

## CONFIDENTIAL REPORT OF INVESTIGATION

TO: Cherie Scricca  
Interim Title IX Officer

FROM: GayLynn Kirn Conant  
Investigator

RE: Investigation into the allegation made by [REDACTED] against  
Professor Gopal Balakrishnan

DATE: September 18, 2018

### INTRODUCTION

At the request of Interim Title IX Officer Cherie Scricca, I was engaged to conduct an investigation concerning an allegation that Gopal Balakrishnan (“Respondent”), Professor at the University of California, Santa Cruz (“UCSC”) engaged in conduct with [REDACTED] (“Complainant”), former student, that may have violated the University of California Policy on Sexual Harassment dated February 10, 2006.

Specifically, as stated in the notice of investigation, Complainant, an undergraduate student at the time, alleges that on or about June 2013, Respondent lay on top of her and attempted to have sex with her without her consent and despite her attempts to push Respondent off of her and telling Respondent that she did not want to engage in such activity with Respondent.

As explained below, the preponderance of the evidence does establish that Respondent engaged in the conduct alleged in the notice of investigation and substantiates a violation of the policy in place at the time of the incident, the University of California Policy on Sexual Harassment, dated February 10, 2006.

### BACKGROUND

On February 7, 2018 I was engaged to conduct an investigation of this complaint by UCSC. On February 8, 2018, the UCSC Title IX Office issued a notice of investigation to the parties which included the allegations to be investigated.

The original 60 day working period for which the university strives to complete the investigation process concluded on May 4, 2018. However, as a result of the investigator being retained to investigate several other allegations concerning Respondent, the number of witnesses involved, the unavailability of the Respondent for his interview until June 11, 2018, witness availability issues, the volume of evidence gathered, and an extended evidence review period, this time frame was extended.

## **SCOPE OF REVIEW**

This investigation sought to determine whether events occurred as alleged and whether they constitute a violation of policy in place at the time of the alleged incident, the University of California Policy on Sexual Harassment, dated February 10, 2006.

## **INVESTIGATION STANDARD**

The standard applied in determining whether or not the facts occurred as alleged is the preponderance of evidence. This means that the totality of the evidence must demonstrate that it is more likely than not that the alleged conduct occurred.

## **THE APPLICABLE POLICY**

The incident occurred in June of 2013. The policy in place at the time of the incident was the UC Policy on Sexual Harassment, dated February 10, 2006.

Section A of this policy states, in relevant part:

That the University is committed to creating and maintaining a community where all persons who participate in University programs and activities can work and learn together in an atmosphere free of all forms of harassment, exploitation, or intimidation. Every member of the University community should be aware that the University is strongly opposed to sexual harassment, and that such behavior is prohibited both by law and by University policy. The University will respond promptly and effectively to reports of sexual harassment, and will take appropriate action to prevent, to correct, and if necessary, to discipline behavior that violates the policy.

Section B of this policy defines sexual harassment in relevant part as:

Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. In the interest of preventing sexual harassment, the University will respond to reports of any such conduct.

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, coaches, housestaff, students, and nonstudent or non-employee participants in University programs, such as vendors, contractors, visitors, and patients. Sexual harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or opposite sex. In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

## INVESTIGATION METHODOLOGY

The investigation included interviews with the following:

<b>Name</b>	<b>Interview Date(s)</b>	<b>Relationship to Investigation</b>
██████████	February 20, 2018	Complainant (UCSC alum)
██████████	July 16, 2018	Witness 1 (UCSC alum, friend of Complainant, acquaintance of Respondent)
██████████	June 7, 2018	Witness 2 (UCSC alum, friend of Complainant)
██████████	March 7, 2018	Witness 3 (██████████ ██████████)
██████████	June 11, 2018	Respondent

I did not decline to interview any witnesses offered by either the Complainant or Respondent.

The following key is provided to identify other individual(s) referenced in the witness statements:

<b>Name</b>	<b>Relationship to Investigation</b>
██████████	Private Investigator (private investigator hired by Respondent's attorneys)

My investigation included a review of the following documents:

<b>Document</b>	<b>Provided By</b>	<b>Reason</b>
University of California Policy on Sexual Harassment, dated February 10, 2006	Title IX Office	Not attached but previously provided to the parties
Notice of Investigation	Title IX Office	Not attached but referenced in report
Notes of January 29, 2018 statement by Complainant to Interim Title IX Officer	Title IX Office	Not attached but relevant portion duplicated and referenced in report

<b>Document</b>	<b>Provided By</b>	<b>Reason</b>
Facebook message between Respondent and Witness 9	Witness 9	Not attached but referenced in report
Respondent's written response to pending complaints (32 pages) provided at interview; portion of response related to Complainant's allegation only (remainder deemed irrelevant to this specific allegation)	Respondent	Not attached but relevant portion duplicated and referenced in report
<i>BuzzFeed</i> article dated May 22, 2018, "This Professor Was Accused of Sexual Harassment For Years. Then An Anonymous Online Letter Did What Whispers Couldn't"	Respondent	Attached as Exhibit 1
The Chronicle of Higher Education articles dated November 13, 2107, December 3, 2017 and January 4, 2018	Respondent	Attached as Exhibit 2
Declaration of Private Investigator	Respondent	Attached as Exhibit 3

The following documents were submitted for consideration but were not relied upon in my findings:

<b>Document</b>	<b>Provided By</b>	<b>Reason</b>
Respondent's Curriculum Vitae	Respondent	Not Relevant
Respondent's Personnel File	Respondent	Not Relevant

The parties were given an opportunity to review the relevant information collected during the investigation via an electronic document-sharing website. The Complainant and her advisor reviewed the evidence and provided a response. Respondent and his advisor reviewed the evidence and provided a response. Neither response required further investigation/inquiry.

## **INFORMATION GATHERED**

Each of the statements summarized below are taken directly from the statements made by each of the parties or witnesses when interviewed, and do not contain opinion or conclusions of the investigator.

