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ROBERT BARON

[REDACTED]

[REDACTED]

[REDACTED]

Tel: (714) 552-3780

[REDACTED]

Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ROBERT BARON, an individual,
Plaintiff,

vs.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; and DOES 1-50,
Defendants.

CASE NO.: 30-2019-01068571-CU-OE-CJC
**SECOND AMENDED COMPLAINT FOR
DAMAGES**

DEMAND FOR JURY TRIAL

1. Retaliation – Labor Code §1102.5, *et seq.*;
2. Violation of California Whistleblower Protection Act – Cal. Govt. Code § 8547.10;
3. Violation of California False Claims Act – Cal. Govt. Code § 12653;

1 Plaintiff ROBERT BARON (“Baron” or “Plaintiff”), by and through her attorneys,
2 charges and allege as follows:

3 **THE PARTIES**

4 1. Plaintiff Baron is an individual who at all relevant times was a resident of
5 the County of Orange in the State of California. At all material times, Plaintiff was the employee
6 of Defendant The Regents of the University of California (“Regents”), at the University of
7 California, Irvine (“UCI”) within the meaning of Government Code section 12940.

8 2. At all material times, Defendant Regents was conducting business within the State
9 of California and in the County of Orange. At all material times, Defendant Regents was a
10 California state agency and conducted business in the State of California, with a location in the
11 County of Orange.

12 3. The true names and capacities, whether individual, corporate, partnership,
13 associate or otherwise of defendants DOES 1-50, inclusive, are unknown to Plaintiff who
14 therefore sues these defendants by such fictitious names pursuant to California Code of Civil
15 Procedure section 474. Plaintiff will seek leave to amend this Complaint or file a DOE statement
16 to allege the true names and capacities of DOES 1-50, inclusive, when the same are ascertained.
17 The DOE defendants, together with Defendant Regents are collectively referred to herein as
18 “Defendants.”

19 4. Plaintiff is informed and believes, and thereon alleges, that Defendants are each
20 responsible in some manner for one or more of the events and happenings that proximately caused
21 the injuries and damages hereinafter alleged.

22 5. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly
23 and willfully acted in concert, conspired together and agreed among themselves to enter into a
24 combination and systemized campaign of activity to cause the injuries and damages hereinafter
25 alleged, and to otherwise consciously and/or recklessly act in derogation of Plaintiff’s rights, and
26 the trust reposed by Plaintiff in each of said Defendants, said acts being negligently and/or
27 intentionally inflicted. Said conspiracy, and Defendants’ concerted actions, were such that, to
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1 Plaintiff's information and belief, and to all appearances, Defendants represented a unified body
2 so that the actions of one defendant was accomplished in concert with, and with knowledge,
3 ratification, authorization and approval of each and every other defendant.

4 6. Plaintiff is informed and believes, and thereon alleges, that each and every
5 defendant named in this Complaint, including DOES 1 through 50, inclusive, is, and at all times
6 mentioned herein was, the agent, servant, alter ego, and/or employee of each of the other
7 defendants and that each defendant was acting within the course of scope of his, his or its
8 authority as the agent, servant and/or employee of each of the other defendants. Consequently,
9 each and every defendant is jointly and severally liable to Plaintiff for the damages sustained as a
10 proximate result of their conduct.

11 **JURISDICTION AND VENUE**

12 7. This Court has jurisdiction over this action pursuant to the California
13 Constitution, Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
14 causes except those given by statute to other courts." The statutes under which this action is
15 brought do not specify any other basis for jurisdiction over Plaintiff's claims to another court.

16 8. This Court has jurisdiction over all defendants because upon information and
17 belief, each defendant is a citizen of California, has sufficient minimum contacts in California,
18 and otherwise intentionally avails itself of the California market so as to render this Court's
19 jurisdiction over it consistent with traditional notions of fair play and substantial justice.

20 9. Venue as to each defendant is proper in this judicial district pursuant to California
21 Code of Civil Procedure sections 395(a) and 395.5, because the Defendants either own or
22 maintain offices in the County of Orange, transact business there, have an agent or agents within
23 the County of Orange, and are otherwise found within the County of Orange.

24 **ADMINISTRATIVE PREREQUISITES**

25 10. Baron was terminated by Defendant Regents on or about June 20, 2017.

