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2022 Board of Directors Agenda and Materials

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6-22-2022

### **Special Board of Directors Quarterly Meeting - Open Session Packet 06/22/2022**

UC Hastings Board of Directors

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**EMPLOYMENT AGREEMENT OF CHANCELLOR & DEAN OF THE  
UNIVERSITY OF CALIFORNIA HASTINGS COLLEGE OF THE LAW**

This Agreement is entered into as of July 1, 2022 (the "Effective Date") by and between the University of California Hastings College of the Law, a public law school located in the City of San Francisco ("Hastings") and David L. Faigman, an individual (the "Chancellor & Dean"). Hastings and the Chancellor & Dean may be referred to individually as a "Party" and collectively as "Parties" in this Agreement.

1. EMPLOYMENT OF THE CHANCELLOR & DEAN.

A. Hastings, pursuant to the terms and conditions of this Agreement, appoints and employs David Faigman as the Chancellor & Dean of Hastings. The Chancellor & Dean will be an at-will employee serving at the pleasure of the Board of Directors (the "Board"). The Chancellor & Dean will serve as the Chief Executive Officer and Chief Academic Officer of Hastings. The reappointment as Chancellor & Dean is effective July 1, 2022, (the "Appointment Date"). Notwithstanding this employment status, he agrees to serve as Chancellor & Dean for the Term, as defined in Section 3, and hereby accepts such employment.

2. COMMITMENTS OF THE PARTIES.

A. Chancellor & Dean Commitments.

(1) Duties and Authority. The Chancellor & Dean shall have those powers and perform all of the duties of the Chancellor & Dean as set forth in Hastings' By-Laws, Standing Orders, and policies and procedures, and such other duties as may be assigned by the Board from time to time.

(2) Availability of Chancellor & Dean. The Chancellor & Dean will engage in those hours of work that are necessary to fulfill the duties and obligations of the Chancellor & Dean position. It is recognized that the Chancellor & Dean must devote time to the business of Hastings outside of normal business office hours, and to that end, the Chancellor & Dean's schedule of work shall vary in accordance with the work required to be performed. At the same time, the parties recognize that the Chancellor & Dean's scholarship redounds to the general benefit of the College and thus remains an integral part of his efforts on behalf of the school.

B. Hastings Commitments.

(1) Hastings shall provide the Chancellor & Dean with the compensation and benefits set forth on Schedule 1 of this Agreement.

(2) Subject to annual budgetary considerations, an administrative fund of approximately \$30,000 for travel, donor cultivation, and special events is allocated to support the Chancellor & Dean. In addition, an annual allocation of approximately \$20,000 from the Lockhart Endowment is provided to support the Chancellor & Dean's efforts for the benefit of Hastings. Further, the parties acknowledge that the Chancellor & Dean will continue to receive the regular annual allocation of funds from the John F. Digardi Chair, which he holds, to support his travel, scholarship, or other academic activities.

(3) Hastings agrees to pay for customary professional dues and memberships necessary for the Chancellor & Dean to perform his duties and obligations.

C. Mutual Commitments.

(1) Goals and Objectives.

As soon as practicable after July 1, 2022, the Board Chair and the Chancellor & Dean shall meet to establish the prioritized goals and objectives for the Chancellor & Dean ("Performance Plan") to achieve during the next twelve (12) months. The Board and the Chancellor & Dean shall thereafter meet annually, prior to the commencement of a new academic year, to further refine or modify the Performance Plan as the Board determines is necessary for the proper operation of Hastings and for the attainment of the Board's strategic policy objectives and oversight responsibilities.

(2) Performance Evaluation.

The Board shall continue to conduct an annual evaluation of the Chancellor & Dean's performance. The next performance evaluation shall take place in May 2023. The annual review and evaluation shall be in accordance with specific goals and performance objectives in the Performance Plan.

(3) Faculty Classification.

The Parties acknowledge that the Chancellor & Dean will continue, on and after the Appointment Date, as a tenured member of the Distinguished Faculty. Therefore, the Chancellor & Dean shall be entitled to the continuation of the same rights and privileges as are accorded to members of Hastings Faculty, except as otherwise expressly provided for in this Agreement.

3. TERM.

A. The term of this Agreement shall be for a period commencing on the Appointment Date and continuing for 60 months ("Term") (i.e., ending June 30, 2027), unless sooner terminated in accordance with this Agreement.

B. On or before the end of the Term of this Agreement, the Board may decide to renew or continue the Chancellor & Dean's appointment upon the terms and conditions contained in this Agreement or upon such additional or different terms

as may be agreed upon by and between the Chancellor & Dean and the Board. The Parties agree to a general performance review during the fourth year of the initial term, beyond the annual reviews provided for in Section 2(C)(1), to consider the prospect of an additional term.

4. TERMINATION.

A. Resignation.

If the Chancellor & Dean resigns at any time during the Term of this Agreement, this Agreement shall terminate and the Chancellor & Dean shall forfeit all rights under the terms of this Agreement, subject to the provisions stated in Section 5(D). The Chancellor & Dean shall provide written notice of not less than thirty (30) days prior to the effective date of resignation.

