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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
16

17 SOFIE KARASEK, individually;
18 NICOLETTA COMMINS, individually;
19 ARYLE BUTLER, individually,

20 Plaintiffs,

21 vs.

22 THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a public entity, and DOES 1
through 100, inclusive,

23 Defendants.
24
25
26
27
28

Case No. 4:15-cv-03717-WHO

**NOTICE OF MOTION AND MOTION TO
DISMISS OF DEFENDANT THE
REGENTS OF THE UNIVERSITY OF
CALIFORNIA**

Date: November 3, 2015
Time: 3:00 p.m.
Place: Courtroom 2, 17th Floor
Judge: Hon. William H. Orrick

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1 **PLEASE TAKE NOTICE** that on November 3, 2015, at 3:00 p.m. before the Honorable
2 William H. Orrick in Courtroom 2, 17th Floor, 450 Golden Gate Avenue, San Francisco,
3 CA 94102, Defendant The Regents of the University of California (“The Regents” or “UC”) will
4 and does move pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss all
5 claims brought against it in Plaintiffs’ Second Amended Complaint (“Complaint” or “Compl.”),
6 filed September 10, 2015. ECF No. 14.

7 The Complaint should be dismissed pursuant to Rule 12(b)(6) for the following reasons:

8 (1) Claim 1—which alleges gender discrimination in violation of Title IX—fails to
9 state a claim because Plaintiffs have not alleged facts that would support an inference that
10 UC acted with “deliberate indifference” to their reports of sexual harassment and assault.
11 In addition, Plaintiffs have not alleged that UC’s conduct subjected them to any
12 harassment or made them vulnerable to any harassment. Moreover, Plaintiff Butler’s
13 claim must also be dismissed because she fails to allege that UC exercised control of her
14 harasser or the context in which her harassment occurred.

15 (2) Claim 3—which alleges gender discrimination in violation of California
16 Education Code § 220—fails to state a claim for the same reason that Plaintiffs’ Title IX
17 claim must be dismissed. The standard for liability under Section 220 is identical to the
18 Title IX standard. In addition, Section 220 does not apply to public universities.

19 (3) Claims 2 and 4—which allege a negligent failure to warn or train Plaintiffs and
20 fraud—fail to state a claim because UC is a public entity that is not subject to common-law
21 tort claims under California law, and Plaintiffs have not identified any statute subjecting
22 UC to liability. In addition, Plaintiffs’ failure-to-warn claim fails because UC did not have
23 any duty to warn Plaintiffs of potential attacks by third parties. And Plaintiffs’ fraud claim
24 must be dismissed because Plaintiffs have failed to plead fraud with the particularity
25 required by Rule 9(b).

26 This Motion is based upon the Memorandum of Points and Authorities included herein and such
27 additional authority and argument as may be presented in Defendant’s reply and at any hearing on
28 this Motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The University of California is committed to creating and maintaining a community where
4 all individuals who participate in University programs and activities can work and learn together
5 in an atmosphere free of harassment, exploitation, or intimidation. As part of that commitment,
6 UC takes sexual harassment and sexual violence seriously. Its policy is to respond promptly and
7 effectively to reports of sexual harassment and sexual violence, and to take appropriate action to
8 prevent, to correct, and when necessary, to discipline such behavior. The appropriate action is
9 often difficult to identify, however, and reasonable minds can differ about the best response in any
10 particular case. University administrators, who confront the issues of sexual harassment and
11 sexual violence every day, are in the best position to make decisions about how to respond to
12 reports of sexual violence within the university setting. For that reason, the law vests this
13 decision-making authority in colleges and universities. When a plaintiff seeks to hold a university
14 liable for its response to harassment by a third party, “courts should refrain from second-guessing
15 the disciplinary decisions made by school administrators.” *Davis Next Friend LaShonda D. v.*
16 *Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 648 (1999). A university may only be held liable for its
17 response to sexual harassment or violence if it “acts with deliberate indifference to known acts of
18 harassment in its programs or activities.” *Id.* at 633. Furthermore, the university may only be
19 liable if its deliberate indifference ““subject[s]’ its students to harassment.” *Id.* at 644-45.

20 Plaintiffs’ allegations in this case must be dismissed because they do not come close to
21 meeting that high standard for imposing Title IX liability on a university. Two of the Plaintiffs,
22 Sofie Karasek and Nicoletta Commins, allege that they were sexually assaulted by fellow students,
23 that UC was made aware of the assaults, that UC investigated the incidents and disciplined the
24 assailants, and that they were not assaulted again by those assailants. The law is clear that such
25 facts cannot give rise to a Title IX claim. Plaintiffs clearly disagree with the manner in which UC
26 handled their complaints, but they have not alleged facts that would suggest that UC was
27 deliberately indifferent to those complaints. The third Plaintiff, Aryle Butler, alleges that she was
28 assaulted during the summer while she was employed in Alaska, in a location and by a person

1 over which UC did not have any control. She has not alleged any facts that would suggest that
2 any UC official had authority to address the alleged harassment and institute corrective measures,
3 which is a necessary prerequisite of a deliberate indifference claim.

4 In addition, Plaintiffs' Title IX claim fails because none of them allege any facts that
5 would suggest that UC caused them to suffer further harassment or to be vulnerable to further
6 harassment. Rather, by Plaintiffs' own telling of the facts, none of them underwent any
7 harassment or violence after making their reports to the UC officials with authority to address
8 Title IX complaints. None of them even claims to have had any further contact with their alleged
9 assailants after making their complaints.

10 Plaintiffs' state-law claims should also be dismissed. Their claim under California
11 Education Code § 220 must be dismissed along with the Title IX claim, because Section 220
12 incorporates the same standard of liability as Title IX. In addition, Section 220 does not apply to
13 an institution of higher education such as UC. And Plaintiffs' common-law failure-to-warn and
14 fraud claims must also be dismissed. First, California law provides that a public entity such as UC
15 cannot be subjected to common-law liability unless a statute provides for such liability, and
16 Plaintiffs have not identified and cannot identify any such statute for either of these claims.
17 Second, Plaintiffs have failed to allege sufficient facts to support either claim. Their failure-to-
18 warn claim should be dismissed because UC did not have any duty under California law to warn
19 about possible wrongs by third parties, and their fraud claim should be dismissed because they
20 have not identified any particular misrepresentations purportedly made by UC or its employees.