26 11. On or about August 23, 2017 and October 18, 2017, Plaintiff filed formal
27 whistleblower retaliation complaints with Defendant Regents.
28

1 18. Upon Baron’s information and belief, the EMA Study received funding the
2 National Institutes of Health (“NIH”), a part of the U.S. Department of Health and Human
3 Services and the largest biomedical research agency in the world.

4 19. Supervisors Wadhwa and Gillen and their staff collected the data for the EMA
5 Study approximately six years prior to Baron’s hire. Baron’s role in the study was to take the data
6 collected by supervisors Wadhwa and Gillen and to analyze the data for purposes of completing
7 the study.

8 20. The project description in the grant document for this research specifically stated
9 the importance of gestational age to the study:

10 Our specific aims are 1) to estimate the magnitude of the effect of maternal
11 psychosocial stress on *a*) maternal-placental-fetal (MPF) hormonal parameters, and
12 *b*) birth outcomes; 2) To estimate the magnitude of the effect of maternal
13 biological stress reactivity on *a*) MPF hormonal parameters, and *b*) birth outcomes;
14 and 3) To determine whether the magnitude of the effect of maternal stress is
15 modulated by **the state in gestation of occurrence of stress**. Complete
16 prospective data will be collected in a sample of at least 120 pregnant women over
17 three 4-day assessments in **early, mid, and late gestation**. (emphasis added.)

18 21. Furthermore, the “Specific Aims” of the study in the grant document stated the
19 importance of gestational age and trimesters to the accuracy of this study and the purpose behind
20 it:

21 AIM 1: To estimate the magnitude of the effect of maternal psychosocial stress
22 using EMA measures on *a*) maternal-placental-fetal endocrine factors, and *b*) birth
23 outcomes (**length of gestation, and birth weight adjusted for gestational
24 length**). (emphasis added.)

25 AIM 2: To estimate the magnitude of the effect of maternal biological stress
26 reactivity using EMA measures on *a*) maternal-placental-fetal hormonal
27 parameters, and *b*) birth outcomes (**length of gestation, and birth weight
28 adjusted for gestational length**). (emphasis added.)

 AIM 3: To determine whether the magnitude of the effect of maternal
psychosocial stress and biological stress reactivity on *a*) maternal-placental-fetal
hormonal parameters and *b*) birth outcomes **varies as a function of the stage/time
in gestation of occurrence of stress**. (emphasis added.)

22. The grant document also specifically stated that the trimesters and gestational age were to be calculated in the study measuring the time since last menstrual period (“LMP”), confirmed by ultrasound scans:

Outcomes			
Length of Gestation	Gestational age	Time since LMP, confirmed by ultrasound	Ultrasound/ medical record

(Figure 1)

Timing of Stress in Gestation			
Stage of Pregnancy	Trimester of pregnancy, gestational age	Time since LMP, confirmed by ultrasound	Ultrasound/ medical record

(Figure 2)

23. In or about March 2017, Baron began to review the data collected in the EMA Study for analysis. Baron found that the research data provided to him in an Excel document by supervisors Gillen and Wadhwa had no trimesters or gestational age listed for the study participants, but had a column labeled “visit” that contained values of “G1,” “G2,” or “G3,” without any record of ultrasound scans and LMP calculation regarding how pregnant women in the study were assigned one of these “G” values. There were also no REDCap¹ data sheets containing any ultrasound scans or any other basis for the trimester and gestational age calculation values assigned to the pregnant women in the study. As such, Baron could not create accurate study databases for the EMA Study.

24. During a weekly meeting of the research group in or around March 2017, Baron raised these issues and asked Wadhwa about the missing ultrasound scans and LMP calculations, but received no answer. Baron also asked Wadhwa if the “G” values in the data were for the three trimester values in the data and how they were calculated without any ultrasound scans and LMP measurements in the data. Wadhwa did not have an answer. Another researcher, however, stated that they had just “guessed” the trimester for each pregnant woman in the study and the “G”

¹ REDCap is a secure web application for building and managing online surveys and databases.

1 prefix in “G1,” “G2,” and “G3” values in the “visit” column of the data stood for “guessed”
2 trimester value for trimester 1, trimester 2, and trimester 3.