B. Termination.

Hastings may terminate this Agreement at any time, with or without cause, by a majority vote of the Board. Notice of termination shall be provided to the Chancellor & Dean in writing.

C. Severance Pay.

(1) In the event that Hastings terminates this Agreement for reasons other than "for cause" (as defined in subparagraph D below), Hastings shall pay to the Chancellor & Dean a payment equivalent to ten (10) months of the then applicable base salary on the effective date of termination (the "Severance Payment.") In the event that Hastings is obligated to make the Severance Payment, the amount shall be paid in a lump sum within thirty (30) days from the effective date of termination. Hastings shall have no other or further liability to the Chancellor & Dean under this Agreement.

(2) Notwithstanding the foregoing, if the Chancellor & Dean, upon such termination, elects to return to the Faculty, the Severance Payment shall be reduced by the amount of Faculty salary paid to him/her during the six-month period subsequent to the effective date of termination.

(3) If the Chancellor & Dean elects to return to the Faculty, the salary for the Chancellor & Dean shall be at the then applicable rate of a Distinguished Professor.

D. Separation for Cause.

(1) In the event Hastings proposes to terminate this Agreement "for cause," it shall notify the Chancellor & Dean in writing, specifying the reasons for termination; provide a ten (10) day opportunity to cure, if cure of the cause for termination is possible; and extend to the Chancellor & Dean the right to request a hearing pursuant to applicable law before the Board prior to the Board taking final action. Each Party shall bear its own legal expenses, if any, incident to such a hearing. Termination "for cause" shall become

effective upon final action of the Board. Termination "for cause" is a termination under any of the following circumstances:

- (a) Conviction of a felony or conviction of a misdemeanor involving moral turpitude;
- (b) Unethical business practices;
- (c) Willful misconduct, gross negligence and or repeated failures in the discharge of his duties as Chancellor & Dean;
- (d) Material violation of Hastings' policies;
- (e) Termination as a tenured member of Hastings Faculty; or
- (f) Material breach of this Agreement or the Performance Plan referenced herein in Section 2.C.(1)

(2) In the event Hastings terminates this Agreement "for cause", the Chancellor & Dean shall be entitled to only the compensation accrued up to the date of termination and such other termination benefits and payments as may be required by law. The Chancellor & Dean shall not be entitled to any severance benefits provided by Section 4.C of this Agreement. In the event that the Chancellor & Dean returns to the Faculty as Distinguished Faculty, the salary of the former Chancellor & Dean shall be at the then applicable rate of Distinguished Professor. The Chancellor & Dean acknowledges that the Faculty may seek to remove him/her as a Faculty member under the provisions of the Faculty Code of Rights and Responsibilities, if his conduct is subject to review under that Code.

E. Disability or Inability to Perform.

(1) In the event the Chancellor & Dean becomes mentally or physically incapable of performing the essential functions of his position as Chancellor & Dean, with or without reasonable accommodation, and it reasonably appears such incapacity will last for more than six months, the College may terminate this Agreement and the Chancellor & Dean will return to the Faculty as Distinguished Faculty and receive the long-term disability benefits available to the Faculty.

(2) In the event the Chancellor & Dean becomes mentally or physically incapable of performing the essential functions of his position as Chancellor & Dean, with or without reasonable accommodation, for a period not anticipated to exceed six months, the College may temporarily suspend with full pay the Chancellor & Dean's duties and appoint an interim Chancellor & Dean. If the Chancellor & Dean is unable to adequately resume performance of duties after a six (6) month period, the Board may treat the matter as a permanent or long-term disability and may terminate the Chancellor & Dean as set forth in subparagraph (1) above.

F. Public Statements.

In the event this Agreement is either terminated by Hastings or the Chancellor & Dean resigns, neither Party shall make any written or oral statements to members of the public or the press concerning the Chancellor & Dean's termination or resignation except in the form of a press release which is mutually agreeable to both Parties. Either Party may verbally repeat the substance of any such mutually agreeable press release in response to inquiries by members of the press or public.

5. GENERAL PROVISIONS.

A. Spouse of Dean and Chancellor.

To the extent that the Chancellor & Dean's spouse becomes a member of the Faculty during his tenure, he shall not participate in any academic and/or compensation decisions with respect to his spouse. All said matters related to the Chancellor & Dean's spouse shall be delegated to the Academic Dean, a Faculty committee and/or the Faculty consistent with the rules governing the matter at issue with appropriate oversight by the Board.

B. Scholarship and Outside Employment.

As a tenured member of the Hastings Faculty, the Chancellor & Dean may continue research and scholarship pursuits and receive any benefits derived therefrom during the term of this Agreement; however, the Chancellor & Dean agrees not to engage in any outside employment that interferes with the performance or his duties as Chancellor & Dean.

