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12 Attorney for Defendant Erick G. Guerrero

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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

OCT 25 2017

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

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 KARISSA FENWICK, an individual

12 Plaintiff,

13 v.

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

17 Defendants.

Case No.: BC680904

[Hon. Robert L. Hess, Department 24]

**DEFENDANT'S DEMURRER TO  
COMPLAINT FOR DAMAGES AND  
DEMAND FOR JURY TRIAL**

Date: January 3, 2018

Time: 8:30 a.m.

Dept.: 24

Reservation ID 171025261652

18  
19  
20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on January 3, 2018 at 8:30 a.m. or as soon thereafter as the matter  
22 may be heard, in Department 24 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles,  
23 California, 90012, Defendant Erick G. Guerrero will and hereby does demur to the Complaint of  
24 Plaintiff Karissa Fenwick.

25 This Demurrer is made on the grounds that the First, Second, and Seventh through Eleventh  
26 Causes of Action of the Complaint fail to state facts sufficient to constitute causes of action against  
27 Defendant and/or are stated ambiguously and unintelligibly. (Code Civ. Proc. §§ 430.10(e), (f), (g).)

28 This Demurrer is based upon this Notice, the attached Demurrer and Memorandum of Points and

1 Authorities, all records, papers and pleadings on file in this action, such oral argument as the Court may  
2 consider at the hearing of this Demurrer, and any matters of which the Court may or must take judicial  
3 notice.

4 WERKSMAN JACKSON  
5 HATHAWAY & QUINN LLP

6  
7 DATED: October 25, 2017

By: 

8 Mark M. Hathaway  
9 Jenna E. Eyrich  
Attorneys for Defendant Erick G. Guerrero

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1 **DEMURRER TO COMPLAINT**

2 Defendants demur to the First, Second, and Seventh through Eleventh Causes of Action of  
3 Plaintiff's Complaint on the following grounds:

4  
5 **DEMURRER TO FIRST CAUSE OF ACTION**

6 (For Quid Pro Quo Sexual Harassment (Gov. Code § 12940(j)))

7 1. The First Cause of Action fails to state facts sufficient to constitute a cause of action as against  
8 Defendant Erick G. Guerrero. (Code Civ. Proc. § 430.10(e).)

9 2. The First Cause of Action is ambiguous and unintelligible and therefore subject to a special  
10 demurrer for uncertainty.

11 **DEMURRER TO SECOND CAUSE OF ACTION**

12 (For Hostile Work Environment Sexual Harassment (Gov. Code § 12940(j)))

13 3. The Second Cause of Action fails to state facts sufficient to constitute a cause of action as  
14 against Defendant Erick G. Guerrero. (Code Civ. Proc. § 430.10(e).)

15 4. The Second Cause of Action is ambiguous and unintelligible and therefore subject to a special  
16 demurrer for uncertainty.

17 **DEMURRER TO SEVENTH CAUSE OF ACTION**

18 (For Gender Violence (Civ. Code § 52.4))

19 5. The Seventh Cause of Action fails to state facts sufficient to constitute a cause of action as  
20 against Defendant Erick G. Guerrero. (Code Civ. Proc. § 430.10(e).)

21 6. The Seventh Cause of Action is ambiguous and unintelligible and therefore subject to a special  
22 demurrer for uncertainty.

23 **DEMURRER TO EIGHTH CAUSE OF ACTION**

24 (For Sexual Harassment (Civ. Code § 51.9))

25 7. The Eighth Cause of Action fails to state facts sufficient to constitute a cause of action as  
26 against Defendant Erick G. Guerrero. (Code Civ. Proc. § 430.10(e).)

27 8. The Eighth Cause of Action is ambiguous and unintelligible and therefore subject to a special  
28

1 demurrer for uncertainty.

2 **DEMURRER TO NINTH CAUSE OF ACTION**

3 (For Negligence)

4 9. The Ninth Cause of Action fails to state facts sufficient to constitute a cause of action as  
5 against Defendant Erick G. Guerrero. (Code Civ. Proc. § 430.10(e).)

