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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES – WEST JUDICIAL DISTRICT**

11 GORDON KLEIN,

12 *Plaintiff,*

13 v.

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

17 *Defendants.*

Case No. 21SMCV01577

FIRST AMENDED COMPLAINT FOR:

- 18 **1. BREACH OF CONTRACT;**
- 19 **2. VIOLATION OF RIGHT TO**
20 **PRIVACY BY PUBLIC DISCLOSURE**
21 **OF PRIVATE FACTS;**
- 22 **3. VIOLATION OF RIGHT TO**
23 **PRIVACY BY PLACING PLAINTIFF**
24 **IN A FALSE LIGHT;**
- 25 **4. RETALIATORY DISCRIMINATION**
26 **IN VIOLATION OF LABOR CODE**
27 **§ 1102.5(c);**
- 28 **5. COMMON LAW RETALIATION IN**
VIOLATION OF PUBLIC POLICY;
- 6. NEGLIGENT INTERFERENCE**
WITH PROSPECTIVE ECONOMIC
ADVANTAGE; AND
- 7. BREACH OF EMPLOYER’S**
STATUTORY DUTY OF POLITICAL
NEUTRALITY

1 Plaintiff Gordon Klein, for his complaint against Defendants Antonio Bernardo,
2 The Regents of the University of California, and Does 1 through 25, and each of them, alleges:

3 4 INTRODUCTION

5 1. Plaintiff Gordon Klein (“Plaintiff”), a professor at the University of California,
6 Los Angeles (“UCLA” or “University”), was severely punished by UCLA after he refused to
7 implement a different grading policy solely for black students.

8 2. This dispute originated in June 2020 when a non-black student asked Plaintiff to
9 grade his “Black classmates” differently than other students. Plaintiff rejected this request,
10 knowing that his employment contract – and California law – required him to apply the same
11 grading standards and requirements to all students. He also refused because his faculty supervisor
12 recently had encouraged instructors to reject requests for special exam accommodations.

13 3. After Plaintiff’s email reply to the student was posted on social media, some furious
14 individuals called Plaintiff “woefully racist” and organized an online campaign to attack Plaintiff
15 and the UCLA Anderson School of Management (“Anderson School” or the “School”), where
16 Plaintiff teaches. The Anderson School hastily buckled under this pressure and sought permission
17 from the University to impose disciplinary sanctions on Plaintiff, including terminating his
18 employment.¹ But, as noted below, the University rebuffed the Anderson School, warning that
19 “the School may not take any action . . . at this time” against Plaintiff.

20 4. Despite this firm directive, the Anderson School administration abruptly suspended
21 Plaintiff from his teaching duties, banned him from its campus, and hired others to replace him

22
23 ¹ The UCLA Anderson School had substantial reasons to be concerned about its reputation.
24 Upon information and belief, out of approximately 200 faculty members, only one black professor
25 has tenure and the School has not granted tenure to a black professor in over four decades.
26 Furthermore, although the School once was one of the elite schools of management in the United
27 States, its ranking has plummeted to number 18 under the current administration, according to U.S.
28 News and World Report. Even worse, out of 119 schools evaluated, *Bloomberg Businessweek*
ranks the School 53rd for “Learning” due to its shortcomings in teaching “innovation, problem-
solving, and strategic thinking.” Notably, in his September 17, 2021 message to alumni and
students about the *Businessweek* ratings, Dean Bernardo omitted this fact.

1 in future scheduled courses. Moreover, the Dean of the Anderson School, Defendant Antonio
2 Bernardo (“Bernardo”), disparaged Plaintiff to alumni and the general public based on the private
3 communications between Plaintiff and the student who had requested preferential race-based
4 grading policies (the “Student”). Dean Bernardo even went so far as to publicly disclose the
5 adverse personnel action the School had improperly imposed on Plaintiff.

6 5. After examining the facts, the University eventually closed its investigation and
7 reinstated Plaintiff.² Later, the UCLA Senate Committee on Academic Freedom criticized the
8 Anderson School administration, noting that it had violated Plaintiff’s rights and, more broadly,
9 that such conduct “chills” instructors from expressing views that differ from prevailing campus
10 orthodoxy.

11 6. Plaintiff brings this action not only to redress the wrongful conduct he has endured
12 but also to protect academic freedom.

13
14 **PARTIES**

15 7. Plaintiff Gordon Klein is an individual residing in Los Angeles County, California.
16 Plaintiff is a Certified Public Accountant, an attorney, and a Continuing Lecturer with enhanced
17 security of employment at UCLA.

18 8. Plaintiff is informed and believes, and on that basis alleges, that at all relevant times
19 Defendant Antonio Bernardo was and now is an individual residing in Los Angeles County,
20 California, and was and now is Dean of the Anderson School of Management at UCLA.

21 9. Defendant The Regents of The University of California (“UC Regents”) is the
22 official name of the public corporation that governs and operates the University of California as a
23 public trust through its 26-member Board of Regents. UCLA is one of the campuses of the
24 University of California system, and is located in Los Angeles County, California. The Anderson
25 School is a division of UCLA. All of the conduct herein alleged on the part of agents and officials

26 ² According to the UCLA Discrimination Prevention Office, “[e]ven accepting the facts
27 exactly as Complainant presents them, there is insufficient evidence to support a violation of
28 University policy prohibiting discrimination and harassment” by Plaintiff.

1 of the University of California and under the auspices of the UC Regents took place under color of
2 state law.

3 10. Plaintiff presently is ignorant of the true names and capacities of Defendants Does 1
4 through 25, and therefore sues said Defendants by such fictitious names. Plaintiff will seek to
5 amend this complaint when the true names and capacities of said Defendants are ascertained.
6 Plaintiff is informed and believes, and on that basis alleges, that each fictitiously named Defendant
7 in some manner caused, contributed to, committed, or otherwise is responsible for the acts or
8 omissions herein alleged.

9 11. Plaintiff is informed and believes, and on that basis alleges, that at all relevant times
10 each Defendant was and now is the agent or co-conspirator of each of the remaining Defendants,
11 and, in doing the things herein alleged, acted within the course and scope of such agency or in
12 furtherance of such conspiracy. Plaintiff is further informed and believes, and on that basis
13 alleges, that each Defendant colluded in and rendered substantial assistance in the accomplishment
14 of the wrongdoing herein alleged, or primarily committed the wrongdoing. In taking actions to
15 aid, abet, or substantially assist the wrongdoing herein alleged, or to commit the primary
16 wrongdoing, all Defendants acted with an awareness of the primary wrongdoing, realized that their
17 conduct would substantially assist the accomplishment of that wrongdoing, and were aware of
18 their overall contribution to the conspiracy, common scheme, and course of wrongful conduct.

19
20 **COMMON FACTUAL ALLEGATIONS**

21 **A. Background**

22 12. Plaintiff has taught courses in business law, tax law, and financial analysis as a
23 member of the UCLA faculty for 40 years. Plaintiff has taught both undergraduate and graduate
24 business classes at the Anderson School, and he concurrently has taught courses at the UCLA
25 School of Law and in the L.L.M. Program at Loyola Law School. As a trained lawyer, law
26 professor, and Superior Court referee, Plaintiff sometimes utilizes the Socratic method of teaching.
27 Moreover, Plaintiff emphasizes in his teaching topics such as nondiscrimination, statute drafting,
28 equal protection, and the related economic concept of horizontal equity.

1 13. Plaintiff obtained enhanced security of employment at UCLA as a Continuing
2 Lecturer following an exhaustive UCLA Excellence Review that concluded he “demonstrated
3 excellence in the field and in teaching, academic responsibility, and other assigned duties.”

4 14. Prior to the events alleged herein, Plaintiff had no record of discipline at UCLA and
5 never had been accused of any form of discrimination or harassment. To the contrary, Plaintiff has
6 consistently received superb evaluations. As a result, Plaintiff regularly has received merit-based
7 pay raises throughout his many years teaching at UCLA.³

8 15. Dean Bernardo knew or should have known, including from examining Plaintiff’s
9 personnel file and conferring with UCLA’s Discrimination Prevention Office, that Plaintiff had an
10 unblemished record of service to all Anderson School students, regardless of race, in four decades
11 of teaching at the Anderson School.⁴

12 16. Plaintiff long has opposed all identity-based discrimination, having been devastated
13 by the violent rape and murder of his own family members due to anti-Jewish persecution in
14 Eastern Europe decades ago.

