



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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Jun-17-2009 3:40 pm

Case Number: CGC-09-489576

Filing Date: Jun-17-2009 3:32

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COMPLAINT

JOHN S. KAO VS. UNIVERSITY OF SAN FRANCISCO et al

001C02529126

Instructions:

Please place this sheet on top of the document to be scanned.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

UNIVERSITY OF SAN FRANCISCO, an entity of unknown organization; MARTHA PEUGH-WADE; and DOE ONE through DOE TWENTY, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
JOHN S. KAO

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court:

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER
(Número de caso) **09-489576**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Christopher W. Katzenbach (SBN 108006); Kimberly A. Hancock (205567)

Katzenbach and Khtikian, 1714 Stockton St., Suite 300, San Francisco, CA 941333 Phone: (415) 834-1778

Gordon Park-Li

Clerk, by
(Secretario)

DATE:

(Fecha)

- JUN 17 2009

Chris Park Deputy
Stewart (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date):



FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Christopher W. Katzenbach (SBN 108006); Kimberly A. Hancock (205567)
 Katzenbach and Khtikian
 1714 Stockton St., Suite 300
 San Francisco, CA 94133
 TELEPHONE NO.: (415) 834-1778 FAX NO.: (415) 834-1842
 ATTORNEY FOR (Name): Plaintiff JOHN S. KAO

FILED
 San Francisco County Superior Court

JUN 17 2009

GORDON PARK-LI, Clerk

BY: *Elis Butt*
 Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
 STREET ADDRESS: 400 McAllister Street
 MAILING ADDRESS: 400 McAllister Street
 CITY AND ZIP CODE: San Francisco, CA 94102
 BRANCH NAME: Civic Center Courthouse

CASE NAME:
 John S. Kao v. University of San Francisco et al.

CASE NUMBER:
CGC-09-489576

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- Auto (22)
- Uninsured motorist (46)

Other P/DP/D (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
- Product liability (24)
- Medical malpractice (45)
- Other P/DP/D (23)

Non-P/DP/D (Other) Tort

- Business tort/unfair business practice (07)
- Civil rights (08)
- Defamation (13)
- Fraud (16)
- Intellectual property (19)
- Professional negligence (25)
- Other non-P/DP/D tort (35)

Employment

- Wrongful termination (36)
- Other employment (15)

Contract

- Breach of contract/warranty (06)
- Rule 3.740 collections (09)
- Other collections (09)
- Insurance coverage (18)
- Other contract (37)

Real Property

- Eminent domain/Inverse condemnation (14)
- Wrongful eviction (33)
- Other real property (26)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38)

Judicial Review

- Asset forfeiture (05)
- Petition re: arbitration award (11)
- Writ of mandate (02)
- Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

- Antitrust/Trade regulation (03)
- Construction defect (10)
- Mass tort (40)
- Securities litigation (28)
- Environmental/Toxic tort (30)
- Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- Enforcement of judgment (20)

Miscellaneous Civil Complaint

- RICO (27)
- Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- Partnership and corporate governance (21)
- Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 6

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 17, 2009
 Kimberly A. Hancock

(TYPE OR PRINT NAME)

Kimberly A. Hancock
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 CHRISTOPHER W. KATZENBACH (SBN 108006)
2 KIMBERLY A. HANCOCK (SBN 200567)
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10 khancock@kkcounsel.com

11 Attorney for Plaintiff
12 JOHN S. KAO

SUMMONS ISSUED

FILED
San Francisco County Superior Court

JUN 17 2009

GORDON PARK-LI, Clerk

BY: Chris Butt
Deputy Clerk

13 IN THE SUPERIOR COURT OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO

15 JOHN S. KAO,
16 Plaintiff,
17 vs.

18 UNIVERSITY OF SAN FRANCISCO, an entity
19 of unknown organization; MARTHA PEUGH-
20 WADE; and DOE ONE through DOE
21 TWENTY, inclusive.
22 Defendants.

23 CASE MANAGEMENT CONFERENCE SET

24 NOV 20 2009 - 9:21 AM

25 DEPARTMENT 212

No.: **CGC-09-489576**

**COMPLAINT FOR DAMAGES AND
OTHER RELIEF**

- 1. Discrimination In Violation Of California Fair Employment And Housing Act;
- 2. Retaliation In Violation Of California Fair Employment And Housing Act;
- 3. Discharge In Violation Of Public Policy (Confidentiality Of Medical Information Act);
- 4. Discharge In Violation Of Public Policy (Constitutional Right Of Privacy);
- 5. Violation of Unruh Civil Rights Act;
- 6. Defamation.

DEMAND FOR JURY TRIAL

26 Plaintiff, JOHN S. KAO, as his complaint against defendants, alleges as follows:

27 1. At all material times herein, Defendant UNIVERSITY OF SAN FRANCISCO
28 ("USF") was and is a private university doing business within the State of California, with its
29 principal place of business in San Francisco, California. At all material times, USF was and is an
30 employer and a person within the meaning of California Government Code sections 12925(d),

1 12926(d) and 12940(f) and a business establishment within the meaning of the California Unruh
2 Civil Rights Act (Civil Code § 51). At all material times herein, USF employed in excess of
3 500 employees. Defendant MARTHA PEUGH-WADE was at all material times an employee of
4 defendant USF and an Assistant Vice President of USF.

5 2. Plaintiff sues defendants DOE ONE through DOE TWENTY, inclusive, pursuant
6 to Code of Civil Procedure section 474. Plaintiff is informed and believes, and thereon alleges,
7 that defendants DOES ONE through DOE TWENTY, inclusive, themselves caused the harm to
8 plaintiff alleged herein below, or participated in, assisted, aided, abetted, ratified, encouraged or
9 supported the actions of the other defendants herein which caused the harm, injury and damage
10 to plaintiff as more fully alleged below.

