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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN DIEGO

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA, a California Corporation,
18 Plaintiff,

19 vs.

20 PAUL S. AISEN, an individual; JEREMY
PIZZOLA, an individual; DEBORAH
21 TOBIAS, an individual; GUSTAVO
JIMENEZ-MAGGIORA, an individual;
22 PHUOC HONG, an individual; HONG MEI
QIU, an individual; STEFANIA BRUSCHI,
23 an individual; JIA-SING SO, an individual;
MAYYA NESSIRIO, an individual;
24 UNIVERSITY OF SOUTHERN
CALIFORNIA, a California Corporation; and
25 DOES 1-25, Inclusive,
26 Defendants.

CASE NO. 37-2015-00022082-CU-BT-CTL

**CROSS-COMPLAINT OF DEFENDANTS
PAUL S. AISEN AND UNIVERSITY OF
SOUTHERN CALIFORNIA AGAINST
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, DRS. MOBLEY AND
BRENNER FOR:**

- (1) VIOLATION OF CALIFORNIA
CONSTITUTION;**
- (2) VIOLATION OF CIVIL RIGHTS
PURSUANT TO 42 U.S.C. § 1983;**
- (3) DEFAMATION;**
- (4) TORTIOUS INTERFERENCE WITH
EXISTING PATIENT RELATIONS;**
- (5) TORTIOUS INTERFERENCE WITH
CONTRACT;**
- (6) TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE.**

1 PAUL S. AISEN, an individual; and
2 UNIVERSITY OF SOUTHERN
CALIFORNIA, a California Corporation.

DEMAND FOR JURY TRIAL

3 Cross-Complainants,

4 vs.

5 THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a California Corporation; DR.
6 WILLIAM C. MOBLEY, an individual; DR.
7 DAVID A. BRENNER, an individual; and
DOES 1-25, Inclusive,

8 Cross-Defendants.

9
10 **INTRODUCTION**

11 1. This is a lawsuit that simply should not be occurring. Academics cannot be forced
12 to stay at one institution when another is offering more support. UCSD and the Regents know
13 that. Academics often bring their grants and research and teams with them when they move.
14 They know that too. Cross-Defendants' shenanigans – perhaps the kindest way to describe them -
15 - that have targeted one of the country's leading Alzheimer's researchers and threaten his research,
16 the numerous clinical trials he directs, the health and hopes of thousands of people who are
17 participating in those trials, and ultimately, the future generations that stand to gain from this
18 groundbreaking research. Both USC and UCSD owe it to those people, the real victims here, to
19 work out our differences. USC and UCSD have both devoted substantial resources to
20 Alzheimer's research and will continue to do so. Working together, as partners, sharing research
21 and results, with new infusions of capital from USC which the Regents understandably cannot
22 match at this point, should allow for more rapid progress. Seeking to restrict academic freedom
23 by imposing unconstitutional "oaths of loyalty," playing games with access to the data while
24 putting the research and patients at risk, threatening Dr. Aisen and his team, including false threats
25 of criminal action, have left Dr. Aisen and USC with no choice but to stand up for the rights of its
26 faculty, staff, the research and the clinical study patients involved, and to raise claims against
27 UCSD and its administrators for their unlawful actions. But we remain ready, even in the face of
28 such wrongful conduct, to put our differences aside at a moments notice and resolve this dispute in

1 a way that is fair to everyone, and that allows all of us to return our focus to the search for a
2 breakthrough treatment for Alzheimer's Disease.

3 2. Cross-Plaintiff Dr. Paul Aisen is a widely recognized expert on Alzheimer's
4 Disease. He has worked with the Alzheimer's Disease Collaborative Study ("ADCS") – a
5 worldwide collaborative study to find a cure for Alzheimer's disease -- for 23 years and has been
6 the Director of this Study since 2007. He is the Principal Investigator of the massive multi-center
7 clinical studies that comprise the ADCS, involving thousands of patients and over 70 sites around
8 the world. As the Principal Investigator, he is ultimately responsible for the safety and protection
9 of the patients within these studies and the integrity of the scientific research and data so that it
10 will ultimately be used to obtain approvals from the Food & Drug Association ("FDA") for new
11 treatment drugs. Although historically, the ADCS has been housed at UCSD (because that it
12 where its founder was on faculty at the time), the ADCS is fully funded by sources external to the
13 Regents and the relevant agreements specify that the study sponsors are co-owners of the data and
14 the results of the research. For every grant and contract that Dr. Aisen and his team brought in for
15 additional research, UCSD received 26% of the grant amount as "indirect costs revenue." The
16 ADCS has been a major source of such revenue for UCSD.

17 3. Shortly after Dr. Aisen was selected as the Director of the ADCS in 2007 and
18 recruited to the faculty at UCSD, he realized that UCSD and the Regents were not willing and not
19 able to provide the infrastructure and support needed to grow the ADCS for the new grants and
20 studies he was developing. For several years, Dr. Aisen sought to work with UCSD to obtain the
21 level of support the research required. When that effort largely failed, he was open with Cross-
22 Defendants regarding his growing frustration about the lack of support for the ADCS, including
23 his desire to seek a faculty appointment elsewhere. Dr. Aisen met with Cross-Defendants on
24 multiple occasions to discuss these concerns, but no meaningful action was ever taken. Dr. Aisen
25 also appealed to the national Steering Committee for the ADCS to express his concern that the
26 research was suffering due to the lack of support from UCSD and the Regents. The Steering
27 Committee encouraged Dr. Aisen to seek a more supportive home for the ADCS.

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1 4. Dr. Aisen told the study sponsors and his staff that he was seriously considering
2 moving to USC, which had offered him the support that he had been seeking. In an effort to stop
3 him, Cross-Defendants embarked on a course of actions designed to interfere with such a move, at
4 enormous potential risk to the research Dr. Aisen was leading and the patients he was treating.

5 5. First, Cross-Defendants abruptly and without warning cut off all of Dr. Aisen’s
6 electronic access (email, phones, servers) to the university systems. Dr. Aisen relied on the
7 university electronic systems for many aspects of his practice, including the determination and
8 adjustment of doses of experimental drugs to clinical patients. By revoking his access, Cross-
9 Defendants interfered with Dr. Aisen’s physician-patient relationships, compromised patient
10 safety, and threatened the academic integrity of the research. Despite Dr. Aisen’s expressed
11 concerns that Cross-Defendants were jeopardizing patients and the research, Cross-Defendants
12 refused to restore his access. So severe was this electronic isolation of Dr. Aisen that the National
13 Institute of Health (“NIH”) intervened to get Cross-Defendants to restore Dr. Aisen’s access four
14 days later.

15 6. After Dr. Aisen discussed his possible move to USC with his staff, Cross-
16 Defendant Dr. William Mobley – purportedly acting under the authority of UCSD, the Regents,
17 and California law – demanded that Dr. Aisen, as a condition of his continued employment and
18 restored electronic access, sign an “Oath of Loyalty” pledging to hold the interests of UCSD
19 sacrosanct above all others (in the sense that he could not “act against the University’s interests” in
20 any circumstance, including to defend his Alzheimer’s research and patients’ safety). Cross-
21 Defendants took this action despite the clear ruling of the California Supreme Court more than 60
22 years ago that it was unconstitutional for *the Regents* to impose these types of “loyalty oaths” on
23 its state employees. *Tolman v. Underhill*, 39 Cal.2d 708 (1952).

