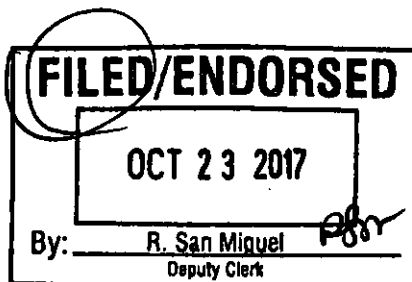


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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **IN AND FOR THE COUNTY OF SACRAMENTO**

13 ISHWARAL JIALAL, M.D., Ph.D.

14 Plaintiff,

15 vs.

16 REGENTS OF THE UNIVERSITY OF
 17 CALIFORNIA; and DOES 1 through 20,
 18 inclusive,

19 Defendants.

Case No. 34-2016-00197227

**FIRST AMENDED COMPLAINT FOR
 INJUNCTIVE RELIEF & DAMAGES**

20 ISHWARAL JIALAL, M.D., Ph.D. (hereinafter "Plaintiff") alleges as follows:

PARTIES

21 1. At all times referenced herein, Plaintiff was a resident of the County of Yolo, State of
 22 California, and was employed by Defendant THE REGENTS OF THE UNIVERSITY OF
 23 CALIFORNIA ("Defendant") as a tenured professor of the University of California, Davis Medical
 24 School located in Sacramento, California.

25 2. Defendant constitutes the governing board of the University of California. Under
 26 California law, Defendant is the real party in interest for all purposes in all legal actions involving the
 27 University system.
 28

1 3. Plaintiff is unaware of the true names and capacities of the individual defendants sued as
2 "Does" 1 through 20, and, therefore, sue these defendants by such fictitious names. Plaintiff is informed
3 and believes, and therefore alleges, that defendants herein designated as "Does" are legally responsible
4 in some manner for the events and happenings referred to which caused the injuries to Plaintiff for
5 which Plaintiff now seeks damages.

6 4. Plaintiff will amend his Complaint to allege the true names and capacities of these DOE
7 defendants when ascertained. Plaintiff is informed and believes, and therefore alleges, that at all times
8 referenced defendants were the agents, servants, employees and/or joint ventures of the other defendants
9 and were, as such, at all times referenced acting within the scope, course and authority of their agency,
10 employment, and/or joint venture. Plaintiff is further informed and believes and, therefore alleges, that
11 each of the defendants consent to, and ratified, participated in, or authorized the acts of the remaining
12 defendants.

13 **BACKGROUND FACTS**

14 5. Plaintiff holds an M.D. and Ph.D. and specializes in cardiovascular Endocrinology and
15 clinical chemistry and toxicology. Plaintiff has published over 350 original papers with respect to his
16 various research interests, and has received several honors and awards.

17 6. Plaintiff has been employed at UC Davis Medical Center since 2002 as a tenured
18 professor and holder of the Robert E. Stowell endowed chair in Experimental Pathology (2002-2014).

19 7. In 2003, Plaintiff met Dr. Uma Singh and assisted her in obtaining a visa so that she
20 could work in his lab. Dr. Singh came to UC Davis in 2004 and worked as a post-doctoral fellow in
21 Plaintiff's lab.

22 8. In 2008, Plaintiff and Dr. Singh worked on an article for Nutrition Reviews, a publication
23 of John Wiley & Sons, for which Plaintiff served as a contributing editor.

24 9. In April 2012, Nutrition Reviews advised Plaintiff and Dr. Singh that the article they had
25 published would be retracted because Dr. Singh had allegedly plagiarized the work of a deceased
26 researcher.

1 10. Thereafter, on August 14, 2012, Retraction Watch reported that Plaintiff and Singh had
2 retracted their Nutrition Reviews article, noting that Dr. Singh's plagiarism was extensive, copying
3 "many phrases, sentences, and even paragraphs..." from the article of the deceased researcher.

4 11. The retraction and subsequent publicity intensely hurt Plaintiff academically. He was
5 removed as a contributing editor of Nutrition Reviews after the retraction was published and has had a
6 difficult time winning grants from NIH and non-profit organizations. In addition, his speaking
7 engagements at national meetings and other academic institutions have dwindled, his "academic
8 currency" has diminished, and he was removed, without explanation, as a chapter author for the next
9 edition of the Tietz Textbook of Clinical Chemistry.

10 12. In late 2012, the UC Davis Research Compliance and Integrity Unit opened an inquiry
11 into the alleged plagiarism to determine whether research misconduct had occurred.

12 13. On or about March 8, 2013, the Research Compliance and Integrity Unit issued its draft
13 Inquiry Report, in which it exonerated Plaintiff and found Dr. Singh had committed plagiarism by
14 failing to properly attribute material in the Nutrition Reviews publication.

15 14. On May 31, 2013, the Vice Chancellor for Research, Harris Lewin, notified the Vice
16 Provost for Academic Affairs, Maureen Stanton (hereinafter, "Vice Provost Stanton"), that some of
17 Plaintiff's actions during the inquiry process warranted further investigation. In response, Vice Provost
18 Stanton directed Professor Ahmet Palazoglu to investigate the matter.

19 15. On March 14, 2014, Professor Palazoglu found that Plaintiff had breached the
20 confidentiality of the research misconduct inquiry process, attempted to interfere with Dr. Singh's
21 participation in that process, and then retaliated against her by sending a confidential draft inquiry report
22 to her employer.

23 16. On July 23, 2014, Chancellor Linda Kathei proposed discipline consisting of: (a) a six-
24 month suspension without pay; (b) a salary reduction of fifty-percent for one year; and (c) denial of
25 Plaintiff's future emeritus status.

26 17. Pursuant to his rights as an Academic Senate member, Plaintiff required a hearing before
27 the Privilege and Tenure Hearings Subcommittee ("P and T Hearings Subcommittee") concerning
28 Professor Palazoglu's findings and the proposed discipline.

1 18. The P and T Hearings Subcommittee conducted hearings on June 2 and 3, 2015. Both
2 parties were represented by counsel. The P and T Hearings Subcommittee considered three issues: (1)
3 whether Plaintiff violated the Faculty Code of Conduct by breaching the confidentiality of a research
4 misconduct inquiry process; (2) whether Plaintiff violated the Faculty Code of Conduct by attempting to
5 prevent Dr. Singh from cooperating with the Inquiry Committee charged with investigating whether
6 research misconduct occurred; and (3) whether Plaintiff violated the Faculty Code of Conduct by
7 sending the draft inquiry report to Dr. Singh's employer in retaliation against Dr. Singh for her
8 participation in the research misconduct inquiry process.

9 19. On September 25, 2015, the P and T Hearings Subcommittee found that Plaintiff had
10 violated the Faculty Code of Conduct as to issues (1) and (3), but found the evidence was insufficient as
11 to issue (2). The P and T Hearings Subcommittee recommended discipline consisting of a one-year
12 reduction of fifty-perfect in salary and a continuation of mental health treatment. The P and T Hearings
13 Subcommittee also opined that the interests of both Plaintiff and the University would be best served if
14 he were to retire sooner rather than later, but provided no concrete suggestions in this regard. Ultimately,
15 the P and T Hearings Subcommittee suggested that the Chancellor consider a significant reduction in
16 sanctions if Plaintiff agreed to retire at the conclusion of the 2015-16 academic year. The P and T
17 Hearings Subcommittee further indicated that Plaintiff should be permitted to maintain his emeritus
18 status following retirement, acknowledging that to deny his status would significantly impair his
19 reputation, which was something of utmost importance to him. For similar reasons, the P and T Hearings
20 Subcommittee indicated it did not recommend a sanction that would include Plaintiff's suspension. the P
21 and T Hearings Subcommittee's recommendations were forwarded to Chancellor Kathei for a final
22 determination.

23 20. On or about November 2, 2015, after Plaintiff lost two of his brothers in South Africa
24 within a six-month period, his physician placed him on a medical leave, reducing his work schedule to
25 50% time. While he was on leave, Plaintiff's work assignment included 30% clinical service and 20%
26 research and/or non-clinical teaching service, working alternate weeks.

27 21. On January 8, 2016, Chancellor Kathei issued a Letter of Censure notifying Plaintiff that
28 she agreed with the P and T Hearings Subcommittee's findings as to issues (1) and (3), but disagreed as

1 to issue (2). Chancellor Katehi's final decision was to impose disciplinary sanctions as follows: (1)
2 suspension without pay for a six-month period, beginning February 1, 2016; (b) a reduction in salary in
3 the amount of fifty-percent of Plaintiff's 2013-14 salary for a period of one year following the
4 suspension; (c) a recommendation to the President to deny future emeritus status; and (d) the issues of a
5 Letter of Censure.

