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

GORDON KLEIN,
Plaintiff,
 v.
 ANTONIO BERNARDO; THE REGENTS
 OF THE UNIVERSITY OF CALIFORNIA;
 and DOES 1 through 25,
Defendants.

Case No. **21SMCV01577**
COMPLAINT FOR:
 1. **BREACH OF CONTRACT;**
 2. **VIOLATION OF RIGHT TO
 PRIVACY BY PUBLIC DISCLOSURE
 OF PRIVATE FACTS;**
 3. **VIOLATION OF RIGHT TO
 PRIVACY BY PLACING PLAINTIFF
 IN A FALSE LIGHT;**
 4. **RETALIATORY DISCRIMINATION
 IN VIOLATION OF LABOR CODE
 § 1102.5(c);**
 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, The Regents
2 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 grade
9 his “Black classmates” differently than other students. Plaintiff rejected this request, knowing that
10 his employment contract – and California law – required him to apply the same grading standards
11 and requirements to all students. He also refused because his faculty supervisor recently had
12 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”), where Plaintiff teaches.
16 The Anderson School hastily buckled under this pressure and sought permission from the University
17 to impose disciplinary sanctions on Plaintiff, including terminating his employment.¹ But, as noted
18 below, the University rebuffed the Anderson School, warning that “the School may not take any
19 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 (“Student”). Dean Bernardo even went so far as to publicly disclose the adverse
5 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 official
22 name of the public corporation that governs and operates the University of California as a public
23 trust through its 26-member Board of Regents. UCLA is one of the campuses of the University
24 of California system, and is located in Los Angeles County, California. The Anderson School is a
25 division of UCLA. All of the conduct herein alleged on the part of agents and officials of the

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

1 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 amend
5 this complaint when the true names and capacities of said Defendants are ascertained. Plaintiff is
6 informed and believes, and on that basis alleges, that each fictitiously named Defendant in some
7 manner caused, contributed to, committed, or otherwise is responsible for the acts or omissions
8 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 alleges,
13 that each Defendant colluded in and rendered substantial assistance in the accomplishment of the
14 wrongdoing herein alleged, or primarily committed the wrongdoing. In taking actions to aid, abet,
15 or substantially assist the wrongdoing herein alleged, or to commit the primary wrongdoing, all
16 Defendants acted with an awareness of the primary wrongdoing, realized that their conduct would
17 substantially assist the accomplishment of that wrongdoing, and were aware of their overall
18 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 Eastern
14 Europe decades ago.

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

22 \\\

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

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

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

2 18. Plaintiff historically has taught live classes at UCLA. However, when the world was
3 beset by the COVID-19 pandemic (“Pandemic”) in early 2020, UCLA, including the Anderson
4 School, hurriedly implemented an online-only structure for both classwork and exam administration
5 for its Spring 2020 academic quarter. This resulted in Plaintiff conducting his classes using
6 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 others
8 initiated a coordinated email campaign for the claimed purpose of encouraging UCLA instructors to
9 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 that
12 “exercise compassion and leniency with Black students.” In particular, according to the Student, an
13 objective of this template was to encourage professors to give only black students optional,
14 “no-harm” final exams. A “no-harm” exam is a test whose score is counted as part of a student’s
15 course grade only if it raises the student’s overall blended course average, but not if it diminishes
16 it.⁶ Students who take an exam on a “no-harm” basis thus tend to receive higher course grades than
17 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 they
23 asked questions by email or during group video “office hours.” Also, Plaintiff shifted to issuing
24 course grades based entirely on students’ final exam performance. Despite the Pandemic and the
25 shift to online instruction, on or about March 16, 2020, the UCLA Academic Senate issued a
26 “Message to Faculty” emphasizing that faculty must continue to adhere to longstanding UCLA
grading policies. As reflected in the Employment Agreement, these policies require instructors to
apply course standards equally and evaluate students solely based on merit.

