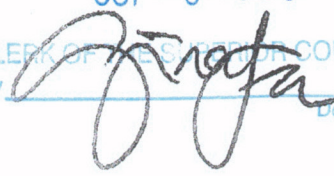


OCT -5 2020

Clerk of Superior Court
By  Deputy

1 Daniel M. Gilleon (SBN 195200)
2 Gilleon Law Firm
3 1320 Columbia Street, Suite 200
4 San Diego, CA 92101
5 Email: dm@mglawyers.com
6 Tel: 619.702.8623/Fax: 619.702.6337

7 Gary J. Aguirre (SBN 38927)
8 Aguirre Law, APC
9 501 W. Broadway, Ste. 800
10 San Diego, CA 92101
11 Email: Gary@aguirrelawfirm.com
12 Tel: 619.400.4960/Fax: 619.501.7072

13 Attorneys for Henrique Lavalle Da Silva Faria

14 **SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY**

15 HENRIQUE LAVALLE DA SILVA FARIA,

16 Faria,

17 vs.

18 THE REGENTS OF THE UNIVERSITY
19 OF CALIFORNIA,

20 Defendant.

CASE NO. RG20056679

FIRST AMENDED COMPLAINT FOR:

- 1. BREACH OF IMPLIED AGREEMENT
- 2. BREACH OF EXPRESS AGREEMENT
- 3. NEGLIGENCE (GOV. CODE § 815.2)
- 4. NEGLIGENT MISREPRESENTATION (GOV. CODE § 815.2)
- 5. NEGLIGENT INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIPS (GOV. CODE § 815.2)
- 6. NEGLIGENCE (GOV. CODE § 815.6)
- 7. NEGLIGENT MISREPRESENTATION (GOV. CODE § 815.6)
- 8. NEGLIGENT INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIPS (GOV. CODE § 815.6)
- 9. MANDATORY INJUNCTION

DEMAND FOR JURY TRIAL

Filed By Fax

1 Henrique Lavalle Da Silva Faria (Faria) brings this action on behalf of himself and alleges
2 as follows:

3 **NATURE OF THE ACTION**

4 1. As a young lawyer, Henrique Faria's love for the law and resolve to master it
5 propelled his career to impressive heights in Brazil during the first nine years of his practice. Along
6 the way, he became aware that a more challenging and professionally rewarding practice existed
7 in the international law arena, but this practice was beyond his reach unless he deepened his
8 understanding of international and comparative law. To that end, he studied the websites of several
9 elite law schools in the U.S. to find the one that would best serve his goals and fit within his means.

10 2. Based on the representations, statements and promises of Defendant Regents of the
11 University of California (Defendant or Regents), Faria chose the LL.M. program at U.C. School
12 of Law at Berkeley (Berkeley Law) to expand and deepen his understanding of international and
13 comparative law.

14 3. Faria's resolve to master his studies as an LL.M. candidate at Berkeley Law did not
15 go unnoticed. One of his professors, also a Berkeley Law dean, saw in Faria the discipline and
16 talent "to be one of the best international tax lawyers of his generation."

17 4. Overcoming the long odds against him, Faria won his dream job as a Senior Advisor
18 in the International Tax Services Practice at one of the world's Big Four Accounting Firms with
19 enormous potential for future career growth, the platform from which he could become "one of
20 the best tax lawyers of his generation."

21 5. Shortly before he was to start work, he rented and furnished an apartment in New
22 York City, while he waited for the U.S. Citizenship and Immigration Services (USCIS) to issue
23 his authorization to remain in the U.S. to work over the next year. USCIS should have routinely
24 approved granted it, since his application met all the requirements.

25 6. Regents represented to Faria that it had a highly skilled office and staff dedicated
26 to preparing the necessary forms and processing those forms through USCIS. Faria paid U.C.
27 more than \$60,000 in tuition and fees to provide him with the course work necessary to obtain his
28

1 LL.M. degree. Regents also had a mandatory and a contractual duty to process Faria's application
2 for work authorization with USCIS in compliance with federal statutes and regulations.

3 7. But Defendant got it terribly wrong with catastrophic consequences for Faria.
4 Through its Berkeley International Office (BIO), Defendant initiated a process with the USCIS
5 that set the deadline for Faria to file his application with USCIS on May 6, 2018, while the same
6 U.C. office notified Faria that the deadline was May 9, 2018. Consequently, Faria's application
7 arrived two days late at USCIS which caused USCIS to deny it.

8 8. Defendant also had the mandatory and contractual duty to monitor Faria's
9 application with USCIS. Had it performed that duty at any time over the next four months and
10 could then have acted to mitigate or avoid the damages and harm it was causing Faria. As a
11 consequence of Defendant's wrongful conduct and breach of its agreement with Faria, Faria lost
12 his dream job, his right to remain in the U.S. to work, and the growth of his career to the next level
13 of international and comparative law practice. As the Defendant has refused to take any action to
14 mitigate the harm it continues to inflict on Faria, his only recourse is to seek judicial relief by filing
15 this complaint with the Court.

16 9. As alleged below in greater detail, Defendant, through its sub-entities and agents,
17 has admitted its wrongful conduct and the harm that conduct has inflicted on Faria's career and
18 reputation.

19 10. Defendants has also modified its contract with LL.M. students to withdraw its
20 promise to process their applications for work authorization with USCIS in compliance with
21 federal statutes and regulations.

22 **PARTIES, JURISDICTION AND VENUE**

23 11. Defendant is a corporation charged by law with the duty of administering the
24 University of California (U.C.) as a public trust, pursuant to Section 9 of Article IX of the
25 California Constitution. In this capacity, at all relevant times, Defendant acted by and through
26 Berkeley School of Law (Berkeley Law), the Berkeley International Office (BIO), Berkeley
27 Advanced Degree Programs (ADP) Office, Career and Professional Development Services
28

1 Office, the Office of Student Services and its servants, agents, and employees who acted within
2 the scope of their authority.

3 12. Faria is a citizen of the Federative Republic of Brazil. During the academic year
4 of 2017-2018, Faria was a student at Berkeley Law enrolled in its LL.M. program.

5 13. This Court has jurisdiction over this action pursuant to the California Constitution,
6 Article VI, § 10, because original jurisdiction was not designated to any other court.

7 14. Venue is proper in this Court because Defendant (a) entered into the agreement
8 alleged herein in Alameda County, agreed to perform the agreement in Alameda County, and
9 breached the agreement in Alameda County and (b) committed the wrongful acts alleged herein
10 in Alameda County.

11 **U.C. BERKELEY REINVENTS ITSELF AS “VENTURE CAPITAL UNIVERSITY”**

12 15. When the State of California (California) enacted the Government Claims Act in 1963,
13 U.C. was a tuition-free university for California residents and required a small tuition (\$300 per
14 year) for nonresident students. At that time, California and the U.S. Government (U.S.) paid more
15 than 80 percent of U.C.’s operational budget¹ and raised those funds by imposing taxes on their
16 citizens and residents. In this way, taxpayers funded U.C. operations when the Government Claims
17 Act was enacted.

18 16. By November 2016, when Faria applied for the LL.M. program at Berkeley Law,
19 California and the U.S. had cut their collective funding of U.C. operations to 15 percent of the
20 U.C. budget and 13 percent of the Berkeley Law budget.

21 17. To offset decreasing government funding, Defendant has planned and striven to
22 increase revenues from alternative sources including business and quasi business activities. As an
23 element of that plan, Defendant has sought to restructure Berkeley Law into a financially self-
24 supportive entity or even a profit center. In pursuing that goal, Defendant and Berkeley Law
25 created Startup@BerkeleyLaw in 2015 as part of the U.C. “innovation ecosystem” to generate
26

27 ¹ [https://cshe.berkeley.edu/sites/default/files/publications/douglassbleemer.tipping_point_report.
updated_2.19.19.pdf](https://cshe.berkeley.edu/sites/default/files/publications/douglassbleemer.tipping_point_report.updated_2.19.19.pdf) (last visited Oct. 5, 2020).

