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12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 SUJIT CHOUDHRY,
16 Plaintiff,
17 v.
18 REGENTS OF THE UNIVERSITY OF
CALIFORNIA, JANET NAPOLITANO,
19 NICHOLAS B. DIRKS, CAROL CHRIST,
JANET BROUGHTON, AND BENJAMIN
20 HERMALIN,
21 Defendants.

Case No. 3:16-cv-05281-RS

**PLAINTIFF SUJIT CHOUDHRY'S
NOTION OF MOTION, MOTION, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Date: November 3, 2016
Time: 1:30 p.m.
Courtroom: 3, 17th Floor
Judge: Hon. Richard Seeborg

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TABLE OF CONTENTS

	Page(s)
1	
2	
3	I. NOTICE OF AND MOTION AND MOTION..... 1
4	II. RELIEF SOUGHT..... 1
5	III. STATEMENT OF ISSUES TO BE DECIDED 1
6	IV. MEMORANDUM OF POINTS AND AUTHORITIES 2
7	A. INTRODUCTION..... 2
8	B. STATEMENT OF THE FACTS 3
9	C. LEGAL STANDARD..... 9
10	D. ARGUMENT 10
11	1. PROFESSOR CHOUDHRY IS LIKELY TO SUCCEED ON THE
12	MERITS..... 10
13	a. Defendants Have Violated and Are Violating Professor Choudhry's
14	Due Process Rights. 10
15	i. The due process clause applies to the University of
16	California. 10
17	ii. Professor Choudhry has been deprived of liberty and
18	property interests in the settlement, in his employment and
19	profession, and his reputation that cannot be repaired by
20	holding a disciplinary hearing, much less a sham hearing
21	with a predetermined outcome..... 11
22	iii. Due process requires state actors to fulfill the promises they
23	make in the exercise of their enforcement powers..... 14
24	iv. Professor Choudhry has been deprived of his Constitutional
25	right to neutral decision makers..... 16
26	b. The University Has Violated Professor Choudhry’s Rights to Equal
27	Protection. 18
28	2. PROFESSOR CHOUDHRY WILL SUFFER IRREPARABLE HARM IN
	THE ABSENCE OF RELIEF. 20
	3. THE BALANCE OF EQUITIES FAVORS PROFESSOR CHOUDHRY
 21
	4. AN INJUNCTION IS IN THE PUBLIC INTEREST 22
	E. CONCLUSION..... 22

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Abney v. United States</i> , 431 U.S. 651 (1977).....	20
<i>Alliance for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9 th Cir. 2011)	9
<i>Blackbird Technologies v. Joshi</i> , Case No. 5:15-cv-04272-EJD, 2015 WL 5818067 (N.D. Cal. Oct. 6, 2015)	9
<i>Board of Regents of State Colleges v. Roth</i> , 408 U.S. 564 (1972).....	11
<i>Brock v. Roadway Express, Inc.</i> , 481 U.S. 252 (1987).....	11
<i>Buckley v. Terhune</i> , 441 F.3d 688 (9 th Cir. 2006)	14, 16
<i>Clements v. Airport Auth. of Washoe County</i> , 69 F.3d 321 (9 th Cir. 1995)	17
<i>Collins v. Harker Heights</i> , 503 U. S. 115 (1992).....	10
<i>Do v. Regents of University of California</i> , 216 Cal. App. 4th 1474, 157 Cal. Rptr.3d 630 (Cal. Ct. App. 2013)	10
<i>Dusenberry v. United States</i> , 534 U.S. 161 (2002).....	11
<i>DVD Copy Control Ass’n v. Kaleidescape, Inc.</i> , 176 Cal.App.4th 697, 97 Cal. Rptr. 3d 856 (Cal. Ct. App. 2009)	20
<i>Friends of the Wild Swan v. Weber</i> , 767 F.3d 936 (9 th Cir. 2014)	9
<i>Hamdi v. Rumsfeld</i> , 542 U.S. 507 (2004).....	16
<i>Ishimatsu v. Regents of the University of California</i> , 266 Cal. App. 2d 854, 72 Cal Rptr. 756 (Cal. Ct. App. 1968)	10
<i>Johnson v. Couturier</i> , 572 F.3d 1067 (9 th Cir. 2009)	9
<i>LAWI/CSA Consolidators, Inc. v. Wholesale & Retail Food Distrib., Teamsters Local 63</i> , 849 F.2d 1236 (1988).....	21
<i>Lee v. City of Los Angeles</i> , 250 F.3d 668 (9 th Cir. 2001)	18

1 *Mendoza v. Blodgett*,
 960 F.2d 1425 (9th Cir. 1992) 11

2

3 *Peacock v. Bd. of Regents of Univs. and State Colleges of Arizona*,
 380 F. Supp. 1081 (D. Ariz. 1974) 12

4 *Portland Gen. Elec. Co. v. Liberty*,
 2016 WL 409658 (D. Or. July 27 2016)..... 21

5

6 *Preminger v. Principi*,
 422 F.3d 815 (2005)..... 22

7 *Republican Party of Minnesota v. White*,
 536 U.S. 765 (2002)..... 17

8

9 *Sacramento v. Lewis*,
 523 U.S. 833 (1998)..... 10

10 *Santobello v. New York*,
 404 U.S. 257 (1971)..... 14

11

12 *Schneider v. County of San Diego*,
 28 F.3d 89 (9th Cir. 1994) 11

13 *Stiesberg v. State of Cal.*,
 80 F.3d 353 (9th Cir. 1996) 13

14

15 *Sumotext Corp. v. Zoove, Inc.*,
 2016 WL 1259041 (N.D. Cal. Mar. 31, 2016)..... 9

16 *Thornton v. City of St. Helens*,
 425 F.3d 1158 (9th Cir. 2005) 18

17

18 *Tumey v. Ohio*,
 273 U.S. 510 (1927)..... 16

19 *United States v. Fuentes*,
 8 F.3d 1333 (9th Cir. 1993) 16

20

21 *United States v. Hall*,
 730 F. Supp. 646 (M.D. Pa. 1990)..... 15-16

22 *United States v. Hallam*,
 472 F.2d 168 (9th Cir. 1973) 15

23

24 *Ward v. Village of Monroeville*,
 409 U.S. 57 (1972)..... 17

25 *Wilkinson v. Austin*,
 545 U.S. 209 (2005)..... 11

26

27 *Winter v. Natural Res. Def. Council, Inc.*,
 555 U.S. 7 (2008)..... 9

28

1 *Wisconsin v. Constantineau*,
400 U.S. 433 (1971)..... 13

2

3 *Wolff v. McDonnell*,
418 U.S. 539 (1974)..... 10

4 **Statutes**

5 U.S. Const. amend. XIV, § 1.....12

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7
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I. NOTICE OF AND MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

Please take notice that on Thursday, November 3, 2016 at 1:30 p.m. in Courtroom 3, 17th Floor, of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiff Sujit Choudhry will, and hereby does, move for a preliminary injunction enjoining Defendants from conducting a second, duplicative disciplinary proceeding against him on the grounds that such proceeding has violated, and will continue to violate, Professor Choudhry’s rights to due process of law and equal protection, and will continue to cause him irreparable harm if allowed to proceed. This motion is made pursuant to Rule 65 of the Federal Rules of Civil Procedure and is based this notice of motion and motion, the accompanying memorandum of points and authorities, the Declaration of Caroline Judge Mehta, the Declaration of Sujit Choudhry, and the Declaration of Lyndsey Marcelino, all filed herewith, the Court’s file herein and such argument and evidence as may be presented at the hearing.