27 ⁶ Because a score of zero on a “no-harm” exam is excluded from a student’s overall course
28 average, taking the exam effectively becomes optional. The Student’s email to Plaintiff confirms
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 recalcitrant
4 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 cancellations."
9 That is, according to the University's investigation, Caskey "advised faculty not to make exam-
10 related adjustments" or grant "accommodations on the basis of race, protests, or police brutality."

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

18 24. Plaintiff's faculty colleague further told him on that occasion that, rather than resist
19 this pressure campaign, many professors were giving away unearned "A" grades like "free candy at
20 Halloween." Plaintiff, upon his examination of the online collaborative spreadsheet posted by
21 the students, noted that after one professor announced in writing that he would "award EVERY
22 STUDENT AN A in the class regardless of performance" due to "the current climate of the country,"
23 this professor was hailed by online participants as an "absolute gem" who "deserves a raise."

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25
26 ⁷ The online campaign instructed students how to "pressure [professors] to make more
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 Other professors similarly received praise.⁹

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

7 26. On June 2, 2020, Plaintiff received from Student the following “copy and paste” email
8 mirroring the foregoing template:

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

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

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

21 In light of these traumas, we have been placed in a position where we must choose
22 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.

23 As of today, May 31st, a petition drafted *yesterday* by the Afrikan Student Union at
24 UCLA to adjust final exams has received **10.5k** signatures. Although we greatly
appreciate the email we received from you about anti-racist resources, the voices of

25
26 ⁹ For instance, students in a pre-med Life Sciences course celebrated receiving “perfect scores”
27 on a test they never even took, proclaiming: “We did it boys, [Life Sciences] is evil no more.”
28 Yet another instructor boldly announced in writing to his History class that “you will not be 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 the student body demand action within our academic environment, and we should be
2 grateful to hear from you regarding the ways our department will respond.

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

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

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

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

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

26 Also, do you have any idea if any students are from Minneapolis? I assume that they
27 probably are especially devastated as well. I am thinking that a white student from
28 there might possibly be even more devastated by this, especially because some might
29 think that they’re racist even if they are not. My TA is from Minneapolis, so if you
30 don’t know, I can probably ask her.

31 Can you guide me on how I should achieve a “no-harm” outcome since our sole course
32 grade is from a final exam only?

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

1 One last thing strikes me: Remember that MLK famously said that people should not
2 be evaluated based on the “color of their skin.” Do you think that your request would
run afoul of MLK’s admonition?

3 28. The Student told a University investigator that Plaintiff had “responded with a series
4 of ‘rhetorical questions’” The investigator also acknowledged that, because the Student and
5 Plaintiff “had a relationship . . . from a prior class,” Plaintiff “may have felt more comfortable
6 responding less formally both in tone and substance.”

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

8 I apologize if any of this seemed offensive, but I was just trying to raise awareness
9 about any institutional factors that may be affecting the people in our community.
10 I meant this in no way shape or form as an email to discredit what you have done for
11 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.

12 Again, I apologize if it seemed like I was asking you to give preferential treatment to
13 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,
14 we could choose to have this conversation or simply omit it.

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

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

22 31. Although UCLA has argued that the Student posed “reasonable exam administration
23 inquiries,” in reality, the Student’s request was exceedingly unreasonable and, indeed, unworkable.
24 For instance, offering black students “no-harm” exams effectively would give them the option to
25 not take the final exam in a class where final exam performance was the *entire* basis for their course
26 grade, leaving an instructor without *any* data on which to base course grades. Moreover, adoption
27 of the Student’s request would have imposed on Plaintiff the unseemly and cumbersome task of
28 determining which students studying remotely were black. Thus, UCLA more appropriately should

1 have characterized the Student’s proposal as unadministrable, inequitable, invariably illegal,
2 demeaning to students, and egregious racial profiling, not as “reasonable.”

