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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10 **UNLIMITED JURISDICTION**

11)
12 **DR. ALI ABBAS**, an individual, tenured)
13 professor;)

14) Petitioner,)

15) vs.)

16) **UNIVERSITY OF SOUTHERN**)
17) **CALIFORNIA**, a California corporation; and)
18) **DOES 1-10**, inclusive,)

19) Respondents.)
20 _____

JURY DEMANDED

Case No. 20STCP00217

**FIRST AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE (CODE CIV.
PROC. §§ 1085, 1094.5)**

21
22 Petitioner, Dr. Ali Abbas, petitions this Court for a writ of mandate under Code of Civil
23 Procedure §§ 1085 and 1094.5 and alleges:

24 1. At all times mentioned in this petition, petitioner has been and now is an individual residing
25 in Los Angeles. Petitioner is a tenured professor employed by the University of Southern California
26 (hereinafter “USC”, “Respondent” or “the University”) in Los Angeles, CA.

1 2. At all times mentioned in this petition, Respondent has been and now is a university, and a
2 California corporation, located within the County of Los Angeles.

3 3. A writ of mandate under Section 1085 of the Code of Civil Procedure is available to change
4 respondent's policy and lack thereof and a writ of mandate under Section 1094.5 of the Code of Civil
5 Procedure is available to review administrative decisions by nongovernmental agencies in all cases in
6 which the subject decision is the product of a proceeding in which a hearing and related protections are
7 required by law. Respondent was required to, *inter alia*, hold a hearing and to take evidence to enable it
8 to exercise its discretion. Respondent failed to comply with the law and deprived petitioner of
9 substantial rights. As of the undersigned date, petitioner has exhausted all remedies and has been denied
10 due process having been deprived by respondent of his livelihood and property. Respondent's policy
11 and conduct also threatens to harm and harms an appreciable number of respondent's other employees
12 other than petitioner.

13 4. On May 20, 2014, respondent offered petitioner tenured employment as Professor of
14 Industrial Systems and Engineering and of Public Policy, and Director of the University's CREATE
15 Center for Risk and Economic Analysis of Terrorism Events (funded by the Department of Homeland
16 Security). Petitioner, at this time on or about May 20, 2014, had alternative employment opportunities,
17 but accepted Respondent's offer of employment and tenure at the University, relying thereupon, and
18 moved to Los Angeles.

19 5. On August 16, 2015, respondent offered petitioner a salary increase, and appointed him as the
20 Director of the USC Center for Decisions and Ethics.

21 6. On March 14, 2016, respondent offered petitioner another salary increase, and appointed him
22 as the Director of the Jerry and Nancy Neely Center for Ethical Leadership and Decision Making, for an
23 initial three-year term, from July 1, 2017 through June 30, 2020.

24 7. On July 19, 2017, respondent sent petitioner a letter stating that petitioner's total salary for the
25 2017-2018 academic year would be \$212,645.
26

1 8. On March 14, 2019, respondent sent petitioner a letter stating that petitioner would receive
2 the University home ownership program subsidiary commitment for additional compensation,
3 commencing March 2019 through February 2026.

4 9. On April 22, 2019, petitioner received an e-mail communication from University investigator,
5 Ninette Toosbuy, a former LA County police officer. In the e-mail communication Toosbuy notified
6 petitioner via email that petitioner was being “investigated” with respect to a confidential complaint. No
7 material information was provided by Toosbuy to the petitioner at this time.

8 10. Petitioner was advised by Toosbuy to keep the matter confidential, and ordered not to
9 disclose it to anyone outside of OCAP, this included his legal counsel or even a witness to the events.

10 11. On April 30, 2019, Toosbuy interrogated petitioner.

11 12. On May 7, 2019, Toosbuy further interrogated petitioner during petitioner’s religious
12 holiday, while petitioner was fasting. From May 10, 2019 and onwards until the end of the purported
13 investigation, Toosbuy did not respond to or acknowledge e-mails from petitioner.

14 13. On May 22, 2019, respondent sent petitioner a letter stating that petitioner’s total salary for
15 the 2019-2020 academic year would be \$224,231.

16 14. On July 23, 2019, respondent sent petitioner a letter confirming that petitioner’s total salary
17 for the 2019-2020 academic year would be \$225,731.

