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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

10 DANIEL SWAN,

11 Plaintiff,

12 v.

13  
14 SAN JOAQUIN VALLEY COLLEGE, INC., et  
al.,

15 Defendants.  
16

1:13-CV-01073-LJO-GSA

**ORDER ON MOTIONS FOR  
SUMMARY JUDGMENT**  
(Docs. 33, 45)

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**INTRODUCTION**

Plaintiff Daniel Swan (“Swan”) brings this action for sex discrimination in violation of 20 U.S.C. § 1681(a) as well as for sex harassment and discrimination, sexual battery, negligent hiring, defamation, breach of contract, and intentional infliction of emotional distress under California law against Defendants San Joaquin Valley College, Inc. (“SJVC”), Melissa Grimsley (“Grimsley”), and Kerrie Liles (“Liles”) (collectively, “Defendants”). Currently before the Court are Defendants’ motions for summary judgment as to Plaintiffs’ first amended complaint in its entirety. Swan brings his federal claim against Defendant SJVC only. For the reasons discussed below, the Court GRANTS Defendant SJVC’s motion for summary adjudication as to Swan’s federal claim, REMANDS to state court Swan’s state law claims, and DENIES AS MOOT Defendants Liles and Grimsley’s motion for summary judgment as to Swan’s claims against them.

1 **BACKGROUND**

2 **A. Facts Related to Swan’s Federal Claim<sup>1</sup>**

3 In May 2011, Plaintiff Swan enrolled as a student in SJVC in its respiratory therapy program at  
4 its Visalia campus. In enrolling, Swan acknowledged, in writing, his receipt of the College Catalog  
5 and Student Handbook, and also acknowledged receipt and understanding of the RT Program  
6 “components and program requirements,” including an “[a]greement to follow the college standards,  
7 guidelines, and policies as outlined in the student handbook, college catalog and RT program policy”  
8 and “[a]cademic, attendance, professional and satisfactory progress policies at SJVC and the RT  
9 profession.” Defs.’ Reply to Pls. Response to Joint Statement of Undisputed Facts, Doc. 68  
10 (hereinafter “DSUF”) # 4. SJVC’s College Catalog, in effect at the time of Swan’s matriculation,  
11 provides in relevant part as follows: “SJVC does not and will not tolerate intentional involvement in  
12 dishonest academic behavior(s). Students who violate this policy will be subject to formal discipline,  
13 which may include the assignment of a failing grade, or in some cases, termination from the College.”  
14 (DSUF # 5). The Respiratory Clinical Manual provides in relevant part as follows: “Any missed shift  
15 (portion thereof) or other absence from the clinical site should be clearly reflected on the daily time  
16 sheet. Falsification, forging or misrepresentation of reported hours may result in termination from  
17 clinical. The attendance line and clinical instructor must be notified prior to leaving facility.” (DSUF  
18 # 7).

19 Sometime between July 26, 2012 and August 7, 2012, Swan turned in an assignment in the  
20 RT 103 course taught by Defendant Grimsley titled “Ventilator Graphics” worksheet. (DSUF # 8).  
21 After receiving Swan’s assignment, Grimsley in her grade sheet gave Swan a final score of zero for the  
22 assignment and marked that the score was for “copy[.]” (DSUF # 9, 18). Grimsley conferred with  
23 Barry Westling, the Respiratory Therapy Program Director and her supervisor, regarding the  
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<sup>1</sup> These are derived from facts that the parties do not substantively dispute, Docs. 49, 57, as reflected in Doc. 68, including key background facts contained in the operative complaint that are not disputed.

1 assignment turned in by Swan in her course. (DSUF # 10). Grimsley entered the grade of zero for that  
2 assignment for Swan on August 7, 2012 in SJVC's electronic grading system. (DSUF # 18).