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

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

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

21 35. During the late afternoon of June 2, 2020, Bernardo sent Plaintiff an email requesting
22 that Plaintiff call him, presumably to discuss these complaints. When Plaintiff called Bernardo that
23 evening as requested, Bernardo tersely informed him in a roughly one-minute call that Bernardo was
24 referring Plaintiff to the “DPO” (*i.e.*, the UCLA Discrimination Prevention Office). Bernardo then
25 abruptly hung up the phone before Plaintiff could respond. Plaintiff tried to call Bernardo back a
26 few minutes later, but Bernardo did not answer.

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

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

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

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

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

21 Again, the Anderson School claimed to have been “upset and offended” and “deeply disturb[ed]”
22 by a private email dialogue between others even though the Student who had initiated and
23 participated in that dialogue distinctly *was not*. Thus, the School doubled down on creating the false
24 impression that Plaintiff did not adhere to the School’s core principles.

25 39. During the same early morning hours on June 3, 2020, the Anderson School urgently
26 requested permission from the University to suspend and ultimately terminate Plaintiff’s
27 employment. In an email to the UCLA Campus Human Resources department, an Anderson School
28 administrator stated: “URGENT ISSUE . . . There is currently a change.org petition with 12,000

1 signatures. We need to remove [Plaintiff] from the remainder of the quarter. . . . What disciplinary
2 actions can we take? This may very well impact his reappointment following this current academic
3 year. How do we proceed with this?”

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

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

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

23 Dear UCLA Anderson Community:

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

26 Providing a safe, respectful and equitable environment in which students can
27 effectively learn is fundamental to UCLA’s mission. We share common principles
28 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.

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

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

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

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

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

15 Best,

16 Antonio Bernardo
17 Dean and John E. Anderson Chair in Management

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

26 44. Additionally, the above email created the false impression that Plaintiff was not
27 committed to an equitable learning environment, that Plaintiff had demonstrated a disregard for the
28 "core principle" of equal treatment for all, and that Plaintiff had engaged in an "abuse of power."
None of this was even remotely true.

45. Furthermore, the above email notably failed to mention that the Student had sent
Plaintiff a form letter requesting race-based grading, that such a policy would be improper, or that
the Student had apologized to Plaintiff. Moreover, the email did not mention that the Email
Exchange reflected Plaintiff's commitment to equitable learning, integrity, excellence,

1 accountability, respect and service.

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

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

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

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

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

25 Here again, the University recklessly attacked Plaintiff, casting Plaintiff as not being committed to
26 “inclusivity, diversity, respect and equity.” This was false and totally inconsistent with the tenor
27 and substance of the Email Exchange. Like Bernardo’s communications, this School message
28 wrongfully implied that Plaintiff had acted improperly and was not committed to UCLA’s core

1 values when in fact Plaintiff had demonstrated his commitment to UCLA’s values in the Email
2 Exchange. And like the other emails mentioned above, this email omitted any details about the
3 Email Exchange, thereby creating a false impression about the participants’ dialogue.

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

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

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

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

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

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

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

Defendants’ decision to mention Plaintiff by name adjacent to the next sentence that the Anderson
School “as a Community . . . reject[s] racism and violence” falsely cast Plaintiff as being guilty of

1 “racism and violence.” Moreover, the email failed to mention that “Gordon Klein’s actions”
2 *opposed* a proposal for a discriminatory, race-based, divisive, preferential grading scheme. In short,
3 Plaintiff’s actions reinforced, rather than abandoned, “basic values and principles” of the UCLA
4 community.

