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10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES – SANTA MONICA COURTHOUSE**  
13

14 GORDON KLEIN,

15 *Plaintiff,*

16 v.

17 ANTONIO BERNARDO; THE REGENTS  
18 OF THE UNIVERSITY OF CALIFORNIA;  
and DOES 1 through 25,

19 *Defendants.*  
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Case No. 21SMCV01577

*Assigned to the Hon. H. Jay Ford III*

**PLAINTIFF'S WRITTEN STATEMENT  
BEFORE TRIAL IN LIEU OF A TRIAL  
BRIEF AND AN OPENING STATEMENT  
AT TRIAL**

Bench Trial:

Date: June 30, 2025

Time: 10:00 a.m.

Dept.: O

Complaint filed: 9/27/21

1 Plaintiff Gordon Klein respectfully submits the following written statement before trial in  
2 lieu of a trial brief and an opening statement at trial:

3  
4 Professor Klein has taught at the UCLA Anderson School Of Management continuously for  
5 the past 44 years. Over this long teaching career, he has taught both undergraduate and graduate  
6 students in legal subjects such as business and tax law, and related subjects in accounting and  
7 entrepreneurship. Professor Klein also is a lawyer and has taught at UCLA's School Of Law. He  
8 is a full-time instructor, always teaching three classes per regular academic quarter, plus summer  
9 school. Prior to the incident at issue here, Professor Klein had a highly distinguished and thoroughly  
10 unblemished record at UCLA.

11 Professor Klein enjoys educating and mentoring students so has not pursued a research-  
12 focused professorship. Rather, although he has written several published textbooks, Professor  
13 Klein's only role at the Anderson School has been teaching. His formal title is Continuing Lecturer  
14 With Security Of Employment, which effectively gives Professor Klein the same rights in  
15 employment as research professors with tenure. Anderson students, faculty, and administrators alike  
16 invariably call him Professor Klein.

17 For the past nearly two decades, Professor Klein has been among a group of about ten  
18 instructors who teach in the Anderson School's undergraduate accounting minor program. These  
19 lecturers are called "Unit 18" employees as they are unionized employees of UCLA represented by  
20 the University Council of the American Federation Of Teachers. Their employment is governed by  
21 a collective bargaining agreement commonly referred to as a Memorandum Of Understanding  
22 ("MOU"). [Ex. 257] Although the MOU applicable here is lengthy, our case focuses on just two  
23 of its express provisions – along with the covenant of good faith and fair dealing that is implied into  
24 the agreement as a matter of law.

25 First, Article 2.A of the MOU states: "Academic freedom will extend to NSF through  
26 applicable provisions of the Academic Freedom Policy in effect at the time at the location of the  
27 NSF." "NSF" refers to Non-Senate Faculty employees, such as Professor Klein, who are teaching-

1 focused and whose employment is governed by the MOU. The Academic Freedom Policy in effect  
2 at UCLA in June 2020 commonly is referred to as APM-010. [Ex. 216]

3 Second, Article 10.B of the MOU “strictly limits” disclosure of both confidential and non-  
4 confidential employee personnel files, records, and information to “those representatives and  
5 employees who need access to information in the personnel files in the performance of their  
6 officially assigned duties, provided that such access is related to the purpose for which the  
7 information was acquired. Members of the public and non-governmental entities shall not have  
8 access to confidential personnel files except as required by law.” We will prove the UC Regents  
9 breached both of these contractual provisions.

10 There’s one other aspect of UCLA’s administration that is important to this case: The  
11 University is administered under a “shared governance” system between UCLA’s Chancellor and  
12 its many Vice Chancellors, Deans, Vice-Deans, and other administrators who report to defendant  
13 The Regents Of The University Of California, on the one hand, and the tenured UCLA faculty, on  
14 the other hand. The faculty is represented in this shared governance system by the Academic Senate,  
15 which has a number of committees composed of UCLA professors. One such committee is the  
16 Committee On Academic Freedom, which is UCLA’s campus-wide body that exists specifically to  
17 address issues of academic freedom and is the University’s repository of expertise on the subject.

18 As a university instructor for many decades, Professor Klein has developed a unique ability  
19 to impart sometimes complex legal and financial principles in ways that lay people can understand.  
20 For several decades, Professor Klein used this unique skill to establish himself as one of the nation’s  
21 premiere – and busiest – expert witnesses in accounting, valuation, and other financial matters. As  
22 Dean Bernardo’s Anderson School webpage notes, it is not uncommon for instructors at top business  
23 universities such as UCLA to earn outside income by serving as expert financial consultants. But  
24 Professor Klein took this opportunity to an extraordinary level, testifying in many large and  
25 sometimes high-profile cases. Moreover, Professor Klein regularly informed the Anderson School  
26 about his outside expert witness practice, and he specifically discussed it with Dean Bernardo on  
27 multiple occasions.

1 By 2016, Professor Klein’s expert witness income had dwarfed his nearly \$200,000 annual  
2 salary as a UCLA instructor; that year, Professor Klein earned almost \$1.9 million from his expert  
3 witness practice, largely from his role as the sole accounting expert involved in the General Motors  
4 bankruptcy – the largest manufacturing bankruptcy in the nation’s history. Professor Klein then  
5 earned over \$970,000 from his expert witness practice in 2017, nearly \$1.2 million in 2018 and  
6 nearly \$1.4 million in 2019.

7 This highly lucrative business developed through years of hard work and dedication suddenly  
8 came crashing down on June 3, 2020, when defendant Antonio Bernardo, as Dean of the Anderson  
9 School, precipitously, reflexively, and – we will prove – unlawfully suspended Professor Klein  
10 because of his private and contractually-protected email exchange with a student regarding the  
11 administration of his upcoming final examination. Dean Bernardo inflicted this draconian  
12 punishment on his longtime Anderson School colleague without investigation – *indeed, without so*  
13 *much as discussing the matter with Professor Klein* – without reasonable basis, and for improper  
14 and self-interested collateral purposes. Dean Bernardo then proceeded to publicly announce this  
15 outrageous suspension to thousands of members of the “Anderson School Community” while  
16 excoriating Professor Klein for ostensibly having demonstrated a “disregard for our core principles,  
17 including an abuse of power.” In fact, however, it was not Professor Klein who abused power on  
18 this occasion; rather, we will demonstrate that Dean Bernardo hastily and reflexively suspended  
19 Professor Klein specifically – but wrongfully – so he could announce to the world that he had done  
20 so. Indeed, Dean Bernardo’s irresponsible and unprofessional conduct epitomized a true abuse of  
21 power.

