mt. SAC Defendants cite the wrong legal standard. 25

B. There was no lack of notice and no prejudice to the Administration Defendants, and Plaintiff pursued her claims in good faith. 27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

Addison v. State of California, 21 Cal.3d 313 (1978) 26

Anderson v. Liberty Lobby. Inc., 477 U.S. 242 (1986)................................... 1,6

Appalachian Ins. Co. v. McDonnell Douglas Corp., 214 Cal.App.3d 1 (1989).. 26

Cervantes v. City of San Diego, 5 F.3d 1273 (9th Cir.) 27

Concrete Pipe & Products of California, Inc. v. Constr. Laborers Pension Trust for S. California, 508 U.S. 602 (1993) 13-14

Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629 (1999) 6-7

Doe ex rel. Doe v. Derby Bd. of Educ., 451 F. Supp. 2d 438 (D. Conn. 2006) 23

Doe v. Regents of University of California, 2017 WL 4618591 (C.D. Cal. June 8, 2017)... 20

Donovan v. Poway Unified Sch. Dist., 167 Cal. App. 4th 567 (2008)........... 7

Flores v. Morgan Hill Unified Sch. Dist., 324 F.3d 1130 (9th Cir. 2003)... 24

Hawkins v. Sarasota County School Bd., 322 F.3d 1279 (11th Cir. 2003).. 23

Hopkins v. Kedzierski, 225 Cal.App. 4th 736 (2014)..................................... 27

Johnson v. Henderson, 314 F.3d 409 (9th Cir. 2009) 26

Karasek v. Regents of the University of California, 226 F.Supp.3d 1009 (N.D. Cal. 2016) 7,22

Lilah R. ex rel. Elena A. v. Smith, No. 11-cv-01860-MEJ, 2011 WL 2976805 (N.D. Cal. July 22, 2011) 7

McDonald v. Antelope Valley Community College District, 45 Cal.4th 88 (2008)..26-30

McMahon v. Valenzuela, No. 2:14-cv-02085, WL 5680305 (C.D. Cal. Sept. 24, 2015).. 27

Moore v. Regents of the Univ. of Calif., 2016 WL 4917103 (N.D. Cal., Sept. 15, 2016, No. 15-CV-05779-RS) 23

Oden v. N. Marianas Coll., 440 F.3d 1085 (9th Cir. 2006) 7

Ramser v. Laielli, 276 F.Supp.3d 978 (2017).. 22

Reese v. Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 739 (9th Cir. 2000) 7

SEC v. M & A West. Inc., 538 F.3d 1043 (9th Cir. 2008) 6
Wall v. County of Orange, 364 F.3d 1107 (9th Cir. 2004)..................... 3,6,18

Statutes

20 U.S.C. §1681 (“Title IX”)... *passim*
42 U.S.C. §1983 24
Cal. Educ. Code §220 7
Cal. Educ. Code §76030 10
Cal. Educ. Code §76033(g).. 2,9
Cal. Gov’t. Code §911.4(b). 26
Cal. Penal Code §240.. 1,5,8,13

Rules

Fed. Rule Civ. Proc. 37 2-3,15
Fed. Rule Civ. Proc. 56 1,6

Regulations

Department of Education’s “Dear Colleague” Letter, April 4, 2011 (“DCL”), 72 Fed. Reg. 3432 1,2
5 CCR § 59327(a) 28
5 CCR § 59336(a)(4) 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF EXHIBITS

A	Department of Education's "Dear Colleague" Letter, April 4, 2011 ("DCL")
B	Mt. San Antonio College selected Board Policies 3540 and 3430
C	Mt. San Antonio College Administrative Procedure 3540
D	Excerpts from Deposition of Aarefah Mosavi, Vol. 1 (June 30, 2017)
E	Excerpts from Deposition of Aarefah Mosavi, Vol. 2 (Oct. 19, 2017)
F	Excerpts from Deposition of Aarefah Mosavi, Vol. 3 (Feb. 28, 2018)
G	Excerpts from Deposition of Lorraine Jones, Vol. 1 (Mar. 2, 2018)
H	Excerpts from Deposition of Lorraine Jones, Vol. 2 (Mar. 23, 2018)
I	Excerpts from Deposition of William Scroggins (Mar. 1, 2018) with Deposition Exhibit S-1 ("Public Safety Records Inconsistent in Sexual Assault Case," Sac on the Scene, May 13, 2015)
J	Excerpts from Deposition of James P. Czaja (Mar. 19, 2018)
K	Excerpts from Deposition of Chester Brown (Jan. 5, 2018)
L	Excerpts from Deposition of Sayedah Mosavi (Nov. 22, 2017)
M	Excerpts from Deposition of Aisha Siddiqui (Mar. 27, 2018)
N	2/2/14 Mosavi email to Bailey Smith
O	2/11/14 notes from Jones investigatory meeting with Mosavi
P	2/21/14 notes from Jones interview of Brown
Q	3/5/14 Jones correspondence to Mosavi re: counseling
R	3/6/14 notes from Jones meeting with Mosavi
S	3/20/14 notes from Jones interview of witness Rene Pyle
T	3/28/14 Mosavi email to Jones
U	4/8/14 Jones email to Mosavi
V	April 2014 Mt. SAC Public Safety Officer Joseph Carl report
W	5/8/14 notes from Los Angeles Sheriff's Department interview of Mosavi
X	5/26/14 Mosavi email to Joseph Carl

Y 2013-14 Mt. SAC academic calendar

Z 6/9/14 Mosavi email to Jones

AA 7/3/14 Czaja's "Administrative review into Complaint against Chester Brown" to Mosavi

BB 4/27/15 Czaja's "Administrative review into Complaint against you by Aarefah Mosavi" to Brown

CC 9/14/17 Mt. SAC Defendants' responses to Plaintiff's requests for production of documents

DD 11/13/17 Mt. SAC Defendants' correspondence re: Plaintiff's follow-up requests for production of documents

EE 2/2/17 Mosavi medical record

FF Correspondence with professors to obtain accommodations

GG1 Video: Mosavi statement at tribunal on sexual assault on college campuses held at the University of California, Berkeley on April 16, 2015*

GG2 Video: Mosavi statement to Mt. SAC Board of Trustees on May 27, 2015*

GG3 1st Video of area, building, and hallway where the rape occurred at the Mt. SAC Farm, taken on June 3, 2016 *

GG4 2nd Video of building where the rape occurred at the Mt. SAC Farm, taken on June 3, 2016*

HH 6/24/14 Mosavi email to Jones

II 4/5/14 Mosavi email to Jones

JJ 3/5/14 Mosavi email to Franco and Jones

*Exhibits GG1 through GG4 are digital files on Exhibit GG (a flash drive that will be filed concurrently with this Opposition)

INTRODUCTION

The motion for summary judgment ("the MSJ") by Defendants Mt. San Antonio College, Lorraine Jones, James P. Czaja, William T. Scroggins, and Bailey Smith ("the Mt. SAC Defendants") may only be granted if there are no genuine disputes as to material facts in this case. Fed. R. Civ. P. 56; *Anderson v. Liberty Lobby. Inc.,* 477 U.S. 242, 248-49 (1986). The evidence shows that a reasonable jury could find that Mt. San Antonio College (Mt. SAC) did not discipline Defendant Chester Brown for sexually assaulting and raping Mosavi because it acted pursuant to its written policies that define "sexual assault" illegally and in violation of Title IX and California law.