21 **II. ALLEGATIONS OF THE SECOND AMENDED COMPLAINT**

22 Plaintiffs Sofie Karasek, Nicoletta Commins, and Aryle Butler each allege that they were
23 victims of sexual assault while enrolled as students at the University of California, Berkeley (the
24 "University"). These allegations are the basis for their claims that UC discriminated against them
25 on the basis of gender in violation of Title IX of the Education Amendments Act of 1972, 20
26 U.S.C. § 1681 *et seq.*, and California Education Code § 220, that UC failed to warn them of the
27 risk of sexual assault, and that UC committed fraud in its purported statements about the relative
28 safety of its campus.

1 **A. Sofie Karasek.**

2 Karasek alleges that she attended a trip to San Diego with the Cal Berkeley Democrats
3 Club (the “Club”) in February 2012, and that while she was there she shared a bed with three other
4 students, including a student referred to in the Complaint as TH. (Compl. ¶¶ 5-8.) She alleges
5 that she awoke to TH massaging her legs, back and buttocks, which continued for approximately
6 30 minutes. (*Id.* ¶ 9.) In April or May of that year, Karasek alleges that she and three other
7 female students who had allegedly been assaulted by TH met with three UC representatives and
8 reported their assaults. (*Id.* ¶ 10.) Karasek then allegedly submitted a written complaint to the
9 Center for Student Conduct at UC on May 15, 2012. (*Id.* ¶ 12.) She alleges that she was not
10 contacted about her complaint for a period of seven months, although she occasionally received
11 information about the course of the investigation from the president of the Club and a board
12 member of the Club. (*Id.* ¶¶ 13-18.) Ultimately, Karasek alleges that after submitting several
13 requests for further information from the University, she was informed that TH had been found in
14 violation of the Campus Code of Student Conduct, and that after further requests for information
15 she was later informed that TH had been placed on disciplinary probation. (*Id.* ¶¶ 22, 25). She
16 claims that she was not given regular updates about the course of the investigation or an
17 opportunity to participate in a disciplinary hearing, and that she was not informed that she could
18 report her assault to law enforcement. (*Id.* ¶ 26.) Karasek does not allege that she experienced
19 any further assaults, nor that she ever even had any further contact with her assailant, after
20 reporting her assault to the University.

21 **B. Nicoletta Commins.**

22 Commins alleges that she was sexually assaulted in her off-campus apartment by a fellow
23 student, identified in the Complaint as John Doe 2, in January 2012. (Compl. ¶ 48.) Specifically,
24 she alleges that without her consent, John Doe 2 performed oral sex on her, digitally penetrated
25 her, and tried to physically coerce her to perform oral sex on him. (*Id.* ¶ 51.) She subsequently
26 reported the assault to the Tang Student Health Center at the University and to the Berkeley Police
27 Department. (*Id.* ¶¶ 52-54.) She did not report the incident to the University administration, but
28 she alleges that the University was “made aware” of the assault and that she received a phone call

1 from a representative of the University who told her that it would conduct an investigation. (*Id.* ¶¶
2 56-57.) She alleges that she did not receive any further information about the investigation, that
3 no hearing took place, and that she was not informed of the results of the investigation until March
4 2013. (*Id.* ¶¶ 59-62.) At that time, a University official informed her that John Doe 2 had been
5 suspended until Fall 2015, the semester after she was set to graduate, and she was later informed
6 that he also was prohibited from making any contact with Commins and would be on disciplinary
7 probation for the rest of his time at the University. (*Id.* ¶¶ 62-63.) Commins does not allege that
8 she experienced any further assaults, nor that she ever even had any further contact with her
9 assailant, after the University voluntarily initiated an investigation into the alleged assault after
10 becoming aware of it.

11 **C. Arlyle Butler.**

12 Butler alleges that she was assaulted during the summer of 2012, while she was working as
13 an assistant to Margot Higgins, a UC Berkeley Ph.D. candidate who was conducting research in
14 Alaska. (Compl. ¶ 28.) Butler alleges that she was living at the Wrangell Mountains Center (the
15 “Center”), and that a board member of the Center, identified in the Complaint as John Doe,
16 approached her in the dining hall from behind and inserted his hands into her underwear and
17 massaged her genitals. (*Id.* ¶ 36.) Butler claims that she reported the incident to Higgins, but
18 “asked that Higgins not say anything at that time.” (*Id.* ¶ 37.) Butler further alleges that a few
19 days after the first incident, John Doe approached her in the library and touched her hair and
20 shoulder while commenting on her appearance, and that later in the summer he approached her in
21 the kitchen and rubbed her breasts underneath her clothing. (*Id.* ¶ 38-39.) When she returned to
22 the University in the fall, Butler alleges that she reported the assaults to the University’s Title IX
23 coordinator. (*Id.* ¶ 43.) She alleges that UC has not investigated or taken any disciplinary action
24 against John Doe. (*Id.* ¶ 46.)

25 Butler does not allege that the Alaska program is controlled by or affiliated with the
26 University, but she alleges that the University advertises for students to enroll in the program and
27 permits them to receive academic credit for the program. (*Id.* ¶ 32.) She does not allege that the
28 University has any authority or control over John Doe, or over the Center or any program housed

1 at the Center. Butler does not allege that John Doe is a student, faculty member, or employee of
2 UC. She alleges only that John Doe was a “guest lecturer at the University” and was “involved”
3 in an environmental restoration project at the University. (*Id.* ¶ 34-35.) Butler also does not
4 allege that she experienced any further assaults, nor that she ever had any further contact with
5 John Doe, after reporting her assault to the University when she returned from Alaska.

6 **D. Additional Allegations.**

7 Plaintiffs also allege that the University “underreported” the number of sexually violent
8 incidents that occurred on campus. (*Id.* ¶ 69.) And they allege that the California State Auditor
9 published a report about sexual harassment and sexual violence at California universities, which
10 concluded, *inter alia*, that “universities must do more to properly educate students on sexual
11 harassment and sexual violence” and that “universities need to better inform students who file a
12 complaint of the status of the investigation and notify them of the eventual outcome.” (*Id.* ¶¶ 70-
13 72.) Plaintiffs also allege that in 2014, a Title IX claim was filed against the University with the
14 Office of Civil Rights (*id.* ¶ 73), and that the University has a policy that students who report
15 being sexually assaulted should be informed that they have the right to report the assault to law
16 enforcement (*id.* ¶ 74).

