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9 Attorneys for Defendant Erick G. Guerrero

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 KARISSA FENWICK, an individual,

14 Plaintiff,

15 v.

16 UNIVERSITY OF SOUTHERN  
CALIFORNIA; ERICK G. GUERRERO;  
17 and DOES 1-25, inclusive,

18 Defendants.

Case No.: BC680904

**ANSWER TO COMPLAINT**

19  
20 COMES NOW the Defendant, Dr. Erick Guerrero, for himself alone and no other  
21 Defendant in answer to the Plaintiff's unverified Complaint, admits, denies, and alleges as  
22 follows:  
23

24 1. Under the provisions of California Code of Civil Procedure Section 431.30, this  
25 answering Defendant denies each and every, all and singular, generally and specifically, all the  
26 allegations of the Plaintiff's Complaint, and the whole thereof, and further denies that the  
27 Plaintiff was damaged in any sum or sums, or at all, as alleged therein.

28 2. Defendant further alleges on information and belief:

ANSWER TO COMPLAINT

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

OCT 25 2017

Sherri R. Carter, Executive Officer/Clerk  
By: M. Soto, Deputy  
Moses Soto

1 **FACTUAL ALLEGATIONS**

2 3. For the past five years, Plaintiff Karissa Fenwick, 33, has been a doctoral student at the  
3 University of Southern California, Suzanne Dworak-Peck School of Social Work. Ms. Fenwick  
4 received her B.S. degree in Psychology from the University of Mary Washington, in 2005 and  
5 her M.S.W. from the University of North Carolina, Chapel Hill, in 2007. Ms. Fenwick was a  
6 Clinical Social Worker in the Adult Bone Marrow Transplant Program at Duke University from  
7 2010 to 2012.

8 4. After starting her doctoral program at USC in 2012, Ms. Fenwick took a doctoral class  
9 from defendant Dr. Erick Guerrero in Spring 2013 and asked for an individualized study,  
10 working one-on-one for a semester in the Fall 2013. In 2014, Dr. Guerrero and Ms. Fenwick  
11 published a manuscript and Ms. Fenwick contributed to another four publications. In 2015, Ms.  
12 Fenwick asked Dr. Guerrero to be her dissertation chair with the expectation for her dissertation  
13 to be completed within a year. Through 2015 and 2016, Ms. Fenwick contributed to another  
14 three publications.

15 5. Since 2013, Ms. Fenwick and Dr. Guerrero appeared to have a very productive and  
16 cordial, respectful relationship as graduate mentee and academic mentor. Dr. Guerrero is  
17 informed and believes that Ms. Fenwick’s civil complaint is retaliation for Dr. Guerrero  
18 informing her in January 2017 that she needed to find another dissertation chair and for Dr.  
19 Guerrero disputing Ms. Fenwick’s false claims against him through a confidential grievance  
20 process at USC, which is pending.

21 6. Since 2013, Ms. Fenwick and Dr. Guerrero have attended at least seven conferences out  
22 of town in other cities without any apparent difficulty.

23 7. The allegations in the Complaint concern a conference in Seattle in November 2016, and  
24 a conference in New Orleans in mid-January 2017.

25 8. Prior to the New Orleans conference in January 2017, Ms. Fenwick’s allegations against  
26 Defendants can be summarized as follows:

- 27 a. at some unknown time and location, Defendant allegedly told Ms. Fenwick  
28 that stairs would be good for her butt.

1                   b. During the Seattle conference in November 2016, Defendant took Ms.  
2                   Fenwick to lunch at a nice steakhouse, ordered wine, and over lunch talked  
3                   about personal matters, including announcing that his wife was pregnant,  
4                   and asking if Ms. Fenwick was seeing anyone.

5           9. Facts regarding the New Orleans conference can be summarized as follows:

6           10. In January 2017, Dr. Guerrero and Ms. Fenwick were to attend the 21st Annual  
7 Conference of the Society for Social Work to be held in New Orleans Marriott from January 12  
8 to 15, 2017. Ms. Fenwick and Dr. Guerrero were to present a symposium on Leadership and  
9 Implementation of Evidence-Based Practices in Behavioral Health Organizations on Saturday  
10 morning, January 14, 2017 from 9:45 a.m. to 11:15 a.m.