11 3. Plaintiff JOHN S. KAO is, and at all material times was, a resident of the State of
12 California. Plaintiff is a native born American citizen of Chinese and Japanese ancestry.
13 Plaintiff graduated magna cum laude, Phi Beta Kappa, from the University of Utah at the age of
14 17 with a bachelor of science degree in mathematics (B.S., 1985). Thereafter, plaintiff was
15 accepted to the Princeton University Graduate School, Department of Mathematics, from which
16 he received the degree of master of art in applied mathematics (M.A., 1987) at the age of 19, and
17 further, the degree of doctor of philosophy in applied mathematics (Ph.D., 1991) at the age of 23.
18 The Mathematics Department Doctoral Program at Princeton University was, and is, ranked first
19 in the United States by the National Research Council. Plaintiff was a National Science
20 Foundation Graduate Fellow and taught at the University of North Carolina Charlotte in 1990
21 and at the Princeton University School of Engineering while on sabbatical from USF in 1999.

22 4. Plaintiff was hired by USF as an Assistant Professor in the USF Department of
23 Mathematics in 1991. Plaintiff was promoted to Associate Professor at USF in 1997. Plaintiff
24 was employed continuously at USF until his discharge on February 2, 2009.

25 5. The position of Associate Professor at USF is a tenured position. As a tenured
26 position, plaintiff could not be discharged from employment at USF without good cause.
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1 6. Beginning in 1998, plaintiff raised objections to a series of faculty appointments
2 to the Mathematics Department that plaintiff believed to discriminate against minorities and
3 women.

4 7. In February 1998, at the Mathematics Department meeting, plaintiff stated that he
5 objected to the possible future appointment without a search of an Australian mathematician,
6 John Stillwell, whose resume was not provided to the faculty. Notwithstanding such objection,
7 in about Fall 2000, Professor Stillwell was appointed as a tenured full professor, without a
8 search, without departmental peer review and in a part-time position, having full-time faculty
9 privileges, that violated the terms of the full-time faculty union contract.

10 8. Beginning in January 2006, plaintiff filed a series of complaints under the USF
11 Policy on Sexual and Other Unlawful Harassment, an internal, non-union, grievance procedure
12 which covers race-based discrimination. In these complaints, plaintiff stated his concern that,
13 from his appointment at USF in 1991 and continuing thereafter, the proportion of people of color
14 among full-time mathematics faculty decreased from 11% to 8%. Plaintiff's concerns focused
15 on the lack of effort to meet the diversity requirements of USF's policies, in particular the
16 systematic failure to follow standard recruitment and hiring procedures that would have enabled
17 a more systematic and successful effort to hire more diverse (female and/or non-Caucasian)
18 faculty. These complaints included allegations of discrimination, as follows:

- 19 a. Discrimination on the basis of temporary and perceived disability by denying
20 plaintiff a request for a two-week leave of absence following an adverse drug
21 interaction in January 2002. In particular, Tristan Needham, USF Associate Dean
22 of Sciences, refused to allow plaintiff to resume teaching duties without first
23 submitting to a personal interview by Dean Needham and without a second
24 faculty member being present in plaintiff's classroom at all times plaintiff was
25 teaching during the semester. As a consequence of plaintiff's refusal to consent to
26 these conditions, plaintiff was compelled to accept, as an alternative to teaching
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1 during the Spring 2002 semester, an unpaid leave of absence, officially approved
2 for purposes of research, resulting in loss of plaintiff's wages for that semester.

3 b. Race, national origin and gender discrimination in the hiring and assignments of
4 faculty in the USF Mathematics Department, including:

5 1. Preferential hiring of white males as tenure-track faculty (in one case the
6 appointment was made with tenure) in contravention of the mandated
7 (internal) hiring protocols and in violation of provisions in the full-time
8 faculty union collective bargaining agreement. In one case, at least, this
9 was a misuse of university funds and appeared to be quid pro quo for
10 personal services rendered.

11 2. Hiring a male professor with non-complying education and degree
12 requirements in preference to a female candidate who met the advertised
13 educational and degree requirements.

14 3. Failing to appoint or consider any persons of color for prestigious dual
15 appointment positions at USF. When plaintiff requested consideration for
16 such a dual appointment, plaintiff was informed that no new dual
17 appointments would be made from that date onward. Current dual
18 appointment faculty—none of whom are persons of color—permanently
19 retained their dual appointments and titles.

20 9. In connection with filing these complaints, USF promised plaintiff that his
21 complaints would be investigated if the disputes did not settle. Such promise was made, in
22 particular, on or about June 20, 2006, by Donna Davis, USF's General Counsel, in the presence
23 of Terry Stoner, Associate Vice President of USF and Director of Human Resources and Jennifer
24 Turpin, Dean of USF's College of Arts and Sciences.

25 10. Thereafter, USF proposed a settlement agreement with plaintiff to settle his
26 claims of discrimination on the basis of temporary and perceived disability arising from
27 plaintiff's compelled leave of absence in Spring 2002. In this settlement, USF demanded that
28

1 plaintiff agree to handle all future disputes with USF exclusively through binding arbitration and
2 not through any court proceeding and that all information regarding plaintiff's prior disputes
3 with USF, including the complaints of discrimination filed in 2006, would be confidential, and
4 could never be relied upon or argued by him in any manner in any dispute, grievance, claim or
5 complaint, whatever the subject matter might be. Plaintiff did not agree to the settlement terms
6 proposed by USF and there was no settlement of plaintiff's complaints.

7 11. Notwithstanding the fact that no settlement of plaintiff's complaints was reached,
8 USF refused to investigate plaintiff's complaints.

9 12. In February 2008, plaintiff filed a new complaint which alleged continuing race,
10 national origin and gender discrimination in the hiring and search process within the
11 Mathematics Department. This complaint concerned the failure of USF to advertise an opening
12 for a position as a tenure-track assistant professor in mathematics in any professional
13 mathematics journal. Such an advertisement is mandated by USF's internal fair employment
14 protocols and was followed in prior searches in 2004 and 2006. This complaint also alleged that
15 USF had failed to investigate plaintiff's prior complaints, notwithstanding USF's promises to do
16 so if there were no settlement of plaintiff's prior complaints.

17 13. The search that was subject of plaintiff's February 2008 complaint was completed
18 in the Spring 2008 semester. This search generated 1/3 fewer qualified applicants as compared
19 with similar searches completed in 2004 and 2006. None of the six finalists in this search were
20 persons of color. In the 2006 search, two of three finalists were persons of color. In the 2004
21 search, one of four finalists was a person of color.