6 10. The Ninth Cause of Action is ambiguous and unintelligible and therefore subject to a special  
7 demurrer for uncertainty.

8 **DEMURRER TO TENTH CAUSE OF ACTION**

9 (For Intentional Infliction of Emotional Distress)

10 11. The Tenth Cause of Action fails to state facts sufficient to constitute a cause of action as  
11 against Defendant Erick G. Guerrero. (Code Civ. Proc. § 430.10(e).)

12 12. The Tenth Cause of Action is ambiguous and unintelligible and therefore subject to a special  
13 demurrer for uncertainty.

14 **DEMURRER TO ELEVENTH CAUSE OF ACTION**

15 (For Battery)

16 13. The Eleventh Cause of Action fails to state facts sufficient to constitute a cause of action as  
17 against Defendant Erick G. Guerrero. (Code Civ. Proc. § 430.10(e).)

18 14. The Eleventh Cause of Action is ambiguous and unintelligible and therefore subject to a  
19 special demurrer for uncertainty.  
20

21 WERKSMAN JACKSON  
22 HATHAWAY & QUINN LLP

23  
24  
25 DATED: October 25, 2017

By: 

Mark M. Hathaway  
Jenna E. Eyrich  
Attorneys for Defendant Erick G. Guerrero

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This action arises out of a claim by Plaintiff Karissa Fenwick that she was sexually harassed by  
4 Defendant Erick G. Guerrero while she was a graduate student at the University of Southern California.  
5 The operative Complaint contains eleven causes of action, as follows: (1) Quid Pro Quo Sexual  
6 Harassment (Gov. Code § 12940(j)); (2) Hostile Work Environment Sexual Harassment (Gov. Code §  
7 12940(j)); (3) Failure to Prevent and Correct Discrimination, Harassment, and Retaliation (Gov. Code §  
8 12940(k)); (4) Retaliation (Gov. Code § 12940(h)); (5) Violation of Title IX (20 U.S.C. §  
9 1681(a)); (6) Violation of Equity in Higher Education Act (Ed. Code § 66270); (7) Gender Violence  
10 (Civ. Code § 52.4); (8) Sexual Harassment (Civ. Code § 51.9); (9) Negligence; (10) Intentional  
11 Infliction of Emotional Distress; and (11) Battery. The third through sixth causes of action run against  
12 University of Southern California and DOES 1-25 only. The first, second, seventh, eighth, ninth, tenth,  
13 and eleventh causes of action run against all defendants.

14 **II. LEGAL STANDARD ON DEMURRER**

15 Pursuant to Code Civ. Proc. § 430.10: “The party against whom a complaint or cross-complaint  
16 has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any  
17 one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a  
18 cause of action and/or (f) The pleading is uncertain. As used in this subdivision, ‘uncertain’ includes  
19 ambiguous and unintelligible. Mere ‘recitals,’ references to, or allegations of material facts, which are  
20 left to surmise are subject to special Demurrer for uncertainty.” (*Ankeny v. Lockheed Missiles & Space*  
21 *Co.* (1979) 88 Cal.App.3d 531, 537.) A complaint that fails to state the date or time of the facts averred  
22 to is uncertain and subject to demurrer on that ground. (*Gonzales v. State of California* (1977) 68  
23 Cal.App.3d 621, 634 [disapproved on other grounds in *Stockton v. Sup. Ct.* (2007) 42 Cal.4th 730].)

24 For purposes of a demurrer, all allegations of the complaint are deemed to be true. (*Moore v.*  
25 *Conliffe* (1994) 7 Cal.4th 634, 638.) A demurrer should be sustained without leave to amend if the  
26 conduct complained of is not actionable as a matter of law. (See, e.g., *Droz v. Pacific National*  
27 *Insurance Co.* (1982) 138 Cal.App.3d 181, 187 [affirming grant of demurrer without leave to amend  
28 where “the allegations of the complaint impose no liability under substantive law”].)