24 7. After Dr. Aisen refused to sign that “Oath of Loyalty,” the Cross-Defendants set
25 about to destroy Dr. Aisen’s reputation in academia. Cross-Defendant Dr. Mobley defamed Dr.
26 Aisen’s good name and professional reputation and went so far as to level threats against him and
27 those planning to work with him, including the threat to “have Dr. Aisen arrested, put in jail, and
28 his medical license suspended.”

1 Cross-Defendants within the scope and capacity of said agency. Cross-Plaintiffs are ignorant of
2 the true names and capacities of such Cross-Defendants sued herein as Does 1 through 25
3 inclusive and therefore sue these Cross-Defendants by such fictitious names for the same acts and
4 causes of action alleged against Cross-Defendants. Cross-Plaintiffs will seek leave of Court to
5 amend this Cross-Complaint to allege the true names and capacities of said Cross-Defendants at
6 such time as they may be ascertained.

7 **JURISDICTION AND VENUE**

8 15. Jurisdiction is proper in this County of San Diego and in this Court. The Regents
9 filed the initial complaint with this Court, thus voluntarily consenting and submitting to this
10 Court's jurisdiction on any counterclaims filed against it by Cross-Plaintiffs.

11 16. Venue is proper in this County of San Diego and in this Court. The conduct
12 alleged herein occurred within the County of San Diego, State of California, and jurisdiction and
13 venue is proper within this County.

14 **STATEMENT OF FACTS**

15 **Dr. Aisen Leads the ADCS Program for Nearly A Decade**

16 17. Alzheimer's Disease is a chronic, irreversible, progressive, degenerative brain
17 disorder that slowly attacks the brain's nerve cells, destroying its victims' memory, thinking, and
18 language skills. The damage caused by Alzheimer's is so severe that it can cause behavioral
19 changes, loss of judgment, loss of the ability to function, and eventually death. Alzheimer's is
20 currently ranked as the sixth leading cause of death in the United States. More than 5.3 million
21 Americans are currently diagnosed with the disease and it is estimated that in the United States,
22 700,000 people will die with Alzheimer's this year.

23 18. Dr. Aisen is a physician researcher who has spent the last twenty-five years
24 studying Alzheimer's Disease. A graduate of Harvard College and Columbia Medical School, he
25 has designed numerous multicenter trials, and has authored over 250 scientific papers. He has
26 secured millions of dollars in grants to study the disease and develop therapeutic treatments to
27 slow its progress and alleviate its affects on its victims. While on the faculty at Georgetown, he
28 founded the Memory Disorders Program, a clinical and research program for Alzheimer's Disease

1 and related disorders. Dr. Aisen was the first researcher to explore therapeutic research for
2 individuals at the earliest, asymptomatic stage of Alzheimer's Disease. Dr. Aisen is currently the
3 Founding Director of the University of Southern California Alzheimer's Therapeutic Research
4 Institute ("USC ATRI").

5 19. The ADCS was launched in 1991 as a cooperative study by the National Institute of
6 Aging ("NIA") Division of Neuroscience with UCSD to facilitate the development and testing of
7 new drugs for the treatment of Alzheimer's Disease. The cooperative study was developed in
8 response to a perceived need to advance research for the development of drugs that may be useful
9 in treating patients with Alzheimer's Disease, particularly drugs that might not otherwise be
10 developed by the pharmaceutical industry.

11 20. Dr. Aisen has been involved with the ADCS almost since its inception. He began
12 working with ADCS in 1992 and in 2003, Dr. Aisen was named by ADCS founder Dr. Leon Thal
13 as his Associate Director and eventual successor. Dr. Aisen was named the Director of ADCS
14 following Dr. Thal's untimely death in 2007. He was a tenured professor of neurosciences at
15 UCSD until June 2015.

16 21. Currently, the ADCS includes six separate major studies funded by outside
17 sponsors that generate clinical research data from all over the world: 1) the A4 Study sponsored
18 by Eli Lilly and NIA; 2) the Toyama Chemical study; 3) the Insulin Study; 4) the FYN Study
19 funded by NIH and Yale; 5) the ADNI study funded as a public-private partnership including the
20 NIH and pharmaceutical companies, and 6) the DoD-ADNI study funded by the Department of
21 Defense. The ADCS currently involves more than 35 primary and over 50 affiliate research sites
22 throughout the world. All of the data for each of these studies is stored in separate files in the
23 Electronic Data Capture system (the "EDC").

24 22. As explained further below, the sponsors of least four of these studies (the Insulin
25 Study, the FYN Study, ADNI, and DoD-ADNI study) have announced a desire to move or are in
26 the process of moving the studies to USC because they want the research to continue to be
27 supervised by Dr. Aisen.

1 23. Since 2007, Dr. Aisen has personally led the selection and design of ADCS studies,
2 including the competitive renewal of the ADCS grant in 2013 from the public and private
3 Sponsors. He has directed every aspect of the clinical research, and he has actively monitored all
4 study activities.

5 24. As Director of ADCS, Dr. Aisen collaborated with pharmaceutical companies on
6 drug development and designing and directing multicenter randomized controlled trials to evaluate
7 the safety and efficacy of new treatments for Alzheimer's Disease. He has been responsible for
8 the drafting of grant proposals and sponsorship requests to pharmaceutical companies and other
9 entities. While at ADCS, he presented and negotiated with sponsors of grant awards as to the
10 terms of the agreements and the funding parameters.

11 25. Additionally, Dr. Aisen and his informatics team extensively reconfigured and
12 broadened the scope of the EDC and, for the last eight years, have been operating and maintaining
13 it in compliance with specific and complex federal regulations. The EDC is a custom-designed,
14 highly complex and specialized data system. It reflects a collaboration of the federal government,
15 private foundations, and pharmaceutical companies who have invested hundreds of millions of
16 dollars over several decades in Alzheimer's research. The operation and maintenance of this data
17 system must comply with very specific federal regulations and external validations

18 26. Data in the EDC must be carefully monitored for compliance with multiple
19 parameters, including the study protocols and federal regulations, on a real-time basis.
20 Regulations for electronic data systems used for submission to the FDA include multiple
21 requirements with regard to access control (specifically limiting access to those who are properly
22 trained), data security, and a comprehensive audit trail, among others. Data entered into the
23 system must be monitored for accuracy (against source documents). Safety data must be
24 collected, reviewed and distributed in a timely manner. Independent auditors have validated the
25 EDC as compliant with all applicable regulations each year that it has been inspected. The EDC
26 facilitates communication among sites and investigators, reporting of patient- site- and study level
27 progress, document sharing, preparation of safety reports for the Data and Safety Monitoring
28 Board, and analysis of data.

1 27. The EDC enables Dr. Aisen and his team to manage all aspects of clinical trial
2 activities, including regulatory affairs, trial master files, clinical monitoring and safety, laboratory
3 and biospecimen information, supply management, site payments, and study source document
4 management. The EDC is an electronic filing cabinet that maintains the entirety of the data for
5 the various ADCS clinical trials. Each study has its own “drawer” in the EDC filing cabinet,
6 which includes, among other things, highly sensitive information related to patients that are
7 participating in clinical trials and observational studies. The information in the EDC allows for
8 the expediting of clinical trial operations – the data system has been designed specifically to
9 satisfy the data submission regulatory requirements of the FDA for new drug approvals. Data in
10 the EDC includes information from clinical trials being sponsored by third party grant
11 funders/sponsors (such as pharmaceutical companies Toyama Chemical and Eli Lilly & Co.) and
12 houses data for researchers at institutions across the country.