1 revenues by acting as an incubator and accelerator for high technology startups.²

2 18. To enhance Startup@BerkeleyLaw’s capacity to operate as a revenue generator,
3 Defendant and Berkeley Law have created numerous affiliations and partnerships for
4 Startup@BerkeleyLaw within Berkeley Law, the U.C. campus, the financial industry, and the
5 professional firms that service the financial industry, including the following:

6 A. Startup@BerkeleyLaw is itself a joint venture and collaboration between the Berkeley
7 Center for Law and Business and the Berkeley Center for Law and Technology;

8 B. Startup@BerkeleyLaw has formed relationships with other U.C. departments, schools,
9 and offices such as the business and engineering schools, which it describes as its
10 “campus partners”;

11 C. Startup@BerkeleyLaw has formed relationships with large law firms that represent
12 financial institutions, public companies, and startups which it describes as its “legal
13 partners”;

14 D. Startup@BerkeleyLaw has formed relationships with hedge funds, private equity
15 funds, and venture capital investors which it describes as its “venture partners”;

16 18. Startup@BerkeleyLaw has formed a relationship with The National Venture
17 Capital Association to create VC University, which brings together investors, startups, U.C.
18 teaching staff, hedge funds, and private equity firms.³

19 **REGENTS PRIVATIZES EDUCATION WITH SELF-SUPPORTING PROGRAMS**

20 19. Defendant has created and uses Self-Supporting Graduate Professional Degree
21 Programs (Self-Supporting Programs) as another profit center to offset its reduced funding from
22 government sources.⁴

23 20. Faria is informed and believes and thereon alleges that Defendant allocates no state
24 or federal funding for the operations of the Self-Supporting Programs.

25 21. Faria is further informed and believes and thereon alleges that Defendant has

26 ² <https://www.law.berkeley.edu/experiential/startupberkeleylaw/> (last visited Oct. 5, 2020).

27 ³ <https://venturecapitaluniversity.com/> (last visited Oct. 5, 2020).

28 ⁴ [https://www.ucop.edu/institutional-research-academic-planning/ files/SSDPDP%20Policy_7.12.2016.pdf](https://www.ucop.edu/institutional-research-academic-planning/files/SSDPDP%20Policy_7.12.2016.pdf) (last visited Oct. 5, 2020).

1 delinked its costs for operating the Self-Supporting Programs from the funds it seeks to generate
2 from them, except the tuition paid by the student must equal or exceed the per-student cost of the
3 program to Defendant.

4 22. Faria is further informed and believes and thereon alleges that Defendant sets the
5 tuition for some or all Self-Supporting Programs at whatever price the domestic or international
6 market will bear. For those with little market demand, e.g., Master of Conservation and Restoration
7 Science, Defendant sets the tuition as low as \$23,000 per year. For those where the market demand
8 is stronger, such as a Master of Health Science for a physician assistant, Defendant sets the tuition
9 at \$123,000 per year. Defendant sets the annual tuition for a nonresident medical student, which
10 is not a Self-Supporting Program, at approximately \$20,000 per year.⁵ For these reasons, the Self-
11 Supporting Programs have become U.C.'s cash cows, generating more than \$1 billion per year,
12 which increases exponentially each year.

13 23. One such "Self-Supporting Graduate Degree Program" is Berkeley Law's LL.M.
14 program, in which Faria enrolled as a student in 2017. Faria's costs for tuition and U.C. fees for
15 his LL.M. and pre-LL.M. studies at U.C. were over \$60,000 and, with living expenses, his total
16 costs exceeded \$90,000. By comparison, the tuition and fees for one year in the J.D. program at
17 Berkeley Law for a nonresident student were approximately \$27,000.⁶

18 **FARIA PAUSES HIS CAREER TO SEEK AN LL.M. AT BERKELEY LAW**

19 24. At the time Faria applied for admission to Berkeley Law's LL.M. program, he
20 already had a successful nine-year career as an attorney in Brazil. After an internship at the public
21 defender's office, he began his career as an attorney in the commercial and tax law practice area
22 where he was given ever increasing responsibilities by the law firms that employed him. In 2017,
23 when Faria applied for the LL.M. program, he was working for one of Brazil's best tax law firms,
24 where he was given significant responsibilities for a young lawyer, e.g., assisting with the
25

26
27 ⁶ [https://www.ucop.edu/institutional-research-academic-
28 planning/ files/SummaryofProposed_2016-17_SSGPDPFees_Attachment_1-6-09-16.pdf](https://www.ucop.edu/institutional-research-academic-planning/files/SummaryofProposed_2016-17_SSGPDPFees_Attachment_1-6-09-16.pdf) (last
visited Oct. 5, 2020).

1 successful resolution of a \$6.5 billion tax liability for Petrobras and also opening a satellite office
2 for his law firm as the resident attorney.

3 25. By late 2016, Faria realized he would need to strengthen his knowledge of
4 international and comparative corporate and business law for his career to continue its ascent.
5 Knowing that elite U.S. law schools were ranked among the best in the world in these fields of
6 law, Faria applied for admission to the LL.M. programs at several U.S. law schools, including
7 Berkeley Law.

8 26. In late 2016 and early 2017, when Faria was considering his educational options,
9 the Berkeley Law website stated internationally known experts taught its LL.M. program and its
10 LL.M. would provide him with the opportunity to obtain the specialized tools he would need for
11 his career to continue its ascent. In particular, the Berkeley Law website told Faria and other
12 prospective LL.M. candidates:

13 **WHY CHOOSE BERKELEY LAW?**

14 **A top-tier education.** Berkeley Law is ranked among the top law schools in the
15 world, offering a superb education in both established and emerging fields of law.
16 **World-renowned faculty.** Our professors are internationally recognized experts
17 in a variety of legal fields, including business law, IP law and social justice.⁷

18 27. Faria applied to Berkeley Law for admission to the traditional track of the LL.M.
19 program in November 2016. At that time, Berkeley Law's website informed LL.M. applicants this
20 track provided students with a range of opportunities and candidates could select their law courses
21 as they saw fit:

22 The traditional track of our LL.M. program... provides students with a range of
23 opportunities, from obtaining a basic knowledge of the U.S. legal system to
24 undertaking original research on a particular aspect of law. Designed to integrate
25 American and international law students at various levels of study, the traditional
26 track allows candidates to satisfy degree requirements by enrolling in courses and
seminars from among those offered to law students pursuing the J.D. degree. Aside
from a few core curriculum courses specifically designed for international students,

27 _____
28 ⁷ A true and correct copy of Berkeley Law's LL.M. website page in May 2016 is attached hereto
an incorporated by reference as Exhibit 1.

1 LL.M. candidates may select law courses as they see fit, with the exception of a
2 few that are restricted to the J.D. curriculum.⁸

3 28. In the 2016-2017 period, the Berkeley Law website had a Career Development page
4 where it gave instructions and guidance to LL.M. students how to navigate through the maze of
5 career opportunities to find the path best suited for them.⁹

6 29. Through the Career Development page (Exhibit 3), Defendant and Berkeley Law
7 told Faria and other LL.M. applicants that the Advanced Degree Programs (ADP) Office at
8 Berkeley Law employed two skilled attorneys who had worked for elite international law firms.
9 According to Defendant's and Berkeley Law's Career Development page, these attorneys would
10 assist and guide LL.M. students in navigating their professional development and academic
11 pursuits. Among other statements, the Career Development page told LL.M. applicants: "We can
12 help you explore a variety of legal career options—both traditional and nontraditional—and
13 determine how to pursue them." Exhibit 3.

14 30. The Career Development page also informed Faria that Berkeley Law's Career
15 Development staff would provide instruction and guidance on the following:

16 **INDIVIDUAL COUNSELING**

17 ADP [Advanced Degree Programs] staffs two attorney-counselors dedicated to the
18 professional development needs of LL.M. students. Each counselor has practiced
19 law and can offer real-world insights into various career paths. You may sign up
20 for individual appointments via bCourses.¹⁰

21 **TARGETED CAREER PLANNING**

22 We can help you explore a variety of legal career options—both traditional and
23 nontraditional—and determine how to pursue them.

24 Your career planning will have two elements:

25 ⁸ A true and correct copy of Berkeley Law's LL.M. traditional track website page in January
26 2017 is attached hereto and incorporated by reference as Exhibit 2.

27 ⁹ A true and correct copy of Berkeley Law's LL.M. Programs, Career Development website page
28 in 2016-2017 is attached hereto and incorporated by reference as Exhibit 3.

¹⁰ "bCourses" is Berkeley's learning management system: "Instructors can create new or upload
existing course materials and build graded activities within bCourses, while also using it to
communicate with and provide feedback to students. It offers a variety of built-in assessment
tools, as well as an opportunity to integrate external tools to customize the course experience."
See <https://www.ets.berkeley.edu/services-facilities/bcourses> (last visited Oct. 5, 2020).