15 17. Plaintiff’s employment by UCLA is governed by an agreement between Plaintiff
16 and the University (“Employment Agreement”). The Employment Agreement consists of (i) a
17 written document executed by the parties that periodically has been renewed in writing or orally,
18 and (ii) various other materials including, but not limited to, applicable policies, procedures,
19 manuals, memoranda, and rules. Because Plaintiff’s educational activities principally focus on
20 teaching rather than publishing research, he is classified by the Employment Agreement as a Non-
21 Senate Faculty member, or “NSF.”

24 ³ For example, during the most recent review process preceding the events alleged herein,
25 Plaintiff was unanimously approved for a merit pay raise, with the University noting that Plaintiff’s
student evaluations were “effusive” in their praise.

26 ⁴ Plaintiff’s record of being unbiased was confirmed by a university investigator, who recites
27 that the Student “did not report that Respondent is known for engaging in racially insensitive
28 conduct.”

1 **B. Defendants' Attacks On Plaintiff**

2 18. Plaintiff historically has taught live classes at UCLA. However, when the world
3 was beset by the COVID-19 pandemic ("Pandemic") in early 2020, UCLA, including the
4 Anderson School, hurriedly implemented an online-only structure for both classwork and exam
5 administration for its Spring 2020 academic quarter. This resulted in Plaintiff conducting his
6 classes using pre-recorded lectures and having limited interactions with his students.⁵

7 19. After the homicide of George Floyd on May 25, 2020, a group of students and
8 others initiated a coordinated email campaign for the claimed purpose of encouraging UCLA
9 instructors to grant final exam accommodations for their "Black classmates."

10 20. These students circulated online a document entitled "Letter Writing for Finals
11 Accommodations for Black Students." This template asked professors to adopt grading policies
12 that "exercise compassion and leniency with Black students." In particular, according to the
13 Student, an objective of this template was to encourage professors to give only black students
14 optional, "no-harm" final exams. A "no-harm" exam is a test whose score is counted as part of a
15 student's course grade only if it raises the student's overall blended course average, but not if it
16 diminishes it.⁶ Students who take an exam on a "no-harm" basis thus tend to receive higher
17 course grades than those who do not.

18 21. Plaintiff was, and remains, fully supportive of students and the University exercising
19 their rights of free expression and academic freedom. However, the students' pursuit of the
20 objectives stated in the template was undermined by the use of intimidation tactics that threatened
21

22 ⁵ Due to this online teaching format, Plaintiff no longer interacted with his students unless
23 they asked questions by email or during group video "office hours." Also, Plaintiff shifted to
24 issuing course grades based entirely on students' final exam performance. Despite the Pandemic
25 and the shift to online instruction, on or about March 16, 2020, the UCLA Academic Senate issued
26 a "Message to Faculty" emphasizing that faculty must continue to adhere to longstanding UCLA
27 grading policies. As reflected in the Employment Agreement, these policies require instructors to
28 apply course standards equally and evaluate students solely based on merit.

26 ⁶ Because a score of zero on a "no-harm" exam is excluded from a student's overall course
27 average, taking the exam effectively becomes optional. The Student's email to Plaintiff confirms
28 this, stating that "no-harm" exams "benefit students' grades *if taken*."

1 UCLA faculty members, in some cases, into giving all students generous, unearned grades.⁷
2 In effectuating this pressure campaign, if a particular professor did not accede to their demands,
3 students coordinated a series of email complaints to the administrators who oversaw the
4 recalcitrant professor’s career advancement and job security, overwhelming their email inboxes.⁸

5 22. On or about June 1, 2020, in apparent response to this concerted email campaign,
6 Plaintiff’s immediate supervisor at the Anderson School, Professor Judson Caskey (“Caskey”),
7 circulated guidance “strongly encouraging” Anderson School instructors “to follow the normal
8 procedures” if “students ask for accommodations such as assignment delays or exam
9 cancellations.” That is, according to the University’s investigation, Caskey “advised faculty not to
10 make exam-related adjustments” or grant “accommodations on the basis of race, protests, or police
11 brutality.”

12 23. That same day, a faculty colleague informed Plaintiff that, if instructors did not
13 capitulate to these students’ demands, they would be labeled with the hurtful and derogatory term
14 “yt,” or “whitey,” and their supervisors’ contact information would be highlighted in red on a
15 spreadsheet circulated among participants of the online email campaign. The color red signaled to
16 allies that they should email complaints to the non-capitulating professors’ supervisors. In
17 response, to protect individual faculty members from harassment, several UCLA academic
18 departments banded together to issue joint statements of refusal. Notably, the Anderson School
19 did not.

20 24. Plaintiff’s faculty colleague further told him on that occasion that, rather than resist
21 this pressure campaign, many professors were giving away unearned “A” grades like “free candy
22 at Halloween.” Plaintiff, upon his examination of the online collaborative spreadsheet posted by
23 the students, noted that after one professor announced in writing that he would “award EVERY
24 STUDENT AN A in the class regardless of performance” due to “the current climate of the

25 ⁷ The online campaign instructed students how to “pressure [professors] to make more
26 adequate changes.”

27 ⁸ The UCLA Discrimination Prevention Office reports that it received “approximately 300
28 emails” concerning Plaintiff alone. Other professors also were targeted.

1 country,” this professor was hailed by online participants as an “absolute gem” who “deserves a
2 raise.” Other professors similarly received praise.⁹

3 25. Plaintiff was stunned that students would pressure professors into giving them high,
4 unearned grades, and he was appalled that some students appeared to be exploiting the tragedy of
5 George Floyd’s homicide for self-serving reasons. Accordingly, Plaintiff reported his colleagues’
6 apparent violations of UCLA policy to the UC Regents. To date, Plaintiff has received no
7 response from them.

8 26. On June 2, 2020, Plaintiff received from one of his students (“Student”) the
9 following “copy and paste” email mirroring the foregoing template:

10 We hope this email finds you well. As non-Black students, we are writing to
11 express our tremendous concern about the impact that this final exam and project
12 will have on the mental and physical health of our Black classmates. The unjust
13 murders of Amhaud Arbery, Breonna Taylor, and George Floyd, the life-
14 threatening actions of Amy Cooper, and the violent conduct of the UCPD in our
15 own neighborhood have led to fear and anxiety which is further compounded by
16 the disproportionate effect of COVID-19 on the Black community. As we
17 approach finals week, we recognize that these conditions will place Black students
18 at an unfair academic disadvantage due to traumatic circumstances out of their
19 control.

20 We cannot begin to understand the pain that our Black classmates are going
21 through. As we work to advocate in our communities and become better allies, we
22 ask that you, as administration, do your part and prioritize equity in our learning
23 environment. We implore you to mandate that our final exam is structured as
24 **no-harm**, where they will only benefit students’ grades if taken. In addition, we
25 urgently request **shortened exams** and **extended deadlines** for final assignments
26 and projects.

27 Our Black classmates are directly facing the consequences of state-sanctioned
28 violence and graphic content on social media that transcends from Minneapolis to
our very own communities in our hometowns and in Westwood.

In light of these traumas, we have been placed in a position where we must choose
between actively supporting our Black classmates or focusing on finishing up our
Spring Quarter. We believe that remaining neutral in times of injustice brings
power to the oppressor, and therefore, staying silent is not an option. This is not a
joint effort to get finals canceled for non-Black students, but rather an ask that you
exercise compassion and leniency with Black students in our major.

25 ⁹ For instance, students in a pre-med Life Sciences course celebrated receiving “perfect
26 scores” on a test they never even took, proclaiming: “We did it boys, [Life Sciences] is evil no
27 more.” Yet another instructor boldly announced in writing to his History class that “you will not be
28 required to write the final assignment because your [teaching assistants] have volunteered to write
this final assignment for you. . . . As a practical matter, you all will receive full points.”

1 As of today, May 31st, a petition drafted *yesterday* by the Afrikan Student Union
2 at UCLA to adjust final exams has received **10.5k** signatures. Although we greatly
3 appreciate the email we received from you about anti-racist resources, the voices
4 of the student body demand action within our academic environment, and we
5 should be grateful to hear from you regarding the ways our department will
6 respond.

7 As quickly as Luskin came to support students for the COVID-19 pandemic, we
8 ask that you do the same in supporting the community that is most vulnerable
9 during this crisis. Thank you for your time, and we look forward to continuing
10 this dialogue with you. [Emphasis in original.]