6 22. A copy of Chancellor Katehi's Letter of Censure was sent directly to Plaintiff's
7 department chair, Dr. Lydia Howell, Professor and Chair of the Department of Pathology & Laboratory
8 Medicine ("Chair Howell"), prior to Plaintiff's receipt. Vice Provost Stanton later acknowledged that
9 Chair Howell should not have received a copy of Chancellor Katehi's letter before Plaintiff did. In
10 addition, prior to the time that any sanctions were to be imposed, certain faculty members informed one
11 of Plaintiff's resident students not to go see Plaintiff as scheduled. This understandably caused Plaintiff
12 additional distress, during a time when he was already on a fifty-percent (50%) medical leave. Plaintiff
13 received a copy of the Letter of Censure via email on January 13, 2016.

14 23. On January 21, 2016, Plaintiff sent an email to Vice Provost Stanton regarding various
15 issues raised by the discipline imposed by the Chancellor. First, Plaintiff asked whether Chancellor
16 Katehi was aware that he was on FMLA leave until May 2, 2016, and under what authority the
17 Chancellor purported to implement discipline upon him prior to the expiration of his leave. Second,
18 Plaintiff advised the Vice Provost that he had an active grant with the Institute of Kidney Life-Sciences
19 Technology (IKLT) from Canada that was due to expire in June 2016. Plaintiff informed Vice Provost
20 Stanton that, as a result of the Chancellor's academic suspension, he was being forced to renege on a
21 signed contract, which could have legal ramifications. Third, Plaintiff requested clarification concerning
22 what he could and could not do during the academic suspension as it related to the University. Finally,
23 Plaintiff asked what would happen to his benefits, including life insurance, for the 50% medical leave
24 that was previously approved.

25 24. On January 26, 2016, Plaintiff sent an email to Vice Provost Stanton requesting a meeting
26 to discuss a plan he proposed that would lead to his retirement. In this email, Plaintiff informed the Vice
27 Provost that the Chancellor's findings and discipline had caused his great mental anguish and had
28 exacerbated both his mental and physical conditions. Plaintiff specifically required that the meeting take

1 place before February 1, 2016, which was the date his six-month suspension would otherwise go into
2 effect. Plaintiff also mentioned that he would prefer that no legal representative for the University be
3 present at the meeting.

4 25. On the same day, Vice Provost Stanton responded via email that she would be happy to
5 meet with Plaintiff to hear his proposal. Vice Provost Stanton requested that a staff member other than
6 campus counsel be present in case she needed assistance with any policy questions.

7 26. On January 27, 2016, Plaintiff met with Vice Provost Stanton and Daniel Gray, Director
8 of Academic Employment and Labor Relations ("Gray"). At the meeting, Plaintiff indicated he would
9 like to retire in 18 months.

10 27. On January 28, 2016, Vice Provost Stanton informed Plaintiff that, after consultation
11 with the Chancellor, the University would agree to forgo the imposition of the disciplinary sanction of
12 suspension if Plaintiff would irrevocably resign from his tenured faculty appointment effective June 30,
13 2016, agree to the denial of future emeritus status, and agree to a reduction in salary in the amount of
14 50% of his 2013-14 salary for the period from February 1 through June 30, 2016. Vice Provost Stanton
15 emphasized that the terms of the disciplinary action would remain in place until the parties had signed
16 documents reflecting mutually agreed upon resolution.

17 28. On the same day, Plaintiff responded with a proposal that his tenure last for 12 months,
18 with retirement on January 31, 2017. Plaintiff asked that the Chancellor take into account his mental and
19 physical health, as well as his added financial responsibilities with the recent passing of his two brothers.
20 Vice Provost Stanton responded via email on the same day, stating that the Chancellor would only
21 forego Plaintiff's disciplinary suspension if he agreed to resign irrevocably by June 30, 2016. However,
22 the University was willing to offer Plaintiff the same terms as expressed earlier that day, except that he
23 would not be subject to a pay reduction between now and his resignation of June 30, 2016.

24 29. On January 29, 2016, Plaintiff expressed his deep disappointment to Vice Provost
25 Stanton that the Chancellor would not even allow a part time call back for six months. He further
26 advised the Vice Provost that "It appears [the Chancellor] has boxed me in and has succeeded in forcing
27 me out. Please send the separation agreement to review before I sign it."
28

1 30. On January 29, 2016, at 6:14 p.m., Campus Counsel, Sheila O'Rourke ("O'Rourke"),
2 sent an email to Plaintiff attaching a draft separation agreement to be reviewed by Plaintiff and his
3 counsel.

4 31. On January 30, 2016, before Plaintiff had had an opportunity to respond, O'Rourke sent a
5 second draft of the separation agreement via email, in which she stated minor typographical errors were
6 corrected. O'Rourke advised Plaintiff that the suspension would go into effect on February 1, 2016 and
7 would continue as scheduled until the parties had a signed and final agreement. O'Rourke further
8 indicated that if Plaintiff signed the agreement within five business days, any effects of the suspension
9 would be entirely removed from Plaintiff's record and he would receive all pay due from that time
10 period when the agreement was final. Based on O'Rourke's email, Plaintiff understood that he could
11 only avoid all effects of the suspension if he signed the agreement within five business days. This was
12 demonstrably not very much time to make such a serious decision regarding the remainder of his career.

13 32. On January 31, 2016, Plaintiff informed O'Rourke via email that he was still awaiting a
14 response from his legal counsel. In the meantime, Plaintiff indicated that he had certain issues with the
15 agreement. First, Plaintiff stated that he still believed, as he did when he wrote to President Napolitano
16 on November 5, 2014, that the matter should be arbitrated at a higher level in the UC System. Plaintiff
17 advised O'Rourke that because the proposed separation agreement was between him and the University,
18 it was no even more important that there be involvement above Chancellor Katehi. Second, Plaintiff
19 objected to Paragraph 12 of the draft agreement, which banned him from seeking employment at any
20 other UC Campus. Plaintiff pointed out that he had an appointment at Children's Hospital of Oakland
21 Research Institute, and under the agreement as worded, he would be forced to resign from that
22 appointment. Third, Plaintiff questioned why he had been advised that he only had five days to avoid
23 academic suspension, which the agreement stated that he had 21 days to consider signing the agreement.
24 In his meeting with Vice Provost Stanton and Gray, Plaintiff was told that once the agreement was
25 signed, the academic suspension would be reversed, without any five-day deadline. Plaintiff asked
26 O'Rourke why she was pressuring him when she was well aware that he was on 50% medical leave and
27 pointed out that when he met with Vice Provost Stanton and Gray, he understood a negotiated settlement
28

1 would be fair to both parties. Plaintiff informed O'Rourke that as presently worded, the agreement was
2 "not close to that goal."

3 33. On February 1, 2016, while the terms of the separation agreement were still being
4 negotiated, the University implemented Chancellor Katehis' discipline and the six-month academic
5 suspension went into effect against Plaintiff.

6 34. On February 1, 2016, O'Rourke sent an email to Plaintiff, thanking him for his previous
7 response, and indicating that she believed his concerns would be addressed to the parties' mutual
8 satisfaction. O'Rourke also indicated that since Plaintiff was now represented by counsel, she would
9 contact Plaintiff's counsel regarding the details.

10 35. Later the same day, in response to O'Rourke's email, Plaintiff advised O'Rourke that he
11 had not yet heard from his counsel. Plaintiff reiterated that he would not agree to the clause in Paragraph
12 12 banning his employment at any UC campus, which would negatively impact his appointment at
13 Children's Hospital of Oakland. Additionally, Plaintiff reaffirmed his desire to have a right to recall of
14 six months of 46% effort from July 1, 2016 until December 31, 2016. Plaintiff explained that his
15 rationale was that he had initially requested 18 months, the Chancellor agreed to six months, and he
16 believed that twelve months was a very fair midpoint for relinquishing a tenured position that would
17 allow him to work beyond 65 years after the six-month suspension. Plaintiff concluded by requesting
18 that he be informed that week of the University's intentions because he was in the process of preparing a
19 Writ to Mandate to enforce his rights.

