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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DEBBY DAY; DE ANN YOUNG;  
JASON GLUCKMAN; JANE DOES 1-  
24,

Plaintiffs,

v.

CALIFORNIA LUTHERAN  
UNIVERSITY; CHRIS KIMBALL;  
MELISSA MAXWELL-DOHERTY;  
JIM MCHUGH; and ROES 1 through  
200, inclusive,

Defendants.

Case No.: 8:21-cv-1286

**COMPLAINT FOR:**

- 1. Breach of Contract**
- 2. Slander**
- 3. Libel**
- 4. False Light**
- 5. Intentional Infliction of Emotional Distress**
- 6. Negligent Infliction of Emotional Distress**
- 7. Negligence**
- 8. Violation of Title IX**
- 9. Retaliation**
- 10. Hostile Work Environment**
- 11. Constructive Termination**
- 12. Violation of Labor Code §2699**
- 13. Violation of Business and Professions Code § 17200**

**DEMAND FOR JURY TRIAL**

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1 COMES NOW Plaintiffs Debby Day, De Ann Young, Jason Gluckman, and JANE  
2 DOES 1-24 who allege as follows:

3 **INTRODUCTORY STATEMENT**

4 1. What does a university do when its accreditation has been threatened due to its  
5 longstanding record of fostering racial and gender inequality? It deflects and distracts by:  
6 a) manufacturing a sham racially-derogatory event; b) publicly blaming that sham event  
7 on a visible group of people that it believes are powerless to defend themselves; and c)  
8 making a showing of punishing that powerless group to deceive the public into believing  
9 that the university is active in combatting racism on campus.

10 2. Defendant California Lutheran University (“CLU”) is an accredited undergraduate  
11 and graduate institution of higher learning located in Thousand Oaks, California. CLU  
12 receives its accreditation from the Western Association of Schools and Colleges  
13 (“WASC”). In January 2020, CLU was under investigation by the WASC’s Senior  
14 College and University Commission (“WSCUC”) in part for its history of racial and  
15 gender equality-related failures.

16 3. CLU’s operations at this time were being run in relevant part by its then-President,  
17 Chris Kimball (“Kimball”), and its Vice President of Mission and Identity, Pastor  
18 Melissa Maxwell-Doherty (“Doherty”).

19 4. CLU has an NCAA Division III Women’s Softball Team (“Softball Team”).  
20 During the same time the WASC was investigating CLU, the Softball Team held a team-  
21 bonding lip-sync event with makeup and costumes. Five members of the team wore facial  
22 hair makeup to disguise themselves as males. Three of these young women wore hats,  
23 and two wore Caucasian male wigs (i.e., Napoleon Dynamite costume wigs). Pictures of  
24 these members of the Softball Team at said event were subsequently posted to social  
25 media.

26 5. Defendants Kimball and Doherty viewed said pictures and confirmed with the  
27 Softball Team, their coaches, and their parents that said Softball Team members: a) were  
28 under the supervision of an African-American Softball coach; b) had makeup on their

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1 faces to resemble men’s facial hair in the form of beard stubble and goatees; and c) were  
2 not engaged in any racially motivated activities. Despite such confirmation, Defendant  
3 Kimball and Doherty publicly proclaimed to the community and national press that: a)  
4 said conduct constituted “Blackface”; b) Plaintiffs participated in and/or allowed  
5 “comedic performances of ‘blackness’ by whites in exaggerated costumes and makeup”;  
6 c) CLU intended to “call attention” to the event; and d) “[t]hose who are responsible will  
7 be held accountable.”

8 6. To make matters worse, Defendant CLU in general, and Defendants Kimball and  
9 Doherty in particular, allowed the Softball Team and their Coaches to be publicly  
10 shamed and harassed, placed in fear for their safety, and to otherwise suffer lifelong  
11 injury to their mental health and reputations. At one point, one of the leaders of the  
12 Softball Team expressly informed Defendants in writing that the young women on the  
13 Softball Team were in desperate need of help by mental health professionals as a result  
14 of the events put in motion by Defendants. The response by CLU in general, and  
15 Defendants Doherty and Kimball in particular, was deafening silence.

16 7. It is now time for CLU to be held accountable for their gender inequality, for the  
17 damage they have unnecessarily caused to be inflicted on the 24 members of the Softball  
18 Team (19 of which did not take part in the performance at issue), and for the hostile work  
19 environment and constructive firing it inflicted upon the Softball Team’s coaching staff.

20 **THE PARTIES**

21 8. Plaintiff Debby Day (“Coach Day”) is, and at all relevant times was, an individual  
22 employed in Ventura County, State of California, and was the head coach of the Softball  
23 Team.

24 9. Plaintiff De Ann Young (“Coach Young”) is, and at all relevant times was, an  
25 individual employed in Ventura County, State of California, and was one of the assistant  
26 coaches of the Softball Team.

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1 10. Plaintiff Jason Gluckman (“Coach Gluckman”) is, and at all relevant times was, an  
2 individual employed in Ventura County, State of California, and was one of the assistant  
3 coaches of the Softball Team.

4 11. Plaintiff JANE DOES 1 through 5 (“DOES 1-5”) at all relevant times were students  
5 at California Lutheran University, in Ventura County, State of California, and members  
6 of the Softball Team. DOES 1-5 took part in the lip-sync performance at issue in this  
7 case.

8 12. Plaintiff JANE DOES 6 through 24 (“DOES 6-24”) at all relevant times were  
9 students at California Lutheran University, in Ventura County, State of California, and  
10 members of the Softball Team. DOES 6-24 did not take part in the lip-sync performance  
11 at issue in this case.

12 13. Plaintiffs JANE DOES 1-24 are filing this complaint under pseudonyms because  
13 this case is one of a sensitive nature, and Courts have recognized and allowed such cases  
14 to be brought through the use of pseudonyms under such circumstances. See, e.g., *M.G.*  
15 *v. R.D.*, No. B159974, 2003 WL 21129878, at \*3 (Cal. Ct. App. May 16, 2003).

16 14. Plaintiffs are informed and believe that, at all relevant times, Defendant CLU is  
17 and was an undergraduate and graduate institution of higher learning located at 60 West  
18 Olsen Road, Thousand Oaks, California 91360, Ventura County, State of California.

19 15. Plaintiffs are informed and believe that, at all relevant times, Defendant Chris  
20 Kimball (“Kimball”) was the President and Chief Executive Officer of CLU.

21 16. Plaintiffs are informed and believe that, at all relevant times, Defendant Pastor  
22 Melissa Maxwell-Doherty (“Doherty”) was a Campus Pastor, as well as the Vice  
23 President for Mission and Identity.

24 17. Plaintiffs are informed and believe that, at all relevant times, Defendant Jim  
25 McHugh (“McHugh”) was the Associate Vice President of CLU.

26 18. Plaintiffs are informed and believe that Defendant CLU receives federal financial  
27 assistance and is therefore subject to the dictates of 20 U.S.C. § 1681 (“Title IX”).  
28

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1 19. The true names and capacities, whether individual, corporate, associate, or  
2 otherwise, of Defendants ROES 1-200, inclusive, are unknown to Plaintiffs, who  
3 therefore sue said Defendants by such fictitious names. Plaintiffs allege on information  
4 and belief that each of the Defendants designated herein as a fictitiously named  
5 Defendant are, in some manner, responsible for the events and happenings referred to,  
6 either contractually or tortuously, and/or that such fictitiously named Defendants are  
7 liable in some manner for the obligations described herein below. When Plaintiffs  
8 ascertain the true names and capacities of ROES 1-200, Plaintiffs will amend this  
9 Complaint accordingly.

10 20. Plaintiffs are informed and believe that at all relevant times mentioned herein,  
11 Defendants, including those fictitiously named as ROES 1 through 200, in doing the  
12 things alleged in this Complaint, acted in concert and conspired with or aided and abetted  
13 each other to do the acts complained of in this complaint, and that each Defendant acted,  
14 at all times, as the agent, partner, co-conspirator, co-venturer, joint venturer,  
15 representative or employee of the remaining Defendants and were acting within the scope  
16 and purpose of that agency, partnership, joint venture or employment, such that the acts  
17 and conduct of each Defendant, including those named herein as ROES, was known to,  
18 authorized by and ratified by the other Defendants. Plaintiffs are further informed and  
19 believe that each of the Defendants named herein engaged in wrongful conduct that is a  
20 cause of Plaintiffs' damages, and are responsible in some manner for the damages  
21 sustained by Plaintiffs.

### 22 JURISDICTION

23 21. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §  
24 1331.

25 22. The damages, which are the subject of this lawsuit, occurred within the County of  
26 Ventura, State of California.

27 23. Defendants targeted Plaintiffs, who, at all relevant times, were students and/or  
28 employees of CLU in the County of Ventura, State of California.

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1 24. Defendants’ behavior and wrongful conduct substantially occurred in the County  
2 of Ventura, within the jurisdiction of the United States District Court for the Central  
3 District of California.

4 25. Venue in this Court is proper under 28 U.S.C. § 1391 (b) because the events giving  
5 rise to this claim took place in this judicial district, and Defendants reside in this judicial  
6 district.

7 **GENERAL FACTUAL ALLEGATIONS**

8 **A. GENERAL BACKGROUND**

9 26. CLU is a private university in the affluent Los Angeles-area suburb of Thousand  
10 Oaks, California, and has a robust NCAA Division III sports program.

11 27. CLU is accredited by the WASC’s WSCUC for federal funding in a number of  
12 programs, including student access to federal financial aid.

13 28. Plaintiffs are informed and believe that many of CLU’s students, including, but not  
14 limited to DOES 1-24, receive federal financial aid.

15 **B. CLU’S POOR HISTORY WITH REGARD TO RACIST EVENTS**

16 29. Plaintiffs are informed and believe that CLU and its agents have a history of  
17 indifference to racial issues on campus, and otherwise have a documented history of  
18 racial and gender inequality.

19 30. Plaintiffs are informed and believe that in a February 11, 2020 article published by  
20 the CLU newspaper, The Echo, Defendant Kimball acknowledged that racism on campus  
21 is “a long-standing issue.”<sup>1</sup> The article memorializes that students on campus have  
22 witnessed racism and racial events to which the CLU administration is perceived to have  
23 responded in an unsatisfactory manner.

24 31. Plaintiffs are informed and believe that, by way of example, The Echo quotes  
25 witnesses to prior racial events on campus such as observing students standing up on  
26 tables and using the N-word. *Id.*

27  
28 <sup>1</sup><https://cluecho.com/13000/news/racial-climate-a-long-standing-issue/>

32. Plaintiffs are informed and believe, that, in another incident in February 2019, a professor at CLU had his office vandalized. He also received notes and emails that were hate-fueled and racist.<sup>2</sup> Plaintiffs are further informed and believe that the CLU administration conducted an investigation into the matter that concluded on or about March 20, 2020 with no action being taken. *Id.* Plaintiffs are further informed and believe that, outraged at this conclusion, representatives of the student body submitted a petition challenging the manner in which the CLU administration handled their dilatory investigation, and otherwise shamed Defendant Kimball and the CLU administration into re-opening the investigation in April 2020.<sup>3</sup>

33. Plaintiffs are informed and believe that, in or around 2010, it was publicly reported that swastikas had been painted on a car window and a dorm window at the CLU campus.<sup>4</sup>

34. Plaintiffs are informed and believe that in or around 1997, it was reported by the Los Angeles Times that CLU experienced a rash of racist and homophobic graffiti and neo-Nazi literature appearing around campus.<sup>5</sup> Plaintiffs are further informed and believe that the Los Angeles Times also memorialized that CLU was widely criticized for its response to these incidents. *Id.*

35. Plaintiffs are informed and believe that, because of CLU's poor record on racial issues and diversity, outside intervention was required by the WSCUC in 2007, in 2013, and again in 2015.

<sup>2</sup><https://www.change.org/p/california-lutheran-university-president-and-cabinet-justice-for-dr-gill>; also see <https://cluecho.com/13260/news/inconclusive-evidence-one-year-after-professors-office-is-vandalized/#photo>

<sup>3</sup><https://cluecho.com/13652/news/president-agrees-to-reopen-inconclusive-investigation-into-vandalization-of-professors-office/>

<sup>4</sup>[https://www.splcenter.org/fighting-hate/hate-incidents?keyword=lutheran&state=IA&f%5B0%5D=field\\_hate\\_incident\\_type%3A3&f%5B1%5D=field\\_state%3A19](https://www.splcenter.org/fighting-hate/hate-incidents?keyword=lutheran&state=IA&f%5B0%5D=field_hate_incident_type%3A3&f%5B1%5D=field_state%3A19)

<sup>5</sup><https://www.latimes.com/archives/la-xpm-1997-04-16-me-49323-story.html>

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1 36. Plaintiffs are informed and believe that WSCUC issued a Special Visit Institutional  
2 Report (“Report”), dated December 20, 2019, which described several areas where  
3 sustained progress was necessary for CLU’s diversity, equity, and inclusion goals,  
4 specifically in the following areas:

5 “More efforts are needed to ensure equity and inclusion, to provide  
6 institution-wide equity and inclusion training ... Refinement is needed in  
7 the Comprehensive Equity and Inclusion Plan, including assessment of  
8 progress. Changes are needed to improve retention and graduation rates  
9 of Black students as well to ensure that Cal Lutheran is not only a  
10 Hispanic enrolling institution, but an authentically Hispanic serving  
11 institution’ ...”

12 37. Plaintiffs are informed and believe that throughout said Report, constituents cited  
13 a need for campus-wide training on holding difficult conversations about race and other  
14 politically charged topics about identity, and the necessity of reinforcing the training  
15 throughout the academic year. They cited Human Resources as lacking the professional  
16 knowledge and resources to provide such trainings.

17 38. Plaintiffs are informed and believe that CLU is currently “in danger of violating  
18 [its accreditor’s] standards,” due in part to the toxic racial climate Defendants created on  
19 campus.<sup>6</sup> “Colleges that violate such standards are at risk of losing accreditation and  
20 access to federal financial aid.”<sup>7</sup>

21 39. Plaintiffs are informed and believe that on or about February 12, 2020, another  
22 racial incident occurred when it was discovered that a racial slur was etched into a Trinity  
23 Hall elevator.<sup>8</sup> Plaintiffs are informed and believe that these identified racial incidents,  
24 and many others that have not been publicly reported, put pressure on CLU’s  
25 administration’s to take drastic measures to try and change through public relations  
26

27 <sup>6</sup> <https://www.chronicle.com/newsletter/race-on-campus/2021-03-30>

28 <sup>7</sup> *Id.*

<sup>8</sup> <https://cluecho.com/13039/news/board-of-regents-to-address-unrest-on-campus/>



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1 efforts the outward perception that CLU has a deplorable record in responding to racism  
2 and inequality. As such, Defendants adopted a new (and legally questionable) strategy  
3 of publicly shaming people who they subjectively perceived to have engaged in racism  
4 or other “things which are not acceptable.”<sup>9</sup>

5 **C. COACH DAY SPEAKS OUT REGARDING DISPARATE TREATMENT**  
6 **OF THE SOFTBALL TEAM**

7 40. At the time of the relevant events described herein, Coach Day was in her 18th year  
8 as head of the CLU Softball Program. During her time at CLU, Coach Day has held many  
9 titles, including: Senior Woman Administrator; Compliance Officer; Assistant Athletic  
10 Director; and Head Softball Coach.