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

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

16 53. In or about the period June 5 through June 10, 2020, in an effort to stem the onslaught
17 of negative publicity that was being ginned up by Defendants, Plaintiff participated in media
18 interviews that were widely published on television, traditional print media, and online. In these
19 interviews, Plaintiff criticized Bernardo for having served him up as a “sacrificial lamb” in
20 furtherance of the Anderson School’s public relations efforts to rehabilitate its longstanding
21 reputation as an institution that is riddled with bias based on race, ethnicity, and gender, according
22 to an official School document. Plaintiff also specifically mentioned that there is only one black
23 professor with tenure at the Anderson School, and none have been granted tenure in several
24 decades.¹¹

25 54. On or about June 11, 2020, in apparent retaliation for Plaintiff having spoken out
26 publicly, Defendants hired other faculty members to replace Plaintiff as the instructor of Summer
27

28 ¹¹ See “Anderson Grad School of Mgmt,” <https://equity.ucla.edu/data-hub/senate-faculty-diversity/>.

1 2020 academic quarter classes for which Plaintiff previously had executed supplemental contracts.
2 By doing so, the Anderson School administration again defied the University’s directive that “[t]he
3 School cannot take any action against [Plaintiff’s] appointment.” Bernardo also appointed an
4 administrator at the Anderson School, Caskey, to monitor and censor Plaintiff’s outbound emails.

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

11 56. On Sunday, June 21, 2020, Bernardo on behalf of the Anderson School suddenly
12 and without prior discussion sent the following notice to Plaintiff: “This letter is to inform you that
13 your paid administrative leave will end today, June 21, 2020. You are therefore expected to
14 commence teaching . . . [tomorrow] on June 22, 2020” Thus, despite having previously
15 communicated to Plaintiff that he would not be teaching during the Summer 2020 quarter,
16 Defendants abruptly – *i.e.*, without providing Plaintiff with advance notice or the availability of
17 necessary technology support personnel – informed Plaintiff on Father’s Day Sunday that he was
18 required to commence teaching Summer Session courses the following day. Despite this
19 discourteous treatment, and consistent with his longstanding dedication to UCLA, Plaintiff altered
20 his plans on this family holiday to do the best he could to comply with Defendants’ demand.

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

24 Dear Anderson Community:

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

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

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

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

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

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

26 Fourth, we must protect due process through our administrative procedures to ensure fair
27 and equitable treatment of all. When there are allegations of misconduct, all institutions,
28 including the University, must have clear, consistent procedures to find the facts, decide
where they violate norms, and provide avenues for appeal. This is how the rule of law
plays out in a University. It takes time, but it protects the interests of all. In some
instances that means immediate action cannot be taken, or may mean that certain
measures can only be implemented on a short-term basis even if the administrative
process continues. We must all be patient and allow the process to play out.

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

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

Best,

Antonio Bernardo
Dean and John E. Anderson Chair in Management

1 58. This Father’s Day Sunday email to the “Anderson Community” was highly false and
2 misleading because Bernardo omitted the fact that about one hour earlier *he personally had*
3 *reinstated* Plaintiff to resume full classroom duties. Such an oversight invariably was intentional
4 and malicious. Moreover, in addition to this glaring omission, Bernardo inaccurately implied that:
5 (i) the administrative “process” against Plaintiff was continuing even though Plaintiff had been
6 reinstated; (ii) he was privy to negative “details” about Plaintiff but was precluded from disclosing
7 them because of “the privacy rights of all employees”; (iii) Plaintiff ultimately would be
8 appropriately punished after the process had “play[ed] out”; (iv) Plaintiff had engaged in “bad
9 teaching”; and (v) Plaintiff exemplified “systemic issues” of “bias and inequality in our community
10 and within our school.”

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

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

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

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

 In response to a recent controversy surrounding an e-mail reply to a student by Gordon
Klein (a Lecturer in Accounting at the Anderson School), the UCLA Senate
Committee on Academic Freedom underlines all instructors’ freedom (protected by