22 But publicly throwing Dean Bernardo’s longtime Anderson School colleague under the bus  
23 had dire consequences for Professor Klein, even if it served defendants’ own perceived self-interest.  
24 The Court will learn that Professor Klein’s expert witness practice was utterly and permanently  
25 destroyed from the moment these defendants disregarded his rights and publicly suspended him  
26 during the first week of June 2020. Today, more than five years later, Professor Klein’s once  
27 thriving practice remains almost completely dormant, and there is no reason to believe it ever will  
28 recover for the simple reason that Professor Klein is now damaged goods; and there are just too

1 many qualified competitors who were not suspended by their universities – even if briefly, even if  
2 without basis, and even if wrongfully. Our damages expert, Eric Madsen, will prove that Professor  
3 Klein will have suffered over \$22 million in lost income as a result of defendants’ misconduct. [Ex.  
4 460] In this sense, Professor Klein was the paradigmatic “eggshell skull” plaintiff we learned about  
5 in law school. Although defendants may not have realized the severity of the economic harm their  
6 wrongful conduct would cause they nevertheless are fully liable for it as a matter of longstanding  
7 common law.

8 Before delving into the facts we briefly address the word “suspension”: Defendants will  
9 argue that Professor Klein was not formally suspended per the MOU; rather, he was placed on  
10 involuntary administrative leave with pay. This is true as far as it goes, but defendants protest too  
11 much. In fact, defendants themselves repeatedly referred to their action against Professor Klein as  
12 a “suspension.” This includes the Anderson School’s Faculty Executive Committee and its Faculty  
13 Chair, among other examples. More importantly, as UCLA’s voluminous record of this incident  
14 makes clear, the outside world understood that Professor Klein had been “suspended” as that term  
15 commonly is used.

16 It is difficult to believe that more than five years have passed since the awful days of late May  
17 and early June 2020. Recall we were at the height of the COVID pandemic and lockdowns. Then,  
18 over that Memorial Day weekend, Americans were shocked to witness the videotaped death of  
19 George Floyd at the hands of Minneapolis police officers.

20 At UCLA – which had been on COVID lockdown and remote-only instruction since March  
21 2020 – students began demanding through an organized email campaign that instructors treat black  
22 students preferentially in their final examination administration and grading based solely on the  
23 color of their skin. Professor Klein believes deeply in racial equality and neutrality as envisioned  
24 by Dr. Martin Luther King – and, of course, as expressly required by California law including in the  
25 administration of its public university system – and for many years Professor Klein has stressed  
26 these fundamental values of racial and ethnic neutrality in his classes at UCLA. Thus, the notion of  
27 racially discriminating in the administration of his final exams was repugnant to Professor Klein.

1 Late in the morning of Tuesday, June 2, 2020, Professor Klein received a template email  
2 demand for race-based preferential treatment in the administration of his final exam. [Ex. 197]  
3 Professor Klein's heart sunk when he realized the demand for racial preferences came from Leslie  
4 Giovanni, a student Professor Klein had come to know during in-class instruction the previous  
5 quarter. Leslie Giovanni was an ambitious young immigrant from Indonesia, and Professor Klein  
6 had spent after-class time discussing legal and business ethics with him before the COVID  
7 lockdowns. Professor Klein was disappointed that Leslie Giovanni, of all students, had succumbed  
8 to this outrageous mob campaign for racial discrimination.

9 Of course, Professor Klein could have chosen not to respond at all to his student's seemingly  
10 thoughtless, somewhat irrational, and – in Professor Klein's view – deeply immoral demand. Or he  
11 could have declined Leslie Giovanni's unlawful request without explanation. But Professor Klein  
12 chose a different path. He thought it was important to convey to Leslie Giovanni his own deep  
13 antipathy to differential treatment based on race, and Professor Klein did so by posing a series of  
14 sharply-worded rhetorical questions intended to challenge his student to rethink his views and to  
15 honestly consider the repercussions of what he was asking of his professor. Some have described  
16 Professor Klein's response to Leslie Giovanni as sarcastic, or even a bit snarky, and perhaps it was  
17 – at worst. Certainly, however, Professor Klein did not berate or insult his student, nor did Professor  
18 Klein attack him personally or even criticize Leslie Giovanni. Rather, in response to Leslie  
19 Giovanni's unsolicited views advocating preferential treatment on the basis of race in his final exam  
20 administration, Professor Klein responded with his own views on the subject – and he did so in a  
21 private, one-to-one email exchange initiated by his student.

22 For whatever reason, Leslie Giovanni chose to share Professor Klein's response – but not  
23 their entire email exchange – with friends who then uploaded just the response to the internet. [Ex.  
24 141] At this tense moment in our history, mob-like calls for Professor Klein's proverbial scalp  
25 immediately went viral. Thousands of people signed an online petition demanding Professor Klein's  
26 termination solely for his choice of words in a private email response to his student.

27 At 4:17 p.m. that same Tuesday, June 2, 2020, a student forwarded to Dean Bernardo a copy  
28 of Professor Klein's email response to Leslie Giovanni. [Ex. 189] Professor Klein's response

1 began: “Thank you for your suggestion in your email below that I give black students special  
2 treatment, given the tragedy in Minnesota.” Having seen only this response – but not the student’s  
3 precipitating email – Dean Bernardo must have believed that Professor Klein’s student had, in fact,  
4 asked him to “give black students special treatment.” Nevertheless, and despite UCLA’s clear and  
5 unequivocal policy – as mandated by California law – prohibiting any use of race in student  
6 examination or grading, Dean Bernardo apparently was unconcerned about this blatantly unlawful  
7 demand. Rather, Dean Bernardo’s fury was directed solely at Professor Klein for the *ideas* he  
8 expressed to Leslie Giovanni in response to his unlawful demand and for the words Professor Klein  
9 used to express them. In other words, Dean Bernardo objected to the ideological content of  
10 Professor Klein’s response to his student’s unlawful request for “special treatment” of other students  
11 based on race.

