

REPORT OF INVESTIGATION AND FINDINGS
Allegations of Violation of the University of California Sexual Harassment Policy
Residential and Student Service Programs, University Village
January 2013

I. Background

On September 19, 2012, [REDACTED], [REDACTED] in Residential and Student Service Programs (RSSP), contacted Title IX Officer Denise Oldham to relay concerns that had been brought to him by two temporary employees. [REDACTED] and [REDACTED] reported to [REDACTED] on Tuesday, September 18, 2012 that they had witnessed James Kohlstedt engaged in sexual activity with two unidentified people in a vacant apartment at University Village, Albany on Friday, September 14, 2012.

Given that the behavior described could constitute a possible violation of University policies, Campus Title IX Officer Denise Oldham and RSSP Employee Relations Manager Javier Gonzalez conducted an investigation. Given the serious nature of the behavior described in the allegations, Kohlstedt was placed on investigatory leave.

II. Jurisdiction

The Title IX Compliance Officer has campus-wide responsibility for responding to sex discrimination complaints and implementation of the University Policy on Sexual Harassment and Complaint Resolution Procedures, which includes the investigation and resolution of complaints received from faculty, staff and students.

III. Applicable Policy

The University of California Policy on Sexual Harassment defines sexual harassment as 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 non-student 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.

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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. A full copy of the Policy is included in Appendix 1.

IV. Summary Findings

Based on the totality of the evidence gathered, the investigator determines that there is sufficient information to support a finding that it is more likely than not that RSSP Painter James Kohlstedt engaged in sexual activity that created a hostile working environment for former RSSP [REDACTED] and [REDACTED], in violation of the University Policy on Sexual Harassment.

A detailed discussion of these findings is included in Sections VI and VII.

V. The Investigation

Interviews were conducted with the following individuals: [REDACTED] and [REDACTED], [REDACTED] James Kohlstedt, [REDACTED] [REDACTED], [REDACTED], and [REDACTED]. Document review included a review of relevant personnel information for the complainants and respondent, a floor plan diagram and photographs of the University Village apartment in question, and photographs provided by the respondent.

A. Initial Report from [REDACTED] – September 19, 2012

[REDACTED] is a [REDACTED] at University Village. On Tuesday, September 18, 2012 [REDACTED] and [REDACTED] came to [REDACTED] office to report an incident that they had witnessed on Friday, September 14, 2012. [REDACTED] initially asked the two men to write down what they had seen. Each wrote down a very brief statement (included in Attachment 1)¹ [REDACTED] then spoke to [REDACTED] and [REDACTED] to gather more details.

[REDACTED] said that [REDACTED] and [REDACTED] stated that between 2:30-3:00 p.m. on Friday they went to vacant unit #140-749, a second-floor apartment that was being prepared for new tenants. [REDACTED] walked in front of [REDACTED] and opened the door. Both of them saw James Kohlstedt a Painter, and two other people in the apartment. One was a young adult woman (they guessed she might be in her early 20s) with short blond hair. She had [REDACTED] breasts that were exposed (topless.) This woman was standing across from the front door, holding a paint roller in one hand. She timidly said hello to [REDACTED] and [REDACTED], waving slightly with her other hand.

¹ The statement from [REDACTED], contains some scribbled notes from [REDACTED] at the bottom, and on a following page.

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They told [REDACTED] that they saw Kohlstedt kneeling on the floor and appearing to mount another person. James was otherwise clothed, but appeared to withdraw from the other person and cover his genital area a second or two after [REDACTED] and [REDACTED] opened the door. Both described body motions by Kohlstedt that indicated he and the person in front of him were sexually aroused, if not in a sexual act. Because Kohlstedt's back was to the door, they did not see private parts; but when asked about it, made gestures showing Kohlstedt may have withdrawn and covered his genitals or 'zipped' up. [REDACTED] described that, upon hearing the door open, Kohlstedt and the other person immediately ran into the hallway, toward the kitchen area. He said they ran "like a flash" and he did not get a good look at the other person, but noted they were dark-haired, and appeared to be holding clothing as they ran out of the room. [REDACTED] said that his view was slightly obscured, as he was standing behind [REDACTED] in the doorway, and did not have as clear a view of Kohlstedt and the other person as he did of the blond topless woman standing to the right.

[REDACTED] and [REDACTED] both described that after witnessing this scene they backed out of the doorway, [REDACTED] closed the door, and they turned to leave. After descending a few stairs, James opened the front door and told them something like, "Obviously the apartment's not ready." [REDACTED] and [REDACTED] told [REDACTED] that they did not see Kohlstedt during the rest of that day. They clocked out and left for the day at the normal time, about 3:45 p.m. They said they left about 10 minutes early that day, and also commented that they frequently ride together, as both happen to live in [REDACTED]. [REDACTED] and [REDACTED] stated that when they came to work on Monday, September 17, 2012, they separately saw Kohlstedt at morning check-in. Both of them independently observed that he acted "like nothing ever happened."

Unable to complete their work that Friday, they returned to work in the same apartment on Monday, September 17, 2012, to find the toilet completely backed up. Both men were bothered by this, as it had not been in that state before.

B. Interviews with the Complainants

[REDACTED] – September 20, 2012

[REDACTED] is employed by [REDACTED], [REDACTED] services. [REDACTED] has worked at [REDACTED] for about [REDACTED] and during that time has completed various [REDACTED] assignments on the campus, in the capacity of [REDACTED] and [REDACTED].

