

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RECEIVED
JAN 20 1951

RECEIVED
2010 JAN 20 P 3:44
RICHARD W. WICK
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO**

) Civil Case No.: **C09-3808 VRW**
)
) **SECOND AMENDED COMPLAINT**

UNIVERSITY OF SAN FRANCISCO
and Does 1 through 100 inclusive,
Defendants.

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) in that there is complete diversity of citizenship between Plaintiff Tecza and Defendant USF, and the amount in controversy will likely exceed the sum of \$75,000, exclusive of interest and costs.
2. At least one of the Plaintiff's claims arises under the laws of the United States, so pursuant to 28 U.S.C. §1331, this Court has federal question jurisdiction over this action.

1 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391 in that a substantial part of
2 Plaintiff Tecza's claims occurred in this District and Defendant USF is subject to personal
3 jurisdiction within this district.

4 **PARTIES**

5 4. Plaintiff JASON TECZA ("Tecza"), an individual, brings this action on behalf of himself.

6 5. Tecza is now, and at all times mentioned in this complaint was a competent adult.

7 6. Tecza was a resident of Contra Costa County, California between March 2005 and September
8 2006; San Francisco County, California between September 2006 and May 2008; and is now,
9 and has been a resident of Hudson County, New Jersey since May 2008.

10 7. Defendant University of San Francisco ("USF") is now, and at all times mentioned in this
11 Complaint was, a California corporation doing business in San Francisco County, California.

12 8. One or more of the incidents alleged in this complaint occurred in San Francisco, California;
13 Dublin, Ireland; and Prague, Czech Republic.

14 9. Tecza does not know the true names or capacities of the defendants sued herein as DOES 1
15 through 100 inclusive, and therefore sues these defendants by such fictitious names. Tecza
16 will amend this complaint to allege their true names and capacities when ascertained. Tecza
17 is informed and believes, and thereon alleges, that each of these fictitiously named defendants
18 is responsible in some manner for the occurrences herein alleged, and that Tecza's damages
19 as herein alleged were proximately caused by those defendants. Each reference in this
20 complaint to "defendant" or "defendants" or to a specifically named defendant refers also to
21 all defendants sued under fictitious names.

22 10. Tecza is informed, believes, and thereon alleges, that at all times herein mentioned each
23 defendant and each of the persons who are not parties to this action but are identified by

1 name or otherwise throughout this complaint, was the agent and employee of each of the
2 remaining defendants, and in doing the things herein alleged, acted within the course and
3 scope of this agency and employment and was the alter ego of each remaining defendant.

4 **FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS**

5 11. In approximately spring of 2006, Tecza applied for and was accepted as a candidate for a
6 Juris Doctor degree to be awarded after successful completion of a legal education program
7 ("School of Law") administered solely by USF, a private post-secondary university located at
8 2130 Fulton Street, City and County of San Francisco, State of California.

9 12. Tecza is informed, believes, and thereon alleges that USF, as an educational institution, has
10 accepted financial assistance from the United States government.

11 13. USF is a member of the Western Association of Schools and Colleges.

12 14. The School of Law promotes accreditation with the American Bar Association and the
13 American Association of Law Schools.

14 15. USF conditioned Tecza's enrollment in law school on participation in the Academic Support
15 Program (ASP), that, upon Tecza's information and belief, is an affirmative-action
16 admissions program administered by USF that considered individualized diversity as a factor
17 in making admissions decisions, which included socioeconomics, race, disabilities and other
18 cultural conditions that were underrepresented in the general student populace at the School
19 of Law as of 2006. These "diversity" factors permit admission to persons who would
20 otherwise not be admitted due to issues with other credentials such as Law School Admission
21 Test score and undergraduate grade point average.

22 16. Tecza attended a required ASP three-week training session prior to commencement of classes
23 in the summer of 2006 and participated in mandatory regular group tutoring and academic

1 counseling sessions throughout Tecza's first year of study at USF, all of which were
2 mandatory components of ASP, none of which identified students in ASP as such to the
3 general populace.

4 17. Tecza began attending the USF School of Law in August 2006, earning a cumulative grade
5 point average of 1.93 for the Fall 2006 semester.

6 18. In or around January 2007, USF placed Tecza on academic probation for failing to maintain a
7 cumulative GPA of 2.00 and threatened expulsion if a minimum cumulative GPA of 2.00
8 was not achieved after Spring 2007 semester. As a further consequence of academic
9 probation, USF imposed upon Tecza a strict curriculum of courses related solely to bar exam-
10 tested materials, restricting Tecza from taking narrower career-focused academic courses that
11 Tecza would have likely otherwise chosen. Also, USF did not permit Tecza to participate in
12 or receive academic credit for career-enhancing internships, and USF did not permit Tecza to
13 be a member of any law review or journal that would have provided Tecza with the writing
14 experience required by many legal employers.

15 19. During an ASP counseling session in or around February 2007 with Tecza, Carol Wilson
16 ("Wilson"), director of ASP, addressed the discrepancy between Tecza's poor exam results
17 and the apparent knowledge retained by Tecza regarding the subject matter of classes taken
18 during the Fall 2006 semester. Wilson suggested to Tecza that he get tested for a learning
19 disability, stating that during previous years in her official capacity, she had seen similar
20 patterns with prior students who later discovered that their poor performance was causally
21 linked to a previously undiagnosed learning disability. Wilson told Tecza that students with a
22 recognized learning disability could counter the disability's effects on their academic success
23 by seeking assistance from Student Disability Services (SDS), a department of the University

1 of San Francisco with offices located on its main campus in San Francisco whose programs
2 were administrated separately from the School of Law.

3 20. Tecza, age 36, had not previously considered getting tested for having a learning disability
4 but agreed to seek a professional medical opinion upon Wilson's request because he believed
5 and believes now that Wilson was advising him to do so in his best interests.

6 21. In or around March 2007, Dr. Irene Yeh ("Dr. Yeh") of Kaiser Permanente, Tecza's treating
7 psychiatrist, diagnosed Tecza with Attention Deficit Hyperactivity Disorder ("ADHD"),
8 finding that habitual emotional, physical and behavioral patterns including anxiety,
9 depression, distractibility, impulsivity, and hyperactivity were substantial life impairments
10 linked to the condition of ADHD that limited Tecza's personal, professional and academic
11 opportunities. Dr. Yeh recommended that Tecza seek exam accommodations that would
12 include extended time for exams and an isolated testing environment to counter the negative
13 effects of ADHD on Tecza's academic performance in law school. Tecza voiced concerns to
14 Dr. Yeh about stigmatization of persons with learning disabilities. Tecza expressed fear of
15 unauthorized disclosure to fellow classmates, faculty and future employers that would result
16 in humiliation, lost self-esteem and ill repute. Tecza asserted that he believed he would be
17 perceived as professionally incompetent by acknowledging an inability to complete exams
18 without requesting accommodations due to ADHD.

19 22. Tecza wears corrective lenses to improve his eyesight but manifests no other known or
20 readily apparent physical disabilities.

