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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

UNLIMITED JURISDICTION

DANIEL JACOBS, an individual,
Plaintiff,

v.

LOYOLA MARYMOUNT UNIVERSITY,
a corporation,
Defendant.

Case No. 21STCV31988

**COMPLAINT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT, LABOR
CODE §§ 2698 *et seq.* FOR VIOLATIONS
OF THE LABOR CODE**

1 Plaintiff Daniel Jacobs alleges on behalf of himself and other aggrieved employees as
2 follows:

3 **NATURE OF ACTION**

4 1. This is an action brought pursuant to the Private Attorneys General Act of 2004
5 (“PAGA”), Labor Code § 2698, *et seq.*, against Defendant Loyola Marymount University
6 (“LMU” or “Defendant”) for Defendant’s violations of the California Labor Code, including
7 its wilful failure to provide safe and healthful places of employment during the COVID-19
8 pandemic.¹

9 **JURISDICTION AND VENUE**

10 2. This court has personal jurisdiction over Defendant, which does business in the
11 County of Los Angeles.

12 3. Venue is proper in this county in accordance with section 395(a) of the
13 California Code of Civil Procedure because the actions and inactions that constitute the alleged
14 wrongs all took place in the County of Los Angeles.

15 **PARTIES**

16 4. Plaintiff Daniel Jacobs, formerly Clinical Associate Professor in the College of
17 Business Administration (“CBA”) at LMU, is a resident of the County of Los Angeles.
18 Plaintiff is an “aggrieved employee” within the meaning of PAGA, Labor Code § 2699(c).

19 5. Plaintiff is an award-winning environmental enforcement and civil rights trial
20 attorney who previously worked at the U.S. Department of Justice, and was the founding
21 director of the first interdisciplinary master’s program in sustainability management in a
22 United States business school. He also is the author of *BP Blowout: Inside the Gulf Oil*
23 *Disaster*.

24 6. LMU is a non-profit domestic corporation incorporated in the State of
25 California, and located in the County of Los Angeles, whose mission is: “The encouragement
26

27 ¹ “COVID-19” is an abbreviation for the novel “coronavirus disease 2019,” as named in an
28 announcement by the World Health Organization on or about February 11, 2020.

1 of learning, the education of the whole person, the service of faith and the promotion of
2 justice.”

3 7. LMU is, and was, at all times relevant herein, an “employer” within the
4 meaning of California Government Code §§ 12926(d) and 12940. In committing the acts
5 herein alleged, LMU’s employees, subcontractors, and agents, acted within the course and
6 scope of their employment and agency with Defendant LMU.

7 8. LMU engaged in the acts alleged herein and/or condoned, permitted,
8 authorized, and/or ratified the conduct of its employees, subcontractors, and agents, and is
9 vicariously liable for the wrongful conduct of its employees, subcontractors, and agents alleged
10 herein.

11 **EXHAUSTION OF REMEDIES**

12 9. Plaintiff has exhausted all administrative remedies required for the filing of the
13 PAGA action by notifying the Labor and Workforce Development Agency (“LWDA”) and the
14 Division of Occupational Safety and Health (“Cal-OSHA”) on April 1, 2021, with a certified
15 copy to LMU of the specific labor violations alleged, along with the facts and theories
16 supporting the claim, in accordance with Labor Code § 2699.3(b).

17 **FACTUAL ALLEGATIONS**

18 10. At all times relevant hereto, Dayle M. Smith was the Dean of the College of
19 Business Administration (“CBA”), a college within LMU whose first enumerated core value
20 reads in part as follows: “We dedicate ourselves to developing ethical leaders who visibly
21 demonstrate moral courage in their personal and professional endeavors.”

22 11. Where an action or inaction alleged herein is attributed to CBA, CBA should be
23 read interchangeably to refer to LMU.

24 12. During the period of August 15, 2016, to July 9, 2021, and at all times relevant
25 herein, Plaintiff was employed by LMU primarily to teach CBA’s flagship business ethics
26 course, and had an outstanding record.

1 **A. The CBA COVID-19 Cluster**

2 13. Plaintiff and aggrieved employees, among other individuals, were exposed to
3 COVID-19 as a result of a CBA educational program held on LMU's campus on March 11-12,
4 2020. The program met during Spring Break in the Hilton Building, which houses CBA.

