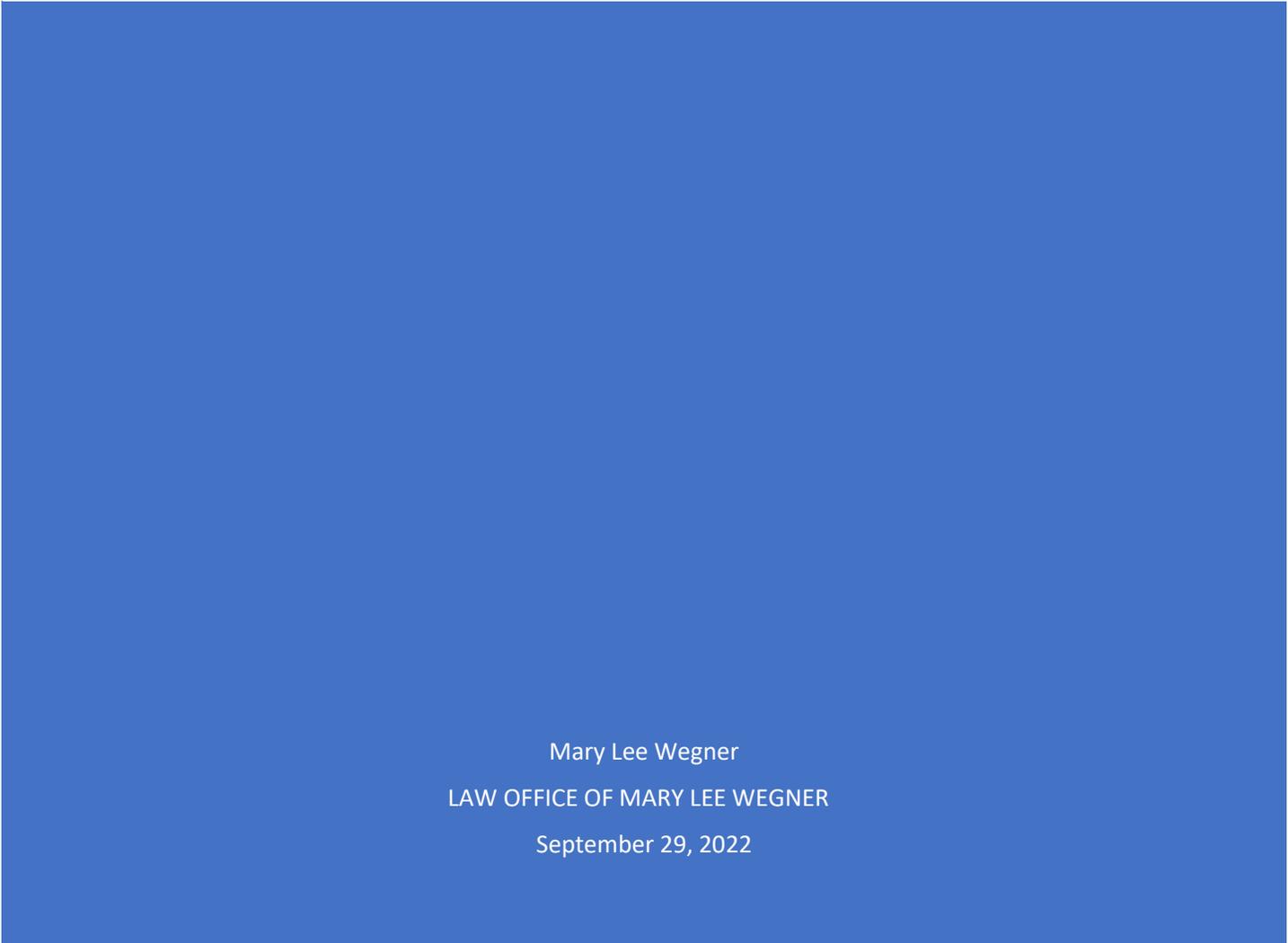




SUMMARY INVESTIGATION REPORT CALIFORNIA STATE UNIVERSITY-FRESNO



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I. Scope of Investigation

On March 25, 2022, California State University (“CSU”) engaged me to conduct a neutral, privileged investigation regarding the sufficiency of CSU-Fresno’s (“the Campus”) responses to reports of Dr. Frank Lamas’ (“Lamas”) alleged sexual harassment and other workplace misconduct between July 1, 2014 through November 4, 2019. The CSU Board of Trustees (“the Board”) initiated this investigation to obtain information about whether the Campus’ responses to the reports complied with applicable policies and what factors, if any, impacted the effectiveness of those responses. My work also included an evaluation of whether CSU’s August 31, 2020 settlement with Lamas (“the Settlement”) violated CSU policies or was otherwise unreasonable. This is a high-level summary of my findings about these matters. Privileged, detailed information not included in this report also was shared with the Board previously in closed sessions.

II. Background Information

Lamas was the Campus’ Vice President of Student Affairs (“VPSA”) from mid-July 2014 until his retirement (required by the Settlement) on December 31, 2020. He reported to and told colleagues he was friends with and was recruited by Joseph Castro, the Campus’ President (who became CSU’s eighth Chancellor in January 2021 but is referred to herein as “the President”).

At specific points during Lamas’ six years of employment, the Campus received several anonymous and other reports that Lamas had engaged in inappropriate behavior toward employees and student employees. There were no formal written complaints about Lamas’ behavior until October 29, 2019, when a graduate student/employee accused Lamas of sexual harassment and bullying (the “October 2019 Complaint”).¹ Prior to that complaint, the reports about Lamas alleged that he had engaged in partying off campus, verbal gender-based misconduct, bullying, staring at a female student-employee in one instance and retaliation in two instances. The October 2019 Complaint, however, also included allegations of touching. On November 4, 2019, the Campus requested a neutral outside investigation of that complaint and placed Lamas on paid leave pending the outcome of that inquiry. That investigation concluded with findings in April 2020 that Lamas had engaged in sexually harassing behavior within the meaning of and prohibited by EO 1096, as well as other workplace misconduct. Lamas unsuccessfully appealed those findings, which were confirmed by the Chancellor’s Office on June 23, 2020.