11 41. In or about February 2019, Coach Day observed that there was disparate treatment  
12 of CLU Athletic teams by the Athletic Department with regard to strength and  
13 conditioning training. In particular, Coach Day observed that her Softball Team, which is  
14 in-season during the spring, was scheduled for only one day a week with CLU’s strength  
15 and conditioning coaches, but that the CLU Women’s Volleyball Team and Women’s  
16 Soccer Team were scheduled three times per week during their off-season. Coach Day  
17 observed that such scheduling of off-season teams for such training in the manner in  
18 which CLU was doing so was a potential violation of Rule 17.02.1.1.1.4.19 and  
19 17.02.1.1(f)10 of the NCAA Division III Bylaws.

20 42. Plaintiffs are informed and believe that in order to make sure that she was  
21 interpreting the NCAA Division III Rules correctly, on February 1, 2019 Coach Day  
22 emailed the then Executive Director for the Southern California Intercollegiate Athletic  
23 Conference (“SCIAC”), asking for clarification.

24  
25  
26 <sup>9</sup> Defendant Kimball stated in an interview with The Echo that the CLU administration  
27 would be responding to perceived incidents of racisms by: “**calling out people** when they  
28 do things which are not acceptable.” See <https://cluecho.com/13000/news/racial-climate-a-long-standing-issue/>

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1 43. Plaintiffs are informed and believe that Coach Day then brought the information  
2 she received from the SCIAC to Defendant McHugh’s attention via email and in a  
3 personal meeting that took place on February 4, 2019.

4 44. Plaintiffs are informed and believe that during the February 4, 2019 meeting,  
5 Defendant McHugh denied the NCAA violations and the disparate treatment of the  
6 Softball Team having less access to strength and training coaches than CLU’s favored  
7 volleyball team – even though the CLU volleyball team was not in-season – and he merely  
8 stated that CLU was in compliance despite evidence to the contrary.

9 45. Plaintiffs are informed and believe that in May 2019, Defendant McHugh issued  
10 his evaluation of Coach Day, with which Coach Day understandably took issue. As such,  
11 Coach Day drafted notes of her meeting with Defendant McHugh and provided them to  
12 CLU Human Resources.

13 46. Plaintiffs are informed and believe that in said notes, Coach Day memorialized that  
14 she was required by Defendants McHugh and CLU to maintain a .500 win average or  
15 would be fired. Coach Day stated that she felt she was being retaliated against and targeted  
16 for reporting said violations, as CLU had never fired a coach in her previous 17 years for  
17 not winning enough games. She also took issue with a new CLU requirements imposed  
18 on her that she attend NCAA Conventions that are scheduled during conference games.  
19 Additionally, Coach Day raised the issue that there still was a lack of equity for all  
20 athletes/programs at CLU.

21 47. On or about August 22, 2019, Coach Day submitted a rebuttal to Defendant  
22 McHugh’s evaluation. Said rebuttal again memorialized the inequitable treatment of the  
23 Softball Team, the unethical practice of recruiting athletes for admittance who do not  
24 satisfy normal academic standards, the lack of financial resources for assistant coaches  
25 for the Softball Team compared to other CLU programs (including CLU Men’s sports  
26 programs), and the fact that Defendant McHugh’s comments to Coach Day in their  
27 previous meeting were more of a personal nature.

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1 48. In addition, Coach Day submitted a document to CLU Human Resources dated  
2 August 22, 2019 entitled “CLU Strength and Conditioning Concerns.” Said document  
3 outlined that: CLU was potentially in violation of NCAA Division III rules with regard  
4 to how CLU has been providing strength and conditioning training to CLU athletes, and  
5 that Coach Day felt like she was being targeted for retaliation for raising these concerns.

6 49. Thereafter, on or about September 21, 2019, Coach Day sent CLU Human  
7 Resources a follow-up to a previous report regarding the Athletic Department. This  
8 document expressly stated that certain comments from Defendants Kimball and McHugh  
9 have come to Coach Day’s attention that “have escalated this situation from concern to a  
10 hostile workplace.” Therein, Coach Day confirmed she was informed that Defendant  
11 Kimball thinks so little of Coach Day and the softball program, and that is why he  
12 scheduled his meeting with Coach Day in September instead of the end of season – as he  
13 does with other coaches. She also learned that Defendant Kimball demeans Coach Day to  
14 other coaches by stating that she does not meet with Admissions to see if academic  
15 requirements can be skirted to let in certain athletes that do not meet CLU’s standard  
16 academic requirements. Coach Day was also informed that Defendant McHugh said that  
17 he does not like Coach Day and wants her gone, and that CLU needs to get rid of Coach  
18 Day. Coach Day believes such hostile statements are a direct result of her reporting the  
19 aforementioned violations.

20 50. Plaintiffs are informed and believe that, as further punishment for Coach Day  
21 reporting CLU’s aforementioned violations, the Softball Team was thereafter denied *any*  
22 access to strength training during their off-season in the fall, which was in direct contrast  
23 to other teams receiving multiple days of strength training per week during their off-  
24 season.

25 51. Plaintiffs are informed and believe that in October 2019, CLU hired Van Demyden  
26 Law Corporation to conduct an independent investigation of CLU and the claims made  
27 by Coach Day. Based thereon, an Executive Summary of Investigative Findings was  
28 issued on January 17, 2020. Said Summary found that CLU had not denied the Softball

1 Team equitable access to strength and conditioning time because of *gender*. It also  
 2 determined that Defendant McHugh had not retaliated against Coach Day. The problem  
 3 with the Summary, however, is that Coach Day never said that the Softball Team was  
 4 denied access to strength and conditioning based on *gender*, but rather based on favoritism  
 5 of certain athletic programs over others rather than need, and in a manner than violated  
 6 NCAA bylaws. It also failed to address Coach Day's accusations against Defendant  
 7 Kimball. Additionally, on January 24, 2020, Coach Day sent the investigator an email  
 8 memorializing that the CLU Football Team had played ineligible players without  
 9 reporting said infraction to the NCAA in direct violation of NCAA bylaws. Subsequently,  
 10 no effort was made to correct said Executive Summary of Investigative Findings.

11 **D. CLU'S TITLE IX VIOLATIONS WITH REGARD TO ITS DISPARATE**  
 12 **TREATMENT BETWEEN THE MEN'S BASEBALL PROGRAM AND**  
 13 **THE WOMEN'S SOFTBALL PROGRAM**

14 52. During said investigation, Coach Day met with Kuntz to discuss the needs of the  
 15 CLU Softball program, including maintenance issues of the Softball field. This was  
 16 memorialized in an email dated December 16, 2019. During said conversation, Coach  
 17 Day identified the drastic inequities that exist between that which has been afforded to  
 18 the CLU Men's Baseball program versus the CLU Women's Softball program.

19 53. By way of example, and not limitation, the following are just some of the blatant  
 20 inequities as to competition and practice facilities and services that exist between the CLU  
 21 Men's Baseball program and the CLU Women's Softball program:

22 54. CLU's Men's Baseball has a JV program, which allows for Men's Baseball to  
 23 maintain a large roster of players, and otherwise receive additional discretionary funds  
 24 for additional coaching staff and other services. In contrast, CLU has mandated that the  
 25 Women's Softball program shall not have a JV program. In depriving Women's Softball  
 26 a JV program, the Women's Softball Program did not have access to the same player  
 27 retention abilities, competitive opportunities, and/or ability to hire additional coaching  
 28 staff as has been provided to the CLU Men's Baseball program.

1 55. Baseball has a complete stadium that cost approximately \$3 Million to build,  
2 including permanent decorative fencing and locking doors around the complex. Softball  
3 has a field surrounded by a chain link fence with a padlock on the gate.



Men's Baseball Stadium

Women's Softball Field

13 56. Baseball has permanent seating (including former and historic Dodger stadium  
14 seats) and an occupant load of 611. Softball has portable metal bleachers – two with three  
15 rows and one full size bleacher of the style commonly used at little league fields behind  
16 the backstop.

17 57. Baseball has permanent covering over all spectator seating to protect spectators  
18 from the sun. Softball has nothing over the spectator benches and are in direct sunlight  
19 with no natural shade.

20 58. Baseball has a permanent masonry building behind home plate, which houses a  
21 men's and women's restroom, a snack bar and a second story press box/control  
22 room. Softball has a portable metal bench and a portable folding table behind home plate  
23 that serves as a makeshift press box. This makeshift press box also has no permanent  
24 shade. The softball field has no snack bar and no restrooms. The closest restroom is over  
25 100 yards away from the softball field in the main sports building.

26 59. Baseball has a wireless scoreboard that includes pitch speed, which was purchased  
27 when the new facility was built. The softball field has a malfunctioning wired scoreboard  
28 that is over 20 years old and is in constant need of maintenance.

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1 60. Baseball has a permanent sound system with a microphone housed in the press  
2 box. Softball has a portable speaker on a stand and a portable microphone that  
3 occasionally works.

4 61. Baseball has permanent concrete dugouts with easy-access storage compartments  
5 for player equipment, a team meeting room, and a coach's office. The softball field has  
6 none of these facilities or services. Instead, the softball field only has chain-link-fenced  
7 dugouts with a bench and worn tarps that attempt to cover the top and sides thereof.



18 Men's Masonry Baseball Dugout

18 Women's Softball Dugout

19 62. Baseball has permanent storage behind the visitor's dugout. Softball uses an old  
20 shed.

21 63. None of these glaring and obvious inequities in the quality of the facilities between  
22 the CLU Men's Baseball program and the CLU Women's Softball program were  
23 considered in Van Dermeyden Law Corporation's Title IX investigation, and Plaintiffs are  
24 informed and believe that no one from CLU provided such information to Van Dermeyden  
25 Law Corporation to investigate, thus making said investigation a sham.

26 **E. THE LIP-SYNC EVENT**

27 64. At the conclusion of the CLU Softball Team's "Hell Week," it is tradition for the  
28 members of the team to break into smaller groups of four or five girls and to perform a

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1 choreographed lip-sync routine while wearing costumes and makeup as part of a team-  
2 bonding activity. Plaintiffs are informed and believe that this is not an uncommon practice  
3 amongst CLU's athletic teams in particular, and NCAA athletic teams in general.

4 65. Plaintiffs are informed and believe that the CLU Volleyball team holds a lip-sync  
5 team-bonding event every year as well. In the fall of 2018, the CLU Volleyball team  
6 posted pictures of such an event to their Instagram page wherein the theme was the "Boy  
7 Band Experience." As such, the CLU Volleyball team posted pictures of themselves  
8 dressed like men in Hip-Hop clothing, wigs, gold chains, and makeup resembling facial  
9 hair, including a group of non-black CLU Volleyball players in curly wigs portraying the  
10 pop group, The Jackson 5.<sup>10</sup>

11 66. The parameters of which songs and routines could be performed by the Softball  
12 Team members were set forth by Coach Day. Specifically, Coach Day recommended that  
13 songs from the 90s or earlier be used because they tend to be more family-friendly than  
14 current music, and the routines had to be tasteful to the point that they would not be  
15 ashamed to perform them in front of their grandmothers.

16 67. Just like the CLU Volleyball Team,<sup>11</sup> one group comprised of DOES 1-5 decided  
17 to dress like "dudes" in a "Boy Band" with the style of Hip-Hop clothing worn by "Boy  
18 Bands." Said group decided to add hats or wigs to hide their feminine hairstyles, and  
19 makeup to portray facial hair to make their faces appear more masculine. DOES 1-5  
20 decided that they wanted to dress like "dudes" before picking the song that were to  
21 perform: *to wit*, the theme song to the television show *The Fresh Prince of Bel-Air*.<sup>12</sup>

22  
23 <sup>10</sup> See [https://www.instagram.com/p/BnAtoPOBpLy/?utm\\_source=ig\\_web\\_copy\\_link](https://www.instagram.com/p/BnAtoPOBpLy/?utm_source=ig_web_copy_link)

24 <sup>11</sup> Plaintiffs do not contend that the Volleyball Team did anything wrong or racially  
25 insensitive in dressing like men with wigs and perform songs originally performed by  
26 African-American artists. Plaintiffs contend that it would be racial discrimination to make  
such an assertion, as CLU did with the Softball Team.

27 <sup>12</sup> *The Fresh Prince of Bel-Air* is an American sitcom television series that originally  
28 aired on NBC from September 10, 1990 to May 20, 1996. The show stars Will Smith as a  
fictionalized version of himself, a street-smart teenager from West Philadelphia who is

68. These members of the Softball Team chose to perform *The Fresh Prince of Bel-Air* theme song for two reasons: 1) They all grew up watching the show and enjoying the theme song; and 2) most of the Softball Team shared the common experience of moving to an affluent suburb of Los Angeles (Thousand Oaks) to attend CLU from far-away and/or humble households, and therefore related to the television show's premise of experiencing the culture shock of doing so.

69. As planned, on or about January 21, 2020, the Softball Team finished their last pre-season practice, and had an hour to change into their costumes and get to the CLU performing arts building to perform their lip-sync routines. The lip-sync routines were thereat observed by Coach Day, and Coach Gluckman, and most notably Coach Young, who is African-American.<sup>13</sup>

70. Plaintiffs are informed and believe that the group in question – DOES 1-5 – dressed in their hip-hop costumes, with two of the girls wearing dirty-blond “Napoleon Dynamite” wigs.



sent to move in with his wealthy uncle and aunt in their Bel Air mansion after getting into a fight in his hometown. In the series, his lifestyle often clashes with the lifestyle of his relatives in Bel Air. [https://en.wikipedia.org/wiki/The\\_Fresh\\_Prince\\_of\\_Bel-Air](https://en.wikipedia.org/wiki/The_Fresh_Prince_of_Bel-Air)

<sup>13</sup> Plaintiffs are informed and believe that the CLU administration was completely unaware that Coach Young was African-American when they made their false claims that the CLU Softball Team had engaged in a “Blackface” performance in front of her during an event that she was jointly supervising.



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1 71. Said routine was clean, fun, and enjoyed by those who attended. More  
2 particularly, Coach Day, Coach Young, and Coach Gluckman confirmed that neither the  
3 subject matter, nor the routine, were offensive, insensitive, or derogatory. As such, the  
4 Softball Team posted pictures and videos of said routine to their Team Instagram page.

5 72. On or about January 26, 2020, Coach Day received a message from Kuntz saying  
6 that an unidentified CLU staff member complained to Defendant Kimball that the Softball  
7 Team posted a “Blackface” performance to social media. Coach Day confirmed that no  
8 such “Blackface” performance took place, and that DOES 1-5 were wearing makeup to  
9 resemble male facial hair. However, she stated that she would have the Softball Team  
10 take the performance down from social media to avoid anyone misinterpreting the event.