13 28. Dr. Aisen is the “Principal Investigator” of these studies. As such, he is
14 responsible, among other things, for “ensuring that an investigation is conducted according to the
15 signed investigator statement, the investigational plan, and applicable regulations; for protecting
16 the rights, safety and welfare of subjects under the investigator’s care; and for the control of drugs
17 under the investigation.” 21 C.F.R. § 312.60.

18 29. As Principal Investigator, Dr. Aisen effectively acts as the supervising physician
19 for every patient involved in clinical trials. Dr. Aisen treats the clinical study patients by
20 monitoring their health, determining proper drug dosages, and guiding activities at participating
21 clinical sites on a minute-by-minute and real-time basis. Also, when an unexpected event occurs,
22 such as unusual toxic reactions to the drugs or side effects from the interaction of multiple drugs,
23 clinicians often contact Dr. Aisen directly to assist in the treatment of the patients.

24 **UCSD Failed To Provide Sufficient Support For Alzheimer’s Research**

25 30. UCSD improperly withheld funds from the ADCS, which held-up and slowed
26 down critical projects and impeded the progress of the research. UCSD became an obstacle to the
27 success of the ADCS.

1 31. Contrary to what was represented to Dr. Aisen when he accepted his appointment,
2 UCSD's administration withheld millions of dollars in residual grant funding that was originally
3 allotted and promised to ADCS. Dr. Aisen was even precluded from paying his staff market
4 salaries by the UCSD administration. This harmed recruitment and retention of his staff.

5 32. Despite these obstacles and shortcomings, under Dr. Aisen's leadership, ADCS
6 dramatically increased in size and scope over the eight years that he served as Director, and its
7 growth outpaced UCSD's ability and competency to keep up with this growth.

8 33. When a grant is awarded to ADCS, the grantor pays UCSD additional indirect cost
9 revenue equaling 26 percent of the base grant funding awarded to ADCS. So, for example, if the
10 NIH awarded a \$100,000 grant to ADCS, it is required to pay UCSD an additional \$26,000. The
11 indirect funds are intended to be used to administer the ADCS program, and a portion of indirect
12 funds are specifically earmarked for contract support.

13 34. In the two years before Dr. Aisen's resignation, UCSD tried to increase its own
14 additional indirect cost revenue at the expense of ADCS. UCSD administrators pressured Dr.
15 Aisen to move ADCS to the UCSD campus so that UCSD could collect indirect costs of up to 55
16 percent, a move which would have crippled the program financially by diverting too much grant
17 funding from research projects into UCSD's Administration.

18 35. The size and scope of Dr. Aisen's contract research portfolio is substantial. At any
19 given time, Dr. Aisen and his team are maintaining hundreds of subcontracts with various clinical
20 and research sites throughout the United States. Such a substantial undertaking requires
21 dedicated contracting support.

22 36. Unfortunately for Dr. Aisen and his team, UCSD's contracting support team could
23 not effectively manage all of the contract and subcontracts associated with the project. Although
24 a portion of the indirect cost revenue to UCSD was supposed to be allocated to contract support,
25 the budgeting process was opaque and unaccountable, and it was difficult to determine where this
26 money actually went. However, one thing is clear: it did not go to ADCS.

27 37. As a result, ADCS suffered from enormous contract backlogs. For every grant or
28 research study, contract documentation must be prepared describing the purpose, scope, budget,

1 protocols, and other parameters of the study. ADCS was dependent on UCSD's contracts
2 department to prepare these contracts. Enrollment of participants into trials was entirely
3 dependent on the execution of contracts with participating sites. UCSD's inability to maintain
4 and manage all of ADCS's contracts led to severe bottlenecks that caused a number of important
5 research projects to grind to a halt. For example, the start-up of two major industry
6 collaborations, the A4 trial (with Lilly) and the TCAD trial (with Toyama), fell far behind
7 enrollment targets, with hundreds of contracts delayed by many months. The inefficiencies
8 threatened the progress of critical multicenter trials, and led ADCS to face mounting pressure from
9 frustrated sponsors and trial sites. The most serious backlog occurred in late 2013 and early
10 2014.

11 38. Dr. Sandra Brown, the Dean of Research and head of contracting at UCSD,
12 explained to Dr. Aisen that the contracting department was insufficiently funded and could not
13 keep up with the volume of work produced by ADCS. When Dr. Aisen asked Dr. Brown about
14 the indirect payments that her department receives from ADCS grants, she stated that the funds
15 did not come to her department and that she did not know where the money was going.

16 39. In response, Dr. Aisen directly contacted UCSD Chancellor Dr. Pradeep Khosla
17 and informed him that the contract backlog seriously threatened the operation of ADCS and that
18 the contracting department needed to be fully funded with the indirect payments. Chancellor
19 Khosla dismissed Dr. Aisen's concern, simply stating that Dr. Brown "had enough money."
20 Chancellor Khosla never indicated where the indirect payments were going.

21 40. Understanding that he would not receive sufficient assistance from the UCSD
22 administration, Dr. Aisen worked with Dr. Brown to develop an arrangement whereby ADCS
23 agreed provide additional resources (on top of the "indirect costs") to support additional staff that
24 UCSD would not provide. The work-around, although necessitated by UCSD's institutional lack
25 of support, drained ADCS of valuable funds that should be used for clinical trials and research, but
26 were instead used to hire additional staff to process the backlog of research contracts and grants
27 needed to keep the ADCS projects moving forward.

1 45. Although Cross-Defendant Regents have attempted to characterize Dr. Aisen’s
2 departure from UCSD as “abrupt,” nothing could be further from the truth. As explained, Dr.
3 Aisen spent months discussing with Cross-Defendants his frustrations and concerns about the
4 continued viability of the ADCS at UCSD and sought to remedy the situation. Dr. Aisen also
5 discussed with Cross-Defendants the fact that he may need to find a new institution that could
6 provide the needed support for the ADCS. Dr. Aisen had every intention of following the
7 standard protocol once he formally decided and announced his intention to move to a new
8 institution. Unfortunately, before he had ultimately made that decision, Cross-Defendants took
9 the extreme actions described here in an attempt to deter and punish Dr. Aisen and his team and
10 prevent an orderly transition. UCSD’s own actions precluded Dr. Aissen from following the
11 standard protocol which he is now being criticized for not following.

12 **Dr. Aisen Wins the Support of the ADCS Steering Committee to Find a New**
13 **Academic Home**

14 46. Frustrated by the failure of his efforts to gain needed support, Dr. Aisen began to
15 express his concerns to other parties involved in the ADCS research, including the ADCS Steering
16 Committee -- an organization of 35 doctors and researchers from all across the country who are
17 responsible for managing the ADCS program and making strategic decisions surrounding it.

18 47. In January 2014, Dr. Aisen met with the ADCS Steering Committee and spoke out
19 about the problems and challenges that he and ADCS were facing at UCSD. Dr. Aisen criticized
20 UCSD and its administration for its failure to provide adequate institutional support for ADCS.
21 After hearing his concerns, the Steering Committee strongly supported Dr. Aisen’s decision to
22 consider finding another institutional home for ADCS.

23 48. After obtaining support from the ADCS Steering Committee, Dr. Aisen began to
24 consider seriously what universities or institutions might better support and facilitate his work as a
25 leading Alzheimer’s researcher.

