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FILED
LOS ANGELES SUPERIOR COURT
AUG 18 2017
Sherrill... Judge/Clerk
By A. Robledo, Deputy

7 Attorneys for Petitioner

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 MATTHEW BOERMEESTER, an individual,
12 Petitioner,
13 v.
14 AINSLEY CARRY, an individual in his official
15 capacity as Assistant Vice Provost for Student
16 Affairs; THE UNIVERSITY OF SOUTHERN
CALIFORNIA, a California corporation; and
17 DOES 1 to 20 inclusive,
18 Respondents.

Case No.: BS170473

[Hon. James C. Chalfant]

**EX PARTE APPLICATION FOR STAY
OF ADMINISTRATIVE ACTION
PENDING COURT REVIEW OF
PETITION; DECLARATIONS;
EXHIBITS; [Proposed] ORDER**

Date: August 18, 2017
Time: 8:30 a.m.
Dept.: 85

19 TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS:

20 PLEASE TAKE NOTICE that on August 18, 2017, at 8:30 a.m. in Department 85 of the
21 above-titled Court, located at 111 N. Hill Street, Los Angeles, California, 90012, Petitioner will, and
22 hereby does, apply *ex parte* for a stay of the operation of Respondents' administrative action, including
23 Petitioner's expulsion from the University of Southern California (hereafter "USC"), pending the court
24 review of his writ petition.

25 THERE IS URGENCY BECAUSE CLASSES FOR USC'S FALL SEMESTER 2017 BEGIN ON
26 MONDAY, AUGUST 21, 2017. A STAY IS NECESSARY TO PREVENT THE IMMEDIATE LOSS
27 OF PETITIONER'S ENTIRE FALL 2017 SEMESTER, AND POTENTIALLY THE ENTIRE 2017
28 2018 SCHOOL YEAR, WHEN HE IS JUST TWO SEMESTERS SHY OF GRADUATING AND

CIT/CASE: BS170473
LEA/DEF#: 00000000
RECEIPT # 00000000
DATE PAID: 08/18/17 02:44 PM
PAYMENT: \$60.00
RECEIVED: 08/18/17 02:44 PM
CHECK #:
CASH:
CHANGE:
CARD: \$0.00

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1 WAS ALREADY SUBJECTED TO AN UNNECESSARY SEMESTER-LONG "INTERIM
2 SUSPENSION" DURING USC'S TITLE IX INVESTIGATION.

3 THE "COMPLAINING PARTY" IN THE UNDERLYING TITLE IX MATTER—PETITIONER'S
4 CURRENT GIRLFRIEND—DENIES THAT ANY MISCONDUCT EVER OCCURRED.

5 As shown in the verified Petition filed herein, Petitioner's Administrative Record to be lodged for
6 the hearing, the attached memorandum, the declaration of Matthew Boermeester, the declaration of Zoe
7 Katz, and any exhibits filed herewith, this court should stay the operation of the administrative decision
8 under Code Civ. Proc. § 1094.5 subd. (g) because: (1) Petitioner presents a colorable claim for writ
9 relief; (2) the requested stay is not contrary to public interest, (3) and the stay causes Respondents no
10 prejudice while preventing irreparable harm to Petitioner's academic success, reputation, professional
11 athletic career, and standing in the academic community.

12 Petitioner's motion is based on the verified Petition for Writ of Mandate; Petitioner's Administrative
13 Record In Support Of Writ Petition, this *ex parte* application; the supporting memorandum of points and
14 authorities; the attached declarations and exhibits; the pleadings, files, and records in this action; and
15 any such argument as may be received by this Court at the hearing on the motion.

17 WERKSMAN JACKSON
18 HATHAWAY & QUINN LLP

19
20 Dated: August 17, 2017

By: 

21 Mark M. Hathaway, Esq.
22 Jenna E. Eyrich, Esq.
23 Attorneys for Petitioner John Doe

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On January 2, 2017, Petitioner Matthew Boermeester, now 23, was a senior, full-scholarship
4 athlete at USC who kicked the game-winning field goal in the final second of the game to give the
5 Trojans a 52-49 victory over Penn State in the Rose Bowl. Petitioner was on track to graduate in May
6 2017 and was planning to continue attending USC while receiving his master’s degree and playing USC
7 football as a graduate student during the Fall 2017 semester.

8 On January 26, 2017, USC ordered Mr. Boermeester escorted off campus by security and banned
9 him from his classes and football, without notice or a hearing, due to alleged “intimate partner violence”
10 with his girlfriend Zoe Katz, which Ms. Katz and Mr. Boermeester deny ever occurred. Mr.
11 Boermeester was barred from participating in the Rose Bowl ceremony for the game he won for USC.

12 Ms. Katz never made any report to USC; rather another student looking out a window thought he
13 saw a physical altercation, told another student about what he thought he saw, and that student told his
14 father, who then made a mandatory report to the USC Title IX Office. Although USC refers to Ms. Katz
15 as the “Reporting Party,” Ms. Katz reported repeatedly to USC that she did not experience any
16 prohibited conduct or “intimate partner violence.” (Decl. Zoe Katz ¶ 4.)

17 The sole complainant against Matthew Boermeester is the University itself, through USC’s Title
18 IX Coordinator Gretchen Dahlinger Means, and USC’s Title IX investigator Lauren Elan Helsper, who
19 investigated and prosecuted Mr. Boermeester for over five months without substantial evidence that
20 misconduct ever occurred and contrary to the direct testimony of the supposed victim.

21 On July 7, 2017, following unsuccessful campus appeals by both Ms. Katz and Mr. Boermeester,
22 Respondent Ainsley Carry ordered Mr. Boermeester expelled.

23 On August 11, 2017, Matthew Boermeester filed his Petition for Writ of Mandate under Code
24 Civ. Proc. § 1094.5, or in the alternative under Code Civ. Proc. § 1085, directed to Respondents in order
25 to redress his improper expulsion. USC’s Title IX sexual misconduct adjudication process is utterly
26 lacking in fairness and due process, with no presumption of innocence, no rules of evidence, no right to
27 confront witnesses against him directly or indirectly, no record of the proceedings, and no impartiality.

28 Petitioner seeks a stay of USC’s administrative action in order to avoid suffering the irreparable

1 adverse consequences of Respondents' improper administrative action, even if he ultimately succeeds on
2 his writ petition.

3 **II. REGULATORY AND LEGAL BACKGROUND¹**

4 **A. TITLE IX.**

5 The issue of student-on-student sexual misconduct on university campuses is primarily addressed
6 at the federal level by Title IX.² A university violates Title IX regarding student-on-student sexual
7 violence if: (1) the alleged conduct is sufficiently serious to limit or deny a student's ability to
8 participate in or benefit from the school's educational programs;³ and (2) the school, upon notice, fails to
9 take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile
10 environment, prevent its recurrence, and, as appropriate, remedy its effects.⁴ The Dept. of Education's
11 Office of Civil Rights ("OCR"),⁵ has expanded on Title IX enforcement through (a) regulations
12 promulgated through notice-and-comment rulemaking⁶ that "have the force and effect of law";⁷ and (b)
13 "significant guidance documents" such as the April 2011 "Dear Colleague Letter,"⁸ and the April 2014

14 _____
15 ¹ A more complete statement of the regulatory and procedural background is set forth in the
16 Amended Petition for Writ of Mandamus ("Amended Petition") at pp. 4-16.

17 ² Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688.

18 ³ OCR requires that the conduct be evaluated from the perspective of a reasonable person in the
19 alleged victim's position, considering all the circumstances. OCR, Revised Sexual Harassment
20 Guidance: Harassment of Students by School Employees, Other Students, or Third Parties – Title IX
21 (2001) at p.18 ("2001 Guidance") notice of publication at 66 Fed. Reg. 5512 (January 19, 2001)
22 <http://www.ed.gov/ocr/docs/shguide.html>.

23 ⁴ OCR, "Questions and Answers on Title IX and Sexual Violence" (April 2014), Available at
24 <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> ("2014 Questions and
25 Answers".)

26 ⁵ In June 2013, OCR launched an investigation into the handling of at least two alleged rape cases at
27 the USC, which received some \$500 Million in federal funds each year. OCR's investigation came on
28 the heels of protests by USC students, including the Student Coalition Against Rape (SCAR), and
litigation brought by attorney Gloria Allred that USC was ignoring or mishandling sexual assault and
rape complaints. USC. See, Los Angeles Times, *USC, Berkeley mishandling sex crimes against women*,
Allred says, May 23, 2013, Dalina Castellanos.

⁶ 2001 Guidance at p. 36 n.98

⁷ *Chrysler Corp. v. Brown* (1979) 441 U.S. 281, 295, 301-02 (regulations promulgated pursuant to
notice-and-comment rulemaking that affect individual rights and obligations "have the force and effect
of law"). The 2001 Guidance is entitled to deference under the doctrine articulated in *Chevron, U.S.A.,
Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837, 842-43.

