

1 JENNIFER YU SACRO, ESQ., SBN 208988
E-Mail: jsacro@sacrowalker.com
2 RICHARD D. BREMER, ESQ., SBN 199019
E-Mail: rbremer@sacrowalker.com
3 SACRO & WALKER LLP
4 700 N. Brand Blvd., Suite 610
Glendale, California 91203
5 Tel.: (818) 721-9597; Fax: (818) 721-9670

6 Attorneys for Non-Party
MICHAEL S. DELL
7 Specially Appearing

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/28/2022 at 02:32:00 PM

Clerk of the Superior Court
By Treva Cutts, Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 NICHOLAS CHRISTIAN RATEKIN,
12 Plaintiff,

13 v.

14 UNIVERSITY OF SAN DIEGO; and DOES 1
15 through 50, inclusive,
16 Defendants.

Case No. 37-2020-00040983-CU-BC-CTL
(Assigned for all purposes to Hon. Eddie C
Sturgeon; Department C-67)

SPECIAL APPEARANCE

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF NON-PARTY MICHAEL
S. DELL'S MOTION TO QUASH
DEPOSITION SUBPOENA FOR
PRODUCTION OF BUSINESS
RECORDS AND FOR PROTECTIVE
ORDER**

IMAGED FILE

[Filed concurrently with (1) Notice of
Motion and Motion to Quash Subpoena, (2)
Declaration of Mallory A. Beck, and (3)
[Proposed] Order]

Date: September 9, 2022
Time: 9:00 AM
Department: C-67

Complaint filed: November 9, 2020

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REQUEST FOR JUDICIAL NOTICE

TO THIS HONORABLE COURT AND ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:


Pursuant to California Evidence Code section 453, non-party Michael S. Dell hereby requests that the Court take judicial notice of the following documents:

1. Defendant University of San Diego’s Motion for Protective Order filed in the instant action on January 20, 2022. Judicial notice of court records is appropriate under California Evidence Code section 452(d)(1). A true and correct copy of the Motion is attached hereto as **Exhibit “1”**.

2. The Washington Secretary of State’s Business Information page for BRT Enterprises, LLC, which reflects that the street address and mailing address for BRT Enterprises, LLC is 609 Lynnwood Court, Richland, WA, 99354-1824. Judicial notice of information published on official government websites is appropriate under California Evidence Code section 452(h). See also *People v. Morales* (2018) 25 Cal.App.5th 502, 511, n.7 (“courts may take judicial notice of information published on official government websites”). A true and correct copy of the Business Information page is attached hereto as **Exhibit “2”**.

DATED: February 23, 2022

SACRO & WALKER LLP

By: 

JENNIFER YU SACRO
RICHARD D. BREMER
Attorneys for Non-Party
MICHAEL S. DELL
Specially Appearing

Exhibit 1

1 MICHAEL C. SULLIVAN (SBN 131817)
msullivan@paulplevin.com
2 JOANNE ALNAJJAR BUSER (SBN 295191)
jbuser@paulplevin.com
3 MATTHEW N. MUSHAMEL (SBN 334771)
mmushamel@paulplevin.com
4 **PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP**
101 West Broadway, Ninth Floor
5 San Diego, California 92101-8285
Telephone: 619-237-5200
6 Facsimile: 619-615-0700

7 Attorneys for Defendant UNIVERSITY OF SAN
8 DIEGO

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 NICHOLAS RATEKIN,
12 Plaintiff,

13 v.

14 UNIVERSITY OF SAN DIEGO; and DOES 1
15 through 50, inclusive,
16 Defendants.

Case No. 37-2020-00040983-CU-BC-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT UNIVERSITY OF SAN
DIEGO'S MOTION FOR PROTECTIVE
ORDER**

IMAGED FILE

Date: August 19, 2022
Time: 9:00 a.m.

Judge: Eddie C Sturgeon
Dept.: C-67
Action Filed: November 9, 2020
Trial Date: November 4, 2022

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/20/2022 at 04:23:00 PM
Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

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I. INTRODUCTION

On November 9, 2020, Plaintiff *In Pro Per* Nicholas Ratekin (“Plaintiff”) filed a lawsuit challenging the University of San Diego’s (“USD”) decision to dismiss him from the Masters of Education program in the School of Leadership and Education Sciences (“SOLES”) in April 2019. After his counsel withdrew from the lawsuit in October 2021, Plaintiff began representing himself and serving voluminous, duplicative, and harassing written discovery that is not reasonably calculated to lead to the discovery of admissible evidence and which USD now seeks to curb through Court intervention by obtaining a protective order pursuant to Code of Civil Procedure section 2031.060.

