

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Wendy Chang

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE

YAN XU as an individual and administrator  
for the ESTATE OF DAVIS XU, and  
HUIPING DAI, an individual,

Plaintiff(s).

v.

OCCIDENTAL COLLEGE, a California  
corporation; RUTH M. JONES, an individual;  
STEPHANIE A. MALTER, an individual;  
SHAUNTI M. YANIK, an individual;  
PUBLIC INTEREST INVESTIGATIONS,  
INC., a California Corporation; and DOES 1-  
20, inclusive,

Defendant(s),

Case No.: 19STLC02141

COMPLAINT FOR

- (1) WRONGFUL DEATH;
- (2) SURVIVAL ACTION;
- (3) VIOLATION OF 42 U.S.C. § 1983;
- (4) VIOLATION OF TITLE IX –  
ERRONEOUS OUTCOME; AND
- (5) VIOLATION OF TITLE IX –  
SELECTIVE ENFORCEMENT.
- (6) VIOLATION OF UNRUH CIVIL  
RIGHTS ACT

COMES NOW, Plaintiffs YAN XU as an individual and administrator for the ESTATE OF  
DAVIS XU, and HUIPING DAI, an individual, hereby allege as follows:

**INTRODUCTION**

A. Plaintiffs bring this action for statutory violations, wrongful death, and survival claims,  
because Defendants, and each of them, directly and/or proximately caused the wrongful death of their

COMPLAINT FOR DAMAGES

1 beloved son, DAVIS XU. This case, among other reasons, arises out of the wrongful conduct, misuse of  
2 authority and misguided Title IX investigation of Mr. XU by his college and its agents and personnel,  
3 which lacked any semblance of compliance with due process, confrontation of accuser(s)/witnesses,  
4 and/or a fair administration or trial process.

5 B. Approximately two months before Mr. XU's passing away, Defendant STEPHANIE A.  
6 MALTER, a fellow classmate, accused Mr. XU of sexual harassment and stalking based upon their  
7 exchange of innocuous Facebook messages over the course of a day. The wrongful investigation and  
8 results of that investigation, and Defendants, and each of them, and their conduct, exacerbated XU's  
9 known clinical depression and resulted in his accidental or intentional intake of multiple prescription  
10 drugs resulting in his death. Shortly after receiving notice on January 11, 2017 that he was found guilty  
11 of "stalking" after the investigation Defendant OCCIDENTAL COLLEGE ordered, Mr. XU suffering  
12 from such severe depression, was found dead in his dormitory room at OCCIDENTAL COLLEGE on  
13 the afternoon of February 27, 2017.

#### 14 **JURISDICTION AND VENUE**

15 1. The court has jurisdiction over this matter pursuant to California Code of Civil Procedure  
16 Section 401.10.

17 2. Venue is proper in Los Angeles County Superior Court because one or more Defendants are  
18 located or reside in the County of Los Angeles and are subject to the personal jurisdiction of this Court.

#### 19 **PARTIES**

20 3. Plaintiffs YAN XU AND HUIPING DAI are individuals who reside in the County of Marin,  
21 State of California. They are the natural parents and next of kin of DAVIS XU. Plaintiff YAN XU,  
22 shall serve as administrator for the estate of DAVIS XU which formed by operation of law in order to  
23 recover damages for the injuries and harm suffered as alleged in this action to DAVIS XU as a result of  
24 the misconduct herein alleged and otherwise as permitted under California law individually and for the  
25 heirs.

26 4. Defendant OCCIDENTAL COLLEGE is a California corporation formed April 20, 1887 and  
27 operates as a private, co-educational liberal arts college located in the Eagle Rock neighborhood of Los  
28 Angeles County, California.

1       5. Defendant RUTH M. JONES was at all times relevant the Title IX Coordinator for defendant  
2 OCCIDENTAL COLLEGE and assigned responsibility to monitor OCCIDENTAL COLLEGE's overall  
3 compliance with Title IX, ensure appropriate training and education, and oversee OCCIDENTAL  
4 COLLEGE's investigation, response, and resolution of reports made under OCCIDENTAL  
5 COLLEGE's Title IX policies. Defendant RUTH M. JONES is an attorney licensed to practice in  
6 California, state bar number 189969.

7       6. Defendant STEPHANIE A. MALTER is an individual who resides in the County of Los  
8 Angeles, State of California, and at all times relevant was and is an undergraduate student at  
9 OCCIDENTAL COLLEGE.

10       7. Defendant SHAUNTI M. YANIK is an individual who resides in the County of Los Angeles,  
11 State of California. Defendant YANIK was, at all times relevant, working as an investigator with or for  
12 Defendant PUBLIC INTEREST INVESTIGATIONS, INC.

13       8. Defendant PUBLIC INTEREST INVESTIGATIONS, INC. ("PII") is a California corporation  
14 whose principal place of business is in the County of Los Angeles, State of California.

15       9. Plaintiff is ignorant of the true names and capacities of the Defendants named herein as DOES  
16 1 to 20 inclusive, and therefore names these Defendants by such fictitious names and will amend this  
17 complaint when their names are ascertained.

18       10. Plaintiffs are informed and believe and upon such information and belief allege that at all times  
19 herein mentioned, Defendants and each of them, were the agents, servants, employees, assistants, and/or  
20 consultants of their co-Defendants and were, as such, acting within the course, scope, purpose and  
21 authority of said agency and employment; that each and every defendant as aforesaid, when acting as a  
22 principal, was negligent in the supervision, selection, hiring, proctoring, granting of, reviewing and  
23 renewing staff privileges, of each and every other defendant as an agent, servant, employee, assistant  
24 and/or consultant.

25       11. Plaintiffs are informed and believe and upon such information and belief allege that each  
26 Defendant designated herein as a DOE was responsible, negligently, or in some other actionable  
27 manner, for the events and happenings herein referred to, which proximately caused the injuries and  
28 damages to Plaintiffs as are hereinafter alleged.

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13. After Mr. XU and Ms. MALTER attended a mandatory meeting entitled “Embracing Differences” on September 20, 2016, MALTER suggested to XU that the two become Facebook friends, and she input her Facebook information into the Facebook application on XU’s phone. Over the next few days, the two exchanged a few Facebook messages regarding a “social norms” assignment they had received in their sociology class.

15. Despite the short length of the correspondence between MALTER and XU, the lack of any threatening, sexual, or harassing messages, and only after MALTER learned of comments made about her by Mr. XU to another student, MALTER retaliated and filed a Title IX complaint against XU on September 30, 2016, alleging that XU had “sexually harassed” and “stalked” her and falsely claiming that she received repeated Facebook postings from Mr. XU even after she instructed him to discontinue contact. A true and correct copy of the entire Facebook dialog between Defendant STEPHANIE A. MALTER and DAVIS XU is attached hereto as Exhibit 1.

16. At the time of MALTER's complaint about XU, Defendant OCCIDENTIAL COLLEGE had a defective and unfair Title IX policy, the Occidental College Sexual Misconduct Policy, that allowed unqualified investigators, with no legal training or adherence to fair legal processes, to unilaterally make findings of guilt or innocence without any evidentiary hearing, and which Defendant OCCIDENTIAL COLLEGE, "rubber stamps" and adopts with a similarly defective and unfair appeal process that also does not adhere to any due process and fairness in administration or decision.

1 17. Despite a lack of evidence against DAVIS XU, as further alleged herein, and the absence of  
2 any threatening or harassing communications or conduct, Defendant YANIK found that DAVIS XU had  
3 “stalked” MALTER based on the Facebook messages exchanged between the two students on  
4 September 25, 2016 over an eight-hour period. As a result, Defendant OCCIDENTIAL COLLEGE  
5 placed DAVIS XU on probation for a year as punishment for “stalking” and required him to comply  
6 with certain conditions before he could be reenrolled.

7 18. This negligent and unjust investigation, the mistreatment XU suffered, and the unjust and  
8 unsupported decision caused a substantial worsening in DAVIS XU’s clinical depression, which he  
9 personally vocalized and wrote to Defendants, and each of them, during this time, but towards which the  
10 Defendants, and each of them disregarded and acted indifferently even after DAVIS XU revealed that he  
11 was already taking prescription medication for his clinical depression. Thus, by February 27, 2017, the  
12 negligent and unjust investigation, the mistreatment he suffered, and the unjust and unsupported  
13 punishment by Defendant OCCIDENTIAL COLLEGE, led DAVIS XU to take an accidental or  
14 intentional overdose of multiple prescription drugs resulting in his tragic death on February 27, 2017.

15 **The Facebook Messages, Accusation, and the Defective and Unjust Investigation**

16 19. After MALTER and DAVIS XU first exchanged some messages regarding their school work  
17 assignment for their shared sociology course on September 25, 2016, DAVIS XU wrote MALTER  
18 Facebook messages telling her that he was considering asking her out, but she told him that “she was  
19 just not interested in people.” Rather than continuing to pursue any romantic or sexual relations with  
20 MALTER, DAVIS XU wrote back and apologized to MALTER and stated that he was embarrassed, to  
21 which she responded that “we’re fine,” and she *continued* to respond to DAVIS XU’s messages  
22 *thereafter*.

23 20. In an attempt to further explain himself, DAVIS XU wrote to MALTER that “I just thought  
24 you were really awesome even at first glance; and smart from what you say in class; personality matters  
25 more; but I also have this weird thing for redheads, idk; sorry; I will stop; before I embarrass myself  
26 more; go do work; I gotta do mine too.” MALTER responded: “Yeah you should probably stop lol ton  
27 just gotta relax.”

28 21. When interviewed by Defendant YANIK, a senior investigator working for or with Defendant

1 PII, MALTER told YANIK that she could have blocked DAVIS XU from Facebook at the time and  
2 wished she had. MALTER stated that she believed she communicated to DAVIS XU that she no longer  
3 wished to talk to him by stating “you should probably stop,” but then she stated that she made this  
4 comment “in a fun way” and continued to communicate with DAVIS XU when he messaged her after.

5 22. When messaging her again, XU brought up his ex-girlfriend, including that she had been raped  
6 by her ex-boyfriend. While MALTER claimed that this conversation made her uncomfortable, she  
7 responded, “People are so fucked up. That’s why I don’t date/like humans in general,” and continued to  
8 inquire about whether XU still had any contact with his ex-girlfriend.

9 23. MALTER also claimed that DAVIS XU made her uncomfortable when he discussed his  
10 ongoing personal litigation against Brown University, yet she continued to encourage communications  
11 with him by telling him that she wanted to be a criminal prosecutor due to her “low levels of sympathy  
12 for people” and because, “People are horrible.”

13 24. Despite MALTER having already clearly stated to Defendant YANIK that she believed she  
14 told DAVIS XU that she no longer wished to communicate earlier, MALTER continued to communicate  
15 with DAVIS XU and actually wrote to him, “This world is horrible; With that said I need to actually get  
16 my homework done be I could rant for ages; So I’m gonna ball out for now.”

17 25. DAVIS XU responded to MALTER later on September 25, 2016, informing her that he was  
18 grateful that their professor had granted him an extension since he was thinking he was about to go “into  
19 a bout of clinical depression.” It was at the end of that conversation, only after DAVIS XU brought up  
20 his history of depression, that MALTER wrote DAVIS XU that she preferred that he stop talking to her.  
21 DAVIS XU wrote back “I wasn’t expecting that actually but ok I respect that; you can unfriend me on  
22 fb. One final interjection: that was pretty rude to be honest and really hurt; what I’m going through right  
23 now; please don’t do that to other people in the future It’s offensive. [Professor 1] has depression. I have  
24 to block you. I’m sure you want the same.” DAVIS XU did not make any further contact with  
25 MALTER after that message, nor did he attempt to make any further contact with her again.

26 26. Shortly after September 25, 2016, Ms. MALTER learned of statements that Mr. XU had made  
27 concerning her to third parties.

28 27. Knowing DAVIS XU was in a fragile state of clinical depression, MALTER filed a complaint

1 on September 30, 2016 alleging violations of OCCIDENTAL COLLEGE's sexual harassment and  
2 stalking policies, in its Sexual Misconduct Policy ("Complaint").

