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9 **JASON ANTEBI**

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13 **JASON ANTEBI**, an Individual,

14 Plaintiff,

15 v.

16 **OCCIDENTAL COLLEGE**, a California
17 Corporation; **THE BOARD OF TRUSTEES OF**
18 **OCCIDENTAL COLLEGE**, **FRANK AYALA**,
19 an individual; **MARYANNE HOROWITZ**, an
20 Individual; **TED MITCHELL**, an Individual,
21 **SANDRA COOPER**, an Individual, **RAMEEN**
22 **TALESH**, an Individual; **JAMES**
23 **TRANQUADA**, an Individual and **DOES 1**
24 through 100 inclusive,

25 Defendants.

26 **CASE NO.**

27 **COMPLAINT FOR DAMAGES FOR:**

- 28 1. **DECLARATORY RELIEF;**
2. **DEFAMATION;**
3. **VIOLATION OF CIVIL CODE SECTIONS 51 AND 52.1;**
4. **INVASION OF PRIVACY – PUBLIC DISCLOSURE OF PRIVATE FACTS**
5. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
6. **NEGLIGENCE;**
7. **BREACH OF CONTRACT; AND**
8. **BREACH OF FIDUCIARY DUTIES**

Plaintiff **JASON ANTEBI**, an individual, hereby alleges against defendants as follows:

GENERAL ALLEGATIONS

1. At all times herein mentioned, Plaintiff **JASON ANTEBI** (“*Mr. Antebi*” or “*Plaintiff*”) was and is a single man residing in the County of Los Angeles.
2. Defendant **OCCIDENTAL COLLEGE** (the “*College*”) is and at all material times hereto, was a corporation organized and existing under the laws of the state of California and licensed to do business in that state.

1 3. Defendant THE BOARD OF TRUSTEES OF OCCIDENTAL COLLEGE (the “*Trustees*”)
2 is and at all material times hereto, was a corporation organized and existing under the laws of the
3 state of California and licensed to do business in that state.

4 4. Plaintiff is informed and believes and thereon alleges that defendant FRANK
5 AYALA (“*Ayala*”), was the Dean of Students of the College and at all relevant times is and was a
6 resident of the county of Los Angeles, State of California.

7 5. Plaintiff is informed and believes and thereon alleges that defendant MARYANNE
8 HOROWITZ (“*Horowitz*”), was the Title IX Officer of the College and at all relevant times is and
9 was a resident of the county of Los Angeles, State of California.

10 6. Plaintiff is informed and believes and thereon alleges that defendant TED
11 MITCHELL (“*Mitchell*”), was the President of the College and at all relevant times is and was a
12 resident of the county of Los Angeles, State of California.

13 7. Plaintiff is informed and believes and thereon alleges that defendant SANDRA
14 COOPER (“*Cooper*”), was the General Counsel of the College and at all relevant times and her
15 principal place of business is in Los Angeles, California and is and was a resident of the county
16 of San Luis Obispo, State of California.

17 8. Plaintiff is informed and believes and thereon alleges that defendant RAMEEN
18 TALESH (“*Talesh*”), was the Associate Dean and Director of Residence Life of the College and
19 at all relevant times is and was a resident of the county of Los Angeles, State of California.

20 9. Plaintiff is informed and believes and thereon alleges that defendant JAMES
21 TRANQUADA (“*Tranquada*”), was the Director of Communication of the College and at all
22 relevant times is and was a resident of the county of Los Angeles, State of California.

23 10. Plaintiff is informed and believes and thereon alleges that Mr. Ayala, Ms.
24 Horowitz, Mr. Mitchell, Ms. Cooper, Mr. Talesh, Mr. Tranquada and others, at all times herein
25 mentioned were official representatives of the College and, as such, acted individually and
26 within such course, scope and capacity when undertaking official acts by reason of which
27 College is liable for their wrongful official acts. Notwithstanding the foregoing, the acts and
28 omissions of the defendants named in this Paragraph that are alleged in those causes of action

1 herein for defamation, civil rights violations, intentional infliction of emotional distress,
2 negligent infliction of emotional distress and breach of contract were done or omitted by them,
3 in their individual capacities and were motivated by factors which were beyond their purview as
4 representatives of the College, including but not limited to personal dislike of Plaintiff and ill
5 will towards Plaintiff. As such, indemnification of these parties for their defense of those causes
6 of action would violate Corporate Code § 830.

7 11. The true names, capacities, and identities of defendants designated herein as
8 DOES 1 through 100 (“*DOE Defendants*”) are unknown to Plaintiff, who therefore sues said
9 defendants by fictitious names. Plaintiff will seek leave of court to amend this pleading to set
10 forth their true names, capacities, and identities when ascertained. Plaintiff alleges on
11 information and belief that each of the DOE Defendants acted or failed to act as alleged in this
12 pleading, and were and are the legal cause of the damages suffered by Plaintiff as alleged in this
13 pleading.

14 12. Plaintiff is informed and believes, and thereon alleges, that in connection with the
15 acts and omissions alleged herein, DOE Defendants and some or all of the named defendants
16 entered into a partnership, employment, conspiracy, joint venture and/or principal/agent
17 relationship to carry out all the acts and omissions herein alleged. At all times material hereto,
18 such DOE Defendants have been and continue to be employees, agents, co-conspirators,
19 partners, employers, principals and/or joint venturers, of each of the named defendants, or one or
20 more of them, acting and omitting to act as alleged herein:

- 21 a. both on their own behalf and on behalf of their employees, agents, co-
22 conspirators, partners, employers, principals and/or joint venturers;
- 23 b. within the course and scope and pursuant to their employment, agency,
24 conspiracy, joint venture and/or partnership; and
- 25 c. with the authorization, direction, consent, ratification and adoption of
26 their employers, principals, joint venturers, partners, employees, agents
27 and/or co-conspirators.

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1 Plaintiff will seek leave to amend this pleading to allege the exact nature of such
2 interrelationships when the same are ascertained.

3 13. Plaintiff was at all times herein mentioned, enrolled in his senior year as a student
4 at defendant Occidental College and residing in the County of Los Angeles.

5 14. In violation of California law, common law, due process and its own contractual
6 promises, as well in violation of the First Amendment of the United States constitution and the
7 California constitution, the free speech protections of which are extended to students at private
8 universities under state law, the College and all Defendants have engaged in a continuing
9 dishonest and malicious campaign against Plaintiff because of their personal dislike of Plaintiff
10 and ill will towards Plaintiff. The College further violated the privacies of Plaintiff as set forth
11 in its Student Handbooks and as further mandated by The Family Educational Rights and
12 Privacy Act of 1974 ("**FERPA**") 20 U.S.C. § 1232g.

13 15. The College found Plaintiff guilty of violating federal and state harassment laws
14 and fired him from his popular comedy radio show on KOXY, a radio station operated not by
15 the College, but by the Associated Students of Occidental College, for engaging in lawfully
16 protected speech. The College did so with full knowledge and notice that Plaintiff's speech was
17 not harassment under the law and could not be lawfully punished.

18 16. Defendants, with knowledge of the falsity of their accusations against Plaintiff,
19 or, at very least, reckless disregard for the truth, maliciously and publicly accused Plaintiff of
20 serious criminal wrongdoing including "hate crimes" ranging from telephone harassment to
21 destruction of property and vandalism. The Defendants disseminated a campus wide e-mail
22 referencing Plaintiff and subjecting him to vilification before his peers. Defendants effectively
23 removed Plaintiff from his elected position in student government. In communications with
24 outsiders the College's Dean of Students and Counsel and other university officials blatantly
25 misrepresented the facts of Plaintiff's situation, in a knowing and malicious attempt to prevent
26 civil liberties groups and other potential supporters from coming to his defense. The College's
27 Dean of Students, General Counsel and other university officials painted Plaintiff as a racist,
28 criminal, drug pusher, advocate of violence, unethical student representative, and as a person

1 responsible for an atmosphere of terror on campus in which women were “unable to concentrate,
2 sleep, or even walk across campus without fear.”