II. RELIEF SOUGHT

Professor Sujit Choudhry seeks a preliminary injunction to enjoin the Regents of the University of California and University administrators (“Defendants”) from pursuing an impermissible disciplinary proceeding that has violated, and will continue to violate, his rights to due process of law and equal protection. Professor Choudhry has already been irreparably harmed by Defendants’ actions, and he will experience further irreparable harm without this Court’s intervention.

III. STATEMENT OF ISSUES TO BE DECIDED

Issue: Should a preliminary injunction issue that maintains the status quo and prevents Defendants from pursuing an impermissible disciplinary proceeding against Plaintiff until there is a trial on the merits of this matter?

Answer: Yes.

IV. MEMORANDUM OF POINTS AND AUTHORITIES**A. INTRODUCTION**

As set forth below, Professor Choudhry meets the criteria necessary for a preliminary injunction: (1) he will prevail on the merits; (2) if he does not receive a preliminary injunction this Court will be unable to provide adequate relief and undo the harm caused by Defendants' impermissible conduct; (3) Defendants will not be harmed by a brief delay that merely preserves the status quo, as it has existed for over a year, while this case is decided, and (4) there is always a public interest in upholding constitutional rights, and even more so when state actors run roughshod over constitutional rights out of self-interest and political expediency.

Professor Choudhry served as Dean of Berkeley Law from June 2014 until March 9, 2016. In March 2015, he was accused of sexual harassment by his executive assistant, Tyann Sorrell. Those accusations, pursuant to University policy, resulted in a University disciplinary investigation and then a settlement, over a year ago, on July 31, 2015 (the "Settlement") between Dean Choudhry and University of California, Berkeley ("UC Berkeley") officials responsible for both "administrative" and "faculty" discipline. By agreeing to the Settlement, then-Dean Choudhry completely and finally resolved all University discipline against him. In exchange for that finality, Dean Choudhry accepted the disciplinary measures imposed upon him, and gave up procedural protections, such as the ability to challenge the investigation's findings and his salary reduction. He also remained Dean of Berkeley Law and a tenured faculty member.

Now, many months later, following Ms. Sorrell's civil suit and related negative publicity, Defendants seek to renege on the Settlement, disavow their representations of finality, subject Professor Choudhry to a second disciplinary proceeding, and leverage Professor Choudhry's own concessions pursuant to the Settlement into further punishment.

If the Due Process Clause embodied in the Fourteenth Amendment means anything, it precludes the government from: (1) putting a tenured employee through a disciplinary investigation; (2) negotiating a resolution with the employee in which he gives up important rights, including the right to defend; (3) agreeing to discipline, as part of the resolution, in exchange for clear entitlements to finality, to continue as a tenured faculty member, and to no

1 further disciplinary proceedings; and (4) then, nearly a year later, deciding to put the employee
2 through the *same* process again to satisfy its critics. Nor does the Due Process Clause allow
3 Defendants, without any process, to stigmatize Professor Choudhry, by labeling him a pariah, or
4 to separate him from his profession by banning him from teaching and moving his office out of
5 the law school. Yet, that is this case. We demonstrate below plaintiff’s entitlement to the relief
6 he seeks as we shine a light on the uniquely harsh and discriminatory manner in which state
7 officials have proceeded against Professor Choudhry, who is of Indian origin and a non-United
8 States citizen.

9 **B. STATEMENT OF THE FACTS¹**

10 Professor Choudhry served as Dean of Berkeley Law from June 2014 until March 9,
11 2016. Choudhry Decl. ¶¶ 1-2. Tyann Sorrell, who had worked for the outgoing dean, was
12 assigned to work for Professor Choudhry as his executive assistant when he assumed the role of
13 Dean. *Id.* ¶ 3. On several occasions, Ms. Sorrell informed Professor Choudhry that she was
14 feeling anxiety from her increased responsibilities and longer hours. *Id.* ¶ 5. In the fall of 2014,
15 Ms. Sorrell informed then-Dean Choudhry that she would need to resign from the executive
16 assistant position because the workload was too demanding under his leadership. Professor
17 Choudhry urged Ms. Sorrell to stay and hired additional staff to attempt to alleviate stress on Ms.
18 Sorrell and make the office function better. *Id.* ¶ 4.

19 On March 19, 2015, Ms. Sorrell e-mailed Professor Choudhry. She raised a number of
20 complaints about their work relationship, including what she believed was an excessive
21 workload, and behavior on the part of Professor Choudhry that she considered rude. *Id.* ¶ 6.
22 Toward the end of the e-mail, Ms. Sorrell complained that Professor Choudhry hugged her and
23 kissed her cheek. *Id.* ¶ 7. None of her objections accused or suggested that Professor
24 Choudhry’s conduct toward her was of a sexual nature or suggested sexual interest or intent.
25 Indeed, she explicitly recognized that he did not mean anything by his conduct other than
26 “perhaps, a warm and friendly greeting.” *Id.* ¶ 8. The e-mail was the first time anyone had raised
27 any of these concerns with Professor Choudhry, and he did not mean to make Ms. Sorrell

28 ¹ Professor Choudhry’s complaint contains a more detailed factual recitation.

1 uncomfortable nor was he aware that his actions might do so. *Id.* ¶¶ 9-10. No one else with
2 whom he has worked, during his 18 years as a law professor, has ever made an allegation of, or
3 brought a claim for, sexual harassment. *Id.* ¶ 11.

4 Ms. Sorrell's e-mail triggered an investigation by the University's Office for the
5 Prevention of Harassment and Discrimination ("OPHD"). Allegations of sexual harassment are
6 investigated by OPHD, including when such allegations are made against administrators or
7 faculty. *Id.* ¶ 12. The UC Berkeley disciplinary procedures therefore permit OPHD Campus
8 Complaint Resolution Officers ("CCRO") to investigate potential violations of the Faculty Code
9 of Conduct that involve sexual harassment, whereas most other violations of the Faculty Code of
10 Conduct are investigated by fellow faculty members. Mehta Decl. ¶ 5, Exh. 4 at 10 ¶ 3. Where
11 CCROs perform the investigative function, they "substitute" for the faculty investigators. *Id.* at
12 10 ¶ 3(b). Their investigative findings are then, as a faculty investigator's findings would be,
13 submitted to the Executive Vice Chancellor and Provost ("EVCP"), who is empowered to
14 resolve both administrative and faculty investigations by settlement instead of bringing formal
15 disciplinary charges. *Id.* at 11 ¶¶ 6-8. If a settlement is offered, and explicitly accepted, or the
16 individual informs the EVCP that he or she does not contest discipline, it ends the matter. *Id.* at
17 11 ¶ 8 ("If the settlement is accepted by the accused faculty member, a hearing before the P&T
18 shall not be necessary."); *id.* at 12 ¶ 10 (when the faculty member does not settle, or inform the
19 EVCP that he or she will not contest the proposed discipline, the EVCP files a complaint and
20 hearing procedures begin).