11 27. Because the Student and Plaintiff had interacted in lively in-person discussions after
12 class in a previous course taught prior to the Pandemic, the two of them had developed a cordial
13 relationship prior to their email dialogue (“Email Exchange”). In this instance, however, Plaintiff
14 disagreed with the Student’s request that Plaintiff apply one set of exam grading policies to black
15 students and a more rigorous set of policies to others. Additionally, Plaintiff always has had a
16 deeply held conviction that it is wrong to segregate students by race, wrong to exempt only
17 students of a certain race from their exam responsibilities, and wrong to preferentially “exercise
18 compassion and leniency” for one particular racial identity group in the grading process.¹⁰
19 Accordingly, Plaintiff believed that he had a professional obligation to caution the Student about
20 possibly promoting demeaning group-based stereotypes. Rather than criticize or preach to the
21 Student, Plaintiff chose to challenge the Student’s views by posing a series of questions
22 highlighting points of concern, as Plaintiff previously had done when classes were conducted in
23 person. Accordingly, Plaintiff responded privately to the Student’s email as follows:

24 Thanks for your suggestion in your email below that I give black students special
25 treatment, given the tragedy in Minnesota.

26 Do you know the names of the classmates that are black? How can I identify them
27 since we’ve been having online classes only?

28 Are there any students of mixed parentage, such as half black-half Asian? What do
you suggest I do with respect to them? A full concession or just half?

Also, do you have any idea if any students are from Minneapolis? I assume that
they probably are especially devastated as well. I am thinking that a white student

¹⁰ When asked by a University investigator to clarify his email’s objective, the Student stated that he “intended that the requested adjustments apply to Black students and not the class generally.”

1 from there might possibly be even more devastated by this, especially because some
2 might think that they're racist even if they are not. My TA is from Minneapolis, so
if you don't know, I can probably ask her.

3 Can you guide me on how I should achieve a "no-harm" outcome since our sole
4 course grade is from a final exam only?

5 One last thing strikes me: Remember that MLK famously said that people should
6 not be evaluated based on the "color of their skin." Do you think that your request
would run afoul of MLK's admonition?

7 28. The Student told a University investigator that Plaintiff had "responded with a series
8 of 'rhetorical questions'" The investigator also acknowledged that, because the Student and
9 Plaintiff "had a relationship . . . from a prior class," Plaintiff "may have felt more comfortable
10 responding less formally both in tone and substance."

11 29. The Student responded the same day, thanking Plaintiff for his help:

12 I apologize if any of this seemed offensive, but I was just trying to raise awareness
13 about any institutional factors that may be affecting the people in our community.
14 I meant this in no way shape or form as an email to discredit what you have done for
15 your students and if it seemed like I was asking too much, I apologize. I appreciate
what you have done for us in this class by posting videos online so that students can
access them at any time, and testing this class only on the contents of the videos.
They really do help us students during these trying times.

16 Again, I apologize if it seemed like I was asking you to give preferential treatment
17 to people because they are Black, I just wanted to raise awareness for everyone right
now because it is tough times, and is affecting everyone here in one way or another,
we could choose to have this conversation or simply omit it.

18 I know times have been tough, and that the end of the quarter is always just as
19 stressful or arguably more stressful than us students have it, and if I made you feel
like you did not do enough, I truly do apologize.

20
21 30. The Student's reply email seemingly had ended the matter, but unfortunately it did
22 not. Instead, UCLA embarked on a concerted course of conduct against Plaintiff, set forth below,
23 in a disingenuous effort to promote that it was at the forefront of rooting out racism and to
24 intimidate Plaintiff and others from exercising their rights of free speech. Stated differently,
25 UCLA scapegoated Plaintiff for ulterior motives.

26 31. Although UCLA has asserted that the Student posed "reasonable exam
27 administration inquiries," in reality, the Student's request was exceedingly unreasonable and,
28 indeed, unworkable. For instance, offering black students "no-harm" exams effectively would

1 give them the option to not take the final exam in a class where final exam performance was the
2 *entire* basis for their course grade, leaving an instructor without *any* data on which to base course
3 grades. Moreover, adoption of the Student’s request would have imposed on Plaintiff the
4 unseemly and cumbersome task of determining which students studying remotely were black.
5 Thus, UCLA more appropriately should have characterized the Student’s proposal as
6 unadministrable, inequitable, invariably illegal, demeaning to students, and egregious racial
7 profiling, not as “reasonable.”

8 32. In response, Plaintiff attempted to guide the Student toward an understanding of
9 UCLA’s fundamental policies of nondiscrimination and merit-based grading while electing to
10 maintain the “normal procedures” governing exams, as urged by Plaintiff’s supervisor.

11 33. However, a screenshot of Plaintiff’s private response to the Student (not their
12 complete email exchange) was disseminated on social media on or about that same day, June
13 2, 2020. At or about the same time, this abridged screenshot of Plaintiff’s communication
14 apparently was forwarded by email to Professor Brett Trueman (“Trueman”), then head of the
15 Anderson School’s Office of Equity, Diversity, and Inclusion. Trueman replied via email,
16 apparently that same day, June 2, 2020, accusing Plaintiff of “outrageous” and “inexcusable”
17 misconduct. To Plaintiff’s knowledge, Trueman did so without ever attempting to contact Plaintiff
18 to understand the context surrounding Plaintiff’s response.

19 34. Additionally, at or about the same time, numerous individuals complained to
20 Anderson School Dean Bernardo about Plaintiff’s response to the Student. One such complaint
21 stated in its subject heading that “Klein is a racist,” and another stated that Plaintiff’s quotation of
22 Dr. Martin Luther King, Jr. “discredits black voices and feelings by bringing up how white people
23 feel.” Plaintiff is informed and believes, and on that basis alleges, that none of the complaints
24 emailed to Bernardo on that occasion were from Plaintiff’s students or from anyone who had ever
25 even met Plaintiff.

26 35. During the late afternoon of June 2, 2020, Bernardo sent Plaintiff an email
27 requesting that Plaintiff call him, presumably to discuss these complaints. When Plaintiff called
28 Bernardo that evening as requested, Bernardo tersely informed him in a roughly one-minute call

1 that Bernardo was referring Plaintiff to the “DPO” (*i.e.*, the UCLA Discrimination Prevention
2 Office). Bernardo then abruptly hung up the phone before Plaintiff could respond. Plaintiff tried
3 to call Bernardo back a few minutes later, but Bernardo did not answer.

4 36. The following day, Bernardo sent a barrage of identical emails to those who had
5 submitted complaints (copying Plaintiff and the DPO) stating:

6 Thank you for reaching out. This professor’s email is outrageous and simply
7 inexcusable. We are investigating the situation and plan to address it. On behalf of
8 Anderson, please accept my apology for the very hurtful sentiments expressed in
9 this message. Please know that respect and equality for all are core principles at
10 Anderson.

11 37. Although the Dean characterized Plaintiff’s email as “inexcusable” and “very
12 hurtful,” the Student himself seemingly shrugged off Plaintiff’s questions as merely “rhetorical,”
13 resumed his studying, and earned a course grade of “A.” The Student later proceeded to enroll in
14 yet another class taught by Plaintiff even though he instead could have selected multiple other
15 classes not taught by Plaintiff. Also, these emails sent by the Dean characterized Plaintiff as
16 not supporting equality or the School’s “core principles,” which was patently false. In fact,
17 Plaintiff’s conduct had unfailingly *upheld* equality and other Anderson School “core principles,”
18 including those manifested by his supervisor’s guidance that professors not grant special exam
19 accommodations. As noted in a comment that later appeared in UCLA Law Professor Eugene
20 Volokh’s blog, the Volokh Conspiracy: “It cannot be that UCLA expects its faculty to engage in
21 insubordination, and punishes them when they follow UCLA's directives and policy.”

22 38. On or about June 3, 2020, the Anderson School’s official Twitter account
23 (@Anderson) issued the following “tweet” about Plaintiff to the general public, once again
24 implying that Plaintiff did not believe in equality of treatment for all:

25 Respect and equality for all are core principles at UCLA Anderson. It is deeply
26 disturbing to learn of this email, which we are investigating. We apologize to the
27 student who received it and to all those who have been as upset and offended by it as
28 we are ourselves.

29 Again, the Anderson School claimed to have been “upset and offended” and “deeply disturb[ed]”
30 by a private email dialogue between others even though the Student who had initiated and

1 participated in that dialogue distinctly *was not*. Thus, the School doubled down on creating the
2 false impression that Plaintiff did not adhere to the School’s stated core principles.

3 39. During the same early morning hours on June 3, 2020, the Anderson School
4 urgently requested permission from the University to suspend and ultimately terminate Plaintiff’s
5 employment. In an email to the UCLA Campus Human Resources department, an Anderson
6 School administrator stated: “URGENT ISSUE . . . There is currently a change.org petition with
7 12,000 signatures. We need to remove [Plaintiff] from the remainder of the quarter. . . . What
8 disciplinary actions can we take? This may very well impact his reappointment following this
9 current academic year. How do we proceed with this?”