3 17. The stress of this unlawful campaign of deceit had serious adverse physical,
4 emotional, financial and academic impact on the Plaintiff, including damage to his reputation.
5 The finding by the College and all other Defendants that Plaintiff had violated federal anti-
6 harassment law effects Plaintiff’s ability to obtain a post-graduate education suitable to his
7 credentials, and will seriously harm his future job prospects as a person having been found guilty
8 of sexual harassment.

9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 18. In and before Fall of 2000, Mr. Antebi was accepted as a full-time college student
11 by the College and he enrolled as a student at Occidental College, a privately funded California
12 liberal arts college. Mr. Antebi made and the College accepted payments of tuition commencing
13 at approximately Twenty-Three Thousand Seven Hundred Fifty Dollars (\$23,750.00) in or
14 around 2000-2001 and escalating annually to Twenty-Seven Thousand Seven Hundred Fifty
15 Dollars (\$27,750.00) as of his senior year in 2003-2004.

16 19. Mr. Antebi’s enrollment was subject to various rules, regulations, standards and
17 guidelines that were (and are) contained in, among other things, various Occidental College
18 Student Handbooks. Those various Occidental College Student Handbooks contain express
19 promises and other promises implied from the language and context thereof, all of which are
20 binding upon the College and the other Defendants named individually herein and inure to the
21 benefit of the Plaintiff, and all other students enrolled in the College.

22 20. During the course of his enrollment with Occidental College, Mr. Antebi actively
23 participated in various aspects of student life. Mr. Antebi was a member of the Associated
24 Students of Occidental College (“*ASOC*”), the student government, and ultimately, in his senior
25 year of 2003-2004, in which he graduated, was elected to and acted as the Vice President of
26 Policy of ASOC.

27 21. From his Freshman year forward, excluding his Junior year, Mr. Antebi co-hosted
28 a popular student radio show on Occidental College’s radio station KOXY, called “*Rant and*

1 *Rave*,” a political parody show that was based and relied on provocative humor and satire and is
2 more commonly known as “shock jock” programming. KOXY is and was sponsored by the
3 ASOC. *Rant and Rave* criticized, mocked and poked fun at Occidental College student
4 government, of which Mr. Antebi was a member, and among other things, explored, discussed,
5 and traversed other popular social issues in ways many would consider politically incorrect and
6 distasteful. *Rant and Rave* was intentionally obnoxious in its mocking of everyone including
7 Mormons, Christians, Jews, Jehovah’s Witnesses, Democrats, Republicans, men, women,
8 children, short, tall, fat and skinny.

9 22. As both co-host of *Rant and Rave* and as a member and Vice President of Policy
10 of the ASOC, Mr. Antebi engaged in controversial commentary as well as decision making
11 policies for the ASOC. As a result, Mr. Antebi gained both a loyal following as well as
12 ravenous critics. Two specific decisions in which Mr. Antebi had input in his capacity as ASOC
13 Vice President were as follows:

14 a. On or about October 21, 2003, the ASOC Policy Committee
15 recommended to the ASOC Senate that Occidental College’s Women’s Center be
16 consolidated into the “off-campus regulated constituency” for voting purposes. Due to
17 perceived fears that consolidation would dilute the Women’s Center’s representation on
18 the Senate, the Women’s Center objected to the proposal. As Vice President of Policy
19 for the ASOC, Mr. Antebi was approached by several non-senators (students who had no
20 regular voice at meetings of the ASOC) who wished to address the Senate on the
21 proposal. Mr. Antebi, as Vice President of Policy informed the non-senators that the
22 rules only permitted senators to speak to the Senate at the ASOC meetings. This decision
23 visibly angered the non-senators who wished to speak out against the proposal.¹

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28 ¹ However, the proposal was not put forward to the Senate and no vote was ever
passed to consolidate the Women’s Center.

1 b. On December 3, 2003, the ASOC Senate voted to fire two African-
2 American student workers over management issues and misuse of ASOC funds. Mr.
3 Antebi, in his capacity as Vice President of ASOC spear headed the committee
4 investigating the misuse of ASOC funds. Mr. Antebi did not vote in the removal
5 process.

6 23. During the following semester of his senior year, in the climate created by the Gray
7 Davis recall in the Fall of 2003, several students, including those who had been angered by the
8 handling of the Women’s Center consolidation proposal, spearheaded their own effort to have Mr.
9 Antebi recalled as the Vice President of the ASOC, by circulating a petition to recall Mr. Antebi
10 from his ASOC Vice President of Policy position. The self-proclaimed proponent of the recall
11 campaign was Samara Neely Cohen (“*Ms. Neely-Cohen*”). Also prominently involved in the
12 recall efforts were Stephan Van der Mersch (“*Mr. Van der Mersch*”) and Gretchen Ptacek (“*Ms.*
13 *Ptacek*”). The efforts to recall Mr. Antebi included personal, unfounded and slanderous
14 accusations, including defamatory comments that Mr. Antebi was “racist,” “anti-Semitic” and
15 “sexually harassed women” and were re-published by persons who had never even met Mr.
16 Antebi. Slanderous comments were made publicly by Mr. Van der Mersch and Ms. Neely-Cohen.
17 The recall efforts lost control so much so that the words “You’re a fucking racist” were written in
18 marker on Mr. Antebi’s on-campus residence door.

19 24. On or about February 13, 2004, Mr. Antebi verbally and in writing, reported the
20 slanderous and harassing conduct, including the defacement of his door, to Defendant Ayala and
21 Defendant Cooper and specifically identified two persons Mr. Van der Mersch and Ms. Neely-
22 Cohen as persons spreading lies about him in the newspaper and student digest. At said time, and
23 in separate meetings, Mr. Antebi informed Defendant Ayala and Defendant Cooper that he desired
24 to file a formal harassment complaint against Mr. Van der Mersch and Ms. Neely-Cohen. Both
25 Defendant Ayala and Defendant Cooper informed Mr. Antebi that they would not proceed with
26 an investigation or disciplinary procedure against Mr. Van der Mersch or Ms. Neely-Cohen,
27 stating that Plaintiff’s complaints did “not constitute harassment,” that they, as well as other
28 college administrators “were not [his] parents” and instructed that he “would have to fight [his]

1 own battles” with the students who were waging this battle.

2 25. On March 8, 2004 and on March 9, 2004, KOXY promoted the Thursday, March
3 11, 2004 show of Rant and Rave, promising that Mr. Antebi and his co-host, would “get really
4 trashed [on the air],” “make fun of Dan and Vander Douche. A lot. Really, a lot...” and
5 identified as a topic, “The Adventures of Vander Douche, the Bearded Feminist, and the Iowa
6 Radio Reject.”

7 26. At no time prior to 10:00 p.m. to 12:00 p.m. on March 11, 2004, did Mr. Van der
8 Mersch or Ms. Neely-Cohen directly inform Plaintiff that they found his conduct to be offensive,
9 as is suggested in the Student Policy Handbook, nor did they contact KOXY, the College or any
10 of the officials or administrators to seek preventative action from allowing the broadcast to take
11 place. Rather, Mr. Antebi’s political rivals, who had commenced the campaign of harassment
12 which went uninvestigated and undisciplined by the College, opted to, and did in fact listen to
13 and tape recorded Mr. Antebi’s program, with the intent to file a harassment claim.