### **I. STATEMENT(S) BY COMPLAINANT**

Complainant is an alum, having attended UCSC as an undergraduate student from [REDACTED] to June 2013.

During her interview, Complainant reported that she met Respondent on the evening "of the assault." Complainant was initially unsure about the date of the incident. At first, she said she thought it occurred shortly before graduation. She later clarified that the incident occurred on June 18, 2013 when she was 22 years old.

Complainant understood from her friend, Witness 1, that Witness 1 [REDACTED] [REDACTED] had received messages from Respondent asking Witness 1 out for drinks on June 18, 2013 (which Witness 1 shared with Complainant after Complainant reported to Witness 1 what had happened). After having drinks with Respondent, Witness 1 introduced Respondent to Complainant at a party at Witness 1's house. Complainant said the people at the house "were in celebration mode," because it was "graduation time."

Complainant remembered she had something to drink before going over to Witness 1's house, which was on the same lot as Complainant's house. Complainant said she became "very intoxicated" that night, to the point she was "on the verge of blacking out or browning out."

According to Complainant, everyone at the party was quite intoxicated except for Respondent who she said, "seemed present." Complainant remembered vaguely doing "some kind of group hug thing" with Respondent and Witness 1. Sometime later in the evening, Complainant said Witness 1 told her she was "uncomfortable with something" but Complainant did not know what that "something" was.

Next, Complainant recalls feeling “really nauseous” and going outside to sit on the porch steps. Complainant remembers she had her hands on her head and was swaying while seated on the porch. Complainant said that she was sitting there on the porch and Respondent came outside.

Complainant reported that Respondent said to her, “I will help you and I will walk you home.” They left and walked to Complainant’s house where she had trouble getting into the house because she could not find her keys and ended up crawling inside the window. Respondent came in the Complainant’s house (“I must have let him in”). They were sitting in Complainant’s room just talking and Respondent started to “make moves on [her],” trying to kiss her. Complainant recalled saying to Respondent that she just wanted to talk.

Complainant said her next memory is that she got undressed and that they were both undressed. Then Complainant remembers she and Respondent kissing. Complainant’s next memory is that Respondent was “on top of her [REDACTED].” Complainant said she remembers “vividly” that Respondent said he wanted intercourse with her [REDACTED]. Complainant reports that at that point she “came to and understood what was going on.” Complainant said she told Respondent, “You need to leave. I don’t want to have sex with you.” In response, Respondent “started to get more adamant” and continued attempting to have intercourse with her. Complainant tried to push Respondent off of her and Respondent “would not move.” Respondent remained on top of Complainant, who Complainant described as “big and strong.” Complainant said she was scared. She said that at this point, she did not even know Respondent’s last name or that he was a professor. Complainant said she believes she was being loud about wanting him off of her and Respondent may have been concerned about the other housemates hearing what was going on. Eventually, Respondent “ended up leaving” and Complainant “passed out.” Complainant woke up “naked and felt violated and ashamed” remembering “glimpses” of what happened with Respondent.

The next morning, Witness 2 came over to Complainant’s house and they discussed what happened. Witness 2, who was a UCSC student at the time, said the man might have been Witness 1’s professor. Complainant said she did not know what to think about it. Witness 2 said Respondent seemed to be the only one who was sober the prior night. Complainant said she was “traumatized.” Complainant recalled it took her a few days or a week to share what had happened with Witness 1.

When they discussed what happened, Witness 1 shared with Complainant that Respondent had bought her “a bunch of drinks” when Respondent knew Witness 1 was under-aged and that Respondent said, “Don’t worry about it.” Complainant said it seemed that Respondent started off focused on Witness 1 and when Witness 1 said she was not interested, Respondent “started to make moves” on Complainant. Complainant said that Witness 1 also told her that Respondent repeatedly said, “I am not trying to have sex with you.” This was the reason why Witness 1 had told Complainant she was uncomfortable during the party. Complainant said that Witness 1 asked Respondent how old he was, and Respondent got offended at her reaction and told Witness 1 he was going home, and Witness 1 thought Respondent had gone home.



“Complainant stated that she met Respondent just before graduation (she said she thinks it was in May) in 2013, at a party she attended on [REDACTED] Street in Santa Cruz, in the house next door/behind the house where she lived. Complainant said she doesn’t remember a lot of what happened that night because of the alcohol she consumed, but she does have some clear memories of what happened.

She stated that during the party, her friend (unnamed) who was hosting the party told her that Respondent was “making moves” on her, and when her friend told Respondent was not interested in him, Respondent got “upset”. Complainant said that at about this same time, she told her friend that she was going to go home, that she was “really drunk”. (Complainant later described this as a “brown out”.) She said that Respondent offered to “help her home.” Complainant said that Respondent “came into my house and into my room”. She said they sat on her bed and talked awhile, though she didn’t recall what they spoke about or for how long. She said she fell asleep or was in some sort of “brown out” and when she “came to”, Respondent “was naked and on top of me trying to have sex with me.” She said she recalls that when she “came to” she was also naked. Complainant stated that she “pushed” Respondent multiple times to get him off of her and repeated told him “no” and that she “didn’t want this”. She said that he was persistent and that it took multiple attempts of pushing him to finally get him off of her.

Complainant stated that she related the story to the friend that hosted the party. She said that approximately one week later, she was able to get Respondent’s number and that she called him and told him that what happened was not okay and that she did not consent/agree to have sex with him. She said that Respondent told her that “it was your fault”, he did not know that she was “blacked out”. Complainant said she did not come forward at that time or tell anyone in authority at that time because she felt “intimidated”.

## **II. STATEMENT(S) BY RESPONDENT**

Respondent is a UCSC faculty member in the History of Consciousness Department.

In a written statement provided at the beginning of his interview, Respondent stated the following:

“I recall attending a party of recently graduated students in June 2013. Complainant, no longer a student, was present. Prior to that night, Complainant and I had not previously met. I left the party alone and was walking to my car when Complainant came out of her apartment, which was along the driveway that I was leaving through. She pulled me into her apartment and I reluctantly went in. We talked briefly. She suggested that we be physical. I was surprised by this invitation. She was highly intoxicated. I extricated myself from the interaction and left her apartment and went home.