- 1 • Exploration — learning about the types of opportunities compatible with
2 your talents, work style, and lifestyle
3 • Job Searching — finding and landing specific opportunities
4 ADP’s counselors are here to work individually with you on both.

5 **PROFESSIONAL DEVELOPMENT PROGRAMMING**

6 ADP sponsors programs for LL.M. students throughout the year on topics
7 including:

- 8 • Resume writing
9 • Interviewing skills
10 • U.S. business etiquette and networking
11 • Various legal practice areas¹¹

12 31. The Career Development page also informed Faria of various job opportunities,
13 including the following:

14 **LL.M. JOB FAIRS**

15 Most LL.M. students are eligible to attend two job fairs specifically designed for
16 LL.M. students: the International Student Interview Program and the UCLA
17 [University of California Los Angeles] LL.M. Interview Program. ADP support for
18 students attending these job fairs includes:

- 19 • Resume review, to conform your C.V. into a U.S.-style resume.
20 • Mock interviews, to help you develop interviewing skills through simulated
21 job interviews conducted and evaluated by practicing attorneys.
22 • Individual appointments, to discuss bidding strategy and your overall plan
23 for attending ISIP [International Student Interview Program].
24 • Other job opportunities. Many international employers regularly solicit
25 resumes from students to fill their hiring needs each year.¹²

26 32. Faria was also drawn to Berkeley Law because it convincingly presented itself as a
27 cutting-edge center for international business and an incubator for business startups.

28 33. Berkeley Law’s website also confirmed its well-established connections to the
 financial services industry (including hedge funds, private equity firms, startups, and venture
 capitalists) and the professional firms that serve the financial industry, including major
 international law and accounting firms. Among the innovative programs that attracted Faria to

¹¹ Exhibit 3.

¹² *Id.*

1 Berkeley Law was Startup@BerkeleyLaw, as alleged herein.

2 34. Understanding and believing Defendant and Berkeley Law had the resources,
3 expertise, and commitment to provide him with (1) the highest quality law courses in those areas
4 he needed to strengthen and (2) comparable quality instruction and guidance on navigating a career
5 path, Faria submitted his application for admission to Berkeley Law’s graduate LL.M. program on
6 November 29, 2016, in which he proposed a curriculum that would focus on “corporate, securities
7 Law, international Law.”

8 35. By January 2017, Faria had not yet decided which law school he would choose.
9 While considering his options, he received an email on January 13, 2017, from Deborah S.
10 Schlosberg, Esq., the Director of Berkeley Law Student Advising Department, which emphasized
11 how an LL.M. from Berkeley Law would advance his career. Director Schlosberg explained:

12 “[W]e know that career progression is a priority. In the global legal marketplace,
13 the LL.M. degree can be a critical component of career advancement in many
14 countries worldwide. The Master of Laws degree from Berkeley Law often leads
15 to opportunities for our LL.M. students at leading law firms around the world, as
16 well as advancement in government bodies and institutions.¹³

17 **FARIA ENTERS INTO AN AGREEMENT WITH REGENTS AND U.C.**

18 36. For the reasons stated above, Faria accepted Berkeley Law’s admission offer in
19 April 2017 for the 2017-2018 academic year and paid \$1,000 as his admission deposit.

20 37. By accepting Faria as a student, and by Faria paying the required admission deposit,
21 Faria entered into an agreement with Defendant through UC Berkeley and Berkeley Law. The
22 terms and conditions of the agreement arise out of the representations made by Defendant to Faria
23 through the Berkeley Law and U.C. websites and other communications to Faria, including those
24 representations alleged, and interpreted using the rules for interpreting agreements, as codified in
25 Civil Code §§1635 and 1663, among them the following:

- 26 A. “All contracts, whether public or private, are to be interpreted by the same rules” (Civ.
27 Code § 1635).

28 ¹³ A true and correct copy of the Jan. 13, 2017, email from Director Schlosberg to Faria is
attached hereto and incorporated by reference as Exhibit 4.

1 B. “Contracts explained by circumstances. A contract may be explained by reference to the
2 circumstances under which it was made, and the matter to which it relates.” (Civ. Code §
3 1647).

4 C. “If the terms of a promise are in any respect ambiguous or uncertain, it must be
5 interpreted in the sense in which the promisor believed, at the time of making it, that the
6 promisee understood it.” (Civ. Code § 1649).

7 D. “Language interpreted against party who caused uncertainty. In cases of uncertainty not
8 removed by the preceding rules, the language of a contract should be interpreted most
9 strongly against the party who caused the uncertainty to exist.” Civ. Code § 1654).

10 38. Before Faria began his studies in August 2017, he knew and understood the
11 probabilities of getting any job after completing his LL.M. were slim, since Berkeley Law had
12 repeatedly advised him that less than ten percent of its LL.M. graduates find *any* temporary or
13 permanent employment in the U.S. Specifically, in her January 13, 2017, email, Director
14 Schlosberg told Faria: “As you may know, the U.S. job market for foreign-trained LL.M. students
15 is highly competitive. The number of positions for LL.M. graduates seeking a one-year position
16 during the Optional Practical Training period are limited...Legal employers rarely hire LL.M.
17 students for positions here in the U.S.”¹⁴

18 39. Upon his enrollment, Defendant provided Faria its LL.M. Guide for Career
19 Searches the University of California, Berkeley, School of Law 2017-2018 (LL.M. Guide).¹⁵ The
20 LL.M. Guide told Faria “the U.S. legal job market” is “extremely tough, and not just for LL.M.
21 students. J.D. students face a difficult job market as well. Less than 10% of the LL.M. class finds
22 a job, temporary or permanent, in the U.S. following graduation.”¹⁶

23 40. Through the LL.M. Guide, Defendant told Faria of three other hurdles he would
24 have to overcome to work in the U.S. as an attorney:

25 A. improve his English language skills since he was a non-native English speaker;

26 ¹⁴ *Id.*

27 ¹⁵ A true and correct copy of the LL.M. Guide for Career Searches the University of California,
Berkeley, School of Law 2017-2018 is attached hereto and incorporated by reference as Exhibit 5.

28 ¹⁶ *Id.* at 3.

1 B. pass a bar exam so he could be licensed to practice law; and

2 C. find employment in his field of study through the firm recruitment process.¹⁷

3 41. For its part, Defendant, through Berkeley ADP Office, gave its commitment to
4 support its LL.M. candidates overcome these obstacles: “Despite the odds, however, the Advanced
5 Degree Programs Office is committed to supporting our students in their career advancement
6 objectives.”¹⁸

7 42. Driven by his love for the law and resolve to master his practice area, Faria put
8 himself on a path to overcome the long odds, obstacles and challenges to achieving his career
9 goals.

10 43. To that end, before the LL.M. academic year began, Faria enrolled in the summer
11 session at U.C. Berkeley to study the English language, so he could better understand the course
12 materials and improve his communication skills before he began the fall semester in LL.M.
13 program at Berkeley Law.

14 44. Over the academic year, Faria threw himself into his studies to master the courses
15 he would need to pursue his career goals. By the end of the academic year, Faria had distinguished
16 himself as Berkeley Law Associate Dean and Professor Mark P. Gergen confirmed in his glowing
17 two-page review of Faria’s work ethic and performance at Berkeley Law:

18 Let me cut to the quick. Based on his performance in Partnership *Tax I believe*
19 *Faria has the analytical ability, work ethic, and lingual talent to be one of the best*
20 *international tax lawyers of his generation. Partnership Tax is an extraordinarily*
21 *difficult class with stiff competition. I teach it at a very high level. Faria received*
22 *the fourth highest grade in a class of 10 students, tying with another student.*
23 *Foreign LLM [sic] students rarely take any U.S. tax courses, much less Partnership*
Tax. Faria’s performance in the class is the best performance of any foreign LLM
[sic] student in a U.S. tax course that I have taught. ...

24 Faria’s answer was extraordinary on each of the dimensions I just described. When
25 he was done [sic] I literally applauded him and said how impressed I was by his
answer.¹⁹

26 ¹⁷ *Id.*

27 ¹⁸ Ex. 4.

28 ¹⁹ A true and correct copy of Dean Gergen’s Aug. 30, 2018, letter to Ernst & Young, f is attached
hereto and incorporated by reference as Exhibit 6.

