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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 06 2011

8 IN THE SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF RIVERSIDE

11 JEFFRY M. KAATZ, JAMES W. BEACH, and
GARY L. BRADLEY,

12 Plaintiffs,

13 v.

14 RICARDO GRAHAM; PACIFIC UNION
15 CONFERENCE OF SEVENTH-DAY
ADVENTISTS, a not-for-profit corporation;
16 DANIEL R. JACKSON; LARRY BLACKMER;
NORTH AMERICAN DIVISION
17 CORPORATION OF SEVENTH-DAY
ADVENTISTS, a not-for-profit corporation; and
18 LA SIERRA UNIVERSITY, a not-for-profit
corporation; and DOES 1-100,

19 Defendants.
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) Case No.: RIC 1112557

) **PLAINTIFFS' OPPOSITION TO**
) **DEFENDANTS PACIFIC UNION**
) **CONFERENCE OF SEVENTH-DAY**
) **ADVENTISTS AND NORTH AMERICAN**
) **DIVISION CORPORATION OF SEVENTH-**
) **DAY ADVENTISTS' DEMURRER TO**
) **PLAINTIFFS' COMPLAINT**

) Hearing Date: October 20, 2011

) Hearing Time: 8:30 a.m.

) Judge: Commissioner Paulette Durand-Barkley
) Department: 2

) Judge Assigned: Hon. Craig G. Riemer

) Complaint Filed: July 28, 2011

23 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

24 Plaintiffs JEFFRY M. KAATZ, JAMES W. BEACH, and GARY L. BRADLEY, hereby submit
25 their opposition to Defendants PACIFIC UNION CONFERENCE OF SEVENTH-DAY ADVENTISTS
26 AND NORTH AMERICAN DIVISION CORPORATION OF SEVENTH-DAY ADVENTISTS
27 Demurrer to Plaintiffs' Complaint; specifically:

28 //

1 **OPPOSITION TO DEMURRER TO THE SIXTH CAUSE OF ACTION**

2 As to the sixth cause of action for intentional interference with contractual relations, Plaintiffs
3 oppose the demurrer on the ground that Plaintiffs sufficiently allege facts sufficient to constitute a cause
4 of action (Code Civ. Proc. § 430.10(e)).

5 **OPPOSITION TO DEMURRER TO THE SEVENTH CAUSE OF ACTION**

6 As to the seventh cause of action for intentional interference with prospective economic
7 advantage, Plaintiffs oppose the demurrer on the ground that Plaintiffs sufficiently allege facts sufficient
8 to constitute a cause of action (Code Civ. Proc. § 430.10(e)).

9 **OPPOSITION TO DEMURRER TO THE EIGHTH CAUSE OF ACTION**

10 As to the eighth cause of action for inducing breach of contract, Plaintiffs oppose the demurrer
11 on the ground that Plaintiffs sufficiently allege facts sufficient to constitute a cause of action (Code Civ.
12 Proc. § 430.10(e)).

13 **OPPOSITION TO DEMURRER TO THE NINTH CAUSE OF ACTION**

14 As to the ninth cause of action for the intentional infliction of emotional distress, Plaintiffs
15 oppose the demurrer on the ground that the California Workers' Compensation Act does not provide the
16 exclusive remedy for the injuries alleged therein and therefore the Court properly has subject matter
17 jurisdiction. (Code Civ. Proc. § 430.10(a)).

18 **OPPOSITION TO DEMURRER TO THE NINTH CAUSE OF ACTION**

19 As to the ninth cause of action for intentional infliction of emotional distress, Plaintiffs oppose
20 the demurrer on the ground that Plaintiffs sufficiently allege facts sufficient to constitute a cause of
21 action (Code Civ. Proc. § 430.10(e)).

22 **OPPOSITION TO DEMURRER TO THE TENTH CAUSE OF ACTION**

23 As to the tenth cause of action for violation of California common-law right to privacy, Plaintiffs
24 oppose the demurrer on the ground that Plaintiffs sufficiently allege facts sufficient to constitute a cause
25 of action (Code Civ. Proc. § 430.10(e)).

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1 **OPPOSITION TO DEMURRER TO THE ELEVENTH CAUSE OF ACTION**

2 As to the eleventh cause of action for violation of Business and Professions Code section 17200,
3 Plaintiffs oppose the demurrer on the ground that Plaintiffs sufficiently allege facts sufficient to
4 constitute a cause of action (Code Civ. Proc. § 430.10(e)).

5 In the alternative, should this Court be inclined to grant, in whole or in part, Defendants'
6 demurrer, Plaintiffs respectfully request that this Court grant Plaintiffs leave to amend to cure any
7 defects.