21 The first investigation and disciplinary process against Professor Choudhry followed the
22 disciplinary procedures. The CCROs conducted an investigation and their investigative report
23 (the "OPHD Report") was, pursuant to the procedures, forwarded to EVCP Steele in July 2015
24 for "further review under the Faculty Code of Conduct." *See* Mehta Decl. ¶ 4, Exh. 3; Choudhry
25 Decl. ¶ 16. After reviewing the OPHD Report and discussing the matter with the senior
26 leadership of UC Berkeley, on July 31, 2015, EVCP Steele offered the Settlement, which
27 Professor Choudhry accepted. Choudhry Decl. ¶ 17, Exh. 16; *see also* Choudhry Decl. ¶¶ 17-20.
28 When EVCP Steele proposed the Settlement to Professor Choudhry, he made no distinction

1 between discipline as an administrator and discipline as a faculty member. Choudhry Decl. ¶ 17.
2 Nor did anyone else, including Professor Choudhry. *Id.* ¶¶ 19-20, 23. EVCP Steele, as
3 discussed above, had full authority to resolve the investigation of Ms. Sorrell’s allegations as to
4 *both* Professor Choudhry’s administrative and faculty status, and it is clear that he did exactly
5 that. Mehta Decl. ¶ 5, Exh. 4 at 11 ¶ 8; *id.* at 12 ¶ 10. The only mention of additional discipline
6 was that Professor Choudhry could face further discipline if *new* allegations of misconduct were
7 lodged and sustained. Choudhry Decl. ¶ 17 (might be subject to “further” discipline if violated
8 policy “again”).

9 UC Berkeley’s leadership represented the Settlement to be the sole and final punishment
10 that Professor Choudhry would ever face, and deemed the sanctions contained in it to be
11 appropriate and proportional in light of his alleged conduct. *See* Choudhry Decl. ¶¶ 13-14, 17-
12 19, 23. Professor Choudhry would not have agreed to the Settlement if it did not achieve a
13 complete and final resolution of University discipline and allow him to remain Dean and a
14 tenured faculty member. Choudhry Decl. ¶ 20. In the Settlement, Professor Choudhry accepted
15 a set of sanctions that he otherwise had a right to challenge, gave up his right to contest the
16 factual record that was the basis of the predicate “probable cause” finding that he had violated
17 faculty discipline standards, and complied to his detriment with the disciplinary sanctions that the
18 University’s leaders proposed as “warranted and appropriate for [the] situation.” *See* Choudhry
19 Decl. ¶ 17, Exh. 16; Choudhry Decl. at ¶¶ 20-21.

20 Professor Choudhry continued his Deanship for seven months after the disciplinary
21 action. During those months, he worked regularly with University administrators. No one
22 mentioned the possibility of a second disciplinary proceeding. Choudhry Decl. ¶¶ 24-25. To the
23 contrary, the same University officials who took part in the Settlement assured him repeatedly
24 that the Settlement put an end to the matter and that they fully supported his future at Berkeley
25 Law. *See, e.g.*, Choudhry Decl. ¶¶ 19, 23, 26. Indeed, in the letter laying out the sanctions,
26 EVCP Steele wrote: “You have a *very promising career* as Berkeley’s Law School Dean with
27 your innovative ideas, high energy, and enthusiastic citizenship, and I trust that you will *grow*
28

1 into the kind of leader that we both know you can be.” Choudhry Decl. ¶ 17, Exh. 16 (emphasis
2 added).

3 Professor Choudhry fulfilled all of the conditions to which he and the University agreed.
4 He accepted a punitive salary reduction, apologized to Ms. Sorrell, and underwent training at his
5 expense and monitoring of his conduct. Choudhry Decl. ¶ 21. Professor Choudhry also kept Ms.
6 Sorrell’s position open within the Dean’s office should she wish to return, and urged University
7 officials to do all they could to support her career goals should she not wish to return. *Id.* ¶ 25.
8 Instead, unbeknownst to Professor Choudhry, the University not only withheld his written
9 apology for two months, it turned Ms. Sorrell down for *ten* successive jobs to which she applied.
10 *Id.* ¶¶ 21, 25. On information and belief, one of those positions was in the Office of the
11 President, Janet Napolitano. *Id.* ¶ 25.

12 In March 2016, apparently believing that the University had shown concern for Professor
13 Choudhry’s career but not her career, Ms. Sorrell filed a lawsuit against the University and
14 Professor Choudhry. *Id.* ¶ 27. Ms. Sorrell’s lawsuit focused attention on the University’s
15 arbitrary handling of allegations of sexual harassment on its campuses, including matters
16 involving other, Caucasian, UC Berkeley administrators and faculty who – unlike Professor
17 Choudhry – were found to have engaged in pervasive, predatory sexual conduct. Mehta Decl. ¶
18 7, Exh. 6; *id.* ¶ 11, Exh. 10; *id.* ¶ 12, Exh. 11. President Napolitano’s office had directly handled
19 one such matter, that of Vice Chancellor for Research and Professor of Chemistry Graham
20 Fleming, within the previous year. *Id.* ¶ 11, Exh. 10. President Napolitano took to the press,
21 immediately, calling for Professor Choudhry to be “banned” from the Berkeley Law campus,
22 describing his conduct – falsely – as “grop[ing],” and ordering the same University
23 administrators who settled his disciplinary matter in July 2015 to institute a second, duplicate
24 disciplinary process aimed at stripping him of his tenure and dismissing him from the University.
25 *See id.* ¶ 2, Exh. 1; *id.* ¶ 3, Exh. 2; Choudhry Decl. ¶ 31.

26 The same administrators who entered into the Settlement with Professor Choudhry in July
27 2015, cowed by President Napolitano’s edict, initiated a new investigation under the pretext that
28 the prior settlement solely addressed Professor Choudhry’s status as an administrator and had left

1 open further discipline based on the Faculty Code of Conduct. Choudhry Decl. ¶ 32, Exh. 18;
2 Mehta Decl. ¶ 16, Exh. 15.

3 The reality is that no one involved in the first discipline – not Chancellor Nicholas Dirks,
4 not EVCP Steele, not Vice Provost for Faculty Janet Broughton, not Chief Campus Counsel
5 Christopher Patti – believed that the Settlement failed to completely resolve the matter.
6 Choudhry Decl. ¶ 17, Exh. 16. It is not plausible that on the very the day discipline was agreed
7 to, EVCP Steele could have assured Professor Choudhry of a “very bright future,” if Professor
8 Choudhry still faced a second “faculty” disciplinary process that could result in loss of tenure and
9 termination. *Id.*; *see also, e.g.*, Choudhry Decl. ¶¶ 17-20, 23, 24.

10 Following President Napolitano’s order of an impermissible, second investigation, on
11 March 15, 2016, Vice Provost Broughton – who approved the original Settlement – notified
12 Professor Choudhry that she would appoint two faculty “Investigative Officers” who would
13 commence an investigation into whether the same conduct for which he was punished in July
14 2015 violated the Faculty Code of Conduct. Choudhry Decl. ¶ 32, Exh. 18. Just six days earlier
15 she had assured Professor Choudhry that the punishment he had already received was
16 appropriate, and that she stood by it. *See id.* ¶ 29.