At no time was I even naked. At no time did I take off any of my clothing. At no time did I ever lie naked on top of her. At no time did I ever lie on top of her. At no time did I attempt to have intercourse with her.

Complainant called me approximately one month after this interaction. In the conversation with her, she clearly indicated that she had no memory of what had happened between us.

I further assert that the University has no jurisdiction over an off campus allegation involving a former student.

Private Investigator's declaration (which was attached to the statement) indicates that when interviewed regarding this alleged incident she said that '...she did not remember details from her encounter with [Respondent], volunteering that she had been "very intoxicated that night."

During his interview, Respondent said Witness 1 was a student who had just graduated and was not a student of Respondent. Witness 1 was an [REDACTED] student who wanted him to come to an [REDACTED] student organization event. However, Respondent never went. Respondent described Witness 1 as "nice and persistent." Respondent said he agreed to meet Witness 1 after she had graduated.

On the night in question, Respondent said he and Witness 1 "had a beer" at the [REDACTED] bar and Witness 1 said there was a party at her house around the corner. Respondent said he and Witness 1 arrived at the house and there were fifteen to twenty people there, including "performers and musicians." According to Respondent "a lot of people seemed to be visiting from abroad."

Respondent said he stayed at the house for over 2 hours. Respondent said he consumed some wine, "two or a little bit more" drinks and was not "in any way inebriated." Respondent said he gauged this "by his state of mind." Respondent said that while at Witness 1's house he was mostly sitting down and observing what was happening around him describing himself as the "older square guy" sitting down. Most of Respondent's interaction was with Witness 1 who he described as "slightly flirtatious" although she was not acting in any way that was "overtly flirtatious."

Respondent said Complainant came into the party in "a wrap-around dress" and they were introduced (he was unsure if Complainant introduced herself or she was introduced by someone else). According to Respondent, Complainant already knew he had been brought to the house by Witness 1. Respondent said he and Complainant talked for a minute and then she left, returning "in short jean shorts."

Respondent said Complainant "was flirtatious" with him. They were dancing, but not in "an interactive way."

He said that Complainant then left to go home.

Later, Respondent had a conversation about his age with Witness 1 on the outdoor patio on the side of the house. Respondent told Witness 1 he was 48 years-old and he described

Witness 1 as “flummoxed” in response to that information. After he told Witness 1 his age, Respondent said that Witness 1 went back into her house.

“Not too long after,” Respondent began his walk back to his car which was parked in the driveway. Complainant “must have listened” because she came out of her house, “grabs [him] by the elbow and takes [him] into her place.”

Complainant and Respondent sat down for 5-10 minutes and listened to Complainant’s music. According to Respondent, Complainant did not seem very intoxicated and Respondent did not see her drink alcohol that night. Respondent was aware Complainant was intoxicated, “but not overly so.” Respondent recalled Complainant was “quiet a bit,” but they were friendly and just chatting (Respondent could not recall what they talked about). Then, Complainant got up and “took off her top.” Respondent said he got up and made his way to the door and said, something like, “[he] had a good time, good luck, good to meet you and something about graduation.” He said Complainant said nothing and Respondent went to his car and drove home.

Respondent said that the next day, Witness 1 called him and said she wanted to talk to him. Respondent “guessed it was connected with ‘this thing’ because it was a bit awkward.” He agreed to meet Witness 1 at the [REDACTED] restaurant.

Respondent reported that when he met with Witness 1, she was uncomfortable and “not very specific.” According to Respondent, Witness 1 “did not seem to get along very well with” Complainant because the evening before, Witness 1 seemed to find Complainant’s behavior “maybe perhaps a little untoward.” Respondent recalled, some kind of eye rolling by Witness 1 “with the shorts.” Respondent therefore got the impression that played a role in what she wanted to speak to him about.

Respondent said that Witness 1 asked, “Did something happen? Was there something that went on last night?” Respondent did not want to bring up that Complainant took him back to her apartment, so Respondent told Witness 1 “nothing happened.”

A month later Respondent received a call on his cell phone from Complainant. Respondent said [REDACTED] was with him when the call came through. Complainant identified herself by name, but Respondent did not know who it was because he did not recognize the name. He explained that Complainant said “she had no recollection” about what happened but was concerned something had happened. Respondent said he assured Complainant that nothing had happened and tried to be polite.

At this point in the interview, Respondent said he thought he had “extricated himself well” from the situation at Complainant’s home.

### III. WITNESS STATEMENT(S)

#### A. Witness 1

Witness 1 is a UCSC alum, having attended UCSC from [REDACTED] to June 2013 as an undergraduate student.

Witness 1 met Respondent during her freshman year at UCSC ([REDACTED]). She attended several social justice events and protests and saw Respondent at those events and became familiar with him through one of her professors and her political activity. Witness 1 found Respondent to be inspiring and knowledgeable and viewed him as a mentor. Witness 1 said she [REDACTED] was never officially a student in a class Respondent taught.

During Witness 1's last year at UCSC (2012-2013) she was in contact with Respondent to see if he was willing to participate in an event she was planning for the [REDACTED]. Witness 1 also dropped by Respondent's office hours once and talked to him about feminism and social justice and Respondent recommended some books for Witness 1 to read.

Witness 1 said she was interested in speaking with Respondent to learn more about his background and history. Witness 1 said she generally had developed good relationships with other professors and she would have lunch or a coffee with some of them. She wanted that kind of mentor relationship with Respondent.

Witness 1 reported that in spring 2013, she invited Respondent to an event on campus. Respondent was not able to make it, but they were emailing back and forth about this event. On June 9, 2013, Witness 1 reached out to Respondent on Facebook (due to his earlier request that she communicate with him via Facebook). Witness 1 told Respondent she was getting ready to graduate, that she finished finals the following week and graduation was June 16. Witness 1 said she hoped they could meet up the week after graduation. Respondent responded that he wanted to meet up with Witness 1 after graduation.

