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22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

BC 594472

24 JOHN DOE, *an individual*

25 Plaintiff,

26 v.

27 OCCIDENTAL COLLEGE

28 Defendant.

Case No.

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

1. Title IX - Hostile Environment
2. Title IX - Deliberate Indifference
3. Title IX - Erroneous Outcome
4. Breach of Contract
5. False Promise
6. Negligence
7. Injunctive Relief

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09/15/2015

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JOHN DOE,	}	Case No.
Plaintiff,		COMPLAINT FOR DAMAGES AND
v.		INJUNCTIVE RELIEF
OCCIDENTAL COLLEGE		1. Title IX - Hostile Environment
Defendant.		2. Title IX - Deliberate Indifference
		3. Title IX - Erroneous Outcome
		4. Breach of Contract
		5. False Promise
		6. Negligence
		7. Injunctive Relief

Plaintiff John Doe ("John Doe"), by his attorneys, complains against
 Defendant Occidental College ("Occidental") as follows:

1 NATURE OF THE ACTION

2 1. John Doe seeks damages and injunctive relief to remedy emotional,
3 mental, and physical harm suffered in part because of Occidental's discrimination
4 against him on the basis of his sex. John Doe files this lawsuit to preserve his rights
5 and assert his claims within the applicable statute of limitations of Title IX of the
6 Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, but requests the action
7 be consolidated with John Doe's Petition for Writ of Administrative Mandate filed
8 against Occidental in the Superior Court of the State of California for the County of
9 Los Angeles, Central District, Case No. BS147275.¹

10 2. As set forth in detail below, Occidental's unlawful conduct involves its
11 discipline of John Doe for his interactions with Jane Doe on or about September 8,
12 2013 while both were students at Occidental. This discipline was unlawful in part
13 because it involved Jane Doe's decision to initiate physical contact with John Doe
14 when Jane Doe: (a) was not incapacitated by alcohol; and (b) knew or should have
15 known John Doe lacked the capacity to consent because he was incapacitated by
16 alcohol.

17 3. The relevant events of September 8, 2013 include, but are not limited
18 to, the following actions or admissions by Jane Doe:

- 19 (a.) After a night of drinking, Jane Doe sought out John Doe in his
20 dormitory room. When Jane Doe arrived, John Doe was visibly
21 intoxicated and/or incapacitated due to alcohol consumed at a hazing
22 ritual for the Occidental sports team of which he was a member;
- 23 (b.) While in his dormitory room, Jane Doe flirted with John Doe by sitting
24 in his lap, kissing him, and taking off her shirt;
- 25 (c.) Jane Doe told John Doe verbally that she wanted to have sex with him
26 on September 8, 2013;

27
28 ¹ See generally, *John Doe's Motion to Consolidate* (containing the basis for John Doe's
request to consolidate this action with his Petition for Writ of Administrative Mandate).

09/15/2015

- 1 (d.) After witnessing Jane Doe's flirtatious conduct, Jane Doe's friend
2 ("Friend#1") suggested Jane Doe and Friend#1 head back to Jane
3 Doe's dormitory room;
- 4 (e.) Upon leaving, Jane Doe then exchanged text messages with John Doe
5 making plans to return to his dorm room to have sex as soon as Jane
6 Doe could get away from Friend#1;
- 7 (f.) After getting away from Friend#1, and before proceeding back to John
8 Doe's room, Jane Doe sent a text message to John Doe to confirm he
9 had a condom so that they could have protected sex;
- 10 (g.) Jane Doe also sent a text message to her best friend from high school
11 to let her friend know "I'mgoingtohave sex now[sic]."
- 12 (h.) When Jane Doe arrived at John Doe's room, she voluntarily performed
13 oral sex on John Doe who was still visibly intoxicated and/or
14 incapacitated;
- 15 (i.) After performing oral sex on John Doe, a friend of Jane Doe
16 ("Friend#2") entered John Doe's dormitory room to see how Jane Doe
17 was doing. Jane Doe told Friend#2 that she was fine and asked him to
18 leave.
- 19 (j.) John Doe then went to the bathroom while Jane Doe remained in his
20 room. At this time, Friend#2 returned, knocked on the door two to
21 three times, and asked Jane Doe if she was okay. Each time Friend#2
22 asked, Jane Doe stated she was fine and/or that she wanted to stay in
23 John Doe's room.
- 24 (k.) After John Doe returned to the room, Jane Doe initiated sexual
25 intercourse with John Doe. While having sex, John Doe's roommate
26 entered the room, witnessed the two engaged in sex, and thereby
27 caused John Doe and Jane Doe to become embarrassed. As a result,
28 Jane Doe put her clothes on, hugged John Doe, and left the room.
- (l.) After leaving John Doe's room, Jane Doe returned to her dormitory for
a short time and in reference to her sexual activity sent text messages
to her friends with smiley faces, then went to another dormitory on
campus where she was witnessed flirting and sitting on the lap of a
male friend.

1 (m.) The next day, realizing that many of her dorm mates and new college
2 friends knew Jane Doe got drunk and hooked up with John Doe, Jane
3 Doe became embarrassed and sought out people to talk to, who
4 convinced her to file knowingly false sexual assault allegations against
John Doe.

5 4. Even though Jane Doe initiated sexual activity with John Doe,
6 Occidental ultimately and unlawfully expelled John Doe from Occidental. In doing
7 so, Occidental engaged in the unlawful conduct detailed below which includes
8 violating John Doe's rights under Title IX which prohibits discrimination in
9 education on the basis of gender.

10 5. Occidental's unlawful conduct towards John Doe: (a) occurred in part
11 to curry the favor of (i) federal officials such as the United States Department of
12 Education ("DOE"), (ii) internal forces at Occidental, and/or (iii) external forces
13 that were pressuring Occidental to find more male students "responsible" for
14 engaging in sexual misconduct; (b) was motivated by gender bias evidenced in part
15 by Occidental's decision to expel John Doe while taking no disciplinary action
16 against Jane Doe who engaged in the same allegedly wrongful conduct that John
17 Doe engaged in; (c) occurred within the context of a gender biased hostile
18 environment for male students like John Doe who were falsely accused of sexual
19 misconduct at Occidental; and/or (d) subjected John Doe to an arbitrary and
20 capricious disciplinary process.

21 ///

22 ///

23 ///

1 PARTIES, JURISDICTION, VENUE.

2 6. John Doe² is an individual residing in California.

3 7. Occidental College is a California corporation operating as a private,
4 co-educational liberal arts college at 1600 Campus Boulevard, Los Angeles,
5 California 90041 with its principal place of business in Los Angeles, County,
6 California.

7 8. This Court and the United States District Court for the Central District
8 of California have concurrent jurisdiction over John Doe's Title IX claims. *See*
9 *e.g., Thein v. Feather River Community College*, 2008 U.S. Dist. LEXIS 108357,
10 2008 WL 2783172 *6 (E.D.Cal.2008)(discussing concurrent state and federal court
11 jurisdiction over Title IX claims); *Fortune ex rel. Fortune v. City of Detroit Public*
12 *Schools*, 2004 Mich. App. LEXIS 2660, 2004 WL 2291333 (Mich.App.2004)
13 jurisdiction over Title IX claims); *Morrison v. Northern Essex Community College*,
14 56 Mass. App. Ct. 784, 780 N.E.2d 132, 136 n.9 (Mass.App.2002)(discussing
15 concurrent state and federal court jurisdiction over Title IX claims); *H.M. v.*
16 *Jefferson County Bd. of Educ.*, 719 So.2d 793, 796 (Ala.1998)(discussing
17 concurrent state and federal court jurisdiction over Title IX claims); *Mosley v.*
18 *Beaumont Indep. Sch. Dist.*, 997 S.W.2d 934, 938 (Tex.Ct.App.1999)(discussing
19 concurrent state and federal court jurisdiction over Title IX claims).

20 9. This Court and the United States District Court for the Central District
21 of California have personal jurisdiction over Defendant on the grounds that
22

23 _____
24 ² Plaintiff uses the pseudonyms of "John Doe" and "Jane Doe" in his complaint in order to
25 preserve privacy in a matter of sensitive and highly personal nature, which outweighs the public's
26 interest in knowing the parties' identity. Use of the pseudonyms does not prejudice Defendant
27 because the identities of Plaintiff and Jane Doe are known to Defendant. *See, Starbucks Corp. v.*
28 *Superior Court* (2008) 68 Cal.App.4th 1436 ("The judicial use of 'Doe plaintiffs' to protect
legitimate privacy rights has gained wide currency, particularly given the rapidity and ubiquity of
disclosures over the World Wide Web"); see also *Doe v. City of Los Angeles* (2007) 42 Cal.4th
531; *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050; *Roe v. Wade* (1973) 410 U.S. 113;
Doe v. Bolton (1973) 410 U.S. 179; *Poe v. Ullman* (1961) 367 U.S. 497; *In Does I thru XXIII v.*
Advanced Textile Corp. (9th Cir. 2000) 214 F.3d 1058.

1 Defendant is conducting business within the State of California.

2 10. Venue for this action properly lies in this Court. In the alternative,
3 venue rests with the United States District Court for the Central District of
4 California district pursuant to 28 U.S.C. §1391 because a substantial part of the
5 events or omissions giving rise to the claims occurred in its judicial district.

6 11. If this Court determines it lacks jurisdiction over the Counts advanced
7 in John Doe's Complaint, John Doe requests this case be transferred and/or
8 removed to the United States District Court for the Central District of California
9 pursuant to 28 U.S.C. §1441.

10 FACTS

11 **Occidental's Discipline of John Doe Occurred In Part Because of** 12 **Gender Bias Caused By Internal and External Forces** 13 **Demanding Occidental Find More Male Students Responsible** 14 **For Sexually Assaulting Female Students**

15 12. This case arises amidst a growing national controversy stemming from
16 the DOE's Office of Civil Rights' ("OCR") threats to withhold federal education
17 dollars in order to compel colleges and universities to address so-called "sexual
18 violence" on their campuses. During the 2013-2014 academic year, the DOE
19 distributed \$134.95 billion dollars (\$134,950,035,518.10) to public and private
20 colleges and universities for students attending their schools. Of that amount, \$13.5
21 million (\$13,432,849.00) was distributed for students attending Occidental. (See
22 Exhibit 1, <https://studentaid.ed.gov/sa/about/data-center/student/title-iv>).

23 13. OCR's threatened withholding of federal funds puts great pressure on
24 Occidental to treat male students accused of sexual misconduct with a presumption
25 of guilt and to simply punish the accused male student in order to avoid
26 jeopardizing the flow of taxpayer dollars, under the guise of making Occidental safe
27 for female students.

28 14. As detailed below, during all relevant times, Occidental was under
federal scrutiny from the DOE for alleged indifference to sexual violence on

1 campus in violation of Title IX, and for violations of the Clery Act, which requires
2 colleges to keep and disclose information about crime on and near their respective
3 campuses. Title IX compliance is monitored in part by the DOE which can impose
4 civil penalties and can suspend institutions from participating in federal student
5 financial aid programs.

6 15. Upon information and belief, Occidental's violations of John Doe's
7 rights occurred in part because of threats by the federal government that Occidental
8 could lose federal funding or face other adverse consequences if Occidental,
9 President Barak Obama's first college, did not find male students like John Doe
10 responsible for sexually assaulting female students. Evidence of this pressure
11 includes, but is not limited to, Exhibit 2 which contains The White House's April
12 2014 report entitled "Not Alone" which includes: (a) references to Vice President
13 Biden's "new Public Service Announcement" which encourages schools to combat
14 the sexual assault of women on campuses; and (b) warnings that if colleges like
15 Occidental do not adhere to Title IX they "risk[] losing federal funds" and/or face
16 potential and/or face potential lawsuits filed by DOJ. (*Id.*)

17 16. In response to pressure from the DOE, the DOJ, and/or the White
18 House, educational institutions like Occidental are being counseled to severely limit
19 procedural protections afforded male students like John Doe in sexual misconduct
20 cases. For example, Exhibit 3 contains atIXa's "2014 Whitepaper" entitled *Equity Is*
21 *Such A Lonely Word*, which is included in training materials presented to college
22 Title IX departments and states: "victims have historically been accorded 3/5 of the
23 rights of an accused individual (or less), and ***victims are typically women***, equity
24 may require institutions to recalibrate the pendulum to right the historical
25 imbalance. An equitable process on many campuses will force a victim focus, but
26 only as a casualty of history." (Emphasis added).