Title IX and California law mandate that colleges take action against all forms of sexual harassment, which includes sexual assault. Sexual harassment consists of "unwelcome conduct of a sexual nature... [i]t includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature." Pl. Exhibit A, Department of Education's "Dear Colleague" Letter, April 4, 2011 ("DCL"), 72 Fed. Reg. 3432. The DCL was a call to action on colleges and universities to comply with Title IX and take action against rape and sexual assault, which at colleges and universities mostly takes the form of date and acquaintance rape and sexual assault. In contrast, the Mt. San Antonio College administration's standard for sexual assault is a much narrower standard in flagrant violation of Title IX. Mt. SAC defines "sexual assault" as "an unlawful attempt, coupled with a present ability, to commit a *violent injury* on the person of another; assault with the intent to commit *mayhem, rape, sodomy, oral copulation*, *rape* in concert with another; and lascivious acts upon a child, or *penetration* of genitals or anus with a foreign object (Penal Code 240)." Exhibit B, BP 3540 ("Sexual and Other Assaults on Campus") (emphasis added).

Plaintiff Aarefah Mosavi made a complaint about sexual harassment by Brown in 2014, three years after the "Dear Colleague Letter" had made the definitions of sexual harassment and sexual assault and the enforcement standards

under Title IX explicit for all college campuses. Mosavi demanded that Mt. SAC take punitive measures against Brown. The Mt. SAC Defendants conducted an investigation to determine whether Brown's conduct was "sexual assault" as it was illegally defined under Mt. SAC's policies: the Mt. SAC definition makes sexual assault synonymous with the criminal standard of violent rape, in violation of Title IX. As stated explicitly in the DCL, "The school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve a school of its independent obligation to investigate the conduct." DCL at 4. Yet for Mt. SAC, the two investigations were synonymous, violating the letter and spirit of Title IX, and violating their obligation to conduct "an adequate, reliable, and impartial investigation" of Ms. Mosavi's complaint and to protect her right to equal educational opportunity.

On February 21, 2014, when Brown gave his first version of what happened between him and Mosavi at the Farm on December 12, 2013 to Defendant investigator Lorraine Jones, he gave a story which also described a sexual assault[1] under Title IX, as detailed *infra.* But Mt. SAC took no action, and it proceeded to conduct an investigation to determine whether Mosavi's account rose to the level of physical coercion, threat of "violent injury" and/or rape that Mt. SAC illegally required Ms. Mosavi to take prove in order to get Mt. SAC to discipline Brown.

Additionally, Mt. SAC's dismissal of Plaintiff's credibility hinges solely on assertions made by Defendant Jones and other Mt. SAC officials about what occurred in certain investigatory meetings with Mosavi. Their ability to make these assertions is facilitated by their failure in discovery to produce the notes from those meetings which Plaintiff is confident would contradict these assertions, as detailed *infra*. Federal Rule of Civil Procedure Rule 37 requires that there be consequences

[1] California law's definition of "sexual assault" is consistent with Title IX, defining it as "actual or attempted sexual contact with another person without that person's consent." Cal. Educ. Code §76033(g).

for failing to preserve and disclose relevant documents in discovery. Fed. R. Civ. P. 37. For Rule 37 to have any meaning, this Court must preclude summary judgment in this case. Further, giving weight to Jones' credibility over Mosavi's credibility would be improper at the summary judgment stage, as "determinations of credibility 'are manifestly the province of a jury.'" *Wall v. County of Orange,* 364 F.3d 1107, 1110-11 (9th Cir. 2004).

STATEMENT OF FACTS

Plaintiff Aarefah Mosavi and Defendant Chester Brown went to Mt. SAC's Farm together on the night of December 12, 2013. He had driven her there, and her belongings were in his car. She had trusted Brown as a friend, and she had made clear to him previously that she had no romantic interest in him. Brown knew that she was a Muslim woman who wore a hijab. But as they walked through the Farm, he repeatedly asked her to remove her hijab (a scarf that Mosavi, a Muslim woman, wears to cover her hair and neck). She was uncomfortable and refused his repeated requests. After another request, she firmly said "no" and demanded that they return to his car so she could go home. He was standing in a dark, unlit outer hallway in one of the Farm's buildings and said that they would not go unless she gave him a hug. She walked toward him and said he was being ridiculous. Exhibit D, Aarefah Mosavi Deposition ("Plaintiff Dep."), Vol. 1, 214:19-227:23.

Brown grabbed her. He started groping her back and stomach. She told him to stop but he did not. He spun her around and pinned her against a wall, where he grinded his body against her. He put his hands under her shirt and bra and groped her bare breasts, stomach, and back. He groped her buttocks from outside her stretch jeans, and pushed his finger so that her stretch jeans and his finger entered her vagina. He tried to kiss her and asked her to remove her clothes. She was terrified that if she cried for help, that he would do something worse. The ordeal lasted for several minutes. After the assault, they walked to his car. After they drove to Mosavi's car, he again asked her to take off her hijab. She refused and

exited the car. He grabbed her coattail, but she took it back and was able to get away. Ibid.

On February 2, 2014, Plaintiff Mosavi reported and described the sexual assault in an email to Defendant Bailey Smith, Director of the tutoring center where Mosavi and Brown worked. Pl. Exhibit N (Mosavi 2/2/14 email to Smith). Mosavi met with Mt. SAC's Title IX coordinator, Defendant Lorraine Jones, on February 11, 2014. Mosavi told her experience in detail. Exhibit O (notes from 2/11/14 Jones meeting with Mosavi). Her account was consistent in all respects with her email on February 2, 2014.

Meanwhile, Brown told Jones a story that described a sexual assault in clear violation of the DCL and Title IX. On February 21, 2014, Brown told Jones that he drove Mosavi to the Farm on December 12, 2013 in his car, parked it, and that they walked through the Farm. He knew that Mosavi had no romantic interest in Brown. Exhibit P (notes from 2/21/14 Jones meeting with Brown). He also said that it was dark. While they were returning to his car, Brown demanded that Mosavi hug him. Mosavi was at his mercy: her belongings were in Brown's car, and she relied on him to get a ride to her own vehicle. Brown said that she refused and was annoyed by this request. He repeated his demand for a hug. According to Brown, he gave her a "bear hug." It lasted a long time, "less than 60 seconds."[2]

Regardless of which account she accepted, Jones knew that Mosavi had been traumatized and had been sexually assaulted under Title IX and California law. Exhibit G, Lorraine Jones Dep., Vol. 1, 84:24-85:23, 139:20-24. Jones acknowledged Mosavi's trauma and understood that trauma can have an effect on memory. She directed Mosavi to tell Jones more details from the assault as she remembered them. Exhibit D, Plaintiff Dep., Vol. 1, 54:24-55:11. Jones also

[2] Czaja's July 3, 2014 administrative findings letter reported Brown's version this way: "He rubbed your back and the embrace lasted for a very short time [sic], less than 60 seconds." Exhibit AA (7/3/14 findings letter).

recommended that Mosavi seek counseling. Exhibit G, Jones Dep., Vol. 1, 105:17-20; Exhibit Q (3/5/14 Jones letter to Mosavi).

However, neither Brown's or Mosavi's report of what happened rose to Mt. SAC's illegal definition of "sexual assault." Mt. SAC's Board Policy 3540 defines "sexual assault" as an "unlawful attempt, coupled with a present ability, to commit a *violent injury* on the person of another; assault with the *intent to commit mayhem, rape, sodomy, oral copulation,* rape in concert with another; and lascivious acts upon a child, or *penetration of genitals or anus* with a foreign object (Penal Code 240)." Exhibit B, BP 3540 ("Sexual and Other Assaults on Campus") (emphasis added). As explained *infra,* this leaves out of it sexual harassment and sexual assaults that must be prevented by schools under Title IX.

What then transpired was a series of meetings with Mosavi in which university investigators put her through the torture of reliving and telling her experience seven times[3] to at least six different college officials, sometimes two at the same time, to ascertain whether her descriptions met this illegal standard. At one meeting on April 4, 2014, Jones together with another senior HR administrator, Cynthia Hoover, directed Mosavi to reenact the assault on Hoover, re-traumatizing Aarefah and then turning her own account against her. Plaintiff Decl. ¶¶28-32.

