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Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
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By: Narzralli Baksh, Deputy

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA
ANACAPA DIVISION

11 SHERI WALKER-FRANCEY, an
12 individual,

13 Plaintiff,

14 v.

15 THE REGENTS OF THE UNIVERSITY
16 OF CALIFORNIA, a public entity; and
DOES 1-50, inclusive,

17 Defendants.

Case No. 19CV02279

COMPLAINT:

- 1. **SEXUAL HARASSMENT – HOSTILE WORK ENVIRONMENT – FEHA;**
- 2. **FAILURE TO PREVENT SEXUAL HARASSMENT – FEHA;**
- 3. **NEGLIGENT RETENTION OF AN UNFIT EMPLOYEE;**
- 4. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; AND**
- 5. **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

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INTRODUCTION

1. This is an action for damages brought by Plaintiff SHERI WALKER-FRANCEY (hereinafter "Plaintiff" or "Walker-Francey") against Defendants REGENTS OF THE UNIVERSITY OF CALIFORNIA ("Regents" or "Defendant") and DOES 1-50 (referred to collectively herein as "Defendants"). Plaintiff asserts causes of action for: (1) Harassment Based

1 on Sex – Hostile Work Environment – FEHA; (2) Failure to Prevent Harassment – Retaliation –
2 FEHA; (3) Negligent Retention of an Unfit Employee; (4) Intentional Infliction of Emotional
3 Distress; and (5) Negligent Infliction of Emotional Distress.

4 2. Plaintiff’s claims arise from Defendants’ actions while she was employed at the
5 University of California, Santa Barbara (hereinafter “UCSB”).

6 3. Sexual harassment is contrary to public policy of the State of California, and
7 although it is unlawful, it persists in employment across all levels of socioeconomic status. The
8 University of California system is no exception. While Plaintiff was employed at UCSB, her co-
9 worker, Jose Preza (“Preza”) sexually harassed her and subjected her to outrageously offensive
10 behavior and physical contact, including forcing himself on her, attempting to rub his genitals on
11 her, and sending her sexually-explicit texts. Plaintiff reported the harassment to UCSB, but no
12 immediate action was taken to protect her. In fact, Regents, through UCSB, created a hostile work
13 environment by forcing Plaintiff to continue to have daily interaction with Preza for two more
14 months until Preza left the job on his own volition. During this period and continuing, Regents
15 inexcusably failed to investigate the matter promptly, thoroughly, and adequately, and it refused to
16 take any formal disciplinary or corrective action.

17 **PARTIES**

18 4. Plaintiff is, and at all relevant times was, an employed by Regents at UCSB. Due to
19 her sex and gender, Plaintiff is entitled to protection under California Department Fair
20 Employment and Housing Act under Cal. Gov’t. Code § 12900, et seq. (hereinafter “FEHA”) and
21 California common law.

22 5. Defendant is, and at all times mentioned herein was, a California public corporation,
23 authorized and empowered to administer a public trust known as the University of California,
24 pursuant to Article IX, Section 9, subdivisions (a) and (f) of the California Constitution. Defendant
25 operates public universities in California, including UCSB. Plaintiff alleges that at all relevant
26 times referenced herein, Defendant was Plaintiff’s employer and did transact and continues to
27 transact business in Santa Barbara County, and the various events relevant to the violations,
28 breaches, and other events alleged herein occurred in Santa Barbara County.

6. The true names and capacities of Defendants, whether individual, corporate,

1 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
2 Plaintiff, who therefore sues such Defendants by such fictitious names under Code of Civil
3 Procedure section 474. Plaintiff will seek leave of court to amend this complaint to reflect the true
4 names and capacities of the Defendants designated hereinafter as DOES when such identities
5 become known.

6 7. Plaintiff is informed and believes, and thereon alleges, that Defendants and the Doe
7 Defendants are the partners, agents, or principals and co-conspirators of each other; that
8 Defendants and the Doe Defendants performed the acts and conduct herein alleged within the
9 scope of the agency; that Defendants and the Doe Defendants performed the acts and conduct
10 herein alleged directly aided and abetted the performance thereof, or knowingly acquiesced in,
11 ratified, and accepted the benefits of such acts and conduct; and therefore, each of the Defendants
12 and the Doe Defendants is liable to the extent of the liability of any other Defendant as alleged
13 herein.

14 JURISDICTION AND VENUE

15 8. The monetary damages sought by Plaintiff exceed the minimum jurisdiction limits
16 of the California Superior Court and will be established according to proof at trial.

