

1 MARK M. HATHAWAY
 2 (CA 151332; DC 437335; IL 6327924; NY 2431682)
 3 JENNA E. PARKER (CA 303560)
HATHAWAY PARKER
 4 445 S. Figueroa St. 31st Fl.
 Los Angeles, California 90071
 Telephone: (213) 529-9000
 5 Facsimile: (213) 529-0783
 E-Mail: mark@hathawayparker.com

6 Attorneys for Petitioner

FILED
 Superior Court of California
 County of Los Angeles

JUL 16 2019

Sherri R. Carter, Executive Officer/Clerk of Court
 By Isaac Lovs Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 JOHN DOE, an individual, on behalf of
 14 himself and all others similarly situated,

15 Petitioners,

16 v.

17 TIMOTHY P. WHITE, an individual in
 his official capacity as Chancellor of the
 California State University; THE BOARD
 18 OF TRUSTEES OF THE CALIFORNIA
 STATE UNIVERSITY, a California
 19 corporation; and DOES 1 to 20 inclusive,

20 Respondents.

Case No.:

19STCP02973

CLASS ACTION

**PETITION FOR WRIT OF
 ADMINISTRATIVE MANDAMUS**

21
 22 Petitioner alleges:

23 1. Petitioner JOHN DOE is a former student at California State University,
 24 Fullerton ("CSUF").

25 2. Respondent TIMOTHY P. WHITE, an individual in his official capacity, is the
 26 Chancellor of the California State University and is ultimately responsible for the
 27 investigation, adjudication and appeals of all student misconduct matters at the University
 28 through his issuance of a series of executive orders, and is ultimately responsible for the

CLASS ACTION PETITION FOR WRIT OF MANDAMUS

1 improper expulsion of Petitioners.

2 3. Respondent THE BOARD OF TRUSTEES OF THE CALIFORNIA STATE
3 UNIVERSITY (hereinafter “Cal State” or “University”), is the official name of the
4 corporation that governs and operates the California State University through its 25-
5 member board of trustees.

6 4. Petitioner uses the pseudonym of “John Doe” in his Petition to preserve privacy
7 in a matter of sensitive and highly personal nature, which outweighs the public’s interest
8 in knowing the parties’ identity. Use of the pseudonyms does not prejudice Respondents
9 because the identity of Petitioner is known to Respondents. (See, *Starbucks Corp. v.*
10 *Superior Court* (2008) 68 Cal.App.4th 1436 [“The judicial use of ‘Doe plaintiffs’ to
11 protect legitimate privacy rights has gained wide currency, particularly given the rapidity
12 and ubiquity of disclosures over the World Wide Web”]; see also *Doe v. City of Los*
13 *Angeles* (2007) 42 Cal.4th 531; *Johnson v. Superior Court* (2008) 80 Cal.App.4th 1050;
14 *Roe v. Wade* (1973) 410 U.S. 113; *Doe v. Bolton* (1973) 410 U.S. 179; *Poe v. Ullman*
15 (1961) 367 U.S. 497; *In Does I thru XXIII v. Advanced Textile Corp.* (9th Cir. 2000) 214
16 F.3d 1058.)

17 5. The Supreme Court, courts of appeal, superior courts, and their judges have
18 original jurisdiction in proceedings for extraordinary relief in the nature of mandamus
19 directed to any inferior tribunal, corporation, board, or person. (Cal. Const., art. VI, § 10;
20 see Code Civ. Proc. § 1084 [“mandamus” synonymous with “mandate”]; Code Civ.
21 Proc., § 1085.)