8 Dated: October 6, 2011.

MCCUNEWRIGHT LLP

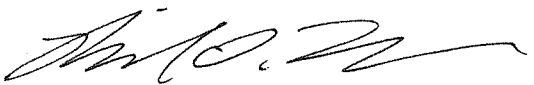
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10 By: 
11 Richard D. McCune
12 Attorneys for Plaintiffs
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 INTRODUCTION

4 As done by Defendant La Sierra University, Defendants Pacific Union Conference and North
5 American Division ask this Court to sustain their demurrer by making factual findings as to whether
6 such Defendants are alter egos of each other, in contradiction of the properly pleaded allegations in
7 Plaintiffs' complaint, by attempting to introduce facts outside the four corners of the complaint. To do
8 so would be error where, as here, the Court must accept Plaintiffs' properly pleaded factual allegations
9 as true.

10 Plaintiffs have alleged in their Complaint that they were lifelong employees of La Sierra
11 University who were wrongfully discharged from their employment when they were coerced and forced
12 into signing a resignation letter by Defendant Ricardo Graham, the Board Chair of their employer, La
13 Sierra University, under the explicit threat of public firing and release of a secret and improper recording
14 of Plaintiffs' private conversation that had been recorded by a La Sierra University board member .
15 Plaintiffs allege that the Board Chair's action was improper both for use of the secretly-recorded
16 conversation to coerce Plaintiffs' resignations, and because he did not have the authority to seek
17 Plaintiffs' resignations or threaten them with termination. Plaintiffs allege that in so doing, Graham
18 violated multiple procedural and due process protections provided by La Sierra University for its
19 employees in taking those actions.

20 The Board Chair's violations of employee due process and procedural protections included
21 taking unauthorized and unilateral board action; failing to consult or seek board approval, bypassing the
22 President and the La Sierra University administration in making unilateral and unauthorized decisions
23 regarding operations and employment – decisions outside of the board's scope of duty and control, and
24 acting in direct breach of his fiduciary duty to La Sierra University as Board Chair.

25 Plaintiffs allege that not only were the coerced and forced resignation letters not legally binding
26 because of the circumstances under which they were obtained, but to the extent they had any effect, they
27 were withdrawn before the board took action on the resignations and were not therefore legally binding.
28 To the extent the board could act on the resignations, the board action was procedurally deficient and

1 substantively illegal because of undue influence exerted on the board members by outside entities and
2 interests that mandated board members to violate their fiduciary duties of loyalty and interest to La
3 Sierra University.

4 As a result of Defendants' actions, Plaintiffs Dr. Kaatz and Dr. Beach have been illegally
5 terminated from their administration positions and Plaintiff Dr. Bradley has been terminated from his
6 teaching position with La Sierra University. These terminations were illegal and actionable because
7 they breached the contracts Plaintiffs had with La Sierra University, violated public policy, and violated
8 Business and Professions Code, section 17200. This very public termination has resulted in substantial
9 damage to the Plaintiffs, including lost wages, loss of employability, and damage to Plaintiffs'
10 professional and personal reputations.

11 Those basic legal allegations are primarily not the subject of the challenge to the Complaint,
12 because the Complaint is properly pled. Instead, Defendants present their version of the factual
13 background relating to the motivation and mechanism for the wrongful terminations in an effort to
14 fabricate a First Amendment challenge to the Complaint. This challenge will fail on the merits when
15 properly before the Court in a motion for summary judgment and trial. But not only does it
16 substantively fail at the pleading stage, it is procedurally improper and inappropriate for Defendants to
17 seek such a finding at the pleading stage because it requires this Court, without a factual record, to make
18 numerous findings of fact.

19 In order to make this tortured First Amendment argument, Defendants ask the Court to assume
20 facts not in the Complaint or properly before the Court, to make findings on disputed facts, and to imply
21 the existence of contrary facts from facts not pled. Aside from asking the Court to issue findings of fact
22 at the pleading stage, it requires the Court to assume facts as relevant and true that not only are not
23 found in any record before the Court, but are contrary to logic and the Complaint.

24 One such argument is that Defendants are really alter-egos of the other Defendants, and the
25 decision of one Defendant is the decision of each Defendant. To concoct a First Amendment argument,
26 Defendants know the Court must find all Defendants are within one entity. This directly contradicts
27 what is properly pled in the Complaint, and will be in conflict with a developed factual record. In
28 making this argument, no explanation is offered as to why the Church organization used the secular

1 legal system to create separate legal entities with separate charters, boards of trustees, members,
2 employees, bylaws, and missions, if the organizations are really just a single entity. Presumably it was
3 for legal protection so that one entity would not be legally responsible for the liabilities of the other
4 entity. That issue, however the factual record may be developed, is not now before the Court.

5 Then in continuing to try and manufacture their First Amendment challenge, Defendants must
6 turn this employment issue into a theology and religious freedom issue. It is a clumsy and obvious
7 attempt to recast the Complaint. Defendants spin the Complaint to be one about the Seventh-Day
8 Adventists church and the origin of the earth debate. That is absurd and no well intentioned reader of
9 the Complaint could conclude that Plaintiffs seek a decision on a religious issue. Defendants' desire to
10 influence the origins debate by utilizing their power and influence over La Sierra University and its
11 faculty and staff in terminating Dr. Bradley and any co-employee that associated with him may have
12 been what motivated Defendants to take the illegal employment action at issue. But the internal
13 motivation by Defendants does not magically transform the legal employment issues into theological
14 faith issues. When a factual record is developed and presented to the Court, it will reveal that La Sierra
15 University has taken the exact opposite position and released a public statement that this religious
16 "origins" issue had nothing to do with the forced resignations.

