APPELLATE NO. A157551

### IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT DIVISION 5

SAVE BERKELEY'S NEIGHBORHOODS Petitioner and Appellant,

vs.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., *Respondents*.

ALAMEDA COUNTY SUPERIOR COURT • CASE NO. RG18902751 Hon. Frank Roesch, Dept. 17, Telephone: (510) 267-6933 and Hon. Noel Wise, Dept. 24, Telephone: (510) 267-6940

### **APPELLANT'S APPENDIX**

VOLUME 2 of 3

THOMAS N. LIPPE (Bar No.104640) LAW OFFICES OF THOMAS N. LIPPE, APC 201 Mission Street, 12th Floor San Francisco, California 94105 Telephone: (415) 777-5604 Email: Lippelaw@sonic.net Counsel for Petitioner/Appellant

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Notice of Entry of Order; Stipulation and Order to Extend Deadlines to Allow Parties to Engage in Further Settlement Negotiations	1	7/2/2018	04	AA00061
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Notice of Entry of Order; Order following Third Stipulation and [Proposed] Order to Extend Deadlines to Allow Parties to Engage in Further Settlement Negotiations	1	8/17/2018	06	AA00071
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Document received by the CA 1st District Court of Appeal.

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Respondents' Separate Statement in Support of Opposition to Petitioner's Motion to Compel Further Responses	2	11/21/2018	28	AA00340
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## Tab 025

	CIVI-110
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Amrit S. Kulkarni (SBN 202786); Timothy D. Cremin (SBN 156725)	FOR COURT USE ONLY
Meyers Nave Riback Silver Wilson See Attachment for Addt'l Counsel 555 12 <sup>th</sup> St., Ste. 1500	
Oakland, CA 94607	
TELEPHONE NO.: (510) - 808-2000 FAX NO. (Optional): (510) 444-1108	
E-MAIL ADDRESS (Optional): tcremin@meyersnave.com	
ATTORNEY FOR (Name): The Regents of the University of California, et al.	-
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA	
STREET ADDRESS: 1221 Oak Street	
MAILING ADDRESS:	
CITY AND ZIP CODE: Oakland, CA 94612	
BRANCH NAME:	
PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	
DEFENDANT/RESPONDENT: The Regents of the Unversity of California, et al.	
CASE MANAGEMENT STATEMENT         (Check one):       Image: Colspan="2">Management Statement         UNLIMITED CASE       LIMITED CASE         (Amount demanded       (Amount demanded is \$25,000)	CASE NUMBER: RG18902751
exceeds \$25,000) or less)	
A CASE MANAGEMENT CONFERENCE is scheduled as follows:	al.
Date: November 30, 2018 Time: 9:00a Dept.: 24 I	Div.: Room: O
Address of court (if different from the address above):	d
Address of court (if different from the address above).	f≯
Notice of Intent to Appear by Telephone, by (name): Timothy D. Cremin	0
INSTRUCTIONS: All applicable boxes must be checked, and the specified	Div.: Room: d information must be provided. The Regents of the University of California; and Carol T. Christ, in her ts only)
<ol> <li>Party or parties (answer one):</li> <li>a.  This statement is submitted by party (name): Defendants/Respondents 1</li> </ol>	The Regents of the University of
a. A This statement is submitted by party (name): Defendants/Respondents California; Janet Napolitano, in her capacity as President of the University of	California: and Carol T. Christ, in her
capacity as Chancellor of the University of California	iist
b. This statement is submitted <b>jointly</b> by parties (names):	D
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainan	ts only) ts
a. The complaint was filed on (date):	
b. The cross-complaint, if any, was filed on <i>(date):</i>	CA
3. Service (to be answered by plaintiffs and cross-complainants only)	
a. All parties named in the complaint and cross-complaint have been served, h	nave appeared, or have been dismissed.
<ul> <li>b. The following parties named in the complaint or cross-complaint</li> </ul>	
(1) have not been served (specify names and explain why not):	٩_ 
	eq
(2) have been served but have not appeared and have not been dis	smissed (specify names):
(3) have had a default entered against them (specify names):	t re
c. The following additional parties may be added (specify names, nature of inv they may be served):	smissed (specify names): volvement in case, and date by which
4 Description of each	ŏ
<ul> <li>4. Description of case         <ul> <li>a. Type of case in ⊠ complaint</li> <li>cross-complaint</li> <li>(Describe, ii)</li> </ul> </li> </ul>	ncluding causes of action):
This is a Petition for Writ of Mandate and Complaint for Declaratory Relie	
Environmental Quality Act ("CEQA").	
	Page 1 of 5