[REDACTED] said that he was given a work assignment by UC employee and [REDACTED] on September 14, 2012 to "[REDACTED]" vacant Apartment #140-749, located at University Village, Albany. [REDACTED] stated that his job was [REDACTED]

James Kohlstedt, the main painter, had finished painting the interior of the apartment.

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█████ said that he unlocked apartment #140-749 in the morning of September 14, 2012, which provided Kohlstedt access to the apartment. █████ said that he performed other assignments that day and at approximately 2:30 p.m., he and fellow █████ arrived at #140-749 █████. █████ said that he and █████ walked up the stairs to the second floor apartment.

█████ said that when he opened the door to the apartment he saw Kohlstedt and two other people in the living room. He saw Kohlstedt in front of him. He saw Kohlstedt's back and described that Kohlstedt appeared to be having sex with someone from behind. █████ said Kohlstedt's body blocked his view of this person, with whom he appeared to be having sex. To his right, █████ said he also noticed another person in the room, a woman standing about 4 to 6 feet away from him █████. He described her as white (fair skinned), with short blond hair, of medium height, and young (he estimated early 20s). The woman was topless – her breasts completely exposed. She was wearing very short shorts, and was holding a paint roller in one hand. █████ added that she had paint splashes all over the front of her torso, including her breasts. When asked to elaborate, he explained that she didn't look like she was splattered with paint from rolling paint, but rather that her skin had been painted on purpose. The woman appeared to be surprised by his entrance to the apartment and said, "Oh hi," in a kind of sheepish tone and gave a small wave.

█████ said that when he opened the door, Kohlstedt appeared startled and immediately backed away from the person in front of him and both of them ran out of the room to the left. The person in front of Kohlstedt had been on hands and knees. █████ described it as happening so quickly that he did not get a good look at the other person with Kohlstedt. From the quick flash of bodies running in front of him, he believed he saw dark hair and darker skin than the blonde woman standing on the other side. He noted that Kohlstedt had his hands in front of his genital area as he ran off to the kitchen area.

█████ said he was completely shocked at seeing what he saw, and closed the door. He and █████ began to go down the stairs. A couple of seconds later Kohlstedt opened the door of the apartment and said words to the effect of "...as you can see this apartment is not finished."

At the end of his shift █████ and █████ went to █████ to do paperwork, according to the end-of-day routine. When he left, he recalled seeing Kohlstedt's van still parked in front of the building #140. After doing his paperwork █████ left University Village to go home █████.

█████ said he saw Mr. Kohlstedt in █████ on the morning of Monday, September 17, 2012 at approximately 7:30 a.m. █████ said that Kohlstedt saw him, greeted him and then motioned to him a "zipped lips" gesture. █████ interpreted this gesture as a reference to what he had witnessed in Apartment #140-749 on the previous Friday. █████ said he raised both hands in the air signifying "I don't care about your business," and left █████ to start his duties.

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Since the interior painting was not finished in Apartment #140-749 on Friday, September 14, [REDACTED] and [REDACTED] returned to that unit on Monday, September 17, in the afternoon at approximately 2:30 p.m. to complete their tasks. [REDACTED] said they entered the apartment and found it to be in disarray. He said that there were McDonald's food wrappers strewn all over the living room and that the toilet was clogged with feces and food wrappings. [REDACTED]

On Tuesday, September 18, 2012, [REDACTED] said he experienced another incident that [REDACTED]. He described that he and [REDACTED] exited a building in which they had been working to go to their van. When they arrived at the vehicle, he saw a happy face spray painted with primer on the windshield. Martinie cleaned it off. [REDACTED] said that Kohlstedt joked with him later, asking [REDACTED] if he had seen the happy face he (Kohlstedt) had painted. [REDACTED] interpreted this incident of vandalism as another intimidating message from Kohlstedt (the first being the "zipped lips" gesture). Later that day, [REDACTED] and [REDACTED] reported the September 14 incident to [REDACTED].

[REDACTED] - September 20, 2012

[REDACTED] worked for UC in a temporary position as a [REDACTED] from [REDACTED].

[REDACTED] explained he had been assigned to work with fellow [REDACTED] to prepare and clean up several apartments. [REDACTED]

[REDACTED] Kohlstedt was the career painter working on Apartment #140-749.

[REDACTED] described that at approximately 2:30 p.m., he and [REDACTED] arrived at #140-749 to perform their [REDACTED] duties as assigned. He said they parked their van in front of the building and went up the stairs to the second floor, where this apartment was located. [REDACTED] walked behind [REDACTED] up the stairs. [REDACTED] had the key. [REDACTED] said he expected the interior painting to be finished, and thus the apartment to be empty. [REDACTED] opened the door with his key. The front door opens into the living room. Standing behind [REDACTED] [REDACTED] saw a woman on one side of the living room, to his right. He immediately noticed that she was topless and holding a paint roller. When asked if he could describe her, he responded that he was shocked at the sight of her completely exposed breasts, and noticed little more than that she was white (Caucasian) and blond. He said he stared in disbelief for a few seconds, and stressed that given his surprise of finding someone in that state of undress in the apartment, he noticed little else but the fact that she was topless. [REDACTED] was standing in the doorway and [REDACTED] was behind him looking over his shoulder.