11 73. Thereafter, the Softball Team and coaches told Kuntz what had happened at the lip-  
12 sync event and confirmed that there was no “Blackface” performance. They were told that  
13 the complaint from the unidentified CLU staff member was that some of the girls in the  
14 performance appeared to be wearing “Blackface” makeup on their entire faces. In  
15 response, the team confirmed that the girls were dressed as men with facial hair, and that  
16 nothing inappropriate was done at the lip-sync event. More importantly, the Softball Team  
17 informed Kuntz that they are all socially conscious and extremely aware of the fact that  
18 the members of their team and coaching staff are ethnically, racially, and sexually diverse,  
19 and that they would never do anything that would be make anyone feel discriminated  
20 against, ridiculed, or not included because of ethnicity, race or sexual orientation.

21 74. Plaintiffs are informed and believe that, on or about February 5, 2020, Defendant  
22 Kimball caused and/or allowed CLU to send a blast email to the entire CLU community  
23 and to every email address in the CLU system. At no time prior to this email did Defendant  
24 Kimball attempt to perform any direct investigation into this matter. Specifically,  
25 Defendant Kimball had not directly communicated with any of the coaches or the Softball  
26 Team to try to learn exactly what occurred at the lip-sync performance. Despite this,  
27 Defendant Kimball stated in his February 5, 2020 email that CLU students had engaged  
28 in a form of racism and confirmed that such an incident involved “Blackface.” A true and

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1 correct copy of Defendant Kimball’s February 5, 2020 email is attached hereto as Exhibit  
2 “1,” and is incorporated herein by this reference. The email further stated: “Those who  
3 are responsible will be held accountable.” *Id.*<sup>14</sup>

4 75. Plaintiffs are informed and believe that the sending of said email was designed to  
5 harass and inflict significant harm on Plaintiffs. This is due to the fact that Defendant  
6 Kimball and/or whomever wrote said email and put Defendant Kimball’s name on it (i.e.,  
7 a person believed to be Defendant Doherty), had no legitimate need to reference any  
8 specific racist incident therein, let alone a false claim that a “Blackface” incident had been  
9 perpetrated by any CLU student, in order to communicate that CLU does not condone  
10 racism.

11 76. Plaintiffs are informed and believe that no one associated with CLU’s Women’s  
12 Softball Team has engaged in, or allowed anyone to engage in, “Blackface” as the term  
13 is and was understood by the general public who saw said email, which is also the same  
14 understanding as the term is defined by the Oxford Learner’s Dictionary, Merriam-  
15 Webster Dictionary, Cambridge Dictionary, Macmillan Dictionary, Collins English  
16 Dictionary, Lexico.com, definitions.net, dictionary.com, yourdictionary.com,  
17 vocabulary.com, or even urbandictionary.com; *to wit*, “Blackface” is the actual wearing  
18 of **dark facial makeup to give the appearance of a black person**.

19 77. Plaintiffs are informed and believe that although Defendant Kimball did not  
20 expressly identify the members of the Softball Team as being the subjects of his  
21 “Blackface” statement in said February 5, 2020 email, it was well known in the CLU  
22 community and elsewhere that said February 5, 2020 email was referring to the Softball  
23 Team. This was confirmed when, almost immediately after Defendant Kimball sent out  
24 the defamatory February 5, 2020 blast email to thousands of people falsely confirming as

25 \_\_\_\_\_  
26 <sup>14</sup> Plaintiffs are informed and believe that the February 5, 2020 email also made reference  
27 to a then-recent video posting of a Caucasian female CLU student, not affiliated with the  
28 CLU Softball program, using the N-word in a non-derogatory manner with her African-  
American friend. Said video went viral and caused outrage on the CLU Campus.

1 fact that CLU students posted pictures of themselves on social media in “Blackface,” a  
 2 member of the CLU student governing body confirmed on social media that he understood  
 3 said email to be referring to the Softball Team.

4 78. Plaintiffs are informed and believe that Defendant Kimball’s February 5, 2020  
 5 email sparked significant and racial outrage on campus and immediately went viral. By  
 6 way of example, the CLU Newspaper, The Echo, published on February 5, 2020 to  
 7 thousands of people in an article entitled “Student-Athletes Involved in Racist Incidents.”  
 8 Said article confirmed that Defendant Kimball stated as fact that a “blackface” incident  
 9 occurred involving student-athletes, and that they would be held accountable.<sup>15</sup>

10 79. Plaintiffs are informed and believe that the story was then published on February  
 11 6, 2020 by the Ventura County Star<sup>16</sup> in an article entitled: “Racial Social Media Posts by  
 12 Cal Lutheran Students Denounced by School Officials.”<sup>17</sup> The story about the offending  
 13 February 5<sup>th</sup> email then made national news on February 7, 2020 when it was published  
 14 in USA Today<sup>18</sup> in an article that stated: “In one video, students wearing what looked to  
 15 be blackface lipsynched a song.”<sup>19 20</sup>

16  
 17 <sup>15</sup> See <https://cluecho.com/12954/news/student-athletes-involved-in-racist-incidents/>

18 <sup>16</sup> The VC Star reported their daily readership in 2016 to be between 45,700 and 58,000.

19 See <https://www.pacbiztimes.com/2016/04/08/gannett-buys-ventura-county-star/>

20 <sup>17</sup> <https://www.vcstar.com/story/news/local/communities/conejo-valley/2020/02/06/racial-posts-cal-lutheran-students-denounced-school-officials/4683135002/>

21 <sup>18</sup>USA Today reported a combined daily circulation of 1,231,306. See

22 [https://en.wikipedia.org/wiki/USA\\_Today](https://en.wikipedia.org/wiki/USA_Today)

23 <sup>19</sup> <https://www.usatoday.com/story/news/nation/2020/02/07/gray-wolf-blackface-homelessness-oscar-joker-mlb-friday-news/4691574002/>

24 <sup>20</sup> Other news articles about the incident <https://vcreporter.com/2020/02/clu-softball-team-accused-of-blackface-all-sides-say-admin-response-misses-the-mark/> ;

25 <https://www.newsbreak.com/news/00C8h4x4/clu-softball-team-accused-of-blackface-all-sides-say-admin-response-misses-the-mark>; <https://www.kclu.org/post/south-coast-university-officials-say-they-are-investigating-some-racist-posts-students#stream/0>

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1 80. Plaintiffs are informed and believe that the CLU Black Student Union (“BSU”)  
2 published an open letter confirming that, but for Defendant Kimball’s February 5<sup>th</sup> email,  
3 they “would have not known [of] the Blackface incident.” The public letter also threatens:  
4 “If appropriate actions (expulsion or suspension) are not taken against these students by  
5 the university, we will take matters into our own hands.”

6 81. Horrified, embarrassed, and fearful for their own safety due to the racially  
7 motivated harassment being instituted against them, the Softball Team convened on  
8 February 6, 2020 and wrote a letter for Kuntz and Defendants McHugh and Kimball to  
9 publish to the CLU Community apologizing for any misunderstanding that may have been  
10 caused by their social media post. The letter stated in part:

11  
12 “A couple of weeks ago, the California Lutheran University Softball team  
13 posted a series of photos and videos featuring different costumes from a  
14 team bonding activity. A few of these costumes featured apparel and  
15 hairstyles that were perceived as racially insensitive. Additionally,  
16 members drew on facial hair that when looked at in a photograph came  
17 across as blackface. These were not the intentions of those wearing the  
18 beards and no one in attendance viewed the beards as such. Even though  
19 the beards were perceived as blackface, no blackface was worn.  
20 Nevertheless, we acted from a place of ignorance and had no intention to  
21 cause any sort of harm. We acknowledge the place of privilege we come  
22 from and accept the harm we have caused to many, and we apologize  
23 profusely.”

24 82. Plaintiffs are informed and believe that the apology letter was given to Defendant  
25 Kimball’s office through Kuntz and Defendant McHugh. To date, Defendants have kept  
26 this letter a secret, and have otherwise continued to promulgate the lie that the Softball  
27 Team engaged in a racist “Blackface” incident.

28 83. Plaintiffs are informed and believe that this apology letter was, and continues to  
be, kept a secret because it discloses that Defendants misled the public into believing that  
an actual racist “Blackface” event had occurred. In turn, the publishing of said apology

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1 letter would have garnered sympathy for Plaintiffs and caused a negative backlash against  
2 CLU for their gross mishandling of the event.

3 84. On or about February 7, 2020, the Softball team was making preparations to leave  
4 on February 8, 2020 for Texas, whereat they were scheduled to play six away-games over  
5 the course of a week. Instead, they were forced to meet with multiple administrators for  
6 several hours that kept trying to convince the players to confess that they did something  
7 wrong. However, the Softball Team would not budge, and steadfastly protested their  
8 innocence with regard to anyone claiming they engaged in a racist performance of  
9 “Blackface.”

10 85. Thereafter, at approximately 9 PM on February 7, 2020, the Softball Team was  
11 informed by Defendant Kimball that he had canceled the Texas trip and that all members  
12 of the CLU Softball program were to attend a meeting at CLU with Defendant Kimball  
13 to discuss the “Blackface” incident. In addition, the coaches were informed that they were  
14 being put on administrative leave pending an investigation in order to determine whether  
15 they were to be disciplined and/or terminated, and were otherwise instructed to have no  
16 contact with the Softball Team.

17 86. Plaintiffs are informed and believe that on or about February 8, 2020, the coaches  
18 and players attended said meeting with Defendants Kimball and Doherty, along with a  
19 number of the players’ parents. The following list contains items of particular note that  
20 were memorialized on an audio recording of said meeting:

- 21 • @ 1:27 Defendant Kimball talks about the Texas trip and says that he canceled the  
22 Texas trip **not as a punishment**, but rather the trip was going to have the Softball Team  
23 gone for nearly a week while “all this stuff is bubbling up on campus,” and he needs to  
24 “deal with all of this stuff now” and not a week from now when they get back.
- 25 • @3:15 Defendant Kimball states that he **does not believe that anyone was**  
26 **intending any bad things toward any CLU student.** But, things have been done that  
27 have been perceived as hurtful.

1 • @3:36 Defendant Kimball states he is aware the team is angry about the February  
2 5<sup>th</sup> email. He acknowledges the team believes that said email put a target on the team’s  
3 back and condemned them for things that they do not believe they did.

4 • @5:39 Defendant Kimball says that he understands the argument that the team did  
5 not do what they are accused of, and that **he believes in his heart that the Team did**  
6 **not intend to do anything racist**. He then says, however, that there is a distinction  
7 between intent and impact and that some of the images play to things that are hurtful.

8 • @6:56 Defendant Kimball says he needs to learn this lesson as much as anybody  
9 because he is “an old white male” with privileges.

10 • @7:56 Defendant Kimball acknowledges there are concerns about safety and that  
11 the team has received threatening comments.

12 • @9:14 Defendant Kimball is questioned by a parent as to what he saw in the videos  
13 and if anyone was in “Blackface.” Defendant Kimball responds that **he saw a number**  
14 **of photographs and a video and that this was girls wearing male beard stubble**.

15 • @11:13 One player speaks to Defendant Kimball and tells him that he needs to  
16 think not about the intent of his email, but the impact of his email. The impact was that  
17 he hurt all of the team. He is in a position of authority and is supposed to protect them  
18 and instead he hurt them. That the statement was issued without him knowing all of the  
19 facts. She says that the entire school hates them because Defendant Kimball told the  
20 entire school that they did “Blackface” when they did not. The player stated Defendant  
21 Kimball sent out the email before doing an investigation. Because of Defendant  
22 Kimball’s carelessness, everyone on the team is now hurt. He did not need to cancel the  
23 Texas trip for his own convenience. He could have met with the Team on Wednesday or  
24 Thursday or Friday and he made no effort to do so. “Blackface” is a loaded word and he  
25 was irresponsible to tell CLU that they did that.

26 • @13:40 Defendant Kimball says that there are folks that would say that it is  
27 “Blackface” as they understand the word – referring to how the girls were dressed,  
28 including the wigs.<sup>21</sup>

<sup>21</sup> Plaintiffs are informed and believe that, when faced with conclusive evidence that none of the members of the Softball Team had put makeup on their face to imitate a person of color, Defendant Kimball for the first time pivoted to defend his February 5, 2020 email at this meeting by claiming that dressing like men with wigs and wearing “Hip-Hop”

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1 • @14:14 Coach Day states that she had not been asked by anyone directly from  
2 Defendant Kimball’s office about anything regarding the incident and there had been  
3 zero communications with her or any of the coaching staff.

4 • @15:07 Another team member says that Defendant Kimball was dishonest about  
5 the reasons he canceled the Texas trip. She says that the incident was brought to their  
6 attention two weeks prior and that he did nothing to address it until the evening of the  
7 Texas trip. He could have investigated the incident weeks ago, have the group go to  
8 meetings and handle the situation before this became a big situation. But no one came to  
9 them to properly investigate the matter.

10 • @17:55 Another player tells Defendant Kimball that it was her dream to come to  
11 CLU to play softball for CLU. She tells Defendant Kimball that **everyone knew**  
12 **immediately after he sent the February 5 email that he was referring to the Softball**  
13 **Team.** She said she is afraid to wear her softball gear on campus. She said, as a result of  
14 the February 5 email, **students are now calling her racist, and telling her “your ass is**  
15 **going to be fucking beat.**” She said Defendant Kimball should know the impact this has  
16 had on her family; that they are freaking out.

17 • @19:08 Another player tells Defendant Kimball that he associated the softball team  
18 in his email with an unrelated N-Word incident not involving Plaintiffs. That doing so  
19 was **a detrimental attribution that will follow the players for the rest of their college**  
20 **career and after.** She states that **the team is now afraid to be on campus.**

21 • @26:24 Defendant Kimball says in response to another player accusing him of  
22 mishandling the situation that he should have done things differently. Defendant Kimball  
23 claims that what they did was “Blackface.” Defendant Kimball claims that there are  
24 different definitions for “Blackface” for some people, alluding to use of a wig or dressing  
25 in hip-hop clothing. The parents erupt uniformly in disagreement. Parents then accuse  
26 Defendant Kimball of being the problem by stereotyping that Hip-Hop dress is  
27 exclusively meant to mimic black people.

28 clothing was racist and constituted “Blackface.” The right to dress in “Hip-Hop” clothing  
is not exclusive to people of color, and it is actually discriminatory racism to make such  
an assertion. Likewise, as stated earlier, the dirty blond wigs at issue were part of a  
Napoleon Dynamite costume – a white male movie character – that were worn to imitate  
males and not people of color. The fact remains that, had the members of the subject  
routine in question been African-American, Defendants would not have stated that  
wearing Napoleon Dynamite wigs and “Hip-Hop” clothing was “Blackface.”

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1 87. During said meeting, Defendant Kimball also admitted that he did not write the  
2 email himself, as he was on an airplane when it was sent. Rather, he claims someone else  
3 wrote the email and put his name on it, but that he would take responsibility for its content.  
4 Plaintiffs contend that the offending February 5<sup>th</sup> email was actually written and sent in  
5 whole or in part by Defendant Doherty, and that she put Defendant Kimball’s name on it.