14 27. Accordingly on the March 11, 2004 broadcast of *Rant and Rave*, Mr. Antebi and
15 his co-host pretended to take Vicodin, in parody of Rush Limbaugh, and did in fact insult
16 satirical characters named “Vander Douche” and “Sam the Bearded Feminist.” During the
17 March 11, 2004, show and others which preceded it over the course of several years, Mr. Antebi
18 further and in satire and parody, insulted a character loosely based on his own mother, insulted
19 the College’s student newspaper editors, engaged in discussions of a sexual nature and even ran
20 segments with off-color interviews of campus administrators where the winner was promised
21 (but not actually provided) free X-rated videotapes/DVDs. Witting participants in these
22 interviews and contests, included such persons as Defendant Ted Mitchell, the College’s
23 President, Defendant Rameen Talesh, the College’s Director of Residence and Greek Life and
24 Vince Cuseo, the College’s Director of Admissions.

25 28. The very next day, on March 12, 2004, Mr. Antebi received verbal notice from
26 the College that sexual harassment complaints would be filed against him and shortly thereafter
27 learned in writing that sexual harassment complaints were, in fact, filed against him on March
28 17, 2004, by two students, including Ms. Neely-Cohen and by Ms. Ptacek, for comments

1 Plaintiff allegedly made on *Rant and Rave's* March 11, 2004 radio show. At the time these
2 sexual harassment complaints were filed, the College and the individual defendants knew Ms.
3 Neely-Cohen, Ms. Ptacek and Mr. Antebi to be political rivals, and further knew that Ms. Neely-
4 Cohen and Ms. Ptacek individually opted to listen to the show for the purpose of filing the
5 complaints. A complaint was later filed on or about March 25, 2004 by Mr. Van der Mersch.
6 Each of the complaints were filed, not by uninvolved third parties, but rather by the very same
7 people who had spearheaded the attempt to recall Mr. Antebi from the student senate, of whom
8 Mr. Antebi sought Defendants' protection from the very same harassment and mis-truths being
9 disseminated about him in the campus newspapers and digests, and whom Defendants indicated
10 they would not investigate or discipline and instructed that Mr. Antebi fight his own battles.

11 29. After the informal complaints, but prior to the formal filings for sexual harassment
12 against Plaintiff, Occidental College's Title IX Officer, Defendant Horowitz, the designated
13 college officer assigned to investigate this matter, instructed and demanded that Mr. Antebi
14 refrain from contact of any type with Ms. Neely-Cohen, Ms. Ptacek and Mr. Van der Mersch
15 despite their mutual involvement in the ASOC; apologize to Ms. Neely-Cohen, Ms. Ptacek and
16 Mr. Van der Mersch; and seek counseling from a psychiatrist. As herein alleged, such conduct by
17 Defendant Horowitz prejudiced Plaintiff, tainted subsequent proceedings and created an
18 atmosphere of hostility toward Plaintiff prior to any fact finding and prior to any determination of
19 Plaintiff's guilt or innocence.

20 30. Defendant Horowitz further exhibited her prejudice and negative bias toward
21 Plaintiff, when, on or about March 16, 2004, prior to the filing of the above described sexual
22 harassment complaints by Ms. Neely-Cohen, Ms. Ptacek and Mr. Van der Mersch commented to
23 Mr. Antebi that his "father demeans women for a living" and asked Plaintiff whether the
24 environment created by his father was the cause of Mr. Antebi's sexual harassment of women.

25 31. Also on March 16, 2004, prior to the filing of any formal sexual harassment
26 complaints, Defendant Ayala, without investigation or proceedings demanded and obtained the
27 removal of Mr. Antebi from KOXY and at all relevant time thereafter widely publicized the
28 reasons therefor.

1 32. Some of the allegations that were contained in the sexual harassment complaints
2 filed against Plaintiff included:

- 3 a. By Gretchen M. Ptacek: She was “horrified, hurt, terrified, offended and
4 left utterly speechless” by Mr. Antebi’s insults to a character loosely based
5 on his own mother and to student newspaper editors, sexual questions on
6 the air, and mocking of an upcoming school event.
- 7 b. By Ms. Neely-Cohen: In addition to the complaints of Ms. Ptacek, the
8 insulting nickname of “Sam the Bearded Feminist.” That Antebi’s
9 comments over the air and internet contributed to a hostile environment
10 for her, Mr. Van der Mersch and women at Occidental College and
11 everywhere.
- 12 c. By Mr. Van der Mersch: complained that Mr. Antebi’s e-mails to the
13 Digest and comments on the Show were statements “of a sexual nature;”
14 “epithets or jokes relating to gender or sexual orientation;” that his
15 statement on the Show was “a remark of a sexual nature about a person’s
16 body;” “his emails to the student digest [were] specifically suggestive or
17 obscene...e-mails.” Mr. Van der Mersch complained that he “had to bear
18 constant public sexual ridicule” due to the Vander Douche statements in
19 the Student Digest and on the Show. Mr. Van der Mersch wondered who
20 was “laughing at him for being the Vander Douche, looking like a vagina”
21 and spreading jokes about what he had up his “ass.” Mr. Van der Mersch
22 alleged he felt very uncomfortable and intimidated.

23 On or about March 17, 2004 and March 25, 2004, Defendant Horowitz disseminated
24 summaries of the complaints and/or the actual sexual harassment complaints to the complaining
25 student, to Mr. Antebi, and to the other complaining students, thereby violating Mr. Antebi’s
26 privacy rights.

27 33. Plaintiff thereafter became the target of multiple and adverse reactions from
28 peers, faculty and administrative staff, including but not limited to his firing from the radio

1 station, and two separate investigations relating to the complaints of sexual harassment and to
2 the accusations of violation of the College's code of conduct.

3 34. On March 17, 2004, Defendant Horowitz sent Mr. Antebi the sexual harassment
4 complaints. On the same date, Defendant Horowitz and Defendant Cooper informed Mr.
5 Antebi, in writing, that he would not be entitled a "Hearing." The only Hearing discussed in the
6 College's Student Handbook, is the Appeal to a Hearing Panel, which is the right of any party to
7 the harassment complaint, who is affected by the recommendation, as set forth in the Occidental
8 College Student Handbook 2003-2004, Sexual Harassment Policy, Section IV(OPTION B),
9 paragraph 5.

10 35. The only grounds for refusing a hearing is if the content that is the subject of the
11 complaint is protected by the First Amendment of the United States Constitution and Article 1,
12 Section 2 of the California Constitution. If such is the case, the administrator was required to
13 immediately notify the complainant and respondent. At the time that Defendants notified Plaintiff
14 he would have no right to an appeal hearing, they failed to state the reason for refusing him his
15 hearing, and there were no findings that the complained of behavior and/or acts was protected by
16 the First Amendment of the United States Constitution and Article 1, Section 2 of the California
17 Constitution.

18 36. On March 22, 2004, from the office of the General Counsel for Occidental
19 College, Defendant Cooper yelled into a public hallway at Mr. Antebi, that he was a "racist,"
20 "sexist," "misogynist," "anti-Semite," "homophobe," "unethical" and "immoral" "trash." These
21 words were published to numerous persons, both identifiable and unidentifiable.