C. By-Laws and Standing Orders.

This Agreement is subject to the provisions of Hastings' By-Laws and Standing Orders as presently constituted and hereafter amended.

D. Survival.

Certain sections of this Agreement are intended by their terms to survive termination of this Agreement, including but not limited to Sections 4.C, 4.F, and 5.F and the Sabbatical/Recall Section in Schedule 1. These Sections, and the others so intended, shall survive termination by either party or expiration of this Agreement.

E. Amendments.

The Agreement may be amended only by a mutual written agreement of Hastings and the Chancellor & Dean.

F. Conflict of Interest.

(1) The Chancellor & Dean shall not engage in any business or transaction nor have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

(2) The Chancellor & Dean shall be subject to the conflict of interest provisions of the California Government Code Sections 8700 et al. The Chancellor & Dean is responsible for submitting to the Secretary to the Board appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

G. Indemnification.

Hastings shall defend, save harmless and indemnify the Chancellor & Dean against any claim or action to the extent required by, and subject to the limitations contained in, California Government Code Sections 825-825.6 and Government Code Sections 995-996.6. Hastings may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon without the prior consent or approval of the Chancellor & Dean.

H. Severability.

If any section of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such section so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding on and enforceable by the Parties hereto.

I. Governing Law.

This Agreement shall be interpreted under the laws of the State of California.

J. Resolution of Disputes.

Any dispute, claim or controversy arising under this Agreement shall be settled by arbitration in accordance with the provisions of Title 9 of the California Code of Civil Procedure governing arbitration agreements. The arbitrator shall be selected jointly by Hastings and the Chancellor & Dean. In the event the Parties cannot reach agreement on the selection of the arbitrator, either party may petition the Superior Court in the City and County of San Francisco to appoint an arbitrator in accordance with the provisions of Section 1281.6 of said Title 9.

K. Entire Agreement.

This Agreement represents the entire agreement of the Parties, which has been jointly drafted by the Parties, and no representations have been made or relied upon by either of the Parties except as set forth in this Agreement.

L. Notice.

Any notice shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:

(1) If to Hastings:

University of California  
Hastings College of the Law  
Chair of the Board of Directors  
200 McAllister Street  
San Francisco, California 94102

(2) If to the Chancellor & Dean:

At the current address shown on the records of Hastings, unless otherwise provided by the Chancellor & Dean to the Chair of the Board.

6. NON-APPLICABILITY.

The Regents of the University of California is not a party to, nor is it financially responsible under, this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

HASTINGS COLLEGE OF THE LAW

CHANCELLOR & DEAN

By: \_\_\_\_\_  
Chairperson of the Board

By: \_\_\_\_\_  
David L. Faigman

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John DiPaolo, General Counsel



## SCHEDULE 1

### COMPENSATION and BENEFITS.

In consideration of the services provided to Hastings by the Chancellor & Dean, Hastings shall provide the following compensation and benefits:

A. Compensation and Required Employer Costs.

(1) Base Salary.

(a) The initial base salary for the position of Chancellor & Dean shall be \$425,000 per year. The Board may adjust the Chancellor & Dean's salary after completion of a performance evaluation.

(b) The Chancellor & Dean shall be paid at the same intervals and in the same manner as Hastings senior staff.

(2) Incentive Pay.

Whenever it is deemed appropriate, the Board may award a bonus. Any bonus awarded to the Chancellor & Dean shall not be deemed compensation qualifying for retirement calculation.

(3) Housing Allowance.

The Chancellor & Dean shall be provided a monthly housing allowance of \$6,500.

(4) Parking

The Chancellor & Dean shall be provided monthly parking in the Hastings Garage on Larkin Street, at no charge during his tenure.

(5) Car Allowance

The Chancellor & Dean shall be provided a monthly car allowance of \$800.

(6) Employee Benefits.

The Chancellor & Dean shall receive the same health, life, long term/short term disability and dental insurance coverage available to Hastings employees as they may change from time to time.

(7) Upon leaving office on or before the end of the term of this Agreement, for any reason other than separation for cause as defined in subparagraph 4.D of this Agreement, Chancellor & Dean shall have the right to one or the other, but not both, of the following two provisions:

(a) The Chancellor & Dean shall have earned the right to a two-semester sabbatical leave. Hastings shall compensate the Chancellor & Dean during the one-year sabbatical leave at his base salary earned during the year immediately preceding the sabbatical leave.

The Chancellor & Dean agrees that when exercising this sabbatical leave right, he shall remain an employee of Hastings and not accept regular employment with any other entity.

(b) If the Chancellor & Dean retires upon leaving office, he shall have the right to be recalled, under applicable University of California policies, to serve as a consultant to Hastings and a resource for his successor for a period of not less than one-year. For this service, he will receive 49% of the base salary he earned during the year immediately preceding his retirement.

(8) Within 60 days of the effective date of this agreement, the Board shall authorize the retention of and the Dean shall utilize executive consulting services to facilitate and coordinate communication strategies amongst the various constituency groups in the College's community.