18 15. On September 6, 2019, in total surprise to petitioner, petitioner received a letter from
19 respondent, imposing sanctions against him that were effective immediately including, but not limited
20 to, as set forth in the September 6, 2019 decision letter, “a suspension without pay from the University
21 for one semester (that is a period equal to one half of an academic year. Beginning now, and continuing
22 until at least one year after your return from the suspension without pay, you will not supervise any
23 staff...and you may not hold an administrative or leadership position. Additionally, you will not be
24 considered for honors.” The surprise sanctions decision was allegedly based on a 74-page investigate
25 report referred to by the University as the “Report on Investigation” (or “ROI” for short) as well as an
26 allusion to “attendant documentation.”
27

1 16. However, no notice of any hearing was ever provided to petitioner.

2 17. No hearing, as required by law, was ever held.

3 18. Moreover, petitioner was never provided with a copy of the ROI before the imposition of the
4 sanctions. Respondent told petitioner that petitioner has no right to discovery in the process and refused
5 petitioner access to information.

6 19. To date, neither petitioner, nor his counsel, have been sent an unredacted copy of the ROI,
7 and this unredacted copy was only sent after this filing of this case and following numerous requests
8 from petitioner's counsel and refusals from respondent.

9 20. The ROI was based on not credible evidence.

10 21. The investigator Toosbuy had and has a relationship with another individual, who was and is
11 also an agent of the University (who shall be referred to herein anonymously as "Agent"), in that
12 Toosbuy and Agent are both former Los Angeles police officers, and on information and belief, Agent
13 has an ongoing relationship with the Los Angeles Police Department, and regularly teaches executive
14 education modules to Los Angeles Police Department officers. Agent has bias against petitioner, and on
15 information and belief, influenced Toosbuy with respect to the ROI document.

16 22. The sanctions against petitioner were applied by the University as effective retroactively,
17 and were applied, with no notice.

18 23. On October 1, 2019, petitioner received a letter from respondent without notice, stating that
19 petitioner's total salary for the 2019-2020 academic year was being decreased by more than
20 \$100,000.00. Respondent again without notice made this decision retroactive to August 15, 2019. Since
21 petitioner at this time was already receiving full salary (since August 15, 2019), respondent further
22 decreased the salary of petitioner in the months ahead as a form of restitution to the University, without
23 any opportunity for petitioner to seek judicial relief before the decision took effect, or seek review
24 through USC's administrative remedies.
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1 24. Petitioner appealed to the University, exhausting his remedies, with respect to the imposition
2 of the sanctions, prior to filing the instant petition. USC worked against petitioner in exhausting his
3 administrative remedies.

4 25. On October 7, 2019, respondent denied petitioner's appeal, affirming the imposition of the
5 sanctions against petitioner, which had already been imposed, pursuant to the University's September 6,
6 2019 decision letter.

7 26. Respondent failed to maintain and apply objective, written, ascertainable standards. In
8 December of 2019, respondent's own USC Dornsife Faculty Council ("Faculty Council"), drafted a
9 resolution asking for suspension of respondent's investigate office and processes which are at issue in
10 this petition. The Faculty Council, which is the only elected body that represents the faculty's interests,
11 and which faculty members cast ballots each spring to elect the Faculty Council to represent
12 respondent's faculty on matters of general concern, stated the following:

- 13
- 14 (i) "We allege that the newly established Office of Conduct, Accountability and
15 Professionalism (OCAP), one of the divisions of the Office of
16 Professionalism and Ethics (OPE), has not properly described its procedures to
17 faculty and staff and that any decisions from that office therefore lack fairness
18 and legitimacy."
 - 19 (ii) "They pose a danger to the well-being of the faculty and staff."
 - 20 (iii) "The procedures have never been adequately explained or communicated to
21 faculty and staff."
 - 22 (iv) "This is a direct violation of the terms of California's Fair Employment and
23 Housing Act" which, as Respondent's own harassment training module explains,
24 requires that "policies be put in writing" as a first principle."
 - 25 (v) "Equally disturbing, OCAP has been staffed in part with former police
26 investigators whose interview strategies and tactics are better suited to criminal
27 settings than to conflicts in an academic environment, and who have a poor
28 understanding of the administrative and academic specific to universities. The
 choice of criminal investigators for human resource inquiries has never been
 explained."