20 36. On February 3, 2016, at 6:17 p.m., Gray sent an email to Plaintiff on behalf of Vice
21 Provost Stanton in response to Plaintiff's emails of January 31 and February 1 to O'Rourke. Gray
22 acknowledged that Plaintiff was still waiting response from his legal counsel, that Plaintiff had issues
23 with the proposed separation agreement but that Plaintiff would prefer to continue negotiations directly.
24 Gray advised Plaintiff that because it is not the University's practice for Campus Counsel to negotiate
25 directly with employees who are represented by counsel, Gray would be communicating with Plaintiff
26 on behalf of Vice Provost Stanton. Gray welcomed Plaintiff to share any such communications with his
27 counsel.
28

1 37. Gray's February 3, 2016 email then addressed the three issues that Plaintiff had raised on
2 January 31, 2016. With respect to Plaintiff's third concern, regarding only having five business days to
3 consider the agreement for receiving full back pay, Gray indicating that although Plaintiff had 21 days to
4 consider signing the agreement, the University's offer of back pay was only to ensure that Plaintiff had
5 adequate time to obtain review by his counsel. Gray advised that although the University felt that five
6 business days was adequate for that purpose, it was willing to provide ten business days as an additional
7 consideration to ensure that Plaintiff was able to receive legal counsel. Gray also promised that at
8 whatever time Plaintiff signed the agreement, the University would provide Plaintiff with up to ten
9 business days of back pay, but no more. Gray then warned that until the date that the executed separation
10 agreement became final, Plaintiff would remain suspended without pay. Lastly, Gray advised that
11 although Plaintiff had 21 days to consider signing the agreement, the University was required to notify
12 the Medical Board of California ("MBC") of any suspension of employment if that suspension exceeded
13 14 days. Gray informed Plaintiff that as a result, if Plaintiff did not sign the agreement reflecting the
14 terms they had discussed on or before February 14, the University would have to inform the MBC,
15 which might have consequences to Plaintiff even if he subsequently signed the agreement.

16 38. On February 11, 2016, Plaintiff received via email a letter dated February 8, 2016, from
17 Chair Howell. In this letter, Chair Howell notified Plaintiff that she intended to change Plaintiff's faculty
18 status to that of a member not in good standing due to the determination that he engaged in faculty
19 misconduct as outlined in the Chancellor's letter of January 8, 2016.

20 39. On February 11, 2016, Plaintiff emailed Gray, informing him that he needed more time to
21 secure a position before signing the agreement. Plaintiff indicated that if he secured a position before the
22 expiration of the 21-day period, he would sign the agreement. However, Plaintiff noted that he thought it
23 was more realistic that he be allowed 60 days. Plaintiff also protested that while the P and T Hearings
24 Subcommittee recommended that he maintain his emeritus status under any arrangement and
25 recommended against a suspension, Chancellor Katehi had completely disregarded these
26 recommendations in imposing discipline against him.

27 40. On February 12, 2016, Gray advised Plaintiff that the University would not agree to any
28 modification of the terms set forth in the proposed settlement and separation agreement provided to

1 Plaintiff on February 3, 2016. In other words, Plaintiff had 21 days to consider whether to agree to the
2 terms, and no more, until February 24, 2016. Additionally, if Plaintiff wanted to avoid having his
3 suspension reported to the MBC, he would have to sign the agreement by February 14, 2016, two days
4 later.

5 41. On or around February 19, 2016, the University submitted an "805 Report" and
6 Addendum to the MBC, advising it of Plaintiff's six-month suspension, effective February 1, 2016.

7 42. On February 23, 2016, Plaintiff emailed Gray and asked whether there would be any
8 more room for negotiations beyond the deadline of February 24, 2016.

9 43. On February 24, 2016, the last day by which Plaintiff could sign the agreement, Gray
10 informed Plaintiff via email that the proposed separation agreement was the Chancellor's final offer and
11 that the University was not obligated to honor the terms of the proposed separation agreement beyond
12 that day. Notwithstanding this, Gray indicated that if it would be helpful for Plaintiff to have another
13 week or so to consider the proposal, Plaintiff should let Gray know by the end of the day.

14 44. On February 24, 2016, Plaintiff signed the separation agreement and returned it via email
15 to Gray. In the body of his email, Plaintiff wrote in part, "I send you this signed agreement with a heavy
16 heart because I still cannot comprehend why such harsh and Draconian sanctions were imposed on me."

17 45. On February 26, 2016, Gray sent Plaintiff an email with an attached separation
18 agreement, now containing signatures by the Dean and General Counsel. Gray advised that the
19 agreement would become effective seven days after Plaintiff's signature, which would be March 2,
20 2016. Gray also indicated that for this reason, Plaintiff would not receive any pay on March 1 for the
21 month of February, but promised that the University would work quickly to pay Plaintiff for the period
22 of February 9 through February 29 as soon as possible, after March 2, 2016. This was the first time
23 Plaintiff was told his February salary would not be paid on time.

24 46. In a response email on the same day, Plaintiff reminded Gray that based on the language
25 of the separation agreement; Plaintiff was expecting to receive full compensation and benefits for the
26 month of February. Plaintiff also complained about O'Rourke's "quasi-coercive tactic" of imposing a
27 five-day deadline to sign the settlement agreement, which was never a part of the discussions Plaintiff
28 had with Gray and Vice Provost Stanton. Plaintiff also indicated he was concerned about the

1 University's attempt to deny him promised compensation because he had expenses such as a mortgage,
2 car payments and college tuition fees to take care of. Gray responded three days later, indicating that the
3 University would work quickly to pay him for the month of February as soon as possible after the March
4 2nd effective date of the separation agreement.

5 47. On February 29, 2016, Plaintiff sent an email to the Director of Medical Staff
6 Administration, Leslie Towns Navarra ("Navarra), acknowledging receipt of a copy of Navarra's
7 February 19, 2016 letter to the MBC with respect to the imposition of summary suspension of
8 employment. Plaintiff requested that the University issue a corrected response to the MBC as soon as
9 possible, because otherwise, he was misled to believe that his suspension would be lifted after he signed
10 the agreement. Plaintiff also mentioned that he still had until the following day to withdraw the
11 negotiated settlement, if this is how the University continued to proceed. Later that same day, Navarra
12 responded and indicated she was aware of the negotiated settlement. Navarra told Plaintiff that a
13 supplemental 805 report reflecting the new information would be filed shortly with the MBC, and that
14 he would receive a copy as soon as it was prepared.

15 48. On March 1, 2016, Plaintiff sent an email to Gray, in which he wrote, "Since you are not
16 answering my questions about my February salary I plan to reverse my decision with respect to the
17 agreement. I need to get a signed letter stating that by 5:00 p.m. [t]oday." Gray responded within a
18 couple of hours, confirming that the University would pay Plaintiff for the entire month of February, so
19 long as he did not revoke the agreement.

20 49. On March 3, 2016, Plaintiff sent a subsequent email to Gray, in which he again expressed
21 his intention to revoke his agreement with the University. In his email, Plaintiff stated he was "troubled
22 that [he] was held to such a high standard of ethics and conduct whilst recent events concerning UC
23 leadership, which refused to engage in a fair negotiated settlement, is very disturbing and leaves a
24 chilling effect on me." Plaintiff also thanked Gray for "affording me with the extra time in this previous
25 email to seriously consider my decision." Plaintiff was referring to Gray's February 24, 2016 email in
26 which he offered to give Plaintiff another week or so to consider this proposal.

27 50. In a reply email, Gray informed Plaintiff that the deadline for him to revoke according to
28 the terms of the agreement was seven days after Plaintiff signed the agreement, or close of business on

1 March 2. Gray also advised that Plaintiff's paycheck for the month of February was being generated and
2 would be available for him to pick up the following week. Additionally, Gray stated that the University
3 would be sending a Supplemental 805 Report informing the MBC that Plaintiff's suspension was
4 terminated and that Plaintiff returned to active status as of February 25th. In response, Plaintiff reminded
5 Gray that he had offered Plaintiff a few weeks if needed. Plaintiff indicated he had signed the agreement
6 with the understanding that this was an amicable relationship and there was thus room for him to grapple
7 with the exceedingly difficult but reversible decision. Plaintiff also pointed out that the University had
8 not kept to its side of the agreement, in that it delayed payment of his February 2016 salary, and
9 reiterated that the matter needed to be arbitrated by the President's office. Plaintiff also again reminded
10 Gray that he was on the 50% medical leave and only working alternative weeks until May 1st.