10 40. UCLA Campus Human Resources promptly replied with this instruction:
11 “**The School cannot take any action** against [Plaintiff’s] appointment, including any discipline or
12 non-appointment at this time. **Further inquiry is warranted before action can be taken.**”
13 (Emphasis added.)

14 41. Nonetheless, later that same day, Bernardo issued a written “Notice of
15 Administrative Leave” that stated: “You are not to conduct any work for the UCLA Anderson
16 School of Management; nor are you to come to the UCLA Anderson School of Management while
17 on this leave” (the “Bernardo Notice”). The only purported explanation in the Bernardo Notice for
18 this disciplinary action stated: “You are being placed on leave to allow the University to review
19 allegations regarding behavior made in the course and scope of your position as a Continuing
20 Lecturer that is inconsistent with APM-015.” This cryptic reference in the Bernardo Notice to
21 “APM-015” was to the *entire* UCLA Faculty Code of Conduct (the “Faculty Code”). Notably, the
22 Bernardo Notice failed to identify any *specific* enumerated act of “unacceptable conduct” in the
23 Faculty Code of Conduct that even remotely could have been a violation of Plaintiff’s employment
24 contract.

25 42. On or about June 4, 2020, Bernardo published the following message about Plaintiff
26 to all recipients on the Anderson School’s email list-serv, which Plaintiff is informed and believes
27 consists of all of his faculty colleagues and over 40,000 alumni of the “Anderson School
28 community”:

1 Dear UCLA Anderson Community:

2 On Tuesday, June 2, we were alerted to troubling conduct by one of our lecturers in
3 the undergraduate accounting program. Our concerns have now been shared with
all appropriate UCLA investigative offices.

4 Providing a safe, respectful and equitable environment in which students can
5 effectively learn is fundamental to UCLA’s mission. We share common principles
6 across the university of integrity, excellence, accountability, respect and service.
Conduct that demonstrates a disregard for our core principles, including an abuse of
power, is not acceptable.

7 The lecturer is currently on leave from campus. His courses have been reassigned to
8 other instructors.

9 If anyone in our community ever feels unfairly treated or maligned because of
10 identity, I urge you to contact Asst. Dean Heather Caruso or Professor Brett
Trueman, our Equity, Diversity and Inclusion leader for students, staff and faculty.
You are also free to report an incident directly to UCLA’s EDI office.

11 Further, I ask that each of us – students, faculty and staff – help foster a strong
12 Anderson culture of inclusivity that will assure effective learning for all students.
In the months ahead, we will also work together to identify initiatives that Anderson
might undertake to advance greater equity in the broader community.

13 I deeply regret the increased pain and anger that our community has experienced at
14 this very difficult time. We must and will hold each other to higher standards.

15 I hope we can use this event as an opportunity to recommit to respect, equity and
16 compassion in all of our words and actions.

17 Best,

18 Antonio Bernardo
Dean and John E. Anderson Chair in Management

19 43. Bernardo knew or should have known that widespread public disclosure of
20 his decision to summarily place Plaintiff on leave from campus and reassign his teaching duties to
21 other instructors (“Confidential Personnel Action”) would have devastating consequences for
22 Plaintiff. Moreover, Bernardo knew or should have known that public disclosure of the
23 Confidential Personnel Action would violate the University’s admonition he had received the
24 previous day that “further inquiry is warranted before action can be taken” against Plaintiff. And
25 Bernardo knew or should have known that public disclosure of the Confidential Personnel Action
26 would violate University rules prohibiting such disclosure.

27 44. Additionally, the above email created the false impression that Plaintiff had engaged
28 in conduct which demonstrated a disregard for the University’s “common principles” of equal

1 treatment for all, and that Plaintiff had engaged in an actionable “abuse of power.” None of this
2 was even remotely true.

3 45. Furthermore, the above email notably failed to mention that the Student had sent
4 Plaintiff a form letter requesting race-based grading, that such a policy would be improper, or that
5 the Student had apologized to Plaintiff. Moreover, the email did not mention that the Email
6 Exchange reflected Plaintiff’s commitment to equitable learning, integrity, excellence,
7 accountability, respect and service.

8 46. Throughout his employment at UCLA, Plaintiff is unaware of any UCLA Anderson
9 School faculty member ever being placed on administrative leave and relieved of teaching duties
10 while a class was ongoing. Thus, to Plaintiff’s knowledge, Bernardo’s action and public
11 disclosure of the Confidential Personnel Action were unprecedented.

12 47. Indeed, the extraordinary nature of the Confidential Personnel Action itself,
13 combined with Bernardo’s accusations about Plaintiff, created the public misperception that
14 Plaintiff’s conduct must have inflicted severe harm on a student and been so egregious that it rose
15 to being an abuse of power untethered from the stated core principles of the University.
16 Therefore, Defendants’ public disclosure of the Confidential Personnel Action – *in and of itself* –
17 has resulted in substantial harm to Plaintiff, as herein alleged. Moreover, in our modern world of
18 instantaneous and far-reaching online communication, it was reasonably foreseeable by
19 Defendants that their accusations against Plaintiff and their public disclosure of the Confidential
20 Personnel Action would be widely circulated online, thereby dramatically multiplying Plaintiff’s
21 reputational damage.

22 48. On or about June 8, 2020, Professor Carla Hayn (“Hayn”), Chair of the Anderson
23 School Faculty Executive Committee, sent an email to “All Faculty” of the Anderson School that
24 stated, in pertinent part:

25 We, the members of the Faculty Executive Committee, were saddened to learn about
26 the troubling conduct of one of our instructors. We share Tony [Bernardo’s]
27 concerns and join his call for fostering a strong culture of inclusivity, diversity,
28 respect and equity among all members of the Anderson community including
faculty, staff and students.

1 As faculty members we play several important roles as the University. We share our
2 knowledge and enthusiasm about our areas of expertise. We create safe and
3 supportive learning environments. Equally important, we are role models, setting an
4 example of how we hope our students will learn and grow both during the time at
5 UCLA and later as they go through life. Any instructor who fails as a role model
6 also fails to promote a safe and supportive learning environment.

7 Here again, the University recklessly attacked Plaintiff, casting Plaintiff as not being committed to
8 “inclusivity, diversity, respect and equity.” This insinuation was false, highly offensive and totally
9 inconsistent with the tenor and substance of the Email Exchange. Like Bernardo’s
10 communications, this School message wrongfully implied that Plaintiff had acted improperly and
11 was not committed to UCLA’s core values when in fact Plaintiff had demonstrated his
12 commitment to UCLA’s values in the Email Exchange. And like the other emails mentioned
13 above, this email omitted any details about the Email Exchange, thereby creating a false
14 impression about the participants’ dialogue.

15 49. On or about June 10, 2020, the Foundation for Individual Rights in Education
16 (“FIRE”) – a highly-respected, non-partisan organization defending free speech on campuses –
17 sent a letter to the University (the “FIRE Letter”) that stated in pertinent part:

18 FIRE appreciates that the University of California Los Angeles (UCLA) remains
19 one of the few institutions in the country whose policies earn a ‘green light’ rating
20 from FIRE. We are, however, concerned that Continuing Lecturer Gordon Klein
21 has been placed on a mandatory leave due to the controversy over his refusal – as
22 directed by UCLA and pursuant to its policies – to alter his final exam schedule or
23 grading policies for black students.

24 While some may disagree with Klein’s approach, his right to academic freedom
25 encompasses the right to manage the content and direction of his course. Further,
26 his email exchange with the student who proposed an altered schedule and grading
27 policies, with whom Klein had a prior cordial relationship, did not amount to
28 unlawful harassment or discriminatory conduct. On the contrary, that exchange
represented a discussion about university policies and how the institution should
respond to the civil unrest following the homicide of George Floyd. Accordingly,
UCLA’s decision to place Klein on leave is incompatible with the university’s First
Amendment obligations and the basic tenets of academic freedom. FIRE calls on
UCLA to immediately reinstate Klein.

29 The FIRE Letter further stated: “Surely, UCLA does not intend to send the message that its
30 faculty members must grant or deny privileges or obligations based on race.”

31 50. On or about June 16, 2020, the Anderson Office of Alumni Relations circulated, in
32 pertinent part, the following email to the Anderson School’s “Alumni Community”:

1 During a time when the pain of ongoing racial injustice, compounded with the
2 impact of the Coronavirus pandemic, is dominating our attention we recognize that
3 many in our UCLA Anderson community may be feeling overwhelmed and
4 experiencing anger, fear and sadness. Some of this frustration has been expressed
5 through dynamic and mostly constructive conversations on our alumni relations
6 channels about Black Lives Matter as well as the incidents that led to the current
7 review of Anderson Lecturer Gordon Klein’s actions.