With respect to Lamas’ employment-related rights, his employment offer letter provided that he served at-will in his administrative capacity “at the pleasure of the President.” That same letter, however, also granted him “retreat rights” (i.e., the option to remain on Campus as a non-tenured professor) even after he was no longer VPSA. Had the Campus fired Lamas based on the 2020 misconduct findings, that discharge would not necessarily have extinguished the retreat rights granted by his offer letter. Lamas publicly disputed the October 2019 Complaint investigation findings and

¹ The applicable policy referenced below, Executive Order 1096 (“EO 1096”), prohibits sexual and other prohibited harassment, discrimination and retaliation in the workplace. EO 1096 contemplates that a formal complaint will be written, signed and contain a “clear and concise statement of facts” of behavior that constitutes a policy violation, along with information about, among other things, potential witnesses, remedies sought and the harm caused by the inappropriate activity. Informal reports also can trigger required campus action depending on the nature of the information received.

reflected an intention to dispute both the validity of those findings, and if he was fired, the dismissal decision.

Ultimately, Lamas and CSU agreed to the Settlement, which the President recommended and the Chancellor approved. The settlement agreement (the “Agreement”) required Lamas to retire (rather than being fired) at the end of 2020, relinquish his retreat rights, release CSU from all claims and agree never to work on Campus or in the CSU system again. The Agreement also provided that Lamas could continue working off Campus on special assignment through his retirement date, would be paid an additional \$260,000 and would receive a “letter of reference” from the President to facilitate Lamas’ search for new employment. After the Settlement, the President released a retirement announcement for Lamas praising his accomplishments. That announcement was not required by the Agreement. He also provided a very positive reference letter despite confirmed findings of Lamas’ misconduct. On February 17, 2022, the President (by then the Chancellor) resigned, having acknowledged mistakes were made in the handling of the Lamas situation.