22 14. On June 18, 2008, Martha Peugh-Wade, on behalf of USF, orally demanded that
23 plaintiff submit to a mental examination by a psychiatrist of USF's choosing. This demand was
24 ostensibly based on complaints concerning plaintiff's behavior occurring during the Spring 2008
25 semester. These complaints were allegedly made by employees of USF.

26 15. Plaintiff is informed and believes, and thereon alleges, that none of the alleged
27 incidents involved students, concerned plaintiff's teaching duties or interfered with USF's or the
28

1 Mathematics Department's operations. Plaintiff is further informed and believes, and thereon
2 alleges, that all the alleged incidents had occurred since about January 2008 and that no one in
3 plaintiff's department had requested USF to take any specific action respecting these incidents
4 during the Spring 2008 semester which ended in May 2008.

5 16. On June 18, 2008, USF stated to plaintiff that it was considering various options,
6 desired plaintiff's input, and would make a final decision on the options by July 1, 2008.

7 17. In response to USF's demand, plaintiff requested information as to the specific
8 behavior that prompted USF's demands, including the dates, locations, times and persons
9 allegedly involved. Plaintiff also stated that he believed that it was possible that some
10 perceptions of his behavior cited by USF may be based on his Asian ancestry or race and
11 misinterpretation of cultural or ethnic behaviors. Plaintiff also proposed that plaintiff send a
12 letter or attend a meeting to "clear the air" and to assure everyone that plaintiff intended no harm
13 to anyone.

14 18. On Friday, June 20, 2008, Peugh-Wade, on behalf of USF, responded that USF
15 would not provide further information as to dates, times or persons involved in the incidents and
16 stated that plaintiff should provide any information that USF should consider to Peugh-Wade by
17 Monday, June 23. At the time Peugh-Wade made this demand, Peugh-Wade knew that she
18 would be out of the office during the week of June 23. Plaintiff is informed and believes, and
19 thereon alleges, that on June 20, Peugh-Wade had already written and signed a letter dated June
20 24, 2008, taking action against plaintiff.

21 19. By letter of June 24, 2008, Peugh-Wade, acting on behalf of USF, put plaintiff on
22 administrative leave without pay, banned him from the USF Campus and demanded that plaintiff
23 attend a psychiatric examination and provide medical information to the doctor performing that
24 examination.

25 20. In banning plaintiff from the USF campus, USF prevented plaintiff from attending
26 programs, activities or events that are open to the public generally.

1 21. Before June 18, 2008, plaintiff had not been informed by anyone of any concern
2 with his behavior during the Spring 2008 semester. USF took no action during the Spring 2008
3 semester to address any purported concerns about plaintiff's behavior. USF did not alter
4 plaintiff's teaching or other professional duties in any way. During the Spring 2008 semester,
5 plaintiff's teaching and professional duties remained unchanged and included:

- 6 a. Teaching three classes inclusive of office hours held at night and on weekends;
- 7 b. Administering homework, scoring examinations and awarding semester grades
8 for three classes;
- 9 c. Participating in Mathematics Department meetings;
- 10 d. Representing the Mathematics Department (one of two mathematics faculty so
11 assigned) in curriculum development meetings with faculty and administrators
12 from the USF School of Business and Management;
- 13 e. Answering statistical questions of faculty from other departments (in particular,
14 research consultation with Maureen O'Sullivan, Professor of Psychology);
- 15 f. Serving as Associate Editor of the research journal, Advances and Applications in
16 Statistics;
- 17 g. Chaperoning weekly student meetings of the USF Mathematics Club, which were
18 held each Friday from 4:00 pm – 6:00 pm.

19 22. During the Spring 2008 semester and thereafter, plaintiff was invited to, and
20 attended, various department social functions including some held at the private residences of
21 mathematics faculty. In connection with these social functions, no one stated any concern about
22 his behavior or interactions with other faculty members, spouses or children thereof, or any other
23 attending persons.

24 23. Plaintiff's teaching evaluations from the Spring 2008 semester ranked plaintiff in
25 the top 1% on a national scale in one of six categories, the top 5% on a national scale in two of
26 six categories, and substantially above the Mathematic Department's average in the remaining
27

1 three categories. Plaintiff's evaluation of students, including grades awarded, satisfied USF's
2 institutional and departmental standards of review.

3 24. Plaintiff is informed and believes, and thereon alleges, that any reports of actions
4 or behavior by plaintiff, and any statement as to plaintiff's purposes and intentions or the
5 reactions to such alleged actions or behaviors, were made in bad faith, knowing that such reports
6 were false or exaggerated, and were made for the purpose of harming plaintiff and retaliating
7 against him because of his prior complaints of discrimination and violation of USF policies, for
8 the purpose of covering up violations of USF policies that had taken place in the Mathematics
9 Department and in order to prevent discovery and disclosure of other violations of policies,
10 misrepresentations or misconduct that may have occurred. Plaintiff is further informed and
11 believes that these allegations are part of a pattern or practice of false accusations and other
12 efforts designed to deter plaintiff from seeking to address policies and practices at USF or in the
13 Mathematics Department that discriminate on the basis of race or gender or otherwise violate the
14 university's policies and rules. Among other things, and in addition to the foregoing false and/or
15 exaggerated allegations, this pattern and practice has involved the following:

- 16 a. After plaintiff stated concerns about the hiring of John Stillwell as a tenured full
17 professor without a search, without departmental peer review and under terms that
18 violated the full-time faculty union contract, plaintiff stated to various faculty
19 members that he intended to file a complaint about this pending appointment.
20 Before plaintiff could file his complaint, on November 1, 2000, Tristan Needham,
21 Associate Dean of Sciences, wrote a letter reprimanding plaintiff for allegedly not
22 informing Needham on the status of certain matters and published this letter to
23 administrators at another San Francisco institution of higher education (the
24 California College of the Arts, for which plaintiff taught mathematics during the
25 prior Spring 2000 semester), and in so doing, damaged plaintiff's professional
26 reputation. As part of this letter, Needham included two emails dated August 2
27 and 3, 2000, that Needham asserted demonstrated that plaintiff was taking actions

1 without informing the Mathematics Department or Needham of developments in a
2 timely way. In fact, Needham had received copies of these same emails on
3 August 15, 2000, but removed the date he had received these two emails and then
4 attached the modified documents to the November 2000 letter in order
5 substantiate his assertion that Needham had not been informed of events in a
6 timely way. Ultimately, in late December 2000, Needham withdrew his
7 accusations against plaintiff in connection with a union grievance plaintiff had
8 filed.