On June 18, 2013, Witness 1 messaged Respondent on Facebook asking if he would be available that week because she was moving back to [REDACTED] the following week. Respondent replied via Facebook and suggested they meet "for drinks" that day and provided his cell number for her to text about final details ("Why don't we meet for drinks later this afternoon, say 4, then go from there? Text me at xxx xxx xxxx"). Witness 1 replied via text that she was not 21 but they could meet at a café which would serve both beer and coffee. Respondent responded via text and proposed that they meet at the [REDACTED] (a bar/restaurant). Witness 1 agreed via text (she reported the text messages are no longer available due to change in cell phone). Witness 1 and Respondent met at the [REDACTED] and went up to the second floor. The patio seating was busy but there were tables open. No one was inside. Witness 1 suggested they sit outside; Respondent said inside looked nicer, so they

sat inside (seated diagonally at a table). Shortly after, Witness 1 said there was “a weird flirty moment.”

Witness 1 explained that she was wearing a skirt that hit just above her knees and was using her jacket to cover her knees as she sat with her legs crossed. Respondent said, “Let me take your jacket” and took it and put it next to him. Witness 1 said she immediately had a sense that he did that, so he could see her legs and felt it was “flirty.” Despite thinking that Respondent’s action was “a little strange,” Witness 1 said that they had an interesting and engaging conversation. Respondent spoke about India, his life and interests and Witness 1 was excited to listen. Witness 1 also shared information about her history, life and interests.

Witness 1 said that towards the end of the conversation, there was another “flirty moment.” They each had two or three glasses of wine and Witness 1 had trouble finishing her last glass, so she asked Respondent to finish it. Witness 1 said Respondent picked up the glass, turned it around to where her lipstick had left a mark on the glass, and stared at her in a “seductive way” as he drank the wine. Witness 1 said she was surprised that Respondent was coming on so strongly.

Witness 1 said that as they left the [REDACTED] and were headed to the parking lot they were discussing what to do next and Witness 1 mentioned her house was nearby (Witness 1 lived two blocks away.) and that her roommates would be around too. Witness 1 was thinking her housemates would enjoy hanging out because they were familiar with Respondent from the social justice events. Witness 1 said she thought it would be “chill” time hanging out with Respondent and her friends.

Respondent started going to his car to drive and Witness 1 said, “We have been drinking. Why don’t we walk?” Respondent declined to walk and drove while Witness 1 walked home on her own.

After Witness 1 arrived at home, she went to [REDACTED] and when she returned, Respondent was there. Witness 1’s roommate (who Witness 1 did not identify due to concern about their privacy) said Respondent showed up at her house with a case of beer he had purchased at a nearby 7-11. The roommate also told Witness 2 that Respondent had introduced himself as Witness 1’s uncle, even though she knew exactly who he was.

Witness 2 and another housemate came home shortly after, and then Complainant who is their next-door neighbor, came by. Music was playing and they were all just talking. At one point the group went to Witness 2’s room and she was playing guitar and singing.

Witness 1 said that she and the others kept drinking through the night. Witness 1 reported that there are some parts that are fuzzy in the middle. Witness 1 remembers the gist of everything and also some specific moments.

Witness 1 said that they were all being nice to each other and having fun. For Witness 1, it was “cool to be hanging out with a professor Witness 1 admired.” At that time, “everything was fine.”

At some point, Witness 1 and Complainant were dancing and Respondent joined them. Witness 1 recalled Respondent kissing Witness 1 on the cheek at some point, maybe more than once, giving her compliments, and “generally being physically close and flirty.”

Witness 1 recalled being “very aware” that Complainant was much more intoxicated than Witness 1. Witness 1 noticed Complainant’s “motor skills were compromised.”

Witness 1 recalled Respondent saying, “two to three times” over the course of the night, “By the way, just to let you know, I am not trying to have sex with you [Witness 1].” Witness 1 said that it seemed as if Respondent was trying to reassure her of his intentions as he said this in a “don't worry” type of tone, but what he said “somewhat contradicted his behavior because he was being very flirty, kissing her on the cheek, and maintaining physical proximity to” her throughout the night. In retrospect, Witness 1 felt like this was a “manipulation tactic” that Respondent was using “to plant the idea in her mind of her having sex with him.”

Respondent and Witness 1 went outside for some air and sat on a haystack outside her house. They were talking and she casually asked Respondent how old he was. Respondent said that he was 48 years-old. Witness 1 was “extremely shocked” and did not hide her reaction, putting her hands up to her face (she says she was very intoxicated at that point and was thus uninhibited in expressing her shock). Witness 1 felt it was weird that she was hanging out with “a 50-year-old. Respondent then stood up and said, “that's old, huh?” He crouched down in front of Witness 1, looked in her eyes and asked in a “seductive” way, “That is probably old enough to be your dad isn't it?” Witness 1 said she felt even more awkward. At that point, Respondent’s mood changed. He said, “I get it. You have made it very clear. You have insulted me. You know what [Witness 1]? I am just going to go home now, I am just going to leave...” Witness 1 said at that point, Respondent left.

Witness 1 went into the house and saw Complainant sitting on the stairs outside the house. She was sitting with her hands on her head and swaying. Witness 1 was upset about what had happened with Respondent and went into her room and started crying. She told her roommate about what had just happened and said she felt like she had been rude to Respondent. Witness 1 said she felt bad for “burning the bridge with someone that was a potential mentor and someone she admired.”

Witness 1 said she was venting to her roommate for about forty-five minutes to an hour when Witness 1 suddenly remembered Complainant and wondered where she was. Witness 1 said she had a “sinking feeling in her gut” because she had forgotten to check up on Complainant. Witness 1 went to the living room to look and Complainant was not there.

Witness 1 said she was about to go to Complainant's house and check on her when Witness 1 thought she saw someone walking into the house (a female bodied person). Witness 1 thought it was Complainant, so she went to bed.