1 APM-010) to express their views on grading policy as they determine to be
2 appropriate.

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

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

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

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

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

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

38 \\\

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

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

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

12 66. As a proximate result of Defendants’ unlawful conduct herein alleged, Plaintiff began
13 losing clients of the Expert Witness Practice immediately following media reports in June 2020
14 of these actions and events. Media reports intensified after Defendants publicized the Confidential
15 Personnel Action and undertook public attacks against Plaintiff. For example, on or about
16 June 3, 2020, Plaintiff was interviewed for an expert witness engagement by lawyers from one of
17 the premier law firm clients of the Expert Witness Practice, following which the attorney and client
18 immediately agreed to retain Plaintiff. That day, an intermediary who arranged for the interview
19 emailed Plaintiff stating: “Gordon, good news! [The attorney and client] would like to retain you
20 for the [] case.” A few days later, however, after Defendants’ unlawful public disclosure of the
21 Confidential Personnel Action had been widely reported by the media, Plaintiff’s engagement
22 on the case was terminated. Plaintiff has not received any further work from this premier client.
23 In addition, the intermediary with whom Plaintiff had a longstanding business relationship modified
24 its website to eliminate any mention of its association with Plaintiff, and its marketing head has
25 ceased all communications with Plaintiff.

26 67. Similarly, also on or about June 3, 2020, another longstanding elite law firm client of
27 the Expert Witness Practice suddenly terminated Plaintiff’s existing engagement on a major antitrust
28 case. This client even refused to pay an invoice that Plaintiff previously had transmitted for past

1 services rendered regarding this ongoing case.

2 68. Simply put, the Expert Witness Practice largely dried up as a proximate result of
3 Defendants' unlawful conduct herein alleged.

4 **D. Defendants' Retaliatory Denial Of Plaintiff's Merit Pay Raise**

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

9 70. On or about May 4, 2021, consistent with UCLA policy, Plaintiff submitted to the
10 University a detailed written objection to the involvement of Caskey, among others, with the
11 faculty committee designated to evaluate Plaintiff's merit pay raise for the Academic Year Ending
12 June 2022 ("Staffing Committee"). Notwithstanding Plaintiff's objection to Caskey's involvement,
13 however, the Staffing Committee, in conjunction with the Anderson School, subsequently
14 participated in a written report ("Staffing Committee Memorandum") that unanimously
15 recommended against Plaintiff's merit pay raise, expressly stating that "tremendous weight" had
16 been placed on Caskey's opposition.

17 71. Despite its negative recommendation, the Staffing Committee Memorandum admitted
18 that "the majority of comments is [*sic*] strongly positive":

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

23 72. Perhaps this anomaly is explained by the Staffing Committee's subtle injecting
24 of Plaintiff's stated opposition to the Anderson School's required submission of a so-called
25 "Equity, Diversity, and Inclusion Statement": "The committee felt they were not in a position to
26 discuss Mr. Klein's contributions to equity, diversity and inclusion"

27 73. On or before September 1, 2021, the University ratified the Staffing Committee's
28 recommended denial of Plaintiff's merit pay raise. Given the decades of consistently positive merit

1 reviews and merit pay raises enjoyed by Plaintiff throughout his tenure at UCLA, it is clear that
2 the University's denial on this particular occasion was in retaliation for the actions and events
3 alleged herein.

4
5 **FIRST CAUSE OF ACTION**

6 *(For Breach Of Contract*

7 *Against The UC Regents and Does 1-25)*

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

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

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

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

- 19 • Failing to maintain confidentiality in personnel matters including investigation
20 and discipline, as evidenced by their unwarranted, unnecessary, and unlawful
21 public disclosure of the Confidential Personnel Action;
- 22 • Failing to communicate the reason for the Confidential Personnel Action to
23 Plaintiff, a NSF, as soon as possible (or ever);
- 24 • Failing to timely and properly respond to the grievance filed by Plaintiff
25 pursuant to the Employment Agreement;
- 26 • Failing to honor Plaintiff's contractual right to academic freedom by failing to
27 maintain an environment in which the free inquiry and exchange of ideas
28 flourish, failing to allow Plaintiff to present controversial issues and enjoy

1 constitutionally protected freedom of expression, and failing to honor Plaintiff's
2 right to freely address any matter or action of institutional policy when acting as
3 a member of the faculty;

- 4 • Acting unlawfully and pretextually with regard to Plaintiff; and
- 5 • Failing to treat Plaintiff fairly and in good faith by depriving Plaintiff of the
6 benefits of the Employment Agreement and by failing to do everything the
7 Employment Agreement presupposed that UCLA would do to accomplish its
8 purpose.

