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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 28 2011

J. Randle

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **OF AND FOR THE COUNTY OF RIVERSIDE**

12 JEFFRY M. KAATZ, JAMES W. BEACH, and
13 GARY L. BRADLEY,

14 Plaintiffs,

15 v.

16 RICARDO GRAHAM; PACIFIC UNION
17 CONFERENCE OF SEVENTH-DAY
18 ADVENTISTS, a not-for-profit corporation;
19 DANIEL R. JACKSON; LARRY BLACKMER;
20 NORTH AMERICAN DIVISION
21 CORPORATION OF SEVENTH-DAY
22 ADVENTISTS, a not-for-profit corporation; and
23 LA SIERRA UNIVERSITY, a not-for-profit
24 corporation; and DOES 1-100,

25 Defendants.

Case No.: **RIC** **1112557**

Judge Assigned:

Complaint Filed:

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

- 1) Wrongful Termination in Violation of Public Policy
- 2) Breach of Employment Contract with Specified Term
- 3) Breach of Employment Contract with No Specified Term
- 4) Constructive Breach of Employment Contract
- 5) Breach of the Implied Covenant of Good Faith and Fair Dealing
- 6) Intentional Interference with Contractual Relations
- 7) Intentional Interference with Prospective Economic Advantage
- 8) Inducing Breach of Contract
- 9) Intentional Infliction of Emotional Distress
- 10) Violation of California Common-Law Right to Privacy
- 11) Violation of Business And Professions Code Section 17200 *et seq.* – Unlawful, Fraudulent, and
- 12) Unfair Business Act and Practices
- 13) Claim for Punitive Damages

DEMAND FOR JURY TRIAL

1 Plaintiffs JEFFRY M. KAATZ; JAMES W. BEACH; and GARY L. BRADLEY, as individuals,
2 herein allege as follows:

3 I

4 INTRODUCTION

5 1. On June 10, 2011, Plaintiffs, three life-long employees of La Sierra University and senior
6 members of the administration and faculty, were individually summoned by Defendant Ricardo Graham,
7 Chair of the Board of Trustees of La Sierra University by virtue of his position as President of the
8 Pacific Union Conference of Seventh-day Adventists, and informed that he was in possession of an
9 audio recording of a conversation made in a private home at which Plaintiffs were present more than
10 seven weeks prior.

11 2. This recording had been made by a member of the Board of Trustees of La Sierra
12 University, without Plaintiffs' knowledge or consent, in the private home of Dr. Beach, following a
13 contentious faculty meeting at which Defendants Larry Blackmer and Daniel Jackson, respectively the
14 Vice President for Education and President of Defendant North American Division Corporation of
15 Seventh-day Adventists, had defended the recent decision of the accrediting organization run by the
16 General Conference of Seventh-day Adventists to issue a negative accreditation finding with respect to
17 La Sierra University. Plaintiffs, who have each devoted their entire professional lives to the mission of
18 La Sierra University, not surprisingly were very critical of Defendants Blackmer, Jackson, and Graham
19 with regard to their actions affecting La Sierra University.

20 3. This surreptitious recording was subsequently delivered to Defendant Blackmer who
21 directed that a purported transcript of the private conversation be prepared. Defendant Blackmer then
22 distributed both the audio recording of the private conversation and the transcript to Defendants Jackson
23 and Graham.

24 4. After inappropriately receiving, listening to, and distributing the non-consensual
25 recording of Plaintiffs' private conversation, Defendants Blackmer and Jackson, to whom Defendant
26 Graham reports in his role as President of the Pacific Union Conference of Seventh-day Adventists but
27 who have no operational or legal authority over the governance of La Sierra University, plotted with
28 Defendant Graham to use the recording as an excuse to terminate Plaintiffs' employment by La Sierra

1 University, including Plaintiff Dr. Gary L. Bradley, Professor of Biology at La Sierra University, whom
2 they considered one of the most vocal critics of the Seventh-day Adventist Church's efforts to influence
3 the academic curriculum of La Sierra University.

4 5. In consultation with, and at the behest of Defendants Blackmer and Jackson, Defendant
5 Graham misrepresented the contents of the recording of their private conversation and threatened
6 Plaintiffs that if they did not immediately sign letter of resignations, they would be fired from their
7 positions and the audio recording would be made public, causing shame and great harm to Plaintiffs,
8 their colleagues, their families, and the University that each had faithfully served for their entire careers.

9 6. In taking such action without advising or consulting with the President of La Sierra
10 University and without the authority of any action taken by the Board of Trustees, Defendant Graham
11 not only made improper and unlawful use of non-consensual recording of a private conversation, but
12 violated the La Sierra University Bylaws, Trustees Handbook, and Faculty Handbook, exceeded his
13 authority as Chair of the Board of Trustees, and breached the fiduciary duty he owed to La Sierra
14 University by putting the interests of his own employer above the interests of the University.

15 7. In so doing, Defendants caused Plaintiffs to suffer the loss of their occupations, exposed
16 Plaintiffs to hatred, contempt, ridicule, and shame, and discouraged others in the Seventh-day Adventist
17 community from associating or dealing with them. Furthermore, Defendants' actions have diminished
18 the reputation of La Sierra University in the Seventh-day Adventist and non-Seventh-day Adventist
19 community, and if left un-redressed, threaten the very existence of La Sierra University and its ability to
20 function as an accredited institution of higher education, which will result in loss of enrollment, private
21 funding, grants, morale, and faculty.

22 8. This complaint seeks full redress for the Plaintiffs as a result of Defendants unlawful
23 actions and seeks a permanent injunction reinstating Plaintiffs to their employment positions and
24 enjoining Defendant Graham from taking further unlawful acts that are substantially certain to cause
25 ongoing harm to Plaintiffs and La Sierra University.

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II

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over the Defendants because Defendants have conducted and continue to conduct business in the State of California, and because Defendants have committed the acts and omissions complained of herein in the State of California.

10. Venue is proper in this Court because some of the Defendants, including Defendant La Sierra University resides in this County, and because a Defendant entered into a contract and the contract was to be performed within this county, pursuant to Code of Civil Procedure, section 395(a).

III

GENERAL ALLEGATIONS

11. This is a civil action primarily seeking from Defendants Pacific Union Conference of Seventh-day Adventists, North American Division Corporation of Seventh-day Adventists, La Sierra University, Daniel R. Jackson, and Larry Blackmer, and Defendant Ricardo Graham, both in his capacity as President of the Pacific Union Conference and in his capacity as Chair of the Board of Trustees of La Sierra University, economic, non-economic, and punitive damages as a result of Defendants' wrongful termination of Plaintiffs, which resulted in the destruction of the Plaintiffs' careers and reputations, and injunctive relief re-instating Plaintiffs in their prior positions and preventing Defendant Graham from further action exceeding his authority as Chair of the Board of Trustees that is in breach of his fiduciary duty to La Sierra University.

12. Furthermore, Plaintiffs also seek remedies for Defendants' actions of intentionally disclosing and/or using and endeavoring to disclose and/or use the contents of the nonconsensual recording of Plaintiffs' private conversations with full knowledge that the information was obtained through the unauthorized interception of oral communications between the Plaintiffs, including private and confidential communications, in addition to the aforementioned statutes, Plaintiffs also seek remedies for intentional interference with contractual relations; breach of actual and constructive employment contract; breach of fiduciary duties, and defamation.