⁸ Available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleagues-201104.pdf>. ("Dear

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1 “Questions and Answers on Title IX and Sexual Violence.”⁹ A college’s procedures must, at a
2 minimum, (1) “ensure the Title IX rights of the complainant,” but “accord due process to both parties
3 involved,”¹⁰ a requirement applicable to both state and private schools;¹¹ (2) provide an “adequate,
4 reliable, and impartial investigation”;¹² (3) provide the complainant and the accused student “an equal
5 opportunity to present relevant witnesses and other evidence”;¹³ (4) ensure that the “factfinder and
6 decision maker . . . have adequate training or knowledge regarding sexual violence”;¹⁴ and (5) require
7 “documentation of all proceedings, which may include written findings of fact, transcripts, or audio
8 recordings.”

9 **B. California Law Requirements for Student Discipline.**

10 California’s procedural and substantive standards for student disciplinary proceedings begin with
11 Code Civ. Proc. § 1094.5 subdivisions (b) and (c), which require that (1) there be “a fair trial,” which
12 “means that there must have been ‘a fair administrative hearing’”¹⁵; (2) the proceeding be conducted “in
13 the manner required by law”; (3) the decision be “supported by the findings”; and (4) the findings be
14 “supported by the weight of the evidence,” or where an administrative action does not affect vested
15 fundamental rights, the findings must be “supported by substantial evidence in the light of the whole
16 record.”¹⁶ In addition, a reviewing court does not “blindly seize any evidence in support of the
17 respondent in order to affirm the judgment. . . . It must be reasonable, . . . credible, and of solid value.”
18 (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.)

19 _____
20 Colleague Letter”) See *Bleiler v. College of the Holy Cross*, 2013 WL 4717340, at *3, 5 (D. Mass. 2013)
21 (holding that the Dear Colleague Letter, as a guidance document, “does not have independent force of
22 law but informs this Court’s evaluation of whether the College’s procedures were ‘equitable’”).

22 ⁹ 2014 Questions and Answers.

23 ¹⁰ 2001 Guidance at p. 22.

24 ¹¹ e.g., OCR Ruling re Complaint #04-03-204 (Christian Brothers Univ.) (Mar. 26, 2004) at 7 (“due
25 process protections [are] inherent in the Title IX regulatory requirements”).

26 ¹² 2001 Guidance at p. 20.

27 ¹³ *Id.*; Dear Colleague Letter, at p. 11.

28 ¹⁴ *Id.*; 2001 Guidance at p. 21.

¹⁵ *Doe v. University of Southern California* (2016) 246 Cal.App.4th 221, 239 (citations omitted)
(hereafter *Doe USC*).

¹⁶ California has undertaken to protect vested fundamental rights “from untoward intrusions by the
massive apparatus of government.” (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 142-143 [hereafter *Bixby*].)

1 Students facing suspension or expulsion have interests qualifying for protection of the Due
2 Process Clause. (*Goss v. Lopez* (1975) 419 U.S. 565, 577 [for suspensions of less than ten days from
3 high school, students are not entitled “to confront and cross-examine witnesses”].) The “[s]pecific
4 requirements for procedural due process vary depending upon the situation under consideration and the
5 interests involved.”¹⁷ The severity of the deprivation is one of several factors that must be weighed in
6 deciding the exact due process owed the student. (*Board of Curators of University of Missouri v.*
7 *Horowitz* (1978) 435 U.S. 78, 86.) In this case, the deprivation in the form of expulsion could not be
8 more severe, resulting in the loss of an “an interest of almost incalculable value, especially to those
9 students who have already enrolled in the institution and begun the pursuit of their college training.”
10 (*Goldberg v. Regents of University of Cal.* (1967) 248 Cal.App.2d 867, 876 [hereafter *Goldberg*].)

11 In California, schools must provide for the questioning of the complainant by the accused
12 student, if even indirectly. (*Doe v. Regents of University of California* (2016) 5 Cal.App.5th 1055, 1084
13 [hereafter *Doe UCSD*].) In addition, students are to have “ample opportunity to hear and observe the
14 witnesses against them.” (*Doe USC, supra*, 246 Cal.App.4th at 246.)

15 A fair process also requires the university to present the evidence to the accused student so that
16 the student has a reasonable opportunity to prepare a defense: “. . . requiring John to request access to
17 the evidence against him does not comply with the requirements of a fair hearing. [citing *Goss v. Lopez*
18 (1975) 419 U.S. 565, 582.]” (*Doe USC, supra*, 246 Cal.App.4th at 245-246.)

19 “The right to a fair procedure includes the right to impartial adjudicators. (*Applebaum v. Board*
20 *of Directors, supra*, 104 Cal.App.3d 648, 658.) Moreover, “[f]airness requires a practical method of
21 testing impartiality.” (*Hackethal v. California Medical Assn., supra*, 138 Cal.App.3d 435, 444.)”
22 (*Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1448 [hereafter *Rosenblit*].)

23 24 **III. STANDARD OF REVIEW**

25 **A. “Fair Hearing” Is Reviewed *De Novo*.**

26 Code Civ. Proc. § 1094.5 authorizes a trial court to issue a writ of administrative mandate where
27 an agency has deprived a petitioner of a fair hearing. (Code Civ. Proc., § 1094.5, subd. (b); *Clark v. City*
28

¹⁷ *Id.* at 244.

1 of *Hermosa Beach* (1996) 48 Cal.App.4th 1152; *Doe USC, supra*, 246 Cal.App.4th at 239.) In
2 determining whether an agency provided a petitioner with a fair hearing, a reviewing court
3 independently evaluates whether “the administrative proceedings were conducted in a manner consistent
4 with the minimal requisites of fair procedure demanded by established common law principles.”
5 (*Rosenblit, supra*, 231 Cal.App.3d at 1442, noting *John A. v. San Bernardino City Unified School Dist.*
6 (1982) 33 Cal.3d 301, *Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, and *Anton v. San*
7 *Antonio Community Hosp.* (1977) 19 Cal.3d 802, superseded on other grounds by statute as stated in
8 *Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655.) That is, the petitioner is entitled to an
9 independent judicial determination of the fair hearing issue. (*Pomona Valley Hospital Medical Center v.*
10 *Superior Court* (1997) 55 Cal.App.4th 93, 101.)

11 **B. Independent Judgment, a Trial *De Novo*, Required Where Administrative Process**
12 **Affects a Vested Fundamental Right.**

13 If an administrative action substantially affects a vested fundamental right, “the trial court not
14 only examines the administrative record for errors of law but also exercises its independent judgment
15 based upon the evidence disclosed in a limited trial de novo.” (*Bixby, supra*, 4 Cal.3d at 143.) The
16 Court must exercise its independent judgment and may reweigh the evidence; in effect, a trial *de novo*.
17 (Code Civ. Proc., § 1094.5, subd. (c); *Shuffer v. Board of Trustees* (1977) 67 Cal.App.3d 208, 219,
18 citing *Greenhill v. Bailey* (8th Cir. 1975) 519 F.2d 5, 7.)

19 A court must determine on a case-by-case basis whether an administrative decision affects a
20 vested fundamental right. (*Id.* at 144.) Specifically, in its analysis, a court is to consider the “nature of
21 the right of the individual: whether it is a fundamental and basic one, which will suffer substantial
22 interference by the action of the administrative agency, and, if it is such a fundamental right, whether it
23 is possessed by, and vested in, the individual or merely sought by him.” (*Id.*) “A right is deemed
24 fundamental on either or both of two bases: (1) the character and quality of its economic aspect; or (2)
25 the character and quality of its human aspect.” (*JKH Enters., Inc. v. Dep’t of Indus. Rels.* (2006) 142
26 Cal.App.4th 1046, at 1059.¹⁸

27
28 ¹⁸ See also *Interstate Brands v. Unemployment Ins. Appeals Bd.* (1980) 26 Cal.3d 770, 775 [the right to be free from an erroneous charge against an unemployment insurance reserve account is a vested

1 Here, Petitioner paid tuition, attended his classes, remained in good standing, and did not
2 participate in misconduct, and therefore possessed a vested contractual right to continue to attend USC.
3 Furthermore, Petitioner has a vested fundamental right under Title IX that Petitioner, as well as any
4 similarly situated student, may not be deprived of access to his education through an administrative
5 process that does not afford due process, is not fair, impartial, reliable, and equitable, or is overly
6 punitive and not remedial.¹⁹ Such an improper process can seriously damage the students' reputation, as
7 well as interfere with later educational and employment opportunities.

8 USC's administrative process affects Petitioner's right to complete his university degree and the
9 Fall 2017 term. California courts have described the value of higher education as "an interest of almost
10 incalculable value, especially to those students who have already enrolled in the institution and begun
11 the pursuit of their college training." (*Goldberg, supra*, 248 Cal.App.2d at 876.)

