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March 18, 2016

**VIA E-MAIL**

President Janet Napolitano  
Office of the President  
University of California  
1111 Franklin Street, 12th Floor  
Oakland, CA 94607  
University of California

Re: Professor Sujit Choudhry

Dear President Napolitano:

This firm represents Sujit Choudhry, I. Michael Heyman Professor of Law, in connection with the matters involving his employment as a tenured faculty member of the University of California, Berkeley School of Law.

We write to introduce ourselves and to express grave concern at the manner in which Professor Choudhry is being treated. The measures your office has taken in the past ten days, or so, with respect to him violate his rights as a faculty member and California citizen, and offend any notion of fairness or due process. Equally troubling, your false characterization of Professor Choudhry's conduct in public statements has caused, and continues to cause, irreparable harm to him. Under these circumstances, there is virtually no possibility that Professor Choudhry will be treated fairly in the unprecedented, second disciplinary process instituted at the direction of your office.

Even in a highly charged political climate, facts should still matter. The undisputed facts are these.

In March 2015, Professor Choudhry received an email from his Executive Assistant, Ms. Sorrell, notifying him that his conduct of hugging her and kissing her on the cheek, and at times touching her on her shoulders and arms made her extremely uncomfortable. In accordance with procedure, the matter was reported to Berkeley's Office for the Prevention of Harassment and Discrimination ("OPHD"), which initiated an investigation. Professor Choudhry fully

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cooperated with that investigation, disputing some of Ms. Sorrell's claims as to the frequency of the alleged conduct, as well as her characterization of his actions, but maintaining that his conduct was in no way motivated by any sexual intent or desire. Significantly, although OPHD ultimately concluded that Professor Choudhry's actions constituted a violation of the University's sexual harassment policy, it did *not* find that his actions were motivated by any sexual intent or desire. Another staff member, who was interviewed by OPHD, reported being hugged by Professor Choudhry, but stated that she took those gestures as "familial" and was not offended by them. OPHD Report at 6. Indeed, Ms. Sorrell herself told Professor Choudhry, in the email in which she, for the first and only time, complained to him about his actions, that "I know you don't mean anything by it other than, perhaps, a warm and friendly greeting." Email from T. Sorrell to S. Choudhry (Mar. 19, 2015). She also described him as an "unaware boss" who had "pure intentions." *Id.* Nonetheless, Professor Choudhry deeply regretted, and regrets, both his conduct and its effect on Ms. Sorrell. He apologized to her, took full responsibility for his actions, and underwent management training.

At the conclusion of OPHD's investigation, the matter was then remitted to the Vice Chancellor and Provost, Claude Steele, for a disciplinary decision. After reviewing the OPHD report and deliberating with Chancellor Nicholas Dirks, Vice Provost of Faculty Janet Broughton, and Chief Campus Counsel Christopher Patti, the Provost imposed a disciplinary sanction on Professor Choudhry that was calibrated, in the judgment of those administrators, to address the conduct at issue: a reduction in his salary, executive coaching at his expense, a written apology from him to Ms. Sorrell, and monitoring of his behavior going forward.

The University's policies call for proportionality in imposing discipline. *See* University Policy on Faculty Conduct and the Administration of Discipline (APM-016) at 3 ("The severity and type of discipline for a particular offence must be appropriately related to the nature and circumstances of the case."). His punishment was imposed by the Provost in consultation and deliberation with the Chancellor, the Vice Provost of Faculty, and Chief Campus Counsel, all of whom apparently took the position that the sanction was proportional. Professor Choudhry played no role in determining or shaping the discipline imposed on him. He appealed no part of either the OPHD findings or the sanction and complied with each aspect of the sanction. Upon learning of Ms. Sorrell's concerns, he immediately addressed and corrected the conduct that led to previous missteps and failure of judgment both before and after the discipline, and he has served both as Dean and a member of the tenured faculty for the past year without incident. Throughout the disciplinary process and in the period thereafter, Professor Choudhry reasonably relied on the repeated assurances from every administrator empowered to decide the issue that his sanction was appropriate and consistent with University policy.