1 45. Faria’s “analytical ability, work ethic, and lingual talent to be one of the best
2 international tax lawyers of his generation,” as described by Dean Gergen, also impressed the
3 hiring partners of Ernst & Young, one of the world’s Big Four accounting firms when they
4 interviewed Faria for a job with the company in April 2018. Faria immediately understood Ernst
5 & Young was the pathway to realize his potential to become “one of the best international tax
6 lawyers of his generation.”

7 46. By June 8, 2018, Faria had overcome the long odds and his biggest obstacle by
8 successfully completing his LL.M. studies with High Honors in International Tax Law and landing
9 a job with Ernst & Young at its headquarters in New York City as a Senior Advisor in Ernst &
10 Young’s International Tax Services Practice, at an annual base salary of \$120,000.²⁰

11 47. Ernst & Young’s job offer to Faria was only the starting point for a career with this
12 elite firm, as the Ernst & Young hiring partner made clear with these statements in the offer:

13 During the interview process you impressed us with your professional experience
14 and qualifications. We are equally convinced that you have the ability to grow and
15 thrive in our inclusive and supportive environment in which your unique talents
and contributions will be recognized and valued...

16 As you make this important decision, please keep in mind that EY is committed to
17 fostering a professional environment where your career may flourish. Our learning
18 culture will provide support for your development with mentoring, coaching and
19 educational opportunities, both formal and informal. We’ll also strive to provide the
20 flexibility you need as you learn to balance work and personal life. Please read all
of the attached information, and if the terms of our offer are acceptable to you,
please sign where indicated. We look forward to hearing from you...²¹

21 In addition to your base pay, you will have the opportunity, under EY’s variable
22 pay program, to be recognized for contributions that go above and beyond our
23 everyday high expectations. The firm’s variable pay program currently includes
24 recognition awards, promotion bonuses and, at the rank of Senior and above,
participation in the firm’s performance based [sic] bonus program.²²

25 ///

26 _____
²⁰ A true and correct copy of Ernst & Young’s June 8, 2018, job offer to Faria is attached hereto
27 and incorporated by reference as Exhibit 7.

²¹ *Id.*, at 1.

28 ²² *Id.*, at 2.

1 48. Faria was also well on his way to clearing one other hurdle to practice law in the
2 U.S.: obtaining a license to practice law by the state of New York, where he would be working for
3 Ernst & Young. By June 2018, he had completed all required courses, the necessary pro bono
4 legal services and submitted all required forms to take the New York bar examination. Faria
5 expected to take the New York bar exam in February 2019.

6 49. With his LL.M. from Berkeley Law in hand, his dream job with Ernst & Young,
7 and the bar exam on track for February 2019, Faria’s career had resumed its ascent to a higher
8 plane.

9 50. Regarding a start date, Ernst & Young’s letter stated: “We anticipate having you
10 start on 6 August 2018; however, should you need to start on a different date we will try to be
11 flexible regarding a mutually agreed upon date.”²³

12 51. In anticipation of his August start date, Faria leased an apartment in New York City
13 and purchased appropriate furniture, furnishings and appliances.

14 52. By July 2018, only one routine administrative step could delay Faria from starting
15 his new career with Ernst & Young in August 2018: The U.S. Citizenship and Immigration
16 Services (USCIS) issuance of an Employment Authorization Document (EAD) so he could
17 complete his Optional Practical Training.

18 53. Under USCIS regulations, international students who have completed at least two
19 semesters as fulltime students holding an F-1 visa, such as Faria, are eligible to work in the U.S.
20 in their field of study for a period of twelve months through a program known as Optional Practical
21 Training (OPT).²⁴ OPT is a temporary period of employment following graduation that is directly
22 related to the major area of study of an international student with an F-1 visa. To participate in
23 OPT, eligible students need to apply to USCIS for an EAD.

24 54. Pursuant to applicable federal regulations, U.C. Berkeley is a certified school under
25 the Student and Exchange Visitor Program (SEVP), which certification authorizes an academic
26 institution to accept an international student with an F-1 visa. Berkeley Law has the same status.

27 ²³ *Id.*

28 ²⁴ *See:* <https://www.uscis.gov/opt> (last visited Oct. 5, 2020).

1 55. Among other reasons, SEVP-certified institutions are attractive to international
2 students like Faria because F-1 students who graduate from an SEVP-certified institution like U.C.
3 Berkeley and Berkeley Law are eligible to participate in OPT.

4 56. One key reason Faria chose Berkeley Law for his studies in the LL.M. program was
5 the availability of OPT after he graduated.

6 57. USCIS routinely grants an EAD to participate in OPT to students who graduate
7 from an SEVP-certified institution and obtains a job offer in the United States, provided their
8 applications are timely submitted to USCIS. All SEVP-certified institutions, including U.C.
9 Berkeley, are required to employ an authorized Designated School Official (“DSO”), an
10 “employed member of the school administration whose office is located at the school.”²⁵ In
11 submitting its application for SEVP certification, Regents certified that U.C. and its DSOs would
12 comply with all federal regulations relating to Faria’s application for an EAD.²⁶

13 58. Federal statutes, as implemented by federal regulations, required the DSO for the
14 U.C. Berkeley campus to accurately maintain the EAD applicant’s records on the Student and
15 Exchange Visitor Information System (“SEVIS”), the program by which the U.S. Immigration and
16 Customs Enforcement (ICE) monitors the students with F-1 visa status who, like Faria, attend a
17 school in the United States. Federal statutes as implemented by federal regulations also require
18 Berkeley’s DSO to immediately report any error regarding the student’s status to ICE upon its
19 discovery.²⁷

20 59. The Federal Regulations governing the EAD process and OPT require U.C.
21 Berkeley and other SEVP-certified institutions to follow the mandatory proceedings established
22 by 8 C.F.R. 214.2(f)(10) through (13). The procedures described in these rules are further
23 implemented and interpreted by the User Manual for School Users of the Student and Exchange
24 Visitor Information System (SEVIS): Form I-20 (“SEVIS User Manual”),²⁸ and in particular by

25
26 ²⁵ See 8 C.F.R. § 214.3(l)(1).

27 ²⁶ See 8 C.F.R. § 214.3(a)(1)(ii).

28 ²⁷ <https://studyinthestates.dhs.gov/maintaining-accurate-sevis-records> (last visited Oct. 5, 2020).

²⁸ Since the SEVIS User Manual is Homeland Security’s interpretation and application of federal regulations, it is an enactment within the meaning of Cal. Gov. Code § 810.6.

1 Chapter 21.5 (“Optional Practical Training”).

2 60. In particular, for eligible students to obtain an EAD that allows them to participate
3 in OPT, U.C. Berkeley and other SEVP-certified institutions must issue the student an I-20
4 Certificate of Eligibility and enter it on SEVIS. The I-20 Certificate of Eligibility informs USCIS
5 that the student is in good academic standing and either already has graduated from the SEVP-
6 certified institution or is scheduled to do so in the near future.

7 61. For Defendant to provide OPT to a student, it must follow the mandatory
8 procedures established by 8 C.F.R. 214.2(f)(10) through (13), including the timelines set forth in
9 8 C.F.R. § 214.2 (f) (11). The step-by-step process the DSO must follow, as contemplated by these
10 mandatory procedures, is set forth in Chapter 21.5 of the SEVIS User Manual.

11 62. Section 214.2 provides the EAD application must be submitted no more than 90
12 days prior to a student’s graduation and no more than 60 days after the student’s graduation.

13 63. The student must file the EAD application with USCIS within 30 days of the date
14 the DSO requests the I-20 Certificate of Eligibility online through SEVIS, as set forth in Section
15 214.2(f)(11)(i)(B)(2).

16 64. The EAD application process is initiated when the student-applicant fills out an
17 OPT Request Form with the assistance of the DSO at the student-applicant’s SEVP-certified
18 institution.

19 65. Following the student’s completion of the OPT Request Form, the DSO provides
20 the student with the forms that comprise the EAD application, including the completed I-20
21 Certificate of Eligibility. At the same time, the DSO enters the institution’s recommendation on
22 SEVIS, which triggers the running of the 30-day period for the student to file the EAD application
23 with USCIS.

24 66. Since the date on which the DSO enters U.C. Berkeley’s recommendation on
25 SEVIS is known only to the DSO, Defendant and U.C. Berkeley had a mandatory duty to
26 accurately communicate the window of time and deadline for Faria to submit his EAD application
27 to USCIS pursuant to SEVIS User Manual and 8 C.F.R. § 214.2.

