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By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

Sofia Karasek, Individually; Nicoletta Commins, Individually; Aryle Butler, Individually;

Plaintiffs,

vs.

The Regents of the University of California, a public entity, and Does 1 through 100, inclusive,

Defendants.

Case No: RG15775904

COMPLAINT FOR DAMAGES:

1. **DISCRIMINATION ON THE BASIS OF GENDER IN VIOLATION OF 20 U.S.C. §1681 (TITLE IX)**
2. **NEGLIGENT FAILURE TO WARN, TRAIN AND/OR EDUCATE PLAINTIFFS**
3. **DISCRMINIATION ON THE BASIS OF GENDER IN VIOLATION OF CALIFORNIA EDUCATION CODE §220**
4. **FRAUD**

[Demand for Jury Trial]

FILE BY FAX

Based upon information and belief available to Plaintiffs, Sofia Karasek, Individually, Nicoletta Commins, Individually, Aryle Butler, Individually at the time of the filing of the Complaint for Damages, Plaintiffs make the following allegations:

PARTIES

1. Defendant The Regents of the University of California ("Regents") owns and operates the University of California, Berkeley ("University").
2. Plaintiff Sofie Karasek ("Karasek") was, at all times relevant, a student at the University.
3. Plaintiff Aryle Butler ("Butler") was, at all times relevant, a student at the University.
4. Plaintiff Nicoletta Commins ("Commins") was, at all times relevant, a student at the University.

BACKGROUND FACTS RELEVANT TO ALL COUNTS

SOFIE KARASEK

5. During her freshman year at the University, Karasek was involved in the Cal Berkeley Democrats Club ("The Club"), a student organization affiliated with the University.
6. On the weekend of February 10 through February 12, 2012, The Club organized a trip to the California Democratic Party Convention being held in San Diego, CA.
7. Karasek attended this event with The Club.
8. On the night of February 10, 2012, Karasek slept in the same bed with three other students, including a student named TH.
9. At around 3:00am, Karasek awoke to TH massaging her legs, back and buttocks. Karasek froze in the moment, and TH continued to inappropriately rub her for approximately 30 minutes.
10. In approximately April or May of 2010, Karasek, along with three other female students who had been sexually assaulted by TH, reported their assaults to Cici Ambrosio, a representative from the Gender Equity Resource Center, Denise Oldham, a representative from the University's Title IX office, and Hallie Hunt, a representative from the Center for Student Conduct.

11. During this meeting, Karasek was never informed that in order to initiate a formal complaint against TH, she would need to submit a written statement detailing her assault.

12. Upon independently learning of this requirement, Karasek submitted a formal, written complaint to Ms. Hunt on May 15, 2012.

13. Karasek received no immediate response to her complaint.

14. Later, Karasek learned from the president of The Club, that the administration had advised against removing TH from The Club because they were concerned that if he went to another student group, he may assault someone and there would not be the same support structure for a survivor in that group.

15. The administration did advise the president of The Club that they could make TH sufficiently "uncomfortable" to leave on his own accord.

16. For the next eight months, Karasek was never contacted about her complaint.

17. Karasek learned from the president of the Club, that the University was conducting backdoor meetings with TH and the Club's board.

18. In November of 2012, Karasek learned from a board member of the Club, that TH was set to graduate a semester early, in December of 2012. Up to this time, Karasek had yet to be contacted by the University regarding her formal complaint.

19. Upon learning this information, Karasek contacted Ms. Ambrosio by e-mail to request an update regarding her complaint. After receiving no response, Karasek sent a follow up e-mail two weeks later. Ms. Ambrosio responded to Karasek with only the information that the University was preparing to respond to Karasek.

20. On December 12, 2012, Karasek received her first communication from the University since her initial meeting took place in April of 2012. This three sentence e-mail from the Title IX office informed Karasek that "this matter had been explored and resolved using an early resolution process" and that the Title IX officer had "communicated the outcome of the resolution process to the Center for Student Conduct." Nowhere in this brief communication was the outcome of the resolution process ever revealed to

Karasek.

21. At no time during the "early resolution process" was Karasek ever contacted by any administrator involved in the investigation and/or resolution process.

22. On December 17, 2012, three days after TH graduated, a representative from the Center for Student Conduct informed Karasek by e-mail that TH had been charged with violating, and had been found to be in violation of, the Campus Code of Student Conduct. However, Karasek was still not apprised of any disciplinary action that may have been taken against TH.

23. Unsatisfied with the entire resolution process, Karasek filed a Federal Clery Act complaint against the University in May of 2013.

