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7 Attorneys for Plaintiffs  
Haley Videckis and Layana White  
8

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
11

12 **HALEY VIDECKIS and LAYANA**  
**WHITE, individuals,**

13 Plaintiffs,  
14

15 v.

16 **PEPPERDINE UNIVERSITY, a**  
**corporation doing business in**  
**California,**

17 Defendant.  
18

CASE NO. 2:15-CV-00298-DDP (JCx)

**PLAINTIFFS' RESPONSE TO**  
**MAGISTRATE JUDGE**  
**JAQUELINE CHOOLJIAN'S**  
**ORDER REGARDING**  
**PLAINTIFFS' MOTION TO**  
**COMPEL THE DEPOSITION OF**  
**ANDREW BENTON**

Trial Date: May 23, 2017

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1 This document and supporting declaration is in response to the Court's order  
2 dated April 14, 2017 ruling that Plaintiffs' motion to compel the deposition of  
3 Pepperdine's President, Andrew Benton, (the "Benton Motion") was denied for  
4 being untimely. As stated more fully in the declaration of Plaintiff's counsel Jayesh  
5 Patel, the motion was inadvertently filed untimely due to an administrative error,  
6 even though the document was prepared, shared and ready for filing on April 7.  
7 Upon realizing the error, Plaintiffs filed the motion the following day, on Saturday  
8 April 8, 2017. Defendant Pepperdine is amenable, as set forth in more detail, below,  
9 to having this motion heard concurrently with the pending motion filed by  
10 Defendant, on April 25. Defendant should have suffered no prejudice, having seen  
11 the relevant papers well before the filing, because of Plaintiffs' inadvertent error.

12 The Parties were to have filed cross discovery motions last week and had  
13 previously agreed that the cross motions would be heard by this Court on the same  
14 day. Plaintiffs intended to file the Benton Motion, and Pepperdine intended to file a  
15 motion to compel the mental examinations of Plaintiffs (the "Mental Exam Motion").

16 Plaintiffs provided their portion of the Benton Motion to Defendant's counsel  
17 on March 31, 2017 for review and response, after extensive efforts to meet and confer  
18 over many weeks. Defendant provided its portion of the Mental Exam Motion on  
19 April 5, 2017, two days prior to when it was to be filed.

20 On April 7, 2017, the date the Parties agreed both motions would be filed, the  
21 Parties exchanged their respective responses to the two motions to be filed. Plaintiffs  
22 were to file the Benton Motion, while Defendant was to file the Mental Exam Motion.  
23 During the course of the day, there were a number of emails and calls between counsel  
24 on the topic, as a result of which Plaintiffs' counsel's office appeared to have suffered  
25 confusion.

26 Pepperdine filed its Notice of Motion and Joint Stipulation re Motion to  
27 Compel the Mental Examination of Plaintiffs on April 7 via ECF (see Dkt. Nos. 60  
28 and 61). Counsel for Plaintiffs, Jayesh Patel, was out of the office and mistakenly

1 believed that one of the two filing notifications he received via ECF, which  
2 notifications he read on his cell phone, were for the Benton Motion. In fact, when  
3 Ms. Victor stated that she had not received notification of the filing of the Benton  
4 Motion via ECF, Mr. Patel assured her that it was filed (due to his mistaken belief that  
5 it was). Upon realizing that the Benton Motion had not actually been filed Plaintiffs’  
6 counsel filed the Benton Motion pm April 8, to correct the oversight (Dkt. No. 62).

7       Once Plaintiffs received this Court’s order regarding the untimely filing on  
8 April 14, 2017, counsel for Plaintiffs attempted to meet and confer with Pepperdine  
9 regarding the filing error. Ms. Victor indicated that she would “agree as to when [she]  
10 received [Plaintiffs] joint stipulation regarding the motion, when [Pepperdine]  
11 provided [Plaintiffs] with [its] responses and that [the parties] had an agreement both  
12 motions could be heard the same date.” Ms. Victor added that she “would be willing  
13 to represent that if the court accepted the motion, [Defendants counsel] would have  
14 no problem with the motions being heard the same day.”