17 Finally, Plaintiffs allege that the Department of Education’s Office for Civil Rights
18 (“OCR”) issued a “Dear Colleague Letter” in 2011 that sets forth a “standard of care for handling
19 reports of sexual harassment and/or assault.” (*Id.* ¶ 75.) Plaintiffs list some of the requirements
20 outlined in the OCR letter, but they do not specifically allege which if any of these requirements
21 were not followed by UC. Nonetheless, the Complaint alleges generally that UC “deviat[ed]”
22 from the standard of care outlined in the Dear Colleague Letter. (*Id.* ¶ 78).

23 **III. ARGUMENT**

24 **A. Plaintiffs’ Complaint Must Be Dismissed if It Fails to State a Legally**
25 **Cognizable Claim.**

26 Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes the Court to dismiss a
27 complaint that fails to state a claim upon which relief may be granted. The Supreme Court has
28 emphasized that, “[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not

1 need detailed factual allegations,” a plaintiff must provide “more than labels and conclusions.”
2 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662,
3 677-78 (2009) (holding that *Twombly* standards apply in all cases). “Threadbare recitals of the
4 elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*,
5 556 U.S. at 678. Thus, to survive a motion to dismiss, a complaint must plead “enough facts to
6 state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570; *see also Moss v.*
7 *U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (“[F]or a complaint to survive a motion to
8 dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content, must
9 be plausibly suggestive of a claim entitling the plaintiff to relief.”).

10 UC vigorously disputes many of the factual allegations in the Complaint, especially the
11 allegations about how UC responded when Plaintiffs reported their alleged sexual assaults to
12 University officials. However, even if one accepts these allegations as true for purposes of this
13 motion to dismiss, Plaintiffs have failed to state any claim on which relief can be granted.

14 **B. Plaintiffs’ Title IX Claim Fails As a Matter of Law.**

15 Plaintiffs’ first claim for relief asserts a cause of action under 20 U.S.C. § 1681 (Title IX),
16 which provides that “[n]o person in the United States shall, on the basis of sex, be excluded from
17 participation in, be denied the benefits of, or be subjected to discrimination under any education
18 program or activity receiving Federal financial assistance,” subject to certain exceptions not at
19 issue here. The Supreme Court has held that a school that receives federal funds, such as UC,
20 “may be liable in damages under Title IX only for its own misconduct.” *Davis*, 526 U.S. at 640.
21 When a student alleges harassment by a fellow student, as in this case, the Court has cautioned
22 that Title IX only supports a private damages action in “limited circumstances.” *Id.* at 643. The
23 Ninth Circuit has recognized that *Davis* “set forth four requirements for the imposition of
24 [institutional] liability under Title IX for student-student harassment.” *Reese v. Jefferson School*
25 *Dist. No. 14J*, 208 F.3d 736, 739 (9th Cir. 2000). First, an institution’s liability is limited “to
26 circumstances wherein the recipient exercises substantial control over both the harasser and the
27 context in which the known harassment occurs.” *Id.* (quoting *Davis*, 526 U.S. at 645). Second,
28 the victim must have suffered harassment “that is so severe, pervasive, and objectively offensive

1 that it can be said to deprive the victims of access to the educational opportunities or benefits
2 provided by the school.” *Id.* (quoting *Davis*, 526 U.S. at 650). Third, the institution must have
3 had “actual knowledge” of the harassment. *Id.* Fourth, the funding recipient must have acted with
4 “deliberate indifference” to the known harassment, and this deliberate indifference must have
5 “cause[d] students to undergo harassment or make them liable or vulnerable to it.” *Id.* (quoting
6 *Davis*, 526 U.S. at 645).

7 Each of these elements is a requirement for Title IX liability for student-student
8 harassment, such that failure to adequately allege any of these four requirements renders a
9 plaintiff’s claim infirm. Applying that standard, Plaintiffs’ claims here should be dismissed for
10 multiple independent reasons. First, Plaintiffs have not alleged conduct by UC that rises to the
11 level of deliberate indifference. Second, Plaintiffs have not adequately alleged that any conduct
12 by UC caused them to undergo harassment or made them vulnerable to it. Finally, Plaintiff Butler
13 has not alleged facts that would show that UC had control over her harasser or over the context in
14 which her harassment occurred.

15 **1. Plaintiffs’ Title IX claim fails because Plaintiffs have not alleged that**
16 **The Regents acted with deliberate indifference.**

17 Plaintiffs have not pleaded facts sufficient to support a claim of deliberate indifference.
18 An educational institution acts with deliberate indifference only where its response to harassment
19 “is clearly unreasonable in light of the known circumstances.” *Davis*, 526 U.S. at 648. This is
20 “not a mere ‘reasonableness’ standard,” but a heightened standard that requires a plaintiff to show
21 that the defendants’ conduct was “clearly unreasonable.” *Id.* at 649. The deliberate indifference
22 standard is an “exacting standard.” *Doe v. Sch. Bd. of Broward County, Fla.*, 604 F.3d 1248, 1259
23 (11th Cir. 2010); *Garcia ex rel. Marin v. Clovis Unified Sch. Dist.*, 627 F. Supp. 2d 1187, 1196
24 (E.D. Cal. 2009) (“‘Deliberate indifference’ is a high standard and requires conduct that is beyond
25 mere negligence.”). A plaintiff must plead facts sufficient to support a finding “that the College
26 made ‘an official decision ... not to remedy the violation.’” *Oden v. N. Marianas Coll.*, 440 F.3d
27 1085, 1089 (9th Cir. 2006) (quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290
28 (1998)); *see also Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211, 219 (5th Cir. 1998) (“Actions and

1 decisions by officials that are merely inept, erroneous, ineffective, or negligent do not amount to
2 deliberate indifference.”).