22 37. On several other occasions in or around March and April of 2004, Defendant
23 Ayala, Defendant Cooper and Defendant Horowitz, engaged in conversations and or written
24 communication with students other than the claimants and Mr. Antebi, maliciously publishing as
25 fact, and not as part and parcel of an investigation, that Mr. Antebi committed several crimes.
26 Specifically, Defendant Cooper published the following false statements to another student:

27 (a) Mr. Antebi committed various crimes and there was no need to look
28 elsewhere for the culprit because she had all the proof she needed to consider Jason

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Antebi guilty; and

(b) Mr. Antebi was a criminal not worthy of being an Oxy student let alone Vice President of Policy.

These statements were and are untrue and Defendant Cooper knew the statements were not true when he published them, and each of them.

38. On March 29, 2004, Defendants, by and through the President of Occidental College, Defendant Mitchell, transmitted a campus wide e-mail accusing unnamed persons of harassing behavior masquerading as “open expression,” intolerance, intimidation and threatening behavior. Although Defendant Mitchell’s e-mail did not mention Mr. Antebi by name, its content clearly identified Mr. Antebi as its sole subject, as he was the only person that any of the Defendants accused or investigated for such behavior against blacks, women and gays, the alleged victims of the complained of behavior. (A true and correct copy of the March 29, 2004 e-mail is attached hereto as Exhibit “A”). Mr. Antebi was approached by several students who expressed that they knew that President Mitchell’s e-mail was in reference to Mr. Antebi.

39. On or about March 30, 2004, the Foundation for Individual Rights in Education (“*FIRE*”) forwarded to Defendants, a correspondence which informed Defendants, and each of them, of, Defendants’ obligation to uphold First Amendment standards for free speech under California Education Code Section 94367 (the “*Leonard Law*”) and of the clarification by the United States Department of Education’s Office of Civil Rights (the “*OCR*”) regarding the relationship between harassment law, federal regulations and the First Amendment and United States Supreme Court case law. FIRE took such action to urge Defendants to cease their proceedings against Plaintiff and not to take action against him on the basis of the content of *Rant and Rave*. (A true and correct copy of the March 30, 2004 correspondence is attached hereto as Exhibit “B”).

40. On March 31, 2004, Defendant Ayala hand delivered, by and through a third party, a correspondence which was unsealed, to Mr. Antebi accusing him of various offenses, including allegations that Plaintiff had made threats of physical violence and retribution against perceived enemies who voiced their concerns, and Defendant Ayala in the same correspondence

1 threatened Mr. Antebi with expulsion from the college.

2 41. On about April 2, 2004, in correspondence from Defendant Cooper to the
3 Director of FIRE, well prior to the completion of the investigation into any of the complaints
4 against Mr. Antebi, Defendant Cooper falsely asserted as “facts” allegations wholly unrelated to
5 and well outside the scope of an investigation into complaints of sexual harassment, including,
6 but not limited to the following allegations that Mr. Antebi: (1) used threats to exact revenge
7 against people who protested against him; (2) racially taunted persons fired from the student
8 senate; (3) used highly derogatory words towards identified persons; (4) jeopardized financial
9 aid to students by parodying taking prescription medication while on the air; (5) misused his
10 position in the student government to fire those who disagreed with him; (6) demanded and
11 received the resignation of the radio station program director and subscribed individuals to spam
12 using campus computers. Defendant Cooper further alleged, in that same correspondence, that
13 there would be an investigation into middle of the night sexual telephone calls to the Campus
14 Womens Center, anonymous e-mails to the gay community, defaced brochures with the words
15 “cunt” “bitches” and “pussy, tire slashing and “loud labeling” of women as bitches across the
16 campus. Defendants further misquoted the ACLU’s interpretation of hate speech and redacted
17 critical elements of the ACLU’s findings of where speech ceases to be speech and becomes
18 conduct. Defendants, prior to the conclusion of any investigation, considered Mr. Antebi guilty
19 of these uncharged acts of racial discrimination, harassment, crimes, undue influence, unfitness
20 for and general disqualification in those respects which his office required and prior to him having
21 been proven responsible by any evidence, let alone clear and convincing evidence. (A true and
22 correct copy of the April 2, 2004 correspondence is attached hereto as Exhibit “C”). Moreover,
23 Defendants, and each of them, failed to administer the claims and complaints against Plaintiff
24 with due process, fairness, impartiality, discretion, sensitivity or concern for Mr. Antebi’s rights
25 or the probable harm to Mr. Antebi resulting from such conduct.

26 42. On or about April 12, 2004 the Final Report of the disciplinary proceedings as to
27 each individual complaint against Mr. Antebi were published collectively to Ms. Neely-Cohen,
28 Ms. Ptacek and Mr. Van der Mersch. The collective publication violated Plaintiff’s privacy rights

1 as to each separate complaint of sexual harassment. At that time Defendant Horowitz was aware,
2 or should have been aware that she had no probable cause to find Mr. Antebi guilty of sexual
3 harassment under federal regulation, Title IX of the Educational Amendments of 1972.
4 However, in order to support her findings Defendant Horowitz overstepped the authority of her
5 position by conducting an investigation beyond the scope of the complaints that had been filed and
6 attached a list of alleged, unproven and untrue allegations against Plaintiff Antebi that were
7 unrelated and irrelevant to the complaint of sexual harassment. (A true and correct copy of the
8 April 12, 2004 report is attached hereto as Exhibit "D"). By inference, Ms. Horowitz stated that
9 some of the conduct was directly attributable to Mr. Antebi and she expressly stated that other
10 conduct echoed his intimidating, threatening and demeaning tone. Defendant Horowitz issued a
11 finding that Mr. Antebi was guilty of creating a sexual and gender hostile environment and of
12 harassment. In her published findings, Defendant Horowitz made the same recommendations she
13 had made to Mr. Antebi on March 12, 2004, suggesting he seek counseling on relationships,
14 apologize to the students and that the report be filed in Mr. Antebi's student file. Attached to the
15 report, published or otherwise, Defendant Horowitz provided a list of sixteen separate incidents
16 which she attributed to Mr. Antebi or which "echoed his behavior." With the intent to expose
17 Plaintiff to further humiliation, ridicule and embarrassment, Defendant Horowitz sent these
18 findings to Plaintiff's family home rather than his on-campus residence where he resided and
19 received all prior documents from the College and the Defendants. Accordingly, Plaintiff did not
20 receive the findings until one week after they were issued. Defendants further failed to notify
21 Plaintiff that the ban on his right to Appeal to a Hearing Panel had been lifted, since the findings
22 included speech coupled with conduct not protected by the First Amendment of the United States
23 Constitution and Article 1, Section 2 of the California Constitution.

24 43. In late April, 2004, Mr. Antebi rejected the Title IX Officer's findings and refused
25 to engage in her recommended activity.

26 44. Immediately following Mr. Antebi's rejection of the Title IX Officer's findings
27 and recommendations, and as part and parcel of the conspiracy to maliciously prosecute Mr.
28 Antebi, Plaintiff was contacted by Defendant Ramen Talesh, the Associate Dean of Students and

1 Director of Residence and Greek Life, and was informed that he was being investigated for:

- 2 a) Distribution of prescribed medications to other students, despite earlier
- 3 admissions by Defendants establishing that Mr. Antebi only parodied
- 4 using Vicodin on the radio station;
- 5 b) Harassing/disrespecting individuals in the community;
- 6 c) Using campus computers to “spam” other students; and
- 7 d) Unauthorized entry or use of College facilities.

8 Mr. Talesh requested a meeting between he and Mr. Antebi before making any
9 determination or otherwise requesting a judicial board hearing.