11 51. Later that evening, March 3, 2016, Plaintiff learned that Chancellor Katehi had received
12 \$420,000 as a Board Member of John Wiley & Sons for her service from 2012 to 2014. Plaintiff was
13 shocked by this information. This critical information was never disclosed by the University at any time
14 during the proceedings in Plaintiff's matter, nor did Chancellor Katehi reveal this conflict of interest
15 with respect to her imposition of discipline on Plaintiff.

16 52. On March 3, 2016, at 11:51 p.m., Plaintiff sent an email with various documents attached
17 to Vice-Provost Stanton and the UCOP Vice Provost for Academic Personnel and Programs, Susan
18 Carlson, advising them that he had just learned of the Chancellor's conflict of interest regarding Wiley
19 & sons. Plaintiff asked why the Chancellor had not recused herself from involvement in Plaintiff's
20 sanctions, since her service to John Wiley & Sons as a paid advisor created a blatant conflict of interest.
21 Plaintiff, now more than ever, his disciplinary dispute needed to be reviewed and handled by President
22 Napolitano's office. Plaintiff reiterated the University's finding that he did not commit research
23 misconduct, yet Chancellor Katehi imposed her wrath on him by forcing his exit from UCD. Plaintiff
24 forwarded this email and attached documents directly to President Napolitano on March 4, 2016.

25 53. On March 4, 2016, Plaintiff received an email from Gray, who stated that the University
26 would not agree to set aside the separation agreement. Plaintiff responded on the same day, and
27 reminded Gray that Plaintiff sent an email conveying his plans to revoke the agreement as a result of the
28 University's vacillation regarding his salary for February. Plaintiff also pointed out that he was misled

1 by Gray's statement that he would allow Plaintiff a few weeks additional time to consider. Plaintiff
2 stated that after he saw that email from Gray, Plaintiff signed, believing that it was an amicable and
3 flexible arrangement that could be reversed.

4 54. On March 7, 2016, Gray advised Plaintiff via email that he had a right to file a grievance
5 pursuant to the Academic Senate Bylaw 335 with the Davis Division Academic Senate Privilege and
6 Tenure Investigations Subcommittee ("P and T Investigations Subcommittee"). Gray also advised that
7 Plaintiff's paycheck would be available the following afternoon at the University Services Building in
8 Davis. Gray stated that because the Separation Agreement was executed after the payroll deadline, the
9 University was unable to process an electronic payment for the month of February.

10 55. On March 8, 2016, Plaintiff emailed Gray, pointing out that he had always been paid by
11 electronic deposit, for the past 13-plus years. Additionally, Plaintiff reminded Gray that he should have
12 received 50% salary on March 3rd since he was on 50% medical leave. Plaintiff concluded by stating
13 that, "UC [has] now violated my FMLA."

14 56. On March 15, 2016, Plaintiff forwarded to Rachael Nava, UC's system-wide Locally
15 Designated Officer ("LDO") for receiving compliance complaints, his March 4, 2016 email to President
16 Napolitano, in which he had complained about Chancellor Katehi's conflict of interest.

17 57. On March 18, 2016, Plaintiff emailed Navarra to follow up regarding the supplemental
18 805 report that should already have been sent to the MBC. Plaintiff noted that the delay in doing so was
19 further evidence that the University was reneging on the signed contract. Plaintiff also advised Navarra
20 that due to other violations by the University, Plaintiff had informed Vice Provost Stanton that the
21 negotiated settlement he initiated with her was now null and void.

22 58. On the afternoon of March 18, 2016, Vice Provost sent an email to Plaintiff advising him
23 that the negotiation regarding his disciplinary action had concluded, and that there was a valid signed
24 separation agreement stating that, as of the effective date of the agreement, Plaintiff had irrevocably
25 resigned from his University appointment effective June 30, 2016. Vice Provost Stanton further stated
26 that in exchange for Plaintiff's resignation, the University had lifted the disciplinary suspension that
27 began on February 1, 2016, had returned him to service in his faculty appointment and had restored him
28 to full salary retroactive to February 1. In response, Plaintiff told Vice Provost Stanton he had been

1 coerced and misled by the University, and that the University had not kept to its side of the agreement,
2 having engaged in multiple violations. Plaintiff also pointed out that Vice Provost Stanton had entered
3 into the negotiations with a bias that she did not declare. Accordingly, Plaintiff indicated that this was
4 “far from over.”

5 59. On March 21, 2016, Vice Provost Stanton replied by simply advising Plaintiff of his right
6 to file a grievance pursuant to the Academic Senate Bylaw 335 with the P and T Investigations
7 Subcommittee. Plaintiff replied on the same day, stating that he was deeply disappointed that she failed
8 to see the numerous violations by the University of a negotiated contract that the University had
9 initiated. Plaintiff continued that the most recent example was the cavalier approach by the School of
10 Medicine concerning the restoration of his reputation with the MBC. Not even an hour later, Plaintiff
11 sent a subsequent email to Vice Provost Stanton, in which he made it clear that, “[g]iven the severity of
12 this matter, until my complaint has been ruled on by Academic Senate I consider any agreement null and
13 void[.]”

14 60. On March 21, 2016, Plaintiff also sent an email to P and T Investigations Subcommittee
15 Chair, Nancy Lane, setting forth all of the violations by the University that Vice Provost Stanton had
16 ignored. First, Plaintiff advised that he was not paid his February salary by the imposed due date of
17 March 2, 2016. Second, Plaintiff to date had still not been refunded his check for life and disability
18 coverage for the month of March. Third, when Plaintiff met with Vice Provost Stanton to engage in
19 negotiations, Vice Provost Stanton failed to advise him that she had agreed to testify against Plaintiff at
20 the P and T Hearing, which would have put Plaintiff on notice of a major conflict of interest. Fourth,
21 Gray led Plaintiff to believe that they were engaged in amicable negotiations and that Gray granted
22 Plaintiff a few weeks extra time to consider the agreement, and that in reliance on Gray’s “reassuring
23 email,” Plaintiff had signed the contract. Fifth, the School of Medicine was quick to report Plaintiff’s
24 academic suspension to the MBC, but extremely slow to notify the MBC it reversed the decision, and
25 well beyond the deadline of March 2, 2016. Lastly, Vice Provost Stanton failed to address Plaintiff’s
26 major concern regarding Chancellor Katehi’s conflict of interest as a paid board member of John Wiley
27 & Sons, the publishing company for the journal involved in the dispute underlying Plaintiff’s discipline.
28 Plaintiff pointed out that “The Retraction was published in a Wiley and Sons journal at a time the

1 Chancellor was being paid handsomely as an Advisor, and that the person who was found guilty of the
2 Plagiarism had left UC Davis. The Chancellor was embarrassed by this retraction and scapegoated me
3 with Draconian Sanctions.”

4 61. On March 28, 2016, Plaintiff sent an email to Chancellor Katehi requesting a meeting to
5 discuss the disciplinary sanctions imposed upon him. The following day, Gray responded via email on
6 behalf of Chancellor Katehi, in which Gray told Plaintiff that Chancellor Katehi had no intention of
7 setting aside or renegotiating the separation agreement.

8 62. Later that same day, Plaintiff advised Mr. Gray of another violation by the University,
9 namely, that his retirement benefits had been frozen through February 2016, consistent with the
10 academic suspension. Plaintiff then sent a subsequent email informing Gray that he would not get any
11 credit for the month of March towards his pension, which was not at all consistent with the terms of the
12 separation agreement. In a separate email on the same day, Plaintiff also complained to Gray that the
13 situation constituted a “gross violation and abuse of power.” Plaintiff reiterated that the contract was
14 void and that Vice Provost Stanton ignored the conflict of interest of the Chancellor with John Wiley &
15 Sons concerning the retraction, thereby demonstrating her bias and prejudice.

16 63. On March 30, 2016, Plaintiff received an email from Gray, in which Gray apologized for
17 the “confusion” regarding Plaintiff’s retirement accruals for March. Gray advised Plaintiff that the error
18 was being corrected in Benefits, and Plaintiff would be receiving all appropriate accrual for the
19 remainder of his appointment. Plaintiff replied to Gray’s email, stating that “[o]ver the last several
20 weeks, I have catalogued various violations by UC Davis concerning this agreement,” and advising Gray
21 that he sent a list of these violations to the P and I Investigations Subcommittee Chair Lane. Plaintiff
22 pointed out that “UC Davis holds my feet to the fire, but without regard to the contract has a cavalier
23 approach in reversing the punishments and sanctions imposed on me.” In conclusion, Plaintiff advised
24 Mr. Gray that until the P and T Investigations Subcommittee completed their work, he would not abide
25 by the agreement.