III. Executive Summary

From 2014 to November 2019, the Campus received nine reports about Lamas’ inappropriate conduct as described in more detail below. Seven reports were received between mid-2014 to August 2016. Two were received approximately three years later in 2019. Several reports were anonymous, although at least six known employees experienced or were aware of Lamas’ alleged misconduct during the relevant time period. Some reports involved conduct that, even if true, either was not covered by policies or may not rise to the level of an EO 1096 violation. Others involved conduct that, depending on its frequency and severity, could constitute EO 1096 violations.

The Campus took some action to explore and address each of these reports. Some responses substantially complied with EO 1096. Others did not. There were notice, recordkeeping and other deficiencies in the Campus’ responses across time. Best practices were not always followed. More could have been done, such as conducting an earlier investigation in response to reports in 2014 or 2016. Campus administrators responsible for responding to reports had good intentions, although their lack of experience and/or heavy workloads in some instances, along with poor documentation, lack of information and other factors, resulted in less aggressive and effective responses to reports until the October 2019 Complaint.²

In particular, the President’s failure to more rigorously address reports of Lamas’ alleged misconduct as they surfaced was a notable factor that negatively impacted the effectiveness of the Campus’ responses to such reports. As discussed below, he consistently did not take any significant action against but instead supported Lamas throughout his employment even in the face of multiple allegations, growing evidence, and ultimately, confirmed findings of Lamas’ alleged misconduct. Indeed, the President’s support continued even in the aftermath of the Settlement to the extent he provided a very positive retirement announcement and recommendation letter for Lamas that were inappropriate given the circumstances. In short, the evidence reviewed reflects a blind spot the President had about

² The response to the October 2019 Complaint was not the subject of this investigation, although relevant information from the prior investigation about it was considered.

Lamas that negatively influenced his response to Lamas' behavior and execution of portions of the Settlement.

IV. Overview of Investigative Process

This investigation occurred from March 25, 2022 through August 10, 2022. It included video and phone interviews with approximately 30 current and former employees and student employees working on Campus or in the Chancellor's Office during the relevant time period. Several individuals were interviewed multiple times (the President, alone, for approximately 14 hours with his attorney present). Other individuals declined to be interviewed or to respond to outreach, some due to fear of retaliation or media scrutiny. Hundreds of emails, texts, news articles and other documents (including those previously provided to the media) were reviewed and considered.

CSU fully cooperated in the investigation. Information obtained was analyzed by applying a "preponderance of the evidence" standard. For purposes of this report, a preponderance of the evidence means the greater weight of the evidence, i.e., that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side. This is the standard prescribed by applicable policies. It is a qualitative and not purely quantitative standard.

Where the information obtained was in conflict or incomplete due to the passage of time, lack of documentation and other factors, witness credibility assessments were required. These were based on a number of considerations, including the inherent limits of human memory, whether witnesses had particular motivations to modify their recollections or claim no recollection and whether the information reported made sense.

V. Applicable Policies

EO 1096 is the systemwide equal employment opportunity policy that prohibits discrimination, sexual and other harassment based on protected characteristics and retaliation in employment. It governs responses to complaints by employees and student employees regarding prohibited conduct in the work environment. Executive Order 1095 ("EO 1095"), CSU's primary Title IX policy, outlines (among other things) the required response to sexual harassment complaints. EO 1096's provisions regarding handling of sexual harassment complaints are consistent with EO 1095. There were several different but similar versions of EO 1096 in effect at various times during Lamas' employment. The policies in effect at the time Lamas was employed are those applicable to the findings in this report.