26 49. For the past 50 years, USC has been a leader in Alzheimer’s research, and currently
27 dedicates substantial resources to support studies and clinical programs. In 1964, USC founded
28 the Ethel Percy Andrus Gerontology Center as the first major research institution in the nation

1 devoted entirely to the study of aging, including the study of Alzheimer's Disease. The Center
2 houses the Alzheimer's Disease Research Center, which focuses on reducing the cognitive and
3 behavioral impact of Alzheimer's Disease and cerebrovascular dementia among ethnically diverse
4 populations. Recent additions to the faculty include Dr. Arthur Toga, the Director of the LONI
5 group who works alongside Dr. Aisen as an ADNI core leader. Dr. Toga had recently left UCLA
6 where he faced similar institutional restraints on his research, was very happy with his decision to
7 come to USC, and highly recommended that Dr. Aisen consider moving to USC.

8 50. Dr. Aisen met with officials from USC in late 2014 to discuss the possibility of
9 joining USC and continuing his research at that institution. USC offered Dr. Aisen the
10 opportunity to establish a new Alzheimer's research institute. The new institute would potentially
11 be housed in a new facility customized specifically for Dr. Aisen's research. USC committed to
12 provide the needed financial and institutional support, as well as operational independence as a
13 San Diego-based Institute of the Keck School of Medicine of USC. The promise of operational
14 independence was especially important to Dr. Aisen and his team as it would afford them
15 flexibility to be creative and innovative in their research. Dr. Aisen was very encouraged by the
16 opportunity to establish a new institute at USC dedicated to the mission of accelerating the
17 development of drugs to treat Alzheimer's Disease.

18 51. In December 2014, UCSD officials, including Cross-Defendants Drs. Brenner and
19 Mobley, became aware that Dr. Aisen had begun employment discussions with USC. In
20 response, UCSD formed a retention committee. The committee held many meetings with Dr.
21 Aisen where he discussed his concerns and the two parties explored whether ADCS's situation at
22 UCSD could be improved. After months of discussions, no specific progress was made and no
23 agreement was reached.

24 52. Before making any definitive decision to move to a new institution, Dr. Aisen also
25 had to determine whether some or all of the sponsors of the various clinical studies involved in the
26 ADCS would be willing to transfer the grants to the new institution.

27
28

1 53. On Thursday May 21, 2015, Dr. Aisen sent an email to officials from the National
2 Institute on Aging (“NIA”), stating that he “expect[s] the written offer [from USC] any day, and
3 plan to complete the transition to a USC affiliation September 1, 2015.”

4 54. The following afternoon, Friday May 22, 2015, Dr. Aisen held the quarterly staff
5 meeting, where he told his team that he was considering moving to USC to establish a new
6 Alzheimer’s institution. He stated that no decision was made, but that he was “leaning” toward
7 joining the USC faculty.

8 55. Later on May 22, Dr. Aisen received a call from Dr. Brown, who stated, “I
9 understand that you just told your staff they are all being transferred to USC and that you just
10 resigned.” Dr. Aisen responded by saying that was untrue and repeated what he had told his staff.
11 That evening and without warning, UCSD completely blocked Dr. Aisen’s access to all university
12 information systems, including his email, cell phone and servers. Because Dr. Aisen relies
13 heavily on electronic access to manage the ADCS and the clinical studies he is responsible for,
14 this electronic isolation severely jeopardized his performance and obligations as the Principal
15 Investigator of these studies.

16 56. Clinical trial participants are closely monitored for safety. Prohibiting Dr. Aisen
17 from electronic access renders him unable to communicate with clinicians and investigators at
18 sites regarding safety and other study issues. Under federal law, while he is the Principal
19 Investigator of a study, Dr. Aisen remains responsible for “protecting the rights, safety and welfare
20 of subjects under the investigator’s care; and for the control of drugs under the investigation.” 21
21 C.F.R. § 312.60. His electronic access is crucial to this responsibility because new and unusual
22 medical issues arise throughout the course of a clinical trial. Patients may have unusual toxic
23 reactions to particular drugs or suffer side effects from the interaction of two or more medications.
24 When an unexpected event occurs, on-site clinicians often contact Dr. Aisen directly – typically
25 through email -- to assist in the immediate treatment of the patients. Because Dr. Aisen’s
26 electronic access was revoked (including his cell phone), he was unable to receive or respond to
27 any such issues that arise on a daily basis.

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1 57. By barring Dr. Aisen’s electronic access, Cross-Defendants put the health and
2 safety of the trial participants and the integrity of the ongoing studies at serious risk.

3 58. On the morning of Saturday, May 23, 2015, Cross-Defendant Mobley summoned
4 Dr. Aisen to his office for a meeting. When Dr. Mobley said that it was rumored that Dr. Aisen
5 planned to leave UCSD for another institution, Dr. Aisen said that he was considering it but that a
6 final decision had not yet been made. Dr. Mobley then warned Dr. Aisen that, as a result of Dr.
7 Aisen’s impending move, his “career was in jeopardy.” Dr. Mobley asked Dr. Aisen if he intended
8 to resign and threatened to replace him as head of ADCS. Dr. Mobley showed Dr. Aisen a press
9 release announcing a new director of the ADCS.

10 59. During this same meeting, Dr. Mobley stated that Dr. Aisen’s access to the
11 university electronic system had been blocked and that other University officials were behind this
12 move. Dr. Aisen reminded Dr. Mobley that as Principal Investigator, Dr. Aisen was responsible
13 for the safety of the patients in the trial, the integrity of the system, maintaining compliance with
14 federal requirements that regulate the submission of electronic data to the FDA, and the overall
15 scientific integrity of the research. Dr. Aisen conveyed his astonishment that UCSD would
16 isolate a Principal Investigator from his studies, and demanded that Dr. Mobley have Dr. Aisen’s
17 access restored immediately.

18 60. In response, Dr. Mobley presented Dr. Aisen with an “Oath of Loyalty” that
19 included language stating: “As the Director of the ADCS at UC San Diego, I understand that I
20 owe the University a duty of loyalty and may not act against the University’s interests” and that all
21 ADCS data “belonged solely to UCSD.” Dr. Mobley conditioned reconnecting Dr. Aisen’s
22 electronic access on his willingness to sign and agree to the loyalty oath, stating that “If you sign
23 this, we may be able to restore your electronic access.”

24 61. The statement that all ADCS data “belonged solely to UCSD” was unequivocally
25 false because the Sponsor Agreements (which UCSD is a party to) expressly state, “Study Data
26 will be jointly owned by [the Sponsor] and UCSD.” UCSD itself has acknowledged this fact in
27 the Complaint it filed in this matter. Compl., ¶ 29.

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1 62. Still worse, Dr. Mobley’s insistence that Dr. Aisen sign a loyalty oath to the
2 University violated both the United States Constitution and the California Constitution. More
3 than 60 years ago, the California Supreme Court held, in a case involving the UC Regents, that
4 requiring faculty members to take an oath of loyalty beyond the limited oath specifically required
5 for all state employees is unconstitutional. See *Tolman v. Underhill*, 39 Cal. 2d 708, 710 (1952).
6 The so-called loyalty oath demanded by Dr. Mobley likewise violated Dr. Aisen’s rights to free
7 expression and academic freedom as cherished under the First Amendment to the United States
8 Constitution. *Keyishian v. Board of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967)
9 (“Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent
10 value to all of us and not merely to the teachers concerned. That freedom is therefore a special
11 concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over
12 the classroom. ‘The vigilant protection of constitutional freedoms is nowhere more vital than in
13 the community of American schools’”).