12 **IV. BRIEF FACTUAL AND PROCEDURAL BACKGROUND.**

13 **A. USC's "Interim" Suspension Lasting Over Five months.**

14 As of January 21, 2017, Zoe Katz, 22, was captain of the USC women's tennis team, was a
15 nationally ranked singles player, and had been dating Matthew Boermeester for well over a year. (Decl.
16 of Zoe Katz ¶¶ 2-3.) Mr. Boermeester, then 22, a kicker on USC's football team, was limping with a
17 knee brace due to recent knee surgery. Around midnight, Ms. Katz and Mr. Boermeester returned to
18 Ms. Katz's residence after getting french fries at McDonalds. The two were briefly engaged in loud,
19

20
21 fundamental right for purposes of mandamus review]; *Berlinghieri v. Department of Motor Vehicles*
22 (1983) 33 Cal.3d 392, 396-397 [the right to retain a driver's license is a vested fundamental right
23 because it has "an impact on the individual sufficiently vital . . . to compel a full and independent review
24 by the court."] [internal citations omitted].) Strikingly, a case cited by the California Supreme Court in
25 *Bixby* is the United States Supreme Court's decision in *Meyer v. Nebraska* (1923) 262 U.S. 390, 399.
26 *Bixby* observes that in *Meyer*, "[T]he United States Supreme Court listed the right of the individual 'to
27 engage in any of the common occupations of life' as one of several fundamental liberties, which also
28 include the right of the individual 'to acquire useful knowledge...'" (*Bixby, supra*, 4 Cal.3d at 145.)
Meyer thus lends further support to the position that Petitioner's right to pursue the career of his choice,
free of the severe restrictions that a lengthy suspension places on his ability to transfer to another college
or to gain admission to grad school or essential professional training, should qualify as a "fundamental
vested right" for purposes of review under Code Civ. Proc. § 1094.5.

¹⁹ See, Questions and Answers on Title IX and Sexual Violence, OCR, April 29, 2014, p. 29

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1 consensual horseplay and laughing in the alley before going into Ms. Katz' residence. As they entered
2 her building, Dylan Holt,²⁰ another USC student who had apparently seen part of their interaction from a
3 window, approached Ms. Katz and Mr. Boermeester and to see if Ms. Katz was alright. Ms. Katz said
4 she was fine. Dylan Holt told his roommate Tanner Smith what Dylan thought he had seen going on in
5 the alley from his window. Tanner Smith also approached Ms. Katz that night and noticed that Ms. Katz
6 did not seem upset by her interaction with Petitioner in the alley. Tanner Smith later spoke to his father
7 Peter Smith, USC Men's Tennis Coach, about what Dylan had told him. As a Responsible Employee,²¹
8 tennis coach Peter Smith was required to report to the USC Title IX Office what he had been told by his
9 son, Tanner Smith, who had relayed to his father what Tanner had heard from Dylan Holt.

10 A week later, Lynette S. Merriman, Ed.D., Assistant Vice Provost for Student Affairs, notified
11 Matthew Boermeester that he was "on interim suspension pending administrative review of a Title IX
12 investigation." Mr. Boermeester was escorted off campus on January 26, 2016, was excluded from all
13 classes, not permitted any involvement with football team functions, and banned from all University
14 sponsored activities.²² Because he was banned from all USC facilities, Petitioner was unable to receive
15 medical treatment or rehabilitative care for the surgery that had been performed on his knee by USC
16 doctors on January 10, 2017.

17 Throughout USC's Title IX investigation, Zoe Katz and Matthew Boermeester each asserted that
18 no violence or prohibited conduct ever occurred.

19 **B. The Title IX Investigation.**

20 From approximately January 22, 2017, through March 22, 2017, Title IX Investigator Lauren
21 Elan Helsper conducted her investigation, supervised by USC's Title IX Coordinator, Gretchen

22
23 ²⁰ Dylan Holt later told the Title IX Office that he did not want to participate in the investigation and
24 that he had not seen the entire interaction between Ms. Katz and Mr. Boermeester in the alley.

25 ²¹ USC's Policy requires Responsible Employees to "immediately report all known information about
26 suspected prohibited conduct to the Title IX Office. . . . This duty applies no matter how the information
27 is learned; whether from direct report from an affected party, from social media, or from a concerned
28 third party. Failure by a Responsible Employee to make a timely report of prohibited conduct may be
subject to discipline, up to and including removal from their position." (PT0230.)

²² Assistant Vice Provost Merriman also told Mr. Boermeester, "You may have no contact with Z.K.
[Zoe Katz], directly or indirectly by any means." Petitioner and Ms. Katz maintained the no-contact at
USC, and in Los Angeles, but they continued to date and saw each other privately in San Diego County
and foreign countries where Ms. Katz flew to visit Mr. Boermeester.

1 Dahlinger Means. During the investigation, Helsper and Means interviewed Matthew Boermeester, Zoe
2 Katz, Dylan Holt, Max Brenner, as well as fourteen other witnesses who had no first-hand knowledge of
3 any of the events of January 21, 2017. Title IX investigator Helsper also collected screenshots of text
4 messages, emails, an audio recording, and security video footage from the alley on January 21, 2017.
5 Zoe Katz' insistence that no prohibited conduct occurred in the alley on January 21, 2017 is confirmed
6 by the security video footage, which USC refuses to turn over but did eventually allow Ms. Katz, Mr.
7 Boermeester, and their advisors to view in the Title IX Office.

8 **C. The Evidence Hearing, Findings of Fact, and Guilt.**

9 USC Title IX does not conduct an evidentiary hearing before a neutral panel or adjudicator.
10 Rather USC provides for an "Evidence Hearing" where the Title IX Investigator and the Title IX
11 Coordinator decide the facts and guilt. Zoe Katz submitted a written statement denying that any
12 misconduct occurred on January 21, 2017, or at any time. Matthew Boermeester also denied committing
13 any misconduct. Given that no one actually saw the interaction in the alley (other than Zoe Katz and
14 Matthew Boermeester), and the video does not depict prohibited conduct, and there is no physical or
15 direct evidence of any prohibited conduct, Matthew Boermeester expected to be cleared.

16 Gretchen Dahlinger-Means and Lauren Elan Helsper, however, decided that Petitioner had
17 violated the Policy sections VI.E., Intimate partner violence, and VI.G., Violation of an interim measure
18 (in that Ms. Katz and Mr. Boermeester had continued their relationship.)

19 **D. USC's Anonymous Misconduct Sanctioning Panel.**

20 After finding Mr. Boermeester responsible for prohibited conduct, the Title IX Office forwarded
21 its report to the Misconduct Sanctioning Panel, which is composed of three unidentified individuals, two
22 of whom are staff or faculty designated by Michael Quick,²³, the Provost and Senior Vice President for
23

24
25 ²³ According to USC's website, Dr. Michael Quick has held this position since April 1, 2015, and
26 was also responsible for overseeing the Keck School of Medicine and some 17 other professional
27 schools. In response to the recently reported misconduct by USC medical school dean Dr. Carmen A.
28 Puliafito, Dr. Quick explained USC's delay in taking action in his letter to faculty, "I know many people
wanted us to act on allegations and hearsay, but we needed actual facts." See, Paul Pringle, Adam
Elmahrek, Matt Hamilton and Sarah Parvini, "*USC received more than a year of questions about former
medical school dean's conduct before scandal broke*" (July 23, 2017) Los Angeles Times.
<http://www.latimes.com/local/california/la-me-usc-dean-ethics-20170723-story.html>

1 Academic Affairs. On May 2, 2017, the Panel decided that Petitioner should be expelled.

2 **E. USC's Anonymous Appellate Panel.**

3 After USC issued the sanctions, both Ms. Katz and Mr. Boermeester submitted appeals,
4 objecting to the findings and sanctions. Under USC' Policy, Appellate Panel decisions "are to defer to
5 the Title IX Office and the Misconduct Sanctioning Panel" and the Panel only makes recommendations
6 that Respondent Ainsley Carry may modify or accept at his sole discretion. (PT0253.) In this case, the
7 Appellate Panel denied both appeals, but recommended a 2-year suspension instead of expulsion.

8 **F. Final Decision by Respondent Ainsley Carry.**

9 On July 7, 2017, Ainsley Carry approved the decision of guilt reached by the Title IX Office,
10 however, he rejected the Appellate Panel's recommended two-year suspension and ordered Petitioner
11 expelled. Petitioner has exhausted all avenues of administrative appeal of USC's decision and on
12 August 11, 2017, Petitioner filed his Petition for Writ of Mandate.