Witness 1 said she woke up the next morning and got a Facebook message from Respondent that said, "Hi [Witness 1]. Nice hanging out with you. I left my iPod at your place so if you're free I should come by and get it." Witness 1 responded, indicating Respondent could come by and pick it up. Respondent later asked if they could meet at the [REDACTED] instead "because his phone was not working well." Witness 1 said she saw this as a chance "to make amends" and hoped she and Respondent "would not end on a sour note."

Witness 1 said she went to the [REDACTED] to return the iPod. She said that she sat with Respondent and asked him if they kissed "on the lips" the night before and Respondent said, "No, we kissed on the cheek." Then they talked about the night ending awkwardly. Witness 1 asked Respondent "what his intentions were" that night and Respondent said he thought they could make out for a bit before he left, and then he could visit her in [REDACTED], "but you had to be super immature about it." When Respondent said this, Witness 1 then recalled that at the beginning of the evening she had shared with Respondent that she was moving to [REDACTED] and he said he had contacts and was down there often. Witness 1 had also joked that if he was ever down in [REDACTED] she would buy him a drink because she would be 21.

Witness 1 said that during the discussion at the [REDACTED], Respondent's communication style felt "aggressive and defensive." Respondent said he did not know why they were having a conversation because nothing happened and there was nothing to talk about.

Witness 1 said the reason she was hoping to talk about it was because she wanted to make sure everything between them was "chill." However, Respondent was making her feel worse and was taking up most of the space in the conversation. He spoke in an "aggressive tone" and said there was nothing for them to talk about.

Witness 1 felt the conversation ended on a "little bitter, 'whatever' note." She said there was "fake cordiality with underlying tension." This was the last time Witness 1 communicated with Respondent.

In July, about a month after the conversation in the [REDACTED], Witness 1 came to visit Santa Cruz and she and Complainant went on a walk. During the walk, Complainant shared with Witness 1 "what had happened with Respondent."

Complainant told Witness 1 that when Respondent left Witness 1, Complainant was sitting on the front porch. Complainant got up and tried to get back into her place. Witness 1 was unclear on what happened next, but she believes that Complainant was having difficulty getting back in to Complainant's house, Respondent saw this and offered to help her. Complainant told Witness 1 that she was extremely intoxicated, she did not remember "chunks" of what happened but remembered "bits." Complainant said she remembered sitting on the floor in front of her "alter space" talking about Marxism with

Respondent. Complainant said Respondent leaned in and tried to kiss her at which point Complainant told him she did not want to “hook up,” that she just wanted to talk. The Complainant said Respondent attempted to kiss her again and she repeated she did not want to “hook up.” The next thing Complainant said she remembered was she was completely naked and so was Respondent. Respondent was on top of her and trying to penetrate her. [REDACTED]

[REDACTED]. Complainant said Respondent was whispering “vulgar things” in her ear, [REDACTED]. [REDACTED]. Complainant said she finally managed to push Respondent off of her and asked him to leave.

Witness 1 was shocked and livid at Respondent. Complainant said she had already shared what had happened with Witness 2, but wanted to wait to tell Witness 1 in person.

Complainant later told Witness 1 that she and Witness 2 called Respondent “to confront him.” Complainant said she called Respondent and he was “defensive and aggressive.” Respondent said “he knew when a girl was interested” in response to Complainant saying she did not consent. Witness 1 said she believes Respondent also said in this call (but Witness 1 said she was not 100 % certain) that Respondent was very well versed on feminist literature and more knowledgeable about feminism than Complainant was. Witness 1 reported that Complainant explained that Respondent denied he did anything wrong or that anything wrong happened and that Complainant reported that Respondent was not allowing Complainant to speak but she was finally able to communicate her message. Respondent called back and left her a long voice mail message that Complainant never listened to. Complainant said she ended up deleting it because she did not think listening to it would help her in the healing process.

#### B. Witness 2

Witness 2 attended UCSC from [REDACTED] through 2013. [REDACTED]  
[REDACTED].

Witness 2 said she never had a class with Respondent and did not know who he was until he showed up at their house on the night of the event. Respondent was introduced to Witness 2 by her housemate Witness 1 and understood Witness 1 was a former student of Respondent. Witness 1 had been out with him earlier and invited him back to the house. Another roommate was also there that night.

Prior to meeting Respondent at the house, Witness 2 had gone out with her boyfriend to [REDACTED] and went home from there. When they arrived at the house, Respondent was already there with Witness 1 and others. They were all drinking wine and talking. Witness 2 said the group was going out to the balcony a lot. Witness 2 said she was hanging out with her boyfriend, cooking and then going to her room to play music. They were in her room playing music and everyone else was being rowdy outside. Then the group came into Witness 2’s room and listened, including Respondent and

Complainant. Witness 2 recalled Respondent asked, "How long have you been playing together?" Witness 2 replied "This is the first time."

Witness 2 said she found it strange to have a professor in their house. Everyone else was "our" age. Witness 2 and Witness 1 had made friends with another faculty member and had him over for dinner as a thank you, but this was different. In this instance, Witness 2 said it was notable because "there was this guy drinking and partying with our housemates." She remembers thinking it was strange at the time but was not dwelling on it in the moment.

According to Witness 2 the group partying got really loud and Witness 2 and her boyfriend just kept playing music. Respondent "seemed pretty normal" in terms of his level of intoxication. Witness 2 said that Respondent did not seem very intoxicated when he asked the question about how long Witness 2 and her boyfriend had been playing together.

Witness 2 saw Respondent and Witness 1 chatting over the course of the night and did not notice any special attention being directed to Complainant by Respondent.

Witness 2 said that sometime after that night, Witness 1 said that she thought Respondent was interested in her.

Witness 2 said she understood that Witness 1 and Respondent had been exchanging texts "for a long time" and Witness 2 thought Witness 1 and Respondent had gone out once before this encounter. According to Witness 2, Witness 1 may have had a bit of a "teacher crush" on Respondent. It "freaked her out" (Witness 1) when Witness 1 realized Respondent had real interest in her when Respondent tried to kiss Witness 1.