3 28. On October 4, 2016, Defendant RUTH M. JONES sent Mr. XU a notification letter that Ms.  
4 MALTER had filed a complaint with the Title IX Office alleging an incident of stalking and sexual  
5 harassment that occurred from September 20, 2016 – September 25, 2016 and "that you sent the  
6 Complainant repeated Facebook postings even after she instructed you to discontinue contact." Ms.  
7 JONES further stated that the Title IX office had determined that the allegations, if true, could constitute  
8 a violation of the college's Sexual Misconduct Policy and that Ms. MALTER's complaint must proceed  
9 through formal investigation and resolution.

10 29. When Mr. XU met with Defendant RUTH M. JONES on October 4, 2016, he asserted that Ms.  
11 MALTER had filed her Title IX complaint to retaliate for statements he made to third parties about Ms.  
12 MALTER and his statement to Ms. MALTER on Facebook that she was being rude and offensive. On  
13 October 11, 2016, Mr. XU filed a formal retaliation complaint, which Defendant JONES dismissed three  
14 days later on the stated grounds that under the Sexual Misconduct Policy, "Retaliation can be committed  
15 by or against any individual or group of individuals, not just a Respondent or Complainant" and  
16 "retaliation is applicable if an adverse action was taken against a Complainant (the student filing the  
17 report) for making a good faith report of prohibited conduct or participating in any proceeding under this  
18 Policy."

19 30. On October 4, 2016, Defendant PII received an External Investigation Assignment Letter from  
20 Defendant OCCIDENTAL COLLEGE to investigate the complaint MALTER filed against DAVIS XU.  
21 The Complaint specifically alleged that DAVIS XU sent MALTER "repeated Facebook messages after  
22 she instructed him to discontinue contact with her."

23 31. Defendant YANIK was assigned to investigate the Complaint and prepare a report that was to  
24 include findings of fact and responsibility for policy violations as determined by Ms. YANIK. Ms.  
25 YANIK conducted an investigation that included interviews with MALTER, DAVIS XU, and two  
26 unnamed witnesses, without counsel for the accused or otherwise any proper notice of the accusation.  
27 The interviews were conducted from October 13, 2016 to October 18, 2018.

28 32. During his interview with YANIK, DAVIS XU understandably stated that he did not

1 understand MALTER's last messages, which stated, "you're totally fine" and "No problem I hope you  
2 get some clarify see you later," to indicate that she did not want DAVIS XU to continue to contact her  
3 any further. Instead DAVIS XU explained that he thought that "ninety-nine percent of other people"  
4 would agree that MALTER's last messages meant "no problem I hope you get some clarity see you  
5 later," which did not show an intent to cease all communications between MALTER and DAVIS XU.

6 33. DAVIS XU also questioned why his compliments to MALTER, being "instantly attracted" to  
7 her and "having a thing for redheads," was "really that detrimental" and DAVIS XU told YANIK that he  
8 thought that MALTER was trying to make up as much as possible to get him into as much trouble as  
9 possible after her made-up Complaint.

10 34. DAVIS XU further questioned why MALTER never stated anything to him directly about how  
11 his comments made her feel uncomfortable at any time prior to the Complaint. Being sensitive to the  
12 awkwardness, DAVIS XU further explained to Defendant YANIK that had MALTER told him that he  
13 was making her uncomfortable, he would have immediately stopped communicating with her entirely.

14 35. When Defendant YANIK asked DAVIS XU about a particular message to MALTER stating  
15 that "he would stop," DAVIS XU explained he was referring to embarrassing himself by asking  
16 MALTER out, but that it did not indicate that MALTER asked him to stop contact or that he had agreed  
17 to stop communicating with her at her behest.

18 36. When Defendant YANIK inquired about DAVIS XU mentioning that DAVIS XU's ex-  
19 girlfriend had been raped, DAVIS XU attempted to explain to Defendant YANIK that they had a  
20 common interest in criminal justice and that MALTER had mentioned that her mother was a volunteer  
21 attorney in a poor neighborhood and had dealt with "rape and stuff."

22 37. DAVIS XU also tried to explain to Defendant YANIK that he had not attempted to contact  
23 MALTER in any way since their last messages on September 26, 2016 and that he had not attempted to  
24 contact her since that time.

25 38. Defendant YANIK's investigation states that MALTER was "freaked out" after she read a  
26 Buzzfeed article that DAVIS XU had sent her regarding his litigation against Brown University, which  
27 he had previously attended. MALTER told Defendant YANIK that she had an anxiety disorder and had  
28 been prescribed medication, which kept her balanced, but after she read about DAVIS XU's past



1 behavior she became “too afraid” to go out by herself at night.

2 39. However, MALTER confirmed to Defendant YANIK that DAVIS XU had not attempted to  
3 make any contact with her since she filed her Complaint and that she had only seen him at the dining  
4 hall once since it happened.

5 40. MALTER told YANIK that her fear was not based on DAVIS XU’s actions toward her but  
6 “not knowing what DAVIS XU may do as a result of sending her the BuzzFeed article about himself.”

7 41. In the report that YANIK prepared for Defendant OCCIDENTIAL COLLEGE, regarding  
8 MALTER’s Complaint, Defendant YANIK found that “Complainant’s [MALTER’s] messages did not  
9 clearly indicate that she wanted to stop communication with Respondent [XU] until her last message.  
10 When Complainant clearly stated that she no longer wanted to communicate with Respondent,  
11 Respondent wrote back one additional time, and then discontinued contact, on the same day.  
12 Respondent did not attempt to contact Complainant in person or by any other means after the last  
13 exchange.”

14 42. Defendant YANIK concluded that, “Based on the preponderance of the evidence, we find that  
15 Respondent did not continue to contact Complainant after she clearly told him to stop communicating  
16 with her, aside from one Facebook message in which he stated that he and Complainant should unfriend  
17 each other on Facebook.”

18 43. Defendant YANIK additionally found that “Based on the preponderance of the evidence,  
19 Defendant PII found that Respondent did not sexually harass Complainant based on her gender.”

20 44. However, inexplicably and without factual support or basis, Defendant YANIK held that  
21 DAVIS XU engaged in two (2) acts that caused MALTER to fear for her safety [(a) communicating to  
22 two other people on social media regarding MALTER, and (b) sending her a BuzzFeed article that  
23 described him having “drunken fights” with his ex-girlfriend], although Defendant YANIK concluded  
24 that MALTER’s emotional distress was “not substantial.”

25 45. Defendant YANIK further concluded that, “Based on the preponderance of the evidence, we  
26 found that Respondent did not violate the College’s Sexual Misconduct Policy regarding harassment,  
27 gender-based harassment and sexual harassment” finding that “Complainant did not provide a clear  
28 directive that Respondent’s messages were unwelcome until their last exchange, following which

Respondent stopped communicating with her” and “Complainant said the communications caused her anxiety, but they do not appear to have interfered with her ability to participate in education programs. Finally, while Respondent did ask Complainant out, he immediately apologized for doing so after Complainant declined his invitation.”

46. Despite YANIK’s conclusions regarding DAVIS XU not violating the College’s Sexual Misconduct Policy, she concluded that DAVIS XU did violate the College’s policy regarding stalking because he allegedly engaged in two or more acts of communicating directly and indirectly to and about the Complainant, in such a way that a reasonable person under similar circumstances and with similar identities of the Complainant’s would fear for their safety.

47. Based on Defendant YANIK’s report there were two actions that gave rise to her conclusion that DAVIS XU was guilty of stalking, which were: (1) the link to the published Buzzfeed article that DAVIS XU sent to MALTER; and, (2) his communication with a third party who did not know MALTER, and to whom he referred to MALTER as a “bitch” and a “certain redheaded asshole” without mentioning her name. However, both the published Buzzfeed article and Mr. XU’s statements to the third party were protected Free Speech under the Occidental College Sexual Misconduct Policy provision, “*The College’s Commitment to Academic Freedom and Free Speech.*”

48. When Mr. XU sent Ms. MALTER the link to the Buzzfeed article, he wrote, “if ur interested in civil rights y eah that’s me.” When Ms. MALTER later responded, “I’m not the person to talk to about this,” Mr. XU responded, “sorry probably shouldn’t sent that civil rights article,” then “shouldn’t have\* don’t read it.” Ms. MALTER apparently read the article later.

49. Defendant YANIK misplaced significant emphasis on the content of the Buzzfeed article to suggest that after MALTER read the article she experienced some kind of fear for her safety, specifically noting DAVIS XU’s “multiple suicidal gestures” and “impulsive, risk-taking behaviors.”

50. By December 6, 2016, Defendant JONES sent DAVIS XU a letter via email advising him that Defendant YANIK found him guilty of stalking but not for sexual or gender-based harassment. In that letter, DAVIS XU was advised that a review panel would determine the sanctions and that he and MALTER had until December 13, 2016 at 5:00 p.m. to submit an impact statement.

51. On December 9, 2016, Defendant JONES advised DAVIS XU that his request for an extension

1 had been granted. He was given until December 22, 2016 to submit an impact statement.

2 52. On January 11, 2017, Defendant JONES informed DAVIS XU that (1) he would be placed on  
3 disciplinary probation from January 23, 2017 through January 23, 2018; (2) he must meet with a  
4 representative of the Office of Student Conduct monthly during the term of the disciplinary probation;  
5 (3) he must complete the online prevention education programs assigned to members of his class; (4) he  
6 must write a letter of reflection of no less than 1,000 words by February 15, 2017; and (5) he could have  
7 no contact with MALTER for the remainder of their time as students. He was further advised that if he  
8 intended to appeal, he must do so prior to January 17, 2017 at 5:00 p.m.

9 53. On January 18, 2017 at 4:40 a.m., DAVIS XU sent an email with the subject line "What's  
10 next?" to Defendant JONES. In his email DAVIS XU sought to understand the harshness of the penalty  
11 and noted that he would not be accepted into law school or medical school because the stalking findings  
12 would be part of his college record.

13 54. On January 23, 2017, DAVIS XU sent his statement of appeal to Defendant JONES. In  
14 DAVIS XU's statement of appeal, he advised the Appeal Officer, Tamara Himmelstein, Assistant Dean  
15 of Students, that he was having depression, anxiety, PTSD, and panic disorder, which resulted in "self-  
16 harm" and "significant suicidal ideation," which lead to his partial hospitalization over the last winter  
17 break. DAVIS XU also stated that he would file suit against the College if he lost the appeal.

18 55. On January 24, 2017, DAVIS XU emailed Defendant JONES stating that OCCIDENTAL's  
19 Emmons Wellness Center failed to properly treat him for his depression, anxiety and suicidal ideation.  
20 DAVIS XU also advised Defendant RUTH M. JONES that he learned that he would not be able to  
21 graduate on time because he was no longer eligible for independent study due to the probation sanction.

22 56. On January 24, 2017, Defendant JONES sent DAVIS XU a letter acknowledging receipt of his  
23 appeal and advising that MALTER had until January 29, 2017 to respond.

24 57. On January 27, 2017, MALTER filed a response to the appeal.

25 58. From February 16, 2017 through February 18, 2017, DAVIS XU retained counsel in  
26 connection with the appeal on the Complaint and to represent him in respect to the claims for  
27 misconduct by Defendants.

28 59. In and between February 19 to 24, 2017, DAVIS XU, by and through his counsel, and

1 Defendant OCCIDENTIAL COLLEGE, entered into discussions related to the Complaint, Appeal, and  
2 claims by DAVIS XU related thereto. However, by February 27, 2017, DAVIS XU had passed away.

3 **FIRST CAUSE OF ACTION**

4 **(WRONGFUL DEATH)**

5 *(C.C.P. § 377.32 - by all Plaintiffs against all Defendants)*

6 60. Plaintiffs hereby incorporate by reference each allegation made in this complaint as if fully set  
7 forth without duplication.

8 61. Plaintiffs would be and are each entitled to the property of Plaintiffs' decedent, DAVIS XU,  
9 under California Laws of intestate succession as his parents and only heirs. Persons of such degree of  
10 kinship would be entitled to the property of the decedent by intestate succession pursuant to the  
11 provisions of California Probate Code §§ 6400 *et seq.* DAVIS XU, Plaintiffs' decedent, had no wife or  
12 children. A true and correct copy of the death certificate for DAVIS XU, Plaintiffs' decedent, is  
13 attached hereto as Exhibit 1.