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On the other side of the room he caught a very brief glimpse of Kohlstedt, who had his back to the door. [REDACTED] said that from Kohlstedt's body position he appeared to have mounted someone from behind, although he could not see the person in front of Kohlstedt. He recalled Kohlstedt was wearing his "painter's whites" and a white or light colored t-shirt. [REDACTED] heard some noises that sounded like movement but did not see much else as [REDACTED] began backing out of the apartment to shut the door. [REDACTED] said [REDACTED] looked at him with a "flustered" look on his face, sighed and the two of them began to go downstairs, as it was clear there was no work they could do in the apartment. After they had taken a few steps down on the staircase they heard the apartment door open and saw Kohlstedt standing in the doorway. [REDACTED] said Kohlstedt said something about the apartment "obviously" not being ready.

[REDACTED] noted that Kohlstedt was not with the rest of the group at the end of the shift, and when he and [REDACTED] left [REDACTED] at about 4p.m., they both looked over and saw Kohlstedt's UC van still parked in front of the building. He explained that one could easily see that building from the parking lot that is adjacent to [REDACTED]

When he and [REDACTED] returned to #140-749 on the afternoon of Monday September 17 for another attempt at [REDACTED] said they found the apartment to be "a complete mess." He said it was not in that state when they'd seen it on Friday. He described that there food containers and wrappers all over the floor and that the toilet was blocked with more wrappers and also with feces. [REDACTED]

When [REDACTED] saw Kohlstedt at the morning check-in on Monday, September 17, 2012, Kohlstedt appeared as "if nothing ever happened." Later that day [REDACTED] told [REDACTED] about his encounter with Kohlstedt in which he [REDACTED] had seen Kohlstedt make the "zipped lips" gesture. The following day, Tuesday, September 18, 2012, when he and [REDACTED] found the happy face spray-painted on their work vehicle, [REDACTED] made up his mind that he needed to report what they had seen on September 14, 2012.

C. Interview with the Respondent

James Kohlstedt – September 26, 2012

James Kohlstedt has a career position as a Painter in RSSP. He is currently assigned to University Village, Albany. Kohlstedt has been in this job classification since 2005, and held other positions at UC before that. Kohlstedt attended the meeting with [REDACTED], representative from the [REDACTED] and [REDACTED], who also acts as [REDACTED] for [REDACTED]. He described his current tasks at University Village as doing "the complete paint job" in empty apartments, i.e.,

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painting the walls, trim, doors, baseboards, etc. He explained that he receives assignments from the [REDACTED], [REDACTED], and goes to the apartments assigned to him each day by the lead painter. The painter assistants have laid down paper and taped as necessary on the day before he begins working and the day after he has finished, they come and remove those preparatory materials.

After reviewing the written allegations presented to him, Kohlstedt immediately responded that the allegations were "totally out of the blue," "completely not true," and that this was a case of people "making up lies" to get him fired so that they could "get his job." After a few seconds, Kohlstedt said he recalled that he did have his [REDACTED] and [REDACTED] with him while painting an apartment a couple of weeks earlier, and that the two people referenced in the allegations could have been them, though he emphatically stressed that he had not engaged in the sexual behavior that was described in the allegations.

He said that his [REDACTED] who was visiting California from [REDACTED] and his [REDACTED] had come to meet him at work because they wanted to ride home with him. Kohlstedt said they were job-hunting in the Albany area, and walked to his workplace and stayed with him for approximately two hours in the afternoon before he left for the day. He said that they came to University Village, walked around and found his van, and came up to the apartment to wait until he finished his shift.

When asked what he recalled about that day, Kohlstedt explained that he had begun the day normally, getting his painting assignment first thing in the morning and proceeding to the assigned housing unit, #140-749. He said the apartment was very dirty, and there was trash around the place. He said there were probably McDonald's containers there, and those would have been his, as he often gets food there and brings it back to his worksite to eat. Kohlstedt described that he spent the day doing "a complete paint job," which involved painting all walls, trims and doors in the apartment. In the afternoon his [REDACTED] and [REDACTED] joined him in the apartment. When asked how they were dressed, Kohlstedt said they were dressed nicely as they were job hunting. He did not have a clear recollection of their outfits, but seemed to remember they were wearing "normal clothes," like long pants (not jeans), shirts and shoes, and not shorts, as was mentioned in the allegations. He said that he was wearing his painter's whites, or perhaps jeans and a white t-shirt, but he couldn't exactly recall.

Kohlstedt said that his [REDACTED] and [REDACTED] waited in the living room while he worked around the apartment. He said that [REDACTED] came to the apartment that afternoon. Kohlstedt said he was standing at the door when [REDACTED] came, and [REDACTED] stood on the stairs while Kohlstedt talked to him. He recalled telling [REDACTED] that if he came back later the unit might be ready. Kohlstedt said he could not recall if he finished his painting work in that apartment by the end of Friday. He said that when [REDACTED] came to the door, his [REDACTED] was standing in the living room and his [REDACTED] was in the bathroom. When asked if he was aware of the blocked toilet in the bathroom, he said he had noticed it was blocked with he arrived that morning. When asked if his [REDACTED] mentioned the clogged toilet, he responded that she had not. When asked if he had warned her not to

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use the toilet because it was blocked he said he didn't specifically recall doing so, but perhaps he had. He said that he "was not paying attention to what his [REDACTED] was doing in the bathroom," and that "maybe she was putting on her makeup."

