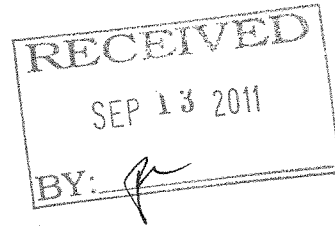


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7 SEVENTH-DAY ADVENTISTS

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF RIVERSIDE

11 JEFFRY M. KAATZ, JAMES W. BEACH, and) CASE NO. RIC 1112557
GARY L. BRADLEY,)
12)
Plaintiffs,)
13)
v.)
14)
RICARDO GRAHAM; PACIFIC UNION) DEFENDANTS PACIFIC UNION
15 CONFERENCE OF SEVENTH-DAY) CONFERENCE OF SEVENTH-DAY
ADVENTISTS, a not-for-profit corporation;) ADVENTISTS AND NORTH AMERICAN
16 DANIEL R. JACKSON; LARRY) DIVISION CORPORATION OF
BLACKMER; NORTH AMERICAN) SEVENTH-DAY ADVENTISTS' NOTICE
17 DIVISION CORPORATION OF SEVENTH-) OF DEMURRER AND DEMURRER TO
DAY ADVENTISTS, a not-for-profit) PLAINTIFF'S SIXTH, SEVENTH, AND
18 corporation; and LA SIERRA UNIVERSITY, a) EIGHTH CAUSES OF ACTION;
not-for-profit corporation; and DOES 1-100,) MEMORANDUM OF POINTS AND
19) AUTHORITIES IN SUPPORT THEREOF,
Defendants.) AND NOTICE OF JOINDER IN LA
20) SIERRA UNIVERSITY'S DEMURRER TO
THE OTHER CAUSES OF ACTION TO
PLAINTIFFS' COMPLAINT

Judge: Commissioner Paulette
Durand-Barkley

Dept.: 2

Date: October 20, 2011

Time: 9:00 a.m.

Dept.: 2

Action Filed: July 28, 2011

Trial Date: None

26 **TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:**

27 PLEASE TAKE NOTICE that Defendants Pacific Union Conference of Seventh-day

28 Adventists and North American Division Corporation of Seventh-day Adventists (hereinafter

1 sometimes collectively referred to as "Adventists") will, and hereby does generally demur to sixth,
2 seventh, eighth, ninth, tenth and eleventh causes of action in the complaint filed by plaintiffs Jeffrey
3 M. Kaatz, James W. Beach and Gary L. Bradley ("Plaintiffs"), on the grounds that each of those
4 causes of action therein fail to state facts sufficient to constitute a cause of action against Adventists
5 (Code Civ. Proc. §430.10(e)), and on the grounds set forth in the demurrer of Defendant La Sierra
6 University ("LSU") to the complaint filed by Plaintiffs, on calendar for hearing with this Court on
7 October 20, 2011.

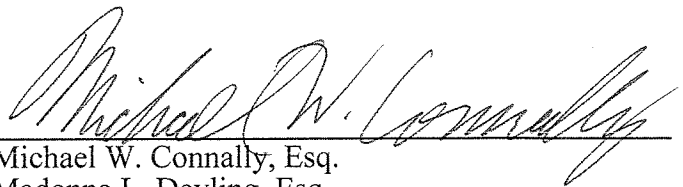
8 PLEASE ALSO TAKE NOTICE that Adventists hereby join in LSU's demurrer, including
9 all documents, arguments, exhibits, notices in support thereof.

10 This demurrer will be based upon this notice, the Adventists' accompanying demurrer and
11 memorandum of points and authorities, the accompanying request for judicial notice, all pleadings,
12 records and papers on file, all matters that this court may take judicial notice of, and upon such other
13 matters as may properly be introduced at the hearing of this demurrer.

14 DATED: September 12, 2011

LEWIS BRISBOIS BISGAARD & SMITH LLP

15
16
17 By



Michael W. Connally, Esq.

Madonna L. Devling, Esq.

Sean Paisan, Esq.