17 9. This Court has jurisdiction over this action pursuant to the California Constitution
18 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
19 those given by statute to other courts. The California statutes under which this action is brought do
20 not give jurisdiction to any other court.

21 10. This Court has jurisdiction over Defendants because each Defendant is either a
22 resident of California. Defendants have done and are doing business throughout California,
23 including by maintaining and operating business locations in this County. Venue is proper in this
24 Court because one or more of the Defendants resides, transacts business, or has offices in this
25 County and the acts or omissions alleged herein took place in this County, including specifically in
26 connection with Defendants' operation of their business.

27 GENERAL ALLEGATIONS

28 11. Plaintiff has been employed by Regents at UCSB for nearly 25 years. Currently,

1 she is a personnel analyst with UCSB’s Earth Research Institute (“ERI”). Beginning in or about
2 December 2018, on two separate occasions, Plaintiff’s co-worker, Jose Preza, aggressively tried to
3 kiss Plaintiff without her consent.

4 12. During the second encounter, Preza forcibly grabbed Plaintiff’s hips, aggressively
5 pulled her towards him, and tried to rub his genitals against her. Plaintiff told him to stop,
6 physically pushed him away, and escaped.

7 13. Preza also sent sexual harassing and explicit text messages to Plaintiff. For
8 example, in a text exchanges regarding a work related topics (as was customary in the office),
9 Preza wrote, “*Whatever it takes to get you wet*” and “*“you must get written permission before I’m*
10 *in another of your wild wet dreams.”*”

11 14. On January 31, 2019, Plaintiff first reported the sexual harassment to her supervisor.
12 The supervisor relayed the complaint to UCSB’s Title IX office, which arranged a meeting
13 between Plaintiff and one of the University’s CARE advocates.

14 15. Following the consultation with the CARE advocate, Plaintiff contacted the UCSB
15 Title IX office and advised that she had decided to pursue a formal complaint. Shockingly, the
16 UCSB Title IX office responded that it could not meet with Plaintiff to discuss the matter until
17 February 21, 2019 because it was “too busy and understaffed.”

18 16. That the Title IX office would not meet with Plaintiff to address these serious
19 reports of sexual harassment demonstrates UCSB’s indifferent attitude and inadequate policies for
20 handling such claims. Compounding Plaintiff’s frustration and angst was that her complaints could
21 be easily verified just by looking at the incriminating text messages. Also extremely troubling was
22 that Preza had only been employed at UCSB for approximately 6 months, and in that short time, he
23 had developed a reputation for making strange or inappropriate comments to female co-workers.

24 17. While she waited to meet with the Title IX office, Plaintiff objected to having to
25 continue working with her harasser. Plaintiff’s supervisor then implemented scheduling change
26 which involved Plaintiff and her harasser alternating between working in-person and remotely so
27 they wouldn’t have to physically work together. This arrangement was wholly inadequate and did
28 little to alleviate Plaintiff’s severe distress and anxiety because UCSB still required Plaintiff and
her harasser to communicate with each other on daily basis so that there was no interruption to the

1 projects that they both worked on. As a result of UCSB forcing Plaintiff to continue working and
2 interacting with her harasser , Plaintiff's already high levels of harassment-induced fear, stress, and
3 anxiety were exacerbated and she began to suffer from panic attacks and an inability to sleep at
4 night.

5 18. On February 21, 2019, Plaintiff finally met with UCSB's Title IX office. Plaintiff
6 was advised of her rights to pursue an informal or formal investigation, but the Title IX officer
7 tried to talk Plaintiff out of it. More specifically, the officer repeatedly emphasized that a formal
8 investigation was a "lengthy process" – in other words, Plaintiff's complaint wouldn't be resolved
9 anytime soon, if at all. The officer then asked Plaintiff if she could give the harasser "a little time
10 to transition out" (i.e., quit on his own once he found a new job), which was a suggestion that the
11 harasser had apparently made to the Title IX office. Plaintiff was appalled that, rather than take
12 prompt, adequate measures to remedy the patent sexual harassment, UCSB would suggest to
13 Plaintiff that she accommodate the harasser by agreeing work with him for perhaps weeks or
14 months while he looked for another job. After Plaintiff flatly refused UCSB's offer to
15 accommodate the harasser, the Title IX officer told Plaintiff that the office generate a report and be
16 in touch with her soon.

17 19. On March 1, 2019, after hearing nothing, Plaintiff emailed the Title IX office to
18 inquire about the status of the report and reiterate that she wanted to proceed with a formal
19 investigation. The Title IX office did not respond.