3 Swan was assigned to clinical training at a Kaiser hospital through an internship program.  
4 On July 31, 2012 Grimsley was contacted by Nicole Bourbon, a Kaiser supervisor and respiratory  
5 therapist in Fresno. (DSUF # 11). After receiving the call from Bourbon, Grimsley called and texted  
6 Swan to determine his whereabouts. (DSUF # 12). Swan responded to Grimsley via text message that  
7 he was told to go study in the lobby and that he was still in the lobby. (DSUF # 13). On August 1,  
8 2012, SJVC's Director of Clinical Education, Christine Foster, made an inquiry regarding Swan's  
9 attendance at Kaiser on July 31, 2012. (DSUF # 15, 19). On August 9, 2012, William Eropkin, the  
10 Pulmonary Clinical Services Manager at Kaiser, responded to Foster's inquiry. (DSUF # 20). Eropkin  
11 stated that, on July 31, 2012, no one at Kaiser had sent Swan home, that Swan had stated at  
12 approximately four o'clock PM that he was going to a different hospital ward, but that he was nowhere  
13 to be found, and that Bourbon had contacted Grimsley at about six o'clock PM. (DSUF # 20). Foster  
14 later determined that Swan would not return to Kaiser, and Swan was assigned to a clinical site in  
15 Hanford. (DSUF #16).

16 On August 1, 2012, Swan met with SJVC Dean of Student Services Kerrie Liles regarding a  
17 complaint of alleged sexual harassment against Grimsley. (DSUF #44). Liles had Swan reduce his  
18 complaint to writing. (DSUF # 45). On August 1, 2012, Liles informed SJVC Dean of Academic  
19 Affairs Tami Olson of Swan's verbal complaint regarding Grimsley. (DSUF # 57). On August 2,  
20 2012, Liles met with Matthew Paul, a classmate of Swan's and the only witness identified by Swan in  
21 his verbal complaint. (DSUF # 55). At Defendant Liles' request, Swan put his complaint in writing  
22 and submitted it to Liles on August 3, 2012. (DSUF # 45). At some point in August 2012, after Swan  
23 made his complaint regarding Grimsley, Olson met with Grimsley about Swan's complaint. (DSUF  
24 # 59). Olson then provided a written summary of her findings and conclusions to Liles. (DSUF # 63).  
25 After Swan's complaint, Grimsley's clinical instructor shifts at clinical sites where Swan was assigned  
26 were covered by other clinical instructors so that she would not be at the same sites with Swan or  
27 supervising Swan. (DSUF # 68). Grimsley no longer made or had one-on-one contact with Swan.  
28 (DSUF # 67-70). After Swan complained, he completed the remaining two or three weeks of the

1 course taught by Grimsley in his third term in the respiratory therapy program. (DSUF # 67).  
2 Grimsley was no longer his clinical instructor for the remainder of Swan's time at SJVC. (*Id.*). After  
3 meeting with Liles on August 1, 2012 and submitting his complaint in writing on August 3, 2012,  
4 Swan did not make any further complaints regarding sex or gender-related conduct by Grimsley.  
5 (DSUF #71).

6 In Swan's third term in the respiratory therapy program, Swan's final grade in the RT 103  
7 course taught by Grimsley was an "A." (DSUF #72).

8 In Swan's fourth term in the program, he was assigned to the Veterans' Administration  
9 Medical Center ("the V.A.") in Fresno. (DSUF # 29). On October 11, 2012, Swan left the V.A.  
10 Hospital before his shift ended. (DSUF # 30). Swan notified John Batch, Swan's V.A. supervisor,  
11 about his early departure. (DSUF # 32, 35). Swan did not notify Westling, Foster, or any other SJVC  
12 instructor before leaving. (DSUF # 31). Westling made a site visit to the V.A. Hospital on October 11,  
13 2012 and was informed by Batch as to Swan's early departure. (DSUF # 32). Swan later turned in his  
14 clinical timesheet for October 11, 2012, indicating that he had worked a full shift at the V.A. when in  
15 fact he had not. (DSUF # 34). On October 19, 2012, Swan wrote an e-mail to Foster stating that he  
16 "goofed" on his timesheet in indicating that he worked a full shift and that he had made up the two  
17 hours he incorrectly credited to himself. (DSUF # 36).

18 On October 23, 2012, Liles and Westling met with Swan and terminated Swan from the  
19 respiratory therapy program. (DSUF # 39). Swan appealed his termination decision to the Campus  
20 Director, Don Wright, pursuant to SJVC policy. (DSUF # 40). Wright denied Swan's appeal. (DSUF  
21 # 43).