21 23. After meeting with Dr. Yeh, Tecza downloaded a copy of the "Student Disability Services
22 Handbook" ("SDS Handbook"), published by USF, which details policies and regulations
23 regarding disability services as well as rights and responsibilities of students, faculty and

administration at USF. Tecza is informed, believes, and thereon alleges that the SDS Handbook includes the following statements (bold for emphasis):

- p.2 *"Qualified students with disabilities, who are provided reasonable accommodations, must be able to function in their academic and residential environments. They must meet the requirements and expectations of their academic programs, follow established guidelines and procedures for securing and remaining in residential living spaces, and adhere to the University's student conduct and discipline codes."*
- p.3 *ACCESSIBILITY: THE KEY TO EQUAL OPPORTUNITY. The University of San Francisco, in accordance with applicable Federal and State laws and university policy, does not discriminate on the basis of disability. Equal educational opportunity is required by federal and state law, including the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the California State Unruh Act, and California Civil Code Sections 54 through 55.2. Under federal law, a person with a disability is one who: 1) has a physical or mental impairment which substantially limits one or more major life activities; 2) has a record of such impairment; 3) is regarded as having such an impairment. Individuals seeking reasonable accommodations for academic programs should contact the SDS office on the main campus.*
- p.4 *A. STUDENT RIGHTS AND RESPONSIBILITIES. 1. Every qualified student with a documented disability or disabling condition has the right to: . . . Appropriate confidentiality of all information pertaining to his/her disability or condition.*
- p.5 & 6 *B. INSTITUTIONAL RIGHTS AND RESPONSIBILITIES . . . 2. The University of San Francisco has the responsibility to . . . Maintain appropriate confidentiality of records and communication concerning students with disabilities or disabling conditions (except where disclosure is authorized by the student or required by law). . .*
- p. 8 *CONFIDENTIALITY OF RECORDS – Student SDS files are confidential and are not part of a student's educational record (as defined by the Family Educational Rights and Privacy Act (FERPA)) at USF. Information about a student's disability is not shared with anyone without the student's consent.*
- p. 8 *DISCLOSURE OF DISABILITY— . . . in order to receive academic accommodations, students must identify themselves directly to SDS as a student with a disability. Students who complete the intake and eligibility process are advised to obtain a Verified Individualized Services and Accommodations letter (see Appendix F) from their SDS specialist that verifies that the student has a qualified disability and is eligible for appropriate accommodations . . . Students are advised against sharing documentation directly with instructors, as instructors are not required to be knowledgeable about disability regulations and accommodation options. As such, instructors are not responsible for interpreting, evaluating, or responding to disability documentation.*

- p. 17 *PROCEDURES . . . Exam Accommodation Agreement*. Once it is determined that a student will receive exam accommodations, the student **must read, understand, and sign the Accommodation Agreement Form** (See Appendix K) indicating that he or she understands and agrees with whatever specific exam accommodations he or she will be receiving as well as the **SDS exam policies, procedures, and guidelines**.
- APPENDIX E – *Attention Deficit/Hyperactivity Disorder (ADHD) Documentation Guidelines . . . Under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, individuals with disabilities are **protected from discrimination** and may be eligible for services. In determining eligibility for accommodations under the Americans with Disabilities Act (ADA), the student must demonstrate that a qualified professional has established a **formal diagnosis** of a disability and evidence of a "substantial limitation" or impairment in a major life activity such as learning. . . . All **information provided to Student Disability Services is confidential** and is not released without written consent of the student except on a need-to-know basis. . . . The following professionals would generally be considered **qualified to evaluate and diagnose ADHD** provided they have comprehensive training in the differential diagnosis of ADHD and direct experience with an adolescent or adult ADHD population: clinical psychologists, neuropsychologists, **psychiatrists**, and other relevantly trained medical doctors.*

24. Tecza is informed, believes and thereon alleges that the SDS Handbook sets forth USF's business practices regarding the handling of students with disabilities.

25. Thereafter, Tecza contacted SDS, which issued Tecza a written questionnaire to be completed that included a thorough battery of questions requiring answers involving thoughtful reflection about highly personal, individualized psychological issues.

26. Thereafter, Dr. Yeh submitted her diagnosis of Tecza's condition along with the "Request for Verification of Disability" forms to SDS as required for Tecza's intake with SDS.

27. After reviewing Dr. Yeh's documentation and responses to the questionnaire, as well as a personal interview, SDS offered Tecza exam accommodations based on the substantial mental impairment caused by ADHD that was substantially affecting his ability to compete as a student at the School of Law. Tecza read, understood and signed an "Exam

1 Accommodation Agreement” used by SDS to complete the intake process, which was ratified
2 by a Student Disability Services Specialist.

3 28. Thereafter, SDS issued a signed “Student Disability Services Verified Individualized
4 Services and Accommodations” agreement to the School of Law recommending exam
5 accommodations, which were denoted as extended time by 50% and an isolated room, which
6 was approved by the School of Law.

7 29. Tecza is informed, believes and thereon alleges that the relationship between SDS and the
8 School of Law is limited to issues relating to student disabilities. SDS receives funding from
9 USF separately from the School of Law and is staffed by persons who are not employed by or
10 affiliated with the School of Law. SDS houses testing rooms separate from the law school
11 and proctors exams for students whose accommodations include isolation, where the testing
12 process is relocated to a separate room for environmental control purposes. Tecza is also
13 informed and believes that USF keeps a system of records regarding student disabilities that
14 is primarily maintained at the SDS office, which includes Tecza’s records.

15 30. Tecza is informed, believes and thereon alleges that the School of Law created and maintains
16 a business record called “Special Exam Sign-Out Sheet” in an effort to prevent interaction
17 between student and professor regarding exam accommodations. This form, when complete,
18 requires personally identifiable information including student name, course enrolled and
19 professor, examination time and date, standard duration of exam and accommodated
20 duration, location and proctor, specific accommodations to be given to that student,
21 restrictions on accommodations and the student’s signature. Law School professors are
22 informed of the student’s exam number only and are not supposed to be aware of any exam
23

accommodations given to the student, whereas many other schools operated by USF encourage interaction between student and professor regarding accommodations.

31. Tecza is informed, believes and thereon alleges that the School of Law's policy provides that when a student that has been approved by the School of Law for exam accommodations, the "Special Exam Sign-Out Sheet" must be filled out and signed by the proctor and student and returned to the School of Law along with examination materials provided by the course instructor. If an exam is improperly administered or the "Special Exam Sign-Out Sheet" is not properly authorized by signature, the exam is deemed invalid by the registrar of the School of Law and the student receives no credit for the exam.

32. Students enrolled in the USF School of Law are subject to rules, regulations and policies found in a handbook entitled "Academic Policies and Administrative Procedures" ("Student Handbook"). Tecza is informed, believes and thereon alleges that the Student Handbook includes the following information (bold for emphasis):

- TITLE PAGE: *The University and the School of Law expressly reserve the right to modify the curriculum, including the offering, timing and content of courses, and/or to change any requirement for admission or graduation. The University and the School of Law also expressly reserve the right to change any rule, regulation, requirement and/or procedure affecting the student body including any rule, regulation, requirement and/or procedure relating to grading, academic standing, and disqualification. Such changes shall become effective **whenever the administration may determine and may operate retroactively.***

- p.4 & 5

*5. Degree Requirements . . . (d) Attain a **2.000 (or better) cumulative grade point average** as well as attain a 2.000 (or better) grade point average in at least one of the last two regular semesters prior to completing the degree requirements . . .*

*6. Residence Requirements. Accreditation regulations require compliance with specified standards relating to the law school's education program. In addition, the Committee of Bar Examiners has adopted Rules Regulating Admission to Practice Law in California. These rules **impose standards on the educational***

*program of law students seeking admission to the State Bar of California. There are **similar rules** regulating admission to practice law **in other states** as well . . . Students must note that the foregoing residence requirements complement but are distinct from the law school's degree and curricular requirements. **Students must comply with both sets of standards.***

- p. 11 *Grading Deadlines.* The faculty has adopted a policy requiring that grades from faculty shall be due (with certain exceptions) **21 days** after an examination is administered. For further information see the Registrar.