20 20. On March 8, 2019, Plaintiff sent another email to the Title IX office advising that it
21 had been six weeks since she first reported the harassment, and yet, UCSB had failed to take any
22 appropriate action. Plaintiff further informed the office that forcing her to have continued daily
23 contact with her harasser created an hostile work environment, and that, as a result, she was
24 experiencing major anxiety on a daily basis, panic attacks. The response from the Title IX office
25 was far from satisfactory:

26 *I understand your concern, and apologize for the delay. Although this is not an excuse, this
27 is a very busy time in my office and we have limited resources.*

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1 Plaintiff was bewildered and frustrated by this response. She was the victim of egregious sexual
2 harassment, and she rightly felt that prompt investigation and elimination of her hostile work
3 environment should not depend on the workload of UCSB's Title IX office.

4 21. Plaintiff was subjected to the hostile work environment for another two months until
5 mid-April 2019 when Plaintiff's harasser voluntarily resigned from the ERI office. Every day that
6 she showed up for work during this period, Plaintiff was traumatized and suffered intense fear,
7 anxiety, and dread at having to continue to interact with her harasser. Further, all throughout that
8 period and continuing to the present, UCSB bungled its purported "investigation." For example, in
9 the initial report that the Title IX office ultimately generated, some of the harassment incidents
10 were omitted even though Plaintiff provided the officers with detailed accounts of *all* events. As a
11 result, Plaintiff had to repeatedly contact the Title IX office to correct the record re-telling all of the
12 details (and hence, re-live the traumatic events).

13 22. Moreover, there still has been no "final report." Due to UCSB's inexplicable
14 inability or unwillingness to correctly conduct a proper investigation, Preza was able to resign
15 without repercussion. In fact, upon information and belief, UCSB even paid Preza six weeks paid
16 leave benefits when he resigned and he is still eligible for rehire at UCSB.

17 23. Plaintiff has suffered and continues to suffer persistent and severe damage –
18 personally and emotionally, financially and professionally as a result of UCSB's unlawful actions
19 and inactions.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 24. Prior to commencing this civil action, and within the time provided by law, Plaintiff
22 satisfied all administrative prerequisites with respect to this and related filings, including receiving
23 a "Right-to-Sue" Letter from DFEH. A copy of the DFEH's Right to Sue letter and Complaint are
24 attached hereto as Exhibit "A".

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FIRST CAUSE OF ACTION

**SEXUAL HARASSMENT – HOSTILE WORK ENVIRONMENT – FEHA
VIOLATION OF CAL. GOV. CODE §§ 12940, *et seq.*
(Against All Defendants & DOES 1-50)**

25. Plaintiff incorporates by reference and realleges every allegation contained above as though fully set forth herein.

26. At all times herein mentioned, California Government Code §12940 *et seq.* was in full force and effect and is binding on Defendants. California Government Code §12940 *et seq.* provides that it is an unlawful employment practice for an employer or any other person, because of a person’s gender, to harass an employee, and that any entity shall take all reasonable steps to prevent such harassment from occurring.

27. Defendants willfully and intentionally engaged in conduct harassing Plaintiff, including by creating a hostile work environment. Defendants’ harassing conduct was severe or pervasive, was unwelcome by Plaintiff, and a reasonable person in Plaintiff’s circumstances would have considered the work environment to be hostile or abusive. Plaintiff’s gender was at least a substantial motivating factor in Defendants’ decision to take such harassing adverse actions against Plaintiff, including, without limitation, the adverse treatment and conduct as alleged herein.

28. Complaints and/or information about the harassing conduct were made to Defendants. Defendants failed to conduct a prompt and thorough investigation into the allegations of sexual harassment. Defendants’ actions and inactions were so severe, pervasive, and/or abusive that this altered the terms and conditions of Plaintiff’s employment.

29. As a proximate result of Defendants’ willful, knowing, and intentional violation of FEHA, Plaintiff has sustained and continues to sustain economic losses, humiliation, emotional distress, and mental and physical pain and anguish in an amount subject to proof.

30. The unlawful acts described herein were committed with oppression, fraud and/or malice and were authorized, ratified or both by such officers, directors, or managing agents. As a result of Defendants’ willful, knowing, and intentional discrimination against Plaintiff, Plaintiff seeks an award of punitive damages in an amount according to proof.