22 Swan filed a charge of discrimination with California's Department of Fair Employment and  
23 Housing ("DFEH") and received a right to sue letter dated May 31, 2013. (First Amended Complaint  
24 ("FAC") ¶21, Ex. A).

25 **B. Procedural History**

26 Swan brought this action for sex discrimination and retaliation in violation of 20 U.S.C. §  
27 1681(a) ["Title IX"] as well as for sexual harassment and discrimination, sexual battery, negligent  
28 hiring, defamation, breach of contract, and intentional infliction of emotional distress under California

1 law against Defendants in Fresno County Superior Court on or about June 3, 2013. On July 12, 2013,  
2 Defendants timely removed this action to this Court on the basis of federal question jurisdiction over  
3 Swan’s Title IX claim and supplemental jurisdiction over Swan’s state law claims. (Doc. 1). Swan  
4 filed the operative first amended complaint (“FAC”) on October 29, 2013. (Doc. 14). The FAC names  
5 SJVC as the only defendant in the Title IX claim. (FAC at ¶¶ 74-80.)

6 On October 20, 2014, Defendants filed the instant motions for summary judgment as to the  
7 FAC in its entirety. (Docs. 33, 45). SJVC moves for summary judgment on the Title IX and state law  
8 claims; Defendants Grimsely and Liles move for summary judgment as to the state claims brought  
9 against them. *Id.* Swan filed an opposition to Defendants’ motions on November 3, 2014, and  
10 Defendants filed replies on November 10, 2014 and November 13, 2014. (Docs. 59, 67, 68).

## 11 DISCUSSION

### 12 I. Evidentiary Objections

13 “In general, only admissible evidence may properly be considered by a trial court in granting  
14 summary judgment.” *Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1324, 1335 n. 9 (9th  
15 Cir. 1980).

16 Swan has filed objections to ten statements in declarations filed by SJVC in support of its  
17 motion for summary judgment. (Doc. 56). Likewise, SJVC has filed objections to six statements in  
18 declarations filed by Swan in support of his opposition to this motion. (Doc. 68). However, these  
19 statements do not bear on the Court’s decision herein, and therefore the parties’ objections to them  
20 need not be addressed. The court need only decide evidentiary objections that are material to its  
21 ruling. *Norse v. City of Santa Cruz*, 629 F.3d 966, 973 (9th Cir. 2010).

### 23 II. Motion for Summary Judgment

#### 24 A. Legal Standard

25 Summary judgment is proper if the movant shows “there is no genuine dispute as to any  
26 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The  
27 moving party bears the initial burden of “informing the district court of the basis for its motion, and  
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1 identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on  
2 file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of  
3 material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotation marks omitted).  
4 A fact is material if it could affect the outcome of the suit under the governing substantive law;  
5 “irrelevant” or “unnecessary” factual disputes will not be counted. *Anderson v. Liberty Lobby, Inc.*,  
6 477 U.S. 242, 248 (1986).

7           If the moving party would bear the burden of proof on an issue at trial, that party must  
8 “affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party.”  
9 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). In contrast, if the non-moving  
10 party bears the burden of proof on an issue, the moving party can prevail by “merely pointing out that  
11 there is an absence of evidence” to support the non-moving party’s case. *Id.* When the moving party  
12 meets its burden, the non-moving party must demonstrate that there are genuine disputes as to material  
13 facts by either: (A) citing to particular parts of materials in the record, including depositions,  
14 documents, electronically stored information, affidavits or declarations, stipulations (including those  
15 made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B)  
16 showing that the materials cited do not establish the absence or presence of a genuine dispute, or that  
17 an adverse party cannot produce admissible evidence to support the fact. Fed. R. Civ. P. 56(c)(1).

18           In ruling on a motion for summary judgment, a court does not make credibility  
19 determinations or weigh evidence. *See Anderson*, 477 U.S. at 255. Rather, “[t]he evidence of the non-  
20 movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Id.* Only  
21 admissible evidence may be considered in deciding a motion for summary judgment. Fed. R. Civ. P.  
22 56(c)(2). “Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise  
23 genuine issues of fact and defeat summary judgment.” *Soremekun*, 509 F.3d at 984.