17 The second “investigation” was a sham, as the University could take advantage of
18 Professor Choudhry’s agreement as part of the settlement not to contest the earlier findings in
19 order to establish the “facts.” The two faculty “Investigative Officers,” appointed three months
20 later, did not actually perform a single investigatory task other than reading the original OPHD
21 Report by the CCROs, which was written in 2015, and speaking with the CCROs. They avoided
22 speaking to a single witness. *Id.* at ¶¶ 34-35. In fact, they denied Professor Choudhry’s request
23 to meet with them during their “investigation.” *Id.* ¶ 35. They were never told that Professor
24 Choudhry had been punished for the identical conduct in July 2015. *Id.* at ¶¶ 37-38. All they did
25 was adopt, as fact, the findings of the first investigation that Professor Choudhry had elected not
26 to challenge in exchange for the Settlement. *Id.* ¶ 35. They then recommended to the new Vice
27 Provost, Defendant Hermalin, punishment up to and including stripping Professor Choudhry of
28 tenure and termination from the University. *Id.* ¶ 36. On September 15, 2016, after this lawsuit

1 was filed, EVCP Christ (who now occupies the position formerly held by EVCP Steele),
2 informed Professor Choudhry that, if Professor Choudhry did not request mediation (i.e.,
3 settlement discussions) of the second disciplinary proceeding, she would seek his dismissal. *Id.* ¶
4 42.

5 Further demonstrating that Defendants' true objective is to paper over the University's
6 poor record in addressing findings of genuine sexual harassment by other faculty members by
7 making a scapegoat of Professor Choudhry, following Ms. Sorrell's civil complaint, Defendants
8 not only began an impermissible second investigation, they have also -- without process, and
9 even without waiting for the unlawful, duplicative proceeding to play out -- repeatedly warned
10 Professor Choudhry to stay away from campus, threatening a formal "ban" if he comes to work;
11 unilaterally stripped him of teaching responsibilities, preventing him from performing his faculty
12 role; denied him summary salary paid to all Berkeley Law faculty; and are now sponsoring
13 defamatory and incendiary "warnings" about Professor Choudhry's presence on campus,
14 suggesting that students may have need to "protect themselves," from him and circulating
15 information about available resources such as rape crisis counselors and night safety escorts. *See*
16 Choudhry Decl. at ¶¶ 31, 33, 39, 40. Defendants sit silent while students falsely accuse Professor
17 Choudhry of having committed "sexual assault," and label him a "predator." Indeed, on
18 September 8, 2016, Berkeley Law hosted a "Town Hall" at which Defendants validated these
19 sentiments, openly discussed Professor Choudhry's unprecedented, duplicate disciplinary
20 process, and assured students that additional disciplinary charges against him were imminent.
21 Marcelino Decl. at ¶¶ 3-4, 7-8.

22 Additionally, after Defendants received a copy of Professor Choudhry's right to sue letter
23 and after he filed this lawsuit, Defendant Christ sent Professor Choudhry a letter informing him
24 that his office will be moved out of the law school and off-campus to an administrative building.
25 A similar letter was distributed to the whole law school community minutes later. Choudhry
26 Decl. ¶ 41, and Exhs. 23 and 24.

27 In sum, Kafka could not have scripted a more surreal and baseless inversion of reason and
28 fairness than is now playing out on the UC Berkeley campus. Professor Choudhry endures

1 irreparable harm daily, has been stigmatized and made a pariah, and removed in all but name
2 from his profession. Nearly a year after he accepted discipline under established procedure,
3 fulfilled that discipline and accepted responsibility, he now faces the academic equivalent of a
4 life sentence on a record he explicitly declined to challenge in reliance on the finality of the
5 punishment that EVCP Steele and Defendants Dirks and Broughton all agreed was appropriate,
6 and proportional. If this Court fails to intervene, Defendants will succeed in depriving Professor
7 Choudhry of due process to which he is entitled under the Constitution, and scapegoating the
8 Indian, non-United States citizen – whose conduct Ms. Sorrell acknowledged was intended as a
9 “warm, friendly greeting” – whose case came to light at the moment the University President
10 needed to compensate for the minimal attention paid to the conduct of Caucasian faculty and
11 administrators who were found to have engaged in predatory sexual misconduct.

12 C. LEGAL STANDARD

13 A party seeking a preliminary injunction must make a “clear showing that plaintiff is
14 entitled to such relief.” *Sumotext Corp. v. Zoove, Inc.*, Case No. 16-cv-01370, 2016 WL
15 1259041, at *2 (N.D. Cal. Mar. 31, 2016) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555
16 U.S. 7, 22 (2008)); *Blackbird Technologies v. Joshi*, Case No. 5:15-cv-04272-EJD, 2015 WL
17 5818067, at *4 (N.D. Cal. Oct. 6, 2015) (same). To obtain a preliminary injunction, the moving
18 party must establish: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable
19 harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an
20 injunction is in the public interest. *Winter*, 555 U.S. at 20; *Johnson v. Couturier*, 572 F.3d 1067,
21 1079 (9th Cir. 2009). Alternatively, if the plaintiff cannot establish that it is likely to succeed on
22 the merits, it may still obtain a preliminary injunction if it shows that it has raised “serious
23 questions going to the merits” and that the balance of hardships “tips sharply” in its favor, so
24 long as it also shows that there is a likelihood of irreparable injury and that the injunction is in
25 the public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir.
26 2011), 1131-35 (9th Cir. 2011); *see also Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942
27 (9th Cir. 2014) (citations omitted).

1 In evaluating a motion for a preliminary injunction, a court may consider hearsay
2 evidence. *Johnson*, 572 F.3d at 1083.

3 D. ARGUMENT

4 1. PROFESSOR CHOUDHRY IS LIKELY TO SUCCEED ON THE MERITS.

5 a. Defendants Have Violated and Are Violating Professor Choudhry's 6 Due Process Rights.

7 i. The due process clause applies to the University of California.

8
9 The Due Process Clause is implicated where a state actor seeks to deprive any citizen of a
10 liberty or property interest, and it is violated where the state actor does so in an arbitrary manner.
11 *See, e.g., Sacramento v. Lewis*, 523 U.S. 833, 840 (1998) (Due Process clause prohibits abuses of
12 executive power without legitimate basis); *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (“[t]he
13 touchstone of due process is protection of the individual against the arbitrary action of
14 government”). Due process protects citizens from government officials’ abuses of their power
15 and misuse of their power to deprive citizens of protected liberty and property interests. *See*
16 *Collins v. Harker Heights*, 503 U.S. 115, 126 (1992), 126 (1992) (Due Process Clause was
17 intended to prevent government officials “from abusing [their] power, or employing it as an
18 instrument of oppression”).

19 “[G]overnance of University [of California] activities requires due process in the carrying
20 out of its personnel functions, such as adopting and administering employment policies.” *Do v.*
21 *Regents of University of California*, 216 Cal. App. 4th 1474, 1487, 157 Cal. Rptr. 3d 630, 640
22 (Cal. Ct. App. 2013); *see also Ishimatsu v. Regents of the University of California*, 266 Cal. App.
23 2d 854, 861, 72 Cal. Rptr. 756, 761 (Cal. Ct. App. 1968) (“[T]he [University’s] power (to
24 dismiss public employees) may not be exercised arbitrarily in disregard of the employee’s
25 constitutional rights”) (citations omitted).