11          11. Dr. Guerrero and Ms. Fenwick traveled separately to New Orleans and planned to meet  
12 for dinner on Thursday, January 12, 2017 to discuss final details for their presentation on  
13 Saturday morning at the Conference.

14          12. The plans changed slightly when Dr. Guerrero invited his mentor, a female professor  
15 from another university, to join the dinner at Mr. B's Bistro. Ms. Fenwick, Dr. Guerrero, and Dr.  
16 Guerrero's mentor met in the lobby of the Marriot and around 6:00 p.m. walked to the bistro,  
17 about two blocks away.

18          13. After dinner, the three walked back to the Marriott lobby and Dr. Guerrero parted  
19 company with his mentor and Ms. Fenwick and went up to his room around 8:15 p.m. Once in  
20 his room, he called home to check on his spouse, who was expecting their first child in April  
21 2017. Dr. Guerrero then returned to the Marriot lobby where he met up with Ms. Fenwick to  
22 walk to the Lafitte Blacksmith Shop Bar piano bar, about 3/4 mile away, where other USC  
23 faculty and students had planned to meet that evening. Dr. Guerrero and Ms. Fenwick ran into  
24 another doctoral student and her husband also on their way to the piano bar.

25          14. After arriving at the piano bar, Ms. Fenwick asked Dr. Guerrero to pay for additional  
26 drinks and Dr. Guerrero handed her a credit card to purchase two drinks. At some point during  
27 the night, Ms. Fenwick began to dance with Dr. Guerrero provocatively and displayed  
28 inappropriate engagement, backing up into him and trying to rub her buttocks on him. Dr.

1 Guerrero confronted Ms. Fenwick about her inappropriate behavior and discussed with Ms.  
2 Fenwick that it may be best for her to find another dissertation chair. Ms. Fenwick did not  
3 respond and did not seem to know what to do. She left to go to the bathroom, then she came  
4 back and continued drinking and engaged other men in dancing .

5 15. When the piano bar closed around 3:00 a.m., rather than take a cab or Uber to her hotel,  
6 Ms. Fenwick began to walk back with Dr. Guerrero to the New Orleans Marriott. After Ms.  
7 Fenwick started walking with Dr. Guerrero, she began talking about her concerns that other  
8 students were gossiping about her and spreading rumors that she was having sexual relations  
9 with Dr. Guerrero and other USC faculty members. Ms. Fenwick mentioned that she had gone  
10 out with other faculty to drink and gamble years prior at the same conference in New Orleans.  
11 Ms. Fenwick also shared that she had been the subject of similar rumors when she was a clinical  
12 social worker at Duke University.

13 16. Dr. Guerrero learned that Ms. Fenwick was not staying at the Marriott, but at another  
14 location farther away. Being too tired and having a meeting in the morning, Dr. Guerrero  
15 declined to walk her to her hotel, but offered to order an Uber for Ms. Fenwick if he could just  
16 charge his phone. Dr. Guerrero had asked Ms. Fenwick to wait in the lobby when he went to  
17 plug his phone into his charger, but she followed him up to the room. Ms. Fenwick told him she  
18 did not want to wait in the lobby because people would “think she was a hooker.” When they  
19 got to the room, Dr. Guerrero kept the door open, plugged in his phone, gave Ms. Fenwick a  
20 bottle of water, and ordered an Uber to take Ms. Fenwick to her extended-stay hotel at 521  
21 Tchoupitoulas St. Ms. Fenwick sat in a chair, and almost fell asleep; no one was ever on the  
22 bed.

23 17. After Dr. Guerrero ordered the Uber, he was barely able to wake Ms. Fenwick from the  
24 chair, and told her, “You can't sleep here.” Dr. Guerrero escorted Ms. Fenwick out of his room  
25 and she went down to the lobby on her own, after being in the room for about five minutes.

26 18. On January 13, 2017, at 3:50 a.m. Ms. Fenwick took the Uber from the Marriott to her  
27 hotel at 521 Tchoupitoulas Street, New Orleans, arriving at her hotel at 3:54 a.m. When he  
28 received the Uber charge at 3:55 a.m., Dr. Guerrero texted Ms. Fenwick to make sure she had

1 arrived safely to her hotel. At 4:10 a.m., Ms. Fenwick responded, "Yes, Thank you."