8 At UCLA and UCLA Anderson, we hold basic values and principles as a
9 Community that reject racism and violence and uphold respect for all, appreciation
10 of diversity and a responsibility to address historical and divisive biases through
11 education, research and dialogue. Read Dean Bernardo’s Racial Injustice
12 Community Update from May 29, 2020.

13 Defendants’ decision to mention Plaintiff by name adjacent to the next sentence that the Anderson
14 School “as a Community . . . reject[s] racism and violence” falsely cast Plaintiff as being guilty of
15 supporting “racism and violence.” Moreover, the email failed to mention that “Gordon Klein’s
16 actions” *opposed* a proposal for a discriminatory, race-based, divisive, preferential grading
17 scheme. In short, Plaintiff’s actions reinforced, rather than abandoned, “basic values and
18 principles” of the UCLA community.

19 51. In or about the period from June 4 through June 10, 2020, the foregoing events
20 garnered substantial national and international media attention. Plaintiff began receiving death
21 threats on his UCLA voicemail and by email, which he shared with the Los Angeles County
22 Sheriff and the Federal Bureau of Investigation. One such emailed threat sent to Plaintiff’s UCLA
23 email account on or about June 11, 2020 stated: “You are a typical bigoted, prejudiced and racist
24 dirty, filthy, crooked, arrogant Jew kike mother fucker! Too bad Hitler and the Nazis are not
25 around to give you a much needed Zyklon B shower.”

26 52. On or about June 9, 2020, national media reported that local police were
27 surrounding Plaintiff’s residence for his protection. Nevertheless, Plaintiff was not contacted by
28 UCLA’s Threat Manager, Chris Silva (“Silva”), to inquire about Plaintiff’s physical safety until on
or about June 19, 2020 – ten days after serious physical threats against Plaintiff had been widely
reported.

53. In or about the period June 5 through June 10, 2020, in an effort to stem the
onslaught of negative publicity that was being ginned up by Defendants, Plaintiff participated in
media interviews that were widely published on television, traditional print media, and online. In

1 these interviews, Plaintiff criticized Bernardo for having served him up as a “sacrificial lamb” in
2 furtherance of the Anderson School’s public relations efforts to rehabilitate its longstanding
3 reputation as an institution that is riddled with bias based on race, ethnicity, and gender, according
4 to an official School document. Plaintiff also specifically mentioned that there is only one black
5 professor with tenure at the Anderson School, and none have been granted tenure in several
6 decades.¹¹

7 54. On or about June 11, 2020, in apparent retaliation for Plaintiff having spoken out
8 publicly, Defendants hired other faculty members to replace Plaintiff as the instructor of Summer
9 2020 academic quarter classes for which Plaintiff previously had executed supplemental contracts.
10 By doing so, the Anderson School administration again defied the University’s directive that “[t]he
11 School cannot take any action against [Plaintiff’s] appointment.” Bernardo also appointed an
12 administrator at the Anderson School, Caskey, to monitor and censor Plaintiff’s outbound emails.

13 55. Moreover, Defendants communicated this personnel action by blocking Plaintiff’s
14 access to the University server utilized in conducting his Summer 2020 classes and by replacing
15 his name as the instructor of record with the names of colleagues. From Plaintiff’s perspective, by
16 doing so, Defendants implicitly threatened Plaintiff with loss of income and caused Plaintiff to
17 fear he was on the verge of suffering a complete loss of his UCLA employment. Plaintiff also
18 learned that one or more of his faculty colleagues had signed supplemental employment contracts
19 to replace him.

20 56. On Sunday, June 21, 2020, Bernardo on behalf of the Anderson School suddenly
21 and without prior discussion sent the following notice to Plaintiff: “This letter is to inform you
22 that your paid administrative leave will end today, June 21, 2020. You are therefore expected to
23 commence teaching . . . [tomorrow] on June 22, 2020” Thus, despite having previously
24 communicated to Plaintiff that he would not be teaching during the Summer 2020 quarter,
25 Defendants abruptly – *i.e.*, without providing Plaintiff with advance notice or the availability of

27 ¹¹ See “Anderson Grad School of Mgmt,” [https://equity.ucla.edu/data-hub/senate-faculty-](https://equity.ucla.edu/data-hub/senate-faculty-diversity/)
28 [diversity/](https://equity.ucla.edu/data-hub/senate-faculty-diversity/).

1 necessary technology support personnel – informed Plaintiff on Father’s Day Sunday that he was
2 required to commence teaching Summer Session courses the following day. Despite this
3 discourteous treatment, and consistent with his longstanding dedication to UCLA, Plaintiff altered
4 his plans on this family holiday to do the best he could to comply with Defendants’ demand.

5 57. Plaintiff was shocked to see that, notwithstanding Plaintiff’s unconditional
6 reinstatement, Bernardo *concurrently* on June 21, 2020 emailed the following communication
7 about Plaintiff to the entire Anderson School list-serv:

8 Dear Anderson Community:

9 I wrote to you two weeks ago about the feelings of distress and anger permeating our
10 community and the need to treat one another with kindness and respect, especially at
11 difficult times like this. Part of my job, my priority, is to strengthen and advance a
12 culture here at Anderson that is based on respect and trust. We need that culture now
13 more than ever.

14 Through this period of crisis, uncertainty and change, we must be able to depend on
15 each other for understanding and support just as we rely on one another for
16 intellectual challenge and growth.

17 Recently, students expressed concern about an undergraduate lecturer and how he
18 responded to a student’s request for understanding during protests against racial
19 injustice. Many of the details have been circulating widely in social media.
20 Nevertheless, because the University must protect the privacy rights of all
21 employees, I cannot comment on this matter with the full transparency that I would
22 like. What I can do is share my values and vision for Anderson as its dean.

23 First, let me be clear that I take very seriously the values of freedom of expression
24 and the freedom of intellectual inquiry. I value them not only because of the First
25 Amendment but because those values are critical to any great research and teaching
26 institution.

27 Second, I recognize that no value is limitless in practice. Academic freedom
28 protects the content of academic programming and grading evaluation, but it does
not protect everything a lecturer does. For example, it does not protect bad teaching
or failures to respond to students asking for information about office hours. All
faculty can and should be held accountable for how well we discharge our
responsibilities as teachers at Anderson.

Third, the faculty own an ethical duty to demonstrate respect for students as
individuals and to adhere to our roles as intellectual guides and counselors. In my
view, we have a sacred responsibility when we teach, and even as we push our
students to stretch the limits of their understanding and capacity, that should never be
done with callousness or condescension. It is my responsibility to hold our
community to our highest standards, in accordance with UCLA principles and
policies.

Fourth, we must protect due process through our administrative procedures to ensure
fair and equitable treatment of all. When there are allegations of misconduct, all
institutions, including the University, must have clear, consistent procedures to find the

1 facts, decide where they violate norms, and provide avenues for appeal. This is how
2 the rule of law plays out in a University. It takes time, but it protects the interests of
3 all. In some instances that means immediate action cannot be taken, or may mean that
4 certain measures can only be implemented on a short-term basis even if the
5 administrative process continues. We must all be patient and allow the process to play
6 out.

7 Having said that, I believe Anderson needs to do more now to acknowledge, explore
8 and address the systemic issues that allow bias and inequality in our community and
9 within our school. We need to create norms for our community that explicitly set
10 behavior expectations as well as specific processes to reinforce and uphold them.

11 I've learned through this experience that we have much more work to do to advance
12 the culture and environment of our aspirations. To that end, I am committing to
13 work in partnership with students, faculty and staff at Anderson, and potentially
14 across UCLA, to explore new models for motivating and enforcing the behavioral
15 changes necessary to fully and consistently live our principles. This will be a core
16 focus of my term as dean.

17 Best,

18 Antonio Bernardo
19 Dean and John E. Anderson Chair in Management

20 58. This Father's Day Sunday email to the "Anderson Community" was highly false and
21 misleading because Bernardo omitted the fact that about one hour earlier *he personally had*
22 *reinstated* Plaintiff to resume full classroom duties. Such an oversight invariably was intentional
23 and malicious. Moreover, in addition to this glaring omission, Bernardo inaccurately implied that:
24 (i) the administrative "process" against Plaintiff was continuing even though Plaintiff had been
25 reinstated; (ii) he was privy to negative "details" about Plaintiff but was precluded from disclosing
26 them because of "the privacy rights of all employees"; (iii) Plaintiff ultimately would be
27 appropriately punished after the process had "play[ed] out"; (iv) Plaintiff had engaged in "bad
28 teaching"; and (v) Plaintiff had violated the University's "principles and policies."