Attorneys for Defendants, LA SIERRA UNIVERSITY;
18 PACIFIC UNION CONFERENCE OF SEVENTH-
19 DAY ADVENTISTS; NORTH AMERICAN
20 DIVISION CORPORATION OF SEVENTH-DAY
21 ADVENTISTS

DEMURRER

1
2 Defendants Pacific Union Conference of Seventh-day Adventists and North American Division
3 Corporation of Seventh-day Adventists, in their own capacity generally and specially demurs to
4 plaintiffs' complaint on the following grounds:

5 1. The sixth cause of action, for intentional interference with contractual relations, does not
6 state facts sufficient to constitute a cause of action (Code Civ. Proc. §430.10(e));

7 2. The seventh cause of action, for intentional interference with prospective economic
8 advantage, does not state facts sufficient to constitute a cause of action (Code Civ. Proc. §430.10(e));

9 3. The eighth cause of action, for inducing breach of contract, does not state facts sufficient
10 to constitute a cause of action (Code Civ. Proc. §430.10(e));

11 4. This Court is without jurisdiction over the subject matter of the ninth cause of action,
12 for intentional infliction of emotional distress, because the California Workers' Compensation Act
13 provides the exclusive remedy for the injuries alleged therein. (Code of Civ. Proc. §430.10(a));

14 5. The ninth cause of action, for intentional infliction of emotional distress, does not state
15 facts sufficient to constitute a cause of action (Code Civ. Proc. §430.10(e));

16 6. The tenth cause of action, for violation of California common-law right to privacy, does
17 not state facts sufficient to constitute a cause of action (Code Civ. Proc. §430.10(e)); and

18 7. The eleventh cause of action, for violation of Business and Professions Code section
19 17200, does not state facts sufficient to constitute a cause of action (Code Civ. Proc. §430.10(e)).

20 WHEREFORE, defendants Pacific Union Conference of Seventh-day Adventists and North
21 American Division Corporation of Seventh-day Adventists pray that this court sustain this demurrer in

22 ///

23 ///

24 ///

25 ///

26 ///

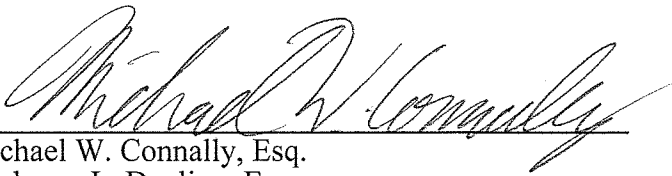
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1 its entirety, without leave to amend, for its costs of suit incurred herein and for all other relief that this
2 court may deem just and proper.

3 DATED: September 12, 2011

LEWIS BRISBOIS BISGAARD & SMITH LLP

4
5
6 By 

Michael W. Connally, Esq.
Madonna L. Devling, Esq.
Sean Paisan, Esq.

7 Attorneys for Defendants, LA SIERRA UNIVERSITY;
8 PACIFIC UNION CONFERENCE OF SEVENTH-
9 DAY ADVENTISTS; NORTH AMERICAN
10 DIVISION CORPORATION OF SEVENTH-DAY
11 ADVENTISTS
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1. INTRODUCTION

3 Does the First Amendment give the leaders of a church the right to speak with each other
4 about whether people are qualified to hold leadership positions in a religious university that church
5 founded and operates as part of its education ministry?

6 If so, does the First Amendment also give those church leaders the right, without being
7 subjected to tort liability, to ask people to resign from leadership positions in that university after
8 the church learns those university leaders:

9 (A) are “very critical” of that church’s highest officials and that church’s efforts to
10 accomplish the church’s religious mission, and

11 (B) have violated a fundamental belief of the church by drinking alcoholic beverages
12 while at a gathering criticizing the church’s leaders?

13 Does the First Amendment prevent a court from issuing an injunction requiring a religious
14 organization to keep people in leadership positions after that religious organization learns those
15 people are “very critical” of the way that religious organization is trying to carry out its religious
16 mission?

17 Defendants Pacific Union Conference of Seventh-day Adventists (“PUC”) and North
18 American Division Corporation of Seventh-day Adventists (“NAD”) submit that the United States
19 Constitution and California Constitutions dictate that the answer to each of these questions is an
20 emphatic “Yes!”