---

[3] After making an initial report to Defendant Bailey Smith in an email, she was made to talk through her entire rape three times with Defendant Jones (in the presence of Human Resources Analyst Joanne Franco and later Human Resources Director Cynthia Hoover), one time with an Officer Kelly with Mt. SAC Public Safety, again with Officer Joseph Carl of Public Safety, and again with Deputies Kyle Anderson and Patrick Coussa of the Los Angeles Sheriff's Department. Exhibit N (2/2/14 Mosavi email to Smith); Exhibit O (notes from 2/11/14 Jones meeting with Mosavi); Exhibit T (3/28/14 Mosavi email mentioning giving account to Jones that day); Exhibit AA (7/3/14 findings letter), at 3; Def. Exhibit 30 (Plaintiff Decl. ¶¶36-37); and Exhibit W (5/8/14 Sheriff's Department's report).

Despite Mosavi's account and Brown's own admissions, Jones and the other Mt. SAC Defendants took no disciplinary action against him. In violation of Title IX and rejecting the DCL, they took no issue with his story of giving an extended "bear hug" to a woman without her consent. They did not even give a warning not to do it again. Exhibit BB (4/27/15 findings letter to Brown).

ARGUMENT

I. Summary judgment is improper when there are genuine disputes of material facts after viewing the evidence in the light most favorable to the non-movant (Plaintiff).

Summary judgment is denied if the pleadings and evidence show that there is genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Material facts are those that might affect the outcome of the case. *Anderson v. Liberty Lobby. Inc.,* 477 U.S. 242, 248 (1986). An issue is "genuine" when there is a sufficient evidentiary basis on which a reasonable factfinder could find for the nonmoving party. *Id.* at 248-49. When deciding on summary judgment, courts must view the evidence in the light most favorable to the nonmoving party and draw all justifiable inferences in their favor. *Anderson,* 477 U.S. at 255.

Summary judgment is rarely appropriate when credibility is at issue. *SEC v. M & A West. Inc.,* 538 F.3d 1043, 1055 (9th Cir. 2008). "[D]eterminations of credibility 'are manifestly the province of a jury.'" *Wall v. County of Orange,* 364 F.3d 1107, 1110-11 (9th Cir. 2004).

II. The Mt. SAC Defendants were deliberately indifferent in failing to protect Plaintiff from sexual harassment.

Mt. SAC is liable for student-on-student sexual harassment under Title IX if the school receives federal funds, the school had "actual knowledge" of the harassment, the harassment was "so severe, pervasive, and objectively offensive that it can be said to deprive [the plaintiff] of access to the educational

opportunities or benefits provided by the school," the school had "a minimum... authority to address the alleged discrimination and to institute corrective measures," the school acted with "*deliberate indifference*" to the harassment, and the school's deliberate indifference must have "subject[ed] [the plaintiff] to harassment," i.e., "cause[d] [the plaintiff] to undergo harassment or ma[d]e [the plaintiff] liable or vulnerable to it." *Davis v. Monroe Cnty. Bd. of Educ.,* 526 U.S. 629, 643-50 (1999) (emphasis added); *Reese v. Jefferson Sch. Dist. No. 14J,* 208 F.3d 736, 739 (9th Cir. 2000).[4]

The "deliberate indifference" standard entails the school's response being "clearly unreasonable in light of the known circumstances." *Davis,* 526 U.S. at 648. The response must be more deficient than merely "negligent, lazy, or careless," *Oden v. N. Marianas Coll.,* 440 F.3d 1085, 1089 (9th Cir. 2006). Rather, the facts must support "a plausible inference that the school made what amounts to 'an official decision... not to remedy' the discrimination." *Karasek v. Regents of the University of California,* 226 F.Supp.3d 1009, 1026 (N.D. Cal. 2016) (citation omitted).

"Deliberate indifference" is a fact-intensive inquiry that often must be resolved by the trier of fact. *Id.* (citing *Lilah R. ex rel. Elena A. v. Smith,* No. 11-cv-01860-MEJ, 2011 WL 2976805, at 5 (N.D. Cal. July 22, 2011).

A. The Mt. SAC Defendants adhere to an illegal definition of sexual assault that violates Title IX and led to their inaction against Defendant Brown.

At the relevant times in this case, the Department of Education Office for Civil Rights ("OCR") had promulgated on April 4, 2011 a Dear Colleague Letter ("DCL"), calling on college administrations to adhere to Title IX and take action

[4] Plaintiff's sex discrimination claim against Mt. SAC under California Education Code 220 follows this same test for liability. As this Court has noted (Dkt. No. 58, p. 11), the California Legislature "intended Title IX's standards of liability to apply to a section 220 claim for money damages." *Donovan v. Poway Unified Sch. Dist.,* 167 Cal. App. 4th 567, 606 (2008).

against the epidemic of sexual harassment at colleges and universities. Pl. Exhibit A (DCL), at 1.[5] The DCL defines sexual harassment as "unwelcome conduct of a sexual nature... [i]t includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature." DCL at 3. The DCL continued: "[A] single instance of rape is sufficiently severe to create a hostile environment." Ibid. This Court ruled in accord with this finding in its February 23, 2016 Order. (Dkt. No. 58)

Defendants Jones, Scroggins, and Czaja testified to being aware of the DCL and claimed to adhere to it. Exhibit G, Jones Dep., Vol. 1, 72:13-74:25; Exhibit I, Scroggins Dep., 17:17-22:11; Exhibit J, Czaja Dep., 47:22-48:14.

But Mt. SAC's policy, in violation of the DCL, departs from this definition: Mt. SAC's Board Policy (BP) 3540 defines "sexual assault" as "an unlawful attempt, coupled with a present ability, to commit a *violent injury* on the person of another; assault with the intent to commit *mayhem, rape, sodomy, oral copulation*, *rape* in concert with another; and lascivious acts upon a child, or *penetration* of genitals or anus with a foreign object (Penal Code 240) [sic] ." Exhibit B, BP 3540 ("Sexual and Other Assaults on Campus") (emphasis added). Mt. SAC's Policy Administrative Procedure (AP) 3540 shares this narrow definition: "'Sexual assault' includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault. [sic]" Pl. Exhibit C, AP 3540 ("Sexual Assaults on Campus").

It was this higher burden that the Mt. SAC Defendants placed on Plaintiff to determine whether Brown would be removed from his job, suspended, expelled, or given any discipline at all. This higher standard was the purview of College President Scroggins, for which he and the Mt. SAC administration are liable.

[5] The DCL was a "significant guidance document" as defined by the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices. See DCL at 1 n.1; 72 Fed. Reg. 3432.

1. Brown's own story described a sexual assault under Title IX, but not a sexual assault as defined in Mt. SAC's written policies.

Mt. SAC did not have to believe Mosavi to take action against Brown for committing sexual assault. Brown's own story described him committing a sexual assault under Title IX and California Education Code §76033(g).

Jones interviewed Chester Brown on February 21, 2014. At this meeting, Brown told Jones that he drove Mosavi to the Farm on December 12, 2013 in his car and parked it, and that they walked through the Farm. He knew that Mosavi had no romantic interest in Brown. CITATION. Brown knew that she was a Muslim woman who wore a hijab.