When asked if anyone else in University Village saw his visitors that day, Kohlstedt said that it was unlikely. When asked for more information about what his [REDACTED] and [REDACTED] did during the two hours they were with him in the apartment, he said that they "hung out," and spent their time talking to each other, "joking and giggling." The investigators asked if there was any furniture in the apartment or anywhere to sit and Kohlstedt replied that there was not. He was asked if the two women stood for two hours in the empty apartment, given that there was wet paint everywhere and no place to sit. He said that they did, and then added that they went in and out of the apartment, sometimes sitting in the van, perhaps playing games on their phones and talking. When questioned again, he reiterated that while in the apartment the two women just stood in the living room. He reiterated that he wasn't closely watching over them because he was working.

Kohlstedt said that on Tuesday of that same week, [REDACTED] had taped "a doll" on the antennae of his van, as a joke. Kohlstedt found it funny, and as a return joking gesture, he spray-painted the happy face on the van [REDACTED] drove. He recalled [REDACTED] laughing about it "a little later." He stressed that he considered this a harmless prank, characteristic of the general informality and playful atmosphere among the workers, and particularly of [REDACTED] whom he referred to as a "jokester." He said both [REDACTED] and [REDACTED] had acquired "goofy nicknames." [REDACTED] was known as [REDACTED]

Kohlstedt stated several times during the interview that family members have visited him at the workplace many times (he estimated "30 to 40 times" since 1996). He claimed that this was never a problem before. He also said that many people were aware of his family visits to the workplace and that other colleagues had family visits, i.e., it was well known in the department that visits from family to the worksite was an acceptable practice. When asked for examples of people who knew of his practice, he replied that [REDACTED] was well aware of the visits from Kohlstedt's family members, and that [REDACTED] often had his own son with him at work, sometimes riding around with [REDACTED] in his UC truck. When asked for other names of others who could corroborate this common understanding and practice, Kohlstedt said his [REDACTED] knew about his family visiting him in the workplace. Kohlstedt then declined to reveal he names of any others he knew who had family visit their workplace, as it now appeared he might "get someone in trouble" for doing so.

The investigators asked Kohlstedt for contact information for his [REDACTED] and [REDACTED], to enable them to seek corroborating evidence of his claims about the alleged activity in the apartment on September 14, 2012. He said he would consider the request. The investigators also asked for photographs of these two individuals. Again, he said he would think about it.

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Follow up Communications from Kohlstedt

On October 3, 2012 Kohlstedt's interview, he sent an email to HR Manager Gonzalez in which he stated,

"In response to your request [sic]. The only thing I am willing to provide to the university at this time is a photo of my [redacted] [sic] and [redacted] [sic]. When I spoke with each of them about the possibility of speaking with you, they both refuse [sic] and are highly upset along with the rest of [redacted] regarding these charges..."

On October 12, 2012, Kohlstedt emailed two jpeg files to HR Manager Gonzalez. In his transmission email text, he stated,

"Here are the pictures you requested... My [redacted] is [redacted] about [redacted] feet and has blonde hair. My [redacted] is [redacted] is about [redacted] feet tall with brown hair..."

Printed copies of the jpeg files are included in Attachment 2.

In the same email message, Kohlstedt stated the following in reference to [redacted]

"...I got a call from an employee stating that the same person lied about [redacted] and something about her vacation, if you would look into this, it would be appreciated as this could show a pattern of this person lying..."

D. Follow up Interviews with the Complainants

[redacted] - September 28, 2012

[redacted] was asked again about the happy face incident. Specifically he was asked to respond to Kohlstedt's claim that the happy face was part of a larger prank, during which [redacted] had tied a "doll" to Kohlstedt's van antennae. Kohlstedt said since [redacted] had admitted tying the doll to the antennae, he painted the happy face on [redacted] van in response to the prank. [redacted] denied having any part of the incident with the doll. He explained that on Monday, September 17, 2012, staff were joking about a toy (similar to one found in a fast food "Happy Meal") that someone had attached to Kohlstedt's antennae. [redacted] had heard the culprit might have been a painter called [redacted], but was not positive. He said he had had no part in the incident and denied telling Kohlstedt that he had done it. He said he had not discussed that incident with Kohlstedt at all.

[redacted] was also asked to respond to Kohlstedt's assertion that the allegations against him were fabricated in order to get him fired, so that the complainants could take his job. [redacted] said that he had always worked with [redacted] and had not sought direct employment with the University. He said his employment with [redacted] continues even though his assignment at University Village has ended, so he is in

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no need of a job. He pointed out that he had worked in many places on campus and has good relationships with employees there, and has absolutely no reason to "make trouble" by lying about someone he barely knows.