24. In September of 2013, Karasek contacted Ms. Hunt to again attempt to ascertain what, if any, disciplinary action had been taken against TH.

25. Ms. Hunt responded that TH had been placed on a disciplinary probation and engaged in some counseling measures.

26. At no time during the entire investigation and/or resolution process was Karasek given updates about the investigation, nor was she encouraged, or even informed that she could report her assault to law enforcement. Karasek was never afforded the opportunity to present her claim at a disciplinary hearing, nor was she informed about the outcome of the investigation until 10 months after TH had graduated early.

27. As a result of the University's conduct, and lack of conduct Karasek has suffered psychological and emotional damages, and has experienced a loss of educational opportunities and/or benefits, including but not limited to:

    Being forced to change her major from Economics to the less academically rigorous Political Economy;

    Suffering a noticeable drop in her GPA subsequent to the University's inadequate response to her report;

    She was forced to drop at least one class, and has also missed assignments and asked for extensions on assignments;

She is constantly operating with a heightened sense of fear, anxiety and stress knowing that there are possible perpetrators in her classes that have not been removed by the University.

Aryle Butler

28. During the summer of 2012, Butler signed a work contract with the University to serve as an assistant to Margot Higgins ("Higgins"), a PhD candidate who was going to be conducting research in Alaska that summer.

29. While in Alaska, Butler lived at the Wrangell Mountains Center ("The Center"). The Center houses the Alaska Wildlands Studies Program ("Program").

30. The University advertises for University students to enroll in the Program, and University students receive academic credit for completing the Program.

31. John Doe is on the board of The Center and is a guest lecturer for the Program.

32. Toward the end of June 2012, Butler was in the dining hall at The Center. John Doe approached Butler from behind, pressed Butler up against a table, and proceeded to insert his hands in to Butler's underwear and massage Butler's genitals. Butler could feel John Doe's breath on her right shoulder as he continued to assault her. After a short time, John Doe stopped, removed his hands from Butler's underwear, and left without saying anything.

33. The next day, Butler contacted Higgins to report what had happened. Butler did not reveal the name of her assailant to Higgins. However, unprompted, Higgins specifically asked Butler if it was John Doe who had touched her inappropriately. Butler confirmed to Higgins that it was John Doe who had assaulted her, but asked that Higgins not say anything at that time.

34. A few days later, Butler was in the library at the Center. John Doe entered the room and maneuvered behind Butler's chair. He swept her hair to one side and whispered "it's so nice to have such a beautiful woman around" into Butler's ear. John Doe then patted Butler's shoulder and left the room. Butler again reported this incident to Higgins.

35. Later that summer, Butler was again in the kitchen at the Center preparing her dinner

when John Doe entered the room. He again maneuvered behind her, pressed her up against the kitchen counter, reached around her body and rubbed Butler's breasts underneath her clothing. John Doe quickly retracted his hands after there was an audible noise outside the room. He then whispered "you have such a beautiful voice" to Butler and left the room.

36. Butler immediately reported this assault to Higgins. Higgins was away for a few days and she advised Butler to pack her belongings and go to Higgins cabin, which was offsite from the Center and away from John Doe.

37. Upon Higgins' return, Butler asked Higgins if she had reported John Doe to anybody, or spoken to John Doe about the assaults. Higgins responded that she had done neither.

38. Upon completion of Butler's employment with Higgins, Higgins mentioned to Butler that she had spoken to John Doe and that she believed that John Doe "really gets it this time."

39. Upon returning to the University, Butler reported her assaults to Ms. Ambrosio. Ms. Ambrosio set up a meeting between Butler and Ms. Oldham, the Title IX Coordinator. Ambrosio informed Butler that the meeting was to assess Butler's credibility.

40. During the meeting, Oldham repeatedly asked Butler if she ever affirmatively rebuffed any of John Doe's advances. She then asked how John Doe was supposed to know his conduct was not welcomed if Butler never affirmatively denied consent.

41. At the end of the meeting, Oldham admonished Butler regarding the consequences of falsely reporting sexual assaults.

42. Butler is informed, believes, and on that basis alleges that to date, there has been no investigation by the University into John Doe, nor has any disciplinary action been taken against John Doe.

43. As a result of the University's conduct, and lack of conduct Butler has suffered psychological and emotional damages, and has experienced a loss of educational opportunities and/or benefits, including but not limited to:

Being forced to withdraw from an internship she had secured with the Gender

Equity Resource Center because she was deemed "too political" for speaking out against the way the University handles reports of sexual assault;

Being forced to drop a class, required for her major, during finals week in the Fall of 2013;

Being forced to avoid classes altogether for fear that she would encounter John Doe on campus.