1           **III. FIRST CLAIMS FOR QUID PRO QUO SEXUAL HARASSMENT (GOV. CODE §**  
2           **12940(J) FAILS TO STATE A CLAIM AND LACKS THE REQUIRED SPECIFICITY.**

3           The prima facie case of quid pro quo sexual harassment requires a showing that a tangible  
4 employment action resulted from a refusal to submit to a supervisor's sexual demands. (*Hughes v. Pair*  
5 (2009) 46 Cal.4th 1035, 95.) Specifically, quid pro quo harassment consists of unwelcome demands for  
6 sexual favors in return for advancement or other perquisites in the workplace. (*Sheffield v. Los Angeles*  
7 *County Dept. of Social Services* (2003) 109 Cal.App.4th 153, 134.) To be actionable as sexual  
8 harassment, a sexually objectionable work environment must be both objectively and subjectively  
9 offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did  
10 perceive to be so. (*Erdmann v. Tranquility Inc.* (N.D. Cal. 2001) 155 F.Supp. 2d 1152.) Here, Plaintiff  
11 failed to state a tangible employment action that resulted from a refusal to submit to a supervisor's  
12 sexual demands. The Plaintiff has also failed to allege actions that are both objectively and subjectively  
13 offensive, or that a reasonable person would find abusive. Plaintiff has failed to allege facts that  
14 constitute a viable cause of action for quid pro quo sexual harassment, and the facts are stated  
15 ambiguously or unintelligibly.

16  
17           **IV. SECOND CLAIMS FOR HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT**  
18           **(GOV. CODE § 12940(J)) FAILS TO STATE A CLAIM AND LACKS THE REQUIRED**  
19           **SPECIFICITY.**

20           The prima facie case of quid pro quo sexual harassment requires a showing that an  
21 employer created a hostile environment for an employee because of that employee's sex. (*Singleton v.*  
22 *U.S. Gypsum Co.* (2006) 140 Cal.App.4th 1547.) Hostile work environment sexual harassment exists  
23 where the harassment is sufficiently pervasive so as to alter the conditions of employment and create an  
24 abusive work environment. (See *Lyle v. Warner Bros. Television Productions* (2006) 38 Cal.4th 264.)  
25 More specifically, claims of a hostile or abusive working environment due to sexual harassment arise  
26 when a workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently  
27 severe or pervasive to alter the conditions of the victim's employment and create an abusive working  
28 environment. (*Erdmann v. Tranquility Inc.* (N.D. Cal. 2001) 155 F. Supp. 2d 1152.)

1 Here, Plaintiff has failed to describe with clarity any actions by Defendant Guerrero that were so  
2 pervasive that they altered the conditions of employment or created an abusive work environment.  
3 Plaintiff has failed to allege facts that constitute a viable cause of action for hostile work environment  
4 sexual harassment, and the facts are stated ambiguously or unintelligibly.

5  
6 **V. SEVENTH CLAIMS FOR GENDER VIOLENCE (CIV. CODE § 52.4) FAILS TO STATE**  
7 **A CLAIM AND LACKS THE REQUIRED SPECIFICITY.**

8 Gender-motivated violence is a form of sex discrimination and means either: (1) One or more  
9 acts that would be a California criminal offense using, attempting to use, or threatening to use physical  
10 force against the person or property of another, committed at least in part because of the victim's gender.  
11 Whether those acts resulted in criminal complaints, charges, prosecution, or conviction is irrelevant.  
12 (Civ. Code § 52.4(c)(1)); or (2) A physical intrusion or physical invasion of a sexual nature under  
13 coercive conditions. (Civ. Code § 52.4(c)(2).) Plaintiff has failed to allege facts that constitute a viable  
14 cause of action for gender violence, and the facts are stated ambiguously or unintelligibly.