14 63. Dr. Aisen ultimately had to get the National Institute of Health (“NIH”) to
15 intervene on his behalf and urge that Cross-Defendants restore his electronic access for the safety
16 and integrity of the clinical trials.

17 64. As a result of this conduct, Dr. Aisen realized that UCSD and its officials were
18 willing to jeopardize the safety of the clinical trial patients and the integrity of decades’ worth of
19 Alzheimer’s research in an attempt to strong-arm Dr. Aisen into staying at UCSD. Although his
20 electronic access was eventually restored, after NIH intervened, UCSD’s conduct irreparably
21 damaged Dr. Aisen’s relationship with UCSD and its leadership. Because of the actions that
22 UCSD had taken, Dr. Aisen knew that any efforts to follow the standard protocol for the orderly
23 transfer of grants related to the ADCS would not only be futile, but potentially harmful to the
24 patients and the research if UCSD blocked his electronic access again.

25 65. Dr. Aisen was convinced that UCSD, by taking the unfortunate steps it had, was
26 neither acting rationally nor prudently in response to Dr. Aisen’s decision to leave. Dr. Aisen was
27 concerned that UCSD would take further rash actions to interfere with his responsibilities as the

1 Principal Investigator of these studies, and that those actions could place patients and research in
2 harm's way.

3 **UCSD Retaliates When Dr. Aisen and His Team Leave For USC**

4 66. On June 18, 2015, Dr. Aisen tendered his resignation to UCSD. The resignation
5 became effective on June 21, 2015.

6 67. Dr. Aisen initially planned to transition from UCSD to USC over a period of two
7 months. However, UCSD's rash actions and decision to block his electronic access and
8 jeopardize patient safety convinced Dr. Aisen that transition could not play out in the orderly,
9 amicable way that is customary. Therefore, in an effort to protect his patients and research, Dr.
10 Aisen and his team immediately left for USC.

11 68. On or around July 1, 2015, Sarah Walter, a member of Dr. Aisen's team, tendered
12 her resignation to UCSD. Dr. Mobley called her into his office that same day. He tried to
13 convince her to continue her employment at UCSD at a substantially higher salary than her
14 compensation to that point. When she declined, Dr. Mobley stated that Dr. Aisen behaved
15 unethically and that he and the UCSD employees who resigned to join Dr. Aisen at USC were
16 criminals.

17 69. UCSD officials have attempted to prevent other employees from leaving UCSD
18 and joining Dr. Aisen and his team at USC. When other employees tendered notices of
19 resignation, Dr. Mobley falsely told them that they were required to give two-weeks notice and
20 that their future employment would be impacted, statements that UCSD's Human Resources
21 Department confirmed were untrue. UCSD officials also withheld final paychecks of a number of
22 departing employees unless they agreed to participate in an exit interview, and failed to reimburse
23 employees for travel expenses properly incurred while they were UCSD employees. UCSD
24 officials thus violated established employment policies and acted unfairly toward employees who
25 were exercising their statutory right and constitutional right of academic freedom to work for a
26 different academic institution.

27 70. Despite these efforts by UCSD, since Dr. Aisen's resignation, at least 30 of his
28 colleagues have tendered their resignations to UCSD and have sought employment with USC in

1 order to continue the Alzheimer’s research under his leadership. These include four individuals
2 from the Administrative Core (including the two lead administrators), seven individuals that work
3 in the Clinical Operations Core, and six individuals from Informatics (these six individuals
4 constitute the entirety of the Informatics team).

5 71. Since Dr. Aisen’s move to USC, at least four of the six major ADCS studies have
6 followed or were in the process of following Dr. Aisen to USC. Those ADCS studies are the
7 Intranasal Insulin Study, the FYN Study, ADNI, and DoD-ADNI. In spite of these sponsors’
8 decisions to transfer their studies to USC, Cross-Defendants have interfered with these decisions
9 by withholding critical data and access from these sponsors, refusing to cooperate in the transfer of
10 these studies, and disparaging Dr. Aisen’s professional reputation.

11 72. Yale University, the sponsor the FYN Study, stated in its announcement that it
12 “strongly believe[d] that USC ATRI personnel should continue to maintain the FYN Study data
13 systems, as this is clearly in the best interest of the ongoing FYN clinical trial and safety of its
14 participants.”

15 73. Likewise, the Principal Investigator of the Intranasal Insulin (“INI”) Study, Dr.
16 Suzanne Craft, stated that she wants Dr. Aisen and his team to retain operational oversight over
17 the data because the “ongoing trial involves participants on active medication, and their safety, as
18 well as the integrity of trial data, depend on uninterrupted operational oversight by Dr. Aisen and
19 his team.” After Dr. Craft made the announcement to officially transfer the INI Study to USC,
20 Cross-Defendant Brenner called the Dean of Wake Forest Medical School, where Dr. Craft was on
21 faculty, in an unsuccessful effort to interfere with Dr. Craft’s decision.

22 74. Dr. Michael Weiner, the Principal Investigator of the ADNI study (discussed
23 further below), announced that the new ADNI subcontract would be awarded to USC because “the
24 clinical trials field in Alzheimer’s Disease needs to remain united, and its clear that we should be
25 united under Paul’s leadership.” He further stated that the announcement reflected Dr. Weiner
26 and the ADNI grantors’ “enthusiasm and support for continued collaboration with Paul and his
27 new team at USC.”

1 75. Although the A4 study is not yet in the process of moving to USC, Eli Lilly, the
2 largest sponsor of the A4 study, stated that Dr. Aisen and his team should retain control over the
3 study pending litigation. Despite having “no intention of taking sides in this lawsuit,” Eli Lilly
4 declared under oath that:

- 5 • Unlike Dr. Aisen’s team, “[n]one of the proposed replacement individuals at
6 UCSD, while presumably competent academics and researchers, **have this
7 essential specific experience or training on the A4 Study.**” (emphasis added).
- 8 • **“it is critical that the A4 Study remain under the day-to-day control of Dr.
9 Aisen and his team.”** (emphasis added).
- 10 • “Removing administrative control of the A4 Study from Dr. Aisen and his trained
11 and certified staff at this time could **jeopardize patient safety and potentially
12 compromise the scientific and regulatory integrity of the study data.**”
13 (emphasis added).

14 76. On July 2, 2015, UCSD assumed administrative control over the EDC.
15 Immediately after assuming control, UCSD did the following to compromise the EDC:

- 16 • UCSD removed key security features, including multifactor-authentication that
17 required those accessing the system to input two security keys. Multifactor
18 authentication is a standard security feature and helps protect the system against
19 unauthorized access. UCSD’s systems administrator was surprised that this
20 security feature had been disabled and could not explain why.
- 21 • UCSD has used its SuperUser capabilities to access the database from various
22 computers that have not been demonstrated to meet essential security requirements.
23 It has even accessed the databse from an unknown Time Warner connection.
24 There is no audit trail for these log-ins, even though the FDA specifically requires
25 an audit trail in order to ensure compliance with federal regulations.

26 77. By discounting security issues, UCSD has made the system more susceptible to
27 hacking. Further, UCSD’s own employees admit that they do not have the capability to
28 administer it without training and support from Dr. Aisen’s team.

29 78. The entire Informatics team, clinical operations group, and administrative directors
30 have left UCSD to join Dr. Aisen at USC ARTI. Dr. Aisen and the Informatics team at USC
31 ARTI are most familiar with and most competent to administer the EDC. It would take
32 approximately 3-to-6 months of full-time effort to effectively train a replacement system
33 administrator and new team to operate the EDC.