21 Consequently, PUC and NAD (collectively “Adventists”) file this separate demurrer to three
22 causes of action Plaintiffs have pled against PUC and NAD for alleged interference with contractual
23 relations, prospective economic advantage and inducing breach of contract. Specifically, this
24 demurrer will address Plaintiffs’ causes of action Number 6 (Intentional Interference with
25 Contractual Relations), Number 7 (Intentional Interference with Prospective Economic Advantage),
26 and Number 8 (Inducing Breach of Contract). As more fully set forth below, the allegations in
27 Plaintiffs’ Complaint fails to set forth the essential elements of these causes of action (which are
28 essentially similar).

1 PUC and NAD also join in the arguments set forth in the demurrer filed by defendant La
2 Sierra University (“LSU”) to the ninth, tenth and eleventh causes of action, which allege intentional
3 infliction of emotional distress, violation of common law right to privacy and violation of Business
4 and Professions Code section 17200.

5 **2. SUMMARY OF THE ALLEGATIONS IN THE FIRST AMENDED COMPLAINT**

6 PUC and NAD (hereinafter sometimes collectively referred to as “Adventists”) join in
7 LSU’s summary of Plaintiffs’ complaint, since Plaintiffs’ allegations against Adventists incorporate
8 every preceding paragraph into the causes of action pled against Adventists. (Complaint, pp. 28:14-
9 15, 29:14-15, 30:14-15, 31:8-9, 31:26-27, and 32:23-24, ¶¶ 158, 165, 172, 177, 183 and 188.)

10 The sixth through eight causes of action add virtually nothing new to the allegations
11 summarized in LSU’s demurrer. Plaintiffs add only a few conclusionary allegations to those in the
12 paragraphs incorporated by reference. Plaintiffs allege that Plaintiffs had valid, enforceable
13 employment contracts with LSU, that Adventists and some of Adventists’ church leaders knew of
14 Plaintiffs’ employment contracts and “. . . intentionally disregarded the administrative structure” by
15 inducing LSU to breach those contracts without the prior knowledge of LSU’s board of trustees.
16 (Complaint, pp. 28-31, ¶¶ 158-176.)

17 Significantly, Plaintiffs do not allege that LSU’s board of trustees disagreed with the idea
18 that Plaintiffs were unfit to remain as leaders of LSU. Plaintiffs also do not allege that if Adventists
19 had consulted with the board of trustees in advance that would have led to Plaintiffs remaining in
20 their university leadership positions.

21 In short, Plaintiffs do not attempt to plead the failure to consult with the board of trustees
22 caused Plaintiffs any harm, and with good reason. Plaintiffs’ admit they are “very critical” of the
23 Seventh-day Adventist Church’s leaders. More important, Plaintiffs admit that when the trustees of
24 LSU were subsequently asked to weigh in on the issue, the trustees voted to accept Plaintiffs’
25 resignations. (Complaint, ¶65.)

26 The eighth cause of action adds the allegation that Adventists’ tort liability arises because
27 Adventists and their leaders, one of whom is LSU’s board chairman, “encouraged and persuaded
28 [LSU’s President] that it would be *to the University’s advantage* to breach its employment

1 contracts with Plaintiffs, and each of them, to further the interests of Defendants Pacific Union
2 Conference and North American Division.” (Complaint, p. 30:18-22, ¶ 174.)

3 In summary, Plaintiffs’ complaint alleges Adventists’ tort is that they:

4 (A) successfully *persuaded* LSU’s President that it would be advantageous to LSU to cease
5 employing Plaintiffs in their role as leaders of LSU, and

6 (B) failed to first consult with LSU’s board of trustees, even though Plaintiffs admit the
7 board of trustees subsequently agreed with accepting the resignations.