6 88. Thereafter, the Softball Team was forced to attend a mandatory meeting with the  
7 CLU Pastors for several hours under the pretense that it was to be a private and  
8 confidential counseling session between the players and their spiritual advisors. In reality,  
9 the purpose of the meeting was to allow Defendant Doherty to pressure the players into  
10 confessing that they engaged in a racial “Blackface” event, and that they otherwise did  
11 something worthy of punishment.

12 89. Plaintiffs are informed and believe that, at no time during this “counseling session”  
13 did Defendant Doherty disclose that she was the author of the February 5<sup>th</sup> email that  
14 harmed the players, that she intended to continue to harm the players if they failed to  
15 confess, and that she intended to use the information in said meeting to do so. As such, it  
16 is likely that Defendant Doherty violated her duties owed to the players as a Lutheran  
17 Pastor in engaging in the conduct identified herein.<sup>22</sup>

18 90. After the February 8<sup>th</sup> meetings, the Players were told to attend another meeting on  
19 February 9, 2020 with Defendant Doherty in attendance. The Players gave up time away  
20 from their studies to attend this meeting. However, the meeting was immediately stopped  
21 by their attorney, as it was designed to allow Defendants to show the general public that  
22

23 \_\_\_\_\_  
24 <sup>22</sup> A pastor has a duty not to harm those that seek their spiritual guidance and to otherwise  
25 hold in confidence any information obtained during a counseling session. A pastor who  
26 violates this trust “might be on the losing end of a suit for an invasion of privacy or  
27 defamation.” See David C. Gibbs, attorney (September 26, 2003). "Pastoral Counseling:  
28 Safeguard Against Potential Liability." *Church Solutions*; Also See Richard N. Olstling;  
J.Madeleine Nash/Chicago:Martin Casey/Miami (Oct 1984). "Confidence and the  
Clergy." *Time U.S.* David C. Gibbs, attorney (September 26, 2003). "Pastoral Counseling:  
Safeguard Against Potential Liability." *Church Solutions.*



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1 Defendants were disciplining the Softball Team without telling the Softball Team they  
2 were actually being disciplined.

3 91. Plaintiffs are informed and believe that Plaintiffs’ attorney and CLU’s attorney then  
4 met in person on Sunday, February 9, 2020 to try and mitigate the damage that was being  
5 inflicted upon Plaintiffs. As a direct outcome from said meeting, the Softball Team  
6 received on Monday, February 10, 2020 at 12:18 PM an email from the Assistant Dean  
7 of Students stating that: “Based on our review of this situation, we have determined that  
8 there will be no individual student conduct process related to the performances.” A true  
9 and correct redacted copy of said email is attached hereto as Exhibit “2” and is  
10 incorporated herein by this reference.

11 92. Plaintiffs are informed and believe that this email was supposed to help reassure  
12 the Softball Team that they would not be facing any official CLU discipline for the alleged  
13 incident, and could start trying to return their lives back to normal.

14 93. However, not even an hour later, Plaintiffs are informed and believe that Defendant  
15 Kimball (and Defendant Doherty) sent out a second damaging “blast” email that again  
16 unnecessarily referenced the “Blackface” incident, but this time in a more racially  
17 inflammatory manner.

18 94. Plaintiffs are informed and believe that Defendant Kimball (and Defendant  
19 Doherty) inexplicably sent out said email despite being directly and personally informed  
20 that: 1) the entire campus knew the offending February 5<sup>th</sup> email was referring to the  
21 Softball Team when it mentioned the “Blackface” incident; 2) that publicly referring to  
22 the “Blackface” incident was hurtful to those that are associated with the Softball Team  
23 (including those nineteen (19) girls who did not engage in the subject lip-sync  
24 performance); and 3) that reference to the “Blackface” incident was so racially  
25 inflammatory that it compromised the safety of those involved with the CLU Softball  
26 program.

27 95. Plaintiffs are informed and believe that this second email was sent out on February  
28 10, 2020 at 1:16 PM to the entire CLU community (and known public for whom CLU

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1 had an email address). A true and correct redacted copy of the February 10, 2020 email  
2 is attached hereto as Exhibit “4” and is incorporated herein by this reference. Said email  
3 stated:

4 “As a starting point, we want to share more detailed information about some  
5 incidents and their impact. The University has a responsibility to identify and  
6 respond to behavior that is inconsistent with our values. In one incident,  
7 students were recorded doing performances in which there were exaggerated  
8 characterizations of black people and culture. The images were shared on  
9 social media. Many viewers in our campus community took offense and  
10 identified it as blackface. While some have questioned the University’s use of  
11 the term “blackface,” and whether such a definition is solely limited to using  
12 makeup on one’s face, the University used the term as it is often used by  
13 historians – comedic performances of “blackness” by whites in exaggerated  
14 costumes and makeup. Regardless of how one views this particular definition,  
15 it does not change the nature of the underlying conduct.”

16 96. There was no reason for said email “to share more detailed information about some  
17 incidents and their impact” other than to intentionally publicly smear Plaintiffs and to  
18 intentionally cause them to be in fear for their safety.

19 97. Plaintiffs are informed and believe that the February 10, 2020 email contained  
20 numerous maliciously false facts: First, there were no “performances in which there were  
21 exaggerated characterizations of black people and culture.” Thus, it was false to say that  
22 students were recorded engaging in such racially inflammatory behavior.

23 98. Second, Plaintiffs are informed and believe that the video and pictures in question  
24 were not viewed by “many members” of the “campus community.” The view count on  
25 Instagram of the subject social media posting was extremely low, and the BSU confirmed  
26 that they had previously not known about the alleged incident and had never viewed the  
27 content. Rather, the individual viewer that complained was a CLU employee.

28 99. Third, Plaintiffs are informed and believe that the email then falsely states: “the  
University used the term as it is often used by historians – comedic performances of  
‘blackness’ by whites in exaggerated costumes and makeup. Regardless of how one views

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1 this particular definition, it does not change the nature of the underlying conduct.” This  
2 statement is defamatory on its face, as it is false on many levels.

3 100. Plaintiffs are informed and believe that the “Blackface” definition used by CLU in  
4 the February 10, 2020 email does not exist. Rather, it is an intentional and bad-faith  
5 perversion of the definition of “Minstrelsy,” as noted by the single historian Dale  
6 Cockrell.<sup>23</sup> It is not the definition of “Blackface,” which focuses on the art of donning  
7 black makeup to one’s entire face to portray a person of color.

8 101. Plaintiffs are informed and believe that not only is CLU’s perverted definition of  
9 “Blackface” incorrect, but it both implies intent and otherwise asserts – contrary to  
10 Defendant Kimball’s previous statement that he believed in his heart that there was no  
11 racist intent – that the entirety of the Softball Team callously and maliciously intended to  
12 portray African-American people and culture in a derogatory and comedic fashion.

13 102. Plaintiffs are informed and believe that the negative effect and connotation of this  
14 February 10, 2020 email cannot be understated, especially since its content and reference  
15 to the “Blackface” incident was completely unnecessary to the information contained in  
16 the rest of the email. What is more, the email went on to belittle the information  
17 Defendants Kimball and Doherty received from the Softball Team of the threats of  
18 violence that were being made against them when it stated: “On the other hand, we  
19 recognize that people are sharing their feelings and opinions, which some may perceive  
20 as threats. There is a difference between critiques and threats.” See Exhibit “3.”  
21

22 <sup>23</sup>CLU intentionally and in bad-faith perverted the following definition of the term  
23 “Minstrelsy”: “Historian Dale Cockrell once noted that poor and working-class whites  
24 who felt ‘squeezed politically, economically, and socially from the top, but also from the  
25 bottom, invented minstrelsy’ as a way of expressing the oppression that marked being  
26 members of the majority, but outside of the white norm. **Minstrelsy, comedic  
performances of ‘blackness’ by whites in exaggerated costumes and make-up,  
cannot be separated fully from the racial derision and stereotyping at its core.**”

27 See: <https://nmaahc.si.edu/blog-post/blackface-birth-american-stereotype> (emphasis  
28 added).

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1 103. As a direct and proximate result of Defendants’ conduct, Defendants have  
2 destroyed the Softball Team’s ability to effectively and fully mentally and/or physically  
3 participate in scholastic and extracurricular endeavors at CLU.

4 104. Plaintiffs are informed and believe that, as a direct result of Defendants’ wrongful  
5 conduct documented herein, Plaintiffs have suffered extreme and irreparable damage to  
6 their reputations and mental health. They have also had their physical safety put at risk,  
7 and their academic and/or professional careers tarnished and/or destroyed.

8 **F. CLU CAMPUS CIVIL UNREST AND HARASSMENT RESULTING FROM**  
9 **THE FALSE “BLACKFACE” ACCUSATIONS**

10 105. Plaintiffs are informed and believe that the February 10<sup>th</sup> email had inflamed racial  
11 passions and anger on the CLU campus to such a degree that the BSU organized an  
12 unauthorized campus “walk-out,” whereat they demanded the expulsion of the entire  
13 Softball Team for being racists. On the way to the “walk-out,” students who were trying  
14 to stay in their classes and learn were confronted by hostile mobs of students that called  
15 them “racist,” and otherwise pressured said students to participate and follow a crowd  
16 shouting: **“Give us their names! Expel them all!”**<sup>24</sup>

17 106. Plaintiffs are informed and believe that the “walk-out” mob then stormed the  
18 Administration Building and live-streamed their confrontations with administrators. In  
19 such videos, the students confront Defendant McHugh and demanded the expulsion of  
20 the Softball Team. The mob said to Defendant McHugh that they know who the team is  
21 that engaged in “Blackface” and that they demand the Softball Team be expelled because  
22 they do not want to be near them on campus.

23 107. Plaintiffs are informed and believe that in said videos, Defendant McHugh further  
24 defames Plaintiffs by confirming as fact there was a “Blackface” incident. The students  
25 also claim that Defendant Kimball’s emails confirmed that the Softball Team had already  
26

27 <sup>24</sup>Plaintiffs are informed and believe that Defendant Kimball and other CLU faculty  
28 members voluntarily spoke publicly at said “walk-out,” and otherwise supported and  
condoned the “walk-out.”

1 been found guilty by Defendants of engaging in racist “Blackface” conduct. The video  
2 then shows Defendant McHugh committing a Federal Educational Rights and Privacy Act  
3 (“FERPA”) violation by disclosing that the student involved in the N-Word incident was  
4 suspended.

5 108. Plaintiffs are informed and believe that, in another video, the mob corners Christine  
6 Paul, the Assistant Dean of Students. Therein, Ms. Paul attempts to deny the content of  
7 her February 10, 2020 email wherein she states that the Softball Team would not be facing  
8 any “individual student conduct process related to the performances.” Instead, in response  
9 to the mob demanding the Softball Team be expelled, Ms. Paul falsely implies that  
10 Plaintiffs are still subject to discipline, and are *being* disciplined, because: “there are lots  
11 of things that can happen.” This too is a potential FERPA violation since the mob had  
12 already stated that they knew CLU was referring to the Softball Team when it made  
13 reference in its emails to the “Blackface” incident.

14 109. Plaintiffs are informed and believe that, in an effort to try and calm tensions and  
15 explain what occurred, the Softball Team reached out to the BSU and invited them to  
16 meet over a dinner to “talk about the information that is now out there, causing so much  
17 pain for everyone, and create a dialogue between our two groups.” The BSU outright  
18 refused the invitation due to Defendants’ conduct that branded the Softball Team as racists  
19 and turned them into social pariahs.

20 110. The toxic, volatile, and substantially racially-charged environment on campus  
21 Defendants created had become so pervasive and dangerous that the members of the  
22 Softball program were made to fear for their own personal safety and well-being. The  
23 Thousand Oaks Police Department had been monitoring the situation and deemed the  
24 threat level against the Softball Team and their coaches was so high that it warranted the  
25 public display of a police presence at all softball practices and games for approximately  
26 two weeks.

27 111. Plaintiffs are informed and believe that at this juncture that CLU failed to provide  
28 any security to the Softball Team until their next home game on February 17, 2020.

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1 Instead, CLU went so far as to state that the threats of physical violence to the Softball  
 2 Team’s safety were mere criticisms. See February 10, 2020 email at Exhibit “3.” And,  
 3 during this ineffective token attempt at providing additional security at said home game,  
 4 the Softball Team’s locker room was burglarized while the Softball Team was on the  
 5 softball field playing a game, and their personal possessions were stolen.

6 112. Plaintiffs are informed and believe that in order to show Defendants’ hypocrisy,  
 7 pictures surfaced on Twitter that Defendant Kimball had proudly posted on his CLU  
 8 social media page. The pictures were of a CLU administrator dressing as Bob Marley,  
 9 *with actual “Blackface” makeup* and wig and imitation illegal narcotics, all of which  
 10 squarely fit CLU’s newly-minted definition of “Blackface.”



25 113. Plaintiffs are informed and believe that in response, on or about February 13, 2020,  
 26 Defendant Doherty made Defendant Kimball publicly apologize for said postings to the  
 27  
 28

1 entire CLU community in the Chapel.<sup>25</sup> Members of the Softball Team recorded this  
2 public meeting, which quickly deteriorated into an open forum of both students and  
3 faculty demanding that the Softball Team be expelled due to the false information  
4 Defendants continued to maliciously publish about them. Of particular note, Defendant  
5 Kimball confirmed his and CLU's racist bias against the Softball Team, and CLU's racist  
6 policies regarding the Softball Team's ability to perform songs by African-American  
7 artists, when he announced at said meeting that he regrets not telling the employee that  
8 **white people have no right to dress like Bob Marley.** It is also of note that Defendant  
9 Kimball falsely stated at said meeting to the CLU community that Plaintiffs were being  
10 disciplined.

11 114. As a direct result of the poisoned atmosphere Defendants had unnecessarily created  
12 on campus against the members of the CLU Softball program, countless numbers of  
13 students continued to attack and harass the Softball Team on social media. One such  
14 student was a Senior ASCLU student Senator that wrote: "@regals softball @callutheran  
15 O-M-[Statue of God]. Will you acknowledge those affected. yt voices with instagram  
16 accounts ARE NOT 'being silenced.'"

17 115. Plaintiffs are informed and believe that this post appears to be in response to one  
18 of the softball team member's statements at Defendant Kimball's Chapel meeting. Said  
19 student addressed said message to the entire "regal" (the official name of the softball  
20 team) Softball program. The message is racially motivated in origin, as it refers to "yt  
21 voices with instagram accounts." "yt" is slang for "whitey," which is a racially  
22 derogatory term for Caucasians. Therefore, the message is directly aimed at a certain  
23 group of people based on the color of their skin.

24 116. Plaintiffs are informed and believe that the purpose, and most certainly the effect,  
25 of the message was to racially harass and bully the members of the Softball program.