1 79. Since Dr. Aisen’s resignation, UCSD has also blocked Dr. Aisen and his team from
2 accessing the data and communication portals to the various studies for which he is still the
3 Principal Investigator. For example, on July 22, 2015, UCSD revoked and deactivated Dr.
4 Aisen’s team’s access to the A4 study even though Dr. Aisen’s team is the only team qualified to
5 operate and maintain the A4 data pipeline.

6 80. Upon learning that Dr. Aisen’s team’s access to the A4 studies was revoked, Dr.
7 Sperling and representatives from Eli Lilly, the sponsor of the study, contacted Dr. Mobley to
8 have the credentials restored. According to the Director of the A4 study, Harvard Professor of
9 Neurology, Dr. Reisa Sperling, UCSD’s revocation of their access has put the landmark studies at
10 risk. The Lilly representative, Russell Barton, echoed this sentiment stating: “We are concerned
11 that the restrictions to data access referenced in [Dr. Sperling’s] email below and other recent
12 communications coupled with other problems we understand [Dr. Sperling] is encountering in the
13 day to day operations of the study are jeopardizing the overall study... as the study sponsor we
14 respectfully request that UCSD restore the access for the necessary individuals.” Dr. Mobley
15 refused to immediately restore access, despite the fact that both Dr. Sperling and Eli Lilly
16 communicated that failure to restore access would put the studies at risk.

17 81. Additionally, UCSD has blocked Dr. Aisen and his team from accessing ADNI
18 data and software including the Clinical Trial Management System, the electronic regulatory files
19 and trackers, and the ADNI supply management plan. On July 27, 2015, members of Dr. Aisen’s
20 team reported the problem to Dr. Mobley, who refused to grant them the access to which they are
21 entitled.

22 82. According to Dr. Weiner, the ADNI Principal Investigator, this action constituted a
23 “major change to what assurances we have had” regarding Dr. Aisen’s team’s access to the ADNI
24 data. Further, he stated UCSD had no right to revoke the access as “all of the data and other
25 information related to ADNI ... is the property of our Foundation NCIRE.”

26 83. Dr. Weiner asserted that “that in order for ADNI to be managed properly, we need
27 to make all the ADNI data and study tools available to the ... ATRI staff at USC, who have the
28 knowledge and expertise to run the study.” According to Dr. Weiner, UCSD’s actions “will very

1 seriously endanger the scientific integrity, regulatory oversight, and patient safety issues.”

2 Despite Dr. Weiner’s plea, UCSD has still refused to restore access to Dr. Aisen’s team.

3 84. In addition to putting the studies’ integrity at risk, denying Dr. Aisen and his team
4 appropriate access clearly interferes with Dr. Aisen’s legal and ethical responsibilities to protect
5 the patients and integrity of the data.

6 85. Cross-Defendants have also set out to destroy Dr. Aisen’s professional reputation.
7 Since Dr. Aisen’s resignation from UCSD, the Regents, led by Dr. Mobley and on information and
8 belief, with the direction and knowledge of Dr. David Brenner, have defamed and disparaged Dr.
9 Aisen’s reputation within the medical and academic community in an effort to convince the study
10 sponsors not to transfer their grants to USC, despite the sponsors’ clear expressions that Dr. Aisen
11 and his team should continue to lead this ground-breaking research at USC.

12 86. For example, on or around July 25, 2015, Dr. Michael Weiner of UCSF, the
13 Principal Investigator of the ADNI study, received a call from Dr. Mobley. Dr. Mobley advised
14 Dr. Weiner against working with Dr. Aisen and USC in the future. Dr. Mobley also stated that
15 Dr. Aisen was a criminal and that UCSD intended to have “Dr. Aisen arrested, put in jail, and his
16 medical license suspended.” As discussed in greater detail below, on information and belief, Dr.
17 Mobley made these false and defamatory statements in an effort to induce Dr. Weiner to breach
18 his agreement to move the ADNI study to USC.

19 **UCSD Interferes with the Agreement to Award the New ADNI Study to USC**

20 87. The ADNI study is one of the six major studies funded by outside sponsors that
21 make up ADCS. The study, which is funded by the NIH, is widely regarded as the single largest
22 observational study in the field of Alzheimer’s Disease/Dementia research. The ADNI study is
23 led by Dr. Michael Weiner, who is the Principal Investigator of the study. Dr. Weiner is also a
24 tenured faculty member of the University of California San Francisco (“UCSF”).

25 88. The existing ADNI subcontract, which was assigned to UCSD, was set to expire on
26 July 31, 2015. A new subcontract was to be awarded effective August 1, 2015. On July 19,
27 2015, Dr. Weiner publicly announced that the new ADNI study subcontract would be awarded to
28 Dr. Aisen and USC. According to Dr. Weiner, the decision to move the study was made because

1 “the clinical trials field in Alzheimer’s Disease needs to remain united, and its clear that we should
2 be united under Paul’s leadership.” As such, Dr. Weiner wanted Dr. Aisen to be the Principal
3 Investigator of the Clinical Core of the ADNI grant submission. The subcontract’s award and
4 announcement represented Dr. Weiner and the ADNI grantors’ “enthusiasm and support for
5 continued collaboration with Paul and his new team at USC.”

6 89. Before Dr. Weiner made his announcement, he obtained all the necessary approvals
7 from the institutions involved in the study to award the new subcontract to Dr. Aisen and USC.
8 All necessary paperwork to facilitate the transition from UCSD to USC had been prepared. Dr.
9 Weiner had the authority to award the ADNI subcontract. Dr. Weiner, Dr. Aisen, and all
10 necessary parties mutually assented to award the new ADNI subcontract to USC. USC had
11 signed the contract.

12 90. On July 22, 2015, USC learned that Dr. Brenner, Dean of the UCSD Medical
13 School and UCSF leadership, were using their influence within the UC System to interfere with
14 Dr. Weiner’s professional and medical judgment regarding the award of the new ADNI
15 subcontract. Cross-Defendants pressured Dr. Weiner, a faculty member at UCSF, to rescind his
16 agreement to award the new ADNI subcontract to USC.

17 91. On July 25, 2015, Dr. Aisen had a telephone conversation with Dr. Weiner that left
18 Dr. Aisen deeply shaken and disturbed. On this call, Dr. Weiner said that he had had an earlier
19 call from Dr. Mobley warning him not to work with Dr. Aisen and USC. Dr. Mobley stated that
20 Dr. Aisen was a criminal and that UCSD intended to have “Dr. Aisen arrested, put in jail, and his
21 medical license suspended.”

22 92. On information and belief, Cross-Defendant Mobley and Does 1-25 have repeated
23 similar disparaging and defamatory comments to other sponsors and members of the Alzheimer’s
24 research community. These disparaging comments have resulted in the NCIRE Executive
25 Committee overriding Dr. Weiner’s decision and breaching the ADNI subcontract award to USC
26 as of July 31, 2015 on the purported grounds that Dr. Aisen is “unethical.”

27 93. Dr. Aisen, Dr. Aisen’s team, and USC have all been harmed both economically and
28 reputationally by the intentional acts of the Regents, UCSD and its officials. These Cross-

1 Defendants have acted in wanton disregard of the integrity of the groundbreaking research being
2 conducted by Dr. Aisen and his team, not to mention the public that stands to benefit
3 immeasurably from this research, preferring to fight in a court room rather than work together, and
4 cooperatively, to save lives.