8 **3. A DEMURRER SHOULD BE SUSTAINED WHERE, AS HERE, A COMPLAINT**
9 **IMPERMISSIBLY PLEADS CONTRADICTORY FACT ALLEGATIONS**

10 Although one may plead alternative theories and still maintain a viable complaint, a plaintiff
11 cannot plead facts that are so internally inconsistent that they negate one another. (*O’Hare v.*
12 *Marine Electric Co.* (1964) 229 Cal.App.2d 33, 36; *Careau & Co. v. Security Pacific Business*
13 *Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390.)

14 While inconsistent theories of recovery are permitted [citation], a pleader cannot
15 blow hot and cold as to the facts positively stated. [citations omitted.] To verify
16 inconsistent facts alleged in a complaint indicates perjury in the matter. But the rule
also applies to unverified pleadings.

17 (*Manti v. Gunari* (1970) 5 Cal. App. 3d 442, 449. See, also, *Gentry v. eBay, Inc.* (2002) 99 Cal.
18 App. 4th 816, 827-828, citing this holding from *Manti* with approval.)

19 Faced with conflicting factual pleadings, the trial court is required to take as true those
20 allegations that bear most strongly against the pleading party. (*Manti, supra*, at p. 450.)

21 Where such internal inconsistencies exist, a general demurrer for failure to state a cause of
22 action is proper. In *O’Hare, supra*, 229 Cal.App.2d at 36, the court held a minority shareholder's
23 complaint that each defendant was "an officer and/or director and/or shareholder" failed to state a
24 claim for breach of fiduciary duty because there was no direct allegation that any defendant was a
25 director or shareholder. Likewise in *Careau, supra*, 222 Cal.App.3d at 1390, the court held: “. . . a
26 general allegation of due performance will not suffice if plaintiff also sets forth what has actually
27 occurred and such specific facts do not constitute due performance.” (Emphasis added.)

28 Therefore, here, for example, this court should disregard Plaintiffs’ allegations that LSU has

1 interests that conflict with PUC and NAD, since those allegations are inconsistent with fact
2 admissions in Plaintiffs' complaint showing that LSU, PUC and NAD are all part of the same
3 religious faith. This court can also disregard Plaintiffs conclusionary allegations that LSU's
4 trustees' chairman, Ricardo Graham, "wrongfully terminated all three Plaintiffs" and that he was
5 acting outside his authority when doing so (e.g., Complaint ¶¶ 6, 18, 59-62 and 196), since the
6 Complaint alleges facts inconsistent with those conclusions.

7 Specifically, the Complaint alleges that Plaintiffs resigned and that impliedly admits that
8 Graham acknowledged the fact that only the board of trustees could fire Plaintiffs. (See Complaint
9 ¶¶ 46, 51, 53, 54-58.) Plaintiffs concede that Graham told plaintiffs Kaatz and Beach that if they
10 chose not to resign he would "... call a special meeting of the Board of Trustees the following week
11 and have them fired." Significantly, plaintiffs do not allege Graham threatened to have Bradley
12 fired. (*Ibid.*) Obviously, if Graham were intending to fire Kaatz and Beach he would not have told
13 them a special meeting with the board was going to be necessary. Also, obviously, if Kaatz and
14 Beach thought they had done nothing wrong they could have waited until the next week and
15 presented their case to the board.

16 Furthermore, Plaintiffs' complaint admits that a little over a week later, when Plaintiffs
17 sought to withdraw their resignations, the board of trustees chose, instead, to accept those
18 resignations. That admission shows that Plaintiffs' complaints about Graham's alleged failure to
19 first consult the board of trustees is immaterial. Graham's alleged failure to consult the board did
20 not cause Plaintiffs' situation.

21 **4. PLAINTIFFS HAVE FAILED TO ALLEGE THE ESSENTIAL ELEMENTS OF**
22 **THE SIXTH, SEVENTH, AND EIGHTH CAUSES OF ACTION**

23 Plaintiffs have alleged three virtually identical causes of action against PUC and NAD:
24 intentional interference with contractual relations; intentional interference with prospective
25 economic advantage; and inducing breach of contract. All three causes of action arise from
26 Plaintiffs' alleged contractual/economic relationships with LSU.