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

11
12 **SECOND CAUSE OF ACTION**

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

14 *By Public Disclosure Of Private Facts*

15 *Against All Defendants)*

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

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

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

22 81. This expansive right to privacy is further recognized, among other places, by Section
23 1798.1 of the California Civil Code, which states:

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

27 82. Section 160 of UCLA's Academic Personnel Manual and UCLA Policy 603, which
28 are incorporated into the Employment Agreement and otherwise govern Plaintiff's employment by

1 UCLA, protect academic employees from unwarranted invasion of their personal privacy and
2 support the principle of securing to individuals their fundamental right of privacy. In addition, in
3 his June 21, 2020 publication to the Anderson School Community, Bernardo himself recognized
4 UCLA’s obligation to “protect the privacy rights of all employees.”

5 83. The Confidential Personnel Action was a private fact pertaining to Plaintiff which
6 was, at the time of its widespread publication by Defendants as herein alleged, outside the realm of
7 legitimate public interest or concern. Among other things, the Confidential Personnel Action was a
8 short-term paid leave initiated prior to any investigation, prior to any discussion with Plaintiff, and
9 prior to a thorough understanding of the pertinent facts. Just over two weeks later, Plaintiff was
10 completely exonerated by UCLA and returned to his active teaching status. Unfortunately, however,
11 by that time, the extreme harm to Plaintiff resulting from public disclosure of the Confidential
12 Personnel Action had irrevocably occurred.

13 84. Indeed, irrespective of their own views about Plaintiff’s very brief interaction with
14 the Student – and any arguable right to publicize those views – the Defendants had no legitimate
15 reason concurrently to disclose the Confidential Personnel Action publicly. Rather, Defendants
16 publicly disclosed the Confidential Personnel Action maliciously, with the deliberate and specific
17 intent to harm Plaintiff in order to buttress the appearance that the Anderson School was committed
18 to its Equity, Diversity, and Inclusion agenda and tethered to social justice issues even though its
19 track record with regard to advancing the interests of black Americans was lacking. In effect,
20 Bernardo also sought to use public punishment of Plaintiff through disclosure of the Confidential
21 Personnel Action to achieve his marketing goal of rehabilitating the Anderson School’s existing
22 reputation as an educational institution riddled with race and gender bias. And Bernardo wanted to
23 placate the online mob that loudly and angrily was demanding Plaintiff’s proverbial head.

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

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

28 87. Defendants are guilty of fraud, oppression, and/or malice for having engaged in the

1 unlawful conduct herein alleged. Accordingly, Plaintiff is entitled to recover punitive damages for
2 the sake of example and by way of punishing Defendants for their unlawful conduct in an amount
3 to be proven at trial.

4
5 **THIRD CAUSE OF ACTION**

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

7 ***By Placing Plaintiff In A False Light***

8 ***Against All Defendants)***

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

11 89. Defendants' acts herein alleged cast Plaintiff in a false light that would be highly
12 offensive to a reasonable person. Among other things, Defendants created the false impression that
13 Plaintiff had engaged in troubling conduct and an abuse of power, that Plaintiff was not committed
14 to the core values of UCLA, including diversity, equality, a safe and respectful learning
15 environment, excellence, integrity, accountability, and effective learning, and that Plaintiff is a
16 racist. In multiple communications that Defendants cast Plaintiff in a false light, including
17 widespread public disclosure of the Confidential Personnel Action, Defendants never disclosed that
18 the Student had asked for race-based grading, had apologized, and was not offended by the
19 communications with Plaintiff. Plaintiff is not a racist, and nothing he ever has said or done even
20 remotely evidences that he is. He is steadfastly committed to the core principles of UCLA, which
21 includes creating a safe, respectful, fair, and equitable learning environment. He is also committed
22 to a truly diverse learning environment that is predicated on equality and fairness to all students,
23 regardless of race, ethnicity, gender or sexual orientation.