26 \_\_\_\_\_  
27 <sup>25</sup> See News Story at [https://www.kclu.org/post/more-controversy-south-coast-](https://www.kclu.org/post/more-controversy-south-coast-university-over-racism-concerns#stream/0)  
28 [university-over-racism-concerns#stream/0](https://www.kclu.org/post/more-controversy-south-coast-university-over-racism-concerns#stream/0)

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1 117. Plaintiffs are informed and believe that the posting, its message, and its effect,  
2 derives from “unwelcome behavior that...fails to respect the rights of others” (i.e.,  
3 including the right to protest one’s innocence), and “interferes with work, learning, living  
4 or campus environment.” It constitutes a “threat to the well-being of a person or a group,  
5 which is derived from a written communication through a computer [ ] or by any other  
6 means of communication.” It therefore constitutes an inappropriate posting on social  
7 media sites or other applications and graphic commentaries as identified in Section 17.1b  
8 of the CLU Student Handbook (“Handbook”).

9 118. Plaintiffs are informed and believe that said posting also appears to be a Hate  
10 Incident and a Hate Crime under Section 18.0 of the Handbook, as it is harassment  
11 directed to members of the University's community based on race and color, and it  
12 otherwise constitutes “any act that has the purposes or effect of unreasonably or  
13 substantially interfering with an individual’s safety and security by creating a(n)  
14 intimidating, hostile, discriminatory, or offensive education or working environment,”  
15 which the University has promised its students “will not be tolerated.”

16 119. Plaintiffs are informed and believe that the subject post constitutes a Hate Crime  
17 under Section 18.1 of the Handbook, in that it is an offense “motivated by hatred against  
18 a victim or a group of victims based on their actual or perceived race,” and is reportable  
19 as intimidation under the Clery Act. Such conduct is an offense that may result in  
20 suspension/dismissal from the University.

21 120. Plaintiffs are informed and believe that the subject post also constitutes a Hate  
22 Incident under Section 18.2 of the Handbook, which is “broadly defined as acts which  
23 threaten a person’s sense of belonging, dignity, emotional and/or physical well-being.”

24 121. Plaintiffs are informed and believe that countless others would not have directed  
25 their venom toward the Softball Team players and coaches but for the egregiously  
26 wrongful actions of Defendants. Defendants, through their extremely reckless and grossly  
27 negligent conduct, have fostered and maintained a racially toxic environment on campus  
28



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1 that has directly and proximately caused these postings, and many other postings of a  
2 similar nature, to be directed at Plaintiffs.

3 122. As a direct result of such conduct, in or about February 2020, the Softball Team  
4 filed an Internal Student Grievance Complaint against several students and Defendant  
5 Kimball with the CLU administration. Plaintiffs are informed and believe that CLU  
6 opened an investigation into said Internal Student Grievance Complaints approximately  
7 a month later in mid-March 2020. The players and the coaches of the Softball Team were  
8 then interviewed in mid to late March 2020 by an investigator hired by Defendants.  
9 Plaintiffs are informed and believe that CLU waited until late into the following fall  
10 semester to inform Plaintiffs that CLU closed said investigation finding no violations of  
11 the Handbook.

12 **G. CLU’S CONTINUED CAMPUS-WIDE PUBLIC SHAMING OF THE**  
13 **SOFTBALL TEAM AND REFUSAL TO PROVIDE THE SOFTBALL**  
14 **TEAM REQUESTED PROFESSIONAL MENTAL HEALTH SERVICES.**

15 123. On or about February 24, 2020, Defendants made it mandatory that the members  
16 of the Softball Program attend another meeting featuring guest speaker Dr. Shaun Harper  
17 from the University of Southern California’s Race and Equity Center. The stated purpose  
18 of the meeting was to discuss the topic of “inclusion” with the entire CLU community.  
19 However, the topic of “inclusion” was barely discussed. Rather, the meeting actually  
20 became another vehicle for Plaintiffs to be publicly shamed and ridiculed.

21 124. Plaintiffs are informed and believe that Defendant Doherty had reserved seats in  
22 the gym for the Softball Team to sit up front and center so that the CLU community could  
23 see that they were the focus of the meeting. All other students attending were allowed to  
24 sit wherever, and with whomever, they wished. Dr. Harper then allowed both students  
25 and faculty to get up and otherwise chastise and malign the Softball Team in front of the  
26 CLU community. At one point, Dr. Harper joined in the public ridiculing of the Softball  
27 Team by adopting the statement that the Softball Team was obviously guilty of racism  
28

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1 because they hired a lawyer to represent their interests, and **only guilty people hire**  
2 **lawyers.**

3 125. At this point, Plaintiffs’ counsel expressly informed CLU’s counsel that the  
4 Softball Team would not be attending any further meetings due to the fact that said  
5 meetings were interfering with the Softball Team’s school work and degrading their  
6 mental health. Despite this admonition, on or about February 26, 2020, Defendant  
7 Doherty again attempted to single out the Softball Team and make them attend several  
8 more hours of meetings related to the “Blackface” incident. In declining to attend any  
9 further meetings, one of the Softball Team players responded to Defendant Doherty:

10 “you should be aware that **the members of the softball team need**  
11 **professional mental health help** instead of poems, trees and rocks. The  
12 damage inflicted by the university on all of the team is deep and traumatic.  
13 If the university is truly trying to look out for our welfare, your time would  
14 be better spent making such arrangements.”

15 126. In addition to requesting professional mental health help in writing, Plaintiffs  
16 prepared and provided to CLU individual impact statements from each of the players and  
17 coaches. Said statements reveal the extreme emotional distress they have suffered as a  
18 result of the discriminatory harassment and treatment memorialized herein<sup>26</sup>

19  
20  
21 <sup>26</sup> Said impact statements included the following descriptions of the effect Defendants’  
conduct has personally had on them:

- 22 • “Constant anxiety...feelings of panic... hoping that this will not be a forever  
23 medication”  
24 • “...Anxiety and depression...lack of sleep...lonely and emotionally weak...  
25 emotionally unstable. The community never knew what actual [sic] happened, so I  
26 constantly felt like I had to fix my broken reputation by explaining myself and what  
27 actually happened”  
28 • “The accusations of racism that came from this were never apparent to any of us,  
including our black coach... This nausea turned to anxiety, which stayed with me for days  
and days as this ordeal trudged on... uncomfortable and full of anxiety... unable to focus

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1 127. Further review of the statements show that a majority of Plaintiffs suffered in a  
2 similar manner: They have vomited, cried uncontrollably, lost sleep, lost weight, have  
3 been unable to focus on their studies, and have been made to feel isolated. Additionally,  
4 most of the Softball Players have stated that they are now on medication for their  
5 depression, anxiety, and PTSD, and that some otherwise submitted themselves to the care  
6 of medical professionals as a direct result of Defendants’ conduct.

7 **H. ADDITIONAL EMPLOYMENT ISSUES REGARDING THE COACHES**

8 128. As a result of the Defendants’ false “Blackface” narrative, all three softball coaches  
9 suffered damages to their reputation and wellbeing.

10 129. Defendants caused a hostile work environment for the coaches and caused the  
11 coaches to suffer damages resulting from being directly and/or indirectly publicly  
12 ridiculed in front of students and peers, being publicly placed on administrative leave,  
13 being made to feel anxious from the threats of physical harm being made to members of  
14

15 \_\_\_\_\_  
16 ... anxiety grew, as fear of my future at work and future career stared me in the face...  
emotionally drained.”

17 • “...emotional and mental trauma... crippling anxiety that made it impossible for  
18 me to do everyday things and carry on with my life... intense anxiety that caused me to  
19 lose my appetite for entire days and then overindulge in food and binge. I couldn't not  
20 [sic] sleep at night, I would wake up with night terrors... of deep sadness and lack of  
motivation... makes me sick to my stomach... extremely nauseous...”

21 • “I’ve never felt so targeted in my life.”

22 • “Made me sick to my stomach...I could not sleep... I felt attacked.”

23 • “Felt very blindsided...I didn’t have an appetite...I burst into tears... I would cry  
silently in the bathroom.”

24 • “I became distraught... I had an extreme loss of appetite as well as sleep. **I was**  
**unable to focus on any of my classes**... My depression and anxiety flared.”

25 • “I was lethargic and **I couldn’t focus for more than 10 minutes at a time on**  
26 **school work**... depression set in... This experience has caused me to feel anxiety,  
27 embarrassment, depression, anger, sadness, exhaustion, unfocused, and just emotionally  
28 drained. It has turned me into a person I don’t recognize. I feel as if I’ve been existing  
outside of my body and that I’m not living my life as I’ve known it.”

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1 the CLU Softball Program, and Defendants refusing to provide any additional security to  
2 Plaintiffs during practice for over a week.

3 130. Defendants’ creation of a hostile work environment has resulted in substantial  
4 emotional distress to the coaches, including causing substantial fear, anxiety, or emotional  
5 torment.

6 131. Defendants’ conduct has resulted in severe emotional distress, which has resulted  
7 in physical manifestations including, but not limited to: loss of sleep; anxiety; depression;  
8 nausea; loss of appetite; loss of weight; fear; sense of helplessness; and despair.

9 132. Coach Young and Coach Gluckman have sought other employment due to the  
10 intense harassment, defamation, and hostile work environment perpetuated by  
11 Defendants.

12 **I. EXHAUSTION OF ADMINISTRATIVE PROCEDURE**

13 133. All legal prerequisites for proceeding with the claims contained in this complaint  
14 have been met.

15 134. On or about August 3, 2021, Coach Day, through counsel, sent a letter to the Labor  
16 Workforce Development Agency and Defendants outlining claims pursuant to the Private  
17 Attorney General Act (“PAGA”). The LWDA has not responded to the letter, and thus  
18 Coach Day may proceed with the PAGA claims outlined below.

19 135. Coach Day, Coach Young, and Coach Gluckman have all received a “Right to Sue”  
20 letter from the Department of Fair Employment and Housing of the State of California  
21 authorizing their claims against Defendants stated herein.

22 **FIRST CAUSE OF ACTION**

23 **BREACH OF CONTRACT**

24 **DOES 1 THROUGH 24 AGAINST CLU and ROES 1 THROUGH 20**

25 136. Plaintiffs hereby incorporate by reference each and every allegation contained in  
26 paragraphs 1 through 135 of this Complaint as though fully set forth herein.

27 137. Plaintiffs are informed and believe that CLU and ROES 1 through 20 (collectively  
28 “Contract Defendants”) entered into written contractual agreements with DOES 1-24

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1 whereby the Parties agreed to adhere to the Student Handbook (the “Handbook”), relevant  
2 portions of which are incorporated herein.

3 138. Plaintiffs are informed and believe that the 2019-2020 Student Handbook  
4 (“Handbook”) is one of the primary documents that spells out the contractual relationship  
5 between Contract Defendants and DOES 1-24. A contract was initially formed when  
6 Contract Defendants accepted the students and when the students submitted their initial  
7 payment to attend CLU.

8 139. Plaintiffs are informed and believe that Page 3 of the Handbook specifies:  
9 “Students accept the following policies and agree to be bound thereby upon admission,  
10 readmission, or continued enrollment with California Lutheran University. Any student  
11 is bound to follow all of the University’s policies and procedures and is subject to the  
12 jurisdiction of the University with regard to violations of such policies and procedures.  
13 California Lutheran University students who fail to read this handbook will not be  
14 excused from compliance with policies and procedures.”

15 140. Plaintiffs are informed and believe that Contract Defendants entered into a contract  
16 with DOES 1-24 to attend CLU and play softball for CLU in exchange for DOES 1-24  
17 enrolling in CLU and paying tuition. Included in the terms of that agreement was that all  
18 parties would abide by, and conduct themselves in accordance with, the terms in the  
19 Handbook and the Code of Conduct therein. When Contract Defendants violated the  
20 Handbook Code of Conduct, it breached its contract with DOES 1-24.

21 141. Plaintiffs are informed and believe that the CLU Code of Conduct at all relevant  
22 times specified in relevant part:

23  
24 17.0 Student Harassment and Bullying

25 “The University seeks to create and maintain an academic environment in  
26 which all members of the community are free from harassment and bullying  
27 based on sex, race ... color, .... harassment compromises the integrity of a  
28 liberal arts education, because it makes the learning and working  
environment hostile, intimidating and offensive; it destroys opportunities

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1 for students to develop a strong, positive self-concept and the sense of self-  
2 confidence which is essential to living out the ideals of a liberal arts  
3 education. In addition, persons who harass others compromise their own  
4 integrity and credibility. Consequently, no form of harassment will be  
tolerated at California Lutheran University.”

5 “17.1 **Harassment:** Harassment refers to unwelcome behavior that is  
6 offensive, fails to respect the rights of others, and interferes with work,  
7 learning, living or campus environment. Harassment includes intimidation,  
8 invasion of privacy, or any threat to the well-being of a person or a group  
9 which is communicated verbally, in writing, or through contact by  
10 telephone, computer, a third party, or by any other means of  
communication. Forms of harassment include, but are not limited to: ...  
11 postings on social media sites or other applications.”

12 18.0 **Hate Crime** Harassment directed to members of the University's  
13 community based on race and color, and it otherwise constitutes “any act  
14 that has the purposes or effect of unreasonably or substantially interfering  
with an individual’s safety and security by creating a(n) intimidating,  
15 hostile, discriminatory, or offensive education or working environment,  
16 which the University has promised its students “will not be tolerated.”

17 142. On or about February 14, 2020, the Softball Team filed an Internal Student  
18 Grievance Complaint against a student and Defendant Kimball with the CLU  
19 administration. Additionally, on or about February 15, 2020, the Softball Team filed an  
20 Internal Student Grievance Complaint against another student and Defendant Kimball  
21 with the CLU administration. Plaintiffs are informed and believe that Contract Defendants  
22 opened an investigation into said Internal Student Grievance Complaints approximately  
23 a month later.

24 143. Plaintiffs are informed and believe that the subject post by one of the students that  
25 used a racial slur directed at the Softball Team constituted a Hate Crime under Section  
26 18.1 of the Handbook, in that it is an offense “motivated by hatred against a victim or a  
27 group of victims based on their actual or perceived race,” and is reportable as intimidation  
28 under the Clery Act. Such conduct is an offense that may result in suspension/dismissal  
from the University.

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1 144. Plaintiffs are informed and believe that the subject post also constitutes a Hate  
2 Incident under Section 18.2 of the Handbook, which is “broadly defined as acts which  
3 threaten a person’s sense of belonging, dignity, emotional and/or physical well-being.”

4 145. Plaintiffs are informed and believe that, in addition, it is abundantly clear that said  
5 student and countless others would not have directed their venom toward the Softball  
6 Team but for the egregiously wrongful actions of Defendants. Defendants, through their  
7 extremely reckless and grossly negligent conduct, have fostered and maintained a racially  
8 toxic environment on campus that has directly and proximately caused these postings, and  
9 many other postings of a similar nature, to be directed at the Softball Team.

10 146. Plaintiffs are informed and believe that Contract Defendants breached its contract  
11 to DOES 1-24 by engaging in harassing behavior in violation of the terms of the  
12 Handbook, and otherwise letting others violate the Handbook with regard to conduct  
13 directed at the Softball Team.

14 147. Plaintiffs are informed and believe that by Defendants engaging in the conduct set  
15 forth above, including cyberbullying and perpetuating falsehoods in an effort to harm  
16 Plaintiffs, Plaintiffs did not receive the benefits of their bargain. As such, Contract  
17 Defendants should pay an amount sufficient to restore each Plaintiffs to their position but  
18 for Defendants’ breach.