3 None of Plaintiffs’ allegations suffices to meet the deliberate indifference standard.

4 a. **Karasek has not pleaded sufficient facts to show deliberate**
5 **indifference.**

6 Karasek’s allegations do not support an inference that UC acted in a manner that was
7 clearly unreasonable in its response to the alleged instance of sexual assault by a fellow student.
8 Karasek alleges that she was sexually assaulted February 2012, that she reported the incident in a
9 meeting with several UC representatives in April or May of that year, and that she submitted a
10 formal written complaint on May 15, 2012. (Compl. ¶¶8-12.) Karasek does not allege that UC
11 failed to respond to her complaint or that it failed to take action against the alleged perpetrator.
12 On the contrary, the Complaint alleges that UC engaged in an “investigation and/or resolution
13 process” (*Id.* ¶ 21), that UC informed her that her assailant had been found to be in violation of
14 UC’s Campus Code of Student Conduct (*Id.* ¶ 22), and that in response to her further inquiry a UC
15 representative informed her that her assailant was placed on disciplinary probation and referred to
16 counseling. (*Id.* ¶ 25.) These allegations show the opposite of deliberate indifference, showing
17 instead that UC took concrete steps to respond to Karasek’s complaint by conducting an
18 investigation and disciplining the student she had accused of harassment.

19 Karasek’s other allegations do not change this result. Karasek alleges that she was not
20 contacted about her complaint from when it was filed on May 15, 2012, until December 12 of that
21 year, which represents a delay of nearly seven months (*Id.* ¶¶ 12, 20), and that she was not given
22 updates about the investigation, encouraged to report her assault to law enforcement, or afforded
23 the opportunity to attend a disciplinary hearing. (*Id.* ¶ 26.) But these are disagreements with the
24 manner in which UC addressed her complaint, and they do not render UC’s response clearly
25 unreasonable. As the Supreme Court has stressed, student victims of harassment are not entitled
26 to make “particular remedial demands” about how their school should have responded to the
27 harassment, and “courts should refrain from second-guessing the disciplinary decisions made by
28 school administrators.” *Davis*, 526 U.S. at 648. A plaintiff does not adequately plead deliberate

1 indifference merely by expressing disagreement with the degree to which the institution included
2 her in the disciplinary process. On the contrary, as noted, a Title IX plaintiff must allege “that the
3 College made ‘an official decision ... not to remedy the violation.’” *Oden*, 440 F.3d at 1089
4 (quoting *Gebser*, 524 U.S. at 290). Karasek alleges that UC *did* remedy the situation.

5 While Karasek alleges that she was not given any updates on the investigation for a period
6 of seven months, the Ninth Circuit has held that even a nine-month delay in conducting
7 disciplinary proceedings, in contravention of an institution’s policy, did not support a finding of
8 deliberate indifference. *Oden*, 440 F.3d at 1089 (nine-month delay was insufficient to “permit an
9 inference that the delay was a deliberate attempt to sabotage Plaintiff’s complaint or its orderly
10 resolution”). Karasek’s allegations do not even rise to the level of those found insufficient in
11 *Oden*, because she alleges a shorter delay and only a delay in providing notice to her, not any
12 delay in any actual disciplinary proceedings. Accordingly, Karasek has failed to state a claim for
13 deliberate indifference.

14 **b. Commins has not pleaded sufficient facts to show deliberate**
15 **indifference.**

16 For similar reasons to Karasek, Commins has not adequately pleaded that UC acted with
17 deliberate indifference in response to her complaint. Commins alleges that she was sexually
18 assaulted by a fellow student in her off-campus apartment in January 2012, and that UC was made
19 aware of the assault, although she did not report it to UC. (Compl. ¶¶ 48, 56.) Her allegations
20 about how UC responded to the assault do not support an inference of deliberate indifference.
21 Instead, she alleges that after the Berkeley Police Department conducted a criminal investigation,
22 UC elected to conduct a further investigation that resulted in a suspension of Commins’s assailant
23 until the fall of 2015, after Commins was scheduled to graduate. (*Id.* ¶ 62.) In addition, UC
24 prohibited the perpetrator from contacting Commins and placed him on disciplinary probation for
25 the remainder of his studies. (*Id.* ¶ 63.)

26 As with Karasek, Commins alleges that she was not notified of the status of UC’s
27 disciplinary proceedings for a period of time, but that allegation amounts to a request to have the
28 Court “second-guess[] the disciplinary decisions made by school administrators.” *Davis*, 526 U.S.

1 at 648. Commins also complains that the punishment meted out to her assailant was insufficient,
2 and that she was not informed of her right to appeal the punishment. But “[a]n aggrieved party is
3 not entitled to the precise remedy that he or she would prefer.” *Oden*, 440 F.3d at 1089; *see also*
4 *Doe v. Univ. of the Pac.*, No. CIV. S-09-764, 2010 WL 5135360, at *15 (E.D. Cal. Dec. 8, 2010)
5 (“It is well established that a school has no obligation to engage in particular disciplinary action.”)
6 (quotation marks omitted). The mere fact that Commins may disagree with UC’s disciplinary
7 decision to suspend her assailant for more than two years does not provide any factual basis to
8 support an inference that UC “attempt[ed] to sabotage [her] complaint or its orderly resolution,” as
9 needed to support the deliberate indifference prong. *Oden*, 440 F.3d at 1089.

10 c. **Butler has not pleaded sufficient facts to show deliberate**
11 **indifference, or to show that UC had any control over her**
12 **harasser or the context in which her harassment occurred.**

12 Butler likewise fails to allege sufficient facts to support an inference of deliberate
13 indifference by UC. Butler alleges that she was assaulted on multiple occasions by a board
14 member at the Wrangell Mountains Center in Alaska, while she was working as a research
15 assistant at the Center during the summer of 2012. (Compl. ¶¶ 36-39.) She alleges that she
16 reported the assaults to Margot Higgins, a Ph.D. student for whom Butler was working (*Id.* ¶¶ 37,
17 40), and then that she reported the assaults to UC’s Title IX Coordinator when she returned to the
18 University at the end of the summer. (*Id.* ¶ 43.)