For the following reasons, the motion for a protective order should be granted to avoid further misuse of the discovery process and to encourage the use of informal discovery conferences concerning further discovery issues.

II. BACKGROUND

A. Brief Overview Of Lawsuit.

In 2018, Plaintiff began his coursework in SOLES’ Masters of Education Program. (Complaint.) In December 2018, USD issued Plaintiff a performance improvement plan to inform him of his need to improve his performance and meet the program’s expectations. Between February and April 2019, two different teaching placements asked Plaintiff not to return. Because Plaintiff did not satisfy the performance improvement plan and two teaching sites asked him to leave during the same term, USD dismissed Plaintiff in April 2019. (Complaint.)

On November 9, 2020, Plaintiff’s then-counsel filed the instant lawsuit against USD alleging claims for: (1) breach of contract, (2) breach of the covenant of good faith and fair dealing, (3) fraud in the inducement, (4) negligent misrepresentation, (5) unjust enrichment, (6) violations of the California Business and Professions Code (“BPC”) section 17200, (7) violations of the Consumer Legal Remedies Act, California Civil Code section 1750 *et seq.*, and (8) untrue and misleading advertising in violation of BPC section 17500. (Complaint.)

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1 On April 1, 2021, USD first served written discovery on Plaintiff. (Buser Decl. 2:7.) After
2 several extensions granted by USD’s counsel, Plaintiff produced certain written responses and
3 documents responsive to discovery and sat for his deposition with his counsel. (*Id.* 2:7-9.) USD
4 served a total of 53 requests for production and 18 special interrogatories, form interrogatories
5 (general), as well as subpoenas for records. (*Id.* 2:9-11.)

6 **B. Following Plaintiff’s Attorney’s Withdrawal, Plaintiff Serves 214 Requests For**
7 **Production, Form Interrogatories, And Two Subpoenas On USD, And**
8 **Numerous Subpoenas To Other Persons And Entities.**

9 On September 14, 2021, Plaintiff’s then-counsel served a motion for withdrawal from the
10 case, and the Court granted the motion on October 22, 2021. (Buser Decl. 2:12-14.) The parties
11 thereafter attended a case management conference with Your Honor on December 6, 2021. (*Id.*)

12 Meanwhile, on November 14, 2021, Plaintiff began serving discovery on USD. (Buser
13 Decl. 2:15-17.) In total to date as of filing this motion, Plaintiff has served a whopping 214
14 Requests for Production, plus Form Interrogatories. (*Id.* 2:15-22; Notice of Lodgment [“NOL”]
15 Exhs. 1-8.) As of the date of filing this motion, USD provided verified objections and responses
16 to 117 of the Requests for Production and all of the Interrogatories. (Buser Decl. 2:23-25; NOL
17 Exhs. 1-5.) USD also produced 1,766 pages of documents to Plaintiff. (Buser Decl. 2:25.)

18 **C. Plaintiff Rejects USD’s Efforts To Meet And Confer About Discovery.**

19 On January 12 and 13, 2022, USD informed Plaintiff that many of the discovery requests
20 were becoming duplicative and harassing and not reasonably calculated to lead to the discovery of
21 admissible evidence given the scope of Plaintiff’s claims against USD, which concerned the
22 events arising from his enrollment and dismissal from USD. (Buser Decl. 2:26-3:11; NOL Exhs.
23 9-10.) To that end, USD asked if Plaintiff would agree to limit the scope of his discovery given
24 the hundreds of pages already produced by USD and the nature of the claims Plaintiff asserted in
25 the lawsuit, or if he would be willing to attend an informal discovery conference with Your Honor.
26 (*Id.*)

27 ///

28 ///

1 Unfortunately, Plaintiff did not agree to modify any requests or attend an informal
2 discovery conference. (Buser Decl. 3:4-6.) Instead, Plaintiff lodged subpoenas to USD and to
3 many other persons and entities inside and outside San Diego County (and even outside
4 California) seeking confusing and duplicative requests for documents that have nothing to do with
5 his claims against USD. (*Id.* 3:12-15.) As of the filing of this motion, Plaintiff has sent USD
6 copies of approximately 20 subpoenas (22 if the subpoenas to USD are included, which are the
7 subject of a separate Motion to Quash by USD). (*Id.* 3:16-17.)