3 25. Upon hearing this, Baron advised Wadhwa and the rest of the research team about
4 his concerns with them having “guessed” the trimester values instead of calculating the trimester
5 values based on known gestational age of a pregnant study participant measured by LMP and
6 ultrasound scans as specified in the grant document.

7 26. Baron also asked Wadhwa and the rest of the research team if they could provide
8 him with accurate trimester values for the study participants based on the gestational age and
9 LMP calculations. Wadhwa and members of the research team assured Baron that they would
10 provide him with the requested information. However, for months thereafter, Baron repeatedly
11 requested the information, but received none.

12 27. Instead of providing answers, on or about March 21, 2017, only a few days after
13 Baron’s complaint to Wadhwa and the research team about the research integrity issue,
14 Defendants changed Baron’s employment position from the Department of Statistics to the
15 Pediatrics Department. When Baron inquired about the change, UCI’s Human Resources
16 department informed Baron that the funding change was effective March 1, 2017 to August 31,
17 2017. When Baron originally accepted his position and moved to California he did so with the
18 understanding that his position was a permanent position. However, when Defendant Regents
19 transferred him to the Pediatrics Department, Defendant Regents indicated that it was renegeing on
20 its prior representations of a full-time position for Baron in the Statistics Department. Once he
21 was transferred, Baron sought confirmation that he would continue to be permitted the same job
22 security as when he was in the Statistics Department, but no one provided any such confirmation,
23 nor any confirmation that his position would remain funded after August 31, 2017, nor that he
24 would be able to continue his employment with Defendant Regents following that date.

25 28. Baron proceeded to follow-up on his previously unanswered inquiry about the
26 missing ultrasound scan data. In response, on or about May 10, 2017, UCI’s Human Resources
27 unilaterally requested a second background check on Baron. When Baron questioned UCI’s
28 motives in suddenly requiring a second background check on him, UCI’s Human Resources

1 personnel gave a cryptic and innocuous response, essentially claiming that somehow Baron's first
2 background check was not processed by the Federal Bureau of Investigations. At no time prior to
3 May 10, 2017 – nearly three months into his employment – did Defendant Regents inform Baron
4 that issues existed with his background check or that his background check had to be redone.
5 Only **after** Baron began to complain about the integrity of the data in the EMA Study did
6 Defendant Regents suddenly require an additional background check.

7 29. On or about May 18, 2017, during another meeting with Gillen and the research
8 team, Baron again asked for the true trimester values for the study participants based on
9 ultrasound scans. Gillen feigned ignorance and instead asked two members of the research team
10 to “identify trimester” for each participant in the data and “identify day” that the measurements
11 were taken, and then to get that information to Baron.

12 30. However, by about May 24, 2017, Baron had still not received the requested data.
13 Baron sent an email to Wadhwa, Gillen, and the research team again requesting the information.
14 In response, Baron received two new Excel document files and was asked to make a database
15 based off of the new files sent to him.

16 31. However, upon analysis of the two files, Baron found that the files contained a
17 column labeled “Trimester,” but did not contain any factual basis for calculating the trimester
18 values contained in that column. The files also did not contain any ultrasound scans or LMP date
19 calculations.

20 32. Upon further analysis, Baron discovered that the “supposed” trimester values in
21 the “Trimester” column in the files were the same values as the “guessed” and fabricated “G”
22 values previously labeled as “G1,” “G2,” and “G3” provided to Baron in or about March 2017.
23 The only difference between the March 2017 Excel document, and the May 2017 Excel
24 documents was that in the May 2017 files’ “Trimester” column, a “0” correlated to “G1,” a “1”
25 correlated to “G2,” and “2” correlated to “G3” respectively.

26 33. Baron deduced that supervisors Gillen and Wadhwa, along with the rest of the
27 research team had simply copied the “guessed” visit values in “G1,” “G2,” and “G3” from the
28 March 2017 Excel file and renamed them “0,” “1,” and “2” in the May 2017 files. There was no

1 record of any ultrasound scans, LMP measurements, or any other clinical documentation
2 regarding the study participants' actual trimesters and gestational ages.