9 b. In connection with a proposed settlement of discrimination on the basis of
10 disability arising from plaintiff's compelled leave of absence in Spring 2002, USF
11 demanded that plaintiff agree to handle all future disputes with USF exclusively
12 through binding arbitration and not through any court proceeding and that all
13 information regarding plaintiff's prior disputes with USF, including the
14 complaints of discrimination filed in 2006, would be confidential, and could never
15 be relied upon or argued by him in any manner in any dispute, grievance, claim or
16 complaint, whatever the subject matter might be.

17 c. On January 16, 2009, in further justification of its demand for a psychiatric
18 examination, USF asserted that it had received a report that plaintiff had recently
19 spoken to a faculty member by telephone and that this conversation had caused
20 that faculty member to panic and leave the USF campus. After plaintiff
21 responded in detail to this accusation, explaining how nothing in this apparent
22 telephone conversation could possibly be considered as misconduct by him but
23 was instead an inquiry into the status of the current mathematics faculty position
24 search to learn how many applications had been received, USF declined to retract
25 its accusations, to address any of the factual statement made by plaintiff or to
26 explain why it nevertheless believed that plaintiff had done anything improper;
27 instead, USF reiterated its demand for a psychiatric evaluation.

1 25. By letter dated June 26, 2008, plaintiff responded to USF's demands by stating,
2 among other things, that the demand for a psychiatric examination violated the California Fair
3 Employment and Housing Act, in particular 42 U.S.C. § 1212(d)(4)(A) and Government Code §
4 12940, and plaintiff's right to privacy under the California Constitution and the California
5 Confidentiality of Medical Information Act, Civil Code § 56.20. In addition, plaintiff again
6 proposed that he send a letter or attend a meeting to "clear the air" and to assure everyone that
7 plaintiff intended no harm to anyone.

8 26. By letter of July 8, 2008, USF reiterated its demand that plaintiff attend a
9 psychiatric examination and threatened to institute proceedings to discharge him if he did not do
10 so. USF did not respond to plaintiff's offer to "clear the air" to assure everyone that he intended
11 no harm to anyone.

12 27. Plaintiff is informed and believes, and thereon alleges, that notwithstanding the
13 threats in the July 8 letter, USF did not institute any proceedings to discharge him until sometime
14 in 2009.

15 28. Because of USF's instructions, determination and demands in its letters of June
16 24 and July 8, plaintiff was prevented from teaching during the Fall 2008 semester and lost the
17 income and benefits he would otherwise have received.

18 29. By letter of December 29, 2008, USF repeated its demand that plaintiff undergo a
19 psychiatric examination and threatened that it would discharge him for insubordination if he did
20 not do so. By letter of January 12, 2009, plaintiff again stated that USF's demand violated
21 plaintiff's rights under the Americans With Disabilities Act, the California Fair Employment and
22 Housing Act, the California Confidentiality of Medical Information Act and the right of privacy
23 in the California Constitution. Plaintiff again offered a letter or meeting to "clear the air" and to
24 assure anyone who believed that plaintiff acted improperly that plaintiff intends no harm to
25 anyone.

26 30. By letter of January 23, 2009, USF reiterated its demand for a medical/psychiatric
27 examination. USF rejected plaintiff's offer to "clear the air" as he had proposed, stating that the
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1 only assurance USF would accept must come from the mandatory medical examination by
2 Norman Reynolds—the psychiatrist USF had already selected and had already communicated
3 with in regards to plaintiff, without plaintiff's consent.

4 31. By letter of February 3, 2009, USF discharged plaintiff. USF stated that the
5 reason for plaintiff's discharge was his failure to "carry out the work-related instructions to
6 cooperate with an independent medical evaluation".

7 32. Following his discharge, USF has continued to ban plaintiff from the USF
8 campus, including banning him from attending programs, activities or events that are open to the
9 public generally.

10 33. Because of USF's demand for a psychiatric examination and because of his
11 discharge, plaintiff has lost past and future wages and benefits, suffered irreparable damage to
12 his academic career and future employment as a tenured professor in other universities or
13 colleges, and has suffered shame, humiliation, upset and emotional distress.

14 FIRST CAUSE OF ACTION

15 (DISCRIMINATION IN VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND 16 HOUSING ACT—DEFENDANT USF)

17 Plaintiff incorporates by reference the allegations in paragraphs 1 through 33 hereof as if
18 fully set forth herein.

19 34. The California Fair Employment and Housing Act ("FEHA"), in Government
20 Code Section 12940(f) provides that it is an unlawful employment practice:

21 (1) Except as provided in paragraph (2), for any employer or
22 employment agency to require any medical or psychological
23 examination of an employee, to make any medical or
24 psychological inquiry of an employee, to make an inquiry whether
25 an employee has a mental disability, physical disability, or medical
26 condition, or to make any inquiry regarding the nature or severity
27 of a physical disability, mental disability, or medical condition. (2)
Notwithstanding paragraph (1), an employer or employment
agency may require any examinations or inquiries that it can show
to be job-related and consistent with business necessity. An
employer or employment agency may conduct voluntary medical
examinations, including voluntary medical histories, which are part
of an employee health program available to employees at that
worksite.

1 35. USF's demand for a psychiatric evaluation was not job-related and was not
2 consistent with business necessity, within the meaning of California Government Code Section
3 12940(f)(2).

4 a. USF's demand for a psychiatric evaluation was based upon false, untrue or
5 exaggerated reports or claims against plaintiff.

6 b. USF's demand for a psychiatric evaluation was based upon the subjective
7 reactions of persons that were excessive or unjustified by any behavior attributed
8 to plaintiff.

9 c. USF failed to conduct a reasonable investigation of the claims made against
10 plaintiff.