13
14 **V. ARGUMENT**

15 **A. Applicable Law**

16 Pursuant to Code Civ. Proc. § 1094.5 subd. (g), the Court may stay the operation of the
17 administrative order or decision pending judgment, or until the filing of a notice of appeal from the
18 judgment or until the expiration of the time for filing the notice, whichever occurs first. No stay shall be
19 imposed or continued if the court is satisfied that it is against the public interest. (See *Board of Medical*
20 *Quality Assurance v. Superior Court* (1980) 114 Cal.App.3d 272, 276.) In addition to Code Civ. Proc. §
21 1094.5 subd. (g)'s express language, the common law requires a showing of irreparable harm and a
22 reasonable prospect of success on the merits, sometimes referred to as a "colorable claim." Petitioner
23 does not need to show that he is likely to prevail on the merits at trial, only that he has "a colorable
24 claim for writ relief" i.e. there is some possibility that he will ultimately prevail. (*Association of Orange*
25 *County Deputy Sheriffs v. County of Orange* (2013) 217 Cal.App.4th 29, 49.) Petitioner has at least a
26 colorable claim for writ relief.

1 **B. Petitioner Has At Least A Colorable Claim.**

2 **1. USC's Administrative Action is Unsupported by Evidence.**

3 Zoe Katz never made any report to USC; rather another student looking out a window thought he
4 saw a physical altercation, told another student about what he thought he saw, and that student told his
5 father, who then made a mandatory report to the USC Title IX Office. Although USC refers to Ms. Katz
6 as the "Reporting Party," Ms. Katz reported repeatedly to USC that she did not experience any
7 prohibited conduct or "intimate partner violence." (Decl. Zoe Katz ¶ 4.) Ms. Katz states in her
8 declaration:

9 7. Most alarming, I saw that statements of witnesses, including my own statements
10 to Gretchen Dahlinger Means and Laruen Elan Helsper, were misrepresented,
11 misquoted and taken out of context in order to support Ms. Means' and Ms.
 Helsper's own personal opinions about what they think happened.

12 The sole complainant against Matthew Boermeester is the University itself, through USC's Title
13 IX Coordinator Gretchen Dahlinger Means, and USC's Title IX investigator Lauren Elan Helsper, who
14 investigated and prosecuted Mr. Boermeester for over five months without substantial evidence that
15 misconduct ever occurred and contrary to the direct testimony of the supposed victim.

16 **2. No Opportunity to Question Accuser, Even If Indirectly.**

17 Where matters turn on credibility, USC must provide for the questioning of the complainant,
18 even if indirectly, by the accused student. (*Doe UCSD, supra*, 5 Cal.App.5th at 1084.) Here Zoe Katz is
19 not the complainant, rather USC Title IX personnel Gretchen Dahlinger Means or Lauren Elan Helsper,
20 are the actual complainants in this case. By not providing Petitioner any opportunity to question those
21 accusing him, USC improperly deprived Petitioner of "a full opportunity to present his defense."
22 (*Andersen v. Regents of Univ. of Cal.* (1972) 22 Cal.App.3d 763, 771.)

23 **3. No Impartial Adjudicators.**

24 "The right to a fair procedure includes the right to impartial adjudicators. (*Applebaum v. Board*
25 *of Directors, supra*, 104 Cal.App.3d 648, 658.) Moreover, '[f]airness requires a practical method of
26 testing impartiality.' (*Hackethal v. California Medical Assn., supra*, 138 Cal.App.3d 435, 444.)"
27 (*Rosenblit v. Superior Court, supra*, 231 Cal.App.3d at 1448.) Here, there is no showing that the Title
28 IX Coordinator and Investigator are impartial, quite the contrary. See, Zoe Katz Decl. ¶¶ 2-8.

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4. USC's Title IX Process Is Permeated With Structural Error.

By failing afford accused students due process and failing to comply with OCR guidance and Title IX, Respondents' Title IX sexual misconduct policing process is permeated with structural error. "Structural error" has been defined as "an error that 'permeate[s] the entire conduct of the trial from beginning to end, or affect[s] the framework within which the trial proceeds.'" (*United States v. Recio* (9th Cir. 2004) 371 F.3d 1093, 1101, citing *Rice v. Wood* (9th Cir. 1996) 77 F.3d 1138, 1141.)

Here USC Title IX Office does not record witness interviews, a standard investigation practice. USC Title IX Office misrepresents, misquotes, and takes witness statements out of context in order to support their personal opinions. USC Title IX Office withholds evidence and fails to provide the accused student with a copy of the evidence. Even where matters turn on credibility, USC Title IX Office forbids the questioning of the complainant, even if indirectly. USC Title IX Office improperly shifts the burden of proof to the accused student to prove themselves innocent of the allegations. USC relies on hearsay evidence that is contradicted by first person testimony. USC Title IX Office relies upon character evidence that is inadmissible. USC Title IX Office relies upon evidence that is not temporally proximate to the conduct at issue, contrary to USC Policy. USC Title IX does not conduct an evidentiary hearing before a neutral or impartial panel or adjudicator. USC Title IX Office does not allow for any substantive appeal at the University. USC's Title IX proceedings are so obviously permeated with structural error, the findings must be set aside and the expulsion overturned.

5. USC's Title IX Investigators Failed to Properly Weigh the Evidence.

Under USC's Policy, the Title IX investigator is to consider only information that is relevant, material, and temporally proximate to the conduct at issue. (PT0238.) Character evidence is not admissible and will not be considered. (PT0238.) However, the Policy also provides that Title IX investigator Helsper will decide what evidence she wants to consider in forming her personal opinions about findings of fact. (PT0247.) After Title IX investigator Helsper decides the facts, based on her own investigation and what evidence she wishes to consider, Ms. Helsper and Title IX Coordinator Gretchen Dahlinger Means decide whether the Respondent violated the Policy based on Ms. Helsper's opinion regarding the facts. (PT0247.)

Here, investigators Helsper and Means interviewed more than a dozen witnesses who had no first-hand knowledge of any of the events of January 21, 2017, and whose testimony could have only

1 included irrelevant character evidence. Conversely, the investigators discredited statements made by
2 Zoe Katz, the person with the most relevant, material, and temporally proximate testimony, by accusing
3 her of being a “battered” woman whose denials of abuse could not be believed. The investigators
4 present their own assumptions, innuendo, and inferences from cherry-picked information as fact in order
5 to support their predetermined outcome that Mr. Boermeester was responsible for prohibited conduct.

6 **6. Respondents Have Denied Petitioner His Education In Violation Of Title IX.**

7 USC was obligated to determine whether the alleged misconduct is sufficiently serious to limit
8 or deny a student’s ability to participate in or benefit from the school’s educational programs.²⁴ Here,
9 USC made no such determination, nor would USC’s Title IX officers have been able to make such a
10 determination when the “complaining party” and the accused student are in an ongoing dating
11 relationship and deny what USC Title IX Office alleges happened. USC Title IX Office is responsible
12 for creating the only hostile environment that has interrupted Zoe Katz’s education and ended Matthew
13 Boermeester’s education. There is no showing that any student has been denied the ability to participate
14 in educational programs, other than Petitioner by USC’s Title IX Office.

15 **C. Issuance of Stay Not Contrary to Public Interest.**

16 The public interest in ensuring due process in Title IX administrative proceeding and Petitioner’s
17 right to his education is at least as significant as any public interest in stemming interpersonal domestic
18 violence on college campuses. A unique situation is presented here where Ms. Katz, the supposed
19 “victim,” repeatedly denied USC’s claims that Mr. Boermeester was responsible for interpersonal
20 domestic violence and does not assert that she will suffer any harm by his return to USC. (Decl. Zoe
21 Katz ¶¶ 4-6.) On the contrary, she advocates for this stay of sanctions and castigates USC for their
22 mismanaged and misguided action against Mr. Boermeester. (Decl. Zoe Katz ¶¶ 7-10.) There is no
23 public interest in the expulsion of a student who has not received a fair hearing and contrary to the
24 evidence.

25 Stays are routinely granted in student disciplinary appeals, including Title IX sexual misconduct
26 cases. (See *Doe v. Regents of University of California, supra*, 5 Cal.App.5th 1055; *John Doe v. Donald*
27 *Dudley, et al.*, YCSC Case No. PT 15-1253 [stay order granted September 22, 2015 in Yolo Superior
28

²⁴ OCR Questions and Answers, Page 1.

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1 Court]; *Doe v. Donald Dudley, UC Regent's et al.* YCSC Case No. PT17-728 [[stay order granted
2 September 22, 2015 in Yolo Superior Court May 30, 2017].) The frequency with which stays are
3 granted in university disciplinary cases undermines any argument that a stay in this case is against the
4 public interest.

5 Individuals facing lengthy suspensions and expulsions have interests qualifying for protection of
6 the Due Process Clause and fairness. (*Goss v. Lopez* (1975) 419 U.S. 565, 577.) In this case,
7 Respondents' disciplinary process falls far short of what is required by fundamental fairness and due
8 process, and Dr. Carry's imposition of an expulsion is arbitrary and capricious. The public has a greater
9 interest in ensuring that educational institutions protect the due process rights of all the individuals who
10 work and study there over and above the universities' interest in making administrative disciplinary
11 determinations. The Court's issuance of a single stay does not deprive USC of its ability to effectively
12 govern its student body. The public interest does not weigh against the issuance of a stay.