Jones recalled Brown's story in her deposition:

> Q. In that meeting did he describe to you what he recalled happened at the farm with Ms. Mosavi?
> A. Yes. What he described was that they had hung out a few times before, that they were friends and comfortable with each other. They went to the farm. It was closed. Essentially, his version of events lined up exactly with Ms. Mosavi's, with the exception of his description of the hug or embrace is decidedly different than Ms. Mosavi's.
> Q. Do you recall how he described the hug or embrace at that meeting?
> A. He says that they were facing each other, that it lasted for less than 30 seconds, I believe, that's what I recall.
> Q. Did he say who initiated the hug?
> A. He said that he requested the hug.
> Q. Did he tell you why he requested the hug?
> A. I wouldn't say specifically. What he said is that they were kind of joking around, which was their -- a way that they communicated. That it was cold. Ms. Mosavi offered him her jacket, which he declined. *She wanted to leave and he said, give me a hug or I want a hug,* something like that and *Ms. Mosavi said I want to go. Let's leave…*
> Q. Do you know or did you find out from Mr. Brown at that meeting whether it was daylight or whether it was evening?
> A. No, *he clearly said it was dark outside. It was at night.*
> Q. And did he tell you whether or not there were other people in the vicinity?
> A. No, the farm was closed. *There was no one there but them.*

> Q. Did he say whether or not -- did he tell you how Ms. Mosavi responded when he asked for the hug?
> A. If I recall correctly, *annoyed* would be a good description…

Exhibit G, Jones Dep., Vol. 1, 45:19-49:19 (emphasis added).

Brown's account as related by Jones after her first interview with him makes clear that Ms. Mosavi did not give consent to the hug, but instead said "I want to go. Let's leave." Under the standard of Title IX and the DCL this is clear sexual harassment. The explicit purpose of the DCL was to ensure that colleges and universities desist from their practice of ignoring and suppressing complaints by young women about this type of sexual harassment.

> Q. Do you know about how long the hug was supposed to have lasted? ...
> A. According to Mr. Brown, I believe he said it was less than 30 or 60 seconds...
> Q. 30 seconds – assuming it's 30 seconds, 30 seconds is a long hug.
> A. Uh-huh.

Exhibit G, Jones Dep., Vol. 1, 149:14-24.

As Jones herself admitted, she knew that whatever happened at the Farm on December 12, 2013 had traumatized Mosavi severely. Exhibit G, Lorraine Jones Dep., Vol. 1, 84:24-85:23, 139:20-24.

But Brown's story did not involve an attempt to commit "violent injury... mayhem, rape, sodomy, oral copulation, or penetration of genitals or anus with a foreign object," which Mt. SAC's Board Policy 3540 requires to constitute sexual assault that is actionable under Education Code §76030. See Exhibit B (BP 3540).

Jones did not find that Brown's conduct, as he described it, violated Mt. SAC's policy. In Jones' deposition, she responded to the question "Did you believe that Mr. Brown's description of what occurred, giving her a bear hug, was insufficient to make a claim of sexual harassment? … In the context of it happening in the dark at the farm?" by saying, "[A]s it's described, I would say the findings wouldn't have changed." Exhibit H, Jones Dep., Vol. 2, 27:2-20.

Nor did the Mt. SAC Defendants see anything wrong with Brown's admission that he hugged people, including women, at work "all the time." Exhibit H, Jones Dep., Vol. 2, 14:15-21. Exhibit K, Brown Dep., 80:23-25. Brown's supervisor, Rene Pyle, told Jones that Brown was a "hugger" at work. Exhibit AA (7/3/14 findings letter), at 3; also see Exhibit V (April 2014 Carl report), at 7. Mt. SAC found nothing concerning about Brown's proclivity to hug women at work. Defendant Czaja was oblivious to the possibility that this could be inappropriate:

> Q. During the course of this investigation if you ever became aware of the fact that Mr. Brown frequently hugged women employees on the job, would you have advised him to stop doing it? ...
> A. I don't know. I'd have to know the full circumstances. *People hug each other at community colleges. We would hope that it's always welcome and never unwelcome.*

Exhibit J, Czaja Dep., 68:25-69:10.

This from the administrator who made the final determination that Mosavi had not demonstrated any basis for her claim that the college needed to recognize. Any sexual harassment policy starting from the legal basis of Title IX and the Dear Colleague Letter must recognize that not all hugs are welcome. This is the entire basis of the policy. As of February 21, 2014, Jones and the other Mt. SAC Defendants had enough information to immediately discipline Brown. But they did nothing. They did not even issue a verbal warning, for having hugged a woman in the dark for up to a minute while she was alone, her freedom was compromised, and she had said "no." Exhibit BB (4/27/15 findings letter to Brown).

2. Defendant Jones repeatedly interrogated Mosavi and asked her to reenact the rape on another person, pursuant to an investigation to determine the incident met Mt. SAC's illegal definition of sexual assault.

Per Jones' directive, Mosavi supplemented her account to Jones with additional details as she recalled them after their initial February 11, 2014 meeting. Exhibit D, Plaintiff Dep., Vol. 1, 54:24-55:11. None of these additional details

contradicted her previous account so as to justify further questioning. But Jones scheduled further meetings and made Mosavi relive the rape and retell her entire experience.

At a meeting with Jones, Jones told Mosavi that they would need to meet again, and to be ready to undergo a physical reenactment of the rape. Plaintiff Decl. ¶26. At the April 4, 2014 meeting, Jones was accompanied by Mt. SAC's Director of Human Resources, Cynthia Hoover. Hoover is also a senior administrator who consulted Jones regularly in the course of their investigation of Mosavi's complaint. They had met prior to the April 4, 2014 meeting to discuss how they would run the meeting. Exhibit G, Jones Dep., Vol. 1, 22:9-26:20.

In the meeting, Jones claimed that she could not understand how Brown could grope Mosavi while she was against the wall. Jones directed Mosavi to reenact what Brown had done to her on Hoover, who was to represent Mosavi.[6] Mosavi had great difficulty with this demand. She touched Hoover solely to pose her to represent Mosavi's body position as Brown raped her. She refused to emulate what Brown had done to her on Hoover. While she was in this vulnerable state, the two administrators asked Mosavi many detailed questions. They asked her to recall whether her palms were up or down. They asked her to recall whether Brown's body position allowed her to move to the left or to the right. They placed importance on whether she was fully pressed against the wall, or whether there was a distance (even a few inches) between her and the wall.[7] Jones also asked Mosavi if she had been "penetrated." Plaintiff Decl. ¶¶28-32.

---

[6] Jones denies requiring Mosavi to touch Hoover. Mosavi recalls otherwise, Plaintiff Decl. ¶¶28-32. (When Mosavi requested the notes from these meetings in June 2014 and in the present litigation, Mt. SAC failed to produce them. See *infra*.)

[7] Mt. SAC's administrative findings letter illustrates that Jones and Hoover were seeking to determine whether Mosavi was completely unable to move: "You were not actually *pinned* against a wall but standing back several *inches* from the wall, with only your hands up against the wall. You maintained that you were facing the wall and had room to have stepped to the right or the left but did not because you

Mosavi's initial account to Mt. SAC administrators already met the definition of sexual assault as defined under Title IX jurisprudence and California law ("actual or attempted sexual contact with another person without that person's consent").

But Jones and the other Mt. SAC Defendants placed especial importance on whether Mosavi was fully pressed against the wall and whether she was penetrated in order to meet Mt. SAC's illegal standard of sexual assault, which must include "*an unlawful attempt, coupled with a present ability*, to commit a *violent injury* on the person of another; *assault* with the intent to commit mayhem, *rape*, sodomy, oral copulation, rape in concert with another; and lascivious acts upon a child, or *penetration* of genitals or anus with a foreign object (Penal Code 240)." Exhibit B (BP 3540) (emphasis added).

B. A genuine dispute exists over whether the Mt. SAC Defendants' dismissal of Plaintiff's credibility, while accepting Brown's implausible and self-contradictory story, was clearly unreasonable.

The level of proof required in school misconduct proceedings is a preponderance of the evidence. This simply requires "the trier of fact to believe that the existence of a fact is more probable than its nonexistence." *Concrete Pipe & Products of California, Inc. v. Constr. Laborers Pension Trust for S. California,* 508 U.S. 602, 622 (1993).