3 34. By this time, Baron had grown deeply concerned about the integrity of the EMA
4 Study as he continually received no clarification as to why supervisors Wadhwa and Gillen
5 refused to provide him with the missing data so he could properly analyze and consolidate the
6 information. Nor did Baron ever – at any time – receive any assurance from Wadhwa, Gillen, or
7 anyone at UCI that any ultrasound data or LMP measurements were ever collected for the
8 subjects of the EMA Study.

9 35. On or about May 25, 2017, during another EMA Study research team meeting,
10 Baron again raised his concerns to Gillen and the rest of the research team. Baron asked why the
11 research team still had not provided him with the data requested, where the missing information
12 was, whether it even existed, or a response to the previous remark that the team had “guessed” the
13 trimester of each EMA Study participant.

14 36. Having received absolutely no rational and non-evasive response to his inquiries,
15 on or about May 26, 2017, Baron advised supervisors Wadhwa and Gillen of his concerns
16 regarding research misconduct involving the trimester values via email. In response, Gillen
17 attempted to cover-up the issue by way of a false, circular and non-sensical explanation. Gillen
18 essentially told Baron that the “Trimester” values in the May 2017 files were really visit day
19 values (even though they were labeled “Trimester” values), and that he had asked that the
20 gestational age be added to the data so that the trimesters could be calculated based on the
21 gestational ages.

22 37. Gillen’s explanation was a false and deceptive attempt to cover-up the fact that the
23 EMA Study never collected ultrasound data so that trimesters could not be accurately calculated.

24 38. First, the pregnancy trimester values and visit day values for each study participant
25 were two completely separate and distinct sets of data that were to be collected. Rather than
26 spending the money and taking the time to perform the ultrasounds necessary to collect accurate
27 trimester values for each trimester for hundreds of subjects, Wadhwa’s and Gillen’s team simply
28 tried to pass-off visit date values as trimester values. Only after being called on this

1 misrepresentation by Baron did Gillen claim that the “Trimester” value did not really mean
2 trimester after all. This was itself a lie to try to cover-up the original lie concerning the failure to
3 perform ultrasounds.

4 39. Second, Gillen had previously asked members of his research team – in front of
5 Baron – to provide Baron with both trimester **and** visit day values, indicating Gillen knew the two
6 values should have been separately reported as distinct values; not one in the same.

7 40. Third, even if Gillen’s belated and implausible claim that trimester values were
8 actually visit values – rather than a fraudulent attempt at substituting pure guesses for actual
9 ultrasound-based trimester calculations – the EMA Study still relied on circular logic and
10 guesswork totally devoid of ultrasound data. Gillen claimed, *ex post facto*, that the trimester
11 values could be calculated based on the gestational age dates, but there is glaring problem with
12 this logic: there was no clinical basis in the data for calculating the gestational age because there
13 was never any ultrasound nor any data to confirm where the estimated gestational age values
14 came from, nor that the gestational age values were reliable in any way. Without any ultrasound
15 scans, the gestational ages could not be accurately confirmed, thus the trimesters could not be
16 calculated. Thus, even if Gillen’s implausible explanation were true – which it is not – such
17 explanation still relies on baseless circular logic. That is, according to Gillen, the trimester would
18 be calculated based on the gestational age, and the gestational age is the age that is recorded in the
19 data based on the date of the patient’s visit, but the date of the subject’s visits were based on the
20 presumed and unverified gestational age; *not* an ultrasound. The importance of accurately
21 calculating trimesters by way of ultrasound scan in order to avoid errors cannot be understated.

22 41. According to the American Journal of Obstetrics and Gynecology, relying on the
23 memory of pregnant women, or on estimates from medical professionals without any ultrasound
24 is essentially guesswork. Not only do most women fail to accurately recall when their last
25 menstrual period was, but studies have shown that even when the pregnant woman does recall the
26 date, “that 40% of women have their due dates altered by more than 5 days after dating by
27 ultrasound.” (American Journal of Obstetrics and Gynecology, 2004). The American College of
28 Obstetricians and Gynecologists leave no doubt about it: “Ultrasound measurement of the embryo

1 or fetus in the first trimester (up to and including 13 6/7 weeks gestation) is the most accurate
2 method to establish or confirm gestational age” (Committee Opinion, No. 611, 10/2014).