19 148. Plaintiffs are informed and believe that DOES 1-24 performed all conditions,  
20 covenants, and promises required of them to be performed in accordance with the terms  
21 of the Handbook, except for those provisions they have been prevented by Contract  
22 Defendants from performing or which otherwise have been excused.

23 149. Plaintiffs are informed and believe that Contract Defendants breached the terms of  
24 the Handbook by allowing unjustified violations of the Handbook, which included, but  
25 were not limited to: permitting hate crimes and harassment on campus; permitting  
26 cyberbullying; de facto punishing DOES 1-24 without affording them the right to due  
27 process, as required by the Handbook; and failing to timely investigate complaints, as  
28 required by the Handbook.

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1 150. Plaintiffs are informed and believe that Contract Defendants’ breaches of contract  
2 caused harm to Plaintiffs. Such harm includes the fact that some of DOES 1-24 will not  
3 obtain a degree from CLU, which was the reason that they entered into a contract with  
4 Contract Defendants in the first place and paid approximately \$66,000 per year over the  
5 past four (4) years. DOES 1-24 seek reimbursement of some or all of their tuition and fees  
6 paid to Contract Defendants, in an amount to be proven at trial.

7 151. Plaintiffs are informed and believe that Contract Defendants’ breaches of contract  
8 forced some of Plaintiffs to transfer to other universities, at a cost to be proven at trial,  
9 but is estimated to exceed \$66,000 per Plaintiff that transferred away from CLU.

10 152. Contract Defendants’ conduct in breaching the contract was a substantial factor in  
11 causing DOES 1-24 harm. As a direct, foreseeable and proximate result of Contract  
12 Defendants’ breach of the implied covenant, DOES 1-24 have suffered and sustained  
13 damages in an amount according to proof.

14 **SECOND CAUSE OF ACTION**

15 **SLANDER**

16 **DOES 1 THROUGH 24 AGAINST ALL DEFENDANTS**

17 **and ROES 21 THROUGH 40**

18 153. Plaintiffs hereby incorporate by reference each and every allegation contained in  
19 preceding paragraphs 1 through 152 of this Complaint as though fully set forth herein.

20 154. Plaintiffs are informed and believe that numerous false oral statements have been  
21 made in and around campus concerning the Softball Team. These statements were made  
22 in open forums by CLU representatives Defendants Kimball, Doherty, McHugh, and  
23 ROES 21-40 (Collectively “Slander Defendants”).

24 155. Plaintiffs are informed and believe that numerous false oral statements were made  
25 about the Softball Team, even though only DOES 1 through 5 participated in the lip-sync  
26 event.  
27  
28



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1 156. Plaintiffs are informed and believe that these statements have caused great harm to  
2 Plaintiffs. These include statements uttered in open forums, including, but not limited to  
3 a February 8, 2020 meeting and a February 13, 2020 campus open forum meeting.

4 157. Plaintiffs are informed and believe that Slander Defendants' statements were made  
5 within the scope of his/her/their employment with CLU and is/are attributable to CLU.

6 158. Plaintiffs are informed and believe that the Slander Defendants' aforementioned  
7 statements about the Softball Team was/were unprivileged, and false. The Slander  
8 Defendants were obligated not to publicly make any statements about the subject event,  
9 as to do so could constitute a FERPA violation under the circumstances since the  
10 recipients of said statements knew to whom they referred.

11 159. Plaintiffs are informed and believe that the Slander Defendants knew or should  
12 have known that his/her/their statements were false, especially since the Slander  
13 Defendants had prior notice of the falsity of the statements before they were made.

14 160. Plaintiffs are informed and believe that the Slander Defendants failed to use  
15 reasonable care and took no reasonable steps to determine whether their statements were  
16 true or false.

17 161. Plaintiffs are informed and believe that the nature of the statements made by the  
18 Slander Defendants is so defamatory that referral to extrinsic material is unnecessary to  
19 determine their defamatory meaning and/or effect. As such, the Slander Defendants'  
20 statements pertaining to the Softball Team are slander per se.

21 162. As a direct and proximate result of the Slander Defendants' statements, DOES 1-  
22 24 have been injured, including, but not limited to, injury to their reputations, as well as  
23 injury to their emotional health, well-being, and personal relationships, as discussed  
24 above. These statements also directly injured DOES 1-24 in their occupation as students  
25 and as athletes.

26 163. As a direct and proximate result of the Slander Defendants' statements, DOES 1-  
27 24 have incurred special damages that include, but are not limited to, the costs associated  
28

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1 with seeking mental health help to address the harm caused by virtue of Slander  
2 Defendants’ misconduct.

3 164. Plaintiffs are informed and believe that the Slander Defendants made said false  
4 statements about and/or concerning DOES 1-24 with malice, oppression, and/or fraud,  
5 and intended to injure and damage DOES 1-24 with the false statements, which warrants  
6 an award of punitive damages.

7 165. Plaintiffs are informed and believe that, as a direct and proximate result of the  
8 conduct of Slander Defendants as stated herein, DOES 1-24 have been damaged in an  
9 amount to be proven at trial, but which is otherwise expected to exceed collectively  
10 \$80,000,000.

11 166. Plaintiffs are informed and believe that, in doing the acts alleged herein, Slander  
12 Defendants acted with oppression, fraud, malice, and in total disregard of the Softball  
13 Team’s rights. As such, DOES 1-24 are entitled to exemplary damages in an amount  
14 designed to deter such behavior in the future.

15 **THIRD CAUSE OF ACTION**

16 **LIBEL**

17 **DOES 1 THROUGH 24 AGAINST CLU, KIMBALL DOHERTY,**  
18 **and ROES 41 THROUGH 60**

19 167. Plaintiffs hereby incorporate by reference each and every allegation contained in  
20 preceding paragraphs 1 through 166 of this Complaint as though fully set forth herein.

21 168. Plaintiffs are informed and believe that written defamatory matter was published  
22 to thousands of members of the CLU community in at least two emails by Defendant  
23 Kimball and Defendant Doherty and Roes 41 through 60 on behalf of the CLU  
24 administration (Collectively “Libel Defendants”); *to wit*, the February 5, 2020 email and  
25 February 10, 2020 email. The statements in these emails were then republished by various  
26 news agencies, including national news agencies, as well as thousands of social media  
27 posts.

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1 169. Plaintiffs are informed and believe that the statements made by the Libel  
2 Defendants in said emails pertaining to DOES 1-24 were false, including those that  
3 expressly state that CLU student athletes engaged in “Blackface” and engaged in  
4 “Blackface” performances. The truth is that there never was an incident involving student  
5 athletes engaging in “Blackface,” let alone in several “Blackface” performances, under  
6 the generally understood definition of the term “Blackface.”

7 170. Plaintiffs are informed and believe that the entire CLU student body and faculty,  
8 and eventually the world, understood that said emails and “Blackface” statements were  
9 referring to the Softball Team, a small group of 24 girls. Further, immediately after the  
10 publication of the February 5th email, members of the Softball Team were contacted by  
11 various media sources and reporters seeking information as to the statements made  
12 therein, and members of student government were posting on social media that they knew  
13 for certain that the Libel Defendants were referring to the Softball Team in said email.  
14 Additionally, the Softball Team expressly informed the Libel Defendants that they were  
15 receiving harmful threats because it was generally understood that the Libel Defendants  
16 were speaking about DOES 1-24 in their February 5<sup>th</sup> email. As such, the statements  
17 therein were defamatory on their face as applied to a small group of players and coaches  
18 that constitute the members of the CLU Softball Program.

19 171. Plaintiffs are informed and believe that readers of these publications reasonably  
20 understood, without resort to any extrinsic material or explanatory information, that Libel  
21 Defendants meant that the Softball Team intentionally engaged in harmful racial  
22 misconduct, including “blackface” performances. As such, it was generally understood  
23 by the public receiving said emails that the Softball Team as whole had applied paint to  
24 their faces in order to create offensive caricatures of African-Americans. These  
25 statements directly injured DOES 1-24 in their occupation as students and as athletes.

26 172. Plaintiffs are informed and believe that readers of various publications reasonably  
27 understood, without resort to any extrinsic material or explanatory information, that  
28 statements regarding the use of “blackface” were of and concerned the Softball Team.

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1 173. Plaintiffs are informed and believe that readers of various publications reasonably  
2 understood, without resort to any extrinsic material or explanatory information, that the  
3 Libel Defendants’ statements meant that the Softball Team had engaged in “blackface,”  
4 meaning that DOES 1-24 had collectively applied paint to their faces in order to create  
5 offensive caricatures of African-Americans.

6 174. Plaintiffs are informed and believe that the Libel Defendants’ aforementioned  
7 written statements about the Softball Team were unprivileged and false. The Libel  
8 Defendants were obligated not to publicly make any statements about the subject event,  
9 as to do so could constitute a FERPA violation under the circumstances.

10 175. Plaintiffs are informed and believe that Libel Defendants knew or should have  
11 known that the statements pertaining to the Softball Team in said emails were maliciously  
12 false, especially because the Libel Defendants had been directly informed of the falsity  
13 of their statements before they were made yet continued to publicly broadcast said  
14 statements to thousands in any event.

15 176. Plaintiffs are informed and believe that Libel Defendants took no reasonable steps  
16 to determine whether the statements they broadcasted referring to DOES 1-24 were true.  
17 Had Libel Defendants exercised reasonable, or even minimal, care to investigate the  
18 circumstances giving rise to the photographs, they would have learned the falsity of their  
19 statements.

20 177. Plaintiffs are informed and believe that the nature of the statements made by the  
21 Libel Defendants is so defamatory that referral to extrinsic material is unnecessary to  
22 determine their defamatory meaning and/or effect. As such, the Libel Defendants’  
23 statements pertaining to the Softball Team are libel per se.

24 178. Plaintiffs are informed and believe that as a direct and proximate result of the  
25 conduct of Libel Defendants described herein, DOES 1-24 have been shunned, avoided,  
26 and/or injured in their occupation as students and athletes.

27 179. Plaintiffs are informed and believe that, as a direct and proximate result of the  
28 conduct of Libel Defendants as stated herein, DOES 1-24 have been damaged in an

1 amount to be proven at trial, but which otherwise is expected to collectively exceed  
2 \$80,000,000.

3 180. Plaintiffs are informed and believe that, in doing the acts alleged herein, Libel  
4 Defendants acted with oppression, fraud, malice, and in total disregard of the Softball  
5 Team’s rights. As such, DOES 1-24 are entitled to exemplary damages in an amount  
6 designed to deter such behavior in the future.

7 **FOURTH CAUSE OF ACTION**

8 **FALSE LIGHT**

9 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

10 **and ROES 61 THROUGH 80**

11 181. Plaintiffs hereby incorporate by reference each and every allegation contained in  
12 preceding paragraphs 1 through 180 of this Complaint as though fully set forth herein.

13 182. Plaintiffs are informed and believe that named Defendants and ROES 61 through  
14 80 (Collectively “False Light Defendants”) have made numerous false statements  
15 regarding Plaintiffs, which have depicted Plaintiffs in a false light in the public eye. These  
16 statements include, but are not limited to, statements that made it seem that all of the  
17 Plaintiffs had engaged in, or otherwise allowed there to be, “blackface” performances  
18 that were orchestrated and/or promoted and/or tolerated by Plaintiffs, and that the Softball  
19 Team had collectively applied paint to their faces in order to specifically create offensive  
20 comedic caricatures of African-Americans.

21 183. The publicity created by False Light Defendants was offensive and objectionable  
22 to Plaintiffs and to a reasonable person of ordinary sensibilities.

23 184. The publicity created by False Light Defendants was done with gross negligence,  
24 oppression, fraud, and/or malice in that it was made either with knowledge of its falsity  
25 or in reckless disregard of its truth in that the statements depicting Plaintiffs were  
26 calculated falsehoods because False Light Defendants knew the statements to be false at  
27 the time the statements were made. For instance, Defendant Kimball knew that there was  
28 no “Blackface” incident before he confirmed to news outlets that there was a “Blackface”

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1 incident and saying that those who were responsible would be held accountable.  
2 Nonetheless, said Defendants proceeded with the publication of false facts to portray  
3 Plaintiffs in a false light.

4 185. As a proximate result of the above-mentioned disclosure and depictions, Plaintiffs  
5 suffered general damages in an amount according to proof. Plaintiffs are informed and  
6 believe that, as a direct and proximate result of the conduct of False Light Defendants as  
7 stated herein, Plaintiffs have been damaged in an amount to be proven at trial, but which  
8 is otherwise is expected to exceed \$100,000,000.

9 186. Plaintiffs are informed and believe that, in doing the acts alleged herein, False  
10 Light Defendants acted with oppression, fraud, malice, and in total disregard of Plaintiffs’  
11 rights. As such, Plaintiffs are entitled to exemplary damages in an amount designed to  
12 deter such behavior in the future.

13 187. Plaintiffs believe that False Light Defendants will continue disclosing the above  
14 information. Unless and until enjoined and restrained by order of this court, and otherwise  
15 ordered to retract their statements, False Light Defendants’ will continue publication of  
16 their lies, which will in turn continue to cause Plaintiffs great and irreparable lifelong  
17 injuries. Plaintiffs have no adequate remedy at law for the injuries being suffered in that  
18 a judgment for monetary damages will be inadequate.

19 **FIFTH CAUSE OF ACTION**

20 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

21 **DOES 1 THROUGH 24 AGAINST ALL DEFENDANTS**

22 **and ROES 81 THROUGH 100**

23 188. Plaintiffs incorporate paragraphs 1 through 187 of this Complaint as if fully set  
24 forth herein.

25 189. Plaintiffs are informed and believe that the conduct of the named Defendants and  
26 ROES 81-100 (Collectively “IIED Defendants”) alleged in the preceding paragraphs is  
27 outside the parameters of the normal educational experience and constitutes outrageous  
28 conduct.

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1 190. Plaintiffs are informed and believe that the IIED Defendants owe the Softball Team  
2 a duty of care to not engage in conduct that they knew, or with reasonable care should  
3 have known, will cause the Softball Team extreme emotional distress.

4 191. Plaintiffs are informed and believe that the IIED Defendants knowingly and  
5 intentionally breached said duty of care that they owed to DOES 1-24 by engaging in the  
6 aforementioned conduct. By way of example, DOES 1-24 informed the IIED Defendants'  
7 that their conduct, including, but not limited to falsely accusing the Softball Team of  
8 engaging in "Blackface," and publicly confirming to the entire CLU community that the  
9 Softball team had engaged in such conduct, was causing them severe emotional distress.  
10 Yet, despite being so informed, the IIED Defendants persisted in publishing said false  
11 information, and in an even more inflammatory manner.

12 192. As stated above, Plaintiffs are informed and believe that the IIED Defendants'  
13 conduct was a substantial factor in causing the Softball Team to suffer severe emotional  
14 distress and physical manifestations of that emotional distress.