1 (vi) “For these several reasons, we assert that the current configuration of OCAP is
2 unsupportable and its activities should be suspended immediately.”

3 27. Despite the Faculty Council’s December 2019 resolutions, respondent continues to
4 violate the rights of its employees.

5 28. Respondent’s failure to maintain and apply objective, written, ascertainable standards is
6 capricious and arbitrary, which harm is felt by petitioner other faculty members and employees in
7 addition to petitioner.

8 29. In January 2020, Annenberg and Gould School of Law Faculty Councils joined with the
9 Dornsife Faculty Council of USC and drafted an open letter requesting immediate suspension of OCAP
10 and expressed concerns about procedures and practices in open letters providing that, “*we hold that its*
11 *procedures lack due process.*” Further, these organizational bodies declared, “we hold that its
12 procedures lack due process, have not been adequately explained to the university community or
13 outlined in the relevant governing documents, and therefore that *the decisions of that office lack prima*
14 *facie legitimacy and pose a danger to the well-being of the faculty and staff as well as USC’s good*
15 *name.*”

16 30. The Engineering Faculty Council also Approved Meeting Minutes January 15, 2020
17 providing the following:

18
19 (i) “Heads of OCAP have described the development of OCAP as ‘building the
20 airplane while flying it.’ The system has been launched but not all processes and
21 procedures are in place. HR people have asked for clarity, the websites talk in
22 general terms rather than specific terms. It is operationally problematic. Yet, they
23 are operating and even handing out sanctions.”

24 (ii) “It seems the OCAP investigations have something to hide, or perhaps hide
25 information to avoid legal issues, without thinking of faculty rights or how
26 faculty may react.”

27 (iii) “It seems like OCAP is using trial and error.”
28

1 31. On February 18, 2020, the Provost and Senior Vice President for Academic Affairs, Senior
2 Vice President for Human Resources, President of the Academic Senate, and the President of the Staff
3 Assembly, announced a message to USC Faculty and Staff on USC’s website, available online at
4 <https://www.provost.usc.edu/joint-committee-to-review-processes-and-practices-ocap>, and a true and
5 correct copy of which is attached hereto as Exhibit A. The Joint Committee declared its unanimous
6 proclamation, “OCAP’s processes and practices are not well understood today...our faculty and staff
7 continue to raise concerns about OCAP due to a lack of clarity and a lack of understanding about its
8 outcomes.”

9 32. Despite the widely affecting unfair policy of respondent, respondent has refused to change
10 its policy or act in accordance with the law depriving petitioner of fundamental rights.

11 33. Respondent’s actions are invalid for the following reasons:

12 a. Respondent’s failure to maintain and apply objective, written, ascertainable standards
13 resulting in arbitrary and capricious administration of the agency program which continues to deny the
14 petitioner a “fair trial.”

15 b. No notice of a hearing was ever provided to petitioner.

16 c. No hearing, as required by law, was held.

17 d. A copy of the ROI was not provided to the petitioner or his counsel prior to the filing
18 of this legal action.

19 e. Petitioner was deprived of any opportunity to confront alleged witnesses.

20 f. Petitioner was deprived of a fair opportunity to present any defense.

21 g. Respondent acted without or in excess of its jurisdiction, as follows.

22 h. Petitioner did not receive a fair trial.

23 i. Respondent committed a prejudicial abuse of discretion by failing to proceed in the
24 manner required by law.

25 j. Respondent committed a prejudicial abuse of discretion, in that the decision is not
26 supported by the findings.
27

1 k. Respondent committed a prejudicial abuse of discretion, in that the findings are not
2 supported by the evidence.

3 l. Evidence was improperly received.

4 m. Petitioner was unable, in the exercise of reasonable diligence, to produce evidence at
5 a hearing since none was held, and even if a hearing was held petitioner was deprived of a fair
6 opportunity to present a defense, neither petitioner nor his counsel were provided with a copy of the ROI
7 report nor were they provided with an opportunity to identify or confront any alleged witnesses.