1 67. As alleged more specifically below, Defendant instructed Faria through his I-20
2 Certificate of Eligibility, which it prepared and delivered to Faria, and its Tutorial, which it
3 instructed Faria to read and to follow, that his 30-day window of time to file his EAD application
4 with USCIS began to run on April 9, 2018, with a deadline of May 9, 2018, but Defendant and its
5 DSO prematurely entered its recommendation on April 6, 2018, and thereby set the deadline for
6 May 6. In effect, Defendant and its DSO used SEVIS to set Faria's deadline to file his EAD
7 application with USCIS for May 6, 2018, but notified Faria with the I-20 Certificate of Eligibility,
8 its Tutorial, and its email that it had set May 9, 2018, as the deadline.

9 68. For his part, Faria understood USCIS's approval of his EAD application is routinely
10 granted, which it normally is, because Defendant had repeatedly informed him that BIO staff were
11 experts on the procedures for obtaining visas to study and authorizations to work in the U.S., that
12 BIO would prepare the necessary forms for him to obtain his EAD to remain in the U.S. for OPT,
13 and that Faria should follow BIO's instructions.

14 69. In particular, Defendant agreed with Faria that BIO would prepare the required I-
15 20 Certificate of Eligibility for Faria to file with USCIS and Defendant, through BIO, would
16 monitor the process until USCIS granted the EAD application for Faria's OPT job, as Defendant
17 had done for thousands of students before him.

18 70. Faria had learned firsthand that he could rely on Defendant and BIO to provide
19 accurate guidance what steps should be taken to obtain a visa to enter and remain in the U.S. for
20 educational purposes. One year earlier, in its April 19, 2017, email, when Defendant confirmed
21 Faria's enrollment, it instructed him exactly what steps he should take to obtain his student visa
22 and to contact BIO if he had any questions or problems with the process. In relevant part, Berkeley
23 Law instructed Faria:

24 The first step toward obtaining your student visa is completing the Non-Immigrant
25 Information Form, or NIF. In a few days, your Non-Immigrant Information Form
26 will be available on [CalCentral](#). Check CalCentral to access and complete the NIF.
27 If you have questions about the NIF, please review some basic information about
28 the visa process at the [Berkeley International Office](#) New Students website. The
visa application process can take 3-4 months, so we urge you to take action as soon

1 as possible. If you have questions or problems completing the NIF, please contact
2 nif@berkeley.edu.²⁹

3 71. Following Defendant's guidelines quoted in paragraph 67, Faria completed his
4 Non-Immigrant Information Form (NIF) and thus, with BIO's guidance, started the process that
5 culminated with his submitting the required documentation to the U.S. embassy in Sao Paulo on
6 approximately May 9, 2017. As a routine matter, the U.S. Department of State granted Faria's F-
7 1 visa on approximately May 16, 2017.

8 72. Faria understood he would need USCIS to issue an EAD if he were to remain in the
9 U.S. to work after he completed his LL.M. program. On this point, Defendant, through
10 Berkeley Law's website, informed Faria and other LL.M. applicants of the existence of visa
11 regulations and instructed them to contact BIO in this frequently asked question and answer:

12 **Are there visa regulations to stay in the U.S. for Optional Practical Training?**

13 Yes. Be aware of visa regulations for Academic Training and Optional Practical
14 Training. Admitted students, current students and alumni may contact UC Berkeley
15 International Office to learn more about their ability to work in the United States.³⁰

16 73. Regarding the process to obtain an EAD, Defendant advised Faria in its LL.M.
17 Student Handbook (Handbook) that BIO staff were experts in navigating the OPT process and told
18 Faria he should follow BIO's instructions. Among other things, Defendant told Faria:

19 Berkeley International Office provides knowledge and expertise in advising,
20 immigration services, advocacy, and programming to the UC Berkeley campus
21 community. The BIO office is your primary point of contact for questions regarding
22 your visa status; ADP staff are not permitted to provide visa or immigration advice.

23 Services provided by BIO:

- 24 ● Advising support for nonimmigrant students
- 25 ● Visa document production for nonimmigrant students and scholars
- 26 ● A wide variety of programs and workshops

27 ²⁹ A true and correct copy of the Berkeley Advanced Degree Program's email of April 19, 2017,
28 is attached hereto and incorporated by reference as Exhibit 8.

³⁰ A true and correct copy of the Berkeley Law Traditional Track Frequently Asked Questions
website page is attached hereto and incorporated by reference as Exhibit 9.

- OPT forms³¹

1
2 74. The Handbook provided Faria with a link to the BIO website containing detailed
3 information about OPT: what it is, how to apply, etc.³² One of the links in that website provided a
4 tutorial (Tutorial)³³ which explained in detail each step Faria had to take to obtain his EAD so he
5 could take advantage of OPT and legally remain and work in the U.S.

6 75. The Tutorial directed Faria to complete the Optional Practical Training Request
7 Form prepared by Defendant and submit the completed form to BIO. Within three days, BIO would
8 provide Faria with an I-20 Certificate of Eligibility for Non-Immigrant Student Status (I-20
9 Certificate of Eligibility).³⁴

10 76. Defendant's Tutorial further instructed Faria to submit the I-20 Certificate of
11 Eligibility along with the required forms, supporting documents and fees (EAD application) to
12 USCIS.

13 77. Defendant's Tutorial also instructed Faria to submit his EAD application to USCIS
14 during a 30-day window of time which Defendant, through BIO, set in the I-20 Certificate of
15 Eligibility.

16 78. In order to qualify for the I-20 Certificate of Eligibility, Faria had to complete the
17 LL.M. program for which he paid Defendant more than \$60,000 in tuition and fees. Additionally,
18 to obtain the I-20 Certificate of Eligibility, Faria had to pay Defendant \$100 as a "Post-Completion
19 Services fee."³⁵

20 79. At all times, based on the totality of circumstances, Defendant through BIO knew
21 Faria reasonably understood they would correctly, accurately, and clearly set the window of time
22

23 ³¹ See LL.M. Student Handbook at 10. A true and correct copy of the LL.M. Student Handbook
24 Faria received upon his enrollment is attached hereto and incorporated by reference as Exhibit
25 10.

³² *Id.*, at 15.

26 ³³ A true and correct copy of the OPT Tutorial linked to BIO's March 28, 2018, email is attached
27 hereto and incorporated by reference as Exhibit 11.

³⁴ A true and correct copy of the OPT I-20 Defendant provided to Faria is attached hereto and
28 incorporated by reference as Exhibit 12.

³⁵ Ex. 11, at 7.

1 during which Faria could timely file his EAD application with USCIS. At all times, Defendant and
2 BIO knew and understood USCIS would without exception deny Faria's application if his EAD
3 application were untimely filed.

4 80. Defendant and BIO further knew and understood USCIS's denial of Faria's
5 application would result in his deportation, possible arrest, loss of his job, and USCIS treating
6 Faria as a common criminal with long term, irreversible, and adverse effects on his promising
7 career.

8 81. For this consideration, among other things, Defendant agreed through the totality
9 of its communications with Faria through all of its sub-entities that BIO and its DSO (A) would
10 correctly set the 30-day window of time during which Faria could timely file his EAD application,
11 which included his I-20 Certificate of Eligibility, with USCIS and (B) would notify Faria of the
12 same window of time that DSO had set for the filing of EAD application with USCIS. The SEVIS
13 User Manual at page 272 requires the DSO to submit the OPT request through SEVIS, thereby
14 setting the 30-day deadline, and then take the following steps:

- 15 A. Review the information;
- 16 B. Save the OPT request, which submits it to USCIS;
- 17 C. Print the OPT request;
- 18 D. Sign the Form I-20; and
- 19 E. Give the printed Form I-20 to the student.

20 The student must sign the Form I-20 and submit it to USCIS with the application for work authorization
21 within 30 days.

22 82. On April 4, 2018, in accordance with Defendant's Tutorial, Faria submitted to BIO
23 his OPT Request Form and check for \$100, and thereby accepted Defendant's offer as specified
24 on paragraph 78.³⁶ Defendant confirmed Faria's acceptance of its offer by receiving his application
25 and accepting the \$100 in funds.

26 83. At all times, federal statutes, as implemented in regulations, required that

27 _____
28 ³⁶ A true and correct copy of Faria's OPT Request Form is attached hereto and incorporated by
reference as Exhibit 13.