15  
16 **VI. EIGHTH CLAIMS FOR SEXUAL HARASSMENT (CIV. CODE § 51.9) FAILS TO**  
17 **STATE A CLAIM AND LACKS THE REQUIRED SPECIFICITY.**

18 A person is liable for sexual harassment under Civ. Code § 51.9 when the plaintiff proves that:  
19 (a) there is a business, service, or professional relationship between the plaintiff and the defendant; (b)  
20 the defendant has made sexual advances, solicitations, requests, or demands for sexual compliance by  
21 the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature, or a hostile nature  
22 based on gender, that was unwelcome and pervasive or severe; (c) the plaintiff is unable to easily  
23 terminate the relationship; and (d) the plaintiff has suffered or will suffer economic loss or disadvantage  
24 or personal injury, including emotional distress or the violation of a constitutional or statutory right, as a  
25 result of the defendant's conduct. (Civ. Code § 51.9(a); see also *Ramirez v. Wong* (2010) 188  
26 Cal.App.4th 1480, 1487.)

27 Here, Plaintiff conclusory recites that she was “subjected to gender violence as that term is  
28 defined in Civil Code Section 52.4(c),” but has not described behavior that is pervasive or severe, and

1 has not stated any reason why she was unable to easily terminate her relationship with Erick G.  
2 Guerrero. Plaintiff has not stated facts that constitute a viable cause of action for sexual harassment, and  
3 the facts are stated ambiguously or unintelligibly.  
4

5 **VII. NINTH CLAIMS FOR NEGLIGENCE FAILS TO STATE A CLAIM AND LACKS THE**  
6 **REQUIRED SPECIFICITY.**

7 Although it is true that negligence may be pleaded in general terms, a plaintiff must still specify  
8 the acts alleged to have been negligently done. "The term 'negligence' signifies and stands for the  
9 absence of care. . . . As a result of the application of these principles to code pleading in cases of  
10 negligence and to others of kindred character, it is held in this state, and in nearly all of the United  
11 States, that it is sufficient to allege the negligence in general terms, specifying, however, the particular  
12 act alleged to have been negligently done." (*Rannard v. Lockheed Aircraft Corp.* 26 Cal. 2d 149, 155.)  
13 Here, plaintiff fails to specify which acts of Defendant Erick G. Guerrero were done negligently.  
14 Rather, plaintiff merely states, "Defendant GUERRERO breached his duty to Plaintiff by, among other  
15 things, subjecting Plaintiff to unwanted conduct of a sexual nature as set forth above." (Complaint at ¶  
16 128.) Without any explication as to which alleged acts were done negligently, plaintiff has failed to  
17 state facts sufficient to state a cause of action for negligence against Defendant Erick G. Guerrero.  
18

19 **VIII. TENTH CLAIMS FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
20 **FAILS TO STATE A CLAIM AND LACKS THE REQUIRED SPECIFICITY.**

21 "The elements of the tort of intentional infliction of emotional distress are: '(1) extreme and  
22 outrageous conduct by the defendant with the intention of causing, or reckless disregard of the  
23 probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional  
24 distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous  
25 conduct. . . .' Conduct to be outrageous must be so extreme as to exceed all bounds of that usually  
26 tolerated in a civilized community." (*Christensen v. Superior Court* (1991) 54 Cal. 3d 868, 903, quoting  
27 *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209.) The defendant must have engaged in  
28 "conduct intended to inflict injury or engaged in with the realization that injury will result." (*Id.*) Here,



1 plaintiff fails to specify which conduct allegedly perpetrated by Defendant Erick G. Guerrero was so  
2 extreme as to exceed all bounds of that usually tolerated in a civilized community. Accordingly,  
3 plaintiff has failed to set forth facts sufficient to constitute a cause of action for intentional infliction of  
4 emotional distress as against Defendant Erick G. Guerrero. Additionally, plaintiff fails to allege that any  
5 acts allegedly done by Defendant Erick G. Guerrero were done with the intent to inflict injury or with  
6 the realization that injury would result.

