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7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10
11 KENNETH P. MONTEIRO

12 Plaintiff,

13 v.

14 CALIFORNIA STATE UNIVERSITY; SAN
FRANCISCO STATE UNIVERSITY; LESLIE
15 WONG; SUE V. ROSSER; JENNIFER
SUMMIT; and DOES 1 through 25, inclusive,

16 Defendants.
17

Case No.:

**COMPLAINT FOR DAMAGES:
UNLAWFUL DISCRIMINATION [CAL.
GOVT. CODE §§ 12900, ET SEQ.];
HARASSMENT [CAL. GOVT. CODE §
12940(J)]; RETALIATION [CAL. GOVT.
CODE § 12940(H)]; FAILURE TO
PREVENT DISCRIMINATION AND/OR
HARASSMENT [CAL. GOVT. CODE §
12940(K)]; DEFAMATION**

DEMAND FOR JURY TRIAL

18 **PARTIES**

19 1. Plaintiff Kenneth P. Monteiro, PhD., is an individual who resides in the City and
20 County of San Francisco. Plaintiff is currently the Dean of The College of Ethnic Studies at San
21 Francisco State University (hereinafter referred to as the “College”).

22 2. Defendant California State University (“CSU”), is a state university with its
23 principal office located in Long Beach, California.

24 3. Defendant San Francisco State University (“SFSU”), is a state university with its
25 principal location in San Francisco, California.

26 4. Defendant Leslie Wong (“Wong”), is an individual who resides in the City and
27 County of San Francisco, California. Defendant Wong is currently the President at SFSU.

28 5. Defendant Sue V. Rosser (“Rosser”) is an individual who resides in the City and

COMPLAINT FOR DAMAGES

1 County of San Francisco, California. Defendant Rosser is the former Provost at SFSU, and is
2 currently the Special Advisor for Research Development and External Partnerships, for the CSU
3 Chancellor, where she is responsible for onboarding and mentoring new and interim provosts.
4 Rosser is also a Special Advisor to the President of SFSU, working to facilitate the transition of
5 the Interim Provost.

6 6. Defendant Jennifer Summit (“Summit”) is an individual who resides in the City
7 and County of San Francisco, California. Defendant Summit is the current Interim Provost at
8 SFSU.

9 7. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
10 Does 1 through 25, inclusive, and therefore sues these defendants by such fictitious names.
11 Plaintiff is informed and believes, and based thereon alleges, that each fictitiously named
12 defendant is in some manner legally responsible for the events, occurrences, and damages
13 caused to plaintiff as alleged in this Complaint For Damages: Unlawful Discrimination [Cal.
14 Govt. Code §§ 12900, et seq.]; Harassment [Cal. Govt. Code § 12940(j)]; Retaliation [Cal.
15 Govt. Code § 12940(h)]; Failure to Prevent Discrimination and/or Harassment [Cal. Govt. Code
16 § 12940(k)]; Constructive Discharge; Defamation (“Complaint”). Plaintiff will seek leave of
17 the Court to amend this Complaint to allege the true names and capacities of the fictitiously
18 named defendants when the same have been ascertained.

19 8. Plaintiff is informed and believes, and thereon alleges, that, at all times
20 mentioned herein, each of the defendants sued herein, including each defendant sued by a
21 fictitious name, was the agent, servant, and employee of the remaining defendants, and in doing
22 the things hereinafter alleged, was acting within the scope of its authority as such agent, servant,
23 and employee, and with the permission and consent of the remaining defendants.

24 **JURISDICTION AND VENUE**

25 9. This Court has jurisdiction over this controversy by virtue of the fact that this is a
26 civil action wherein the matter in controversy exceeds \$25,000. Venue is properly laid in this
27 county because the actions which are the subject of this Complaint, occurred within this County.
28 Further, the defendants do substantial business in California, and have a principal place of

COMPLAINT FOR DAMAGES

1 business in San Francisco.

2 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

3 10. Plaintiff filed a timely government tort claim against defendants. Defendants have
4 neither accepted or rejected plaintiff's tort claim. According to a letter from CSU dated
5 February 17, 2017, the claim is currently under investigation by CSU. (See, February 17, 2017
6 letter from CSU, attached hereto as Exhibit A, and incorporated herein.)