1 **ii. Professor Choudhry has been deprived of liberty and property**
2 **interests in the settlement, in his employment and profession, and his**
3 **reputation that cannot be repaired by holding a disciplinary hearing,**
4 **much less a sham hearing with a predetermined outcome.**

5 The Fourteenth Amendment reads in part: “nor shall any State deprive any person of life,
6 liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. In determining
7 whether an individual’s procedural due process rights have been violated, courts proceed in two
8 steps. First, courts examine whether there exists a liberty or property interest that has been
9 interfered with by the state. *See, e.g., Board of Regents of State Colleges v. Roth*, 408 U.S. 564,
10 571 (1972). A property interest is established by a “legitimate claim of entitlement” to a specific
11 benefit. *Id.* at 577. “A liberty interest may arise from the Constitution itself, by reason of
12 guarantees implicit in the word ‘liberty,’ or it may arise from an expectation or interest created by
13 state law or policies.” *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (citations omitted); see also
14 *Mendoza v. Blodgett*, 960 F.2d 1425, 1428 (9th Cir. 1992). “A state creates a protected liberty
15 interest when it places substantive limitations on official discretion.”

16 Second, courts consider whether, in advance of the deprivation, the state applied
17 constitutionally sufficient procedures. Such procedures generally must involve notice and an
18 opportunity to be heard. *Dusenberry v. United States*, 534 U.S. 161, 167 (2002). The
19 opportunity to be heard must be “at a meaningful time and in a meaningful manner.” *Schneider*
20 *v. County of San Diego*, 28 F.3d 89, 92 (9th Cir. 1994) (quoting *Brock v. Roadway Express, Inc.*,
21 481 U.S. 252, 261 (1987)).

22 Despite those guarantees, Defendants, acting under color of state law, have deprived
23 Professor Choudhry of multiple property and liberty interests without any process whatsoever.

24 First, Professor Choudhry’s Settlement conveyed property rights, in the nature of contract
25 rights, to which Professor Choudhry had a clear entitlement. As discussed above, in the
26 background section, Professor Choudhry reached a final and complete resolution of University
27 discipline against him by entering into the Settlement. The Settlement was offered by an official,
28 EVCP Steele, who had authority to resolve both administrative and faculty discipline, had
 discussed it with other administrators, at exactly the point where the disciplinary procedures

1 allowed him to offer a settlement. The Settlement provided a property right (i.e., a clear
 2 entitlement) to finality and ensured that Professor Choudhry would continue as a tenured faculty
 3 member. Mehta Decl. ¶ 5, Exh. 4 at 11, ¶ 8 (once EVCP has investigative findings, “before
 4 filing formal charges with the P&T [Committee], the EVCP may offer a settlement involving a
 5 proposed sanction. If the settlement is accepted by the accused faculty member, a hearing before
 6 P&T shall not be necessary”); *id.* at 12, ¶ 10 (EVCP files a complaint with the P&T Committee
 7 only “if the matter is not thus resolved”); Choudhry Decl. ¶¶ 14, 17-20. By unilaterally
 8 repudiating the Settlement and initiating duplicative discipline – and, in particular, aiming to
 9 strip Professor Choudhry of tenure – Defendants vitiated Professor Choudhry’s property rights.

10 Second, Defendants have enacted a *de facto* suspension of Professor Choudhry that all
 11 but formally separates him from his position as a faculty member. They denied him summer
 12 salary, *see* Choudhry Decl. ¶ 33; reported that he was “banned” from campus;² and stripped him
 13 of teaching responsibility by not assigning classes to him for the fall semester, which not only
 14 deprives him of the right to practice his profession but affects his compensation and ability for
 15 advancement. Choudhry Decl. ¶ 40. And, after receiving Professor Choudhry’s right to sue letter
 16 and after this lawsuit was filed, Defendants sent a letter to all faculty, staff, and students at
 17 Berkeley law informing them that Professor Choudhry has been assigned an office outside the
 18 law school. Choudhry Decl. ¶ 41 and Exh. 24; Mehta Decl. ¶ 17. The media received this letter,
 19 and reported about it in, for example, an article entitled “Ex-Dean Not Welcome at Berkeley
 20 Law, Letter Says.” Mehta Decl. ¶ 14, Exh. 3. These are undoubtedly property and liberty
 21 interests encompassed by due process protections. *See Peacock v. Bd. of Regents of Univs. and*
 22 *State Colleges of Arizona*, 380 F. Supp. 1081, 1087 (D. Ariz. 1974) (“when a professor is
 23 separated from the mainstream of his occupation . . . the consequences are major even though not
 24 measurable in financial terms,” and due process safeguards apply).

25 Third, Defendants have imposed a profound stigma on Professor Choudhry that impairs
 26 his liberty interests under the Constitution. “Where a person's good name, reputation, honor, or
 27 integrity is at stake because of what the government is doing to him, at least minimal due process

28 ² Mehta Decl. ¶ 2, Exh. 1; *id.* ¶ 7, Exh. 6; Choudhry Decl. ¶ 31.

1 safeguards must be observed.” *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971).
2 Moreover, “an individual has a liberty interested in employment protected by the Due Process
3 Clause if the [personnel action taken against him] is for reasons that might seriously damage his
4 standing in the community, or if [it] effectively precludes future work in the individual’s chosen
5 profession.” *Stiesberg v. State of Cal.*, 80 F.3d 353, 357 (9th Cir. 1996); *see also Peacock* 380 F.
6 Supp. at 1086 (“Attaching a badge of infamy is a restraint of liberty.”)

7 A year ago, Defendants Dirks and Broughton, and the entire UC Berkeley senior
8 administration, encouraged Professor Choudhry to continue as Dean and remain at UC Berkeley,
9 *see, e.g.*, Choudhry Decl. ¶¶ 15, 17-19, yet they now join, or at a minimum fail to correct, an
10 utterly false misrepresentation being broadcast across campus. Following Ms. Sorrell’s
11 allegations, President Napolitano falsely called Professor Choudhry a “grop[er],” commanded, on
12 her imagined authority, that he be “banned” from campus, ordered duplicate discipline despite a
13 final resolution of discipline in July 2015,³ and through University counsel renews the “ban”
14 threat repeatedly should Professor Choudhry not volunteer to stay off campus, Choudhry Decl. ¶
15 40. On September 2, 2016, the Berkeley Law Office of Student Services circulated a statement
16 from the Boalt Hall Student Association, which stated that Professor Choudhry’s presence on
17 campus made it a “difficult time for everyone,” and that there were resources available to “help
18 students protect themselves,” including: night time safety escort services; rape crisis counselors;
19 and other psychological assistance. Choudhry Decl. ¶ 39 and Exh. 20. On September 15, after
20 the filing of this action, Defendants moved Professor Choudhry’s office out of the law school and
21 into an administrative building that is not located on the main campus. Choudhry Decl. ¶ 41 and
22 Exh. 23. These actions have made it virtually impossible for Professor Choudhry to even go to
23 his office, and are thus also infringements on his First Amendment rights of speech and
24 association. Professor Choudhry’s counsel wrote to the University’s outside counsel insisting
25 that the University stop sponsoring and promoting the false and defamatory narrative that
26 Professor Choudhry is some sort of predator. Mehta Decl. ¶ 10, Exh. 9. The University has
27 refused to do so.