19 These allegations fail even to establish the factual predicate that is necessary to state a
20 claim of deliberate indifference, because they do not allege that any official of UC was in a
21 position to respond to Butler’s complaints. The Supreme Court has held that “a damages remedy
22 will not lie under Title IX unless an official who at a minimum has authority to address the alleged
23 discrimination and to institute corrective measures on the [university’s] behalf has actual
24 knowledge of discrimination in the recipient’s programs and fails adequately to respond.” *Gebser*,
25 524 U.S. at 290. Butler’s claims simply do not meet that standard. She makes no allegation that
26 Higgins had any “authority to address” the alleged assault or to “institute corrective measures” on
27 UC’s behalf. She alleges that Higgins was a student herself, not a UC administrator. Butler does
28 allege that Higgins’s research was being funded by the University and that Higgins was authorized

1 to hire a research assistant, but these allegations do not suggest that Higgins had any “authority” to
2 take corrective action in response to a complaint of sexual harassment.

3 Butler also alleges that she later reported the assaults to UC’s Title IX Coordinator, but the
4 Complaint is notably vague about what facts Butler reported to UC. In any event, the Complaint
5 certainly does not plead any facts that would indicate that UC’s Title IX Coordinator had authority
6 over Butler’s alleged assailant, who by Butler’s own allegation is a board member of an
7 independent Center located in Alaska. There is not even a hint in the Complaint that would
8 explain how UC *could* have conducted any investigation or discipline of Butler’s assailant.
9 Absent any such allegation, there can be no claim of deliberate indifference.

10 Butler’s Title IX claim should additionally be dismissed because she has not alleged that
11 UC “exercise[d] substantial control over both the harasser and the context in which the known
12 harassment occur[red].” *Davis*, 526 U.S. at 645; *see also Reese*, 208 F.3d at 739 (recognizing that
13 institutional control over the harasser and the context is a “requirement[] for the imposition of ...
14 liability under Title IX”). Butler does not make any allegation—nor could she consistently with
15 Rule 11—that her assailant was a student, faculty member, or employee of UC, and without any
16 such allegation there can be no basis for concluding that UC “exercises significant control over the
17 harasser.” *Davis*, 526 U.S. at 646. Butler’s allegations that her assailant was from time to time a
18 “guest lecturer” at the University and was “involved” in an on-campus environmental restoration
19 project do not suggest that UC actually had any sort of control over him.¹

20 Additionally, Butler does not offer any factual basis to support an inference that UC had
21 any control over the Center—the context in which the harassment occurred. Butler alleges that the
22 University “advertises” for a program that is “house[d]” at the Center, and that UC students
23 receive academic credit for completing that program. (Compl. ¶¶ 29, 30.) But these allegations in
24 no way suggest that UC has any formal relationship with the Center itself, and much less that it

26 ¹ There are many guest lectures delivered at the University almost every day of the year, and these
27 lectures are planned and sponsored by a wide variety of groups and organizations. *See* “UC
28 Berkeley Events,” at <https://events.berkeley.edu/>, under the tab “Lectures.” It is implausible to
suggest that UC exercises “control” over all the people who deliver these lectures.

1 exercises any control over the Center. Courts addressing similar situations have found no
 2 “substantial control.” *See Ostrander v. Duggan*, 341 F.3d 745, 750-51 (8th Cir. 2003) (affirming
 3 judgment in favor of university on Title IX claim arising from sexual assault in off-campus
 4 building because university “did not own, possess, or control” the building where the assault
 5 occurred); *Clifford v. Regents of Univ. of Cal.*, No. 11 CV 02935, 2012 WL 1565702, at *7 (E.D.
 6 Cal. Apr. 30, 2012), *aff’d*, 584 F. App’x 431 (9th Cir. 2014) (dismissing Title IX claim arising
 7 from sexual assault during fraternity retreat to Lake Tahoe for failure to allege that university had
 8 “substantial control” over context in which harassment occurred).

9 **d. Plaintiffs’ allegations about the “Dear Colleague Letter” do not**
 10 **support their claim of deliberate indifference.**

11 The deficiencies in Plaintiffs’ Complaint are not remedied by their reference to the OCR’s
 12 “Dear Colleague Letter.” Even if Plaintiffs could show that UC was not in compliance with DOE
 13 policy as outlined in the OCR letter, a “failure to comply with the [Department of Education’s]
 14 regulations” does not give rise to a claim for deliberate indifference. *Gebser*, 524 U.S. at 291-92.
 15 In fact, the letter itself expressly rules out any suggestion that its requirements may be used to
 16 support a damages claim. *See* Office for Civil Rights, Dep’t of Education, Dear Colleague Letter:
 17 Sexual Violence (Apr. 4, 2011) (available at <http://www.ed.gov/ocr/letters/colleague-201104.pdf>),
 18 at 4 & n. 12 (clarifying that the letter sets forth the “standard for administrative enforcement of
 19 Title IX and in court cases where plaintiffs are seeking injunctive relief” and that this standard
 20 does not apply to “private lawsuits for monetary damages”). Thus, there is no legal basis for
 21 Plaintiffs’ allegation that failing to adhere to the standards of the Dear Colleague Letter constitutes
 22 deliberate indifference.

23 **2. UC’s Conduct did not Cause Plaintiffs to Undergo or be Vulnerable to**
 24 **Harassment.**

25 A further defect in Plaintiffs’ Title IX claim is their failure to allege that UC “subject[ed]”
 26 them to any harassment. *Davis*, 526 U.S. at 644-45. For Title IX liability to attach, a federal
 27 funding recipient’s “deliberate indifference must, at a minimum, cause students to undergo
 28 harassment or make them liable or vulnerable to it.” *Id.* at 645 (quotation marks and brackets
 omitted). This causation requirement means that a Title IX claim must be dismissed if there is no

1 allegation of any further harassment, either as a direct result of the university's conduct or due to a
2 liability or vulnerability that arose from the university's conduct. A federal funds recipient cannot
3 be liable for "alleged *antecedent* harassment of female students by male students," *i.e.*, for
4 harassment that takes place before the institution gains knowledge of it. *Reese*, 208 F.3d at 740.
5 When there is no allegation "that any harassment occurred after the [institution] learned of the
6 plaintiffs' allegations," then the institution "cannot be deemed to have 'subjected' the plaintiffs to
7 the harassment." *Id.*

8 None of the Plaintiffs claim to have experienced any harassment after reporting their
9 assaults to UC. On the contrary, both Karasek and Commins allege a single instance of assault
10 that was not repeated after UC was made aware of the incident, while Butler alleges that three
11 incidents occurred, but none after she reported them to UC. Nor have any of them alleged that
12 they ever saw their attackers again or faced further harassment or violence. A failure to allege
13 subsequent harassment is fatal to a Title IX claim. Courts have repeatedly dismissed similar
14 complaints for failure to state a claim. *See, e.g., Lopez v. Regents of Univ. of Cal.*, 5 F. Supp. 3d
15 1106, 1126 (N.D.Cal. 2013) (dismissing Title IX claim because Plaintiff had failed to allege that
16 university's conduct had "*caused* [plaintiff] to be subject to further harassment or deprivation of
17 rights") (emphasis in original).² The Court should do the same here.