12 At 4:37 p.m., just 20 minutes after Professor Klein’s response had landed in his in-box, Dean  
13 Bernardo emailed the Anderson School’s Equity, Diversity & Inclusion (“EDI”) leaders, Associate  
14 Dean Heather Caruso and Professor Brett Trueman: “I’m not sure of the next steps with Gordon but  
15 we must respond strongly.” [Ex. 151] Three minutes later, Dean Bernardo emailed Patricia  
16 Godefroy, Anderson’s Associate Dean Of Communications: “Gordon’s response is absolutely  
17 outrageous. I asked Brett and Heather to look into how we deal with Gordon but in the meantime  
18 please draft a response.” [Ex. 189]

19 Over the next few hours, as Dean Bernardo reflexively decided to publicly suspend and  
20 excoriate Professor Klein, he surrounded himself with this small group of like-minded Anderson  
21 School administrators – Associate Deans Heather Caruso and Patricia Godefroy, Professor Brett  
22 Truman, and Anderson Faculty Chair Professor Sanjay Sood. The group occasionally included a  
23 few others with thoroughly conforming views. Not surprisingly, therefore, Dean Bernardo’s kitchen  
24 cabinet became an echo chamber in which contrary views about the appropriate course of action  
25 were never even aired – much less considered or discussed – despite the fact that many thoughtful  
26 and distinguished members of the “Anderson Community” contemporaneously expressed to Dean  
27 Bernardo and other administrators at UCLA their *laudatory* reactions to Professor Klein’s email.  
28 This strident, narrow-minded refusal to consider other viewpoints both evidences and explains the

1 abject failure of Dean Bernardo and his highly-positioned public university colleagues to respond in  
2 the manner required by this tense moment at UCLA: As seasoned, deliberative professionals who  
3 considered divergent views and sought to steer a neutral, objective course of action. Nor did they  
4 consider Professor Klein’s legal rights as a UCLA employee and instructor, or their manifest  
5 obligation to uphold our laws and University policy prohibiting racial discrimination. Instead, they  
6 behaved more like the passionate but immature – and frequently thoughtless – young people in their  
7 charge.

8 A little after 6:00 p.m. that evening, Dean Bernardo sent an email to Professor Klein asking  
9 that he call him right away. [Ex. 195] Professor Klein did so, expecting to have a conversation with  
10 Dean Bernardo about the rapidly erupting controversy. However, immediately upon answering the  
11 phone, Dean Bernardo tersely told Professor Klein that the Anderson School was reporting him to  
12 UCLA’s Discrimination Prevention Office (“DPO”). When Professor Klein attempted to discuss  
13 the matter, Dean Bernardo abruptly hung up the phone. Professor Klein called back but Dean  
14 Bernardo refused to answer and the call went to voice mail. To this day – over five years later –  
15 Dean Bernardo *never* has discussed the matter with Professor Klein.

16 At 6:53 p.m. that evening, Dean Godefroy sent Dean Bernardo a template response to  
17 incoming emails about Professor Klein. The response read: “I was devastated to learn of this email  
18 late this afternoon and began investigating immediately. Please know that respect and equality for  
19 all are core principles at Anderson. On behalf of Anderson, please accept my apology for the  
20 incredibly ignorant and hurtful sentiments expressed in this professor’s message. They are simply  
21 inexcusable. I appreciate you reaching out to me to inform me of this matter and to give us the  
22 opportunity to address it.” [Ex. 198] Of course, this reference to Professor Klein’s “ignorant and  
23 hurtful sentiments” was a direct attack on his *ideological viewpoint* – *i.e.*, to the content of Professor  
24 Klein’s email reply to Leslie Giovanny – and not merely to its “tone and manner” as defendants  
25 disingenuously have advanced as a flimsy *post hoc* rationalization for their censorious behavior.

26 Indeed, it is clear that, by a little after 9:00 p.m. that very evening of June 2, 2020 – *i.e.*, less  
27 than five hours after first learning of Professor Klein’s email response to Leslie Giovanny – Dean  
28 Bernardo had decided to suspend him. Dean Bernardo emailed Professor Sood, the Anderson



1 Faculty Chair: “Hey Sanjay, We need to learn more about the process for disciplining Gordon and  
2 the potential actions we can take. We also need to figure out what to do about his final exams and  
3 grades.” [Ex. 199] In other words, Professor Klein would not be administering his own exams nor  
4 grading his own students. He would be suspended. The time was 9:16 p.m. on Tuesday, June 2,  
5 2020.

6 At 10:04 p.m., Dean Bernardo emailed Patricia Turner, UCLA's Dean and Vice Provost For  
7 Undergraduate Education in its College Of Letters And Science: “I’ve received hundreds of emails  
8 from students about Gordon Klein – close to 4000 people have signed on to a change.org petition to  
9 get him fired.” [Ex. 353] This was the first written record of Dean Bernardo’s intense focus an  
10 online petition demanding that Professor Klein be fired. Indeed, from the very outset, Dean  
11 Bernardo appears to have handled this matter not by focusing on UCLA’s rules and regulations but  
12 rather in response to – or perhaps in fear of – an online mob. Needless to say, however, this was not  
13 Dean Bernardo’s duty as Dean of the Anderson School. Just after 10:00 p.m. that same night, Dean  
14 Bernardo reiterated – this time to Vice Provost Turner – that Professor Klein would not be  
15 administering his own final exam that quarter: “It would be helpful to talk if you have some time  
16 tomorrow morning before 10am. I have a few questions about providing accommodations for  
17 Klein’s students for the final exam.” *Id.*

18 Things then cascaded from bad to worse. At 10:07 p.m., Maria Blandizzi, UCLA’s Dean For  
19 Students, sent Dean Godefroy a different out-of-context and distorted email that had been posted  
20 online – obviously maliciously – by another student of Professor Klein’s from the previous quarter,  
21 Olivia Truong. [Ex. 108] Dean Godefroy immediately shared Olivia Truong’s malicious post –  
22 which we refer to as the “Truong Tweet” – with Dean Bernardo, Dean Caruso, and Professor  
23 Trueman. [Ex. 211] Despite Olivia Truong’s clear pile-on – and the equally obvious innocent  
24 meaning of Professor Klein’s email – Dean Bernardo testified at deposition that the Truong Tweet  
25 was another reason, along with the “Giovanny Email,” for his decision to suspend Professor Klein  
26 less than 24 hours later.