11 d. USF refused to provide plaintiff with sufficient information to enable plaintiff to
12 evaluate the allegations of his behavior or to assess the legal basis for USF's
13 demand for a psychiatric examination.

14 e. USF refused to consider alternatives to a psychiatric examination.

15 36. By its actions alleged herein, USF violated the California FEHA.

16 37. Plaintiff has exhausted all his administrative remedies under the FEHA prior to
17 bringing this action, including filing charges with the California Department of Fair Employment
18 and Housing.

19 38. USF's violation of the California FEHA has caused plaintiff to suffer damages,
20 including loss of wages and benefits, loss of employment, injury to his reputation and loss of
21 employability, stigmatization, emotional distress and upset.

22 39. USF acted with the purpose and intent of harming plaintiff and causing injury to
23 his employment and employability, by its own acts or by ratifying actions of others, in (a)
24 adopting the allegations and accusations of persons against plaintiff to support its demands, (b)
25 refusing to provide plaintiff information that would allow him to respond to the allegations and
26 accusations made against him, (c) refusing to conduct an investigation into the allegations and
27 accusations made against plaintiff, (d) refusing to consider alternatives to a psychiatric
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1 examination in good faith and (e) banning and continuing to ban plaintiff from the USF campus.
2 Plaintiff is further informed and believes that the allegations and accusations made against
3 plaintiff were made by or ratified by persons who were officers, directors or managing agents of
4 USF within the meaning of Civil Code Section 3294(b). Plaintiff is further informed and
5 believes that USF's actions were taken, in part, in retaliation against plaintiff for his prior
6 complaints of discrimination in hiring and working conditions and for his complaint that the
7 demand for a psychiatric examination violated his rights under the FEHA, the ADA and other
8 laws. By reason of the foregoing, plaintiff is entitled to punitive damages against USF.

9 40. Plaintiff seeks relief for the violations alleged herein, including back pay, future
10 lost wages, front pay and compensatory, punitive and exemplary damages, and further relief of
11 an order from this court directing his reinstatement to his position at USF without loss of
12 seniority or benefits.

13 W H E R E F O R E, plaintiff prays for relief as set out below.

14 **SECOND CAUSE OF ACTION**

15 **(RETALIATION IN VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND**
16 **HOUSING ACT – DEFENDANT USF)**

17 Plaintiff incorporates by reference the allegations in paragraphs 1 through 33 as if fully
18 set forth in this Cause of Action.

19 41. The California Fair Employment and Housing Act ("FEHA"), in Government
20 Code Section 12940(h) provides that it is an unlawful employment practice:
21 For any employer, labor organization, employment agency, or
22 person to discharge, expel, or otherwise discriminate against any
23 person because the person has opposed any practices forbidden
24 under this part or because the person has filed a complaint,
25 testified, or assisted in any proceeding under this part.

26 42. USF demanded that plaintiff undergo a psychiatric examination, discriminated
27 and discharged plaintiff and banned him from the USF Campus in retaliation for and because of
28 complaints made by plaintiff that opposed practices made unlawful under the FEHA, including
29 without limitation:

1 a. The complaints filed by plaintiff under the USF Policy on Sexual and Other
2 Unlawful Harassment, as more fully set forth in paragraphs 8, 9 and 10 herein.

3 b. Plaintiff's objection that USF's demand for a medical/psychiatric examination
4 violated the California FEHA, in particular Government Code § 12940.

5 43. By its actions alleged herein, USF retaliated against plaintiff in violation of the
6 California FEHA.

7 44. Plaintiff has exhausted all his administrative remedies under the FEHA prior to
8 bringing this action, including filing charges with the California Department of Fair Employment
9 and Housing.

10 45. USF's violation of the California FEHA has caused plaintiff to suffer damages,
11 including loss of wages and benefits, loss of employment, injury to his reputation and loss of
12 employability, stigmatization, emotional distress and upset.

13 46. USF acted with the purpose and intent of harming plaintiff and causing injury to
14 his employment and employability, by its own acts or by ratifying actions of others, in (a)
15 adopting the allegations and accusations of persons against plaintiff to support its demands, (b)
16 refusing to provide plaintiff information that would allow him to respond to the allegations and
17 accusations made against him, (c) refusing to conduct an investigation into the allegations and
18 accusations made against plaintiff, (d) refusing to consider alternatives to a psychiatric
19 examination in good faith and (e) banning and continuing to ban plaintiff from the USF campus.
20 Plaintiff is further informed and believes that the allegations and accusations made against
21 plaintiff were made by or ratified by persons who were officers, directors or managing agents of
22 USF within the meaning of Civil Code Section 3294(b). Plaintiff is further informed and
23 believes that USF's actions were taken, in part, in retaliation against plaintiff for his prior
24 complaints of discrimination in hiring and working conditions and for his complaint that the
25 demand for a psychiatric examination violated his rights under the FEHA, the ADA and other
26 laws. By reason of the foregoing, plaintiff is entitled to punitive damages against USF.

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1 47. Plaintiff seeks relief for the violations alleged herein, including back pay, future
2 lost wages, front pay and compensatory, punitive and exemplary damages, and further relief of
3 an order from this court directing his reinstatement to his position at USF without loss of
4 seniority or benefits.

5 **WHEREFORE**, plaintiff prays for relief as set out below.

6 **THIRD CAUSE OF ACTION**

7 **(WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY - VIOLATION OF**
8 **CONFIDENTIALITY OF MEDICAL INFORMATION ACT—DEFENDANT USF)**

9 Plaintiff incorporates by reference the allegations in paragraphs 1 through 33 as if fully
10 set forth in this Cause of Action.

11 48. The California Confidentiality of Medical Information Act, Civil Code § 56 et
12 seq., states California public policies that prohibit the release of medical information without a
13 written authorization by the person to whom the medical information pertains, except in certain
14 specified circumstances stated in Civil Code §§ 56.10(b), 56.10(c). Unless the release of medical
15 information is allowed under subdivisions (b) or (c) of Section 56, Civil Code § 56.11 requires a
16 written authorization by the patient for release of medical information. Section 56.20(c) further
17 provides that “No employer shall use, disclose, or knowingly permit its employees or agents to
18 use or disclose medical information which the employer possesses pertaining to its employees
19 without the patient having first signed an authorization under Section 56.11 or Section 56.21
20 permitting such use or disclosure” except in certain circumstances specified in subdivisions
21 (c)(1) through (c)(4) of Civil Code section 56.20. Civil Code § 56.20(b) further provides that
22 “no employee shall be discriminated against in terms or conditions of employment due to that
23 employee’s refusal to sign an authorization under this part.”