8 n. Without notice or hearing, Respondent collected or received from petitioner and other
9 employees wages paid by Respondent employer to said employees

10 34. Respondent failed to conduct its own purported grievance process or unfairly delayed it
11 solely in order to damage and oppress petitioner. Respondent violated its own the Employee handbook
12 terms, which in pertinent part provides, "If six months pass from the date the grievance was filed and the
13 hearing has not been held, the chair will dismiss the case, except where the chair or the panel allows a
14 brief extension when needed to reschedule an already-scheduled hearing or complete a hearing that has
15 begun." This time period has expired without respondent conducting the purported grievance process or
16 taking any action to extend it. Respondents has violated its own standards.

17 35. Petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law.

18 36. Respondent changed its Handbook multiple times without notice and whenever it suits
19 respondent, but there continues to be a lack of objective, written, ascertainable standards.

20 37. On October 8, 2019, another employee at USC e-mailed petitioner stating that, "there are
21 no published procedures."

22 38. Respondent deprived petitioner of his right to livelihood and property by retroactively
23 collecting or receiving wages already paid by respondent employer to its employees, including
24 petitioner.

25 39. Petitioner was advised by another faculty member, acting in a formal capacity, via e-mail
26 that the University grievance process does not provide for review of the merits of any adverse
27

1 employment action but rather only the process. This self-assumed review of its own process by
2 respondent is ultimately futile and leaves petitioner without a remedy for the harm suffered by
3 petitioner.

4 40. Petitioner is left without any adequate remedy.

5 40. As an incident of bringing and maintaining this proceeding, petitioner has become
6 personally obligated to pay to his counsel fees in excess of \$7,500.

7 41. WHEREFORE, petitioner prays the court for judgment as follows:

8 a. For a peremptory writ of mandate directing respondent to set aside its decision dated
9 September 6, 2019 imposing sanctions.

10 b. For reasonable attorney's fees in an amount of no less than \$7,500 in addition to any
11 other relief granted or costs awarded;

12 c. For all costs of suit incurred in this proceeding; and

13 d. For such other and further relief as the court deems proper.

14 Date: May 29, 2020

15
16 Respectfully submitted,

17
18
19 By: *A. Aalaei*

20 Ali Ari Aalaei, Esq.
21 **ARI LAW, P.C.**
22 90 New Montgomery St., Suite 900
23 San Francisco, CA 94105
24 Attorneys for Petitioner,
25 DR. ALI ABBAS
26
27
28

1 VERIFICATION

2 I, Ali Abbas, am the petitioner in the above-entitled proceeding. I have read the foregoing
3 petition and know its contents.

4 I declare under penalty of perjury under the laws of the State of California that the same is true
5 and correct to my own knowledge.

6 Executed on May 29, 2020, at Los Angeles, CA.

7
8 

9
10 _____
11 Petitioner, Dr. Ali Abbas

EXHIBIT A

USC Provost

Joint Committee to Review Processes and Practices: OCAP

February 18, 2020

Message to USC Faculty and Staff

From: Charles F. Zukoski, Provost and Senior Vice President for Academic Affairs; Felicia A. Washington, Senior Vice President for Human Resources; Rebecca Lonergan, President, Academic Senate; Erika H. Chesley, President, Staff Assembly

February 18, 2020

We are joining today to announce a committee that will review and make recommendations regarding our investigatory processes and practices in the Office of Conduct, Accountability, and Professionalism (OCAP). The feedback from this committee will also inform the design of an Employee Relations function at the university.

Created two years ago to capture all non-protected status concerns and complaints that trigger university policy implications, OCAP's processes and practices are not well understood today. Indeed, some of our faculty and staff continue to raise concerns about OCAP due to a lack of clarity and a lack of understanding about its outcomes. OCAP conducts workplace investigations, makes findings of fact, and determines if university policy was violated. OCAP does not issue sanctions or discipline with respect to its findings, as that responsibility currently rests with Human Resources (for staff) and the Committee on Professional Responsibility (for faculty).

Since November, an Employee Relations Design Team has been meeting to understand processes and needs, and to design a more human-centered approach to employee relations. This working group, which includes the Academic Senate President, two additional faculty members, the Vice President for Culture, Ethics, and Compliance, and HR professionals, has been focusing on early intervention, training and other actions focused on building healthy working environments.

Now is a good time to get more input from our faculty and staff related to OCAP and its interplay with employee relations, as part of the broader USC HR: Designing for the Future initiative. With that goal in mind, we are establishing the Joint Committee to Review Processes and Practices: OCAP, which will include faculty and staff representatives. The list of members is appended.