7 11. Plaintiff also filed a timely claim of discrimination/harassment/retaliation with the
8 California Department of Fair Employment and Housing ("DFEH"), as plaintiff is required to
9 do under the California Fair Employment and Housing Act (Cal. Govt. Code § 12900, et
10 seq.)(“FEHA”). The DFEH has issued a right-to-sue letter, which is attached hereto as Exhibit
11 B, and incorporated herein.

12 12. Plaintiff has exhausted the administrative remedies available to him.

13 **GENERAL ALLEGATIONS**

14 13. During the tenure of former President Robert A. Corrigan and former Provost
15 John Gemello, plaintiff empirically demonstrated that emergency strategies for massive budget
16 cuts to the whole university over the past several years, had inadvertently disproportionately cut
17 funding for the College. The former President and former Provost acknowledged this
18 unintended consequence of their budget cut strategies, and plaintiff, the former President and
19 former Provost established an agreement that, during the emergency, plaintiff, as Dean, would
20 handle the disparity for as many years as possible from reserves or internal strategies, and then
21 the Provost would begin to assist with handling the budget shortfall as it began to exceed our
22 capacity to absorb it. The total shortfall was estimated at approximately \$500,000 per year.

23 14. The intent was to correct this shortfall when the emergency was over. When
24 President Corrigan hired Provost Sue V. Rosser, this agreement was continued. Just before the
25 retirement of President Corrigan, plaintiff requested that the temporary fix be corrected with a
26 permanent adjustment. President Corrigan reported that Provost Rosser did not support
27 plaintiff's request at that time.

28 15. At the beginning of President Leslie Wong's second year, plaintiff made the

1 same request, and President Wong took it under study. Provost Rosser’s messaging thereafter
2 changed to describe the shortfall as overspending. After years of study, President Wong
3 concluded in a meeting held in February 2016 with the College chairs council, that Wong
4 agreed that the College had been disproportionately cut, but he (note was made that Wong did
5 not refer to the Provost’s budget) had no money to correct it. Specifically, President Wong
6 stated at that meeting that “you have been unfortunately screwed, but I have no money to fix it.”
7 President Wong went on to explain that the Provost would no longer be able to cooperate with
8 the College because the Provost had depleted her \$14.5 million reserves, implying that the
9 reason was the continuing support to the College. The Provost had contributed only about
10 \$400,000.00 during this period.

11 16. The meeting with chairs council motivated the faculty and students, on their own
12 volition, to abandon the 7-year “détente” regarding this unfairness, and begin to organize,
13 creating the semester of activism in 2016. The activism culminated in a hunger strike by the
14 students, which was ultimately resolved by a temporary agreement between President Wong and
15 the hunger strikers that provided more money to the College and other departments for which
16 the students had requested support. Plaintiff was not a party to the negotiations. Although
17 plaintiff was not privy to the negotiations, plaintiff agreed to respect the agreement.

18 17. After the semester of activism, President Wong sent a message through Provost
19 Rosser, delivered at plaintiff’s performance review on July 18, 2017, conveying that President
20 Wong wanted plaintiff to know that, despite his positive five (5) year comprehensive review, the
21 President’s and Provost’s reviews are independent of the committee’s review, and that President
22 Wong wanted plaintiff to be clear that “if there was not a moratorium on negative changes to
23 Ethnic Studies, that you [plaintiff] would be that change.” Provost Rosser added that the
24 President wanted to remind him [plaintiff] “that the Chancellor’s moratorium ends July 2017.”

25 18. In sum, plaintiff had brought a problem to President Corrigan who instituted a
26 temporary fix, then brought it to President Wong, who first studied it and concluded that the
27 problem was real, but that the university could not afford to fix it. This assertion by President
28 Wong was later shown to be false, as documents subsequently released by SFSU demonstrated

1 that while Provost Rosser had refused funding to the College and asserted that the College was
2 the only one in such a situation, the Provost had provided at least \$700,000.00 to other colleges.
3 Then, because of the activism that arguably was instigated by President's Wong's inflammatory
4 and cavalier manner of addressing an injustice in a budget that would not be fixed, President
5 Wong threatened to fire plaintiff, and that threat remains.