17 The remaining challenges to the complaint also fail because Defendants are wrong on the law,
18 and any findings by the Court necessitate the development of a factual record. Obviously, Defendants
19 know that the Court cannot make findings of fact without a factual record and cannot recast Plaintiffs'
20 Complaint into something entirely new and different because it suits Defendants' strategy. To do so
21 would radically change the law to find that a non-profit religious based entity, and its employees and
22 board members, are immune from any legal challenge to its employment decisions no matter the
23 circumstances, motivations, or even whether they were acting in the interest of their employer at the
24 time actions were taken. That would mean employees of a non-profit religious based institution are
25 without any legal recourse for employment actions taken against them, whether the challenge is based in
26 contract, violation of public policy, or violation of California statutes. Defendants know this is not the
27 law and to seek such a finding, especially at the pleading stage, is inappropriate. It seems in this high-
28 profile case, Defendants are more interested in public spin, shaping the debate, and argument than

1 appropriate legal challenges to the Complaint. This is a disservice to the Court and the parties and the
2 Court should therefore overrule Defendants' demurrer.

3 **II**

4 **STATEMENT OF PLEADED FACTS**

5 On June 10, 2011, Plaintiffs, three life-long employees of La Sierra University and senior
6 members of the administration and faculty, were individually summoned by Defendant Ricardo Graham,
7 Chair of the Board of Trustees of La Sierra University by virtue of his position as President of the
8 Pacific Union Conference of Seventh-day Adventists, and informed them that he was in possession of an
9 audio recording of a conversation made in a private home at which Plaintiffs were present more than
10 seven weeks prior. (Complaint, ¶ 1.) The recording at issue had been made by a member of the Board
11 of Trustees of La Sierra University, without Plaintiffs' knowledge or consent, in the private home of Dr.
12 Beach. (Complaint, ¶ 2.)

13 In consultation with, and at the behest of Defendants Blackmer and Jackson, employees and
14 officers of Defendant North American Division, Defendant Graham misrepresented the contents of the
15 recording of their private conversation and threatened Plaintiffs that if they did not immediately sign
16 letters of resignations, they would be fired from their positions and the audio recording would be made
17 public, causing shame and great harm to Plaintiffs, their colleagues, their families, and the University
18 that each had faithfully served for their entire careers. (Complaint, ¶5.) In taking such action without
19 advising or consulting with the President of La Sierra University and without the authority of any action
20 taken by the Board of Trustees, Defendant Graham not only made improper and unlawful use of a non-
21 consensual recording of a private conversation, but violated La Sierra University Bylaws, Trustees
22 Handbook, and Faculty Handbook, exceeded his authority as Chair of the Board of Trustees, and
23 breached the fiduciary duty he owed to La Sierra University by putting the interests of his own employer
24 above the interests of the University. (Complaint, ¶ 6.) In so doing, Defendants caused Plaintiffs to
25 suffer the loss of their occupations, exposed Plaintiffs to hatred, contempt, ridicule, and shame, and
26 discouraged others in the Seventh-day Adventist community from associating or dealing with them.
27 (Complaint, ¶7.)

28 //

III
ARGUMENT

A. Legal Standard for Demurrer

The function of a demurrer is to test the sufficiency of a complaint by raising questions of law. (*Buford v. State of California* (1980) 104 Cal.App.3d 811, 818 [164 Cal.Rptr. 264].) The question to be determined is whether the complaint states facts sufficient to constitute a cause of action. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal.Rptr. 718].) A complaint survives a demurrer if it states facts disclosing some right to relief. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 22 [157 Cal.Rptr. 706].)

In a case involving a motion for judgment on the pleadings, the California Supreme Court has said:

“[W]e treat the properly pleaded allegations of [the] complaint as true, and also consider those matters subject to judicial notice. [Citations.] ‘Moreover, the allegations must be liberally construed with a view to attaining substantial justice among the parties.’ [Citation.] ‘Our primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory.’ [Citation.]”

(*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1232 [44 Cal.Rptr.2d 352].)