27 17. atIXa's Whitepaper also details OCR's demands that colleges limit the
28 due process rights of males accused of sexual misconduct by stating: (a) "[a]

1 hearing became a panel . . . [t]he panel afforded presumptions of innocence, rights
2 to attorneys, rights to remain silent. Rights, rights, rights. But, we forgot about
3 victims along the way.”); and (b) OCR’s 2011 Dear Colleague Letter “indicated that
4 we must deconstruct part of the due process castle by more equitably employing
5 remedies. Remedies are, by their nature, intended to restore the complainant to
6 their pre-discrimination status . . . Equity requires fairness under the circumstances,
7 which can and often should lead institutions to create skewed remedies that place
8 more restrictions and requirements on respondents. Equity demands that
9 complainants should be inconvenienced only as far as absolutely required to remedy
10 the discrimination.” *Id.*, pages 5, 13-14.

11 18. In addition to pressure from DOE, internal forces demanded
12 Occidental find more male students responsible for sexually assaulting female
13 students. For example, in February 2012, Occidental Associate Professor of
14 Politics Caroline Heldman and Assistant Professor of Sociology Danielle Dirks
15 founded the Occidental Sexual Assault Coalition (“OSAC”).

16 19. OSAC, a sanctioned Occidental campus advocacy group, lobbied
17 Occidental to address what OSAC calls the “rape culture” on campus. (Exhibit 4,
18 <http://oxysexualassaultcoalition.wordpress.com/>) OSAC also stated its “mission is
19 to raise awareness of the sexual assault epidemic.” *Id.*

20 20. In addition to their leadership roles in OSAC, Professor Dirks and
21 Professor Heldman contributed to a hostile environment for male students at
22 Occidental by writing, blogging, and speaking to the media about sexual assault at
23 Occidental and on campuses throughout the country.

24 21. As demonstrated by the articles attached as Exhibit 5, Professor Dirks
25 and Professor Heldman consider themselves leaders in the feminist effort to remedy
26 the alleged “rape culture” via gender-biased views about males.

27 22. The actions of OSAC, Professor Dirks and/or Professor Heldman
28 created a divide on campus and falsely portrayed Occidental as a place where male

1 students sexually assault with impunity. For example, Professor Heldman was
2 quoted as saying,

3
4 Serial rape is the norm on college campuses, including at
5 Occidental, according to Caroline Heldman, associate professor of
6 politics at Occidental.

7 “We have numerous cases with three or four women coming
8 forward and alleging that the same man has raped or sexually assaulted then

9 (Exhibit 6, Oct. 28, 2013, AlJazeera America,
10 [http://america.aljazeera.com/watch/shows/america-tonight/america-](http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/10/28/serial-rapists-commit9of10campussexualassaultsresearchfinds.html)
11 [tonight-blog/2013/10/28/serial-rapists-](http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/10/28/serial-rapists-commit9of10campussexualassaultsresearchfinds.html)
12 [commit9of10campussexualassaultsresearchfinds.html](http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/10/28/serial-rapists-commit9of10campussexualassaultsresearchfinds.html)

13 23. In addition, Professor Heldman published blog posts such as: “[t]he
14 reality is that campus rapists’ principal weapon is alcohol and they are able to hide
15 in plain sight within a male-dominated party culture where men provide the venues,
16 parties, and drinks to women, often with the explicit purpose of hooking up.”

17 (Exhibit 7, November 7, 2013, Coffee at Midnight by Caroline Heldman,
18 [http://carolineheldman.me/2013/11/07/emily-yoffe-is-helping-campus-rapists-hide-](http://carolineheldman.me/2013/11/07/emily-yoffe-is-helping-campus-rapists-hide-in-plain-sight/)
19 [in-plain-sight/](http://carolineheldman.me/2013/11/07/emily-yoffe-is-helping-campus-rapists-hide-in-plain-sight/)).

20 24. Similarly, Professor Dirks stated that she believes all but a small
21 percentage of college guys are calculated predators. In New York Magazine,
22 reporter Vanessa Grigoriadis wrote:

23 “There are people out there who want to say that survivors today
24 are feminism gone wild, railroading men for power,” says Dirks,
25 the Occidental sociologist. “And they can rely on talking about
26 kids and alcohol, saying what happened was just drunk sex—and,
27 you know, we’ve all had great drunk sex!” Research, she says,
28 shows that only a small percentage of college guys truly don’t
know where the line is—“and, for them, if you tell them to get
verbal consent, they don’t push so hard.” She pauses. “But the rest
of them—and I know it’s hard to think of our brothers, our sons,

1 like this—are calculated predators. They seem like nice guys, but
2 they're not nice guys.

3 (Exhibit 8, [http://nymag.com/thecut/2014/09/emma-sulkowicz-](http://nymag.com/thecut/2014/09/emma-sulkowicz-campus-sexual-assault-activism.html#)
4 [campus-sexual-assault-activism.html#](http://nymag.com/thecut/2014/09/emma-sulkowicz-campus-sexual-assault-activism.html#)).

5 25. Professor Dirks encouraged the filing of Title IX complaints by female
6 college students similar to the one filed by the Occidental female students. For
7 example, she told a reporter that: "[e]very school in America should have a [Title
8 IX or Clery] complaint filed against it right now." (Exhibit 9, June 25, 2014, Marie
9 Claire, *The Fight Against Sexual Violence on College Campuses: End Rape on*
10 *Campus*).

11 26. In her blog, however, Professor Heldman criticized males who filed
12 Title IX lawsuits stating: "[t]hese lawsuits are an incredible display of entitlement,
13 the same entitlement that drove them to rape. These are students who were found
14 responsible after an extensive adjudication proceeding that is heavily biased in
15 favor of alleged perpetrators. We don't have a problem with false rape reporting, we
16 have a problem with rapes not being reported, a problem with adjudications that
17 favor perpetrators when they are reported and a problem with light sanctions when a
18 student has been found responsible for assault/rape." (Exhibit 10).

19 27. In response to the negative publicity and campus strife created by
20 Professor Dirks, Professor Heldman, OSAC and others, Occidental hired two
21 former sex crime prosecutors in late March 2013. Specifically, Occidental hired
22 Ms. Lisa M. Gomez and Ms. Gina Maisto-Smith who were ex-prosecutors working
23 at the Philadelphia law firm of Pepper Hamilton LLP where they focused on Title
24 IX. (Exhibit 11).

25 28. Exhibit 12 details how Occidental's Project S.A.F.E. (for a Sexual
26 Assault Free Campus) trains Occidental students on sexual violence, including the
27 assertion that 1 in 5 college women are sexually assaulted.

28 29. Emily Yoffe's article in *Slate* – contained in Exhibit 12 – discusses
President Obama's similar assertion that one in five women are sexually assaulted

1 during their college years. Ms. Yoffe interviewed the lead author of the study often
2 quoted as the source of the one and five statistic. Specifically, Ms. Yoffe asked the
3 author - Christopher Krebs - whether the study represented the experience of the
4 approximately 12 million female students in America. *Id.*, p.14. Mr. Krebs stated
5 those involved in the study, "don't think one in five is a nationally representative
6 statistic." *Id.* This was because Mr. Krebs stated his team's sampling of only two
7 schools "[i]n no way . . . make[s] our results nationally representative." *Id.* Ms.
8 Yoffe noted that if the "one-fifth to one-quarter assertion [regarding sexual assaults
9 on college campuses were accurate that] would mean that young American college
10 women are raped at a rate similar to women in Congo, where rape has been used as
11 a weapon of war." *Id.*

12 30. Occidental's pervasive sexual assault training for students violated its
13 own policies and claimed that all drunken sex was rape. It led to additional
14 influence on Jane Doe from other students. She relayed to investigators, her
15 roommate "pushed her to realize that she had been sexually assaulted". (Exhibit 13,
16 Occidental Investigation Report, p. 40).

17 31. Nevertheless, in April 2013, Professor Heldman, Professor Dirks and
18 others were busy ratcheting up the pressure on Occidental to find more male
19 students responsible for sexually assaulting female students. This pressure took the
20 form of a highly-publicized 250-page complaint that 36 alleged victims of rape or
21 sexual assault filed against Occidental with the OCR. In addition, some of the
22 females involved in this complaint threatened to file lawsuits in court alleging
23 Occidental maintains a hostile environment for female sexual assault victims and
24 their advocates which violated Title IX and the Clery Act. (Exhibit 14, Occidental
25 College Sexual Assault Response Subject of Federal Complaints,
26 www.huffingtonpost.com 04/19/2013, Updated: 12/03/2013, Tyler Kingkade; see
27 also, Exhibit 15, USC, Occidental Underreported Sexual Assaults, *Los Angeles*
28 *Times*).

1 32. In September 2013, Occidental settled with at least ten of the
2 complainants addressed in the preceding paragraph under an agreement negotiated
3 by their counsel, attorney Gloria Allred. The ten female complainants received cash
4 payments from Occidental and agreed not to participate in OSAC. Professor Dirks
5 publically criticized attorney Allred's negotiated settlement stating that requiring
6 "the women to remain silent and not to participate in campus activism could have a
7 chilling effect at Occidental"³ and that the settlement, "effectively erases all of the
8 sexual assaults and the college's wrongdoing." (Exhibit 16, Occidental College
9 Settles in Sexual Assault Cases, *LA Times*, Jason Felch and Jason Song, September
10 18, 2013).

11 33. Despite the settlement of the aforementioned claims, pressure
12 continued to mount at Occidental to more aggressively discipline male students
13 accused of sexual misconduct. For instance, on May 6, 2013, based in part on the
14 work of the OSAC and the complaints of female students made in federal court and
15 with the OCR, Occidental's faculty issued a no confidence vote for the Dean of
16 Students Barbara Avery and Occidental General Counsel Carl Botterud, who
17 Occidental terminated. (Exhibit 17).

18 34. Then, on May 8, 2013, Occidental encountered additional pressure to
19 aggressively discipline male students because OCR launched an investigation into
20 Occidental's handling of sexual assault claims. (Exhibit 18).

21 35. In response to this increasing scrutiny and pressure, Occidental
22 implemented a new Sexual Misconduct Policy in August 2013. (Exhibit 19,
23 Occidental College Sexual Misconduct Policy, p. 1). Upon information and belief,
24 Occidental intended this new policy to allow covert discrimination against male
25 students so as to avoid federal penalties and to succumb to internal and external
26 pressure to find more male students responsible for sexually assaulting female
27

28 ³ (Exhibit 21, Rape Settlement at Occidental College: Victims Barred from Campus
Activism, *The Nation*, Jon Weiner, Sept. 19, 2013).

1 students.

2 36. Even though Occidental implemented a new Sexual Misconduct
3 Policy, the pressure to aggressively discipline male students continued because on
4 September 10, 2013, the DOE launched a second investigation under the Clery Act
5 to determine if Occidental was underreporting the number of sexual assaults on
6 campus. (Exhibit 20).

7 37. Then, in October 2013, L.A. Times reporters Jason Felch and Jason
8 Song published the first of several articles about Occidental's alleged mishandling
9 of sexual assault complaints filed by female students. (Exhibit 22). Felch's articles
10 led to an onslaught of media coverage and public debate between Occidental and
11 the LA Times. And, on January 20, 2014, Occidental hired a crisis communications
12 firm headed by LA Times editor Glenn Bunting to assist with the handling of the
13 negative publicity relating to its Title IX policies and enforcement. (Ex 23).

14 38. A few months later, in March or April of 2014, Felch's employment
15 with the LA Times was terminated upon discovery that he was having a sexual
16 affair with a source providing information on the Occidental sexual assault stories.
17 (Exhibit 24). Following his termination, information surfaced indicating that
18 Felch's relationship was with an Occidental professor who was a victim's right
19 advocate. (Exhibit 25).

20 39. Around this same time period, Occidental worked to prove to its
21 internal and external critics that it would more aggressively prosecute male students
22 alleged to have engaged in sexual misconduct. For example, on October 22, 2014,
23 Pepper Hamilton issued its "Occidental College Report of External Audit and
24 Assessment of Title IX Policies, Procedure and Practices." (Exhibit 26). The report
25 detailed the internal and external pressure on Occidental to more aggressively
26 prosecute male students for sexual misconduct. For example, page iv of the report
27 states:

28 Concerns expressed to us by students, staff and faculty include

1 fears of speaking freely, concerns that the campus dynamic is
2 detrimental to the conversation, worries about lack of trust between
3 different members of the community and fears that the campus has
4 become so divided on this issue that the College community may
5 not be able to work together to rebuild. A March 26, 2014 Letter
6 of Faculty Concern echoed these concerns, describing an
"unsustainable, adversarial deadlock" and a "failure to let go of
hostility" that "becomes more damaging every day."