6 19. Plaintiff brought a legitimate problem to President Wong. Wong was recalcitrant,
7 taking several years to respond. President Wong acknowledged the wrong, but asserted the
8 university could not afford to fix it. Wong falsely and wrongfully blamed the campus activism
9 on plaintiff. Wong falsely accused plaintiff of creating safety and security issues, and increasing
10 another's personal risk. President Wong then threatened to fire plaintiff.

11 20. Subsequent to the threat to fire plaintiff, President Wong and Provost Rosser
12 excluded plaintiff from participating in the decision on a replacement for Provost Rosser, who
13 was stepping down effective September 2016. All other direct reports to the Provost
14 participated in the decision except for the plaintiff. Under normal circumstances, plaintiff,
15 being the most senior Dean, would have been one of the top candidates for the Provost position.
16 To overlook plaintiff as a potential candidate, and to exclude him from the decision-making
17 process was motivated by prejudicial concerns, and was blatantly discriminatory.

18 21. President Wong was aware that the data supporting the claim of underfunding
19 would be published in the CSU Chancellor's Task Force for Advancing Ethnic Studies report, of
20 which President Wong is a signed participant. In a meeting with the College chair's council,
21 President Wong dismissed the report as considered "in purgatory" by the Chancellor and his
22 office, and therefore irrelevant to the discussions.

23 22. To discourage further campus activism, in September 2016 at the opening faculty
24 convocation, President Wong announced that, as a result of the budget analysis undertaken as a
25 result of the conflicting claims of the College and Provost about availability of funding,
26 additional monies were discovered for all colleges. That new budgetary model when calculated
27 would, just based on normal application, increase the base budget of the College by
28 approximately \$500,000, effectively addressing the original question. President Wong has

1 continued to choose not to implement his own new budget. He continues not to solve a problem
2 that even his more rational budget model would automatically fix. Thus, Wong continues his
3 threat to fire plaintiff, and withholds a solution to a major on campus controversy for no
4 apparently rational reason. President Wong's actions are discriminatory, harassing, arbitrary,
5 and taken in retaliation against plaintiff and the College for seeking to correct the historic
6 underfunding at the College.

7 23. Former Provost Rosser's change in characterization of the continuing budget
8 situation from a shared budgetary challenge, to the message that the fundamental problem was
9 that the College, specifically its Dean, was overspending, quickly became the official position of
10 the President's cabinet and President Wong. He held this position despite having signed a report
11 with data to the contrary, and his public admission that he believed that the College was
12 disproportionately cut. This messaging has continued under the Current Interim Provost,
13 Jennifer Summit, who has maintained the past practices of former Provost Rosser.

14 24. President Wong personally, and through public affairs, repeated this false claim
15 (a claim of malfeasance) in a number of public venues, local, and national media. He offered a
16 particularly damaging message in a written letter to the San Francisco Human Rights
17 Commission ("HRC"), which was read into the record of the HRC meeting on March 24, 2016.
18 The transcript of that meeting records a member of the Commission (who was familiar with
19 SFSU) asking incredulously whether the assertion that plaintiff had habitually been
20 overspending could be true, and what facts there were to corroborate that claim. The President's
21 representative could not answer, and therefore the Commissioner asked the representative to
22 check for factual evidence before returning to the commission. A true and correct copy of the
23 relevant portions of the HRC transcript of the March 24, 2016 meeting is attached hereto as
24 Exhibit C, and incorporated herein.

25 25. Put directly, President Wong authorized a direct communication to the HRC,
26 making a claim of malfeasance against plaintiff that plaintiff was overspending, which is
27 documented as false, which he knew and had acknowledged was false, all to harm plaintiff's
28 public reputation. In addition, he either made personally or approved similar messages in the

1 student newspaper, the local city newspaper and a national publication, Inside Higher
2 Education. As a result, plaintiff's reputation has suffered irreparable damage. Because of this
3 harm caused by defendants, plaintiff has lost professional employment prospects, including
4 positions at the University of San Francisco, University of South Carolina, the University of
5 Central Arkansas, the University of Texas-Arlington, and the University of Texas-Dallas..

6 26. Though all colleges received various cuts during the past decade, none but the
7 College has evidence that it was disproportionately cut. No other Dean has been accused to be a
8 safety threat by a President, and had that information communicated to him and other senior
9 officers orally and in writing. Falsely claiming that plaintiff, an African American male is
10 threatening, is one of the historically most pernicious "dog whistles" in the American cultural
11 and rhetorical arsenal, alarming and alerting others to turn against that Black man in often quite
12 dangerous ways.