24 49. The California public policies stated in the California Confidentiality of Medical
25 Information Act inure to the benefit of the public at large.

26 50. USF’s letter dated June 24, 2008, in connection with the psychiatric examination
27 demanded by USF, demanded that plaintiff “provide all medical information the IP (independent
28 physician) requests”. At the time USF made such demand, the release of information to the

1 independent physician identified by USF was not within any of the exceptions to the requirement
2 of written authorization in subdivisions (b) or (c) of Civil Code section 52.10 or in subdivisions
3 (c)(1) through (c)(4) of Civil Code section 56.20 or within any other exception to the
4 requirement of a written authorization under the California Confidentiality of Medical
5 Information Act.

6 51. USF's letter of June 24, 2008, was a demand for disclosure of medical
7 information to agents of USF without a written authorization required by the California
8 Confidentiality of Medical Information Act or, in the alternative, was a demand that plaintiff
9 execute a written authorization allowing the disclosure of medical information to agents of USF.

10 52. USF terminated plaintiff's employment for reasons including plaintiff's refusal to
11 participate in the psychiatric examination under the conditions demanded in USF's letter of June
12 24, 2008.

13 53. By its actions alleged herein, USF violated California Public Policies and
14 discriminated against plaintiff because of his refusal to disclose information without a written
15 authorization required by the California Confidentiality of Medical Information Act and/or
16 plaintiff's refusal to sign an authorization under the California Confidentiality of Medical
17 Information Act.

18 54. USF's violation of public policy alleged herein has caused plaintiff to suffer
19 damages, including loss of wages and benefits, loss of employment, injury to his reputation and
20 loss of employability, stigmatization, emotional distress and upset.

21 55. USF acted with the purpose and intent of harming plaintiff and causing injury to
22 his employment and employability, by its own acts or by ratifying actions of others, in (a)
23 adopting the allegations and accusations of persons against plaintiff to support its demands, (b)
24 refusing to provide plaintiff information that would allow him to respond to the allegations and
25 accusations made against him, (c) refusing to conduct an investigation into the allegations and
26 accusations made against plaintiff, (d) refusing to consider alternatives to a psychiatric
27 examination in good faith and (e) banning and continuing to ban plaintiff from the USF campus.

1 Plaintiff is further informed and believes that the allegations and accusations made against
2 plaintiff were made by or ratified by persons who were officers, directors or managing agents of
3 USF within the meaning of Civil Code Section 3294(b). Plaintiff is further informed and
4 believes that USF's actions were taken, in part, in retaliation against plaintiff for his prior
5 complaints of discrimination in hiring and working conditions and for his complaint that the
6 demand for a psychiatric examination violated his rights under the FEHA, the ADA and other
7 laws. By reason of the foregoing, plaintiff is entitled to punitive damages against USF.

8 56. Plaintiff seeks relief for the violations alleged herein, including back pay, future
9 lost wages, front pay and compensatory, punitive and exemplary damages, and further relief of
10 an order from this court directing his reinstatement to his position at USF without loss of
11 seniority or benefits.

12 W H E R E F O R E, plaintiff prays for relief as set out below.

13 **FOURTH CAUSE OF ACTION**

14 **(WRONGFUL DISCHARGE IN VIOLATION OF CONSTITUTIONAL RIGHT TO
15 PRIVACY, CAL. CONST. ARTICLE 1, §1—DEFENDANT USF)**

16 Plaintiff incorporates by reference the allegations in paragraphs 1 through 33 as if fully
17 set forth in this Cause of Action.

18 57. Article I, Section 1 of the Constitution of the State of California provides that all
19 persons have the inalienable right of privacy (herein the "Constitutional Right of Privacy").
20 Among other things, the Constitutional Right of Privacy protects persons against demands to
21 disclose personal or private information about them, including medical information.

22 58. The Constitutional Right of Privacy states a public policy of the State of
23 California that inures to the benefit of the public at large.

24 59. On or about June 24, 2008, USF demanded that plaintiff undergo a
25 medical/psychiatric examination and demanded that plaintiff "provide all medical information
26 the IP (independent physician) requests". USF's demands intruded on plaintiff's private affairs
27 and his privacy, and demanded disclosure of private information about plaintiff. USF's demands
28 were not justified and the justification asserted by USF did not outweigh plaintiff's interests in

1 maintaining the privacy of his medical information and other matters that would have been
2 subject to and disclosed in the medical/psychiatric examination demanded by USF.

3 60. On or about February 2, 2009, USF terminated plaintiff's employment for reasons
4 including plaintiff's refusal to participate in the medical/psychiatric examination under the
5 conditions demanded by USF.

6 61. By its actions alleged herein, USF violated California public policies and
7 plaintiff's rights under the Constitutional Right of Privacy.

8 62. USF's violation of public policy alleged herein has caused plaintiff to suffer
9 damages, including loss of wages and benefits, loss of employment, injury to his reputation and
10 loss of employability, stigmatization, emotional distress and upset.

11 63. USF acted with the purpose and intent of harming plaintiff and causing injury to
12 his employment and employability, by its own acts or by ratifying actions of others, in (a)
13 adopting the allegations and accusations of persons against plaintiff to support its demands, (b)
14 refusing to provide plaintiff information that would allow him to respond to the allegations and
15 accusations made against him, (c) refusing to conduct an investigation into the allegations and
16 accusations made against plaintiff, (d) refusing to consider alternatives to a psychiatric
17 examination in good faith and (e) banning and continuing to ban plaintiff from the USF campus.
18 Plaintiff is further informed and believes that the allegations and accusations made against
19 plaintiff were made by or ratified by persons who were officers, directors or managing agents of
20 USF within the meaning of Civil Code Section 3294(b). Plaintiff is further informed and
21 believes that USF's actions were taken, in part, in retaliation against plaintiff for his prior
22 complaints of discrimination in hiring and working conditions and for his complaint that the
23 demand for a psychiatric examination violated his rights under the FEHA, the ADA and other
24 laws. By reason of the foregoing, plaintiff is entitled to punitive damages against USF.