Moreover, the courts liberally construe the pleading with a view to substantial justice between the parties. (*Kotlar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116, 1120 [100 Cal.Rptr.2d 246].) A complaint must contain “[a] statement of the facts constituting the cause of action, in ordinary and concise language.” (Code Civ. Proc., § 425.10, subd. (a)(1).) This fact-pleading requirement obligates the plaintiff to allege ultimate facts that “as a whole apprise [] the adversary of the factual basis of the claim. [Citations.]” (*Estate of Archer* (1987) 193 Cal.App.3d 238, 245 [239 Cal.Rptr. 137]; *see also Lim v. The TV Corp. Int’l* (2002) 99 Cal.App.4th 684, 689-90 [121 Cal.Rptr.2d 333].) When a complaint complies with the fact-pleading requirement of section 425.10, subdivision (a)(1), “[t]he existence of a legal right in an abstract form is never alleged by the plaintiff; but, instead thereof, the facts from which that right arises are set forth, and the right itself is inferred therefrom. The cause of action, as it appears in the complaint when properly pleaded, will therefore always be the facts from which the plaintiff’s primary right and the defendant’s corresponding primary duty have arisen, together with the facts which

1 constitute the defendant's delict or act of wrong.” (*Lodi v. Lodi* (1985) 173 Cal.App.3d 628, 631 [219
2 Cal.Rptr. 116] (internal quotation and citation omitted).)

3 **B. Plaintiffs’ Alternate Theories of Recovery Are Properly Pled Against All Defendants**

4 As Defendants concede, alternative theories of recovery-like those pled by Plaintiffs here-are
5 permissible. (Defs.’ Pacific Union Conference of Seventh-day Adventists and North American Division
6 Corporation of Seventh-day Adventists Demurrer (“Defs.’ PUC and NAD Demurrer”), p. 3.) “In
7 general, plaintiff may plead whatever version of facts, or whatever legal theory, would support recovery.
8 And, if the plaintiff is uncertain as to the facts or theory on which he can prevail, he is entitled to plead
9 them in the alternative, or even inconsistently,” subject to a few limitations not applicable here. (Robert
10 I. Weil & Ira A. Brown, Jr., *Civil Procedure Before Trial* § 6:242 (2003).)

11 Defendants make much of the fact that all Defendants at issue in this case are “all part of the
12 same religious faith.” (Defs.’ PUC and NAD Demurrer, p. 4.) From this basic and obvious observation,
13 Defendants make the leap that Defendant LSU’s interests could not have possibly conflicted with those
14 interests of Defendants PUC and NAD. Additionally, Defendants make the argument that because
15 Plaintiffs “resigned” it is inconsistent to allege that Plaintiffs were “wrongfully terminated.” What
16 Defendants fail to acknowledge is the allegation that Plaintiffs’ resignations were *coerced*, and
17 therefore, were in reality constructive terminations. (Complaint, ¶¶ 47, 63, 64, 146, 148, 189.)
18 Defendants take the nonsensical position that Defendant Graham telling the Plaintiffs that he would have
19 them fired if they did not resign is inconsistent with the allegation that Defendant Graham threatened to
20 fire Plaintiffs. This argument is one and the same and cannot, even in the most liberal light, be
21 construed as inconsistent. (Demurrer, pp. 3-4.)

22 Moreover, the cases cited by Defendants are inapposite. *Manti v. Gunari* (1970) 5 Cal.App.3d
23 442 [85 Cal.Rptr. 366], does not involve a demurrer. Rather, at trial (and after discovery), the court held
24 that the plaintiff was bound by his pleadings which alleged, in the first three causes of action, that a joint
25 tenancy account had been created, but in the fourth, alleged the exact opposite. (*Id.* at p. 449.) In any
26 event, after considering the evidence presented, the court determined a joint tenancy had been created.
27 (*Id.* at p. 450.)

1 Although *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371
2 [272 Cal.Rptr. 387], did involve the sustaining of a demurrer, not only was the demurrer reversed on
3 appeal, the case does not stand for the proposition cited by Defendants-that contradictory facts alleged
4 by plaintiff resulted in sustaining the demurrer. Rather, the trial court sustained the demurrer because
5 plaintiff was required, but failed, to plead specific facts-as opposed to general allegations-about the
6 occurrence of several conditions precedent. (*Id.* 1388-90.) The claim at issue was breach of contract,
7 with liability predicated upon the performance of these conditions precedent. (*Ibid.*) Despite four years
8 of substantial discovery and three failures adequately to plead a contract claim, the court of appeal
9 *reversed the demurrer, and gave plaintiff one more chance:*

10 [Plaintiffs'] failure to sufficiently allege the satisfaction of several
11 significant, if not critical, conditions precedent to any obligation on the
12 part of [Defendants] to provide financing is fatal to their contract claims.
13 These pleading defects are at once matters of both form and substance.
14 However, we cannot conclude, without effectively resolving a factual
15 issue, that there is no reasonable possibility of plaintiffs making the direct
16 allegations necessary to demonstrate the existence of a binding contract.
17 On appeal, it is not our task to be concerned with the possible difficulty or
18 inability of proving such allegations. Therefore, it is appropriate that
19 plaintiffs be given the opportunity to correct the specific pleading errors
20 we have described. It was therefore error to sustain a demurrer to these
21 contract counts without leave to amend.

22 (*Id.* at p. 1391.)