31. Due to Defendants’ violation of FEHA, Plaintiff has incurred and continues to incur

1 legal expenses and attorneys' fees, all to Plaintiff's damage in a sum according to proof.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PREVENT SEXUAL HARASSMENT – FEHA**
4 **VIOLATION OF CAL. GOV. CODE §§ 12940, et seq.**
5 **(Against All Defendant Regents & DOES 1-50)**

6 32. Plaintiff incorporates by reference and realleges every allegation contained above as
7 though fully set forth herein.

8 33. In violation of FEHA, Defendants failed to take all reasonable steps necessary to
9 prevent sexual harassment of Plaintiff.

10 34. During all relevant times, Defendants failed to make an adequate response and
11 investigation into sexual harassment. Further, Defendants forced Plaintiff to continue to work and
12 interact with her harasser on a daily basis after Plaintiff reported the harassment.

13 35. Defendants knew or reasonably should have known that failing to make an adequate
14 response and investigation and forcing Plaintiff to continue to work and interact with her harasser
15 on a daily basis after Plaintiff reported the harassment would result in a hostile work environment.

16 36. Defendants' actions and inactions constituted a policy, custom, practice or usage
17 within Defendants that condoned, encouraged, tolerated, sanctioned, ratified, approved of, and
18 acquiesced in unlawful sexual harassment towards Defendants' employees including, but not
19 limited to, Plaintiff.

20 37. The failure of Defendants to adequately investigate Plaintiff's complaints, and
21 instead, forcing her to continue to work and interact with her harasser on a daily basis after
22 Plaintiff reported the harassment constituted a deliberate indifference to the Plaintiff's rights under
23 FEHA.

24 38. Upon information and belief, Defendants failed to adequately investigate the
25 complaints from these other women at UCSB, and instead, continued to employ Preza and
26 permitted him to work alongside Plaintiff, which actions and inactions constituted a deliberate
27 indifference to the Plaintiff's rights under FEHA.

28 39. Upon information and belief, Defendants did not provide adequate harassment
training with respect to their employees and managers, failed to properly develop and implement

1 appropriate policies and procedures relating to compliance with anti-harassment law, failed to
2 adequately train employees, managers, and other agents responsible for carrying out such
3 necessary policies and procedures and making related decisions in connection therewith, failed to
4 investigate facts and matters indicating such unlawful conduct was occurring in violation of such
5 laws, failed to implement proper corrective action, interim corrective action, or otherwise prevent
6 continuing unlawful behavior, failed to properly monitor or discipline individuals who had
7 unlawfully harassed employees or engaged in other unlawful behavior, or otherwise properly
8 address and remedy such violations as alleged herein.

9 40. Defendants knew or reasonably should have known that the failure to provide any
10 or adequate education, training, and information to their personnel policies and practices regarding
11 sexual harassment would result in unlawful conduct.

12 41. The failure of Defendants to provide any or adequate education, training, and
13 information to personnel concerning policies and practices regarding sexual harassment constituted
14 deliberate indifference to the Plaintiff's rights under FEHA.

15 42. As a proximate result of Defendants' conduct, Plaintiff has sustained and continues
16 to sustain economic losses, humiliation, emotional distress, and mental and physical pain and
17 anguish in an amount subject to proof.

18 43. The unlawful acts described herein were committed with oppression, fraud and/or
19 malice and were authorized, ratified or both by Defendants' officers, directors, or managing agents.
20 As a result of Defendants' willful, knowing, and intentional harassment, and failure to prevent
21 harassment, of Plaintiff, Plaintiff seeks an award of punitive damages in an amount according to
22 proof.

23 44. Due to Defendants' violation of the FEHA, Plaintiff has incurred and continues to
24 incur legal expenses and attorneys' fees, all to Plaintiffs' damage in a sum according to proof.

25 **THIRD CAUSE OF ACTION**

26 **NEGLIGENT RETENTION OF AN UNFIT EMPLOYEE**
27 **(Against All Defendants & DOES 1-50)**

28 45. Plaintiff incorporates by reference and realleges every allegation contained above as
though fully set forth herein.

1 46. Upon information and belief, in the short time that UCSB employed Preza, UCSB
2 knew or should have known that Preza had previously made concerning and/or inappropriate to
3 women at UCSB other than Plaintiff.

4 47. Upon information and belief, Defendants failed to adequately investigate the
5 complaints from these other women at UCSB, and instead, continued to employ Preza and
6 permitted him to work alongside Plaintiff, which actions and inactions constituted a deliberate
7 indifference to the Plaintiff's rights under FEHA.