25 64. Plaintiff seeks relief for the violations alleged herein, including back pay, future
26 lost wages, front pay and compensatory, punitive and exemplary damages, and further relief of
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1 an order from this court directing his reinstatement to his position at USF without loss of
2 seniority or benefits.

3 W H E R E F O R E, plaintiff prays for relief as set out below.

4 **FIFTH CAUSE OF ACTION**

5 **(VIOLATION OF UNRUH CIVIL RIGHTS ACT—DEFENDANTS USF AND DOES)**

6 Plaintiff incorporates by reference the allegations in paragraphs 1 through 33 as if fully
7 set forth in this Cause of Action.

8 65. The California Unruh Civil Rights Act, Civil Code § 51, provides, in material
9 part:

10 (b) All persons within the jurisdiction of this state are free and
11 equal, and no matter what their sex, race, color, religion, ancestry,
12 national origin, disability, medical condition, marital status, or
13 sexual orientation are entitled to the full and equal
14 accommodations, advantages, facilities, privileges, or services in
15 all business establishments of every kind whatsoever.

13 * * *

14 (e) For purposes of this section:

15 (1) "Disability" means any mental or physical disability as defined
16 in Sections 12926 and 12926.1 of the Government Code.

17 * * *

18 (5) "Sex, race, color, religion, ancestry, national origin, disability,
19 medical condition, marital status, or sexual orientation" includes a
20 perception that the person has any particular characteristic or
21 characteristics within the listed categories or that the person is
22 associated with a person who has, or is perceived to have, any
23 particular characteristic or characteristics within the listed
24 categories.

22 66. The California FEHA provides in Government Code Section 12926(i) that, for
23 purposes of the California FEHA, a "mental disability" includes, but is not limited to, any of the
24 following:

25 (1) Having any mental or psychological disorder or condition, such
26 as mental retardation, organic brain syndrome, emotional or mental
27 illness, or specific learning disabilities, that limits a major life
28 activity. ...

27 * * * *

- 1 (2) Any other mental or psychological disorder or psychological
2 disorder or condition described in paragraph (1) or (2), which is
3 known to the employer or other entity covered by this part.
4
5 (3) Having a record or history of a mental or psychological
6 disorder or condition described in paragraph (1) or (2), which is
7 known to the employer or other entity covered by this part.
8
9 (4) Being regarded or treated by the employer or other entity
10 covered by this part as having, or having had, any mental condition
11 that makes achievement of a major life activity difficult.
12
13 (5) Being regarded or treated by the employer or other entity
14 covered by this part as having, or having had, a mental or
15 psychological disorder or condition that has no present disabling
16 effect, but that may become a mental disability as described in
17 paragraph (1) or (2).
18

19 67. The California FEHA provides in Government Code Section 12926(k) that, for
20 purposes of the California FEHA, a "physical disability" includes, but is not limited to, any of
21 the following:

22 (1) Having any physiological disease, disorder, condition, cosmetic
23 disfigurement, or anatomical loss that does both of the following:

24 (A) Affects one or more of the following body systems: neurological,
25 immunological, musculoskeletal, special sense organs, respiratory, including
26 speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and
27 lymphatic, skin, and endocrine.

28 (B) Limits a major life activity. For purposes of this section:

29 (i) "Limits" shall be determined without regard to mitigating measures
30 such as medications, assistive devices, prosthetics, or reasonable
31 accommodations, unless the mitigating measure itself limits a major life
32 activity.

33 (ii) A physiological disease, disorder, condition, cosmetic disfigurement,
34 or anatomical loss limits a major life activity if it makes the achievement
35 of the major life activity difficult.

36 (iii) "Major life activities" shall be broadly construed and includes
37 physical, mental, and social activities and working.

38 * * *

1 (3) Having a record or history of a disease, disorder, condition,
2 cosmetic disfigurement, anatomical loss, or health impairment
described in paragraph (1) or (2), which is known to the employer
or other entity covered by this part.

3 (4) Being regarded or treated by the employer or other entity
4 covered by this part as having, or having had, any physical
condition that makes achievement of a major life activity difficult.

5 (5) Being regarded or treated by the employer or other entity
6 covered by this part as having, or having had, a disease, disorder,
7 condition, cosmetic disfigurement, anatomical loss, or health
impairment that has no present disabling effect but may become a
physical disability as described in paragraph (1) or (2).

8
9 68. At all material times, defendants:

- 10 a. Perceived plaintiff as a person with a physical, mental or psychological condition
11 that created a danger to other persons, or limited his ability to teach students work
12 or to work with persons in an academic department;
- 13 b. Regarded or treated plaintiff as having a physical, mental or psychological
14 condition that created a danger to other persons, or limited his ability to teach
15 students or to work with persons in an academic department;
- 16 c. Regarded or treated plaintiff as having a physical, mental or psychological
17 condition that might result in harm to other persons, might limit his ability to
18 teach students or to work with persons in an academic department;
- 19 d. Considered plaintiff as having a record of a physical, mental or psychological
20 condition that limited his ability to function or work, including the record arising
21 from the events alleged in paragraph 8(a) hereinabove;
- 22 e. Regarded or treated plaintiff as having or having had a physical, mental or
23 psychological condition that makes it difficult for plaintiff to teach students or to
24 work with persons in an academic department; and/or
- 25 f. Regarded or treated plaintiff as having or having had a physical, mental or
26 psychological condition with no present limiting effect but that might limit in the
27 future his ability to teach students or to work with persons in an academic
28 department.

1 69. Because of the facts alleged hereinabove, plaintiff has a disability within the
2 meaning of the California Unruh Civil Rights Act.

3 70. Since on or about February 3, 2009, following plaintiff's discharge, USF has
4 banned plaintiff from the USF Campus and prevented him from attending the facilities,
5 privileges and services USF provides to other members of the public.

6 71. USF has banned and continues to ban plaintiff from the USF Campus because
7 plaintiff has a disability within the meaning of the California Unruh Civil Rights Act.