13 **D. Petitioner's Appellate Vindication Cannot Undo Irreparable Damage to His**
14 **Academic Success and Reputation Without the Stay.**

15 It is an accepted fact that "Expulsion denies the student the benefits of education at his chosen
16 school. Expulsion also damages the student's academic and professional reputation, even more so when
17 the charges against him are serious enough to constitute criminal behavior. Expulsion is likely to affect
18 the student's ability to enroll at other institutions of higher education and to pursue a career." (*Furey v.*
19 *Temple Univ.* (E.D. Pa. 2012) 884 F.Supp.2d 223, 245-48.)

20 Petitioner has already experienced irreparable harm as a result of USC's lengthy and
21 discriminatory proceedings. Without an investigation, and without any evidence to substantiate the Title
22 IX Office's claims, Dr. Carry upheld Petitioner's interim suspension, separating him from his academic
23 programs for the Spring 2017 semester. If Petitioner had been permitted to take classes at USC or
24 another university during the Spring 2017 semester, he would have completed his undergraduate degree
25 and been able to transfer as a graduate student to another university anywhere in the country. As a
26 graduate transfer student, Petitioner would have had the opportunity to play football for one more season
27 at a Division-1 university. Now, with only two classes left to complete his undergraduate degree and his
28 opportunity to play football at USC revoked, Petitioner has lost the opportunity to play college football
altogether.

1 Without a stay, Petitioner will continue to suffer irreparable harm academically by being
2 permanently separated from his academic programs, professors, mentors, and contacts at USC.
3 Petitioner is only two classes shy of graduating, meaning he has earned nearly all of his 128
4 baccalaureate units required for graduation at the undergraduate level. Transferring to another
5 university at this point in Petitioner's academic career would be redundant, time-consuming, and
6 expensive considering that most universities have strict requirements regarding the minimum number of
7 units that must be completed at that university for graduation eligibility. In the unlikely event Petitioner
8 will be able to transfer to another college or university with an expulsion mark on his transcript for
9 interpersonal domestic violence, he will be required to meet the transfer requirements at his new
10 university, which may entail forfeiting credits completed at USC and paying for and completing
11 additional undergraduate units at his transfer university in order to earn his undergraduate degree.

12 Athletically, the interim suspension in place during USC's lengthy Title IX process and the
13 subsequent expulsion have deprived Petitioner an opportunity to play college football as a graduate
14 student at USC—a team that is in the conversation for a National Championship—or for any other
15 Division 1 college football team in the nation. This makes it impossible for Petitioner to develop his
16 ranking as a draft-eligible college football player for the NFL in the 2017 draft class, which will severely
17 hinder his future professional football career. Petitioner was also denied necessary medical and
18 rehabilitative services by USC following his knee surgery performed by USC doctors in January 2017,
19 which affected his recovery.

20 Petitioner's reputation will also suffer, as USC announced publicly that Mr. Boormeester would
21 not return to USC due to a student code of conduct issue. Petitioner is now known as the Rose Bowl
22 kicker who got expelled for student conduct code violations. Those who learn that Petitioner was
23 expelled due to interpersonal domestic misconduct will certainly believe that such a serious punishment
24 was substantiated by the weight of credible evidence, and their good opinion of Petitioner, once lost,
25 will be lost for good.

26 Petitioner should not have to bear the full burden of the damage to his academic and professional
27 future and reputation due to Respondents' improper actions, if it turns out later, after a review on the
28 merits, that Respondents were wrong. Without a stay, Petitioner will have already suffered all the

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1 consequences of the unnecessary interruption of his education and irreparable damage to his reputation
2 caused by his public removal from USC, even if he ultimately prevails.

3 **VI. APPLICATION FOR STAY PROPERLY BEFORE THE COURT.**

4 *Ex parte* applications are governed generally by California Rule of Court 3.1200 et seq. and
5 must be in writing and include the following: (1) an application containing the case caption and stating
6 the relief requested; (2) a declaration in support of the application; (3) a declaration, competent and
7 based on personal knowledge, regarding the notice provided to other parties pursuant to California Rule
8 of Court 3.1204; (4) a memorandum; and (5) a proposed order. Petitioner has filed the required *ex parte*
9 application documents. Under California Rule of Court 3.1202, the *ex parte* application must state the
10 name, address, and telephone number of any attorney known by the applicant to be an attorney for any
11 party. The names, addresses and telephone numbers are as follows:

12 Karen Pazzani
13 Young Zinn & Bate LLP
14 1150 South Olive Street, 18th Fl.
15 Los Angeles, CA 90015
16 Telephone: (213) 362-1860
17 Facsimile: (213) 362-1861
18 E-mail: kpazzani@yzblaw.com

19 Petitioner has complied with the *ex parte* rule and all parties were properly notified, as shown in
20 the Declaration of Mark M. Hathaway ¶ 2. Respondent's counsel indicated she will appear on August
21 18, 2017 to oppose Petitioner's *ex parte* application for stay.

22 **VII. CONCLUSION**

23 Based on the foregoing, Petitioner respectfully requests that this Court stay the operation of
24 Respondents' administrative action pending court review of his petition.

25 WERKSMAN JACKSON
26 HATHAWAY & QUINN LLP

27 DATED: August 17, 2017

28 By: 

Mark M. Hathaway, Esq.
Jenna E. Eyrich, Esq.
Attorneys for Petitioner John Doe



DECLARATION



DECLARATION

1 10. I have already experienced irreparable harm as a result of USC's lengthy and discriminatory
2 proceedings. Without an investigation, and without any evidence to substantiate the Title IX Office's
3 claims, Dr. Carry upheld the interim suspension, separating me from my academic programs for the
4 Spring 2017 semester. If I had been permitted to take classes at USC or another university during the
5 Spring 2017 semester, I would have completed my undergraduate degree and been able to transfer as a
6 graduate student to another university anywhere in the country. As a graduate transfer student, I would
7 have had the opportunity to play football for one more season at a Division-1 university. Now, with
8 only two classes left to complete my undergraduate degree and my opportunity to play football at USC
9 revoked, I have lost the opportunity to play college football altogether.

10 11. If the Court does not exercise its discretion to stay my expulsion, I will suffer irreparable harm
11 by being permanently separated from my academic programs, professors, mentors, and contacts. I am
12 only two classes shy of graduating, meaning I have earned nearly all of my 128 baccalaureate units
13 required for graduation at the undergraduate level. Transferring to another university at this point in my
14 academic career would be redundant, time-consuming, and expensive considering that most universities
15 have strict requirements regarding the minimum number of units that must be completed at that
16 university for graduation eligibility. For instance, USC requires transfer students to complete a
17 minimum of 64 units (half the units required for graduation) while in residence at USC. Attached hereto
18 as Exhibit 2 is a true and correct copy of USC's Policy on transfer credits. This means that even in the
19 unlikely event I am able to transfer to another college or university with an expulsion mark on my
20 transcript for interpersonal domestic violence, I will be required to meet the transfer requirements at my
21 new university, which may entail forfeiting credits completed at USC and paying for and completing
22 additional undergraduate units at my transfer university just to earn my undergraduate degree.

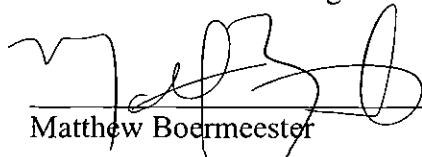
23 12. Athletically, the interim suspension in place during USC's lengthy Title IX process and the
24 subsequent expulsion have deprived me an opportunity to play college football as a graduate student at
25 USC—a team that is in the conversation for a National Championship—or for any other Division 1
26 college football team in the nation. This makes it impossible for me to develop my ranking as a draft-
27 eligible college football player for the NFL in the 2017 draft class, which will severely hinder my
28 professional football career.

1 13. Because I was banned from all USC facilities, I was unable to receive medical treatment or
2 rehabilitative care for the surgery that had been performed on my knee by USC doctors on January 10,
3 2017, which affected my recovery.

4 14. My reputation will suffer if a stay is not issued, as USC announced publicly that I would not
5 return to USC due to a student code of conduct issue. I am now known as the Rose Bowl kicker who
6 got expelled for student conduct code violations. Those who learn that I was expelled due to
7 interpersonal domestic misconduct will certainly believe that such a serious punishment was
8 substantiated by the weight of credible evidence, and their good opinion of me, once lost, will be lost for
9 good.

10 I declare under the penalty of perjury in the State of California and of the United States of America that
11 the foregoing is true and correct. Sign on the date below in San Diego County.

12
13 Date: August 17, 2017



Matthew Boormeester

1 information that makes the existence of a fact or inference more or less likely. The Title
2 IX Coordinator may exclude information that is not relevant or is not considered credible
3 or reliable in the investigatory process.”