EO 1096 requires every campus to "promptly and effectively" respond to harassment, discrimination and retaliation reports and to take "appropriate" (but unspecified) action to prevent, correct and when necessary discipline policy violations. It prescribes the notices and information identified complaining parties must receive about, among other topics, their options to file a complaint, request an investigation and/or pursue "early resolution" and the policy prohibiting retaliation. The policy also outlines recordkeeping requirements and the time periods within which notices must be provided and investigations and other processes must be completed. It does not require an investigation in all instances. For example, EO 1096 notes, "An investigation may not be warranted where the reported information is insufficient" and "The Campus will respond to all reports of alleged violations of this policy, whether or not the report is submitted as a written Complaint. However, the responses may be limited if information contained in the report is insufficient to verify violation(s) of this Executive Order."

(EO 1096 rev. 6/23/15). Nonetheless, a campus may investigate if the facts warrant it and generally is expected to investigate a formal EO 1096 complaint or other reports that indicate a pattern of potential violations. If a campus does not investigate an EO 1096 complaint, it must document the reasons for the decision. EO 1096 also does not prescribe specific remedial or preventative action in response to a complaint but leaves the determination of what is appropriate given the circumstances to the campus.

VI. Summary of Key Findings

What follows is a summary of key findings regarding: (1) the number and nature of reports about Lamas' alleged misconduct; (2) whether the Campus' responses to such reports complied with applicable policies; (3) what factors affected reporting and effectiveness of the responses; and (4) whether the Settlement and its execution violated applicable policies.

A. What Were the Reports About Lamas' Alleged Misconduct?

The Campus received the following reports between 2014 and 2016:

1. A 2014 anonymous letter to the President that Lamas had been partying off campus ("Report 1").
2. A report in September 2014 that Lamas had asked an identified employee about his sexual orientation, made comments about women's appearances and retaliated against the employee for raising such concerns ("Report 2").
3. A report in October 2015 that Lamas had stared at an identified student employee's breasts and asked her personal questions about a boyfriend ("Report 3").
4. A report in May 2016 to the Title IX Coordinator that an employee had heard from four to seven other unidentified employees (whom the employee later refused to identify for the Title IX Coordinator) that Lamas made at least three inappropriate comments to or about women ("Report 4").³
5. After Reports 3 and 4, the Campus initiated a June 2016 anonymous climate survey in Lamas' division yielding at least four comments that Lamas had made unspecified sexist and other inappropriate remarks and ten responses that the division had a "harassing" or "hostile" environment ("Report 5-June 2016 Survey").
6. A report in July 2016 from the Title IX Coordinator that Lamas had removed her from committees in retaliation for her follow up to the 2016 reports ("Report 6")
7. An anonymous letter in mid-August 2016 to the Associate Vice President-Human Resources ("AVP-HR") about Lamas' bullying behavior and the lack of follow up to the June 2016 Survey ("Report 7").

³ Report 4 (May 2016) and Report 5 (the June 2016 Survey) each counted as one report even though they involved information that several unidentified individuals had heard Lamas make inappropriate comments or heard from others that this had occurred. It was unclear from the reports to whom Lamas made the comments, how many were made and whether the unidentified individuals experienced Lamas' alleged misconduct themselves or heard the same or different information about it.

Between August 2016 and July 2019, the Campus did not receive additional reports of Lamas' misconduct.⁴ The next report about Lamas surfaced in August 2019, when an employee notified the President and others that Lamas had engaged in bullying conduct ("Report 8"). That was followed by the October 2019 Complaint of sexual harassment and bullying ("Report 9").

With the exception of Report 2, the President received or was contemporaneously aware of all reports. Although the President has publicly denied knowing about Report 2 until years later, there was credible evidence he knew some details about it in late 2014 and received additional information by mid-2016. Individuals serving in the AVP-HR, Title IX Coordinator and Vice President-Finance & Administration roles also were aware of the reports when made, although the individuals in those positions changed during Lamas' employment.