28 ³ Mehta Decl. ¶ 2, Exh. 1; *id.* ¶ 3, Exh. 2.

1 No “process” at this point could ever cure Defendants’ deprivation of the property rights
2 Professor Choudhry acquired in the Settlement. The second “process,” which renders the finality
3 of the Settlement worthless, is the harm itself. Even if that were not the case, Defendants’ effort
4 to inflict duplicate punishment takes place in a tainted atmosphere of Defendants’ own making:
5 The President of the University has publicly ordered Professor Choudhry “banned,” falsely
6 described his conduct as “grop[ing]” in the national press, and ordered the same Defendants who
7 reached the Settlement to revoke it. *See* Mehta Decl. ¶ 2, Exh. 1; *id.* ¶ 3, Exh. 2. The faculty
8 who would stand in judgment against him voted as a body to award his accuser for bringing new
9 attention to the issue of sexual harassment on campus. *See* Mehta Decl. ¶ 8, Exh. 7; *see also id.*
10 ¶ 9, Exh. 8. And in the intervening year, witnesses have left the University’s employ, Ms. Sorrell
11 is now a civil plaintiff seeking substantial damages, and Professor Choudhry has been pilloried
12 so profoundly on campus and beyond that any notion of fairness is a fantasy.

13 **iii. Due process requires state actors to fulfill the promises they make in**
14 **the exercise of their enforcement powers.**

15 Where state officials wielding enforcement authority make explicit promises to the
16 subject of an enforcement action to settle it, the government is bound by those promises. For
17 example, it is clear that the government may not induce a citizen to enter into a plea or
18 cooperation agreement, where the accused makes admissions or concessions against interest in
19 return for resolving charges with finality, and then abandon that agreement and seek to punish the
20 citizen again in contravention of its promises. The Supreme Court has held that “when a plea
21 rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said
22 to be part of the inducement or consideration, such promise must be fulfilled.” *Santobello v.*
23 *New York*, 404 U.S. 257, 262 (1971). *Santobello* was a constitutional decision governing state
24 proceedings, and thus grounded in the Due Process Clause. *See Buckley v. Terhune*, 441 F.3d
25 688, 694 (9th Cir. 2006) (en banc). The process of resolving criminal conduct by an accused
26 forfeiting rights, agreeing on or conceding a factual statement underlying the resolution, and
27 thereby resolving exposure to the potential discipline one could face in a full trial “presuppose[s]”

28

1 fairness in securing the agreement between the accused and the prosecutor.” *United States v.*
2 *Hall*, 730 F. Supp. 646, 650 (M.D. Pa. 1990).

3 In *United States v. Hallam*, 472 F.2d 168 (9th Cir. 1973), a defendant entered into a plea
4 agreement in which he agreed to plead guilty to count two and count one was dismissed. A year
5 after the defendant pled guilty, and began serving his sentence of three years’ probation, the
6 defendant violated probation and a resentencing hearing was held. *Id.* At the hearing, the
7 government expressed concerns about the viability of its conviction; therefore, the court set aside
8 the plea agreement and the government reindicted on the count dismissed pursuant to the parties’
9 plea agreement. *Id.* The Ninth Circuit, in a per curiam opinion, stated that the government could
10 not set aside the agreement:

11 Judgment having been entered upon count II, it did not lie with the
12 Government unilaterally to seek to set it aside over the objections
13 of the appellant. It is clear from *Santobello v. New York* . . . that
14 due respect for the integrity of plea bargains demands that once a
15 defendant has carried out his part of the bargain the Government
16 must fulfill its part.

15 *Id.*

16 In *Hall*, a defendant who accepted a plea agreement later faced a civil penalty stemming
17 from a separate ongoing investigation that the prosecutors declined to tell him or his counsel
18 about at the time they induced him to accept the plea. The Court held that the prosecutors’
19 representations could “reasonably be understood as an assurance that, at that time, no
20 investigation of Hall was underway that would lead to a civil penalty such as the one at issue in
21 this case,” 730 F. Supp. at 652, and that, even if there were any ambiguity as to whether the terms
22 of his plea agreement reached other civil investigations, that ambiguity must be resolved against
23 the government, *id.* at 650.

24 Professor Choudhry’s situation is directly analogous, and the bargained for Settlement
25 must be enforced. The University of California has a disciplinary system with rules. Mehta
26 Decl. ¶ 5, Exh. 4. The rules provide that the EVCP is the prosecutor, who determines whether to
27 bring charges, *id.* at 11 ¶ 10, and that before he does so, he may offer a settlement, *id.* at 10 ¶ 8,
28 which, as Vice Provost Hermalin correctly and publicly acknowledged, is akin to a “plea

1 agreement,” Marcelino Decl. ¶ 5. Further emphasizing that the EVCP is the prosecutor, if the
 2 EVCP brings charges, the Academic Bylaws state that the EVCP has the “burden of proving the
 3 allegations.” Mehta Decl. ¶ 15, Exh. 14 at ¶ (D)(8); *see also* Mehta Decl. ¶ 5, Exh. 4 at 12 ¶ 10
 4 (stating that references to Chancellor’s designee in Academic Bylaw 336 refer to EVCP).

5 Here, Professor Choudhry accepted punishment that was represented to him as a full and
 6 complete resolution of the disciplinary allegations raised by Ms. Sorrell’s complaint. *See, e.g.*,
 7 Choudhry Decl. ¶¶ 17-20, 25, 26, 28-29. In doing so, as with any plea agreement, Professor
 8 Choudhry gave up critical procedural rights in exchange for a set punishment and finality. *Id.* ¶
 9 21. Here, as in *Hall*, state officials acting under color of state law made statements that “could
 10 reasonably be understood . . . as an assurance that no action such as the present one would be
 11 brought against him.” 730 F. Supp. at 653.⁴ Professor Choudhry satisfied his obligations under
 12 the Settlement, complying with all the disciplinary sanctions. Choudhry Decl. ¶ 21. Therefore,
 13 Defendants’ effort to impose additional punishment notwithstanding those assurances violates
 14 the basic fairness that is a fundamental bedrock of due process. Defendants may not unilaterally
 15 revoke the Settlement, over Professor Choudhry’s objection, because, a year later, due to
 16 criticism and a desire to protect their image, they are unhappy with the deal they reached. There
 17 is no reason not to hold Defendants, state actors empowered to impose punishment by inducing
 18 Professor Choudhry to forgo his procedural rights in exchange for a final resolution, to their
 19 “plea agreement.” The government cannot lie and yet claim any fealty to due process.