26 64. On April 1, 2016, the Director of Investigations, University of California Office of the
27 President, Will Mallari, Esq. informed Plaintiff that he had received Plaintiff’s complaint concerning
28 Chancellor Katehi’s conflict of interest, as forwarded by Nava on March 14, 2016 and that he hoped to

1 convene an Investigation Workgroup to further assess Plaintiff's complaint pursuant to the UC
2 Whistleblower Policy. As of the date of this complaint, the investigation was still pending.

3 65. On April 3, 2016, Vice Provost Stanton replied to Plaintiff's email and advised Plaintiff
4 of his right to file a grievance with P and I Investigations Subcommittee. Vice Provost Stanton added
5 that the University does consider the separation agreement he signed on February 24, 2016 to be valid.
6 On the same date and in his response to Vice Provost Stanton's email, Plaintiff indicated that until the
7 matter has been ruled upon by the P and I Investigations Subcommittee, he would not adhere to the
8 agreement because he was misled and coerced by the University. Plaintiff concluded by asking that
9 Vice Provost Stanton "[p]lease keep in mind that I am unwell and although I met with you against the
10 advice of legal counsel and conceded a tenured position you and Mr. Gray have not been fair in the
11 negotiations." In an email to Gray on April 4, 2016, Plaintiff pointed out again that the Chancellor had a
12 conflict of interest when she sanctioned him. In a separate email, Plaintiff further stated, "Also, at no
13 stage you or V-P Stanton or the Chancellor consider this was an emotionally charged decision and was a
14 lapse of judgment given my mental state including my PTSD and Depression stemming from my
15 traumatic childhood in South Africa and this stress...Also from O'Rourke's first 5 day coercion to sign,
16 you have put relentless pressure on me such as I take insulin and 5 oral medications for my diabetes
17 now." In conclusion, Plaintiff wrote, "I hope at some point UC leadership will come to its senses [and]
18 realize how the Chancellor[']s punitive sanctions have scarred me mentally and physically."

19 **FIRST CAUSE OF ACTION**

20 **Rescission and Restitution Due to Duress,**
21 **Fraud and Undue Influence under Civil Code §§1688, et seq.**

22 66. Plaintiff incorporates the allegations contained in paragraphs 1 through 65 as though fully
23 set forth herein.

24 67. As alleged in this Complaint, Plaintiff's consent to the separation agreement was
25 obtained through duress, fraud, and undue influence that was exercised by Defendant.

26 68. On or about February 24, 2106, Plaintiff and Defendant entered into a written separation
27 agreement whereby Plaintiff agreed to irrevocably resign by June 30, 2016, and relinquish his future
28 emeritus status, and Defendant agreed to forego the imposition of an unpaid six-month disciplinary
suspension and one year of reduced salary (by 50% of Plaintiff's 2013-2014 salary) to begin upon

1 Plaintiff's returning from suspension. (A true and correct copy of the separation agreement is attached as
2 Attachment "A" and incorporated by reference.)

3 69. The terms of the separation agreement were negotiated and discussed with Plaintiff while
4 Defendant was well aware that Plaintiff was not receiving legal advice from counsel. Defendants also
5 proceeded to "negotiate" with Plaintiff while Plaintiff was on a 50% medical leave. As alleged above,
6 Plaintiff stated on more than one occasion, that the distress of the academic suspension was negatively
7 impacting his physical and mental well-being.

8 70. Even under the questionable circumstances surrounding Plaintiff's lack of counsel and
9 weak emotional and physical state, Defendant insisted on rushing Plaintiff into making an extremely
10 serious and permanent decision regarding his career and reputation.

11 71. Additionally, there was absolutely no need for Defendant to enforce the suspension as
12 soon as February 2016. Alternatively, Defendant could have delayed implementation of the suspension,
13 thereby providing Plaintiff with an appropriate amount of time to consider his options and effectively
14 negotiate.

15 72. Furthermore, even after the contract was signed, and it became clear that Plaintiff had
16 been unaware what he had gotten himself into, the Defendant refused to acknowledge any irregularities
17 surrounding the negotiation.

18 73. Not only was Plaintiff mentally distraught throughout the entire negotiation process, but
19 he had no real bargaining power in coming to an agreement with Defendant. Defendant essentially
20 presented Plaintiff with a "take it or leave it" scenario, and even though Plaintiff was not in the frame of
21 mind where he could act in his own best interests, he succumbed the pressure of his impending
22 suspension.

23 74. At the time of signing the separation agreement on February 24, 2016, Plaintiff was
24 unaware that Chancellor Katehi had served as a board member for John Wiley & Sons, the publishing
25 company of the journal, "*Nutrition Reviews*," which published then retracted the article due to Dr.
26 Singh's plagerism. Based on Defendant's failure to disclose such material information, Plaintiff
27 mistakenly believed that there was no other basis upon which to challenge Chancellor Katehi's
28

1 disciplinary sanctions against him. Had Plaintiff known of Chancellor Katehi's conflict of interest while
2 imposing sanctions upon him, he would not have signed the agreement or tendered his resignation.

3 75. At the time it sanctioned Plaintiff, Defendant had a duty to inform Plaintiff of the true
4 nature of Katehi's status as a paid board member for John Wiley & Sons.

5 76. Defendant's concealment of the truth regarding Chancellor Katehi's conflict of interest
6 was a substantial factor in causing Plaintiff's harm. Had Plaintiff known of Chancellor Katehi's
7 involvement with John Wiley & Sons, Plaintiff would not have entered into the separation agreement
8 with Defendant.

9 77. Plaintiff did not know until March 3, 2016 that Chancellor Katehi had a serious conflict
10 of interest with respect to the imposition of Plaintiff's discipline.

11 78. The aforementioned conduct of Defendant was an intentional misrepresentation, deceit or
12 concealment of a material fact known to Defendant with the intention on the part of Defendant of
13 thereby depriving Plaintiff of property or legal rights or otherwise causing injury.

14 79. Because of Plaintiff's reliance upon the conduct of Defendant, Plaintiff has been
15 damaged in an amount according to proof at trial.

16 80. Plaintiff is entitled to rescind the separation agreement and will suffer substantial harm
17 and injury if it is not rescinded in that, as a result of Defendant's conduct, Plaintiff has been deprived of
18 his rights as a tenured professor at UC Davis, including his rights to compensation and benefits beyond
19 June 30, 2016.

20 81. Plaintiff intends service of the Summons and Complaint in this action to serve as notice
21 of the rescission of his separation agreement, and hereby offers to restore all consideration offered by
22 the University, on the condition that Plaintiff be restored the consideration furnished by him,
23 specifically, Plaintiff's resignation, effective June 30, 2016 and relinquishment of future emeritus status.

24 **SECOND CAUSE OF ACTION**
25 **Damages for Breach of Contract**

26 82. Plaintiff incorporates the allegations contained in paragraphs 1 through 81 as though fully
27 set forth herein.

28 83. On or about February 24, 2016, Plaintiff and Defendant entered into a written separation
agreement whereby Plaintiff agreed to irrevocably resign by June 30, 2016, and relinquish his future

1 emeritus status, and Defendant agreed to forego the imposition of an unpaid six-month disciplinary
2 suspension, and one-year of reduced salary (by 50% of Plaintiff's 2013-2014 salary) to begin upon
3 Plaintiff's returning from suspension.

4 84. Paragraph 20 of the separation agreement provides as follows: "Cooperation. The parties
5 agree to do all things necessary and to execute all further documents necessary and appropriate to carry
6 out and effectuate the terms and purposes of this Agreement."

7 85. According to the separation agreement, Defendant had a duty to fully cooperate in
8 effectuating the terms and purposes of the Agreement.

9 86. Plaintiff alleges that Defendant breached its duty to do all things necessary to carry out
10 and effectuate the terms of the agreement by (1) quickly reporting Plaintiff's suspension to the MBC,
11 and then causing unnecessary delay in notifying the MBC of the reversal of Plaintiff's suspension; (2)
12 failing to pay Plaintiff his February salary in a timely manner; (3) freezing his retirement benefits
13 through February 2016; (3) failing to refund Plaintiff for life and disability coverage for the month of
14 Marc; (4) leading Plaintiff to believe that he would have extra days to consider whether or not to revoke
15 the agreement once it was signed; and (5) failing to address Plaintiff's major concern regarding
16 Chancellor Katchi's conflict of interest as a paid board member of John Wiley & Sons, the same
17 publishing company for his journal article that was published then retracted.