18 Plaintiffs may try to argue that their claim can survive without an allegation of further
19 harassment, based on the argument that they were "made vulnerable" to harassment even if no

21 ² *See also, e.g., Thomas v. Meharry Med. Coll.*, 1 F. Supp. 3d 816, 826 (M.D. Tenn. 2014)
22 (dismissing Title IX claim where plaintiff made "no allegations of sexual harassment following his
23 filing a formal sexual harassment report"); *Moore v. Murray State Univ.*, No. 12 CV 00178, 2013
24 WL 960320, at *5 (W.D. Ky. Mar. 12, 2013) (dismissing Title IX claim where there were "no
25 allegations that the indifference caused [plaintiff] to experience further or additional harassment");
26 *Rouse v. Duke Univ.*, 914 F. Supp. 2d 717, 725 (M.D.N.C. 2012), *aff'd*, 535 F. App'x 289 (4th
27 Cir. 2013) (university was entitled to summary judgment because plaintiff had "offered no
28 evidence that she suffered additional sexual harassment in the months following her rape, by the
rapist or by anyone else, much less that any such harassment was attributable to Duke's alleged
failure to investigate"); *Elgamil v. Syracuse Univ.*, No. 99-CV-611 NPMGLS, 2000 WL 1264122,
at *8 (N.D.N.Y. Aug. 22, 2000) (dismissing Title IX claim because plaintiff could not show "that
actionable harassment continued to occur *after* the appropriate school official gained actual
knowledge of the harassment") (emphasis in original).

1 such harassment occurred. That argument would be incorrect as a matter of law. As the cases
2 cited above make clear, to sustain a damages claim a plaintiff must allege that additional
3 harassment occurred after the institution had actual knowledge of harassment. The case law uses
4 the term “make vulnerable” to describe a type of causation by which an institution’s conduct can
5 be alleged to have resulted in further harassment, *i.e.*, a plaintiff can allege that further harassment
6 occurred due to a vulnerability that was created by the university’s deliberate indifference. The
7 use of the term “make vulnerable” does not mean that a claim can be brought based merely on
8 alleged “vulnerability” without an allegation that any further harassment actually occurred. *See*
9 *Shrum ex rel. Kelly v. Kluck*, 249 F.3d 773, 782 (8th Cir. 2001) (“Specifically, the school district’s
10 deliberate indifference must either directly cause the abuse to occur or make students vulnerable to
11 such abuse, ***and that abuse must take place*** in a context subject to the school district’s control.”)
12 (quotation marks omitted and emphasis added).

13 But *even if* a claim could survive based on a mere allegation that an institution’s conduct
14 increased a plaintiff’s vulnerability to harassment, without any allegation that such harassment
15 took place, Plaintiffs’ Title IX claim in this case must still be dismissed. The only possible basis
16 for an argument that Plaintiffs were “made vulnerable” after reporting their assaults to UC is the
17 allegation by each Plaintiff that their alleged harassers were not banned from campus while
18 investigations into the incidents were ongoing. *See* Compl. ¶¶ 17-18 (Karasek alleges that her
19 harasser was meeting with UC and was set to graduate early); *Id.* ¶ 60 (Commins alleges that her
20 harasser was “allowed to remain on campus” while Berkeley Police Department and UC
21 investigated her complaint); *Id.* ¶¶ 34-35 (Butler alleges that her assailant was “frequently on
22 campus”).

23 These allegations, however, do not give rise to a plausible inference that Plaintiffs were
24 made vulnerable to potential harassment as a result of UC’s conduct. Plaintiffs do not allege that
25 there was ever any contact with their alleged harassers, nor do they plead any specific facts that
26 would suggest that they experienced any particular vulnerability to further harassment. The
27 Supreme Court’s opinion in *Davis*, the Ninth Circuit has explained, “requires more than non-
28 responsiveness; it requires that the indifference result in harassment or render [the plaintiff]

1 vulnerable to harassment.” *Stanley v. Trs. of Cal. State Univ.*, 433 F.3d 1129, 1137 (9th Cir.
2 2006). One court recently dismissed a similar Title IX claim because “other than an occasional
3 glimpse of him on campus, there was no other contact between” the plaintiff and her harasser.
4 *Yoona Ha v. Northwestern Univ.*, No. 14 CV 895, 2014 WL 5893292 at *2 (N.D. Ill. Nov. 13,
5 2014). The court further noted that although the plaintiff “claim[ed] that knowledge of [the
6 harasser’s] presence on campus caused her considerable grief,” such allegations were “not
7 actionable under Title IX.” *Id.*

8 Likewise here, at most Plaintiffs have alleged that their harassers remained on campus, but
9 this does not show that UC “subjected” them to harassment and is therefore not actionable under
10 Title IX. Indeed, if a university could be held liable under Title IX merely because it did not
11 immediately banish a student from campus after receiving a complaint about that student, this
12 would raise significant due process concerns for students accused of sexual assault and put
13 colleges in the impossible position of facing liability regardless of how they responded to such
14 complaints. *See Davis*, 526 U.S. at 649 (“[I]t would be entirely reasonable for a school to refrain
15 from a form of disciplinary action that would expose it to constitutional or statutory claims.”).