1 Defendant correctly notify Faria of deadline for filing his EAD application with USCIS.

2 **DEFENDANT BREACHES ITS AGREEMENT WITH FARIA**

3 84. Defendant breached its agreement with Faria by prematurely setting the deadline
4 for him to file his EAD application in SEVIS for May 6, 2018, but then notified him through the
5 Tutorial in conjunction with the I-20 Certificate of Eligibility that the deadline was May 9, 2018.

6 85. Defendant, through BIO's email to Faria of April 9, 2018, again notified Faria the
7 deadline was May 9, 2018, for the filing of his EAD application with USCIS.³⁷ The email directed
8 Faria to look at the section titled "Program of Study on your I-20," which indicated May 9, 2018,
9 as the date on which his "Program of Study ended."

10 86. In prematurely setting the deadline for Faria to submits his EAD application for
11 May 6, 2018, and notifying Faria the Deadline was May 9, 2018, Defendant breached its
12 mandatory duty to accurately enter its recommendation on SEVIS and accurately notify Faria of
13 the deadline to file his EAD application with USCIS pursuant to 8 C.F.R. § 214.2(f)(10) through
14 (13) and the SEVIS User Manual.

15 87. Faria is informed and believes, and thereon alleges, that Defendant and its DSO had
16 a mandatory duty to monitor the status of Faria's EAD application on SEVIS pursuant to 8 C.F.R.
17 214.2 (f)(10) thorough (13) and Chapter 21.5 of the SEVIS User Manual and, had they done so,
18 would have discovered that on May 7, 2018, the status of Faria's EAD application on SEVIS had
19 not been converted to "pending," which would have raised a red flag that Faria's EAD application
20 would be denied. Had the DSO and the Regents discovered this fact on May 7, as they were
21 obligated to do, Faria would have had numerous options to preserve his career path and, on
22 information and belief, his job with Ernst & Young.

23 88. Defendant did not notify Faria of any issue regarding his EAD or the status of his
24 EAD application on SEVIS until July 24, 2018, when BIO notified Faria:

25 We are contacting you because your SEVIS record shows that your OPT
26 Application has been in **requested** status for over 90 days, This can mean that you

27 _____
28 ³⁷ A true and correct copy of BIO's April 9, 2018, email to Faria is attached hereto and
incorporated by reference as Exhibit 14.

1 did not submit your OPT application, that there has been some delay in processing
2 your OPT request, or that USCIS has not accurately updated your status in SEVIS.
3 If your OPT stays in *requested* status for over 180 days, your SEVIS record could
4 be ended.³⁸

5 Defendant and its DSO failed to inform Faria that SEVIS contained no note his EAD was pending,
6 which would mean USCIS had not received his EAD application and thus it would likely be
7 denied.

8 89. Defendant admitted making the error that caused the denial of Faria's EAD
9 application through the letter its Director of BIO, Ivor Emmanuel, sent to Ernst & Young on
10 approximately August 30, 2018. In particular, Defendant, through Director Emmanuel's letter (1)
11 admitted BIO had misstated the window of time for Faria to file his EAD application in the I-20
12 Certificate of Eligibility BIO prepared and provided to Faria and (2) conceded that, as a
13 consequence, Faria's EAD application was denied. On these points, Director Emmanuel's letter
14 stated:

15 This letter is written in support of Henrique Lavalle who has a current job offer
16 from EY. Henrique is a recent LLM [sic] graduate of the University of California,
17 Berkeley Boalt School of Law. As an F-1 nonimmigrant international student,
18 Henrique recently sought Optional Practical Training (OPT) employment
19 authorization through the USCIS that would permit him to join your organization.
20 Unfortunately, an erroneous slide on a powerpoint [sic] presentation providing
21 instructions to students on how to complete the application contributed to the denial
22 of Henrique's application for OPT. We deeply regret this error and are taking
23 several steps to assist Henrique in this very unfortunate situation.³⁹

24 90. In a second letter dated August 31, 2018, to USCIS, Director Emmanuel explained
25 Defendant's and BIO's error more precisely:

26 Henrique was following the guidelines provided by the Berkeley International
27 Office. On page 16 of the instructional materials (OPT Tutorial Powerpoint [sic]
28 presentation - attached) a box with instructions erroneously pointed to the date on

³⁸ A true and correct copy of the July 24, 2018, email from Mikaela Auerbach, SEVIS Coordinator at BIO, is attached hereto and incorporated by reference as Exhibit 17, see p. 5 email at 1:05 p.m.

³⁹ A true and correct copy of Director Emmanuel's letter of Aug. 30, 2018, to Ernst & Young is attached hereto and incorporated by reference as Exhibit 15.

1 page two of the I 20 as the deadline date by which students needed to have their
2 completed application at USCIS.⁴⁰

3 91. In the paragraph quoted above, Director Emmanuel was referring to the following
4 instruction and illustration at page 16 of the Tutorial, which identifies the page and line number of
5 the I-20 Certificate of Eligibility that sets the last day of the 30-day window during which Faria
6 could timely file his EAD application with USCIS:

7
8 OPT applications must be received by USCIS
9 no later than 30 days after this date. Please
10 see an advisor at BIO if there are concerns
11 that the application will not arrive on time.

12 TRAVEL ENDORSEMENT

This page, when properly endorsed, may be used for re-entry of the student to attend the same school after a temporary absence from the United States. Each endorsement is valid for one year.

Designated School Official	TITLE	SIGNATURE	DATE ISSUED	PLACE ISSUED
Advisor Name	DSO Berkeley, CA	x-Advisor Signature	MM/DD/YYYY	
		X		
		X		
		X		

13

14 92. On the same line of the same page of Faria's I-20 Certificate of Eligibility,
15 Defendant, through BIO, set the date April 9, 2018, as the first day of the 30-day period during
16 which Faria could file his EAD application and thereby set May 9, 2018, as the deadline for filing
17 it with USCIS. BIO delivered the I-20 Certificate of Eligibility with the relevant portion exactly
18 as shown below:

19 TRAVEL ENDORSEMENT

This page, when properly endorsed, may be used for re-entry of the student to attend the same school after a temporary absence from the United States. Each endorsement is valid for one year.

Designated School Official	TITLE	SIGNATURE	DATE ISSUED	PLACE ISSUED
Tatiana Djordjevic	DSO Berkeley, CA	x-Tatiana Djordjevic	4/9/2018	
		X		
		X		
		X		

20
21
22

23 93. In the same letter, Ex. 16, Director Emmanuel then explained this was the wrong
24 date: "In fact, the date that should have been used was the issue date on page 1 of the I 20."⁴¹

25 ///

26
27 ⁴⁰ A true and correct copy of Director Emmanuel's letter of Aug. 31, 2018, to USCIS is attached
28 hereto and incorporated by reference as Exhibit 16.

⁴¹ *Id.*

1 94. In the same letter, Ex. 16, Director Emmanuel admitted in the following statement
2 that Defendant’s and BIO’s error caused USCIS to deny Faria’s EAD application:

3 As a result of this error, and because the date on page 2 of the form I 20 was
4 different from the date on page 1 by three days, Henrique submitted his
5 application which arrived at USCIS 3 days after the stated deadline. We deeply
6 regret this error and appeal to you to reopen the case given that he was otherwise
7 eligible at the time of filing the initial application. He mailed out the application
8 on May 4th and it was technically due on May 6th. It was received [sic] on May
9 8th (Receipt # YSC 1890222817).⁴²

10 95. In the same letter, Ex. 16, Director Emmanuel then explains the impact the denial
11 will have on Faria’s career:

12 This administrative error that was contributed by my office, will result in
13 considerable hardship for Henrique as he will miss a tremendous opportunity to
14 work for one of the world’s renowned accounting firms—Ernst and Young
15 (EY).⁴³

16 96. Director Emmanuel correctly predicted Defendant’s breach of its agreement with
17 Faria would result in the loss of “tremendous opportunity,” i.e., a career with Ernst & Young, “one
18 of the world’s renowned accounting firms,” but Defendant’s blunder would cause far more damage
19 and harm. As a direct result of Defendant’s breach of its agreement with Faria, he lost the
20 opportunity to use his year with Ernst & Young as a stepping stone for a lateral move to other
21 international law and accounting firms or to the international companies which hire executives and
22 professionals from accounting firms such as Ernst & Young after they have gained critical work
23 experience.