7 We believe that the College is at a pivotal moment, but one that has
8 the potential for hope and optimism. The key to achieving success
9 at Occidental is directly tied to the community's ability to rebuild
10 damaged and frayed relationships and find a way to share common
11 goals—preventing sexual and gender-based harassment and
12 violence and improving institutional responses that prioritize
13 individual welfare and safety—but to do so in a way that is
14 collaborative and respectful. While we fully applaud and support
15 achieving culture change through activism, we worry that the very
16 tactics used to gain attention to the issues will stand in the way of
17 candid and collaborative communication between activists and
18 administrators. We encourage the administration, faculty, staff,
19 students, and all members of the College community to create safe
spaces for conversation that focus on inclusivity, diversity and
respect for civil discourse. This will require listening openly to
fellow community members, seeking to understand their
perspective and searching for an inference of good will, rather than
presuming a negative inference. (See Exhibit 26, p. iv).

20 The Pepper Hamilton Report provides more detail on page 2-3, which states:

21 While the concerns themselves [reporting and handling of sexual
22 assault claims on campus] were neither unique nor unexpected,
23 other factors at Occidental were. First, we encountered intense and
24 polarized campus dynamics and great distrust of the administration.
25 This distrust was so significant that for some, the very fact that the
26 College engaged us meant that we could not be viewed as
27 objective. Second, perhaps in direct response to the polarization,
28 some members of the community attacked our efforts and
encouraged individuals to decline to participate in our review or in
any other effort by the College. At the outset of our engagement,
during our first meeting with OSAC [Occidental Sexual Assault

Coalition], we voiced our interest in meeting with students who could share their perspectives of the process and the College's responses. OSAC faculty advisors told us that they would not permit us to meet with student survivors. Over the course of the next eighteen months, we continued to seek the engagement of students who were willing to participate. Those efforts to engage community members are outlined in Appendix I. (See Exhibit 26, p. 2; *see also*, pp. 21-23).

40. The Pepper Hamilton Report also recognized the pressure being applied on Occidental by the federal government by stating:

In addition to the strained campus dynamics, since 2011, the federal government's enforcement strategies have become more aggressive and have shifted in tone, focus and application during the course of our engagement. For Occidental, as for colleges and universities across the country, the seismic plates have been shifting below the institutional foundations, leaving many institutions, administrators and students struggling to find stable footing. Given these dynamics, in many respects, our task was akin to navigating the straits between Scylla and Charybdis with little hope for successful resolution. . . .
(See Exhibit 26, p. 3).

41. The Pepper Hamilton report appears to have done little to calm the internal demands for higher conviction rates of male students accused of sexual misconduct. For example, on November 11, 2014, Occidental professors and students openly criticized the Pepper Hamilton report and continued to demand more aggressive prosecution of male students accused of sexual misconduct. (Exhibit 27).

42. In sum, Occidental has been in crisis mode since late 2012 as a result of the extreme activism from female forces such as OSAC and because of the increased scrutiny from the federal government and potential loss of federal funding. (See, Exhibit 28, Feb. 10, 2015, The Trouble with Oxy, Los Angeles Magazine). As detailed in this Complaint, Occidental dealt with this crisis by

1 unlawfully discriminating against male students like John Doe on the basis of their
2 gender in part because of internal and external pressure to aggressively discipline
3 males accused of sexual misconduct.

4 43. Although Occidental's policies relating to sexual misconduct by
5 students appear gender-neutral, these policies are evidence of a pretext for gender
6 bias in part because the policies are being applied almost exclusively against male
7 students and not female students. Evidence of this fact is found in the Pepper
8 Hamilton report which noted male students were the alleged assailants in all 17 of
9 the formal complaints for non-consensual sexual intercourse and non-consensual
10 sexual contact between 2011-12 and 2012-13. (Exhibit 26, Pepper Hamilton Report,
11 p. 40).

12 **Occidental's Gender-Biased Prosecution of John Doe.**

13 44. John Doe is from California where he worked diligently at a magnet
14 public high school focused on international studies. John Doe graduated from high
15 school with a strong academic record.

16 45. Setting his sights on a college education from a top ranked college,
17 John Doe was excited to accept an offer to attend Occidental because of its strong
18 reputation in international relations and history and because it is the alma mater of
19 his grandparents. John Doe was accepted into Occidental College and began his
20 studies in the fall of 2013 as a freshman. While at Occidental during this, his first
21 and only semester, and despite the ongoing allegations against him, John Doe
22 continued his diligent studies while being a college athlete and was placed on the
23 Dean's list for his academic achievement.

24 46. Jane Doe is from Tennessee and also began her studies at Occidental in
25 the fall of 2013 as a freshman. Upon information and belief, Jane Doe is currently a
26 student at Occidental.

27 47. During the 2013-14 academic year, classes began at Occidental
28 College on August 28, 2013. John and Jane Doe met in a class that they were both

1 taking.

2 48. It should be noted, Jane Doe initially denied John Doe had engaged in
3 sexual misconduct and did not have an interest in filing a complaint against John
4 Doe. (Exhibit 13, pages 46, 52-3). But, upon information and belief, Professor
5 Dirks convinced Jane Doe to falsely accuse John Doe of sexual misconduct.
6 Evidence supporting this belief includes, but is not limited to, Professor Dirks'
7 allegation that 90% of rapes are done by repeat offenders (and) that "[John Doe] fits
8 the profile of other rapists on campus in that he had a high GPA in high school, was
9 his class valedictorian, was on [a sports] team, and was 'from a good family.'" (Exhibit 13, page 41.)

10
11 49. During the time between when Jane Doe initiated physical contact with
12 John Doe and when Jane Doe filed a complaint against John Doe, Jane Doe
13 engaged in extensive discussions with Professor Dirks and Occidental faculty
14 member Movindri Reddy. Professor Reddy was a co-signer of An Open Letter to
15 Occidental Faculty (Exhibit 29) raising concerns about Occidental's alleged failure
16 to aggressively discipline male students accused of sexual assault and Jane Doe's
17 advisor for the hearing process. (Exhibit 30, p. 1).⁴

18 50. According to Occidental's Investigation Report, "Professor Reddy put
19 [Jane Doe] in touch with Professor Dirks . . . [and Jane Doe] met with Professor
20 Dirks for three hours, and told her the entire story.... During this period, Jane Doe
21 stated, she went to see Professor Reddy every day to talk about what had happened,
22 and how she was dealing with it." (Exhibit 13, p. 40).

23 51. According to Occidental's Investigation Report, Jane Doe struggled for
24 some time over whether to file a complaint against John Doe stating: "I have spent a
25 lot of sleepless nights on whether I should pursue this or not." (Exhibit 13, p. 40).

26
27
28 ⁴ The hearing transcript is confidential, pursuant to a court order in the pending
Petition for Writ of Administrative Mandate. Therefore, Exhibit 30 is not filed with the
Complaint, but will be filed separately under seal.

1 Jane Doe admitted her decision to file the complaint against John Doe was
2 influenced by Professor Dirks' allegation that 90 percent of rapes are done by repeat
3 offenders and that if she did not file a complaint against John Doe that he might
4 sexually assault other women. *Id.*

5 52. Jane Doe admitted her decision to file the complaint against John Doe
6 was influenced by Professor Dirks' allegation that there was a pattern at Occidental
7 of male students engaging in the inappropriate practice of having sex with highly
8 intoxicated women. *Id.*, p.41.

9 53. Jane Doe admitted her decision to file the complaint against John Doe
10 was influenced by Professor Dirks' allegation that Jane Doe's reluctance to allege
11 she was sexually assaulted likely occurred because she suffered from Post-
12 Traumatic Stress Disorder (PTSD). *Id.*, p. 53. Professor Dirks provided this
13 diagnosis and counselling even though she is not a licensed psychologist.

14 54. Jane Doe admitted her decision to file the complaint against John Doe
15 was influenced by Professor Dirks' allegation that Jane Doe appeared to be "in a
16 strong state of denial" and that her reluctance to call what had happened "rape" was
17 consistent with other victims of sexual assault whom Dirks has talked to on campus.
18 *Id.*, pp. 40-41, 53.

19 55. Jane Doe admitted her decision to file the complaint against John Doe
20 was influenced by Professor Dirks' allegation that John Doe was "acting in the
21 same way all these other young men [involved in sexual assaults] have acted." *Id.*,
22 pp. 40-41, 54.

23 56. Similarly, Jane Doe's rationale for reporting John Doe echoed
24 Professor Dirk's anger at allegedly exploitive and/or unrepentant male students.
25 Specifically, Jane Doe stated she decided to report John Doe in part because he
26 attended his classes without difficulty, and she "saw that he wasn't fazed by what
27 had happened at all." (*Id.*, page 40.)

28 57. Therefore, after prodding by Professor Dirks, Jane Doe falsely accused

1 John Doe of violating Occidental's Sexual Misconduct Policy on September 16,
2 2013. (Exhibit 19, Occidental Sexual Misconduct Policy & Exhibit 31).

3 58. Jane Doe filed her complaint against John Doe on September 16, 2013
4 – just four days after Professor Dirks dialed up the pressure on Occidental to
5 convict male students like John Doe by giving another interview to the LA Times.
6 Specifically, the LA Times quoted Professor Dirks as stating: "I've heard from three
7 students since the beginning of the school year who say they were raped. None of
8 them has been handled appropriately." (Exhibit 32, Occidental College Chief Asks
9 for Reconciliation after Accusations, *Los Angeles Times*, September 20, 2013, Jason
10 Felch and Jason Song).

11 59. Jane Doe's complaint was also filed within a week of the DOE's
12 second investigation into Occidental under the Clery Act. (Exhibit 20).

13 60. Moreover, as discussed above, Jane Doe's complaint overlapped with
14 Occidental's public relations initiative to protect its federal funding and prove to
15 internal and external critics that Occidental would find more male students
16 responsible for sexual misconduct. (Exhibits 11 & 14-21)

17 61. Evidence that John Doe was adversely impacted by the aforementioned
18 internal and external pressure includes, but is not limited to, a November 13, 2013
19 e-mail from Occidental's Interim Title IX Coordinator, Lauren C. Carella (an
20 attorney and former prosecutor in the sex crimes unit of the York County District
21 Attorney's Office in Pennsylvania) to John Doe which admitted that "the current
22 campus climate" was impacting his disciplinary procedure. (Exhibit 32).

23 62. With the assistance of Professors Reddy and Dirks, Jane Doe filed a
24 sexual assault report with the Los Angeles Police Department on or about
25 September 16, 2013. (Exhibit 13, pp 41 & 53). Los Angeles Police Department
26 Detective Michelle Gomez was in charge of the LAPD investigation and
27 interviewed Jane Doe and other student witnesses at Occidental.

28 63. On November 5, 2013, the Los Angeles District Attorney's Office,

1 Sexual Crimes Unit declined to prosecute John Doe for lack of evidence. Deputy
2 District Attorney Alison Meyers concluded, after meeting with Jane Doe and
3 conducting a number of witness interviews, that both parties were drunk and "they
4 were both willing participants exercising bad judgment" and "[s]pecifically the
5 facts show the victim was capable of resisting based on her actions." Deputy
6 Meyers also stated that "it would be reasonable for [John Doe] to conclude based on
7 their communications and her actions that, even though she was intoxicated, she
8 could still exercise reasonable judgment." (Exhibit 34, Charge Evaluation
9 Worksheet). In an interview for Esquire Magazine, Deputy District Attorney
10 Meyers stated:

11The investigating officer ... remembered the case clearly: "We
12 had these really bad text messages that supported a consensual
13 encounter," she says. "Even though everything pointed to her being
14 intoxicated, she still had enough frame of mind to send these text
15 messages saying, 'I'm on the way. I'm coming. I'm coming. Do you
16 have a condom?' So his state of mind is, she's saying yes.... How
17 was he supposed to know that she did not want to give consent?
18 And if he's intoxicated, then that kind of falls under the same
19 category: Was *he* able to give consent? There's a whole bunch of
20 different factors that went into this.

21 "Based on the evidence," she adds, "I don't think he committed a
22 crime."

23 (Exhibit 35)

24 64. In deciding not to prosecute the case, the district attorney effectively
25 concluded that the alleged sexual assault did not meet the minimum standard of
26 "reasonable suspicion." The test in California for the government to hold a citizen
27 to answer for a crime is "a strong suspicion," which is less than the "preponderance
28 of the evidence" standard applied by Occidental's Policy. The LAPD District
Attorney was unable to prosecute John Doe because the case did not even meet the
lower standard of a strong suspicion that a crime had occurred. In an attempt to
justify Occidental's improper Findings under a higher standard of proof,
Occidental's Finding misstates the prosecutor's finding that there is no "strong

1 suspicion" that a sexual assault occurred. The school refused to allow presentation
2 of the highly relevant result of the LAPD investigation (Exhibit 30, p. 62), and
3 refused to acknowledge that law enforcement found insufficient evidence of a
4 crime, even at the lower standard of proof. The college rejected the presentation of
5 this relevant information, and misrepresented the standard of proof, in order to find
6 the accused male responsible.