2 19. At 9:00 a.m. on January 13, 2017, another conference attendee sent a text message to Dr.  
3 Guerrero asking whether Ms. Fenwick had arrived safely to her hotel. The attendee immediately  
4 sent another text message stating, "Nevermind, she replied! Sorry to bother you."

5 20. At 9:30 a.m. Dr. Guerrero sent Ms. Fenwick a text message advising that the other  
6 conference attendee was looking for her. He also asked Ms. Fenwick if they could meet 15  
7 minutes before the Saturday morning symposium in which they were co-presenters. She  
8 responded affirmatively.

9 21. On January 14, 2017, Dr. Guerrero again spoke to Ms. Fenwick about transferring to  
10 another dissertation chair. Dr. Guerrero also spoke to his spouse, an Assistant Professor, who  
11 suggested that he and Ms. Fenwick should agree on a plan to transition her to another  
12 dissertation advisor so she can graduate and move on. Dr. Guerrero later also spoke to another  
13 colleague, a professor at another university, about his concerns with Ms. Fenwick's behavior.

14 22. Ms. Fenwick and Dr. Guerrero also interacted at another cluster meeting on Sunday  
15 (January 15, 2017), and after the conference concluded, Ms. Fenwick and Dr. Guerrero  
16 separately returned to Southern California.

17 23. Once back in Southern California, Dr. Guerrero followed up with Ms. Fenwick. On  
18 January 23, 2017, Dr. Guerrero left a voicemail message after Ms. Fenwick failed to show up at  
19 a key event that she was leading. Dr. Guerrero was anxious to finalize plans to transition Ms.  
20 Fenwick to a new dissertation chair.

21 24. On January 26, 2017, Dr. Guerrero was told that a Title IX complaint had been lodged  
22 against him involving Karissa Fenwick.

23 25. During his meetings with OED/Title IX Investigator Wagner, however, Defendant was  
24 told that Ms. Fenwick had reported the following:

- 25 a. While in his hotel room, Dr. Guerrero put his face close to her face without  
26 saying anything;
- 27 b. While in the hotel room, he never touched her, but did guide her to lie on  
28 top of his bed without saying anything (and without touching her);

1 c. She felt this was a sexual advance, and said, "I do not want to do this."

2 26. Dr. Guerrero denied each allegation and relayed to OED/Title IX Investigator Donna  
3 Wagner his prior concerns with Ms. Fenwick's conduct towards him. Over the next five months  
4 Dr. Guerrero cooperated with the Title IX investigation, but was never provided any witness  
5 statements, transcripts, or any other evidence.

6 27. On May 11, 2017, OED/Title IX Investigator Wagner advised Dr. Guerrero that she had  
7 concluded her investigation and found him responsible for violation of University policy and  
8 that a preponderance of the evidence showed, "that you engaged in an unwelcome sexual  
9 advance to Karissa Fenwick in your hotel room on January 12, 2017, and further dissuaded her  
10 not to report the incident in a conversation on Saturday, January 14, 2017."

11 28. This "preponderance of evidence" appeared to be only Ms. Fenwick's assertion that Dr.  
12 Guerrero said nothing inappropriate and never touched her, but put his face close to her face  
13 without saying anything, and also somehow "guided" her to lie on top of the bed without saying  
14 anything or touching her.

15 29. Following an unsuccessful appeal of the Title IX decision within USC, Dr. Guerrero filed  
16 a grievance with the Faculty Senate, asserting that the Title IX investigation failed to comply  
17 with Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education  
18 Amendments of 1972, California law, government regulations, and failed to comply with the  
19 USC's own internal rules and regulations. The most significant violations were the  
20 withholding of evidence from Dr. Guerrero, the failure to maintain separate roles of the OED  
21 Investigator and OED Director, the failure to disclose the findings of fact to Dr. Guerrero, and  
22 the failure to meet the University's burden to prove the elements of the policy violation by a  
23 preponderance of evidence. USC OED had refused to turn over any of the factual findings and  
24 other investigation materials such as the investigation chronology, evidence, transcripts of  
25 interviews with witnesses, and the investigator's report. The grievance action is still pending.

26  
27 **AFFIRMATIVE DEFENSES**

28 30. Without assuming the burden to prove that which properly falls on Plaintiff Karissa

1 Fenwick, this answering Defendant asserts the following defenses to Plaintiff's alleged cause of  
2 actions. Insofar as any of the following expresses denial of an element of any cause of action  
3 alleged against Defendant, such expression does not indicate that Plaintiff is relieved of her  
4 burden to prove each and every element of any such cause of action.