10 45. On May 3, 2004, Defendant Ayala informed Plaintiff in writing that he accepted
11 the recommendations of Defendant Horowitz relating to the sexual harassment complaints and
12 ordered Mr. Antebi to draft an apology to the complainants, and that failure to comply would lead
13 to alternative disciplinary action. (A true and correct copy of the May 3, 2004 correspondence is
14 attached hereto as Exhibit “E”).

15 46. On May 6, 2004, Plaintiff submitted to Defendants an appeal of Defendants
16 findings and punishment.

17 47. Also, on or about May 6, 2004, FIRE sent a lengthy correspondence to
18 Defendants, and each of them, highlighting the willful and demonstrably false assertions of
19 “fact,” “unsupportable allegations of wrongdoing,” and misinterpretation of case law, OCR
20 regulations and American Civil Liberties Union (“*ACLU*”) policy set forth in the Defendants’
21 April 2, 2004 correspondence to FIRE. (A true and correct copy of the May 6, 2004
22 correspondence is attached hereto as Exhibit “F”).

23 48. In further support of Plaintiff, on May 7, 2004, the ACLU sent correspondence to
24 Defendants, and each of them, informing of Defendants’ misinterpretation of ACLU guidelines
25 and the law with respect to sexual harassment, and specifically informing that in order for speech
26 to cease being speech and become conduct, it must further be addressed directly to the person
27 whom it harasses and be intended to frighten, coerce or intimidate its target. The ACLU
28 discussed how the findings relating to Mr. Antebi did not satisfy these elements and recommended

1 that the Defendants rescind their finding of liability for harassment. (A true and correct copy of
2 the May 7, 2004 correspondence is attached hereto as Exhibit "G").

3 49. On or about May 10, 2004, Mr. Antebi, his student advisors and Mr. Talesh on
4 two different occasions met to discuss the allegations against Mr. Antebi. Mr. Talesh
5 immediately informed Mr. Antebi that he was no longer being investigated for unauthorized
6 entry or use of College facilities. During the course of the meeting, Mr. Talesh said that some of
7 the allegations made against Mr. Antebi by General Counsel Sandra Cooper were baseless and
8 that "there was not even evidence that some of the allegations had occurred at all," including but
9 not limited to the allegations of slashing tires and making harassing and obscene middle of the
10 night telephone calls to the Women Center. All charges were immediately dismissed, except for
11 the charge of illegal drug abuse and distribution and the SPAM charge. With respect to the drug
12 charge, the only evidence provided by Defendant Talesh was that Mr. Antebi "jokingly"
13 discussed it, a sentiment of parody which was espoused by other administrators at the College in
14 writing.

15 50. During the meeting, Mr. Antebi requested from Defendant Talesh the evidence
16 used against him, on all charges including the charge of violating the Computer Use Policy for
17 sending or signing up a student for SPAM mail. Mr. Talesh referred to a SPAM email on the
18 subject of diamond rings but later showed a part of the email message that was allegedly sent
19 about inkjet cartridges, not rings. Mr. Antebi asked how the SPAM email content suddenly
20 changed, to which Defendant Talesh said he did not know much about computers or the Internet
21 or SPAM in general. In fact, Thomas Slobko, the administrator who runs the Computer Center
22 at Occidental College informed Plaintiff and his student advisor that there was no substantive
23 evidence against Mr. Antebi and that if someone thought Mr. Antebi sent the SPAM, that person
24 was working on personal opinion, not fact.

25 51. On May 13, 2004, Defendants denied Plaintiff his right to appeal Defendants'
26 findings, and upheld the finding that Plaintiff was guilty of sexual harassment under federal
27 regulation, Title IX of the Educational Amendments of 1972. Despite the filing of formal
28 complaints of sexual harassment, Defendants, and each of them deprived Plaintiff his right to

1 privacy, the right to hearings, the right to a lawyer, the right to appeal and the rights to equal care,
2 to present evidence, the right to discretion, sensitivity and concern for his dignity.

3 52. On May 14, 2004, Defendant Talesh issued his findings. The issue of drug abuse
4 talk was not deemed to be a violation of any policy. However, based on fabricated findings,
5 Defendant Talesh concluded that Plaintiff falsely registered another student's e-mail to receive
6 junk mail/spam. He also concluded that Mr. Antebi misled Defendant Cooper in violation of the
7 Code of Conduct for intentional furnishing of false information to the College and intentional
8 violation of other published College regulations or policies regarding the computer use.
9 Defendant Talesh ordered Disciplinary Censure until May 17th 2004, a written reprimand and a
10 warning of additionally disciplinary action if necessary. The notice was to remain in Plaintiff's
11 student disciplinary file. (A true and correct copy of the May 14, 2004 findings is attached hereto
12 as Exhibit "H").

13 **FIRST CAUSE OF ACTION**

14 **[DECLARATORY RELIEF AGAINST DEFENDANT OCCIDENTAL COLLEGE]**

15 53. Plaintiff hereby alleges and incorporates by reference paragraphs 1 through 52,
16 inclusive, of this Complaint as though set forth in full herein.

17 54. Plaintiff is informed and believes and thereon alleges that at some time during his
18 senior year at Occidental College Defendants and each of them enacted or allowed to be enacted
19 rules of conduct which violate the First Amendment of the Constitution of the United States of
20 America and the California Constitution. Said rules contemplate and include a proscription of
21 conduct which is protected speech under the United States and California Constitutions and are
22 overly broad so that they can proscribe protected speech or expression. As such and to that
23 extent said rules are invalid and unenforceable.

24 55. Plaintiff is informed and believes and thereon alleges that those defendants subject
25 to this cause of action held disciplinary proceedings against Plaintiff based upon said rules of
26 conduct. Said disciplinary action enforced rules which violate the United States and the California
27 Constitutions and such disciplinary actions are specifically prohibited under the Leonard Law.

28 56. Defendants and each of them knew or should have known that they were in

1 flagrant violation of the Leonard Law and they deliberately ignored the Education Code and its
2 provisions. The Defendants knew, or should have known that they lacked probable cause to
3 initiate a disciplinary procedure as the conduct that gave rise to the accusations was protected
4 speech under the Constitution of the United States and the Constitution of California. In initiating
5 the disciplinary proceedings, the Defendants acted willfully and maliciously for the purpose of
6 harming the plaintiff and forcing him to forego many of the benefits to which he was entitled as
7 student of the College.

8 57. Under the provisions of the Leonard Law, Plaintiff is entitled to declaratory relief
9 and therefore seeks a declaration by this court that the rules these Defendants enforced and
10 continue to enforce were and are at all times invalid under the Constitutions of the United States
11 and California. There was a clear violation of Plaintiff's rights and a declaration of the respective
12 rights and responsibilities of the parties of the court is necessary.

13 58. A controversy exists between the Plaintiff and the Defendants subject to this cause
14 of action as to the constitutionality of the rules these defendants enforced and continue to enforce
15 and between the parties as to applicability of constitutional constraints to these Defendants under
16 the Leonard Law Defendants and each of them blatantly invaded Plaintiff's privacy rights and a
17 declaration of the respective rights and responsibilities of the parties by this court is necessary, in
18 addition, Plaintiff seeks an order requiring Defendants, and each of them, to remove from
19 Plaintiff's records any and all documents that relate to such wrongful proceedings, findings and
20 recommendations against Plaintiff.

21 59. The statute provides for the payment of attorney's fees to prevailing Plaintiff by
22 reason of which Plaintiff requests an award of attorney's fees under the Leonard Law.

23 **SECOND CAUSE OF ACTION**

24 **[DEFAMATION]**

25 **(AGAINST ALL DEFENDANTS EXCEPT FOR TRANQUADA)**

26 60. Plaintiff realleges paragraphs 1 through 59, inclusive, and incorporates the same as
27 though fully set forth herein.