██████████ – September 28, 2012 and October 5, 2012

██████████ was asked to respond to the claim that he had fabricated this information in an attempt to get Kohlstedt fired and try to move into his position. ██████████ denied any motivation of this kind. He replied that when he interviewed for the job at University Village, and also after he began working, ██████████ stressed that the job was temporary. The end date never changed and ██████████ had never expected it to change. He added that when he began working at University Village he noted that there were two other painters with temporary assignments, ██████████ and ██████████ who had far more seniority and experience working at the Painter (as opposed to ██████████) level, so ██████████ had always assumed that "there were at least those two [people] in front of" him, and thus never developed any expectation of permanent work as a painter. He also pointed out that he already had another job lined up that would begin after his UC assignment ended on ██████████

E. Interviews with Witnesses

██████████ – October 1, 2012

██████████ has worked at UC since May 2010. He met Kohlstedt shortly after he arrived on campus, as the latter was a temporary lead painter when ██████████ joined the RSSP painting crew. ██████████ commented that when Kohlstedt worked for him (when ██████████ became a ██████████), his work was "satisfactory." He also said that Kohlstedt is "the best refinisher" he knows.

At the beginning of the meeting, when the investigators explained to ██████████ that the campus was exploring concerns about Kohlstedt's workplace behavior, ██████████ commented that the situation probably had to do with "a guy having ██████████ problems." When asked to elaborate on that statement, ██████████ said that the ██████████ problems were not something he knew about "firsthand," and that "everyone knows" Kohlstedt is having a rough time. The investigators asked ██████████ if he was aware of a regular practice of facilities employees being visited by family members on the job site, or bringing family members to work. ██████████ responded that this was not an accepted practice. He said that his understanding is that visits to facilities job sites are discouraged, for obvious safety reasons. He commented that apartments in that state of repair are no place for visitors. He specifically pointed out that the fumes from paint and spray texture would be unpleasant, that there was equipment around that could be hazardous for a visitor to trip over, and that there is absolutely no place to sit.

When asked to respond to Kohlstedt's assertion that ██████████ knew that Kohlstedt's ██████████ or ██████████ had stopped by his worksite 30 or 40 times, ██████████ replied that he did not know that. ██████████ said that he had not met Kohlstedt's ██████████ and that Kohlstedt had never mentioned his ██████████ to him. ██████████ did say he had seen Kohlstedt's ██████████ had

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come to have lunch with her [REDACTED] a few times, but not on the work site. [REDACTED] then said that recently he had had to approach Kohlstedt about having a visitor at work. When asked to elaborate, he said that about a month and a half ago, he saw Kohlstedt "talking to some girl" at the Manville apartments at lunch time. [REDACTED] said that he "told [Kohlstedt] point blank that he could not have people on the job site. [REDACTED] recalled Kohlstedt saying that the woman was his [REDACTED] who "needed a place to stay" and had been "shopping all day." [REDACTED] said he nevertheless repeated to Kohlstedt that visitors were not allowed on the job site. When asked if he could provide a description of the woman, [REDACTED] said he recalled her being "shorter," perhaps 5 feet tall, "dark," with "dark brown hair with streaks in it."

[REDACTED] – October 5, 2012

[REDACTED] is the [REDACTED]. He described the painting process in which the complainants and respondent participate as follows: at the beginning of each shift (7:30 a.m. to 4 p.m.) [REDACTED] gives out keys to painter assistants, who proceed to those units to prepare them for painting. Preparation tasks include applying tape for trim painting, and putting down drop cloth sheets and trim paper. When painter assistants finish the preparation, they leave. Then career painters come in and do interior painting in the units. At the end of the day the painter assistants return to the newly painted units to remove tape, drop cloths and trim paper, and do other kinds of general clean up work. At the end of the day the painter assistants return the keys to [REDACTED]. He said that he generally tries to check on the status of work in some of the apartments in the morning after distributing keys, and again at the end of the day, between 3 and 4 p.m. Sometimes, given the workload, he cannot check on the status of a unit until the following day. At the very end of the day, [REDACTED] turns in the keys and gets the list of units to be "prepped," painted and "finished" for the following day.

[REDACTED] confirmed that he was not at work on Friday, September 14, 2012. When he returned to work on Monday, September 17th, 2012, he said that [REDACTED] informed him in the morning that more work was needed on apartment #140-749 [REDACTED] and would have to return there again that day. Later on that day, [REDACTED] mentioned that he had found the apartment was "filthy" and that the toilet completely clogged. [REDACTED] told them to [REDACTED] call maintenance if necessary. [REDACTED] said he was not particularly alerted by the news that the apartment was very dirty. He said he knew Kohlstedt was having to scrape the baseboards in that unit, and assumed the messiness was due to that. He said he had received no information from [REDACTED], [REDACTED] or anyone else about the allegations of Kohlstedt's alleged behavior on September 14, 2012.

[REDACTED] said he had worked with [REDACTED] for a couple of months and with [REDACTED] for about a month. He had had no problems with either employee. [REDACTED]

[REDACTED] stated that neither man had ever approached him about wanting to extend their temporary appointment, or about wanting a permanent job of any kind on campus. [REDACTED] stated that he was surprised to hear that [REDACTED] and [REDACTED] had brought concerns forward about Kohlstedt's behavior, but saw no reason for them to fabricate information, and could think of nothing they could gain from doing so. He commented that, given the collegial atmosphere among the facilities staff, many of whom had worked together for many years, it would be "stupid" for anyone, and particularly a newcomer, to make false accusations about a co-worker, particularly a longtime staff member.