59. Incredibly, in describing the Email Exchange, Dean Bernardo disingenuously said
that the Student merely was seeking "understanding during protests for racial injustice." To the
contrary, the Student did not ask Plaintiff for "understanding." Rather, the thrust of his request
was asking Plaintiff to adopt a grading scheme that would boost black students' grades solely
based on their race and asked for preferential treatment granting "leniency with Black students."
If Plaintiff had acceded to this request, a firestorm of litigation and reputational harm to the
University might well have resulted.

1 60. The UCLA Academic Senate Committee on Privilege and Tenure subsequently
2 issued a report criticizing Bernardo’s Father’s Day Sunday email, stating:

3 The media frequently suggested that the administrative leave was indefinite, and some
4 of it asserted that he had been fired. The Dean’s notice to Professor Klein stated its
5 duration as roughly two weeks, and indeed he was back teaching by June 22, but the
6 communications to the Anderson community did not mention any end time.
7 The Dean’s June 21 email to the Anderson community did not mention Professor
8 Klein’s return to teaching. This increased the public perception that UCLA was
9 continuing to punish him.

10 61. On or about June 30, 2020, another authoritative UCLA Academic Senate body –
11 the Academic Freedom Committee – expressed concerns about the Anderson School’s conduct in
12 the following “Statement of the Committee on Academic Freedom”:

13 In response to a recent controversy surrounding an e-mail reply to a student by
14 Gordon Klein (a Lecturer in Accounting at the Anderson School), the UCLA Senate
15 Committee on Academic Freedom underlines all instructors’ freedom (protected by
16 APM-010) to express their views on grading policy as they determine to be
17 appropriate.

18 Some people may disagree with Prof. Klein’s views, and think that he should have
19 responded differently to a student’s request that the grading structure be changed to
20 “exercise compassion and leniency with Black students in the major.” But
21 instructors are entitled and empowered to say “no” to such requests; and, just as
22 students have every right to express their views on such matters to faculty and to
23 others, instructors are entitled to explain their views in turn to students. When any
24 of us ask people to do things, especially based on a moral or political argument
25 about current events, those people are entitled to respond with their own moral or
26 political views.

27 The process of evaluating the situation is proceeding at the Anderson School, and
28 our committee has no direct role in that process. Our concern instead is that any
public announcement that an instructor is being placed on administrative leave for
what appears to be a particular statement – whether the statement happened in class,
in an e-mail responding to a student, on social media, or wherever else – creates a
chilling effect for other instructors, especially untenured ones. It is the committee’s
role to try to prevent such chilling effects.

 An academic institution like UCLA must remain a place for the expression of a wide
diversity of views and interpretations. It should also be a site of vigorous debate –
including by students, by faculty, and by others – so that those exposed to our
participating in these discussions have the opportunity to hear a range of opinions as
they formulate their own views.

 62. On or about July 22, 2020, UCLA’s Discrimination Prevention Office issued a letter
to Plaintiff stating in pertinent part that the complaint filed against him did not merit “pursu[ing] a
formal investigation”:

1 After reviewing the complaint and assessing the relevant information available to us,
2 DPO has determined that we will close this matter and will not pursue a formal
investigation.

3 63. Nevertheless, Plaintiff continues to fear for his physical safety and security at UCLA
4 as a result of Defendants’ unlawful conduct. On or about July 31, 2020, Plaintiff wrote to UCLA
5 Threat Manager Silva, informing him that a psychiatrist had diagnosed that Plaintiff was suffering
6 from PTSD. Plaintiff inquired: “I was wondering what protection I reasonably may request from
7 your office.” Plaintiff received no reply. In or about March 2021, Plaintiff shared with the UCLA
8 Police Department another anti-Semitic death threat that Plaintiff had received on his campus
9 voicemail. Although the police informed Plaintiff that this information would be reported to the
10 UCLA Threat Manager, to date Plaintiff has received no further communication from the Threat
11 Protection Office.

12 **C. The Resulting Substantial Damage To Plaintiff**

13 64. As a proximate result of Defendants’ unlawful conduct herein alleged, Plaintiff has
14 suffered severe emotional distress, trauma, and physical ailments for which he has been treated by
15 his primary care physician, a gastrointestinal physician, and a psychiatrist.

16 65. Plaintiff also has suffered substantial loss of income as a proximate result of
17 defendants’ public disclosure of the Confidential Personnel Action and other unlawful conduct
18 herein alleged. Since approximately 2008, Plaintiff has maintained a highly successful private
19 consulting practice as an expert witness (“Expert Witness Practice”). The Expert Witness Practice
20 – of which Defendants were well aware at the time of their actions and the events alleged herein –
21 has served as Plaintiff’s principal source of income and is conducted independently from his
22 University commitments.

23 66. As a proximate result of Defendants’ unlawful conduct herein alleged, Plaintiff
24 began losing clients of the Expert Witness Practice immediately following media reports in June
25 2020 of these actions and events. Media reports intensified after Defendants publicized the
26 Confidential Personnel Action and undertook public attacks against Plaintiff. For example, on or
27 about June 3, 2020, Plaintiff was interviewed for an expert witness engagement by lawyers from
28 one of the premier law firm clients of the Expert Witness Practice, following which the attorney

1 and client immediately agreed to retain Plaintiff. That day, an intermediary who arranged for the
2 interview emailed Plaintiff stating: “Gordon, good news! [The attorney and client] would like to
3 retain you for the [] case.” A few days later, however, after Defendants’ unlawful public
4 disclosure of the Confidential Personnel Action had been widely reported by the media, Plaintiff’s
5 engagement on the case was terminated. Plaintiff has not received any further work from this
6 premier client. In addition, the intermediary with whom Plaintiff had a longstanding business
7 relationship modified its website to eliminate any mention of its association with Plaintiff, and its
8 marketing head has ceased all communications with Plaintiff.

9 67. Similarly, also on or about June 3, 2020, another longstanding elite law firm client
10 of the Expert Witness Practice suddenly terminated Plaintiff’s existing engagement on a major
11 antitrust case. This client even refused to pay an invoice that Plaintiff previously had transmitted
12 for past services rendered regarding this ongoing case.

13 68. Simply put, the Expert Witness Practice largely dried up as a proximate result of
14 Defendants’ unlawful conduct herein alleged.

15 **D. Defendants’ Retaliatory Denial Of Plaintiff’s Merit Pay Raise**

16 69. Prior to the events alleged herein, Plaintiff regularly had been granted merit pay
17 raises over the decades of his employment by UCLA. Plaintiff has accepted and executed
18 UCLA’s offers of employment contracts for the Academic Years ending June 2021 and June 2022.
19 Plaintiff was eligible for a merit pay increase for the Academic Year Ending June 2022.

20 70. On or about May 4, 2021, consistent with UCLA policy, Plaintiff submitted to
21 the University a detailed written objection to the involvement of Caskey, among others, with the
22 faculty committee designated to evaluate Plaintiff’s merit pay raise for the Academic Year
23 Ending June 2022 (“Staffing Committee”). Notwithstanding Plaintiff’s objection to Caskey’s
24 involvement, however, the Staffing Committee, in conjunction with the Anderson School,
25 subsequently participated in a written report (“Staffing Committee Memorandum”) that
26 unanimously recommended against Plaintiff’s merit pay raise, expressly stating that “tremendous
27 weight” had been placed on Caskey’s opposition.

28

1 71. Despite its negative recommendation, the Staffing Committee Memorandum
2 admitted that “the majority of comments is [sic] strongly positive”:

3 Student comments on Mr. Klein’s courses are often very positive, for sections taught
4 in-person as well as those taught online due to the pandemic. Students often
5 mention that they find his lectures very clear and engaging, that he uses good
6 examples, and that he is highly knowledgeable and committed to his students. Some
7 students comment that he is accommodating and flexible, for instance that he gave
8 students (in a class of 65) the chance to get to know each other. Some students
9 comment that they feel welcome and supported during office hours.

7 72. Perhaps this anomaly is explained by the Staffing Committee’s subtle injecting
8 of Plaintiff’s stated opposition to the Anderson School’s required submission of a so-called
9 “Equity, Diversity, and Inclusion Statement”: “The committee felt they were not in a position to
10 discuss Mr. Klein’s contributions to equity, diversity and inclusion”

11 73. On or before September 1, 2021, the University ratified the Staffing Committee’s
12 recommended denial of Plaintiff’s merit pay raise. Given the decades of consistently positive
13 merit reviews and merit pay raises enjoyed by Plaintiff throughout his tenure at UCLA, it is clear
14 that the University’s denial on this particular occasion was in retaliation for the actions and events
15 alleged herein.