7 65. In spite of the aforementioned evidence, Occidental elected to forgo
8 any attempt to informally resolve Jane Doe's complaint as contemplated by
9 Occidental's policies and proceeded with a "formal resolution" which required a
10 hearing and investigation.

11 66. Information gathered during Occidental's investigation substantiated
12 the determinations of the aforementioned police officers and prosecutors. For
13 instance, Jane Doe told Occidental how - on or about the early morning hours of
14 September 8, 2013 - she performed oral sex on John Doe. (Exhibit 13, pp. 19, 36).
15 Moreover, despite her rape allegations, Jane Doe initially stated she could not
16 specifically recall having intercourse with John Doe. (See Exhibit 31, Notice of
17 Charges Letter.)

18 67. The investigation of Jane Doe's complaint was conducted by the
19 outside firm of Public Interest Investigations, Inc. Cathleen Watkins and Keith
20 Rohman were the investigators who prepared the report attached as Exhibit 13. This
21 report included the following facts:

- 22 (a.) Jane Doe voluntarily went to John Doe's dorm room.
- 23 (b.) John Doe did not serve Jane Doe alcohol;
- 24
- 25 (c.) While dancing, and in the presence of John Doe and her friends, Jane
26 Doe took off her shirt. Jane Doe was grabbing John Doe and trying to
27 kiss him while John Doe was "somewhat responsive" to Jane Doe but
28 "also seemed pretty indifferent to [Jane Doe's] advances." (Exhibit 13,
page 73). During this time Jane Doe was "getting really physical" in
John Doe's bed, riding on top of him and grinding her hips. Jane Doe's

1 friends tried to shepherd her back to her dorm, but before she left John
2 Doe's room, she gave him her cell phone number so that they could
3 coordinate her return for sex, which Jane Doe had verbally agreed to.
4 When she arrived at her own dorm room, John Doe texted her, "The
5 second that you away from them, come back." Jane Doe responded,
6 "Okay." John Doe wrote back, "Just get back here." Jane Doe
7 responded, "Okay do you have a condom." John Doe replied, "Yes."
8 Jane Doe texted back, "Good, give me two minutes." (Exhibit 36;
9 Exhibit 13, pp. 16-17 & Exhibits 3-6 thereto);

10 (d.) Before leaving her dorm room, Jane Doe texted a friend from back
11 home: "I'mgoingtohave sex now[sic]." (*Id.*);

12 (e.) Jane Doe walked down a flight of stairs to John Doe's room at
13 approximately 1 a.m., knocked on his door, went in, took off her
14 earrings, performed oral sex, and had sexual intercourse with him.
15 Jane Doe never claimed that she was forced, intimidated, physically
16 harmed, nor resisted in any way. When an acquaintance knocked on
17 John Doe's door to check up on her, Jane Doe called out: "Yeah, I'm
18 fine." The acquaintance asked twice more and Jane Doe gave the same
19 reply. During these questions John Doe had stepped out of his room
20 and gone down the hall to use the restroom. He was not present during
21 this exchange to exert any influence upon her affirmations and Jane
22 Doe decided to remain in the room to continue her sexual encounter
23 with John Doe. Shortly before 2 a.m., Jane Doe dressed herself and
24 returned to her room. (Exhibit 13, pp. 18-21);

25 (f.) After having sex, Jane Doe texted her friends smiley faces (Exhibit 35
26 hereto; Exhibit 13 & Exhibit 5 thereto). She then left her dormitory,
27 walked to a different dorm where she sat on the lap of another male
28 student whom she had met the night before, talking and joking. The
next day she texted John Doe asking if she had left her earrings and
belt in his room and asked to come by to pick them up. (Exhibit 13 &
Exhibit 5 thereto); and

(g.) Later that day, Jane Doe learned that others around the dorm knew that
she and John Doe had sex the night before. Jane Doe was embarrassed
of her actions. (Exhibit 13, pp. 83, 95).

68. In the midst of this investigation, Occidental continued to experience
internal and external pressure to discipline male students like John Doe. For

1 instance, on same day as John Doe's hearing, Felch - the LA Times reporter
2 detailed above - authored another article in the LA Times alleging Occidental was
3 not properly handling or reporting sexual assault claims. (Exhibit 37)

4 69. It was under this infamous cloud of publicity and pressure that
5 Occidental conducted John Doe's hearing on Saturday December 7, 2013.

6 70. On Monday, December 9, 2013, merely two days after the hearing -
7 Ms. Mirkovich issued her thirteen (13) page, single-spaced decision finding that
8 John Doe had violated Occidental's Sexual Misconduct Policy and had engaged in
9 two forms of prohibited conduct—sexual assault and non-consensual contact.
10 (Exhibit 38, December 9, 2013, External Adjudicator's Decision).

11 71. The Adjudicator improperly relied on witness testimony to achieve the
12 gender-biased objective of finding incapacitation. The Adjudicator disregarded the
13 undisputed facts of the actions performed by Jane Doe and the witness testimony
14 showing that Jane Doe may have been intoxicated, but was not incapacitated. As
15 referenced by the Adjudicator's report:

16 [Friend#1] stated that, although she and Friend#3 did not carry the
17 Complainant to her room, the Complainant was walking like an
18 intoxicated person, thus, to escort the Complainant to her room,
19 Friend#1 and Friend#3 each linked arms with the Complainant and
20 supported her when they were returning the Complainant to her
21 room. (Exhibit 38, December 9, 2013, External Adjudicator's
22 Decision, p. 9).

23 Two paragraphs later, the Adjudicator finds that Jane Doe was *incapacitated*,
24 despite the prior 'other evidence' testimony which stated her *intoxication*:

25 The external adjudicator recognizes that the fact that Complainant
26 successfully navigated herself, under her own power to the
27 Respondent's room, indicates both that, at the time, she had an
28 awareness of where she was and that her motor skills were
sufficiently intact to enable her to walk unassisted. Those factors,
however, must be considered not in isolation but along with all of
the other evidence regarding the Complainant's condition during
the relevant period. (Exhibit 38, December 9, 2013, External

1 Adjudicator's Decision, p. 10).

2 72. Upon information and belief, the Adjudicator deliberately places the
3 testimony of her friends above the fact of her self-mobility in a deliberately
4 prejudicial manner in order to justify her desire to find John Doe responsible.

5 73. In another instance, the Adjudicator believes the testimony of Jane Doe
6 in the December 9 hearing, stating that she was incapacitated based on her lack of
7 memory, despite the extensive evidence of Jane Doe's detailed memories made in
8 earlier testimony to the Investigator. Her testimony in the weeks following the
9 incident include many points that were clear to the Investigator, but were later
10 denied in the December 9 hearing. In one instance, regarding the memory of oral
11 sex, Jane Doe's memories are very vague (Exhibit 30, Hearing transcript pp. 47-48).
12 The Adjudicator questions the Investigator to understand these changing memories:

13 Adjudicator: Did she communicate to you in any way that she was
14 telling you what she had heard from others as opposed to
15 what she independently recalled?

16 Investigator: That's not my recollection.... Particularly I remember
17 asking her -- I remember her saying that they had oral sex.
18 And I remember specifically asking her was that you
19 performing it with him or him performing it on you, and
20 she had a very straight answer. "No. It was me giving him
oral sex." ... So that struck me as strictly her recollection.
(*Id.*, pp. 208-09)

21 Based on this line of questioning, the Adjudicator appears to understand that
22 the 'blackout' was conveniently selective, but then chose to ignore the factual
23 statement by the investigator, instead choosing to believe the victim's inconsistent
24 testimony.

25 74. Six days later, on Friday, December 13, 2013, Occidental notified John
26 Doe that he had been found responsible for Sexual Assault and Non-Consensual
27 Sexual Contact, even though Jane Doe engaged in the same alleged misconduct that
28 John Doe was accused of committing. (Exhibit 39, December 13, 2013 letter from

1 Occidental to John Doe).

2 75. On December 20, 2013, Occidental issued the sanction of "Permanent
3 Separation from the College." (Exhibit 40).

4 76. On January 6, 2014, John Doe filed his timely appeal to Occidental.
5 (Exhibit 41). On January 8, 2014, Occidental initially designated its employee,
6 Devon MacIver, Assistant Dean of Admissions, as the administrative appeal officer.
7 Jane Doe submitted her response to John Doe's appeal on January 22, 2014 (Exhibit
8 42).

9 77. On January 31, 2014, Occidental notified John Doe that Mr. MacIver
10 was no longer the appeals officer due to his workload. Instead, Occidental
11 appointed a female employee - Maria Hinton, Asst. Director for Housing services -
12 to serve as the administrative appeals officer for John Doe's appeal. As a result,
13 John and Jane Doe then submitted their positions to Ms. Hinton. (Exhibits 43 & 44)

14 78. Occidental's Sexual Misconduct Policy contains the following grounds
15 for appeal:

16 The Complainant and/or Respondent may appeal on the parts of
17 final outcome directly relating to him/her. Dissatisfaction with the
18 outcome of the hearing is not grounds for appeal. The only grounds
19 for appeal are:

20 A procedural or substantive error occurred that significantly
21 affected the outcome of the hearing (e.g. substantiated bias,
22 material deviation from established procedures, etc.).

23 New evidence, unavailable during the original hearing or
24 investigation, that could substantially impact the original finding
25 or sanction (a summary of this new evidence and its potential
26 impact must be included).

27 (Exhibit 19, Occidental Sexual Misconduct Policy, p. 45.)

28 79. John Doe's appeal should have been granted because he presented
evidence of a procedural or substantive error that occurred that significantly
affected the outcome of the hearing. (Exhibits 19 & 41) For example, John Doe

1 presented evidence of gender bias by pointing out: (a) how Jane Doe engaged in the
2 same conduct that John Doe engaged in but was not disciplined (b) how Jane Doe's
3 contradictory testimony precluded a finding that John Doe engaged in misconduct;
4 and/or (c) how the evidence proved Jane Doe initiated physical contact with John
5 Doe when Jane Doe was not incapacitated (*Id.*)

6 80. Nevertheless, on February 12, 2014, in a report purportedly prepared
7 by Ms. Hinton, Occidental rejected John Doe's appeal and affirmed the earlier
8 findings and sanctions. (Exhibit 45). Upon information and belief, Ms. Hinton did
9 not prepare the appeal or follow Occidental's policy. Evidence supporting this
10 belief includes, but is not limited to: (a) the fact that Ms. Hinton did not sign the
11 report, (b) Ms. Hilton's failure to review the hearing transcript or the audio; and/or
12 (c) the report's failure to consider the discrepancies between the investigation and
13 the hearing testimony. (*Id.*)

14 81. If Occidental applied its policies and procedures in a gender neutral
15 manner, both Jane Doe and John Doe should have received the same discipline (or)
16 neither should have been disciplined. Therefore, Occidental's discipline of John
17 Doe evidences gender-bias in part because Occidental never disciplined Jane Doe
18 while expelling John Doe.

19 82. At all times relevant to this Complaint, John Doe and Jane Doe were
20 similarly situated in part because they were both students at Occidental who
21 consumed alcohol prior to engaging in physical contact with another student who
22 consumed alcohol.

23 83. Occidental's Sexual Misconduct Policy – which is contained at Exhibit
24 19 - mandates allegations of sexual assault be addressed through "fair and equitable
25 procedures for determining when this policy has been violated." But, as detailed in
26 the Complaint, Occidental's unlawful discipline of John Doe was corrupted by
27 gender based bias which resulted in his being denied "fair and equitable"
28 disciplinary proceedings at Occidental.

1
2 **Occidental engaged in deliberate indifference in refusing to implement**
3 **corrective measures to address John Doe's unlawful discipline detailed above.**

4 84. On February 13, 2014, John Doe filed a Petition for Writ of
5 Administrative Mandate in the Superior Court of the State of California for the
6 County of Los Angeles, Central District, Case No. BS147275, pursuant to Code of
7 Civ. Proc. §§ 1085 and 1094.5. A copy of the Petition is attached as Exhibit 46.

8 85. On October 20, 2014, John Doe also filed a Complaint with OCR
9 alleging that Occidental violated Title IX and discriminated against him because of
10 his gender (Exhibit 47). The OCR Complaint was administratively dismissed due to
11 the Petition for Writ of Mandate pending in state court. (Exhibit 48) John Doe was
12 invited to refile once the court case is concluded.