27 Then, of all things, Professor Trueman – whom we now know had been maintaining a 15-  
28 year personal grudge against Professor Klein (for reasons Professor Klein will explain at trial) –

1 chose this moment to claim that Professor Klein had been the subject of a vague female student  
2 complaint in the 1990s, about which Professor Trueman allegedly had heard third or fourth-hand  
3 but knew no details. Professor Trueman also told Dean Bernardo’s kitchen cabinet echo chamber  
4 that he and Professor Judson Caskey, who then oversaw the undergraduate accounting minor  
5 program, disliked some of the case examples that Professor Klein had used in one of his tax classes.  
6 Once again, and despite the obvious impropriety of raising these accusations at this moment amid a  
7 swirling controversy, Dean Bernardo testified at deposition that these “Trueman Tales” were yet  
8 another reason – along with the Giovanni Email and the Truong Tweet – for his reflexive suspension  
9 of Professor Klein the following day.

10 At 7:43 a.m. the next morning, June 3, 2020, Dean Bernardo emailed Professor Klein’s  
11 supervisor, Professor Caskey: “Judson, Do you know if Gordon is teaching again this week and  
12 when his finals are scheduled? Please respond asap.” [Ex. 203] Professor Klein was being replaced.

13 A few minutes later, at 7:49 a.m., Dean Godefroy emailed Deans Bernardo and Caruso, along  
14 with another like-minded member of Dean Bernardo’s kitchen cabinet echo chamber, Senior  
15 Associate Dean Miguel Unzueta: “We should send a community-wide message today on this. Very  
16 transparent. We heard about this yesterday afternoon, and immediately began investigating. We  
17 confirmed that the professor did indeed write the email, spoke with the student who received it and  
18 apologized. Reported the matter to DPO and – here’s the important part – did what to remove him  
19 immediately from the classroom? Referring this to the DPO will be perceived as bureaucratic  
20 protocol. *We have to be able to share some action that shows absolute rejection of what he said.*”  
21 (Emphasis added.) [Ex. 212]

22 A little over ten minutes later, at 8:03 a.m., Dean Godefroy doubled down on her throw-  
23 Professor-Klein-under-the-bus strategy when she emailed Dean Bernardo: “Tony, I think we need  
24 to send a note to all of our program students and administration leadership alerting them to this issue  
25 ASAP. We should also set up a briefing for student leadership before noon. BUT we need the  
26 answer to how we remove from the classroom. This is actually an opportunity now to clearly  
27 demonstrate our commitment to our values.” [Ex. 364]

1 Dean Bernardo's troops took immediate action. At 8:32 that morning, Wednesday, June 3,  
2 Professor Sood emailed UCLA Vice Chancellor Michael Levine: "Hi Mike, We have a lecturer in  
3 the undergraduate program, Gordon Klein, who has made some very inappropriate comments. Tony  
4 has received hundreds of emails and there is a petition to remove Klein signed by 4000 students.  
5 What options do we have for removing or disciplining him?" [Ex. 353] A few minutes later, at  
6 8:40 a.m., Professor Sood emailed Professor Caskey, copying Dean Bernardo: "First we need to  
7 find a replacement for Klein and then we can explore any disciplinary action." [Ex. 203]

8 At 9:19 a.m., Susan Murray, the Anderson School's Director Of Academic Affairs, emailed  
9 UCLA's central campus Human Resources Department: "We need your urgent assistance on a  
10 matter regarding Continuing Lecturer Gordon Klein. I've attached several emails that have come  
11 as a result of an email that Klein sent out. ... There is currently a change.org petition with over  
12 12,000 signatures. We need to remove him from the remainder of the quarter .... What disciplinary  
13 action can we take? *This may very well impact his reappointment following this current academic*  
14 *year.*" (Emphasis added.) [Ex. 236] In other words, merely hours after first learning of Professor  
15 Klein's email response to Leslie Giovanny – and having undertaking no investigation whatsoever –  
16 Dean Bernardo and his colleagues at the Anderson School actually contemplated *permanently*  
17 terminating the employment of a highly-valued decades-long faculty member holding formal  
18 Security Of Employment, the effective equivalent of tenure, purportedly because they didn't like the  
19 "tone and manner" of his email response to a student who had asked Professor Klein to racially  
20 discriminate in his final exam administration.

21 About 25 minutes later, at 9:44 a.m., Dean Caruso – acting on behalf of the Anderson School  
22 administration and copying Deans Bernardo, Unzueta, and Godefroy, and Professor Trueman – sent  
23 to the UCLA Title IX Office a formal complaint against Professor Klein for the Truong Tweet. [Exs.  
24 160, 168] Again, defendants made this baseless accusation against Professor Klein without speaking  
25 with him and without any knowledge – nor apparent concern – about the underlying facts.

26 At 3:05 p.m. that afternoon, Professor Sood emailed Erica Chau, UCLA's Assistant Vice  
27 Chancellor For Academic Affairs: "DPO and Title IX office have both been notified, neither has  
28 decided yet to start an official investigation. We were advised by Anthony Solana [Michael

1 Simidjian’s supervisor at UCLA Labor Relations] that we could suspend Klein with pay under the  
2 notion that there is a pending investigation (although not by DPO or Title IX). Unless there is a  
3 reason not to move forward, the Anderson leadership is planning on suspending Klein for the  
4 remainder of this quarter and perhaps over the summer as well.” **[Ex. 236]**

5 Then, early that evening of Wednesday, June 3, 2020 – just one day after Professor Klein’s  
6 email response to Leslie Giovanny – Dean Bernardo sent Professor Klein via email a formal “Notice  
7 of Administrative Leave” that stated: “In accordance with Article 12.A.8 of the memorandum  
8 between the University of California and the UC-AFT, I am notifying you that you are being placed  
9 on paid administrative leave from your position as a Continuing Lecturer commencing immediately,  
10 June 3, 2020, and ending June 24, 2020. If your leave is extended, you will be notified in writing.  
11 You are being placed on leave to allow the University to review allegations regarding behavior made  
12 in the course and scope of your position as a Continuing Lecturer that is inconsistent with APM-  
13 015.” **[Ex. 186]**

14 Dean Bernardo later learned that APM-015 – UCLA’s Faculty Code Of Conduct **[Ex. 145]** –  
15 is inapplicable to Professor Klein’s employment in all material respects. Indeed, the Anderson  
16 School’s own website explicitly states that the Faculty Code Of Conduct “does not apply to  
17 instructors in Unit 18,” such as Professor Klein. **[Ex. 185]** So Dean Bernardo’s Notice Of  
18 Administrative Leave was defective on its face, yet another manifestation of his rush to judgment.  
19 In any event, the University – through its Discrimination Prevention and Title IX Offices – soon  
20 determined that Professor Klein had not engaged in behavior “inconsistent with APM-015” that even  
21 warranted formal investigation. **[Exs. 312, 107, 181]** By then, however, the severe damage caused  
22 by Dean Bernardo’s reflexive public suspension and excoriation of Professor Klein had long been  
23 done. The bell could not be unrung.