Cal. Rules of Court, rules 3.720–3.730 www.courts.ca.gov



CM-110

	PLAINTIF	F/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: RG18902751
D	EFENDANT/	RESPONDENT: The Regents of the University of California, et al.	
4.	damage earning Plaintifi the Uni analyze a writ c	a brief statement of the case, including any damages. ( <i>If personal injury dam</i> as claimed, including medical expenses to date [indicate source and amount], s to date, and estimated future lost earnings. If equitable relief is sought, desc f and Petitioner Save Berkeley's Neighborhoods alleges that Defenda versity of California, et al. violated CEQA due to alleged increases in ed in the UC Berkeley 2020 Long Range Development Plan Environm of mandate and declaratory relief. No damages are sought.	estimated future medical expenses, lost cribe the nature of the relief.) ants and Respondents The Regents of student enrollment beyond that nental Impact Report. Petitioner seeks
	<u> </u>	re space is needed, check this box and attach a page designated as Attachm	ent 4b.)
5.	Jury or nor		the second s
	The party o requesting a		one party, provide the name of each party
6.	Trial date		
	а. 🗌 Т	he trial has been set for (date):	
		o trial date has been set. This case will be ready for trial within 12 months of ot, explain):	
		on which parties or attorneys will not be available for trial <i>(specify dates and e</i> nber 19, 2018 - January 8, 2019 (vacation)	xplain reasons for unavailability):
7.		length of trial	AI
	The party o	r parties estimate that the trial will take (check one):	Ţ
		ays (specify number):	0
	b. 🛛 h	ours (short causes) <i>(specify):</i> 3	LI I
8.	The party o a. Attorne b. Firm: c. Addres	s:	t Distr
		one number: f. Fax numb	er: S
		address: g. Party repr	resented:
	Addi	tional representation is described in Attachment 8.	C
9.	Preference	case is entitled to preference (specify code section): Public Resources Co	de section 21167.1
10.	Alternative	dispute resolution (ADR)	A C
	the AD	<b>dispute resolution (ADR)</b> <b>iformation package.</b> Please note that different ADR processes are available R information package provided by the court under rule 3.221 for information nd community programs in this case.	about the processes available through the
	(1) For p in rule	arties represented by counsel: Counsel 🔀 has 🔲 has not provide 3.221 to the client and reviewed ADR options with the client.	ded the ADR information package identified
	(2) For s	elf-represented parties: Party 🔲 has 🔲 has not reviewed the ADR info	prmation package identified in rule 3.221
	(1)	al to judicial arbitration or civil action mediation (if available). This matter is subject to mandatory judicial arbitration under Code of Civil Pro mediation under Code of Civil Procedure section 1775.3 because the amoun	ocedure section 1141.11 or to civil action
		statutory limit.	č
		Plaintiff elects to refer this case to judicial arbitration and agrees to limit recov Civil Procedure section 1141.11.	very to the amount specified in Code of
	(3)	This case is exempt from judicial arbitration under rule 3.811 of the California mediation under Code of Civil Procedure section 1775 et seq. (specify exem	Rules of Court or from civil action <i>ption):</i>



**C** 

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PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: RG18902751
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

	The party or parties completing this form <b>are willing</b> to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case <b>have agreed</b> to participate in or have already completed an ADR process or processes indicate the status of the processes (attach a copy of the parties' ADR stipulation):	s,
(1) Mediation		<ul> <li>Mediation session not yet scheduled</li> <li>Mediation session scheduled for (<i>date</i>):</li> <li>Agreed to complete mediation by (<i>date</i>):</li> <li>Mediation completed on (<i>date</i>):</li> </ul>	
(2) Settlement conference		<ul> <li>Settlement conference not yet scheduled</li> <li>Settlement conference scheduled for (<i>date</i>):</li> <li>Agreed to complete settlement conference by (<i>date</i>) :</li> <li>Settlement conference completed on (<i>date</i>): June 12, 2018</li> </ul>	of Appeal.
(3) Neutral evaluation		<ul> <li>Neutral evaluation not yet scheduled</li> <li>Neutral evaluation scheduled for (<i>date</i>):</li> <li>Agreed to complete neutral evaluation by (<i>date</i>):</li> <li>Neutral evaluation completed on (<i>date</i>):</li> </ul>	District Court of Appea
(4) Nonbinding judicial arbitration		<ul> <li>Judicial arbitration not yet scheduled</li> <li>Judicial arbitration scheduled for (<i>date</i>):</li> <li>Agreed to complete judicial arbitration by (<i>date</i>):</li> <li>Judicial arbitration completed on (<i>date</i>):</li> </ul>	by the CA 1st
(5) Binding private arbitration		<ul> <li>Private arbitration not yet scheduled</li> <li>Private arbitration scheduled for (<i>date</i>):</li> <li>Agreed to complete private arbitration by (<i>date</i>):</li> <li>Private arbitration completed on (<i>date</i>):</li> </ul>	Document received
(6) Other ( <i>specify</i> ):		<ul> <li>ADR session not yet scheduled</li> <li>ADR session scheduled for (<i>date</i>):</li> <li>Agreed to complete ADR session by (<i>date</i>):</li> <li>ADR completed on (<i>date</i>):</li> </ul>	Docui





	CM-110
PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER:
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	RG18902751
<ul> <li>11. Insurance</li> <li>a. Insurance carrier, if any, for party filing this statement (name):</li> <li>b. Reservation of rights: Yes No</li> <li>c. Coverage issues will significantly affect resolution of this case (explain):</li> </ul>	
<ul> <li>12. Jurisdiction</li> <li>Indicate any matters that may affect the court's jurisdiction or processing of this case and</li> <li>Bankruptcy Other (specify):</li> <li>Status:</li> </ul>	d describe the status.
<ul> <li>13. Related cases, consolidation, and coordination <ul> <li>a.</li> <li>There are companion, underlying, or related cases.</li> <li>(1) Name of case:</li> <li>(2) Name of court:</li> <li>(3) Case number:</li> <li>(4) Status:</li> <li>Additional cases are described in Attachment 13a.</li> <li>b.</li> <li>A motion to</li> <li>Consolidate</li> <li>Coordinate</li> <li>will be filed by (r</li> </ul></li></ul>	name party):
<ul> <li>(4) Status: <ul> <li>Additional cases are described in Attachment 13a.</li> </ul> </li> <li>b. A motion to Consolidate Coordinate will be filed by (<i>r</i>)</li> </ul> <li>14. Bifurcation <ul> <li>The party or parties intend to file a motion for an order bifurcating, severing, or coordinate (<i>specify moving party, type of motion, and reasons</i>):</li> </ul> </li> <li>15. Other motions <ul> <li>The party or parties expect to file the following motions before trial (<i>specify moving neurophy moving neurophy for Demurrer scheduled for hearing on N Petitioner's Notice and Motion to Compel Discovery scheduled for Decem</i></li> </ul> </li> <li>16. Discovery <ul> <li>The party or parties have completed all discovery</li> </ul></li>	ordinating the following issues or causes of ${\rm Oord}_{{\rm Oot}}$
15. Other motions	ict
The party or parties expect to file the following motions before trial <i>(specify moving Respondents' Notice and Motion for Demurrer scheduled for hearing on N Petitioner's Notice and Motion to Compel Discovery scheduled for Decem</i>	g party, type of motion, and issues): November 15, 2018 Iber 6, 2018
<ul> <li>16. Discovery <ul> <li>a. The party or parties have completed all discovery.</li> <li>b. The following discovery will be completed by the date specified (describe all ar Party</li> </ul> </li> </ul>	nticipated discovery):
<ul> <li>c. X The following discovery issues, including issues regarding the discovery of ele anticipated (specify):</li> <li>Petitioner's discovery requests are not permitted without prior leave of under CEQA.</li> <li>Any Discovery motions are premature until the Court rules on pleading</li> </ul>	f Court in a writ of mandate action

Any disputes over the Administrative Record should be brought by noticed motion and addressed after the Court rules on demurrer. Petitioner has elected to prepare the Administrative Record.