18 87. As a result of the Defendant's breaches, Plaintiff has suffered harm to his reputation and
19 has incurred monetary damages and other expenses, in an amount to be proven at trial.

20 **THIRD CAUSE OF ACTION**

21 **Defamation**

22 88. Plaintiff incorporates the allegations contained in each of the preceding paragraphs as
23 though fully set forth herein.

24 89. Plaintiff has an established and distinguished reputation as an endocrinologist and is
25 widely published in the area of his expertise. For over thirty years, Plaintiff has been the recipient of
26 numerous domestic and international awards, attesting to his background, skill and professional
27 qualifications in clinical practice, research and education.

28 90. A significant part of Plaintiff's teaching practice has involved medical research, medical
presentations, speaking engagements and overview/editorship of medical articles and publications.

1 91. At all times relevant hereto, Defendant has had actual knowledge of Dr. Jialal's work in
2 each of the foregoing areas and that Dr. Jialal received compensation therefor.

3 92. The Separation Agreement that Plaintiff executed with UC Davis in February 2016 and
4 for which he seeks rescission does not preclude Plaintiff from teaching at other facilities or from
5 engaging in work resulting in compensation in the foregoing areas.

6 93. On or about March 20, 2016, Plaintiff contacted a former colleague, Michael Clearfield,
7 Dean of the School of Osteopathic Medicine ("Clearfield") at Touro University ("Touro"), seeking a
8 position as a professor at that institution. Plaintiff provided a copy of his CV and interviewed for an
9 appointment at the University.

10 94. On or about May 20, 2016, Plaintiff was offered and accepted a 40% appointment with
11 Touro commencing in July 2016. Compensation for the position was approximately \$100,000 a year.

12 95. Approximately two weeks after accepting the appointment, Dr. Jialal followed up with
13 the University regarding the details of his position; however, his communications were not returned.
14 When Touro finally responded to Dr. Jialal, Clearfield told Plaintiff in a phone call that the University
15 had checked his references at UC Davis and had stated that Dr. Jialal "had committed research
16 misconduct and had been required to return monies to the National Institutes of Health ("NIH") as a
17 result of his misconduct" or words substantially to that effect.

18 96. On July 13, 2016, Clearfield wrote to Jialal stating that Touro University could not hire
19 him and was "seeking other candidates" for the position. Jialal had not been responding to a position
20 offering, had already been offered the position, and there were no other candidates at that time. Based
21 upon his discussion with Clearfield, Jialal understood this communication to mean that his offer was
22 being rescinded because of the statements Defendant had made to representatives of Touro, including
23 but not limited to Clearfield.

24 97. On information and belief, UC Davis Professor David Asmuth made the foregoing
25 statements to Clearfield. On information and belief, other UC Davis representatives, including but not
26 limited to UC Davis Professors Peter Havel and/or Kimber Stanhope, also made similar oral and/or
27 written statements to representatives of Touro University.
28

1 98. The foregoing statements by representatives of the Defendant were false and defamatory.
2 The statements imputed dishonesty, a breach of professional ethics, a lack of skills, and
3 unprofessionalism on the part of Plaintiff and impugned his moral character, all of which constitute
4 defamation per se and defamation per quod.

5 99. Defendant knew that the statements were false because Plaintiff had been investigated
6 and exonerated from all claims of research misconduct and he had not been required to return monies to
7 NIH.

8 100. Defendant intended for individuals seeking references regarding prospective employment
9 for Dr. Jialal and for representatives of scholarly publications to believe its statements about Dr. Jialal's
10 character and qualifications.

11 101. Michael Clearfield and other administrators and professors of Touro University heard,
12 understood, believed and republished the foregoing statements about Dr. Jialal all of which resulted in
13 the loss of his appointment with Touro University.

14 102. Defendant continues to defame Dr. Jialal after the foregoing incident by making
15 statements that Dr. Jialal committed research misconduct, lacks professional skills and concerning his
16 moral character (i.e., that he retaliates against students who complain about him) to third parties with
17 whom Dr. Jialal has had long-standing professional relationships. The individuals who have heard these
18 statements prior to July 14, 2016, include but are not limited to, representatives, administrators and/or
19 faculty of other academic institutions, medical institutions, publishers and other organizations who have
20 hired Dr. Jialal to consult, conduct research, speak or make other types of presentations.

21 103. Plaintiff has met and conferred with Defense Counsel concerning the inclusion of these
22 post-July 2016 defamatory acts and Defendant does not agree that they may be included in an Amended
23 Complaint. Plaintiff will seek leave of court to file a supplemental complaint to allege the specific
24 publications, including who made the statements, and who received the statements that occurred after
25 July 2016 and the damage resulting therefrom.

26 104. The defamatory statements made before July 2016 and after July 2016 by Defendant
27 regarding Dr. Jialal's personal character have been repeated by those who have heard them and have
28 been published and republished orally, in writing and on the internet in various derivative forms so that

1 they remain available for others to see them any time Dr. Jialal is the subject of a search on the internet.
2 More specifically, the statements made by representatives of Defendant to Touro University were
3 republished to individuals on the Touro University hiring committee which caused Touro to rescind its
4 offer of employment to Dr. Jialal.

5 105. In addition to the statements themselves, Defendant's defamatory statements have been
6 of the kind and nature that Dr. Jialal has been forced to republish these statements himself to third
7 parties as a means of explanation when defending himself when asked to explain why he was separated
8 from UC. Each and every, all and singular, of these publications have resulted in further damage for Dr.
9 Jialal's personal and professional reputation and the loss of income and other forms of compensation.

10 106. As a direct and proximate result of the defamatory statements concerning Dr. Jialal,
11 Plaintiff has been damaged in reputation and has lost privileges, wages, speaking engagements, and
12 other employment opportunities for compensation in an amount according to proof.

13 **FOURTH CAUSE OF ACTION**

14 **Tortious Interference with Prospective Economic Advantage**

15 107. Plaintiff incorporates the allegations contained in each of the preceding paragraphs as
16 though fully set forth herein.

17 108. From February 2016 through present, Defendant has sought out ways and means to
18 interfere with Plaintiff's livelihood to retaliate against Plaintiff for exposing the conflict of interest
19 which fraudulently induced Plaintiff to execute the Separation Agreement.

20 109. Plaintiff has an established and distinguished international reputation as an
21 endocrinologist and is widely published in the area of his expertise. For over thirty years, Plaintiff has
22 been the recipient of hundreds of domestic and international forms of recognition and awards, attesting
23 to his background, skill and professional qualifications in clinical practice, research and education.
24 Further, Plaintiff has mentored Endocrine fellows at UC Davis for years and assisted the in getting
25 published as recently as 2017.

26 110. For over thirty years, Plaintiff's livelihood has included compensation resulting from
27 clinical practice, hospital affiliation, teaching, supervision of medical students, interns and fellows,
28 medical research, published articles and speaking engagements all over the world.

1 111. At all times relevant hereto, Defendant has had actual knowledge of Dr. Jialal's work in
2 each of the foregoing areas and that Dr. Jialal received compensation therefor.

3 112. The Separation Agreement that Plaintiff executed with UC Davis in February 2016 and
4 for which he seeks rescission does not preclude Plaintiff from teaching at other facilities or from
5 engaging in work resulting in compensation in the foregoing areas.

6 113. On or about March 20, 2016, after Defendant refused to rescind its separation agreement
7 with Plaintiff, Plaintiff contacted a former colleague, Michael Clearfield, Dean of the School of
8 Osteopathic Medicine ("Clearfield") at Touro University ("Touro"), seeking a position as a professor at
9 that institution. Plaintiff provided a copy of his CV and interviewed for an appointment at the
10 University.

11 114. On or about May 20, 2016, Plaintiff was offered and accepted a 40% appointment with
12 Touro commencing in July 2016. Compensation for the position was approximately \$100,000 a year.

13 115. Approximately two weeks after accepting the appointment, Dr. Jialal followed up with
14 the University regarding the details of his position; however, his communications were not returned.
15 When Touro finally responded to Dr. Jialal, Clearfield told Plaintiff in a phone call that the University
16 had checked his references with UC Davis and had stated that Dr. Jialal "had committed research
17 misconduct and had been required to return monies to the National Institutes of Health ("NIH") as a
18 result of his misconduct" or words substantially to that effect.