22 6. The doctrine of exhaustion of judicial remedies precludes an action by a college
23 or university student to challenge the result of a Title IX sexual misconduct
24 administrative proceeding unless the student first challenges the university’s decision
25 though a petition for writ of mandamus under Code Civ. Proc., § 1094.5. (*Doe v.*
26 *University of Southern California* (2016) 246 Cal.App.4th 221, 237 fn.9; *Gupta v.*
27 *Stanford University* (2004) 124 Cal.App.4th 407, 411; *Pomona College v. Superior Court*
28

1 (1996) 45 Cal.App.4th 1716, 1722–1723 (§ 1094.5 applicable to private universities.)
2 The statute’s requirement of a “ ‘fair trial’ ” means that there must have been “a fair
3 administrative hearing.” (*Pomona College v. Superior Court* (1996) 45 Cal.App.4th
4 1716, 1730, citing *Guilbert v. Regents of University of California* (1979) 93 Cal.App.3d
5 233, 241.).

6 CLASS ACTION ALLEGATIONS

7 7. Petitioner brings this action on his own behalf and on behalf of all persons
8 similarly situated. The class that Petitioner represents is composed of students who were
9 issued discipline in Title IX sexual misconduct administrative proceedings under
10 Executive Order 1097 Revised June 23, 2015 (Systemwide *Policy* Prohibiting
11 Discrimination, Harassment and Retaliation, Sexual Misconduct, Dating and Domestic
12 Violence, and Stalking against Students and Systemwide *Procedure* for Addressing Such
13 Complaints by Students) (“2015 EO 1097”), Executive Order 1097 Revised October 5,
14 2016 (Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation,
15 Sexual Misconduct, Dating and Domestic Violence, and Stalking against Students and
16 Systemwide *Procedure* for Addressing Such Complaints by Students) (“2016 EO 1097”),
17 and/or Executive Order 1098 Revised June 23, 2015, Article IV (Student Conduct
18 Procedures) (“EO 1098”) (collectively, the “Policies”), with respect to complaints that, if
19 substantiated, could result in a severe sanction for the respondent, and where credibility
20 of any party or witness was central to the finding.

21 8. The persons in the class are so numerous that the joinder of all such persons is
22 impracticable and that the disposition of their claims in a class action rather than in
23 individual actions will benefit the parties and the court.

24 9. There is a well-defined community of interest in the questions of law and fact
25 that predominate over interests of individual class members. Common questions of law
26 and fact to be litigated include: (a) whether the Policies comply with the law; (b) whether
27 Respondents have failed to implement procedures that provide adequate Due Process to
28

1 students accused of sexual misconduct at California State Universities; and (c) whether
2 findings and discipline imposed under the unlawful Policies must be set aside and
3 vacated. These questions of law and fact predominate over questions that affect only
4 individual class members. The claims of Petitioner are typical of those of the class, and
5 Petitioner will fairly and adequately represent the interests of the class.

6 10. There is no plain, speedy, or adequate remedy other than by maintenance of this
7 class action. The claims arise from the failure of Respondents to implement fair policies
8 that protect the Due Process rights of students disciplined for sexual misconduct. A class
9 action is superior to individual lawsuits for resolving this controversy.

10 11. Petitioner will fairly represent and adequately protect the interests of members of
11 the class as a whole. Petitioner does not have any interests antagonistic to those of other
12 class members. By filing this action, Petitioner has displayed an interest in vindicating
13 his rights, as well as the claims of others who are similarly situated. The relief sought by
14 Petitioner will inure to the benefit of members of the class generally. Petitioner is
15 represented by qualified, experienced, and competent counsel.

16 12. At all relevant times, Respondents were bound to abide by the procedures set
17 forth in Executive Order 1097 Revised June 23, 2015 (Systemwide *Policy* Prohibiting
18 Discrimination, Harassment and Retaliation, Sexual Misconduct, Dating and Domestic
19 Violence, and Stalking against Students and Systemwide *Procedure* for Addressing Such
20 Complaints by Students) (“2015 EO 1097”), Executive Order 1097 Revised October 5,
21 2016 (Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation,
22 Sexual Misconduct, Dating and Domestic Violence, and Stalking against Students and
23 Systemwide *Procedure* for Addressing Such Complaints by Students) (“2016 EO 1097”),
24 and/or Executive Order 1098 Revised June 23, 2015, Article IV (Student Conduct
25 Procedures) (“EO 1098”) (collectively, the “Policies”).