In sum, Professor Choudhry's conduct was fully adjudicated through an investigation and disciplinary process that the Provost, and several other administrators who joined him in

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deliberating and issuing the sanction decision, presented as final and complete. At no time did the Provost, or anyone else in the administration, suggest that a second disciplinary process relating to Professor Choudhry's tenured faculty position was being contemplated, much less that one would be initiated. Indeed, until the recent announcement in the press of Ms. Sorrell's lawsuit and the media attention it generated, every participant in that completed disciplinary process stood by both the process and the sanction.

With that factual background, we take issue with specific actions taken by your office that are injurious to Professor Choudhry, including the following.

*First*, while there is no plausible basis whatsoever for the suggestion that Professor Choudhry is a physical or harassment threat to anyone, it was widely reported that he either should be or was "banned" from campus. This notion apparently emanated from your office, in the days after Ms. Sorrell's civil lawsuit was filed. See "UC President Wants Choudhry Banned from Campus," The Recorder, Mar. 14, 2016.<sup>1</sup> Professor Choudhry first learned of your office's decision to pursue such a ban and further disciplinary action through a *Los Angeles Times* article published on Saturday, March 12. See "Multiple Sex Harassment Cases Against UC Faculty Prompt New Review Process" Los Angeles Times, Mar. 12, 2016.<sup>2</sup>

Indeed, despite the gravity and importance of this matter to Professor Choudhry, and the due process to which he is entitled, he did not receive *any* written notice of the measures being taken, or possibly being taken, against him before you announced them in the national press.

The first contact to get clarity on the University's position was initiated by Professor Choudhry, not your office. On Friday evening, March 11, Naomi Rustomjee, his counsel in the state court action filed by Ms. Sorrell, called one of the Senior Counsel in the University's Office of General Counsel, asking to discuss matters related to Professor Choudhry. The Senior Counsel returned Ms. Rustomjee's call on Monday, March 14; during that call the Senior Counsel stated that no such campus "ban" is actually in place, but that the University would appreciate Professor Choudhry informally agreeing not to be on campus through the end of the semester due to the highly charged campus atmosphere. As a practical matter, Professor Choudhry has not been on campus since the events of last week when he voluntarily resigned from his position as Dean, believing that doing so would be in the best interest of the law school and the campus community. But Professor Choudhry categorically rejects the idea that he

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<sup>1</sup> Available at <http://www.therecorder.com/id=1202752176835/UC-President-Wants-Choudhry-Banned-from-Campus?slreturn=20160216150231>.

<sup>2</sup> Available at <http://www.latimes.com/local/lanow/la-me-ln-napolitano-harass-20160312-story.html>.

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should be “banned” from campus, either through compulsion or at his election. The very notion that Professor Choudhry merits being banned from campus feeds the false narrative, fueled by statements emanating from your office and advocacy groups, that he is some type of predator. That is untrue and unfair.

**Second**, your office has on multiple occasions referred to Professor Choudhry’s conduct as “groping.” *See, e.g.*, “UC President Janet Napolitano Appalled by Latest Groping Case,” The Sacramento Bee, Mar. 9, 2016.<sup>3</sup> That characterization is defamatory. At no time has it even been *alleged* that Professor Choudhry’s physical contact with Ms. Sorrell was informed or motivated by sexual intent or the desire for sexual gratification. The terms “grope” and “groping” connote, in common parlance, fondling someone for sexual pleasure, yet nowhere in Ms. Sorrell’s March 2015 email, which triggered the OPHD investigation, nor in the lawsuit complaint, nor in the OPHD report, is there any suggestion that Professor Choudhry “groped” Ms. Sorrell. We ask you to cease and desist from any such false characterizations of Professor Choudhry or the conduct at issue.