23 Accordingly, Defendants' demurrer to Plaintiffs' Complaint on grounds of uncertainty must be
24 overruled.

25 **C. Defendants' Religious Affiliation Is Irrelevant to the Contract Issues**

26 Once again, the Church Defendants point the Court outside of the Complaint to LSU's bylaws,
27 which they seek judicial notice of, in hopes of supporting their factual contention that the Church
28 Defendants must be considered alter-egos of one another and thus, cannot be liable for Plaintiffs' cause
of actions for intentional interference with contractual relations, intentional interference with prospective
economic advantage, and inducing breach of contract. (Defs.' PUC and NAD Demurrer, at p. 6:1-3.)

 As was true with their attempt to re-cast Plaintiffs' Complaint as an issue of freedom of religion,
Defendants again improperly introduce purported facts outside of the four corners of the Complaint and
ask this Court to make factual determinations in the context of a demurrer in an attempt to have

1 Plaintiffs thrown out of court before even being afforded the opportunity to offer proof of their properly
2 pleaded allegations. Here, Defendants' attempt to establish through demurrer that Defendants La Sierra
3 University, Pacific Union Conference of Seventh-day Adventists, and North American Division of
4 Seventh-day Adventists are, in fact, alter-egos of one another. As was true with their newly formed
5 theory as to why Plaintiffs were terminated, this alter-ego theory is in direct contradiction not only of the
6 facts alleged in the Complaint, but also of the representations made by Defendant La Sierra University
7 to the Western Association of Schools and Colleges in the process of obtaining accreditation, to the
8 effect that La Sierra is an independent institution of higher learning. Moreover, Plaintiffs properly
9 allege the exact opposite in the Complaint, specifically, that "Defendant La Sierra University is a
10 separate and distinct entity from Defendants North American Division and Pacific Union Conference
11 subject to its own articles of incorporation and corporate bylaws." Once again, Defendants improperly
12 seek to dispute factual issues, and have the Court rule on such factual disputes, at the pleading stage of
13 this litigation.

14 Defendants cite *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126
15 [270 Cal.Rptr. 1], for the proposition that a stranger to a contract may be held liable in tort for
16 intentionally interfering with the performance of a contract, and that the Church Defendants cannot
17 possibly be "strangers" to the contract. (Defs.' PUC and NAD Demurrer, p. 6.) However, this argument
18 falls flat in light of the allegations contained in the Complaint that Plaintiffs' employment contracts were
19 with Defendant La Sierra University. (Complaint, ¶¶ 13-15, 23, 132, 137, 159, 166, 173, 189.)
20 Nowhere in the Complaint is it alleged that Plaintiffs had any contract, employment or otherwise, with
21 Defendants PUC or NAD, nor can anything in the Complaint be construed as such. The fact that
22 Defendants share a religious affiliation does not automatically make them all parties to a contract. At
23 the pleading stage, Plaintiffs' facts must be taken as true and Defendants' arguments of alternative facts
24 outside of the Complaint must fail.

25 Next, Defendants continue down the same path of disingenuously citing inapposite cases, from
26 which they extrapolate propositions that not only are not espoused in the case, but are wholly
27 inapplicable to the facts at hand. *Proctor v. General Conference of Seventh-Day Adventists* (D. Ill.
28 1986) 651 F.Supp.1505, 1526, was an antitrust case in which the court found following a bench trial and

1 extensive findings of fact, that for purposes of conspiracy to fix retail prices, the Seventh-day Adventist
2 Church is a single unified body that could not conspire with itself for purposes of the Sherman Act. (*Id.*
3 at p. 1524.) Defendants note in their demurrer that “one of the entities the *Proctor* court held was part of
4 the Seventh-day Adventist Church was Andrews University,” and then blithely submits that a similar
5 rule should apply here. (Defs.’ PUC and NAD Demurrer, at p. 7:2-5.) However, Defendants fail to
6 apprise the Court of the fact that in reaching its decision, the *Proctor* court made an express finding that
7 “Andrews University is listed in the Seventh-day Adventist yearbook as a denominationally owned
8 educational institution” and that “Andrews University is owned by the Adventist Church.” (*Proctor v.*
9 *General Conference of Seventh-Day Adventists* (N.D. Ill. 1986) 651 F.Supp. 1505, 1510, 1516.)
10 Although the *Proctor* court found that Andrews University was part of the Seventh-day Adventist
11 Church, that holding cannot be extrapolated to the instant case as suggested by Defendants, i.e., that
12 Defendants PUC and NAD are part of Defendant LSU and therefore, by extension, are also parties to the
13 employment contract between LSU and Plaintiffs. As Defendants well know, and as Plaintiffs will
14 establish through the course of discovery in this matter, Defendant La Sierra University is not a
15 denominationally owned institution, unlike Andrews University. Indeed, it is precisely because of this
16 type of factual discrepancy that Defendants must not be allowed to make fact-based challenges to the
17 Complaint at the demurrer stage. Therefore, this Court should overrule Defendants’ demurrer on this
18 point.