- p. 11 *I. Credit/No Credit Optional Grading (Credit Optional).*
 - *Credit/no credit optional grading refers to a system under which a student receives a grade designation of "credit" or "no credit" in lieu of a letter grade. . . . A student is presumed to be taking a credit optional course for a letter grade unless the student elects to be graded on the credit/no credit optional basis. A student makes the election by completing and filing a written option form with the Registrar's office. The election, once made, is irrevocable. The election must be made by a deadline noted in the official academic calendar for the semester in which the course is taken. The academic record (and transcript of the academic record) of a student who receives "credit" shall only reflect the designation "credit," and **shall not, under any circumstances, have a letter grade designation entered for the course. The Registrar shall not inform any student who earns a "credit" of the letter grade assigned by the instructor.***

- p. 12 *Grade Changes.* No grade may be changed after it is submitted to the Registrar except at the instructor's request on a **clear showing of computational error** by the instructor in the grading of the examination. The **Committee on Academic Standards must approve any grade change** before it may be accepted by the Registrar.

- p. 12 *III. Scholastic Standards/Academic Probation/Disqualification.*

A. Scholastic Standards – Good Standing. To be in good academic standing a student must attain at least a 2.000 ("C") grade point average (G.P.A.) for all letter graded work taken in each semester and must maintain a **cumulative G.P.A. of at least 2.000** for all letter graded work taken at the School of Law. A student who fails to meet these standards is not in good academic standing. . . . For purposes of determining compliance with the School of Law's scholastic standards, grade point averages are computed at the end of the fall and spring semesters. **Grades in summer sessions are not counted either to raise or lower a previous cumulative or semester G.P.A.** For purposes of determining compliance with the law school's scholastic standards, summer session grades are computed as part of a student's cumulative G.P.A. following completion of the next succeeding regular semester.

- p. 22 *E. Semester in Residence at Other Institutions.*

*In extraordinary, unforeseen circumstances related to **family, health or other unusual personal situations**, a student may be granted permission to attend another ABA/AALS-approved law school for his or her final semester or year of law school, while still earning the USF degree. . . .*

*No course or other requirement for the USF degree may be taken at another institution. Credits earned during the visit will be accepted only if earned in letter graded "classroom" courses in which the student receives a letter grade of "C" or better. **Clinical programs, judicial externships, directed research, independent study, and the like are not classroom courses.***

- p. 23 to 25 *V. Final Examinations.*

*A. Evaluation of Student Work. . . . is based on a written examination at the end of the semester. Such examinations are identified by a student's examination number rather than name, and therefore are **anonymously reviewed and graded.** . . . Papers and other similar projects, seminar courses, and other appropriate circumstances may warrant departure from the anonymous grading system.*

*B. Examination Schedule. . . . In **no event** will a rescheduled examination be administered prior to the published examination date and time.*

F. Special Accommodations Due to Disability. . . . A student with a disability may seek special accommodations for taking examinations . . . If a basis for accommodation is established, an individual student will be given reasonable and necessary accommodation. A student seeking accommodations must contact the University's office of Student Disability Services in a timely fashion.

*G. Examination Rules and Procedures. **All students** must adhere to the examination **rules and procedures** established by the law Registrar's office. These rules and procedures are available from the Registrar.*

- p. 25 *VI. SUMMER SESSION. A. USF Summer Sessions. . . . Credits earned in courses taken . . . in a Study Abroad program program are **applied toward the JD degree** requirements. . . Students may enroll in a maximum of 7 units during a summer.*
- p. 26 – 28 *VIII. PRIVACY RIGHTS OF PARENTS AND STUDENTS. In accordance with the Family Education Rights and Privacy Act of 1974 (20 USC § 1232(g)) the following notice is given to all law school students.*

A. The University of San Francisco School of Law maintains the following records on students who have registered for any regular session of the School of Law:

- 1. Permanent record maintained by the Registrar;*

1 2. Financial aid file maintained by the Financial Aid officer for each
2 student who has applied for financial aid;

3 3. Placement file maintained by the Placement Officer for each student or
4 former student who has sought law school assistance in job placement.

5 B. The permanent **student record** contains a record of law school academic work,
6 **forms completed by the student during his or her academic career**, copies of
7 correspondence relating to the student, all admissions materials retained after the
8 admission process has been completed, and **other pertinent records relating to the**
9 **student.**

10 C. The **Registrar is responsible for maintaining and releasing information from the**
11 **academic record.** . . . University and law school administrators and law school
12 faculty have access to the academic record . . . for the purpose of administering the
13 academic record in performance of their official duties. . . . **Records shall be released**
14 **to others only upon a request in writing from the student** specifying the records to be
15 released, the reasons therefore and names of the persons to whom the records are to
16 be released. . . .

17 G. The **Registrar keeps a record of each disclosure** of information from the academic
18 records (except disclosures to the student or to which the student has consented,
19 disclosures to appropriate school officials or disclosures of directory information),
20 which record states the **legitimate interest** in the information of the party requesting
21 and obtaining it. This record is **kept with the academic record** to which it pertains
22 and may be inspected by the student.

23 33. Tecza is informed, believes and thereon alleges that the Student Handbook sets forth USF's
 business practices regarding the procedures for handling USF School of Law students,
 including exam accommodations for students with disabilities.

 34. Tecza is informed, believes and thereon alleges that the Student Handbook makes special
 accommodated testing available only to students with disabilities.

 35. USF School of Law Juris Doctor degree students are subject to rules, regulations and policies
 determined by the Registrar, published in a handbook entitled "Examination Policies and
 Procedures" ("Exam Handbook"). Parts of the Exam Handbook relevant to this case include:

- p.1 I. Final Examinations, A. Examination numbers. Student examinations, in class and take home, are identified by number rather than name, and therefore, are graded in anonymity.

- p.3 19. *Students are prohibited from contacting an instructor from the time the examination commences until final grades for the course have been posted. Contacting an instructor before the final grades have been posted may constitute a violation of the Honor Code. If an issue arises in regard to either the content or the administration of an examination, the issue must be brought to the attention of the Law Registrar, not the instructor.*

36. Tecza is informed, believes and thereon alleges that the Exam Handbook sets forth USF's business practices regarding administration of examinations for students that do not require accommodated testing due to a disability.

37. USF operates a combined-site Study Abroad summer program ("Study Abroad") in Dublin, Ireland and Prague, Czech Republic, offered as part of its fully accredited curriculum.

38. Courses offered by USF in the Study Abroad program are substantially the same as a full-length semester course in regards to the volume and nature of course content, quality of teaching and time spent in class by students.

39. Grades earned by students of the School of Law in Study Abroad courses are recorded on the student's permanent transcript identically to those taken in the Fall and Spring semesters, carrying equal weight and value against the student's G.P.A.

40. USF's application for participation in the Study Abroad program required students to reveal a disability prior to being accepted in the program (bold added for emphasis):

*A student who requires an exam accommodation due to disability **must** make his/her needs known to the Study Abroad Coordinator **on this application**. Appropriate documentation must be submitted immediately thereafter.*

I will require exam accommodation _____ YES _____ NO

41. Tecza applied for participation in the Study Abroad program, completing the application in its entirety as instructed by USF, answering "YES" to requiring exam accommodation.

1 42. Tecza contacted USF's Study Abroad Coordinator, Kristin Geddis ("Geddis") and SDS to
2 make sure that each had proper documentation regarding Tecza's disability accommodations.
3 Tecza was informed by Geddis and SDS that Tecza had provided each with proper
4 documentation regarding Tecza's disability in regard to accommodations.