24 Moreover, in his scramble to placate an online mob, it is apparent that Dean Bernardo failed  
25 to consider Professor Klein’s contractual right of academic freedom – despite placing his  
26 longstanding Anderson School colleague on involuntary administrative leave for a private email  
27 response to a student concerning administration of his final exam. This manifest failure to consider  
28 Professor Klein’s contractual rights before taking punitive action over a matter that obviously

implicated academic freedom was a clear violation of the Regents' obligation of good faith and fair dealing.

How do we know this? First and foremost, Dean Bernardo never sought guidance or input from UCLA’s Committee On Academic Freedom – the very University body that exists specifically to address issues of academic freedom at UCLA. Indeed, less than a week after Professor Klein’s suspension, the Committee On Academic Freedom itself convened *sua sponte* to address the matter and, just three weeks later, issued the following statement:

“In response to a recent controversy surrounding an email reply to a student by Gordon Klein (a Lecturer in Accounting at the Anderson School), the UCLA Senate Committee on Academic Freedom underlines all instructors’ freedom (protected by APM-010) to express their views on grading policy as they determine to be appropriate.

Some people may well disagree with Prof. Klein's views and think that he should have responded differently to a student's request that the grading structure be changed to 'exercise compassion and leniency to Black students in our major.' But instructors are entitled and empowered to say 'no' to such requests; and, just as students have every right to express their views on such matters to faculty and to others, instructors are entitled to explain their views in turn to students. When any of us ask people to do things, especially based on a moral or political argument about current events, those people are entitled to respond with their own moral or political views.

\* \* \*

An academic institution like UCLA must remain a place for the expression of a wide diversity of views and interpretations. It should also be a site of vigorous debate – including by students, by faculty, and by others – so that those exposed to or participating in these discussions have the opportunity to hear a range of opinions as they formulate their own views.” [Ex. 230]

1           UCLA’s distinguished *emeritus* Professor of Law Eugene Volokh, who sat on the Committee  
2 On Academic Freedom in June 2020 and was the primary author of this statement, will lay its  
3 foundation via brief portions from his videotaped deposition. Professor Volokh twice has chaired  
4 the Committee On Academic Freedom and is one of the nation’s preeminent legal scholars in areas  
5 of expressive freedom.

6           Moreover, rather than consult with appropriate UCLA colleagues, Dean Bernardo simply  
7 concocted his own bizarre construction of academic freedom to rationalize his punitive decision-  
8 making. Indeed, although Dean Bernardo admits he has no relevant knowledge or expertise, he  
9 nevertheless disagrees with his longstanding UCLA colleague, Professor Volokh – a renowned  
10 expert in the field of expressive freedom – and with UCLA’s Committee On Academic Freedom –  
11 the University’s officially-designated repository of expertise regarding academic freedom – as to  
12 the meaning of this contractual term. Dean Bernardo went so far as to submit a sworn declaration  
13 in which he opined: “While academic freedom protects the content of academic programming and  
14 grading evaluation, it does not similarly protect the manner in which communications are made.”

15 **[Ex. 105]**

16           Not only is Dean Bernardo’s cramped and transparently self-serving view contrary to the  
17 University’s own experts, it does not remotely comport with the definition of “academic freedom”  
18 long supplied by the authoritative *Black’s Law Dictionary*:

19  
20           “The right (esp. of a university teacher) to speak freely about political or ideological  
21 issues without fear of loss of position or other reprisal.”  
22

23           When we asked Dean Bernardo at deposition for the basis of his own definition of academic freedom  
24 – submitted publicly under oath – we were met with privilege objections. We’ll see how this plays  
25 out at trial.

26           On June 4, 2020, one day after notifying Professor Klein of his suspension, Dean Bernardo  
27 set out to publicly excoriate and vilify Professor Klein – including by informing the world that  
28 Professor Klein had been suspended. At 2:50 p.m. that afternoon, Dean Godefroy circulated to

1 Deans Bernardo, Caruso, and Unzueta, Professors Trueman and Sood, and a new member of their  
2 kitchen cabinet echo chamber, Associate Dean Robert Weiler, a draft statement to the Anderson  
3 School Community they had been working on all day: “Tony and I have gone cross-eyed working  
4 on this statement. We’ve incorporated the consensus from this morning’s call with relevant UCLA  
5 leadership and gotten subsequent approval from Mary Osaka on this draft. BUT it’s a bit of a  
6 Frankenstein so we need your relatively fresh eyes on it. Does it capture the points that you’ve heard  
7 are most important to convey (and refrained from those that we can’t share)? Will it satisfy our  
8 students or do we need to add additional messaging, and if so, what would you add? Rob, I’m  
9 adding you to our merry band for obvious reasons. Your insights will be helpful.” [Ex. 243]

10 One of the lines in the draft statement circulated by Dean Godefroy stated: “I want to inform  
11 you that this lecturer is currently on leave from campus. His courses have been reassigned to other  
12 instructors.” Less than an hour later, at 3:44 p.m., Dean Rob Weiler responded to Dean Bernardo’s  
13 “merry band”:

14  
15 “I think the one line about the professor being on leave from campus will be very  
16 satisfying to students. I am glad we are able to indicate specific action being taken.  
17 Yes, it doesn’t sound as permanent as many would like, but firm nevertheless.” [Ex.  
18 244]

19  
20 Dean Weiler’s candid response revealed the ugly truth: Dean Bernardo had raced to suspend  
21 Professor Klein so he could tell the world he’d done so.