15 193. Plaintiffs are informed and believe that the IIED Defendants' conduct was not  
16 privileged. As to this point, the IIED Defendants were legally obligated to not publicly  
17 discuss anything having to do with the subject incident, as doing so could constitute a  
18 FERPA violation regarding the potential disclosure of a student's disciplinary record  
19 contained in a private and legally protected student file.

20 194. The Softball Team's damages include, but are not limited to, lost educational  
21 benefits, diminished future earning capacity, and loss of future employment  
22 opportunities. The Softball Team members have also suffered and continue to suffer  
23 depression, anxiety, loss of sleep, nausea, vomiting, shame, loss of appetite, humiliation,  
24 emotional distress, as well as pain and suffering.

25 195. In performing the acts described herein, the IIED Defendants were guilty of gross  
26 negligence, oppression, fraud, and/or malice, in that the IIED Defendants engaged in such  
27 conduct with a willful and conscious disregard of Plaintiffs' property rights. The Softball  
28 Team therefore seeks an award of damages, including punitive damages, in an amount to

1 be proven at trial, but that is otherwise high enough to ensure that the IIED Defendants  
2 will never engage in such conduct against their own students ever again.

3 **SIXTH CAUSE OF ACTION**

4 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

5 **DOES 1 THROUGH 24 AGAINST ALL DEFENDANTS**

6 **and ROES 101 THROUGH 120**

7 196. Plaintiffs incorporate paragraphs 1 through 135 of this Complaint as if fully set  
8 forth herein.

9 197. Plaintiffs are informed and believes that the conduct of the named Defendants and  
10 ROES 101-120 (Collectively “NIED Defendants”) alleged in the preceding paragraphs is  
11 outside the parameters of the normal educational experience and constitutes outrageous  
12 conduct.

13 198. Plaintiffs are informed and believe that the NIED Defendants owe DOES 1-24 a  
14 duty of care to not engage in conduct that they know, or with reasonable care should have  
15 known, will cause the Softball Team extreme emotional distress.

16 199. Plaintiffs are informed and believe that the NIED Defendants were negligent and  
17 breached said duty of care that they owed to the Softball Team by engaging in the  
18 aforementioned conduct, which, at a minimum, caused the Softball Team to suffer serious  
19 emotional distress.

20 200. As stated above, Plaintiffs are informed and believe that the NIED Defendants’  
21 conduct was a substantial factor in causing the Softball Team to suffer severe emotional  
22 distress and physical manifestations of that emotional distress.

23 201. Plaintiffs are informed and believe that the NIED Defendants’ conduct was a  
24 substantial factor in causing the Softball Team severe emotional distress.

25 202. The Softball Team’s damages include, but are not limited to, lost educational  
26 benefits, future earning capacity and other future employment benefits. The Softball  
27 Team members have also suffered and continue to suffer depression, anxiety, nausea,  
28

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1 vomiting, loss of sleep, depression, shame, loss of appetite, humiliation, emotional  
2 distress, as well as pain and suffering.

3 **SEVENTH CAUSE OF ACTION**

4 **NEGLIGENCE**

5 **DOES 1 THROUGH 24 AGAINST ALL DEFENDANTS**

6 **and ROES 121 THROUGH 140**

7 203. Plaintiffs incorporate paragraphs 1 through 135 of this Complaint as if fully set  
8 forth herein.

9 204. Plaintiffs are informed and believe that the conduct of the named Defendants and  
10 ROES 121-140 (Collectively “Negligence Defendants”) alleged in the preceding  
11 paragraphs is outside the parameters of the normal educational experience.

12 205. Plaintiffs are informed and believe that the Negligence Defendants owe DOES 1-  
13 24 various duties of care to act as a normal and prudent university, and to otherwise not  
14 engage in conduct that they know, or with reasonable care should know, will cause their  
15 students undue harm and severe emotional distress.

16 206. Plaintiffs are informed and believe that the Negligence Defendants were negligent  
17 and breached said duties of care that they owed to the Softball Team by engaging in the  
18 aforementioned conduct, which, at a minimum, caused the Softball Team to suffer serious  
19 emotional distress.

20 207. Plaintiffs are informed and believe that, as an actual and proximate cause of the  
21 conduct of the Negligence Defendants, the Softball Team has been damaged and suffered  
22 harm, including severe emotional distress and physical manifestations of that emotional  
23 distress, all in an amount to be proven at trial.

24 **EIGHTH CAUSE OF ACTION**

25 **VIOLATION OF TITLE IX**

26 **ALL PLAINTIFFS AGAINST DEFENDANT CLU**

27 208. Plaintiffs incorporate paragraphs 1 through 207 of this Complaint as if fully set  
28 forth herein.

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1 209. Plaintiffs are informed and believe that, as stated above, Defendant CLU engaged  
2 in disparate treatment between the CLU Women’s Softball Program and the CLU Men’s  
3 Baseball program, in addition to other instances of unfair treatment when compared to  
4 other CLU sports programs. Such disparate treatment included unequal access to facilities  
5 and services, wherein CLU allowed money, equipment, services, and benefits to be  
6 directed to the CLU Men’s Baseball program that it did not provide to the CLU Women’s  
7 program. Further, there was no justifiable reason for said disparate treatment between the  
8 two programs.

9 210. Plaintiffs are informed and believe that Coach Day reported issues of disparate  
10 treatment to CLU’s agents including, but not limited to: Kuntz, Defendant McHugh and  
11 Defendant Kimball. These individuals were/are responsible employees who had the  
12 ability to respond to Coach Day’s report.

13 211. Plaintiffs are informed and believe that CLU acted with deliberate indifference in  
14 response to Coach Day’s reports. For example, CLU intentionally failed to include  
15 information about the disparity between the money, equipment, services, and benefits  
16 directed to the CLU Men’s Baseball program that were not provided to the CLU  
17 Women’s program when it hired a third-party investigator to determine if CLU had  
18 violated Title IX. CLU showed further deliberate indifference by predetermining the  
19 outcome of Coach Day’s complaint.

20 212. Plaintiffs are informed and believe that CLU intentionally discriminated against  
21 Coach Day and the Softball Team based on their gender in general, and specifically in  
22 the manner in which it responded to Coach Day’s complaint.

23 213. Plaintiffs are informed and believe that CLU presented to Coach Day and the  
24 Softball Team that CLU was following its policies, including providing a fair and neutral  
25 investigation into Coach Day’s report. However, in reality, CLU’s investigation process  
26 was nothing more than a charade intended to mislead Plaintiffs.

27 214. Plaintiffs are informed and believe that Defendants came to an erroneous outcome  
28 regarding Coach Day’s NCAA complaint in December 2019. Just one month after CLU

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1 predetermined the outcome of Coach Day’s potential Title IX violation, CLU and its  
2 agents perpetuated a false “blackface” event, and otherwise completely mishandled said  
3 event in part to retaliate against Coach Day for reporting the potential Title IX violation  
4 in conjunction with other NCAA violations.

5 215. Plaintiffs are informed and believe that, as a result of CLU’s Title IX violations,  
6 Coach Day suffered emotional distress, including but not limited to, emotional distress,  
7 fear, anxiety, and trauma; lost past and future earnings and earning capacity; and delays  
8 in pursuing her career.

9 216. Plaintiffs are informed and believe that as a result of CLU’s Title IX violations,  
10 DOES 1-24 suffered emotional distress, including but not limited to, emotional distress,  
11 fear, anxiety, and trauma, shame; and delays in pursuing their education.

12 217. Plaintiffs are informed and believe that, unless restrained, CLU will continue to  
13 violate Title IX. As such, Plaintiffs have no adequate remedy at law, and hereby seek an  
14 injunction against CLU to cure its Title IX violations and ensure reasonable parody of  
15 the services, facilities, opportunities and benefits between the CLU Men’s Baseball  
16 program and the CLU Women’s Softball program.

17 **NINTH CAUSE OF ACTION**

18 **RETALIATION**

19 **PLAINTIFF DAY AGAINST DEFENDANTS CLU, KIMBALL, MCCUGH**  
20 **and ROES 141 THROUGH 160**

21 218. Plaintiffs incorporate paragraphs 1 through 217 of this Complaint as if fully set  
22 forth herein.

23 219. Plaintiffs are informed and believe that, at all times material to this Complaint,  
24 *California Labor Code* §1102.5 was in effect and binding on Defendants, CLU, Kimball,  
25 McCugh and ROES 141-160 (Collectively “Retaliation Defendants”). This section  
26 requires Retaliation Defendants to refrain from retaliating against an employee for  
27 refusing to participate in an activity that she reasonably believes would result in a  
28 violation of a state or federal statute, or a violation or noncompliance with a state or

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1 federal rule or regulation. *Labor Code* §1102.5(b) also states that: “[a]n employer, or any  
2 person acting on behalf of the employer, shall not retaliate against an employee for  
3 disclosing information, or because the employer believes that the employee disclosed or  
4 may disclose information, to a government or law enforcement agency...”

5 220. Plaintiffs are informed and believe that Coach Day has been a victim of retaliation  
6 since questioning the potentially unlawful Title IX practices at CLU, in addition to other  
7 NCAA violations. Retaliation Defendants were dismissive of Coach Day’s questioning  
8 and ultimately publicly punished Coach Day by falsely accusing the Softball Team of  
9 engaging in a “Blackface” incident, and thereby accusing Coach Day of mismanagement  
10 of her Softball program by allowing such a “Blackface” incident to occur, by placing  
11 Coach Day on administrative leave after the incident, and then refusing to clear her name  
12 or employment file when it was ultimately determined that no such “Blackface” incident  
13 occurred as promulgated by Defendant CLU. Thereafter, CLU excluded Coach Day from  
14 department meetings, and continues to this day to exclude Coach Day from said meetings.  
15 CLU’s conduct was in direct retaliation to Coach Day’s reports of potential NCAA and  
16 Title IX violations, all in violation of the law. Coach Day is informed and believes that  
17 she had a reasonable belief that Retaliation Defendants were violating state and federal  
18 laws, and questioned those violations to CLU, as Retaliation Defendants well knew, and  
19 as alleged hereinabove.

20 221. Plaintiffs are informed and believe that Retaliation Defendants retaliated against  
21 Coach Day by harassing, and threatening to terminate her, among other things, all in  
22 violation of *Labor Code* § 1102.5.

23 222. Plaintiffs are informed and believe that, following Coach Day’s questions  
24 regarding potential NCAA and Title IX violations, Retaliation Defendants engaged in  
25 conduct that, taken as a whole, materially and adversely affected the terms and conditions  
26 of Coach Day’s work environment. Coach Day’s questions were, in part, a motivating  
27 reason for Retaliation Defendants to fabricate a false narrative regarding the “Blackface”  
28 incident, and/or a motivating reason for the Retaliation Defendants to have handled the

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1 “Blackface” in a more responsible and professional manner. The decision to retaliate  
2 against Coach Day and to create a false narrative regarding the Softball Team was in  
3 close nexus to Coach Day’s questioning of Retaliation Defendants’ potentially unlawful  
4 practices.

5 223. Plaintiffs are informed and believe that, as stated above, said Defendants  
6 encouraged — or did not discourage — CLU employees in their showing of defiance,  
7 insubordination and a total lack of respect toward Coach Day.

8 224. Plaintiffs are informed and believe that, as a direct and proximate cause of  
9 Retaliation Defendants’ retaliatory conduct identified herein, Coach Day was harmed.  
10 Retaliation Defendants’ conduct was a substantial factor in causing Coach Day’s harm.

11 225. As a direct and proximate result of said Retaliation Defendants’ willful, knowing,  
12 and intentional retaliation against Coach Day, she has suffered and continues to suffer  
13 emotional distress, mental and physical pain, anguish, pain and suffering, loss of sleep,  
14 loss of appetite, and anxiety to her damage in a sum according to proof.

15 226. In light of the willful, knowing, and intentional harassment, Coach Day seeks an  
16 award of punitive and exemplary damages in an amount according to proof at trial.

17 227. Coach Day has incurred and continues to incur legal expenses and attorneys’ fees.  
18 Coach Day will seek the recovery of attorneys’ fees and costs at the conclusion of this  
19 lawsuit.

20 **TENTH CAUSE OF ACTION**

21 **HOSTILE WORK ENVIRONMENT**

22 **PLAINTIFFS DAY, YOUNG, AND GLUCKMAN AGAINST DEFENDANTS**

23 **CLU, KIMBALL, DOHERTY, MCHUGH and ROES 161 THROUGH 170**

24 228. The allegations set forth in paragraphs 1 through 227 are realleged and  
25 incorporated by reference as though fully set forth herein.

26 229. Plaintiffs are informed and believe that the above conduct was unwelcome and was  
27 directed towards Coaches Day, Young, and Gluckman based on their status as employees,  
28

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1 and specifically as coaches of the CLU Softball Program. All the above conduct was part  
2 of an ongoing and continuing pattern of conduct.

3 230. Hostile work environment is defined as inappropriate behavior in the workplace,  
4 such as harassment based on race or ethnicity and/or retaliation for exercising a legal  
5 right, that is either severe or pervasive enough to create an abusive work atmosphere for  
6 one or more employees.

7 231. Plaintiffs are informed and believe that the aforementioned conduct (including  
8 conduct directed at Coaches Day, Young, and Gluckman) caused Coaches Day, Young,  
9 and Gluckman to perceive their work environment as intimidating, hostile, abusive or  
10 offensive and created a hostile work environment based on their perceived race and/or  
11 ethnicity and/or in retaliation for exercising a lawful right.

12 232. Plaintiffs are informed and believe that complaints and/or information about much  
13 of the harassing conduct were made to Defendants CLU, Kimball, Doherty, McHugh,  
14 and Roes 161-170 (Collectively “Hostile Work Environment Defendants”). However,  
15 Hostile Work Environment Defendants failed to conduct a prompt, timely, and thorough  
16 investigation into the allegations. After the complaints, the harassment continued in  
17 similar forms and resulted in new forms of harassment and discrimination.

18 233. Hostile Work Environment Defendants’ acts were malicious, oppressive or  
19 fraudulent with intent to vex, injure, annoy, humiliate and embarrass Coaches Day,  
20 Young, and Gluckman, and in conscious disregard of the rights or safety of Coaches Day,  
21 Young, and Gluckman and in furtherance of CLU’s ratification of the wrongful conduct  
22 of the administrators of CLU, including Defendants Kimball, Doherty, and McHugh.  
23 Accordingly, Coaches Day, Young, and Gluckman are entitled to recover punitive  
24 damages from Hostile Work Environment Defendants.

25 234. By reason of the conduct of Hostile Work Environment Defendants’ and each of  
26 them as alleged herein, Coaches Day, Young, and Gluckman have necessarily retained  
27 attorneys to prosecute this action. Coaches Day, Young, and Gluckman are therefore  
28 entitled to reasonable attorney’s fees and litigation expenses, including expert witness

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1 fees and costs incurred in bringing this action. By reason of the conduct of Hostile Work  
2 Environment Defendants’ and each of them as alleged herein, Coaches Day, Young, and  
3 Gluckman sustained economic damages to be proven at trial. As a further result of Hostile  
4 Work Environment Defendants’ and each of their actions, Coaches Day, Young, and  
5 Gluckman have suffered emotional distress, resulting in damages to be proven at trial.