3 42. Baron’s analysis of the data concluded that the EMA Study contained no data to
4 base of any accurate trimester or gestational age value upon which to rely.

5 43. Shortly after Baron and Gillen’s email exchange, they met in person to discuss
6 various concerns Baron had, including the research integrity issues, the subsequent changes to
7 Baron’s position, his duplicative background check, and his request for a mid-probation
8 performance review as mandated by UCI’s Human Resources policy. Baron again showed Gillen
9 that the trimester values had no documented basis in the data, and that there were no ultrasound
10 scans, no LMP calculations, and no interview responses with the study participants regarding
11 which trimester they were in. Baron told Gillen that he was seriously concerned about the
12 integrity of the trimester data that the EMA Study research team had provided him. Baron also
13 candidly expressed concerns that due to the funding of the EMA Study, state and/or federal laws
14 may have been violated. In response, Gillen again attempted to divert by regurgitating the same
15 non-sensical explanation as articulated in his email. Baron responded that if the EMA Study did
16 not have calculations for the trimesters, the research would not be accurate. To date, despite
17 being given numerous opportunities, none of the defendants, nor anyone for that matter, has ever
18 informed Baron that any ultrasound scans were ever performed on the subjects of the EMA Study.
19 Nor has anyone ever provided Baron with any data collected from any ultrasound scans
20 performed on the subjects of the EMA Study.

21 44. On or about May 30, 2017, Baron addressed his concerns with UCI’s Human
22 Resources department. During the meeting, Baron informed Human Resources of his concerns
23 regarding the lack of data for the EMA Study, and that the research team was fabricating data by
24 “guessing” the trimester/gestational age of the participants.

25 45. On or about June 1, 2017, Baron invited Wadhwa to his office to show him the
26 fabricated trimester values in the data on his computer. Wadhwa offered no rational explanation.
27 On the same day, during the EMA Study weekly meeting, Baron again pointed out the trimester
28 values issue and asked the research team members point blank where the trimester values came

1 from. One of the researchers responded with words to the effect of, “You will just have to take
2 my word for it on that.” Wadhwa immediately scolded the researcher not to say that out loud, but
3 instead say that the data came from some documents. Baron asked what these “documents” were
4 and where they were located. Wadhwa again had no answer, and instead glared at Baron in anger
5 before changing the subject.

6 46. On or about June 2, 2017, Baron emailed his concerns about the previous day’s
7 meeting to Wadhwa, Gillen, and the research team. In response, one of the researchers followed
8 Gillen’s lead and continued to cover-up the trimester fabrication by echoing Gillen’s recent claim
9 that, “The variable called ‘Trimester’ is not ‘calculated’ in any way [. . .] as we explained to you,
10 and as it is recorded in the data dictionary, ‘Trimester’ indicates study visit number.” The
11 researcher also refused to address Baron’s specific statement regarding the researcher’s earlier
12 statement of having “guessed” the trimesters of the participants in the study.

13 47. By this point, Baron realized that he would not receive any additional information
14 from Wadhwa, Gillen, or the rest of the EMA Study research team about the integrity of the data
15 in the study. As such, Baron made a formal written complaint to UCI’s whistleblower hotline. In
16 the call, Baron complained that he believed the falsification of data and any attempts to cover up
17 that falsification constituted severe misconduct. Baron further complained that he had
18 experienced resistance and hostility from Supervisors Wadhwa and Gillen when he complained to
19 them about the lack of data, and he relayed his concerns that this EMA Study may be some form
20 of legal violation given the representations mad in the grant application.

21 48. On or about June 12, 2017, Dr. Craig M. Walsh (“Walsh”) (Associate Vice
22 Chancellor for Research Engagement) and Jill Kay (“Kay”) (Director of Research Policy)
23 interviewed Baron regarding his whistleblower complaint. During the interview, Baron reiterated
24 his concerns that there were no calculations for the trimesters/gestational ages and no supporting
25 documentation – including ultrasound results – for trimester calculations. Walsh and Kay told
26 Baron that they could not do anything and would not speak with anyone about his complaint
27 unless he provided them with a “smoking gun” or evidence that the researchers admitted to fraud,
28

1 or words to that effect. Further, Walsh and Kay sternly discouraged Baron from pursuing his
2 complaint as it could be a “career ender” for Wadhwa, Gillen, and the EMA Study research team.