8 USD now seeks the Court’s intervention to prevent further abuse of the discovery process.

9 **III. ARGUMENT**

10 **A. Applicable Standard.**

11 Pursuant to Code of Civil Procedure section 2031.060, the Court may issue a protective
12 order against document requests for good cause shown if justice so requires “to protect any party .
13 . . from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.”
14 (Code Civ. Proc. § 2031.060.) Specifically, as applicable here, the Court may limit the “frequency
15 or extent of discovery” if it determines that any of the following conditions exist:

16 (1) It is possible to obtain the information from some other source that is more
17 convenient, less burdensome, or less expensive.

18 (2) The discovery sought is unreasonably cumulative or duplicative.

19 (3) The party seeking discovery has had ample opportunity by discovery in the
20 action to obtain the information sought.

21 (4) The likely burden or expense of the proposed discovery outweighs the likely
22 benefit, taking into account the amount in controversy, the resources of the
23 parties, the importance of the issues in the litigation, and the importance of the
24 requested discovery in resolving the issues.

24 (Code Civ. Proc. § 2031.060(f).) Code of Civil Procedure section 2023.010 specifically provides
25 that it is a misuse of the discovery process to “[p]ersist[], over objection and without substantial
26 justification, in an attempt to obtain information or materials that are outside the scope of
27 permissible discovery,” and “[e]mploying a discovery method in a manner or to an extent that
28 causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.”

1 (Code Civ. Proc. §§ 2023.010(a) and (c).)

2 As demonstrated by USD’s exhaustive efforts to provide discovery to Plaintiff and to meet
3 and confer about the utility of additional written discovery requests beyond the 117 requests for
4 which USD has already responded, USD now seeks the Court’s intervention to issue a protective
5 order that reasonably limits the scope of further discovery.

6 **B. Plaintiff’s Excessive Discovery Is Unreasonably Cumulative and Duplicative,**
7 **Particularly Given The Material Issues To Be Decided By The Court.**

8 As of the date of filing this motion, USD has responded to 117 Requests for Production
9 and Form Interrogatories, and produced 1,766 pages of documents. (Buser Decl. 2:23-25; NOL
10 Exhs. 1-5.) Despite USD’s best efforts, Plaintiff continues to lodge meaningless, duplicative, and
11 harassing discovery that is not seeking anything new, nor does it seek anything even remotely
12 reasonably calculated to lead to the discovery of admissible evidence.

13 By way of example only, in response to Plaintiff’s Request Nos. 24 and 40 in Request for
14 Production (Set One) about USD’s communications with National University, USD provided
15 verified responses to Request Nos. 24 and 40: “After a diligent search, no responsive documents
16 exist. Discovery is ongoing, and USD reserves the right to supplement its response as discovery
17 progresses.” (NOL Exh. 1.) Apparently not satisfied with USD’s verified response stating there
18 were not communications with National University, Plaintiff then served numerous duplicative
19 requests about communications with National University employees in Request Nos. 56 through
20 70, 72, 73, 91 and 106, to which USD provided verified responses. (NOL Exhs. 2-5.) Plaintiff
21 also served Request Nos. 154, 171, and 186 through 199 that USD has not yet answered
22 concerning communications with National University. (NOL Exhs. 6-7.)

23 Likewise, in response to Plaintiff’s Request No. 25 in Request for Production (Set One)
24 about USD’s communications with employees from Battleground Public School District (where
25 Plaintiff was a student teacher in Washington state years after leaving USD in 2019), USD
26 provided this verified response: “After a diligent search, no responsive documents exist.
27 Discovery is ongoing, and USD reserves the right to supplement its response as discovery
28 progresses.” (NOL Exh. 1.) Again, not satisfied with USD’s response, Plaintiff then served

1 Request Nos. 41, 49, 52, 109 through 114, and 117 seeking similar information about
2 communications with Battleground Public School District, which USD answered. (NOL Exhs. 2,
3 5.) Plaintiff also served Request Nos. 130, 155, 176, 184, 200, 201, and 206, which USD has not
4 yet answered concerning communications with Battleground Public School District. (NOL Exhs.
5 6-8.)

6 Further, in response to Plaintiff’s Request Nos. 10, 11, 14, and 15 through 18 in Request
7 for Production (Set One) about USD’s communications with employees in the San Dieguito
8 Unified High School District, USD provided verified responses clarifying either that USD did not
9 control documents maintained by that School District, or that USD did not have any responsive
10 documents. (NOL Exh. 1.) But Plaintiff continued to serve duplicative Request Nos. 42, 43, 51,
11 79, 88, and 89, and USD provided similar responses thereto. (NOL Exhs. 2-4.) Plaintiff also
12 served Request Nos. 124, 125, 140, 141, 144 through 148, 177 and 178, which USD has not yet
13 answered concerning communications with San Dieguito Unified High School District. (NOL
14 Exhs. 6-8.) These are just several examples of the nature of Plaintiff’s many duplicative,
15 irrelevant requests, which are further set forth in the NOL for the Court’s review.