Witness 2 said Complainant lived in the house right in front of the house Witness 1 and Witness 2 lived in. She recalled it was a Saturday morning and Witness 2 went over to see how Complainant was doing and, Witness 2 said Complainant was "really low." Complainant was barely responding to Witness 2 and walked out of the room when she asked if Complainant was okay.

Eventually that morning Complainant and Witness 2 talked, and Witness 2 asked, "Did you drink a lot?" Complainant responded, "Yeah, I got really drunk. I was going to walk home when [Respondent] said he would walk me home because I was swaying, not walking well." Complainant then said, "I cannot really remember what happened, but I am slowly having flashbacks of [Respondent] in my room with me and I asked him to leave and then I have a memory of him being naked and me being naked too. I don't really know what happened." According to Witness 2, Complainant seemed "really lost, unsettled and upset." Complainant also said that she felt "taken advantage of" by Respondent. Complainant said she had more and more memories coming back and said, "I think I was really taken advantage of."

Witness 2 stayed with Complainant for the rest of the day to provide support. Over the course of that day, Complainant remembered being naked in her bed, Respondent being on

top of her; and she said, "Get off of me, get out of my room, get out of my room." Complainant said she felt helpless and weak and Respondent would not get off of her.

Witness 2 believes (but was unsure) that Complainant also remembered opening her eyes and Respondent's "[REDACTED]." Complainant also remembered Respondent touching her when she was naked.

Witness 2 and Complainant were together often the week following the incident. During that time, Complainant would bring up the experience again. In those conversations, Complainant said she felt so disgusted with herself and her body. In response, Complainant and Witness 2 decided to do a two week "body cleanse." As part of the cleansing process, they cleansed Complainant's room. Complainant slept in her room the night after the incident but told Witness 2 she was uncomfortable. As a result, Complainant slept in Witness 2's room for the next two weeks.

Witness 2 and Complainant also made all their meals together; they made it a "spiritual thing" for them both to close the door on [REDACTED] experiences [REDACTED].

Witness 2 said that a week or two weeks later, Complainant decided to call Respondent and confront him. Complainant made the call from Witness 2's room and Witness 2 was there and heard the conversation because the call was on speaker phone (Witness 2 believes Complainant acquired the number from Witness 1). According to Witness 2, Complainant said, "This is [Complainant] (providing her first name)." Witness 2 said Respondent seemed to remember Complainant and said, "How are you? It is Friday, do you want to go out?" Complainant responded, "I am calling you to tell you that you crossed the line and I never want to see you again. What you did was not okay and you can't keep doing that to women."

Witness 2 heard Respondent say, "What are you talking about? I just walked you home, you were drunk." Complainant said, "No, I have clear memories of you being in my room and asking you to leave and you would not leave. At that point in the call, Witness 2 says that Respondent hung up and the call ended.

### C. Witness 3

Witness 3 is Complainant's [REDACTED].

[REDACTED]

[REDACTED]

When asked if Complainant ever shared anything with her about an incident that occurred near graduation in Santa Cruz, Witness 3 recalled visiting Complainant after graduation and Complainant told her about "a personal experience with a teacher."

Witness 3 said that in the presence of a friend of Complainant (who Witness 3 declined to identify because Witness 3 understood at the time of her interview that the friend did not want to be involved), Complainant reported that a professor came over to a friend's house and that he "must have" been invited to come over. [REDACTED]

Complainant told Witness 3 that either drugs or alcohol "were involved" and the professor "sexually abused her." Complainant said she was inebriated to the point that she was "initially compliant." Complainant reported she had to "muster all the strength she had to stay conscious to combat his actions," that it was a struggle and described the professor's "continued pressure." Complainant also said it was difficult to get him to leave. Witness 3 said the professor was not Complainant's professor.

Witness 3 and Complainant did not speak of what happened to Complainant again. The only discussion was shortly before Witness 3's interview and their conversation concerned when the event occurred. Witness 3 could not remember the date and asked Complainant when it occurred, and Complainant said it was near graduation in 2013.

Witness 3 expressed that she felt she should have done more at the time Complainant shared what happened, "but the girls did not want to go forward with a formal complaint at that time."

## **ANALYSIS AND FINDINGS**

### **Allegation**

Complainant, an undergraduate student at the time, alleged that on or about June 2013, Respondent lay on top of her and attempted to have sex with her without her consent and despite her attempts to push Respondent off of her and telling Respondent that she did not want to engage in such activity with Respondent.

### **Analysis**

A respondent cannot be found responsible unless, following a thorough and impartial investigation, the preponderance of the evidence shows that the conduct, as alleged in the notice of investigation, occurred in violation of University policy.

In this matter, the preponderance of the available evidence shows that the conduct, as alleged in the notice of investigation occurred.

It is undisputed that Respondent and Complainant met at Witness 1 and Witness 2's house "near graduation" in June 2013. The preponderance of the available evidence (including the messages between Witness 1 and Respondent) establish the incident occurred on June 18, 2018, two days after the UCSC commencement ceremonies concluded.

It is undisputed that Respondent arrived at Witness 1's house after having had drinks with Witness 1. Witness 1 credibly reported that Respondent knew she was under the age of 21

at the time because she had explicitly told him that in proposing a meeting at a café in response to his proposal that they get together for drinks in a Facebook message.

The weight of the evidence is that Complainant was highly intoxicated (Respondent stated in his written statement that she was “highly intoxicated<sup>1</sup>”), and that Respondent was in Complainant’s home on the night in question. Respondent agrees with the other witness accounts that he had a few drinks but was “not in any way inebriated” and therefore had the capacity to perceive whether Complainant was conscious of what was happening and whether the sexual advance and activity was welcome.