19 **D. Defendants’ Claim that Plaintiffs’ Complaint is Barred by the First Amendment is Both**
20 **Premature and Without Merit**

21 As more fully set forth in Plaintiffs’ opposition to Defendant LSU’s demurrer, Plaintiffs’
22 Complaint is one which seeks redress for wrongful termination, breach of contract, and breach of
23 fiduciary duty, and not for a determination of a religious issue or governance issue. (See Plfs.’ Oppo. to
24 Def. LSU’s Demurrer, pp. 6-9.)

25 **E. Plaintiffs’ Complaint Alleges Plaintiffs Were Forced to Resign**

26 Defendants continue to assert as fact for the Court to take as true that Plaintiffs’ terminations
27 were voluntary. In fact that is the opposite of what was pled in the Complaint. As more fully set out in
28 Plaintiffs’ opposition to Defendant LSU’s demurrer, Plaintiffs have properly alleged wrongful conduct

1 and tactics which forced caused Plaintiffs' termination. (See Plfs.' Oppo. to Def. LSU's Demurrer, pp.
2 9-15.)

3 **F. Plaintiffs Have Sufficiently Alleged Intentional Conduct to Overrule Defendants'**
4 **Demurrer to Breach of Contract and Intentional Interference Causes of Action**

5 Plaintiffs adequately allege intentional conduct in relation to their breach of contract claims and
6 intentional interference claim by alleging the following facts:

- 7 • "In bypassing the safeguards of academic and administrative due process as the result of
8 improper influences and motivations, Defendant Graham improperly acted as an
9 administrative officer of the Pacific Union Conference of Seventh-day Adventists rather
10 than as the Chair of the Board of Trustees of La Sierra University, and such actions were
11 adverse to those interests of La Sierra University and its students in favor of those
12 interests of his superiors at the North American Division and the General Conference."
13 (Complaint, ¶ 62.)
- 14 • "Defendants Pacific Union Conference, North American Division, Blackmer, Jackson,
15 and Graham intentionally disregarded the administrative structure at Defendant La Sierra
16 University and intentionally induced Defendant La Sierra University to breach the
17 contractual relationships with Plaintiffs without the prior knowledge of La Sierra
18 University Board of Trustees and administration, thereby acting to govern and control the
19 University." (Complaint, ¶ 161; 168.)
- 20 • "After inappropriately receiving, listening to, and distributing the non-consensual
21 recording of Plaintiffs' private conversation, Defendants Blackmer and Jackson, to whom
22 Defendant Graham reports in his role as President of the Pacific Union Conference of
23 Seventh-day Adventists but who have no operational or legal authority over the
24 governance of La Sierra University, plotted with Defendant Graham to use the recording
25 as an excuse to terminate Plaintiffs' employment by La Sierra University, including
26 Plaintiff Dr. Gary L. Bradley, Professor of Biology at La Sierra University, whom they
27 considered one of the most vocal critics of the Seventh-day Adventist Church's efforts to
28 influence the academic curriculum of La Sierra University." (Complaint, ¶ 4.)

- 1 • “In consultation with, and at the behest of Defendants Blackmer and Jackson, Defendant
2 Graham misrepresented the contents of the recording of their private conversation and
3 threatened Plaintiffs that if they did not immediately sign letters of resignations, they
4 would be fired from their positions and the audio recording would be made public,
5 causing shame and great harm to Plaintiffs, their colleagues, their families, and the
6 University that each had faithfully served for their entire careers.” (Complaint, ¶5.)
- 7 • “[T]he computer file of the digital recording of the faculty meeting and private gathering
8 at Dr. Beach’s home was given to Defendant Blackmer, at Defendant North American
9 Division, by a member of the La Sierra University Board of Trustees. It appears that the
10 Board member was unaware at the time that the digital recording contained anything
11 other than the recording of the special faculty meeting. (*Id.*, ¶ 96.)
- 12 • “[U]pon his receipt of the audio file, Defendant Blackmer listened to the recording in its
13 entirety and was the first person to realize that the recording included the private
14 conversation that took place later that day at Dr. Beach’s home. (*Id.*, ¶ 97.)
- 15 • “Defendant Blackmer, using the resources of Defendant North American Division, had a
16 purported transcription of the recording related to the private conversation in Dr. Beach’s
17 home prepared and forwarded the audio recording and the transcript to Defendant
18 Jackson.” (*Id.*, ¶ 98.)
- 19 • “[I]n early June 2011, Defendant Jackson forwarded the recording and transcript of the
20 private conversation to Defendant Graham, at Defendant Pacific Union Conference.”
21 (*Id.*, ¶ 99.)
- 22 • “[O]n or about June 5, 2011, Defendant Graham and Defendant Jackson discussed the
23 contents of the audio recording. (*Id.*, ¶ 100.)
- 24 • “[O]n or about June 9, 2011, Defendants Blackmer, Jackson, and Graham, together with
25 the General Counsel for the General Conference of Seventh-day Adventists and General
26 Counsel for La Sierra University, met for the purpose of determining what action would
27 be taken against Plaintiffs Kaatz, Beach, and Bradley. Significantly, no member of the
28 La Sierra University administration or faculty was present at this meeting, nor was

1 anyone from the La Sierra University Board of Trustees, except for Defendant Graham.
2 (*Id.*, ¶ 101.)