27 The elements that a plaintiff must plead to state the cause of action for intentional
28 interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2)

1 defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach
2 or disruption of the contractual relationship; (4) actual breach or disruption of the contractual
3 relationship; and (5) resulting damage. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990)
4 50 Cal.3d 1118, 1126.) The Supreme Court also analyzed the cause of action for inducing breach of
5 contract with these same elements. (*Ibid.*)

6 The elements necessary to allege an intentional interference with prospective economic
7 advantage are very similar. The plaintiff must allege: "(1) an economic relationship between the
8 plaintiff and some third person containing the probability of future economic benefit to the plaintiff;
9 (2) knowledge by the defendant of the existence of the relationship; (3) intentional acts on the part
10 of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and
11 (5) damages to the plaintiff proximately caused by the acts of the defendant." (*Fisher v. San Pedro*
12 *Peninsula Hosp.* (1989) 214 Cal. App. 3d 590, 618-619.)

13 **A. The Religious Affiliation Between the Adventists and LSU Precludes Adventists**
14 **from Being Held Liable for Tortious Interference Claims**

15 Plaintiffs' tortious interference/breach causes of action are legally untenable because they
16 require the court to ignore the religious unity between the Adventists and LSU. In essence,
17 Plaintiffs' theories require this court to evaluate the religious structure and governance of the
18 Seventh-day Adventist Church and conclude that the Adventists can be liable for interfering with
19 LSU's contracts. That theory is untenable as a matter of both common law and Constitutional
20 jurisprudence. A party cannot be liable in tort for interfering with its own economic interests,
21 contracts or "business."

22 As set forth in LSU's demurrer, Plaintiffs' complaint admits LSU is an Adventist university
23 that is part of, or at least "affiliated" with PUC.^{1/} Plaintiffs also allege PUC and NAD are .

24 _____
25 ^{1/} See, also, LSU's bylaws in exhibit 2 to the Church Defendants' request for judicial notice
26 ("RJN"), filed with this demurrer. Adventists join with LSU in requesting judicial notice of LSU's
27 bylaws. LSU's bylaws' "Purpose" section states, among other things, that:

27 The University is an institution of higher education sponsored and maintained by the
28 Pacific Union Conference of Seventh-day Adventists as part of the system of
educational institutions established throughout the world by the Seventh-day
Adventist Church. *The University is operated by its Board of Trustees as an*
integral part of the Pacific Union Conference of Seventh-day Adventists.

1 Therefore, these entities must be considered as alter-ego of one another for purposes of this analysis.
2 In other words, neither PUC nor NAD is a “stranger” to the alleged contract/relationship between
3 Plaintiffs’ and LSU.

4 In *Pacific Gas*, the California Supreme Court acknowledged the history of these causes of
5 action. It stated: “It has long been held that *a stranger to a contract* may be liable in tort for
6 intentionally interfering with the performance of the contract.” (*Pacific Gas, supra*, 50 Cal.3d at
7 1126, emphasis added [citing *Lumley v. Gye* (1853) 2 El. & Bl. 216 [118 Eng. Rep. 749]; *Imperial*
8 *Ice v. Rossier* (1941) 18 Cal.2d 33].) In other words, the torts of interference with contracts,
9 contractual relations or prospective economic advantage cannot be maintained against a party to the
10 contract. However, here Plaintiffs contend this court should examine the Seventh-day Adventist
11 Church’s structure and governance and adjudicate that Adventists are “strangers” who have no right
12 to even “encourage and persuade” LSU that its mission will be advanced by having administrators
13 and faculty who agree with Seventh-day Adventist Church leadership.

14 *Proctor v. General Conference of Seventh-Day Adventists* (D. Ill. 1986) 651 F. Supp. 1505,
15 1526 rejected an identical contention. There, Proctor, a bookseller, sought an injunction and
16 antitrust damages against defendants, Seventh-day Adventist conference and churches, for alleged
17 violations of the Sherman Act, 15 U.S.C.S. §§ 1, 2, and the Robinson-Patman Act, 15 U.S.C.S. §
18 13(a), as well as for tortious interference with business relations. The *Proctor* court reviewed the
19 Seventh-day Adventist Church’s structure and observed that: “Theologically, the Seventh-day
20 Adventist Church is a single unified church. Church documents that prescribe the Church's structure
21 and governance confirm that all parts of the Church are parts of a single entity.” (*Proctor, supra*,
22 651 F. Supp. at 1515.)