13 27. Plaintiff is the only Dean who was directed by a Provost to listen to the other
14 deans make false claims against him while attempting to bully him into signing a public letter of
15 political support for the then Provost, a letter which plaintiff declined to sign. No other Dean
16 has had the unprecedented experience of being offered an endowed chair by an honoree and
17 donor and then, against the honoree's wishes, have the President and members of his cabinet
18 block the offer. When President Wong's attempt to block the endowment failed, President
19 Wong then sought to downgrade it from an endowed chair to an endowed professorship, with a
20 caveat that it would remain in the College for only three (3) years, with the intention of moving
21 it to other colleges afterwards. No other Dean is blocked from access to his/her most prominent
22 and generous financial donor, and the primary donor for the endowed professorship. No other
23 Dean has been defamed.

24 WHEREFORE, plaintiff prays for judgment as set forth below.

25 **FIRST CAUSE OF ACTION**

26 **(Discrimination in Violation of FEHA- Against All Defendants except Wong, Rosser, and**
27 **Summit)**

28 28. Plaintiff realleges and incorporates herein by reference each and every allegation

COMPLAINT FOR DAMAGES

1 contained in paragraphs 1 through 27, with the same force and effect as if fully realleged and
2 recited herein at length.

3 29. Plaintiff is a gay, African American male over the age of forty (40), therefore a
4 member of a protected class under the Fair Employment and Housing Act, California
5 Government Code, sections 12900, et seq. (“FEHA”).

6 30. Defendant CSU and SFSU are employers subject to FEHA. Defendants have a
7 duty to not discriminate against plaintiff on the basis of any protected status.

8 31. In violation of the FEHA, defendants CSU and SFSU have discriminated against
9 plaintiff due to his protected status, and have treated plaintiff less favorably than similarly
10 situated non-black employees. The actions by CSU and SFSU have had a disparate impact on
11 plaintiff.

12 32. As a direct and proximate result of defendants’ discrimination, plaintiff has
13 suffered damages, including economic losses and emotional distress, in amounts which will be
14 proven at trial.

15 WHEREFORE, plaintiff prays for judgment as set forth below.

16 **SECOND CAUSE OF ACTION**

17 **(Harassment in Violation of FEHA - Against All Defendants)**

18 33. Plaintiff realleges and incorporates herein by reference each and every allegation
19 contained in paragraphs 1 through 32, with the same force and effect as if fully realleged and
20 recited herein at length.

21 34. Defendants routinely subjected plaintiff to abusive conduct because of his
22 protected status. Defendants treated plaintiff as a threat, prevented plaintiff from access to his
23 donor base, prevented the College from receiving an endowment, and threatened to discharge
24 plaintiff, all with the intent of harassing plaintiff because of his protected status.

25 35. Defendants’ harassment of plaintiff was severe and pervasive, and altered the
26 working conditions of plaintiff’s employment. Plaintiff made an internal complaint to
27 defendants, but defendants have failed to respond to plaintiff’s internal complaint.

28 36. As a direct and proximate result of defendants’ harassment, plaintiff has suffered

COMPLAINT FOR DAMAGES

1 damages, including economic losses and emotional distress, in amounts which will be proven at
2 trial.

3 37. Defendants' actions were willful, malicious, fraudulent, and oppressive, and were
4 committed with the intent to injure plaintiff in conscious disregard of plaintiff's rights, entitling
5 plaintiff to an award of punitive damages.

6 WHEREFORE, plaintiff prays for judgment as set forth below.

7 **THIRD CAUSE OF ACTION**

8 **(Retaliation in Violation of FEHA- Against All Defendants)**

9 38. Plaintiff realleges and incorporates herein by reference each and every allegation
10 contained in paragraphs 1 through 37, with the same force and effect as if fully realleged and
11 recited herein at length.

12 39. Defendants routinely subjected plaintiff to abusive conduct because of his
13 protected status. Defendants treated plaintiff as a threat, prevented plaintiff from access to his
14 donor base, prevented the College from receiving an endowment, and threatened to discharge
15 plaintiff. Plaintiff alleges that the defendants engaged in this conduct in retaliation for plaintiff's
16 efforts to correct the historic disproportionate budget cuts experienced by the College.