8 72. The defendants sued herein as DOE ONE through DOE TWENTY have
9 themselves denied, or aided or incited USF in denying, or have made a discrimination or
10 distinction contrary to California Unruh Civil Rights Act.

11 73. Defendants' actions have caused plaintiff to suffer stigmatization, humiliation,
12 embarrassment, upset and distress. Defendants acted with the purpose and intent of vexing or
13 harming plaintiff, causing injury to him and denying him full and equal access to the USF
14 Campus and the advantages, facilities, privileges and services available to other members of the
15 public. By reason of the foregoing, plaintiff is entitled to the action and other damages provided
16 in California Civil Code Section 52(a) for each offence and attorney fees. Plaintiff alleges that
17 defendants have committed an offence within the meaning of California Civil Code Section
18 52(a) on each day on which an event, program or activity occurs on the USF Campus that is or
19 was open to members of the public, including sporting events, lectures, exhibitions or religious
20 services.

21 W H E R E F O R E, plaintiff prays for relief as set out below.

22 **SIXTH CAUSE OF ACTION**

23 **(DEFAMATION—DEFENDANTS USF, PEUGH-WADE AND DOES)**

24 Plaintiff incorporates by reference the allegations in paragraphs 1 through 30 as if fully
25 set forth in this Cause of Action.

26 74. At some time on or about June 18, 2008, the date of which is unknown to
27 plaintiff, and at sometime thereafter on or about the second week in January 2009, defendants
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1 DOE ONE, and/or other defendants sued herein as DOE TWO through DOE TWENTY, stated
2 to USF that plaintiff had committed certain acts or displayed certain behaviors that had caused
3 such defendant or defendants to be concerned for their safety. Such statements were oral, in
4 writing or both.

5 75. At the time DOE ONE, and/or other defendants, made the statements alleged in
6 paragraph 74 herein, they knew that such statements were false, in that plaintiff had not
7 committed the acts or displayed the behaviors alleged against him and that defendants were not
8 actually or reasonably concerned about their safety. Defendants made such statements with the
9 intent and purpose of harming plaintiff, causing him to lose his employment and to deter plaintiff
10 from pursuing complaints as to the hiring and other employment issues in the Mathematics
11 Department, including the search for new faculty and the qualifications of faculty members.

12 76. Plaintiff is informed and believes, and thereon alleges, that on or about June 24,
13 2008, defendant Peugh-Wade sent a copy of the letter dated June 24, 2008, to the medical doctor,
14 Norman Reynolds, by whom USF had demanded that plaintiff be examined. The June 24, 2008,
15 letter republished the allegations as to plaintiff's actions and behaviors purportedly reported to
16 USF some time on or about June 18, 2008, as alleged in paragraph 74 herein, and some
17 additional allegations of similar nature, and republished the statement that plaintiff's behavior
18 and actions had caused persons to be concerned for their safety. At the time defendant Peugh-
19 Wade sent this copy to the medical doctor, as alleged herein, plaintiff had not agreed to see this
20 medical doctor. Defendant Peugh-Wade sent this letter in order to prejudice the medical doctor
21 against plaintiff, without a reasonable or good faith belief in the truth of the statements contained
22 therein, without investigation of the statements contained therein, without allowing plaintiff an
23 opportunity to respond to such statements and without providing plaintiff sufficient information
24 to make a response to such statements.

25 77. The statements made by defendants alleged herein in paragraphs 74 and 76 tended
26 directly to injure plaintiff in his occupation or profession as a teacher, attributed to him a general
27 disqualification in those respects that teaching requires or imputed matters that had the natural
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1 tendency to lessen its profits and/or to cause plaintiff to lose his employment at USF, and were
2 such as to cause plaintiff to be shunned or avoided, and to expose plaintiff to hatred, contempt,
3 ridicule or obloquy.

4 78. The statements made by defendants alleged herein in paragraphs 74 and 76 had
5 the natural consequence of causing plaintiff to lose his employment at USF, to prejudice any
6 medical/psychiatric examination, to deter plaintiff from agreeing to a medical/psychiatric
7 examination before the medical doctor to whom such information was provided and to cause
8 plaintiff to suffer actual damages and did cause plaintiff actual damages.

9 79. Plaintiff is informed and believes, and thereon alleges, that the statements by
10 defendants alleged herein were made by employees of USF acting within the scope of their
11 employment.

12 80. Defendant USF ratified the statement by other defendants by relying upon them,
13 by failing to investigate the truth of the statements and by failing to provide plaintiff sufficient
14 information so that he could respond to the allegations or statements against him or the motives
15 of the persons making such statements.

16 81. Because of the statements by defendants alleged in paragraph 74 herein, USF
17 demanded plaintiff undergo a medical/psychiatric examination and thereafter discharged
18 plaintiff.

19 82. Defendants acted with the purpose and intent of harming plaintiff and causing
20 injury to his employment and employability. Plaintiff is informed and believes that the
21 allegations and accusations made against plaintiff were made by or ratified by persons who were
22 officers, directors or managing agents of USF within the meaning of Civil Code Section 3294(b).
23 Plaintiff is further informed and believes that defendants took the actions alleged herein, in
24 whole or in part, in retaliation against plaintiff for his prior complaints of discrimination in hiring
25 and working conditions. By reason of the foregoing, plaintiff is entitled to punitive damages
26 against defendants.

1 83. Plaintiff seeks relief for the violations alleged herein, including back pay, future
2 lost wages, front pay and compensatory, punitive and exemplary damages.

3 W H E R E F O R E, plaintiff prays for relief as follows:

- 4 1. For back pay, future lost wages, front pay and compensatory damages.
5 2. For punitive and exemplary damages.
6 3. For reinstatement to his employment, without loss of seniority or benefits.
7 4. For damages under Civil Code Section 52(a).
8 5. For attorney fees.
9 6. For prejudgment and post judgment interest, for plaintiff's costs of suit, and for
10 such other and further relief as the Court deems appropriate on the evidence presented.

11
12 Dated: June 17, 2009.

KATZENBACH AND KHTIKIAN

13
14 By 

15 Christopher W. Katzenbach
16 Attorneys for Plaintiff JOHN S. KAO
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