5 43. After Tecza had applied to study in Dublin and Prague and placed the required non-
6 refundable deposit, Geddis sent Tecza an e-mail counseling Tecza to withdraw on the basis
7 of his disability because USF was unable to provide accommodations. After Tecza
8 recommended that accommodations not be provided to Tecza in lieu of withdrawal, Geddis
9 later recanted by e-mail and assured Tecza that USF would provide the exam
10 accommodations agreed upon by SDS and Tecza.

11 44. USF managed Tecza's confidential disability information for exam accommodation purposes,
12 which included administration of exam accommodations for courses taken during the Study
13 Abroad program.

14 45. Tecza is informed, believes, and thereon alleges that in or around the summer of 2007, the
15 School of Law created a joint program between ASP and the Academic Achievement
16 Program, which offered tutoring and related assistance to non-ASP students, in an effort to
17 reduce stigmatization about unfair advantage perceived by the student body in regards to
18 those who received ASP assistance.

19 46. Tecza is informed, believes, and thereon alleges that in 2007, there were 43 students in
20 Dublin: 31 from USF and 12 from other schools. There were 51 students in Prague: 25 from
21 USF and 26 from other schools. Many of the students who participated in the Dublin Study
22 Abroad program also studied in Prague.
23

1 47. A significant majority of students enrolled in Prague during the 2007 Study Abroad program
2 were housed in the same dormitory, had similar schedules, and shared a breakfast room as
3 well as common areas and entries.

4 48. For the Dublin program, Tecza was enrolled in Mediation and ADR Techniques, taught by
5 Professor Robert Talbot ("Talbot"), and Comparative Urban Planning/Land Use Law, taught
6 by Professor Tim Iglesias ("Iglesias").

7 49. On or about July 3, 2007, enrollment for Fall 2007 classes was opened for rising 2L students.
8 Tecza had previously received his grades from the Spring 2007 semester, revealing a grade
9 point average that was higher than 2.000. Since he was no longer subject to expulsion based
10 upon his G.P.A., Tecza enrolled in classes for Fall 2007 on the belief that he would be able
11 to complete his studies at the School of Law and remain in the Bay Area indefinitely.

12 50. On or about July 6, 2007, Talbot administered and proctored Tecza's final examination for
13 Mediation and ADR Techniques. To accommodate Tecza, Talbot, while in the room where
14 the exam under regular conditions was to be taken and in the company of those students who
15 were about to take the exam under regular conditions, asked Tecza and another student to
16 accompany him to separate rooms for accommodated testing. After waiting in a separate
17 room with this classmate, who was also promised confidentiality about his exam
18 accommodations, Tecza was removed to a private room and an accommodated exam was
19 administered by Talbot.

20 51. On or about July 8, 2007, Iglesias administered and proctored Tecza's final examination for
21 Comparative Urban Planning/Land Use Law in an isolated room. With approximately forty-
22 five minutes remaining in the examination time period, a maintenance person for Trinity
23 College, where the courses were being taught for the Dublin portion of the USF Study

1 Abroad program, informed Tecza that the building was being locked up and that he would
2 have to leave. Tecza packed up his belongings and exited the classroom. Tecza searched for
3 Iglesias, who had vacated the building, and had no alternative but to ask other students
4 enrolled in the program who happened to be in the area for assistance in finding Iglesias so he
5 could turn in his exam. Approximately one hour later, Tecza located Iglesias near the center
6 of campus and turned in his exam.

7 52. For the Prague portion of the USF Study Abroad program, Tecza enrolled in
8 Constitutionalism in the Czech Republic, taught by Professor Vojtech Cepl ("Cepl"), and
9 International Sales Contracts (CISG), taught by Professor Eldon Reiley ("Reiley").

10 53. On or about July 17, 2007, copies of *USF School Of Law Comparative Criminal Justice*
11 *Course Materials* by Professor Susan Rutberg, Summer 2007, ("Textbook") were distributed
12 to students enrolled in the Comparative Criminal Justice course who were attending the USF
13 Study Abroad program in Prague. An unknown number of remaining copies were left
14 unattended on a publicly accessible table in an unlocked classroom at Charles University's
15 School of Law after distribution.

16 54. Tecza was **NOT ENROLLED** in the Comparative Criminal Justice Course offered by USF.

17 55. The Textbook includes hand-written numbering on the front side of each page, numbered "1"
18 through "239" in consecutive order in the lower right corner, not counting the cover page or
19 back binding page, and excluding the number "176." Tecza is informed, believes and thereon
20 alleges that the numbers in the Textbook corners constitute page numbers. If so, page 175 of
21 the Textbook contains a hand-written number "175" on the lower right corner and the upper
22 left corner, which is inconsistent with any other page in the Textbook.

1 56. The content of pages 137 through 205 of the Textbook is an otherwise unpublished judicial
2 opinion involving a defendant who had been criminally accused of rape. The opinion details
3 various means by which evidence and witnesses should be allowed, citing various
4 illustrations and examples. The contents of the page directly facing page 175 focuses on
5 relevancy of evidence involving consensual sex, lesbianism, the mens rea of a rape and
6 delves into the accused's background.

7 57. The illustration immediately following this information on page 175 is titled "Special Exam
8 Sign-Out Sheet." Jason Tecza is identified by name, the course and professor are identified as
9 Criminal Procedure and Mounts, the date and time of examination is 5/18/2007 at 9:00 a.m.,
10 standard Duration is listed as 3 hours 5 minutes whereas the accommodated duration is 4
11 hours 38 minutes. It's a closed book exam so no materials are permitted. Accommodations
12 are 1.5 time and isolation. SDS is to proctor the examination and the room is the SDS office.

13 58. The phrase "[REG\FORMS\SPECIAL\SPECEXAM.FRMAP]" is printed at the bottom of
14 page 175 of the Textbook. Tecza is informed, believes and thereon alleges that this phrase,
15 identifies a folder hierarchy within an electronic database of files maintained in a system of
16 records by the School of Law.

17 59. The word "accommodate" appears exactly four times in varying forms throughout the
18 "Special Exam Sign-Out Sheet."

19 60. The subject matter on page 177 (there is no page 176) continues with details about the
20 criminally accused's background.

21 61. Between approximately July 17, 2007 and July 31, 2007, on at least three occasions, while in
22 the company of other students enrolled in the Prague portion of the USF Study Abroad
23 program, Reiley asked Tecza about how to coordinate Tecza's exam accommodations. Tecza

1 did not answer directly, saying "I'm not worried about that right now. We'll figure it out,"
2 hoping Reiley would take the response as a reminder about the duty of confidentiality instead
3 of requiring a public acknowledgment of the circumstances by Tecza.

4 62. On or about July 25, 2007, Reiley issued an in-class exam, which constituted a significant
5 percentage of the International Sales Contracts final grade. Reiley insisted that students place
6 their names on these exams rather than performing anonymous grading. Reiley, who
7 proctored and administered the exam, did not provide Tecza with exam accommodations.
8 Tecza did not consent to this examination procedure but adhered to Reiley's request to place
9 his name on the answer sheet under duress of receiving a failing grade in the course.

10 63. At approximately 9:30 p.m. on or about August 1, 2007, Tecza was approached by a USF
11 student who was taking the Comparative Criminal Justice course who was wondering if she
12 had his mistakenly taken his textbook. When asked why she believed that, she showed Tecza
13 page 175, which contained Tecza's exam accommodations information. It was at this precise
14 moment that Tecza discovered the publication.

15 64. Tecza then confirmed by checking two other copies that page 175 was included as part of the
16 distributed Textbooks rather than merely his classmate's copy.