B. Did the Campus' Responses to Reports Comply with Applicable Policies?

Three reports (Report 1 (anonymous letter re partying off campus in 2014), Report 7 (anonymous letter re bullying in 2016) and Report 8 (bullying in August 2019)) did not require specific responses. The alleged behavior, while inappropriate and unprofessional, was not covered by EO 1096 or other policies expressly prohibiting such behavior or requiring a specific response to such reports. The President nonetheless responded to each report by orally counseling Lamas not to engage in such conduct. In response to Report 8 in August 2019, he also offered workplace mediation to Lamas and the employee (which was declined). Given the circumstances, the Campus' responses were reasonable but not appropriately documented. Additionally, by the time Report 8 surfaced, more should have been done given the pattern of concerns raised about Lamas at the time.

The remaining five reports (again, excluding the October 2019 Complaint) involved allegations that, if true and depending on the circumstances, could involve EO 1096 violations. The Campus' responses to three of them (Report 3 (2015 report of staring) and Reports 4 and 5 (May 2016 report and June 2016 Survey responses)) substantially complied with EO 1096. The known complainant from Report 3, and the employee with information of potential violations (Report 4), both received EO 1096 notices, including information about complaint, investigation and early resolution options. These options were offered to and declined by the Report 3 complainant twice, and the Report 4 employee denied reporting a concern and declined to file a complaint. The Title IX Coordinator also unsuccessfully attempted to identify others who may have heard some comments identified in Report 4.

After Reports 3 and 4, the Campus initiated the anonymous June 2016 Survey (Report 5) in Lamas' division and learned that several other unidentified individuals were aware of Lamas' alleged "sexist" remarks and an alleged "hostile" or "harassing" environment in his division.⁵ The Campus then provided harassment prevention and other coaching to Lamas and training for his and another division about EO 1096 and the policy against retaliation, including the duty and how to report alleged violations. The President also orally counseled Lamas (again). These were appropriate remedial and preventative

⁴ Although additional remarks were made to HR and others occasionally about Lamas' difficult management style and similar workplace challenges during this three-year period, such general remarks were not considered new reports of misconduct. Additionally, although the 2014 complainant referenced his prior report and its handling to some HR employees after the fact, these references also were not considered new reports.

⁵ Since individuals with knowledge of Reports 3 and 4 participated in the Survey, the Survey responses likely encompassed some of the information the Title IX Coordinator already had.

measures consistent with EO 1096 though, as noted below, written counseling should have occurred, and additional follow up was warranted (and contemplated but did not occur) by this time.

The Campus' responses to the remaining two reports of potential EO 1096 policy violations (Report 2 (September 2014 report from identified individual) and Report 6 (July 2016 retaliation report from Title IX Coordinator)) did not substantially comply with policy notice and other requirements. Among other things, the individuals in question did not receive the requisite documentation and information about their complaint, investigation and other options. (Report 6 complainant, however, was aware of all such information given her job duties). There also were no records of the reports or responses in the DHR or Lamas' files.

With respect to Reports 2 and 6, however, the Campus took some action to address Lamas' alleged misconduct. In response to Report 2, the AVP-HR/Title IX Coordinator spoke to the employee and Lamas about the alleged behavior, told Lamas it was inappropriate, cautioned him against retaliating, prevented Lamas from putting a performance improvement plan in the employee's file and helped the employee identify and interview for a different job on Campus.⁶ In response to Report 6, the President immediately ordered the Title IX Coordinator restored to committees and orally counseled Lamas.⁷

In several instances, the Campus' responses to reports of Lamas' alleged misconduct did not adhere to best practices regarding recordkeeping, documentation of counseling and training for Lamas, investigation or additional follow up to determine whether the responses to the reports were effective. For example, there was no documentation that the President orally counseled Lamas. The President also did not provide progressively more serious written warnings, performance improvement plans or similar performance feedback to Lamas despite the emerging pattern of alleged inappropriate behavior. Planned follow up to the June 2016 Survey, including an investigation, more coaching for Lamas and another climate survey, also did not occur.