16 **C. Plaintiffs’ Claim Under California Education Code § 220 Fails for the Same**
17 **Reasons as Their Title IX Claim.**

18 The Court should also dismiss Plaintiffs’ third claim, which alleges discrimination on the
19 basis of gender in violation of California Education Code § 220, for the same reasons that
20 Plaintiffs’ Title IX claim must be dismissed. The California courts have recognized that the state
21 legislature “intended Title IX’s standards of liability to apply to a section 220 claim for *money*
22 *damages.*” *Donovan v. Poway Unified Sch. Dist.*, 167 Cal. App. 4th 567, 606 (2008) (emphasis in
23 original); *id.* at 605 (applying “deliberate indifference” standard from *Davis* to Section 220 claim).
24 Following *Donovan*, the federal courts have repeatedly recognized that Section 220 claims are
25 governed by the same legal standard as Title IX claims and that dismissal of a Title IX claim
26 necessitates dismissal of a Section 220 claim arising from the same facts. *Doe v. Willits Unified*
27 *Sch. Dist.*, No. 09 CV 03655, 2010 WL 4922645, at *6 & n. 5 (N.D. Cal. Nov. 29, 2010) *aff’d*,
28 473 F. App’x 775 (9th Cir. 2012); *Garcia*, 627 F. Supp. 2d at 1195 n. 3.

1 In addition, Plaintiffs’ Section 220 claim fails for the independent reason that Section 220
 2 does not apply to a university such as UC. This section by its terms applies only to “an
 3 educational institution,” Cal. Educ. Code § 220, and the same chapter of the Education Code
 4 defines “educational institution” as “a public or private preschool, elementary, or secondary school
 5 or institution; the governing board of a school district; or any combination of school districts or
 6 counties recognized as the administrative agency for public elementary or secondary schools,”
 7 Cal. Educ. Code § 210.3. Thus, Section 220 cannot give rise to a claim against a university and
 8 Plaintiffs’ claim should be dismissed on that basis as well.

9 **D. Plaintiffs’ State Common-Law Tort Claims Should be Dismissed.**

10 Plaintiffs also assert a state-law tort claim for UC’s alleged failure to warn or educate them
 11 about the risk of sexual assault, and a separate state-law tort claim for fraud based on UC’s
 12 supposed false representations regarding the safety of its facilities. Both of these claims fail
 13 because UC is a public entity under Section 815(a) of the California Government Code and is
 14 therefore not subject to common-law tort liability. In addition, Plaintiffs’ negligent failure-to-
 15 warn claim fails on the merits because UC did not have any duty to warn them under the
 16 circumstances alleged in the Complaint. And Plaintiffs’ fraud claim must be dismissed because
 17 Plaintiffs have failed to satisfy the heightened pleading standard for a fraud claim.

18 **1. As a public entity, UC is not subject to common-law tort liability.**

19 Both of Plaintiffs’ tort claims must be dismissed because they fail to identify any statute
 20 that makes UC subject to liability as a public entity. “Except as otherwise provided by statute, ...
 21 [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of
 22 the public entity or a public employee or any other person.” Cal. Gov. Code § 815(a); *see also*
 23 *Miklosy v. Regents of Univ. of Cal.*, 44 Cal. 4th 876, 899 (2008) (“[S]ection 815 abolishes
 24 common law tort liability for public entities.”); *Davis v. City of Pasadena*, 42 Cal. App. 4th 701,
 25 703 (1996) (“Public entities have liability for injury only when that liability has been assumed by
 26 statute.”). UC is a “public entity” for purposes of Section 815(a). *See* Cal. Gov. Code § 811.2
 27 (“‘Public entity’ includes ... the Regents of the University of California ...”).

28 Plaintiffs do not identify any statute that would subject UC to liability for a failure to warn

1 them about the risk of sexual assault. There is no such statute. To be sure, California courts have
2 recognized that a public entity may be liable for failure to warn when a dangerous condition on its
3 property increases the risk of wrongful conduct by third parties, because there is a statute
4 regarding public entity liability for dangerous conditions on property. *See Peterson v. San*
5 *Francisco Cmty. Coll. Dist.*, 36 Cal. 3d 799, 815 (1984) (holding college could be liable for failure
6 to warn of known danger of criminal attacks due to untrimmed foliage around parking lot and
7 stairway); Cal. Gov. Code § 835. But this type of liability has been narrowly limited to a situation
8 in which a public entity has failed to warn of a risk created by a physical defect on its property.
9 By contrast, “[i]f the risk of injury from third parties is in no way increased or intensified by any
10 physical defect of the public property,” then a public entity may not be held liable for the failure to
11 warn of that risk. *Crow v. State of Cal.*, 222 Cal. App. 3d 192, 206 (1990). Here, Plaintiffs do not
12 allege that any physical defect in UC’s property increased their risk of assault from third parties,
13 and so California law does not permit UC to be held liable for failure to warn.

14 Plaintiffs do allege that UC is vicariously liable for negligent acts of its employees, citing
15 Cal. Gov. Code §815.2. (Compl. ¶ 76.) But that allegation does not salvage Plaintiffs’ failure-to-
16 warn claim, because Plaintiffs have not identified and cannot identify any UC employee that had
17 any duty to warn them of acts by third parties. As discussed below, there is no such duty either on
18 the part of UC or of its employees.

19 Plaintiffs’ fraud claim is also barred by California law. In addition to Section 815(a), the
20 California Government Code expressly rules out vicarious liability for fraud, stating that a “public
21 entity is not liable for an injury caused by misrepresentation by an employee of the public entity,
22 whether or not such misrepresentation be negligent or intentional.” Cal. Gov. Code § 818.1.
23 Courts have recognized that under Sections 815 and 818.1, public entities in California have
24 “absolute” immunity against liability for misrepresentations. *Jappa v. State of Cal.*, No. 05 CV
25 1813, 2009 WL 69312, at *6 (S.D. Cal. Jan. 8, 2009); *Harshbarger v. City of Colton*, 197 Cal.
26 App. 3d 1335, 1341 (1988) (“A public employee may be liable for actual fraud, but the public
27 entity is wholly immune.”). This absolute immunity mandates dismissal of Plaintiffs’ fraud claim.

28

1 2. **Plaintiffs’ failure to warn claim should be dismissed because UC did**
2 **not have any duty to warn them of potential attacks by third parties.**

3 Even aside from UC’s immunity from liability for a failure to warn under these
4 circumstances, Plaintiffs have failed to state a claim on which relief could be granted. They do not
5 allege any facts that would indicate that UC had any duty to warn or educate Plaintiffs about the
6 risk of sexual assault. Where, as here, the defendant has not created the risk in question,
7 California law provides that, “as a general matter, there is no duty to act to protect others from the
8 conduct of third parties.” *Melton v. Boustred*, 183 Cal. App. 4th 521, 531 (2010) (quoting
9 *Delgado v. Trax Bar & Grill*, 36 Cal. 4th 224, 235 (2005)). Courts may recognize the existence of
10 such a duty when the defendant has a “special relationship” with the plaintiff, *id.* at 532, but
11 California courts have repeatedly held that a university does not have a generalized “special
12 relationship” with its students such that it can be held liable for the wrongful acts of third parties.
13 *Tanja H. v. Regents of Univ. of Cal.*, 228 Cal. App. 3d 434, 438 (1991).