3 49. Following the whistleblower interview, Baron made several written complaints
4 about experiencing retaliation from supervisors Wadhwa and Gillen as a result of his complaints
5 regarding the EMA Study’s lack of research integrity. Baron continued to send emails to UCI’s
6 Human Resources, but to no avail.

7 50. On or about June 13, 2017, Baron again asked Wadhwa to provide him with a
8 clinical formula regarding how gestational age was calculated for a pregnant female. Wadhwa
9 provided the formula in a series of confusing, self-contradictory emails to Baron.

10 51. On or about June 15, 2017, during the weekly EMA Study research team meeting,
11 Wadhwa verbally berated Baron in front of other researchers and other employees for continually
12 asking probing questions about the trimester values.

13 52. That same day, Baron filed an Equal Employment Opportunity (“EEO”) complaint
14 on citizenship harassment and discrimination as well as retaliation as a result of reporting research
15 data falsification.

16 53. On or about June 15, 2017, Baron also received a cryptic and conclusory statement
17 from UCI (specifically, Walsh) that “insufficient evidence” existed to move forward with Baron’s
18 whistleblower complaint. Baron told Walsh he was willing to provide additional information to
19 support his claims, but never received any further response from either Walsh or Kay about the
20 status of his whistleblower complaint.

21 54. On or about June 16, 2017, Baron filed a revised EEO complaint alleging the same
22 claims as his previous EEO complaint.

23 55. On or about June 16, 2017, Baron also wrote to UCI’s Human Resources and
24 asked to be transferred to another department where he would no longer work with Supervisors
25 Wadhwa and Gillen. Baron received no response.

26 56. On or about June 18, 2017, UCI’s Office of Equal Opportunity and Diversity
27 (“OEOD”) stamped “received” on Baron’s June 16, 2017 EEO complaint.

28

1 57. On or about June 19, 2017, Baron wrote to the NIH about the falsification of data
2 he observed in the EMA Study, as well as the retaliation he experienced for complaining about
3 the research integrity issue. Later that day, Baron discovered that Wadhwa had removed his
4 access to the REDCap database containing all of the EMA Study data, but left his access to non-
5 EMA Study data. When Baron asked Wadhwa's REDCap administrator why his access to the
6 EMA Study data had been removed, he received no response.

7 58. On or about June 20, 2017 – two days after UCI's OEOD received Baron's EEO
8 complaint – Defendant Regents terminated Baron's employment. Defendant Regents did not
9 provide Baron with a substantive reason for his termination. Baron's termination letter merely
10 states that he was being released during his probationary period.

11 59. Even after Baron's termination, he continued to vocalize his concerns about the
12 EMA Study with UCI's Whistleblower Office. Baron submitted formal whistleblower retaliation
13 complaints on or about August 23, 2017 and October 18, 2017, which further alleged that he was
14 terminated as a result of complaining about research misconduct.

15 60. Baron initially spoke with an investigator from UCI regarding his Whistleblower
16 complaints. This investigator appeared to take Baron's complaints very seriously and indicated
17 he had concerns about the integrity of the study. However, this investigator did not complete the
18 report because his employment at UCI abruptly ended before any conclusion was reached.
19 Instead, UCI had a report completed and a conclusion reached by a different investigator – one
20 who never even spoke with Baron.

21 61. On or about December 19, 2018, Baron finally received a short letter from the
22 UCI's Whistleblower Office. The letter indicated in conclusory fashion that UCI had completed
23 its investigation and upon the Chancellor's review of the investigation report, the Chancellor had
24 concluded that no retaliation had occurred as defined by the Cal. Govt. Code and UC Policy. The
25 letter provided absolutely no basis for UCI's finding, disclosed no factual information, no legal
26 analysis, and no information regarding what, if anything, UCI actually did to investigate the
27 complaint. Upon reviewing this cryptic letter Baron asked why the investigator who actually
28

1 performed the investigation and spoke with Baron did not create the report and the conclusion
2 letter. In response, UCI informed Baron that that investigator no longer worked for UCI.