5 **CAUSES OF ACTION**

6 **First Cause of Action for Violation of California Constitution Art. XX, § 3 on Behalf of Dr.**

7 **Aisen Against Cross-Defendants the Regents, Dr. Mobley and Does 1-25**

8 94. The foregoing allegations are incorporated as if re-alleged herein.

9 95. Cross-Defendants the Regents, Dr. Mobley and Does 1-25 requirement that Dr.
10 Aisen sign a loyalty oath as a condition of his being restored access to the university’s electronic
11 systems violated the California Constitution.

12 96. The California Constitution mandates that state employees, including U.C. faculty,
13 upon employment, swear an oath pledging to uphold the California and U.S. Constitutions and be
14 faithful in performing their duties.

15 97. The oath outlined in the California Constitution is the only oath or declaration that
16 may be required as a condition of public employment.

17 98. The “Oath of Loyalty” that Cross-Defendants sought to impose on Dr. Aisen, as a
18 condition to restoring electronic access, required that he pledge: “As the Director of the ADCS at
19 UC San Diego, I understand that I owe the University a duty of loyalty and may not act against the
20 University’s interests.”

21 99. The California Supreme court expressly stated, more than 60 years ago, that the UC
22 Regents are prohibited from requiring its faculty execute any other oath or declaration of loyalty
23 beyond what is prescribed in the Constitution as a condition of employment: “university personnel
24 cannot properly be required to execute any other oath or declaration relating to loyalty than that
25 prescribed for all state employees.” *Tolman v. Underhill*, 39 Cal. 2d 708, 710 (1952).

26 100. Cross-Defendants Mobley and the Regents plainly flouted the California
27 Constitution and the California Supreme Court’s on-point holding, *specifically* to the UC Regents,

28

1 that they are prohibited from imposing such additional and inconsistent oaths of loyalty on its
2 faculty or employees.

3 101. In order to fulfill his duties and obligations, as an employee and Principal
4 Investigator, Dr. Aisen needed access to the university electronic systems and corresponding
5 ADCS databases. Dr. Aisen's electronic access is also critical to the health and safety of his
6 clinical patients and the integrity of the research. Dr. Aisen uses the real-time data to monitor
7 studies and manage patient safety issues. The clinical patients are put at serious risk when Dr.
8 Aisen is denied electronic access.

9 102. By requiring Dr. Aisen to sign an unconstitutional oath of loyalty, Cross-
10 Defendants the Regents, Mobley and Does 1-25 illegally required Dr. Aisen to execute an
11 additional oath as a condition of his employment in violation of the California Constitution.

12 103. Furthermore, the vague and overbroad requirements and oath of loyalty
13 unmistakably imperil Dr. Aisen's academic freedom secured by the First Amendment and
14 California Constitution. Dr. Aisen has the right to explore employment at other academic
15 institutions that are better suited to support his critical scientific research to effectively treat and
16 find a cure for Alzheimer's. He also has the right to engage with interested parties and
17 stakeholders within and without the university, including the ADCS Steering Committee, when
18 expressing his views as an academic, physician, educator, professional, and citizen, including in
19 ways that may run contrary to the views and interests of UCSD. Cross-Defendants the Regents,
20 Mobley and Does 1-25 nonetheless attempted to contravene these freedoms by requiring Dr. Aisen
21 to sign an illegal oath of loyalty as a condition to restoring his electronic access, continuing his
22 vital research, and fulfilling his ethical and legal obligations.

23 104. This unlawful action was intended to deter Dr. Aisen from seeking employment at
24 another academic institution. It was also intended to make sure that UCSD kept the millions of
25 grant dollars that Dr. Aisen's work brought to UCSD.

26 105. As a direct and proximate result of Cross-Defendants, Regents', Mobley's and
27 Does' 1-25 violations of Dr. Aisen's constitutional rights, Dr. Aisen suffered severe and
28 substantial damages.

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Second Cause of Action for Violation of Constitutional and Civil Rights Pursuant to 42 U.S.C. § 1983 on Behalf of Dr. Aisen Against Cross-Defendant Dr. Mobley and Does 1-25.

106. The foregoing allegations are incorporated as if re-alleged herein.

107. At all relevant times, Cross-Defendant Mobley and Does 1-25 were acting under color of California law and the authority they claimed thereunder.

108. Dr. Aisen’s exercise of academic freedom and expression of criticism towards UCSD and its administration are protected by the First Amendment to the U.S. Constitution. As the United States Supreme Court has made clear, “[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. ‘The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’” *Keyishian v. Board of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967). Indeed, the U.S. Supreme Court consistently instructs that free speech is especially sacrosanct in universities, such as UCSD. *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003) (“We have long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition.”)

109. Dr. Aisen’s research and criticism of the UCSD administration, including but not limited to his criticism of UCSD’s administration of the ADCS project before the ADCS Steering Committee, touched on matters of public concern.

110. Cross-Defendants Mobley and Does 1-25, acting under color of law, violated Dr. Aisen’s First Amendment Right to free speech by blocking his access to university electronic systems and by conditioning his access on his agreeing to an unconstitutional loyalty oath and requirement to “not act against the University’s interests.”

111. The loyalty oath threatens Dr. Aisen’s academic freedom and otherwise violates his right to freedom of expression. Insistence that Dr. Aisen sign the oath as a condition of his

1 continued electronic access and pursuit of his employment violated the U.S. Constitution, both
2 facially as well as applied.

3 112. The requirement that Dr. Aisen “not act against the University’s interests” was
4 unconstitutionally vague, overbroad, contrary to established law, and stood to chill Dr. Aisen’s
5 exercise of academic freedom, speech, and expression.

6 113. Cross-Defendants Mobley and Does 1-25 could not lawfully condition Dr. Aisen’s
7 access to the university electronic system on a basis that burdened and infringed his First
8 Amendment rights.

9 114. As a direct and proximate result of Cross-Defendants Mobley’s and Does’ 1-25
10 violations of Dr. Aisen’s constitutional rights, Dr. Aisen suffered severe and substantial damages.

11
12 **Third Cause of Action for Defamation *Per Se* on Behalf of Dr. Aisen**
13 **Against Cross-Defendants Mobley and the Regents**

14 115. The foregoing allegations are incorporated as if re-alleged herein.

15 116. On at least two occasions, Cross-Defendant Mobley, acting with the knowledge and
16 direction of Cross-Defendant Regents, made statements to third parties falsely accusing Dr. Aisen
17 and his team of being criminals who had engaged in criminal conduct and stood to be treated as
18 criminals.

19 117. On or around July 1, 2015, Cross-Defendant Mobley told Sarah Walter, a member
20 of Dr. Aisen’s team, that Dr. Aisen behaved unethically and that he and the UCSD employees who
21 resigned to join Dr. Aisen at USC were criminals.

22 118. On our around July 25, 2015, Cross-Defendant Mobley told Dr. Weiner that Dr.
23 Aisen was a criminal and that UCSD intended to “have him arrested, put in jail, and his medical
24 license suspended.”

25 119. In both instances, Cross-Defendant Mobley referred to Dr. Aisen by name, the
26 statements were made of and concerning Dr. Aisen, and were so understood by those who heard
27 the statements.

1 120. Both statements were false. Dr. Aisen has committed no crime and is not at risk of
2 being arrested, put in jail, or losing his medical license. Nor does UCSD have the authority to
3 take such action.

4 121. On information and belief, Dr. Mobley and Does 1-25 have repeated similar
5 disparaging and defamatory comments to other sponsors and members of the Alzheimer's research
6 community, including statements that Dr. Aisen is "unethical."