4 52. Under the Policy and Title IX, USC’s fact-finders and decision-makers may not
5 conclude that a student is responsible for violating the Policy based on the lesser standard
6 that the accusation is supported by substantial evidence.

7 53. If the evidence is so evenly balanced that the investigator is unable to say that
8 the evidence on either side of an issue preponderates, the investigator’s finding on that
9 issue must be against the party who had the burden of proving it—in this case, the
10 University.

11 **B. Summary Of Events.**

12 **1. January 21, 2017.**

13 54. As of January 21, 2017, Zoe Katz, 22, was captain of the USC women’s tennis
14 team, was a nationally ranked singles player, and had been dating Matthew Boermeester
15 for well over a year. Mr. Boermeester, then 22, a kicker on USC’s football team, was
16 limping with a knee brace, due to recent knee surgery on January 10, 2017.

17 55. Around midnight on January 21, 2017, Ms. Katz and Mr. Boermeester returned
18 to Ms. Katz’s residence after getting french fries at McDonalds. The two were briefly
19 engaged in loud, consensual horseplay and laughing in the alley before going into Ms.
20 Katz’ residence. At one point, Max Brenner, another USC student, walked past Ms. Katz
21 and Mr. Boermeester to put his garbage in the dumpster and then walked back inside
22 without ever turning his head towards the two of them. As they entered her building,
23 Dylan Holt,⁴⁸ another USC student who had apparently seen part of their interaction from
24 a window, approached Ms. Katz and Mr. Boermeester and to see if Ms. Katz was alright.
25 Ms. Katz said she was fine.

26
27 ⁴⁸ Dylan Holt later told the Title IX Office that he did not want to participate in the
28 investigation and that he had not seen the entire interaction between Ms. Katz and Mr.
Boermeester in the alley.

1 2. The Report to USC Title IX Office.

2 56. Ms. Zoe Katz never made any report to USC concerning Petitioner.

3 57. Dylan Holt, who had asked Ms. Katz if she was alright, told his roommate
4 Tanner Smith what Dylan thought he saw going on in the alley from his window.

5 58. Tanner Smith also approached Ms. Katz that night and noticed that Ms. Katz did
6 not seem upset by her interaction with Petitioner in the alley.

7 59. Tanner Smith, however, later spoke to his father Peter Smith, the USC Men's
8 Tennis Coach, about what Dylan had told him. As a Responsible Employee, tennis coach
9 Peter Smith was required to report to the USC Title IX Office what he had been told by
10 his son, Tanner Smith, who had relayed to his father what Tanner had heard from Dylan
11 Holt.

12 60. USC's Policy states:

13 Responsible Employees must immediately report all known
14 information about suspected prohibited conduct to the Title IX
15 Office. This includes the name of the parties and known details
16 of the conduct. This duty applies no matter how the
17 information is learned; whether from direct report from an
affected party, from social media, or from a concerned third
party. Failure by a Responsible Employee to make a timely
report of prohibited conduct may be subject to discipline, up to
and including removal from their position." (PT0230.)

18 61. Although the USC Title IX investigation refers to Zoe Katz as the "Reporting
19 Party,"⁴⁹ Ms. Katz repeatedly told USC that she had *not experienced* any prohibited
20 conduct by Petitioner.

21 62. On or about January 26, 2017, Lynette S. Merriman, Ed.D., Assistant Vice
22 Provost for Student Affairs, notified Petitioner that "[t]he Office of the Vice President for
23 Student Affairs has placed you on interim suspension pending administrative review of a
24 Title IX investigation." Mr. Boormeester was escorted off campus on January 26, 2016
25 and was excluded from all classes, seminars and university programs, not permitted any
26

27 ⁴⁹ USC's Policy states, "For the purposes of this policy, the individual who is reported to have
28 experienced prohibited conduct is referred to as the Reporting Party. The Respondent is the
individual who is reported to have committed the prohibited conduct." (PT0230)

1 involvement with organized football team functions including practice, games, or
2 training, and was banned from all University sponsored activities.

3 63. Assistant Vice Provost Merriman also notified Mr. Boermeester, “You may have
4 no contact with Z.K. [Zoe Katz], directly or indirectly by any means.”

5 64. Neither Zoe Katz nor Matthew Boermeester—two adults in a consensual,
6 private, romantic relationship—had any interest in remaining apart.

7 65. USC later charged Petitioner with violating the interim measure because Ms.
8 Katz and Petitioner continued their private relationship, which should be of no concern to
9 the University.

10 3. *The Title IX Investigation.*

11 66. From approximately January 22, 2017, through March 22, 2017, Title IX
12 Investigator Lauren Elan Helsper⁵⁰ conducted her investigation, interviewing Matthew
13 Boermeester, Zoe Katz, Dylan Holt, Max Brenner, as well as fourteen other witnesses
14 who had no first-hand knowledge of any of the events of January 21, 2017. Title IX
15 investigator Helsper also collected screenshots of text messages, emails, an audio
16 recording, and security video footage from the alley on January 21, 2017.

17 67. Title IX Investigator Lauren Elan Helsper does not audio record or otherwise
18 make a transcription of her witness interviews. There is no verbatim record of the
19 questions that the Title IX Office asks witnesses, nor the response from the witness. The
20 record of witness interviews consists of notations and summaries prepared by Title IX
21 investigator Helsper.

22 68. USC also does not provide the accused student with the evidence. The evidence
23 can only be viewed in person at the Title IX Office, or, under certain circumstances,
24 viewed online via a web-based service called OneHub, which does not allow for
25

26 ⁵⁰ According to USC’s website, “Lauren began working at USC in 2011 as student crisis case
27 manager in Student Affairs. She transitioned to Equity and Diversity in 2014 as an investigator
28 and project specialist before joining the Title IX Office. Lauren earned her master’s degree in
postsecondary education and student affairs at USC and earned her bachelor’s degree from
UCLA. She is currently working on her doctorate at USC in higher education administration.”

1 documents to be downloaded, saved, or printed.

2 69. USC prohibits the accused student from having a copy of the actual documents
3 or evidence. According to USC's Policy:

4 Evidence Review occurs at the Title IX Office. Witness
5 statements, physical and documentary evidence, and
6 audio/visual material is provided for review. Parties are not
provided copies or allowed to take photographs. Parties may
take notes. (PT0246.)

7 70. Zoe Katz' insistence that no prohibited conduct occurred in the alley on January
8 21, 2017 is confirmed by the security video footage from the alley, which USC refuses to
9 turn over but did allow Ms. Katz, Petitioner, and their advisors to view in the Title IX
10 Office.

11 71. USC prohibits students from being represented by an attorney in the Title IX
12 process. As mandated by federal law, USC Policy provides that an attorney may serve as
13 an advisor, however, the advisor is only "to provide support and assistance in
14 understanding and navigating the investigation process . . . The advisor is not an
15 advocate." (PT0240.)

16 72. Title IX investigator Helsper was supervised by USC's Title IX Coordinator
17 Gretchen Dahlinger Means,⁵¹ who also participated in at least some investigation
18 interviews.

19
20
21 ⁵¹ According to USC's website, Gretchen Dahlinger Means was a prosecutor with the San
22 Diego District Attorney's Office from 2000 to 2007, where she was assigned to the Sex Crimes
23 Unit and prosecuted cases involving sexual assaults, Sexually Violent Predator commitments,
24 sex-based homicides, and criminal sexual exploitation. Ms. Means also participated on a variety
of state and federal task forces dedicated to combating criminal sexual exploitation and helped
form a county-wide, multi-disciplinary group on the topic. She provided 24-hour support to law
enforcement in the San Diego region and developed and facilitated annual training on sexual
assault prosecution, and taught internationally on sexual assault and criminal sexual exploitation.

25 In 2013, Gretchen was recruited by the U.S. Marine Corps and became a Highly Qualified
26 Expert in Sexual Assault and Complex Litigation. She developed sexual assault protocol, and
trained and mentored prosecutors on five west coast installations.

27 In another Title IX case, Title IX Coordinator Gretchen Dahlinger Means acknowledged that
28 she and USC Title IX investigator Patrick Noonan referred to an accused male student and his
advisor as "motherfuckers." See, *John Doe v. Ainsley Carry, et al.*, Los Angeles Superior Court
Case BS163736; See <http://reason.com/blog/2016/08/02/usc-title-ix-official-campus-rape>

1 4. *The Evidence Hearing. Findings of Fact, and Guilt.*

2 73. After the Title IX Office completes the investigation, USC does not conduct an
3 evidentiary hearing before a neutral or impartial panel or adjudicator.

4 74. Instead of an evidentiary hearing, USC's Policy provides for what it calls an
5 "Evidence Hearing," where Title IX Coordinator Gretchen Dahlinger Means and Title IX
6 investigator Lauren Elan Helsper meet with the Respondent and with the Reporting Party
7 separately. In the Evidence Hearing, the students may respond orally or in writing to the
8 evidence that they were permitted to view in USC's Title IX Office. Title IX Coordinator
9 Gretchen Dahlinger Means may also ask each party questions that have been submitted
10 by the other party.

