

1 SANDRA L. McDONOUGH (SBN 193308)
smcdonough@paulplevin.com
2 EVA A. ADEL (SBN 329490)
eadel@paulplevin.com
3 **PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP**
101 West Broadway, Ninth Floor
4 San Diego, California 92101-8285
Telephone: 619-237-5200
5 Facsimile: 619-615-0700

6 Attorneys for Defendants The Regents of the
University of California and Antonio Bernardo
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, WEST DISTRICT**
11

12 GORDON KLEIN,

13 Plaintiff,

14 v.

15 ANTONIO BERNARDO; THE REGENTS
OF THE UNIVERSITY OF CALIFORNIA;
16 and DOES 1 through 25,

17 Defendants.
18
19
20
21

Case No. 21SMCV01577

**DECLARATION OF ANTONIO
BERNARDO IN SUPPORT OF
DEFENDANTS THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA'S AND
ANTONIO BERNARDO'S SPECIAL
MOTION TO STRIKE [CCP § 425.16]**

Date: January 20, 2022
Time: 8:30 a.m.

Judge: Hon. H. Jay Ford, III
Dept.: O
Action Filed: September 27, 2021
Trial Date: not set

**EXEMPT FROM FEES
GOVT. CODE § 6103**

22
23 I, Antonio Bernardo, declare as follows:

24 1. I have personal knowledge of the following facts and, if called as a witness, could
25 and would testify competently thereto.

26 2. I am a party in the above-entitled action.

27 3. I am the Dean and John E. Anderson Chair in the Anderson School of Management
28 (“Anderson”), as well as a Professor at UCLA. I was appointed Dean of Anderson on July 1,

1 2019, and first joined the faculty at UCLA 27 years ago. As such, I have intimate knowledge of
2 the facts and incidents surrounding the factual allegations in this matter.

3 4. Gordon Klein (“Klein”) is a Continuing Lecturer in Accounting at Anderson. As
4 such, he is bound by the Faculty Code of Conduct (APM 015), and he is represented by a union,
5 and his employment is subject to the Unit 18 Non-Senate faculty (“NSF”) collective bargaining
6 agreement.

7 5. In or around late May 2020, students initiated a coordinated email campaign to
8 encourage UCLA instructors to grant final exam accommodations for students on account of the
9 trauma students were experiencing in the wake of George Floyd’s murder on May 25, 2020,
10 further compounded by the previous murders of Ahmaud Arbery and Breonna Taylor, as well as
11 the disproportionate impact of COVID-19 on the Black community. This occurred against a
12 backdrop of city-wide protests, demonstrations, and social unrest.

13 6. On June 2, 2020, an unnamed student (“Student X”) sent one such email to Klein in
14 which he requested special accommodations for all students due to the trauma of these events. On
15 June 2, 2020, Klein responded to Student X with a series of inappropriate and callous rhetorical
16 questions, which harshly diminished the trauma that Black students were experiencing, and which
17 were designed to mock Student X. Attached as **Exhibit A** is a true and correct copy of this email
18 exchange to the Notice of Lodgment of Exhibits [“NOL”] filed herewith, which would later be
19 forwarded to me by hundreds of concerned parties.

20 7. The content of Klein’s June 2, 2020 email response to Student X was outrageous
21 and inexcusable and entirely unacceptable for a UCLA lecturer to engage in. During a time when
22 students were seeking compassion and understanding, Klein’s remarks demonstrated a level of
23 callousness and disrespect which I believe was harmful to our students. Contrary to Klein’s
24 allegations, Student X’s letter was sent with the intent of requesting accommodations for all
25 students, not just Black students. This is a point Student X clarifies in his follow up email to
26 Klein. **Exhibit A** also contains the true and correct copy of Student X’s response to Klein.

27 8. A screenshot of Klein’s email response to Student X was disseminated on social
28 media almost immediately, sparking widespread outrage. I am unaware of who took the

1 screenshot or shared the contents of the email via social media.

2 9. I received a multitude of complaints about Klein’s response to Student X, including
3 one with the subject line “Klein is a racist,” and another stating that Klein quoting Dr. Martin
4 Luther King, Jr. “discredits black voices and feelings by bringing up how white people feel.”
5 Attached as **Exhibit B** to the NOL are true and correct copies of the examples of complaints
6 received. These were addressed either to me, the Chancellor’s Communications Service, the
7 Discrimination Prevention Office (“DPO”) and/or other relevant parties.