17 65. Prior to leaving Prague on August 3, Tecza was asked, in the presence of others, about the
18 publication of his exam accommodations in the Textbook on no less than six occasions by
19 persons with whom Tecza had no close personal relations and whom he had not shared
20 information about his disability, causing Tecza lost sleep each night and continuous anxiety
21 about when he would be next asked about his disability. Tecza recalls comments by these
22 persons about how "special the accommodations must be" and how this particular
23

1 information "fit so neatly in the middle of a rape case," relating to Tecza through inference a
2 state of mental infirmity and sexually deviant behavior.

3 66. Tecza was clearly identifiable to a substantial segment of the School of Law community
4 participating in the USF Study Abroad program as the person described by USF on page 175
5 of the Textbook. USF used Tecza's full name, "Tecza, Jason," referring to Plaintiff. USF also
6 identified Tecza through his attendance in a School of Law course, Criminal Procedure;
7 reference to the instructor of this course, Suzanne Mounts, the date, time and duration of the
8 examination, May 18, 2007 at 9 a.m., 3 hours and 5 minutes; and details of Tecza's exam
9 accommodations, 1.5 time and isolation, that Tecza had not previously openly disclosed to
10 colleagues. Prior to the publication of Tecza's exam accommodations in the Textbook, any
11 information about Tecza's ADHD and exam accommodations was held between Tecza and
12 select individuals with whom Tecza had medical, intimate and/or close personal relations.

13 67. On or about August 3, 2007, Reiley and Cepl administered and proctored Tecza's exams for
14 their respective classes, providing Tecza with 1.5 time and isolation. Reiley required Tecza to
15 identify his examination answer book by name rather than following the School of Law
16 standard procedure of anonymous grading. Tecza did not consent to this examination
17 procedure but Tecza adhered to Reiley's request to place his name on the answer sheet under
18 duress of receiving a failing grade in the course.

19 68. After collecting copies of the Textbook and returning to San Francisco from the Study
20 Abroad program, Tecza contacted the Dean's Office at the School of Law and inquired about
21 discussing a problem with the School of Law's administration with the Study Abroad
22 program. Tecza was informed by the office administrator who answered the phone that this
23 was an issue to be addressed by "Academic Services," and an appointment was set to meet.

1 69. On or about August 14, 2007, Tecza met with Elizabeth Benhardt, Assistant Dean for
2 Academic Services at the School of Law ("Dean Benhardt"), to discuss the publication of
3 Tecza's exam accommodations in the textbook and exam accommodations issues that arose
4 during the USF Study Abroad program. Tecza gave a copy of the Textbook to Dean
5 Benhardt, which she retained. After several apologies and an inquiry into Tecza's trauma
6 regarding the information printed on page 175, Dean Benhardt agreed to discuss the matter
7 with Jeffrey Brand, Dean of the School of Law ("Dean Brand").

8 70. On or about August 14, 2007, Tom Merrell, Director of Student Disability Services for USF,
9 telephoned Tecza and expressed his apologies for the breach of confidentiality and the
10 publication of Tecza's exam accommodations on page 175 of the Textbook.

11 71. On or about August 16, 2007, Tecza met with Dean Brand. Dean Brand apologized for the
12 disclosure and inquired into Tecza's trauma over the information printed on page 175, then
13 promised to address the problem of disability confidentiality at the next faculty meeting.

14 72. On or about August 17, 2007, while working an information table at a student organization
15 fair prior to the start of Fall Semester 2007, Tecza was asked on several occasions about the
16 publication of the Textbook and his exam accommodations by classmates with whom he had
17 not previously discussed either. Carol Wilson, who was previously unaware of the Textbook
18 or the occurrences in Dublin and Prague, was present at the fair, to whom Tecza revealed his
19 resentment and embarrassment over the interrogatories from other students.

20 73. Tecza received grades of "A," "A" and "A-" in the courses taught by Iglesias, Cepl and
21 Talbot, respectively. Reiley issued Tecza a "C" grade in International Sales Contracts. Tecza
22 petitioned USF for a grade change from "C" to "Credit," which was approved by Dean
23 Benhardt and recorded in Tecza's transcript. Nonetheless, whether "C" or "Credit" is

1 reflected on Tecza's transcript, this was an adverse educational action caused by USF's
2 disclosure of Tecza's private information preceding the examination and Reiley's breach of
3 duty as a professor in performing in accordance with the policies and procedures set forth in
4 the SDS Handbook, Student Handbook and Exam Handbook.

5 74. During the Fall 2007 exam period, SDS, acting on behalf of USF, forced Tecza to take two
6 exams within a two day period, whereas non-accommodated students had three days between
7 the same exams and on November 28, 2007, administered an accommodated Evidence exam
8 to Tecza beginning 90 minutes earlier than the non-accommodated exam start time.

9 75. Over the course of Fall Semester 2007 at the School of Law, Tecza was asked on multiple
10 occasions about the publication of the Textbook and his exam accommodations by classmates
11 with whom he had not previously discussed either. Additionally, Dean Brand and Dean
12 Benhardt, in passing and during meetings regarding other subject matters, initiated
13 discussions with Tecza about Tecza's distress over the breach of confidentiality and its
14 impact on Tecza personally and academically.

15 76. At the conclusion of Fall Semester 2007, Tecza remained anxious and embarrassed about the
16 publication of page 175 of the Textbook. At this time, the prevalence of the stigma attached
17 to Tecza's professional reputation as a result of the disclosure and publication of previously
18 private information appeared to Tecza to have been reduced to fairly common knowledge at
19 the School of Law among classmates, faculty and administration based on continued
20 uninitiated inquiries about the subject matter of Tecza's accommodations.

21 77. In December 2007, Tecza and his wife, Julie Tecza, both of whom had previously intended to
22 remain in the Bay Area indefinitely, decided to seek a future outside the Bay Area to avoid
23 further embarrassment surrounding the revelation of Tecza's disability to his peers and the

1 continued taunting that resulted from the publication of page 175 of the Textbook. Julie
2 Tecza, who not previously planning a departure from her employer, began applying for jobs
3 outside the Bay Area. Tecza spent Winter Break 2007-2008 inquiring into visiting status
4 requirements at other law schools and considering relocation options.

5 78. In March, 2008, Julie Tecza accepted an employment opportunity in New York City, New
6 York and promptly relocated.

7 79. In or around April, 2008, Jason Tecza applied for visiting status at Rutgers-Newark School of
8 Law in Newark, New Jersey, citing a change in familial circumstances as the primary reason
9 for the request without going into detail about the embarrassment or anxiety over the
10 situation. This strategy, which included a sufficient reason for wanting visiting status
11 according to School of Law policy, was an effort to avoid any further perpetuation of
12 disclosing confidential information to unnecessary third parties. His application for visiting
13 status for the 2008-2009 school year was approved by Rutgers-Newark School of Law and
14 Ron Micon, Associate Dean for Academic Affairs at the School of Law.

15 80. Tecza communicated with administrators Dean Benhardt, Registrar Ostrowski and Dean
16 Brand by e-mail, in person and by phone on several occasions between September, 2007 and
17 May 2008 regarding Tecza's displeasure with USF's refusal to do nothing more than
18 apologize to Tecza for the harm proximately caused him by USF's breach of confidentiality
19 and failure to administrate Tecza's exam accommodations appropriately.

20 81. USF offered exam accommodations without changing the "Exam Accommodation
21 Agreement" and administered exams taken by Tecza, who accepted the exam
22 accommodations for courses enrolled at the School of Law in the following semesters: Spring
23 2007, Summer 2007, Fall 2007 and Spring 2008, on the basis that USF considered Tecza a

1 person with a disability, defined as any person who has a physical or mental impairment
2 which substantially limits one or more major life activities including walking, seeing,
3 hearing, speaking, breathing, learning, and working; has a record of such impairment; or is
4 regarded as having such an impairment.