NICOLETTA COMMINS

44. Commins was sexually assaulted in January 2012 in her apartment by [redacted], a student at the University.

45. Commins and [redacted] were acquainted through their mutual involvement with the Tae Kwon Do team at the University.

46. One night, Commins invited [redacted] over to her apartment. The night quickly turned from flirtatious to [redacted] performing non-consensual sexual acts on Commins.

47. Without Commins' consent, [redacted] performed oral sex on Commins, tried to coerce Commins to perform oral sex on him by forcibly pushing her head towards his genitals and getting on top of Commins and rubbing his penis on Commins face as she turned away, and digitally penetrated Commins.

48. The next day, Commins reported her assault to the Tang Student Health Center at the University.

49. The Tang center performed a cursory exam, but did not perform a rape kit.

50. Subsequently, Commins reported her assault to the Berkeley Police Department.

51. She then went to Highland Hospital wherein a rape kit was performed. The rape kit revealed evidence of trauma.

52. Commins never directly reported her assault to the University administration, but the administration was made aware of her assault, likely by the Berkeley Police Department.

53. Commins received a phone call from either the Title IX office or the Office of Student Conduct to discuss her assault. Commins was told that the University would perform an investigation, however, Commins was made to believe that the investigation could not

commence until after the Berkeley Police Department finished with their investigation.

54. Commins specifically requested that the University commence their investigation immediately, instead of waiting until after the criminal investigation, but she was given no response to her request.

55. Commins received no information about what, if any, investigation would commence.

56. Throughout this whole process, [redacted] was allowed to remain on campus, with no restrictions.

57. At one point, a representative from the Office of Student Conduct contacted Commins to inquire if she would still like to pursue an investigation. Commins answered in the affirmative, however she was never contacted again and no hearing ever took place.

58. Finally, in March of 2013, the Office of Student Conduct sent Commins an e-mail to an e-mail address that she infrequently used, and had not used to correspond with the administration prior, informing Commins that [redacted] had been suspended until the Fall of 2015, the semester after Commins was set to graduate.

59. Commins did not check this e-mail address, and in July of 2013, Commins contacted the Office of Student Conduct for an update. The Office of Student Conduct informed Commins that [redacted] had indeed been suspended until the Fall of 2015, that he had to complete a reflective writing assignment, that he was prohibited from contacting Commins, and that he would be on disciplinary probation for the rest of his studies at the University.

60. Commins was not informed of her right to appeal any of these decisions.

61. Upon graduating, Commins subsequently matriculated in graduate school at the University.

62. [redacted] is set to return to the University in August of 2015.

63. Despite Commins' protestations that she does not feel comfortable with [redacted] on campus, the University has informed Commins that [redacted] will be returning to campus.

64. As a result of the University's conduct, and lack of conduct Commins has suffered psychological and emotional damages, and has experienced a loss of educational

opportunities and/or benefits, including but not limited to:

Being forced to drop a class because it let out at night, and she was fearful of encountering [redacted] on campus after dark;

Avoiding enrollment in any classes that let out after dark;

Being forced to take a reduced course load for the semester after her report, and having to stay in school for an extra summer to make up for her reduced course load;

Withdrawing her participation in the Tae Kwon Doe Club; and

Significantly higher amounts of absences which negatively impacted her GPA.

OTHER SALIENT FACTS

65. Plaintiffs are informed, believe, and on that basis allege, that the University underreported the amount of sexually violent incidents that occurred on campus during the years prior to Plaintiffs' enrollment at the University.

66. In June of 2014, the California State Auditor published a report entitled "Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents" (the "Audit") (https://www.auditor.ca.gov/pdfs/reports/2013-124.pdf).

67. The Audit studied the handling of sexual violence incidents at four California universities, including the University.

68. Among other conclusions, The Audit concluded the following:

The universities do not ensure that all faculty and staff are sufficiently trained on responding to and reporting these incidents to appropriate officials.

Certain university employees who are likely to be the first point of contact are not sufficiently trained on responding to and reporting these incidents.

The universities must do more to properly educate students on sexual harassment and sexual violence.

The universities did not always comply with requirements in state law for distribution of relevant policies.

The universities need to better inform students who file a complaint of the status of the investigation and notify them of the eventual outcome.

69. In 2014, thirty-one women filed an administrative Title IX claim with the Office of Civil Rights, alleging that as far back as 1979, the University failed to adequately respond to their reports that they had been sexually assaulted.