11 75. USC provided no process for Matthew Boermeester to question, if even
12 indirectly with, the complaining witnesses against him. In failing to provide this
13 requirement of a fair process, USC improperly deprived Mr. Boermeester of "a full
14 opportunity to present his defense." (*Andersen v. Regents of Univ. of Cal.* (1972) 22
15 Cal.App.3d 763, 771.)

16 76. For the Evidence Hearing, Zoe Katz submitted her written statement that denied
17 that any prohibited conduct occurred on January 21, 2017, or at any time.

18 77. For his Evidence Hearing, Matthew Boermeester submitted his written
19 statements that showed the prohibited conduct that USC alleges took place on January 21,
20 2017 did not occur.

21 78. Given that no one actually saw the interaction in the alley other than Zoe Katz
22 and Matthew Boermeester, and that the video does not depict any prohibited conduct, and
23 there is no physical or direct evidence of any prohibited conduct, Matthew Boermeester
24 expected to be cleared by USC's "fair, thorough, reliable, neutral and impartial
25 investigation by a trained and experienced investigator."

26 79. Under USC's policy, the Title IX investigation is to consider only information
27 that is relevant, material, and temporally proximate to the conduct at issue. (PT0238.)
28 Character evidence is not admissible and will not be considered. (PT0238.) However,

1 the Policy also provides that Title IX investigator Helsper will decide what evidence she
2 wants to consider in forming her personal opinions about findings of fact. (PT0247.)

3 80. After Title IX investigator Helsper decides the facts, based on her own
4 investigation and what evidence she wishes to consider, Ms. Helsper and Title IX
5 Coordinator Gretchen Dahlinger Means decide whether the Respondent violated the
6 Policy based on Ms. Helsper's opinion regarding the facts. (PT0247.)

7 81. In this case, Title IX investigator Helsper and Title IX Coordinator Gretchen
8 Dahlinger Means decided that Petitioner had violated the Policy sections VI.E., Intimate
9 partner violence, and VI.G., Violation of an interim measure (in that Ms. Katz and Mr.
10 Boermeester had continued their relationship.)

11 5. USC's Anonymous Misconduct Sanctioning Panel.

12 82. After Ms. Helsper and Ms. Means found Petitioner responsible for violating
13 the Policy, the Title IX Office forwarded its Summary Administrative Report to the
14 Misconduct Sanctioning Panel. The role of the Misconduct Sanctioning Panel is to
15 determine what sanction is appropriate based on the conclusions of the Title IX Office.
16 (PT0248.)

17 83. The Misconduct Sanctioning Panel is composed of three unidentified
18 individuals, two of whom are staff or faculty designated by Michael Quick,⁵² the Provost
19 and Senior Vice President for Academic Affairs, and the third member is an
20 undergraduate or graduate student, depending on the standing of the Respondent.
21 (PT0248.)

22 84. Title IX Coordinator Gretchen Dahlinger Means trains the members of the
23

24 ⁵² According to USC's website, Dr. Michael Quick has held this position since April 1, 2015,
25 and was also responsible for overseeing the Keck School of Medicine and some 17 other
26 professional schools. In response to the recently reported misconduct by USC medical school
27 dean Dr. Carmen A. Puliafito, Dr. Quick explained USC's delay in taking action in his letter to
28 faculty, "I know many people wanted us to act on allegations and hearsay, but we needed actual
facts." See, Paul Pringle, Adam Elmahrek, Matt Hamilton and Sarah Parvini, "USC received
more than a year of questions about former medical school dean's conduct before scandal
broke" (July 23, 2017) Los Angeles Times. <http://www.latimes.com/local/california/la-me-usc-dean-ethics-20170723-story.html>

1 Misconduct Sanctioning Panel twice each year and the panelists serve terms of two
2 school-years. (PT0248.)

3 85. Title IX Coordinator Gretchen Dahlinger Means attends the meetings and
4 deliberations of the Misconduct Sanctioning Panel, but does not have a vote in
5 determining the specific sanctions. (PT0248.)

6 86. In this case, the Misconduct Sanction Panel met on May 2, 2017, and decided
7 that Petitioner should be expelled.

8 **6. USC's Anonymous Appellate Panel.**

9 87. Under USC's Policy, after the Misconduct Sanctioning Panel's sanctioning
10 decision, either the Reporting Party or the Respondent, or both, may file a written appeal
11 to the Appellate Panel. (PT0249.) The Appellate Panel is composed of three unidentified
12 individuals, at least one of whom is a faculty member, appointed by Respondent Ainsley
13 Carry, the Vice President for Student Affairs. (PT0249.)

14 88. Title IX Coordinator Gretchen Dahlinger Means is also responsible for the
15 training of the Appellate Panel members. (PT0249.)

16 89. As to the appeal, the Policy provides:

17 A review by the Appellate Panel is narrowly-tailored to the
18 provisions of this policy and relevant reasons for appeal.
19 Appeals are not a full rehearing of the facts or findings.
(PT0250.)

20 90. Appellate Panel decisions "are to defer to the Title IX Office and the Misconduct
21 Sanctioning Panel" and make recommendations to Respondent Ainsley Carry, Vice
22 President for Student Affairs, who may modify or accept the recommendation at his sole
23 discretion. (PT0253.)

24 91. In this case, the Appellate Panel denied Petitioner's appeal but recommended a
25 2-year suspension instead of expulsion.

26 **7. Final Decision by Respondent Ainsley Carry.**

27 92. Under USC's Policy, Dr. Ainsley Carry, Vice President for Student Affairs,
28 makes the final decision on appeal and, once made, Dr. Carry's decision is final and

1 binding upon all parties. (PT0253.)

2 93. On July 7, 2017, Ainsley Carry approved the conclusions reached by the Title IX
3 Investigator and the Appellate Panel regarding the two Policy violations, however, Dr.
4 Carry did not accept the recommendation of the Appellate Panel to two-year suspension,
5 and increased the sanction to expulsion:

6 Whether you intended to cause the Reporting Party harm or did
7 so recklessly, expulsion is appropriate given the nature of the
8 harm inflicted upon the Reporting Party,⁵³ as well as your
violation of the University's Avoidance of Contact order.
(PT0255.)

9 94. Once Respondent Dr. Carry issued his final decision in Title IX Case 20170003,
10 Petitioner had no further avenue of appeal. (PT0255.)

11 95. Shortly thereafter, USC announced publicly:

12 Placekicker Matt Boermeester, whose 18 field goals last
13 year—including a 46-yarder at the gun to win the Rose Bowl—
14 were 1 shy of the school record, won't return because of a
student code of conduct issue.

15 III. RESPONDENTS' PROCEDURAL ERRORS.

16 96. At a minimum USC was required to 1) "ensure the Title IX rights of the
17 complainant," but "accord due process to both parties involved," a requirement
18 applicable to both state and private schools; (2) provide an "adequate, reliable, and
19 impartial investigation"; (3) provide the complainant and the accused student "an equal
20 opportunity to present relevant witnesses and other evidence"; (4) ensure that the
21 "factfinder and decision maker . . . have adequate training or knowledge regarding sexual
22 violence"; and (5) require "documentation of all proceedings, which may include written
23 findings of fact, transcripts, or audio recordings." The University has failed on almost
24 every point.

25 A. Doctrine Of Judicial Non-Intervention Does Not Apply.

26
27
28 ⁵³ Zoe Katz denies she was ever harmed, there was no physical evidence of any harm, and Ms.
Zatz repeatedly told USC that there was no prohibited conduct.

DECLARATION

1 **DECLARATION OF ZOE KATZ**

2 I, Zoe Katz, declare:

3 I am a 22-year-old student athlete at the University of Southern California (“USC”). I have
4 personal and first-hand knowledge of the facts set forth in this Declaration, unless otherwise stated, and,
5 if called as a witness, I could and would testify competently to those facts.

6 1. I make this declaration in support of Matthew Boermeester’s Motion for Stay of USC’s
7 expulsion decision. I have read the Petition filed herein and am familiar with its contents.

8 2. As of January 21, 2017 I had been dating Matthew Boermeester for more than a year and we
9 are still in a dating relationship. I was the captain of the USC women’s tennis team and I am nationally
10 ranked singles tennis player.

11 3. Although USC refers to me as the “Reporting Party” in their Title IX process, I never made a
12 report to USC about Matthew Boermeester and I repeatedly told USC Title IX personnel, including Title
13 IX Coordinator Gretchen Dahlinger Means and Title IX Investigator Lauren Elan Helsper that Matthew
14 Boermeester was falsely accused of conduct involving me.

15 4. I made it very clear to USC that I have never been abused, assaulted or otherwise mistreated by
16 Matthew Boermeester; not on January 21, 2017 and not ever. Nothing happened that warranted an
17 investigation, much less the unfair, biased and drawn out process that we were forced to endure without
18 speaking publicly.