14 62. DAVIS XU, Plaintiffs' decedent, died wrongfully as a direct, concurrent, proximate result  
15 and/or substantial contributing factor of each Defendant's actions, omissions, negligence, misconduct,  
16 and violation of laws and deprivation of rights.

17 63. As a direct, proximate, and/or concurrent cause and/or substantial contributing factor of  
18 Defendants, and each of them, and their personnel, their actions, inactions, violations of law, breaches of  
19 warranty and duties, and of the death of DAVIS XU, Plaintiffs' decedent, as alleged herein, Plaintiffs  
20 have and will sustain pecuniary loss resulting from Plaintiffs' decedent's death and the loss of his love,  
21 teachings, skill, knowledge, services, talent, comfort, affection, companionship, guidance, society, care,  
22 solace, grief or sorrow, and moral support of a kind and loving husband and father, and the source of  
23 constant support that he was and would have been. Plaintiffs further allege that such injuries resulted in  
24 permanent disability. As a result of such injuries, Plaintiffs have sustained general damages in an as yet  
25 un-ascertained amount or to be proven at trial.

26 64. As a direct, proximate, and/or concurrent cause and/or substantial contributing factor of  
27 Defendants, and each of them, and their personnel, their actions, inactions, violations of law, breaches of  
28 warranty and duties, and of the death of DAVIS XU, Plaintiffs' decedent, as alleged herein, Plaintiffs

1 have and will sustain special damages and loss resulting from medical expenses and a loss of present  
2 and future earning capacity and benefit of DAVIS XU, Plaintiffs' decedent, all to Plaintiffs' special  
3 damage in a sum as yet un-ascertained or to be proven at trial.

4 65. As a direct, proximate, and/or concurrent cause and/or substantial contributing factor of  
5 Defendants, and each of them, and their personnel, their actions, inactions, violations of law, breaches of  
6 warranty and duties, and of the death of DAVIS XU, Plaintiffs' decedent, as alleged herein, Plaintiffs  
7 have sustained pecuniary loss resulting from burial expenses in a sum to be proven at trial.

8 66. The above conduct of Defendants, and each of them, was committed with recklessness and with  
9 malice, oppression or fraud, and therefore an award of punitive damages in a sum according to proof is  
10 justified and appropriate.

## 11 **SECOND CAUSE OF ACTION**

### 12 **(SURVIVAL CLAIMS)**

13 *(by all Plaintiffs against all Defendants)*

14 67. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as though fully set  
15 forth herein in their entirety without duplication.

16 68. Plaintiffs are the successors in interest of DAVIS XU and succeed to this cause of action.  
17 Plaintiff YAN XU brings this Complaint in the capacity of administrator and has executed, attached, and  
18 filed herewith the declaration required by Code Civ. Proc. § 377.32 as Exhibit 2.

19 69. Plaintiff's Decedent, DAVIS XU, would have been a plaintiff in this action after the foregoing  
20 causes of action arose in his favor if he had lived.

21 70. As a proximate and/or concurrent cause and/or substantial contributing factor of Defendants,  
22 and each of them, and their personnel, their actions, inactions, violations of law, breaches of warranty  
23 and duties, and DAVIS XU's death, as alleged herein, Plaintiff YAN XU (as administrator of the estate  
24 of DAVIS XU) and Plaintiff HUIPING DAI, did and will sustain pecuniary loss resulting from past and  
25 future expenses and charges, loss of earnings, attorneys' fees and charges, and earnings and earnings  
26 capacity, damages to personal items and belongs, and other economic losses that resulted and accrued.  
27 As a result of said injuries, that Plaintiffs have sustained special damages in an as yet unascertained  
28 amount or to be proven at trial.

1 **THIRD CAUSE OF ACTION**

2 **(42 U.S.C. § 1983 – DENIAL OF FOURTEENTH AMENDMENT**

3 **PROCEDURAL DUE PROCESS)**

4 *(by all Plaintiffs against all Defendants)*

5 71. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as though fully set  
6 forth herein in their entirety without duplication.

7 72. The Fourteenth Amendment to the United States Constitution provides that no state shall  
8 “deprive any person of life, liberty, or property, without due process of law.” A similar right is stated in  
9 the Fifth Amendment to the United States Constitution.

10 73. Section 1983 of Title 42 of the U.S. Code provides in pertinent part:

11 Every person who, under color of any statute, ordinance, regulation or  
12 custom, or usage, of any State or Territory or the District of Columbia,  
13 subjects, or causes to be subjected, any citizen of the United States or other  
14 person within the jurisdiction thereof to the deprivation of any rights,  
15 privileges, or immunities secured by the Constitution and laws, shall be  
16 liable to the party injured in an action at law, suit in equity, or other proper  
17 proceeding for redress...

18 74. As aptly observed by California’s Second District Court of Appeals: “Due process - two  
19 preeminent words that are the lifeblood of our Constitution. Not a precise term, but most everyone  
20 knows when it is present and when it is not. It is often most conspicuous by its absence. Its primary  
21 characteristic is fairness. It is self-evident that a trial, an adjudication, or a hearing that may adversely  
22 affect a person’s life must be conducted with fairness to all parties.” *Doe v. Regents of Univ. of*  
23 *California* (2018) 28 Cal.App.5th 44, 46.

24 75. Given the severe implications of a responsibility finding in the university disciplinary context,  
25 an accused party must be afforded at least minimal procedural protections.

26 76. Defendant OCCIDENTAL, in its adjudication of sexual misconduct and violence and levying  
27 sanctions against students, is a state actor exercising its jurisdiction over offenses that traditionally have  
28 been part of the responsibilities of the States.

77. The U.S. Supreme Court has ruled that a not-for-profit athletic association’s regulatory activity

1 was state action owing to the “close nexus between the state and the challenged action,” the pervasive  
2 entwinement of state school officials in the association’s structure, and the lack of a countervailing  
3 reason against attributing activity to the government. In so ruling, the U.S. Supreme Court reviewed the  
4 various circumstances in which an ostensibly private actor has been treated as a state actor, 531 U.S. at  
5 296:

- 6 i. when the challenged activity results from the State’s exercise of “coercive power”  
7 and provides “significant encouragement, either overt or covert,”  
8 *Blum v. Yaretsky*, 457 U. S. 991, 1004 (1982);
- 9 ii. when a private actor operates as a “willful participant in joint activity with the State  
10 or its agents,” *Lugar v. Edmondson Oil Co.*, 457 U. S. 922, 941 (1982);
- 11 iii. when a private actor is controlled by an agency of the state, *Pennsylvania v. Board*  
12 *of Directors of City Trusts of Philadelphia*, 353 U.S. 230 (1957);
- 13 iv. when the private entity has been delegated a public function by the State, *West v.*  
14 *Atkins*, 487 U.S. 42, 56 (1988); and
- 15 v. when the challenged activity is “entwined with governmental policies”; or when  
16 government is “entwined in [its] management or control,” *Evans v. Newton*, 382 U.  
17 S. 296, 299, 301 (1966).

18 78. The key tests, then, are “Government coercion,” “willful participation by the private actor,”  
19 “Government control,” “delegation of public function to private entity,” and “entwinement with  
20 Government policy or Government management or control.”

21 79. In this case, with respect to Defendant OCCIDENTAL’s adjudication of alleged intimate  
22 partner violence, there has been a delegation of the public function of the state in adjudicating sexual  
23 misconduct on college campuses thus creating a “close nexus between the state and the challenged  
24 action” such that the ostensibly private behavior “may be fairly treated as that of the state itself.” Here,  
25 OCCIDENTAL’s actions resulted from the government’s exercise of “coercive power,” where it  
26 provided “significant encouragement, either overt or covert,” OCCIDENTAL operated as a “willful  
27 participant in joint activity with the state or its agents” and has been controlled by an “agency of the  
28 state” and, with the delegation of a public function by the state, such that the ostensibly private entity is

1 “entwined with governmental policies” or when government is “entwined in [the private entity’s]  
2 management or control.” *Brentwood*, 531 U.S. at 296.

3 80. While private universities have been fighting the state action argument on the ground that the  
4 2011 Dear Colleague Letter was merely guidance as opposed to binding law, Education Secretary Betsy  
5 DeVos in her September 7, 2017 speech unequivocally acknowledged the coercive nature of the Dear  
6 Colleague Letter, stating in part:

7 Washington’s push to require schools to establish these quasi-legal  
8 structures to address sexual misconduct comes up short for far too many  
9 students.

10 . . . .

11 Through intimidation and coercion, the failed system has clearly pushed  
12 schools to overreach. With the heavy hand of Washington tipping the  
13 balance of her scale, the sad reality is that Lady Justice is not blind on  
14 campuses today. This unraveling of justice is shameful, it is wholly un-  
15 American, and it is anathema to the system of self-governance to which our  
16 Founders pledged their lives over 240 years ago.

17 . . . .

18 Schools have been compelled by Washington to enforce ambiguous and  
19 incredibly broad definitions of assault and harassment.”

20 [https://www.washingtonpost.com/news/grade-  
21 point/wp/2017/09/07/transcript-betsy-devoss-remarks-on-campus-sexual-  
22 assault/?utm\\_term=.9ae47dac7010](https://www.washingtonpost.com/news/grade-point/wp/2017/09/07/transcript-betsy-devoss-remarks-on-campus-sexual-assault/?utm_term=.9ae47dac7010)

23 81. Upon information and belief, during the Obama Administration, OCCIDENTAL COLLEGE  
24 acted in response to the federal government’s threat that colleges refusing to comply with the mandates  
25 of the Dear Colleague Letter would be found in violation of Title IX and be subject to substantial  
26 monetary penalties.

27 82. Accordingly, OCCIDENTAL COLLEGE was coerced by the United States into complying  
28 with the Title IX investigative and adjudicatory process mandated by the April 2011 Dear Colleague  
Letter and by subsequent federal actions, statements, and directives including the University’s prior  
voluntary resolution with OCR concerning its handling of sexual misconduct matters on campus.

83. Under clear and controlling case law, a private actor required by the United States to



investigate and adjudicate the violations of a federal statute under terms and procedures dictated by the federal government is a state actor when engaging in such investigation and adjudication.

84. When OCCIDENTAL investigated and adjudicated the complaint made against Mr. XU, and when it sanctioned him, OCCIDENTAL COLLEGE was a state actor and was therefore required to honor the rights and guarantees set forth in the United States Constitution.

85. In the course of OCCIDENTAL's investigation and adjudication, it flagrantly violated Mr. XU's clearly established rights under the Due Process clause of the Fourteenth Amendment through its repeated acts of gender bias and deprivation of the minimal requirements of procedural fairness by, without limitation:

- i. Failing to conduct an impartial investigation;
- ii. Disciplining him under a policy that does not comply with common law notions of fairness and due process;
- iii. Adopting a trauma-informed investigative approach which caused the Investigators to disregard exculpatory evidence;
- iv. Applying the preponderance of the evidence standard, rather than the clear and convincing evidence standard, despite the serious nature of the allegations and severe consequences that could result, including lifelong damage to Mr. XU's reputation;
- v. Failing to provide Mr. XU with meaningful access to evidence;
- vi. Failing to provide any form of hearing, even though credibility determinations were critical to the Investigators' findings;
- vii. Failing to provide any method through which Mr. XU could ask questions of Ms. MALTER and witnesses;
- viii. Failing to provide an impartial adjudicator at any stage of the proceedings;
- ix. Exacerbating Mr. XU's known clinical depression by reaching an erroneous finding that he was responsible for "stalking" Ms. MALTER, resulting in his accidental or intentional intake of multiple prescription drugs and death.

86. A person has a protected liberty interest in his good name, reputation, honor, and

1 integrity, of which he cannot be deprived without due process.

2 87. A person has a protected property interest in pursuing his education, as well as in future  
3 educational and employment opportunities and occupational liberty, of which he cannot be deprived  
4 without due process.

5 88. A person has a protected interested in his life, of which he cannot be deprived without due  
6 process.

7 89. Prior to his discipline, Mr. XU was a student in good standing at OCCIDENTAL COLLEGE.  
8 His constitutionally protected property interest in his continued enrollment and good standing at  
9 OCCIDENTAL COLLEGE and to be free from arbitrary discipline and reputational harm arises from  
10 the policies, courses of conduct, practices and understandings, established by OCCIDENTAL.

11 90. Mr. XU's constitutionally protected property interest further arises from the express and  
12 implied contractual relationship between OCCIDENTAL COLLEGE and Mr. XU.