16 Plaintiff has also propounded bizarre requests for things like USD’s communications with
17 Governor Gavin Newsom (Request No. 85), “the Joe Biden Administration” (Request No. 84),
18 Governor Jay Inslee (Request No. 86), California’s Employment Development Department
19 (Request Nos. 101-102) and the State Bar (Request No. 103), even though there would be
20 absolutely no reason for USD to make such communications with these individuals or entities; in
21 particular because Plaintiff was not a USD employee nor is he an attorney. (NOL Exhs. 4-5.)

22 With no end in sight from Plaintiff’s repetitive discovery about meaningless, duplicative,
23 and harassing requests that do nothing to advance his claims in the lawsuit (or to seek information
24 about USD’s defenses to the lawsuit), USD respectfully seeks the Court’s intervention to avoid
25 further harassment, undue burden and expense for having to continue objecting and responding to
26 such requests and to preserve judicial resources by avoiding making multiple discovery motions
27 over duplicative issues that will inevitably continue unabated.

28 ///

1 **C. Further Discovery Should Be Limited By The Court To Avoid Unnecessary**
2 **Discovery Disputes That Will Unavoidably Result In Further Motions And A**
3 **Waste Of Judicial Resources.**

4 Given the foregoing examples of Plaintiff’s duplicative and harassing discovery, and his
5 blatant refusal to attend informal discovery conferences with Your Honor, USD respectfully
6 requests the motion for protective order be granted and that the Court fashion an order that, at a
7 minimum, provides the following:

8 (1) USD need only respond to the previously-served requests for document production
9 through number 214 to the extent they are new requests that specifically seek information about
10 Plaintiff’s enrollment in, attendance at, or separation from USD between July 2018 and April
11 2019, and to the extent the requests do not seek information already answered by USD in prior
12 discovery requests;

13 (2) USD need not respond to or lodge objections to any other previously-served
14 requests for document production through number 214;

15 (3) Plaintiff may only serve new requests for document production after attending an
16 informal discovery conference with Judge Sturgeon and obtaining his prior approval before
17 serving the discovery;

18 (4) The parties are required to attend an informal discovery conference with Judge
19 Sturgeon prior to filing and serving any further discovery motions with the Court;

20 (5) Plaintiff and his representatives may not serve any subpoenas on USD or its
21 employees;

22 (6) The Court will consider issuing more severe evidentiary and/or terminating
23 sanctions as needed based on discovery conduct that violates the Court’s protective order.

24 **D. USD’s Fees And Costs For Having To Make This Motion Should Be Granted**
25 **Because Plaintiff Refused To Meet And Confer In Good Faith.**

26 The Code of Civil Procedure provides that the Court “shall impose” monetary sanctions
27 against the losing party on a motion for protective order unless it finds that the party acted “with
28 substantial justification,” or other circumstances render sanctions “unjust.” (Code Civ. Proc. §

1 2031.060(h).) Such sanctions are to be awarded pursuant to Code of Civil Procedure section
2 2023.010, which specifically provides that it is a misuse of the discovery process to “[p]ersist[],
3 over objection and without substantial justification, in an attempt to obtain information or
4 materials that are outside the scope of permissible discovery,” and “[e]mploying a discovery
5 method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or
6 oppression, or undue burden and expense.” (Code Civ. Proc. §§ 2023.010(a) and (c).)

7 Plaintiff’s blatant refusal to attend an informal discovery conference or to meet and confer
8 in good faith about the scope of discovery is not justified. His *pro per* status does not excuse him
9 from complying with basic discovery obligations applicable to all parties in any court proceeding.
10 (*In re Marriage of Falcone* (2008) 164 Cal.App.4th 814, 830 [upholding monetary sanctions
11 award against *pro per* because “self-represented parties are entitled to no greater consideration
12 than other litigants and attorneys”].)

13 Accordingly, USD respectfully requests the Court award sanctions against Plaintiff in the
14 amount of USD’s reasonable fees and costs for drafting and filing this motion and any reply
15 papers, if necessary, which to date is \$2,100. (Buser Decl. 3:20-23.)