19 5. On July 30, 2017, after the USC Title IX process was finally completed, I issued a public
20 statement about the mistreatment that I had personally endured during USC’s Title IX investigation
21 process, specifically from Title IX Coordinator Gretchen Dahlinger Means and Title IX Investigator
22 Lauren Elan Helsper. Attached to this declaration is a true and correct copy of the public statement that
23 I issued. The representations I made in my public statement are true and correct.

24 6. During the Title IX process I felt so misled, harassed, threatened and discriminated against by
25 USC’s Title IX personnel, specifically Gretchen Dahlinger Means and Lauren Elan Helsper, that I had to
26 retain my own attorney to protect myself and to try to get UCS’s Title IX office to listen to me.

27 7. Most alarming, I saw that statements of witnesses, including my own statements to Gretchen
28 Dahlinger Means and Laruen Elan Helsper, were misrepresented, misquoted and taken out of context in

08/22/2017

1 order to support Ms. Means' and Ms. Helsper's own personal opinions about what they think happened.

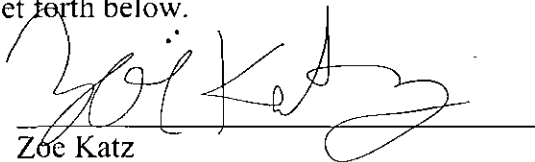
2 8. Looking back in hindsight, I now see that USC's Title IX Coordinator Gretchen Dahlinger
3 Means and Title IX Investigator Lauren Elan Helsper must so strongly presume reports of misconduct to
4 be true, especially allegations against very successful male scholar-athletes such as Matthew
5 Boermeester, that "the ends justifies the means" and the accused student will be judged guilty even with
6 no evidentiary support and against the uncontradicted testimony of the supposed "victim."

7 9. I ask the court to stay USC's entire action and decision against Matthew Boermeester,
8 including the expulsion

9 I declare under the penalty of perjury in the State of California that the foregoing is true and correct.

10 Sign at San Diego, California, and on date set forth below.

11 Date: August 16, 2017

12 
Zoe Katz

Samantha Greene
Kerry L. Steigerwalt

Vanessa Albert
Alexander H. Fuqua

Law Office
Sevens Legal, APC

3555 Fourth Avenue
San Diego, CA 92103
www.sevenslegal.com
(619) 297-2800

FOR IMMEDIATE RELEASE
July 30, 2017

Zoe Katz Statement about the USC Title IX Investigation of Matt Boormeester

Los Angeles, CA - I really do not know how to make a statement like this but I am determined to try to have my voice heard.

I am Zoe Katz and I am a 22 year old student athlete at USC (captain of the women's tennis team), nationally ranked singles player and have been dating Matt Boormeester for well over a year. Matt, the Trojan kicker who helped win the Rose Bowl, has been falsely accused of conduct involving me.

The fact that I have to publicly state this truth is because of how both Matt and I have been treated by USC's Title IX office.

I am speaking up now because this horrible and unjust six-month process has finally concluded. I will tell you that I am afraid of USC's Title IX office. I hope that my comments will not cause USC's Title IX office to further retaliate against me in any way.

I want to be very clear that I have never been abused, assaulted or otherwise mistreated by Matt. He is an incredible person, and I am and have been 100% behind him. Nothing happened that warranted an investigation, much less the unfair, biased and drawn out process that we have been forced to endure quietly.

Terrible and untrue things have been said about Matt by people who don't even know him, including apparently the third party who contacted Title IX, and these bizarre assertions have been treated as fact in this investigation. Words, including mine, have been incompetently or intentionally misrepresented, misquoted and taken out of context, which should not be that surprising since no statements were recorded or verified.

The first time I was mandated to come in and be interviewed by the Title IX office, I was told that I must be afraid of Matt, which I definitely was not and am not. When I told the truth about Matt, in repeated interrogations, I was stereotyped and was told I must be a "battered" woman, and that made me feel demeaned and absurdly profiled. I understand that domestic violence is a terrible problem, but in no way does that apply to Matt and me.

On one occasion I was told to come in to view a videotape - which I was happy to do - and then nothing was shown to me. It ended up being just another interrogation. I feel I was misled, harassed, threatened and discriminated against by the Title IX office to such an extent that I had to retain my own attorney during the process to protect myself and to try to get them to listen to me. The Title IX office's response was dismissive and demeaning, "We are sorry you feel that way."

Looking back, Matt never had a chance. Before he was even interviewed by the Title IX investigator, he was suspended from the University. He was not permitted to go to class or be on campus (he had two classes left

to graduate and he was not allowed to take them elsewhere), he was not permitted to rehabilitate his knee with our trainers (he had surgery by USC doctors two weeks before), he was publicly removed from the football team and all of its activities, he was forbidden to contact me because of an unfounded concern about my safety (it was a one-way no contact order, and every one of my repeated attempts and those of my own attorney to have it lifted it were denied), and he was told he could not talk about the matter or he would potentially face another alleged violation of the policy.

Others in the University community were told they could not talk to Matt or they could be investigated too. He was completely cut off from his school and the team he had kicked to victory in the Rose Bowl. I was told that if I contacted Matt, "things would not go well for him." I was also told that I could be charged and investigated if I spoke to anyone who they decided to call in as possible "witnesses."

Matt and I love USC. We have given our best on the tennis court and on the football field. I do not understand how this situation could have been allowed to happen, especially at USC.

The USC I know and really love upholds values like family, trust and excellence. Facts and fairness are supposed to govern Title IX and not agendas, intimidation and falsehoods. I am so sad that a rogue group like the Title IX office can bring down this amazing school. On behalf of all Trojans, I have to speak up. But more importantly, I am speaking up for myself and for Matt. I will not permit anyone to portray me as a victim, I am not. Nor will I stand by silently and watch a good person like Matt be railroaded by a rigged system.

Matt Boermeester did nothing improper against me, ever. I would not stand for it. Nor will I stand for watching him be maligned and lied about, and I implore the USC community to stand together to stop this from happening to Matt or anyone else.

I know we are not alone.

<https://scepticsociety.com/2017/07/23/a-new-class-of-victims-abuse-of-title-ix-at-the-university-of-southern-california/>

<http://reason.com/blog/2016/08/02/usc-title-ix-official-campus-rape>

<http://helpsaveoursons.com/uscs-eight-title-ix-lawsuits-in-superior-court-filed-by-males/>

If you want any further information, please contact my attorney Kerry Steigerwalt.

[PROPOSED] ORDER

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

MATTHEW BOERMEESTER, an individual,
Petitioner,
v.
AINSLEY CARRY, an individual in his official
capacity as Assistant Vice Provost for Student
Affairs; THE UNIVERSITY OF SOUTHERN
CALIFORNIA, a California corporation; and
DOES 1 to 20 inclusive,
Respondents.

Case No.: BS170473

[Proposed]
**ORDER GRANTING STAY OF
OPERATION OF ADMINISTRATIVE
ACTION PENDING COURT REVIEW**

Having considered the papers submitted in support of and opposition to Petitioner's request for stay, and the argument in support of and in opposition to the stay, and finding good cause therefore;

IT IS HEREBY ORDERED that the operation of the administrative action of Respondents' against Petitioner is stayed pending further order of the court.

Date: _____

Judge of the Superior Court

PROOF OF SERVICE

1
2 STATE OF CALIFORNIA)
3) ss.
4 COUNTY OF LOS ANGELES)

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 888 West Sixth Street, Suite 400, Los Angeles, California 90017.

6 On August 17, 2017, I served the foregoing document described NOTICE OF MOTION AND MOTION FOR STAY OF
7 ADMINISTRATIVE ACTION PENDING COURT REVIEW OF PETITION on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

8 Karen Pazzani
9 Young Zinn & Bate LLP
10 1150 South Olive Street, 18th Fl.
11 Los Angeles, CA 90015
12 Telephone: (213) 362-1860
13 Facsimile: (213) 362-1861
14 E-mail: kpazzani@yzblaw.com
15 ATTORNEYS FOR RESPONDENTS

16 **BY FACSIMILE TRANSMISSION** from FAX number (213) 624-1942 to the fax number set forth above. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

17 **BY MAIL** by placing a true copy thereof enclosed in a sealed envelope addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

18 **BY PERSONAL SERVICE** by delivering a copy of the document(s) by hand to the addressee or I cause such envelope to be delivered by process server.

19 **BY EXPRESS SERVICE** by depositing in a box or other facility regularly maintained by the express service carrier or delivering to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

20 **BY ELECTRONIC TRANSMISSION** by transmitting a PDF version of the document(s) by electronic mail to the party(s) identified on the service list using the e-mail address(es) indicated.

21 I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

22 I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

23 Executed on August 17, 2017 in Los Angeles, California

24
25
26
27 Yesenia Alvarado
28

08/22/2017