13 91. A student who has been admitted to a university, and who has paid tuition to that university,  
14 has a protected property interest in continuing his education at that university until he has completed his  
15 course of study.

16 92. Consequently, when Mr. XU faced disciplinary action that included the possibility of  
17 suspension or dismissal if found responsible, then OCCIDENTAL COLLEGE was required to provide  
18 him with Due Process as established by the Fourteenth Amendment to the United States Constitution  
19 and established California law.

20 93. OCCIDENTAL COLLEGE, and the individual Defendants as agents of the College, have a  
21 duty to provide its students equal protection and due process of law by and through any and all policies  
22 and procedures set forth by OCCIDENTAL COLLEGE.

23 94. Defendants SHAUNTI M. YANIK, PUBLIC INTEREST INVESTIGATIONS, INC., and  
24 RUTH M. JONES violated Mr. XU's right to due process when they issued a finding of responsibility  
25 and imposed a penalty on Mr. XU, despite the evidence supporting a finding of no responsibility, and  
26 where there was no opportunity for him to question the witnesses against him or the supposed  
27 complainant, no formal hearing before an impartial panel of decisionmakers, no opportunity to challenge  
28 the participation of any member of the appellate board, and no attempt to collect exculpatory evidence

1 or give due consideration to the evidence indicating that he did not engage in any conduct violative of  
2 OCCIDENTAL COLLEGE's policies.

3 95. The investigator, Defendant SHAUNTI M. YANIK, prosecuted Mr. XU under a presumption  
4 of guilt, and conducted an investigation designed to fit her narrative of what she believed had occurred,  
5 despite clear evidence to the contrary.

6 96. Mr. XU had obeyed all institutional rules when he was wrongly found responsible and  
7 sanctioned by OCCIDENTAL COLLEGE.

8 97. Under both federal and state law, Mr. XU was entitled to Due Process including proper notice  
9 and a meaningful opportunity to be heard.

10 98. Mr. XU was entitled to a process commensurate with the seriousness of the allegations and the  
11 potential discipline, sanctions, and repercussions he was facing.

12 99. Ms. MALTER's allegations against Mr. XU have had serious and incontrovertible effects on  
13 Mr. XU, leading him to take an accidental or intentional overdose of multiple prescription drugs  
14 resulting in his tragic death in his dorm room at OCCIDENTAL COLLEGE.

15 100. In the course of the investigation and adjudication, Defendants flagrantly violated Mr. XU's  
16 clearly established rights under the Due Process Clause of the Fourteenth Amendment through its  
17 deprivation of the minimal requirements of procedural fairness.

18 101. Defendants deprived Mr. XU of his life, liberty, and property interests without affording him  
19 basic due process, including, but not limited to, his right to a fair investigation free of bias, his right to  
20 be heard by an impartial factfinder, and his right to cross examine witnesses and challenge witnesses.

21 102. Defendants, as well as other agents, representatives, and employees of Defendant  
22 OCCIDENTAL COLLEGE, were acting under color of state law when they showed intentional,  
23 outrageous, and reckless disregard for Mr. XU's constitutional rights. Defendants SHAUNTI M.  
24 YANIK and RUTH M. JONES deprived Mr. XU of his liberty and property interests without affording  
25 him basic due process without good faith and thus are not afforded qualified immunity for her actions.  
26 All Defendants agreed to, approved, and ratified this unconstitutional conduct.

27 103. Based on the foregoing, OCCIDENTAL COLLEGE was acting as a state actor when it violated  
28 the rights and guarantees set forth in the Fourteenth Amendment of the United States Constitution

1 during the investigation and adjudication of the complaint against Mr. XU.

2 104. As recently articulated by the Sixth Circuit in *Doe v. Baum*, a university disciplinary  
3 proceeding that may result in a sanction of expulsion or suspension must: (1) afford an accused student  
4 “some sort of hearing” and (2) “when the university’s determination turns on the credibility of the  
5 accuser, the accused, or witnesses, that hearing must include an opportunity for cross-examination.” *Doe*  
6 *v. Baum* (2018) 903 F.3d 575, 581.

7 105. Though the standard pronounced in *Baum* addressed the requirements in the context of a public  
8 university, there is no rational or logical basis for affording disparate constitutional protections to  
9 students who choose to attend a public university in comparison to students who choose to attend private  
10 universities, when the interests at stake and potential ramifications are just as severe.<sup>1</sup>

11 106. In fact, it is well established in California that procedural due process protections are required  
12 in higher education disciplinary proceedings, regardless of whether the institution is public or private.

13 107. Two recent cases in the Court of Appeal of the State of California have reaffirmed the rights to  
14 which a respondent in a Title IX university disciplinary proceeding is entitled.

15 108. In *Doe v. Allee* (Case No. B283406, January 4, 2019), the Court of Appeal reversed the  
16 decision of the Superior Court, holding that the record revealed that a university’s disciplinary procedure  
17 failed to provide a fair hearing because the accused student faced severe disciplinary sanctions, the  
18 disciplinary decision turned on witness credibility, and USC’s procedure failed to provide a mechanism  
19 for effective cross-examination of the accuser and adverse witnesses. *Doe v. Allee*, No. B283406, 2019  
20 WL 101616, at \*20 (Cal. Ct. App. Jan. 4, 2019) The Court found, “when a student accused of sexual  
21 misconduct faces severe disciplinary sanctions, and the credibility of witnesses (whether the accusing  
22 student, other witnesses, or both) is central to the adjudication of the allegation, fundamental fairness  
23 requires, at a minimum, that the university provide a mechanism by which the accused may cross-  
24 examine those witnesses, directly or indirectly, at a hearing in which the witnesses appear in person or  
25

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26 <sup>1</sup> Given the variety of considerations that go into a student’s college search, including the availability  
27 of financial aid or scholarships, location, and programs offered, students should not further be burdened  
28 with the decision of whether to attend a public or private college based upon the constitutional  
protections that would be afforded to them in the event they were accused of a violation of the school’s  
policies.

1 by other means (such as means provided by technology like videoconferencing) before a neutral  
2 adjudicator with the power independently to find facts and make credibility assessments.” As USC’s  
3 process failed to provide these protections, the Court declared that the disciplinary decision could not  
4 stand. The same or similar administrative process was used by OCCIDENTAL COLLEGE to  
5 adjudicate Ms. MALTER’s false allegations, and Mr. XU was denied the right to cross-examine Ms.  
6 MALTER at a live evidentiary hearing before neutral adjudicators.

7 109. OCCIDENTAL’s policies deprived Mr. XU of the fair process and procedural protections to  
8 which he was entitled. Accordingly, Defendants are liable under 42 U.S.C. § 1983 for violations of  
9 the Due Process Clause of the Fourteenth Amendment, and for all damages arising therefrom.

10 110. As a direct and proximate result of the above conduct, Plaintiffs YAN XU (as administrator of  
11 the estate of DAVIS XU) and HUIPING DAI did and will sustain pecuniary loss resulting from past and  
12 future expenses and charges, loss of earnings, attorneys’ fees and charges, and earnings and earnings  
13 capacity, damages to personal items and belongs, and other economic losses that resulted and accrued.

14 111. Plaintiffs further seek punitive damages against Defendants SHAUNTI M. YANIK and RUTH  
15 M. JONES in their individual capacities for violations of Mr. XU’s well-established fundamental rights.

16 112. As a result of the foregoing, Plaintiff YAN XU (as administrator of the estate of DAVIS XU)  
17 and Plaintiff HUIPING DAI are entitled to damages in an amount to be determined at trial, plus  
18 prejudgment interest, attorneys’ fees, expenses, costs and disbursements.

19 **FOURTH CAUSE OF ACTION**

20 **(VIOLATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972,**

21 **20 U.S.C. § 1681, *ET SEQ.*- ERRONEOUS OUTCOME)**

22 *(by all Plaintiffs against Defendant OCCIDENTAL COLLEGE Only)*

23 113. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as though fully set  
24 forth herein in their entirety without duplication.

25 114. Title IX of the Education Amendments of 1972 provides, in relevant part, that: “No person in  
26 the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of,  
27 or be subjected to discrimination under any education program or activity receiving Federal financial  
28 assistance.”

1 115. Title IX of the Education Amendments of 1972 applies to all public and private educational  
2 institutions that receive federal funding, which includes Defendant OCCIDENTAL COLLEGE.

3 116. Both the Department of Education and the Department of Justice have promulgated regulations  
4 under Title IX that require a school to “adopt and publish grievance procedures providing for the  
5 *prompt and equitable resolution* of student . . . complaints alleging any action which would be  
6 prohibited by” Title IX or regulations thereunder. 34 C.F.R. § 106.8(b) (Dep’t of Education); 28 C.F.R.  
7 § 54.135(b) (Dep’t of Justice) (*emphasis added*). Such prohibited actions include all forms of sexual  
8 harassment, including sexual intercourse, sexual assault, and rape.<sup>2</sup>

9 117. In 2001, the Department of Education’s Office for Civil Rights issued the “Revised Sexual  
10 Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties”  
11 (the “2001 Guidance”) pursuant to the Administrative Procedure Act’s notice and comment rulemaking.

12 118. According to the 2001 Guidance, the procedures adopted by a school covered by Title IX must  
13 not only “ensure the Title IX rights of the complainant,” but must also “[*accord*] *due process to both*  
14 *parties involved...*”<sup>3</sup>

15 119. The “prompt and equitable” procedures that a school must implement include, at a minimum:

- 16 a. “Notice . . . of the procedure, including where complaints may be filed”;
- 17 b. “Application of the procedure to complaints alleging [sexual] harassment...”;
- 18
- 19 c. “Adequate, reliable, and impartial investigation of complaints, including the  
20 opportunity to present witnesses and other evidence”;
- 21 d. “Designated and reasonably prompt timeframes for the major stages of the complaint  
22 process”; and
- 23 e. “Notice to the parties of the outcome of the complaint.....”<sup>4</sup>

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25 <sup>2</sup> See generally U.S. Dep’t of Education, Office for Civil Rights, Revised Sexual Harassment  
26 Guidance: Harassment of Students by School Employees, Other Students, or Third Parties -- Title IX  
(2001) at 19-20, 21 & nn. 98-101

27 <sup>3</sup> *Id.* at 22 (*emphasis added*).

28 <sup>4</sup> *Id.* at 20.

1 120. A school also has an obligation under Title IX to ensure that all employees involved in the  
2 investigation and adjudication process have “adequate training as to what conduct constitutes sexual  
3 harassment, which includes ‘alleged sexual assaults.’”<sup>5</sup>

4 121. Further, Title IX Coordinators should not have a conflict of interest. “For example, serving as  
5 Title IX coordinator and a disciplinary hearing board member may create a conflict of interest.” April  
6 2011 Dear Colleague Letter at 7; August 2015 Dear Colleague Letter at 2-3.

7 122. Title IX may be violated by a school’s failure to prevent or remedy sexual harassment or sexual  
8 assault or by the imposition of university discipline where gender is a motivating factor in the decision  
9 to discipline. In either case, the statute is enforceable through an implied private right of action.

10 123. Challenges to university disciplinary proceedings for sex discrimination generally fall into  
11 two categories: (1) “erroneous outcome” cases, in which the claim is that plaintiff was innocent and  
12 wrongly found to have committed an offense and gender bias was a motivating factor behind the  
13 erroneous findings; and (2) “selective enforcement” cases, in which the claim asserts that, regardless of  
14 the student’s guilt or innocence, the severity of the penalty and/or decision to initiate the proceeding  
15 was affected by the student’s gender.

16 124. To succeed on an erroneous outcome claim, a plaintiff must demonstrate that there was (1) a  
17 flawed proceeding that (2) led to an erroneous outcome that was adverse to the plaintiff; and (3) specific  
18 circumstances suggesting gender bias led to the erroneous outcome.

19 125. An “erroneous outcome” occurred in Plaintiff’s case. Mr. XU was innocent and wrongly  
20 found to have committed a violation of OCCIDENTAL’s policies, and gender bias was a motivating  
21 factor.

22 126. OCCIDENTAL COLLEGE failed to conduct an adequate, reliable, and impartial investigation  
23 of Ms. MALTER’s complaint made against Mr. XU.