13
14 **Occidental Violated John Doe's Rights By Prejudicing His Ability**
15 **To Defend Himself During the Investigation and Hearing**

16 86. Occidental denied John Doe certain rights with intent to discriminate
17 against him on the basis of his gender. For example, Occidental's 46-page Sexual
18 Misconduct Policy denies accused male students like John Doe the basic due
19 process rights recognized by UN Universal Declaration of Human Rights, the U.S.
20 Constitution, and the California Constitution. These rights include the assistance
21 of counsel, the right to remain silent in the face of criminal accusations, and the
22 presumption of innocence. (Exhibit 19).

23 87. John Doe was denied a fair hearing in part because Occidental's
24 Sexual Misconduct Policy specifically states that it "prohibits outside attorneys, or
25 family members acting as attorneys from participating in proceedings under this
26 policy" and that, if a party obtains the advice and assistance of an attorney, "the
27 attorney may not participate in investigatory interviews, informal resolution
28 proceedings, or formal resolution via administrative hearing or Hearing Panel."

1 (Exhibit 19, Occidental Sexual Misconduct Policy, p. 36).

2 88. Moreover, while Occidental denied John Doe the right to an attorney,
3 Occidental routinely provided allegedly assaulted female students access to
4 attorneys, advisors, and/or advocates through Occidental's Sexual Assault Coalition
5 and/or the National Women's Law Center. (Exhibit 49, p. 10) For example,
6 Occidental has assisted female students in obtaining counsel from the National
7 Women's Law Center and requests that the female students be provided attorneys
8 who are strong feminists. (*Id.*).

9 89. According to Occidental's Policy, all parties in the Title IX hearing
10 have the opportunity to ask questions of witnesses through the Hearing Panel
11 (Exhibit 19, p. 38) and are encouraged to prepare a list of written questions in
12 advance. (Exhibit p, page 41).

13 90. But, John Doe was irreparably prejudiced because Occidental refused
14 to ask the vast majority of the written questions John Doe prepared prior to the
15 hearing and presented to Occidental. For example, of the 38 questions John Doe
16 submitted to Occidental to be asked of Jane Doe, the adjudicator only asked 9.
17 Some of the questions Occidental refused to ask Jane Doe were:

18 (1.) On September 7th at about midnight were you in John and [his
19 roommate's] dorm room dancing with John, lying down on his
20 bed, grabbing John, and trying to kiss him?

21 (2.) Were you excited and happy?

22 (3.) Were your friends trying to get you to leave John's room and go
23 to bed?

24 (4.) Before you left John, did you agree to come back to his room
25 and have sex with him?

26 (5.) You went up to your room and waited and John then texted you
27 to come back like you had planned, is that correct?

28 (6.) Were you excited when you were able to sneak out past them

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[her friend and her RA]?

- (7.) Did you text to John, "Okay do you have a condom."?
- (8.) And did John text back "Yes,"?
- (9.) And did you reply, "Good give me two minutes?"
- (10.) The next day, Sunday, did you tell people that you had a difficult time remembering what happened that night?
- (11.) The next morning, [Friend#1] came over to your room and to help you piece together the events of the previous night, is that right?
- (12.) Did you tell [your roommate] that you and [Friend#1] had accounted for all of your activities the previous night, except for the hour when you went back to John's room to have sex?
- (13.) You remember details of that night that happened before and after you went back to John's room, but aren't sure you remember what happened during that hour, is that right?
- (14.) But in your statement, you told the investigators about a number of things that you do remember happening about that time, correct?
- (15.) You remembered John telling you to come back down so you can have sex, right?
- (16.) You remember giving John your cell phone number so he could text you when to come back, yes?
- (17.) You remember being excited to sneak out of your room to get back to John's room like you had planned, true?
- (18.) You remembered that when you got downstairs to John's room that he gave you a piece of gum? Is that right?
- (19.) You remembered that John left you alone in his room at one point, correct?

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- (20.) You remembered responding three times that you were fine (to the person who knocked on the door while John was out of the room), correct?
- (21.) And you also remember that John said that his roommate [] had just came in the room, correct?
- (22.) And [John Doe's roommate] came in the room right when you were having sex, correct?
- (23.) [John Doe's roommate] told the investigators that right when he came in the room he saw you and John having sex without any covers on, didn't he?
- (24.) And [John Doe's roommate] saw that you were conscious because he saw you moving, true?
- (25.) And you were conscious and aware because you heard John say that [his roommate] just came in, and you remember that, correct?
- (26.) You remember John telling you about [his roommate] right when you were having sex, but are not able to remember that you were having sex at that very same time, is that right?
- (27.) So even if you don't remember now, or have blocked it out, at the time you and John had sex in his room, you were conscious and aware, isn't that right?
- (28.) Isn't it true that you agreed to have sex, went back to his room to have sex, and you were aware that sexual activity was occurring when you were in John's room?

(Exhibit 50).

91. In addition to avoiding these tough questions, neither the hearing transcript nor Occidental's investigators showed any interest in exploring Jane Doe's lack of credibility. For instance, Jane Doe alleged she did not remember what occurred during the hour that she was in John Doe's room. (Exhibit 30, p.

1 40). This allegation completely lacks merit because when Jane Doe testified to the
2 investigators in the weeks after the event, she remembered the following significant
3 events from the "missing hour":

- 4 (a.) Jane Doe remembered agreeing to come back down to John Doe's room
5 to have sex;
- 6 (b.) Jane Doe recalled giving John Doe her cell phone number so he could
7 text her when to come back;
- 8 (c.) Jane Doe remembered texting her friend back home
9 "I'm going to have sex now;"
- 10 (d.) Jane Doe recalled being excited to sneak out of her room to get back to
11 John Doe's room;
- 12 (e.) Jane Doe remembered asking John Doe if he had a condom because
13 she had not used any birth control;
- 14 (f.) Jane Doe recalled watching out of her keyhole for her friend and RA
15 with the spiky hair to leave before sneaking out of her room to meet
16 John Doe.
- 17 (g.) Jane Doe remembered that while John Doe was out of the room
18 someone knocked on the door and asked if she was ok and remembered
19 responding three times to her friend that she was fine;
- 20 (h.) Jane Doe recalled performing oral sex on John Doe; and
- 21 (i.) Jane Doe remembered John Doe saying that his roommate had just
22 come in the room while they were having sexual intercourse. (Exhibit
23 13, pp. 33-36, 78).

24 92. In addition, Occidental failed to consider Jane Doe's actions which
25 disproved the allegation that Jane Doe was incapacitated when she initiated
26 physical contact with John Doe. For instance, Occidental ignored:

- 27 (a.) Jane Doe remembered going back to her own room after initiating
28 physical contact with John Doe;

- 1 (b.) Jane Doe recalled leaving her dormitory after having sex with John
2 Doe to meet her friends;
- 3 (c.) Jane Doe remembered having her phone taken away;
- 4 (d.) Jane Doe recalled going to bed;
- 5 (e.) Jane Doe remembered that as soon as her roommate left her alone, she
6 got out of bed again because, she "didn't feel like going to sleep;"
- 7 (f.) Jane Doe recalled finding her phone and her key card, and putting on
8 her shoes, walking down the stairs and across the grassy area known as
9 "Stewie Beach" to Stewart-Cleland Hall;
- 10 (g.) Jane Doe remembered going to the common room, seeing a male
11 student whom she met the night before, and remembered sitting on his
12 lap, talking and joking about a NASCAR program on the television;
13 and
- 14 (h.) Jane Doe remembered the next day that she had left her belt and
15 earrings in John Doe's room.

16 (Exhibit 13, p. 37.)

17 93. Instead of asking John Doe's prepared questions and assessing Jane
18 Doe's credibility, the external adjudicator - Marilou Mirkovich – asked questions
19 during the hearing evidencing gender bias. For example, Ms. Mirkovich asked
20 leading questions of Jane Doe that were designed to get her to say she did not
21 normally take off her shirt and engage in the types of behavior she was observed
22 engaging in on the night she initiated sexual contact with John Doe. But, even with
23 the leading questions, the best Jane Doe could do was agree that she didn't think
24 she had ever done anything like this before. (Exhibit 30, p. 42).

25 94. Conversely, Ms. Mirkovich asked no questions exploring whether John
26 Doe knew or should have known Jane Doe did not normally take off her shirt and
27 engage in the types of behavior she was observed engaging in on the night she
28 initiated sexual contact with John Doe. *Id.*

1 95. Ms. Mirkovich's conduct demonstrates the gender biased application
2 of Occidental's Sexual Misconduct Policy. For instance, under this policy, the
3 accused—the male student—cannot present evidence concerning the prior sexual
4 history of the complainant.

5 ***Prior Sexual History of a Complainant:*** In general, a
6 Complainant's prior sexual history is not relevant and will not be
7 admitted as evidence at a hearing. Where there is a current or
8 ongoing relationship between the Complainant and the
9 Respondent, and the Respondent alleges consent, the prior sexual
10 history between the parties may be relevant to assess the manner
11 and nature of communications between the parties. As noted in other sections of this
12 policy, however, the mere fact of a current or previous dating relationship, by itself,
13 is not sufficient to constitute consent. Any prior sexual history of the Complainant with
14 other individuals is typically not relevant and will not be permitted.

15 (Exhibit 19, Occidental Sexual Misconduct Policy, Section D,
16 paragraph 8, p. 38).

17 96. However, Occidental allowed Jane Doe the female student—to rely on
18 alleged prior chaste behavior to indicate future chaste behavior, which Occidental
19 in turn relies on to find incapacitation and a lack of consent. For example, in this
20 case, Occidental relied in part on evidence presented that Jane Doe had (as far as
21 she could remember) not taken her shirt off in front of a boy while dancing in the
22 past, was a virgin, was a hopeless romantic, and was not perceived by her friends to
23 be the type of person who gets drunk and has sex to conclude that Jane Doe was
24 incapacitated and could not consent to sex. (Exhibit 13, pp. 20, 25 & Exhibit 30, pp.
25 39, 42).

26 97. Occidental engaged in a gender-biased application of the Policy in part
27 because Occidental's erroneous allegation that Jane Doe was incapacitated: (a)
28 inappropriately relied on evidence of Jane Doe's alleged prior chaste behavior as a
basis for claiming Jane Doe only initiated sexual contact with John Doe because she
consumed too much alcohol to know what she was doing; and (b) conflicted with
the evidence that proved Jane Doe was in full control of her actions when she

1 initiated sexual contact with John Doe. Evidence that Jane Doe was in full control
2 of her actions when she initiated sexual contact with John Doe include, but are not
3 limited to, Jane Doe's texts with John Doe, Jane Doe's consent to have sex, Jane
4 Doe's arranging to have safe sex, Jane Doe's ability to sneak out of her room to
5 return to John Doe's room to carry out the plan to have sex, and Jane Doe's
6 decision to turn down opportunities to leave the room with a trusted companion
7 while John was not present. (Exhibit 38, p. 12; *see also paragraph 67, supra*).

8 98. Occidental's decision to ignore Jane Doe's lack of credibility and/or
9 prevent John Doe from asking questions proving his innocence evidences gender
10 bias caused in part by Occidental's desire to increase the number of male students
11 found responsible for engaging in sexual misconduct in order to appease internal
12 and external forces demanding these findings.

13 99. Upon information and belief, Occidental allowed John Doe to be
14 irreparably tainted by gender bias by silencing male voices that might contradict the
15 internal and/or external pressure to find more male students responsible for sexually
16 assaulting female students. Evidence supporting this belief includes, but is not
17 limited to: (a) the Pepper Hamilton report, discussed above and attached as Exhibit
18 26, which stated professors were hesitant to become involved in disciplinary
19 proceedings involving sexual misconduct because of the efforts of the OSAC; (b)
20 the decision by John Doe's first choice of advisor - a male faculty member - to
21 refuse to assist John Doe thereby forcing John Doe to select a female advisor;
22 and/or (c) the fact that the hearing process was conducted and administered entirely
23 by women and the favorable treatment of Jane Doe during the process.

24 100. Occidental violated John Doe's rights and/or Title IX in part because
25 the procedural protections Occidental afforded male students like John Doe are
26 unfair, inadequate, and/or designed to limit a male student's ability to obtain a fair
27 and equitable result.

28 101. Occidental violated John Doe's rights and/or Title IX in part because

1 Occidental knew or should have known their actions would have an adverse impact
2 on male students alleged to have engaged in sexual misconduct with a female
3 student (and) were deliberately indifferent to this impact.