The charge to the committee is threefold:

- Examine the current processes by which OCAP investigates complaints and makes findings.
- Review statistics regarding complaints and resulting outcomes. This committee will not revisit findings nor have a role in the conduct of OCAP investigations during the pendency of this review.
- Make recommendations for enhancements to the USC Human Resources/Employee Relations Steering Committee by the end of the semester.

We appreciate the willingness of the committee to serve and to work cooperatively and thoroughly in a short timeframe. The committee's work will be critical in helping us build and maintain a work environment that upholds the highest standards of integrity while supporting all USC employees.

cc: Office of the President
President's Senior Leadership Team
Academic Deans
Provost's Leadership Team
GSG President
USG President

Joint Committee to Review Processes and Practices: OCAP

Co-chair: **Rebecca Lonergan**, Academic Senate President, USC Gould School of Law
Co-chair: **Erika Chesley**, Staff Assembly President, Auxiliary Services
Steve Bucher, Professor of Technical Communication Practice, USC Viterbi School of Engineering
Paula Cannon, Distinguished Professor of Molecular Microbiology & Immunology; Associate Director of Cross School Programs for the MESH Academy, Keck School of Medicine of USC

Gretchen Dahlinger-Gaspari, Executive Director, Equity and Diversity and Title IX, Office of Equity and Diversity

Judy Garner, Vice Dean for Faculty Affairs, Keck School of Medicine of USC

Michael Gorse, Center Supervisor for LGBT Resource Center, Student Affairs

Devin Griffiths, Associate Professor of English and Comparative Literature, USC Dornsife College of Letters, Arts and Sciences

Karen Koblitz, Professor Emerita of the Practice, Art, USC Roski School of Art and Design

Mark Manley, Director of Professionalism and Ethics, Office of Legal Affairs and Professionalism

Patricia Riley, Associate Professor of Communication and Director, Global Communication Master's Degree Program, USC Annenberg School for Communication and Journalism

Fred Weaver, Professor of Surgery; Division Chief, Vascular Surgery, Keck School of Medicine of USC

Sue Vogl, President, Staff Retirement Association

(Note: An emailed version of this announcement listed an incorrect name in the committee roster. This has now been corrected.)

1 **ARI LAW, P.C.**

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8 Attorneys for Plaintiff,
9 DR. ALI ABBAS

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 **UNLIMITED JURISDICTION**

13 DR. ALI ABBAS, an individual, tenured
14 professor,

15 Plaintiff,

16 vs.

17 UNIVERSITY OF SOUTHERN
18 CALIFORNIA, a California corporation; and
19 DOES 1-10, inclusive,

20 Defendants.

Case No. 20STCP00217

PROOF OF SERVICE

1 I am over the age of eighteen years and not a party to the within cause; my business address is 90 New
2 Montgomery St., Suite 900, San Francisco, CA, 94105. I hereby certify that on or around the date set
3 forth below, I served a true and correct copy of the following:

4 **FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE**
5 **(CODE CIV. PROC. §§ 1085, 1094.5)**

6 On counsel and the parties in said cause via the method indicated below.

7 YOUNG & ZINN LLP
8 JULIE ARIAS YOUNG (State Bar No. 168664)
9 jyoung@yzllp.com
10 KAREN J. PAZZANI (State Bar No. 252133)
11 kpazzani@yzllp.com
12 1150 South Olive Street, Suite 1800
13 Los Angeles, California 90015
14 Telephone: (213) 362-1860

15 **X ELECTRONIC EMAIL.** I transmitted by email the document at the emails addressed my firm
16 regularly uses to communicate with the attorney of record representing the parties in this matter. I
17 received no error message, and the transmission was successful. I am readily familiar with the firm's
18 practice for processing email correspondence and the service of the above document(s) was served in
19 accordance with those procedures.

20 I declare under penalty of perjury under the laws of the State of California and of the United States of
21 America that the foregoing is true and correct, and that this declaration was executed on June 2, 2020 at
22 Seville, Spain.

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27
28
By: /s/ Benjamin Martin
ARI LAW, P.C.
Attorney for Plaintiff, DR. ALI ABBAS