23 Proctor charges the Church defendants with tortious interference with his business
24 relationships. This claim is that the Church defendants interfered with his business
25 dealings with Adventist entities and with independent suppliers. The intrachurch
26 claim fails because the Church is a single entity. A party cannot be liable in tort for
interfering with its own business. *F.E.L. Publications, Ltd. v. Catholic Bishop of*
Chicago, 754 F.2d 216, 221 (7th Cir.), cert. denied, 474 U.S. 824, 106 S. Ct. 79, 88
L. Ed. 2d 64 (1985).

27 _____
28 (LSU bylaws, RJN exh. 2, Art. IV, p. 4, emphasis added.)

1 (*Proctor, supra*, 651 F. Supp. at 1526.)

2 Significantly, the one of the entities the *Proctor* court held was part of the Seventh-day
3 Adventist Church was Andrews University. (*Id.* at 1516.) A similar rule should apply here.
4 California law recognizes this principle and dictates a similar result here. Therefore, this court
5 should sustain this demurrer without leave to amend.

6 **B. Adventists' Acts Are Protected by the First Amendment**

7 Assuming *arguendo*, that Plaintiffs can allege facts that show that PUC and NAD engaged in
8 intentional acts, leave to amend should not be granted because any such acts are protected. As more
9 fully set forth in LSU's demurrer, LSU is an Adventist university whose origins, funding, bylaws
10 and leadership structure is tied to PUC and NAD. Accordingly, the First Amendment precludes
11 courts from evaluating whether LSU, PUC and NAD have conflicting or complementary approaches
12 to accomplishing LSU's Seventh-day Adventist religious mission.

13 **C. Plaintiffs' Complaint Admits PUC and NAD Did Not Cause Plaintiffs' Alleged**
14 **Damages**

15 As more fully set forth in LSU's demurrer, to which these Defendants join, the salient fact is
16 that Plaintiffs *voluntarily resigned* after Defendant Graham confronted Plaintiffs with proof of
17 Plaintiffs' own conduct. Therefore, it is clear that Plaintiffs' own actions in choosing to resign
18 instead of engaging in the administrative process were the proximate cause of their alleged damages.

19 Furthermore, Plaintiffs' admissions show that Adventists persuaded LSU's president that it
20 was advantageous *to the university* to sever Plaintiffs ties to their administrative positions and that
21 the board of trustees voted to accept Plaintiffs' resignations makes it clear that advance consultation
22 would not have changed the result. Accordingly, this court should sustain Adventists' demurrer,
23 without leave to amend.

24 **D. Plaintiffs' Conclusory Allegations of Intentional Acts Are Insufficient**

25 An essential element to these three causes of action is an *intentional act taken by the*
26 *defendant designed to cause* a breach of the contract or to interfere with the economic relationship.
27 Plaintiffs Complaint fails to plead this essentially element requiring that this demurrer be sustained.
28 Plaintiffs have pleaded only legal conclusions and have failed to allege any acts, intentional or

1 otherwise, to support their claims.

2 In pleading a cause of action for intentional interference, a plaintiff “must not only plead and
3 prove intentional acts, but also that such acts were designed to disrupt the formation of a prospective
4 economic relationship.” (*Hofmann Co. v. E. I. du Pont de Nemours & Co.*, (1988) 202 Cal. App. 3d
5 390, 402.) In business torts, the defendant's motive is crucial. (*Seaman's Direct Buying Service, Inc.*
6 *v. Standard Oil Co.* (1984) 36 Cal.3d 752, 765-767.)