DI AINTIEE/DETITIONED: SAVE BERKEIEV/S NEIGHDORDOODS	CASE NUMBER: 18902751
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	

#### 17. Economic litigation

- This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code a. of Civil Procedure sections 90-98 will apply to this case.
- This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional b. discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

#### 18. Other issues

The party or parties request that the following additional matters be considered or determined at the case management conference (specify):





Attachment re Additional Counsel:

Charles F. Robinson (SBN 113197) Alison Krumbein (SBN 229728) alison.krumbein@ucop.edu The University of California, Office of General Counsel 1111 Franklin Street, 8<sup>th</sup> Floor Oakland, California 94607 Telephone: (510) 987-0851 Facsimile: (510) 987-9757 3078997.1

1	PROOF OF SERVICE				
2	STATE OF CALIFORNIA, COUNTY OF ALAMEDA				
3 4	At the time of service, I was over 18 years of age and <b>not a party to this action</b> . I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.				
5	On November 15, 2018, I served true copies of the following document(s) described as <b>CASE MANAGEMENT CONFERENCE STATEMENT</b> on the interested parties in this action as follows:				
7 8 9	Thomas N. Lippe, Esq.Attorneys for Plaintiff SAVEKelly Marie Perry, Esq.BERKELEY'S NEIGHBORHOODSLaw Offices of Thomas N. Lippe, APCTel: (415) 777-5604201 Mission Street, 12th Fl.Fax: (415) 777-5606				
10	kmhperry@sonic.net				
11 12	<b>BY MAIL:</b> I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and				
13	<ul> <li>mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,</li> <li>Riback, Silver &amp; Wilson's practice for collecting and processing correspondence for mailing. On</li> <li>the same day that the correspondence is placed for collection and mailing, it is deposited in the</li> <li>ordinary course of business with the United States Postal Service, in a sealed envelope with</li> </ul>				
14					
15					
16 17	<b>BY E-MAIL OR ELECTRONIC TRANSMISSION:</b> At <u>11.68</u> pm., I caused a copy of the document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.				
18	I declare under penalty of perjury under the laws of the State of California that the $\checkmark$				
19	foregoing is true and correct.				
20	Executed on November 15, 2018, at Oakland, California.				
21	UBLICIA PA				
22	Melissa Bender				
23	sht r				
24	nme				
25	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 15, 2018, at Oakland, California.				
26					
27					
28					
	AA00311				

## Tab 026

	CM-11
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Thomas N. Lippe, SBN 104640	
Law Offices of Thomas N. Lippe, APC	
201 Mission Street, 12th Floor, San Francisco, CA 94105	
TELEPHONE NO.: 415-777-5604 FAX NO. (Optional): 415-777-5606	
E-MAIL ADDRESS (Optional): Lippelaw@sonic.net	
ATTORNEY FOR (Name): Plaintiffs; Berkeley Hills Watershed Coalition, et al	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda	-
STREET ADDRESS: 1225 Fallon Street	
MAILING ADDRESS: 1225 Fallon Street	
CITY AND ZIP CODE: Oakland, CA 94612	
BRANCH NAME: René C. Davidson Courthouse	
PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	-
DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	
CASE MANAGEMENT STATEMENT	CASE NUMBER:
(Check one): UNLIMITED CASE (Amount demanded exceeds \$25,000) UNLIMITED CASE (Amount demanded is \$25,000) or less)	RG18902751
A CASE MANAGEMENT CONFERENCE is scheduled as follows:	
	Div.: Room:
Address of court (if different from the address above):	
Administration Building, 1221 Oak Street, 3rd Floor, Oakland, CA 94612	
✓ Notice of Intent to Appear by Telephone, by (name): Thomas N. Lippe	<u></u>
INSTRUCTIONS: All applicable boxes must be checked, and the specifie	Div.: Room: Got To
1. Party or parties (answer one):	
	Naiabhada
<ul> <li>a. L✓ This statement is submitted by party (name): Plaintiff; Save Berkeley's</li> <li>b. This statement is submitted jointly by parties (names):</li> </ul>	
b This statement is submitted jointly by parties (names).	
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainan	ts only)
a. The complaint was filed on <i>(date):</i> April 27, 2018	
b. The cross-complaint, if any, was filed on (date):	
3. Service (to be answered by plaintiffs and cross-complainants only)	
a. All parties named in the complaint and cross-complaint have been served	have appeared, or have been dismissed.
b The following parties named in the complaint or cross-complaint	<u>,</u>
(1) have not been served (specify names and explain why not):	- Personal
(2) have been served but have not appeared and have not been	dismissed (specify names):
(3) have had a default entered against them (specify names):	1 14
c. The following additional parties may be added (specify names, nature of in they may be served):	have appeared, or have been dismissed. dismissed (specify names):
4. Description of case	
5 D	ncluding causes of action):
This action seeks a writ of mandate and declaratory relief ordering the F analyzing the environmental effects of increasing enrollment at UC Berk	Respondents to comply with CEQA by reley. See Attachment 4b.