4
5 **Occidental Violated John Doe's Rights by Allowing Irrelevant, False, and/or**
6 **Prejudicial Gender Biased Allegations to Prejudice John Doe.**

7 102. Occidental irreparably prejudiced John Doe by allowing Professor
8 Dirks to interject her false, irrelevant, and/or prejudicial gender biased views into
9 John Doe's disciplinary procedure. For example, the Investigation Report was
10 riddled with highly inflammatory statements by Professor Dirks such as:

- 11 (a.) "[John Doe] fits the profile of other rapists on campus in that he had a
12 high GPA in high school, was his class valedictorian, was on [a sports]
13 team, and was 'from a good family.'" (Exhibit 13, p. 41).
- 14 (b.) "[Jane Doe]'s symptoms are like 'the dozens of other survivors [of
15 sexual assault] I have met with on campus.'" (Exhibit 13, p. 53).
- 16 (c.) "[Jane Doe]'s reluctance to call what had happened to her 'rape' was
17 consistent with other victims of sexual assault... on campus.'" (Exhibit
18 13, p. 53).
- 19 (d.) "[John Doe] was 'acting in the same way all these other young men
20 [involved in sexual assaults] have acted' by checking in on [Jane Doe]
21 after the incident, and seeking to manage [Jane] by being nice in a
22 manner... described as 'disingenuous.'" (Exhibit 13, p. 54).

23 103. Occidental's admission and reliance on Professor Dirks' gender-
24 biased, unsupported, and inaccurate statements describing John Doe as a "rapist,"
25 are highly prejudicial. Occidental's allowance of such statements into evidence
26 while at the same time excluding relevant evidence favorable to John Doe is
27 gender-biased, contrary to its own policies, and discriminatory. By allowing
28 Professor Dirks to interject her false, irrelevant, and/or prejudicial gender biased
views into John Doe's disciplinary procedure, Occidental violated Title IX and/or

1 provisions of Occidental's Policy which caution against the introduction of: (a)
2 "personal opinion[s]"; (b) "irrelevant" or "immaterial" allegations; and/or (c)
3 information that is "more prejudicial than probative" (See, Exhibit 13, p. 38).
4 Occidental also violated this mandate by redacting information favorable to John
5 Doe from its Investigation Report. Upon information and belief, the redacted
6 information contains exculpatory evidence. (Exhibit 13).

7
8 **Occidental Violated John Doe's Rights by Improperly Finding**
9 **Jane Doe Was Incapacitated By Alcohol**

10 104. Occidental violated John Doe's rights in disciplining him after alleging
11 Jane Doe could not be held responsible for her actions because she was
12 incapacitated by alcohol. (Exhibit 38, p. 11). The Adjudicator's Finding agrees that
13 consent was present: "The external adjudicator... finds that the Complaint's text
14 messages, ... coupled with her actions in returning to the Respondent's room after
15 that exchange of text messages are conduct and statements that would indicate that
16 she consented to sexual intercourse with the Respondent. Accordingly, the external
17 adjudicator finds that it is more likely than not that the Complainant engaged in
18 conduct and made statements that would indicate she consented to sexual
19 intercourse with the Respondent." (Exhibit 38, p. 8) Judge James Chalfant agreed,
20 stating in court at the Ex Parte request for an Order of Stay: "[John's] got a pretty
21 strong position... I would think an eighteen-year-old boy who gets these texts
22 would think she's fully capable of consenting." (Exhibit 51). However, the
23 Adjudicator then rejects her consent on the basis of alleged incapacitation of Jane
24 Doe.

25 105. Upon information and belief, Occidental's unlawful allegation that
26 Jane Doe was incapacitated by alcohol occurred because of gender bias and/or in
27 response to internal and/or external pressure to find more male students responsible
28 for sexually assaulting female students. Evidence supporting this belief includes,

1 but is not limited to, the fact that if Jane Doe were truly incapacitated by alcohol,
2 she would have been unable to engage in actions which included: (a) sending a text
3 message to John Doe asking if he had a condom; (b) actively manipulating her
4 friends and her RA in order to return to John Doe's room to have sex with John
5 Doe; (c) sending a text to a friend announcing her intent to have sex with John Doe;
6 (d) voluntarily performing oral sex on John Doe; (e) telling friends she was "fine"
7 while engaging in physical contact with John Doe; and/or (f) sending smiley faces
8 to friends right after having sex with John Doe. (Exhibits 13 & 30).

9 106. Similarly, Occidental's incapacitation finding is unlawful because Jane
10 Doe's actions did not fall within Occidental's definition of incapacitation which
11 was defined as follows:

12 "Incapacitation: Incapacitation is a state where an individual
13 cannot make an informed and rational decision to engage in sexual
14 activity because s/he lacks conscious knowledge of the nature of
15 the act (e.g., to understand the who, what, when, where, why or
16 how of the sexual interaction) and/or is physically helpless. **An individual is incapacitated, and therefore unable to give consent, if s/he is asleep, unconscious, or otherwise unaware that sexual activity is occurring.**

17
18 Incapacitation may result from the use of alcohol and/or drugs.
19 Consumption of alcohol or other drugs alone is insufficient to
20 establish incapacitation. The impact of alcohol or other drugs
21 varies from person to person, and evaluating incapacitation
22 requires an assessment of how the consumption of alcohol and/or
23 drugs impacts an individual's

- 23 • decision-making ability;
- 24 • awareness of consequences;
- 25 • ability to make informed judgments; or
- 26 • capacity to appreciate the nature and the quality of the act.

27
28 Evaluating incapacitation also **requires an assessment of whether**

1 **a Respondent knew or should have known that the**
2 **Complainant was incapacitated"** (Exhibit 19, p. 13) (emphasis
3 added).

4 107. The Adjudicators' finding equates amnesia with incapacitation: The
5 blackouts were not her ONLY justification but were a primary one:

6 '...the Complainant has very little memory of what occurred
7 between the period beginning approximately 11 :00 p.m. on
8 September 7, 2013 until she woke up on September 8, 2013. In that
9 regard, the Complainant does not recall creating or sending the text
10 messages contained in the investigators' report during that time
11 period and other events during that period, including having sexual
12 intercourse -with the Respondent. Thus, during that period the
13 Complainant's level of intoxication by alcohol was so significant
14 that she experienced "blackouts."

15 In addition to the blackouts, multiple witnesses observed that the
16 Complainant was slurring her speech, stumbling, and not making
17 sense during the relevant time period. Further, the fact that the
18 Complainant removed her shirt while dancing with the Respondent
19 and credibly testified that she would not normally do so when
20 intoxicated caused the external adjudicator to find that by this point
21 in the evening the Complainant's decision-making ability was
22 significantly impaired. The external adjudicator finds that at the
23 time the Complainant and the Respondent had sexual intercourse,
24 the Complainant was not aware of the consequences of her action
25 and she did not have the capacity to appreciate the nature and
26 quality of the act. Accordingly, the external adjudicator finds that
27 the Complainant was incapacitated at the time she engaged in the
28 conduct or statements that indicated she consented to sexual
29 intercourse with the Respondent.'

30 (Exhibit 38, p. 11)

31 108. The problem with Jane Doe's statements about the blackouts is that the
32 facts show otherwise, and any reasonable hearing process would have obtained the
33 discrepancies between the testimony at the hearing and the statements to the
34 investigator regarding those facts. It shows that the adjudicator never considered the

1 substantial evidence that Jane Doe consented to sex with John Doe with full
2 capacity and understanding of her actions. Occidental's allegation that Jane Doe
3 was incapacitated was also unlawful because it ran afoul of guidance issued by the
4 Association of Title IX Administrators ("atIXa"), who trained Occidental on how
5 implement Title IX. (Exhibit 52) (detailing atIXa's Title IX training of Occidental
6 employees).

7 109. For example, atIXa issued a "Tip of the Week" explaining how five
8 colleges "got it completely wrong" in finding male students responsible for "hook-
9 ups" when alcohol was involved. *Id.* In explaining these concerns, atIXa's "Tip of
10 the Week" states colleges are exposing themselves to Title IX lawsuits by
11 inappropriately evaluating the impact of alcohol consumption on a student's ability
12 to consent to physical activities. (Exhibit 53) Specifically, atIXa's described the
13 factors that must be present before a male student can be found responsible for
14 taking advantage of a female student who consumed alcohol as follows:

15 "The taking advantage comes because the respondent knows the
16 victim is weak, unable to make reasonable decisions and cannot
17 have knowledge of the act. *This cannot be proved by the victim's*
18 *assertion of her own incapacity, blackout or lack of memory.*
19 This is shown by the totality of evidence composed of some or all
20 of the following factors that the respondent knew or should have
21 known: The respondent knew that the complainant was drinking
22 or using drugs and may know how much/what kind; The victim
23 was stumbling or otherwise exhibited loss of equilibrium; Slurred
24 speech or word confusion; Bloodshot, glassy unfocused eyes; Any
25 of the signs of alcohol poisoning, vomiting, especially repeatedly;
26 Being disoriented, or confused as to time, place, etc.; and/or loss
27 of consciousness." *Id.* (emphasis added).

28 110. ATIXA went on to express concerns that these colleges are making
"Title IX Plaintiffs" of students by wrongly equating intoxication with
incapacitation. Specifically, ATIXA noted:

A common policy problem comes from failing to distinguish
between intoxicated and incapacitated. Yet, the most serious issue

comes from failing to implement a mens rea, if you will, within the definition. Certainly, criminal concepts like mens rea are not strictly applicable to the campus conduct process, but if we agree as I stated above that having sex with a willing, yet intoxicated person is not an offense, there must be something that the respondent does, beyond having sex, that makes a lawful act (sex) into a policy violation . . . there has to be something more than an intent to have sex to make this an offense. Otherwise, men are simply being punished for having sex, which is gender discrimination under Title IX, because their partners are having sex too and are not being subject to the code of conduct for doing so. Without a knowledge standard, a respondent will suffer an arbitrary and capricious application of the college's rules." *Id.* (emphasis added).

111. Occidental violated these atIXa recommendations because it relied solely on contradictory and self-serving testimony of Jane Doe that her intoxication qualified as incapacitation.

112. Additional evidence that Occidental wrongly equated intoxication with incapacitation is located in an April 10, 2014 letter the Foundation for Individual Rights in Education (FIRE) sent to Occidental which stated in part:

The [text] messages demonstrate that Doe's accuser understood what she was planning to do (she told a friend she was going to have sex), with whom she was going to have sex (she asked Doe if he had a condom), when she would do it (she told a friend that she was going to have sex "now"), and where it would take place (her texts with Doe discussed how she would sneak out of her room to a specific, known place—Doe's room). While her texts did not discuss exactly why or how she would choose to have sex with Doe, the investigative report goes into some detail on pages 13–15 about the accuser's sexual advances towards [John] Doe. The text messages and the accuser's concerted and deliberate effort to sneak out of her room for the purpose of having sex, described in text messages sent over 24 minutes, eliminate any possibility that she was physically helpless, asleep, unconscious, or unaware that sexual activity would occur. . . . [t]he possibility that one's judgment might be impaired or one's memories might fail while intoxicated does not strip students of the ability or right to make

1 judgments about their activities while intoxicated, nor does it
2 extinguish their ability to reason or make decisions. Occidental's
3 written policy reflects that reality by recognizing that
4 "[c]onsumption of alcohol or other drugs alone is insufficient to
5 establish incapacitation" . . . The fact that the applied definition of
6 incapacitation would make both parties guilty of sexually
7 assaulting one another brings into stark relief the gender-based
8 discrimination in violation of Title IX and the fundamental
9 unfairness and lack of equity present in Occidental's actions
10 against [Mr.] Doe." (Exhibit 54, pp. 4-7)

11 113. Upon information and belief, Occidental knew that if it applied its
12 policies in a gender neutral fashion, Occidental would have been required to either:
13 (a) similarly discipline John Doe and Jane Doe; or (b) find neither John Doe nor
14 Jane Doe should have been disciplined. Evidence supporting this belief includes,
15 but is not limited to, the following three admissions by Occidental that Jane Doe
16 and John Doe Exhibited substantially similar alcohol induced conditions: (1) pages
17 13-15 of the investigative report which detail how both Jane Doe and John Doe
18 were intoxicated; (2) page 10 of Ms. Mirkovich's report which states Jane Doe
19 "subsequently recalled giving [John Doe] oral sex; however, [John Doe] does not
20 recall this act;" and (3) Ms. Mirkovich's note that both John Doe and Jane Doe
21 experienced alcohol induced "blackout[s]." *Id.* Additional evidence support this
22 belief is the interview summary of Friend#1 from the Investigation which stated:

23 In retrospect, Friend#1 Said, [Jane Doe] was "pretty drunk, but
24 pretty persistent" about going to [John Doe]'s room. According to
25 Friend#1, [Jane Doe's] demeanor did not appear as if she knew
26 what was going on, but her text messages and her physically going
27 to [John Doe]'s room seem to indicate that [Jane Doe] had some
28 idea of where she was, of what was taking place, and of what
would happen if she went to [John Doe's] room....
Friend#1 stated, "I think [Jane Doe] was just as much a part of this
as [John Doe]. I wouldn't say that it is was just [John Doe] coming
on to her, or forcing her. She could have said, 'No,' or she could
have just not responded to his texts, or just not gone back down to
his room." (*Id.*)

1
2 **The Arbitrary Dismissal of John Doe's Counter Complaint of Sexual**
3 **Misconduct by Jane Doe Further Demonstrates Gender Bias**

4 114. Upon information and belief, Occidental's rejection of John Doe's
5 request that Jane Doe be disciplined for sexually assaulting him occurred because of
6 gender bias and/or in response to internal and/or external pressure to treat female
7 students more favorably than male students. Evidence supporting this belief
8 includes, but is not limited to, the fashion in which Occidental arbitrarily dismissed
9 John Doe's complaint regarding Jane Doe.