██████████ said he had known Kohlstedt professionally for many years, since before he was a painter and was part of the grounds staff. He said Kohlstedt is also a hard worker. He said he got along well with Kohlstedt at work and had not noticed any recent changes in his behavior or any problems whatsoever with his work. He said he did not know Kohlstedt on a personal level, i.e., he did not socialize with him. When asked if he was aware of a common practice of facilities staff having family members visit them at job sites, ██████████ said he was not aware of any such practice. He recalled being introduced to Kohlstedt's ██████████ "many years ago," when she must have been ██████████ years old, and could not remember the occasion, but was pretty sure it was not at a job site, but rather at some sort of work event, like a holiday party or something like that. He recalled she was blond, but nothing else about her.

F. More Follow Up Interviews

– October 15, 2012


██████████ was interviewed again to discuss Kohlstedt's claim that the complainants, and specifically ██████████ had falsely accused him of misconduct in order to take his job. ██████████ raised several points in response. First, he said he had communicated as clearly as possible to both men ██████████

██████████ said that although he had limited day-to-day interaction with both men, he believed ██████████ had always seemed very happy with ██████████ as an employer and recalled ██████████ commenting that he liked his job and the variety it provided. ██████████ said ██████████ never asked him about any sort of direct employment with UC. ██████████ also seemed very clear that his job was temporary. ██████████ recalled mentioning to ██████████ when he was hired, at least two or three times, that this job was not a "stepping stone." ██████████ explained that he explicitly communicates this to all temporary staff so that they don't feel misled when their appointments end. He said that ██████████ clarity about his job status and prospects was evident in the way he spoke when he and ██████████ reported the incident they had witnessed in apartment #140-749. ██████████ recalled ██████████ saying something like, "...I don't have any stake in this" and "maybe you don't want to listen to a temporary worker" when he described what he had seen in the apartment.

██████████ said that it also should have been clear, especially to ██████████ that there was a formal hiring process conducted for any vacant positions, whether temporary or

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permanent (██████████ himself had participated in one of these processes), and therefore, the notion of getting Kohlstedt fired so that one of them could take his job was "farfetched." Like ██████████ also commented that anyone would have to assume that in this kind of work environment (i.e., featuring longtime colleagues with solid professional and sometimes personal relationships); bringing false accusations like these against a co-worker would seriously damage the accuser's reputation in the workplace. ██████████ said that one would have to further assume that this damaged reputation would precede the accuser in a RSSP hiring process for future work, which features selection committees that include other facilities staff.



Finally, ██████████ noted that both ██████████ and ██████████ provided similar and consistent accounts of what they had seen on September 14, 2012. He recalled that ██████████ had been the more reluctant of the two to provide details of what he saw. ██████████ initially stressed that he was very happy with his job at ██████████ ██████████ and did not want to create any problems. ██████████ recalled ██████████ expressing that he was profoundly bothered by the notion that Kohlstedt would behave like that at work. ██████████ told ██████████ that he'd "seen people fired for less" at other jobs, and ██████████ had echoed these sentiments.

██████████ – October 25, 2012

██████████ returned to campus for a third investigation meeting. He reviewed the photos provided by Kohlstedt, and signed a transcription of information provided in his previous interviews. This document² is included in Attachment 3. He said he was sure that the blond woman in the photo was not the woman he saw in the apartment. He said the woman he saw looked older. When reminded that in his statement of allegations he said that he noticed little more than the fact that the woman was blond and topless, ██████████ responded that while he hadn't had a long, close look at the blond woman with the paint roller, he was certain that the woman in the picture was "younger" and more "fresh faced" than the woman he saw on September 14, 2012 in apartment #140-749. When asked if he could be more specific about the differences, he recalled that the

²This document contains spelling errors that were not identified until after the signature from ██████████ was obtained. "Kholsteadt" in the document refers to James "Kohlstedt," and ██████████ in the document refers to ██████████

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woman he saw had shorter hair. He could not estimate the height of the blond woman in the photograph from the upper torso view displayed.

██████████ – November 14, 2012

In his second interview, ██████████ was asked to look at the dark haired woman in the photographs and indicate whether or not he had seen her on campus. ██████████ said he didn't recognize her and had never seen her before.

James Kohlstedt – November 14, 2012

In a second meeting with Kohlstedt, he was asked again if his ██████████ and ██████████ would consider making themselves available to provide information. He reiterated that his ██████████ had returned to ██████████ by the time the investigation started, after having visited the Bay Area for about 4 months. The investigators clarified that an interview using Skype or another similar tool could be arranged for his ██████████. Kohlstedt said he felt it was "not necessary," and that he did not want to "drag them into it." He clarified that the photos he provided earlier were taken about a year ago.

The investigators reviewed with him the information he had provided in the prior interview. He said that he recalled being in the back of the apartment painting bedroom doors, and heard the front door shut. He walked to the living room, where his ██████████ told him that "someone came by." He then opened the front door, saw ██████████ (he stipulated that he saw only ██████████ and not ██████████), and told him that the apartment wasn't ready yet.

The investigators asked Kohlstedt if he could paint a clearer picture of how his ██████████ and ██████████ spent their time in apartment #140-749 during the hours that he was painting. The investigators pointed out that there are nearby coffee shops and other places where they could have waited for two hours while he finished painting, rather than standing in the middle of a worksite. He replied that he didn't find it unusual or strange that they would wait with him. He insisted that they stood in the middle of the living room, which he estimated to be about 15' x 12'.