20 **iv. Professor Choudhry has been deprived of his Constitutional right to**
 21 **neutral decision makers.**

22 Constitutional due process commands not just a hearing, but a fair one, which requires
 23 neutral and impartial decision makers. *Tumey v. Ohio*, 273 U.S. 510, 532 (1927); *Hamdi v.*
 24 *Rumsfeld*, 542 U.S. 507, 535 (2004) (O’Connor, J., plurality opinion) (noting that due process

25 ⁴ No ambiguity exists as to the Settlement being a complete resolution. However, even if, as
 26 Defendants seem to claim, EVCP Steele (and other administrators) hid that he was only offering
 27 a partial settlement and created an ambiguity, Defendants should not, and cannot, benefit from
 28 that ambiguity. *United States v. Fuentes*, 8 F.3d 1333, 1338 (9th Cir. 1993) (“As with any
 contracts, provisions of plea agreements are occasionally ambiguous; the government ‘ordinarily
 must bear responsibility for any lack of clarity.’”) (citation omitted). Professor Choudhry’s
 objectively reasonable understanding should control. *Buckley*, 441 F.3d at 695.

1 requires an "impartial adjudicator"); *Clements v. Airport Auth. of Washoe County*, 69 F.3d 321,
2 333 (9th Cir. 1995) (quoting *Ward v. Village of Monroeville*, 409 U.S. 57, 59–60, (1972)); *see*
3 *also Republican Party of Minnesota v. White*, 536 U.S. 765, 777 (2002).

4 The decision makers here are not neutral. President Napolitano commanded the duplicate
5 disciplinary process against Professor Choudhry. Mehta Decl. ¶ 2, Exh. 1. Nearly every
6 administrator involved in Professor Choudhry's initial discipline has been replaced, in part due to
7 the negative attention his first discipline received. Not surprisingly, the new administrators have
8 fallen in line. For example, even though her predecessor, EVCP Steele, based on the same
9 conduct and same investigation, settled the matter with sanctions that allowed Professor
10 Choudhry to continue as Dean and a tenured faculty member, EVCP Christ now seeks his
11 dismissal. *Compare* Choudhry Decl. ¶¶ 17-18, 23-25 *with id.* ¶ 42. Vice Provost Hermalin,
12 whose predecessor, Vice Provost Broughton, initially approved of and stood by the disciplinary
13 sanctions and urged Professor Choudhry not to leave UC Berkeley,⁵ recently suggested that a
14 faculty investigation "might be more harsh," "because we care about students," Marcelino Decl.
15 ¶ 9; *see also id.* ¶ 7 (focusing on removal of tenure, the harshest punishment, when describing the
16 disciplinary process). Chancellor Dirks, who recently announced his resignation, is nominally
17 still in the position but has suffered negative backlash for his participation in and approval of the
18 Settlement and discipline Professor Choudhry accepted. He read President Napolitano's
19 command loud and clear, and will inevitably fall in line.

20 Moreover, the faculty who purport to involve themselves in both the duplicative
21 investigation and discipline do so in a tainted atmosphere directly attributable to President
22 Napolitano's false description of Professor Choudhry's conduct as "grop[ing]," a widely-shared
23 belief that Professor Choudhry was so dangerous as to be "banned" from campus beginning last
24 spring, and the continuing sponsorship by University officials of statements that students must
25 "protect themselves" if he were to be on campus. Roughly 120 members of the Academic Senate
26 have publicly taken the position that Professor Choudhry's discipline reflects a lack of
27 seriousness and disrespect for victims, Mehta Decl. ¶ 9, Exh. 8. The entire Academic Senate

28 ⁵ Choudhry Decl. ¶¶ 13, 15, 17, 18, 29.

1 voted in emergency session last spring to grant Ms. Sorrell an award for outstanding service by a
2 staff member because her allegations against Professor Choudhry brought renewed attention to
3 the issue of sexual harassment at the University. Mehta Decl. ¶ 8, Exh. 7. To be clear, members
4 of the Academic Senate would make up the hearing panel that, if formal charges are brought,
5 would decide Professor Choudhry's second disciplinary proceeding. Mehta Decl. ¶ 15, Exh. 14
6 at ¶ (D)(1).

7 In short, there are virtually no "neutral" or "impartial" decision-makers on the Berkeley
8 campus with respect to Professor Choudhry. Should Defendants be allowed to rewrite his
9 discipline, there is no question that the outcome will be extraordinarily harsh punishment.

10 **b. The University Has Violated Professor Choudhry's Rights to Equal**
11 **Protection.**

12 Professor Choudhry will also prevail on his claim that Defendants' actions violate his
13 constitutional right to equal protection. To state a section 1983 claim for violation of the Equal
14 Protection Clause "a plaintiff must show that the defendants acted with an intent or purpose to
15 discriminate against the plaintiff based upon membership in a protected class." *Thornton v. City*
16 *of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005) (quoting *Lee v. City of Los Angeles*, 250 F.3d
17 668, 686 (9th Cir. 2001)).⁶

18 There is a vast and unmistakable difference between how Professor Choudhry has been
19 treated and how Caucasian, United States citizen administrators and faculty who (unlike
20 Professor Choudhry) were found by University investigators to have engaged in pervasive,
21 predatory conduct with students and staff have been treated. Former Vice Chancellor Graham
22 Fleming is still a full Professor of Chemistry, and was permitted to resign his administrative
23 position, citing "health reasons," to resolve an investigation that sustained allegations of overtly
24 sexual and predatory conduct toward his subordinates. President Napolitano's office directly
25 oversaw Fleming's case and an investigation that sustained findings he grabbed a subordinate's
26 breasts, told a subordinate he wanted to molest her, told a subordinate he wanted to sleep with
27 her, went to a hotel room with a subordinate and massaged her feet, approached a subordinate

28 ⁶ For the reasons discussed below, Professor Choudhry will also prevail on his Title VII claim.

1 from behind so he could move her hair to kiss her neck, boasted of a graduate student performing
2 oral sex on him, and more. *See* Mehta Decl. ¶ 11, Exh. 10.

3 Professor Choudhry was and is sorry if, as alleged, his gestures of greeting and support,
4 the occasional hug or kiss on the cheek, made Ms. Sorrell uncomfortable. But contrast the
5 Fleming facts with Ms. Sorrell's allegations, and the OPHD's conclusion that Professor
6 Choudhry was "unconscious" of the effect that his conduct was purportedly having on Ms.
7 Sorrell. Choudhry Decl. ¶ 16. Yet no Defendant has threatened faculty discipline against
8 Professor Fleming, or suggested he be "banned" from campus or that students might need to
9 "protect themselves" given his presence at UC Berkeley. Nor was his office or laboratory moved
10 off campus at any time, and the University certainly did not send communications suggesting that
11 he was a danger and casting him as a pariah. He teaches undergraduate, graduate and post-
12 graduate students. Those measures were reserved for the South Asian man of Indian descent, and
13 a non-United States citizen, Professor Choudhry.

14 So too does the handling of the Geoffrey Marcy matter point to unmistakable disparate
15 treatment based on protected classification. Professor Marcy was found to have engaged in
16 overtly sexual conduct with multiple students over multiple years. *See* Mehta Decl. ¶ 12, Exh.
17 11. He has retired from the University as Professor Emeritus, with (on information and belief)
18 full pension; voting rights in his Department and the Academic Senate; and access to campus
19 resources. Defendant Broughton settled the Marcy case – with finality – upon receipt of an
20 OPHD investigation sustaining allegations of sexual harassment. Broughton's settlement was
21 that Marcy should not violate the University Policy on Sexual Harassment in the future, or he
22 would then face discipline. Mehta Decl. ¶ 13, Exh. 12. No ban from campus, threatened or real.
23 No warning to students that they should "protect themselves." No threatened stripping of his
24 Emeritus status or retirement benefits. Those measures have been taken as to just one member of
25 the Berkeley faculty: Sujit Choudhry. Additional discovery will undoubtedly reveal additional
26 facts as to why it is only the faculty member who belongs to three different protected classes –
27 race, national origin, and citizenship - that Defendants have chosen to punish this way. Professor
28 Choudhry will prevail on his discrimination claims.