7 In *Fisher v. San Pedro Peninsula Hosp.* (1989) 214 Cal. App. 3d 590, the court upheld a
8 judgment for defendants entered after sustaining demurrers without leave to amend with respect to
9 causes of action by spouses for intentional interference with business relations. With regard to the
10 wife's cause of action for intentional interference against an individual who allegedly disrupted her
11 relationship with the hospital she worked at, the Court of Appeal found allegations that the
12 defendant "embarked on course of intentional conduct designed to disrupt plaintiff's relationship
13 with the hospital" were insufficient in that they pleaded a legal conclusion, not facts. (*Id.* at 619.)

14 In this case, Plaintiffs have not pleaded any specific intentional acts on the part of PUC and
15 NAD designed to disrupt any contract or economic relationship between Plaintiffs and LSU. As in
16 *Fisher*, Plaintiffs have only pleaded a legal conclusion and not facts, stating only that “Defendants ...
17 intentionally disregarded the administrative structure at Defendant La Sierra University and
18 intentionally induced Defendant La Sierra University to breach the contractual relationships with
19 Plaintiffs without the prior knowledge of La Sierra University Board of Trustees and administration,
20 thereby acting to govern and control the University. . .” (Complaint at ¶¶161 and 168.) Plaintiffs
21 also plead the conclusory allegation that Defendants “wrongfully acted in exerting improper and
22 unjustified influence over Defendant La Sierra University” and caused Defendant La Sierra
23 University to actually breach the contractual relationship with each Plaintiff and interfered with the
24 business relationship between Plaintiffs and LSU. (Complaint at ¶¶162 and 169.) At no point do
25 Plaintiffs plead *any facts* to support their allegation that PUC and NAD “intentionally induced
26 Defendant La Sierra University to breach the contractual relationships with Plaintiffs.”

27 Accordingly, this court should sustain Adventists’ demurrer, because Plaintiffs have failed to
28 plead any intentional acts to support these causes of action.

1 **E. Plaintiffs Have Not Alleged Breach of any Contractual Relationship**

2 As to Plaintiffs' Sixth (Intentional Interference with Contractual Relations) and Eighth
3 (Inducing Breach of Contract) Causes of Action, Plaintiffs have failed to set forth the terms of the
4 contracts that were allegedly breached.

5 The contracts purportedly breached are not attached as exhibits to the complaint, nor are
6 their terms quoted in the pleading. The same is true of the bylaws and handbooks Plaintiffs allege
7 govern LSU, PUC and NAD. It is well settled in California that: "A written contract is usually
8 pleaded by alleging its making, and then setting it out verbatim (in haec verba) in the body of the
9 complaint or as a copy attached and incorporated by reference." (4 Witkin *California Procedure*
10 (3d ed. 1995) §467, p.507.)

11 As the California Supreme Court stated in *Gilmore v. Lycoming Fire Insurance Company*
12 (1880) 55 Cal.123, 124:

13 Where a party relies upon a contract in writing, and it affirmatively appears that all
14 the terms of the contract are not set forth in haec verba, nor stated in their legal
15 effect, but that a portion which may be material has been omitted, the complaint is
16 insufficient.

17 The complaint completely fails to satisfy these pleading requirements. The complaint does
18 not attach the alleged express contracts between LSU and the Plaintiffs, nor quote all of the
19 contractual terms verbatim. Plaintiffs do not allege the terms or conditions of their alleged
20 employment contracts with any specificity. Significantly, Plaintiffs do not allege the express terms
21 of their contracts that allegedly reflect that their employment was not at will and could only be
22 terminated for good cause. This is not merely a technical pleading defect.

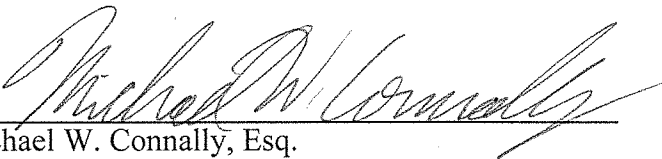
23 It is well established that conclusions set forth in a complaint are not admitted by general
24 demurrer and must be ignored when ruling on the sufficiency of the complaint to state a cause of
25 action. (*Beresford Neighborhood Association v. City of San Mateo* (1989) 207 Cal.App.3d 1180,
26 1190-91.) To be sufficient, a complaint must contain a statement of facts that, without the aid of
27 any conjectured facts not stated, shows a complete cause of action. (*Going v. Dinwiddie* (1890) 86
28 Cal. 633, 637.)