5 14. The educational program that met on campus was a last-minute substitute for an
6 international Spring Break trip that was cancelled due to COVID-19 travel restrictions.

7 15. The Spring Break trip was part of a capstone project that was included in the
8 students' tuition (with the exception of airfare). Thus, there was a financial motive on the part
9 of LMU's leadership to provide a substitute program in the face of anticipated tuition/fee
10 refund demands.

11 16. The international trip was cancelled by LMU on March 3, 2020, just three days
12 before the program cohort was officially scheduled to gather in Panama City. By then, a
13 handful of the students had already traveled there in advance of the start date.

14 17. On March 4, 2020, Governor Newsom declared a State of Emergency in the
15 State of California due to COVID-19.

16 18. On March 4, 2020, Dean Smith convened a meeting in her office to discuss
17 providing an alternative to the cancelled trip. Dean Smith made the decision to hold an
18 improvised substitute program on campus notwithstanding the risks of COVID-19. One
19 participant in the meeting described her insistence on a substitute program as "like a horse with
20 a bit in the mouth."

21 19. On March 5, 2020, Dean Smith wrote a long email explaining to the students in
22 the program that "[g]iven inadequate and inconsistent testing coupled with the little we know
23 about community spread, and asymptomatic carriers, we have to treat the situation with great
24 caution."

25 20. Dean Smith announced a "contingency approach," later branded the "LA
26 Residency" that, under her direction and supervision, was scheduled to take place on LMU's
27 campus from March 11-17, 2020. Students scheduled to be on the cancelled trip were
28

1 instructed that they were required to attend the on-campus “LA Residency” program instead.

2 21. The students attending the “LA Residency” program, together with faculty and
3 staff, comprised a cohort of approximately 25 persons.

4 22. Members of the “LA Residency” cohort were given the option of staying at the
5 LAX Courtyard Marriott at Defendant LMU’s expense. The cohort included the students in the
6 program who were already in Panama City and were instructed to return, as well as one student
7 who was known to reside in, and travelled from, Seattle.

8 23. Panama City, the hub of COPA Airlines, is known to be a major air transit point
9 for travelers in Central and South America. Seattle was known at the time to be the epicenter of
10 the pandemic in the United States.

11 24. Even in light of these considerations and other important risk factors, Dean
12 Smith did not flag these travel origins as concerning and still decided to hold an on-campus, in-
13 person program.

14 25. On March 10, 2020, LMU President Timothy Law Snyder announced that
15 classes on campus would cease.

16 26. As a result of President Snyder’s announcement, some of the students in the
17 “LA Residency” program sent emails to CBA administrators questioning whether it would
18 nonetheless go forward. The administrators responded by email that the program would
19 proceed with the express approval of the LMU administration.

20 27. Despite the announcements by Governor Newsom and President Snyder, and
21 despite the World Health Organization having earlier in the day (in Geneva) declared COVID-
22 19 to be a global pandemic, on March 11, 2020, at 8:00am, Dean Smith kicked off the
23 alternative “LA Residency” program with remarks in Hilton 302 (also known as the Dean’s
24 Conference Room).

25 28. During the on-campus “LA Residency” program, LMU took no precautions to
26 guard against the spread of COVID-19 amongst and between members of the cohort and others
27 with whom they came in contact on the LMU campus.

1 29. Following Dean Smith’s kickoff remarks, the group met for the remainder of the
2 day in Hilton 304, an interior room (approximately 20’ x 25’ in dimensions) with poor
3 ventilation.

4 30. Hilton 304 seats approximately 25 in a U-shaped conference room style with
5 close-proximity seating.

6 31. The cohort went across the hall to Hilton 300 for a buffet lunch. The cohort also
7 congregated frequently in the third-floor hallway during breaks, used the restrooms on that
8 floor, and had access to other areas of Hilton as well as to other campus buildings.

9 32. At the end of the day on March 11, 2020, about half of the cohort checked into
10 the LAX Courtyard Marriott, and the cohort gathered for a 6:00pm group kickoff dinner at a
11 nearby restaurant in El Segundo.