Jones continues throughout the "investigation" to operate on the illegal standard set forth by Mt SAC Administration. As shown below, Jones is supposedly trying to establish whether there was a violation of Title IX, which Mosavi's and Brown's initial statements already had made clear existed. What is she searching for? For criminal and violent rape that is the only basis to satisfy actionable sexual harassment assault according to Mt. SAC's policies. This is

---

were frozen and unable to move." Exhibit AA (7/3/14 findings letter) (emphasis added).

illegal, and is the exact behavior on the part of colleges and universities that the DCL and other orders that accompanied it were intended to halt.

1. The Mt. SAC Defendants knew that Mosavi was traumatized by Brown on December 12, 2013.

Mosavi's acute mental distress as she told her account to Jones strongly supported her credibility. Mosavi remembered this traumatizing incident as a series of terror-filled flashbacks, and she struggled to recall the details in her meetings with Jones and frequently broke into tears. Jones knew from her meetings with Mosavi that Mosavi had been traumatized. Jones and Defendant Smith told Mosavi that she should seek counseling. Exhibit Q (3/5/14 Jones letter to Mosavi); Exhibit G, Jones Dep., Vol. 1, 105:17-20. Jones testified: "Ms. Mosavi was overcome with emotion and was unable to talk, so she would either just cry or she had to go to class. And so one of the things that I communicated to her is that I would meet with her as often as she needed me to feel that she shared everything that needed to be shared." Ibid, 77:17-21. As described *infra,* Mosavi experienced severe emotional suffering and continues to do so to this day.

Defendant Jones knew firsthand, from having provided services to victims of sexual abuse and trauma, that traumatizing events could have an effect on memory and that recalling exact details and their exact sequence could be difficult and take time. Exhibit G, Jones Dep., 85:7-16, 105:9-17. Jones directed Mosavi to let her know additional details as she recalled them. Exhibit D, Plaintiff Dep., Vol. 1, 54:24-55:11.

2. The Mt. SAC Defendants' fail to disclose notes that are material to their claims against Ms. Mosavi used to justify ruling against her.

The Federal Rule of Civil Procedure 37 imposes penalties on parties who did not preserve or disclose relevant documents in discovery. For Rule 37 to have any meaning, there must be consequences for the Mt. SAC Defendants failing to disclose key documents int his case.

Rule 37(c) states that, if a party fails to disclose documents, the Court may impose sanctions including taking "designated facts… as established for purposes of [an] action," "prohibiting the [nondisclosing] party from supporting or opposing designated claims or defenses," and "rendering a default judgment against the [nondisclosing] party." Fed. R. Civ. P. 37(c)(1)(C).

There are glaring omissions in the Mt. SAC Defendants' disclosures. On July 18, 2017, Plaintiff promulgated requests for production of all documents from the investigation, including specifically notes from the meetings that Jones had with Mosavi on February 11, 2014, March 28, 2014, April 4, 2014, April 22, 2014, and June 6, 2014. Pl. Exhibit CC (Mt. SAC's 9/14/17 response to document requests), at 3-4. Defendants disclosed meeting notes from Jones' February 11, 2014 meeting with Mosavi, her February 21, 2014 meeting with Brown, and from her interviews of three other witnesses. But they did not disclose the notes from several meetings they had with Brown, from Mosavi's meetings with Jones on March 28, April 4, April 22, and June 6, and from Mosavi's interview with Public Safety Officer Kelly, the first official to whom Mosavi reported that Brown had penetrated her. The April 4 meeting is the one in which Mosavi was directed to reenact the rape on an administrator.

Plaintiff made a follow-up request for the notes from Mosavi's meetings with Jones. The Defendants responded that all existing notes had been produced. Pl. Exhibit DD (Mt. SAC's 11/13/17 response). However, Defendant Jones testified at her deposition on March 2, 2018 that there had been a notetaker at all her meetings with Mosavi and Brown, and that Mt. SAC had a protocol of storing those notes in an investigation file. Mt. SAC employee Joanne Franco added to the file, and there was both a physical copy and an electronic copy. Exhibit G, Jones Dep., Vol. 1, 28:19-34:24. These copies existed when Jones last worked for Mt. SAC in June 2015. Ibid, 98:17-99:16.

The lack of these notes prejudices Plaintiff on proving material facts, for the Mt. SAC Defendants make claims about the April 4, 2014 meeting to impugn Plaintiff's credibility (see *infra*). Plaintiff is confident that if the notes had been produced, they would have corroborated Plaintiff's account. Plaintiff Decl. ¶¶28-32. "Cur[ing]" the prejudice here requires, at minimum, not granting summary judgment to the Mt. SAC Defendants due to their non-preservation and/or non-disclosure of these notes.

3. Brown's accounts were implausible and inconsistent.

Brown's story as he was interviewed by various college officials, changed drastically. Plaintiff only has access to the notes from Brown's initial meeting with Jones on February 21, 2014, and his meeting with Public Safety Officer Joseph Carl on April 23, 2014. Brown had several other meetings with Jones at which notes were produced, but the Mt. SAC Defendants have failed to disclose them. The produced notes show contradictions in Brown's testimony, although the fact that he was aware he did not receive consent from Mosavi is clear from the beginning.

When Brown gave his story to Officer Joseph Carl of Mt. SAC's Department of Public Safety, he contradicted himself in several respects:

- Brown told Carl that he hugged Mosavi at his car. Carl reported: "Then we walked back northwest, (the way they came down), to the car – *when they got to the car*, Chester gave her a hug, they go into his car and he drove her to her veh[icle]." 4/23/14 AM DD 000219. Brown then told Carl that they hugged at a building near the car: "I described the old Building F3 area and tractor barn. Student Brown said, 'Yes, that's where we were.'... "'When I hugged her, or when I was letting go, my hand dragged behind her back, then I came to her waist, and I said to her okay, *let me take you to your car.*'" 4/23/14 AM DD 000112-13 (emphasis added).

- Brown also told Carl: "I told her that I always wanted to see what's in there. I've never been in there and they have tools in there. So when I came, I actually went into this building and I looked inside." 4/23/14 AM DD 000113. He also said they were at the building 7-10 minutes. AM DD 000112. But at night it was so dark that it was impossible to see anything in the darkness. Exhibits GG3 and GG4 (night-time videos of area where rape occurred); Plaintiff Decl. ¶61; Exhibit D, Mosavi Dep., Vol. 1, 212:4-7, 223:20-22.

The Mt. SAC Defendants did not put any effort into finding out whether Brown's account to Carl was consistent with his previous accounts. Jones testified that she never saw Carl's report; she only saw the photographs that Carl took of the location of the rape. Exhibit G, Jones Dep., Vol. 1, 89:6-91:18.

4. Mosavi's account was consistent and credible, despite Mt. SAC's effort to sabotage her by requiring her to repeat it and to reenact the rape.

The Mt. SAC Defendants, consistently unwilling to take action against sexual harassment as demonstrated by their Board Policy 3540, discounted Mosavi's account by claiming there were "inconsistencies" in her accounts.

Despite having to recount her trauma six times, Mosavi's accounts remained consistent and had increasing detail. Exhibits N, O, V, W (5/8/14 notes from Los Angeles Sheriff's Department interview of Mosavi). Defendant Jones knew firsthand from having provided services to victims of sexual abuse and trauma that traumatizing events could have an effect on memory, and that recalling exact details and their exact sequence could be difficult and could take time. Exhibit G, Jones Dep., Vol. 1, 85:7-16, 105:9-17. As Mosavi reported new recollections and clarified the meaning of certain terms such as "penetration," giving the administration ample evidence of sexual harassment and assault. Plaintiff Decl. ¶15. Rather than rule for Mosavi on the basis of Title IX and their own erroneous

standard, the Mt. SAC Defendants ruled against Mosavi for doing as they had instructed her to do: clarifying her account and adding details to it.