26 13. Under the Policies, Respondents placed the entire responsibility for the
27 investigation, prosecution, fact-finding, and adjudication of sexual misconduct claims in
28 the hands of a single individual who acted as police, prosecutor, jury, and judge without a

live, in-person hearing before impartial adjudicators where the accused could question or cross-examine the complainant and witnesses, an administrative procedure determined to be unlawful by California's Second District Court of Appeal in *Doe v. Allee* (2019) 30 Cal.App.5th 1036. (See also, *Doe v. Westmont College* (2019) 34 Cal.App.5th 622; *Doe v. University of Southern California* (2018) 29 Cal.App.5th 1212; *Doe v. Regents of University of California* (2018) 28 Cal.App.5th 44; *Doe v. Claremont McKenna College* (2018) 25 Cal.App.5th 1055; *Doe v. Regents of University of California* (2016) 5 Cal.App.5th 1055; *Doe v. University of Southern California* (2016) 246 Cal.App.4th 221.)

14. On information and belief, Respondents have been aware of the class of individuals improperly disciplined as alleged herein since at least in or about September 2018, and have taken no action to correct the deprivation of rights imposed on the class by Respondents nor to alleviate the damages suffered by class members as a result of Respondents' improper actions.

ALLEGATIONS RE PETITIONER

15. As for Petitioner John Doe, another student, Jane Roe, filed a Sexual Misconduct complaint against Petitioner on November 15, 2016 with CSUF's Title IX and Gender Equity office. The same day, CSUF's Title IX Coordinator, Mary Bacerra, informed Petitioner, "The University has received allegations of sexual misconduct against you ("Respondent") by CSUF student, [Jane Roe] ("Complainant"). The alleged incident is stated to have occurred at an off campus location on October 18, 2016."

16. The charges were investigated and adjudicated pursuant to the 2016 EO 1097 policy and EO 1098.

17. Pursuant to 2016 EO 1097, the Title IX Coordinator designated a single individual, Title IX Investigator Andy Terhorst, to investigate the alleged conduct and make factual findings and a determination of whether Petitioner had violated the 2016 EO 1097 policy. Petitioner denied the allegations and denied engaging in any sexual activity with the complainant, Jane Roe.

1 18. On or about February 21, 2017, the sole investigator, Andy Terhorst, completed
2 his CSU Executive Order 1097 Investigative Report finding that based on his
3 determination of the parties' and witnesses' credibility, Jane Roe's allegations were
4 substantiated. No hearing was held in front of impartial factfinders prior to Andy
5 Terhorst making findings and recommendations that Petitioner was responsible for
6 engaging in Sexual Misconduct and Sexual Harassment in violation of the 2016 EO 1097
7 policy.

8 19. On March 13, 2017, Petitioner submitted a written appeal of investigator Andy
9 Terhorst's findings and determinations pursuant to the 2016 EO 1097 policy.

10 20. On March 23, 2017, relying on Andy Terhorst's credibility determinations and
11 findings, Bridget Pinelli, Manager, Chancellor's Office Investigations, denied Petitioner's
12 written appeal, stating, "On appeal, you did not show that the investigation outcome is
13 unsupported by the evidence, based on the Preponderance of the Evidence Standard, that
14 prejudicial procedural errors impacted the investigation outcome to such a degree it did
15 not comply with this EO, or that there is new evidence not available at the time of the
16 investigation. Your appeal is denied."

17 21. On May 23, 2017, a hearing was held pursuant to EO 1098 to determine the
18 sanctions to be imposed against Petitioner. Dr. Lynn Sargeant served as the Hearing
19 Officer.

20 22. On June 5, 2017, Dr. Sargeant recommended the sanction of expulsion from
21 CSUF, which would prevent Petitioner's admission to any of the California State
22 Universities, and cancellation of Petitioner's enrollment for the Spring and Summer
23 Semesters 2017, resulting in marks of "W" for all enrolled courses.

24 23. On June 8, 2017, CSUF President Mildred Garcia implemented the sanction
25 recommended by Dr. Sargeant. Petitioner appealed the sanctions pursuant to EO 1098.