28 61. As set forth in paragraphs 36, 37, 38, 40, 41, 42 and 52 defendants, and each of

1 them repeatedly defamed Plaintiff in a malicious effort to terrorize, humiliate, harass and
2 emotionally batter him. Specifically, Defendants published the following defamatory statements
3 regarding Mr. Antebi: “Racist,” “sexist,” “misogynist,” “anti-Semite,” “homophobe,” “unethical,”
4 “immoral trash,” “committed various crimes,” “was a criminal not worthy of being an Oxy student
5 let alone Vice President of Policy,” “harasser,” “intolerant,” “made threats of physical violence
6 and retribution against perceived enemies who voiced their concerns,” “used threats to exact
7 revenge against people who protested against him,” “racially taunted persons fired from the
8 student senate,” “used highly derogatory words towards identified persons, “jeopardized financial
9 aid to students by parodying taking prescription medication while on the air,” “misused his
10 position in the student government to fire those who disagreed with him,” “demanded and
11 received the resignation of the radio station program director,” “subscribed individuals to spam
12 using campus computers,” and was being investigated for having “made middle of the night sexual
13 telephone calls to the Campus Womens Center,” “anonymous e-mails to the gay community,”
14 “defaced brochures with the words “cunt” “bitches” and “pussy,” “tire slashing” and “loud
15 labeling” of women as bitches across the campus (the “**Defamatory Statements**”). These
16 defendants, and each of them falsely accused Plaintiff of criminal conduct, general disqualification
17 with respect to his office, sexual harassment, several other types of misconducts and have made
18 public repeated false accusations against Plaintiff.

19 62. None of the Defamatory Statements were issued in the context of a privileged
20 investigation or other form of privileged communication.

21 63. These Defendants made these false and Defamatory Statements verbally, in
22 writing, and electronically to different organizations outside the College, individuals, students,
23 faculty and administrative staff of the College and directly to each other.

24 64. The Defamatory Statements are, and were, false, known to be false by Defendants
25 when published, unprivileged and constitute defamation *per se*. Defendants’ accusations charged
26 Plaintiff with one or more crimes, injured him in respect to his office by imputing general
27 disqualification in those respects which the office required and which caused him actual damages.

28 65. The Defamatory Statements were understood by those who read and heard them

1 to connote and to mean exactly that which was contained in the published Defamatory
2 Statements. The Defamatory Statements were believed to be true by many of those to whom the
3 defamatory matters were transmitted to.

4 66. Plaintiff became the object of contempt, ridicule, humiliation and obloquy as a
5 consequence of the acts of defamation by these defendants and has been harmed in his reputation.
6 The full extent of damage suffered by the Plaintiff is unknown at present but are believed to be in
7 excess of Ten Million Dollars (\$10,000,000.00) for loss of future earnings and earning capacity;
8 for loss of higher education and job opportunities and other special damages. Plaintiff will seek
9 leave of court to allege the extent of damage when said damage has been fully ascertained.

10 67. The Defamatory Statements are defamatory per se as that term is defined in
11 California Civil Code Section 46.

12 68. The Defamatory Statements were published and circulated by Defendants and
13 republished by them, and each of them, for the purposes of:

- 14 a. Embarrassing and humiliating Plaintiff in the place where he went to
15 school; and
16 b. Injuring him in all aspects of his life.

17 69. As a proximate result of the above-described publication, Plaintiff has suffered loss
18 of reputation, shame, mortification, embarrassment, and hurt feelings all to his general damage in
19 an amount according to proof.

20 70. As a direct and proximate result of Defendants acts, Plaintiff suffered injury to his
21 health, strength and activity and sustained injuries to his nervous system and person, all of which
22 said injuries have caused and continue to cause him great mental, physical and nervous pain and
23 suffering. Plaintiff is informed and believes, and on such information and belief alleges, that said
24 injuries will result in some permanent disability to Plaintiff, all to his general damage in a sum
25 within the jurisdiction of the above-entitled Court.

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27 71. As a further direct and proximate result of Defendants' Defamatory Statements,
28 Plaintiff was required to and did employ health care providers to examine, treat and care for

1 Plaintiff, and incurred medical and incidental expenses. Plaintiff is informed and believes, and on
2 such information and belief alleges, that Plaintiff will be required to employ health care
3 professionals in the future, and will incur further medical and incidental expenses. The exact
4 amounts thereof are unknown at this time, and leave of Court will be sought to amend these
5 pleadings to set forth the exact amounts when the same are ascertained.

6 72. The above-described Defamatory Statements were published by the Defendants,
7 and each of them, with malice, oppression and fraud, in that, among the other motives herein
8 alleged and without limitation, they each knowingly sought to cause financial and pecuniary harm
9 to Plaintiff and, thus, Plaintiff seeks an award of punitive damages in a sum sufficient to make an
10 example of Defendants, and each of them.

11 **THIRD CAUSE OF ACTION**

12 **[CALIFORNIA CIVIL CODE SECTIONS 51 AND 52.1]**

13 **(AGAINST ALL DEFENDANTS)**

14 73. Plaintiff hereby alleges and incorporates by reference paragraphs 1 through 72 of
15 this Complaint as though set forth in full hereat.

16 74. As a result of the aforementioned conduct by Defendants, and each of them, upon
17 Plaintiff, Defendants, and each of them violated *Civil Code* section 51, which states in pertinent
18 part, that all persons within the jurisdiction of this State, which includes Plaintiff, are free and
19 equal, and no matter what their sex, race, color, religion, ancestry, national origin or disability
20 are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all
21 business establishments of every kind.

22 75. Defendants, and each of them, have discriminated against Plaintiff on the basis of
23 sex, race, color, religion and ancestry and have failed to provide full and equal accommodations,
24 advantages, facilities, privileges, or services in Defendants business establishment. Defendants
25 are therefore liable for Plaintiff's actual damages, including special and general damages,
26 exemplary damages, a civil award in the amount of Twenty-Five Thousand Dollars (\$25,000.00)
27 and attorney's fees.

28 76. As a result of the aforementioned conduct by Defendants, and each of them, upon

1 Plaintiff, Defendants, and each of them violated *Civil Code* section 52.1, which states in pertinent
2 part, that it is a violation for any person or persons, whether or not acting under color of law, to
3 interfere by threats, intimidation or coercion or attempts to interfere by threats, intimidation or
4 coercion, with the exercise or enjoyment by any individual of rights secured by the Constitution or
5 laws of the United States, or the of the rights secured by the Constitution or laws of this State.

6 77. Defendants, and each of them, have interfered by threats, intimidation and
7 coercion, with Plaintiffs exercise and enjoyment of rights secured by the Constitution and laws of
8 the United States, and the rights secured by the Constitution and laws of this State. Defendants
9 are therefore liable for Plaintiff's actual damages, including special and general damages,
10 exemplary damages, a civil award in the amount of Twenty-Five Thousand Dollars (\$25,000.00)
11 and attorney's fees.

12 78. At all relevant times, Defendants and each of them were the agents of, were
13 authorized to act for, and on behalf of, each of the other Defendants, including the College, the
14 Trustees and the DOE Defendants and that each and every act of the Defendants were ratified by
15 each of the other Defendants, including the College, the Trustees and the DOE Defendants.