15       Since Defendant Pepperdine has suffered no prejudice due to the Plaintiffs’  
16 inadvertent failure to file the Benton Motion on April 7<sup>th</sup> instead of April 8<sup>th</sup>, Plaintiffs  
17 respectfully request that the Court reconsider its decision to deny Plaintiffs’ motion  
18 as untimely and rule on its based on the merits.

19 Dated: April 17, 2017

Respectfully submitted,

**ZUBER LAWLER & DEL DUCA LLP**

JAYESH PATEL

JEFFREY J. ZUBER

ROBERT W. DICKERSON

25 By: */s/ Jayesh Patel*

26 Attorneys for Plaintiffs Haley Videckis and  
27 Layana White  
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**PROOF OF SERVICE**

**Videckis & White v. Pepperdine  
Case No. 2:15-CV-00298-DDP (JCx)**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 777 S. Figueroa Street, 37th Floor, Los Angeles, CA 90017, USA.

On April 17, 2017, I served true copies of the following document(s) described as **PLAINTIFFS' RESPONSE TO MAGISTRATE JUDGE JAQUELINE CHOOLJIAN'S ORDER REGARDING PLAINTIFFS' MOTION TO COMPEL THE DEPOSITION OF ANDREW BENTON;DECLARATION OF JAYESH PATEL AND [PROPOSED] ORDER** on the interested parties in this action as follows:

Paula Tripp Victor  
ptv@amclaw.com  
Peter B. Rustin  
pbr@amclaw.com  
Eric A. Schneider, Esq.  
eas@amclaw.com  
ANDERSON, McPHARLIN &  
CONNERS LLP  
707 Wilshire Boulevard, Suite 4000  
Los Angeles, California 90071-2901  
Telephone: (213) 688-0080  
Facsimile: (213) 622-7594  
Attorneys for Defendant Pepperdine  
University

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 17, 2017, at Los Angeles, California.

*/s/ Debbie J. Ellis*  
\_\_\_\_\_  
Debbie J. Ellis

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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
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12 **HALEY VIDECKIS and LAYANA**  
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15 v.

16 **PEPPERDINE UNIVERSITY, a**  
corporation doing business in  
California,  
17

18 Defendant.

CASE NO. 2:15-CV-00298-DDP (JCx)

**DECLARATION OF JAYESH PATEL**

Trial Date: May 23, 2017

19 I, Jayesh Patel, declare as follows:

20 1. I am an attorney duly admitted to practice before this Court. I am a  
21 partner with Zuber Lawler & Del Duca LLP, attorneys of record for Plaintiffs Haley  
22 Videckis and Layana White. I have personal knowledge of the facts stated herein,  
23 and if called to testify, I could competently do so.

24 2. After it became clear that the Parties in this matter were unable to  
25 resolve their cross discovery motions, I made an agreement with Ms. Paula Tripp  
26 Victor that both parties would file their respective motions on April 7, 2017, as set  
27 forth in the Joint Stipulated filed with the Court earlier this month.

28 3. I was out of the office on April 7, 2017 but had instructed my staff to

1 file Plaintiffs’ Motion to Compel the Deposition of Andrew Benton (the “Benton  
2 Motion”), once Pepperdine provided its portion of the stipulation to our office.

3 4. On April 7, 2017, two days after receiving Pepperdine’s portion of its  
4 the joint stipulation regarding Defendants’ motion re the mental examination of  
5 Plaintiffs (the “Mental Exam Motion”), Plaintiffs provided their portion to  
6 Pepperdine’s counsel. Thereafter, Ms. Victor and her assistant made calls and sent  
7 several emails regarding who was filing each motion. In hindsight, I am informed  
8 and believe that those communications confused my staff.

9 5. Later that day, I received two notifications from ECF regarding  
10 discovery motions that had been filed that day, Documents Nos. 60 and 61. I was  
11 not at a computer, but saw the notifications on my cell phone. I mistakenly believed  
12 that one of the two filings was done by my office and was the Benton Motion, since  
13 Plaintiffs’ portion of the motion had been drafted and was ready a week prior and  
14 could be filed upon receipt of Pepperdine’s portion of the motion.

15 6. Later in the evening, I received an email from Ms. Victor stating that  
16 she had not received an ECF confirmation that Plaintiffs’ motion was filed. Since I  
17 was under the misimpression that one of the two ECF notices I received was for  
18 Benton Motion, I informed her that the motion had been filed.