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1 **Plaintiffs**

2 13. Plaintiff Jeffry M. Kaatz, D.M.A. (hereinafter "Dr. Kaatz"), was at all times relevant
3 herein a resident of San Bernardino County, California, and had a contract of employment with
4 Defendant La Sierra University. On June 10, 2011, Dr. Kaatz was constructively and actually
5 terminated from his position as Vice President for University Advancement of La Sierra University.

6 14. Plaintiff James W. Beach, D.A. (hereinafter "Dr. Beach"), was, at all times relevant
7 herein, a resident of Riverside County, California, and had a contract for employment with Defendant La
8 Sierra University. On June 10, 2011, Plaintiff Dr. Beach was constructively and actually terminated
9 from his position as Dean of the College of Arts & Sciences of La Sierra University.

10 15. Plaintiff Gary L. Bradley, Ph.D. (hereinafter "Dr. Bradley"), was, at all times relevant
11 herein, a resident of Riverside County, California, and had a contract for employment with Defendant La
12 Sierra University. On June 10, 2011, Dr. Bradley was constructively and actually terminated from his
13 faculty position of Professor in the Biology Department at La Sierra University.

14 **Defendants**

15 16. Defendant North American Division Corporation of Seventh-day Adventists (hereinafter
16 "North American Division") is a not-for profit corporation incorporated in the State of Maryland, with
17 its principal place of business located in Silver Spring, Maryland. Defendant North American Division
18 is one of 13 Divisions that together comprise the world-wide Seventh-Day Adventist Church.
19 Defendant North American Division operates, directs, supervises, and otherwise controls the Seventh-
20 day Adventist churches throughout the United States and is also responsible for the supervision,
21 coordination, promotion and quality control of the Seventh-day Adventist educational system. Its
22 employees functionally report to leadership of the General Conference of Seventh-day Adventists. It is
23 the employer of Defendants Larry Blackmer and Daniel R. Jackson, and has operational and practical
24 control over employees of Pacific Union Conference of Seventh-day Adventists, including Defendant
25 Ricardo Graham. All actions taken by Defendants Graham, Blackmer, and Jackson were in the course
26 of scope of agency for Defendant North American Division and taken to benefit Defendant North
27 American Division.

1 17. Defendant Pacific Union Conference of Seventh-day Adventists (hereinafter "Pacific
2 Union Conference") is a not-for-profit corporation incorporated in the State of California, with its
3 principal place of business located in Westlake Village, California. It is one of nine unions that
4 comprise Defendant North American Division of the General Conference of Seventh-day Adventists.
5 Defendant Pacific Union Conference's websites claim that "[t]he Pacific Union Conference owns and
6 operates two schools of higher education, La Sierra University, in Riverside, California, and Pacific
7 Union College, in Angwin, California."

8 18. Defendant Ricardo Graham (hereinafter "Graham") was, at all relevant times herein, a
9 resident of Stockton, California, and President of Defendant Pacific Union Conference, and reported to
10 Defendant North American Division. At all relevant times herein, Defendant Graham, by virtue of his
11 position as President of Defendant Pacific Union Conference, was also Chair of the La Sierra University
12 Board of Trustees and as such owed a fiduciary duty to La Sierra University to exercise discretionary
13 authority and control respecting University policy in the best interest of La Sierra University according
14 to the La Sierra University Bylaws. Defendant Graham personally demanded the immediate
15 resignations of all three Plaintiffs from their positions at La Sierra University and, in so doing,
16 constructively terminated Plaintiffs. Defendant Graham is being sued herein both in his capacity as
17 President of Defendant Pacific Union Conference and in his capacity as Chair of the Board of Trustees
18 of La Sierra University.

19 19. Defendant Larry Blackmer (hereinafter "Blackmer") was at all relevant times herein a
20 resident of Burtonsville, Maryland, and the Vice President for Education of Defendant North American
21 Division.

22 20. Defendant Daniel R. Jackson ("Jackson") was at all relevant times herein a resident of the
23 State of Maryland, and the President of Defendant North American Division.

24 21. Defendant La Sierra University is an institution of higher education and a not-for profit
25 corporation incorporated in the State of California, with its principal place of business located in
26 Riverside, California. La Sierra University is affiliated with the Seventh-day Adventist church, and
27 Defendant Pacific Union provides financial support to La Sierra University. It is one of fourteen
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1 Seventh-day Adventist higher education institutions in the United States and has approximately 2,000
2 students.

3 22. La Sierra University is accredited by the Adventist Accrediting Association (hereinafter
4 "AAA") as well as the academic accreditor, the Western Association of Schools and Colleges'
5 Accrediting Commission for Senior Colleges and Universities (hereinafter "WASC"). Defendant La
6 Sierra University is a separate and distinct entity from Defendants North American Division and Pacific
7 Union Conference subject to its own articles of incorporation and corporate bylaws.

8 23. At all relevant times herein, there were contracts of employment between each Plaintiff
9 and Defendant La Sierra University.

10 24. The true names and capacities whether individual, corporate, associate, or otherwise of
11 Defendants DOES 1 through and including 22, are LSU board members. Said board members' names
12 are known to Plaintiffs, but it is unknown which board members took illegal actions as alleged in the
13 complaint, and therefore, sue said defendants under fictitious names. Plaintiffs will amend and/or cause
14 an amendment to this complaint to show their true names and capacities when ascertained.

15 25. The true names and capacities whether individual, corporate, associate, or otherwise of
16 Defendants DOES 23 through and including 50, are employees of La Sierra University. Said
17 employees' names may be known to Plaintiffs, but it is unknown which employees took illegal actions
18 as alleged in the complaint, and therefore, sue said defendants under fictitious names. Plaintiffs will
19 amend and/or cause an amendment to this complaint to show their true names and capacities when
20 ascertained.

21 26. The true names and capacities whether individual, corporate, associate, or otherwise of
22 Defendants DOES 51 through and including 70, are employees of Defendant North American Division
23 unknown to Plaintiffs who, therefore, sue said defendants under fictitious names. Plaintiffs will amend
24 and/or cause an amendment to this complaint to show their true names and capacities when ascertained.

25 27. The true names and capacities whether individual, corporate, associate, or otherwise of
26 Defendants DOES 71 through and including 90, are employees of Defendant Pacific Union Conference
27 unknown to Plaintiffs who, therefore, sue said defendants under fictitious names. Plaintiffs will amend
28 and/or cause an amendment to this complaint to show their true names and capacities when ascertained.

1 1996, was promoted to Professor and served as the Assistant Vice President for Academic
2 Administration.

3 33. On March 22, 2001, Dr. Kaatz was appointed Vice President for Advancement by La
4 Sierra University President Lawrence T. Geraty with the approval of the Board of Trustees.

5 34. Plaintiff James W. Beach has been employed by Defendant La Sierra University (and its
6 predecessor entity, La Sierra College of Loma Linda University) since July 1, 1979, when he was hired
7 as an Assistant Professor of Mathematics. In July 1982, Dr. Beach was promoted to Associate Professor
8 of Mathematics and appointed Chair of the Department of Mathematics and Computing. In July 1991,
9 Dr. Beach was given tenure. From 1994 through 2000, Dr. Beach served as Associate Dean of the
10 College of Arts and Sciences. In 2000, Dr. Beach was appointed Interim Dean of the College of Arts
11 and Sciences. From July 2002 through the June 2011, Dr. Beach served as the Dean of the College of
12 Arts and Sciences.