Page 1 of D Cal. Rules of Court, rules 3.720–3.730 www.courts.ca.gov

	)	CM-110
	PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER:
DE	EFENDANT/RESPONDENT: The Regents of the University of CA, et al.	RG18902751
4.	b. Provide a brief statement of the case, including any damages. (If personal injury da damages claimed, including medical expenses to date [indicate source and amount earnings to date, and estimated future lost earnings. If equitable relief is sought, des See Attachment 4b.	], estimated future medical expenses, lost
	(If more space is needed, check this box and attach a page designated as Attack	hment 4b.)
	Jury or nonjury trial The party or parties request a jury trial $\checkmark$ a nonjury trial. (If more than requesting a jury trial):	n one party, provide the name of each party
	<ul> <li>Trial date</li> <li>a The trial has been set for (<i>date</i>):</li> <li>b. I No trial date has been set. This case will be ready for trial within 12 months on <i>not</i>, <i>explain</i>):</li> </ul>	f the date of the filing of the complaint <i>(if</i>
7.	<ul> <li>c. Dates on which parties or attorneys will not be available for trial (specify dates and December 24, 2018, to January 4, 2019 (vacation); March 14, 2019 (trial in 2019 (vacation); June 14 to June 18, 2019 (vacation).</li> <li>Estimated length of trial</li> <li>The party or parties estimate that the trial will take (check one):</li> <li>a.  days (specify number): 1</li> <li>b.  hours (short causes) (specify):</li> </ul>	
	Trial representation (to be answered for each party)         The party or parties will be represented at trial         a. Attorney:         b. Firm:         c. Address:         d. Telephone number:       f. Fax number:         e. E-mail address:       g. Party represented	the caption by the following: USU TO Der:
	Additional representation is described in Attachment 8.	CP
9. <b> </b>	Preference ↓ This case is entitled to preference (specify code section): Public Resources C	11
10.	Alternative dispute resolution (ADR)	by
	<ul> <li>a. ADR information package. Please note that different ADR processes are available the ADR information package provided by the court under rule 3.221 for information court and community programs in this case.</li> <li>(1) For parties represented by counsel: Counsel  has  has not provide in rule 3.221 to the client and reviewed ADR options with the client.</li> </ul>	le in different courts and communities; read
	(2) For self-represented parties: Party has has has not reviewed the ADR	information package identified in rule 3.22
	<ul> <li>b. Referral to judicial arbitration or civil action mediation (if available).</li> <li>(1) This matter is subject to mandatory judicial arbitration under Code of Civil mediation under Code of Civil Procedure section 1775.3 because the amostatutory limit.</li> </ul>	Procedure section 1141.11 or to civil action
	(2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit re Civil Procedure section 1141.11.	ecovery to the amount specified in Code of
	(3)  ✓ This case is exempt from judicial arbitration under rule 3.811 of the Califo mediation under Code of Civil Procedure section 1775 et seq. (specify ex Rule 3.811(b)(1)	rnia Rules of Court or from civil action (comption):

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PLAINTIFF/PETITIONER:	Save Berkeley's Neighborhoods	CASE NUMBER:
		RG18902751

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

	The party or parties completing this form <b>are willing</b> to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case <b>have agreed</b> to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation		<ul> <li>Mediation session not yet scheduled</li> <li>Mediation session scheduled for (<i>date</i>):</li> <li>Agreed to complete mediation by (<i>date</i>):</li> <li>Mediation completed on (<i>date</i>):</li> </ul>
(2) Settlement conference		<ul> <li>Settlement conference not yet scheduled</li> <li>Settlement conference scheduled for (<i>date</i>):</li> <li>Agreed to complete settlement conference by (<i>date</i>):</li> <li>Settlement conference completed on (<i>date</i>): June 12, 2018</li> </ul>
(3) Neutral evaluation		Neutral evaluation not yet scheduled         Neutral evaluation scheduled for (date):         Agreed to complete neutral evaluation by (date):         Neutral evaluation completed on (date):         Judicial arbitration not yet scheduled
(4) Nonbinding judicial arbitration		Agreed to complete judicial arbitration by (date):
(5) Binding private arbitration		Judicial arbitration completed on (date):       Judicial arbitration completed on (date):         Private arbitration not yet scheduled       Private arbitration scheduled for (date):         Agreed to complete private arbitration by (date):       Private arbitration completed on (date):         Private arbitration completed on (date):       Private arbitration completed on (date):         ADR session not yet scheduled       ADR session scheduled for (date):
(6) Other ( <i>specify</i> ):		<ul> <li>ADR session not yet scheduled</li> <li>ADR session scheduled for (<i>date</i>):</li> <li>Agreed to complete ADR session by (<i>date</i>):</li> <li>ADR completed on (<i>date</i>):</li> </ul>

.

	CM-110
PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER:
DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	RG18902751
<ul> <li>11. Insurance</li> <li>a. Insurance carrier, if any, for party filing this statement (name):</li> <li>b. Reservation of rights: Yes No</li> <li>c. Coverage issues will significantly affect resolution of this case (explain):</li> </ul>	
<ul> <li>12. Jurisdiction</li> <li>Indicate any matters that may affect the court's jurisdiction or processing of this case ar</li> <li>Bankruptcy Other (specify):</li> <li>Status:</li> </ul>	nd describe the status.
<ul> <li>13. Related cases, consolidation, and coordination <ul> <li>a. There are companion, underlying, or related cases.</li> <li>(1) Name of case:</li> <li>(2) Name of court:</li> <li>(3) Case number:</li> </ul> </li> </ul>	
<ul> <li>(4) Status:</li> <li>Additional cases are described in Attachment 13a.</li> <li>A motion to consolidate coordinate will be filed by (</li> </ul>	(name party):
<ul> <li>14. Bifurcation</li> <li>The party or parties intend to file a motion for an order bifurcating, severing, or co action (specify moving party, type of motion, and reasons):</li> </ul>	(name party): bordinating the following issues or causes of port of District Control of Vbbeal ag party, type of motion, and issues):
15. Other motions	ct (
The party or parties expect to file the following motions before trial ( <i>specify movin</i> See Attachmnt 15.	ng party, type of motion, and issues):
<ul> <li>16. Discovery <ul> <li>a. ☐ The party or parties have completed all discovery.</li> <li>b. ✓ The following discovery will be completed by the date specified (describe all a Party Description</li> </ul> </li> </ul>	anticipated discovery):
See Attachment 16.	y tl
	l b.
	Vec
<ul> <li>c.  The following discovery issues, including issues regarding the discovery of el anticipated (specify):</li> </ul>	Date ectronically stored information, are

Document

See Attachment 16.