7  
8 **IX. ELEVENTH CLAIMS FOR BATTERY FAILS TO STATE A CLAIM AND LACKS THE**  
9 **REQUIRED SPECIFICITY.**

10 The Complaint effectively concedes that Plaintiff likely acted in a manner consistent with  
11 Defendant Erick G. Guerrero developing an understanding that the alleged touching was consented to,  
12 while at the same time stating there was no consent. Accordingly, the eleventh cause of action is  
13 ambiguous and unintelligible and thus legally uncertain.

14 Additionally, "In an action for civil battery the element of intent is satisfied if the evidence  
15 shows defendant acted with a "willful disregard" of the plaintiff's rights." (*Ashcraft v. King* (1991) 228  
16 Cal. App. 3d 604, 613.) Here, Plaintiff's Complaint is not consistent with a determination that  
17 Defendant Erick G. Guerrero acted with a willful disregard of the plaintiff's rights. Accordingly, the  
18 complaint fails to state fact sufficient to constitute a cause of action for battery against Defendant Erick  
19 G. Guerrero.

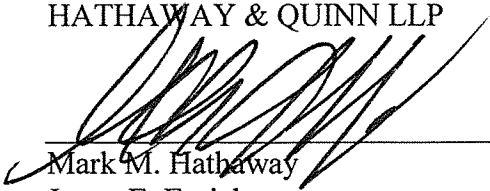
20  
21 **X. CONCLUSION**

22 For the foregoing reasons, Defendant respectfully request that the Court grant its Demurrer as to  
23 the First, Second, and Seventh through Eleventh Causes of Action in Plaintiff's Complaint.

24 WERKSMAN JACKSON  
25 HATHAWAY & QUINN LLP

26  
27 DATED: October 25, 2017

By:

  
28 Mark M. Hathaway  
Jenna E. Eyrich  
Attorneys for Defendant Erick G. Guerrero

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 DEMURRER TO COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

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

Kelli D. Burritt  
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Woodland Hills, CA 91367  
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Facsimile: (877) 641-0824  
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.

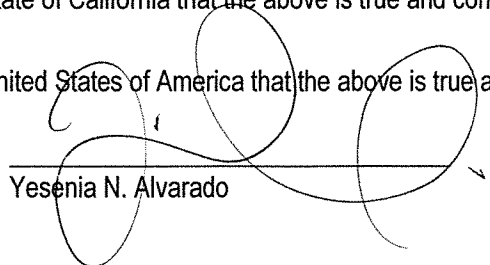
**BY EXPRESS SERVICE** by depositing in a box or other facility regularly maintained by the express service carrier or delivering to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with 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

**THIS IS YOUR CRS RECEIPT**

INSTRUCTIONS
<p>Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.</p> <div style="text-align: center;"> </div>

**RESERVATION INFORMATION**

**Reservation ID:** 171025261652  
**Transaction Date:** October 25, 2017  
**Case Number:** BC680904  
**Case Title:** KAIRSSA FEWICK VS UNIVERSITY OF SOUTHERN CA ET AL  
**Party:** GUERRERO ERICK G. (Defendant/Respondent)  
**Courthouse:** Stanley Mosk Courthouse  
**Department:** 24  
**Reservation Type:** Demurrer - without Motion to Strike  
**Date:** 1/3/2018  
**Time:** 08:30 am

**FEE INFORMATION (Fees are non-refundable)**

**First Paper Fee:** Party asserts first paper was previously paid.

Description	Fee
Demurrer - without Motion to Strike	\$60.00
<b>Total Fees:</b>	<b>\$60.00</b>

**Receipt Number: 1171025K6448**

**PAYMENT INFORMATION**

**Name on Credit Card:** yesenia n alvarado  
**Credit Card Number:** XXXX-XXXX-XXXX-4059

**A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE MOTION/DOCUMENT FACE PAGE.**