6 235. The above harassing and discriminatory conduct violates FEHA, *Government*  
7 *Code* §§ 12940 and 12941 and California Public Policy, and entitles Coaches Day,  
8 Young, and Gluckman to all categories of damages, including exemplary or punitive  
9 damages against Hostile Work Environment Defendants.

10 **ELEVENTH CAUSE OF ACTION**

11 **CONSTRUCTIVE TERMINATION**

12 **PLAINTIFFS YOUNG AND GLUCKMAN AGAINST DEFENDANT CLU**

13 **and ROES 171 THROUGH 180**

14 236. The allegations set forth in paragraphs 1 through 235 are realleged and  
15 incorporated by reference as though fully set forth herein.

16 237. As a direct result of the aforementioned conduct, Coaches Young and Gluckman  
17 have left their employment at CLU due to the fact that they could no longer tolerate the  
18 abhorrent hostility and treatment they received from CLU, and as such, maintaining their  
19 employment at CLU had become untenable. As such, Coaches Young and Gluckman  
20 have been constructively terminated.

21 238. Plaintiffs are informed and believe that Plaintiffs’ termination was substantially  
22 motivated by both protected complaints and refusal to accept the harassing treatment.  
23 Plaintiffs’ termination violates the public policies contained in the Fair Employment &  
24 Housing Act. Moreover, at all times mentioned in this complaint, *Labor Code* § 1102.5  
25 was in full force and effect and was binding on Defendant CLU and ROES 171-180  
26 (Collectively “Constructive Termination Defendants”). This law requires Constructive  
27 Termination Defendants to refrain from retaliating against employees who refuse to  
28 participate in or condone conduct they reasonably believe to violate state or federal law.

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1 239. Plaintiffs are informed and believe that Coach Young and Coach Gluckman were  
2 constructively terminated at the end of the 2020 Softball Season after being publicly  
3 defamed, harassed, and embarrassed by CLU and its agents at the school, within the  
4 community, and on a national level for an event that simply did not happen. As a further  
5 point, Coach Young and Coach Gluckman were publicly placed on administrative leave  
6 regarding said fabricated event, despite the fact that CLU was in possession of evidence  
7 that no such event took place under said Coaches' supervision. By way of example, and  
8 not limitation, Coach Young and Coach Gluckman were placed on administrative leave  
9 on or about February 8, 2020, which is the same day Defendant Kimball was recorded  
10 saying that the pictures of the Softball Team show that certain players had makeup on  
11 their faces resembling male facial hair stubble, and that there was no racial intent to their  
12 performances. Instead, CLU wrongfully placed Coach Young and Coach Gluckman on  
13 administrative leave for public relations purposes and attempted to make them patsies for  
14 the false narrative CLU was attempting to push regarding the "Blackface" incident.  
15 Remarkably, Plaintiffs are informed and believe that when the Constructive Termination  
16 Defendants put Coach Young on administrative leave to "investigate" said fabricated  
17 "Blackface" incident to further perpetuate their false narrative, CLU did not know that  
18 Coach Young is African-American, and that the Constructive Termination Defendants  
19 were in essence publicly accusing an African-American coach of producing and/or  
20 allowing racially disparaging "Blackface" performances by the Softball Team.

21 240. Plaintiffs are informed and believe that Constructive Termination Defendants'  
22 potentially unlawful and/or unethical conduct, all as mentioned above, were each a  
23 proximate cause of their termination in violation of the law. But for Constructive  
24 Termination Defendants' conduct, Coach Young and Coach Gluckman would more than  
25 likely still be working at CLU.

26 241. At all times material hereto, Coach Young and Coach Gluckman have suffered and  
27 continue to suffer harm due to the discharge. Constructive Termination Defendants'  
28 wrongful termination is a substantial factor in causing such harm. As a direct and



1 proximate result of the constructive termination, Coach Young and Coach Gluckman  
2 have sustained losses in earnings and other employment benefits. As a direct and  
3 proximate result of the constructive termination by Constructive Termination  
4 Defendants, Coach Young and Coach Gluckman have suffered and continues to suffer  
5 humiliation, emotional distress, mental and physical pain and anguish, pain and suffering,  
6 loss of sleep, depression and shame.

7 242. In light of Constructive Termination Defendants’ constructive termination of  
8 Coach Young and Coach Gluckman, said Plaintiffs also seek an award of punitive and  
9 exemplary damages in an amount according to proof at trial.

10 **TWELFTH CAUSE OF ACTION**  
11 **PRIVATE ATTORNEY GENERAL ACTION**  
12 **PLAINTIFF DEBBY DAY AGAINST DEFENDANT CLU**  
13 **and ROES 181 THROUGH 190**

14 243. Plaintiffs incorporate paragraphs 1 through 242 of this Complaint as if fully set  
15 forth herein.

16 244. Plaintiffs are informed and believe that CLU violated its recordkeeping obligations  
17 as to Coach Day and other employees by providing them with inaccurate and/or  
18 incomplete wage statements. Specifically, CLU failed to accurately specify the gross  
19 wages earned by Coach Day and other aggrieved employees by improperly recording  
20 donations to the university from pre-tax categories of the pay stubs, in violation of *Labor*  
21 *Code* § § 226 and 2802. Specifically, Coach Day alleges that the inaccurate recording of  
22 donations resulted in a false recordation of a “all deductions” and “net wages earned” in  
23 violation of *Labor Code* § 226. Plaintiffs are further informed and believe that Defendant  
24 CLU placed donations to the university in the pre-tax donation portion of Plaintiff and  
25 other employees’ pay stubs, in violation of the *Labor Code* and in violation of both state  
26 and federal tax mandates, all in violation of *Labor Code* § 2802.

27 245. Coach Day, an aggrieved employee, hereby seeks recovery of civil penalties as  
28 prescribed by the *Labor Code* Private Attorneys General Act of 2004 on behalf of herself

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1 and other aggrieved employees against whom one or more of the violations of the *Labor*  
2 *Code* were committed.

3 246. On or about August 3, 2020, Coach Day sent a certified letter to the Labor  
4 Workforce and Development Agency (“LWDA”), Defendant CLU as prescribed by  
5 *Labor Code* § 2699.3 regarding claims for penalties pursuant to *Labor Code* § 221-224,  
6 226, 1102.5, and 2802. At least sixty-five (65) days have passed since the postmark date  
7 of that notice and the LWDA has not indicated that it intends to investigate the alleged  
8 violations. Therefore, pursuant to *Labor Code* § 2699.3(a)(2)(A), Plaintiff may  
9 commence a civil action.

10 247. Plaintiff and other aggrieved employees are entitled to penalties for the herein  
11 alleged violations, to be proven at the time of trial, allocated 75% to the LWDA and 25%  
12 to the affected employees, subject to the following formula: a) \$100.00 for the initial  
13 violation per employee per pay period; and b) \$200.00 for each subsequent violation per  
14 employee per pay period.

15 248. The remedies provided under PAGA are intended to be cumulative of other  
16 available remedies. *Lab. Code* § 2699(g)(1).

17 **THIRTEENTH CAUSE OF ACTION**

18 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

19 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS AND ROES 191 THROUGH**  
20 **200**

21 249. Plaintiffs re-allege and incorporate herein by reference each and every allegation  
22 contained in the preceding paragraphs 1 through 248 of this Complaint as though fully  
23 set forth herein.

24 250. Plaintiffs, on their behalf and on behalf of the general public, bring this claim  
25 pursuant to *Business & Professions Code* § 17200, *et seq.* The conduct of all Defendants  
26 and ROES 191 through 200 (Collectively “UCL Defendants”) as alleged in this  
27 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs and  
28 the general public.

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1 251. Plaintiffs are “persons” within the meaning of *Business & Professions Code* §  
2 17204, and therefore have standing to bring this cause of action for injunctive relief,  
3 restitution, and other appropriate equitable relief.

4 252. *Business & Profession Code* §17200, *et seq.* prohibits unlawful and unfair business  
5 practices.

6 253. Plaintiffs are informed and believe that, as stated above, the UCL Defendants have  
7 violated statutes and public policies. Through the conduct alleged in this Complaint, the  
8 UCL Defendants have acted contrary to these public policies, have defamed, harassed,  
9 and retaliated against Plaintiffs, have engaged in unethical business practices, have not  
10 ensured a safe and non-violent educational experience and/or workplace for Plaintiffs and  
11 others, and have engaged in other unlawful and unfair business practices in violation of  
12 *Business & Profession Code* § 17200, *et seq.*, depriving Plaintiffs of rights, benefits, and  
13 privileges guaranteed to all “persons” under the law.

14 254. Plaintiffs are informed and believe that the UCL Defendants’ conduct, as alleged  
15 hereinabove, constitutes unfair competition, in violation of § 17200, *et seq.* of the  
16 *Business & Professions Code*.

17 255. Plaintiffs are informed and believe that the UCL Defendants, by engaging in the  
18 conduct herein alleged, either knew or in the exercise of reasonable care should have  
19 known, that their conduct was unlawful. As such, it is a violation of § 17200, *et seq.* of  
20 the *Business & Professions Code*. As a proximate result of the above-mentioned acts of  
21 the UCL Defendants, Plaintiffs have lost money and/or property.

22 256. Plaintiffs are informed and believe that there is no adequate remedy at law to  
23 address the UCL Defendants’ conduct. Unless restrained by this Court, the UCL  
24 Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant  
25 to *Business & Professions Code* § 17200, *et seq.*, this Court should make such orders or  
26 judgments as may be necessary to prevent the use or employment by the UCL  
27 Defendants, their agents or employees, of any unlawful or deceptive practice prohibited  
28 by the *Business & Professions Code*, including but not limited to disgorgement of profits.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

**FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT:**

- For general, incidental, and/or consequential damages in a sum to be proven at trial;
- For prejudgment interest at the legal rate of 10%;
- For costs of suit incurred herein and as permitted by law; and,
- For such other and further relief as the Court deems appropriate.

**SECOND CAUSE OF ACTION FOR SLANDER:**

- For general, special, incidental, and/or consequential damages in a sum to be proven at trial;
- For punitive damages in an amount high enough to deter such conduct in the future;
- For injunctive relief;
- For prejudgment interest at the legal rate of 10%;
- For costs of suit incurred herein and as permitted by law; and,
- For such other and further relief as the Court deems appropriate.

**THIRD CAUSE OF ACTION FOR LIBEL:**

- For general, special, incidental, and/or consequential damages in a sum to be proven at trial;
- For punitive damages in an amount high enough to deter such conduct in the future;
- For injunctive relief;
- For prejudgment interest at the legal rate of 10%;
- For costs of suit incurred herein and as permitted by law; and,
- For such other and further relief as the Court deems appropriate.

**FOURTH CAUSE OF ACTION FOR FALSE LIGHT:**

- For general, special, incidental, and/or consequential damages in a sum to be

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1 proven at trial;

- 2 • For punitive damages in an amount high enough to deter such conduct in the
- 3 future;
- 4 • For injunctive relief;
- 5 • For prejudgment interest at the legal rate of 10%;
- 6 • For costs of suit incurred herein and as permitted by law; and,
- 7 • For such other and further relief as the Court deems appropriate.

8 **FIFTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF**  
9 **EMOTIONAL DISTRESS:**

- 10 • For general, special, incidental, and/or consequential damages in a sum to be
- 11 proven at trial;
- 12 • For prejudgment interest at the legal rate of 10%;
- 13 • For costs of suit incurred herein and as permitted by law; and,
- 14 • For such other and further relief as the Court deems appropriate.

15 **SIXTH CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF**  
16 **EMOTIONAL DISTRESS:**

- 17 • For general, special, incidental, and/or consequential damages in a sum to be
- 18 proven at trial;
- 19 • For prejudgment interest at the legal rate of 10%;
- 20 • For costs of suit incurred herein and as permitted by law; and,
- 21 • For such other and further relief as the Court deems appropriate.

22 **SEVENTH CAUSE OF ACTION FOR NEGLIGENCE:**

- 23 • For general, special, incidental, and/or consequential damages in a sum to be
- 24 proven at trial;
- 25 • For prejudgment interest at the legal rate of 10%;
- 26 • For costs of suit incurred herein and as permitted by law; and,
- 27 • For such other and further relief as the Court deems appropriate.

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1 **EIGHTH CAUSE OF ACTION FOR VIOLATION OF TITLE IX:**

- 2 • For general, special, incidental, and/or consequential damages in a sum to be
- 3 proven at trial;
- 4 • For prejudgment interest at the legal rate of 10%;
- 5 • For costs of suit incurred herein and as permitted by law; and,
- 6 • For such other and further relief as the Court deems appropriate.

7 **NINTH CAUSE OF ACTION FOR RETALIATION:**

- 8 • For general, special, incidental, and/or consequential damages in a sum to be
- 9 proven at trial;
- 10 • For prejudgment interest at the legal rate of 10%;
- 11 • For punitive damages in an amount high enough to deter such conduct in the
- 12 future;
- 13 • For attorneys’ fees;
- 14 • For costs of suit incurred herein and as permitted by law; and,
- 15 • For such other and further relief as the Court deems appropriate.

16 **TENTH CAUSE OF ACTION FOR HOSTILE WORK ENVIRONMENT:**

- 17 • For general, special, incidental, and/or consequential damages in a sum to be
- 18 proven at trial;
- 19 • For punitive damages in an amount high enough to deter such conduct in the
- 20 future;
- 21 • For attorneys’ fees;
- 22 • For prejudgment interest at the legal rate of 10%;
- 23 • For costs of suit incurred herein and as permitted by law; and,
- 24 • For such other and further relief as the Court deems appropriate.

25 **ELEVENTH CAUSE OF ACTION FOR CONSTRUCTIVE TERMINATION:**

- 26 • For general, special, incidental, and/or consequential damages in a sum to be
- 27 proven at trial;
- 28 • For prejudgment interest at the legal rate of 10%;

- 1 • For costs of suit incurred herein and as permitted by law; and,
- 2 • For such other and further relief as the Court deems appropriate.

**TWELFTH CAUSE OF ACTION FOR VIOLATION OF LABOR CODE § 2699:**

- 4 • For penalties pursuant to Labor Code § 2699;
- 5 • For prejudgment interest at the legal rate of 10%;
- 6 • For reasonable attorneys’ fees and costs of suit incurred herein and as permitted
- 7 by law; and,
- 8 • For such other and further relief as the Court deems appropriate.

**THIRTEENTH CAUSE OF ACTION FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200:**

- 11 • For injunctive relief;
- 12 • For costs of suit incurred herein and as permitted by law; and
- 13 • For such other and further relief as the Court deems appropriate.

14 Dated: July 29, 2021

**Jacobson, Russell, Saltz, Nassim & de la  
Torre, LLP**



\_\_\_\_\_  
Michael J. Saltz, Esq.  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

22 Plaintiffs demand a jury trial of their claims to the extent authorized by law.

23 Dated: July 29, 2021

**Jacobson, Russell, Saltz, Nassim & de la  
Torre, LLP**



\_\_\_\_\_  
Michael J. Saltz, Esq.  
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