Mt. SAC attempted to discredit Mosavi solely on *Jones' assertions* of what occurred at her April 4, 2014 meeting with Mosavi, the meeting in which Mosavi was asked to reenact the rape on another person.[8] The Mt. SAC Defendants have failed to produce the notes from that meeting despite assurances by Ms. Jones that such notes exist. Factual disputes that get at the credibility of either Plaintiff or Defendants would be improper at the summary judgment stage, as "determinations of credibility 'are manifestly the province of a jury.'" *Wall v. County of Orange,* 364 F.3d 1107, 1110-11 (9th Cir. 2004).

At the March 28, 2014 meeting, Jones told Mosavi to be prepared for a reenactment of the rape at the April 4 meeting, and told her that she had to participate or else she would not be considered credible. (Mt. SAC has failed to produce notes from this meeting.)

Czaja misrepresented Mosavi's account, and furthermore cast doubt on her honesty by citing her difficulty in answering a question while being asked by two senior administrators to physically reenact the rape on one of them:

> During this meeting, you were asked to demonstrate how you were pinned against the wall by Mr. Brown, using [Director of Human Resources] Ms. Hoover to illustrate. When asked to clarify how Mr. Brown had touched multiple areas on your body as you were pinned against the wall as you had previously described, you paused for a few minutes prior to responding and then indicated that you were not

[8] In Mt. SAC's July 3, 2014 letter, they claimed that Mosavi contradicted herself because she had first said that Brown had "pinned" her against the wall, and also said in the April 4, 2014 meeting that she was standing "several inches" from the wall with her hands against it. Exhibit AA (7/3/14 findings letter). Mt. SAC's distinction is only important to them because they were applying their illegal standard of sexual assault. The July 3 letter also claims that Jones, when asking Mosavi whether there was "penetration," clarified that this included penetration by a finger. This is false. Plaintiff Decl. ¶¶14,31,44.

actually pinned against a wall but standing back several inches from the wall, with only your hands up against the wall.

Exhibit AA (7/3/14 findings letter), at 3.

Jones' line of questioning as shown in this letter reveals not only the absurd degree of exactitude that Mt. SAC demanded a rape victim have when recounting her traumatic experience; it also illustrates the importance that the Mt. SAC Defendants placed on physical coercion and the threat of violence in order to find that Brown committed a "sexual assault" as defined by Mt. SAC's Board Policy 3540, in violation of Title IX. Exhibit A (DCL); Exhibits B, C (board policies).

C. Mt. SAC's investigation treated Mosavi differently based on sex by discrediting her, ignoring her witnesses, and denying her any meaningful opportunity to rebut Brown or appeal the findings.

Mosavi asked Jones to interview Mosavi's sister, Sayedah (a.k.a. Tayyaba) Mosavi, who could have shared her own negative experiences of harassment by Brown. Pl. Exhibit T (Mosavi's 3/28/14 email to Jones); Exhibit X (Mosavi's 5/26/14 email to Jones AM DD 000157). Mt. SAC did not give Sayedah Mosavi any serious consideration and did not interview her.[9]

As Sayedah Mosavi testified in her deposition, upon arriving at work in mid-April 2013 Brown told her, "Are you trying to seduce me now?" because she wore a hijab with flowers. She was taken aback, was uncomfortable, and shook her head no. She told him: "Maybe next time I'll come in wearing a trash bag." To which he responded: "That would seduce me even more." Exhibit L, Sayedah Mosavi Dep., pp. 36:12-38:10. She was offended and angry: "It was uncalled for. I did nothing to warrant that. I don't appreciate any kind of attention of a sexual nature, and that

[9] Despite Mosavi emailing Jones in March and Carl in May of 2014 identifying her sister as a witness of *harassment by Brown*, Jones testified at her deposition that Mosavi's sister was offered to "speak to the fact that she had expressed romantic interest in Mr. Luna and not Mr. Brown [sic]" and that Mosavi did not offer her sister as a witness until June 2014. Exhibit G, Jones, Vol. 1, Dep., 128:14-129:18.

was pretty well known about me at the TMARC. It was also well known that I went in to do my work and not really to socialize." Exhibit L, Sayedah Mosavi Dep., 42:15-22. On a later occasion, he greeted her when she arrived at work again by saying "Are you trying to seduce me now?" while she wore a plain back coat. She ignored him, and he did not apologize. Ibid, 52:15-54:6. These interactions were relevant to showing Brown's motive and state of mind, where he fixates on Muslim women who wear a hijab and enjoys violating the boundaries they set out for him.

Jones chose not to interview Sayedah Mosavi, claiming in her Declaration that this was because "any report of Sayedah's experiences or interactions with Mr. Brown would solely be related to Mr. Brown's character, which was not an element of my investigation [sic]." Jones Decl. ¶4.

But character witnesses are proper witnesses in Title IX investigations. See *Doe v. Regents of University of California,* 2017 WL 4618591 at 8 (C.D. Cal. June 8, 2017) (denying motion to dismiss, where Title IX complainant was not allowed to furnish character witnesses while his accuser was). The DCL states: "[A] hearing officer or disciplinary board should not allow only the alleged perpetrator to present *character witnesses* at a hearing." DCL at 11.

More notably, the Mt. SAC Defendants had no problem interviewing Brown's supervisors, who were *not* present at the Farm on December 12, 2013 and who were predisposed to favor Brown. Their July 3, 2014 letter stated that the witnesses reported no previous complaints against Brown. The letter gave weight to the testimony of Brown's supervisor Rene Pyle:

> Witness 1 (W1) [Rene Pyle] reported that she works very closely with all the student staff, particularly the tutors. W1 reported that she has directly observed Mr. Brown greeting others by extending his arms for a big hug. *She reports that he is a 'hugger.'* W1 reports that she has no knowledge of any incidents occurring between Mr. Brown and yourself in the work environment.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

Exhibit AA (7/3/14 findings letter) (emphasis added).

Showing its bias, Mt. SAC found this questionable character "evidence" to be valid in its investigation.

Plaintiff Mosavi also requested that Jones interview people who were not Brown's supervisors, particularly female coworkers of Brown. As Mosavi explained, coworkers were more likely to be at the front counter where Brown interacted with people, and Brown likely would have behaved differently outside of direct observation by his supervisors. Exhibit Z (6/9/14 Mosavi email to Jones). But Jones did not interview any of Brown's coworkers.

D. The Mt. SAC Defendants failed to take interim measures to protect Mosavi from seeing her rapist and took no disciplinary action against Brown, and were therefore deliberately indifferent in protecting Plaintiff from further harassment.

Even before exonerating Brown, Mt. SAC failed to address Mosavi's fear of running into Brown. As of Jones' February 21, 2014 meeting with Brown, Brown "ha[d] no restrictions with working with Aarefah." Exhibit P (2/21/14 notes from Jones meeting with Brown). The Mt. SAC Defendants did not remove him from his job, not even temporarily, even though Mosavi worked there and had a class that met twice a week in the same building. Nor did the Mt. SAC Defendants place any restrictions on Brown's movement on the campus.

Colleges and universities routinely place much more significant restrictions on students who are accused of sexual assault. *See Karasek v. Regents of University of California,* 226 F.Supp.3d 1009, 1019-20 (2016) (UC-Berkeley imposed an interim suspension on a student accused of sexual assault, and modified the suspension to allow him to "attend his classes only" and to be on campus for five minutes before and after each class); *Ramser v. Laielli,* 276 F.Supp.3d 978, 983 (2017) (university instituted a no-contact order on a student

accused of sexual assault and prohibited him from being on campus except to attend classes).