- 3 • “[I]t was at this June 9 meeting that the decision was made by Defendants Graham,
4 Blackmer, and Jackson that Plaintiffs Kaatz, Beach, and Bradley were to be terminated as
5 employees of La Sierra University. (*Id.*, ¶ 102.)
- 6 • “[O]n June 9, 2011, following this meeting, Defendant Graham contacted La Sierra
7 University President Wisbey and instructed him to have Plaintiffs Kaatz, Beach, and
8 Bradley summoned independently to the President’s office the following day to meet
9 with Defendant Graham. (*Id.*, ¶ 103.)
- 10 • “[A]t no time on or before June 9, 2011, was President Wisbey advised or consulted
11 regarding the termination of Plaintiffs. (*Id.*, ¶ 104.)
- 12 • “[A]t no time on or before June 9, 2011, was a meeting of the Board of Trustees
13 convened to discuss any actions to be taken with regard to Plaintiffs’ employment at La
14 Sierra University, nor was any action authorized by the Board of Directors. (*Id.*, ¶ 105.)

15 It is difficult to see how Plaintiffs could be any more particular or specific in pleading facts
16 establishing both the acts and intent of Defendants. The foregoing facts detail the step by step actions
17 taken by Defendants PUC and NAD, through their highest officers, with the intent of seeing that
18 Plaintiffs were terminated from their employment with Defendant La Sierra University. These are a far
19 cry from *Fisher v. San Pedro Peninsula Hosp.* (1989) 214 Cal.App.3d 590, 619 [262 Cal.Rptr. 842],
20 cited by Defendants, where the plaintiffs alleged only that defendant “embarked on a course of
21 intentional conduct designed to disrupt plaintiff’s relationship with the hospital.” Indeed, Defendants’
22 contention that “[a]t no point do Plaintiffs plead *any facts* to support their allegation that PUC and NAD
23 ‘intentionally induced Defendant La Sierra University to breach contractual relationships with
24 Plaintiffs’ is, at best, meritless and, at worst, disingenuous.

25 Because Plaintiffs have indeed pleaded specific intentional actions of Defendants, which support
26 their contract and intentional interference claims, Defendants’ demurrer should be overruled.

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28 //

1 **G. Plaintiffs Have Alleged Breach of Contractual Relationship**

2 Defendants' argument that the breach of contract claim must fail because Plaintiffs have
3 allegedly not pled the contract terms is meritless, if not seemingly frivolous. This argument disregards
4 the Complaint's detailed allegations of the relevant contract terms and their legal effect, and relies
5 instead on an overly technical, disfavored and arguably improper challenge.

6 It is indisputable that the Complaint contains sufficiently detailed allegations regarding the
7 relevant contract terms and their legal effect. Yet Defendants have inexplicably misstated the pleading
8 record to the Court by stating that “plaintiff does not allege the terms or conditions of their alleged
9 contracts.” (Defs’. Demurrer, 9:18-19).

10 It is well-settled under California law that a party may plead a contract cause of action in the
11 manner employed by the Complaint, *i.e.*, other than by quoting the contract terms verbatim or attaching
12 a copy of the contract and incorporating it by reference. This issue of the sufficiency of pleading a
13 breach of contract cause of action has been conclusively decided in favor of Plaintiffs by, respectively,
14 the California Supreme Court, and the Appellate court: *Antonelle v. Kennedy & Shaw Lumber Co.*
15 (1903) 140 Cal. 309, 320 [73 P. 966] (“Plaintiff did not set forth the contract in her complaint *in haec*
16 *verba* But the legal effect of the contract ... was pleaded, and the complaint stated a cause of
17 action.”); *Holly Sugar Corporation v. McColgan* (1941) 18 Cal.2d 218, 225-26 [115 P.2d 8] (emphasis
18 added) (pleading a breach of contract cause of action by attaching and incorporating the contract is
19 *permissive, not mandatory*: “It is well-settled that a written instrument which is the foundation of a
20 cause of action *may* be pleaded *in haec verba*, rather than according to its legal effect, either by setting
21 forth a copy in the body of the complaint or by attaching a copy ... and incorporating it by proper
22 reference.”); *Bank of Alameda County v. Hering* (1933) 134 Cal.App. 570, 572 [25 P.2d 1004]
23 (emphasis added) (“ [I]t is well settled that a written instrument *may be pleaded according to its legal*
24 *effect* or *in haec verba*.”); and *Pneucrete Corporation v. United States Fidelity and Guaranty Company*
25 (1935) 7 Cal.App.2d 733, 735, 741 [46 P.2d 1000] (emphasis added) (the “amended complaint alleged
26 that respondent furnished materials to [appellant] and that [appellant] used the same, promised and
27 agreed to pay therefor an agreed price, and that the money became due and was not paid. *That a*
28

1 *contract may be pleaded in its legal effect and need not be set forth in haec verba is thoroughly*
2 *settled.”).*

3 Here, Plaintiffs generally allege that Plaintiffs had contracts of employment with Defendant
4 LSU, and they were terminated from their respective positions. (Complaint, ¶¶ 12-15; 32-37.) To the
5 extent such allegations fall short of a pleading for breach of contract, Plaintiffs respectfully request leave
6 to amend their contract claims.