24 127. Particular circumstances suggest that gender bias was a motivating factor behind the erroneous  
25 findings and the decision to impose discipline upon Mr. XU. These circumstances include, without  
26 limitation:

27  
28 

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<sup>5</sup> *Id.* at 21.

- i. OCCIDENTAL presumed Mr. XU guilty from the outset when it decided to pursue an investigation against him, despite documentary evidence affirming that Mr. XU and the female complainant, Ms. MALTER, had only corresponded with each other for six days, during which Ms. MALTER responded positively to Mr. XU's correspondence, and despite a total lack of threatening or harassing communications;
- ii. OCCIDENTAL deprived Mr. XU of a meaningful opportunity to be heard when it implemented a defective and unfair Title IX policy that allowed an unqualified female Investigator with no legal training or adherence to fair legal processes, to unilaterally make findings of guilt or innocence on violations that may have occurred without first providing a hearing to the male student or an opportunity to investigate, and which OCCIDENTAL "rubber stamps" and adopts with a similarly defective and unfair appeal process that also does not adhere to any due process and fairness in administration or decision;
- iii. OCCIDENTAL deprived Mr. XU of the opportunity to challenge and question Ms. MALTER's account, despite the Investigators' reliance on Ms. MALTER's witness statements;
- iv. OCCIDENTAL reached an inequitable and unreasonable outcome by finding Mr. XU responsible for stalking and imposing disciplinary sanctions against him after the Investigator found that Mr. XU had not contacted Ms. MALTER after she clearly told him to stop, aside from one Facebook message;
- v. OCCIDENTAL responded with concern and accommodation to Ms. MALTER's purported anxiety disorder, while offering no assistance to Mr. XU for his self-reported depression, anxiety, PTSD, and panic disorder;
- vi. OCCIDENTAL decided that Ms. MALTER's mental health issues demonstrated that she was a "victim" while Mr. XU's mental health issues evidenced that he was a perpetrator;
- vii. OCCIDENTAL used the discriminatory justification that it needed to keep Ms. MALTER "safe" from Mr. XU.

128. Upon information and belief, OCCIDENTAL COLLEGE receives millions of dollars annually in federal funding. OCR's threatened de-funding penalties for failure to comply with Title IX puts tremendous pressure on universities, including OCCIDENTAL COLLEGE, to aggressively prosecute male students accused of sexual misconduct, like Mr. XU.



1 129. In addition to these threatened monetary penalties, OCCIDENTAL COLLEGE was under  
2 immense pressure, from both the federal government and its own student body, to aggressively handle  
3 sexual misconduct related allegations and to resolve them in favor of the female complainant.

4 130. On April 4, 2011, the Office for Civil Rights (“OCR”) of the United States Department of  
5 Education issued a guidance letter to colleges and universities in the United States in receipt of federal  
6 funding which became widely known as the “Dear Colleague Letter” (the “DCL”). The DCL advised  
7 recipients that sexual violence constitutes sexual harassment within the meaning of Title IX of the  
8 Education Amendments of 1972, 20 U.S.C. §1681 *et seq.* and its regulations, and directed schools to  
9 “take immediate action to eliminate the harassment, prevent its recurrence and address its effects.” DCL  
10 at p. 4.

11 131. The DCL responded, in part, to a special investigative report published by National Public  
12 Radio and the Center for Public Integrity, which proclaimed a campus rape epidemic and criticized the  
13 OCR for its lax response to what the report characterized as a social problem of critical importance. *See*  
14 <http://www.npr.org/templates/story/story.php?storyId=124001493>. The report described in detail the  
15 obstacles faced by sexual assault victims in obtaining redress through college disciplinary proceedings  
16 and how victims who did engage in the college disciplinary process suffered additional trauma as a  
17 result. Much of the report focused on underreporting, re-traumatization of victims, rape myth adherence  
18 on college campuses, and young men’s cultural adherence to the sexual aggressor role.

19 132. The DCL, further, relied on faulty statistics in sounding a “call to action” for campuses  
20 nationwide—that “about 1 in 5 women are victims of completed or attempted sexual assault while in  
21 college.” DCL, at p. 2. The researchers behind this study subsequently invalidated that statistic as a  
22 misrepresentation of the conclusions of the study and warned that it was “inappropriate to use the 1-in-5  
23 number as a baseline...when discussing our country’s problem with rape and sexual assault.”  
24 <http://time.com/3633903/campus-rape-1-in-5-sexual-assault-setting-record-straight/>. Relying on these  
25 faulty numbers, the DCL minimized due process protections for the accused by, among other things,  
26 eschewing any presumption of innocence, mandating a preponderance of the evidence standard, limiting  
27 cross-examination, and forbidding certain forms of alternative dispute resolution.

28 133. OCCIDENTAL COLLEGE advertises on one of its Student Life websites that 1 in 5 college

1 women will be the victims of Sexual Violence (Sexual Assault). [https://www.oxy.edu/student-](https://www.oxy.edu/student-life/resources-support/project-safe/prevention-education/power-based-violence)  
2 [life/resources-support/project-safe/prevention-education/power-based-violence](https://www.oxy.edu/student-life/resources-support/project-safe/prevention-education/power-based-violence). This is in comparison  
3 to the only 1 in 33 college men who will purportedly be the victims of Sexual Violence (Sexual  
4 Assault).

5 134. On April 29, 2014, OCR issued additional directives to colleges and universities in the form of  
6 a guidance document titled *Questions and Answers on Title IX and Sexual Violence* (“Q&A”) which was  
7 aimed at addressing campus sexual misconduct policies, including the procedures colleges and  
8 universities “must” employ “to prevent sexual violence and resolve complaints” and the elements that  
9 “should be included in a school’s procedures for responding to complaints of sexual violence.” Q&A, at  
10 p. 12. The Q&A advised schools to adopt a trauma informed approach, advising, for example, that  
11 hearings should be “conducted in a manner that does not inflict additional trauma on the complainant.”  
12 *Id.* at p. 31. While the Q&A advised that “the rights established under Title IX must be interpreted  
13 consistently with any federally guaranteed due process rights...a school should ensure that any due  
14 process rights do not restrict or unnecessarily delay the protections provided by Title IX to the  
15 complainant.” *Id.* at p. 13.

16 135. In April 2014, the White House issued a report entitled “Not Alone,” which included a warning  
17 that if the OCR finds that a Title IX violation occurred, the “school risks losing federal funds” and that  
18 the Department of Justice (“DOJ”) shares authority with OCR for enforcing Title IX and may initiate an  
19 investigation or compliance review of schools. Further, if a voluntary resolution cannot be reached, the  
20 DOJ may initiate litigation.

21 136. In June 2014, then Assistant Secretary of Education Catherine Lhamon testified before the  
22 United States Senate that if OCR could not secure voluntary compliance with the DCL from a college or  
23 university, it may elect to initiate an administrative action to terminate federal funds or refer the case to  
24 the Department of Justice. To support enforcement of the DCL the OCR hired hundreds of additional  
25 investigators. To date, OCR has resolved 193 investigations of colleges for the potential mishandling of  
26 complaints of sexual violence, while 309 cases remain open. <https://projects.chronicle.com/titleix/>

27 137. In 2015, OCCIDENTAL took part in a sexual assault campus climate survey organized by the  
28 Higher Education Data Sharing Consortium. The results, released in in the Fall 2015, revealed that 8

1 percent of respondents at OCCIDENTAL reported being a victim of sexual assault or misconduct since  
2 their enrollment. <https://www.oxy.edu/magazine/fall-2015/sexual-assault-surveying-campus-climate>

3 138. While investigating the allegations against Mr. XU, OCCIDENTAL was under investigation by  
4 OCR for its alleged mishandling of sexual misconduct complaints.

5 139. In April 2013 OCCIDENTAL COLLEGE professors Caroline Heldman and Danielle Dirks, in  
6 association with 36 alleged victims of rape or sexual assault at OCCIDENTAL, filed a 250-page  
7 complaint with the U.S. Department of Education's Office of Civil Rights alleging that OCCIDENTAL  
8 COLLEGE maintains a hostile environment for female sexual assault victims and their advocates and  
9 violated Title IX laws against sex discrimination and the Clery Act.

10 <https://www.lamag.com/longform/trouble-oxy/>

11 140. In September 2013, OCCIDENTAL COLLEGE settled with at least ten of the complainants  
12 under an agreement negotiated by attorney Gloria Allred. The ten female complainants received cash  
13 payments from OCCIDENTAL COLLEGE and agreed not to participate in the OCCIDENTAL  
14 COLLEGE Sexual Assault Coalition. Assistant Professor Danielle Dirks criticized attorney Gloria  
15 Allred's negotiated settlement stating that requiring "the women to remain silent and not to participate in  
16 campus activism could have a chilling effect at OCCIDENTAL." Asst. Professor Dirks told a female  
17 complainant in another case that "[The accused student] fits the profile of other rapists on campus in that  
18 he had a high GPA in high school, was his class valedictorian, was on [a sports] team, and was 'from a  
19 good family.'"

20 141. In August 2013, OCCIDENTAL COLLEGE implemented a new Sexual Misconduct Policy  
21 that caused the pendulum to swing far in the other direction, with OCCIDENTAL discriminating against  
22 male students in order to avoid federal penalties and settlement pay-outs for OCCIDENTAL's past  
23 indifference to the plight of female students and the college's failure to address the so-called "rape  
24 culture" and "sexual assault epidemic" on campus.

25 142. Subsequently, on or about March 9, 2016, OCR received another complaint against  
26 OCCIDENTAL COLLEGE, filed by an individual raising similar allegations.

27 143. The investigations by OCR prompted a great deal of publicity and media attention surrounding  
28 OCCIDENTAL's alleged mishandling of sexual misconduct complaints.

1 144. Since the initiation of the OCR complaints and investigation into OCCIDENTAL’s handling of  
2 sexual assault claims, OCCIDENTAL COLLEGE has perpetuated an anti-male atmosphere in which  
3 male students are treated as perpetrators who must be severely disciplined regardless of their guilt or  
4 innocence, and female complainants are equated to “victims” and “survivors” that must receive  
5 preferential treatment and validation.

6 145. Upon information and belief, OCCIDENTAL COLLEGE possesses additional documentation  
7 demonstrating its unlawful pattern of gender-biased adjudications and disparate treatment applied to  
8 males and females.

9 146. OCCIDENTAL COLLEGE employs an all-female administrative staff in its Title IX Office.

10 147. The foregoing combination of internal institutional pressure, ongoing OCR investigations, and  
11 pressure from the United States Department of Education, under a threat of recession of federal funds,  
12 contributed to an overzealous prosecution and erroneous finding of responsibility against Mr. XU.

13 148. Education Secretary Betsy DeVos has called the current enforcement of Title IX at public and  
14 private universities nationwide a “failed system” during her speech of September 7, 2017 wherein she  
15 vowed to rewrite the rules put in place by the Obama administration’s approach to Title IX enforcement.

16 149. On January 25, 2019, OCCIDENTAL COLLEGE issued a revised Sexual Misconduct Policy in  
17 response to a California Court of Appeals decision that requires private universities to conduct live  
18 evidentiary hearings and allow for cross-examination of the complainant in front of neutral  
19 adjudicators—elements that were noticeably absent from the prior Sexual Misconduct Policy and during  
20 the administrative proceedings involving Mr. XU. <https://www.oxy.edu/sexual-respect-title-ix>.

21 150. Based on the foregoing, Mr. XU was subjected to a biased, prejudiced, discriminatory, and  
22 inherently unfair process in violation of Title IX.

23 151. As alleged herein, this willful, deliberate, intentional, and unlawful discrimination in violation  
24 of Title IX proximately caused the death of DAVIS XU, and Plaintiff YAN XU (as administrator of the  
25 estate of DAVIS XU) and Plaintiff HUIPING DAI have and will sustain substantial injury, damage, and  
26 loss, including, without limitation, special damages and loss resulting from medical expenses and a loss  
27 of present and future earning capacity and benefit of DAVIS XU, economic injuries and other direct and  
28 consequential damages, and emotional distress. As a result of the foregoing, Plaintiffs are entitled to

1 damages in an amount to be determined at trial, plus prejudgment interest, attorneys' fees, expenses,  
2 costs and disbursements, and punitive damages.