14 In a time in which colleges are no longer expected to enforce “curfews, bed checks,
15 dormitory searches, hall monitors, chaperons, and the other concomitant measures,” *id.*, there are
16 sound policy reasons not to impose any such duty on colleges and universities. A decision to
17 “make colleges liable for damages caused by third parties” could lead those colleges to “impose
18 onerous conditions on the freedom and privacy of resident students—which restrictions are
19 incompatible with a recognition that students are now generally responsible for their own actions
20 and welfare.” *Id.*; *Stockinger v. Feather River Cmty. Coll.*, 111 Cal. App. 4th 1014, 1031 (2003)
21 (“[S]ince college administrators have abandoned *in loco parentis* supervision of adult students and
22 have recognized the students’ rights to control and regulate their own lives, colleges and
23 universities may no longer be charged with a general duty of care to supervise student activities.”).
24 Plaintiffs’ claim seeks to impose liability on UC for failure to warn Plaintiffs about the risk of
25 crimes from fellow students, liability that is foreclosed by California law. “College administrators
26 have a moral duty to help educate students in this respect, but they do not have a legal duty to
27 respond in damages for student crimes.” *Tanja H.*, 228 Cal. App. 3d at 438.
28

1 3. **Plaintiffs’ fraud claim should be dismissed because they have failed to**
2 **plead any misrepresentations with particularity.**

3 Plaintiffs have also failed to adequately allege a claim for fraud under the heightened
4 pleading standard of Rule 9(b), which requires a party alleging fraud to “state with particularity
5 the circumstances constituting fraud.” Fed R. Civ. P. 9(b). The pleading requirements of Rule
6 9(b) apply to a fraud claim whether it is based on federal or state law. *Vess v. Ciba-Geigy-Corp.*
7 *USA*, 317 F.3d 1097, 1102 (9th Cir. 2003). The heightened pleading standard means that fraud
8 allegations “must be accompanied by the who, what, when, where, and how of the misconduct
9 charged.” *Id.* at 1106 (quotation marks omitted).

10 Plaintiffs’ allegations fail to meet any aspect of this standard. Plaintiffs merely allege that
11 unnamed “officers” and “agents” of UC made unidentified “false representations” to Plaintiffs
12 regarding the “safety of their facilities” (Compl. ¶ 87), and that UC made unidentified “statements
13 and omissions that communicated to Plaintiffs that the University was safe and that students only
14 experienced a minimal amount of sexual violence.” (*Id.* ¶ 88). The Complaint does not identify
15 any specific statement that fits these generalized descriptions, nor does it identify any person who
16 supposedly made any such statement, when any such statement was made, or the context in which
17 any such statement was made. Under settled law, these type of allegations “are not particular
18 enough to satisfy Rule 9(b)” because they “do[] not identify any specific misrepresentations or
19 specify when and where they occurred.” *Vess*, 317 F.3d at 1107; *Kearns v. Ford Motor Co.*, 567
20 F.3d 1120, 1126 (9th Cir. 2001) (affirming dismissal of fraud allegations where plaintiff failed to
21 “specify what the [purported misrepresentations] specifically stated” or “when he was exposed to
22 them or which ones he found material”).

23 The Complaint also alleges that Defendants “underreported” the number of incidents of
24 sexual violence to the federal government, allegedly “in violation of the federal Clery Act which
25 requires all universities to report crime statistics.” (Compl. ¶ 89.) Again, this allegation founders
26 on a lack of any specificity about what representations were made, who made them and when, and
27 why they were supposedly misleading. But even assuming that this particular allegation were
28 sufficiently specific, it still could not be the basis for fraud liability. The Clery Act expressly
 provides that, “[n]otwithstanding any other provision of law, evidence regarding compliance or

1 noncompliance with this subsection *shall not be admissible as evidence* in any proceeding of any
2 court ..., except with respect to an action to enforce this subsection.” 20 U.S.C. § 1092(f)(14)(B)
3 (emphasis added). The Clery Act also vests exclusive power to enforce its requirements in the
4 Secretary of Education, §1092(f)(13), and provides that “[n]othing in this subsection may be
5 construed to ... create a cause of action against any institution of higher education ... for any civil
6 liability.” § 1092(f)(14)(A). Accordingly, Plaintiffs may not rely on any allegations about Clery
7 Act reporting to support their fraud claim. Plaintiffs’ fraud allegations lack the specificity
8 required by Rule 9(b) and should be dismissed.

9 **E. The Court Should Dismiss Without Leave to Amend.**

10 UC previously filed a motion to dismiss Plaintiffs’ First Amended Complaint, making the
11 same legal arguments made in this motion. ECF No. 6. Rather than responding to that motion,
12 Plaintiffs filed their Second Amended Complaint without UC’s consent or leave of the Court, in
13 violation of Rule 15. Fed. R. Civ. P. 15(a). Plaintiffs’ amendment attempts to address the legal
14 deficiencies identified in UC’s prior motion, but, as discussed above, the Complaint still fails to
15 state any claim on which relief may be granted. “[A] district court may dismiss without leave
16 where a plaintiff’s proposed amendments would fail to cure the pleading deficiencies and
17 amendment would be futile.” *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041
18 (9th Cir. 2011). Dismissal without leave is especially warranted where, as here, a plaintiff has
19 already amended the complaint. *See Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 879 (9th Cir.
20 1999); *Lovesy v. Armed Forces Ben. Ass’n*, No. 07 CV 02745, 2009 WL 1574575, at *4 (N.D.
21 Cal. June 3, 2009) (“[T]he district court’s discretion to deny leave to amend is particularly broad
22 where plaintiff has previously amended the complaint.”).

23 **IV. CONCLUSION**

24 For the foregoing reasons, all of Plaintiffs’ claims against UC should be dismissed.
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