## 24       **B. Analysis**

25           Defendants seek summary adjudication as to each cause of action in the complaint.

### 26           **1. Federal Claim**

27           In his ninth cause of action, Swan alleges that Defendant SJVC retaliatorily terminated him  
28 from participating in courses, denied him the benefits of education, and discriminated against him on

1 the basis of his gender, all in violation of Title IX, 20 U.S.C. § 1681(a). As such, Swan appears to  
2 assert a sex discrimination claim and a retaliation claim under Title IX against SJVC. Swan does not  
3 bring this claim against Grimsley or Liles.

4 **i. Title IX Sex Discrimination**

5 The Supreme Court has held that sexual harassment is a form of discrimination for Title IX  
6 purposes. *Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999)  
7 (citing *Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274, 281 (1998), *Franklin v. Gwinnett*  
8 *County Public Schools*, 503 U.S. 60, 74-75 (1992)). “If a funding recipient does not engage in  
9 harassment directly, it may not be liable for damages unless its deliberate indifference ‘subject[s]’ its  
10 students to harassment.” *Id.* at 644 (quoting Title IX, 20 U.S.C. § 1681(a)). “That is, the deliberate  
11 indifference must, at a minimum, ‘cause [students] to undergo’ harassment or ‘make them liable or  
12 vulnerable’ to it. *Id.* at 645 (quoting Random House Dictionary of the English Language 1415 (1966),  
13 Webster’s Third New International Dictionary 2275 (1961)). Funding recipients are deemed  
14 “deliberately indifferent” to acts of harassment “only where the recipient’s response to the harassment  
15 or lack thereof is clearly unreasonable in light of the known circumstances.” *Id.* at 648. Therefore,  
16 “funding recipients are properly held liable in damages only where they are deliberately indifferent to  
17 sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively  
18 offensive that it can be said to deprive the victims of access to the educational opportunities or benefits  
19 provided by the school.” *Id.* at 650.

20 Even if Swan could establish that Grimsley’s conduct toward him constituted harassment  
21 that is so severe, pervasive, and objectively offensive that it can be said to deprive Swan of access to  
22 the educational opportunities or benefits provided by SJVC, Swan fails to present evidence to show  
23 that SJVC acted with deliberate indifference with regard to Grimsley’s alleged sexual harassment of  
24 Swan. *Id.* The parties agree and the evidence shows that Swan first complained about Grimsley in his  
25 meeting with Liles on August 1, 2012. (DSUF # 44). Liles testified that she met with Swan about his  
26 complaint, gathered information and investigated the complaint, and then forwarded that information  
27 on to Olson, who, as the academic dean, has supervision over faculty. (Liles Dep. 35:14-37:10). The  
28 parties also agree that, on the following day, Liles contacted, met with, and interviewed Matthew Paul,

1 the only witness identified by Swan, regarding Swan's complaint. (DSUF # 55). Olson testified that,  
2 after she was informed of Swan's complaint regarding Grimsley and received Swan's written  
3 complaint, she contacted Grimsley on August 7, 2012 and interviewed her on August 8, 2012 about her  
4 interactions with Swan. (Olson Dep. 14:18-15:11). Olson also testified that she had never received  
5 any complaints regarding Grimsley prior to Swan's complaint. (Olson Dep. 17:4-8). The parties agree  
6 that Swan accused Grimsley of sending him inappropriate and offensive text messages, that Swan  
7 produced all of the text messages from Grimsley that were on his phone, and that the text messages  
8 Swan produced refer only to school and clinical assignments without any mention or inference of  
9 gender or sex. (Swan Dep. 193:13-25; DSUF # 53). Olson further testified that, based on the  
10 information given to her by Liles, her interview with Grimsley, and viewing Grimsley's text messages,  
11 she concluded that there was no evidence of sexual harassment. (Olson Dep. 17:9-20). Olson testified  
12 that, following her interview with Grimsley, Olsen conferred with Liles regarding Swan's complaint  
13 and determined that it would be in the best interests of Swan, Grimsley, SJVC and SJVC students for  
14 Grimsley to no longer be Swan's clinical supervisor. (Olson Dep. 18:20-19:3). Olson testified she  
15 then made arrangements with Foster, the clinical director, to that effect. *Id.* The parties agree that,  
16 after Swan's complaint, Grimsley's clinical instructor shifts at clinical sites where Swan was assigned  
17 were covered by other clinical instructors so she would not be at the same sites with Swan, nor would  
18 she be supervising Swan. (DSUF # 68). SJVC also provides direct evidence to show that Grimsley  
19 was not the classroom instructor for any courses in which Swan was enrolled following his third term.  
20 (Pearce Decl. Exhs. 1, 2). SJVC presents evidence that there have been no complaints against  
21 Grimsley prior to Swan's complaint, and there is no evidence that Swan made any further complaints  
22 as to Grimsley's conduct relating to sex or gender. *See*, Foster Decl. ¶ 10; Liles Decl. ¶ 5; Zaczek  
23 Decl. ¶ 6.

24 In addition, as further discussed below, Swan fails to raise a genuine issue of material fact to  
25 show that SJVC terminated him in retaliation for his complaint against Grimsley. *See, infra.*

26 Therefore, based on the evidence before the Court, Swan fails to put forth evidence to raise a  
27 genuine issue of material fact as to whether SJVC's response to Swan's complaint of harassment was  
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1 “clearly unreasonable in light of the known circumstances” as required to show deliberate indifference.  
2 *Davis*, 526 U.S. at 648.

3 **ii. Title IX Retaliation**

4 In his ninth cause of action, Swan also alleges that SJVC retaliated against him for making  
5 the complaint of sexual harassment against Grimsley by terminating him from their respiratory therapy  
6 program in violation of Title IX.

7 The Ninth Circuit recently expressly adopted the framework used to assess Title VII  
8 retaliation claims to analyze Title IX retaliation claims. *Emeldi v. Univ. of Oregon*, 698 F.3d 715, 724  
9 (9th Cir. 2012). “In this framework, a plaintiff who lacks direct evidence of retaliation must first make  
10 out a *prima facie* case of retaliation by showing (a) that he or she was engaged in protected activity, (b)  
11 that he or she suffered an adverse action, and (c) that there was a causal link between the two.” *Id.*  
12 (citing *Brown v. City of Tucson*, 336 F.3d 1181, 1192 (9th Cir. 2003)).

13 The parties do not dispute that Swan engaged in a protected activity by making the sexual  
14 harassment complaint or that he suffered an adverse action in being terminated from SJVC’s  
15 respiratory therapy program. SJVC contends that Swan fails to show the requisite causal link between  
16 the complaint and his termination. The Ninth Circuit has instructed that, “[a]t the *prima facie* stage of  
17 a retaliation case, ‘the causal link element is construed broadly so that a plaintiff merely has to prove  
18 that the protected activity and the negative ... action are not completely unrelated.’” *Id.* at 726 (quoting  
19 *Poland v. Chertoff*, 494 F.3d 1174, 1180 n. 2 (9th Cir. 2007); *Pennington v. City of Huntsville*, 261  
20 F.3d 1262, 1266 (11th Cir. 2001)). The Ninth Circuit further has found that proximity in time between  
21 a protected complaint and an adverse action can be “strong circumstantial evidence of causation” at the  
22 *prima facie* stage. *Id.* Here, the evidence shows that Swan began attending SJVC in or around July  
23 2011, that he made the complaint on August 1, 2012, and that he was terminated from the respiratory  
24 therapy program on October 23, 2012.

25 Once a plaintiff has made the threshold *prima facie* showing, the defendant must articulate a  
26 legitimate, non-retaliatory reason for the challenged action. *Davis v. Team Elec. Co.*, 520 F.3d 1080,  
27 1089 (9th Cir.2008). If the defendant puts forth non-retaliatory reasons for the action, the burden shifts  
28 back to the plaintiff to show that the defendant’s proffered reasons were actually a pretext for

1 retaliation. *Id.* Even assuming, without deciding, that Swan shows the causal link and establishes a  
2 *prima facie* case of retaliation, SJVC provides non-retaliatory reasons for Swan’s termination, and  
3 Swan fails to show that SJVC’s proffered reasons are actually a pretext for retaliation.

4 SJVC provides evidence that Westling, as Program Director of the respiratory therapy  
5 program, in consultation with Liles, as the Dean of Student Services, decided to terminate Swan from  
6 the program due to three incidents in which Swan violated SJVC policy: 1) Kaiser’s inability to locate  
7 Swan during his clinical rotation at Kaiser on July 31, 2012; 2) Swan’s turning in an assignment as his  
8 own that Westling determined was done by another student; and 3) Swan leaving his shift at the V.A.  
9 early without notifying or obtaining permission from SJVC staff on October 11, 2012, turning in a  
10 timesheet that claimed hours he did not work for October 11, 2012, and making up those hours without  
11 permission from SJVC. (Westling Dep. 13:7-11; 24:9-15). SJVC also provides evidence that Swan’s  
12 alleged conduct in those incidents violates SJVC policy. (DSUF 4, 5, 7). As such, SJVC articulates  
13 non-retaliatory reasons for Swan’s termination.

14 Therefore, the burden shifts back to Swan to show that SJVC’s proffered reasons are actually  
15 pretext for retaliation. *Davis*, 520 F.3d at 1089. “A plaintiff may meet the burden to show pretext  
16 using either direct or circumstantial evidence.” *Coghlan v. American Seafoods Co. LLC.*, 413 F.3d  
17 1090, 1094-5 (9th Cir. 2005). If the plaintiff uses circumstantial evidence to meet the burden, the  
18 circumstantial evidence can take two forms: “First, the plaintiff can make an affirmative case that the  
19 employer is biased. For example, statistical evidence is circumstantial evidence that could, if  
20 sufficiently probative, point to bias. Second, the plaintiff can make his case negatively, by showing  
21 that the employer’s proffered explanation for the adverse action is ‘unworthy of credence.’” *Id.* at  
22 1095 (citing *Texas Dep’t of Community Affairs v. Burdine*, 450 U.S. 248, 256 (1981); *Aragon v.*  
23 *Republic Silver State Disposal, Inc.*, 292 F.3d 654, 663 (9th Cir. 2002)). “[W]hen the plaintiff relies  
24 on circumstantial evidence, that evidence must be ‘specific and substantial’ to defeat the employer’s  
25 motion for summary judgment.” *Id.* (quoting *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1221 (9th  
26 Cir. 1998)). *See also*, *Steckl v. Motorola, Inc.*, 703 F.2d 392, 393 (9th Cir. 1983) (“A party opposing a  
27 summary judgment motion must produce ‘specific facts showing that there remains a genuine factual  
28 issue for trial’ and evidence ‘significantly probative’ as to any [material] fact claimed to be disputed.”)

1 (quoting *Ruffin v. County of Los Angeles*, 607 F.2d 1276, 1280 (9th Cir. 1979)) (emphasis in the  
2 original).

3 Swan attempts to show SJVC's proffered reasons are unworthy of credence using  
4 circumstantial evidence in order to meet his burden. As discussed above, SJVC puts forth three  
5 reasons for terminating Swan. Swan counters those reasons by claiming that (1) he was studying in the  
6 lobby at Kaiser during his shift on July 31, 2012 because he was instructed by Kaiser personnel do to  
7 so and left Kaiser on Grimsley's advice; (2) Grimsley forged the alleged copied homework assignment  
8 from him; and (3) he thought he was following protocol by informing Batch instead of SJVC  
9 instructors of his early departure on October 1, 2012 and making up those hours without the  
10 involvement of SJVC. (Compl. Pp. 5, 9-10). There is evidence of the communication between Swan  
11 and Grimsley on July 31, 2012 to support Swan's contention that he left Kaiser on the advice of  
12 Grimsley. (Grix Dec., Doc. 51, Exh. 1 (Liles Dep.) p. 71). However, the text message communication  
13 seems to indicate that personnel at Kaiser had been looking for Swan and could not locate him. *Id.* In  
14 addition, there is no specific and substantial circumstantial evidence to show that the account given by  
15 Eropkin that Bourbon contacted Grimsley on July 31, 2012 because Kaiser personnel could not locate  
16 Swan on his shift was inaccurate. Swan also presents no evidence to show that Grimsley forged the  
17 homework assignment that Westling determined Swan had copied. Rather, Liles testified that, when  
18 she met with Swan on August 22, 2012 to discipline him for the July 31, 2012 incident at Kaiser and  
19 for the copied homework assignment, Swan admitted to copying the homework assignment. (Liles  
20 Dep. 19:8-24). Swan disputes Liles' testimony as to disciplining Swan on August 22, 2012 for  
21 plagiarism in that her notes show he was given a "formal written warning" when in fact nothing in  
22 writing was provided to him. (See DSUF # 25). However, Liles testified that "formal written  
23 warning" was terminology used at SJVC to indicate that it was documented in the CampusVue system,  
24 and that no documentation is given to the student. (Liles Dep. 86:8-24). In addition, Swan does not  
25 appear to contest the facts of the October 11, 2012 early departure incident at the V.A. and the  
26 inaccurate timesheet. Swan also presents no evidence to show that his conduct at the V.A. on October  
27 11, 2012 and aftermath were in compliance with SJVC policy. Finally, Swan points to no evidence to  
28 show that his termination from the respiratory therapy program represents an abnormal, unique, or