13 35. On February 10, 2011, the Board of Trustees appointed Dr. Beach to a third four-year
14 term as Dean of the College of Arts and Sciences for the period of July 1, 2011, through June 30, 2015.

15 36. Plaintiff Gary L. Bradley has been employed by Defendant La Sierra University (and its
16 predecessor entity, La Sierra College of Loma Linda University) since 1972 when he was hired as an
17 Instructor in Biology. In 1974, he was promoted to Assistant Professor of Biology. In 1982, he was
18 promoted to Associate Professor of Biology. Dr. Bradley served as the Chief Health Professions
19 Advisor, College of Arts and Sciences of Loma Linda University from 1983-1984. He served as
20 Coordinator of the Honors Program for the College of Arts and Sciences of Loma Linda University from
21 1984-1986. In 1988, he was promoted to Professor of Biology with Tenure. Dr. Bradley served as the
22 Chair of the Biology Department from 1990-1996. From 1995-1996, Dr. Bradley also served as the
23 Director of the General Education program of La Sierra University. In 1996, Dr. Bradley was appointed
24 Dean of the College of Arts and Sciences, a position held by Dr. Bradley until 1999. From 2000-2008,
25 Dr. Bradley served as Director of Research of the Honors Program of La Sierra University. In 2008, Dr.
26 Bradley formally retired, thereby relinquishing his tenured position. However, he continued to serve La
27 Sierra University by teaching as a Professor of Biology.

1 37. Plaintiffs have devoted their entire professional lives to serving La Sierra University and
2 its mission.

3 **The Termination of Plaintiffs' Employment on June 10, 2011**

4 38. On the morning June 10, 2011, Plaintiff Kaatz was contacted by telephone by President
5 Wisbey and requested to come the President's office at 1:30 p.m. to meet with Defendant Graham.
6 When Plaintiff Kaatz inquired as to the agenda for the meeting, President Wisbey responded that he did
7 not know and asked Plaintiff Kaatz whether he knew what the agenda was going to be.

8 39. Plaintiff Kaatz reported to President Wisbey's office where he was confronted by
9 Defendant Graham and the General Counsel of La Sierra University.

10 40. Defendant Graham started the meeting with prayer, and then immediately informed Dr.
11 Kaatz that Defendant Graham had possession of a transcript and audio recording of a gathering at a
12 home. Defendant Graham then stated that Dr. Kaatz's presence at the gathering required that he no
13 longer serve as Vice President for Advancement of La Sierra University.

14 41. At that point in the meeting, President Wisbey interrupted and stated to Defendant
15 Graham that Dr. Kaatz was a member of his senior executive team. President Wisbey stated that he had
16 barely had the opportunity to cover what was in the transcript and suggested that Dr. Kaatz should be
17 asked to step outside so that President Wisbey and Defendant Graham could have a discussion so that
18 President Wisbey could better understand Dr. Kaatz's involvement. Defendant Graham responded to
19 President Wisbey that Wisbey already had the gist of what took place so Defendant Graham would just
20 proceed with the meeting.

21 42. Defendant Graham then falsely and fraudulently stated to Dr. Kaatz that Dr. Kaatz had
22 made comments on the recording that included derogatory comments about President Wisbey and used
23 foul or vulgar language. Dr. Kaatz was told that his situation was similar to the texting scandal that
24 forced Representative Anthony J. Weiner to step down from his seat in Congress.

25 43. Dr. Kaatz told them that he did not remember anything specifically that he said at the
26 gathering that had occurred more than seven weeks previously, but that he would take responsibility for
27 anything that he said.

1 44. Dr. Kaatz was not allowed to see or listen to the audio recording or to review the
2 purported transcript of the audio recording.

3 45. In fact, subsequent review of the actual audio recording revealed that Dr. Kaatz had not
4 been critical of President Wisbey, had not used the foul or vulgar language at the gathering that had been
5 attributed to him, nor did the recording indicate that Dr. Kaatz had consumed alcohol.

6 46. Defendant Graham then presented Dr. Kaatz with a letter of resignation that had been
7 prepared at Defendant Graham's direction and told Dr. Kaatz that his position was at will and that if he
8 refused to sign the letter of resignation, Defendant Graham would call a special meeting of the Board of
9 Trustees the following week and have him fired.

10 47. Defendant Graham used ambush tactics, false statements, misrepresentations, and an
11 extremely intimidating and stressful environment to coerce Dr. Kaatz into signing the prepared letter of
12 resignation without affording Dr. Kaatz any time or opportunity to review the transcript of the recording,
13 think about his options, discuss the matter with his family or colleagues, or consult an attorney. Instead,
14 Defendant Graham told Dr. Kaatz that he must choose between "voluntarily" submitting his
15 "resignation" or being fired and shamed by the dissemination of the information that would be made
16 public and would cause great harm to Dr. Kaatz personally, his colleagues, his family, and the
17 University that he had served faithfully served for his entire professional life.

18 48. Under such coercion and duress, Plaintiff Kaatz signed the letter of resignation prepared
19 for him.

20 49. Defendant Graham then instructed Dr. Kaatz that he was not to discuss the contents of the
21 meeting with Dr. Beach or Dr. Bradley until after he had met individually with each them.

22 50. Dr. Beach was waiting in the anteroom to the President's office and was called in as Dr.
23 Kaatz left.

24 51. Like with Dr. Kaatz, Defendant Graham informed Dr. Beach that he was in possession of
25 an audio recording of a private conversation made within Dr. Beach's home, and presented Dr. Beach
26 with a letter of resignation that had been prepared at Defendant Graham's direction and told Dr. Beach
27 that his position was at will and that if he refused to sign the letter of resignation, Defendant Graham
28 would call a special meeting of the Board of Trustees the following week and have him fired.

1 52. Under such coercion and duress, Plaintiff Beach signed the letter of resignation prepared
2 for him.

3 53. Dr. Bradley next was called into the President's office by Defendant Graham and
4 informed that Defendant Graham was in possession of an audio recording of a conversation made in the
5 home of Dr. Beach at which Dr. Bradley was present. Defendant Graham claimed that the recording
6 contained material embarrassing to La Sierra University, including evidence that the gathering was a
7 drinking party. Dr. Bradley was told that recorded conversation was so heinous that immediate action
8 was required to stem the tide of embarrassment and harm to the University.

9 54. As with the meetings with Dr. Kaatz and Dr. Beach, Defendant Graham neither permitted
10 Dr. Bradley to listen to the audio recording nor allowed him to read the purported transcript of the
11 conversation.

12 55. Defendant Graham misrepresented to Dr. Bradley that in the recorded conversation he
13 had slandered La Sierra University faculty members and administration. Defendant Graham also
14 misrepresented to Dr. Bradley that the audio recording evidenced "bottles in the room being opened."

15 56. Defendant Graham also misrepresented to Dr. Bradley that he had slandered a certain
16 faculty member identified by name by Defendant Graham.

17 57. Dr. Bradley had very little independent memory of the specific conversation more than a
18 month and half before.

19 58. Under such coercion and duress, and in reliance on the misrepresentations made by
20 Defendant Graham, Plaintiff Bradley signed the letter of resignation prepared for him.

21 59. Defendant Graham's actions on that day were unconscionable in that Defendant Graham
22 was acting in his role as the President of Defendant Pacific Union Conference, at the behest of his
23 superiors, Defendants Blackmer, Jackson, and North American Division.