It is disputed by Respondent that he engaged in any sexual activity with Complainant. Respondent said in his interview that Complainant had been “flirtatious” with him during the night and “pulled him” in to her apartment as he was leaving. Respondent said Complainant took off her shirt and he left shortly thereafter, “extricating” himself from the situation. Respondent also relies on the representation of a private investigator, hired by Respondent’s attorney (according to the investigator’s declaration), that Complainant “did not remember details” of what happened during a cold-call to Complainant while Complainant was at work, in his response denying the allegations. The investigator does not find this position persuasive.<sup>2</sup>

Complainant has been consistently candid that she was extremely intoxicated to the point that she had significant gaps in her memory about what occurred over the course of the night (a condition commonly referred to as a “brown out” state). However, as confirmed by Witness 2, Complainant did remember “details” of what happened during the encounter with Respondent the very next day. Complainant also reported “details” to Witness 1, the Title IX office, a BuzzFeed reporter and this investigator prior to the cold-call. Thus, even assuming the private investigator’s representation of what Complainant said during the brief telephone call to be accurate, the fact that Complainant does not remember “details” of what happened on the night in question does not mean her account of what happened is inaccurate.

Further, Complainant has consistently recalled important details that she recounted to Witness 1 and Witness 2 close in time to the incident. For example, Complainant recalled sitting on the porch, rocking back and forth and that Respondent walked her to her house. She also recalled being with Respondent in her room (Respondent admitted to being inside the apartment). Complainant also recalled Respondent “making moves” on her and she specifically told him she was not interested in a “hook up” and wanted to talk. Complainant also recalled being undressed (it is noted that in one account she said she recalled undressing herself; in another, she recalled being suddenly aware of being naked).

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<sup>1</sup> It is noted that Respondent said something different during his interview. Respondent said: Complainant did not seem very intoxicated; he was aware she was intoxicated, “but not overly so.”

<sup>2</sup> The investigator also notes that the contact by a private investigator hired by Respondent’s attorney, is not an investigator authorized by the university to conduct this investigation. Asking questions of a Complainant during an unexpected “cold call” while the Complainant was at work, is a questionable investigation tactic. As a result, the investigator does not consider the declaration to be persuasive on any issue.

Complainant has also consistently said she remembered “coming to” and realizing that Respondent was naked, on top of her, trying to have sex and [REDACTED]. Complainant has also consistently reported that when she realized Respondent was attempting to penetrate her to have intercourse, she verbalized that she did not want to have sex and wanted Respondent to leave. Complainant has also consistently described that she physically resisted Respondent, attempting to push him off of her body multiple times until he stopped and got off of her.

Complainant woke up the next morning naked and feeling “disgusted” and “violated.” That morning Witness 2 said Complainant appeared very low, upset and lost. That day Complainant told Witness 2 that something had happened with Respondent, that she could not remember everything that happened, but she was having flashbacks of what happened. That same day Complainant remembered being naked in her bed, Respondent being on top of her and her saying, “Get off of me, get out of my room, get out of my room.” Complainant also told Witness 2 that she felt helpless and weak and Respondent would not get off of her. Witness 2 also confirmed Complainant said something about being aware of Respondent [REDACTED] because Witness 2 recalled Complainant saying Respondent’s “[REDACTED],” [REDACTED]. Witness 1 also reported that Complainant told her Respondent had [REDACTED].

Complainant’s memory of what occurred was intermittent. However, the fact that she was sharing with Witness 2 what occurred the next day and that she was having “flashbacks” of what occurred is consistent with someone who has actual memories of what occurred after having been extremely intoxicated.

In addition, other evidence supports Complainant’s account that Respondent engaged in the sexual behavior she has described.

For example, within a month of the encounter with Respondent, Complainant had shared what happened with her friends (Witness 1 and Witness 2) and [REDACTED]. Complainant also “confronted” Respondent during a telephone call that Witness 2 was present for and heard. Respondent also confirms this call occurred, although his version of what was said differs from what Complainant and Witness 2 reported. This conduct is consistent with someone who believes her memory of what occurred to be accurate. In other words, this conduct is inconsistent with someone who is fabricating a story. There was no prior relationship between Complainant and Respondent to suggest that Complainant had a motive or reason to make an untruthful accusation against him.

In addition, Complainant’s recall that Respondent walked her home is consistent with her state of intoxication. Witness 1 said Complainant was so intoxicated that her motor skills were impacted and that she saw Complainant sitting on the stairs with her hands on her head, swaying. Complainant also said she was unable to walk and was sitting on the porch and unable to walk home. This suggests it more likely that Respondent offered to walk Complainant home, rather than Respondent’s version that she came out of her apartment and pulled him inside.

Additional support for Complainant's account includes the fact that Witness 1 also confirmed seeing Complainant sitting on the stairs right after Respondent left. Thus, the weight of the evidence establishes that Complainant was not in her house when Respondent left Witness 1 as Respondent claimed.

Further, it is unlikely Complainant would have been able to "hear" Respondent heading to his car unless he was extremely loud as he passed Complainant's residence or unless Complainant was intentionally waiting for Respondent to pass by her house, which seems implausible given her state of intoxication.

In addition, Witness 2 recalled Respondent saying during the telephone call with Complainant after the incident that nothing happened, that he had just walked Complainant home.

Also a factor, Witness 1's account of Respondent's behavior is consistent with someone with an intent to engage in some form of intimate physical activity. This includes Respondent's behavior at the [REDACTED] (having them sit at a table inside where there were no other patrons, making an obvious effort to demonstrate to Witness 1 that he wanted to drink wine from the same place on Witness 1's glass where she had been drinking the wine, and removing Witness 1's jacket, exposing her legs and, when at the house, saying, more than once, that he was "not trying to have sex with Witness 1 but engaging in contradictory behavior, kissing her on the cheek, maintaining physical proximity to Witness 1, dancing with Witness 1 and Complainant and becoming "offended" at Witness 1's reaction to his age. The fact that Respondent was "partying" with UCSC undergraduate students and students who had recently completed classes and "walked" also shows an extremely troubling lack of judgment which supports the accounts of Witness 1 and Complainant.