Although reasonable minds may differ whether the Campus should have investigated in 2016 or earlier and whether that failure alone was a policy violation, there were some reasons to instead proceed directly to remedial action as the Campus did in 2016. Though not impossible, investigations of anonymous complaints are difficult and not always fruitful. Where, as here, the Title IX Coordinator did not know in 2016 when, where, what and how frequently most of the conduct had occurred, and the sources of information were or wanted to remain anonymous (which was the case in both 2015 and 2016) or refused to share information they had, the Survey followed by training was a reasonable alternative to investigation. In some circumstances, training is an appropriate remedy even after an investigation yields evidence of misconduct (which, in this instance, Lamas repeatedly denied had occurred). That said, an investigation was another best practice the Campus did not follow at the time.

C. What Factors Affected Reporting and Effectiveness of Responses?

The responses to reports between 2014 and 2016 were not effective at preventing Lamas' misconduct despite positive feedback received about the training conducted for Lamas and others in fall 2016. In particular, the Campus learned in 2019 that Lamas' inappropriate conduct had continued,

⁶ The 2014 complainant has publicly stated these actions were insufficient and that he was forced to take what he characterized as a demotion to get away from Lamas (who had expressed the intent to fire him).

⁷ The Title IX Coordinator did not file a complaint and reflected that additional action was unnecessary because her concerns were addressed immediately.

unreported, between late 2016 and August 2019. Individuals (including in some instances senior managers in Lamas' division) who had experienced or were aware of Lamas' inappropriate behavior, and had received training regarding the policies prohibiting such behavior and retaliation and their rights and obligations to report, failed to share that information with Title IX or HR. When senior HR administrators occasionally asked how things were going with Lamas during this timeframe, employees did not report sexually inappropriate or specific incidents of bullying behavior. Instead, they generally mentioned Lamas' difficult and intimidating work style.⁸ Those in HR who heard such general comments did not consider them to be new reports requiring action though they occasionally suggested employees contact the AVP-HR for assistance if needed. None of those employees did so (likely for some or all of the reasons noted below) until 2019.

That less aggressive and effective action occurred in response to concerns about Lamas' behavior before the October 2019 Complaint was the result of several factors. First and foremost, employees did not report Lamas' alleged misconduct (or if they did, refused to file complaints that required use of their names) because they feared retaliation. Lamas' intimidating demeanor and comments about what happens to people when they complain about their bosses, along with the narrative he created about being good friends with the President, created a culture of fear that silenced employees. Although people had information about when, how and where to report, and that policies prohibit retaliation for doing so, they lacked faith in the administration's ability or willingness to protect them and take meaningful action against Lamas. Some employees who experienced or were aware of Lamas' alleged misconduct also felt it was inappropriate but not egregious, and so they did not report. In the absence of such reports, the President and other Campus administrators continued to assume (incorrectly) that Lamas had corrected his behavior after the 2016 training.

Several other factors contributed to less effective responses to reported concerns. For example, employees in critical roles, such as the Title IX Coordinators, had multiple job functions in addition to their Title IX responsibilities. This appears to have limited their ability and time to more effectively respond to concerns. The lack of better recordkeeping and more effective information sharing across rotating executives also meant that those who were new to the Title IX and HR positions in 2016 did not have complete information about Lamas' prior alleged misconduct at the time they were evaluating possible responses. Moreover, because the President was respected and had done so much for the Campus, his subordinates often acceded to his deferential approach toward Lamas as long as something was done to address the reported behavior.

The President's failure to more aggressively respond to reports of Lamas' alleged misconduct also allowed such conduct to continue because there were no serious repercussions for it. By mid-2016, the President was aware Lamas had been accused repeatedly of inappropriate behavior. The only actions he took as Lamas' supervisor were to orally counsel him, persuade (rather than order) him to attend the 2016 training, attend the training himself as a show of support for Lamas and have windows installed in Lamas' office and division. The President also told Lamas to immediately reinstate the Title IX Coordinator when Lamas removed her from committees in 2016. Notably, the President did not document any of these actions, issue written warnings, mention these concerns in Lamas' performance

⁸ While the October 2019 Complaint investigation was ongoing, the Director of Title IX and Clery Compliance invited the 2014 complainant (Report 2) to share any EO 1096/1097 concerns he had. He did not file a complaint at that time.

reviews or put him on a performance improvement plan—although the President had done so with at least one other employee. Instead, he gave Lamas very positive performance reviews. Moreover, immediately after Lamas completed his November 2016 training, the President began recommending him for presidential positions in and outside of the CSU system. He did so at least eight times from 2016 through 2019, including recommendations for two CSU presidencies. With respect to those two, he failed to inform the Chancellor or others involved with the search about Lamas’ history.⁹ He also nominated Lamas for a lifetime achievement award and obtained a salary increase for him in 2018. The President’s actions (and inactions) in these and other instances were not reasonably likely to convey to Lamas that his behavior was jeopardizing his position or future.

It is also worth noting that even after the prior investigation confirmed Lamas’ alleged inappropriate behavior and resulted in adverse EO 1096 findings against him that were upheld in June 2020, the President continued to support Lamas. For example, he asked the Campus Provost and Vice President for Academic Affairs (the “Provost”) to consider allowing Lamas to retreat to a faculty position on Campus in the School of Education. Although Lamas had contractual retreat rights, the President made this request to the Provost without sharing either the investigation reports about Lamas or the specifics of the findings against him. This was one of several instances in which the President exhibited a blind spot about Lamas’ and the impact his conduct had on others, despite multiple allegations (and confirmed findings) of his inappropriate workplace behavior.

In summary, more should have been done to address reports of Lamas’ alleged misconduct. The President justified his decisions about Lamas by pointing to advice he received from others. He also observed that nobody complained to the Chancellor or him about his response to reports of Lamas’ misconduct. The President’s explanations for his decisions, however, were not always credible. In some instances, they also were contrary to the evidence. As Lamas’ supervisor and an experienced university administrator, the President had the power, opportunity and obligation to document and take progressively more significant action to address concerns about Lamas’ behavior as they surfaced. He was ultimately responsible for implementing EO 1096 (along with Campus Title IX Coordinators and DHR Administrators). The President did not need--nor should he reasonably have expected--his subordinates to tell him to do his job and hold his direct report accountable. The assertion that people must have supported his decisions about Lamas because they did not complain about them is similarly unpersuasive. The absence of complaints is not necessarily an implicit endorsement that all is well.

D. The Settlement

The Settlement did not violate CSU policies. The President recommended the Settlement, and the Chancellor approved it. This was all the CSU policies required at the time.¹⁰

There also were legitimate reasons for the Settlement, and in particular, two of the Agreement’s primary terms. First, with respect to the \$260,000 Settlement payment, that amount (approximately one year of Lamas’ salary) was reasonable given the threat, uncertainty and cost of litigation, the value

⁹ Even if the President thought Lamas had improved his behavior after the 2016 training, it is notable that he did not mention prior reports of alleged misconduct to the Chancellor and explain that Lamas had responded well to counseling.

¹⁰CSU has since adopted policies restricting retreat rights and positive reference letters for individuals with a finding of misconduct.

of Lamas' retreat rights and the benefit of having Lamas removed from the Campus and CSU permanently. Second, neutral reference letters are not unusual as a condition of employment-related settlements, and Lamas may not have settled without one. That said, the positive nature of the reference letter the President authored was inappropriate given the confirmed 2020 misconduct findings against Lamas. The President has acknowledged as much. In short, these Agreement terms were reasonable given the totality of the circumstances, although the execution of the reference letter term was problematic.

VII. Conclusion

I am available to discuss next steps as appropriate. I am also aware that Cozen O'Connor is examining and will be making recommendations regarding systemwide Title IX policies and processes, however, and so this report will be provided directly to Cozen O'Connor to assist its work in that regard.