24 60. Moreover, Defendant Graham took these actions without consulting the President of La
25 Sierra University and without the authority of any action taken by the Board of Trustees.

26 61. As a Chair of the Board of Trustees, Defendant Graham had a duty of unqualified
27 commitment to and support for La Sierra University and had a responsibility to La Sierra University to
28 avoid external influence and refrain from advocacy based on his official position as the President of the

1 Pacific Union Conference of Seventh-day Adventists. Defendant Graham took these actions in direct
2 breach of his fiduciary duty to as Chair of the Board of Trustees of La Sierra University and with total
3 disregard of the policy and procedures set forth in the La Sierra University Bylaws, Trustees Handbook,
4 and Faculty Handbook.

5 62. In bypassing the safeguards of academic and administrative due process as the result of
6 improper influences and motivations, Defendant Graham improperly acted as an administrative officer
7 of the Pacific Union Conference of Seventh-day Adventists rather than as the Chair of the Board of
8 Trustees of La Sierra University, and such actions were adverse to those interests of La Sierra University
9 and its students in favor of those interests of his superiors at the North American Division and the
10 General Conference.

11 **Plaintiffs Rescinding of Coerced Resignations**

12 63. There was no imminent harm or any other exigent circumstances that would justify such
13 tactics to force baseless “resignations,” particularly when the non-consensually recorded private
14 conversation, upon which these terminations were purportedly based, had occurred months earlier. As a
15 result, Plaintiffs’ resignations, and each of them, were obtained from duress, coercion, extortion,
16 misrepresentations, and in breach of the administrative disciplinary process at the University and are
17 thereby unenforceable and void.

18 64. On June 17, 2011, one week following the above described meetings and before La Sierra
19 University administration or Board of Trustees had taken any action with regard to Plaintiffs’ coerced
20 resignations, Plaintiffs informed Defendant Graham in writing that “Dr. Kaatz, Dr. Beach and Dr.
21 Bradley all rescind and withdraw these illegally obtained ‘resignations’ and they hereby do not have any
22 force and effect.”

23 **The Board of Trustees Purported “Acceptance” of Plaintiffs “Resignations”**

24 65. Based on information and belief, Plaintiffs allege that on June 19, 2011, a special meeting
25 of the Board of Trustees was convened by Defendant Graham and the Board of Trustees purported took
26 action to “accept” the previously rescinded resignations.

27 66. Plaintiffs have never been officially notified of the nature of the action taken by the
28 Board of Trustees in the special meeting. However, subsequent to this meeting, Plaintiffs’ Kaatz and

1 Beach were informed by La Sierra University human resources officials that they were to vacate their
2 administrative offices and La Sierra University discontinued Plaintiff Bradley's compensation.

3 67. To properly understand both the context within which these actions were taken and the
4 external forces being brought to bear upon La Sierra University that led inexorably to Plaintiffs'
5 termination, it is important to understand 1) the importance of accreditation to the La Sierra University
6 as an institution of higher education; 2) the heated political climate surrounding a recent negative
7 accreditation decision by the Seventh-day Adventist Church organization charged with accrediting
8 Seventh-day Adventist educational institutions , and 3) the governance structure of La Sierra University.

9 **Accreditation of La Sierra University**

10 68. Crucial to the ability of La Sierra University to be able to function and achieve its
11 mission is the accreditation of the University as an institution of higher education.

12 69. La Sierra University is accredited by two separate accrediting organizations: the Western
13 Association of Schools and Colleges and the Adventist Accrediting Association.

14 70. The Western Association of Schools and Colleges ("WASC"), is recognized as one of six
15 regional associations that accredit public and private schools, colleges, and universities in the United
16 States. It was formed in 1962 to promote the welfare, interests, and development of education in the
17 Western Region. The Accrediting Commission for Senior Colleges and Universities of WASC is
18 responsible for the evaluation of the quality and effectiveness of colleges and universities offering the
19 baccalaureate degree and above in California, Hawaii, Guam and the Pacific Basin.

20 71. The WASC accreditation process aids institutions in developing and sustaining effective
21 educational programs. Accreditation is granted at the completion of a peer review process, and assures
22 the educational community, the general public, and other organizations that an accredited institution has
23 met high standards of quality and effectiveness.

24 72. The Accrediting Association of Seventh-day Adventist Schools, Colleges, and
25 Universities ("AAA") is an accrediting body commissioned by the Seventh-day Adventist Church to
26 carry out the accrediting process for Adventist institutions of higher education around the world. It
27 operates out of the General Conference Department of Education in Silver Spring, Maryland, USA, and
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1 in cooperation with its regional Commissions on Accreditation. It is effectively controlled by the
2 General Conference of Seventh-day Adventists and Defendant North American Division.

3 73. The major function of AAA is to visit and consider accreditation or re-accreditation of all
4 Seventh-day Adventist higher education institutions.

5 74. Accreditation of an institution by AAA signifies that the institution has a purpose
6 appropriate to service the educational needs of those in its constituency and has the resources, programs,
7 and services sufficient to accomplish the institution's goals.

8 75. The Adventist Accrediting Association claims to support the right of each institution to
9 pursue its educational mission under the guidance of a governing board elected by its constituency; the
10 right of the faculty to teach, carry out and publish research, and the right of students to learn and to
11 develop their God-given talents.

12 76. The AAA accreditation process involves an institutional visit by an AAA team that will
13 then issue a full report and recommendation with regard to accreditation to be considered and voted on
14 at the biennial AAA board meeting led at the General Conference of Seventh-day Adventists
15 headquarters.

16 77. The membership of the AAA Board of Trustees includes the director and associate
17 directors of the General Conference Education Department; General Conference vice presidential
18 advisors for education; directors of education from each of the church's 13 world divisions; one
19 representative each from a college/university board chair; a college/university president; an academic
20 vice president or dean; a registrar or admissions officer; a finance officer; an academic department chair
21 of education; a union conference education director; and a local conference education director. Also
22 included are three individuals with international Adventist educational experience; two education
23 specialists not employed by the church; and the General Conference officers – specifically the president,
24 secretary and treasurer.

25 **WASC Accreditation in June 2010**

26 78. On June 29, 2010, WASC informed President Wisbey that La Sierra University's
27 accreditation had been reaffirmed for eight years.
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1 79. However, WASC also notified President Wisbey that it would also be conducting a
2 Special Visit in the spring of 2011 in order to determine whether policies and practices of La Sierra
3 University “were in keeping with the generally accepted principles of higher education related to
4 institutional autonomy, academic freedom, and the appropriate roles of the faculty, administration and
5 governing board,” in the face of contentious public controversy and criticism from some segments of the
6 Seventh-day Church regarding the University’s teaching of science.

7 **The AAA Accreditation Team Site Visit in November 2010**

8 80. On November 15-19, 2010, AAA sent a 10-member team (double the size of a typical
9 AAA accrediting team) to conduct La Sierra University’s regular 10-year accreditation visit.

10 81. On February 1, 2011, the Final Draft of the AAA Visiting Team’s Report was issued.
11 The report recommended to the AAA Board of Directors that La Sierra University receive the maximum
12 reaccreditation term possible: five years, with an additional three years to match WASC’s accrediting
13 term through 2018.

14 82. On April 4, 2011, the AAA Board of Directors rejected the recommendation of the
15 visiting team and instead only extended La Sierra University’s AAA accreditation for a period of 18
16 months, with reaccreditation subject to an on-site review by an AAA panel in the second quarter 2012,
17 and AAA board action in October 2012.