22 At 5:44 p.m. on Thursday, June 4, 2020, Dean Bernardo emailed a statement to all of  
23 Professor Klein’s Spring 2020 students: “Unfortunately, we have been alerted to behavior by your  
24 original professor that we find troubling. Our concerns have been shared with all appropriate UCLA  
25 investigative offices.” Certainly, the words “troubling behavior” that had been reported to “all  
26 appropriate UCLA investigative offices” do not ordinarily connote a single email, the content of  
27 which the Anderson School administration did not like. Nevertheless, those are the words that Dean  
28 Bernardo chose to use with Professor Klein’s students. He also told them: “Professor Klein is

1 currently on leave from campus and his courses have been reassigned to Professor Judson Caskey,  
2 who heads our accounting minor program, and to Professor Brett Trueman, who heads our  
3 accounting area. They will oversee and grade your final examinations.” [Ex. 291]

4         Shortly thereafter, Dean Bernardo issued a written statement to thousands of alumni, students,  
5 supporters, faculty, and administrators comprising the Anderson Community. Once again, Dean  
6 Bernardo’s widely-circulated statement referred to “troubling conduct by one of our lecturers in the  
7 undergraduate accounting program” – rather than forthrightly referring to it as an email response to  
8 a student the content of which Dean Bernardo found objectionable. Here again, insinuating a far  
9 different type of “troubling conduct,” Dean Bernardo stated: “Our concerns have been shared with  
10 all appropriate UCLA investigative offices.” He went on: “We share common principles across the  
11 university of integrity, excellence, accountability, respect and service. Conduct that demonstrates a  
12 disregard for our core principles, including an abuse of power, is not acceptable. *This lecturer is*  
13 *currently on leave from campus. His courses have been reassigned to other instructors.*” This same  
14 mass publication also insinuated that Professor Klein had “unfairly treated or maligned” a student  
15 “based on identity.” [Ex. 226] (emphasis added)

16         By this moment, as a direct and immediate result of Dean Bernardo’s public suspension and  
17 excoriation, Professor Klein’s expert witness practice had been permanently destroyed. Professor  
18 Klein’s longstanding role as a respected UCLA instructor was a primary factor in his value as a  
19 generously-paid expert witness. From this point forward, however, Professor Klein would be  
20 ethically obligated to disclose this incident – irrespective of its outcome – to potential clients and if  
21 questioned by opposing counsel about any record of academic discipline, a standard line of cross-  
22 examination with academic experts. The Court will hear testimony from our expert witnesses Eric  
23 Madsen (a marketer of expert witness services) and Laurence Shiekman (an attorney purchaser of  
24 such services) that, by virtue of this public suspension, Professor Klein has become essentially  
25 unmarketable and unusable as an expert witness. There simply are too many academic competitors  
26 without negative university records. More importantly, the proof is in the pudding: From June 4,  
27 2020 to date, Professor Klein’s previously flourishing and highly remunerative expert witness  
28 practice has almost completely dried up, with no realistic prospect of recovery.



1 Professor Klein's suspension was set to expire on Wednesday, June 24, 2020, two days into  
2 the Summer 2020 session. Although Dean Bernardo had hoped to extend the suspension beyond  
3 that date, by June 15 it had become apparent that the DPO would not initiate a formal investigation  
4 of Professor Klein over the Giovanni Email. [Exs. 349, 350] As a result, on Monday, June 15,  
5 2020, Dean Bernardo formally returned Professor Klein to the upcoming summer session's teaching  
6 roster (from which Professor Klein had been removed concurrently with his suspension). [Ex. 303]  
7 By the end of the week it had become increasingly clear that Dean Bernardo – as much as he seems  
8 to have wanted to do so – simply had no grounds to extend Professor Klein's suspension. So Dean  
9 Bernardo decided to reinstate Professor Klein just in time to begin teaching the summer session on  
10 Monday, June 22, 2020. Despite having made this decision several days earlier, however, Dean  
11 Bernardo chose not to inform Professor Klein of his reinstatement – and concurrent requirement that  
12 he begin teaching the next day – until Father's Day Sunday, June 21, 2020. [Ex. 294]

13 That same day, June 21, 2020, Dean Bernardo issued his second statement about Professor  
14 Klein to the Anderson Community. Shockingly, as eager as Dean Bernardo had been on June 4 to  
15 tell the world he had suspended Professor Klein, Dean Bernardo altogether omitted from his June  
16 21 statement any reference to the fact that he had reinstated Professor Klein about one hour earlier.  
17 Instead, Dean Bernardo wrote:

18  
19 “Recently, students expressed concern about an undergraduate lecturer and how he  
20 responded to a student's request for understanding during protests against racial  
21 injustice. Many of the details have been circulating widely in social media.  
22 Nevertheless, because the University must protect the privacy rights of all employees,  
23 I cannot comment on this matter with the full transparency that I would like. What I  
24 can do is share my values and vision for Anderson as its dean.

25  
26 First, let me be clear that I take very seriously the values of freedom of expression  
27 and the freedom of intellectual inquiry. I value them not only because of the First  
28

1 Amendment but because those values are critical to any great research and teaching  
2 institution.

3  
4 Second, I recognize that no value is limitless in practice. Academic freedom protects  
5 the content of academic programming and grading evaluation, but it does not protect  
6 everything a lecturer does. For example, it does not protect bad teaching or failures  
7 to respond to students asking for information about office hours. All faculty can and  
8 should be held accountable for how well we discharge our responsibilities as teachers  
9 at Anderson.

10  
11 Third, the faculty owe an ethical duty to demonstrate respect for students as  
12 individuals and to adhere to our roles as intellectual guides and counselors. In my  
13 view, we have a sacred responsibility when we teach, and even as we push our  
14 students to stretch the limits of their understanding and capacity, that should never be  
15 done with callousness or condescension. It is my responsibility to hold our  
16 community to our highest standards, in accordance with UCLA principles and  
17 policies.

18  
19 Fourth, we must protect due process through our administrative procedures to ensure  
20 fair and equitable treatment of all. When there are allegations of misconduct, all  
21 institutions, including the University, must have clear, consistent procedures to find  
22 the facts, decide where they violate norms, and provide avenues for appeal. This is  
23 how the rule of law plays out in the University. It takes time, but it protects the  
24 interests of all. In some instances that means immediate action cannot be taken, or  
25 may mean that certain measures can only be implemented on a short-term basis even  
26 if the administrative process continues. We must all be patient and allow the  
27 processes to play out.” [Ex. 280]

1 And that's where Dean Bernardo chose to leave it. After insinuating to thousands of members  
2 of the Anderson School Community that Professor Klein must be held accountable for the manner  
3 in which he had discharged his responsibilities as a teacher; that Professor Klein had abandoned his  
4 ethical duty to demonstrate respect for his students as individuals; that Professor Klein had failed to  
5 adhere to his role as an intellectual guide and counselor; that Professor Klein had acted with  
6 callousness and condescension toward his student; and that Professor Klein had failed to  
7 demonstrate Anderson's highest standards in accordance with UCLA principles and policies, Dean  
8 Bernardo falsely implied that Professor Klein remained on suspension while "the administrative  
9 process continues."