7 122. The statements are *per se* defamatory as they accuse Dr. Aisen of criminal behavior
8 and disparage his professional reputation and standing.

9 123. As a direct and proximate result of Cross-Defendant Mobley's statements, Dr.
10 Aisen suffered severe and substantial damages.

11
12 **Fourth Cause of Action for Tortious Interference with Existing Patient Relations on Behalf**
13 **of Dr. Aisen Against Cross-Defendant Mobley, the Regents, Does 1-25**

14 124. The foregoing allegations are incorporated as if re-alleged herein.

15 125. Dr. Aisen, at all relevant times, had preexisting relationships with the patients in
16 the clinical trials. As the Principal Investigator of these studies, Dr. Aisen "is responsible for
17 ensuring that an investigation is conducted according to the signed investigator statement, the
18 investigational plan, and applicable regulations; for protecting the rights, safety and welfare of
19 subjects under the investigator's care; and for the control of drugs under the investigation." 21
20 C.F.R. § 312.60. The data collected in the research studies has at all relevant times directly
21 related to and affected patient care on a real-time basis. For example, dosages for each of the
22 study drugs and other medications may require adjustment in response to blood tests and other
23 data reflecting how each patient is reacting to the particular study drug. By monitoring and
24 administrating the data, Dr. Aisen was actively involved in the medical care of the patients in the
25 study and was acting pursuant to ongoing relationships he maintains with the patients.

26 126. It was probable that Dr. Aisen, as the Principal Investigator, would continue the
27 relationships and reap future economic benefit through his work in connection with these studies.

1 127. Cross-Defendants are and were, at all relevant times, aware of the preexisting
2 relationships Dr. Aisen had with the relevant patients.

3 128. As described herein, Cross-Defendants intentionally committed independently
4 wrongful acts designed to disrupt the relationships that Dr. Aisen was maintaining with his
5 patients.

6 129. As a result of Cross-Defendants' intentional and wrongful actions, the relationships
7 between Dr. Aisen and his patients have been disrupted.

8 130. As a direct and proximate result of Cross-Defendants' actions, Dr. Aisen has
9 suffered severe and substantial economic harm.

10 **Fifth Cause of Action Tortious Interference with Contract on Behalf of Dr. Aisen and USC**
11 **Against Cross-Defendants Mobley, Regents, Brenner and Does 1-25**

12 131. The foregoing allegations are incorporated as if re-alleged herein.

13 132. On or around July 20, 2015, USC, Dr. Aisen and Dr. Weiner entered into a valid
14 and binding contract whereby Dr. Weiner, on behalf of ADNI, agreed to award the new ADNI
15 subcontract to Dr. Aisen and USC, naming it the Coordinating Center for ADNI effective August
16 1, 2015.

17 133. Cross-Defendants had knowledge of the contract award as Dr. Weiner publically
18 announced the agreement.

19 134. Cross-Defendants acted intentionally to interfere with and induce Dr. Weiner to
20 breach or rescind his contract with Dr. Aisen and USC.

21 135. Cross-Defendants Brenner and Mobley pressured Dr. Weiner to rescind the
22 agreement, using their influence within the Regents to coerce Dr. Weiner, a faculty member within
23 the Regents.

24 136. Cross-Defendant Mobley also advised Dr. Weiner against working with Dr. Aisen
25 and USC in the future. Cross-Defendant Mobley also stated that Dr. Aisen was a criminal and
26 that UCSD intended to "have him arrested, put in jail, and his medical license suspended."

27 137. On information and belief, Cross-Defendants Mobley and Does 1-25 have repeated
28 similar disparaging and defamatory comments to other sponsors and members of the Alzheimer's

1 research community, including statements that Dr. Aisen is “unethical.” These disparaging
2 comments have resulted in the NCIRE Executive Committee overriding Dr. Weiner’s decision and
3 breaching the ADNI subcontract award to USC.

4 138. As a result of Cross-Defendants’ intentional actions, it has made Dr. Aisen’s and
5 USC’s performance more expensive and difficult, disrupted the contractual relationship and
6 resulted in the breach of the ADNI subcontract award to USC.

7 139. As a direct and proximate result of Cross-Defendants’ actions, USC and Dr. Aisen
8 have suffered severe and substantial economic harm.

9
10 **Sixth Cause of Action for Tortious Interference with Prospective Economic Advantage on**
11 **Behalf of Dr. Aisen and USC Against Cross-Defendants Mobley, Regents, Brenner and Does**

12 **1-25**

13 140. The foregoing allegations are incorporated as if re-alleged herein.

14 141. USC and Dr. Aisen had a preexisting economic relationship with the ADNI
15 grantors and Dr. Weiner. Dr. Weiner agreed to and announced that he would award the new
16 ADNI subcontract to USC.

17 142. The relationship was likely to result in future economic benefit to Dr. Aisen and
18 USC.

19 143. Cross-Defendants had knowledge of the relationship as it was publically
20 announced.

21 144. As described herein, Cross-Defendants intentionally committed independently
22 wrongful acts designed to disrupt the relationship between Dr. Aisen, USC, and Dr. Weiner and
23 ADNI.

24 145. Cross-Defendants Mobley and Brenner acted intentionally to disrupt the
25 relationship between Dr. Aisen, USC, Dr. Weiner and ADNI by using their influence and power
26 within the Regents to coerce Dr. Weiner, a faculty member of the Regents, into rescinding the
27 award of the new ADNI subcontract.

1 146. In addition, Cross-Defendant Mobley made defamatory and disparaging statements
2 to Dr. Weiner about Dr. Aisen in order to prevent Dr. Weiner from working with USC and Dr.
3 Aisen. Cross-Defendant Mobley stated that Dr. Aisen was a criminal and that UCSD intended to
4 “have him arrested, put in jail, and his medical license suspended.”

5 147. On information and belief, Cross-Defendants Mobley and Does 1-25 have repeated
6 similar disparaging and defamatory comments to other sponsors and members of the Alzheimer’s
7 research community, including statements that Dr. Aisen is “unethical.” These disparaging
8 comments have resulted in the NCIRE Executive Committee overriding Dr. Weiner’s decision and
9 breaching the ADNI subcontract award to USC.

10 148. Cross-Defendant Mobley’s statements were *per se* defamatory and constitute
11 independently wrongful acts.

12 149. As a result of Cross-Defendants’ actions, USC and Dr. Aisen’s economic
13 relationship with Dr. Weiner and ADNI was disrupted.

14 150. As a direct and proximate result of Cross-Defendants’ actions, USC and Dr. Aisen
15 suffered severe and substantial economic harm.

16

17

PRAYER FOR RELIEF

18 WHEREFORE, CROSS-PLAINTIFFS Dr. Aisen and USC respectfully pray for judgment
19 and relief against CROSS-DEFENDANTS as follows:

- 20 1. Declaratory relief against all Cross-Defendants where appropriate;
- 21 2. Injunctive relief against all Cross-Defendants where appropriate;
- 22 3. Actual damages in an amount to be proven at trial;
- 23 4. Reasonable costs and attorneys’ fees pursuant to applicable law;
- 24 5. Pre and post-judgment interest as applicable;
- 25 6. Any other relief the Court deems appropriate

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DEMAND FOR JURY TRIAL

Cross-Plaintiffs hereby demand a jury trial of all issues in this Cross-Complaint which are triable to a jury.

DATED: July 31, 2015

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By 

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