19 116. On July 13, 2016, Clearfield wrote to Jialal stating that Touro University could not hire
20 him and was "seeking other candidates" for the position. Jialal had not been responding to a position
21 offering, had already been offered the position, and there were no other candidates at that time. Based
22 upon his discussion with Clearfield, Jialal understood this communication to mean that his offer was
23 being rescinded because of the statements Defendant had made to representatives of Touro, including
24 but not limited to Clearfield.

25 117. On information and belief, UC Davis Professor David Asmuth made the foregoing
26 statements to Clearfield. On information and belief, other UC Davis representatives, including but not
27 limited to UC Davis Professors Peter Havel and/or Kimber Stanhope, also made similar oral and/or
28 written statements to representatives of Touro University.

118. The foregoing statements by representatives of the Defendant were false and defamatory. The statements imputed dishonesty, a breach of professional ethics, a lack of skills, and unprofessionalism on the part of Plaintiff and impugned his moral character, all of which constitute defamation per se and defamation per quod.

119. Defendant knew that the statements were false because Plaintiff had been investigated and exonerated from all claims of research misconduct and he had not been required to return monies to NIH.

120. Defendant intended for individuals seeking references regarding prospective employment for Dr. Jialal and for representatives of scholarly publications to believe its statements about Dr. Jialal's character and qualifications, and reasonably knew or should have known that making such statements would result in a decision not to hire Jialal.

121. By making the foregoing statements to representatives of Touro University and to other individuals prior to July 14, 2016, included but not limited to representatives, administrators and/or faculty of other academic institutions, medical institutions, publishers and other organizations who have hired Dr. Jialal to consult, conduct research, speak or make other types of presentations, Plaintiff lost of his appointment with Touro University and was damaged as a result.

122. As a direct and proximate result of Defendants' interference with Plaintiff's employment and other opportunities for compensation, Plaintiff has been damaged in reputation and has lost privileges, wages, speaking engagements, and other employment opportunities for compensation in an amount according to proof.

PRAAYER

WHEREFOR, Plaintiff prays for relief as follows:

1. For general damages according to proof;
2. For special damages according to proof;
3. For a declaration that the Separation Agreement signed by Plaintiff on February 24, 2016 was procured by fraud, undue influence or duress and is rescinded;
4. For injunctive relief;
5. For restitution of consideration, according to proof;

6. For attorney's fees as provided by law;
7. For costs of suit;
8. For prejudgment interest; and
9. For such other and further relief as the Court may deem just and proper.

Date: October 20, 2017

NEASHAM & KRAMER LLP

By *Patricia Kramer*
PATRICIA KRAMER

ATTACHMENT "A"

SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS

This Separation Agreement and Release of All Claims ("Agreement") is made between DR. ISHWARLAL JIALAL ("DR. JIALAL") and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ("REGENTS") with respect to the following facts:

RECITALS

DR. JIALAL is a Distinguished Professor of Pathology and Laboratory Medicine and Internal Medicine in the School of Medicine at the University of California, Davis ("UCD").

In a letter dated January 8, 2016, Chancellor Katehi communicated her decision to impose disciplinary sanctions on DR. JIALAL. In order to avoid the costs and inconvenience of further administrative or legal proceedings and to settle fully and finally all differences that may exist between them, the parties have reached the mutual decision to end their employment relationship on the terms and conditions outlined in this Agreement.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:

1. Purpose of Agreement. The purpose of this Agreement is to resolve any and all claims arising out of DR. JIALAL's employment and to settle fully and completely any and all disputes between DR. JIALAL and the University, its Board of Regents, officers, agents or employees (whether current or former). The parties acknowledge that this Agreement shall not in any way be construed as an admission by the University, or any of its Board of Regents, officers, agents or employees (whether current or former) of any improper or unlawful treatment of DR. JIALAL.
2. Separation. As of the Effective Date of this Agreement, DR. JIALAL irrevocably resigns from his University appointment, effective June 30, 2016 (hereafter "Date of Resignation"). This term is self-executing and requires no further act of either party for full force or effect. The University hereby accepts DR. JIALAL's resignation as of the Effective Date of this Agreement.
3. Additional terms. DR. JIALAL agrees that he will accept the disciplinary sanction of denial of emeritus status.
4. General Release of All Claims. DR. JIALAL unconditionally, irrevocably and absolutely releases and discharges the REGENTS, as well as any other present or former employees, officers, agents, attorneys, affiliates, successors, assigns and all other

representatives of the REGENTS (collectively, "Released Parties"), from any and all causes of action, judgments, liens, indebtedness, damages, losses, claims (including attorneys' fees and costs), liabilities and demands of whatsoever kind and character that DR. JIALAL may now or hereafter have against the Released Parties arising from incidents or events occurring on or before the Effective Date of this Agreement (hereafter collectively, "Released Claims"). To the extent permitted by law, this release is intended to be interpreted broadly to apply to all transactions and occurrences between DR. JIALAL and any Released Party, including but not limited to any and all claims related to DR. JIALAL's employment, employment conditions with and separation from the REGENTS, and all other losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the Action and/or these transactions or occurrences. Released Claims include, without limitation, any claim based in tort, contract, common law, the state or federal Constitution, state or federal statutes (including, without limitation, the California Fair Employment and Housing Act, the California Civil Code, the California Government Code, and Title VII of the Civil Rights Act of 1964), all claims for physical injuries, illness, damage or death, and all claims, including such claims as may arise under contract, state or federal law for attorneys' fees, costs and expenses, grievances, claims and/or appeals under the REGENTS' policies and/or collective bargaining agreements, or the University of California, Davis's internal administrative review procedures, but excluding any claims that cannot lawfully be waived or released by private agreement.

5. Unknown or Different Facts or Law. DR. JIALAL acknowledges that he may discover facts or law different from, or in addition to, the facts or law he knows or believes to exist with respect to a Released Claim. He agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or law.

6. California Civil Code Section 1542 Waiver. DR. JIALAL expressly acknowledges and agrees that the releases contained in this Agreement include a waiver of all rights under Section 1542 of the California Civil Code. This statute reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO
CLAIMS WHICH THE CREDITOR DOES NOT KNOW OF
OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME
OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
HIS MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.

DR. JIALAL acknowledges that he has read all of this Agreement, including the above Civil Code Section, and that he fully understands both the Agreement and the Civil Code

section. DR. JIALAL waives any benefits and rights granted to him pursuant to Civil Code section 1542.

7. No Prior Assignments or Liens. DR. JIALAL represents and warrants that he has not assigned to any other person or entity any Released Claim. DR. JIALAL further represents and warrants there are no liens or claims against any of the amounts being paid by the REGENTS as provided in this Agreement. DR. JIALAL agrees to defend, indemnify and hold the REGENTS harmless from any liability, losses, claims, damages, costs or expenses, including reasonable attorneys' fees, arising out of a breach of the representations and warranties contained in this paragraph.

8. No Admissions. By entering into this Agreement, the REGENTS does not admit that it has engaged in, or is now engaging in, any unlawful conduct or employment practice. It is understood and agreed that this Agreement is not an admission of liability, and that the REGENTS specifically deny liability in the Action and intend merely to avoid further litigation and expense by entering into this Agreement. By entering into this agreement, DR. JIALAL does not admit the validity of any of the University's determinations regarding his conduct and discipline. The parties agree that it is their mutual intention that neither this Agreement nor any terms hereof shall be admissible in any other or future proceedings against the REGENTS, except a proceeding to enforce this Agreement.

9. Covenant Not to Sue. DR. JIALAL agrees, to the fullest extent permitted by law, that he will not initiate or file a lawsuit or internal University proceeding to assert any Released Claim. If any such action is brought, this Agreement will constitute an Affirmative Defense thereto, and the REGENTS shall be entitled to recover reasonable costs and attorneys' fees incurred in defending against any Released Claim as set forth in paragraph 4.

Nothing in this Agreement shall affect the U.S. Equal Employment Opportunity Commission's ("EEOC") or the California Department of Fair Employment and Housing's ("DFEH") rights and responsibilities to enforce Title VII of the Civil Rights Act of 1964, as amended, the Fair Employment and Housing Act, or any other applicable law, nor shall anything in this Agreement be construed as a basis for interfering with DR. JIALAL's protected right to file a charge with, or participate in an investigation or proceeding conducted by the EEOC or any other state, federal or local government entity; except that, if the EEOC or any other state, federal or local government entity commences a lawful investigation or issues a complaint on DR. JIALAL's behalf, DR. JIALAL specifically waives and releases his right, if any, to recover any monetary or other benefits of any sort whatsoever arising from any such investigation, nor will DR. JIALAL seek reinstatement to University employment.