1 selective application of SJVC policy. *See, Steckl*, 703 F.2d at 393 (“Steckl’s mere assertions that  
2 Motorola had discriminatory motivation and intent in failing to promote him were inadequate, without  
3 substantial factual evidence, to raise an issue precluding summary judgment.”) (citing *Berkelman v.*  
4 *San Francisco Unified School District*, 501 F.2d 1264 (9th Cir. 1974)).

5 Therefore, Swan fails to present direct evidence or specific and substantial circumstantial  
6 evidence that SJVC’s proffered reasons for terminating him are unworthy of credence. *Coghlan*, 413  
7 F.3d at 1095; *Steckl*, 703 F.2d at 393. Accordingly, Swan fails to raise a genuine issue of material fact  
8 to show that SJVC’s proffered reasons are pretext for retaliation. *Davis*, 520 F.3d at 1089.

9 Because Swan fails to raise a genuine issue of material fact as to his Title IX sex  
10 discrimination claim and as to his Title IX retaliation claim, SJVC’s motion for summary adjudication  
11 as to Swan’s ninth cause of action for violations of Title IX is GRANTED.

## 12 **2. State Law Claims**

13 In the first eight causes of action, Swan brings claims for sexual harassment and  
14 discrimination, sexual battery, negligent hiring, defamation, breach of contract, and intentional  
15 infliction of emotional distress under California law against Defendants.

16 Defendants removed this action to this Court from Fresno County Superior Court on the  
17 basis of federal question jurisdiction over Swan’s Title IX claims. (Doc. 1).

18 Under 28 U.S.C. § 1367(c)(3), a district court may decline to exercise supplemental  
19 jurisdiction over a claim where the district court has dismissed all claims over which it has original  
20 jurisdiction. As discussed above, this Court grants SJVC’s motion for summary adjudication as to  
21 Swan’s only federal cause of action. Moreover, as this Court routinely advises counsel, this Court  
22 carries the heaviest caseload in the nation. *See*, Preliminary Statement, *supra*. Therefore, there is no  
23 reason for this Court to expend its limited resources to adjudicate claims that are purely a matter of  
24 state law when no federal claims remain.

25 Accordingly, this Court DECLINES to exercise supplemental jurisdiction over Swan’s first  
26 through eighth causes of action and REMANDS them to Fresno County Superior Court. Because  
27 Grimsley’s and Liles’ motion for summary judgment only addresses the state law claims against them,  
28 their motion is DENIED as moot.

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**CONCLUSION AND ORDER**

For the reasons discussed above, the Court:

1. GRANTS Defendant San Joaquin Valley College, Inc.’s motion for summary adjudication as to Plaintiff Daniel Swan’s ninth cause of action for violations of Title IX;
2. DECLINES to exercise supplemental jurisdiction over and REMANDS to Fresno County Superior Court Swan’s first, second, third, fourth, fifth, sixth, seventh, and eighth causes of action under California law against Defendants;
3. DENIES as moot Defendants Kerrie Liles and Melissa Grimsley’s motion for summary judgment as to Swan’s claims against them; and
4. ORDERS the Clerk of Court to close this case.

IT IS SO ORDERED.

Dated: January 7, 2015

/s/ Lawrence J. O’Neill  
UNITED STATES DISTRICT JUDGE