17 40. Defendants' retaliatory actions altered the working conditions of plaintiff's
18 employment. Plaintiff made an internal complaint to defendants, but defendants have failed to
19 respond to plaintiff's internal complaint.

20 41. As a direct and proximate result of defendants' retaliation, plaintiff has suffered
21 damages, including economic losses and emotional distress, in amounts which will be proven at
22 trial.

23 42. Defendants' actions were willful, malicious, fraudulent, and oppressive, and were
24 committed with the intent to injure plaintiff in conscious disregard of plaintiff's rights, entitling
25 plaintiff to an award of punitive damages.

26 WHEREFORE, plaintiff prays for judgment as set forth below.

1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Prevent Discrimination/Harassment)**

3 43. Plaintiff realleges and incorporates herein by reference each and every allegation
4 contained in paragraphs 1 through 42, with the same force and effect as if fully realleged and
5 recited herein at length.

6 44. Under the FEHA, CSU and SFSU owed plaintiff the legal duty to take all
7 reasonable actions necessary to prevent and stop unlawful discrimination and harassment.

8 45. Defendant CSU and SFSU breached their legal duty to take all reasonable steps
9 to prevent and stop the discrimination and harassment described in the preceding paragraphs.
10 CSU and SFSU knew or should have known of these harassing and discriminatory actions,
11 because CSU and SFSU participated in maintaining a workplace with pervasive harassment, and
12 plaintiff formally complained internally to CSU and SFSU about its discrimination and
13 harassment.

14 46. Defendants CSU and SFSU have failed to conduct a timely and thorough
15 investigation of plaintiff's internal complaint, and have failed to correct and/or prevent the
16 incidents of discrimination and harassment as alleged above.

17 47. As a direct and proximate result of defendant's conduct, plaintiff has suffered
18 damages, including economic losses and emotional distress, in amounts which will be proven at
19 trial.

20 WHEREFORE, plaintiff prays for judgment as set forth below.

21 **FIFTH CAUSE OF ACTION**

22 **(Defamation - Against All Defendants)**

23 48. Plaintiff realleges and incorporates herein by reference each and every allegation
24 contained in paragraphs 1 through 47, with the same force and effect as if fully realleged and
25 recited herein at length.

26 49. By the above described actions, including on or about March 24, 2016,
27 defendants published false and unprivileged information which injured plaintiff's business and
28 professional reputation. Specifically, defendants stated to HRC that the budget issues at the

1 College were caused by overspending by plaintiff.

2 50. The statements were false, and were known to be false. The statements were
3 published by defendants with express and implied malice on the part of defendants, and with the
4 design and intent to injure plaintiff's reputation and to slander his name. The letter to HRC was
5 clearly libelous on its face, as it charges plaintiff with overspending, which is essentially
6 embezzlement.

7 51. As a proximate result of the defamatory statements made by defendants, and as a
8 result of the above-described publication, plaintiff has suffered loss of reputation, shame, and
9 injury to his character, in an amount that will be proven at trial. Plaintiff has suffered actual
10 damages due to forgone promotion and employment opportunities, in amounts which will be
11 proven at trial. As noted above, plaintiff has presented a timely government tort claim to
12 recover his economic losses, to which defendants have yet to respond.

13 52. Defendants' actions were willful, malicious, fraudulent, and oppressive, and were
14 committed with the intent to injure plaintiff in conscious disregard of plaintiff's rights, entitling
15 plaintiff to an award of punitive damages.

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1 WHEREFORE, plaintiff prays judgment as set forth below.

2 **PRAYER**

3 WHEREFORE, plaintiff prays judgment against defendants as follows:

- 4 1. For compensatory damages in an amount to be proven at trial;
- 5 2. For general and special damages in an amount to be proven at trial;
- 6 3. For punitive damages, according to proof;
- 7 4. For costs of suit, including reasonable attorney's fees; and
- 8 5. For such other relief as the court may deem just and proper.

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10 DATED: August 23, 2017

11 TIMOTHY W. MOPPIN. ESQ.

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13 By _____
14 Timothy W. Moppin
15 Attorneys for Plaintiff
16 KENNETH P. MONTEIRO

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