7 **H. ALTERNATIVELY, PLAINTIFFS REQUEST LEAVE TO AMEND**

8 Should the Court grant Defendants’ demurrer as to any of Plaintiffs’ causes of action, Plaintiffs
9 respectfully request leave to amend their Complaint. “Only rarely should a demurrer to an initial
10 complaint be sustained without leave to amend.” (*Cabral v. Soares* (2007) 157 Cal.App.4th 1234, 1240
11 [69 Cal.Rptr. 3d 242].) Thus, the courts are liberal in permitting amendments, not only when a
12 complaint is defective in form, but also when substantial defects are apparent. (*See Von Batsch v.*
13 *American Dist. Telegraph Co.* (1985) 175 Cal. App. 3d 1111, 1117, 1119 [222 Cal. Rptr. 239] (“Great
14 liberality should be exercised in permitting a plaintiff to amend.”).) “Unless the complaint shows on its
15 face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion,
16 irrespective of whether leave to amend is requested or not. Liberality in permitting amendment is the
17 rule, not only where a complaint is defective as to form but also where it is deficient in substance, if a
18 fair prior opportunity to correct the substantive defect has not been given.” (*McDonald v. Superior*
19 *Court* (1986) 180 Cal.App.3d 297, 303–04 [225 Cal. Rptr. 394].)

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IV
CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court overrule Defendants Pacific Union Conference of Seventh-day Adventists and North American Division Corporation of Seventh-day Adventists demurrer to Plaintiffs' claims. Alternatively, Plaintiffs respectfully request leave to amend any causes of action that this Court may find defective.

Dated: October 6, 2011

McCUNE WRIGHT LLP

By: 
Richard D. McCune
Attorneys for Plaintiffs

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA
3 COUNTY OF SAN BERNARDINO

4 I am employed in the County of San Bernardino, State of California. I am over the age of 18
5 years and not a party to the within action; my business address is 2068 Orange Tree Lane, Suite 216,
6 Redlands, California, 92374.

7 On October 6, 2011, I served the foregoing document described as **PLAINTIFFS' OPPOSITION**
8 **TO DEFENDANTS PACIFIC UNION CONFERENCE OF SEVENTH-DAY ADVENTISTS AND**
9 **NORTH AMERICAN DIVISION CORPORATION OF SEVENTH-DAY ADVENTISTS'**
10 **DEMURRER TO PLAINTIFFS' COMPLAINT** on the interested parties through their respective
11 attorneys of record in this action, by placing a true copy or original thereof enclosed in sealed
12 envelopes addressed as follows:

13 Michael W. Connally, Esq.
14 Madonna L. Devling, Esq.
15 Sean Paisan, Esq.
16 LEWIS BRISBOIS
17 BISGAARD & SMITH, LLP
18 650 Town Center Drive, Suite 1400
19 Costa Mesa, CA 92626
20 Phone: 714.545.9200/Fax: 714.850.1030

21 Attorneys for Defendants, La Sierra University, Pacific
22 Union Conference of Seventh-day Adventists, and North
23 American Division Corporation of Seventh-day
24 Adventists

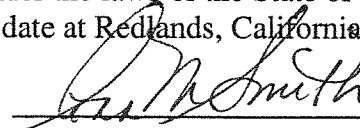
25 Jon Daggett, Esq.
26 Dean Schirmer, Esq.
27 HIROSHIMA, JACOBS, ROTH & LEWIS
28 1420 River Park Drive, 2nd Floor
Sacramento, CA 95815
Phone: (916) 923-2223/Fax: (916) 929-7335

Attorneys for Defendant, Ricardo Graham

29 **METHOD OF SERVICE PURSUANT TO CCP SECTION 1013:**

- 30 [] (BY MAIL) I am readily familiar with the firm's business practice for collection and processing
- 31 of correspondence for mailing. Under that practice, I caused such envelopes with
- 32 postage thereon fully prepaid to be placed in the United States mail at Redlands,
- 33 California.
- 34 [] (BY FACSIMILE) I caused such documents to be transmitted by facsimile to the offices of
- 35 the addressee(s) to the facsimile number(s) listed above.
- 36 [] (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the offices
- 37 of the addressee(s).
- 38 [X] (BY OVERNIGHT DELIVERY) I caused such document to be delivered by overnight delivery
- 39 to the offices of the addressee(s).

40 I declare under penalty of perjury under the laws of the State of California that the above is true and
41 correct. Executed on the above-referenced date at Redlands, California.

42 
43 _____
44 Ann Marie Smith