24 97. Faria also lost his opportunity to take the New York State bar examination in
25 February 2019, because he lacked the funds to return to the U.S., reside in the U.S., and pay for a
26 bar exam review course.

27 98. When Faria learned on August 20, 2018, that USCIS had denied his EAD, he
28 immediately informed Mimi Ghosh—the International Scholar and Student Advisor at BIO he had
been referred to in the past—by email and requested help: “Dear Mimi, I just checked and as you

⁴² *Id.*

⁴³ *Id.*

1 can see from the attached picture, my request was denied. What should I do? What's my option? I
2 start my job on 09.10.18. Do I have enough time to appeal? Please help me.”⁴⁴

3 99. On the same day, August 20, Ghosh responded to Faria but offered no suggestions,
4 options or guidance how Faria could avoid or mitigate the loss of his job and the loss of his visa
5 status. Instead, Ghosh, on behalf of BIO and Defendant, told Faria he had no options and had to
6 leave the country with these words:

7 The 30 days start from the date we issued the I-20, on p. 1, and that was April 6.
8 I realize this must be a very unwelcome shock. Unfortunately, as your program
9 ended on May 9, your 60-day grace period is over, so to lessen the negative impact
10 to your immigration record, you will need to depart the U.S. as soon as possible.⁴⁵

11 100. On September 7, 2018, Faria again informed BIO he had exhausted all his funds
12 and would soon lose his job. He requested BIO’s and Defendant’s assistance, including legal
13 assistance, through Director Emmanuel. Faria’s email in part read:

14 I think you should talk to your legal team to figure out a way to help me because I
15 am in a necessity here. I already took 2 students [sic] loans to pay the tuition and
16 moving expenses to NY and also money from friends. I dont [sic] have anyone else
17 to ask.⁴⁶

18 101. Director Emmanuel responded the next day, September 8, 2018:

19 I understand your situation Henrique. Unfortunately, we do not have the resources
20 to support you any further. I am sorry that I am unable to assist you financially. I
21 advise you to look at options that are least costly to you including going home and
22 waiting for any further decisions.⁴⁷

23 102. Defendant thereby refused to provide Faria with any assistance, legal or any other,
24 to prevent or mitigate the damage it was causing him despite its statements and representations
25 that it had trained staff to assist Faria, including two skilled attorneys dedicated to the LL.M.

26 ⁴⁴ A true and correct copy of the email chain between Faria and Ms. Ghosh is attached hereto and
27 incorporated by reference as Exhibit 17; see page 3, email at 7:55 AM.

28 ⁴⁵ *Id.*, at 2, email at 8:45 PM.

⁴⁶ A true and correct copy of the email chain between Faria and Director Emmanuel is attached
hereto and incorporated by reference as Exhibit 18; see page 1, email sent at 5:01 PM.

⁴⁷ *Id.*, at 1, email at 6:36 PM.

1 program, as alleged above.

2 103. In addition to the other harm and damages alleged above, Faria accumulated more
3 than \$48,000 in debt to pay for his living expenses in Berkeley and his job-related expenses in
4 New York.

5 **DEFENDANT REWRITES ITS AGREEMENT WITH U.C. FOREIGN STUDENTS**
6 **TO ELIMINATE LIABILITY FOR SIMILAR FUTURE BLUNDERS**

7 104. Through Berkeley Law and BIO, Defendant has impliedly admitted its liability for
8 breaching its agreement with Faria by rewriting and modifying the documents on the Berkeley
9 Law and BIO websites that are incorporated into that agreement, so Defendant would have no
10 contractual liability to any future foreign student at U.C. Berkeley for conduct similar to
11 Defendant's conduct alleged herein.

12 105. To that end, Defendant has rewritten the OPT Request Form on BIO's website.
13 When Faria submitted the form to BIO, it required him to agree to this statement: "I understand
14 the responsibilities required for maintaining F-1 status during my period of OPT authorization as
15 stated on the reverse and in the OPT Application Guide.
16 (<http://internationaloffice.berkeley.edu/students/training/f-1/opt>)."⁴⁸

17 106. After Faria's counsel contacted Defendant regarding its mishandling of Faria's I-
18 20 Certificate of Eligibility and by extension his EAD application, Defendant modified the OPT
19 Request Form so it now reads:

20 I have fully read all slides in the OPT Tutorial:
21 <https://internationaloffice.berkeley.edu/sties/default/files/opt-tutorial.pdf>.
22 I understand OPT application procedures and the responsibilities required for
23 maintaining F-1 status during my period of OPT authorization as stated in this form,
24 in the OPT Tutorial and on the BIO OPT website:
25 <http://internationaloffice.berkeley.edu/students/training/f-1/opt>
26 *I understand I am solely responsible for submitting a proper & timely OPT*
27 *application and for maintaining my F-1 student status during OPT* (Emphasis
28 added).

///

⁴⁸ Exhibit 13.

1 LL.M. degree at Berkeley Law and for the assistance of Berkeley Law, ADP and BIO in
2 navigating the career options that would be available to him after he graduated with from the LL.M.
3 program.

4 121. For this consideration, among other things, Defendant agreed to provide Faria with
5 an I-20 Certificate of Eligibility in which Defendant would accurately state (A) Faria's eligibility
6 for an EAD and (B) the 30-day window of time and deadline for Faria to timely file his EAD
7 application, including his I-20 Certificate of Eligibility, with USCIS.

8 122. Faria performed each and every term and covenant of the agreement he was
9 obligated to perform, including the payment of more than \$60,000 in tuition and fees to Defendant.

10 123. On April 4, 2018, in accordance with Defendant's Tutorial, Faria submitted his
11 OPT Request Form to BIO along with his check in the sum of \$100, and thereby accepted
12 Defendant's offer as specified on paragraph 81. Defendant confirmed Faria's offer by receiving
13 his application and accepting the \$100 in funds.

14 124. As alleged herein, Defendant breached its agreement with Faria by preparing and
15 delivering to him an I-20 Certificate of Eligibility that set May 9, 2018, as the deadline for filing
16 his EAD application with USCIS, while prematurely recommending his EAD on SEVIS on April
17 6, 2018, thereby setting the deadline for May 6, 2018.

18 125. As alleged herein, Defendant and its DSO breached its agreement to monitor Faria's
19 EAD application status on SEVIS and thereby failed to detect on approximately May 7 that Faria's
20 EAD application had not been converted to "pending," which would have immediately occurred
21 when USCIS received Faria's EAD application on or before May 6, 2018. The lack of a note that
22 the EAD was pending, would mean it had not timely arrived and therefore the EAD application
23 would be denied. Had the DSO and the Regents discovered this fact on May 7, as they were
24 obligated to do, Faria would have had numerous options to preserve his career path and his job
25 with Ernst & Young.

26 126. As alleged herein, knowing it had breached its agreement with Faria as alleged in
27 paragraph 125, and knowing said breach would cause Faria to lose his job and his dream career,
28 Defendant and its employees abandoned their agreement to provide him with professional

1 guidance to navigate his career options and declared they would provide no further assistance,
2 even though Defendant and its DSO had multiple options to cure Defendant's prior breaches which
3 would have salvaged Faria's career. Instead, as alleged herein, Defendant, through its agents,
4 acting within the scope of their agency, told Faria they could not provide further assistance to him
5 and gave him erroneous legal advice to return home to Brazil.

6 127. Defendant's breach of said agreement caused Faria to suffer the damages and other
7 harm alleged herein.

8 **THIRD CAUSE OF ACTION**
9 **Negligence (Gov. Code § 815.2)**

10 128. Faria incorporates by reference the factual allegations of each of the foregoing
11 paragraphs as though fully set forth herein.

12 129. As alleged herein, Defendant has privatized the self-supporting programs at U.C.
13 Berkeley and other U.C. campuses, including the LL.M. program undertaken by Faria. As operated
14 by Defendant, said self-supporting programs receive no financial support from taxpayers. Instead,
15 they operate as cash-generating, for-profit programs similar in nature and character to other for-
16 profit business projects undertaken by Defendant. The Government Claims Act has no application
17 to such projects. To the extent Defendant asserts that Faria's claims alleged herein come within
18 the scope of the Government Claims Act, Defendant has waived the protections of said Act by its
19 conduct as alleged herein.