Kohlstedt pointed out again that his ██████████ had come to visit him in the work place "many, many" times (he also used the phrase "dozens of times"). When asked if he could point out anyone else who knew of his family visits and/or engaged in this practice that he believed to be common in the department, he again offered the name of ex-employee ██████████. He said that he couldn't recollect anyone telling him not to have visitors at work.

Kohlstedt repeated that ██████████ was not trustworthy and accused him again of fabricating the claim about seeing Kohlstedt engaged in sexual activity in the apartment on September 14, 2012. He mentioned again that he had heard that RSSP employee ██████████ had also been the target of ██████████ fabrications. The investigators asked Kohlstedt how he knew of ██████████ experience. He replied that he had heard about it from a third party, but would not name the source of the information.

– November 15, 2012

██████████ is a ██████████ in RSSP. She said that in early October 2012, she happened to be walking past ██████████, who was talking on his cell phone to Kohlstedt. ██████████ handed her the phone and told her to talk to Kohlstedt, who relayed the reasons for his current investigatory leave. When Kohlstedt told her about how ██████████ had accused him of misconduct, ██████████ shared that she had been negatively affected as a result of an experience in which ██████████ allegedly shared inaccurate information about her. She said Kohlstedt asked her to share that information if investigators followed up with her.

██████████ said that she met ██████████ in 2010. He was employed with the subcontractor ██████████, and while they worked together ██████████ assisted her in projects in and around the student housing units on campus. ██████████ said that in her opinion, he had developed a reputation as a gossip and that she believed he was responsible for her ██████████

that she believed this information to be inaccurate and complained to her supervisor in an email dated September 7, 2010 memo that was later retracted. All the referenced documents are included in Attachment 4.

G. Document Review

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Investigators also reviewed a floor plan diagram and photographs of apartment #140-749, which validate both the complainants' and respondent's descriptions of the physical space provided in their interviews. These documents are included in Attachment 5.

VI. Analysis

An investigation of sexual harassment allegations seeks to answer the questions of whether the alleged behavior occurred, and if so, whether the behavior rises to the level of a violation of the University of California Policy on Sexual Harassment.

A. Did the behavior as described in the allegations occur?

The respondent denied participating in sexual activity with two unidentified individuals in a vacant apartment in University Village, and there were no other direct witnesses to the events alleged by the complainants [REDACTED] and [REDACTED]. Because key material facts in this case are disputed, the answer to the question of whether the alleged behavior more likely than not occurred requires an examination of the totality of the circumstances and the credibility of the parties.

In examining the credibility of both the complaining and responding parties, the following issues emerge:

Consistency and Corroboration

Throughout their multiple interviews with the investigators the complainants relayed consistent and similar accounts of what they saw and heard. Both men were interviewed separately and multiple times. Subsequent versions from each individual matched his first one, and each individual's version corroborated the other's with substantially consistent chronology and detail. Further, their characterization of events as told to the investigators also matched what they presented to [REDACTED] in their initial report.

[REDACTED] also signed a transcription of the information he provided in his interviews, included in Attachment 2. This occurred about 4 weeks after his second interview with investigators, and after his employment with UC had ended on [REDACTED]. However, investigators were unable to reach [REDACTED], whose employment ended on the same day. The transcription of [REDACTED] interview notes, unsigned, is also included in Attachment 2.

In his two interviews Kohlstedt shared similar versions of events. However, his story could not be corroborated by the other two individuals whom he claimed were with him in the apartment. Despite the investigators' multiple requests in each of his two interviews to contact his [REDACTED] and [REDACTED] Kohlstedt refused to provide investigators with their names or contact details. After his first interview Kohlstedt indicated that his [REDACTED] and [REDACTED] "refused" to participate, and in his second interview he told investigators that it was "not necessary," and that he did not want to "drag them into it."

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On October 12, 2012 Kohlstedt provided photos of the two individuals he claimed were in the apartment with him on the day of the alleged incident. He indicated that the blond woman in the photo was his [REDACTED] and the dark haired [REDACTED] was his niece. However, when shown the photographs [REDACTED] did not identify the blond woman in the photo as the one he claimed to have seen on September 14, 2012. As stated above [REDACTED] was not available to examine the photos.

In both of his interviews Kohlstedt maintained that it was a common practice for facilities staff to bring family to the worksite. He claimed numerous times that "everyone" knew that this was an acceptable practice, and that many people knew he engaged in that practice. When asked in both of his interviews to provide some examples of colleagues who, like him, understood that this practice of family visits was commonly accepted, he twice offered the name of a former supervisor who no longer works at UC, as well as his [REDACTED]. [REDACTED] did not corroborate this understanding. In fact, he shared the opposite understanding from Kohlstedt's. He understood that facilities staff should *not* bring non-employees into a worksite, where things like machinery, tools, equipment, paint fumes, and other substances could pose health and safety risks for those not trained and authorized to use them. Further, [REDACTED] cited an example within the last few months where he specifically instructed Kohlstedt not to bring anyone to the worksite, after finding him in Manville Apartments with a woman whom Kohlstedt introduced as his [REDACTED]. In a subsequent interview, when shown the photo of the woman Kohlstedt identified as his [REDACTED], [REDACTED] said did not recognize the pictured woman.