**Third**, your office has taken the step, unprecedented to our knowledge, of directing the UC Berkeley administration – indeed, the very same persons who oversaw Professor Choudhry’s disciplinary process – to initiate a second disciplinary process aimed at stripping him of his tenured faculty position. On Tuesday, March 15, apparently prompted by the call made by Ms. Rustomjee to the University’s Senior Counsel, Vice Provost Janet Broughton sent Professor Choudhry the first direct notice he has received of the actions set in motion to strip him of tenure. The Vice Provost’s email, styled as a “preliminary notification,” states, in part:

the report of July 7, 2015, prepared by the Office for the Prevention of Harassment and Discrimination has been referred to me for assessment under the Faculty Code of Conduct. In accordance with campus procedures, I will be appointing one or two faculty members to investigate possible violations of the Faculty Code of Conduct.

E-mail from J. Broughton to S. Choudhry (Mar. 15, 2016).

The notion that this development is anything other than a response to negative opinion – whether on or off campus – is not credible. The Provost’s Office reviewed and assessed Professor Choudhry’s conduct under the Faculty Code of Conduct when it received the OPHD Report last year. *See* OPHD Report at 12 (“This report will be forwarded to the Provost’s Office for Review under the Faculty Code of Conduct.”). The idea that the very same conduct,

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<sup>3</sup> Available at <http://www.sacbee.com/opinion/california-forum/article65086572.html>.

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described in the same OPHD report, will be evaluated for a second time under the same policy is patently unfair. In effect, your office has instructed the Berkeley administrators to do whatever it takes to secure the outcome in which Professor Choudhry is stripped of tenure.

The Provost's sanction letter to Professor Choudhry can only be read as the result of a process that was intended to be a single, comprehensive and fully executed one, and the final word on his punishment. That outcome is consistent with the University's directive that duplicate processes are to be avoided, particularly in the context of sexual harassment. The UC Policy on Sexual Harassment states: "Procedures under this Policy shall be coordinated with applicable local complaint resolution, grievance, and disciplinary procedures to avoid duplication in the fact-finding process wherever possible." University of California Sexual Violence and Sexual Harassment Policy at 15. That one of the administrators directly involved in the process, who until very recently assured Professor Choudhry that the discipline he received was reasonable and appropriate, is now spearheading this "do-over" belies any notion that a second assessment of his conduct under the Faculty Conduct rubric, or otherwise, was ever intended.

The facts regarding Professor Choudhry's conduct haven't changed. With the exception of Provost Steele, who has now recused himself, the group of administrators who oversaw the first, conclusive process (and were of one mind about the appropriateness of Professor Choudhry's sanction) hasn't changed. What has changed, undeniably, is the context we find ourselves in: the heightened political climate surrounding campus sexual harassment issues and the media spotlight trained on your office and the administration. But the outcry against the University's handling of disciplinary cases, and the lumping together of Professor Choudhry's conduct with unrelated conduct by other UC faculty and staff, are improper grounds on which to force a different result.

Professor Choudhry has the "right to be judged by one's colleagues, in accordance with fair procedures and due process, in matters of . . . discipline, *solely on the basis of the faculty member's professional qualifications and professional conduct.*" APM-015 at 2 (emphasis added). Allowing this second process to unfold, with a predetermined outcome publicly urged by your office, guts that promise of due process or fairness. This no longer has to do with Professor Choudhry's professional qualifications and conduct as a member of the faculty. He is a scapegoat for any shortcomings, real or perceived, in the University's handling of sexual harassment claims and related policies and procedures.

We would welcome a meeting with you as soon as possible. In the interim, however, we demand that you: (1) put a halt to the process that has been initiated by your office to strip Professor Choudhry of his tenured faculty position; (2) communicate directly with us, rather than through the media, regarding Professor Choudhry's status; (3) refrain from false



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characterizations of Professor Choudhry or his conduct; and (4) issue a public retraction of your statements that Professor Choudhry engaged in groping and that he is banned from campus.

Sincerely,

/s/ William W. Taylor

William W. Taylor

cc: Regents of the University of California  
Chancellor Nicholas Dirks, University of California - Berkeley