8 10. While academic freedom protects the content of academic programming and
9 grading evaluation, it does not similarly protect the manner in which communications are made,
10 and UCLA has an obligation to ensure that students are not treated in a demeaning, mocking, or
11 unprofessional manner. The Faculty Code of Conduct (APM 015) notes the clear ethical
12 responsibility that: “Professors demonstrate respect for students as individuals and adhere to their
13 proper roles as intellectual guides and counselors [quoting an AAUP Statement]...“This
14 relationship vests considerable trust in the faculty member, who, in turn, bears authority and
15 accountability as mentor, educator, and evaluator. The unequal institutional power inherent in this
16 relationship heightens the vulnerability of the student and the potential for coercion.”” Attached
17 as **Exhibit C** to the NOL is a true and correct copy of this policy.

18 11. I responded to numerous complaints made by UCLA students, and I copied Klein
19 on these emails. In my responses to these students, I expressed that I felt that Klein’s hurtful
20 sentiments as expressed in his email were outrageous and inexcusable.

21 12. Klein’s June 2, 2020 email was forwarded to Professor Brett Trueman, then-head
22 of Anderson’s Office of Equity, Diversity, and Inclusion (“EDI”), who similarly replied that
23 Klein’s remarks were outrageous and simply inexcusable.

24 13. On June 2, 2020, further allegations against Klein came to light in which he was
25 accused of sexual harassment/inappropriate behavior. These allegations were forwarded to
26 UCLA’s Title IX Office, which opened a preliminary assessment of these allegations.

27 14. It was the combination of Klein’s disrespectful email which I felt potentially
28 violated the Faculty Code of Conduct, and the complaints sent to me by concerned parties, which

1 led me to refer Klein’s conduct to UCLA’s DPO. The DPO’s pending investigation, and Title
2 IX’s pending preliminary assessment led me to place Klein on temporary paid administrative
3 leave. I felt it prudent that Klein would be placed on an administrative leave while these
4 allegations could be investigated by the appropriate bodies. My decision related to Klein’s
5 treatment of students, including, but not limited to, his manner of response to a student’s inquiries.

6 15. On June 3, 2020, I issued a written “Notice of Administrative Leave” under
7 UCLA’s policies and procedures and the governing collective bargaining agreement, to Klein
8 placing him on leave – with pay – to allow UCLA time to review the allegations regarding his
9 behavior and to determine whether Klein’s conduct violated the Faculty Code of Conduct. As a
10 Lecturer, Klein is represented by a union and his employment is subject to the Unit 18 NSF
11 collective bargaining agreement. Article 12.A.8 of the MOU provides: “The University, at its sole
12 discretion, may place an NSF on administrative leave with pay. The University will communicate
13 the reason for the administrative leave to the NSF as soon as feasible. If the administrative leave
14 lasts longer than twenty-one (21) calendar days, a written explanation of the intent, reason for, and
15 expected duration of the leave will be provided no later than the twenty-first day.” Attached as
16 **Exhibit D** to the NOL is a true and correct copy of this policy. The University provided Klein
17 notice of paid administrative leave in full accordance with this provision. Should the leave have
18 lasted longer than 21 days, Klein would have been entitled to a more specific written explanation,
19 but it did not.

20 16. Due to the highly sensitive and polarizing nature of the discourse surrounding
21 Klein’s email, as the Dean of Anderson, I felt compelled to issue a statement on June 4, 2020 to
22 the Anderson community expressing my viewpoint regarding the remarks made by Klein.
23 Attached as **Exhibit E** to the NOL is a true and correct copy of this June 4, 2020 email that I sent
24 to the Anderson e-mail listserv, which includes Anderson’s current and former students, faculty,
25 and alumni.

26 17. I felt duty-bound to respond given the sheer number of complaints received, and
27 the fact that Klein’s behavior was the antithesis of the equity, respect, and justice that UCLA and
28 Anderson stand for. I was careful not to name or identify Klein in this communication, nor did I

1 provide any details regarding potential discipline. However, I used my June 4, 2020 statement to
2 disavow the content of Klein’s condescending email demeaning Student X for expressing
3 solidarity and compassion with Black classmates traumatized by the May 25, 2020 events in
4 Minneapolis, as well as institutional racism and police brutality against the Black community,
5 which is especially prevalent in Los Angeles, all against the backdrop of the Black Lives Matter
6 movement and local unrest. I also expressly affirmed UCLA’s unwavering commitment to
7 diversity, inclusion, and tolerance during a time when the harmful sentiment of Klein’s email was
8 largely interpreted as diminishing Black voices (by making racism about the White experience)
9 and belittling the depth of struggles of Black students at UCLA and across the nation.

10 18. I exercised my First Amendment right to publish statements to the Anderson
11 community denouncing the tone of Klein’s email, and affirming Anderson’s commitment to
12 respect, equality, and inclusivity. This was imperative given that Klein’s email response was a
13 public matter which affected UCLA and the Anderson community. The First Amendment protects
14 the marketplace of ideas and I had a right to express my opinion as Klein had to express his.