When reporting her rape to Bailey Smith and Lorraine Jones, Mosavi told them that she did not want to leave her job at the tutoring center because she did not want to lose work hours that she needed, and that Brown should be removed, not her. Her understanding was that this request would be met. Plaintiff Decl. ¶17.

Mosavi still saw Brown regularly about once a week for several weeks. One time, as she and her friend Aisha Siddiqui were leaving their biology class, Brown was standing at the bottom of a set of stairs leading up to the classroom. He had been standing there waiting for her, as he was staring up at the door right when she exited. He had a smirk on his face. Mosavi chose not to go down the stairs and took a detour. Exhibit D, Plaintiff Dep., Vol. 1, 173:21-175:11, 182:15-184:22, 187:18-23; Plaintiff Decl. ¶¶18-19. On March 5, 2014, she found out from a supervisor that Brown was still working at the TMARC. The next day, Mosavi met with Jones and complained. Jones was only concerned about whether Brown had "touched" or "spoke" to Mosavi, and refused to reschedule Brown's work hours so that they were at the same time as her biology class. Plaintiff Decl. ¶¶20-21; Exhibit R (notes from 3/6/14 Jones meeting with Mosavi). This explicit refusal by Mt. SAC to take action on Mosavi's request for reasonable accommodations was a flagrant violation of Title IX and distinguishes this from Mt. SAC's leading authority, *Moore v. Regents of the Univ. of Calif.,* 2016 WL 4917103 (N.D. Cal., Sept. 15, 2016, No. 15-CV-05779-RS) (finding no Title IX violation where the plaintiff did not allege she had requested an investigation or any interim measures against perpetrator). See *Doe ex rel. Doe v. Derby Bd. of Educ.,* 451 F. Supp. 2d 438 (D. Conn. 2006) ("a reasonable jury could conclude that *further encounters, of any sort*, between a rape victim and her attacker could create an environment sufficiently hostile to deprive the victim of access to educational opportunities") (emphasis added).

E. Mt. SAC's actions denied Plaintiff equal access to education.

The Mt. SAC Defendants make light of Mosavi's damages in their MSJ. As detailed below, her emotional suffering far surpasses that experienced by the plaintiffs in their leading (and non-controlling) case, *Hawkins v. Sarasota County School Bd.,* 322 F.3d 1279 (11th Cir. 2003). Here, Mosavi was sexually assaulted and raped. The Mt. SAC Defendants are attempting to resurrect their argument, twice rejected by this Court, that more instances of harassment from a perpetrator must occur before a school can be found liable under Title IX. This Court in its February 23, 2016 Order ruled correctly that this is not the law. (Dkt. No. 58 at 12)

The continued encounters with Brown and Mt. SAC's decision to allow Brown to continue to work increased her anxiety and interfered with her ability to concentrate that semester. She was in constant fear of seeing Brown while at the campus. She felt at all times like he was watching her. Plaintiff Decl. ¶22.

When Mt. SAC informed her that they would not discipline Brown, her psychological symptoms worsened dramatically. She felt like she was not protected, and that Brown might now retaliate against her. She began to have hypnagogic and hypnopompic hallucinations, and had nightmares that involved a strange phantom figure sexually assaulting her. She had persistent, severe trouble sleeping due to fear of having these experiences, and sometimes went 48 hours without sleeping. Plaintiff Decl. ¶¶51-52.

In the years since, Mosavi has had persistent, severe psychological problems. She cannot recount her rape without reliving it and becoming visibly distraught. Exhibit GG1 (video of 4/16/15 public statement about rape). She has been diagnosed with depression and Post-Traumatic Stress Disorder. Exhibit EE (Mosavi medical record); Exhibit D, Plaintiff Dep., Vol. 1, 31:3-9. She suffers from lapses in memory, inability to focus, lack of appetite, and panic attacks. She has frequent night terrors in which she relives her rape. She must undergo talk therapy once a week. She is on medication for depression and anxiety. She

1 attempted suicide in Fall 2016, and she has had suicidal ideation as recently as
2 January 2018. Plaintiff Decl. ¶¶51-55.

3 Her ability to engage with academics was severely compromised. Starting in
4 Spring 2014, she found that the way she retained information changed. She found
5 that when she studied, she could not retain the information longer than a day, so
6 she was forced to cram for her exams, and at times had to save all her studying for
7 the same day of the exam. Starting in Spring 2014, she has had to take a far
8 reduced course load. While she could manage four to seven classes per semester
9 previously, she can now only take two to three classes. She is enrolled in UC-
10 Berkeley's Disabled Students Program and frequently must have accommodations.
11 Plaintiff Decl. ¶¶22,55; Exhibit FF (emails exchanges with professors).

12 **III. Defendants Scroggins, Czaja, Jones, and Smith are individually**
13 **liable under 42 U.S.C. § 1983.**

14 As this Court has ruled (Dkt. No. 58 at 9), government actors violate the
15 Fourteenth Amendment's guarantee of equal protection when they are
16 "deliberately indifferent" toward acts of student-on-student harassment. *Flores v.*
17 *Morgan Hill Unified Sch. Dist.,* 324 F.3d 1130, 1134 (9th Cir. 2003). This inquiry
18 of "deliberate indifference" toward harassment under §1983 is the same inquiry as
19 under Title IX.

20 Defendant Dr. William Scroggins is the officer responsible for defining
21 sexual harassment at Mt. SAC and instituting procedures to prevent it: "The
22 College President/CEO shall establish procedures that define harassment on
23 campus." Exhibit B (BP 3430). He is responsible for reviewing Mt. SAC's
24 policies. Exhibit I, Scroggins Dep., 67:2-6. On June 6, 2014, Mosavi informed him
25 personally that the investigation had been unfair and biased. She notified him that
26 the investigators had not interviewed her witnesses. Scroggins told Mosavi that he
27 would keep the investigation open until those witnesses were interviewed. Plaintiff
28 Decl. ¶42. This was untrue. Mosavi was under the impression that the investigation

into her complaint was still open. She was only made aware that it was closed when she received the July 3, 2014 letter. Plaintiff Decl. ¶¶42,46-48. This further denied Mosavi an opportunity to timely appeal the result of the investigation.

Defendant Lorraine Jones conducted the investigation of Mosavi's complaint of rape by student Chester Brown using a standard that was in violation of Title IX and California law.

Defendant James Czaja consulted regularly with Jones about the investigation of Mosavi's complaint. Jones gave him frequent updates about the course of the investigation during their weekly meetings. Exhibit J, Czaja Dep., 27:4-14; Exhibit G, Jones Dep., Vol. 1, 26:3-17. In April, Czaja directed Jones to stop directly investigating the case and had her cancel her meeting with Mosavi to visit the site of the rape. Ibid, 87:9-21. Together with Jones, he met with Mosavi on June 6, 2014 to tell her the result of their investigation, and to make clear that the decision was his as well as Jones'. Ibid, 101:21-103:4.

IV. The timely notice and lack of prejudice to Defendants, and Plaintiff's diligent pursuit of her claims in good faith despite the Mt. SAC's failure to inform her of her options for administrative relief, entitle Plaintiff to equitable tolling on her state-law claims.

A. Mt. SAC Defendants cite the wrong legal standard.

The Mt. SAC Defendants' leading authority, *Johnson v. Henderson,* 314 F.3d 409 (9th Cir. 2009), is a *federal* case that applies the doctrine of equitable estoppel to the requirement of filing a discrimination claim with the Equal Employment Opportunity Commission (EEOC) before filing a Title VII claim of race discrimination. This Court is being asked to apply the doctrine of equitable estoppel to the requirement to file a state claim under the Government Tort Claims Act ("the Act"), a *California* requirement for which California's highest court weighed the legislature's intent and public interests and set an entirely different, more liberal equitable-estoppel standard.