12 33. On March 12, 2020, the cohort reconvened in Hilton 304 for another full day of
13 classes and a buffet lunch in Hilton 300, with complimentary roundtrip-chartered bus service
14 provided from the hotel to campus.

15 34. On March 12, 2020, two students sought emergency medical treatment. As a
16 result, on March 13, the program moved online, and the dinner scheduled to take place that
17 evening at Dean Smith’s personal residence was cancelled.

18 35. By March 14, 2020, at least five members of the cohort and one immediate
19 family member were reported to have developed symptoms associated with COVID-19, with
20 some of them seeking emergency medical treatment. One member of the cohort was
21 hospitalized.

22 36. Terrified students pleaded with LMU leadership for more information and for
23 assistance.

24 37. On March 14, 2020, an Associate Dean of CBA wrote to Dean Smith by email:

25
26 Members of the EMBA cohort (the ones exposed, not the ones who shouldn’t
27 have been contacted) are asking:

28 1) Is that *all* the information they are going to get from LMU? (they
 say it’s inadequate)

- 2) What should they do now? Check-out of hotel? Go home? How can they interact with their families and loved ones?
- 3) Can someone give them advice about how to manage the situation?
- 4) Are there resources to help us all get tested?
- 5) CAN WE HAVE AN EMERGENCY CALL VIA ZOOM RIGHT NOW TO DISCUSS ALL THIS?

(The last point is in caps because they want to talk; can we? Can we have a conversation with them asap? The restriction of MarComm vetting everything first is becoming a big challenge)

38. LMU did not help the students get tested as they requested and failed to provide even rudimentary medical devices (such as thermometers) to symptomatic individuals in a timely manner.

39. By March 15, 2020, at least eight members of the cohort and their immediate family members reportedly had symptoms associated with COVID-19.

40. Based on available scientific data, for each infected symptomatic individual, there was likely another infected asymptomatic individual, meaning that roughly two-thirds of the cohort and immediate family members likely contracted COVID-19.

41. The meeting of the “LA Residency” program on campus on March 11-12, 2020, created a substantial public health risk, not just to the cohort, but also to all Defendant LMU employees and their immediate families, as well as to the greater community at large.

42. One elderly CBA faculty member who was scheduled to go on the international trip elected to avoid the on-campus LA Residency program because he had a pre-existing medical condition known to be a risk factor for mortality due to Covid-19.

43. The “LA Residency” program has been described by those familiar with it as “busy work.”

44. The “LA Residency” program put LMU employees at risk and created an unsafe place of employment.

B. The COVID-19 Cover-up

45. If the details of the CBA COVID-19 cluster had become public knowledge, Defendant LMU would have become known as host to one of the very first “super-spreader” events on a college campus in the United States.

1 46. LMU’s concern for reputational risk trumped its legal duty (and moral
2 obligation) to provide a safe and healthy environment to employees.

3 47. On or about March 14, 2020, LMU notified the members of the CBA COVID-
4 19 cluster that they needed to quarantine for 14 days either at the LAX Courtyard Marriott or at
5 their homes.

6 48. LMU did not provide a wider announcement to CBA employees.

7 49. LMU failed to notify other faculty, staff, and students known to have been in
8 Hilton (whether on the third floor or otherwise) or known to have had contact elsewhere on
9 campus with members of the CBA cluster.

10 50. Dean Smith repeatedly withheld information about the CBA COVID-19 cluster
11 despite numerous opportunities to make the appropriate disclosures, including, *inter alia*,
12 during: 1) “All School” Zoom meetings on March 12, 2020 and March 13, 2020, that she led
13 with all CBA employees (which was broadcast from the very conference room in which she
14 held the kickoff breakfast); 2) subsequent prolific daily “urgent” emails to faculty and staff;
15 and 3) throughout the course of the cluster’s 14-day quarantine.

16 51. The only official LMU notification about the CBA COVID-19 cluster sent to
17 members of the broader CBA and LMU communities appeared in small print amongst other
18 announcements in the March 14, 2020, edition of “LMU This Week.”