10 115. As detailed above, John Doe's internal appeal of Occidental's findings
11 and sanctions identified Occidental's gender bias in disciplining John Doe for
12 allegedly violating the same policies that Jane Doe violated. But, in subsequent
13 court filings, Occidental suggested it took no action against Jane Doe because John
14 Doe did not lodge a formal complaint. (Exhibit 55). As a result, on March 7,
15 2014, John Doe filed a formal complaint of sexual misconduct against Jane Doe.

16 116. Occidental retained legal counsel to evaluate John Doe's complaint
17 regarding Jane Doe's sexual misconduct. Occidental gave this attorney over a
18 hundred pages of documents from Occidental's earlier disciplinary proceeding
19 against John Doe which fully addressed the factual allegations in John Doe's
20 subsequent complaint against Jane Doe. (Exhibit 56).

21 117. In violation of VAWA, Occidental told John Doe that he needed to
22 subject himself to an interview by Occidental's attorney without being allowed to
23 have an attorney present.

24 118. Since John Doe and Occidental were engaged in litigation, John Doe's
25 attorney informed Occidental that John Doe could not be interrogated without legal
26 representation (and) attempted to negotiate a compromise. (Exhibit 57). But, John
27 Doe's attorney was prohibited from contacting the attorneys Occidental hired to do
28 the initial investigation into John Doe's complaint. (Exhibit 58).

1 119. Occidental's Title IX Coordinator then rejected John Doe's complaint
2 stating: "[b]ased on your inconsistent assertions, the timing of your complaint, and
3 your failure to cooperate in the initial assessment process, I have concluded that
4 your complaint against [Jane Doe] does not state a violation of the College's Sexual
5 Misconduct Policy and for that reason the College will not process your complaint."
6 (Exhibit 59).

7 120. Occidental's aforementioned rationale for rejecting John Doe's
8 complaint regarding Jane Doe's sexual misconduct is a pretext for unlawful gender
9 bias and/or made in response to internal and/or external pressure to treat female
10 students more favorably than male students.

11
12 **Occidental's Prosecution of John Doe Is Part of a Pattern and Practice**
13 **of Discriminating Against Male Students and/or**
14 **A Response to Internal and/or External Pressure to Find More Male students**
15 **Responsible for Sexually Assaulting Female Students.**

16 121. Upon information and belief, Occidental engaged in a pattern and
17 practice of discriminating against male students like John Doe because of gender
18 bias and/or in response to internal and/or external pressure to find more male
19 students responsible of sexually assaulting female students. Evidence supporting
20 this belief includes, but is not limited to the three lawsuits detailed below which
21 were filed by male students who maintain they were unlawfully disciplined during
22 Occidental's gender biased investigations of sexual assault allegations.

23 122. The first such case is *John Doe v. Occidental College, Superior Court*
24 *of the State of California for the County of Los Angeles, Central District, Case No.*
25 *BS150532*. The Complaint in this case details how Occidental unlawfully expelled
26 a male student who had multiple consensual intimate encounters with a female
27 student who - five months after these encounters ended - alleged one of the
28 encounters was non-consensual. A copy of the Petition in Case No. *BS150532*

1 (Exhibit 60).

2 123. The second case is *John Doe v. Occidental College, Superior Court of*
3 *the State of California for the County of Los Angeles, Central District, Case No.*
4 *BS155004*. The Complaint in this case details how Occidental unlawfully expelled
5 a male student for alleged non-consensual heavy petting of a former girlfriend at an
6 off-campus private house party in San Diego, California. A copy of the Petition in
7 Case No. BS155004 (Exhibit 49).

8 124. The third case is *John Doe v. Occidental College, Superior Court for*
9 *the County of Los Angeles, Central District, Case No. BS156253*. The Complaint in
10 this case details how Occidental unlawfully expelled a male student engaging in a
11 sexual encounter with the female student who evidenced consent via non-verbal
12 cues such as repositioning the male's head while he was giving her oral sex. A copy
13 of the Petition in *Case No. BS156253* is attached as Exhibit 61.

14 125. Similarly, upon information and belief, Occidental subjects males like
15 John Doe to a hostile environment by inflating the statistics of sexual assaults on
16 campus. Evidence supporting this belief includes, but is not limited to, Occidental
17 reporting 60 forceable sexual offenses for the 2013-2014 school year, a sexual
18 misconduct rate which is **15 times higher** than the rate of the next ten California
19 schools combined. (<http://ope.ed.gov/security>). Exhibit 62.

20 126. In engaging in the conduct detailed above, Occidental established an
21 unlawfully hostile and/or abusive environment for male students who include, but
22 are not limited to, John Doe. *See e.g., Jennings v. Univ. of N.C.*, 482 F.3d 686, 695
23 (4th Cir. 2007), *en banc*. (establishing the following four elements of a Title IX
24 hostile environment/sexual harassment claim: (1) plaintiff was a student at an
25 educational institution receiving federal funds, (2) he/she was subjected to
26 harassment based on his/her sex, (3) the harassment was sufficiently severe or
27 pervasive to create a hostile (or abusive) environment in an educational program or
28 activity, and (4) there is a basis for imputing liability to the institution.); *Yusuf v.*

1 *Vassar College*, 35 F.3d 709 (2nd Cir. 1994)(rejecting a motion to dismiss Title IX
2 claim filed by a male student alleging he was falsely accused of sexual assault in
3 part because “. . . statements by pertinent university officials, or patterns of
4 decision-making that . . . tend to show the influence of gender.”); *Zamora v. Jane*
5 *Doe v. Erskine Coll.*, 2006 U.S. Dist. LEXIS 35780, *32-38 (Greenwood Div., N.C.
6 May 25, 2006)(rejecting a motion for summary judgment in a Title IX claim where
7 “a jury issue” was created with regards to “whether [the college] was deliberately
8 indifferent” to Title IX discrimination); *Doe v. Bd. of Educ.*, 982 F. Supp. 2d 641,
9 652 (D. Md. 2012)(stating “severe or pervasive” harm can occur when Title IX
10 plaintiff suffers “humiliat[ion] . . . serious anxiety, fear, or discomfort . . .
11 .”)(citations omitted); *Wells v. Xavier Univ.*, 7 F. Supp. 3d 746 (S.D. Ohio
12 2014)(rejecting a motion to dismiss Title IX claim filed by a male student alleging
13 he was falsely accused of sexual assault).

14 127. Occidental created an unlawfully hostile and/or abusive environment
15 for male Occidental students like John Doe in part because this conduct is similar to
16 that addressed by legal scholars documenting bias against male college students
17 accused of sexual misconduct. *See e.g.*, Barclay Sutton Hendrix, *A Feather On One*
18 *Side, A Brick On The Other: Tilting The Scale Against Males Accused of Sexual*
19 *Assault In Campus Disciplinary Proceedings*, 47 *Ga. L. Rev.* 591, 594-599 (2013);
20 Stephen Henrick, *A Hostile Environment for Student Defendants: Title IX and*
21 *Sexual Assault on College Campuses*, 40 *N. Ky. L. Rev.* 49, 50-52 (2013).

22 23 COUNT 1

24 **(Violation of Title IX –Sex Discrimination and/or Hostile Environment)**

25 128. John Doe realleges and incorporates all the allegations contained in
26 preceding paragraphs of this Complaint as though fully rewritten herein.

27 129. Pursuant to 20 U.S.C. § 1681, Title IX is a federal statute designed to
28 prevent sexual discrimination and/or harassment in educational institutions

receiving federal funding.

130. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, applies to all public and private educational institutions that receive federal funds, including colleges and universities. The statute prohibits discrimination on the basis of sex in a school’s “education program or activity,” which includes all of the school’s operations. Title IX provides in pertinent part: “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). The United States Supreme Court has held that Title IX authorizes private suits for damages in certain circumstances.

131. Occidental receives federal financial assistance and is thus subject to Title IX.

132. Title IX includes an implied private right of action, without any requirement that administrative remedies, if any, be exhausted. An aggrieved plaintiff may seek money damages and other relief.

133. Both the DOE and the Department of Justice have promulgated regulations under Title IX that require a school to “adopt and publish grievance procedures providing for the prompt and equitable resolution of student... complaints alleging any action which would be prohibited by” Title IX or its regulations. 34 C.F.R. § 106.8(b) (Department of Education); 28 C.F.R. § 54.135(b) (Department of Justice).

134. Title IX mandates Occidental afford equitable procedures and due process to John Doe which include, but are not limited to: (a) having proper jurisdictional authority to conduct an investigation; (b) providing adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence, and/or (c) that Occidental employees involved in the conduct of the procedures have adequate training.

1 135. Occidental knew, or in the exercise of due care should have known,
2 that Occidental lacked jurisdiction under Occidental policies to investigate and/or
3 discipline John Doe for a physical encounter Jane Doe initiated with John Doe
4 when he was incapacitated by alcohol.

5 136. Occidental knew, or in the exercise of due care should have known,
6 Occidental employees held unlawful bias which motivated their decisions regarding
7 John Doe.

8 137. Occidental's policies fail to meet the standards required by Title IX
9 regarding how institutions of higher education conduct disciplinary proceedings.

10 138. Occidental has a pattern and practice of discriminating against male
11 students like John Doe on the basis of gender.

12 139. Occidental created an environment in which male students accused of
13 sexual assault, such as John Doe, are fundamentally denied their rights under Title
14 IX as to be virtually assured of a finding of guilt. Such a biased and one-sided
15 process deprives male Occidental students like John Doe of educational
16 opportunities on the basis of sex.

17 140. Occidental has actual or constructive knowledge that Occidental's
18 investigation and/or discipline of John Doe posed a persuasive and unreasonable
19 risk of gender discrimination with regard to John Doe.

20 141. Occidental's actions and inactions detailed above and below set in
21 motion a series of events that Occidental knew, or reasonably should have known,
22 would cause male Occidental students, such as John Doe, to suffer unlawful gender
23 discrimination.

24 142. Occidental's investigation and/or discipline of John Doe is
25 discriminatory and based upon or motivated by John Doe's male gender.

26 143. The male gender discrimination by Occidental against John Doe
27 includes, but is not limited to, providing preferential treatment to Jane Doe. This
28 preferential treatment includes, but is not limited, Occidental's refusal to discipline

1 Jane Doe pursuant to Occidental's policies detailed above and dismissal of John
2 Doe's sexual assault complaint against John Doe.

3 144. Occidental unlawfully failed to exercise the authority to institute
4 corrective measures to remedy: (a) Occidental's violations of John Doe's rights
5 under Occidental policies, Title IX, VAWA, and/or guidance promulgated by OCR;
6 and/or (b) Occidental's unlawful determination that John Doe violated Occidental
7 policies which Occidental adopted pursuant to federal laws and regulations related
8 to Title IX.

9 145. Occidental Exhibited deliberate indifference by refusing to remedy: (a)
10 Occidental's violations of John Doe's rights under Occidental policies, Title IX,
11 VAWA, and/or guidance promulgated by OCR; and/or (b) Occidental's erroneous
12 determination that John Doe violated Occidental policies which Occidental adopted
13 pursuant to federal laws and regulations related to Title IX.

14 146. Occidental's deliberate indifference caused John Doe to suffer sexual
15 harassment and/or discrimination so severe, pervasive or objectively offensive that
16 it deprived John Doe of access to educational opportunities or benefits (and) caused
17 other harms detailed above.