18 83. The AAA Board found that “La Sierra University has deviated from the philosophy and
19 objectives of Seventh-day Adventist education” and approved the shortened accreditation term in order
20 for the University “to act upon its commitments and implement changes and enhancements” to infuse
21 religious beliefs into science classes and make other changes.

22 84. The decision of the AAA Board of Directors to reject the maximum accreditation as
23 recommended in the Final Report of the AAA visiting team caused great concern an indignation among
24 the faculty and administration of La Sierra University, many of whom felt that the AAA Board’s
25 findings were incorrect, unfair, and undeserved.

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1 **Defendants Blackmer and Jackson Address La Sierra University Faculty Regarding AAA**

2 **Accreditation**

3 85. On April 20, 2011, a special meeting of the faculty of La Sierra University was convened
4 for the purpose of allowing Defendant Blackmer and Defendant Jackson to address the faculty regarding
5 the issue of the AAA Board's accreditation action. Defendant Blackmer is a member of AAA's Board
6 of Directors.

7 86. At this meeting, the faculty members were provided the opportunity to question
8 Defendants Blackmer and Jackson regarding the AAA Board's vote to extend accreditation only through
9 the end of 2012 rather than granting them the five year term of accreditation that had been recommended
10 to the Board by AAA's visiting team.

11 87. The AAA Board's decision to overrule the visiting team's recommendation was an issue
12 of great concern to the faculty of La Sierra University and the specially convened faculty meeting was
13 highly charged.

14 88. Not only were the ramifications of losing the Adventist accreditation grave to the ability
15 of the University to function, but it was perceived that the reasonable autonomy and academic freedom
16 of La Sierra University were being threatened by the leadership of General Conference of Seventh-day
17 Adventists, North American Division of Seventh-day Adventists, Pacific Union Conference of Seventh-
18 day Adventists as well as other Seventh-day Adventist institutions. This loss of autonomy, in turn,
19 threatened La Sierra University's WASC accreditation.

20 89. Plaintiffs Kaatz, Beach, and Bradley each attended the special meeting and were very
21 unhappy at what they believed was the unfair and undeserved treatment of La Sierra University by the
22 AAA. They, along with many faculty, were not satisfied with the rationale provided by Defendants
23 Blackmer and Jackson, and were heavily emotionally charged following that meeting.

24 90. The faculty meeting was also attended by La Sierra University Board of Trustees member
25 Leonard Darnell who recorded the proceedings using an application on his smart phone.

26 //

27 //

28 //

1 **The Gathering at the Home of Dr. Beach**

2 91. Sometime following the conclusion of the special faculty meeting on April 20, 2011,
3 Plaintiffs Dr. Kaatz, Dr. Bradley, and board member Darnell got together at the private home of Dr.
4 Beach to watch a Los Angeles Lakers play-off game.

5 92. As the four men watched the basketball game in the privacy of Dr. Beach's home, they
6 also discussed the events that had transpired that day and the underlying issues surrounding the AAA's
7 accreditation decision. During this conversation, these four advocates for La Sierra University were
8 critical of Defendants Blackmer, Jackson, and Graham regarding their handling of the issues
9 surrounding AAA's negative accreditation of La Sierra University and their attempts to impinge upon
10 the academic integrity and academic freedom of the University.

11 93. Unbeknownst to Plaintiffs Kaatz, Beach, and Bradley, the application that Leonard
12 Darnell had used to record the faculty meeting was still running on his smart phone, which he was
13 carrying with him, and recorded the conversation engaged in by the four men.

14 94. At no time were Plaintiffs ever made aware that their private conversation was being
15 recorded nor did they consent to such recording, nor would they have provided consent to taping and
16 distribution of their private conversation.

17 95. It is unknown to Plaintiffs at what time Leonard Darnell first became aware that he had
18 recorded the gathering at Dr. Beach's home.

19 **Distribution and Use of the Audio Recording of the Private Gathering**

20 96. Based on information and belief, Plaintiffs allege that the computer file of the digital
21 recording of the faculty meeting and private gathering at Dr. Beach's home was given to Defendant
22 Blackmer, at Defendant North American Division, by a member of the La Sierra University Board of
23 Trustees. It appears that the Board member was unaware at the time that the digital recording contained
24 anything other than the recording of the special faculty meeting.

25 97. Plaintiffs allege that upon his receipt of the audio file, Defendant Blackmer listened to the
26 recording in its entirety and was the first person to realize that the recording included the private
27 conversation that took place later that day at Dr. Beach's home.

1 98. Plaintiffs allege that Defendant Blackmer, using the resources of Defendant North
2 American Division, had a purported transcription of the recording related to the private conversation in
3 Dr. Beach's home prepared and forwarded the audio recording and the transcript to Defendant Jackson.

4 99. Plaintiffs allege that in early June 2011, Defendant Jackson forwarded the recording and
5 transcript of the private conversation to Defendant Graham, at Defendant Pacific Union Conference.

6 100. Plaintiffs allege that on or about June 5, 2011, Defendant Graham and Defendant Jackson
7 discussed the contents of the audio recording.

8 101. Plaintiffs allege that on or about June 9, 2011, Defendants Blackmer, Jackson, and
9 Graham, together with the General Counsel for the General Conference of Seventh-day Adventists and
10 General Counsel for La Sierra University, met for the purpose of determining what action would be
11 taken against Plaintiffs Kaatz, Beach, and Bradley. Significantly, no member of the La Sierra
12 University administration or faculty was present at this meeting, nor was anyone from the La Sierra
13 University Board of Trustees, except for Defendant Graham.

14 102. Plaintiffs allege that it was at this June 9 meeting that the decision was made by
15 Defendants Graham, Blackmer, and Jackson that Plaintiffs Kaatz, Beach, and Bradley were to be
16 terminated as employees of La Sierra University.

17 103. Plaintiffs allege that on June 9, 2011, following this meeting, Defendant Graham
18 contacted La Sierra University President Wisbey and instructed him to have Plaintiffs Kaatz, Beach, and
19 Bradley summoned independently to the President's office the following day to meet with Defendant
20 Graham.

21 104. Plaintiffs allege that at no time on or before June 9, 2011, was President Wisbey advised
22 or consulted regarding the termination of Plaintiffs.

23 105. Plaintiffs allege that at no time on or before June 9, 2011, was a meeting of the Board of
24 Trustees convened to discuss any actions to be taken with regard to Plaintiffs' employment at La Sierra
25 University, nor was any action authorized by the Board of Directors.

26 **Governance of La Sierra University**

27 106. The La Sierra University Bylaws set forth in explicit detail the manner in which La Sierra
28 University is to be governed.

1 107. Under Article 6.1 of the Bylaws, “the temporal activities, business, and affairs of the
2 University shall be managed and all corporate powers shall be exercised by, or under the direction of,
3 the Board of Trustees.”

4 108. The La Sierra University Trustee Handbook explains:

5 “The Board of Trustees . . . has ultimate authority for governance of the
6 University. Authority and responsibility are vested in the board as a body
7 and are expressed in those actions that represent the majority opinion of
8 the board. The bylaws of the corporation define the function and
9 responsibilities of the Board of Trustees.”

10 109. Pursuant to Section 6.9 of the bylaws, “The president of the University is accountable to
11 the Board of Trustees for the operation of the University and for recommendations in policy and
12 planning.”