		CM-110
PLAINTIFF/PETITIONER:	Save Berkeley's Neighborhoods	CASE NUMBER:
DEFENDANT/RESPONDENT:	The Regents of the University of CA, et al.	RG18902751

#### 17. Economic litigation

- This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code a. of Civil Procedure sections 90-98 will apply to this case.
- This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional b. discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

#### 18. Other issues

19. Meet and confer
a. 
The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):
It is too early to set a hearing or merits briefing schedule.
20. Total number of pages attached (*if any*): \_\_\_\_\_\_5
I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.
Date: November 16, 2018
<u>Thomas N. Lippe</u>
(IMPEOR PRINT NAME)
<

<sup>]</sup> The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

#### Attachment 4b: Nature of Case.

This action seeks a writ of mandate and declaratory relief ordering the Respondents to comply with CEQA by analyzing the environmental effects of increasing enrollment at UC Berkeley since 2005 and into the future.

In 2005, Respondents adopted a Long Range Development Plan (2020 LRDP) for UC Berkeley to achieve a number of objectives through the year 2020, including stabilizing enrollment. In or about 2005, UCB certified a Final Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The 2020 LRDP and 2005 EIR projected that by 2020 student enrollment at UCB would increase by 1,650 students above the 2001-02 two-semester average. The 2020 LRDP and 2005 EIR also projected that by 2020 UCB would add 2,500 beds for students.

The actual increase in student enrollment above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017) is 8,302 students. This increase represents a five-fold increase compared to the 1,650 enrollment increase projected in the 2020 LRDP and 2005 EIR. The response also shows UCB has built fewer than 1,000 beds.

The increase in student enrollment over and above the 1,650 additional students projected by the 2020 LRDP and included in the 2005 EIR's environmental impact analysis (hereinafter the "excess increase in student enrollment") has caused and continues to cause significant adverse environmental impacts that were not analyzed in the 2005 EIR.

Respondents have had and continue to have a legal obligation to analyze the environmental effects of the excess increase in student enrollment pursuant to CEQA.

Page 6 of 10

#### Attachment 15: Motions.

Plaintiff filed a motion to compel further responses and production of documents responsive to its first set of requests, which is set for hearing on December 6, 2018.

Plaintiff intends to file a motion to compel further responses and production of documents responsive to its second set of requests.

Plaintiff intends to file a motion to compel further responses to its first set of requests for admissions.

Plaintiff intends to file a motion for summary adjudication of issues or summary judgment.

Page 7 of 10

#### Attachment 16: Discovery and Preparation of the Record of Proceedings.

When Plaintiff filed this action on April 27, 2018, Plaintiff filed its election to prepare the record of proceedings. Since that time, Respondents have engaged in a pattern of obstructive conduct that has made it impossible for Plaintiff to complete preparation of the record of proceedings. A brief history of Respondents' conduct follows.

# Respondents violate then-applicable Local Rules of Court governing preparation of the record.

When this case was filed, Local Rules 3.320(a) and (d)(1) (since repealed as of August 1, 2018) required that Respondents provide Plaintiff with costs estimates for preparing the record and the location and custodian of all documents to be included in the record. On May 24, 2018, counsel for Respondents responded to these rules by sending a letter to counsel for Plaintiff declining to provide this information on the ground that "Based on the allegations in the Petition for Writ of Mandate, Respondents cannot identify the documents anticipated to be incorporated into the administrative record. Petitioner has not challenged any Project or any action subject to CEQA or any Project approval by Respondents in the Petition."

On June 4, 2018, Plaintiff's counsel responded that: "CEQA defines the term 'Project' to mean 'an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency." (PRC § 21065.) The petition identifies such an 'activity:' namely, increasing the number of students enrolled at UC Berkeley" and requested the Respondents immediately comply with the local rule of court.

On June 13, 2018, pursuant to Local Rule 3.320(d)(2) (since repealed as of August 1, 2018), Plaintiff sent to Respondents a provisional proposed index of the record of proceedings in this matter. The proposed index was "provisional" because Respondents had not complied with the local rules requiring disclosure documents to be included in the record of proceedings. The provisional proposed index listed documents that Plaintiff was able to find on and download from UC Berkeley's "Capital Strategies" website. In this letter, Counsel again asked Respondents to comply with Local Rule 3.320(d)(1).

On June 20, 2018, pursuant to Local Rule 3.320(d)(2) (since repealed as of August 1, 2018), Respondents responded to Plaintiff's provisional proposed index of the record of Page 8 of 10

proceedings by reiterating its position that it cannot comply with this rule because the Petition and Complaint do not challenge a CEQA project.

# Respondents refuse to comply with Plaintiff's first Request for Production of Documents for documents to included in the record.

On May 18, 2018, Plaintiff served on Respondents a Request for Production of Documents asking for the production of documents that may need to be included in the record of proceedings. For example, Request No. 1 seeks: "All writings, including internal staff memoranda and emails, that refer or relate to increases in student enrollment at UC Berkeley that were prepared in connection with the preparation of UC Berkeley's 2020 Long Range Development Plan."

The parties stipulated to extend the deadline for the Regents to respond to Plaintiff's first Request for Production of Documents while the parties discussed settlement of the case. As a result, the Regents' response was finally due on September 7, 2018.

On September 7, 2018, after settlement discussion concluded (without success), Respondents served on Plaintiff their Objections to Petitioners' Request for Production of Documents, in which Respondents refused to produce any documents.

On September 19, 2018, Plaintiff sent a "meet and confer" letter responding to Respondents' Objections to Petitioners' Request for Production of Documents, and setting a deadline of October 5, 2018, for Respondents to provide the requested documents, after which Plaintiff will file a motion to compel production of documents.

### The Regents ignore Plaintiff's Public Records Act Request.

On July 24, 2018, Plaintiff submitted a written request to the Regents pursuant to the California Public Records Act requesting all records showing actual and projected Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.

The Regents ignored this request.

On August 15, 2018, the Regents issued a Notice of Preparation of a Draft Supplemental Environmental Impact Report for the "Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan." (Upper Hearst NOP.) The NOP states that: " At this time, UC Berkeley estimates an overall campus Page 9 of 10

Case Management Statement; Case No. RG18902751



On September 26, 2018, Plaintiff submitted written notification to the Regents that their failure to respond to Plaintiff's July 24, 2018, Public Records Act request, within 10 days of the request or to give notice of an extension of this deadline for up to 14 days, violates the Public Records Act. (See Gov. Code§ 6253(c).) This notice again requested the same records (i.e., records showing actual and projected Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.)