16 79. The above specific acts of Defendants, and each of them, were committed in a
17 willful, intentional, wanton, malicious and oppressive manner with knowledge of the likelihood of
18 injury and were done for the purpose of causing Plaintiff to suffer fear, mental anguish, emotional
19 distress and physical injury, significant physical pain and scarring and humiliation and were a
20 substantial factor in causing Plaintiff to suffer fear, mental anguish, emotional distress and physical
21 injury, significant physical pain and scarring and humiliation.

22 80. As a result of Defendants' actions, Plaintiff sustained economic damages, physical
23 injury and emotional distress resulting in damages, in an amount believed to be in excess of Ten
24 Million Dollars (\$10,000,000.00), the exact amounts to be proven at trial.

25
26 81. Defendants, and each of them actions were carried out with a conscious disregard
27 of Plaintiff's rights and with the intent to vex, injure, or annoy Plaintiff; such as to constitute
28 oppression, fraud, or malice under California *Civil Code* section 3294 and further violating *Civil*

1 Code sections 51 and 52, entitling Plaintiff to exemplary or punitive damages under *Civil Code*
2 sections 3294, 52 and 52.1 and attorney's fees under *Civil Code* section 52.

3 **FOURTH CAUSE OF ACTION**

4 **[INVASION OF PRIVACY- PUBLIC DISCLOSURE OF PRIVATE FACTS]**

5 **(Against All Defendants)**

6 82. Plaintiff re-alleges paragraphs 1 through 81, inclusive, and incorporates the same
7 as though fully set forth herein.

8 83. As set forth in paragraphs 34, 37, 38, 40, 41, 42 and 52 defendants, and each of
9 them, made statements disclosing facts about Plaintiff, verbally, in writing, and electronically to a
10 large number of persons.

11 84. These statements of fact, false or otherwise, pertained to purely private matters,
12 as is set forth by the College in its Student Handbooks and as further mandated by The Family
13 Educational Rights and Privacy Act of 1974 ("**FERPA**") 20 U.S.C. § 1232g.

14 85. The statements disclosing facts about Plaintiff, false or otherwise, which pertained
15 to purely private matters, were highly offensive and objectionable to a reasonable person of
16 ordinary sensibilities.

17 86. Defendants, and each of them, were acutely aware of the "societal benefit from
18 confidentiality" being paramount to the "need for disclosure."

19 87. As a proximate result of the above-described disclosure of private facts, Plaintiff
20 has suffered loss of reputation, shame, mortification, embarrassment, and hurt feelings all to his
21 general damage in an amount according to proof. Plaintiff has also suffered pecuniary damages as
22 aforementioned in an amount believed to be in excess of Ten Million Dollars (\$10,000,000.00),
23 the exact amounts to be proven at trial.

24 88. As a direct and proximate result of Defendants acts, Plaintiff suffered injury to his
25 health, strength and activity and sustained injuries to his nervous system and person, all of which
26 said injuries have caused and continue to cause him great mental, physical and nervous pain and
27 suffering. Plaintiff is informed and believes, and on such information and belief alleges, that said
28 injuries will result in some permanent disability to Plaintiff, all to his general damage in a sum

1 within the jurisdiction of the above-entitled Court.

2 89. As a further direct and proximate result of Defendants disclosure of private facts,
3 Plaintiff was required to and did employ health care providers to examine, treat and care for
4 Plaintiff, and incurred medical and incidental expenses. Plaintiff is informed and believes, and on
5 such information and belief alleges, that Plaintiff will be required to employ health care
6 professionals in the future, and will incur further medical and incidental expenses. The exact
7 amounts thereof are unknown at this time, and leave of Court will be sought to amend these
8 pleadings to set forth the exact amounts when the same are ascertained.

9 90. The above-described disclosure of private facts were published by the Defendants,
10 and each of them, with malice, oppression and fraud, in that, among the other motives herein
11 alleged and without limitation, they each knowingly sought to cause financial and pecuniary harm
12 to Plaintiff and, thus, Plaintiff seeks an award of punitive damages in a sum sufficient to make an
13 example of Defendants, and each of them.

14 **FIFTH CAUSE OF ACTION**

15 **[INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST ALL DEFENDANTS]**

16 91. Plaintiff hereby alleges and incorporates by reference paragraphs 1 through 90,
17 inclusive, of this Complaint as though set forth in full herein.

18 92. The above acts committed by Defendants were outrageous, intentional and
19 uncivilized. Defendants committed these acts deliberately and intentionally to cause
20 humiliation, anguish and emotional distress to Plaintiff and to injure his good name and
21 reputation. These specific acts which were planned and orchestrated by Defendants were beyond
22 outrageous and so extreme as to exceed all bounds of what is tolerated in a civilized community.

23 93. The above specific acts of Defendants, and each of them, constituted an
24 intentional infliction of emotional distress against Plaintiff; these specific acts were committed in
25 a willful, intentional, wanton, malicious and oppressive manner with knowledge of the
26 likelihood of injury and were done for the purpose of causing Plaintiff to suffer humiliation,
27 mental anguish, emotional distress and were a substantial factor in causing Plaintiff to suffer
28 humiliation, mental anguish, emotional distress as well as pecuniary loss, damage, financial

1 devastation and injury to Plaintiff as set forth above.

2 94. As a result of Defendants' actions, Plaintiff sustained economic damages in an
3 amount believed to be in excess of Ten Million Dollars (\$10,000,000.00), the exact amounts to be
4 proven at trial.

5 95. As a result of Defendants' actions, Plaintiff sustained emotional distress resulting
6 in damages, the amounts to be proven at trial.

7 96. Defendants actions were carried out with a conscious disregard of Plaintiff's
8 rights and with the intent to vex, injure, or annoy Plaintiff such as to constitute oppression,
9 fraud, or malice under California *Civil Code* section 3294, entitling Plaintiff to exemplary or
10 punitive damages.

11 **SIXTH CAUSE OF ACTION**

12 **[NEGLIGENCE AGAINST ALL DEFENDANTS]**

13 97. Plaintiff hereby alleges and incorporates by reference paragraphs 1 through 96,
14 inclusive, of this Complaint as though set forth in full herein.

15 98. The above acts committed by Defendants were outrageous and uncivilized.
16 Defendants knew or should have known that these acts would cause humiliation, anguish and
17 emotional distress to Plaintiff and to injure his good name and reputation and Defendants
18 negligently, recklessly and carelessly disregarded the effects of Defendants acts.

19 99. The above specific acts of Defendants, and each of them, constituted a negligent
20 infliction of emotional distress against Plaintiff; these specific acts were committed negligently,
21 recklessly and carelessly and Defendants knew or should have known of the likelihood of injury
22 to Plaintiff and were a substantial factor in causing Plaintiff to suffer humiliation, mental
23 anguish, emotional distress as well as pecuniary loss, damage, financial devastation and injury to
24 Plaintiff as set forth above.

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26 100. As a result of Defendants' actions, Plaintiff sustained economic damages and
27 emotional distress resulting in damages, the amounts to be proven at trial.

28 **SEVENTH CAUSE OF ACTION**

1 **[BREACH OF IMPLIED CONTRACT AGAINST DEFENDANT OCCIDENTAL COLLEGE]**

2 101. Plaintiff hereby alleges and incorporates by reference paragraphs 1 through 100,
3 inclusive, of this Complaint as though set forth in full herein.

4 102. In or about 2000, 2001, 2002 and 2003, at Los Angeles, California, Plaintiff and
5 Occidental College entered into legally valid and binding agreements, both written and verbal,
6 implied by law and/or by fact, whereby in exchange for Plaintiff's payment of tuition, the
7 College would be bound by the regulations, rules, policies and guidelines it elected to establish
8 each year. Said guidelines, rules and policies were explicitly set forth in the College's Student
9 Handbooks, advertising literature, course catalogs and recruiting brochures. Further, implied in
10 the agreements were that Plaintiff would receive a full and complete undergraduate college
11 education, uninterrupted and free from wrongful persecution which would affect any portion
12 thereof.

