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**VIA FEDERAL EXPRESS – SIGNATURE REQUIRED
AND ELECTRONIC MAIL**

March 19, 2020

Claudio Fogu, President
UC Santa Barbara Faculty Association
P.O. Box 19930
Santa Barbara, California 93107
Email: cfogu@frit.ucsb.com

RE: Defamation, Disparagement of Marks and Infringement of Copyrights

Mr. Fogu,

This firm represents ProctorU, Inc. ("ProctorU"). I am contacting you with regard to your organization's March 13, 2020 letter to various representatives of the University of California Santa Barbara ("UCSB") regarding ProctorU Inc. and misrepresentation of ProctorU's personal data privacy practices ("defamatory correspondence").

As you know, ProctorU is an on-line proctoring business. ProctorU does business throughout the US and abroad, and is headquartered in Hoover, Alabama. ProctorU has used its tradename, logos and marks for its on-line testing, tutoring and proctoring services ("marks"). The ProctorU family of marks have been continually used to identify ProctorU's products and services, including but not limited to on-line testing, tutoring and proctoring services for a variety of educational, commercial and governmental organizations since 2008. As a result of its efforts, ProctorU has established a tremendous amount of goodwill in its marks, and it has established federal statutory and common law rights through the continued use of its marks and copyrights.

Contrary to the misstatements and misrepresentations in your defamatory correspondence, the plain language of ProctorU's privacy policy - which you provided a link to - explicitly states that ProctorU does not and will not sell personal information, and that ProctorU only collects, uses, and shares student personal information to provide its proctoring services to higher education institutions and to ensure the integrity of the tests it proctors.

Further, ProctorU's privacy policy is in accordance with applicable laws, transparently discloses all information that could be collected, used, or shared, and specifically identifies the types of third parties with whom it shares student information – all of which is strictly limited to the student's testing institution and assigned test proctors.

As is expressly stated in the ProctorU privacy policy link which you linked, ProctorU does not use any information collected during its business for any reason other than the proctoring of online exams. Contrary to your misrepresentations, ProctorU does not sell or share any information

it collects to any third parties. Further, ProctorU does not market to students, nor does it share any data for the purpose of marketing to students.

ProctorU's name and family of trademarks, service marks and logos ("marks") have become generally known and associated with ProctorU's on-line testing, tutoring and proctoring services, and the ethical provisioning of such. To protect such, ProctorU has registered and maintained websites for its on-line testing, tutoring and proctoring sales, and services at URL <http://www.ProctorU.com>. Through its use of its family of marks, and particularly the ProctorU.com mark, ProctorU has established a secondary meaning in its marks with the consuming public. As a result, its marks are protected by law.

Your use of the ProctorU name and linking to its website is without authority of ProctorU. The misstated content in your defamatory correspondence is also substantially similar to the copyrighted content of ProctorU.com. As such, your use of the ProctorU marks, and link to ProctorU.com are an unlawful use of ProctorU's marks and copyrights, and your misrepresentations regarding such are defamatory and disparaging of ProctorU and its marks. Further, based upon your link to the ProctorU privacy policy, your misstatements pertaining to such are a willful misrepresentation of ProctorU's data privacy policies and practices, and can only be construed as an effort to intentionally interfere with existing and prospective business relations of ProctorU.

Federal law provides substantial remedies against bad faith use of ProctorU's name and copyrighted materials. Your open and notorious disparagement of students' and faculty use of ProctorU's proctoring services is evidence of bad faith pursuant to factors of that law recited in the federal Anti-cybersquatting and Consumer Protection Act, 15 U.S.C. § 1125(d)(1)(B). Such a violation can result in the imposition of statutory damages, which a court could assess against your organization, and individuals responsible for such violations. Alternatively, ProctorU can obtain actual damages as a result of said acts. ProctorU can also seek recovery of its attorneys' fees related to its legal action.

Continued misrepresentation and misstatement of ProctorU's privacy practices is in violation of applicable state law. More specifically, continued willful disparagement of students' and faculty's use of ProctorU's products and services is intentional defamation of ProctorU. Additionally, your website expressly states that your organization represents its faculty members in

“... employment rights such as salaries, health and welfare, fringe and retirement benefits, and other work conditions such as teaching load and outside employment policies. As an independent member-supported organization, the SBFA provides effective representation in employment matters and general welfare.”

Such language evidences you and your members pecuniary benefit in thwarting the use of ProctorU's on-line testing, tutoring and proctoring services, in lieu of personal faculty instruction. Based upon the foregoing, remedies for your actions include not only injunctive relief, but also

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lost profits and damages sustained by ProctorU. In exceptional cases of willfulness such as yours, ProctorU can be awarded multiple damages and attorneys' fees.

ProctorU has authorized me to take direct legal action to protect ProctorU, its marks, copyrights and reputation from your willful unlawful and disparaging conduct. Further, ProctorU has authorized me to seek recovery of economic damages resulting from your willful defamation and disparagement of ProctorU.

On behalf of ProctorU, we demand that you immediately cease and desist from the continued misrepresentation and misstatement of ProctorU's privacy practices. We also demand that you seek retraction of your defamatory correspondence from UCSB, the UCSB Nexus student publication, Twitter and other similar publications. Further, that you immediately cease and desist from all use and plans to use ProctorU's family of marks and copyrighted materials.

In lieu of the foregoing remedies, ProctorU is willing to forego further legal recourse if you immediately 1) cease and desist from the continued misrepresentation and misstatement of ProctorU's privacy practices, 2) seek retraction of your defamatory correspondence from UCSB, the UCSB Nexus student publication, Twitter and other similar publications and 3) cease and desist from all use and plans to use ProctorU's family of marks and copyrighted materials.

To avoid further legal action, you must communicate your willingness to undertake the foregoing corrective measures to me immediately upon receipt of this notice. If you do, ProctorU will not pursue further legal remedy. Failing such, ProctorU will be compelled to consider additional legal action to protect its marks, copyrights and reputation. This offer is made strictly in compromise, and ProctorU reserves all rights to take any action that appears appropriate in its judgment.

Prompt resolution of this matter is necessary to minimize any further damage to ProctorU's valuable intellectual property, goodwill and reputation. Please contact me immediately upon receipt of this notice to discuss the steps required to mitigate the harm to ProctorU. Alternatively, if you are represented by counsel, please have your attorney contact me regarding this notice.

Finally, as you are also aware, the United States and State of California are under a declared state of emergency, which includes among other requirements, the use of on-line educational services. ProctorU is a significant national provider of on-line testing, tutoring and proctoring services, which are being utilized in response to the COVID-19 pandemic and to mitigate civil disruption resulting from such. Your actions are directly negatively impacting student and faculty participation in on-line testing, tutoring and proctoring services, and therefore directly impacting emergency efforts to mitigate civil disruption across the United States. Based upon such, we are copying counsel for USCB, as well as the United States Attorney for the Northern District of California and Attorney General for the State of California on this notice.

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Best regards,



David Vance Lucas

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cc: Charles F. Robinson, Office of Counsel, University of California
Nancy Hamill, Chief Campus Counsel, University of California, Santa Barbara
(by email: nancy.hamill@upoc.edu)
Nicola T. Hanna, United States Attorney, United States Central District
Xavier Becerra, Attorney General for the State of California