5 82. Tecza is informed, believes and thereon alleges that between 2006 and 2008, USF received
6 \$71,480.00 USD in tuition as consideration for Tecza's enrollment in USF's legal education
7 program. USF also received compensation from persons who enrolled in its 2007 summer
8 Study Abroad program and revenue earned on sales of its course materials, including the
9 Comparative Criminal Justice course and its textbook.

10 83. Between 2006 and 2008, USF has on numerous occasions failed to obtain student grades
11 from faculty within 21 days of completion of exams, negatively affecting Tecza's ability to
12 enroll in desired courses.

13 84. On or around May 18, 2008, after final exams for Spring Semester 2008 at the School of Law
14 were complete, as a proximate result of the harm caused by USF's actions discussed in other
15 paragraphs this complaint, Tecza moved from his home in San Francisco, California to
16 Hoboken, New Jersey where he has since obtained permanent residency.

17 85. On or around July 31, 2008, USF was informed by phone by Jamal Collins, administrator of
18 Financial Aid for the School of Law, that Tecza would be denied a tuition grant of \$3,500
19 previously offered and accepted as part of his 2008-2009 Financial Aid package because USF
20 would not be the recipient of this tuition grant even though Tecza was to be enrolled full-time
21 as a law student and completing requirements associated with the Juris Doctor degree
22 program offered by USF.
23

1 86. Tecza is ineligible to apply for or receive financial aid from Rutgers-Newark as a non-
2 matriculating visiting student.

3 87. On or about August 21, 2008, USF offered Tecza \$3,500 to release USF from liability related
4 to accusations of wrongdoing stated herein.

5 88. Tecza is informed, believes, and thereon alleges that USF's actions as an educational
6 institution in setting policies and procedures to accommodate students with disabilities
7 constitute in loco parentis conduct.

8 89. Tecza is informed, believes, and thereon alleges that USF's actions in diagnosing Tecza's
9 psychological profile and mental agility constitute acts of a health care provider.

10 90. Tecza is informed, believes and thereon alleges that USF's actions as an educational
11 institution in relation to Tecza as a student enrolled in a degree granting program at the
12 School of Law, which is operated and controlled by USF, constitute governmental conduct.

13 **First Cause of Action Against Defendant USF for Invasion of Privacy,**

14 **Disclosure of Private Facts**

15 91. Tecza incorporates in this cause of action the allegations contained in paragraphs 1 through
16 90, inclusive.

17 92. USF was acting or purporting to act in the performance of its official duties.

18 93. USF publicly disclosed private facts about Tecza when USF pointed out Tecza's
19 accommodated exams in front of other students, and by printing and distributing Tecza's
20 exam accommodations in a textbook used in a course administered by USF that Tecza was
21 not enrolled in.

22 94. The public disclosure of private facts about Tecza by USF was offensive and objectionable to
23 a reasonable person, constituting an egregious, reprehensible, irrevocable invasion of privacy.

1 Exam accommodations would not normally be disclosed in a typical textbook. The damage
2 wreaked by USF's conduct in disclosing this information about Tecza was substantial.
3 Announcing a law student's disability to his peers is devastating to the student's chances of
4 obtaining employment, imposing unfair and unnecessary hardships in an already competitive
5 job legal job market, while breeding resentment and hostility for a perceived "unfair
6 advantage" in school.

7 95. USF acted with reckless disregard of the fact that a reasonable person in Tecza's position
8 would consider the publicity highly offensive.

9 96. The "Special Exam Sign-Out Sheet" disclosed Tecza's accommodated testing status and
10 revealed in bold and underlined text that Tecza requires "isolation" for his "special exam."

11 97. But for the disclosure of Tecza's accommodated testing, students in the Comparative
12 Criminal Justice Course would not have knowledge of Tecza's disability because Tecza was
13 not enrolled in the course.

14 98. The USF School of Law Student Handbook makes accommodated testing available only to "a
15 student with a disability."

16 99. USF's application for participation in the Study Abroad program makes accommodated
17 testing available only "due to disability."

18 100. Because accommodated testing is made available only to students with disability,
19 disclosure of Tecza's "special exam" and testing accommodation amounts to disclosure of
20 Tecza's status as a disabled student.

21 101. Because Tecza has no physical disabilities, USF, by revealing Tecza's status as an
22 accommodated student, revealed that Tecza suffers from a psychological impairment.
23

1 102. There was no legitimate public concern or newsworthiness to justify this disclosure of
2 private facts about Tecza.

3 103. USF's conduct was a substantial factor in causing harm to Tecza.

4 104. USF's conduct impacts on Tecza's legally protected privacy interest in informational
5 privacy accorded by California Constitution, Art. I § 1.

6 105. As a proximate result of the wrongful conduct of USF as set forth above, Tecza has
7 sustained loss of reputation, severe emotional and psychological distress, anguish, anxiety,
8 and injury, and pain and suffering.

9 **Second Cause of Action Against Defendant USF for Violation of the**

10 **Information Practices Act of 1977, Civil Code § 1798 et seq.**

11 106. Tecza incorporates in this cause of action the allegations contained in paragraphs 1
12 through 105, inclusive.

13 107. By failing to prevent Tecza's personally identifiable private information from being
14 disclosed, USF's conduct violated the Information Practices Act of 1977, Civil Code § 1798
15 et seq.

16 108. USF failed to properly maintain Tecza's confidential records necessary to assure fairness
17 relating to Tecza's qualifications, character, rights, opportunities of, or benefits to Tecza.

18 109. USF's improper maintenance of Tecza's confidential records culminated in the disclosure
19 of Tecza's accommodated status. Testing accommodations are only made available to
20 disabled students. Tecza is not physically disabled. Thus, by USF's improper record
21 maintenance, Tecza's psychological handicap was disclosed.

22 110. As a proximate result of USF's failures, Tecza was adversely affected by the disclosure of
23 confidential information to numerous third parties.

111. As a proximate result of the wrongful conduct of USF as set forth above, Tecza has sustained loss of reputation, severe emotional and psychological distress, anguish, anxiety, and injury, and pain and suffering.

**Third Cause of Action Against Defendant USF for Violation of the
State of California Public Records Act, Gov. Code § 6254(g)(6)**

112. Tecza incorporates in this cause of action the allegations contained in paragraphs 1 through 111, inclusive.

113. USF, in the course of maintaining its University Public Records, disclosed Tecza's "student record" in violation of the State of California Public Records Act, Gov. Code § 6254 (g) 6. The public interest served by not making Tecza's personally identifiable private information outweighs the public interest served by disclosure by USF, who failed to withhold Tecza's personally identifiable private information from public access.

114. In order to seek administrative redress from the School of Law regarding the contents of page 175 of the Textbook, Tecza was forced to disclose personally identifiable disability information to the members of the School of Law administration, each of whom would not have been able to obtain this information otherwise.

115. As a proximate result of the wrongful conduct of USF as set forth above, Tecza has sustained loss of reputation, severe emotional and psychological distress, anguish, anxiety, and injury, and pain and suffering.

Fourth Cause of Action Against Defendant USF for Breach of Contract

116. Tecza incorporates in this cause of action the allegations contained in paragraphs 1 through 115, inclusive.

1 117. Tecza and USF entered into a contract within the meaning of Civil Code § 1550, 1556,
2 1565 and § 1619 to 1621. The contract between Tecza and USF included “good
3 consideration” within the meaning of Civil Code § 1605 and 1614.

4 118. Tecza agreed to be bound by the contract and performed substantially all of the
5 significant things the contract required him to do within the meaning of Civil Code § 1549.

6 119. In the absence of any written agreement binding Tecza to terms set forth by USF in its
7 SDS Handbook, Student Handbook and Exam Handbook, as well as USF’s requirement that
8 students adhere to policies of the Western Association of Schools and Colleges, California
9 State Bar Board of Examiners, American Association of Law Schools and the American Bar
10 Association, the acts and conduct of Tecza and USF demonstrate that an implied-in-fact
11 contract existed which included the terms set forth by USF in these documents, binding both
12 USF and Tecza to those terms in conjunction with terms upon which a written agreement
13 existed.

14 120. Because Tecza did not authorize such disclosure and USF was not required by law to do
15 so, USF breached its promise to maintain “appropriate confidentiality” of “records and
16 communication” related to Tecza’s student disability, which was one of the “institutional
17 rights and responsibilities” owed Tecza by USF.

18 121. USF disclosed Tecza’s accommodated testing to other students on multiple occasions.
19 Accommodated testing is made available only to students with disabilities. By disclosing
20 Tecza’s accommodated testing to other students, USF disclosed the fact of Tecza’s status as a
21 disabled person.

22 122. Because Tecza has no physical disabilities, USF, by revealing Tecza’s status as an
23 accommodated student, revealed that Tecza suffers from a psychological impairment.

1 123. USF's breach substantially caused harm to Tecza.

2 **Fifth Cause of Action Against Defendant USF for Discrimination on the**

3 **Basis of Disability in violation of section 504 of the Rehabilitation Act of 1973.**

4 124. Tecza incorporates in this cause of action the allegations contained in paragraphs 1
5 through 123, inclusive.

6 125. USF discriminated against Tecza on the basis of his disability in violation of section 504
7 of the Rehabilitation Act of 1973 as defined under 29 U.S.C. § 794(a).

8 126. Tecza is disabled.

9 127. USF has acknowledged Tecza's disability.

10 128. Tecza is otherwise qualified.

11 129. USF receives federal financial assistance.

12 130. As alleged above, USF required Tecza to disclose a disability on the application for the
13 Study Abroad Program in order to receive accommodated testing, indicating that disabled
14 status is considered as a criteria for offering admission to the Study Abroad program.

15 131. USF incorrectly administered one of Tecza's accommodated exams on its own campus,
16 and Tecza was unable to be accommodated for another exam due to a building closure, which
17 was precipitated by USF's proctor leaving the building without notifying Tecza. Tecza was
18 enrolled in four courses in the Study Abroad Program. Of the four courses, two
19 accommodated final exams and one in-class quiz was/were improperly administered.

20 132. As a result of this discrimination by USF, Tecza has suffered substantial harm.

21 **Sixth Cause of Action Against Defendant USF for Discrimination on the Basis of Disability**

22 **in violation of the Americans with Disabilities Act of 1990**

1 133. Tecza incorporates in this cause of action the allegations contained in paragraphs 1
2 through 132, inclusive.

3 134. USF discriminated against Tecza on the basis of his disability in violation of the
4 Americans with Disabilities Act of 1990.

5 135. Tecza is disabled.

6 136. USF has acknowledged Tecza's disability.

7 137. Tecza is otherwise qualified.

8 138. As alleged above, USF required Tecza to disclose a disability on the application for the
9 Study Abroad Program in order to receive accommodated testing, indicating that disabled
10 status is considered as a criteria for offering admission to the Study Abroad program.

11 139. USF incorrectly administered Tecza's accommodated exams as stated previously.

12 140. As a result of this discrimination by USF, Tecza has suffered substantial harm.

13 **Seventh Cause of Action Against Defendant USF for Discrimination on the Basis of**

14 **Disability in violation of the Unruh Civil Rights Act, California Civil Code § 51**

15 141. Tecza incorporates in this cause of action the allegations contained in paragraphs 1
16 through 140, inclusive.

17 142. USF discriminated against Tecza on the basis of his disability in violation of the Unruh
18 Civil Rights Act, California Civil Code § 51.

19 143. As alleged above, USF required Tecza to disclose a disability on the application for the
20 Study Abroad Program in order to receive accommodated testing, indicating that disabled
21 status is considered as a criteria for offering admission to the Study Abroad program.

22 144. USF incorrectly administered Tecza's accommodated exams as stated previously.

23 145. As a result of this discrimination by USF, Tecza has suffered substantial harm.

Eighth Cause of Action Against Defendant USF for

Intentional Infliction of Emotional Distress

146. Tecza incorporates in this cause of action the allegations contained in paragraphs 1 through 145, inclusive.

147. As set forth above, USFs did not have in place adequate procedures to avoid disclosing private personally identifiable information concerning Tecza's disability. As a result, USF recklessly managed and communicated such information to unauthorized parties in violation of its statutory and common law duties.

148. USF's conduct in revealing Tecza's accommodated status to parties outside those responsible for ensuring such accommodations was outrageous.

149. As a result of the improperly administered accommodated exam due to building closure, Tecza was forced to reveal his accommodated status to another student in order to locate the course professor and inform him of the building closure.

150. Because accommodated testing is only available to students with a disability, disclosure of Tecza's accommodated status amounted to disclosure of Tecza's disabled status. Accommodated students are seen as receiving an academic advantage and can become the subject of resentment. Tecza was distressed by the feeling of being resented due to the disclosure of his accommodated status.

151. USF acted with reckless disregard of the probability that Tecza would suffer emotional distress, knowing that Tecza reasonably relied upon USF's promise of confidentiality.

152. The "Special Exam Sign-Out Sheet" was made available to third parties charged with unrelated responsibilities, such as printing up course materials, disclosing Tecza's accommodated exam requirement which amounts to revealing Tecza's disability.

1 153. As the administrators of the Study Abroad program, USF exercised actual authority over
2 Tecza with regard to dissemination of course materials and administration of examinations.

3 154. USF abused its authority over Tecza by disclosing Tecza's accommodated testing status
4 to every student **in a course Tecza was not enrolled in**, as well as faculty and administrators
5 responsible for the administration of this course.

6 155. USF abused its authority by incorrectly administering accommodated testing for Tecza on
7 two separate occasions, as set forth above.

8 156. Tecza suffered severe emotional distress.

9 157. USF's conduct was a substantial factor in causing Tecza's severe emotional distress.

10 158. Tecza suffered humiliation, embarrassment and anger.

11 159. USF's conduct was a substantial factor in causing Tecza's humiliation, embarrassment
12 and anger.

13 **Ninth Cause of Action Against Defendant USF for Unfair Business Practice**

14 160. Tecza incorporates in this cause of action the allegations contained in paragraphs 1
15 through 159, inclusive.

16 161. Commencing prior to April 1, 2007 but continuing on that date and continuing thereafter,
17 USF has engaged in, are engaged in, and propose to engage in unfair competition as that term
18 is defined in Business and Professions Code section 17200, which includes any "unlawful,
19 unfair or fraudulent business act or practice," "unfair, deceptive, untrue or misleading
20 advertising," and any act prohibited by Chapter 1 (commencing with section 17500) of Part 3
21 of Division 7 of the Business and Professions Code.

22 162. The conduct of USF as set forth above was an unlawful business act or practice within the
23 meaning of section 17200 because USF denied Tecza financial aid promised and the ability

1 to participate in internships, journals and clinics as a visiting student to Rutgers Law School
2 for credit applied toward a USF Juris Doctorate, yet would not have denied the same to Tecza
3 as a third year student attending USF School of Law.

4 163. The conduct of USF as set forth above was an unlawful business act or practice within the
5 meaning of section 17200 because its SDS Handbook, Student Handbook and Exam
6 Handbook, setting forth USF's business practices regarding the handling of students with
7 disabilities, the procedures for handling USF School of Law students, including exam
8 accommodations for students with disabilities, and USF's business practices regarding
9 administration of examinations for students that do not require accommodated testing due to
10 a disability, respectively, were likely to deceive members of the general public and the
11 students of USF School of Law that USF does not disclose personal records of its disabled
12 students.

13 164. Because USF's business practices are likely to deceive the public by implying that it does
14 not disclose information regarding its disabled students when it in fact does disclose disabled
15 students' testing accommodations thereby disclosing the disabled status of said students its
16 policies and procedures do not comply with those required by the ADA, Rehabilitation Act,
17 Unruh Act, as well as the membership policies of the Western Association of Schools and
18 Colleges, California State Bar Board of Examiners, American Association of Law Schools
19 and the American Bar Association.

20 165. The conduct of USF as set forth above was an unfair business act or practice within the
21 meaning of Business and Professions Code § 17200, which can be construed by weighing the
22 impact of USF's practices on consumers and members of the general public against the
23 business justification for the conduct.

1 166. USF had no legitimate business justification for publishing stale, obsolete, false,
2 inaccurate, incomplete and misleading information concerning its policies and procedures.

3 167. USF had no legitimate business justification for disclosing Tecza's exam
4 accommodations in a textbook because these are private facts and non-public facts protected
5 by the IPA.

6 168. USF misleads the public by stating that students' exams will be graded anonymously,
7 which was not the case when proctoring and grading Tecza's exams; that grades are to be
8 returned to students no later than 21 days after a final examination is administered when in
9 fact grades are often delivered much later, depriving Tecza and others of the ability to apply
10 for jobs, internships, and intra-scholastic organizations well after no longer being on
11 academic probation; and informing students like Tecza that they are in violation of the Honor
12 Code and subject to expulsion if he contacts a professor between the time exams are
13 proctored and grades are issued, all the while forcing students to interact with professors
14 during that time in order to complete the requirements of the Study Abroad program.

15 169. In engaging in conduct that constitutes unfair competition, USF has acquired money or
16 property from members of the general public.

17 **Tenth Cause Of Action Against Defendant USF for Negligent Misrepresentation**

18 170. Tecza incorporates in this cause of action the allegations contained in paragraphs 1
19 through 169, inclusive.

20 171. USF carelessly made representations about its academic policies and student disability
21 services while having no reasonable basis to believe these material facts to be true.

22 172. USF made representations about its academic policies and student disability services
23 upon Tecza's admission to USF School of Law as each admitted student is charged with

1 being responsible for the information in the Student Handbook as indicated on the first page
2 of the Student Handbook itself.

3 173. USF, by way of the Student Handbook, and SDS Handbook represented that disabled
4 students would be afforded accommodated testing and that information about the student's
5 disability would not be disclosed.

6 174. USF intended that Tecza would rely upon USF's statements regarding these material facts
7 in order to induce Tecza into paying tuition and fees.

8 175. Tecza justifiably relied upon USF's statements, which were made in a business or
9 professional capacity, and suffered monetary damages as a result of such reliance.

10 176. As a proximate result of the wrongful conduct of USF as set forth above, Tecza has
11 sustained loss of reputation, severe emotional and psychological distress, anguish, anxiety,
12 and injury, and pain and suffering.

13 **Eleventh Cause Of Action Against Defendant USF for Negligence**

14 177. Tecza incorporates in this cause of action the allegations contained in paragraphs 1
15 through 176, inclusive.

16 178. If any of USF's acts alleged herein are proved to be unintentional, then the harm caused
17 by USF's actions would not have occurred unless USF was negligent.

18 179. The Textbook was under the exclusive control of USF and its assigns.

19 180. The Textbook was published and distributed with information about Tecza that USF had
20 no permission nor legal right to publish or distribute.

21 181. The unintended inclusion of the "Special Exam Sign-Out Sheet" inside of a Textbook for
22 the Comparative Criminal Justice Course would not have occurred had proper care been used
23 by the USF.

182. Tecza did not significantly contribute to the publication or distribution of the Textbook.

183. The Summer 2007 School of Law Study Abroad programs in Dublin and Prague were administered exclusively by USF and its assigns.

184. The "Special Exam Sign-Out Sheet" document included as page 175 of the Textbook was a confidential permanent record of disability services previously provided Tecza by USF which was maintained by USF and was later mishandled by USF. Its publication and distribution in the Textbook was **not connected to delivering educational services** to Tecza. This document was a record of educational services already delivered by USF, relating to an exam taken by Tecza and proctored by USF in San Francisco during a previous semester. The document was not intended for and could not be used by USF to proctor any exam taken by Tecza in Dublin or Prague in the Study Abroad program, including the Comparative Criminal Justice course, in which Tecza was not enrolled anyway.

185. In administering accommodated exams, USF and its assigns did not keep confidential Tecza's exam accommodation information.

186. Tecza did not significantly contribute to the errant accommodated administration of exams by professors.

187. USF's negligent conduct caused harm to Tecza.

Prayer For Relief

188. As a proximate result of USF's conduct as set forth above, Tecza has sustained loss of reputation, severe emotional and psychological distress, anguish, anxiety, and injury, and pain and suffering, for which Tecza is entitled to compensation.

189. It is foreseeable that Tecza will continue to suffer emotional, psychological and professional harm as a result of USF's conduct.

1 190. It is impossible for Tecza to determine the exact amount of money due to Tecza without a
2 detailed review of USFs' financial books and records. Accordingly, Tecza seeks, among
3 other things, an accounting and/or the appointment of a receiver.

4 191. The aforementioned business practices, specifically the administration of USF's policies
5 and procedures, are likely to continue and therefore will continue to violate the law and
6 deceive the public. Thus, USF should be enjoined pursuant to Business & Professions Code §
7 17203 to alter its system of records to include policies and procedures that assure maximum
8 possible security of private personally identifiable information maintained in a system of
9 records by USF.

10 192. USF should be enjoined to remove page 175 from all versions of the Textbook and redact
11 its publication.

12 193. USF should be enjoined to remove any and all stale, obsolete, false, inaccurate,
13 incomplete or misleading information from its SDS Handbook, Student Handbook and Exam
14 Handbook to assure that USF refrains from entering malicious, oppressive and fraudulent
15 agreements with students.

16 194. All profits earned by USF as a result of USF's unlawful conduct alleged herein should be
17 disgorged and paid to Tecza as compensation for economic harm suffered.

18 195. The aforementioned acts of USF constituted malice, oppression and fraud within the
19 meaning of Civil Code § 3294, entitling Tecza to punitive and exemplary damages in an
20 amount according to proof that is appropriate to punish USF for its wrongful conduct and to
21 set an example for others.

22 196. Tecza seeks reasonable attorney's fees pursuant to Civil Code § 1785.31, pursuant to
23 Civil Code § 1798.53, and pursuant to the Private Attorney General Doctrine provision of

1 Code of Civil Procedure § 1021.5. Pursuant to Business and Professions Code §§ 17203 and
2 17204, Tecza is empowered to act as a Private Attorney General to enjoin such conduct in the
3 future, to compel USF to restore to identified victims any money or property that it may have
4 acquired as a result of any act which constitutes unfair competition and to compel USF to
5 disgorge profits obtained as a result of any act which constitutes unfair competition.

6 197. Tecza seeks interest in the sum of damages and amount to be restored to Tecza as allowed
7 by law.

8 198. Tecza seeks costs of suit incurred herein; and

9 199. Tecza seeks other injunctive, declaratory and other relief as the court deems proper.

10 DATED: January 19, 2010

11 Respectfully submitted,

12
13 By



14 JASON TECZA
15 on behalf of himself
16
17
18
19
20
21
22
23