13 103. Plaintiff has performed all obligations pursuant to the agreements and to the
14 extent any obligation on the agreements was not performed by Plaintiff, such obligation was
15 prevented or excused by Defendants.

16 104. Commencing in or about February 2004, at Los Angeles, California, Occidental
17 College and each of them, without justification or excuse, breached the agreements, express and
18 implied as follows:

- 19 a. Failing to provide procedural protections set forth in the 2003-2004
20 Occidental College Student Handbook, p.104, including but not limited to:
21 (1) informing of "specific charges against" Plaintiff; (2) allowing
22 "mediation or a disciplinary conference to resolve the case;" (3) allowing
23 "reasonable time to prepare a defense;" (4) hearing and responding "to all
24 evidence upon which a charge is based;" (5) assurance of "confidentiality,
25 in accordance with the terms of the Family Educational Rights and
26 Privacy Act on file in the Office of the Dean of Students;" (6) information
27 of "rights prior to any conference or hearing;" (7) "to be considered
28 innocent of charges until proven responsible by clear and convincing

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- evidence;” (8) having “an advisor as provided in Part 29 of [the] Code.”
- b. Failing to handle investigation with “discretion, sensitivity, and concern for the dignity of those involved;”
 - c. Failing to provide “as private a resolution of informal and formal complaints as can be afforded” and disclosure of information relating to each complaint to persons who did “not have a legitimate need to know in order to implement policy;”
 - d. Failing to provide Plaintiff an opportunity for appeal and hearing before a hearing panel;
 - e. Failing to provide proper guidance to the complainants of sexual harassment to directly confront the person involved in the conduct;
 - f. Failing to provide a work and academic environment free of unlawful harassment and retaliation and allowing a hostile environment that was likely to interfere significantly with Plaintiff’s work or education or affect adversely his living conditions;
 - g. Failing to promptly, thoroughly or otherwise investigate and take appropriate action, Plaintiff’s complaints of unlawful harassment;
 - h. Failing to create a safe and comfortable living environment, or a clean and comfortable living environment;
 - i. Discriminating on the basis of gender, religion, race and ethnicity;
 - j. Accepting of funds from student body fees and failing to comply with the policies and procedure to abide by the ASOC Constitution which governed authority vested in the ASOC Executive Board, providing the responsibility for developing programs and services to enhance the social, educational and recreational growth of the College’s students and the administration of funds paid by the student body fee;
 - k. Failing to provide promised privacy to and respect the confidentiality of Plaintiff;

- 1 l. Failing to protect Plaintiff's right to free speech;
- 2 m. Terminating Plaintiff from his position with KOXY without authority or
- 3 just cause; and
- 4 n. Terminating Plaintiff from his position with ASOC without authority or
- 5 just cause.

6 105. Defendants, and each of them, have memorialized their understanding that where
7 private institutions make commitments to students, those commitments are promises capable of
8 enforcement by a court of law.

9 106. As a direct and proximate result of the Defendants' breach of the agreement,
10 Plaintiff has suffered damages in the sum of no less than One Hundred Thousand Dollars
11 (\$100,000.00), representing the sums he paid for a full and complete education with interest
12 thereon at the maximum legal rate as may be shown according to proof.

13 **EIGHTH CAUSE OF ACTION**

14 **[BREACH OF FIDUCIARY DUTIES AGAINST ALL DEFENDANTS]**

15 107. Plaintiff hereby alleges and incorporates by reference paragraphs 1 through 106,
16 inclusive, of this Complaint as though set forth in full herein.

17 108. At all relevant times herein, Defendants, and each of them, were administrators,
18 officers and/or trustees of the College and as such, each owed fiduciary duties to Plaintiff and
19 others of utmost good faith, loyalty, and fair dealing in connection with all matters relating to
20 enforcement of the regulations, rules, policies and guidelines.

21 109. Within the last four (4) years, Defendants and each of them breached those duties,
22 by among other things:

- 23 a. Depriving Plaintiff of his guaranteed procedural protections set forth in
- 24 the 2003-2004 Occidental College Student Handbook, p.104, as
- 25 aforementioned;
- 26
- 27 b. Failing to handle investigation with discretion, sensitivity, and concern for
- 28 the dignity of those involved;

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- c. Failing to provide as private a resolution of informal and formal complaints as can be afforded and disclosure of information relating to each complaint to persons who did not have a legitimate need to know in order to implement policy;
- d. Failing to provide Plaintiff an opportunity for appeal and hearing before a hearing panel;
- e. Failing to provide a work and academic environment free of unlawful harassment and retaliation and allowing a hostile environment that was likely to interfere significantly with Plaintiff's work or education or affect adversely his living conditions;
- f. Failing to promptly, thoroughly or otherwise investigate and take appropriate action, Plaintiff's complaints of unlawful harassment;
- g. Failing to create a safe and comfortable living environment, or a clean and comfortable living environment for Plaintiff;
- h. Discriminating against Plaintiff on the basis of his gender, religion, race and ethnicity;
- i. Usurping funds from student body fees and failing to comply with the policies and procedure to abide by the ASOC Constitution which governed authority vested in the ASOC Executive Board, providing the responsibility for developing programs and services to enhance the social, educational and recreational growth of the College's students and the administration of funds paid by the student body fee;
- k. Failing to provide promised privacy to and respect the confidentiality of Plaintiff;
- l. Failing to protect Plaintiff's right to free speech;
- m. Terminating Plaintiff from his position with KOXY without authority or just cause; and

1 n. Terminating Plaintiff from his position with ASOC without authority or
2 just cause.

3 110. As a direct and proximate result of Defendants', and of them, breach of their
4 fiduciary duties, Plaintiff has suffered damages, the full extent of which is not yet known, but
5 which is estimated to be no less than Ten Million Dollars (\$10,000,000.00).

6 111. Plaintiff is informed and believes, and based thereupon alleges, that Defendants'
7 acts were done intentionally, maliciously, fraudulently and/or oppressively, with a willful and
8 conscious disregard of Plaintiff's rights, and/or with the intent to injure Plaintiff, such as to
9 constitute oppression, fraud or malice under California Civil Code § 3294. Accordingly,
10 Plaintiff is entitled to recover punitive and exemplary damages in an amount sufficient to punish
11 Defendants, and each of them, and to deter similar conduct in the future.

12 **WHEREFORE**, Plaintiff prays for Judgment against Defendants, and each of them, as
13 follows:

- 14 1. A declaration by this court that the rules these defendants enforced and continue to
15 enforce were and are at all times invalid under the Constitutions of the United States and
16 California;
- 17 2. An order requiring Defendants and each of them to remove from Plaintiff's records
18 any and all documents that relate to the wrongful proceedings, findings and recommendations
19 against Plaintiff;
- 20 3. For general damages in the sum of no less than One Million Dollars
21 (\$1,000,000.00);
- 22 4. For special damages in the sum of no less than One Hundred Thousand Dollars
23 (\$100,000.00);
- 24 5. For punitive damages in a sum sufficient to make an example of Defendant, and
25 each of them;
- 26 6. For attorneys fees as provided by statute;
- 27 7. For costs of suit incurred herein;
- 28 8. Interest at the maximum legal rate as may be shown according to proof; and

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9. For such other and further relief as the Court may deem just and proper.

DATED: March 14, 2005

SHERMAN & NATHANSON

By: _____
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