10 As the Court knows, we are asserting two causes of action against the Regents – one for  
11 breach of contract and one for statutory retaliation – and two causes of action sounding in tort against  
12 Dean Bernardo, one for false light invasion of privacy and one for negligent interference with  
13 prospective economic advantage.

14 We allege the Regents breached Professor Klein's employment agreement as memorialized  
15 in the MOU by failing to honor his contractual right of academic freedom and by failing to maintain  
16 confidentiality over Professor Klein's involuntary administrative leave. We also allege the Regents  
17 breached the covenant of good faith and fair dealing implied by law into the employment agreement  
18 by abusing the discretion vested in the Regents under Section 12.A.8 of the MOU to reflexively  
19 place Professor Klein on involuntary administrative leave without investigation, without reasonable  
20 basis, and for improper collateral purposes.

21 These contractual breaches destroyed Professor Klein's thriving expert witness practice.  
22 Given defendants' actual or constructive knowledge of this highly successful practice – which  
23 certainly was well-known at the Anderson School and was, for example, touted in Professor Klein's  
24 page on the Anderson School's website – we contend it was entirely foreseeable that this very  
25 damage would result from these particular contractual breaches.

26 From the outset of this case, the Regents have contended that Professor Klein failed to exhaust  
27 his administrative remedy under the MOU before initiating this lawsuit. This defense refers to  
28 Article 32 of the MOU, which set out a three-step administrative grievance procedure for employee

1 claims under the MOU. In fact, however, Professor Klein *did* timely and faithfully pursue *all three*  
2 *steps* of this grievance process. But the Regents dropped the ball and failed to respond to Professor  
3 Klein’s Step 3 appeal. For this reason, we understood that the Regents’ failure to exhaust defense  
4 might have arisen from their mistaken belief that Professor Klein had not filed a Step 3 appeal. This  
5 defense imploded, however, when UCLA Labor Relations Specialist Michael Simidjian admitted at  
6 deposition both that Professor Klein properly filed his Step 3 appeal and that the Regents never  
7 responded to it.

8 When the MOU originally took effect on February 29, 2016, the final step for adjudicating  
9 an employee claim was mandatory binding arbitration under Article 33. As originally implemented,  
10 therefore, the MOU would have subjected Professor Klein’s entire first cause of action for breach  
11 of contract – including his academic freedom claim – to mandatory binding arbitration. It cannot be  
12 disputed, however, that Article 33 lapsed in its entirety on January 31, 2020, and was no longer in  
13 force or effect during June 2020. Accordingly, once Professor Klein had exhausted all three steps  
14 of his administrative grievance under Article 32, he was free to pursue his breach of contract claims  
15 – including for the Regents’ violation of his right to academic freedom – in this Court.

16 Perhaps because of Mr. Simidjian’s deposition testimony, the Regents recently inverted their  
17 defense theory. Now, the Regents contend not only that Professor Klein *did* exhaust his  
18 administrative remedy – at least with respect to his academic freedom claim – but that this ostensible  
19 “remedy” was final and binding. We briefly addressed some of the obvious fallacies undermining  
20 this new theory in our reply to defendants’ trial brief and may do so further as warranted. At this  
21 stage, however, we urge the Court to consider the following:

22 The Regents base this meritless contention on Article 2.B of the MOU, which – under  
23 UCLA’s shared governance system – granted to UCLA’s Academic Senate, rather than to the  
24 Regents through UCLA’s administration (which considers other employee claims), the right to  
25 “review” any “[c]omplaints alleging violation(s) of academic freedom.” For this reason, at Step 2  
26 of Professor Klein’s Article 32 grievance, UCLA’s administration permitted the Academic Senate,  
27 through its Privilege & Tenure Committee, to review Professor Klein’s claim that the Regents had  
28 violated his right of academic freedom guaranteed by the MOU. The Privilege & Tenure Committee

1 met briefly with Professor Klein via a Zoom call, and it separately heard from Dean Bernardo in a  
2 similarly terse manner. The Committee then split as to whether to conduct a formal hearing. As a  
3 result, no hearing took place and there was no litigation or adjudication of Professor Klein’s  
4 academic freedom claim by or before the Privilege & Tenure Committee at any time. Professor  
5 Klein then included his academic freedom claim as part of his Step 3 appeal under Article 32 of the  
6 MOU – to which the Regents never responded.

7         At this point, but for the lapse of Article 33 of the MOU in January 2020, Professor Klein’s  
8 academic freedom claim would have been arbitrable along with the remainder of his cause of action  
9 for breach of contract. Indeed, there is not one word in the MOU – nor in the entire record of this  
10 case – suggesting that an NSF employee’s claim for violation of his contractual right to academic  
11 freedom was not arbitrable under Article 33, just like any other employee claim under the MOU  
12 following completion of the administrative grievance process in Article 32. Accordingly, in the  
13 absence of Article 33, Professor Klein’s academic freedom claim – again, just like his other claims  
14 for breach of the MOU – may be litigated in this Court. Perhaps this explains defendants’ admission  
15 several years ago in their SLAPP papers that Professor Klein would have had “*a judicial remedy*”  
16 for his contractual claims upon completion of his Article 32 administrative grievance – which, at  
17 that time, the Regents still contended had not been exhausted.<sup>1</sup> Simply put, defendants’ newly-  
18 concocted argument that the Privilege & Tenure Committee’s cursory and non-dispositive “review”  
19 of Professor Klein’s academic freedom claim was the end of the legal road is cut from whole cloth.

20         We also allege the Regents violated California Labor Code Section 1102.5(c) by retaliating  
21 against Professor Klein for having refused Leslie Giovanny’s request that he unlawfully discriminate  
22 on the basis of race in his final exam administration, first by suspending Professor Klein and then  
23 by denying his regular merit pay raise in 2021 – only the second time in Professor Klein’s 45-year  
24 teaching career at UCLA that this has occurred. (The first such occurrence, in 2005, was – not  
25 coincidentally – related to the Trueman Tales.)