16 **IV. CONCLUSION**

17 Based on the foregoing, USD respectfully requests the Court grant its motion and issue a
18 protective order preventing Plaintiff from engaging in further duplicative, irrelevant, and harassing
19 discovery. USD also seeks sanctions for its fees and costs incurred for having to make this
20 motion, in the amount of \$2,100.

21 Dated: January 20, 2022

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP

22
23 By:



MICHAEL C. SULLIVAN

JOANNE ALNAJJAR BUSER

MATTHEW N. MUSHAMEL

Attorneys for Defendant UNIVERSITY OF SAN
DIEGO

Exhibit 2



Filed
Secretary of State
State of Washington
Date Filed: 03/01/2021
Effective Date: 03/01/2021
UBI #: 604 723 716

INITIAL REPORT

UBI NUMBER

UBI Number:
604 723 716

BUSINESS NAME

Business Name
BRT ENTERPRISES LLC

REGISTERED AGENT

Registered Agent Name	Street Address	Mailing Address
ROBIN TILLER	609 LYNNWOOD CT, RICHLAND, WA, 99354-1824, UNITED STATES	609 LYNNWOOD CT, RICHLAND, WA, 99354-1824, UNITED STATES

REGISTERED AGENT CONSENT

Customer provided Registered Agent consent? - **Yes**

EFFECTIVE DATE

Effective Date:
03/01/2021

OTHER PROVISIONS

Other Provisions:

PRINCIPAL OFFICE

Phone:
509-845-5236

Email:
ROBINTILLER@CHARTER.NET

Street Address:
609 LYNNWOOD CT, RICHLAND, WA, 99354-1824, UNITED STATES

Mailing Address:

609 LYNNWOOD CT, RICHLAND, WA, 99354-1824, UNITED STATES

GOVERNORS

Title	Governor Type	Entity Name	First Name	Last Name
GOVERNOR	INDIVIDUAL		ROBIN	TILLER

NATURE OF BUSINESS

Nature of Business:

ANY LAWFUL PURPOSE

RETURN ADDRESS FOR THIS FILING

Attention:

RON J MILLER

Email:

RON@MILLERBUSINESSLAW.COM

Address:

10350 N VANCOUVER WAY, PORTLAND, OR, 97217-7530, UNITED STATES

UPLOAD ADDITIONAL DOCUMENTS

Name	Document Type
No Value Found.	

UPLOADED DOCUMENTS

Document Type	Source	Created By	Created Date
No Value Found.			

EMAIL OPT-IN

I hereby opt into receiving all notifications from the Secretary of State for this entity via email only. I acknowledge that I will no longer receive paper notifications.

AUTHORIZED PERSON - STAFF CONSOLE

Document is signed.

Person Type:

INDIVIDUAL

First Name:

RON

Last Name:

MILLER

Title:

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PROOF OF SERVICE

I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: SACRO & WALKER LLP, 700 North Brand Boulevard, Suite 610, Glendale, California 91203. On February 23, 2022, I served the within document(s):

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF NON-PARTY
MICHAEL S. DELL'S MOTION TO QUASH DEPOSITION SUBPOENA
FOR PRODUCTION OF BUSINESS RECORDS AND FOR PROTECTIVE
ORDER**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in **United States mail** in the State of California at Glendale, addressed as set forth below.
- by Electronic Transmission based on a court order or an agreement of the parties to accept service by email or electronic transmission. I am readily familiar with Sacro & Walker LLP's practices for transmitting documents by electronic mail via internet service provider. I caused the documents to be sent to the persons at the email addresses listed for each addressee on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- by causing the documents to be personally delivered to the below listed person(s) at the address(es) set forth below.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: February 23, 2022

SACRO & WALKER LLP

By: _____


Matthew Bagby

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SERVICE LIST

Ratekin vs. University of San Diego
San Diego Superior Court Case No. 37-2020-00040983-CU-BC-CTL

Nicholas Christian Ratekin. 24503 NE 128th Street Brush Prairie, Washington 98606 Tel: (360) 583-2950 E-mail: nicovcpolo@gmail.com	<i>Plaintiff,</i> IN PROPRIA PERSONA
Michael C. Sullivan, Esq. Joanne Alnajjar Buser, Esq. Matthew N. Mushamel, Esq. PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP 101 West Broadway, Ninth Floor San Diego, California 92101-8285 Tel: (619) 237-5200 Fax: (610) 615-0700 E-mail: msullivan@paulplevin.com; jbuser@paulplevin.com; mmushamel@paulplevin.com	<i>Attorneys for Defendant,</i> UNIVERSITY OF SAN DIEGO