3
4 **FIRST CAUSE OF ACTION**

5 **Retaliation – Cal. Lab. Code § 1102.5, et seq.**

6 **(Against Defendant Regents and DOES 1-50, inclusive)**

7 62. Plaintiff refers to and incorporates by reference each and every preceding and
8 subsequent paragraph in this Complaint, as if fully set forth herein.

9 63. At all times herein mentioned, California Labor Code section 1102.5(a) was in full
10 force and effect and was binding upon Defendants, and each of them. Labor Code 1102.5(a)
11 provides:

12 (a) An employer may not make, adopt, or enforce any rule, regulation, or policy
13 preventing an employee from disclosing information to a government or law
14 enforcement agency, to a person with authority over the employee or another
15 employee who has the authority to investigate, discover, or correct the violation or
16 noncompliance [. . .] if the employee has reasonable cause to believe that the
information discloses a violation of state or federal statute, or a violation or
noncompliance with a state or federal rule or regulation, regardless of whether
disclosing the information is part of the employee’s job duties.

17 64. At all times herein mentioned, California Labor Code section 1102.5(b) was in full
18 force and effect and was binding upon Defendants, and each of them. Labor Code 1102.5(b)
19 provides:

20 (b) An employer may not retaliate against an employee for disclosing information
21 to a government or law enforcement agency, to a person with authority over the
22 employee or another employee who has the authority to investigate, discover, or
23 correct the violation or noncompliance [. . .] if the employee has reasonable cause
24 to believe that the information discloses a violation of state or federal statute, or a
violation or noncompliance with a state or federal rule or regulation, regardless of
whether disclosing the information is part of the employee’s job duties.

25 65. At all times herein mentioned, Labor Code section 1102.5(c) as in full force and
26 effect and was binding upon Defendants, and each of them. Labor Code section 1102.5(c)
27 provides: “An employer may not retaliate against an employee for refusing to participate in an
28 activity that would result in a violation of state or federal statute, or a violation or noncompliance

1 with a state or federal rule or regulation.”

2 66. As set forth fully herein, Defendants retaliated against Plaintiff as a result of his
3 refusal to aid and abet Defendants’ scheme to defraud the government and/or for disclosing the
4 information to Plaintiff’s supervisors Wadhwa and Gillen, UCI’s Human Resources, UCI’s Office
5 of Equal Opportunity and Diversity, UCI’s Whistleblower Office, and the NIH about Defendants’
6 fraudulent acts.

7 67. Some of Plaintiff’s complaints include, but are not limited to, a formal
8 whistleblower complaint made to the whistleblower hotline on or about June 2, 2017, EEO
9 complaints made on or about June 15, 2017 and June 16, 2017, a complaint to the NIH on or
10 about June 19, 2017. Defendants failed to take Plaintiff’s complaints seriously. Instead,
11 Defendants terminated Plaintiff shortly after his complaints and failed to give Plaintiff a
12 substantive reason for his termination. Thus, Defendants’ conduct is in violation of Labor Code
13 section 1102.5.

14 68. As set forth herein, Defendants retaliated against Plaintiff for protesting about
15 falsified EMA Study data.

16 69. As a direct and proximate result of the unlawful practices described herein, Baron
17 has suffered damage and injury as herein alleged.

18 70. Moreover, Baron is entitled to costs of suit and reasonable attorneys’ fees pursuant
19 to Code of Civil Procedure section 1021.5 and any other applicable statute.

20
21 **SECOND CAUSE OF ACTION**

22 **Retaliation in Violation of Cal. Govt. Code § 8547.10**

23 **(Against Defendant Regents and DOES 1-50, inclusive)**

24 71. Plaintiff refers to and incorporates by reference each and every preceding and
25 subsequent paragraph in this Complaint, as if fully set forth herein.

26 72. At all times herein mentioned, Cal. Govt. Code section 8547.10 was in full force
27 and effect and was binding upon Defendants, and each of them. Cal. Govt. Code section
28 8547.10(c) provides: “any person who intentionally engages in acts of reprisal, retaliation, threats,

1 coercion, or similar acts against a university employee [. . .] for having made a protected
2 disclosure shall be liable in an action for damages brought against him or her by the injured
3 party.”