### Plaintiffs serve a Second Request for Production of Documents.

On September 26, 2018, Plaintiff served a second Request for Production of Documents on the Regents asking for the same records (i.e., records showing actual and projected Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.)

The Regents objected to these requests and produced no documents.

### Additional Discovery.

On September 26, 2018, Plaintiff served on Respondents a set of requests for admissions. The Regents objected to these requests and admitted nothing.

T:\TL\UC Enroll\Trial\CMC\CMC006 Attachments.wpd

Page 10 of 10

1 2 3	My business address is 201 Mis	<b>PROOF OF SERVICE</b> ited States, employed in the City and County of San Francisco, California. ssion Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18 re entitled action. On November 16, 2018, I served the following document:
4		Case Management Statement
5 6 7	on the parties designated on the	e attached service list; and MANNER OF SERVICE (check all that apply)
7 8 9	[ ] By First Class Mail	In the ordinary course of business, I caused each such envelope to be placed in the custody of the United States Postal Service, with first-class postage thereon fully prepaid in a sealed envelope.
10	[ ] By Personal Service	I personally delivered each such envelope to the office of each such addressee on the date written below.
11 12 13 14 15	[ ] By Overnight FedEx	I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
13 16 17 18 19	<b>[X]</b> By E-mail	I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for. I caused such document to be served via electronic mail equipment transmission (E-mail) on the parties as designated on the attached service list by transmitting a true copy to the following E-mail addresses listed under each addressee below. I did not receive, within a reasonable time after the transmission was unsuccessful.
20 21 22	[ ] By Facsimile	
22 23 24	[ ] By Personal Delivery by Courier	I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below.
25 26 27	I declare under penalty and correct. Executed on Nove	I caused such document to be served via facsimile electronic equipment transmission (fax) on the parties in this action by transmitting a true copy to the following fax numbers listed under each addressee below. I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below. of perjury under the laws of the State of California that the foregoing is true ember 16, 2018, in the City and County of San Francisco, California.
28 Law Offices of Thomas N. Lippe 201 Mission S.1. 12 <sup>th</sup> Floor San Francisco, CA 94105		KellyMarie KellyMarie Perry
Tel: 415-777-5604 Fax: 415-7775606		- i -

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Proof of Service, CMS (CEQA); RG18902751

1	SERVICE LIST
2	
3	Office of General Counsel Anagha Dandekar Clifford, Senior Counsel
4	1111 Franklin Street, 8th Floor
5	Oakland, CA 94607 Email: Anagha Clifford ( <u>Anagha.Clifford@ucop.edu</u> )
6	Meyers Nave
7	555 12th Street, Suite 1500
8	Oakland, California 94607 Email: Tim Cremin (tcremin@meyersnave.com)
9	Email: Melissa Bender (mbender@meyersnave.com)
10	Meyers Nave
11	707 Wilshire Boulevard, 24th Floor Los Angeles, California 90017
12	Email: Amrit Kulkarni (amrit@meyersnave.com)
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Law Offices of Thomas N. Lippe 201 Mission St. 12 <sup>th</sup> Floor	
San Francisco, CA 94105 Tel: 415-777-5604 Fax: 415-7775606	И
	- ii - Proof of Service, CMS (CEQA); RG18902751

# Tab 027

19	corporation, Petitioner and Plaintiff,	ASSIGNED FOR ALL PRE-TRIAL PURPOSES TO HON. FRANK ROESCH DEPARTMENT 24	Document received by the C
	corporation,		$\mathbf{C}$
18	SAVE BERKELEY'S NEIGHBORHOODS, a California nonprofit public benefit	Case No. RG18902751	A 1st
16 17	COUNTY O	F ALAMEDA	t Dis
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13 14	California; Janet Napolitano, in her capacity as President of the University of California; Carol 7 Christ, in her capacity as Chancellor of the University of California, Berkeley	Γ.	CA 1st District Court of Appea
12	Attorneys for The Regents of the University of		Anr
9 10 11	MEYERS, NAVE, RIBACK, SILVER & WILS 555 12 <sup>th</sup> Street, Suite 1500 Oakland, California 94607 Telephone: (510) 808-2000 Facsimile: (510) 444-1108	ON	neal.
6 7 8	Amrit S. Kulkarni (SBN 202786) akulkarni@meyersnave.com Timothy D. Cremin (SBN 156725) tcremin@meyersnave.com Edward Grutzmacher (SBN 228649) egrutzmacher@meyersnave.com	EXEMPT FROM FILING FEES GOV'T CODE § 6103	
2 3 4 5	Alison Krumbein (SBN 229728) alison.krumbein@ucop.edu THE UNIVERSITY OF CALIFORNIA Office of General Counsel 1111 Franklin St., 8th Floor Oakland, California 94607 Telephone: (510) 987-0851 Facsimile: (510) 987-9757		
	Charles F. Robinson (SBN 113197)		

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#### I. INTRODUCTION

1

In its action, Petitioner Save Berkeley's Neighborhoods ("Petitioner") fails to challenge 2 any distinct "project" under the California Environmental Quality Act ("CEQA"). Despite this 3 fact, Petitioner is now attempting to compel discovery on the grounds that it may be unable to 4 compile the administrative record for this undefined project without the responsive documents. 5 Petitioner's Motion to Compel Further Responses to Plaintiff's Requests for Production of 6 Documents, Set One ("Motion") and Requests for Production of Documents, Set One ("Discovery 7 Requests"), however, are nothing more than a fishing expedition. Despite three opportunities to 8 establish what project it seeks to challenge, Petitioner has been unable to do so and has 9 propounded discovery-under the guise that it "may" need to include certain documents in the 10 record—in order to find some grounds for its baseless position. add 11

In addition to the practical difficulties of compelling Respondents and Defendants 12 Regents of the University of California, Janet Napolitano, in her capacity as President of the 13 University of California, and Carol T. Christ, in her capacity as Chancellor of the University, of 14 California, Berkeley's (collectively, "UC") to produce the documents constituting the 15 administrative record for some undefined project, Petitioner's Motion fails for two reasons. Fire, 16 Petitioner failed to seek leave of court prior to propounding the Discovery Requests, and 17 Petitioner's Motion fails to establish that leave of court is not required prior to conducting 18 discovery in a CEQA mandamus action. Second, Petitioner fails to establish good cause why the 19 Motion should be granted because it failed to put forth the disputed facts and to explain why the 20discovery sought will tend to prove the unspecified disputed facts or lead to other evidence that 21 ecelv 22 will tend to prove the same.