3 **FIFTH CAUSE OF ACTION**  
4 **(VIOLATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972,**  
5 **20 U.S.C. § 1681, ET SEQ.- SELECTIVE ENFORCEMENT)**

6 *(by all Plaintiffs against Defendant OCCIDENTAL COLLEGE only)*

7 152. Plaintiffs repeat and re-allege each and every allegation hereinabove as if fully set forth herein.

8 153. As described above, the Title IX selective enforcement theory asserts that, regardless of the  
9 student's guilt or innocence, the severity of the penalty and/or decision to initiate the proceeding was  
10 affected by the student's gender.

11 154. As detailed herein, OCCIDENTAL COLLEGE violated Title IX's prohibition against  
12 selectively enforcing its policies on the basis of gender.

13 155. Specifically, OCCIDENTAL COLLEGE intentionally discriminated against Mr. XU because  
14 he is a male when it initiated the proceeding against Mr. XU despite the lack of evidence of any  
15 misconduct, imposed unwarranted discipline on the student, presumed him to be responsible for the  
16 alleged misconduct based on archaic stereotypes about males, permitted an untrained, unqualified  
17 investigator to act as investigator, judge, jury and executioner in an adversarial role against a student  
18 OCCIDENTAL COLLEGE was obligated to treat fairly, and imposed a grossly disproportionate and an  
19 excessively harsh disciplinary sanction.

20 156. Based on the foregoing, the actions taken and the decisions made by OCCIDENTAL  
21 COLLEGE in carrying out the investigation and adjudication process were informed by Mr. XU's  
22 gender, without regard to guilt or innocence.

23 157. Upon information and belief, the majority of Title IX cases at OCCIDENTAL COLLEGE  
24 involve female complainants and male respondents.

25 158. Upon information and belief, Mr. XU was found responsible and sanctioned because he is a  
26 male. Given the documentary evidence showing that Mr. XU never engaged in any sexually harassing  
27 or stalking conduct violative of OCCIDENTAL's policies, there is no other logical explanation for the  
28 ultimate outcome.

1 159. Based on the foregoing, Mr. XU was subjected to a biased, prejudiced, discriminatory, and  
2 inherently unfair process in violation of Title IX.

3 160. As alleged, this willful, deliberate, intentional, and unlawful discrimination in violation of Title  
4 IX proximately caused the death of DAVIS XU, and Plaintiff YAN XU (as administrator of the estate of  
5 DAVIS XU) and Plaintiff HUIPING DAI have and will sustain substantial injury, damage, and loss,  
6 including, without limitation, special damages and loss resulting from medical expenses and a loss of  
7 present and future earning capacity and benefit of DAVIS XU, economic injuries and other direct and  
8 consequential damages, and emotional distress. As a result of the foregoing, Plaintiffs are entitled to  
9 damages in an amount to be determined at trial, plus prejudgment interest, attorneys' fees, expenses,  
10 costs and disbursements, and punitive damages.

### 11 **SIXTH CAUSE OF ACTION**

#### 12 **(VIOLATION OF UNRUH CIVIL RIGHTS ACT)**

13 *(by all Plaintiffs against Defendant OCCIDENTAL COLLEGE only)*

14 161. Plaintiffs repeat and re-allege each and every allegation hereinabove as if fully set forth herein.

15 162. The Unruh Civil Rights Act, Cal. Civ. Code § 51, guarantees that all people within the  
16 jurisdiction of California, are free and equal, and no matter what their sex, race, color, religion, ancestry,  
17 national origin, disability, medical condition, genetic information, marital status, sexual orientation,  
18 citizenship, primary language, or immigration status are entitled to the full and equal accommodations,  
19 advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

20 163. Defendant OCCIDENTAL COLLEGE is a business establishment within the meaning of Cal.  
21 Civ. Code §§ 51, et seq.

22 164. As defendant OCCIDENTAL COLLEGE discriminated against DAVIS XU on the basis of  
23 sex, as well as medical condition and disability, defendant OCCIDENTAL COLLEGE was in violation  
24 of the Unruh Civil Rights Act.

25 165. Defendant's discrimination proximately caused DAVIS XU to suffer compensatory damages in  
26 the form of economic loss, humiliation, embarrassment, mental anguish, inconvenience, and the  
27 deprivation of civil rights.

28 166. As alleged herein, this willful, deliberate, intentional, and unlawful discrimination in violation

1 of the Unruh Civil Rights Act led to the death of DAVIS XU, and Plaintiff YAN XU (as administrator  
2 of the estate of DAVIS XU) and Plaintiff HUIPING DAI have and will sustain substantial injury,  
3 damage, and loss, including, without limitation, special damages and loss resulting from medical  
4 expenses and a loss of present and future earning capacity and benefit of DAVIS XU, economic injuries  
5 and other direct and consequential damages, and emotional distress. As a result of the foregoing,  
6 Plaintiffs are entitled to damages in an amount to be determined at trial, plus prejudgment interest,  
7 expenses, costs and disbursements, and punitive damages. Cal. Civ. Code § 52 further entitles Plaintiffs  
8 to reasonable attorneys' fees and costs.

9  
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs demand judgment from Defendants as follows:

- 12 1. For an order setting aside the improper finding that DAVIS XU was responsible for  
13 stalking STEPHANIE M. MALTER;  
14 2. For special damages, according to proof;  
15 3. For general damages, according to proof;  
16 4. For such relief as is fair, just, and equitable;  
17 5. For reasonable attorney's fees and litigation expenses incurred herein;  
18 6. For all costs of suit incurred in this proceeding; and  
19 7. For such other and further relief as the court deems proper.

20 HATHAWAY PARKER

21  
22 DATED: February 26, 2019

By: 

Mark M. Hathaway, Esq.  
Jenna E. Parker, Esq.  
Attorneys for Plaintiff

# Exhibit 1



Conversation started September 20

9/20, 11:52am **Davis Xu** Lmao I got off this hook too :D September 21

9/21, 9:58am **Davis Xu** oh crap i got off that hook like u did but still have tmrw and 2x 750 word papers due tmrw



9/21, 9:58am **Stephanie Malter** No bc that was the only thing I sort of missed And I was still kind of there for it so I'm done now bless up

9/21, 9:59am **Davis Xu** btw did u think of a social norm to break I'm trying to get as close to arrested as possible (without doing so)

September 22

9/22, 12:12am **Davis Xu** hey for Socio two of the readings aren't uploaded right t hree rather only 1 of 4 readings were uploaded?

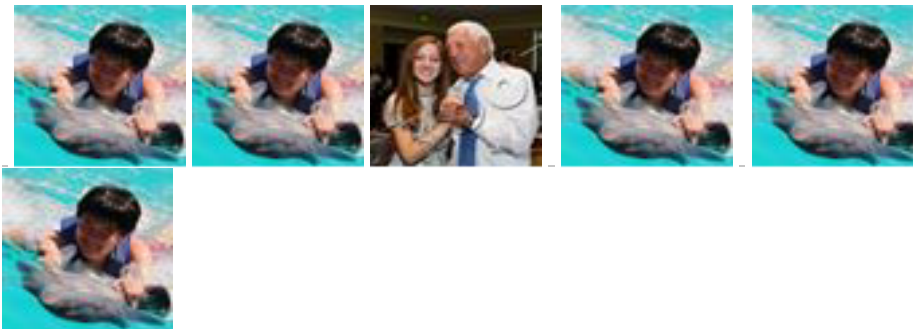
September 22

9/22, 8:13am **Stephanie Malter** Same I can't find 3 of them September 22

9/22, 3:07pm **Davis Xu** Apparently the other people I'm friends with in the class never do the reading :/

September 24

9/24, 3:42am **Davis Xu** hey how far are u on ur paper September 24



9/24, 10:52am **Davis Xu** have you like started mine's going to be 15 pages but only because I have so much data; actual paper is 3pgs though u ghf s omehow i tied Marx, [actual text reading], Ron Paul, Taylor swift, Jesus into the same sentence

LOL

September 24

9/24, 10:21pm **Davis Xu** er.. i just got tinder'd with someone in socio..... this better not be her social norms experiment that would be cruel.

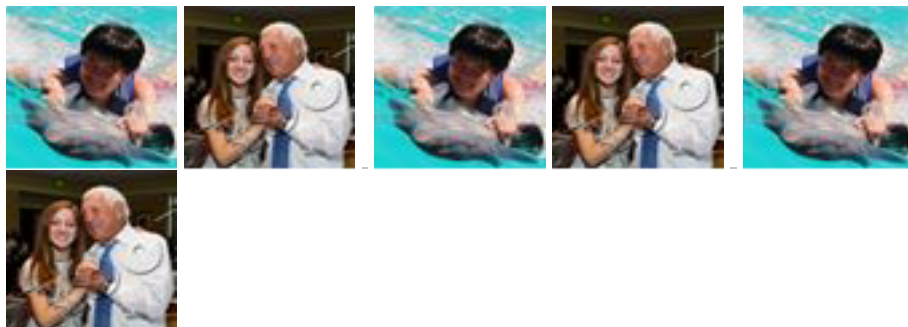
September 25

9/25, 7:12am **Stephanie Malter**C harlotte? S he's been using hers for a super long time you're good

9/25, 7:22am **Davis Xu** um....

9/25, 7:22am **Stephanie Malter**S hetoldmeshesawyouonthere We'regoodfriendssowe use her tinder together lol you don't need to worry about that she uses it for legit reasons like most people She's not the type to do that for breaking a social norm neither of us have even done anything for it yet

9/25, 7:24am **Davis Xu** wait rly its due today...



9/25, 7:25am **Stephanie Malter** Lol yep We don't know what to do! Rip A bunch of people haven't either

9/25, 7:26am **Davis Xu** dude some guy added me on fb

9/25, 7:26am **Stephanie Malter**?

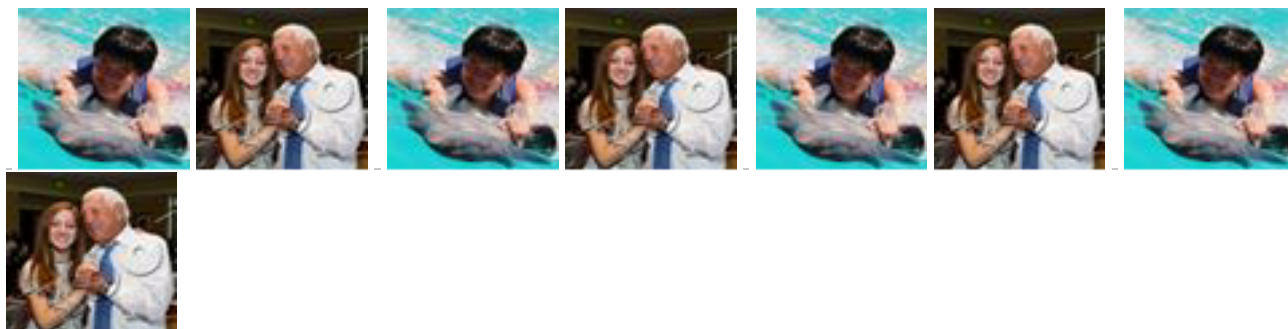
9/25, 7:26am **Davis Xu** i didn't know him but apparently he's on fb

9/25, 7:26am **Stephanie Malter**W ho

9/25, 7:26am **Davis Xu** i mean socio and i kinda felt bad h e was having an anxiety attack so i offered to peer edit his paper but i hadn't even started mine -.- and yes charlotte.

9/25, 7:30am **Stephanie Malter**W hich person?