18 147. Upon information and belief, Occidental possesses additional
19 documentation and/or information evidencing Occidental's unlawful pattern of
20 gender biased decision making which favors female students alleging sexual assault
21 over male students like John Doe who are falsely accused of sexual assault.

22 148. Occidental's hostile environment, sexual harassment, and/or
23 discrimination caused John Doe to be damaged in an amount to be determined at
24 trial. Moreover, as a direct and foreseeable result of Occidental's hostile
25 environment, sexual harassment, and/or discrimination, John Doe has sustained,
26 and will continue to sustain, substantial injury, damage, and loss, including, but not
27 limited to: mental anguish; severe emotional distress; injury to reputation; past and
28 future economic loss; deprivations of due process; loss of educational

opportunities; and loss of future career prospects.

COUNT 2

(Violation of Title IX – Deliberate Indifference)

149. John Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

150. Occidental acted with deliberate indifference towards John Doe because of his male gender.

151. Occidental unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) Occidental's violations of John Doe's rights under Occidental's policies, Title IX, VAWA, and/or guidance promulgated by OCR; and/or (b) Occidental's erroneous determination that John Doe violated Occidental's policies which Occidental adopted pursuant to federal laws and regulations related to Title IX.

152. Occidental Exhibited deliberate indifference by refusing to remedy: (a) Occidental's violations of John Doe's rights under Occidental policies, Title IX, VAWA, and/or guidance promulgated by OCR; and/or (b) Occidental's erroneous determination that John Doe violated Occidental policies which Occidental adopted pursuant to federal laws and regulations related to Title IX.

153. Upon information and belief, Occidental possesses communications evidencing its employees' and/or agents manifest gender based deliberate indifference towards John Doe and/or other similarly situated male students.

154. Occidental's deliberate indifference caused John Doe to be damaged in an amount to be determined at trial. Moreover, as a direct and foreseeable result of Occidental's deliberate indifference, John Doe has sustained, and will continue to sustain, substantial injury, damage, and loss, including, but not limited to: mental anguish; severe emotional distress; injury to reputation; past and future economic loss; deprivations of due process; loss of educational opportunities; and loss of

1 future career prospects.

2
3 **COUNT 3**

4 **(Violation of Title IX – Erroneous Outcome)**

5 155. John Doe realleges and incorporates all the allegations contained in
6 preceding paragraphs of this Complaint as though fully rewritten herein.

7 156. Occidental unlawfully disciplined John Doe because of his male
8 gender.

9 157. By erroneously disciplining John Doe, Occidental violated Occidental
10 policies, Title IX, VAWA, and/or guidance promulgated by OCR.

11 158. Occidental unlawfully failed to exercise the authority to institute
12 corrective measures to remedy: (a) Occidental's violations of John Doe's rights
13 under Occidental policies, Title IX, VAWA, and/or guidance promulgated by OCR;
14 and/or (b) Occidental's erroneous determination that John Doe violated Occidental
15 policies which Occidental adopted pursuant to federal laws and regulations related
16 to Title IX.

17 159. Occidental employees Exhibited deliberate indifference by refusing to
18 remedy: (a) Occidental's violations of John Doe's rights under Occidental policies,
19 Title IX, VAWA, and/or guidance promulgated by OCR; and/or (b) Occidental's
20 erroneous determination that John Doe violated Occidental policies which
21 Occidental adopted pursuant to federal laws and regulations related to Title IX.

22 160. Occidental's conduct detailed above involved arbitrary and capricious
23 violations of John Doe's rights.

24 161. Upon information and belief, Occidental possesses communications
25 evidencing Occidental's deliberate indifference in imposing unlawful discipline on
26 John Doe on the basis of his gender.

27 162. Occidental's wrongful discipline of John Doe caused John Doe to be
28 damaged in an amount to be determined at trial. Moreover, as a direct and

1 foreseeable result of Occidental's wrongful discipline, John Doe has sustained, and
2 will continue to sustain, substantial injury, damage, and loss, including, but not
3 limited to: mental anguish; severe emotional distress; injury to reputation; past and
4 future economic loss; deprivations of due process; loss of educational
5 opportunities; and loss of future career prospects.

6
7 **COUNT 4**

8 **(Breach of Contract — Disciplinary Proceeding)**

9 163. John Doe realleges and incorporates all the allegations contained in
10 preceding paragraphs of this Complaint as though fully rewritten herein.

11 164. John Doe applied to and enrolled at Occidental and, with the assistance
12 of his parents, paid tuition and other fees and expenses. John Doe did so in reliance
13 on the understanding, and with the reasonable expectations, among others, that: (a)
14 Occidental would implement and enforce the provisions and policies set forth in its
15 of cial publications, including, but not limited to, Occidental's 2013-2014 Code of
16 Conduct, its Sexual Assault Policies and Procedures, and other relevant policies,
17 including those not mentioned in this complaint (collectively referred to as
18 "Occidental Policies"); and (b) those provisions and policies would comply with the
19 requirements of applicable law, including Title IX.

20 165. Occidental Policies create an express contract or, alternatively, a
21 contract implied in law or in fact between Occidental and John.

22 166. Occidental Policies contained an implied covenant of good faith and
23 fair dealing. Occidental Policies also contained the following provisions that
24 guaranteed certain rights to John Doe which included, but were not limited to: (1)
25 "[t]he investigation is designed to provide a fair and reliable gathering of the facts;"
26 (2) "the investigation will be thorough, impartial and fair;" (3) "[t]he hearing is
27 intended to provide a fair and ample opportunity for each side to present his/her
28 account of the incident;" (4) "[i]t is the responsibility of the hearing panel to assure

1 that the information necessary to make an informed decision is presented;" and (5)
2 to have an appeal "conducted in an impartial manner by an impartial decision-
3 maker." (Exhibit 19, pp. 29, 40 & 45). As set forth herein, Occidental repeatedly
4 and materially breached these guarantees of due process and fundamental fairness
5 as well as the implied covenant of good faith and fair dealing and other contractual
6 provisions, as detailed in the allegations herein.

7 167. As set forth in this Complaint, Occidental repeatedly and materially
8 breached Occidental Policies of due process and fundamental fairness as well as the
9 implied covenant of good faith and fair dealing and other contractual provisions, as
10 detailed in the allegations above.

11 168. During all times relevant to this Complaint, John Doe did all, or
12 substantially all, of the significant things that Occidental Policies required he do.

13 169. All of the foregoing breaches of contract were wrongful, without
14 lawful justification or excuse, prejudicial, and were part of an effort to achieve a
15 predetermined result in John Doe's case: a finding that he had committed sexual
16 assault or a related offense. As a direct and foreseeable result of these breaches of
17 contract, John Doe has sustained, and will continue to sustain, substantial injury,
18 damage, and loss, including, but not limited to: mental anguish; severe emotional
19 distress; injury to reputation; past and future economic loss; deprivations of due
20 process; loss of educational opportunities; and loss of future career prospects.

21 22 COUNT 5

23 (False Promise — Disciplinary Proceeding)

24 170. John Doe realleges and incorporates all the allegations contained in
25 preceding paragraphs of this Complaint as though fully rewritten herein.

26 171. Occidental's employees and/or agents made various promises to John
27 Doe regarding how Occidental would adjudicate allegations of sexual misconduct
28 against John Doe. These promises – collectively referred to as Student's Rights

1 Promises – include, but are not limited to promises contained in Occidental
2 Policies.

3 172. When Occidental's employees and/or agents made their Student's
4 Rights Promises to John Doe, Occidental's employees and/or agents did not intend
5 to perform these promises because John Doe was alleged to have engaged in sexual
6 misconduct related to Jane Doe.

7 173. John Doe reasonably relied on Student's Rights Promises in accepting
8 Occidental's offer of admission and incurring the cost of tuition and related
9 expenses to attending Occidental.

10 174. As detailed above, John Doe relied to his detriment on the Student's
11 Rights Promises (and) this reliance was a substantial factor in allowing Occidental's
12 unlawful discipline of John Doe to occur.

13 175. Injustice can only be avoided by enforcement of the Student's Rights
14 Promises made to John Doe.

15 176. As a direct and foreseeable result of the breach of the Student's Rights
16 Promises, John Doe sustained, and will continue to sustain, substantial injury,
17 damage, and loss, including, but not limited to: mental anguish; severe emotional
18 distress; injury to reputation; past and future economic loss; deprivations of due
19 process; loss of educational opportunities; and loss of future career prospects.

20 21 COUNT 6

22 (Negligence — Disciplinary Proceeding)

23 177. John Doe realleges and incorporates all the allegations contained in
24 preceding paragraphs of this Complaint as though fully rewritten herein.

25 178. Having put in place a student disciplinary process based on Occidental
26 Policies, Occidental owed a duty of care to John Doe to conduct that process in a
27 non-negligent manner and with due care.

28 179. The Occidental officials and/or agents who directed and implemented

1 Occidental Policies owed John the same duty of care.

2 180. Occidental's conduct, as described above, fell below the applicable
3 standard of care and amounted to breaches of the duty of due care.

4 181. These breaches of the duty of due care caused John Doe, in fact and
5 proximately, to sustain substantial injury, damage, and loss, including, but not
6 limited to: mental anguish; severe emotional distress; injury to reputation; past and
7 future economic loss; deprivations of due process; loss of educational
8 opportunities; and loss of future career prospects.

9
10 **COUNT 7**

11 **(Injunctive Relief)**

12 182. John Doe realleges and incorporates all the allegations contained in
13 preceding paragraphs of this Complaint as though fully rewritten herein.

14 183. Based on the facts articulated above and below, John Doe is entitled to
15 injunctive relief because Occidental's discipline of John Doe is unlawful and
16 violates John Doe's rights under Occidental's policies, federal and/or state laws.

17 184. Occidental's unlawful discipline of John Doe will cause irreparable
18 harm which is certain, great, actual and not theoretical.

19 185. Occidental's unlawful discipline of John Doe cannot be remedied by
20 an award of monetary damages because of difficulty or uncertainty in proof or
21 calculation.

22 186. Based on the facts articulated above, John Doe is entitled to injunctive
23 relief which includes, but is not limited to an Order requiring Occidental to expunge
24 John Doe's official Occidental files of all information related to his interactions
25 with Jane Doe.

26 187. The granting of injunctive relief will cause no harm to Occidental
27 because these defendants have no cognizable interest in the unlawful discipline of
28 John Doe.

1 188. The granting of an injunctive relief will advance a significant and
2 appreciable public interest by protecting members of the public – like John Doe
3 –from having their fundamental rights threatened by unlawful government action.
4

5
6 WHEREFORE, regarding Counts 1-6, John Doe demands judgment and
7 relief against Occidental as follows:

8 1. Damages in an amount in excess of the jurisdiction of federal and state
9 court to compensate John Doe' past and future pecuniary and/or non-pecuniary
10 damages caused by Defendants' conduct;

11 2. Order(s) requiring Occidental expunge John Doe's official Occidental
12 files of all information related to his interactions with Jane Doe;

13 3. Judgment for attorneys' fees, pursuant any applicable statute;

14 4. Judgment for all other reasonable and customary costs and expenses
15 that were incurred in pursuit of this action;

16 5. Pre-judgment interest and post judgment interest as may be permitted
17 by law and statute; and/or

18 6. Such other and further relief as this court may deem just, proper,
19 equitable, and appropriate.
20

21 WHEREFORE, regarding Count 7 John Doe demands judgment and relief
22 against Occidental as follows:

23 1. Order(s) requiring Occidental to expunge John Doe's official
24 Occidental files of all information related to his interactions with Jane Doe;

25 2. Judgment for attorneys' fees, pursuant any applicable statute;


26 3. Judgment for all other reasonable and customary costs and expenses
27 that were incurred in pursuit of this action;

28 4. Pre-judgment interest as may be permitted by law and statute; and/or

1 5. Such other and further relief as this court may deem just, proper,
2 equitable, and appropriate.

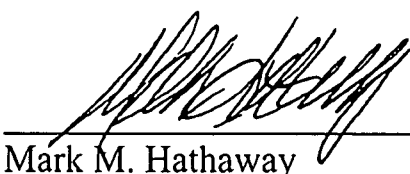
3
4 Respectfully Submitted,

5 Dated: September 15, 2015

6 
7 Eric J. Rosenberg
8 Tracy L. Turner
9 Attorneys for Plaintiff
10 Rosenberg & Ball Co. LPA


11 WERKSMAN JACKSON
12 HATHAWAY & QUINN LLP

13 Dated: September 15, 2015

14 
15 Mark M. Hathaway
16 Attorneys for Plaintiff

JURY DEMAND

John Doe hereby demands a trial by a jury in this matter.



Mark M. Hathaway
Attorney for Plaintiff

08/15/2015

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