Petitioner's Motion incorrectly characterizes UC's objections to the Discovery Requests as opposing the use of the Civil Discovery Act to obtain documents that "may" need to be included in the administrative record. Instead, as discussed below, UC's objections stem from the unique requirement in these cases that leave of court must be obtained before any discovery is to be propounded. This is because mandamus suits are generally litigated on the basis of the administrative record that was before the public agency at the time of the agency's discretionary

action and decision on the project in consideration. Because this case does not challenge a project, 1 no administrative record under CEQA exists. Unlike general civil suits, discovery to unearth 2 support for speculative theories is not the purpose of the limited discovery permitted in mandamus 3 proceedings. 4

Moreover, for Petitioner's Motion to be granted, Petitioner bears the burden of establishing 5 two things: (1) that disputed facts exist; and (2) that Petitioner's propounded discovery would 6 lead to evidence proving those facts. Petitioner's Motion accomplishes neither. Petitioner does 7 not explain how "writings" pertaining to "the 2020 Long Range Development Plan," which was 8 adopted in 2005, would lead to evidence proving Petitioner's theory that student enrollment 9 numbers, standing alone and arising over a decade later, are a project being timely challenged 10 under CEQA. Without such a showing, Petitioner fails to carry its burden of demonstrating good 11 cause for the Court to order further responses to Petitioner's Discovery Requests. Accordingly, 12 Court of the Court should reject Petitioner's arguments and deny its Motion. 13

#### STATEMENT OF FACTS 14 II.

UCB adopted an LRDP in 2005 to guide campus development. (Second Amended Petition 15 ("Pet."), ¶ 3.) At the same time, UCB certified the LRDP EIR. (Ibid.) The environmental 16 impacts of the LRDP were analyzed in the 2005 LRDP EIR. (Ibid.) According to the allegations 17 in the Petition, the LRDP estimated that enrollment at UCB would increase by 1,650 students 18 the above the 2001-02 two-semester average. (*Ibid.*) 19

The Petition alleges that, based on the "two-semester average for the most recent two-20 semester period (i.e., Spring 2017 and Fall 2017)" ("2017 Enrollment Numbers"), there was a 21 greater increase in students "than the increase of 1,650 students projected in the 2020 LRDP and 22 2005 EIR." (Pet., ¶ 4.) This alleged increase in 2017 Enrollment Numbers, according to 23 Petitioner, is "a policy to increase student enrollment at UCB beyond the 1,650 additional stude is 24 projected by the 2020 LRDP" ("Enrollment Policy"). (Pet., ¶ 27.) This purported Enrollment 25 Policy has allegedly caused and continues to cause significant adverse environmental impacts that 26 were not analyzed in the 2005 EIR. (Pet., ¶ 5.) Thus, the Petition concludes, UC has a duty under 27 CEQA to conduct additional CEQA review to analyze the alleged impacts caused by this new 28

information regarding increases in student enrollment and to adopt appropriate mitigation 1 2 measures. (Pet., ¶¶ 6, 27.)

Notably, the Petition contains no allegations regarding any decision or action taken by UC 3 with respect to the alleged "excess increase in student enrollment." (Pet., ¶ 6.) Rather, the 4 Petition only points to an October 30, 2017 letter from UCB to the City of Berkeley, which 5 responded to an earlier Public Records Act request and which included a chart showing total 6 numbers of undergraduates, graduates, off-campus undergraduates, and off-campus graduate 7 program students from Fall 2005 to Fall 2017. (Pet., ¶ 4, Ex. 1.) 8

Petitioner filed this lawsuit on April 27, 2018. The First Amended Petition For Writ of 9 Mandate and Complaint for Declaratory Relief was filed on or about June 18, 2018. The Second 10 Amended Petition For Writ of Mandate and Complaint for Declaratory Relief was filed on or 11 about October 16, 2018. UC filed its Demurrer to the Second Amended Petition ("Demurrer") on 12 October 19, 2016. Petitioner opposed the Demurrer. In its Tentative Ruling sustaining the 13 Demurrer, which was adopted as the ruling of the Court following the November 15, 2098 14 hearing, the Court granted Petitioner 10 days leave to amend and ordered that the Third Amended 15 Petition "clearly identif[ies] the project that is being challenged in this action, as well as the date 16 the discretionary approval for that project was granted and when that project was commencet," 17 pursuant to the requirements of CEQA Guidelines § 17378 ("Demurrer Ruling"). Petitioneds 18 Third Amended Petition is due 10 days from service of the Notice of Entry of Order on Petitioner III. ARGUMENT A. Standard of Review Code of Civil Procedure section 2031.310(b)(1) requires specific facts showing good cauge 19

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22 justifying a motion to compel further responses to a demand for production of documents. To 23 establish "good cause," the burden is on the moving party to show both: (1) relevance to He 24 subject matter (e.g., how the information in the documents would tend to prove or disprove sofe 25 issue in the case); and (2) specific facts justifying discovery (e.g., why such information is 26 necessary for trial preparation or to prevent surprise at trial). (Weil & Brown, Cal. Practice Guide: 27 Civil Procedure Before Trial (The Rutter Group 1997) ¶ 8:1495.6; see also Associated Brewers 28

Dist. Co. v. Sup. Ct. (1967) 65 Cal.2d 583, 586-587.) Declarations used to show "good cause"
 must contain "specific facts" rather than mere conclusions. (*Calcor Space Facility, Inc. v.* Superior Court (1997) 53 Cal.App.4th 216, 223-224, as modified (Mar. 7, 1997) [hereinafter
 Calcor Space Facility].)