9/25, 7:32am **Davis Xu** andrew? idk we only had one mutual friend a nd i didn't recognize that mutual friend



9/25, 7:36am **Stephanie Malter**N o clue who that is lol idk anyone in that class Except a few people so I guess anyone is not accurate

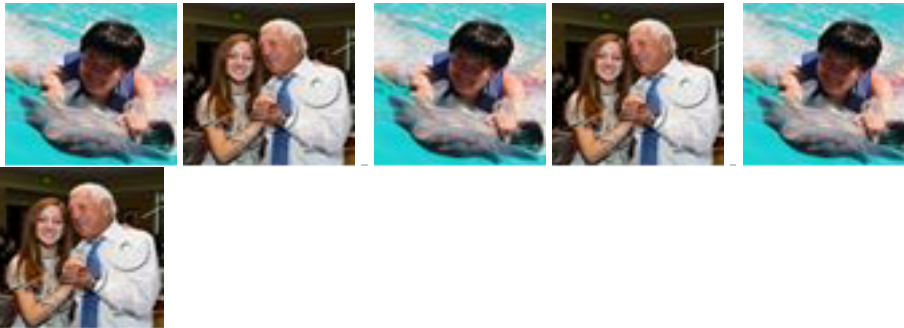
9/25, 7:37am **Davis Xu** yeah well apparently u m... so are you like good friends with charlotte ? ^ well i think most people know me cuz i distract the clas s lol m y papers um... interesting. i woiulndt

9/25, 7:46am **Stephanie Malter** Y eah we're super close actually we spend every day together pretty much I think I'm going to go to cvs and bark at people idk

9/25, 7:49am **Davis Xu** LOL I've been in a lawsuit with brown unit, u niv., s o i wrote a series of passive aggressive emails to them cuz they're kinda jerks um... charlotte didn't like accidentally r ight swipe did she cuz i think she's really nice and its ok if she did or didn't um like you can be honest

9/25, 8:00am **Stephanie Malter** S orry I was on the phone with my mom and idk I didn't talk to her in depth about it she just sent me a picture of when she found you I think she's sort of with someone rn from there tho I haven't really gone into depth with her about it What happened with brown? If you don't mind me asking

9/25, 8:04am **Davis Xu** oh. t hat's another story. it got pub'd front feature article in buzzfeed a year ago by a NY times journalist OCR picked up the case a year ago DOJ did last week which was awesome because they can fine those jerks \$50k per violation x like 20 wait are you like sure she's with someone and/or d idn't accidentally right swipe



9/25, 8:11am **Stephanie Malter** I dk what OCR and DOJ are lol You know I'm like 80% sure? Idk I don't ask about that kind of stuff really so I'm unsure

9/25, 8:13am **Davis Xu** sigh. sry it just seems like everyone's already in a relationship and its only wk 5 s ry but can you like find out discreetly idk sry to call in a favor....

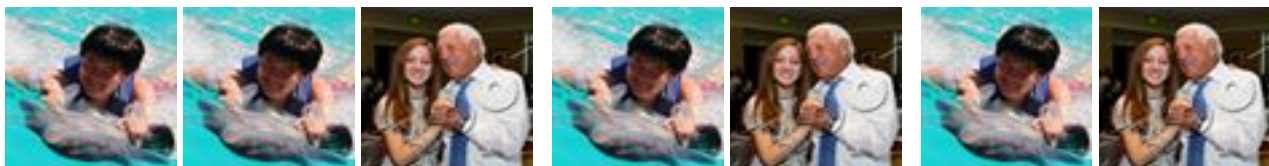
9/25, 8:30am **Davis Xu** erm. this is completely unrelated and i'd hate to like nvm.

9/25, 8:31am **Stephanie Malter** I dk I'll read the vibe I don't want to get in the middle of anything or butt into her private life or whatever I really don't know lol And no worries lol

9/25, 8:32am **Davis Xu** oh i thought you were like best friends

9/25, 8:33am **Stephanie Malter** Y eah but like, she'll tell me when she wants to I only know her from school so I just don't want to overstep my bounds ya know? lol

9/25, 8:34am **Davis Xu** oh yeah no defs just kinda confused why you'd be on tinder if yea h u m okay well w/e i guess



9/25, 8:36am **Stephanie Malter** I t's like a week old or something between them, idk I've had friends in serious relationships who both do it bc it's fun for them

9/25, 8:36am **Davis Xu** no I'm not looking for like fwf

9/25, 8:36am **Stephanie Malter**I mean I don't really know I'm not into that stuff at all so I pretty much steer clear of it all Like they don't meet people

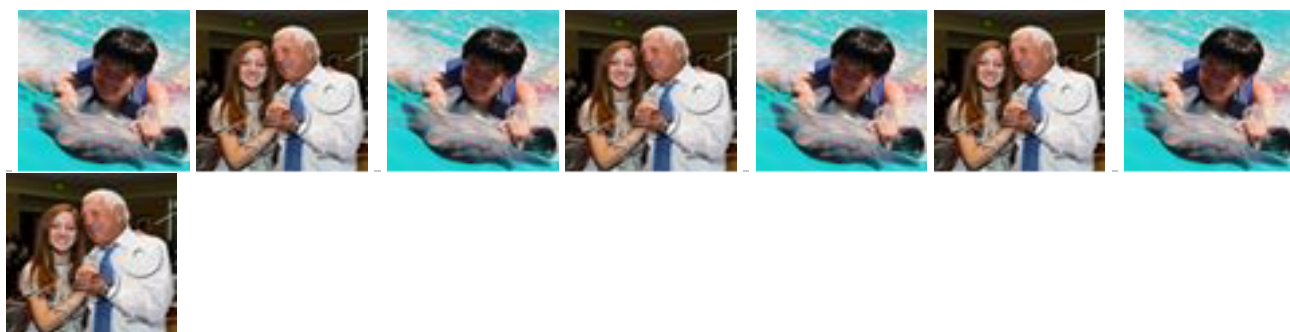
9/25, 8:36am **Davis Xu** no i understand

9/25, 8:36am **Stephanie Malter**T hey just talk to them I t's fun to chat I think it's an ego trip for some people lmao

9/25, 8:37am **Davis Xu** tinder? yeah.

9/25,8:37am **StephanieMalter**T inderisweirdashell

9/25, 8:37am **Davis Xu** i know. i don't rly like it tbh u m. w ell okay so actually i n case its not obvious from kinda knowing me im not into one night stands er sorry I'm like 23 and still so awks.



9/25,8:40am **StephanieMalter**E veryone'sdifferentItotallygetthat

9/25, 8:40am **Davis Xu** please don't take this the wrong way but (and this has nothing to do with her)... but since we're on this topic...

9/25, 8:40am **Stephanie Malter**I 'm just not interested in people lol

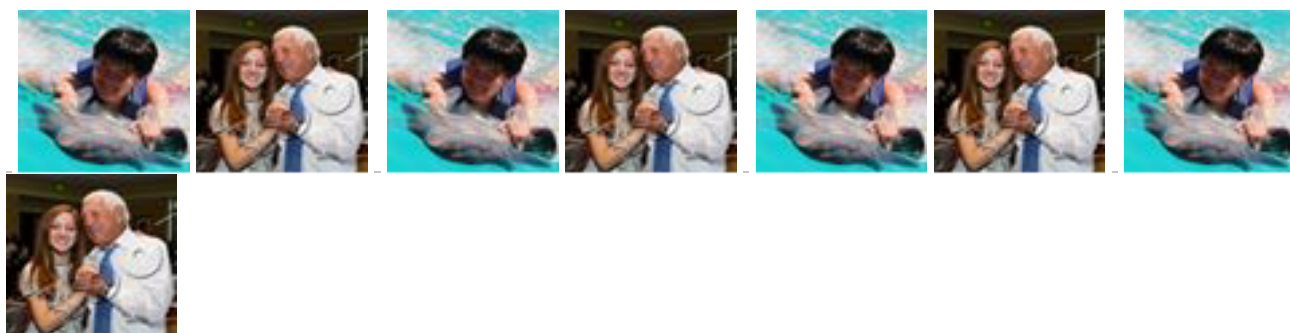
9/25, 8:40am **Davis Xu** i kinda was thinking of asking you out o h crap

9/25, 8:40am **Stephanie Malter**W hich is its own issue

9/25, 8:40am **Davis Xu** really bad timing omg

9/25,8:40am **StephanieMalter**S orrymannotreallyinterestedrn You'refine

9/25, 8:40am **Davis Xu** i feel so dumb



9/25, 8:41am **Stephanie Malter**N ah you're good

9/25, 8:41am **Davis Xu** sorry i just like ugh f ml

9/25, 8:41am **Stephanie Malter**N o you're totally fine

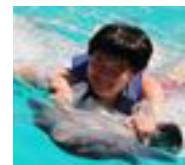
9/25, 8:41am **Davis Xu** 62 hrs without sleep does things.

9/25,8:41am **StephanieMalter**T herearetonsofsupercoolpeoplearoundherewhoare looking I 'm just not one of them lol

9/25, 8:41am **Davis Xu** no all the good ones are taken -. i kinda assumed you were with someone

9/25, 8:41am **Stephanie Malter**I just don't take interest in people, like at all

9/25, 8:42am **Davis Xu** and i don't see you outside of class rly ugh i m so embarrassed



9/25, 8:42am **Stephanie Malter**N o you're totally fine

9/25, 8:42am **Davis Xu** just take it as a compliment i guess im picky.

9/25, 8:42am **Stephanie Malter**I f it makes you feel any better I say no to everyone lol Without fail I say no to every person who has ever asked me out

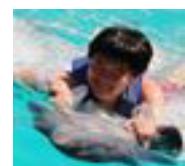
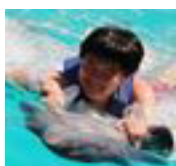
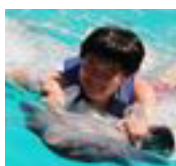
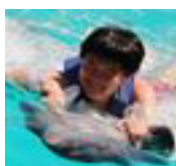
9/25, 8:42am **Davis Xu** um idk.

9/25,8:43am **StephanieMalter**S oyoucouldsayI'mthepickiest!

9/25, 8:43am **Davis Xu** that's not even a fair comparison

9/25,8:43am **StephanieMalter**T herearetonsofcoolpeoplearound

9/25, 8:43am **Davis Xu** i know





9/25, 8:43am **Stephanie Malter** A nd just around LA in general

9/25, 8:43am **Davis Xu** but running 2 businesses, a 501(c)(3) nonprofit, 4 lawsuits on top of academics

9/25, 8:43am **Stephanie Malter** Some people do find people through tinder I know people in serious relationships from it

9/25, 8:43am **Davis Xu** and i might've just gotten a job offer from a fortune 500 company

9/25, 8:43am **Stephanie Malter** Oh shit man That's a lot of shit to deal with

9/25, 8:44am **Davis Xu** my last two serious relationships were off of tinder yeah no kidding.

9/25, 8:44am **Stephanie Malter** You got real life shit going on I dk what I set totally you lol People are tricky

9/25, 8:44am **Davis Xu** i am still not like over my ex after one year well, last ex i like want to beat her old bf up he raped her straight up without alcohol or roofies and she was like so



innocent and tried to kill herself



9/25, 8:45am **Stephanie Malter** People are so fucked up That's why I don't date/like humans in general

9/25, 8:46am **Davis Xu** react-empty: 11

9/25, 8:46am **Davis Xu** i mean like literally i still cannot get over it its been over a year

9/25, 8:46am **Stephanie Malter** I want to be a criminal prosecutor, my low levels of sympathy are great for that People are horrible

9/25, 8:46am **Davis Xu** that's good - I'm civil rights prelaw

9/25, 8:46am **Stephanie Malter** Do you talk to her at all?