16
17 **FIRST CAUSE OF ACTION**

18 ***(For Breach Of Contract***

19 ***Against The UC Regents and Does 1-15)***

20 74. Plaintiff realleges and incorporates herein by this reference each of the allegations in
21 Paragraphs 1 through 73, inclusive.

22 75. In addition to its express provisions, the Employment Agreement contains an
23 implied covenant of good faith and fair dealing on the part of UCLA, pursuant to which UCLA
24 was and is obligated to treat Plaintiff fairly and in good faith, to do nothing to deprive Plaintiff of
25 the benefits of the Employment Agreement, and to do everything the Employment Agreement
26 presupposes UCLA will do to accomplish its purpose.

1 76. Plaintiff has performed all of his obligations under the Employment Agreement,
2 except to the extent such performance has been prevented, excused, or waived by the acts or
3 omissions of Defendants.

4 77. Defendants have breached the Employment Agreement by, among other things:

- 5 • Failing to maintain confidentiality in personnel matters including investigation
6 and discipline, as evidenced by their unwarranted, unnecessary, and unlawful
7 public disclosure of the Confidential Personnel Action;
- 8 • Failing to communicate the reason for the Confidential Personnel Action to
9 Plaintiff, a NSF, as soon as possible (or ever);
- 10 • Failing to timely and properly respond to the grievance filed by Plaintiff
11 pursuant to the Employment Agreement;
- 12 • Failing to honor Plaintiff's contractual right to academic freedom by failing to
13 maintain an environment in which the free inquiry and exchange of ideas
14 flourish, failing to allow Plaintiff to present controversial issues and enjoy
15 constitutionally protected freedom of expression, and failing to honor
16 Plaintiff's right to freely address any matter or action of institutional policy
17 when acting as a member of the faculty;
- 18 • Acting unlawfully and pretextually with regard to Plaintiff; and
- 19 • Failing to treat Plaintiff fairly and in good faith by depriving Plaintiff of the
20 benefits of the Employment Agreement and by failing to do everything the
21 Employment Agreement presupposed that UCLA would do to accomplish
22 its purpose.

23 78. As a direct and foreseeable result of Defendants' contractual breaches herein
24 alleged, Plaintiff has been damaged in an amount to be proven at trial.

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1 **SECOND CAUSE OF ACTION**

2 *(For Violation Of Plaintiff's Right To Privacy*

3 *By Public Disclosure Of Private Facts*

4 *Against Defendants Bernardo and Does 10-25)*

5 79. Plaintiff realleges and incorporates herein by this reference each of the allegations in
6 Paragraphs 1 through 78, inclusive.

7 80. Plaintiff has a well-recognized fundamental right to privacy under California
8 constitutional, statutory and common law. Article 1, Section 1 of the California Constitution
9 states:

10 All people are by nature free and independent and have inalienable rights. Among
11 these are enjoying and defending life and liberty, acquiring, possessing, and
protecting property, and pursuing and obtaining safety, happiness, and privacy.

12 81. This expansive right to privacy is further recognized, among other places, by
13 Section 1798.1 of the California Civil Code, which states:

14 The Legislature declares that the right to privacy is a personal and fundamental right
15 protected by Section 1 of Article 1 of the Constitution of California and by the
16 United States Constitution and that all individuals have a right of privacy in
information pertaining to them.

17 82. Section 160 of UCLA's Academic Personnel Manual and UCLA Policy 603, which
18 are incorporated into the Employment Agreement and otherwise govern Plaintiff's employment
19 by UCLA, protect academic employees from unwarranted invasion of their personal privacy and
20 support the principle of securing to individuals their fundamental right of privacy. In addition, in
21 his June 21, 2020 publication to the Anderson School Community, Bernardo himself recognized
22 UCLA's obligation to "protect the privacy rights of all employees."

23 83. The Confidential Personnel Action – which should not lawfully have occurred in
24 the first instance – was private information pertaining to Plaintiff that was, at the time of its
25 widespread disclosure by Defendants as herein alleged, outside the realm of legitimate
26 public interest or concern. There was no reason the Anderson community needed to know, on
27 June 4, 2020, that Plaintiff was "currently on leave from campus" and that "[h]is courses have
28 been reassigned to other instructors," as Bernardo then publicly announced to more than 40,000

1 recipients by email. All legitimately newsworthy information concerning the matter, along with
2 Defendants' own views and opinions concerning Plaintiff's private email with the Student, could
3 and should have been communicated to the Anderson Community without also disclosing the
4 Confidential Personnel Action. Just over two weeks later, Plaintiff was completely exonerated by
5 UCLA and returned to his active teaching status. Unfortunately, however, by that time, the
6 extreme harm to Plaintiff resulting from public disclosure of the Confidential Personnel Action
7 had irrevocably occurred.

8 84. For this reason, it appears that Defendants publicly disclosed the Confidential
9 Personnel Action maliciously, with the deliberate and specific intent to harm Plaintiff in order to
10 buttress the appearance that the Anderson School was committed to its Equity, Diversity, and
11 Inclusion agenda and tethered to social justice issues even though its track record with regard to
12 advancing the interests of black Americans was lacking. In effect, Bernardo also sought to use
13 public punishment of Plaintiff through disclosure of the Confidential Personnel Action to achieve
14 his marketing goal of rehabilitating the Anderson School's existing reputation as an educational
15 institution riddled with race and gender bias. And Bernardo wanted to placate those who loudly
16 and angrily were demanding Plaintiff's proverbial head.

17 85. Public disclosure of the Confidential Personnel Action was highly offensive and
18 objectionable to Plaintiff, and would be highly offensive and objectionable to any reasonable
19 person.

20 86. As a proximate result of Defendants' tortious misconduct herein alleged, Plaintiff
21 has been damaged in an amount to be proven at trial.

22 87. Bernardo and Defendants Does 10 through 25 are guilty of fraud, oppression, and/or
23 malice for having engaged in the unlawful conduct herein alleged. Accordingly, Plaintiff is
24 entitled to recover punitive damages for the sake of example and by way of punishing these
25 Defendants for their unlawful conduct in an amount to be proven at trial.

26 ///

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 *(For Violation Of Plaintiff's Right To Privacy*

3 *By Placing Plaintiff In A False Light*

4 *Against Defendants Bernardo and Does 10-25)*

5 88. Plaintiff realleges and incorporates herein by this reference each of the allegations in
6 Paragraphs 1 through 87, inclusive.

7 89. Among other acts herein alleged, Defendants' widespread public disclosure of the
8 Confidential Personnel Action – which should not lawfully have occurred in the first instance –
9 placed Plaintiff in a false light that would be highly offensive to a reasonable person. Defendants
10 thereby created (among other things) the false impression that Plaintiff was guilty of such
11 outrageous and heinous misconduct that summary draconian action against him was both
12 warranted and necessary. Moreover, in disclosing the Confidential Personnel Action to the entire
13 Anderson community, Defendants failed to place their unlawful conduct into truthful context by
14 (among other things) concurrently disclosing that the Student had asked for race-based grading in
15 a private email to Plaintiff, that the Student had apologized for this request, and that the Student
16 was not offended by the communications with Plaintiff. Defendants also created the highly
17 offensive insinuation that Plaintiff had engaged in conduct that violated core principles and
18 policies of the University. In fact, Plaintiff is steadfastly committed to the core principles and
19 policies of UCLA. He also is committed to a truly diverse learning environment that is predicated
20 on equality and fairness to all students, regardless of race, ethnicity, gender, or sexual orientation.

21 90. The false light created by Defendants' actions and communications would be highly
22 offensive to a reasonable person in Plaintiff's position.

23 91. Defendants knew or negligently failed to determine that their actions and
24 communications about Plaintiff herein alleged would create the false impression of Plaintiff herein
25 alleged. If Plaintiff is deemed to have been a public figure at the time of the events herein alleged,
26 which Plaintiff denies, then Defendants acted with both malice and reckless disregard for the risk
27 that their actions and communications herein alleged would create this false impression about
28 Plaintiff.

1 92. As a proximate result of Defendants' tortious misconduct herein alleged, Plaintiff
2 has been damaged in an amount to be proven at trial.

3 93. Bernardo and Defendants Does 1 through 15 are guilty of fraud, oppression, and/or
4 malice for having engaged in the unlawful conduct herein alleged. Accordingly, Plaintiff is
5 entitled to recover punitive damages for the sake of example and by way of punishing Defendants
6 for their unlawful conduct in an amount to be proven at trial.