1 Under the Government Claims Act ("the Act"), a claim presented to a state
2 entity after the six-month and one-year[10] periods in the Act is not barred, if the
3 doctrine of equitable tolling applies and "tolls" the statutory deadlines, which it
4 does in this case. *Addison v. State of California*, 21 Cal.3d 313, 316 (1978).
5 California's leading case in this regard is *McDonald v. Antelope Valley*
6 *Community College District*, 45 Cal.4th 88 (2008). The doctrine of equitable
7 tolling is "designed to prevent unjust and technical forfeitures of the right to a trial
8 on the merits when the purpose of the statute of limitations—timely notice to the
9 defendant of the plaintiff's claims—has been satisfied." *McDonald*, 45 Cal.4th at
10 99 (emphasis added), quoting *Appalachian Ins. Co. v. McDonnell Douglas Corp.*,
11 214 Cal.App.3d 1, 28 (1989). The doctrine will "suspend or extend a statute of
12 limitations as necessary to ensure fundamental practicality and fairness." *Id.*
13 (internal citation omitted). "[B]y alleviating the fear of claim forfeiture, it affords
14 grievants the opportunity to pursue *informal remedies*, a process we have
15 repeatedly encouraged." *Id.* at 100 (emphasis added, internal citations omitted).
16 *McDonald* sets for the test for equitable tolling of the claim-present
17 requirement of the Act: "[1] timely notice, and [2] lack of prejudice to the
18 defendant, and [3] reasonable and good faith conduct on the part of the plaintiff."
19 *Id.* at 102. When applying this three-part test, the Court must, "as with other
20 general equitable principles… balanc[e]… the injustice to the plaintiff occasioned
21 by the bar of his claim against the effect upon the important public interest or
22 policy expressed by the [operative] limitations statute." *Id.* at 103. Also see
23 *Cervantes v. City of San Diego*, 5 F.3d 1273, 1275 (9th Cir.) ("California courts
24
25
26 [10] In their MSJ, the Mt. SAC Defendants selectively avoid referring to the Act's
27 provision allowing for applications for leave to file a claim after six months and
before twelve months have elapsed. See Cal. Gov't. Code §911.4(b). This lawsuit
28 was filed eleven months after Czaja's administrative findings letter, on June 3, 2015.

have liberally applied tolling rules or their functional equivalents to situations in which the plaintiff has satisfied the notification purpose of a limitations statute.”).

B. There was no lack of notice and no prejudice to the Administration Defendants, and Plaintiff pursued her claims in good faith.

“Equitable estoppel and equitable tolling present questions of fact.” *Hopkins v. Kedzierski*, 225 Cal.App. 4th 736, 746 (2014); also see *McMahon v. Valenzuela*, No. 2:14-cv-02085, WL 5680305, at 15 (C.D. Cal. Sept. 24, 2015) (viewing evidence in the light most favorable to plaintiff when considering plaintiff's claim of equitable estoppel). At summary judgment, this Court must draw all reasonable inferences from the evidence in favor of the Plaintiff. *Anderson,* 477 U.S. at 255.

The Mt. SAC Defendants had prompt notice (*McDonald)* that Plaintiff took issue with their handling of the investigation. On June 6, 2014, Mosavi met with Scroggins and complained about the lack of cameras at the Farm. CITATION. Also that day, Mosavi gave notice to Jones and Scroggins that she objected to how Mt. SAC handled the investigation. Plaintiff Decl. ¶¶44-45. When Mosavi fully detailed the Mt. SAC Defendants' failures in her statements beginning in April 2015, Defendant Mt. SAC President Scroggins spoke to news media to respond. Exhibit I, Scroggins Dep., 52:24-53:23 and Scroggins Exhibit S-3.

There is no prejudice (*McDonald)* against the Mt. SAC Defendants. Jones treated Mosavi's complaint against Brown as a formal complaint. Exhibit G, Jones Dep., Vol. 1, 40:6-8. Mt. SAC documented the investigation thoroughly, taking notes at all meetings. Ibid, 28:19-34:24, 98:20-25.

Mosavi pursued her grievances about the investigation reasonably and in good faith (*McDonald),* in spite of the Mt. SAC Defendants' misconduct misleading and discouraging her from doing so. In June 2014, Mosavi was under the impression that her investigation was still open because Defendant Scroggins had said he would keep it open. The Mt. SAC Defendants never told her it was closed until their July 3, 2014 letter. In it, Czaja stated: “[I]t is the District's

conclusion that no further action is warranted at this time. You have been advised of your right to seek resolution of your complaint with external organizations, including law enforcement, should you wish to do so. *The District considers this matter closed.*" Ex. AA (7/3/14 findings letter) (emphasis added). This was in violation of state law.[11] Jones did not provide Mosavi with documents informing her of right to complain or about her investigation. Plaintiff Decl. ¶12.

Pursuant to Czaja's letter to seek resolution from "external organizations," Mosavi awaited the conclusion of the Los Angeles County Sheriff's Department investigation. She filed a police report on May 8, 2014. Exhibit W (Sheriff's report). In Spring 2015, the Sheriff's Department contacted Mosavi and was still considering the case. Plaintiff Decl. ¶57. A positive outcome might have provided a basis for reopening the Mt. SAC investigation.

Defendants' unlawful conduct forced Plaintiff to discover her administrative appeal options on her own. Nine months after Mt. SAC's administrative findings letter in April 2015, Mosavi tried to informally resolve the matter by publicly urging Defendants Scroggins, Jones, Czaja, and the Mt. SAC Board of Trustees to

---

[11] The California Code of Regulations lists what community college districts must do when a student makes a complaint of unlawful discrimination, including:

> (3) notify the person bringing the charges of his or her right to file a complaint, as defined in section 59311, and of the procedure for filing such a complaint pursuant to section 59328; (4) advise the complainant that he or she may file his or nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction.

5 CCR § 59327(a). Furthermore, the California regulations require that a community college district, once it concludes its investigation, must issue the complainant a written finding that includes "the complainant's right to appeal to the district governing board and the Chancellor." 5 CCR § 59336(a)(4).

reverse the administrative finding. Mosavi made numerous public statements detailing the Mt. SAC Defendants' failures, and made a statement to Mt. SAC's Board of Trustees on May 27, 2015. Exhibit G2 (video of Mosavi statement to Board of Trustees, at 47:50). Plaintiff Decl. ¶56.

The Mt. SAC Defendants continued their failure to provide Mosavi a fair and equitable investigation into Spring 2015. When it was apparent that the Administration Defendants would not reverse their decision, Mosavi filed the instant case in federal court on June 3, 2015, well within the statute of limitations. In December 2015, Plaintiff informed Defendants that she sought to add analogous state claims to the complaint.

The facts here are stronger than in the leading case *McDonald* in which equitable estoppel was granted. Here, the individuals whose misconduct is in question in this case are the Mt. SAC administrators themselves. They were in the midst of conducting a formal investigation in which all the parties' conduct was fully documented. In *McDonald,* the college had duly notified the plaintiff of her right to appeal her decision in the college system and file a claim with the Department of Fair Employment and Housing (DFEH), *McDonald,* 45 Cal.4th at 97. Here, the Mt. SAC Defendants failed to tell Plaintiff Mosavi how to pursue administrative relief.

By Plaintiff's Attorneys,
UNITED FOR EQUALITY AND AFFIRMATIVE ACTION LEGAL DEFENSE FUND

BY: /s/ Shanta Driver
Shanta Driver (Michigan Bar P65007)*
Ronald Cruz (State Bar No. 267038)
Monica Smith (Michigan Bar P73439)*
755 McAllister Street
San Francisco, CA 94607
(510) 875-4463
*Appearing *pro hac vice*

Dated: April 19, 2018