13 110. According to the Trustee Handbook, the Board of Trustees has the final authority
14 “[u]pon recommendation by the president, appointment, reappointment, promotion, awarding of
15 tenure, and discipline of all faculty, major administrative and academic personnel: vice presidents,
16 university counsel, deans of schools, school department heads, and directors of support services.”

17 111. The distinction between “trusteeship” and “administration” is set for in the Trustee
18 Handbook, which provides:

19 “It is also important to understand that the board is not an administrative
20 body, and that care must be exercised to avoid board involvement in
21 operational responsibilities. This fact is an especially difficult one for the
22 Trustees to accept when their positions elsewhere are administrative.
23 Such Trustees are accustomed to viewing matters as administrators rather
24 than as Trustees. The Trustee’s responsibility is to establish policy, and
25 to approve, modify, or reject the president’s recommendations, but to
26 leave administration to the president and his/her staff.”

27 . . .

28 “Personal involvements of board members in the implementation of
board action and policies or in administrative decisions or responsibilities
are generally inappropriate and should be avoided.”

112. Trustees owe the University a heightened fiduciary duty and duty of loyalty to the
University. According to the Trustee Handbook:

“In many states the trustee is held to have properly exercised the rights
and responsibilities of board membership by acting in good faith and for
no personal gain However, University Trustees in California are held
to a significantly higher standard of performance in that they must also
serve in a fiduciary capacity.

1 “It is considered to be a breach of the fiduciary duty for a Trustee to
2 delegate his/her authority in the six areas indicated above under the
3 sidehead “Rights and Responsibilities [which includes ‘evaluating the
4 service and effectiveness of the service of those employed to operate the
5 enterprise.’] To delegate to another one’s authority in these six areas
6 cannot and does not relieve the Trustee of responsibility for actions
7 taken.”

8 113. The Guidelines for Trustees set forth in the Trustee handbook provide that:

9 **Trustees must**

10 Give Unqualified commitment to and support for La Sierra University and
11 its mission.

12 **Trustees are responsible for**

13 ...

14 Defending the university from influences which interfere with its
15 achieving its mission.

16 Safeguarding the principles of moral and academic freedom for the
17 community of scholars.

18 ...

19 114. Finally, the Trustees Handbook expressly charges the Board of Trustees with the
20 responsibility of “safeguarding the principle of academic freedom within the University by a careful
21 observation of academic due process.”

22 **Composition of the Board of Trustees**

23 115. Pursuant to the La Sierra University Bylaws, the Board of Trustees is 23 member body,
24 all of whom must be Christian and at 22 of whom must be members of the Seventh-day Adventist
25 church.

26 116. The composition of the Board of Trustees consists of the following:

- 27 • President of the Pacific Union Conference of Seventh-day Adventists (Chair of the
28 Board)
- Secretary of the Pacific Union Conference of Seventh-day Adventists
- Treasurer of the Pacific Union Conference of Seventh-day Adventists
- Vice president of the Pacific Union Conference of Seventh-day Adventists
- Director of Education of the Pacific Union Conference of Seventh-day Adventists
- President of the Arizona Conference of Seventh-day Adventists

- 1 • President of the Southeastern California Conference of Seventh-day Adventists
- 2 • President of the Southern California Conference of Seventh-day Adventists
- 3 • President of La Sierra University
- 4 • 14 other persons elected by the Constituent Membership

5 117. The potential for conflicts of interest to exist when so many of the board members
6 derived their seats on the Board of Trustees by virtue of the offices they hold with Seventh-day
7 Adventist Church was anticipated and addressed in the Trustees Handbook, which provides:

8 **“Trustees whose membership on the board is derived from an office**
9 **held in the Seventh-day Adventist church must give their primary**
10 **loyalty to the needs of the University; their responsibility to the**
11 **institution from which their appointment is derived is one of**
12 **interpretation rather than advocacy.”**

11 WASC Action Following the Wrongful Terminations

12 118. On June 22-24, 2011, the WASC Commission considered the report of the WASC
13 Special Visit team that conducted an on-site review of La Sierra University on April 18-19. Based
14 thereon the Commission issue a formal Notice of Concern and scheduled another Special Visit in spring
15 2012 to review progress in the resolution of the issues raised in the Notice of Concern.

16 119. A formal Notice of Concern provides notice to an institution that it is in danger of being
17 found in noncompliance with one or more of WASC’s Standards if current findings continue. If the
18 issues are not addressed, a sanction against the institution will be imposed.

19 120. By letter of July 5, 2011, WASC informed President Wisbey that the Special Visit team
20 and the WASC Commission had serious concerns about the “role and composition of the governing
21 board,” stating:

22 “The Commission’s review of La Sierra’s bylaws revealed that they
23 establish a governing structure that, on its face, is inconsistent with WASC
24 expectations for an independent governing board There was also
25 concern over the general lack of clarity about the president’s role,
26 provisions related to the nomination and composition of the governing
27 board, and the fact that the board chair and other members of the
28 governing board hold multiple positions in the Church and the University
and also serve as chair or members of more than one Church-related
educational institutions’ governing board. . . . LSU needs to take steps to
ensure that the La Sierra community understands the respective roles and
responsibilities of the board, president, and faculty.”

1 121. The WASC Commission letter also raised concerns regarding institutional autonomy of
2 La Sierra University as an educational institution, stating:

3 “WASC Standards of Accreditation call for institutions affiliated with or supported by religious
4 organizations to have ‘education as their primary purpose and [operate] as an academic
5 institution with appropriate autonomy.’ Institutions are expected to have a history free of
6 ‘interference in substantive decisions or educational functions by . . . bodies outside of the
7 institution’s own governance arrangement.’”

8 122. The WASC Commission then commented extensively on the actions taken against
9 Plaintiffs, set forth herein, as exemplifying its concerns regarding the lack of institutional autonomy,
10 stating:

11 “The recent forced resignations, which were obtained through the actions
12 of the board chair, reinforce concerns about institutional autonomy
13 because of the multiple roles that the board chair has in the University and
14 in the Church. **Based on the bylaws and the statements of the board
15 and the statements of the board chair himself, it appears that he did
16 not have independent authority as La Sierra’s board chair to take
17 these actions and was not acting at the instruction of the board. The
18 board chair reported that he consulted only with a few of the Church-
19 designated trustees, members of the national Church leadership, and
20 University counsel before asking for the resignations of the four
21 individuals involved. The Commission thereby could infer from these
22 facts that the board chair acted in his capacity as a Church leader,
23 which would be a clear violation of WASC standard’s on institutional
24 autonomy. Furthermore, these actions are inconsistent with both
25 LSU’s processes to protect the rights of faculty members and its
26 bylaws provisions on the removal of trustees.”**

27 (Emphasis added.)

28 V

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(By All Plaintiffs Against Defendants La Sierra University, Ricardo Graham, and Does 1 through
100)

123. Plaintiffs hereby incorporate by reference and reallege all paragraphs previously alleged
in this Complaint as if fully set forth herein.

1 124. Plaintiffs, and each of them, entered into an employment relationship with Defendant La
2 Sierra University.

3 125. Defendants La Sierra University, Graham and DOES constructively discharged Plaintiffs,
4 and each of them, by coercing their resignations with threats of public ridicule, shame, contempt, with
5 the release of the non-consensual recordings of private conversations.