19 7. The following day, Saturday, April 8, I realized that Plaintiffs’ motion  
20 had not been filed. Immediately after being notified of this, I contacted Ms. Victor  
21 and informed her via email about the mix-up. She responded with “no problem.”  
22 Also on that day, Plaintiffs filed the Benton Motion.

23 8. Pepperdine was provided a copy of Plaintiff’s portion of the Benton  
24 Motion over a week before the motion was filed and has not suffered any prejudice  
25 due to Plaintiffs’ inadvertent, administrative failure to file Motion on time. In fact,  
26 Pepperdine had more time to review the Motion and provide a response than  
27 Plaintiffs received to respond to Pepperdine’s Mental Exam Motion. /

28 9. After I received this Court’s Order on April 14, 2017 regarding the



1 untimeliness of the Benton Motion, I attempted to meet and confer with Ms. Victor  
2 regarding filing a joint stipulation with the Court explaining what occurred. Ms.  
3 Agnes Sullivan, an associate at my office, sent Ms. Victor a proposed stipulation on  
4 April 17, 2017. Ms. Victor thereafter responded that she would not agree to the  
5 stipulation and would instead on agree as to when [she] received [Plaintiffs] joint  
6 stipulation regarding the motion, when [Pepperdine] provided [Plaintiffs] with [its]  
7 responses and that [the parties] had an agreement both motions could be heard the  
8 same date.” Ms. Victor added that she “would be willing to represent that if the  
9 court accepted the motion, [Defendants counsel] would have no problem with the  
10 motions being heard the same day.” Attached hereto as Exhibit 1 is a true and  
11 correct copy of Ms. Victor’s email.

12 I declare under penalty of perjury under the laws of the United States of  
13 America that the foregoing is true and correct.

14 Executed on this 17th day of April, 2017, at Los Angeles, California.

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17 Jayesh Patel

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**EXHIBIT 1**



## Agnes Sullivan

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**From:** Paula Tripp Victor <PTV@amclaw.com>  
**Sent:** Monday, April 17, 2017 10:33 AM  
**To:** Agnes Sullivan  
**Cc:** Jayesh Patel  
**Subject:** RE: Videkckis- Stip re Benton Motion - Late Filing

Agnes,

I am not willing to sign the attached. I could agree as to when I received your joint stipulation regarding the motion, when we provided you with our response and that we had an agreement both motions could be heard the same date. I did not agree to do anything that would cure the procedural problem with your filing the motion late; rather, if the court had an issue with that and you had to seek relief, I would be willing to represent that if the court accepted the motion, I would have no problem with the motions being heard the same day. That was the intent of the e-mail I sent to Jay when I said, "no problem."

Thus, I am guessing a stipulation is probably not the best option for you. I'm sure your request can be supported by Jay's declaration. As long as he does not represent more or other than what I have said in this e-mail to you now regarding my intent when I corresponded with him on April 7<sup>th</sup> and 8<sup>th</sup>, I will likely not feel compelled to clarify my intent.

Thank you.

Paula

Paula Tripp Victor  
Anderson McPharlin & Connors  
707 Wilshire Blvd Ste 4000  
Los Angeles, CA 90017-3623

Main: (213) 688-0080  
Direct: (213)236- 1646  
Fax: (213) 622-7594

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**From:** Agnes Sullivan [mailto:asullivan@zuberlaw.com]  
**Sent:** Monday, April 17, 2017 8:59 AM  
**To:** Paula Tripp Victor  
**Cc:** Jayesh Patel; Meredith Smith  
**Subject:** Videkckis- Stip re Benton Motion

Paula,

As discussed, attached is a proposed stipulation regarding the filing mix-up with Andrew Benton's motion.

Thanks.

Agnès Markarian Sullivan  
**Zuber Lawler & Del Duca LLP**  
777 South Figueroa Street, 37th Floor  
Los Angeles, CA 90017

USA

Phone: +1 (213) 596-5620 . Fax: +1 (213) 596-5621

[asullivan@zuberlaw.com](mailto:asullivan@zuberlaw.com)

[www.zuberlaw.com](http://www.zuberlaw.com)

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