9/25, 8:46am **Davis Xu** pro bono no she cut me off she like was the nicest person I've ever met but obviously had depression issues and PTSD



9/25, 8:47am **Stephanie Malter** My mom does volunteer law actually



9/25, 8:47am **Davis Xu** my lawyer's pretty much charging me nothing for a lot of work

9/25, 8:47am **Stephanie Malter**I t's so horrible

9/25, 8:47am **Davis Xu** i felt so bad that i gifted her a brand new rolex and she wouldn't take it

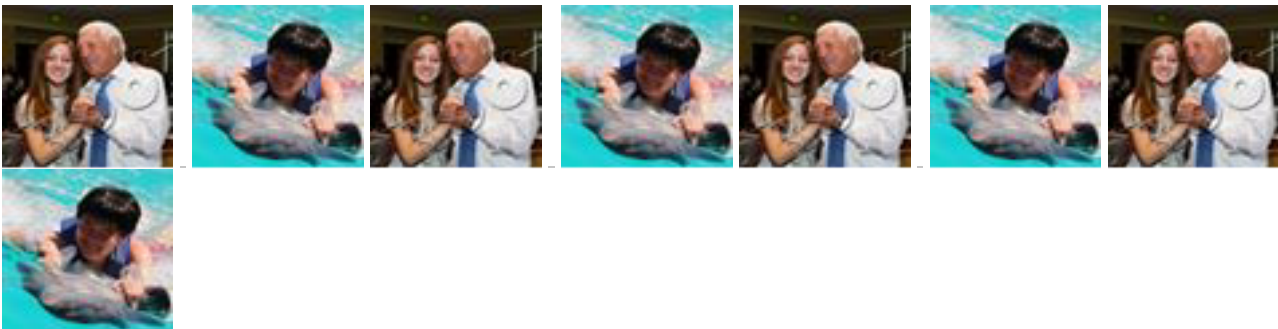
9/25, 8:47am **Stephanie Malter**I want to specialize in crimes against women Holy shit

9/25, 8:47am **Davis Xu** oh god the stanford shit

9/25, 8:48am **Stephanie Malter**I t's horrible This world is horrible With that said I need to actually get my homework done bc I could rant for ages So I'm gonna ball out for now

9/25, 8:48am **Davis Xu** yeah sorry

9/25,8:48am **StephanieMalter**A ndI'llseeyoulater



9/25, 8:48am **Davis Xu** for the um awks ugh I 'm like blushing

9/25, 8:48am **Stephanie Malter**N o problem! I hope you got some clarity lol idk Everything's gonna be alright

9/25, 8:49am **Davis Xu** no i just thought you were really awesome even at first glance and smart from what you say in class personality matters more but i also have this weird thing for redheads idk sorry i will stop b efore i embarrass myself more go do work; i gotta do mine too

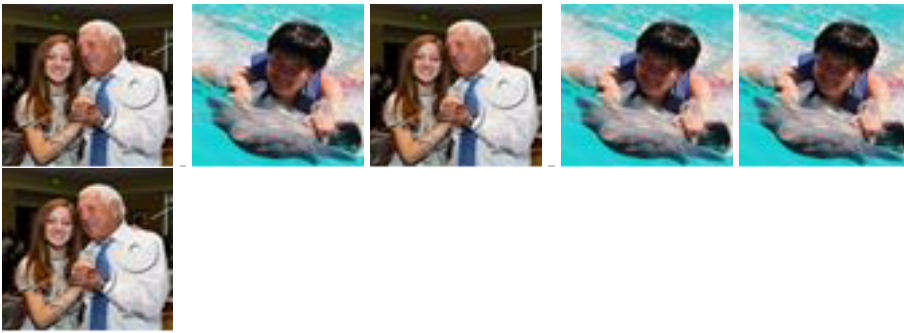
9/25,8:50am **StephanieMalter**Y eahyoushouldprobablystoploltonjustgottarelay

9/25, 8:50am **Davis Xu** yeah. sorry. I'm really extroverted except when asking people i like out (it's not an issue if i don't like someone rly). O K I WILL STOP btw <https://www.buzzfeed.com/katiejmbaker/how-colleges-stop-depressed-students-from-returning-to-campu> if ur interested in civil rights y eah that's me. ok i g2g i 'll ttyl last thing though if you can find out about her lmk s o many sluts and jocks here its actually hard to find a decent person. ok I'm actually about to ptfo ttyl

September 25

9/25, 3:08pm **Davis Xu** omg thank god potts gave me an extension i think I'm going into a bout of clinical depression again....





9/25, 3:09pm **Stephanie Malter**I 'm not the person to talk to about this

9/25, 3:09pm **Davis Xu** sorry. wait its not because i made things awkward earlier is it ^ omg i realized omg no it wasn't because of our convo earlier it was a lot of other stuff

i've been up for 70hrs straight.

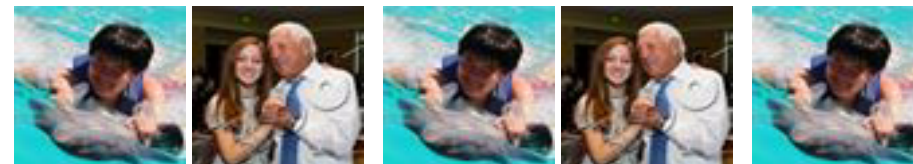
9/25, 3:12pm **Stephanie Malter**N o, it's because I'm not the person to talk to about this

9/25, 3:12pm **Davis Xu** sorry probably shouldn't sent that civil rights article then shouldn't have\* d on't read it.

9/25, 3:15pm **Stephanie Malter**I didn't and I wasn't planning on it I t's not my business I'd prefer it if you don't talk to me anymore

9/25, 3:51pm **Davis Xu** oh wow. um... i wasn't expecting that actually but ok i respect that; you can unfriend me on fb. one final interjection: that was pretty rude to be honest and really hurt what I'm going through right now; please don't do that to other people in the future. It's offensive. [REDACTED] has depression. I have to block you; I'm sure you want the same.

You cannot reply to this conversation.



## Exhibit 2

MARK M. HATHAWAY  
(CA 151332; DC 437335; IL 6327924; NY 2431682)  
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E-Mail: jenna@hathawayparker.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE

YAN XU as an individual and administrator  
for the ESTATE OF DAVIS XU, and  
HUIPING DAI, an individual,

Plaintiff(s).

v.

OCCIDENTAL COLLEGE, a California  
corporation; RUTH M. JONES, an individual;  
STEPHANIE MALTER, an individual;  
SHAUNTI YANIK, an individual; PUBLIC  
INTEREST INVESTIGATIONS, INC., a  
California Corporation; and DOES 1-20,  
inclusive,

Defendant(s),

Case No.:

DECLARATION OF YAN XU  
PURSUANT TO SECTION 377.32 OF  
THE CODE OF CIVIL PROCEDURE

I, YAN XU, declare as follows:

1. I am over the age of 18 years. I have personal knowledge of the facts contained in this declaration, and if called as a witness I could and would testify competently to the truth of the facts stated herein.

2. I am the father of Davis Xu, who died on February 27, 2017 at Occidental College in Los Angeles, California.

DECLARATION OF YAN XU

3. No proceeding is now pending in the State of California for administration of the Estate of Davis Xu.

4. I am one of the successors in interest to Davis Xu, as defined in Section 377.11 of the Code of Civil Procedure, and succeed to his interest in the above-entitled proceeding.

5. I am authorized by the other successors in interest to Davis Xu to act on their behalf in the above-entitled proceeding.

6. No other person has a superior right to commence the above-entitled proceeding or to be substituted in the above-entitled proceeding.

7. A certified copy of the death certificate for Davis Xu is attached hereto as Exhibit “A” and incorporated herein by reference.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on February 24, 2019 at San Rafael, California.

**Signature:** Yan Xu  
Yan Xu (Feb 24, 2019)

**Email:** xuy\_98@hotmail.com

YAN XU



## STATE OF CALIFORNIA

## CERTIFICATION OF VITAL RECORD

## COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC HEALTH

3052017046220

## CERTIFICATE OF DEATH

3201719010035

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
1. NAME OF DECEDENT - FIRST (Given) DAVIS		3. LAST (Family) XU	
2. MIDDLE -		4. DATE OF BIRTH mm/dd/ccyy 01/05/1993	
5. AGE Yrs. 24		6. SEX M	
9. BIRTH STATE/FOREIGN COUNTRY CHINA		10. SOCIAL SECURITY NUMBER 621-53-4893	
11. EVER IN U.S. ARMED FORCES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		12. MARITAL STATUS/SROP* (at Time of Death) NEVER MARRIED	
13. EDUCATION - Highest Level/Degree (see worksheet on back) SOME COLLEGE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		14. DATE OF DEATH mm/dd/ccyy 02/27/2017	
15. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED STUDENT		16. DECEDENT'S RACE - Up to 3 races may be listed (see worksheet on back) CHINESE	
17. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED EDUCATION		18. YEARS IN OCCUPATION 15	
20. DECEDENT'S RESIDENCE (Street and number, or location) 140 LA PERDIZ CT.		21. CITY SAN RAPHAEL	
22. COUNTY/PROVINCE MARIN		23. ZIP CODE 94903	
24. YEARS IN COUNTY 19		25. STATE/FOREIGN COUNTRY CA	
26. INFORMANT'S NAME, RELATIONSHIP YAN XU, FATHER		27. INFORMANT'S MAILING ADDRESS (Street and number, or rural route number, city or town, state and zip) 140 LA PERDIZ CT., SAN RAPHAEL, CA 94903	
28. NAME OF SURVIVING SPOUSE/SROP*-FIRST -		29. MIDDLE -	
30. LAST (BIRTH NAME) -		31. NAME OF FATHER/PARENT-FIRST YAN	
32. MIDDLE -		33. LAST XU	
34. BIRTH STATE CHINA		35. NAME OF MOTHER/PARENT-FIRST HUIPING	
36. MIDDLE -		37. LAST (BIRTH NAME) DAI	
38. BIRTH STATE CHINA		39. DISPOSITION DATE mm/dd/ccyy 03/06/2017	
40. PLACE OF FINAL DISPOSITION RESIDENCE OF YAN XU 140 LA PERDIZ CT., SAN RAPHAEL, CA 94903		41. TYPE OF DISPOSITION(S) CR/RES	
42. SIGNATURE OF EMBALMER NOT EMBALMED		43. LICENSE NUMBER -	
44. NAME OF FUNERAL ESTABLISHMENT CABOT AND SONS		45. LICENSE NUMBER FD341	
46. SIGNATURE OF LOCAL REGISTRAR JEFFREY GUNZENHAUSER, MD		47. DATE mm/dd/ccyy 03/06/2017	
101. PLACE OF DEATH DORMITORY		102. IF HOSPITAL, SPECIFY ONE <input type="checkbox"/> IP <input type="checkbox"/> ER/OP <input type="checkbox"/> DOA <input type="checkbox"/> Hospice <input type="checkbox"/> Nursing Home/LTC <input checked="" type="checkbox"/> Other	
103. IF OTHER THAN HOSPITAL, SPECIFY ONE <input type="checkbox"/> Decedent's Home <input checked="" type="checkbox"/> Other		104. COUNTY LOS ANGELES	
105. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number, or location) 1600 CAMPUS ROAD DORM ROOM 354		106. CITY LOS ANGELES	
107. CAUSE OF DEATH Enter the chain of events - diseases, injuries, or complications - that directly caused death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. IMMEDIATE CAUSE (A) DEFERRED Sequentially, list conditions, if any, leading to cause on Line A. Enter UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST (B) (C) (D)		108. DEATH REPORTED TO CORONER? Time Interval Between Onset and Death (AT) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO 2017-01665 (BT) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (CT) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (DT) <input type="checkbox"/> YES <input type="checkbox"/> NO	
109. BIOPSY PERFORMED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		110. AUTOPSY PERFORMED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
111. USED IN DETERMINING CAUSE? <input type="checkbox"/> YES <input type="checkbox"/> NO		112. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107 NONE	
113. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 OR 112? (If yes, list type of operation and date.) NO		113A. IF FEMALE, PREGNANT IN LAST YEAR? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK	
114. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED. Decedent Attended Since Decedent Last Seen Alive (A) mm/dd/ccyy (B) mm/dd/ccyy		115. SIGNATURE AND TITLE OF CERTIFIER REGINA AUGUSTINE	
116. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE		117. DATE mm/dd/ccyy	
118. I CERTIFY THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED. MANNER OF DEATH <input type="checkbox"/> Natural <input type="checkbox"/> Accident <input type="checkbox"/> Homicide <input type="checkbox"/> Suicide <input checked="" type="checkbox"/> Pending Investigation <input type="checkbox"/> Could not be determined		119. INJURED AT WORK? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK	
120. INJURY DATE mm/dd/ccyy		121. INJURY DATE mm/dd/ccyy	
122. HOUR (24 Hours)		123. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.)	
124. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury)		125. LOCATION OF INJURY (Street and number, or location, and city, and zip)	
126. SIGNATURE OF CORONER / DEPUTY CORONER REGINA AUGUSTINE		127. DATE mm/dd/ccyy 03/03/2017	
128. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER REGINA AUGUSTINE, DEP. CORONER		129. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER	
STATE REGISTRAR		CENSUS TRACT	

CERTIFIED COPY OF VITAL RECORD  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

This is a true certified copy of the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.

Health Officer and Registrar

DATE ISSUED

MAR -6 2017

This copy is not valid unless prepared on an approved border, displaying the date, seal and signature of the Registrar.

Exhibit A, Page 1

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

CALOSANGOL