19 52. LMU’s March 14, 2020, “LMU This Week” announcement relating to the CBA
20 COVID-19 cluster reads in pertinent part as follows:

21 The university was notified this afternoon that a community member tested positive
22 for COVID-19. The individual is currently isolating off-campus and other
23 community members who have been in close contact with this individual have been
24 notified and are self-quarantined. We have consulted with L.A. County Department
25 of Public Health and are following their guidance. Due to spring break, we believe
26 potential community exposure has been very limited.

27 53. This statement was misleading at best. LMU did not disclose that the student
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1 had been on campus and made no effort to perform contact tracing of other symptomatic
2 individuals in the CBA COVID-19 cluster.

3 54. Whether symptomatic or not, the members of the CBA COVID-19 cluster
4 received no instruction from LMU to disclose their exposure to other members of the LMU
5 community with whom they had been in close contact.

6 55. On or about March 13, 2020, Plaintiff learned by word-of-mouth of the CBA
7 COVID-19 cluster.

8 56. Because he had been in Hilton and elsewhere on campus, during Spring Break,
9 Plaintiff was concerned about his safety as well as the safety and health of his fellow
10 employees and family members.

11 57. Plaintiff did not quarantine because he did not know or have reason to believe at
12 the time that he had been in direct contact with any infected member of the CBA COVID-19
13 cluster.

14 58. Due to the cover-up of the CBA COVID-19 cluster, Plaintiff did not learn until
15 months later that he had been directly exposed to one of the symptomatic members of the
16 cluster who had become seriously ill.

17 59. On or about March 15, 2020, in an attempt to disinfect Hilton, LMU secretly
18 applied chemical agents throughout the building without notice to employees, prompting one
19 employee to post on Facebook her surprise at encountering individuals in hazmat suits in the
20 building.

21 60. The actions and inactions of LMU's agents with respect to the CBA COVID-19
22 cluster are antithetical to the institutions' advertised missions. These actions and inactions also
23 conflict with the very ethical decision-making models that LMU requires its business students
24 to learn in the flagship business ethics course that Plaintiff taught.

25 61. LMU's decision to conceal Dean Smith's decisions exacerbated a grave public
26 health emergency and put LMU employees at significant further risk, thereby violating
27 provisions of the California Labor Code, § 6400, *et seq.*

62. After notifying Plaintiff that the length and value of his contract would be cut by two-thirds going forward, citing as justification the World Health Organization's COVID-19 pandemic declaration in the previous year, on July 9, 2021, Dean Smith served Plaintiff with a Notice of Separation after he failed to sign the contract.

FIRST CAUSE OF ACTION

Private Attorneys General Act

Cal. Labor Code § 2698 *et seq.*

(By Plaintiff on Behalf of Himself and Aggrieved Employees Against LMU)

63. Plaintiff, on behalf of himself and all aggrieved employees, incorporates and realleges the allegations set forth in all proceeding paragraphs as though fully set forth herein.

64. Plaintiff is an aggrieved employee as defined by Labor Code § 2699(c), and Plaintiff therefore brings this action on behalf of himself, all other aggrieved employees, and the State of California.

65. Pursuant to Labor Code § 2699.3(a), on April 1, 2021, Plaintiff gave notice by electronic filing and by certified mail to LMU and the Labor Workforce Development Agency ("LWDA") of the factual and legal basis for the labor law violations alleged in this complaint. The LWDA has not provided notice pursuant to Labor Code § 2699.3(a)(2)(A) and 65 calendar days have passed since the date of Plaintiff's LWDA notice. Therefore, Plaintiff is entitled to commence a civil action pursuant to Labor Code § 2699.

66. Defendant LMU violated the California Labor Code by committing the acts described above and below, specifically:

- a. By holding classes on campus at CBA on March 11-12, 2020, without taking any precautions whatsoever and without notice to employees, Defendant LMU failed to provide a place of employment that is safe and healthful in violation of Labor Code § 6400.
- b. By holding classes on campus at CBA on March 11-12, 2020, without taking any precautions whatsoever and without notice to employees, Defendant LMU failed to adopt and use practices, means, methods, operations, and processes reasonably

adequate to render LMU employment and the place of employment safe and healthful in violation of Labor Code § 6401.