15 19. I believe Klein misled the media, which accepted and spread, that he was
16 suspended “for refusing to treat [his] black students as lesser than their non-black peers.” This is
17 an absolutely false and severely damaging narrative, which discredits the merits of Black students
18 who worked and studied hard, and earned their grades, during a time of social and emotional
19 turmoil for all. Klein either was, or should have been, fully aware that he was placed on leave due
20 to the blatant disrespect he showed, **not** because of any alleged refusal to grant special requests for
21 Black students. Klein retained The Foundation for Individual Rights in Education (“FIRE”) to
22 represent his academic freedom interests. It is my understanding that UCLA responded to FIRE
23 and made it clear that the real reason behind Klein’s leave was the disrespect he showed. Klein’s
24 claims are meritless and indeed disingenuous, given that he either was aware, or should have been
25 aware, of the actual and justified reason behind the leave. In his most recent media tour and this
26 suit, Klein continues to promote the fiction that he was placed on leave for not providing unequal
27 accommodations for Black students. Klein’s continuing to perpetuate the myth that he was placed
28 on leave for refusing to provide accommodations for Black students is damaging to hardworking

1 Black students, to me, UCLA, and the Anderson community.

2 20. Before these events, on May 28, 2020, I led an Anderson faculty town hall to
3 collaborate on ways to support, foster and encourage diversity, inclusivity and a positive culture
4 within Anderson. Klein’s email exchange, less than one week later, was the antithesis of the goals
5 we were trying to accomplish through the town hall and related initiatives.

6 21. Sometime on or about the week of June 14, 2020, I was informed by Jerry Kang,
7 UCLA’s Vice Chancellor for EDI, that it would not pursue a formal investigation into Klein’s
8 action, as it related to his June 2, 2020 email exchange with Student X.

9 22. On June 21, 2020, I sent a follow-up communication to the Anderson listserv to
10 again address ongoing concerns regarding inclusivity and developing a positive culture at UCLA.
11 Klein’s FAC alleges that I implied that the “administrative process against Klein was continuing.”
12 (FAC ¶ 51.) In this email I “implied” that the administrative process against Klein was ongoing
13 because I believed it was. While the DPO decided not to pursue a formal investigation, I believed
14 UCLA’s Title IX Office’s processes were still ongoing. Attached as **Exhibit F** to the NOL is a
15 true and correct copy of this June 21, 2020 email which I sent to the Anderson e-mail listserv.

16 23. On June 21, 2020, I informed Klein that his period of paid administrative leave had
17 ended, and he could commence teaching on June 22, 2020. Klein’s paid leave totaled 13 working
18 days and he went back to his regularly scheduled classes.

19 24. It is my understanding that UCLA’s DPO later informed Klein that it would not
20 pursue a formal investigation.

21 25. UCLA’s DPO and Title IX Office process all claims in accordance with published
22 procedures that protect both the integrity of the investigation and the due process interests of all
23 parties. At this time, I am aware that Title IX chose not to pursue an investigation, however, as of
24 June 21, 2020, I believed Title IX’s process was ongoing.

25 26. UCLA takes its role in upholding the First Amendment and academic freedom
26 seriously. But UCLA also recognizes its role in ensuring an appropriate educational environment
27 for its students and its faculty that is based on principles of mutual respect and fair treatment. The
28 balance of these interests is a difficult one and I endeavor always to protect both interests with

1 care and deliberation.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct.

4 Executed on this 29th day of November, 2021, at Los Angeles, California.

5

6

Antonio Bernardo
Antonio Bernardo

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

**Gordon Klein v. Antonio Bernardo, et al.
Case No. 21SMCV01577**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 101 West Broadway, Ninth Floor, San Diego, CA 92101-8285.

On November 29, 2021, I served true copies of the following document(s) described as **DECLARATION OF ANTONIO BERNARDO IN SUPPORT OF DEFENDANTS THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S AND ANTONIO BERNARDO'S SPECIAL MOTION TO STRIKE [CCP § 425.16]** on the interested parties in this action as follows:

Steven M. Goldberg
Markun, Zusman, Freniere & Compton LLP
3 Hutton Centre Dr., Ninth Floor
Santa Ana, CA 92707
Telephone: (949) 390-2170
Facsimile: (310) 454-5970
E-Mail: sgoldberg@mzclaw.com;
dmarkun@mzclaw.com;
tmcMahon@mzclaw.com
Attorneys for Plaintiff Gordon Klein

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address smcdonough@paulplevin.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 29, 2021, at San Diego, California.



Sandra L. McDonough