

# GIBSON DUNN



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## **Confidential Summary of Investigative Factual Findings**

The Rules Committee of the California State Senate  
Independent Report Concerning Senator Tony Mendoza  
February 15, 2018

## I. The Investigation

The Rules Committee of the California State Senate retained Gibson, Dunn & Crutcher LLP and Van Dermyden Maddux Law Corporation to conduct an independent investigation into multiple allegations relating to Senator Tony Mendoza (“Mendoza”) involving possible sexual harassment, and possible retaliation for reporting sexual harassment. The investigation commenced on December 15, 2017, and we submitted our report on February 15, 2018. This document sets forth a short summary of our factual findings.

The Rules Committee of the Senate initiated this investigation after a former Mendoza staff member told the Senate’s Human Resources department on September 22, 2017 that Mendoza would not hire a Senate Fellow in his office as a full-time staff member unless the Fellow went to his house to review resumes. The reporting staff member further stated that she and two other staff members were fired in retaliation for reporting the alleged harassment.

In connection with the investigation, we conducted fifty-one interviews with forty-seven witnesses. The individuals interviewed consisted of eight members of Mendoza’s current Senate staff, fourteen former members of Mendoza’s Senate staff (including fellows and interns), twelve members of Mendoza’s former Assembly staff, and thirteen additional individuals, including percipient witnesses, and present and former Assembly and Senate Human Resources staff.<sup>1</sup> Senator Mendoza cooperated in the investigation and we interviewed him on two occasions. We also reviewed documents provided by the Senate, Assembly, Mendoza’s attorney, and multiple witnesses, including emails sent to and from Mendoza’s Senate account, text messages, and other personal records.

We were not able to locate or speak with every potential witness, and some witnesses expressed hesitancy about meeting with us or providing information. However, we were able to speak with all of the witnesses that we identified as critical to the allegations that were the subject of the investigation. We believe we had sufficient time to conduct a thorough investigation, to compile the relevant evidence, and to prepare our report. Our factual findings, summarized below, are drawn from the totality of the evidence we collected.

## II. Factual Findings

In the course of the investigation, witnesses we interviewed described multiple instances in which Mendoza engaged in a pattern of unwelcome flirtation and sexually suggestive behavior towards several female staff members and other women he interacted with at the Capitol. These incidents ranged from the 2007-2008 legislative session when Mendoza was in the Assembly, to the 2017-2018 session when he was in the Senate.

Many current and former staff members, particularly those in his District office, said they had neither witnessed nor heard of any inappropriate behavior by Senator Mendoza. It appears based on these interviews that he behaved appropriately and professionally towards

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<sup>1</sup> One individual interviewed fell into two separate categories.

female staff while he was in his District. However, we received reports of Mendoza engaging in inappropriate behavior while in Sacramento or on overnight trips.

Over the course of the investigation, six women stated they personally experienced unwanted flirtatious or sexually suggestive behavior by Mendoza. Four of these women were working for Mendoza as staff members, interns, or fellows at the time of his conduct. None of these women alleged that they had a sexual relationship with Mendoza or that he had been physically aggressive or sexually crude towards them. However, the recipients of this unwelcome behavior understood that Mendoza was suggesting sexual contact. Although none of the women reported that Mendoza explicitly threatened them or offered career benefits in exchange for sexual favors, the subordinate employees believed that complaining about his conduct could put their careers at risk.

Some additional information about similar conduct by Mendoza was brought to our attention by individuals who had heard of, but not personally experienced, potentially relevant events. For each of these accounts, we endeavored to contact relevant potential witnesses and obtain other evidence. However, for some of these accounts we could not either corroborate or disprove the information.

The following is a summary of the factual findings regarding Mendoza's conduct while serving in the California State Assembly, 2006-2012.

- We found that it is more likely than not that around 2007 Mendoza engaged in flirtatious and sexually suggestive behavior with a female staff member, including asking her to share a room with him at an event in Hawaii. Shortly thereafter, this staff member directly asked Mendoza to stop engaging in behavior suggestive of wanting a sexual relationship and he subsequently conformed his behavior.
- We found that it is more likely than not that in 2008 Mendoza stayed in adjoining rooms in a suite with a 19-year-old intern at the Democratic California Convention, during which he:
  - offered and subsequently had alcoholic drinks with the intern in the hotel suite, and
  - engaged in unwanted flirtatious and sexually suggestive conversation with the intern, including asking her questions regarding her dating life.
- We found that it is more likely than not that in 2010 Mendoza engaged in unwanted flirtatious and sexually suggestive behavior with a female staff member, including repeatedly inviting her to dinner or drinks and kissing her on the cheek after driving her to her house. An Assembly Human Resources representative counseled Mendoza about this behavior towards the staff member, and Mendoza subsequently conformed his conduct.

The following is a summary of the factual findings regarding Mendoza's conduct while serving in the California State Senate, 2014 to present.

- We found that it is more likely than not that in 2017 Mendoza engaged in unwanted flirtatious and sexually suggestive behavior with a Senate Fellow in his office, who was in her early twenties, including:

- asking her personal questions that he did not ask other staff,
  - suggesting that they could go out to dinner or a movie, and suggesting that they could take a vacation together,
  - suggesting that she rent a spare room in his house,
  - telling her that he had a large hotel room with two beds during an overnight event she was also attending, and suggesting they could have just reserved one room, and
  - on more than one occasion, including at night, inviting the Fellow to come to his home under the guise of reviewing resumes of candidates for a full time legislative position for which she was an applicant, when he had little intention of hiring her for the position.
- We found that it is more likely than not that in 2015 Mendoza engaged in flirtatious behavior with a different Fellow working in another legislator’s office, and invited her to come visit him at his home.
  - We found that it is more likely than not that around 2015 Mendoza engaged in unwanted flirtatious and sexually suggestive behavior with a lobbyist, including taking her out to dinner and asking about what type of guys she likes.

We also investigated whether three Mendoza Capitol staff members who were terminated on September 22, 2017 were terminated in retaliation for raising concerns about sexual harassment relating to Mendoza and the Fellow.<sup>2</sup> After speaking with numerous witnesses, including all three terminated staff members, and reviewing relevant documents, we learned that there were pre-existing conflicts among members of Mendoza’s Capitol and District offices, and that any concerns relating to potential sexual harassment issues had not come to the attention of Mendoza or Senate Human Resources prior to September 22, 2017. We found that it is more likely than not that the three staff members terminated on September 22, 2017 were terminated for reasons unrelated to any complaint of sexual harassment.



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<sup>2</sup> Only one of the three terminated employees has alleged that the terminations were retaliatory based on concerns over sexual harassment.