- c. By requiring and/or permitting its employees to be in Hilton and/or other LMU buildings that members of the CBA COVID-19 cohort were permitted to enter, Defendant LMU required and/or permitted its employees to go or be in a place of employment that was not safe and healthful, in violation of Labor Code § 6402.
- d. By holding classes on campus at CBA on March 11-12, 2020, without taking any precautions whatsoever and without notice to employees, Defendant LMU failed or neglected to use reasonably adequate safety devices and safeguards or adopt or use reasonably adequate methods and processes, or to do every other thing reasonably necessary to protect the life, safety, and health of employees in violation of Labor Code § 6403.
- e. By failing to notify persons who potentially had been exposed to COVID-19 as a result of the classes held on campus at CBA on March 11-12, 2020, Defendant LMU failed to provide a place of employment that is safe and healthful in violation of Labor Code § 6400.
- f. By failing to notify persons who potentially had been exposed to COVID-19 as a result of the classes held on campus at CBA on March 11-12, 2020, Defendant LMU failed to adopt and use practices, means, methods, operations, and processes reasonably adequate to render employment and the place of employment safe and healthful in violation of Labor Code § 6401.
- g. By failing to notify persons who potentially had been exposed to COVID-19 as a result of the in-person classes held on campus at CBA on March 11-12, 2020, Defendant LMU failed or neglected to use reasonably adequate safety devices and safeguards or adopt or use reasonably adequate methods and processes, or to do every other thing reasonably necessary to protect the life, safety, and health of employees in violation of Labor Code § 6403.

- 1 h. By applying chemical agents in the Hilton building on or about March 15, 2020,
2 without notice to employees in the building, LMU failed to provide a place of
3 employment that is safe and healthful in violation of Labor Code § 6400.
- 4 i. By applying chemical agents in the Hilton building on or about March 15, 2020,
5 without notice to employees in the building, LMU failed to adopt and use practices,
6 means, methods, operations, and processes reasonably adequate to render LMU
7 employment and the place of employment safe and healthful in violation of Labor
8 Code § 6401.
- 9 j. By requiring and/or permitting its employees to be in the Hilton building on or
10 about March 15, 2020 when chemical agents were being applied without notice to
11 employees, LMU required and/or permitted its employees to go or be in a place of
12 employment that was not safe and healthful, in violation of Labor Code § 6402.
- 13 k. By applying chemical agents in the Hilton building on about March 15, 2020,
14 without notice to employees, LMU failed or neglected to use reasonably adequate
15 safety devices and safeguards or adopt or use reasonably adequate methods and
16 processes, or to do every other thing reasonably necessary to protect the life, safety,
17 and health of employees in violation of Labor Code § 6403.

18 67. Plaintiff, on behalf of himself and all other aggrieved employees, requests civil
19 penalties against Defendant LMU for each of the violations alleged above, as provided under
20 Labor Code § 2699(a), (f), plus reasonable attorneys' fees and costs, as provided under Labor
21 Code § 2699(g)(1), in amounts to be proved at trial.

22 **RELIEF REQUESTED**

23 WHEREFORE, Plaintiff respectfully prays for judgment against Defendant as follows:

24 (A) Award statutory and civil penalties under Labor Code § 2699 in an amount
25 according to proof, with 75% of the penalties to be remitted to the LWDA and with 25% of the
26 penalties to be remitted to Plaintiff and all aggrieved employees of Defendant LMU;

27 (B) Enjoin Defendant from continuing to violate the California Labor Code
28

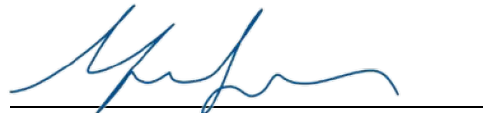
provisions set forth herein;

(C) Award Plaintiff reasonable attorneys' fees and costs under Labor Code § 2699(g), California Code of Civil Procedure § 1021.5(j), and any other applicable statutory provisions; and

(D) Award such other relief as the court deems just and proper.

Dated: August 30, 2021

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Monique Olivier', is written over a horizontal line.

Monique Olivier

Attorneys for Plaintiff Daniel Jacobs