70. Based on information and belief, as early as 1999, if a student reported that they had been sexually assaulted, the University's policy dictated that the student be notified of their rights under the law, as well as their ability to report their assault to law enforcement.

FIRST CAUSE OF ACTION
DISCRIMINATION ON THE BASIS OF GENDER IN VIOLATION OF 20 U.S.C. § 1681 (TITLE IX)

(ALL PLAINTIFFS AGAINST DEFENDANT REGENTS)

71. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth herein.

72. The acts, and failures to act, perpetrated against Plaintiffs amounted to unlawful sexual harassment and discrimination on the basis of gender. One or more administrators or officials of Defendant Regents, with authority to take corrective action on Plaintiffs' behalf, had actual notice of said discrimination and failed to adequately respond. Those failures amounted to deliberate indifference toward the unlawful conduct that was occurring or likely to occur. Additionally, and/or in the alternative, Defendant Regents failed to enact and/or disseminate and/or implement proper or adequate policies to discover, prohibit or remedy the kind of discrimination that Plaintiffs suffered. This failure included, without limitation, non-existent or inadequate customs, policies or procedures for the recognition, reporting, investigation and correction of unlawful discrimination.

73. As a result of Defendant Regents' deliberate indifference, Plaintiffs suffered loss of educational opportunities and/or benefits and has and will continue to incur attorney fees and costs of litigation.

SECOND CAUSE OF ACTION
NEGLIGENT FAILURE TO WARN, TRAIN AND/OR EDUCATE PLAINTIFFS

74. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth herein.

75. Defendants breached their duty to take reasonable protective measures to protect Plaintiffs and other similarly situated students from the risk of sexual abuse and/or sexual assault by TH, John Doe and [redacted] such as the failure to properly warn, train, or educate Plaintiffs and other students about how to avoid such a risk.

76. As a result of the above-described conduct, Plaintiffs have suffered, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will continue to be prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

THIRD CAUSE OF ACTION
DISCRIMINATION ON THE BASIS OF GENDER IN VIOLATION OF CALIFORNIA EDUCATION CODE § 220

77. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth herein.

78. The acts, and failures to act, perpetrated against Plaintiffs amounted to unlawful sexual harassment and discrimination on the basis of gender. One or more administrators or officials of Defendant Regents, with authority to take corrective action on Plaintiffs' behalf, had actual notice of said discrimination and failed to adequately respond. Those failures amounted to deliberate indifference toward the unlawful conduct that was occurring or likely to occur. Additionally, and/or in the alternative, Defendant Regents failed to enact and/or disseminate and/or implement proper or adequate policies to discover, prohibit or remedy the kind of discrimination that Plaintiffs suffered. This failure included, without limitation, non-existent or inadequate customs, policies or procedures for the recognition, reporting, investigation and correction of unlawful discrimination.

79. As a result of Defendant Regents' deliberate indifference, Plaintiffs suffered loss of educational opportunities and/or benefits and has and will continue to incur attorney fees and costs of litigation.

FOURTH CAUSE OF ACTION
FRAUD

(All Plaintiffs against Defendant Regents)

80. Plaintiffs incorporate all paragraphs of this Complaint as if set forth herein.

81. Defendant, by and though its officers and authorized managing agents, committed fraud upon Plaintiffs with respect to their false representations regarding the safety of their facilities, associated programs and students to the pecuniary damage of Plaintiffs.

82. In order to induce Plaintiffs to enroll at the University and pay tuition, and to induce Plaintiffs to continue their enrollment, attendance at and payment of tuition to the University, Defendants made statements and omissions that communicated to Plaintiffs that the University was safe and that students only experienced a minimal amount of sexual violence.

83. Based on information and belief, the University significantly underreported the amount of sexually violent incidents that were reported in violation of the federal Clery Act which requires all universities to report crime statistics, including incidents of sexual violence, for public consumption.

84. Such representations were false when made and the University knew them to be false.

85. Plaintiffs reviewed and relied upon these false and misleading representations when they enrolled at the University as herein alleged.

86. As a result of the above-described conduct, Plaintiffs have suffered, and continue to suffer, great pain of mind and body, physical injury, physical injury shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; have suffered and continue to suffer spiritually; were prevented and will continue to be prevented from performing Plaintiffs' daily activities and obtaining the full enjoyment of life; have sustained and will continue to sustain loss of earnings and earning capacity; and/or have incurred and

will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

JURY DEMAND

Plaintiffs demand a jury trial on all issues so triable.

THE ZALKIN LAW FIRM, P.C.

Date: June 29, 2015

By:
Alexander S. Zalkin
Attorney for Plaintiff