Inherent plausibility and motive to falsify

While [REDACTED] and [REDACTED] described a scene not commonly witnessed in the workplace, it is possible that an employee could have allowed two outside individuals into the University-owned apartment. Kohlstedt's version of events is also possible. His [REDACTED] and [REDACTED] could have visited him in the apartment on the day in question. However, the notion of two women standing for two hours in an apartment filled with the smell of wet paint, no furniture on which to sit or rest, seems unlikely. Kohlstedt described that his [REDACTED] and [REDACTED] had been job-hunting all day (on foot) in the area, and had walked to his worksite to wait for him in order to ride home with him. Why not sit and wait in a coffee shop (there are numerous coffee shops in downtown Albany, just blocks from University Village)? Why stand in the middle of a room surrounded by wet paint and paint fumes? As stated above, the investigators were unable to explore these questions with these two individuals.

[REDACTED] and [REDACTED] do not have a motive to lie about what they described. Despite Kohlstedt's assertion that they (especially [REDACTED]) were trying to get him fired in order to take his job, both complainants refuted this assumption with clear explanations of already having jobs after their UC appointments ended, and not having any expectation that they would be strong candidates for any open painter's position. The information [REDACTED] and [REDACTED] provided in their interviews supports the complainants' positions. Neither man had heard [REDACTED] or [REDACTED] mention wanting to extend their temporary appointments, nor inquire about future employment possibilities. In addition, both

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██████████ and ██████████ independently commented that anyone making those kinds of false accusations against about a co-worker could reasonably predict a negative impact their professional credibility and prospects in that workplace.

Kohlstedt, on the other hand, has a clear motive to lie. Being found responsible for the kind of risky behavior described in the allegations could bring serious disciplinary consequences. Kohlstedt is a veteran employee who is versed enough in campus policies and procedures to be aware of this.

Past Record

Kohlstedt asserted that ██████████ has a history of falsifying information about other employees, and requested that investigators speak to ██████████ who could provide evidence that supported this claim. However, the information and documentation provided by ██████████ does not validate this claim. ██████████

██████████ This incident does not substantiate the contention that ██████████ made a false claim against ██████████. Further, the investigators did not find this or any other incident(s) establish a pattern of ██████████ making false claims against other employees.

Attitude

In general, both the complainants and respondent participated cooperatively in this investigation. ██████████ and ██████████ participated in multiple investigation interviews before their employment ended. Although ██████████ was not available to return to campus after his employment ended to sign his statement of allegations and examine the photo evidence provided by Kohlstedt, he was nonetheless consistent and credible in providing information to follow up his initial report. Conversely, when asked for access to two key witnesses that could corroborate his account of events, Kohlstedt communicated his unwillingness to have them provide any information.

The collection of these factors lead the investigators to conclude that, based on the totality of the circumstances, the complainants are more credible than the respondent. ██████████ and ██████████ account of what occurred on September 14, 2012 is more plausible than Kohlstedt's. Their claim was supported with more consistent, plausible information, delivered with cooperation and without a motive to lie. Information from three other witnesses ██████████ supports the integrity of their statements of having no ulterior motive to exaggerate or falsify information. Kohlstedt, on the other hand, did not provide the investigators access to key sources information that could directly corroborate his different version of events, and had a clear motive to misrepresent what occurred in the vacant apartment. The investigators find his version of events less plausible than the complainants' account.

Therefore, the investigators determine that it is more likely than not that Kohlstedt engaged in sexual activity with two unidentified people in a vacant University Village apartment on September 14, 2012.

B. Did the alleged behavior constitute sexual harassment?

The University of California Policy on Sexual Harassment states:

The University of California Policy on Sexual Harassment defines sexual harassment as 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...

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, coaches, housestaff, students, and non-student 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.

Central to the question of whether or not Kohlstedt's conduct violated the Policy is an examination of the severity of alleged behaviors and the impact on those who witnessed it.

The conduct [REDACTED] and [REDACTED] described in their allegations was not at the level of hearing a sexually explicit joke or looking at a pornographic image, but rather a graphic sexual encounter witnessed in real time. No reasonable person would expect, during work hours and on work premises, to walk in on a co-worker engaged in a sexual activity. The subsequent "zipped lips" gesture by Kohlstedt to [REDACTED] and the happy face painted on the van that the complainants witnessed during the following week served to heighten the negative impact of the complaints' experienced on September 14, 2012. Even if the zipped lips gesture and happy face incident had been misinterpreted or misunderstood by the complainants, the single graphic sexual encounter stands alone as an act so serious and offensive in the context of the workplace, that it would constitute an objectively offensive working environment for any employee regardless of sex (i.e., male or female). The investigators therefore determine that Kohlstedt's sexual activity with two unidentified people in a vacant University Village apartment on September 14, 2012 created a sexually hostile work environment for [REDACTED] and [REDACTED], in violation of the UC Policy on Sexual Harassment.

VII. Conclusion

Based on information gathered from interviews with the complainant, the respondent and witnesses as well as the review of relevant documents, the investigators evaluated the record of the allegations as a whole and gave consideration to the totality of the

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circumstances, including the context in which the alleged incidents occurred. The standard by which the evidence was weighed was "more likely than not."

The preponderance of evidence gathered supports a finding that James Kohlstedt engaged in sexual activity with two unidentified individuals in a vacant apartment in University Village on September 14, 2012, and that his conduct created a sexually hostile working environment for [REDACTED] and [REDACTED], in violation of the University Policy on Sexual Harassment.