The investigator also finds it significant that Respondent was very aware of Complainant and Complainant's attire (even five years later during his interview), noting what she was wearing (a wraparound dress and then short shorts) and describing her as acting "flirtatious" with him (and also that Witness 1 had been flirtatious). Respondent also admits that he allowed himself, to be "pulled by the arm" by Complainant into her house. This version, if true, is of concern, as it would be inappropriate for Respondent to willingly go into Complainant's home given Complainant's state of intoxication. Given the differences in their respective size and weight, and Complainant's level of intoxication, Respondent could have avoided any encounter in Complainant's home. The fact that Respondent agrees that he stayed long enough to listen to Complainant's music and that Complainant took off her shirt makes the sexual conduct Complainant reported plausible and more credible than Respondent's version of events.

There was also no evidence to suggest Complainant had any motive to fabricate her allegation against Respondent. It was not until Complainant read about Respondent's denials of having engaged in sexual misconduct that she came forward and spoke with the Title IX office (and only after Witness 1, alerted her to the issue). Respondent's own private investigator confirms that Complainant's primary interest was "restorative justice"

(a process that calls for the accused to acknowledge wrong doing) rather than monetary gain.

For the purpose of the credibility analysis in this matter, the investigator also finds that Complainant's account of what occurred is also similar to conduct the investigator has found Respondent engaged in with another woman, also in spring 2013.<sup>3</sup> This both adds to Complainant's credibility and diminishes Respondent's credibility in this case.

In addition, Respondent's account of his meeting with Witness 1 the day after the incident was different than Witness 1's account in ways the investigator also finds relevant for assessing the credibility of the various witnesses. Respondent said Witness 1 contacted him, wanting to meet. Witness 1 said Respondent contacted her to retrieve his iPod, which is corroborated by the Facebook messages provided by Witness 1. Respondent said Witness 1 asked him "if something happened last night" and implied that Witness 1 was asking about whether something happened between Respondent and someone else.

Witness 1 on the other hand said she asked Respondent specifically if he kissed her on the lips and what his intentions had been. Witness 1 reported Respondent to be defensive and aggressive during the conversation suggesting Witness 1 had "ruined everything because she had been immature." This behavior is consistent with Respondent's negative comments about Complainant during the interview referring to her as flirtatious, wearing provocative clothing, pulling him into her house and taking off her shirt. This investigator also found Witness 1's account of what happened on the night in question and during the meeting at the ██████, to be credible based upon her forthright demeanor in describing it and the additional support for her account provided by the messages between her and Respondent.

There is also no evidence that Witness 1 had any bias against Respondent. She described admiring Respondent before the "party" and wanted him to be a mentor. Her description of what occurred that night was internally consistent and plausible and supported by the Facebook messages which corroborate her account of how they came to be at the ██████ bar. While Witness 1 is not a complainant in this case, the impact on her as a result of this experience is also concerning, given the "totality of the circumstance" analysis that the university's sexual harassment policy contemplates.

Witness 1 viewed Respondent as a mentor and a potential source for academic support (letters of recommendation/guidance) until the events of June 18 and 19. Respondent's "flirty" behavior and reaction to Witness 1 on the night in question (when it became clear she was not interested in Respondent after the discussion about his age) and during the meeting at the ██████ (dismissive comments including calling her "immature") resulted in the loss of this potential mentor relationship Witness 1 said she wished to cultivate (and which had her in tears after she thought Respondent had left). This scenario is the opposite of the type of university experience a university should expect for its students. Further, Witness 1 is also a victim in the sense that she feels responsible for having made possible

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<sup>3</sup> Respondent attempted to have sex with another woman after the woman verbally declined consent, repeatedly, and was forcibly pushed out of the woman's bed by the woman and a friend.

what happened to Complainant due to her introduction of Respondent to her friends and roommates on the night in question.

Turning to the issue of Complainant's student status at the time of the incident, The University of California Policy on Sexual Harassment does not provide guidance as to the definition of "student." However, the policy does state that in determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and "to the totality of the circumstances, including the context in which the conduct occurred."

Information provided by the Registrar indicates that Complainant was enrolled in the spring quarter of 2013. Spring 2013 quarter began on April 1, 2013. Classes concluded on June 13, 2013 and the commencement ceremonies occurred over the weekend of June 14-16. However, final grades were not posted by Complainant's instructors until June 14 and June 18 respectively. An audit to determine whether Complainant had met the requirements for her degree was not completed by the Registrar's office until July 12, 2013. After the audit was complete, the degree was conferred.

Since Complainant's degree had not been conferred on the date of the confirmed conduct, the investigator finds that Complainant was still a student on June 18, 2013 for purposes of application of the sexual harassment policy. Accordingly, Respondent should be held accountable for engaging in the confirmed prohibited conduct under the University of California Policy on Sexual Harassment.

Also relevant for the "totality of the circumstances" and "context" analysis is that Respondent would not have been present in Complainant's home were it not for his position as a member of the UCSC faculty and his prior relationship with a student (Witness 1). Respondent was aware Witness 1 was a student and approaching graduation when they initially discussed meeting "after graduation." Respondent was also aware Complainant had recently participated in commencement ceremonies. A finding that the policy is inapplicable because Complainant had participated in graduation ceremonies (but still did not have the benefit of the degree from UCSC), particularly given the predatory nature of the behavior described by the witnesses in this case, would defeat the purpose of the sexual harassment policy to prevent and correct sexually harassing behavior.

The traumatic impact of the incident on Complainant, as described by both Complainant and Witness 2, and the severity of the conduct involved is also sufficient that an intimidating, hostile or offensive working or learning environment was implicitly created.

Based upon the preponderance of the evidence gathered, the investigator makes the following factual findings:

- (1) Respondent, with knowledge of Complainant's extreme intoxication, took advantage of her intoxication, went to her home and engaged in physical conduct of a sexual nature with Complainant. This sexual conduct included attempted penetration of