1 **5. CONCLUSION**

2 The First Amendment gives religious organizations, rather than courts, the right to decide
3 who can best serve as leaders of those organizations and how best to accomplish their religious
4 missions. However, Plaintiffs' lawsuit seeks tort damages from the Church Defendants because a
5 church official asked Plaintiffs to resign from leadership roles at LSU after it became known that
6 Plaintiffs were "very critical" of the Church Defendants' officials and the Church Defendants'
7 efforts to accomplish LSU's religious mission. Even more offensive, Plaintiffs ask this court to
8 meddle with the Church Defendants' affairs by issuing injunctions telling the Church Defendants
9 how to govern themselves.

10 DATED: September 12, 2011

LEWIS BRISBOIS BISGAARD & SMITH LLP

11
12
13 By 
14 Michael W. Connally, Esq.
15 Madonna L. Devling, Esq.
16 Sean Paisan, Esq.
17 Attorneys for Defendants, LA SIERRA UNIVERSITY;
18 PACIFIC UNION CONFERENCE OF SEVENTH-
19 DAY ADVENTISTS; NORTH AMERICAN
20 DIVISION CORPORATION OF SEVENTH-DAY
21 ADVENTISTS
22
23
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25
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1 **CALIFORNIA STATE COURT PROOF OF SERVICE**
2 *Jeffry M. Kaatz, James W. Beach and Gary L. Bradley v. Ricardo Graham, et al.*
3 RCSC Case No.: RIC 1112557

4 STATE OF CALIFORNIA, COUNTY OF ORANGE

5 At the time of service, I was over 18 years of age and not a party to the action. My business
6 address is 650 Town Center Drive, Suite 1400, Costa Mesa, California 92626.

7 On September 12, 2011, I served the following document(s): **DEFENDANTS LA**
8 **SIERRA UNIVERSITY, PACIFIC UNION CONFERENCE OF SEVENTH-DAY**
9 **ADVENTISTS, AND NORTH AMERICAN DIVISION OF SEVENTH-DAY ADVENTISTS'**
10 **NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF'S SIXTH, SEVENTH, AND**
11 **EIGHTH CAUSES OF ACTION; MEMORANDUM OF POINTS AND AUTHORITIES IN**
12 **SUPPORTH THEREOF, AND NOTICE OF JOINDER IN LA SIERRA UNIVERSITY'S**
13 **DEMURRER TO THE OTHER CAUSES OF ACTION TO PLAINTIFFS' COMPLAINT**

14 I served the documents on the following persons at the following addresses (including fax
15 numbers and e-mail addresses, if applicable):

16 Richard D. McCune, Esq.
17 David C. Wright, Esq.
18 Michele M. Vercoski, Esq.
19 McCUNE WRIGHT, LLP
20 2068 Orange Tree Lane, Suite 216
21 Redlands, CA 92374
22 (909) 557-1250 FAX: (909) 557-1275
23 Attorneys for Plaintiffs, JEFFRY M. KAATZ, JAMES W. BEACH, and GARY L.
24 BRADLEY

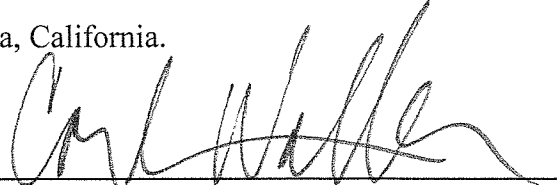
25 The documents were served by the following means:

26 (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the
27 persons at the addresses listed above and (specify one):

28 Placed the envelope or package for collection and mailing, following our ordinary
29 business practices. I am readily familiar with the firm's practice for collection and processing
30 correspondence for mailing. Under that practice, on the same day that correspondence is placed for
31 collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal
32 Service, in a sealed envelope of package with the postage fully prepaid.

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

35 Executed on September 12, 2011, at Costa Mesa, California.

36 
37 Carla Waller