7
8 **FOURTH CAUSE OF ACTION**

9 ***(For Retaliatory Discrimination***

10 ***In Violation Of Labor Code Section 1102.5(c)***

11 ***Against All Defendants)***

12 94. Plaintiff realleges and incorporates herein by this reference each of the allegations in
13 Paragraphs 1 through 78, inclusive.

14 95. Section 1102.5(c) of the California Labor Code states:

15 An employer, or any person acting on behalf of the employer, shall not retaliate
16 against an employee for refusing to participate in an activity that would result in a
17 violation of state or federal statute, or a violation of or noncompliance with a local,
state, or federal rule or regulation.

18 96. The California Constitution, California statutes, and the rules and regulations
19 governing UCLA – including those incorporated into the Employment Agreement – prohibit
20 discrimination or preferential treatment on the basis of race. For example, Article 1, Section 31(a)
21 of the California Constitution states:

22 The State shall not discriminate against, or grant preferential treatment to, any
23 individual or group on the basis of race, sex, color, ethnicity, or national origin in
the operation of public employment, public education, or public contracting.

24 97. Consistent with this governing law, Plaintiff properly refused to discriminate or
25 grant preferential treatment to his students on the basis of race during the Spring 2020 academic
26 quarter.

27 98. Defendants have retaliated against Plaintiff for refusing to discriminate or grant
28 preferential treatment to students on the basis of race during the Spring 2020 academic quarter,

1 and instead challenging the Student’s request that Plaintiff do so. Defendants implemented this
2 retaliation by publicly attacking Plaintiff for having challenged the Student’s request that he
3 discriminate and give preferential treatment to students on the basis of race; by placing Plaintiff on
4 administrative leave and relieving Plaintiff of his teaching duties in bad faith without any legal
5 basis and prior to a thorough investigation; by widely publicizing the Confidential Personnel
6 Action; by designating an administrator to monitor and censor Plaintiff’s outbound emails; and by
7 denying Plaintiff a merit pay raise for the Academic Year Ending June 2022, among other actions.

8 99. As a proximate result of Defendants’ breach of statutory duty herein alleged,
9 Plaintiff has been damaged in an amount to be proven at trial.

10 100. Section 1102.5(j) of the California Labor Code states: “The court is authorized to
11 award reasonable attorney’s fees to a plaintiff who brings a successful action for a violation of
12 these provisions.”

13 101. Plaintiff has engaged the law firm Markun Zusman Freniere & Compton LLP
14 (among other legal counsel) to prosecute this action and will be entitled to recover his attorney
15 fees and costs if and when he prevails on this claim in an amount to be determined under
16 governing law.

17
18 **FIFTH CAUSE OF ACTION**

19 ***(For Retaliation In Violation Of Public Policy***

20 ***Against All Defendants)***

21 102. Plaintiff realleges and incorporates herein by this reference each of the allegations
22 in Paragraphs 1 through 78, and 95 through 99, inclusive.

23 103. The public policy of the State of California is to treat all persons equally irrespective
24 of race. This policy is reflected in Article 1, Section 31(a) of the California Constitution. It also is
25 reflected, among other places, in Section 51(b) of the California Civil Code which states:
26 “All persons within the jurisdiction of this state are free and equal, and no matter what their sex,
27 race, color, religion, ancestry, national origin, disability, medical condition, genetic information,
28 marital status, sexual orientation, citizenship, primary language, or immigration status are entitled

1 to the full and equal accommodations, advantages, facilities, privileges, or services in all business
2 establishments of every kind whatsoever.” And it is reflected in the policies, bylaws, standing
3 orders, and procedures of the University of California, including as incorporated into the
4 Employment Agreement.

5 104. In clear violation of California public policy, Defendants have retaliated against
6 Plaintiff for refusing to discriminate or grant preferential treatment to students on the basis of race
7 during the Spring 2020 academic quarter and instead challenging the Student’s request that he
8 do so – thereby upholding the public policy of the State of California – by publicly attacking
9 Plaintiff for having challenged the Student’s request that he discriminate and give preferential
10 treatment to students on the basis of race; by placing Plaintiff on administrative leave and relieving
11 Plaintiff of his teaching duties without any basis and prior to any investigation; by widely
12 publicizing the Confidential Personnel Action; by designating an administrator to monitor and
13 censor Plaintiff’s outbound emails; and by denying Plaintiff a merit pay raise for the Academic
14 Year Ending June 2022, among other actions.

15 105. As a proximate result of Defendants’ unlawful retaliatory misconduct herein alleged,
16 Plaintiff has been damaged in an amount to be proven at trial.

17 106. Bernardo and Defendants Does 10 through 25 are guilty of fraud, oppression, and/or
18 malice for having engaged in the unlawful conduct herein alleged. Accordingly, Plaintiff is
19 entitled to recover punitive damages for the sake of example and by way of punishing these
20 Defendants for their unlawful conduct in an amount to be proven at trial.

21
22 **SIXTH CAUSE OF ACTION**

23 ***(For Negligent Interference With Prospective Economic Advantage***
24 ***Against All Defendants)***

25 107. Plaintiff realleges and incorporates herein by this reference each of the allegations in
26 Paragraphs 1 through 86, 89 through 92, 95 through 99, and 103 through 105, inclusive.

27 108. Prior to the events and actions alleged herein, the Expert Witness Practice had both
28 established and prospective law firm, corporate, and other clients (“Clients”) that generated

1 substantial future economic benefits to Plaintiff.

2 109. Defendants knew or reasonably should have known of Plaintiff's relationship with
3 these Clients. For example, the curriculum vitae that Plaintiff periodically has provided to UCLA
4 extensively mentions these relationships, as does Plaintiff's biographical page on UCLA's public
5 website.

6 110. Defendants knew or reasonably should have known that the Expert Witness
7 Practice's relationship with these Clients would be disrupted if Defendants failed to act with
8 reasonable care toward Plaintiff.

9 111. Defendants negligently failed to act with reasonable care when they publicly
10 attacked Plaintiff for having challenged the Student's request that he discriminate and give
11 preferential treatment to students on the basis of race; when they placed Plaintiff on administrative
12 leave and relieved Plaintiff of his teaching duties without any basis and prior to any investigation;
13 and when they widely publicized the Confidential Personnel Action, among other actions.

14 112. As a proximate result of Defendants' tortious misconduct herein alleged, Plaintiff
15 has been damaged in an amount to be proven at trial.

16
17 **SEVENTH CAUSE OF ACTION**

18 ***(For Breach Of Employer's Statutory Duty Of Political Neutrality***

19 ***Against the UC Regents and Does 1-15)***

20 113. Plaintiff realleges and incorporates herein by this reference each of the allegations in
21 Paragraphs 1 through 73, inclusive.

22 114. Section 1102 of the California Labor Code states:

23 No employer shall coerce or influence or attempt to coerce or influence his
24 employees through or by means of threat of discharge or loss of employment to
25 adopt or follow or refrain from adopting or following any particular course or line of
political action or political activity.

26 115. Defendants attempted to coerce Plaintiff to accede to their ideological orthodoxy by
27 means of threat of loss of employment when they publicly attacked Plaintiff for having challenged
28 the Student's request that he discriminate and give preferential treatment to students on the basis

1 of race; when they placed Plaintiff on administrative leave and relieved Plaintiff of his teaching
2 duties without any basis and prior to any investigation; when they widely publicized the
3 Confidential Personnel Action; when they designated an administrator to monitor and censor
4 Plaintiff's outbound emails; when they retained other instructors to replace Plaintiff as the
5 instructor of classes for which he had pre-existing, executed supplemental Summer School
6 contracts and communicated his termination by posting the names of the replacement instructors,
7 rather than his name, as the instructor of record for those classes; and when they denied Plaintiff a
8 merit pay raise for the July 2021 through June 2022 academic period, among other actions.

9 116. As a proximate result of Defendants' breach of statutory duty herein alleged,
10 Plaintiff has been damaged in an amount to be proven at trial.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff Gordon Klein prays for judgment as follows:

- 14 1. For compensatory damages in an amount to be proven at trial;
15 2. On the Second, Third, and Fifth Causes of Action, for punitive or exemplary
16 damages in an amount to be proven at trial;
17 3. For prejudgment interest in the greatest amount permitted by law;
18 4. For all recoverable costs of suit herein, including attorney fees; and
19 5. For such additional or further relief as the Court deems just and proper.

20 Respectfully submitted,

21
22 Dated: October 18, 2021

MARKUN ZUSMAN FRENIERE & COMPTON LLP

23
24
25 By: 

26 Steven M. Goldberg

27 *Attorney for Plaintiff GORDON KLEIN*
28