8 48. Plaintiff is informed and believes and thereon alleges that Defendants, by and
9 through its principals, agents and employees, conducted itself unlawfully in violation of applicable
10 law as described above with conscious disregard of the result or outcome of such conduct.

11 49. At all times, Defendants owed Plaintiff the duties to properly and adequately hire,
12 investigate, train, supervise, monitor and discipline its employees, as well as to make, enforce and
13 act in compliance with policies that are lawful and protective of its employees' rights and safety.

14 50. Defendants negligently and carelessly hired and retained its employee Preza.
15 Defendants breached its duty to exercise reasonable care and acted negligently and carelessly in the
16 retention of Preza by failing to monitor, supervise and investigate the conduct of Preza, and by
17 failing to adequately take proper corrective action.

18 51. As a direct and proximate result of Defendants' willful, knowing and intentional
19 conduct, Plaintiff has sustained, and continues to sustain, economic and non-economic damages,
20 emotional distress, and other damages

21 **FOURTH CAUSE OF ACTION**

22 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
23 **(Against All Defendants & DOES 1-50)**

24 52. Plaintiff incorporates by reference and realleges every allegation contained above as
25 though fully set forth herein.

26 53. Defendants conduct, including but not limited to: creating a hostile work
27 environment; requiring Plaintiff to continue to work and interact with her harasser on a daily basis;
28 failing and refusing to adequately and promptly investigate Plaintiff's complaints, and continuing

1 to employ the harasser when, upon information and belief, Defendants were aware of prior
2 improper conduct by the harasser, was extreme and outrageous conduct.

3 54. Defendants conduct was intentional and malicious and done for the purpose of
4 causing Plaintiff to suffer humiliation, mental anguish, and emotional and physical distress.
5 Defendants' conduct was done with a wanton and reckless disregard of the consequences to
6 Plaintiff.

7 55. As a proximate result of the acts alleged, Plaintiff suffered the following severe
8 emotional distress and physical symptoms thereof: highly unpleasant mental reactions, such as
9 fright, shame, humiliation, embarrassment, anger, disappointment or worry as well as depression,
10 sleep disturbance, loss of enjoyment of life and grief.

11 56. Defendants' conduct was a substantial factor in causing Plaintiff's humiliation,
12 mental anguish, and emotional and physical distress.

13 57. The wrongful or unlawful acts described herein were committed with oppression,
14 fraud and/or malice and were authorized, ratified or both by such officers, directors, or managing
15 agents. As a result of defendants' willful, knowing, and acts against Plaintiff, Plaintiff seek an
16 award of punitive damages in an amount according to proof.

17 **FIFTH CAUSE OF ACTION**

18 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
19 **(Against All Defendants & DOES 1-50)**

20 58. Plaintiff incorporates by reference and realleges every allegation contained above as
21 though fully set forth herein.

22 59. In carrying out the conduct described above, Defendants breached a duty they
23 owned to Plaintiff to provide a workplace free of harassment.

24 60. Plaintiff suffered the following emotional distress and physical symptoms thereof:
25 highly unpleasant mental reactions, such as fright, shame, humiliation, embarrassment, anger,
26 disappointment or worry as well as depression, sleep disturbance, loss of enjoyment of life and
27 grief.

28 61. Defendants' conduct was a substantial factor in causing Plaintiff's humiliation,
29 mental anguish, and emotional and physical distress.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for an award and judgment against Defendant Casino on all
3 causes of action as follows:

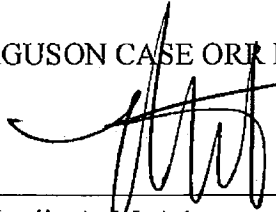
- 4 1. For compensatory damages;
- 5 2. For general damages including, without limitation, for physical harm and/or mental
6 and emotional distress according to proof, on the applicable causes of action;
- 7 3. For punitive damages, on the applicable causes of action;
- 8 4. For applicable penalties;
- 9 5. For an award of interest, including prejudgment interest, at the legal rate;
- 10 6. For an award of attorneys' fees on the applicable causes of action as provided by
11 law;
- 12 7. For costs of suit incurred; and
- 13 8. For such other and further relief as the Court deems appropriate.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury trial in this matter on all matters triable to a jury.

16 Date: April 30, 2019

17 FERGUSON CASE ORR PATERSON LLP

18 By:  _____

19 Leslie A. McAdam
20 Max R. Engelhardt
21 Attorney for Plaintiff Sheri Walker-
22 Francey
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