26 24. On June 30, 2017, Pamela Thomason, Systemwide Title IX Office with the
27 Office of the Chancellor, California State University, denied Petitioner's appeal of the
28 sanctions, stating, "Expulsion is reasonable based on the facts and circumstances as

1 determined by the investigation.”

2 25. Petitioner has exhausted his administrative remedies.

3 26. Petitioner seeks to exhaust judicial remedies through this petition for writ of
4 mandate following Respondents’ disciplinary process, which is now final.

5 27. On information and belief, Respondents’ actions, sanctions, and decisions are
6 invalid under Code Civ. Proc., § 1094.5. and alternatively, Code Civ. Proc., § 1085, for
7 the following reasons:

- 8 a. Respondents failed to grant Petitioner and all members of the class a fair
9 hearing;
- 10 b. Respondents failed to implement policies that provide adequate Due
11 Process to Petitioner and all members of the class who were accused of
12 sexual misconduct and subject to discipline;
- 13 c. Respondents committed a prejudicial abuse of discretion, in that
14 Respondents failed to proceed in the manner required by law;
- 15 d. Respondents’ decisions made based on information gleaned from
16 improper administrative proceedings are not supported by the findings;
17 and
- 18 e. Respondents’ findings are not supported by the evidence.

19 28. Petitioner and all members of the class are entitled to an independent, fair
20 hearing before neutral factfinders where the university shall bear the burden of proof and
21 must establish each of the elements required to show a violation of the charged policies
22 by the weight or preponderance of the evidence.

23 29. Issuing findings and decisions prior to a hearing and opportunity to cross-
24 examine the complainant and witnesses in front of a neutral factfinder is an unfair and
25 unlawful process.

26 30. Respondents’ actions and decision deprive Petitioner and all class members of
27 fundamental vested rights; therefore, the reviewing court must exercise its independent
28 judgment to reweigh the evidence pursuant to Code Civ. Proc., § 1094.5, subd. (c).

31. Petitioner has exhausted all administrative remedies available to him as of the

1 date of filing this Petition.

2 32. Petitioner has no plain, speedy, adequate remedy in the ordinary course of law.

3 33. Petitioner brings this action not only to enforce his own rights, but also to
4 enforce the rights of the class and important rights affecting the public interest, and the
5 Due Process rights of college and university students who are subject to the Policies.

6 34. Petitioner is obligated to pay an attorney for legal services to prosecute this
7 action and will seek to recover attorney's fees as provided in Code Civ. Proc., § 1021.5
8 and/or Gov. Code, § 800.

9 35. Petitioner intends that this Petition serve as a request for Respondents to produce
10 the complete Administrative Record of its decision against Petitioner and all members of
11 the class. Petitioner reserves the right to augment, supplement, and modify this Petition
12 when he is able to review the Administrative Record.

13
14 WHEREFORE, Petitioners and the proposed class pray for the Court to order the
15 following relief and remedies:

- 16 1. Certify this action as a class action;
17 2. Issue a writ of mandate directing Respondents to set aside and vacate the
18 findings and sanctions issued against Petitioner and all members of the class, or to show
19 cause why a peremptory writ of mandate to the same effect should not be issued;
20 3. Award Petitioner the costs of this action and reasonable attorney's fees and
21 litigation expenses as permitted by statute, in addition to any other relief granted;
22 4. For such other and further relief as the court deems just and proper.

23 HATHAWAY PARKER

24
25 DATED: July 15, 2019

By: 

26 Mark M. Hathaway
27 Jenna E. Parker
28 Attorneys for Petitioner

1 **VERIFICATION**

2 I am the named Petitioner in this action. I have read the foregoing petition and
3 know the contents thereof. The same is true of my own knowledge, except as to those
4 matters which are therein alleged on information and belief, and as to those matters, I
5 believe it to be true.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct. Signed on the date below at San Pedro, California.

8
9
10 Date: July 15, 2019

Redacted

Petitioner

07/17/2019