6 126. The sole reason proffered by Defendant Graham for the adverse employment action were
7 the statements allegedly made by Plaintiffs in the privacy of the home of Dr. Beach, which had been
8 recorded by Defendant La Sierra University Board of Trustees member Leonard Darnell and distributed
9 without Plaintiffs' knowledge or consent by Defendants Blackmer, Jackson, and Graham.

10 127. Such conduct by Defendants Graham and La Sierra University was in violation of public
11 policy including, but not limited to California Penal Code § 632 (Eavesdropping on or recording
12 confidential communications), 18 U.S.C. § 2511 (Interception and disclosure of oral communications),
13 and Article I, section 1 of the California Constitution (Privacy Initiative).

14 128. As a direct and proximate result of the misconduct and unlawfulness of Defendants
15 Graham and La Sierra University, and the resulting constructive discharge and adverse employment
16 action, as set forth above, Plaintiffs sustained severe and serious injury to their persons, all to Plaintiffs'
17 damage in a sum to be shown according to proof.

18 129. Such conduct by Defendants Graham and La Sierra University was a substantial factor in
19 causing harm to the Plaintiffs' occupations, humiliation, embarrassment, and mental anguish, and
20 exposed Plaintiffs to hatred, contempt, ridicule, shame, and discouraged others in the SDA community
21 from associating or dealing with them.

22 130. The conduct of Defendants Graham and La Sierra University in terminating Plaintiff's
23 employment without good, just, or legitimate cause and purportedly because of statements contained in a
24 audio recording of a private conversation in the private home of Dr. Beach, without the knowledge or
25 consent of Plaintiffs violated California public policy including, but not limited to, California Penal
26 Code § 632 (Eavesdropping on or recording confidential communications), 18 U.S.C. § 2511
27 (Interception and disclosure of oral communications), and Article I, section 1 of the California
28 Constitution (Privacy Initiative). Such actions were, therefore, done in conscious disregard of the

1 privacy rights of Plaintiffs, among other rights secured under California law. Plaintiffs are informed and
2 believes, and thereon allege, that their termination by Defendants Graham was done with an intent to
3 cause injury to Plaintiffs. As a consequence of the aforesaid oppressive, malicious and despicable
4 conduct, Plaintiff is entitled to an award of punitive damages against Defendant Graham in a sum to be
5 shown according to proof.

6 **SECOND CAUSE OF ACTION**

7 **Breach of Employment Contract with Specified Term**

8 **(By Plaintiff Beach Against Defendants Ricardo Graham, La Sierra University, and DOES 1**
9 **through 100)**

10 131. Plaintiff Beach hereby incorporates by reference and realleges all paragraphs previously
11 alleged in this Complaint as if fully set forth herein.

12 132. Plaintiff Beach entered into an employment contract with Defendant La Sierra University
13 that specified that Plaintiff Beach would remain employed with Defendant La Sierra University until
14 June 20, 2015.

15 133. At all times relevant herein, Plaintiff Beach adequately performed his job duties.

16 134. Defendants Graham and La Sierra University breached Plaintiff Beach's employment
17 contract by constructively discharging Plaintiff Beach before the end of the term of the employment
18 contracts.

19 135. As a result, Plaintiff Beach was harmed by the constructive discharge in an amount to be
20 proved at the time of trial.

21 **THIRD CAUSE OF ACTION**

22 **Breach of Employment Contract with No Specified Term**

23 **(By Plaintiffs Kaatz and Bradley Against Defendants Ricardo Graham, La Sierra University, and**
24 **Does 1 through 100)**

25 136. Plaintiffs Kaatz and Bradley hereby incorporate by reference and reallege all paragraphs
26 previously alleged in this Complaint as if fully set forth herein.

27 137. Plaintiffs Kaatz and Bradley each entered into an employment contract with Defendant
28 La Sierra University that did not specify the term of employment.

1 138. Defendants Graham and La Sierra University were subject to obligations, both express
2 and implied, not to discharge Plaintiffs Kaatz and Bradley, except for just or good cause.

3 139. At all times relevant herein, Plaintiffs Kaatz and Bradley adequately performed their job
4 duties.

5 140. Defendants Graham and La Sierra University breached Plaintiff Beach's employment
6 contract by constructively and actually discharging Plaintiffs without good cause, where such adverse
7 employment action was not based on fair and honest cause or reason, and was not taken in good faith.

8 141. As a result, Plaintiffs Kaatz and Bradley were harmed by the constructive discharge in an
9 amount to be proved at the time of trial.

10 **FOURTH CAUSE OF ACTION**

11 **Constructive Breach of Employment Contract**

12 **(By All Plaintiffs Against Defendants Ricardo Graham, La Sierra University, and Does 1 through**
13 **100)**

14 142. Plaintiffs hereby incorporate by reference and reallege all paragraphs previously alleged
15 in this Complaint as if fully set forth herein.

16 143. Plaintiffs, and each of them, entered into an employment relationship with Defendant La
17 Sierra University.

18 144. Defendant La Sierra University promised, by words or conduct or both, to discharge
19 Plaintiffs only for good cause.

20 145. Plaintiffs, and each of them, at all times relevant herein, performed their job duties in a
21 satisfactory manner. Based on the length of each Plaintiff's service, their substantial pay increases and
22 superior job evaluations, Defendants La Sierra University and Graham impliedly promised Plaintiffs that
23 as long as they performed their jobs satisfactorily, their employment would continue.

24 146. Defendants Graham and La Sierra University breached said employment agreement by
25 intentionally creating or knowingly permitting the use of the illegally obtained recording of Plaintiffs'
26 private conversations to harass, embarrass, coerce and shame Plaintiffs with the threat of termination
27 and going public with the illegally obtained recording to the University, the Seventh-day Adventist and
28 non-Seventh-day Adventist community, and the Church, if they refused to sign the letters of resignation.

1 Such a situation was so intolerable that a reasonable person in Plaintiffs' position would have no
2 reasonable alternative but to resign.

3 147. Plaintiffs, and each of them, signed letters of resignation under the coercion and duress of
4 the threat of publication of the private conversations and termination.

5 148. Moreover, Plaintiffs formally and effectively rescinded such coerced resignations prior to
6 Defendant La Sierra University taking any action in reliance thereon.

7 149. As a direct and proximate result of the misconduct and unlawfulness of Defendants
8 Graham and La Sierra University, and the resulting constructive discharge and adverse employment
9 action, as set forth above, Plaintiffs sustained severe and serious injury to their persons, all to Plaintiffs'
10 damage in a sum to be shown according to proof.

11 150. Such conduct by Defendants Graham and La Sierra University was a substantial factor in
12 causing harm to the Plaintiffs' occupations, humiliation, embarrassment, and mental anguish, and
13 exposed Plaintiffs to hatred, contempt, ridicule, shame, and discouraged others in the SDA community
14 from associating or dealing with them.

15 **FIFTH CAUSE OF ACTION**

16 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

17 **(By All Plaintiffs Against Defendants Ricardo Graham, La Sierra University, and Does 1 through**
18 **100)**

19 151. Plaintiffs hereby incorporate by reference and reallege all paragraphs previously alleged
20 in this Complaint as if fully set forth herein.

21 152. Plaintiffs, and each of them, entered into an employment relationship with Defendant La
22 Sierra University.

23 153. A covenant of good faith and fair dealing is implied in every employment contract.

24 154. Plaintiffs, and each of them, substantially performed their job duties.