4 73. As set forth herein, Defendants retaliated against Plaintiff for complaining about
5 data research integrity, specifically, that the EMA Study: (1) lacked any scientific documentation
6 or records to support the trimester values of the participants; (2) that the trimester values were
7 fabricated as there was no scientifically collected data to support the calculation of the trimesters;
8 and (3) various members of the research team, including Supervisors Wadhwa and Gillen,
9 attempted to cover up the fabrication of data.

10 74. Plaintiff had reasonable cause to believe that these issues were in violation of the
11 terms and conditions under which Defendants had received funds for the EMA Study. Plaintiff
12 notified supervisors Wadhwa and Gillen, UCI’s Human Resources, UCI’s Office of Equal
13 Opportunity and Diversity, UCI’s Whistleblower Office, and the NIH of the serious concerns he
14 had that researchers were fabricating data.

15 75. Some of Plaintiff’s complaints include, but are not limited to, a formal
16 whistleblower complaint made to the whistleblower hotline on or about June 2, 2017, EEO
17 complaints made on or about June 15, 2017 and June 16, 2017, a complaint to the NIH on or
18 about June 19, 2017, and formal whistleblower retaliation complaints on or about August 23,
19 2017 and October 18, 2017. Defendants failed to take Plaintiff’s complaints seriously. Instead,
20 Defendants terminated Plaintiff on June 20, 2017 and failed to give Plaintiff a substantive reason
21 for his termination even at the conclusion of Defendant Regents’ whistleblower investigation.
22 Thus, Defendants’ conduct is in violation of Government Code section 8547.10.

23 76. Government Code section 8547.10(c) also provides that “[p]unitive damages may
24 be awarded by the court where the acts of the offending party are proven to be malicious.”
25 Furthermore, “[w]here liability has been established, the injured party shall also be entitled to
26 reasonable attorneys’ fees as provided by law.”

27 77. Plaintiff has also exhausted his administrative remedies by making a “protected
28 disclosure, together with a sworn statement that the contents of the written complaint are true, or

1 are believed by the affiant to be true, under penalty of perjury” on or about August 23, 2017 and
2 October 18, 2017, pursuant to Government Code section 8547.10(a).

3 78. Government Code section 8547.10(c) states that “any action for damages shall not
4 be available to the injured party unless the injured party has first filed a complaint with the
5 university officer identified pursuant to subdivision (a), and the university has failed to reach a
6 decision regarding that complaint within the time limits established for that purpose by the
7 regents. Nothing in this section is intended to prohibit the injured party from seeking a remedy if
8 the university has not satisfactorily addressed the complaint within 18 months.”

9 79. Defendant Regents concluded its investigation and notified Plaintiff of its
10 conclusory decision that Plaintiff’s allegations were not substantiated on or about December 19,
11 2018. Defendant Regents did not satisfactorily address Plaintiff’s complaint. (*Taswell v. The*
12 *Regents of the University of California* (2018) 23 Cal.App.5th 343, 356, the court found that the
13 most natural reading of the phrase “not satisfactorily addressed the complaint” is that the
14 complaint was not addressed to the complainant employee’s satisfaction.)

15 80. As a direct and proximate result of the unlawful practices described herein, Baron
16 has suffered damage and injury as herein alleged.

17 81. As a direct and proximate result of this unlawful retaliation, Baron seeks the
18 imposition of punitive damages because Defendants and its managers, officers, and/or directors
19 committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful
20 intention of injuring Baron and acted with an improper and evil motive amounting to malice or
21 oppression, and in conscious disregard to Baron’s rights. Moreover, Defendants and their
22 managers, officers, and/or directors authorized and/or ratified the wrongful conduct of their
23 employees and/or are personally guilty of oppression, fraud, or malice. As such, Baron is entitled
24 to recover punitive damages from Defendants in an amount according to proof at trial.

25 82. Plaintiff has incurred, and will continue to incur, attorneys’ fees as a result of
26 bringing this action and therefore is entitled to reasonable attorneys’ fees pursuant to Government
27 Code section 8547.10(c) and any other applicable statute.

28 ///

1 8. For reasonable attorneys' fees pursuant to Government Code Section 12965(b),
2 Code of Civil Procedure Section 1021.5, and any other applicable statutory provision; and

3 9. For such other and further relief as the Court may deem proper.
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6 Dated: May 19, 2021

7 ROBERT BARON



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11 _____
12 Plaintiff
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