1 **2. PROFESSOR CHOUDHRY WILL SUFFER IRREPARABLE HARM IN**
 2 **THE ABSENCE OF RELIEF.**

3 Professor Choudhry suffers irreparable harm *now*, being unable to go to work or teach.
 4 But if this Court does not intervene, then there will be no way to restore the rights that
 5 Defendants have infringed. Should Defendants proceed with duplicate punishment, there is no
 6 meaningful way to restore the property rights (i.e., finality and no further discipline) that were
 7 promised to Professor Choudhry in the Settlement and by the University's disciplinary
 8 procedures. As a California court in *DVD Copy Control Ass'n v. Kaleidescape, Inc.* explained,
 9 this is exactly the type of situation where an injunction should issue:

10 [T]he concept of irreparable harm means more than harm that
 11 cannot be repaired. Irreparable harm includes 'that species of
 12 damages whether great or small that ought not to be submitted to
 13 on the one hand or inflicted on the other.' 'The argument that there
 14 is no 'irreparable damage,' would not be so often used by
 15 [defendants] if they would take the trouble to observe that the word
 16 'irreparable' is a very unhappily chosen one, used in expressing the
 17 rule that an injunction may issue to prevent wrongs . . . which
 18 occasion damages estimable only by conjecture and not by any
 19 accurate standard.' Irreparable harm may be established where
 20 there is the fact of an injury, such as that arising from a breach of
 21 contract, but where there is an inability to ascertain the amount of
 22 damage. In other words, to say that the harm is irreparable is
 23 simply another way of saying that pecuniary compensation would
 24 not afford adequate relief or that it would be extremely difficult to
 25 ascertain the amount that would afford adequate relief.

19 176 Cal. App. 4th 697, 721-22, 97 Cal. Rptr. 3d 856, 876 (Cal. Ct. App. 2009) (emphasis
 20 removed from original; citations omitted).

21 Should Professor Choudhry be forced to face formal disciplinary charges before the
 22 Privilege and Tenure Committee, the very proceeding his Settlement obviated, there is no amount
 23 of pecuniary compensation that could afford him relief after the fact.⁷ The UC Berkeley faculty

24 _____
 25 ⁷ Professor Choudhry will face the stress and difficulties that accompany a second impermissible
 26 punitive proceeding for the same conduct. *Cf. Abney v. United States*, 431 U.S. 651, 661 (1977)
 27 ("[T]he guarantee against double jeopardy assures an individual that, among other things, he will
 28 not be forced, with certain exceptions, to endure the personal strain, public embarrassment, and
 expense of a criminal trial more than once for the same offense. It thus protects interests wholly
 unrelated to the propriety of any subsequent conviction."). Professor Choudhry will also have to
 expend resources in such a proceeding. Defendants will likely claim that any attorneys' fees or
 expenses paid to combat the do over disciplinary proceeding are not recoverable. *Cf. Portland*

1 and administration have received a clear directive from President Napolitano, and when
 2 combined with the campus atmosphere, EVCP Christ's decision to seek dismissal, and
 3 Defendant Hermalin's promise that *faculty* investigators will act more harshly because they "care
 4 about students," the outcome is all but preordained. Moreover, Professor Choudhry has already
 5 lost any meaningful right to confront the facts and conclusions he chose not to contest in
 6 exchange for the Settlement. He certainly received no right to do so via the second
 7 "investigation:" the "Investigative Officers" refused to meet with him as they performed their
 8 "investigation," which in fact merely adopted the findings of July 2015 OPHD investigation, then
 9 only agreed to meet with Professor Choudhry after they had drafted their preliminary
 10 investigative report. Choudhry Decl. ¶¶ 35-38. Since the first investigation was completed,
 11 multiple witnesses have left the University's employ, Ms. Sorrell has sued for substantial money
 12 damages, and Professor Choudhry's matter has become the focal point for criticism of President
 13 Napolitano and the University.

14 3. THE BALANCE OF EQUITIES FAVORS PROFESSOR CHOUDHRY

15 Professor Choudhry meets this prong of the standard. Defendants will not be harmed by a
 16 preliminary injunction. They have already waited over a year before this politically-motivated
 17 effort to revisit and increase Professor Choudhry's discipline. During most of those months,
 18 Professor Choudhry was Dean of Berkeley Law, and he has continued as a tenured professor,
 19 since he voluntarily resigned as Dean six months ago. Any claim that his continued employment
 20 as a faculty member creates some harm is untenable, and Defendants should not be permitted to
 21 rely on the poisoned campus atmosphere *they* created by choosing Professor Choudhry as the
 22 sacrificial scapegoat to purge the University of its prior sins in harassment cases in which
 23 investigations found far more egregious conduct. In short, Defendants will suffer no injury from
 24

25 *Gen. Elec. Co. v. Liberty*, No. 3:13-cv-00495, 2016 WL 4059658, at *8 (D. Or. July 27 2016)
 26 (slip copy) (recognizing that the Ninth Circuit has indicated that "irreparable injury
 27 presumptively would exist if a party is required to expend resources participating in an arbitration
 28 in which it has no duty to participate" and recognizing that many other courts "have also held
 that forcing a party to submit to arbitration when it did not agree to do so, constitutes per se
 irreparable harm") (citing *LAWI/CSA Consolidators, Inc. v. Wholesale & Retail Food Distrib.,
 Teamsters Local 63*, 849 F.2d 1236, 1241 n. 3 (1988) and collecting cases).

1 being put precisely in the position they elected in July 2015. In the unlikely event a court
2 ultimately upholds their attempt to duplicate Professor Choudhry's discipline in these
3 circumstances, Defendants are not injured by a brief delay in the start of their do over.

4 **4. AN INJUNCTION IS IN THE PUBLIC INTEREST**

5 "Generally, public interest concerns are implicated when a constitutional right has been
6 violated, because all citizens have a stake in upholding the Constitution." *Preminger v. Principi*,
7 422 F.3d 815, 826 (9th Cir. 2005). That is certainly the case here, where Professor Choudhry's
8 constitutional rights to due process and equal protection under law have been violated.

9 **E. CONCLUSION**

10 For the forgoing reasons, Plaintiff respectfully requests that the Court enter a preliminary
11 injunction enjoining the Defendants from any and all disciplinary action against Plaintiff Sujit
12 Choudhry arising from the conduct that was the subject of the July 2015 Settlement pending final
13 resolution of this action.

14 Dated: September 22, 2016

Respectfully submitted,

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1 Pursuant to Local Rule 5-1 (i)(3), I attest that the concurrence in the filing of this
2 document has been obtained from each of the other signatories.

3 /s/ Jamie L. Dupree _____
4 Jamie L. Dupree

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