10. Acknowledgment of Payment of Compensation/Benefits: The University agrees to pay to DR. JIALAL all wages, benefits and compensation to which he is entitled as of the date of separation.

11. Attorneys' Fees and Costs. DR. JIALAL and the REGENTS agree to bear their own attorneys' fees and expenses incurred in connection with the Action, or any Released Claim, except as otherwise set forth herein.

12. No Future Employment or Affiliation with the REGENTS. With the exception of DR. JIALAL's pre-existing appointment as of February 1, 2016 at the Children's Hospital of Oakland Research Institute, DR. JIALAL agrees, warrants and represents that he will not apply for, and if offered will not accept, any employment with or by the University at any time, or at any campus, medical center, Agricultural Experiment Stations, Cooperative Extension, Organized Research Unit, Foundation affiliated with a University of California campus, DOE Laboratory operated by the University or any other entity in which DR. JIALAL's wages, salary or benefits are paid, in part or in full, by the REGENTS/University of California. DR. JIALAL understands and agrees that a violation of this Agreement shall constitute good cause for the REGENTS to reject DR. JIALAL's application for employment or terminate his employment status. DR. JIALAL further understands and agrees that should he accept University employment, the acceptance shall constitute misconduct and DR. JIALAL may be terminated without cause or notice and without recourse to any University policy, complaint resolution or contractual grievance process. In consideration for the promises contained in this Agreement, DR. JIALAL expressly waives any right he may have to any University complaint or contractual grievance process, including any rights he might otherwise have to any notice or opportunity to be heard.

13. Confidentiality Provision. The parties and their attorneys agree that they will not voluntarily release this Agreement to third parties or to otherwise disclose its contents publicly except under the following circumstances: (a) The REGENTS receives a request and determines it is required by law to release the document to the person or entity submitting the request; (b) either party is required to disclose either pursuant to a subpoena issued by a competent authority or an order issued by a court or tribunal of competent jurisdiction; or (c) The REGENTS determines that disclosure is necessary for The REGENTS to defend itself in a judicial action or administrative proceeding (either internal or external). The agreement will not be placed in DR. JIALAL's personnel file, but shall be retained in a separate file in Academic Affairs. Nothing in this provision shall preclude the parties from sharing a copy of this Agreement or disclosing its contents to their accountants or attorneys, and in the case of the REGENTS, its officers, agents or employees with a need to know in order to perform their duties, and in the case of DR. JIALAL, to his domestic partner or spouse. DR. JIALAL agrees that, in response to any

inquiry regarding this Action or Settlement Agreement, he will limit his response to "The matter has been resolved to everyone's satisfaction."

The parties, including themselves and their representatives, acknowledge and agree that a material term of this agreement is that its terms and conditions are strictly confidential, subject to the limitations described above, and thereafter promise that they will not discuss, describe or in any other manner communicate the terms, conditions or contents of this Agreement, or the negotiations leading thereto, directly or indirectly, or by or through any agent, attorney, or representative, to any source, individual, or entity.

14. Condition. This Agreement is subject to formal approval by the UCD Chief Campus Counsel or his designee, which approval will be communicated to DR. JIALAL. Without approval by the Chief Campus Counsel or his designee, this Agreement shall have no force and effect.

15. Older Workers' Benefits Protection Act. It is the intention of the parties that the releases contained in this Agreement comply with the provisions of the Older Workers' Benefits Protection Act (29 U.S.C. § 626(f)) and thereby effectuate the release by DR. JIALAL of any potential claims under the federal Age Discrimination in Employment Act. Accordingly, DR. JIALAL agrees as follows: (i) he has carefully reviewed this Agreement, and understands the terms and conditions it contains; (ii) he has been advised of the right to consult any attorney or representative of his choosing to review this Agreement; (iii) DR. JIALAL is receiving consideration that is above and beyond anything of value to which he is already entitled; (iv) DR. JIALAL does not waive right or claims that may arise after the date on which he executes this Agreement; (v) DR. JIALAL has had twenty-one (21) days to consider whether to agree to the terms and conditions set forth in this Agreement. DR. JIALAL may sign this Agreement sooner, but in doing so, DR. JIALAL acknowledges that the decision to sign was DR. JIALAL's alone and, as a result, DR. JIALAL has voluntarily waived the balance of the 21-day review period.

16. Seven-Day Revocation Period and Effective Date. DR. JIALAL shall have seven (7) days after executing this Agreement to reconsider and revoke this Agreement. Any revocation must be in writing and delivered to Danny Gray, Director of Academic Employee and Labor Relations (dgray@ucdavis.edu), University of California, One Shields Avenue, Davis, CA 95616, 530.752.2090, no later than the close of business on the seventh (7th) day following DR. JIALAL's execution of this Agreement. This Agreement shall not become effective or enforceable until the seven-day revocation period has expired, or until the date of the last signature on this Agreement, whichever is later ("EFFECTIVE DATE"). If DR. JIALAL revokes this Agreement, it shall not be effective or enforceable, and he will not receive the consideration described herein.

17. California Law. This Agreement is made and entered into in the State of California and shall in all respects be interpreted and enforced in accordance with California law.

18. Severability. Should it be determined by a court that any term of this Agreement is unenforceable, that term shall be deemed to be deleted. However, the validity and enforceability of the remaining terms shall not be affected by the deletion of the unenforceable terms.

19. Modifications. This Agreement may be amended only by a written instrument executed by all parties hereto.

20. Cooperation. The parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

21. Interpretation; Construction. The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the REGENTS, but DR. MALAL acknowledges he has had an opportunity to review and discuss each term of this Agreement with legal counsel and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

22. Entire Agreement. The parties to this Agreement declare and represent that no promise, inducement or agreement not herein discussed has been made between the parties, and that this Agreement contains the entire expression of agreement between the parties on the subjects addressed herein.

23. Counterparts. This Agreement may be executed in counterparts. The execution of a signature page of this Agreement shall constitute the execution of the Agreement, and the Agreement shall be binding on each party upon that party's signing of such a counterpart.

24. Advice of Counsel. The parties declare and represent that they are executing this Agreement with full advice from their respective legal counsel, and that they intend that this Agreement shall be complete and shall not be subject to any claim of mistake, and that the releases herein express a full and complete release and, regardless of the adequacy or inadequacy of the consideration, each intends the releases herein to be final and complete. Each party executes this release with the full knowledge that this release covers all possible claims, to the fullest extent permitted by law.

PLEASE READ CAREFULLY. THIS SEPARATION AGREEMENT AND GENERAL
RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

W W

WHEREFORE, THE PARTIES HAVE VOLUNTARILY EXECUTED THIS
AGREEMENT ON THE DATES SHOWN BELOW.

Dated: 3-27, 2016

By:

DR. DALAL

Dated: 2/24/, 2016

By:

Julie A. Freischlag, M.D.
Dean, School of Medicine

Dated: 2/25, 2016

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA

By:

Jacob Appelsmith
Chief Campus Counsel

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PROOF OF SERVICE

I, Katie A. Brand, declare that:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years, and am not a party to this action; my business address is 340 Palladio Parkway, Suite 535, Folsom, California 95630.

On October 23, 2017, I served a copy of the foregoing document(s) described herein as **FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF & DAMAGES** on the interested party(ies) named below addressed as follows:

Carolee G. Kilduff, Esq.
Angelo, Kilday & Kilduff, LLP
Attorneys at Law
601 University Avenue, Suite 150
Sacramento, CA 95825

☒ (MAIL) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. By following ordinary business practice, I placed a true copy thereof enclosed in a sealed envelope for collection and mailing with the United States Postal Service where it would be deposited for first class delivery, postage fully prepaid, in the United States Postal Service that same day in the ordinary course of business.

☐ (OVERNIGHT DELIVERY) Depositing a copy of the above document(s) in a box or other facility regularly maintained by FEDEX, in an envelope or package designated by FEDEX with delivery fees paid.

☐ (FACSIMILE) By use of facsimile machine telephone number (916) 853-8039 by transmitting by facsimile machine to the above listed facsimile number. The facsimile machine I used complied with California Rules of Court, rule 2.306 and no error was reported by the machine. Pursuant to California Rules of Court, rule 2.306(h), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

☐ (ELECTRONIC) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses(es) listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 23, 2017, at Folsom, California.


Katie A. Brand

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GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY