

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered into effective as of July 1, 2019 (the “Effective Date”), between The Regents of the University of California (“The Regents”), David Brenner, M.D., and William Mobley, M.D., PhD, (collectively, the “UCSD Parties”) on the one hand, and the University of Southern California (“USC”), Paul Aisen, M.D., Deborah Tobias, Jeremy Pizzola, Gustavo Jimenez-Maggiora, and Phuoc Hong (the “Individual USC Parties,” and, together with USC, collectively the “USC Parties”), on the other hand. The UCSD Parties and the USC Parties are referred to collectively as the “Parties” and, in the alternative, individually as a “Party.”

RECITALS

A. The Individual USC Parties were employed by The Regents at the Alzheimer’s Disease Cooperative Study (“ADCS”) research program at the University of California, San Diego (“UCSD”) until June 2015, when they resigned, accepted employment at USC, and continued to engage in research activities, leading to disputes between the Parties.

B. On July 2, 2015, The Regents filed an initial complaint in San Diego Superior Court entitled *The Regents of the University of California v. Paul S. Aisen, et al.*, Case No. 37-2015-22082, and on January 3, 2019 filed a First Amended Complaint alleging various claims against the USC Parties (the “Litigation”).

C. On July 30, 2015, USC and Aisen filed a Cross-Complaint against The Regents and William Mobley, M.D. and David Brenner, M.D. in the Litigation.

D. On August 4, 2015, the San Diego Superior Court issued a Preliminary Injunction and Appointment of Special Master (the “Preliminary Injunction”) in the Litigation.

E. On May 24, 2019, The Regents filed an appeal in the Fourth District Court of Appeal, Division One, Case No. No. D076049, of an interlocutory order striking the eighth cause of action in The Regents’ First Amended Complaint (the “Appeal”) in the Litigation.

F. The Parties now desire to resolve the Litigation and settle all actual and potential claims that the Parties have or may have against each other related to the events giving rise and/or related to issues in the Litigation.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Payment to The Regents. Within thirty (30) days of the Effective Date, USC shall pay to The Regents the sum of fifty million dollars (\$50,000,000.00) to be transmitted via wire transfer in accordance with the wire transfer instructions attached as Exhibit D.

2. Press Release by USC. On or before the Effective Date, USC shall issue a public statement in the form attached hereto as Exhibit A (“the USC Public Statement”) in the same manner in which it issues other press releases concerning significant university developments. USC further shall post the USC Public Statement on its website through December 31, 2019, in a manner of equal prominence and accessibility as other newsworthy announcements. USC shall not initiate any other media outreach concerning the Litigation or this Agreement except to respond to public statements issued by any of the UCSD Parties that go beyond the UCSD Statement..

3. Press Release by The Regents: The Regents may issue a press release in the form attached hereto as Exhibit B (the “UCSD Statement”), and shall not initiate any other media outreach concerning the Litigation or this Agreement except to respond to public statements issued by any of the USC Parties that go beyond the USC Public Statement.

4. Dismissal of the Litigation and Appeal; Retention of Jurisdiction. Upon execution of this Agreement, the Parties shall immediately, or as soon as is practicable, file a Notice of Settlement with the San Diego Superior Court and inform the Court to take all pending motions and proceedings off calendar. Within ten (10) court days of filing the Notice of Settlement, the Parties shall execute and file with the Court a dismissal with prejudice of the Litigation. The Dismissal shall specify that each party is to bear its own fees and costs and shall include the following statement: “This dismissal is being made to effectuate a Settlement Agreement. Pursuant to California Code of Civil Procedure § 664.6, the parties hereby agree, acknowledge, stipulate and request that the Court retain jurisdiction over the parties to enforce the Settlement Agreement until full performance of its terms.” The Dismissal shall vacate the Preliminary Injunction. Within this same time frame, The Regents shall dismiss the Appeal.

5. Amazon Web Services: The Parties agree to cooperate and execute all necessary paperwork for The Regents to transfer and assign all right, title, and interest in Amazon Web Services Account No. 675713428646 to USC, and agrees that USC shall be entitled to exclusive dominion, custody, and control over this account and its contents. USC shall be financially responsible for the operation and maintenance of the account as of July 1, 2019.

6. Electronic Data Capture System: USC is authorized to use, maintain, and modify the Electronic Database Capture System, as defined in the description attached hereto as Exhibit C, (“EDC”) for purposes of conducting research studies at the USC Alzheimer’s Therapeutic Research Institute (“ATRI”), which includes use by study sponsors, study sites and collaborators. USC is further authorized to use, maintain, and modify the Validation Documents necessary for the maintenance and operation of the EDC, which are currently in the possession, custody, and control of USC. USC assumes full responsibility for the maintenance and operation of the EDC, with no warranties express or implied.

7. Releases.

(a) As used in this Section 7, the term “Related Parties” means the parent, subsidiaries, affiliates, past and present directors, officers, Trustees, Regents, current and former employees, agents, attorneys, predecessors, insurers, reinsurers, and other authorized representatives of any of the Parties or any of their affiliates, and the heirs, successors, executors, and assigns of any of the foregoing.

(b) Except for the rights and obligations contained in this Agreement, the UCSD Parties and their Related Parties hereby releases and forever discharge the USC Parties and their Related Parties from any and all past, present or future claims or causes of action (including any suit, petition, demand, or other claim in law or equity), known and unknown, suspected and unsuspected, disclosed and undisclosed, that are related to the Litigation (the “Regents Release”).

(c) Except for the rights and obligations contained in this Agreement, the USC Parties and their Related Parties hereby release and forever discharge The Regents and its Related Parties, including Dr. William Mobley and Dr. David Brenner, from any and all past, present or future claims or causes of action (including any suit, petition, demand, or other claim in law or equity), known and unknown, suspected and unsuspected, disclosed and undisclosed, that are related to the Litigation (the “USC Parties Release”).

(d) Each Party acknowledges that there is a risk that, subsequent to the execution of this Release, it may incur, suffer, or sustain losses, damages, attorneys' fees, expenses, or any of these, which are unknown and unanticipated at the time this Release is signed. Each Party further acknowledges that there is a risk that such alleged damages as are known may become more serious than it now expects or anticipates and further acknowledges that there may be damages which presently exist or existed in the past but of which it may be unaware. Each Party acknowledges that this Release has been negotiated and agreed upon in light of those realizations. Each Party hereby expressly waives all rights each may have in such unsuspected claims for conduct arising out of or related to the events giving rise to the Litigation. In doing so, each Party has had the benefit of counsel of its own choosing, and has been advised of, understands, and knowingly and specifically waives its rights under California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

8. Costs and Attorney's Fees. The Parties shall each be responsible for their own attorneys' fees, costs, and expenses incurred by them prior and subsequent to the Effective Date in connection with the Litigation, including the preparation, negotiation and drafting of this Agreement and related documents, and waive any and all claims against any other Party for the recovery of the same.

9. Confidentiality. The Parties acknowledge that The Regents is a public entity subject to open meetings laws including California Education Code § 92030, the California Public Records Act (“CPRA”), and other obligations requiring transparency in The Regents' administration and oversight of the University of California as a public trust-

10. Governing Law. This Agreement shall be deemed executed and delivered in the State of California and shall be construed and governed solely by the internal laws of the State of California, without regard to California's conflict of laws provisions.

11. Severability. The Parties believe that this Agreement does not contain any provision contrary to law. However, if any part of this Agreement shall be determined to be illegal, invalid, or unenforceable: (a) that part shall nevertheless be enforced to the extent permissible in order to effect the intent of the Parties; and (b) the remaining parts shall be deemed valid and enforceable, so long as the remaining parts continue to fulfill the original intent of the Parties.

12. Waiver. No delay or failure by any Party to exercise its rights under this Agreement shall be construed to be a waiver thereof, unless memorialized by written instrument signed by all Parties. The agreed waiver of any covenant, condition, or agreement to be performed under this Agreement shall not be construed to be a continuing waiver of the same covenant, condition or agreement or the waiver of a different covenant, condition or agreement. Furthermore, the agreed waiver of any breach of this Agreement shall not be considered to be the agreed waiver of a different or subsequent such breach.

13. Integration/Amendment. This Agreement constitutes the entire agreement between the Parties, and supersedes any and all prior or contemporaneous agreements, promises, representations, or understandings, written or oral, between them relating to the subject matter of this Agreement. No other agreements, promises, representations, or understandings shall be binding upon the Parties with respect to this subject matter unless contained in this Agreement, or separately agreed to in writing and signed by an authorized representative of each of the Parties. No amendment, modification, or addition to this Agreement shall be valid unless it is in a writing executed by the Parties.

14. Duty of Cooperation. Each Party covenants to take all such actions and to execute all such documents as may be reasonable and necessary or desirable to implement the provisions of this Agreement fully and effectively.

15. Representations. The Parties each represent that: (a) this Agreement is freely and voluntarily entered into, and that each of the Parties has had an opportunity to consult with counsel with respect to the advisability of entering into this Agreement; (b) The Regents has obtained the requisite approval of the Board of Regents to enter into this Agreement, and each Party's signatory to this Agreement is fully authorized to execute this Agreement on its behalf; (c) each Party has all necessary power and authority to enter into the releases contained herein; (d) no claim or cause of action that is herein released has been sold, assigned or transferred; and (e) the Parties jointly participated in the drafting of this Agreement, with the result that any ambiguity contained therein shall not be interpreted or construed against any Party as the drafter thereof.

16. Notices and Service of Process. Any and all notices, demands or requests required or permitted to be given under this Agreement shall be given in writing and sent by registered or certified mail, return receipt requested, or by hand or overnight delivery, with a copy sent via email, to the addresses below. Notices and/or service or process hereunder shall be deemed given upon receipt as shown on a return receipt or proof of service.

If to The Regents:

Office of The General Counsel
Attn: Margaret Wu, Deputy General
Counsel, Litigation and Capital
Strategies
The Regents of the University of
California
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200
Margaret.Wu@ucop.edu

If to any of the USC Parties:

University of Southern California
Office Of The General Counsel
Attn: Stacy R. Bratcher
University Park-ADM 352
3551 Trousdale Pkwy
Los Angeles, CA 90089
bratcher@usc.edu

With a copy (not constituting notice) to:

Daniel W. Park
Chief Campus Counsel
University of California, San Diego
9500 Gilman Dr., Mail Code 0097
La Jolla, CA 92093-0097
dpark@ucsd.edu

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. For purposes of execution, facsimile signatures and signature pages sent through electronic mail, including in portable document format (PDF), shall be considered effective and binding.

In witness whereof, the Parties through their duly authorized representatives have executed this Agreement:

The Regents of the University of California


By: _____
Name: Charles Robinson
Title: General Counsel

Date: July __, 2019

David Brenner, M.D.
Date: July __, 2019

William Mobley, M.D., PhD
Date: July __, 2019

University of Southern California

By:  _____
Name: David W. Wright
Title: Senior Vice President, Administration

Date: July __, 2019

Paul S. Aisen, M.D.
Date: July __, 2019

Deborah Tobias
Date: July __, 2019

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Office of The General Counsel
Attn: Margaret Wu, Deputy General
Counsel, Litigation and Capital
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The Regents of the University of
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Oakland, CA 94607-5200
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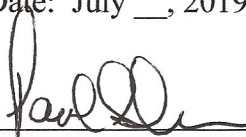
By: _____
Name: Charles Robinson
Title: General Counsel

By: _____
Name: _____
Title: _____

Date: July __, 2019

Date: July __, 2019

David Brenner, M.D.
Date: July __, 2019



Paul S. Aisen, M.D.
Date: July 1, 2019

William Mobley, M.D., PhD
Date: July __, 2019

Deborah Tobias
Date: July __, 2019

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Date: July __, 2019

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Date: July __, 2019


William Mobley, M.D., PhD
Date: July __, 2019

University of Southern California


By: _____
Name: _____
Title: _____

Date: July __, 2019

Paul S. Aisen, M.D.
Date: July __, 2019



Deborah Tobias
Date: July 1, 2019

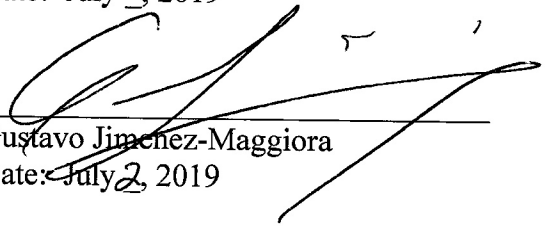


Jeremy Pizzola
Date: July 1, 2019

Gustavo Jimenez-Maggiora
Date: July _, 2019

Phuoc Hong
Date: July _, 2019

Jeremy Pizzola
Date: July __, 2019

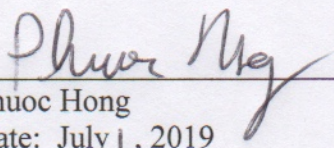


Gustavo Jimenez-Maggiora
Date: July 2, 2019

Phuoc Hong
Date: July __, 2019

Jeremy Pizzola
Date: July __, 2019

Gustavo Jimenez-Maggiora
Date: July __, 2019



Phuoc Hong
Date: July 1, 2019

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Counsel, Litigation and Capital
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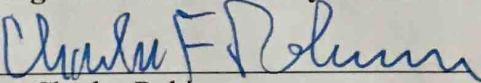
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Title: General Counsel

Date: July 1, 2019

David Brenner, M.D.
Date: July __, 2019

William Mobley, M.D., PhD
Date: July __, 2019

University of Southern California

By: _____
Name: _____
Title: _____

Date: July __, 2019

Paul S. Aisen, M.D.
Date: July __, 2019

Deborah Tobias
Date: July __, 2019

Exhibit A

USC Public Statement

USC believes that transfers of faculty and grants from one academic institution to another should be done in accordance with all applicable laws and guidelines and in a professional manner consistent with the advancement of the science and research.

USC and Dr. Paul Aisen regret that the manner in which Dr. Aisen and members of the ADCS staff left UC San Diego and brought research assets to USC created disruption to UC San Diego. These actions did not align with the standards of ethics and integrity which USC expects of all its faculty, administrators, and staff. USC is committed to, and wants to be known for, ethics, integrity and the pursuit of academic excellence, and it has already implemented sweeping changes to this end. These standards will apply to all aspects of University operations, including the recruitment and/or transition of faculty members to or from USC. USC regrets that actions in this case fell short of these standards.

USC and Dr. Aisen acknowledge the outstanding work and the ongoing commitment and leadership of the researchers and administration at UC San Diego in the pursuit of cures for Alzheimer's disease.

Exhibit B
The Regents Public Statement

USC and UC San Diego reach agreement on resolution of Alzheimer's disease
research lawsuit

On July 1, 2019, USC and UC San Diego reached a settlement in the ongoing Alzheimer's disease research lawsuit, *Regents of the University of California v. Aisen et al.*

UC San Diego for more than three decades has built and supported a world-class program in neurosciences and disorders of the brain, with a special focus on Alzheimer's disease. UC San Diego researchers and clinicians continue to contribute insights critical for understanding and treating this devastating disorder. Faculty leaders continue to enjoy the robust support of UC San Diego leadership.

We are pleased that we were able to reach a settlement on this important matter. USC issued the following statement:

[insert USC Public Statement and link to USC web site]

Exhibit C

EDC Description

The “EDC” identified in paragraph 6 of the attached Agreement is an integration of an electronic data capture (EDC) software, software-as-a-service (SAAS) services, custom domain name, and notification endpoints designed to facilitate the collection of clinical data in electronic format for the following studies and clinical trials at the Alzheimer’s Disease Cooperative Study (“ADCS”): the Alzheimer’s Disease Neuroimaging Initiative (“ADNI”); the Anti-Amyloid Treatment in Asymptomatic Alzheimer’s Disease (“A4”) study; the Longitudinal Evaluation of Amyloid Risk and Neurodegeneration (“LEARN”); the Intranasal Insulin (“INI”) study; and the Fyn inhibition (“Fyn”) study (collectively, the “former ADCS Studies”)

It is comprised of the following related services, accounts and repositories:

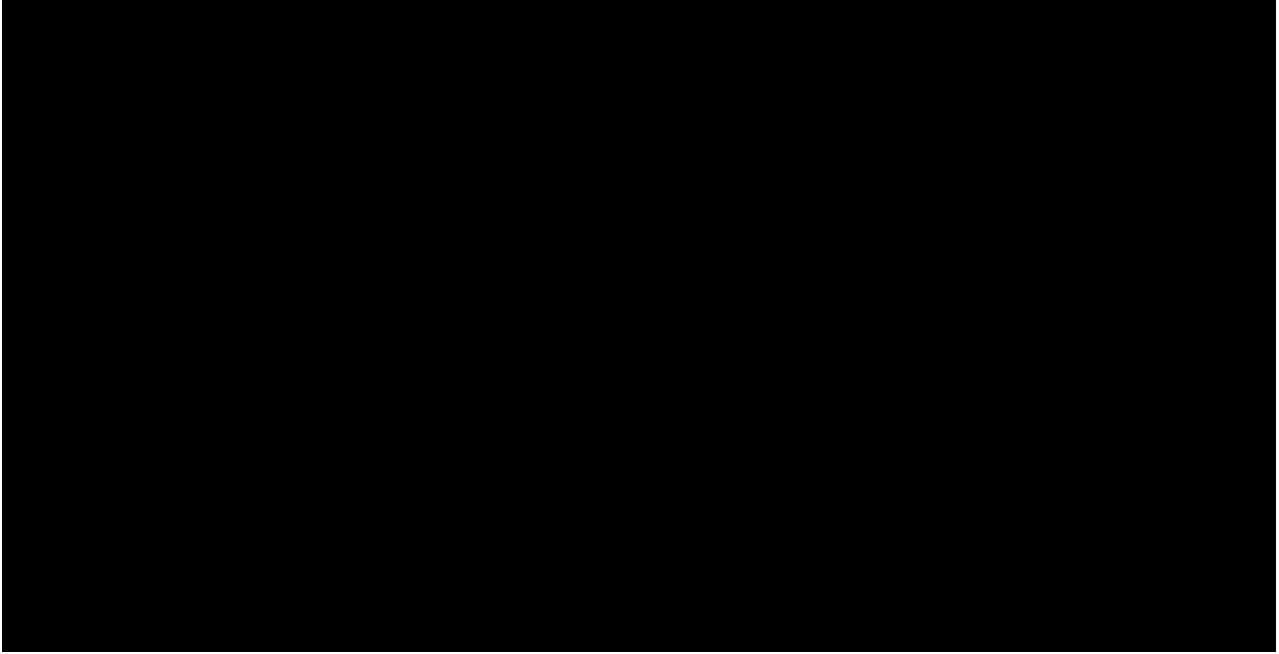
- 1) Amazon Web Services Account No. 675713428646 (“the AWS Account”).
- 2) The GitHub account at <https://github.com/organizations/iadcs>, registered by IADCS, and billed to aws@iadcs.org.
- 3) The Atlassian (Bitbucket) account at <https://bitbucket.org/adcsinformatics/>, workspace ID: adcsinformatics, billed to aws@iadcs.org.
- 4) The Google Apps account at <https://admin.google.com/iadcs.org/>, workspace ID: adcsinformatics, billed to phuoc@iadcs.org.
- 5) The Google account: bblinformatics@gmail.com
- 6) The Google Apps account: adcs-clinops@iadcs.org

The Regents and USC will cooperate to transfer control for the AWS Account to USC. USC will assume immediate financial responsibility for all elements of the EDC identified herein and will be responsible for payment of all expenses related to the EDC identified herein as of July 1, 2019.

UCSD will authorize access to the GitHub, Bitbucket, and Google Apps accounts. USC will copy all EDC data related to the former ADCS Studies from the GitHub, Bitbucket, and Google Apps accounts no later than sixty (60) days after the Effective Date.

UCSD and USC agree to cooperate, as necessary, to transfer the domain name “adcs” and all inter-connected services back to UCSD. USC will cease to use any email address or domain name with the letters “adcs” no later than ninety (90) days after the Effective Date.

EXHIBIT D
Wire Instructions



01/03/2019 at 02:05:00 PM

Clerk of the Superior Court
By Linda Sheffa, Deputy Clerk

Exempt from Filing Fees
Gov't Code § 6103

CROWELL & MORING LLP
Michael A. Kahn (SBN No. 57432)
mkahn@crowell.com
J. Daniel Sharp (SBN 131042)
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Molly A. Jones (SBN 301419)
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3 Embarcadero Center, 26th Floor
San Francisco, CA 94111
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Facsimile: 415.986.2827

Mark A. Romeo (SBN 173007)
mromeo@crowell.com
Laura Schwartz (SBN 302907)
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3 Park Plaza, 20th Floor
Irvine, California 92614-8505
Telephone: 949.263.8400
Facsimile: 949.263.8414

Attorneys for Plaintiff
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a California
Corporation,

Plaintiff,

V.

PAUL S. AISEN, an individual;
JEREMY PIZZOLA, an individual;
DEBORAH TOBIAS, an individual;
GUSTAVO JIMENEZ-MAGGIORA, an
individual; PHUOC HONG, an individual;
UNIVERSITY OF SOUTHERN
CALIFORNIA, a California Corporation;
and DOES 1-25, Inclusive,

Defendants.

Case No. **37-2015-22082-CU-BT-CTL**

**FIRST AMENDED COMPLAINT FOR
MONEY DAMAGES AND EQUITABLE
RELIEF FOR:**

- 1. BREACH OF FIDUCIARY DUTY;**
- 2. BREACH OF DUTY OF LOYALTY BY
EMPLOYEE;**
- 3. AIDING AND ABETTING BREACH OF
FIDUCIARY DUTY AND DUTY OF
LOYALTY;**
- 4. INTERFERENCE WITH CONTRACT;**
- 5. INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE;**
- 6. CONVERSION;**
- 7. COMMISSION OF COMPUTER
CRIMES;**
- 8. VIOLATION OF INJUNCTION;**
- 9. CIVIL CONSPIRACY**

DEMAND FOR JURY TRIAL

[IMAGED FILE]

1 Plaintiff The Regents of the University of California (“The Regents,” “UCSD,” or
2 “Plaintiff”) alleges upon knowledge as to its own actions, and upon information and belief as to
3 all other matters, against Defendant University of Southern California (“USC”) and Individual
4 Defendants Paul S. Aisen (“Aisen”), Jeremy Pizzola, Deborah Tobias, Gustavo Jimenez-
5 Maggiora (“Jimenez”), Phuoc Hong as follows:

6 INTRODUCTION

7 1. The University of California is a nonprofit institution overseen by The Regents to
8 pursue the central pervasive mission of discovering and advancing knowledge through research,
9 education, and public service. This case arises from tortious and criminal acts committed by the
10 Defendants for the purpose of deliberately harming the University’s research mission.

11 2. In furtherance of its nonprofit mission, The Regents, like most research
12 universities in the United States, enters into contracts (sometimes called “grants” or “awards”)
13 with third-party sponsors such as the federal government, private companies, and philanthropic
14 organizations, pursuant to which The Regents receives funding to conduct studies and
15 experiments. Such contracts with funding sponsors are the life-blood of academic research. The
16 amount of research funding under contract to a university is also a measure of the university’s
17 success and prestige.

18 3. The Regents filed its original complaint on July 2, 2015, seeking relief from
19 Defendants’ attempt to force the “institutional transfer” of a sponsored research program called
20 the Alzheimer’s Disease Cooperative Study (“ADCS”) from UCSD to USC without The Regents’
21 consent, in violation of state law of property, contract, and employment/agency, as well as in
22 violation of well-settled ethical, regulatory, and procedural standards governing human-subject
23 research at academic institutions in the United States.

24 4. When this case was initially filed, Defendants attempted to portray themselves as
25 acting in a good faith desire to advance scientific research in compliance with the norms of
26 civilized society. However, through discovery and their subsequent conduct, Defendants have
27 shown by clear and convincing evidence that they acted, and are continuing to act, in the words of
28 the USC Provost as an academic “predator,” in knowing disregard of settled legal and ethical

standards, with the specific intent to benefit and enrich themselves by diverting over \$300 million in research funding from The Regents, a public university held in trust for the people of the State of California, to USC, a private corporation that is not accountable to the public except through the enforcement of civil and criminal laws.

5. Among many wrongful acts, Defendants committed criminal violations of California Penal Code § 502(c) by altering, accessing, and using the UCSD computer system that collects and stores raw clinical data sent to UCSD over the Internet from third-parties pursuant to contracts between such parties and The Regents. Defendants without required authorizations migrated UCSD's Electronic Data Capture ("EDC") computer system from the San Diego Supercomputer Center to a UCSD-owned Amazon Web Services ("AWS") Account No. 67513428646, and then took control over the AWS account as if were their own. As a result of this criminal conduct, Defendant USC was able to commandeer control over UCSD's EDC computer system without The Regents' consent, and thereby represent to third-party sponsors that USC had possession, custody, and control of the specialized computer system necessary to administer ADCS research studies immediately, without having to purchase or develop its own computer system, and without undertaking the complex effort of migrating live, ongoing data streams from one institution's computer system to another's. In addition, Defendants deprived UCSD of administrative control over its own EDC computer system so that USC could falsely assert to funding sponsors that The Regents no longer had the practical ability to run ADCS studies and conduct the scientific research that is central to The Regents' nonprofit mission and to performing the university's obligations under existing contracts and grants.

6. To preserve the *status quo ante* and avoid irreparable harm to The Regents, this Court issued a preliminary injunction dated August 4, 2015 (the "PI Order"), which ordered Defendants to cease violating Penal Code § 502(c) and "to return full system and data access, control and management of the ADCS Data and Systems to UCSD *to resume possession, management and control to the same extent that UCSD had such management, control and operation, before Defendants resigned from UCSD*" (emphasis added).

7. Upon issuance of the injunction, Defendants resolved to refuse to comply with the Court's order, and to continue their illegal use of UCSD's computer system, telling sponsors that the PI Order was without "legal basis." Defendants have failed and refused to comply with the PI Order for over three years. Due to their willful violation of the PI Order, Defendants have largely inflicted on The Regents the irreparable harm that this Court's order was intended to avoid. Plaintiff in this amended complaint therefore adds a claim for compensatory damages for Defendants' violation of the PI Order and for punitive damages on all claims in light of Defendants' malice, fraud, and oppression in committing the acts complained of herein.

THE PARTIES

8. The Regents of the University of California is a California corporation doing business in the County of San Diego, State of California.

9. Individual Defendants Paul S. Aisen, Jeremy Pizzola, Deborah Tobias, Gustavo Jimenez-Maggiora, Phuoc Hong are and were at all relevant times individuals residing in the County of San Diego, State of California. Until June 2015, the Individual Defendants were employees of The Regent with responsibility for the successful operation of the ADCS research program, and the performance of The Regents' obligations under the contracts and grants between The Regents and third-party sponsors that called for the use of the ADCS program and its resources.

10. Defendant University of Southern California is a California corporation doing business in the Counties of Los Angeles and San Diego, State of California.

11. The Individual Defendants and Defendant USC are collectively referred to herein as the “Defendants.”

JURISDICTION AND VENUE

12. The conduct alleged herein occurred within the County of San Diego, State of California, and jurisdiction and venue is proper within this County.

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GENERAL ALLEGATIONS

The Regents and Its ADCS Program

13. *The Regents*: The Regents is a California corporation authorized and empowered to administer a public trust known as the University of California (“UC” or “the University”). Under Article IX, section 9, of the California Constitution, The Regents is vested with full powers of organization and government over the University, including all powers necessary or convenient for the effective administration of the public trust and the advancement of the tripartite mission of the University: to provide excellence in teaching, research, and public service.

14. *UC San Diego*: The Regents maintains a campus in this county known as the University of California, San Diego. UCSD operates a School of Medicine as well as the UC San Diego Health System, which is the region’s only academic health system and provides patient care, conducts medical research, and serves as a training ground for health care professionals.

15. *The ADCS Research Program*: Since 1991, UCSD has managed a research center known as the Alzheimer’s Disease Cooperative Study under a cooperative agreement with the National Institute on Aging (“NIA”), which is an agency of the federal government and one of the National Institutes of Health (“NIH”). The ADCS serves as the central hub of a consortium of approximately 70 academic medical centers, research clinics, and participating sites in the United States and Canada that deploy their resources and efforts to facilitate the testing of new drugs and therapies for the treatment of Alzheimer's disease, particularly research that might not otherwise be undertaken by private industry. Over the course of a quarter century, UCSD created a nationwide ADCS infrastructure comprised of experienced and talented personnel, complex computer systems, specialized procedures, and relationships among the consortium of ADCS members and participating sites, which has contributed to the fulfillment of The Regents’ research mission and enriched the academic environment at its San Diego campus. At the time of the events alleged herein, the ADCS occupied the time and attention of approximately 80 UCSD employees, including six faculty members other than Defendant Aisen, arranged into eight “Core” groups, namely, Medical and Safety, Clinical Operations, Biostatistics, Biomarkers, Imaging, Informatics, Minority Recruitment, and Administration. Each Core was led by a faculty member

1 or staff member with responsibility for the various components of Alzheimer's disease research,
2 reporting to the ADCS Director, Defendant Aisen. The program operated from leased office space
3 at the La Jolla Village Professional Center adjacent to the UCSD campus.

4 16. *The ADCS is a Data and Coordinating Center:* No human research subjects are
5 seen at the ADCS at UCSD. Rather, the ADCS serves as the "Coordinating and Data
6 Management Center" for the network of ADCS participating sites. With assistance and direction
7 from the ADCS, participating sites throughout North America recruit individuals to participate in
8 research studies, collect clinical data from the participants, and transmit the data ("the ADCS
9 Data") to UCSD over the Internet. ADCS Data are facts regarding the health of study
10 participants. The value of ADCS Data inheres in its unique and irreplaceable nature in validating
11 scientific hypotheses and determining the success or failure of scientific experiments. ADCS Data
12 is personal property under California Civil Code §§ 654 *et seq.* that is owned by The Regents.
13 Depending on the terms of their contracts with The Regents, some ADCS funding sponsors may
14 be co-owners of some ADCS Data and entitled to a copy thereof; however, under its contracts and
15 grants with research sponsors and under applicable law, The Regents is entitled to possession and
16 administrative control over ADCS Data.

17 17. *UCSD developed the EDC computer system for the ADCS Data and Coordinating*
18 *Center:* To facilitate its administrative control over ADCS Data, and to ensure compliance with
19 its clinical data management responsibilities, The Regents developed a custom-designed, highly
20 complex, Internet-based electronic data capture (EDC) system to manage all aspects of clinical
21 trial activities, including regulatory affairs, trial master files, clinical monitoring and safety,
22 laboratory and biospecimen information, supply management, site payments, and study source
23 document management. This proprietary EDC computer system, developed over many years
24 under the leadership of Dr. Ronald Thomas, coordinates the data management, quality assurance,
25 and monitoring activities of thousands of staff across multiple continents, and was specifically
26 designed to satisfy the chain-of-custody and data submission requirements of the federal Food and
27 Drug Administration (FDA), the federal agency responsible for protecting and promoting public
28 health in the approval of newly discovered drugs and therapies. As of 2015, UCSD had

1 completed approximately 20 ADCS research studies using its EDC computer system, and had
2 entered contracts and established relationships with multiple third-party funding sponsors for
3 research using ADCS resources, including the proprietary EDC computer system.

4 18. *ADCS research must be carried out in compliance with written protocols approved*
5 *by an independent ethics committee known as an Institutional Review Board (IRB):* All
6 individuals and institutions who undertake human subject research in the U.S. must comply with
7 federal law requiring that any research involving human subjects must follow a written protocol
8 or “investigational plan” setting forth the specifics of the study, including the name and address of
9 the facility at which the study is being conducted. All such protocols must be reviewed and
10 approved by an independent ethics committee called an Institutional Review Board (“IRB”).
11 IRBs exist to protect the rights, safety, and welfare of human subjects, and to ensure that
12 participants’ clinical data is collected and maintained in a manner that adequately protects their
13 rights and interests in safety, privacy, and informed personal decision-making.

14 19. *ADCS Data belongs at UCSD:* The IRB-approved protocols for each ADCS
15 research project called for ADCS Data to “be housed in a secure datacenter at the San Diego
16 Supercomputer Center” on the UCSD campus. Individuals who volunteered to participate as
17 subject of ADCS research studies provided their informed consent based on these protocols. Any
18 changes to an IRB-approved protocol also must be approved by the IRB, except in exigent
19 circumstances to eliminate an immediate hazard to a human research subject.

20 20. *Contracts and grants between funding sponsors and The Regents for ADCS*
21 *research:* ADCS research is funded primarily by third-party sponsors such as the federal
22 government and private companies pursuant to the terms of written contracts, sometimes referred
23 to as “grants,” “awards,” or “subawards.” Under these contracts, the sponsor provides funding to
24 UCSD, which uses the funds to carry out an IRB-approved research protocol using the ADCS
25 infrastructure, resources, and relationships with participating sites. For example, the Subaward
26 Agreement between The Regents and Wake Forest University Health Services recites:

27 The Alzheimer’s Disease Cooperative Study (ADCS: U01-
28 AG10483) is in a unique position to provide the operational

1 infrastructure for Therapeutic Effect of Intranasal Insulin on
2 Cognition. Dr. Paul Aisen, Director of the ADCS, will continue to
3 serve as co-Director of the Clinical Core, and will oversee the
4 Coordinating Center. The ADCS is a consortium of 35 academic
5 centers across the US funded by NIA since 1991 to conduct
6 therapeutic studies in AD [*i.e.*, Alzheimer's disease]. The ADCS
7 has completed over two dozen trials with over 6000 subjects, and
8 plays a pivotal role in the development and standardization of
assessment instruments and analytical tools for AD trials. The
ADCS facilities at UCSD include an Administrative Core, a
Medical Core, a Clinical Operations Core and a Data Core; each of
these units plays a central role in the management of Therapeutic
Effect of Intranasal Insulin on Cognition.

9 At the time of the events giving rise to this action, the value of ADCS grant funding under
10 contract to The Regents was in excess of \$100 million, and Defendants estimated that the
11 program would attract \$343 million in funding over the next five years. Such funding finances
12 both (i) direct research activity including equipment, supplies, and salaries of researchers, as well
13 as (ii) a portion of the costs of the UCSD facilities and administration necessary to support
14 complex human-subject research, including but not limited to the Institutional Review Board
15 referenced in Paragraph 19 above and the research administration staff referenced in Paragraphs
16 22 and 44-48 below. Such funding is essential to accomplishing the University of California's
17 research mission.

18 21. *Role and authority of academic researchers with regard to the institutional*
19 *transfer of sponsored research programs:* Defendant Aisen is not a party to the contracts and
20 grants between The Regents and ADCS sponsors, but is designated by UCSD as "principal" or
21 "clinical" investigator, together with multiple other investigators, both at UCSD and at the
22 participating sites where human research subjects are seen. (Federal regulations use the term
23 "investigator" instead of "researcher.") Each participating site must have its own principal
24 investigator who is responsible for the activities at that site, including compliance with the IRB-
25 approved protocols and protecting the safety and confidentiality of human research subjects who
26 are seen at the participating site. It is not within the authority of an academic researcher such as
27 Defendant Aisen to decide to force the "institutional transfer" of an academic research program,
28

1 or to attempt to persuade sponsors to breach or terminate their contracts and relationships with the
2 institution that employs the researcher.

3 22. *Role and authority of research administration officers:* All research universities,
4 including UCSD and USC, maintain Offices of Contracts and Grants (or similar names) with
5 personnel who execute, manage, and administer research contracts and grants. While faculty
6 members such as Defendant Aisen carry out the scientific activities on grant-sponsored research
7 projects, officials in the Office of Contracts and Grants act as the university's agent in forming the
8 contractual arrangement with the sponsor, ensuring compliance with contractual and regulatory
9 obligations, and making any changes to a contract or grant. The field of academic research
10 administration is so complex that it comprises an entire discipline of professional employment,
11 with support organizations such as the National Council of University Research Administrators
12 and the Society of Research Administrators.

13 **UCSD Entrusted Defendant Aisen with the Directorship of the ADCS Program**

14 23. From the time that the ADCS was established in 1991 until February 2007, the
15 Director of the ADCS was Leon Thal, M.D., a Distinguished Professor and Chair of
16 Neurosciences at UCSD. Dr. Thal had joined the UCSD faculty in 1985 and over the years
17 became an acknowledged leader and visionary in Alzheimer's disease research. In February
18 2007, he was tragically killed in a plane crash.

19 24. Following the death of Dr. Thal, UCSD conducted a search for a new Director of
20 the ADCS and hired Defendant Paul Aisen, M.D. from Georgetown University in Washington,
21 D.C., which had been a participant in the ADCS consortium. Dr. Aisen became employed by The
22 Regents in November 2007 as a Professor of Neurology and Medicine at UCSD and was
23 appointed Director of the ADCS. As such, Defendant Aisen was the agent of The Regents and
24 entrusted with fiduciary authority over the ADCS staff, resources, and research funding. In
25 accepting employment at UCSD, Defendant Aisen promised in writing "to do all things necessary
26 to enable University to perform its obligations to grantors of funds for research or contracting
27 agencies as said obligations have been undertaken by University." As an employee of The
28 Regents, Defendant Aisen owed a duty of loyalty to the University during his tenure, including a

1 duty to refrain from actions that are inimical to the interests of The Regents, and to avoid giving
2 preference to his own interests, or those of a rival employer, at the expense of The Regents and
3 UCSD. The position of Director of the ADCS is one of prestige and influence in the field of life
4 sciences, and UCSD placed trust and confidence in Defendant Aisen to discharge his obligations
5 to The Regents with honesty, fidelity, and candor.

6 **Defendants Aisen and USC Secretly Bargained Over the “Institutional Transfer” of**
7 **the ADCS from UCSD to USC**

8 25. In late 2014, according to Defendant Aisen, the ADCS was “an impressive
9 organization setting standards for academia and industry and meeting all regulatory hurdles
10 necessary for drug development studies.” In November of that year, without authorization from
11 UCSD, Defendant Aisen reached out to USC leadership to propose moving “an enormous
12 Alzheimer’s disease research program,” *i.e.*, the ADCS, from UCSD to USC as if the ADCS
13 program were Aisen’s personal property.

14 26. Defendant USC operates the Keck School of Medicine near downtown Los
15 Angeles, including an Alzheimer’s Disease Research Center, also located near downtown Los
16 Angeles, approximately 100 miles north of San Diego. In the fall of 2014, USC had recently
17 announced its ambitions to pursue “the development of a truly outstanding biomedical research
18 enterprise and academic medical center through the University’s Keck School of Medicine.” To
19 advance its ambitions, USC sought to expand its operations to San Diego, where USC had no
20 research facilities or activities. In explaining USC’s actions relating to the “institutional transfer”
21 of the ADCS, USC Provost Michael Quick stated, “The 21st [century] will be dominated by
22 biomedical sciences. We have to be at places where the conversation (in life sciences) are the
23 best, and San Diego is one of those places.”

24 27. In December 2014, USC representatives including Provost Quick and Carmen
25 Puliafito, then Dean of USC’s Keck School of Medicine, met personally with Aisen and began
26 their discussions over the institutional transfer of the “enormous Alzheimer’s research program”
27 that The Regents had entrusted Defendant Aisen to oversee. Shortly thereafter, Defendant Aisen
28 enlisted Defendants Deborah Tobias and Jeremy Pizzola to join him in conspiring with USC to

1 usurp UCSD's role in ADCS research activities, and Tobias and Pizzola agreed to do so.
2 Defendants Tobias and Pizzola were employed by UCSD as the Director and Associate Director,
3 respectively, of the ADCS' Administrative Core. Their job responsibilities included
4 administrative, fiscal, contractual, and regulatory oversight of ADCS trials and projects to assure
5 that the program accomplishes its aims consistent with the ADCS contracts and grants to which
6 UCSD is a party.

7 28. In the first quarter of 2015, Defendants Aisen, Pizzola, and Tobias prepared a
8 business plan, which they labeled "ADCS USC Model," for what they referred to as the
9 "institutional transfer" of all ADCS assets and resources from UCSD to USC, including The
10 Regents' contracts and grants for ADCS research funding. Defendants agreed to combine their
11 efforts to form what they would label a "new" USC "Institute" in San Diego, but which would be
12 comprised entirely of the ADCS assets and resources that UCSD had entrusted to Defendants'
13 supervision. Defendants planned to lure away the UCSD employees who ran the Data and
14 Coordinating Center; to induce ADCS sponsors to breach or terminate their contracts and
15 relationships with UCSD and enter new ones with USC; and to take over the lease for the office
16 space adjacent to the UCSD campus that housed the UCSD/ADCS staff. Defendants thus
17 planned to cripple UCSD's ability to function as the Data and Coordinating Center for ADCS
18 projects as contemplated by the IRB-approved protocols for ADCS sponsored research projects.
19 Defendants' business plan recited that the ADCS was "very successful," and projected that the
20 program's "total anticipated income for the next five years is \$343m[illion]" from "about twenty
21 active funding sources."

22 29. While Defendant Aisen would later claim that his negotiations with USC were
23 focused on his recruitment as an individual faculty member at the Keck School of Medicine
24 (located in Los Angeles), the business plan that Defendants Aisen, Tobias, and Pizzola presented
25 to USC explicitly stated that the "new" USC "institute" would "physically be located in San
26 Diego in off campus leased space," and that the terms proposed for forcing the "institutional
27 transfer" of the ADCS program were "separate from any potential faculty offer packages" and that
28 Aisen's personal compensation package would be "negotiated individually." As set forth in

1 Paragraphs 21-22 above, it is not within the scope of authority of a faculty member such as
2 Defendant Aisen to negotiate with third parties for the institutional transfer of a UCSD research
3 program.

4 30. Defendant Aisen demanded, and Defendant USC agreed to provide, significant
5 individual incentives for Dr. Aisen to betray the trust reposed in him by UCSD. Among other
6 things, USC guaranteed to increase Aisen's salary by more than \$100,000 per year through 2020
7 (to be paid from sponsored research funds), and provide both interest-free and low-interest
8 financing on a new home, with forgiveness of at least half the debt over time. Thus, thanks to
9 Defendant USC, Defendant Aisen had a strong personal financial incentive to interfere with The
10 Regents' contractual relationships with UCSD's research sponsors. Defendant USC similarly
11 promised substantial salary increases to the other Individual Defendants, to be paid from
12 sponsored research funds.

13 **The Individual Defendants Conspired to Act as "Double Agents," Ostensibly**
14 **Employed by UCSD But Acting for the Benefit of USC**

15 31. In accordance with the incentives they stood to receive from USC, Defendants
16 Aisen, Tobias, and Pizzola recruited and conspired with other key UCSD employees, including
17 Individual Defendants Gustavo Jimenez-Maggiora and Phuoc Hong, to join them in conspiring to
18 force the "institutional transfer" of the ADCS. Defendants Jimenez and Hong were the Director
19 and Associate Director, respectively, of the ADCS's Informatics Core, with both direct and
20 supervisory responsibility for collecting, validating, and archiving clinical data transmitted to
21 UCSD from participating ADCS sites using UCSD's computer systems, including UCSD's
22 proprietary EDC computer system housed at the San Diego Supercomputer Center on the UCSD
23 campus. In addition, Jimenez and Hong were the custodians of the critical passwords and access
24 credentials needed to access, maintain, and operate the various components of the EDC computer
25 system, which passwords and credentials they were to hold and use for the benefit of UCSD.

26 32. In conspiring together, Individual Defendants Aisen, Pizzola, Tobias, Jimenez, and
27 Hong mutually agreed to become "double agents" — ostensibly employed by UCSD to fulfill The
28 Regents' research mission by carrying out IRB-approved protocols for ADCS research studies

1 consistent with the contracts and grants to which UCSD was a party, but in reality working to
2 dismantle and destroy the ADCS research program at UCSD and put the pieces of the program
3 back together under the auspices of USC, thereby forcing the “institutional transfer” of the
4 program without The Regents’ consent. As set forth below, the Individual Defendants engaged in
5 multiple actions that violated their obligations as UCSD employees, aided and abetted by
6 Defendant USC and by each other. Such conduct by the Individual Defendants violated the duty
7 of loyalty owed by employees to their employer.

8 33. Between January and May 2015, Defendant Pizzola without authorization
9 downloaded and copied UCSD’s ADCS contracts and regulatory documents and provided them to
10 USC, to facilitate Defendants’ interference with The Regents’ contracts with research sponsors.
11 Thus, both the Individual Defendants and Defendant USC were aware of the existence and terms
12 of The Regents’ contracts and grants, and formed the intent to interfere with The Regents’
13 contracts and relationships with ADCS funding sponsors.

14 34. Defendants Aisen, Tobias, and Pizzola, while still employed at UCSD, arranged
15 for representatives of USC’s Human Resources (“HR”) Department to come to the ADCS offices
16 in San Diego May and June 2015 to orchestrate the *en masse* resignations of the UCSD
17 employees who staffed the ADCS and *en masse* hiring by USC. In April and early May 2015,
18 Defendant Tobias and Pizzola falsely represented to the UCSD employees that they were required
19 to provide their c.v.s or résumés to comply with an audit by ADCS sponsor Eli Lilly & Company,
20 which was not the case, and failing to disclose that Defendants were collecting the résumés of
21 UCSD employees to force the “institutional transfer” of the ADCS to USC. Personnel in USC’s
22 HR Department used this wrongfully obtained information to create “job requisitions” that were
23 required to be approved by USC Provost Michael Quick under USC’s internal operating
24 procedures, and also created job descriptions and associated internet links on USC’s HR computer
25 system to facilitate the *en masse* hiring of ADCS staff by USC. Defendant USC also used the
26 information wrongfully supplied by the Individual Defendants to create aggressive financial
27 incentives, which Defendants labelled “signing bonuses” (to be paid or reimbursed from
28

1 Alzheimer's disease research funds), to induce UCSD employees to abandon UCSD *en masse* and
2 transfer their loyalty to USC.

3 35. With Defendant USC's knowledge, approval and assistance (including the creation
4 of passwords and accounts on USC's computer systems), the Individual Defendants arranged to
5 download and copy regulatory documents and other data from the UCSD-ADCS computers to a
6 USC computer system, without authorization from UCSD.

7 36. Defendants Aisen and Tobias arranged a meeting at the ADCS offices between
8 USC Information Technology personnel to facilitate USC's understanding of the ADCS physical
9 server organization, connections, and structures, allowing USC personnel to take notes and
10 pictures of the servers used to store documents in a system known as "CTMS" (the Clinical Trial
11 Management System) to facilitate the "institutional transfer" of the ADCS program.

12 37. On or about May 20, 2015, USC sent Aisen its written offer of employment,
13 outlining the terms referenced in Paragraph 30 above, promising to increase Aisen's salary by
14 more than \$100,000 per annum, to be paid or reimbursed from sponsored research funds. The
15 letter stated that USC's offer would remain open for 10 days, through 5:00 p.m. on May 30, 2015,
16 "when it will expire if you have not accepted it in writing." Aisen promptly shared a copy of the
17 USC offer letter with Defendants Pizzola and Tobias. Aisen signed and returned the offer letter to
18 USC by Federal Express.

19 38. Before Aisen received the USC offer letter, he had participated in meetings and
20 discussions with Janssen Pharmaceuticals ("Janssen") regarding potential sponsorship of ADCS
21 research. After receiving USC's offer letter, Aisen advised Dr. Gary Romano of Janssen that
22 Aisen would move the ADCS program to USC and "will continue to use the ADCS designation
23 after the move." Aisen further advised Dr. Romano that "[w]e are confident that all funding will
24 move to USC, but again there could be complications. UCSD will have to formerly [sic]
25 relinquish our federal grants. We have contingency plans in place if this does not go smoothly."
26 Through this communication and other evidence that will be shown at trial, Aisen expressed
27 Defendants' intention to interfere with The Regents' contractual relationships with third-party
28

sponsors of ADCS research, including both The Regents' existing sponsors and its prospective relationships with Janssen and others.

Defendants Convened an ADCS Staff Meeting on May 22, 2015, to Make Unauthorized Announcements to UCSD Employees

39. On May 22, 2015, with knowledge on the part of Defendant USC, Defendants Aisen, Tobias, and Pizzola, using the authority of their supervisory positions over ADCS staff, summoned all UCSD employees working at the ADCS to a meeting at the Sheraton hotel across the street from the ADCS office in San Diego. Prior to the staff meeting, Aisen had not shared Defendants' plan for the "institutional transfer" with anyone in the UCSD administration, but had confided Defendants' plans to selected individuals. For example, the day before the May 22 staff meeting, Aisen sent an email to an ADCS principal investigator in Boston, saying, "After my disclosure to ADCS core leaders yesterday, the fun has started with accusations flying. I am in for some interesting times."

40. At the May 22, 2015, staff meeting, Defendants Aisen, Tobias, and Pizzola told the assembled UCSD employees that all ADCS research activities, grants, and sponsors would be moving to USC by September 1, 2015. After Defendant Aisen finished speaking, Defendant Tobias addressed the ADCS staff and encouraged them to accept employment at USC, stating that that she had arranged for USC's Human Resources ("HR") Department to be on-site at the UCSD's offices housing the ADCS the following Wednesday, May 27, 2015. Tobias further said that the "transition" would be completed by September 1, 2015, and that every UCSD employee working at the ADCS would receive USC offer letters by mid-July 2015. Defendant Pizzola also took the microphone encouraging all ADCS personnel to join him and the other Defendants in moving to USC.

41. To create further pressure on UCSD employees, Defendants misled the UCSD employees to believe that that the NIA had approved the "institutional transfer" of the ADCS to USC, and that all sponsored research activities of the ADCS would be "shutting down" at UCSD so that no ADCS jobs would remain at UCSD.

1 42. Defendants had no authorization from The Regents to comment on the
2 employment status of other UCSD employees, or to comment on the institutional transfer of the
3 ADCS. The conduct by Defendant Aisen, Tobias, and Pizzola at the May 22, 2105, staff meeting
4 created fear and unrest and concern among UCSD's employees and disrupted their relationships
5 with The Regents.

6 43. UCSD leaders learned of Aisen's unauthorized announcement to ADCS staff when
7 employees contacted the administration that same afternoon afraid they were losing their jobs.
8 Although UCSD leaders had learned on or about March 25, 2015 (from a source other than
9 Defendants) that Aisen was considering joining the faculty of USC (located 100 miles north in
10 Los Angeles), the afternoon of May 22, 2015, was the first occasion that UCSD had received
11 information that Aisen was attempting to force the "institutional transfer" of the ADCS research
12 center located in San Diego. UCSD leaders were concerned (presciently) that Aisen and USC
13 might attempt to commandeer ADCS Data, which is essential to running the Data and
14 Coordinating Center. With the concurrence of the Designated Institutional Official for Human
15 Subject Research, who is responsible for human subject safety and oversight of UCSD's IRB,
16 UCSD suspended Aisen's "single sign on and active directory" privileges to UCSD computer
17 systems. As a result, Aisen was temporarily precluded from accessing certain university computer
18 systems, including his ucsd.edu email account, over the Memorial Day weekend.

19 **Defendant USC Deliberately Violated Well-Settled Standards**
20 **for Recruitment of Faculty Involved in Sponsored Research Projects,**
21 **and Used the Dereliction of the Individual Defendants' Duties**
22 **as a Weapon to Destroy the ADCS at UCSD**

23 44. Within hours after the May 22, 2015, ADCS staff meeting, the Director of UCSD's
24 Office of Contract and Grant Administration (OCGA), Linda Collins, sent an email to Defendants
25 Tobias and Pizzola, the Director and Associate Director of the ADCS's Administrative Core,
26 stating:

27 //

28 //

1 It is my understanding that an announcement was made today to all
2 ADCS staff that ADCS intends to transfer their program from
3 UCSD to USC. This is to inform you that I have been directed by
4 Vice Chancellor Research Sandy Brown that no changes will be
5 made to any prime award, flow-through award or any of the sub-site
6 subawards without discussion, review and approval by OCG and
7 the VCR [*i.e.*, Vice Chancellor Research]. I will also [forward] this
8 directive to OPAFS [*i.e.*, Office of Post-Award Financial Services].

9 This notice to Defendants reflects well-settled standards of conduct governing sponsored
10 academic research in the United States, which require a faculty member (such as Defendant
11 Aisen) who wishes to move to another university and take with him all or part of a grant-
12 sponsored research program (such as the ADCS) to obtain permission from the institution that
13 holds the program's grants and contracts, and that owns the facilities, assets, and resources used to
14 run the program (*i.e.*, UCSD). None of the Defendants responded to Ms. Collins' email.

15 45. The standards and procedures for seeking the "institutional transfer" of sponsored
16 research activities are reflected in the NIH Grant Policy Statement on "Change of Recipient
17 Organization," which provide that permission to transfer grant-sponsored research activities must
18 be obtained from the existing parties to a research contract/grant before the anticipated start date
19 of faculty member at the new institution, "and preferably several months in advance." Defendant
20 USC's internal policies are the same as those set forth in the NIH Grant Policy Statement. USC's
21 "Procedure for Processing a Request for a Change of Grantee Organization of an Award"
22 specifically provides that a request to transfer grant-sponsored research must be "approved by the
23 original organization [*i.e.*, The Regents] . . . prior to the PI's [*i.e.*, Aisen's] anticipated start date at
24 the new organization [*i.e.*, USC]," and sets forth specific steps to be followed.

25 46. These standards and procedures serve at least three important purposes. First, the
26 requirement of advance permission and planning reflects the fact that research contracts and
27 grants confer legally protected rights that are entitled to protection from tortious interference, such
28 that permission from both parties to the existing contract, grants, and ongoing relationship is
required to conform to the standards of civil society. Second, advance permission and planning
protects the rights and safety of human research subjects by ensuring that changes to research

1 protocols – which in this case required ADCS Data to be housed securely in the San Diego
2 Supercomputer Center – have been reviewed and approved by the independent Institutional
3 Review Board, and that study participants are provided the opportunity to give their informed
4 consent to any substantial change in the IRB-approved protocol. Third, advance permission and
5 planning ensures that the integrity of costly research projects and data sets is not compromised.
6 For example, NIH Policy requires the proposed transferee organization to demonstrate that the
7 “facilities and resources at the new organization will allow for successful completion of the
8 project,” which in this case would have required USC to demonstrate that it had the computer
9 system and infrastructure to serve as Data and Coordinating Center for ongoing multi-site clinical
10 trials – assets and resources that Defendant USC did not have.

11 47. As set forth below, Defendants elected to proceed in contravention of the settled
12 and customary procedures governing sponsored research and faculty transitions, including USC’s
13 own written policies, and in contravention of California law. Discovery in this action has
14 revealed that Defendant USC’s predatory raid on the ADCS program was not an isolated incident,
15 but was modeled on a 2013 raid by USC on a research program at the University of California Los
16 Angeles (UCLA) in which USC conspired with UCLA employees to commandeer the assets and
17 resources of UCLA’s Laboratory of Neuro Imaging (LONI) without required consent and
18 authorization from The Regents.

19 48. Defendants’ conduct was deliberate, willful, and malicious, reflecting Defendants’
20 intent to harm the University of California and benefit USC by dismantling and destroying the
21 ADCS research program at UCSD and putting the pieces of the Data and Coordinating Center
22 back together under the auspices of USC. Defendants’ malicious intent is further reflected in
23 September 2015 comments by USC Provost Michael Quick, who wrote that that USC observes a
24 law-of-the-jungle philosophy in which “[a]ll universities are both predators and prey.” In a
25 telephone conversation with Defendant Aisen on or about June 1, 2015, memorialized in Aisen’s
26 handwritten notes, USC Provost Quick told Aisen, “let them sue.” Similarly, the Dean of USC’s
27 School of Medicine, Carmen Puliafito, who was one of the signatories to Aisen’s USC offer letter
28 and became Aisen’s direct superior at USC, testified under oath:

1 Q: Is the golden rule part of USC's Code of Ethics, to treat others
2 the way USC would want to be treated?

3 A: No.

4 Defendants' amoral violations of accepted academic and legal standards, and the predatory
5 attitude underlying Defendants' conduct, represent a clear and present danger to public
6 universities' investment in academic research. Unless Defendants' practices are corrected or
7 prevented, public universities will be under a disincentive to support innovative research centers
8 such as the ADCS, since – under USC's predatory philosophy, coupled with its willingness to
9 violate human-subject research protocols -- wealthy private universities may commandeer the
10 assets and resources of successful programs at any time simply by diverting sponsored research
11 funds into higher salaries and "signing bonuses" to induce public employees to betray the public
12 trust pursuant to which they were entrusted with leadership and oversight of the research center,
13 and to violate IRB-approved protocols intended to protect the rights and safety of individuals who
14 volunteer to participate in human-subject research.

15 **Defendants Deceived UCSD to Buy Time to Commandeer the Assets**
16 **and Resources of the ADCS Data and Coordinating Center**

17 49. On Saturday morning following the May 22, 2015, ADCS staff meeting,
18 Defendant Aisen met with his UCSD Department Chair, Dr. William Mobley, at Mobley's
19 request to discuss the transition of Aisen's responsibilities as Director of the ADCS. Defendant
20 Aisen was infuriated that his ucsd.edu email had been suspended. To induce UCSD to restore his
21 email account, Aisen falsely stated or implied that he had not decided to move to USC, and
22 agreed to meet with Dean David Brenner of the UCSD School of Medicine in the coming week to
23 discuss improvements to the ADCS program at UCSD. Dr. Mobley was trusting enough to take
24 Aisen at his word. UCSD restored Aisen's ucsd.edu email access the next business day and
25 allowed Aisen to remain Director of the ADCS.

26 50. After leaving Dr. Mobley's office on Saturday May 23, 2015, Aisen contacted
27 USC to make "urgent" arrangements to download and copy ADCS data to USC. Aisen tasked
28 Defendant Pizzola to determine "the fastest possible timeline" for transitioning all ADCS

1 resources to USC. In the ensuing days and weeks, Defendants engaged in multiple acts of
2 deception to forestall UCSD from taking action to protect the ADCS program and relieve Aisen
3 of his authority as Director, and to enable Defendants to commandeer ADCS assets and resources,
4 and disrupt The Regents' relationships with ADCS sponsors and the UCSD employees that
5 staffed the ADCS.

6 51. On Thursday, May 28, 2015, Defendant Aisen met with UCSD's Dean Brenner
7 and others under the false pretense of discussing improvements to the ADCS program, without
8 disclosing that Defendants had already engaged in downloading and copying ADCS Data for
9 USC, and made arrangements to encourage the *en masse* resignation of ADCS staff who were
10 under Aisen's supervision. While deceiving UCSD's leadership, Aisen reported to USC that "he
11 believes he can buy another 1-2 weeks before more aggressive actions are taken." Defendants
12 sought to use this interval to take the "best assets" of the ADCS and "leave the infrastructure
13 fragmented at UCSD," so as to prevent UCSD from being able to carry on the ADCS research and
14 to encourage study sponsors to terminate their contracts with UCSD. In seeking to "leave the
15 infrastructure fragmented at UCSD," Defendants targeted the ADCS's essential computer
16 systems, key employees, and relationships with funding sponsors and ADCS participating
17 research sites.

18 *Defendants without authorization commandeered control over ADCS Data and computer*
19 *systems in violation of Penal Code Section 502(c)*

20 52. Over that weekend of May 23-25, 2015, Defendants Aisen, Tobias and Pizzola
21 purchased, or caused to be purchased, approximately five external hard drives with their personal
22 credit cards (to be reimbursed by USC) to download ADCS data for the "transition" to USC.
23 Defendant Tobias directed a subordinate UCSD employee, Baoyuan (David) Zhao, to copy the
24 entire ADCS file share server—more than 4.5 terabytes of data—to take to USC. Defendants
25 Pizzola and Tobias also purchased thumb drives to copy their "work documents." These too were
26 taken to USC. By Tuesday morning, May 26, USC reported internally that UCSD's "CTMS
27 [Clinical Trial Management System] data has been backed up on hard drives" and that Defendants
28

1 were “trying to back-up the EDC data and the data in the super computer center on campus on
2 hard drives as well.”

3 53. In order to accomplish the “institutional transfer” of ADCS research activities,
4 Defendants required more than a back-up copy of the ADCS Data; they needed administrative
5 control over the “live” active EDC computer system to which ADCS participating sites were
6 sending clinical data to UCSD over the Internet. The EDC computer system is a functioning
7 combination of computer hardware and software that was running on servers located in the
8 Supercomputer Center on the UCSD campus. Over the Memorial Day weekend in May 2015,
9 without authorization from the IRB, from UCSD, or from anyone else, Defendants Aisen, Hong,
10 and Jimenez, altered UCSD’s computer systems such that the active EDC system, and all the
11 ADCS Data it contains, was migrated from the UCSD Supercomputer Center to a pre-existing
12 Amazon Web Services (AWS) Account No. 675713428646 (colloquially referred to as the
13 Amazon “cloud”) that UCSD had established under an August 1, 2013, Enterprise Agreement
14 between The Regents and AWS, and which had been used for back-up storage. At the time
15 Defendants migrated the live EDC system to AWS Account No. 675713428646, UCSD had paid
16 approximately \$96,000 to establish and maintain the account. At the present time, UCSD has
17 paid over \$360,000 for the cloud computing system.

18 54. The migration of the live EDC computer system to the Amazon cloud required
19 Defendants to change the uniform resource locator (URL) to which participating ADCS sites
20 transmitted clinical data over the Internet, and violated the IRB-approved protocols for ADCS
21 research studies which required participants’ data to be “housed in a secure datacenter in the San
22 Diego Supercomputer Center” on the UCSD campus. The unauthorized migration of the live
23 computer system also required Defendants to shut down the EDC computer system such that it
24 was inaccessible to the physicians and medical professionals at ADCS participating sites where
25 human research subjects are seen. These actions created unnecessary risk to study participants,
26 violated Aisen’s obligations as Principal Investigator of human-subject research studies, caused
27 The Regents to be in violation of its contractual obligations to ADCS sponsors, and breached
28 Aisen’s duties as an employee and fiduciary of The Regents.

1 55. During the first days of June 2015, Defendant Aisen conspired with Defendants
2 Jimenez and Hong to cause Amazon to change the ownership of AWS Account No.
3 675713428646 from The Regents to Aisen's name at his home address and on his personal
4 American Express credit card. These Defendants similarly conspired to change the ownership of
5 other UCSD accounts with third-party vendors including Atlassian Bitbucket, Google, and
6 GitHub, which were used by ADCS personnel to support the EDC computer system. Defendants
7 did not notify anyone else at UCSD of their actions, which were unauthorized and outside the
8 scope of their UCSD employment.

9 56. Defendant USC was aware that Aisen had taken custody and control of the AWS
10 account containing ADCS data and systems as if it were his personal property, and has ratified
11 and condoned these actions, which violate the California Penal Code § 502(c) as well as
12 California tort law.

13 *Defendants interfered with The Regents' relationships with UCSD employees*

14 57. During the first week of June 2015, the Individual Defendants arranged for USC
15 HR personnel to hold a "job fair" at the Sheraton Hotel, across the street from the ADCS offices,
16 for the sole purpose of transitioning ADCS employees from UCSD to USC. Defendant USC had
17 originally planned on holding the job fair on May 27, and postponed the event after UCSD
18 suspended Aisen's computer access after the May 22 staff meeting. Defendants targeted UCSD
19 employees whose "positions are integral to the migration of the agreements and data" to USC. In
20 advance of the job fair, the Individual Defendants sought to encourage UCSD employees to
21 transfer their loyalty to USC by falsely stating or implying that the NIA and other sponsors had
22 decided to move the ADCS program to USC, that the program was being shut down at UCSD,
23 and creating the false impression among ADCS staff that "we have to go [to USC] or else we
24 won't have jobs."

25 58. At the Sheraton Hotel, Defendant USC held the meetings in one large room.
26 According to people that attended, there were multiple tables (about 4-5) with a representative
27 from USC at each. Once a table opened up, an ADCS employee waiting to meet with Defendant
28 USC would go to the table. The representative from Defendant USC asked for the person's name,

1 and after looking up information (which some people say the USC representatives had on tablet
2 computers), the USC representative provided a USC job title, and also handed out a document
3 with a job description/job duties, together with a salary range for various positions. Many of
4 these job descriptions and proposed job duty descriptions were described as “generic.” For
5 example, when one ADCS employee-interviewee pointed out to the USC representative that what
6 she had been given did not match the duties she actually performed for the ADCS, and that the
7 salary was also substantially off compared to what she was making at UCSD, the USC
8 representative responded, “don’t worry about it, we just need to get you in the system.” As to the
9 salary, the USC representative said, “we’ll fix that later once you get started.” USC
10 representatives were also heard saying, “we have a job for everyone at the ADCS,” and that the
11 ADCS employees must apply right away as “we [USC] need to get these positions filled
12 immediately.” Defendants Tobias and Pizzola were present at the USC job fair, where they acted
13 as liaisons for USC, and helped USC hire away UCSD employees.

14 59. The offer letters that Defendant USC prepared and sent to UCSD employees in
15 June 2015 falsely stated their employment at USC was “funded by a research contract/grant” and
16 “contingent upon receipt of the necessary funding from this or any subsequent contract/grant to
17 continue employment.” In this way, Defendant USC falsely led UCSD employees to believe that
18 their future employment was dependent on USC’s success in usurping UCSD’s contracts and
19 relationships with ADCS funding sponsors.

20 *Defendants interfered with The Regents relationships with ADCS funding sponsors*

21 60. Beginning no later than the Memorial Day weekend in 2015, Defendants Aisen,
22 Pizzola, and Tobias, while still employed by The Regents, attempted to pressure, persuade, and
23 otherwise induce ADCS funding sponsors to breach or terminate their relationships with The
24 Regents and form new relationships with USC. By way of example only, on May 30, 2015,
25 Defendant Pizzola sent an email to Toyama Chemical Company (“Toyama”), a research sponsor
26 and party to a, asking Toyama to terminate its Collaborative Study Agreement with The Regents
27 and enter a new contract with USC, stating:
28

1 We believe that Paul [i.e., Defendant Paul Aisen] can affiliate with
2 USC and form a new institution that would reside here in San
3 Diego. The new institute will hire on all of the staff members
4 currently working for Paul. We have discussed with USC and they
5 have indicated that they can issue replacement contracts to all
6 TCAD sites [i.e., research facilities under contract with The
7 Regents] simultaneously with precisely the same terms and
8 conditions. . . . This would need to be very carefully timed with
9 Toyama as we believe Toyama could chose to cancel its agreement
10 with UCSD with 30 days notice.

11 In short we believe that we can have essentially the same people
12 filling the same roles in the TCAD study simply under a new
13 institutional affiliation. (Underlying added for emphasis.)

14 61. Toyama's representatives responded to Defendants Aisen, Pizzola, and Tobias on
15 June 3, 2015, stating in part, "Have you already discussed these with UCSD and NIH? It is
16 important for Toyama to confer directly with UCSD to make sure that Toyama honors all of its
17 obligations to UCSD and complies with all applicable laws." However, rather than referring
18 Toyama's inquiry to UCSD's research administration officials who are responsible for any
19 changes to contracts and grants in conformance with accepted academic practice reference in
20 Paragraphs 46-48 above, Defendant Pizzola replied "we do not think it is time to discuss anything
21 with UCSD," adding "we don't know what's going to happen with UCSD."

22 62. On June 8, 2015, Toyama wrote directly to Defendant Aisen, stating in part:

23 After carefully considering the actions that Jeremy [i.e., Defendant
24 Pizzola] and you have recently requested of us, we find that the
25 complexity of these requested actions raises a series of significant
26 logistical, contractual, and regulatory compliance issues.
27 Resolution of these issues, from both business and legal
28 perspectives, requires us to consult with UCSD and its counsel. We
29 thus request that, in addition to the project meeting scheduled for
30 next week in San Diego, that you kindly arrange for us and our
31 counsel to meet separately with the appropriate representatives of
32 UCSD and its counsel so that this consultation can occur.

33 Notwithstanding this explicit request from Toyama, Defendant Aisen concealed the
34 communication from UCSD and its counsel, and accelerated Defendants' planned transition to
35 USC. Defendants similarly sought to induce other ADCS funding sponsors to breach or
36 prematurely terminate their contracts with The Regents and enter new ones with USC. For

1 example, on June 10, 2015, Defendant Aisen wrote to ADCS sponsor Eli Lilly & Company,
2 asking that Lilly “quickly terminate the UCSD contract and re-establish it at USC.”

3 *Other breaches of loyalty and wrongful acts by the Individual Defendants*

4 63. The Individual Defendants committed additional violations of their duties of
5 loyalty owed to UCSD during the term of their employment in ways that will be shown at trial.
6 By way of example only, Defendant Pizzola, with the approval of Defendants Aisen and USC,
7 submitted or caused to be submitted to and paid by UCSD over eleven million dollars of false
8 invoices and/or falsified claims, causing unearned and unauthorized “advance payments” to be
9 made to ADCS participating sites that had entered sub-contracts with The Regents to support
10 ADCS research. Under the terms of these sub-contracts, the participating sites were to be paid in
11 arrears for work actually performed. In an effort to induce the participating sites to continue
12 performing services during the “transition” period in which Defendants would force the
13 “institutional transfer” of the ADCS to USC, Defendant Pizzola created falsified spreadsheets to
14 input into UCSD’s computer systems that generate payments of UCSD funds to third parties) with
15 the description “in payment for work performed,” knowing that no such work had been performed
16 and that the payments were not due and owing to the recipients.

17 **Aisen’s Abrupt Resignation and the Launch of USC’s Raid on the ADCS**

18 64. On or about June 18, 2015, while travelling and away from San Diego, Defendant
19 Aisen sent an email stating in its entirety, “I resign my faculty position effective July 1, 2015.”
20 Defendant Aisen made no arrangements for the transition of any of the responsibilities he held by
21 virtue of his UCSD employment, including oversight of the ADCS program. Aisen’s Department
22 Chair, Dr. William Mobley, responded that same day, stating, “I would very much like to meet
23 with you to understand what I can do to ease the transition that we now must undertake and to
24 support the many folks that will be affected.” Defendant Aisen refused to respond to Dr. Mobley
25 or otherwise cooperate in the transition of the responsibilities he had held by virtue of his UCSD
26 employment.

27 65. Also on or about June 18, 2015, USC Provost Michael Quick sent an email to
28 UCSD Chancellor Pradeep Khosla stating in part, “We have made an offer to Dr. Aisen and we

1 believe he will accept it,” although Provost Quick had actual knowledge that Aisen had already
2 accepted USC’s May 20, 2015, offer of employment within the 10-day deadline USC had
3 afforded him. Provost Quick’s June 18 email continued, “Assuming he does accept the offer, I
4 hope we can make this transition as smooth as possible, both for the preservation of his research
5 studies and the safety of research participants.” UCSD Chancellor Khosla responded within
6 hours, copying the Dean of the UCSD Medical School, David Brenner, who responded by
7 separate email, stating in part:

8 Although we never like to see a valued faculty member go, we understand
9 Dr. Aisen’s decision to leave UC San Diego to join USC or any other
10 institution of his choosing, and we are happy to facilitate Dr. Aisen’s
11 personal transition. The ADCS, however, is a different matter.

12 As you know, while faculty regularly move from institution to institution, the
13 centers established by their home institutions do not. When Dr. Aisen
14 accepted the position with UC San Diego to be its Director of the established
15 ADCS, Dr. Aisen also accepted the fiduciary duty to act in the best interests
16 of UC San Diego. While Dr. Aisen is free to leave UC San Diego at any
17 time, he is not free to take the ADCS with him or to undermine UC San
18 Diego’s relationships with its research partners or its employees. . . .
19 I would welcome your sending at the earliest opportunity your vision for a
20 plan that facilitates Dr. Aisen’s move and at the same time protects the
21 important, on-going research at UC San Diego.

22 Neither USC Provost Quick nor any other USC representative responded to Dean Brenner’s
23 message, nor did USC propose any plan for facilitating the transition of Defendant Aisen’s
24 personal employment as a faculty member.

25 66. On June 20, 2015, USC HR Director Carmen Carillo sent an email to Defendant
26 Tobias stating, “[t]he Provost [*i.e.*, USC Provost Michael Quick] has authorized us to proceed for
27 Monday [*i.e.*, June 22, 2015]” with nine “critical hires” of individual employed by UCSD at the
28 ADCS. The “critical hires” included Defendants Jimenez and Hong. USC also targeted UCSD
29 employee Bayouan (David) Zhao, as a “critical hire.” Zhao was the Information Technology (IT)
30 Manager for the ADCS, and an employee in the Administrative Core. Zhao had acted on the
31 instructions of the other Individual Defendants in downloading and copying ADCS Data over the
32 Memorial Day weekend, and in helping USC IT personnel understand the ADCS computer

1 systems. By the time Aisen announced his resignation, however, Zhao had begun to suspect that
2 the Defendants were acting illegally. He sought assurances from Defendants Aisen and Tobias of
3 the legality of their actions. Defendant Aisen falsely advised Zhao that Aisen personally owned
4 the ADCS Data. Defendant Tobias likewise falsely advised Zhao, in a phone conversation on
5 Monday, June 22, 2015, that Aisen “has the ownership of the data” and that the Individual
6 Defendants were “entitled to bring the study data and program along with them to USC.” In the
7 same phone conversation, Tobias also told Zhao that “Everything done so far has [been] reviewed
8 by USC legal council [*sic*] and they are comfortable with it” and that “Individuals will not be held
9 to legal responsibilities.”

10 67. After Aisen sent his one-line resignation email on June 18, UCSD Campus
11 Counsel Dan Park sent Aisen a letter congratulating Aisen on his job offer from USC, and
12 reminding Aisen of his fiduciary duties as Director of the ADCS and an employee’s duty of
13 undivided loyalty to his employer during the term of employment. Park’s letter further stated:

14 In addition to avoiding any action that could disrupt UC San
15 Diego’s contractual relationships, you should be sure not to remove
16 from UC San Diego’s possession or control any equipment, records,
17 electronic data, or software that were purchased or created for the
18 ADCS at UC San Diego. All such items are the property of UC San
19 Diego, the taking of which without UC San Diego’s express
20 permission would be an illegal conversion. *Burlesci v. Petersen*
(1998) 68 Cal.App.4th 1062. Conversion is a strict liability tort,
21 “meaning questions of the defendant’s good faith, lack of
22 knowledge, and motive are ordinarily immaterial.” *Id.* Similarly,
23 you should not attempt to delete or destroy any records or
documents, whether electronic or physical.

24 In summary, UC San Diego will be pleased to provide you with
25 assistance as you make your transition to your new position. At the
26 same time, UC San Diego hopes that you will provide similar
27 assistance to ensure the continued smooth functioning of the ADCS
28 at UC San Diego as we prepare to search for a new director.

Without responding to Park’s letter requesting Aisen’s compliance with legal and ethical
obligations attendant to his departure from UCSD, Defendants continued to pursue a diametrically
opposite course. Defendant Aisen on Sunday, July 21, 2015, wrote, “On the recommendation of
USC counsel (Stacy Bratcher), I moved up my resignation date again. I resigned today. I would

1 like to change my start date at USC to today, 6/21/15.” That same Sunday, Aisen sent Dr. Mobley
2 announcing his immediate resignation.

3 68. Defendant Aisen refused to consent to an exit interview with any of his former
4 colleagues at UCSD, and made no arrangements for the transition of his responsibilities as
5 Director of the ADCS, which included his appointment as Director and Principal Investigator of
6 the ADCS, and his appointment as Principal Investigator of many of the research studies under
7 contract to UCSD for which the ADCS served as Data and Coordinating Center. Aisen’s abrupt
8 abandonment of these responsibilities on Sunday, June 21, 2015, without advance transition
9 planning violated NIH Grants Policy and caused substantial disruption to the ADCS research
10 program, creating unnecessary and avoidable risk to ongoing human-subject research studies.

11 69. On Friday, June 26, 2015, USC issued a fraudulent press release stating that USC
12 “has established the USC Alzheimer’s Therapeutic Research Institute (USC ATRI) in San Diego .
13 . . effective June 21” and that “[t]he establishment of the USC ATRI with Aisen as director adds a
14 strong clinical research program to complement USC’s existing strengths in Alzheimer’s
15 research.” In reality, USC’s new “institute” existed in name only, as it had no facilities, computer
16 systems, no staff other than Aisen, no Institutional Review Board approval, and no clinical
17 research program other than the research activities being carried out by the ADCS at UCSD.
18 Nevertheless, USC issued the fraudulent press release as part of its scheme to create the false
19 impression that the Data and Coordinating Center had been moved to USC so as to induce UCSD
20 employees to transfer their loyalty to USC, and to induce ADCS sponsors to breach or terminate
21 their contracts with The Regents and enter new ones with USC.

22 70. Defendants Pizzola, Jimenez, and Hong remained UCSD employees during the
23 week after Aisen’s abrupt resignation, continuing to act as double agents in pursuing the interests
24 of USC. Defendant Pizzola accepted a promotion to become Director of the ADCS
25 Administrative Core, without disclosing that he had already transferred his loyalty to USC.

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1 **Defendants Committed Computer Crimes to Force**
2 **the “Institutional Transfer” of ADCS Research**

3 71. On Friday, June 26, 2015, Defendants Jimenez and Hong both resigned abruptly
4 from UCSD and immediately became employees of USC, which paid each Defendant a \$10,000
5 “signing bonus,” and increased Jimenez’s salary by approximately 35% and Hong’s by
6 approximately 25%. Like Aisen, neither Jimenez nor Hong made any effort to transition their job
7 responsibilities as leaders of the ADCS Informatics Core overseeing the EDC computer system to
8 any remaining UCSD employees, nor did Jimenez or Hong turn over to UCSD the critical
9 passwords and credentials for accessing, maintaining, and operating the EDC computer system’s
10 virtual machines. Instead, without authorization from UCSD and outside the course and scope of
11 their UCSD employment, Jimenez and Hong kept the UCSD passwords and access credentials,
12 took the UCSD passwords and access credentials with them to USC, and continued to use the
13 UCSD passwords to access UCSD’s EDC computer system for the benefit of USC and
14 themselves after they were no longer employed by UCSD.

15 72. Shortly after Defendant Jimenez and Hong’s abrupt resignations, UCSD
16 discovered that the Defendants had migrated the live EDC computer system from the
17 Supercomputer Center to the Amazon cloud, and that Defendants had arrogated exclusive
18 administrative control over the EDC computer systems on UCSD’s Amazon, GitHub, Bitbucket,
19 and Google Docs accounts, and were accessing and using UCSD’s computer systems (i) as if the
20 systems belonged to USC, which they did not, (ii) as if USC had been awarded the contracts and
21 grants to serve as Data and Coordinating Center for ADCS research studies, which USC had not
22 even requested, (iii) as if study participants had provided informed consent to have their clinical
23 data sent to an Amazon cloud account under the control of the Individual Defendants, rather than
24 maintained in a secure data storage facility in the Supercomputer Center on the UCSD campus,
25 and (iv) as if a duly constituted Institutional Review Board had approved this change to the
26 protocols for ADCS research studies, which had not occurred.

27 73. Defendants’ assertion of dominion, custody, and control over the UCSD computer
28 systems violated the Comprehensive Computer Data Access and Fraud Act, which prohibits

1 unauthorized access and use of UCSD's computer systems. The Individual Defendants' authority
2 to access and use UCSD's computer systems – either through UCSD's Supercomputer Center or
3 its Amazon cloud computing account – terminated with the voluntary resignation of their UCSD
4 employment. Defendant USC never had authorization to access and use UCSD's computer
5 systems.

6 74. After their resignations from UCSD, Defendants Jimenez and Hong arranged for
7 the return of their UCSD laptop computers but before doing so wiped the computers of all data by
8 re-installing the operating system on each computer, thereby over-writing the data on the
9 computer and rendering it inaccessible without the use of specialized recovery tools. Re-
10 installation of a computer's operating system is considered a primary "anti-forensic technique"
11 used to make recovery of data (and evidence of wrongdoing) as difficult as possible. The data
12 that Jimenez and Hong destroyed included the passwords and administrative access credentials for
13 AWS Account No. 675713428646, and for each of the sub-systems within the Amazon cloud
14 computing account that contained ADCS Data. The foregoing conduct by Jimenez and Hong was
15 outside the scope of their UCSD employment and undertaken with malicious intent to harm
16 UCSD by preventing any remaining UCSD personnel from interfering with Defendants'
17 administrative control over the ADCS Data on AWS Account No. 6765713428646.

18 75. The Individual Defendants engaged in other abuses of UCSD's computer systems
19 and data, as will be shown at trial, including but not limited to the following:

- 20 a. Defendant Jimenez purchased an external hard drive and copied the contents of his
21 entire UCSD laptop onto it, without authorization, including UCSD email and
22 passwords, for the benefit of USC.
- 23 b. Before resigning from UCSD, Defendant Tobias copied UCSD data to multiple
24 USB storage devices. Forensic investigation has revealed a number of link files on
25 the computer indicating the transfer of data from the computer to a USB storage
26 device, such as a thumb drive or an external hard drive. UCSD is informed and
27 believes and thereon alleges that Link files are similar to shortcuts in that they
28 reference a file in another location. These link files have timestamps for

1 themselves along with the file that they reference. A number of the link files
2 indicated that files were copied from this computer to a Kingston DataTraveler 2.0
3 USB device, some of which were copied into a file folder titled “\USC\.” Several
4 of the link files pointing to that thumb drive, including those in the USC file
5 folder, reference the ADCS:

6 F:\USC\ADCS Support.V2.dct.xlsx

7 F:\USC\ADCS to USC PSNL.dct.xlsx

8 F:\USC-ADCS Press Release.docx

9 F:\USC\HR Meeting Schedule.xlsx

10 UCSD is informed and believes and thereon alleges that all of these files have a
11 timestamp of May 22, 2015, well before Tobias later resigned from UCSD in favor
12 of USC.

13 c. Defendant Aisen was in possession of three computers and one smart phone, one
14 of which is a laptop UCSD provided at its expense to enable Defendant Aisen to
15 conduct UCSD business Defendant Aisen was in possession of three computers
16 and one smart phone, one of which is a laptop UCSD provided at its expense to
17 enable Defendant Aisen to conduct UCSD business, but which Defendant Aisen to
18 this date has refused to return (claiming it has personal information on it).

19 Defendant Aisen also refuses to return the smart phone UCSD provided to him at
20 its expense for his use as a UCSD employee. Additionally, UCSD is informed and
21 believes and thereon alleges that Defendant Aisen, either personally or through his
22 co-conspirators, deleted archived PST files, as well as files that were once
23 contained in a “DropBox” folder (as well as numerous subdirectories).

24 d. Defendant Pizzola and other Individual Defendants instructed multiple ADCS
25 employees to download onto USB sticks or external drives their respective emails
26 for the benefit of USC.

27 //

28 //

1 **Defendant USC Used Its Control over UCSD's Computer Systems to Interfere with**
2 **The Regents' Contracts, Grants, and ADCS Relationships**

3 76. In the days following their discovery that Defendants had commandeered control
4 over the active EDC computer system, representatives of UCSD made repeated requests that the
5 Defendants turn over to UCSD all account data, passwords, and access credentials for any and all
6 repositories holding ADCS Data, including Amazon Account No. 675713428646. The Individual
7 Defendants failed to respond in any substantive or meaningful way.

8 77. UCSD attempted to gain access to the Account No. 675713428646 through
9 Amazon; however, Amazon advised that, because the account is not held in the name of UCSD,
10 that Amazon regarded the account as "owned" by someone else, and Amazon's internal policies
11 prevented Amazon from identifying the "account holder," permitting UCSD to reset the password
12 to the account, or granting UCSD administrative control over the account. Amazon suggested
13 that UCSD either obtain the password from the "account holder," or get a court order. UCSD
14 continued to work with Amazon in an attempt to gain full access and control over the account.

15 78. On Sunday, June 28, 2015, UCSD Associate Vice Chancellor Gary S. Firestein,
16 M.D., sent an urgent message to USC Associate Dean for Clinical Research Thomas Buchanan,
17 stating, "Since Dr. Aisen is now an employee and agent of USC, we formally request your
18 assistance in directing Dr. Aisen to turn over to UCSD all account data, passwords, and access
19 credentials for any and all repositories holding ADCS data, of whatever kind or nature."
20 Buchanan referred Dr. Firestein's message to USC Provost Michael Quick, who responded on
21 Monday, June 29, 2015, stating in part, "I will assume that this issue of access to data, etc., will
22 get resolved today," but Provost Quick took no action to cause USC and its employees to cease
23 their illegal exercise of dominion, custody and control over UCSD's computer systems. Provost
24 Quick was also blunt about Defendants' intentions to interfere with The Regents' contractual
25 relationships with ADCS funding sponsors, stating to UCSD's Dean David Brenner in his email
26 of June 29, 2015, "It seems to me that in the end, funders will decide whether to continue their
27 projects at UCSD or to move them to USC. Or take them somewhere else. . . . Of course this
28 should have been worked out ahead of time, but it is clear that we should try immediately to

1 devise a plan that both UCSD and USC can agree to – so that we aren’t creating divergent
2 systems and putting data integrity and patients at risk – and preferably do so without threats.”
3 Thus, Provost Quick acknowledged through both words and conduct that USC intended to
4 exercise dominion, custody, and control over UCSD’s computer systems in violation of California
5 law for the purpose of interfering with The Regents’ relationships with sponsors of ongoing
6 ADCS research studies.

7 79. By July 2, 2015, Amazon recognized that UCSD and not Aisen is the *bona fide*
8 owner of AWS Account No. 675713428646 and granted UCSD the account’s root credential
9 (allowing UCSD to delete or disable the entire AWS cloud account), but Amazon was not able to
10 restore UCSD’s administrative control over the inner workings of the EDC computer system
11 (referred to as “virtual machines,” of which there were approximately 100), as Defendants
12 retained sole possession of the passwords and access credentials for the virtual machines that
13 comprised the active EDC computer system.

14 80. The Defendants’ exercise of dominion, custody, and control over UCSD’s EDC
15 computer system deprived The Regents of exclusive dominion and control over its own property,
16 and allowed Defendants to use The Regents’ own property to enrich themselves and to hinder and
17 prevent The Regents from carrying out scientific research into Alzheimer’s disease in fulfillment
18 of the University of California’s nonprofit mission. As a result of the conduct alleged herein, The
19 Regents has suffered damages, and will continue to incur damages, in ways that will be subject to
20 proof at trial.

21 **Defendants Defied the Superior Court’s Preliminary Injunction Prohibiting Their**
22 **Dominion, Custody, and Control over the ADCS Data and Systems**

23 81. After it became clear that Defendant USC would not willingly relinquish its
24 dominion, custody, and control over UCSD’s active EDC computer system, The Regents filed its
25 complaint in this action on July 2, 2015. To remedy Defendants’ wrongful assertion of dominion,
26 custody and control over UCSD’s active EDC computer system, and to preserve the *status quo*
27 *ante* and avoid irreparable harm, The Regents sought a preliminary injunction enjoining
28

1 Defendants from continuing to exercise possession, custody, and control over “ADCS Data and
2 Systems,” defined as follows:

3 all electronic data and computer systems of the Alzheimer’s Disease
4 Cooperative Study (“ADCS”) and any research studies administered
5 by or coordinated through the ADCS, including the Electronic Data
6 Capture (“EDC”) system and data thereon currently hosted on
7 Amazon Web Service Account No. 6751328646 and Google, along
8 with all needed access, passwords and documentation needed to
9 update, revise, maintain and control the data and EDC system,
including its source code and any web-based repositories in which
this is held, including but not limited to GitHub and Bitbucket,
along with all attendant documentation, passwords, and access
credentials

10 Before the Court could hear The Regents’ motion, Defendants applied for a temporary restraining
11 The Regents from “exercising root control of the electronic data capture platform (‘EDC’) hosted
12 on [AWS], Account No. 675713428646,” and from “disabling Defendants’ administrative access
13 to the EDC.” This Court denied USC’s TRO application, stating “there is no evidence before the
14 Court to establish defendants’ right of ownership or access to this account” and no evidence “that
15 Defendants have a right to access the system outside of their previous employment.” The Court’s
16 ruling was legally and factually correct: none of the Defendants has any rights of ownership or
17 access to Amazon Web Services Account No. 6751328646 and no right to access and use UCSD
18 computer systems.

19 82. On July 24, 2015, this Court heard argument and granted The Regents’ motion for
20 preliminary injunction, directing The Regents to prepare a written order. Defendants asked the
21 Court to include a provision in the order stating that “nothing in this [injunction] shall prohibit
22 Defendants from continuing to access, maintain, and update the ADCS Data and Systems for
23 purposes of continuing the ongoing clinical studies,” arguing that some third-party sponsors “will
24 want Defendants to administer their clinical trial data for them.” The Regents opposed this
25 language, and the Superior Court rejected it, overruling Defendants’ objection, and thus
26 withholding the Court’s permission for Defendants to access and use UCSD’s computer system
27 without The Regents’ consent.
28

1 83. The Regents sought the appointment of a Special Master with powers similar to a
2 receiver to supervise and direct Defendants' compliance with the preliminary injunction.
3 Defendants through their counsel of record agreed to the appointment of a Special Master with
4 such powers, waiving any objection or argument that the Special Master's power and authority
5 should be more limited than proposed by The Regents. The Court in the PI Order empowered the
6 Special Master "to supervise, and direct as needed, the process by which Defendants comply with
7 this order in the restoration of custody and control of ADCS data and systems to UCSD."

8 84. The Superior Court issued its Preliminary Injunction on August 4, 2015 (the "PI
9 Order"), which enjoined and prohibited Defendants "from exercising dominion, custody, and
10 control over the ADCS Data and Systems," defined to include UCSD's AWS Account No.
11 67513428646, unless otherwise directed by the Special Master, whom the Court authorized to
12 "supervise, and direct as needed, the process by which Defendants comply with this order in the
13 restoration of custody and control of ADCS data and systems to UCSD." In aid of this injunctive
14 relief, the Preliminary Injunction ordered Defendants "to return full system and data access,
15 control and management of the ADCS Data and Systems to UCSD *to resume possession,*
16 *management and control to the same extent that UCSD had such management, control and*
17 *operation, before Defendants resigned from UCSD*" (emphasis added). A true and correct copy
18 of the Preliminary Injunction is appended to this Supplemental Complaint as Exhibit 1.

19 85. The PI Order was appealable under Code of Civil Procedure section 904.2.
20 Defendants failed to appeal, and the PI Order thus became a final order of the Court.

21 86. Defendants, and each of them, were aware that this Court entered the PI Order
22 dated August 4, 2015, and had the ability to comply with the PI Order.

23 87. As set forth below, Defendants, and each of them, wrongfully failed and refused to
24 comply with the PI Order, and to this day Defendants are continuing to access and use the ADCS
25 Data and Systems of UCSD's AWS Account No. 67513428646 without The Regents' consent.
26 Such conduct by Defendants, and each of them, was not only a violation of the PI Order, but also
27 an ongoing criminal violation of California Penal Code § 502(c)(1), (2), (3), (4), (5), (6), (7), and
28 (10), as set forth in Paragraphs 53-56 and 72-76 above. At all relevant times, from the

1 commencement of the Individual Defendants' unauthorized migration, access, alteration, and use
2 of UCSD's EDC computer system on AWS Account No. 67513428646 (which commenced no
3 later than approximately June 5, 2015, when Defendants Aisen, Jimenez, and Hong arranged to
4 change the ownership of from UCSD to Defendant Aisen at his home address on his personal
5 credit card) the conduct of each Individual Defendants in violation of Penal Code § 502(c) was
6 undertaken outside the scope of his or her lawful employment at UCSD.

7 88. Defendants evaded this Court's enforcement of the PI Order by falsely asserting
8 that the claims set forth in The Regents' July 2, 2015, Complaint and restated in this First
9 Amended Complaint necessarily arise within exclusive federal jurisdiction under the Copyright
10 Act. As a matter of law, none of The Regents' claims arises under federal law, nor does any
11 claim require The Regents to plead and prove ownership of a copyright in a work of authorship.

12 89. Once Defendants had ousted this Court of jurisdiction, Defendants refused to
13 comply with the PI Order. Defendants misrepresented the language and purpose of the PI Order
14 to sponsors and other third parties, and took the position that the PI Order did not enjoin and
15 prohibit Defendants "from exercising dominion, custody, and control over the ADCS Data and
16 Systems." Defendants refused to comply with the directives of the Special Master and denied that
17 that the PI Order empowered the Special Master to "to supervise, and direct as needed, the
18 process by which Defendants comply with this order in the restoration of custody and control of
19 ADCS data and systems to UCSD," despite the plain language of the PI Order.

20 90. Defendants exploited their wrongful custody and control over ADCS Data and
21 Systems to pressure, persuade, and induce employees, current and prospective research sponsors,
22 and other third parties to join or acquiesce in the "institutional transfer" of UCSD's long-standing
23 research enterprise to USC. Defendant Aisen represented to third-party sponsors in September
24 2015 that "We intend to continue using the EDC [on UCSD's AWS Account No. 6751328646],
25 since there is (in our strong opinion) no legal basis for UCSD to block this," despite the plain
26 language of the PI Order.

27 91. Due to the prolonged period of time in which Defendants have refused to comply
28 with the PI Order, The Regents has already suffered much of the irreparable harm that the

1 Preliminary Injunction was intended to prevent. The Regents, therefore, now seeks compensatory
2 damages for Defendants' violation of the PI Order, in amounts that will be shown at trial. As set
3 forth herein, Defendants' actions in seeking to force the "institutional transfer" of ADCS assets
4 and resources, including Defendants' ongoing violation of the Preliminary Injunction, were
5 undertaken with malice, fraud, and oppression, warranting an award of punitive damages.

6 **FIRST CAUSE OF ACTION**
7 **(BREACH OF FIDUCIARY DUTY - AGAINST DEFENDANT AISEN)**

8 92. The Regents incorporates herein, by way of reference, all other paragraphs set forth
9 in this Complaint in support of this cause of action.

10 93. By virtue of being entrusted to act as The Regents' agent in serving as Director of
11 the ADCS, and by virtue of his voluntary assumption of those responsibilities, Defendant Aisen
12 was a fiduciary to The Regents and owed fiduciary duties.

13 94. Defendant Aisen breached his fiduciary duties by committing the acts complained
14 of herein.

15 95. As a direct and proximate result of Defendant Aisen's wrongful and tortious
16 conduct, Defendant Aisen has been unjustly enriched at the expense of The Regents, and The
17 Regents has suffered, and will continue to suffer, substantial damages including, but not limited
18 to, costs incurred recovering data owned or controlled by The Regents, the loss of property owned
19 by The Regents, the disruption and/or loss of contractual relations with ADCS sponsors and
20 employees, and costs incurred with repairing and monitoring UCSD's network. Defendant
21 Aisen's actions were a substantial factor in causing The Regents' harm.

22 96. The above-recited actions of Defendant Aisen were done with malice, fraud,
23 oppression, and reckless disregard of the above described rights of The Regents and within the
24 meaning of California Civil Code § 3294. Therefore, The Regents is entitled to recover punitive
25 damages against Defendant Aisen.

SECOND CAUSE OF ACTION
(BREACH OF DUTY OF LOYALTY - AGAINST INDIVIDUAL DEFENDANTS)

97. The Regents incorporates herein, by way of reference, all other paragraphs set forth in this Complaint in support of this cause of action.

98. By virtue of being employed by The Regents, each of the Individual Defendants owed a duty of loyalty to The Regents during the term of their employment. An employee's duty of loyalty to an employer arises from the employment relationship by operation of California law (statutory, decisional, and constitutional) including but not limited to California Labor Code 2863, which states "An employee who has any business to transact on his own account, similar to that entrusted to him by his employer, shall always give the preference to the business of the employer," and Labor Code § 2861, which states that "[a]n employee shall, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as is reasonable, and shall, without demand, give prompt notice to his employer of everything which he receives for the account of the employer." In addition, each Individual Defendant took an oath mandated by the Constitution of State of California as a condition of public employment that they would "well and faithfully discharge the duties upon which I am about to enter."

99. The Individual Defendants breached their duty of loyalty by committing the acts complained of herein.

100. As a direct and proximate result of Defendants' wrongful and tortious conduct, the Individual Defendants have been unjustly enriched at the expense of The Regents, and The Regents has suffered, and will continue to suffer, substantial damages including, but not limited to, costs incurred recovering data owned or controlled by The Regents, the loss of property owned by the Regents, and costs incurred with repairing and monitoring UCSD's network. Individual Defendants' actions were a substantial factor in causing The Regents' harm.

101. The above-recited actions of the Individual Defendants were done with malice, fraud, oppression, and reckless disregard of the above described rights of The Regents and within the meaning of California Civil Code § 3294. Therefore, The Regents is entitled to recover punitive damages against the Individual Defendants.

THIRD CAUSE OF ACTION
(AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AND DUTY OF
LOYALTY – AGAINST DEFENDANT USC)

102. The Regents incorporates herein, by way of reference, all other paragraphs set forth in this Complaint in support of this cause of action.

103. Defendant USC provided substantial assistance, support, and encouragement to the Individual Defendants in committing the breaches of loyalty and fiduciary duty described above and alleged in The Regents' first and second causes of action. Defendant USC committed such actions, which are known to USC and will be shown at trial, with full knowledge that Defendant Aisen, Tobias, Pizzola, Hong and Jimenez were still employed by UCSD and, therefore, owed duties (including a duty of loyalty) to their then employer, UCSD. Further, Defendant USC accepted the benefits of further bad acts committed by the then UCSD ADCS employees, who, in breach of their respective duties, took study files, documents, data, and other property of The Regents that had been used in operating the ADCS.

104. The conduct of Defendant USC was a substantial factor in causing the harm suffered by The Regents as a result of the breaches described above.

105. The above-recited actions of Defendant USC were done with malice, fraud, oppression, and reckless disregard of the above described rights of The Regents and within the meaning of California Civil Code § 3294. Therefore, The Regents is entitled to recover punitive damages against Defendant USC.

FOURTH CAUSE OF ACTION
(INTERFERENCE WITH CONTRACTUAL RELATIONS - AGAINST ALL DEFENDANTS)

106. The Regents incorporates herein, by way of reference, all other paragraphs set forth in this Complaint in support of this cause of action.

107. Valid contracts existed between The Regents and certain third parties.

108. Defendants knew of the existence of said contracts.

109. Defendants intended to disrupt the performance of the contracts between The Regents and certain third parties.

110. Defendants' conduct made it more expensive and difficult for The Regents to perform under its contracts with third parties, and, unless corrective action is taken by the court, The Regents will likely be unable to perform at all under its contracts.

111. By way of specific example, but not limitation, by exercising dominion and control over Cloud-based storage accounts and preventing The Regents from exercising administrative control over the data contained therein, Defendants have made it more difficult, if not impossible, for UCSD to act as Data and Coordinating Center for ADCS research studies.

112. The above-recited actions of Defendants were done with malice, fraud, oppression, and reckless disregard of the above described rights of The Regents and within the meaning of California Civil Code § 3294. Therefore, The Regents is entitled to recover punitive damages.

FIFTH CAUSE OF ACTION
(INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE – AGAINST ALL DEFENDANTS)

113. The Regents incorporates herein, by way of reference, all other paragraphs set forth in this Complaint in support of this cause of action.

114. Economic relationships existed between The Regents and the sponsors of the ADCS, including the NIA, Yale University, Wake Forest University, the Northern California Institute for Research and Education (NCIRE), Janssen Pharmaceuticals, and others containing past and probable future economic benefit or advantage to The Regents.

115. Economic relationships existed between The Regents and the UCSD employees who staffed the ADCS at UC San Diego.

116. Defendants knew of these relationships.

117. Defendants intended to interfere with these relationships in order to force the “institutional transfer” of ADCS research projects without The Regents' consent, and to foster their own relationship with ADCS sponsors and UCSD employees who staffed the program.

118. As described more fully above, Defendants' interference with these relationships was accomplished by means of independently wrongful acts, including but not limited to the

1 conversion of UCSD property, damage to UCSD's network and computer systems, violations of
2 the Individual Defendants' duties of loyalty, and intentional misrepresentations and deceptions.

3 119. As a result of Defendants' tortious conduct, The Regent's relationship with ADCS
4 sponsors and employees was disrupted and UCSD has been harmed in ways that will be shown at
5 trial. Defendants' conduct was a substantial factor in causing The Regent's harm.

6 120. The above-recited actions of Defendants were done with malice, fraud, oppression,
7 and reckless disregard of the above described rights of The Regents and within the meaning of
8 California Civil Code § 3294. Therefore, The Regents is entitled to recover punitive damages.

9
10 **SIXTH CAUSE OF ACTION**
11 **(COMMISSION OF COMPUTER CRIMES PURSUANT**
12 **TO CALIFORNIA PENAL CODE SECTION 502(C)**
13 **AGAINST ALL DEFENDANTS EXCEPT THOSE DEFENDANTS**
14 **WHO WERE DISMISSED BY THE FEDERAL COURT)**

15 121. The Regents incorporates herein, by way of reference, all other paragraphs set forth
16 in this Complaint in support of the above-referenced cause of action.

17 122. The acts described above, including the knowing and unauthorized actions and
18 attempts to access and download from The Regents' databases and other information stored on
19 The Regents' computers and computer systems by Defendants, constitute a violation of one or
20 more of the following provisions of the California Penal Code, Section 502, which imposes
21 liability on one who:

- 22 • Knowingly accesses and without permission alters, damages, deletes, destroys, or
23 otherwise uses any data, computer, computer system, or computer network in order
24 to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort,
25 or (B) wrongfully control or obtain money, property, or data;
- 26 • Knowingly accesses and without permission takes, copies, or makes use of any
27 data from a computer, computer system, or computer network, or takes or copies
28 any supporting documentation, whether existing or residing internal or external to
a computer, computer system, or computer network;
- Knowingly and without permission uses or causes to be used computer services;

- Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network;
- Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section;
- Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network; or
- Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

123. All Defendants violated Penal Code, Section 502, including Section 502(c)(1), (2), (3), (4), (5), (6), and (7), by doing the acts described above, including, without limitation: (a) the knowing and unapproved of disruption of the ability of UCSD to access its own computer systems and the ADCS Data; (b) the movement of the ADCS Data to AWS and changing the ownership of the account into the name of Defendant Aisen; (c) the refusal to return passwords that were exclusively in the possession, custody and control of Defendants; (d) blocking access to the AWS account and while providing access to the same to USC; (e) the deletion of data from the UCSD computers and computer systems (in part to slow down UCSD's ability to continue to perform the obligations it is required to perform under the governmental and private contracts, and also to cover up their misdeeds); (f) the facilitation and then transmission of ADCS Data to USC; (g) connecting thumb drives and external hard drives in order to copy, and then transfer ADCS Data to USC; (h) the disruption of access to the ADCS Data by, among other things, disabling the EDC internet portals for at least two key UCSD/ADCS studies and then lying to cover up the bad acts; and (i) continuing to access and use UCSD's computer system without authorization from UCSD.

124. Defendant USC facilitated and knowingly accepted the benefits of the bad acts referenced above by, among other things, providing the Individual Defendants with burner phone, thumb drives and other devices on which the ADCS Data could be copied and then transferred to USC. Indeed, discovery thus far has revealed that USC reimbursed Defendant Tobias in \$100

1 bills for the amount she spent to purchase external hard drives in connection with the raid on
2 UCSD. Defendant USC then knowingly and intentionally provided individuals it knew to be
3 current employees of UCSD to obtain access to USC's computer systems for the purpose of those
4 then UCSD employees transferring ADCS Data and other things to USC's own computer
5 systems, all so that USC could tell the study sponsors that it (USC) was able to substitute into the
6 role that UCSD had held, and to do this months if not years before USC ever could have done this
7 if it acted lawfully.

8 125. None of the Individual Defendants' actions fall within the so-called scope of
9 employment exception, which is set forth in Section 502(c)(h). Defendant Aisen and the
10 Individual Defendants were acting as 'double agents' when they violated 502(c). Specifically,
11 these Defendants systematically engaged in copying, downloading, and then transmitting data to
12 USC, and against the best interests of UCSD. They then worked to try to cover their tracks, and
13 make it very difficult for UCSD to get access to such data, by blocking access to passwords, and
14 otherwise deleting/destroying copies of the information and data that otherwise resided at UCSD.
15 None of their actions were reasonably necessary to the performance of any legitimate work
16 assignment for UCSD, and none of their bad actions could be deemed to be furthering the
17 interests of UCSD. Rather, their misconduct was part of a coordinated effort to deprive UCSD,
18 their employer, of access to computer data in favor of their future employer. There can be no
19 legitimate argument that their actions to thwart the interests of their then employer were somehow
20 within the scope of their employment.

21 126. As a direct and proximate result of Defendants' wrongful conduct, Defendants
22 have been unjustly enriched, and The Regents has been harmed and The Regents has sustained
23 damages in an amount to be proven at trial.

24 127. The Regents also has suffered irreparable harm as a result of Defendants' activities
25 and will continue to suffer irreparable injury that cannot be adequately remedied at law unless
26 Defendants, and their officers, agents and employees, and all other persons acting in concert with
27 them, are enjoined from engaging in any further such acts.
28

128. The above-recited actions of Defendants were done with malice, fraud, oppression, and reckless disregard of the above described rights of The Regents and within the meaning of California Civil Code § 3294. Therefore, The Regents is entitled to recover punitive damages.

SEVENTH CAUSE OF ACTION
(CONVERSION OF PERSONAL PROPERTY OTHER THAN ADCS DATA, WHICH
THE FEDERAL COURT EXCLUDED FROM THIS CLAIM
- ALL DEFENDANTS)

129. The Regents incorporates herein, by way of reference, all other paragraphs set forth in this Complaint in support of the above-referenced cause of action.

130. The Regents owned and/or was entitled to possession of all data related to the ADCS project, as well as the data and contents of AWS Account No. 675713428646, and the data contained on the UCSD laptop computers issued to the Individual Defendants (“the ADCS Data”). Additionally, The Regents owned and/or was entitled to possession of various items of physical property used or useful in the operation of the ADCS research program, including mobile phones, laptops as well as numerous regulatory documents.

131. Defendants converted The Regents' personal property by exercising dominion, custody, and control to the exclusion of The Regents, and/or in derogation of The Regents' ownership and/or right to possession, custody, and control.

132. As a direct and proximate result of the wrongful and tortious conduct of Defendants as alleged herein, Defendants have been unjustly enriched and The Regents has suffered, and will continue to suffer, substantial damages in ways that will be shown at trial. Defendants' actions were a substantial factor in causing The Regents' harm.

133. The above-recited actions of Defendants were done with malice, fraud, oppression, California Civil Code § 3294. Therefore, The Regents is entitled to recover punitive damages.

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EIGHTH CAUSE OF ACTION
(VIOLATION OF AUGUST 4, 2015, PRELIMINARY INJUNCTION)

134. The Regents incorporates herein, by way of reference, all other paragraphs set forth in this Complaint in support of the above-referenced cause of action.

135. The August 4, 2015, PI Order imposed an “obligation . . . founded on an instrument in writing” on each Defendant within the meaning of Civil Procedure Code § 337. Plaintiff is an intended beneficiary of the PI Order, with a legal right to Defendants’ compliance.

136. Defendants, and each of them, were aware that this Court entered the PI Order dated August 4, 2015, and had the ability to comply with the PI Order.

137. Defendants, and each of them, wrongfully failed and refused to comply with the Preliminary Injunction, and to this day continue to act in violation of the Preliminary Injunction.

138. Defendants’ failure and refusal to comply with the Preliminary Injunction cause harm and detriment to The Regents, and resulted in unjust enrichment to the Defendants, in ways and amounts that will be shown at trial.

139. The above-recited actions of Defendants were done with malice, fraud, oppression, and reckless disregard of the above described rights of The Regents and within the meaning of California Civil Code § 3294. Therefore, The Regents is entitled to recover punitive damages.

NINTH CAUSE OF ACTION – ADDENDUM TO ALL CAUSES OF ACTION
(CIVIL CONSPIRACY – ALL DEFENDANTS)

140. The Regents incorporates herein, by way of reference, all other paragraphs set forth in this Complaint in support of the above-referenced cause of action.

141. Defendants, and each of them, were aware the Defendant Aisen and Defendant USC planned to interfere with The Regents’ contractual and economic relations with the NIA, with ADCS sponsors, and with UCSD employees, and that they planned to commit acts that violate the Comprehensive Computer Data Access and Fraud Act, California Penal Code § 502(c), and to convert personal property owned or in the possession of The Regents, and to violate this Court’s Preliminary Injunction.

1 142. Defendants, and each of them, with full knowledge and intent and without
2 justification, agreed to act in concert with Defendants Aisen and USC to commit the torts and
3 crimes set forth in the Third through Eighth causes of action in this First Amended Complaint in
4 order to further their personal financial gain and to aid in the formation of their new venture, and
5 to harm The Regents and UCSD.

6 143. Discovery taken to date reveals the formation of the conspiracy dating back to at
7 least March 9, 2015. Between March 9, 2015, and continuing through at least the end of July,
8 2015, multiple individuals, employed at the highest levels within the USC Keck School of
9 Medicine, executives at the USC Keck School of Medicine, held closed door meetings at UCSD,
10 wherein they discussed how to raid the UCSD ADCS and all of its property and employees.
11 Defendant USC not only clandestinely gained access to UCSD's facilities, computer systems, and
12 properties, but conspired with the Individual Defendants and other key UCSD ADCS employees,
13 all the while knowing that they were asking for this information and having discussions with
14 UCSD personnel who were still employed and being paid by UCSD. Further, Defendant USC
15 provided substantial assistance to the Individual Defendants on setting up the ability to resign *en*
16 *masse* as they eventually did.

17 144. As a result of the wrongful and tortious conduct of Defendants as alleged herein,
18 Defendants have been unjustly enriched and The Regents has suffered, and will continue to suffer,
19 damages in ways and amounts that will be shown at trial.

20 145. The above-recited actions of Defendants were done with malice, fraud, oppression,
21 and reckless disregard of the above described rights of The Regents and within the meaning of
22 California Civil Code § 3294. Therefore, The Regents is entitled to recover punitive damages.

23 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them as follows:

- 24 1. For compensatory damages, according to proof;
- 25 2. For punitive damages;
- 26 3. For preliminary and permanent injunctive relief;
- 27 4. For restitution and/or disgorgement of unjust benefits;
- 28 5. For attorneys' fees;

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- 6. For costs of suit incurred herein;
- 7. For a trial by jury on all claims except the First Cause of Action; and
- 8. For such other and further relief as the Court may deem proper.

DATED: January 3, 2019

CROWELL & MORING LLP

By: 

J. Daniel Sharp
Attorneys for Plaintiff
The Regents of the University of California

EXHIBIT A

F I L E D
Clerk of the Superior Court

AUG - 4 2015

By: R. CERSOSIMO, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a California Corporation,

Plaintiff,

v.

PAUL S. AISEN, an individual; JEREMY
PIZZOLA, an individual; DEBORAH
TOBIAS, an individual; GUSTAVO
JIMENEZ-MAGGIORA, an individual,
PHUOC HONG, an individual; HONG MEI
QIU, an individual; STEFANIA BRUSCHI, an
individual; JIA-SING SO, an individual,
MAYYA NESSIRIO, an individual;
UNIVERSITY OF SOUTHERN
CALIFORNIA, a California Corporation; and
DOES 1-25, Inclusive,

Defendant.

Case No. 37-2015-00022082-CU-BT-CTL

PRELIMINARY INJUNCTION AND
APPOINTMENT OF SPECIAL MASTER

Complaint Filed: July 2, 2015

Date: July 24, 2015
Time: 2:00 p.m.
Dept.: C-68
Judge: Judith F. Hayes

On Friday, July 24, 2015, a hearing was held on the Order to Show Cause issued July 8, 2015, in this matter regarding the application of Plaintiff The Regents of the University of California ("Plaintiff" or "UCSD") for a Preliminary Injunction and Appointment of Special Master. The parties' appearances are noted on the record. Based on the Complaint, the briefs and admissible evidence submitted by the parties, and the argument of counsel, the Court finds that (1) Plaintiff has demonstrated a likelihood of succeeding on the merits of one or more claims asserted in the Complaint, in that Plaintiff has demonstrated ownership and a right to control and manage

1 certain data and systems, the control and management of which have been taken over by
2 Defendants; (2) that Plaintiff currently is, and shall continue, to incur and suffer irreparable injury
3 unless the relief requested is ordered, and that the balance of the hardships favors Plaintiff; and (3)
4 therefore Plaintiff is entitled to a preliminary injunction and the ancillary relief requested in aid of
5 the preliminary injunction.

6 The purpose of the preliminary injunction is to preserve the “status quo” during the
7 pendency of litigation. The “status quo” is “the last actual peaceable, uncontested status which
8 preceded the pending controversy.” (*Voorhies v. Greene* (1983) 139 Cal.App.3d 989, 995; 14859
9 *Moorpark Homeowner’s Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1408.) The “status quo”
10 therefore is that ADCS data and systems were in the possession, custody, and control of UCSD and
11 its duly authorized employees, consistent with the terms of the contracts and grants to which UCSD
12 is a party. This is the status quo that should be restored and preserved pending the outcome of this
13 litigation.

14 IT IS HEREBY ORDERED as follows:

15 **1. Restoration of Control of ADCS Data and Systems:** In aid of the preliminary
16 injunction set forth in Paragraph 2 below, Defendant University of Southern California (“USC”)
17 and Defendants Paul S. Aisen, Jeremy Pizzola, Deborah Tobias, Gustavo Jimenez-Maggiora, Phuoc
18 Hong, Hong Mei Qiu, Stefania Bruschi, Jia-Sing So, and Mayya Nessirio (“the Individual
19 Defendants”), along with all their employees, agents, assigns, and all persons acting in concert with
20 them are ordered to employ all deliberate speed to restore to The Regents the sole management and
21 control of all “ADCS Data and Systems,” defined as follows: all electronic data and computer
22 systems of the Alzheimer’s Disease Cooperative Study (“ADCS”) and any research studies
23 administered by or coordinated through the ADCS, including the Electronic Data Capture (“EDC”)
24 system and data thereon currently hosted on Amazon Web Service Account No. 6751328646 and
25 Google, along with all needed access, passwords and documentation needed to update, revise,
26 maintain and control the data and EDC system, including its source code and any web-based
27 repositories in which this is held, including but not limited to GitHub and Bitbucket, along with all
28 attendant documentation, passwords, and access credentials; and to do all other things necessary to

1 return full system and data access, control and management of the ADCS Data and Systems to
2 UCSD to resume possession, management and control to the same extent that UCSD had such
3 management, control and operation, before Defendants resigned from UCSD. This order does not
4 determine the rights of third parties, and shall not be construed to preclude any third party from
5 assigning to Defendants any rights that such third parties may have to obtain access, custody, or
6 control over ADCS data.

7 **2. Preliminary Injunction:** Except as set forth in Paragraph 1 above or as otherwise
8 directed by the Special Master referenced in Paragraph 3 below, each and every one of the
9 Defendants, USC and the Individual Defendants, and each of their employees, agents, assigns, and
10 all persons acting in concert with them, is hereby enjoined and prohibited from exercising
11 dominion, custody, and control over the ADCS Data and Systems. Notwithstanding the foregoing,
12 Defendants may, under the supervision of the Special Master, make a snapshot image of the current
13 state of the ADCS data and EDC, at Defendant's expense, to preserve a copy of this data for
14 purposes of this litigation. A copy of the snapshot image will be maintained by the Special Master
15 for safekeeping until further order of the Court or an agreement among the parties as to its
16 disposition. Plaintiff may, at its expense, obtain a copy of the snapshot image.

17 The mandatory portions of this injunction are merely incidental to those portions which are
18 prohibitory. The gathering, sorting, storage, analysis and management of data are all essential
19 aspects of the Alzheimer's disease Cooperative Study (ADCS). In order to maintain the status quo,
20 these functions must be performed to avoid the likelihood of damage to the study and to enable the
21 study to continue to move forward to achieve its stated goals.

22 **3. Special Master and Consultant:** Due to the complex and sensitive nature of the ADCS
23 Data and Systems, and the concern expressed by both Plaintiff and Defendants for the protection of
24 data integrity, the Court orders that a Special Master be appointed to supervise, and direct as
25 needed, the process by which Defendants comply with this order in the restoration of custody and
26 control of ADCS data and systems to UCSD as described in paragraph 1 above.

27 a. The Court appoints David E. Garrett of Stroz Freidberg, 101 Montgomery Street,
28 Suite 2450, San Francisco, CA 94104, as Special Master in this action for the purpose of

1 supervising the process by which Defendants comply with their obligations hereunder, so as to
2 ensure that the process is completed in a comprehensive, technically appropriate, and timely
3 manner, and without prejudicing UCSD, or causing any avoidable risk of harm to the rights or
4 interests of third parties.

5 b. In addition, the Court appoints Dr. Karl D. Kieburz of the University of
6 Rochester Medical Center to act as Consultant to the Special Master, to be consulted as deemed
7 necessary or convenient by the Special Master regarding issues that may arise within the
8 Consultant's expertise or experience. The Special Master shall be the primary decision-maker.

9 c. The Special Master shall communicate with and direct the parties as he deems
10 necessary to accomplish these goals and Defendants' compliance. The Special Master shall submit
11 a report, with any recommendations for Court action, at the completion of the process, and also at
12 any time he considers the Court's assistance, or an interim Court order, is needed for any purpose
13 necessary or convenience to accomplish the purposes of this order.

14 d. The Special Master is authorized to bill the Parties for his time at a rate not to
15 exceed \$770 per hour, being his current hourly rate, and may bill for the regular hourly rates of any
16 assistants he determines are reasonably needed to assist him. The Consultant is authorized to
17 submit bills to the Special Master for his/her time at a rate not to exceed \$500 per hour, to be added
18 to the Special Master's bill. As it appears that at least The Regents and USC have the financial
19 resource to pay, payment obligations shall be split evenly, 50% payable by Plaintiff, and 50% the
20 joint and several responsibility of each of the named Defendants. If any individual Defendant
21 demonstrates inability to share in these expenses, he or she may petition the Court for allocation of
22 his or her payment obligations to USC. At the conclusion of the Action, the prevailing party may
23 apply for adjustment and payment of the full amount by the non-prevailing party.

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26 ///

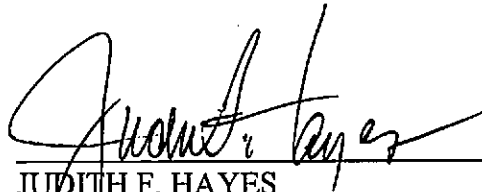
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28 ///

1 4. **Bond**: The Court has considered the necessity for the issuance of a bond and has
2 concluded that, because Defendants have not demonstrated more than minimal risk of any harm to
3 Defendants, only a minimal bond is required. A bond of \$5,000.00 shall be posted by The Regents.

4 IT IS SO ORDERED.

5
6 Dated: 8.4.15


JUDITH F. HAYES
Judge of the Superior Court

1 **PROOF OF SERVICE**

2
3 I, Kim Harris, state:

4 My business address is 3 Embarcadero Center, 26th Floor. I am over the age of eighteen
5 years and not a party to this action.

6 On the date set forth below, I served the foregoing document(s) described as:

- 7 1. **FIRST AMENDED COMPLAINT FOR MONEY DAMAGES AND EQUITABLE
8 RELIEF FOR: 1. BREACH OF FIDUCIARY DUTY; 2. BREACH OF DUTY OF
9 LOYALTY BY EMPLOYEE; 3. AIDING AND ABETTING BREACH OF
10 FIDUCIARY DUTY AND DUTY OF LOYALTY; 4. INTERFERENCE WITH
11 CONTRACT; 5. INTERFERENCE WITH PROSPECTIVE ECONOMIC
12 ADVANTAGE; 6. CONVERSION; 7. COMMISSION OF COMPUTER CRIMES;
13 8. VIOLATION OF INJUNCTION; 9. CIVIL CONSPIRACY**

14 on the following person(s) in this action:

15
16 **Please see attached Service List.**

- 17 ☒ **BY E-MAIL OF ELECTRONIC TRANSMISSION:** Based on a court order or
18 an agreement of the parties to accept service by e-mail or electronic transmission, I
19 caused the documents (s) to be sent from email address kharris@crowell.com to
20 the persons at the e-mail addresses listed in the Service List. I did not receive,
21 within a reasonable time after the transmission, any electronic message or other
22 indication that the transmission was unsuccessful.

23 I declare under penalty of perjury under the laws of the United States and the State of
24 California that the foregoing is true and correct.

25 Executed on January 3, 2019, at San Francisco, California.

26
27 
28 Kim Harris

The Regents of the University of California v. Paul S. Aisen, et al.

SDSC Case No. 37-2015-00022082-CU-BT-CTL

SERVICE LIST

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