25 155. Defendants Graham and La Sierra University deprived Plaintiffs of their occupations
26 with La Sierra University when they constructively and wrongfully discharged Plaintiffs by attempting
27 to force their resignations under duress and coercion.
28

1 184. Defendants, and each of them, intruded on Plaintiffs' privacy by intentionally
2 intercepting and/or recording and/or wrongfully disclosing the contents of the private communication
3 between Plaintiffs by means of recording in violation of federal and state statutes as set forth herein.

4 185. Defendants, and each of them, intentionally intruded on Plaintiffs' right to privacy and
5 solitude and/or confidential and private affairs by intentionally recording and/or wrongfully disclosing
6 these contents of the oral communications between Plaintiffs and/or otherwise using the same to their
7 unfair advantage, by means of recording devices, in violation of federal and state laws as set forth
8 herein.

9 186. Defendants' intentional intrusion upon the Plaintiffs' seclusion and/or private affairs were
10 offensive and objectionable to a reasonable person of ordinary sensibilities in that it exposed Plaintiffs'
11 private and confidential affairs to Defendants and other unauthorized persons, and resulted in the
12 wrongful terminations of Plaintiffs. Furthermore, such intrusions were into a place and/or thing which
13 was private and entitled to be private in that it involved an invasion of Plaintiffs' confidential,
14 privileged, and private communications without consent of any and/or all parties to such
15 communications.

16 187. Plaintiffs were damaged and are entitled to relief, including actual and/or statutory
17 damages, injunctive relief and attorney fees for the Defendants' violations in the amount to be shown at
18 trial.

19 **ELEVENTH CAUSE OF ACTION**

20 **Violation of Business And Professions Code Section 17200 *et seq.* – Unlawful, Fraudulent, and**
21 **Unfair Business Act and Practices**

22 **(Against All Defendants)**

23 188. Plaintiffs hereby incorporate by reference and reallege all paragraphs previously alleged
24 in this Complaint as if fully set forth herein.

25 189. Defendants, and each of them, violated California Business and Professions Code
26 § 17200 when they engaged in unlawful, unfair or fraudulent business acts, practices and/or tactics of
27 illegally obtaining a recording of Plaintiffs' private conversations, without any of the Plaintiffs'
28 knowledge or consent, and gaining an unfair advantage by using such information to intimidate, coerce,

1 and extort Plaintiffs into forcefully resigning from their contracted positions with Defendant La Sierra
2 University, and by disclosing and disseminating misleading information and preventing a proper
3 investigation into the circumstances surrounding the validity and legality of the use of the private
4 conversation. Such acts by Defendants, and each of them, resulted in the forced resignations of
5 Plaintiffs and interfered with Plaintiffs' prospective economic advantage of future employment with
6 Defendant La Sierra University.

7 190. In addition to the above, the conduct as alleged throughout the complaint constitute
8 violations of each of the causes of action alleged in this complaint that not only result in liability under
9 each of the causes of action, they also provide the basis for a finding of liability under California
10 Business and Professions Code section 17200 et seq. Furthermore, such conduct is unfair under the
11 UCL, pursuant to the declared legislative policies regarding California Penal Code § 632
12 (Eavesdropping on or recording confidential communications), 18 U.S.C. § 2511 (Interception and
13 disclosure of oral communications), and Article I, section 1 of the California Constitution (Privacy
14 Initiative).

15 191. The Plaintiffs, and each of them, were damaged and are entitled to relief, including actual
16 and/or statutory damages, injunctive relief and attorney fees for the Defendants' violations in the amount
17 to be proven at the time of trial.

18 TWELFTH CAUSE OF ACTION

19 Breach of Fiduciary Duties

20 (Against Defendant Ricardo Graham, and DOES 1 through 100)

21 192. Plaintiffs hereby incorporate by reference and reallege all paragraphs previously alleged
22 in this Complaint as if fully set forth herein.

23 193. Plaintiffs are informed and believe that Defendant Graham failed to discharge his
24 obligations in accordance with documents and instruments governing La Sierra University by causing
25 the wrongful termination of Plaintiffs without following the proper disciplinary procedures, and without
26 the authority of the Board of Trustees as set forth in the governing documents and instruments.
27 Plaintiffs are informed and believe that Defendant Graham allowed his conflict of interest to influence
28 his decisions and actions and to disregard his fiduciary duty to La Sierra University.

1 194. Plaintiffs are informed and believe that Defendant Graham has been the president of the
2 Pacific Union since November 15, 2007. Prior to that, Defendant Graham served as president of the
3 Northern California Conference since February 2001 and as executive secretary of that the Pacific Union
4 Conference in February 2006, and was executive secretary of the Northern California Conference since
5 February 2001. At all times relevant herein, Defendant Graham was chairman of the La Sierra
6 University board of trustees.

7 195. At all times relevant herein, the governing documents and instruments required the Board
8 Chair to act, with respect to the University, with the care, skill, prudence, and diligence that a prudent
9 person acting in a like capacity and familiar with such matters would use in managing an enterprise of
10 like character and with like aims, and to “[g]ive unqualified commitment to and support for La Sierra
11 University and its mission,” “[d]efend[] the university from influences which interfere with its achieving
12 its mission,” and “[s]afeguard[] the principles of moral and academic freedom for the community of
13 scholars.”

14 196. At all times relevant herein, Defendant Graham breached his duty of loyalty to the
15 University when he knew or should have known that he bypassed documents and instruments governing
16 discipline and investigation and went over the President’s head to carry out the initiatives of his own
17 employers, and wrongfully terminated all three Plaintiffs.

18 197. Defendant Graham owed to the University, its faculty, and its students, a duty to
19 discharge their obligations loyally and in accordance with documents and instruments governing the
20 plans.

21 198. Plaintiffs Kaatz and Beach have standing to assert this claim of breach of fiduciary duty
22 against the Chair of the La Sierra University Board of Trustees as each were Constituent Members of La
23 Sierra University, pursuant to the L Sierra University Bylaws and the Trustees Handbook, prior to their
24 wrongful discharge from their administrative positions.

25 199. As a legal result, the University, faculty, and students suffered and continue to suffer a
26 loss of three valued professors; diminished reputation of the University in the Adventist and non-
27 Adventist community which will cause a loss of enrollment, private funding, grants, loss of moral and
28 loss of faculty. Therefore, the Defendant Graham should be enjoined from further breaches of his

1 fiduciary duty to La Sierra University when acting in his role as Chair of the Board of Trustees to
2 prevent further harm to the University.

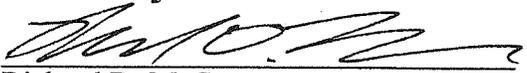
3 **WHEREFORE**, Plaintiffs demand judgment against and relief from Defendants as follows:

- 4 a. An Order enjoining Defendant Graham from acting in violation of his fiduciary duty to
- 5 La Sierra University in his role as Chair of the Board of Trustees;
- 6 c. Economic and non-economic damages;
- 7 d. Punitive damages against all liable Defendants in their individual capacity;
- 8 e. Injunctive and other appropriate equitable relief;
- 9 f. Reasonable attorneys' fees and expenses;
- 10 g. Taxable costs;
- 11 h. Interest as provided by law; and
- 12 i. Such other and further relief as the Court deems appropriate.

13
14 DATED: July 28, 2011

MCCUNEWRIGHT LLP

15
16 By:


Richard D. McCune
Attorneys for Plaintiffs