26  
27  
28  

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<sup>1</sup> See Defendants’ reply in support of their anti-SLAPP motion at 11:15 (emphasis added).

1 We take this opportunity to delve a bit more deeply into our statutory retaliation claim. First,  
2 we emphasize that this is not a “whistleblower” claim under Labor Code Section 1102.5(b) – as  
3 defendants inaccurately have insinuated – so there was no “protected disclosure.” Rather, Professor  
4 Klein’s claim is one for unlawful *retaliation* under Labor Code Section 1102.5(c), which makes it  
5 illegal for an employer to punish an employee for “refusing” to take part in unlawful activity.

6 The key statutory word here is “*refusing*.” We contend that defendants suspended Professor  
7 Klein, and then denied his raise, at least in part because he *refused* to racially discriminate in the  
8 administration of his final exam – which indisputably would have violated California law and UCLA  
9 policy. Leslie Giovanni asked Professor Klein to engage in this unlawful activity, and Professor  
10 Klein communicated his refusal to do so by way of the Giovanni Email.

11 The Regents respond by arguing that they did not suspend Professor Klein for his refusal to  
12 violate California law but rather for the “tone and manner” by which he expressed his refusal. But  
13 this is a distinction without a difference in light of the statutory language. The statutory question is  
14 whether the employee “refused” to engage in illegal activity, irrespective of the content – or, indeed,  
15 the “tone and manner” – of his refusal to do so. In fact, it is not unreasonable to expect a law-abiding  
16 person – and a university instructor with a strong legal background, no less – to respond vigorously  
17 when asked to engage in blatantly illegal conduct.

18 Consider the following analogy: A group of black students quietly and politely walks into  
19 the UCLA bookstore. Seeing this, a racist manager tells his subordinate to get rid of them for no  
20 good reason. The subordinate employee responds: “Hell no!” The manager then promptly fires the  
21 employee and UCLA, in response to the employee’s statutory retaliation claim under Labor Code  
22 Section 1102.5(c), contends he was not fired for having refused to engage in unlawful activity  
23 against the black students but rather for the “tone and manner” by which he communicated that  
24 refusal to his manager. Needless to say, such a contention would be absurd. Indeed, the real moral  
25 here is this: When an employee expresses his refusal to engage in blatantly unlawful conduct in the  
26 course of his employment, the context of that communication is relevant to any reasonable  
27 assessment of the content – including the “tone and manner” – of the employee’s refusal.

1 As for the two tort claims against Dean Bernardo, we contend that both torts proximately  
2 destroyed Professor Klein's expert witness practice resulting in lost income of more than \$22  
3 million. [Ex. 460] And, again, even if Dean Bernardo did not anticipate the severity of economic  
4 damage that would result from his violations of Professor Klein's legal rights, this certainly would  
5 not absolve him of liability for those damages as a matter of law. We also contend that Dean  
6 Bernardo's false light defamation and the Regents' statutory retaliation caused substantial general  
7 damage to Professor Klein's reputation and severe (but relatively short-term) emotional distress.  
8 And we seek punitive damages for Dean Bernardo's malicious and oppressive false light violation  
9 of Professor Klein's privacy rights, and attorney fees from the Regents for the statutory retaliation.

10 There are few disputed facts in this case. Nor, frankly, does it raise particularly complex or  
11 unusual legal principles. Instead, defendants seem to be resting their defense on causation: They  
12 claim – without evidentiary basis – that Professor Klein caused his own damage, first by sending the  
13 Giovanni Email and then by appearing on television with Fox News commentator Laura Ingraham  
14 late in the evening of June 10, 2020. In fact, however, the evidence will establish that Professor  
15 Klein appeared with Laura Ingraham – in a thoroughly reasonable attempt to salvage his shattered  
16 reputation and mitigate his damages – *after* defendants had inflicted their fatal damage to Professor  
17 Klein's expert witness practice a week earlier.

18 We addressed in our trial outline some of the important legal principles regarding causation  
19 as they apply to our contract, tort, and statutory claims, and why this defense simply does not fly  
20 here as a matter of fact or law. Suffice for now to note that defendants' unconvincing causation  
21 argument will run squarely into the testimony of their own ostensible causation expert, John Meyers,  
22 who testified at deposition that the "events" at UCLA which occurred more than a week before  
23 Professor Klein appeared on The Ingraham Angle "more likely than not had a negative impact on  
24 his consulting business," and that "the cause of the negative impact on Mr. Klein's consulting  
25 business cannot be determined" as between "the publicity caused by actions of UCLA or the  
26 publicity caused by Mr. Klein's media appearances."

27 In any event, as the Court hears the evidence in this case, we encourage the Court to consider  
28 the following with respect to causation: Imagine that Professor Klein had sent his response to Leslie

1 Giovanni as worded, that Leslie Giovanni had caused Professor Klein's response to be published  
2 on the internet, and that a virtual mob of thousands of furious UCLA students and others angrily had  
3 demanded Professor Klein's immediate firing for his unacceptable choice of words – all of which,  
4 of course, occurred. But then imagine that, rather than reflexively suspending and publicly  
5 excoriating Professor Klein, these defendants – while publicly expressing their own deep antipathy  
6 to what Professor Klein had said to Leslie Giovanni – instead had respected Professor Klein's rights  
7 of academic freedom and confidentiality, and, over the ensuing days, had gently worked to tamp  
8 down the mob anger until it eventually subsided of its own weight.

9 What would Professor Klein's world look like today had these defendants responded to this  
10 virtual mob in a responsible manner that did not violate Professor Klein's contractual and other  
11 rights? We believe it is reasonable to conclude that the whole thing likely would have blown over  
12 in short order, and that Professor Klein's expert witness practice would have emerged virtually – if  
13 not entirely – unscathed. But instead of acting as seasoned, deliberative, professional administrators,  
14 these defendants threw gasoline on what would and should have been a briefly raging fire – and they  
15 did so in blatant disregard for Professor Klein's legal rights. That is what damaged Professor Klein  
16 to the tune of more than \$22 million.

17 We thank the Court for its years of careful adjudication of this case and look forward to  
18 calling our first witness at trial.

19  
20 DATED: June 25, 2025

Respectfully submitted

21 **MARKUN ZUSMAN & COMPTON LLP**

22 Steven M. Goldberg  
23 Tadeusz McMahon

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28