20 130. As alleged herein, in the scope of their employment, Defendant's employees
21 negligently prepared its Tutorial and Faria's I-20 Certificate of Eligibility by providing Faria with
22 a specific window of time and deadline for him to file his EAD application with USCIS, while
23 simultaneously providing a different and earlier window of time and deadline to USCIS for Faria
24 to file his EAD application.

25 131. As alleged herein, Defendant and its DSO negligently failed to monitor Faria's
26 EAD application status on SEVIS and thereby failed to detect on approximately May 7 that Faria's
27 EAD application had not been converted to "pending," which would have immediately occurred
28 when USCIS received Faria's EAD application on or before May 6, 2018. The lack of a note that

1 the EAD application was “pending,” would mean it had not timely arrived and therefore the EAD
2 would be denied. Had the DSO and the Regents discovered this fact on May 7, as they were
3 obligated to do, Faria would have had numerous options to preserve his career path and, on
4 information and belief, his job with Ernst & Young.

5 132. As alleged herein, after Defendant learned it had negligently set Faria’s deadline
6 for submitting his EAD application and further learned it had negligently failed to detect between
7 May 7, 2018, and July 9, 2018 that it had given different deadlines to USCIS and Faria, and
8 knowing that its negligence would cause Faria to lose his job and his dream career, Defendant and
9 its employees abandoned their agreement to provide him with professional guidance to navigate
10 his career options and declared they would provide no further assistance, even though Defendant
11 and its DSO had multiple options to cure Defendant’s prior breaches which would have salvaged
12 Faria’s career. Instead, as alleged herein, Defendant, through its agents, told Faria it could not
13 provide further assistance to him and gave him the erroneous legal advice to return home to Brazil.

14 133. Defendant’s negligence was the proximate cause of the damages and other harm
15 suffered by Faria, as alleged herein.

16 134. Defendant’s negligence was also the proximate cause of severe emotional distress
17 suffered by Faria in that Defendant’s wrongful conduct caused irreparable harm to his career, the
18 loss of his dream job, ongoing and permanent damage to his reputation, his humiliating arrest and
19 detention in feet and hand cuffs; and his police-escorted boarding flight to Brazil, as if he were an
20 international criminal.

21 **FOURTH CAUSE OF ACTION**
22 **Negligent Misrepresentation (Gov. Code § 815.2)**

23 135. Faria incorporates by reference the factual allegations of each of the foregoing
24 paragraphs as though fully set forth herein.

25 136. As alleged herein, in the scope of their employment, Defendant’s employees
26 negligently prepared its Tutorial and Faria’s I-20 Certificate of Eligibility by providing Faria with
27 a specific window of time and deadline for him to file his EAD application with USCIS, while
28

1 simultaneously providing a different and earlier window of time and deadline to USCIS for Faria
2 to file his EAD application.

3 137. As alleged herein, Defendant's employees acting in the scope of their employment,
4 negligently notified Faria in its Tutorial and its April 9, 2020, notice that he had a window of time
5 from April 9 through May 9, 2018, to file his EAD application with USCIS, while simultaneously
6 providing a different and earlier window of time and deadline to USCIS for Faria to do the same.

7 138. At all times, Faria believed Defendant's misrepresentations to be true.

8 139. Faria relied upon Defendant's negligent misrepresentations and filed his EAD
9 application within the window of time and by the deadline Defendant misrepresented.

10 140. Defendant's negligent misrepresentation was the proximate cause of Faria's
11 damages, including his severe emotional distress as alleged herein.

12 **FIFTH CAUSE OF ACTION**

13 **Negligent Interference with Prospective Contractual Relationships (Gov. Code § 815.2)**

14 141. Faria incorporates by reference the factual allegations of each of the foregoing
15 paragraphs as though fully set forth herein.

16 142. Defendant's conduct, as described above, interfered with the prospective
17 contractual relationship between Faria and Ernst & Young.

18 143. Defendant, with knowledge of Faria's prospective contractual employment
19 relationship with Ernst & Young, negligently mishandled Faria's I-20 Certificate of Eligibility and
20 EAD application, thus interfering with Faria's contractual relationship with Ernst & Young.

21 144. Defendant's interference caused Faria to suffer the damages set forth above.

22 **SIXTH CAUSE OF ACTION**

23 **Negligence (Gov. Code § 815.6)**

24 145. Faria incorporates by reference the factual allegations of each of the foregoing
25 paragraphs as though fully set forth herein.

26 146. As alleged herein, in the scope of their employment, Defendant's employees
27 negligently prepared its Tutorial and Faria's I-20 Certificate of Eligibility by providing Faria with
28

1 a specific window of time and deadline for him to file his EAD application with USCIS, while
2 simultaneously providing a different and earlier window of time and deadline to USCIS for Faria
3 to file his EAD application.

4 147. As alleged herein, under applicable federal statutes, as implemented in regulations,
5 Defendant had a mandatory duty to correctly and accurately state all information in its Tutorial
6 and Faria's I-20 Certificate of Eligibility.

7 148. As alleged herein, Defendant and its DSO violated their mandatory duty to monitor
8 Faria's EAD status on SEVIS and thereby failed to detect on approximately May 7 that Faria's
9 EAD application had not been converted to "pending," which would have immediately occurred
10 when USCIS received Faria's EAD application on or before May 6, 2018. The lack of a note that
11 the EAD application was "pending," would mean it had not timely arrived and therefore the EAD
12 would be denied. Had the DSO and the Regents discovered this fact on May 7, as they were
13 obligated to do, Faria would have had numerous options to preserve his career path and, on
14 information and belief, his job with Ernst & Young.

15 149. As alleged herein, knowing it had violated its mandatory duty to correctly set the
16 deadline on SEVIS for Faria to submit his EAD application to USCIS, knowing it had violated its
17 mandatory duty to detect Faria's EAD application on SEVIS had not been converted to "pending"
18 by May 7, 2018, and knowing these violations of Defendant's mandatory duties would cause Faria
19 to lose his job and his dream career, Defendant and its employees abandoned their agreement to
20 provide him with professional guidance to navigate his career options and declared they would
21 provide no further assistance, despite Defendant and its DSO had multiple options to cure
22 Defendant's prior breaches which would have salvaged Faria's career. Instead, as alleged herein,
23 Defendant, through its agents, acting within the scope of their agency, told Faria they could not
24 provide further assistance to him and gave him erroneous legal advice to return home to Brazil.

25 150. Defendant's negligence was the proximate cause of the damages and other harm
26 suffered by Faria, as alleged herein.

27 151. Defendant's negligence was also the proximate cause of severe emotional distress
28 suffered by Faria in that Defendant's wrongful conduct caused:

1 negligently prepared its Tutorial and Faria's I-20 Certificate of Eligibility by providing Faria with
2 a specific window of time and deadline for him to file his EAD application with USCIS, while
3 simultaneously providing a different and earlier window of time and deadline to USCIS for Faria
4 to file his EAD application.

5 160. As alleged herein, under applicable federal statutes, as implemented in regulations,
6 Defendant had a mandatory duty to correctly and accurately state all information in its Tutorial
7 and Faria's I-20 Certificate of Eligibility.

8 161. Defendant's conduct, as described above, interfered with the prospective
9 contractual relationship between Faria and Ernst & Young.

10 162. Defendant, with knowledge of Faria's prospective contractual employment
11 relationship with Ernst & Young, negligently mishandled Faria's I-20 Certificate of Eligibility and
12 EAD application, thus interfering with Faria's contractual relationship with Ernst & Young.

13 163. Defendant's interference caused Faria to suffer the damages set forth above.

14 **NINTH CAUSE OF ACTION**
15 **Mandatory Injunction**

16 164. Faria incorporates by reference the factual allegations of each of the foregoing
17 paragraphs as though fully set forth herein.

18 165. In the event the Court finds no adequate remedy-at-law fully compensates Faria for
19 his losses, and those losses are otherwise irreparable, an injunction should be issued directing
20 Defendant to offer Faria an educational program that will restore Faria's options, to the extent
21 possible, before Defendant's wrongful conduct caused Faria to lose his job and career options. In
22 view of the COVID pandemic, and the consequential disruption of the course scheduling at
23 Berkeley Law and U.C. Berkeley, the details regarding such academic program cannot be alleged
24 at this time. Faria requests leave of Court to amend this First Amended Complaint when the
25 conditions and circumstances permit him to allege those facts.

26 **REQUEST FOR RELIEF**

27 Faria hereby requests the following relief:

- 28 1) Compensatory damages, including general damages, lost wages and benefits;