5  
6 **FIRST AFFIRMATIVE DEFENSE**

7 **(Failure to State a Cause Of Action)**

8 31. Plaintiff's unverified Complaint, in its entirety, nor any purported cause of action set  
9 forth therein, alleges facts sufficient to constitute a cause of action against the answering  
10 Defendant.

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Statute of Limitations)**

13 32. Plaintiff is barred from recovery from the answering Defendant by operation of the  
14 applicable statute(s) of limitations.

15  
16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Estoppel, Unclean Hands, Laches)**

18 33. Plaintiff's cause of action and recovery of damages from the answering Defendant is  
19 barred by reason of Plaintiff's conduct which constitutes a breach of contract, tortious conduct,  
20 waiver, unclean hands, and laches, and Plaintiff is estopped to assert any right of relief.

21  
22 **FOURTH AFFIRMATIVE DEFENSE**

23 **(Waiver)**

24 34. Plaintiff is engaged in conduct that constitutes waiver of her rights. By reason of such  
25 waiver, the action and recovery of damages from the answering Defendant is barred.

26  
27 **FIFTH AFFIRMATIVE DEFENSE**

28 **(Failure to Mitigate Damages)**

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ANSWER TO COMPLAINT

1 35. Plaintiff failed and neglected to mitigate her damages so as to reduce and/or diminish her  
2 claim.

3  
4 **SIXTH AFFIRMATIVE DEFENSE**

5 **(Setoff/Offset)**

6 36. The answering Defendant has incurred damages by reason of Plaintiff's conduct, and the  
7 answering Defendant is entitled to a setoff and/or offset of any amount of monies owed to  
8 Plaintiff by way of damages.

9  
10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **(Ratification of Acts)**

12 37. By her acts, conduct and/or omissions, Plaintiff has ratified the acts, conduct and  
13 omissions, if any, of the answering Defendant; therefore, Plaintiff is barred from seeking any  
14 relief from the answering Defendant.

15  
16 **EIGHTH AFFIRMATIVE DEFENSE**

17 **(In Pari Delicto)**

18 38. Plaintiff herein, and each and every cause of action contained in the unverified  
19 Complaint, is barred because Plaintiff has engaged in acts and courses of conduct which render  
20 her in pari delicto.

21  
22 **RESERVATION OF OTHER AFFIRMATIVE DEFENSES**

23 39. The answering Defendant reserves the right to allege other affirmative defenses, as  
24 it may become known through the course discovery.

25  
26 WHEREFORE, Defendant prays for judgment as follows:

- 27 1. That Plaintiff takes nothing by way of the Complaint.  
28





PROOF OF SERVICE

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 888 West Sixth Street, Suite 400, Los Angeles, California 90017.

On October 25, 2017, I served the foregoing document described DEFENDANT ERICK GUERRERO'S ANSWER TO COMPLAINT on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

John D. Winer  
Alexis S. McKenna  
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1999 Harrison Street, Ste. 600  
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ATTORNEYS FOR PLAINTIFF

Kelli D. Burritt  
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ATTORNEYS FOR PLAINTIFF

**BY FACSIMILE TRANSMISSION** from FAX number (213) 624-1942 to the fax number set forth above. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

**BY MAIL** by placing a true copy thereof enclosed in a sealed envelope addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

**BY PERSONAL SERVICE** by delivering a copy of the document(s) by hand to the addressee or I cause such envelope to be delivered by process server.

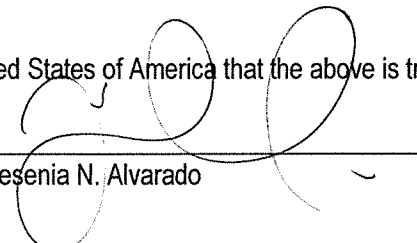
**BY EXPRESS SERVICE** by depositing in a box or other facility regularly maintained by the express service carrier or delivering to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

**BY ELECTRONIC TRANSMISSION** by transmitting a PDF version of the document(s) by electronic mail to the party(s) identified on the service list using the e-mail address(es) indicated.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on October 25, 2017 in Los Angeles, California

  
\_\_\_\_\_  
Yesenia N. Alvarado