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

26 91. Defendants knew or negligently failed to determine that their actions and
27 communications about Plaintiff herein alleged would create the false impression that Plaintiff is a
28 racist (among other negative mischaracterizations). If Plaintiff is deemed to have been a public

1 figure at the time of the events herein alleged, which Plaintiff denies, then Defendants acted with
2 both malice and reckless disregard for the risk that their actions and communications herein alleged
3 would create this false impression about Plaintiff.

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

6 93. Defendants are guilty of fraud, oppression, and/or malice for having engaged in the
7 unlawful conduct herein alleged. Accordingly, Plaintiff is entitled to recover punitive damages for
8 the sake of example and by way of punishing Defendants for their unlawful conduct in an amount
9 to be proven at trial.

10
11 **FOURTH CAUSE OF ACTION**

12 ***(For Retaliatory Discrimination***

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

14 ***Against All Defendants)***

15 94. Plaintiff realleges and incorporates herein by this reference each of the allegations in
16 Paragraphs 1 through 93, inclusive.

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

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

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

25 The State shall not discriminate against, or grant preferential treatment to, any
26 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.

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

1 98. Defendants have retaliated against Plaintiff for refusing to discriminate or grant
2 preferential treatment to students on the basis of race during the Spring 2020 academic quarter, and
3 instead challenging the Student’s request that Plaintiff do so. Defendants implemented this
4 retaliation by publicly attacking Plaintiff for having challenged the Student’s request that he
5 discriminate and give preferential treatment to students on the basis of race; by placing Plaintiff on
6 administrative leave and relieving Plaintiff of his teaching duties in bad faith without any legal basis
7 and prior to a thorough investigation; by widely publicizing the Confidential Personnel Action;
8 by designating an administrator to monitor and censor Plaintiff’s outbound emails; and by denying
9 Plaintiff a merit pay raise for the Academic Year Ending June 2022, among other actions.

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

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

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

18
19 **FIFTH CAUSE OF ACTION**

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

21 ***Against All Defendants)***

22 102. Plaintiff realleges and incorporates herein by this reference each of the allegations in
23 Paragraphs 1 through 101, inclusive.

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

1 marital status, sexual orientation, citizenship, primary language, or immigration status are entitled
2 to the full and equal accommodations, advantages, facilities, privileges, or services in all business
3 establishments of every kind whatsoever.” And it is reflected in the policies, bylaws, standing
4 orders, and procedures of the University of California, including as incorporated into the
5 Employment Agreement.

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

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

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

22
23 **SIXTH CAUSE OF ACTION**

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

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

28 108. Prior to the events and actions alleged herein, the Expert Witness Practice had both

1 established and prospective law firm, corporate, and other clients (“Clients”) that generated
2 substantial future economic benefits to Plaintiff.

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

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

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

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

17
18 **SEVENTH CAUSE OF ACTION**

19 ***(For Breach Of Employer’s Statutory Duty Of Political Neutrality***

20 ***Against the UC Regents and Does 1-25)***

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

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

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

27 115. Defendants attempted to coerce Plaintiff to accede to their ideological orthodoxy by
28 means of threat of loss of employment when they publicly attacked Plaintiff for having challenged

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

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

12
13 **PRAYER FOR RELIEF**

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

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

21 Respectfully submitted,

22 Dated: September 27, 2021

23 **MARKUN ZUSMAN FRENIERE & COMPTON LLP**

24
25 By: 

26 Steven M. Goldberg
27 David S. Markun

28 *Attorneys for Plaintiff GORDON KLEIN*