Moreover, a bare showing of "good cause" is insufficient to compel production of
materials constituting attorney-work product. Such material may be ordered disclosed only if the
party seeking discovery can demonstrate injustice or unfair prejudice, a much heavier burden.
(Code Civ. Proc. § 2018.030(b).)

When analyzing a motion to compel, the court may consider the relationship of the 9 information to the issues framed in the pleadings; the likelihood that disclosure will be of practical 10 benefit to the party seeking the discovery; and, the burden or expense likely to be encountered by 11 the responding party in furnishing the information sought. (Columbia Broadcasting System Inc) 12 Sup. Ct. (Rolfe) (1968) 263 Cal.App.2d 12, 19.) In other words, the court may properly weigh 13 whatever probative value the records are likely to have against the cost, time, expenses and 14 disruption of normal business likely to result from an order compelling production thereof. 15 (Volkswagen of America, Inc. v. Sup. Ct. (2006) 139 Cal.App.4th 1481, 1497; Calcor Space 16 st *Facility, supra,* 53 Cal.App.4th at 223.) 17

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# B. Discovery in CEQA Cases Requires Propounding Party to First Seek Leave Court

While "there is no express provision allowing discovery in an administrative mandames 20 proceeding, section 1094.5, subdivision (e) has been interpreted to allow limited post hearing 21 discovery provided the moving party shows that such discovery is reasonably calculated to lead to 22 evidence admissible under section 1094.5." (Pomona Valley Hospital Medical Center v. Superior 23 Court (1997) 55 Cal.App.4th 93, 102 [hereafter Pomona Valley] [citing Department of Headh 24 Services v. Superior Court (1980) 104 Cal.App.3d 80, 84] [emphasis in original]; see also City af 25 Fairfield v. Superior Court (1975) 14 Cal.3d 768, 774 ["in an action for administrative mandamus 26 an order compelling discovery must rest upon a showing that such discovery is reasonably 27 calculated to lead to evidence admissible under Code of Civil Procedure section 1094.5, 28

subdivision (d)."].) This is distinguishable from "an ordinary civil action," where the scope of
 discovery *de facto* "includes inquiries relevant to the subject matter of the action which may be
 helpful in preparation for trial." (*City of Fairfield, supra*, 14 Cal.3d at 774, fn. 6 [citing *Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 172-173].)

Thus, discovery in a CEQA suit, "unlike general civil discovery, cannot be used to go on a 5 fishing expedition looking for unknown facts to support speculative theories." (Pomona Valley, 6 supra, 55 Cal.App.4th at 102.) Instead, "[t]he stringent requirements" of section 1094.5, 7 subdivision (e) first require the propounding party "to identify what evidence is sought to be 8 discovered for purposes of adding it to the record; to establish the relevancy of the evidence; and 9 to show that either (a) any such relevant, additional evidence was improperly excluded at the 10 administrative hearing, or (b) it could not have been produced at the hearing with the exercise of 11 reasonable diligence." (Ibid.) If the propounding party fails to make such a showing, it is abuse 12 Б of the trial court's discretion to permit any proposed discovery. (Ibid.) 13

rial court's discretion to permit any proposed discovery. (*Ibid.*) The California Supreme Court has explained that "the only evidence that is relevant to the 14 question of whether there was substantial evidence to support a quasi-legislative administrative 15 decision under Public Resources Code section 21168.5 is that which was before the agency at de 16 time it made its decision." (Western States Petroleum Association v. Superior Court (1995);9 17 Cal.4th 559, 573, fn. 4 [hereafter Western States].) Documents and material that were not before 18 the agency would be "extra-record evidence" which is "generally not admissible in traditional 19 mandamus actions challenging quasi-legislative administrative decisions on the ground that the 20 agency 'has not proceeded in a manner required by law' within the meaning of Public Resources 21 ecelv Code section 21168.5." (*Id.* at 576.) 22

Foremost, Petitioner's Motion asserts that UC's "primary objection [to the propounded discovery] is that Plaintiff's [sic] cannot use the Civil Discovery Act to obtain documents that may need to be included in the administrative record." (Mot. at p. 1.) This is not true. As clearly evidenced by UC's Objections, UC asserted that "Petitioners have not made the required showing to conduct discovery in this writ proceeding." (Declaration of Thomas N. Lippe In Support of Motion to Compel Further Responses ("Lippe Decl."), Ex. 3 at p. 2.)

Petitioner's position on the merits is only that "mandamus cases and CEQA cases are no 1 different than other cases when it comes to the procedures by which the right to discovery is 2 exercised and enforced" and "Plaintiff's requests for documents are likely to lead to the discovery 3 of evidence that must be included in the record of proceedings." (Mot. at pp. 3, 6-7.) In support 4 of these conclusions, Petitioner attempts to distinguish Western States, Pomona Valley, and City of 5 Fairfield on the grounds that those cases dealt with efforts to introduce or discover extra-record 6 evidence. (Mot. at p. 4.) Instead, Petitioner urges this Court to rely on Citizens for Open 7 Government v. City of Lodi (2012) 205 Cal.App.4th 296, State of California v. Superior Court 8 (1974) 12 Cal.3d 237, Citizens for Ceres v. Superior Court (2013) 217 Cal.App.4th 889, and 9 Catalina Island Yacht Club v. Superior Court (2015) 242 Cal.App.4th 1116, for the position that 10 any discovery-without first seeking leave of court-is permitted without leave of court in a 11 CEQA action. (Mot. at p. 5.) Notably, Petitioner concedes that "[t]here are cases where a party 12 has elected to file a request for leave of court to propound discovery," but ultimately determines 13 such a "voluntary" step does not indicate that leave is required. (Mot. at p. 4.) Finally, Petitioner 14 concludes that even if leave of court was required for Petitioner to propound discovery as to the 15 CEQA claim, the same was not required for Petitioner's declaratory relief claim. (Mot. at p. 6.). 16 Petitioner's Motion ignores the fundamental flaw in this suit-the absence of any 17 discretionary action by UC constituting a project subject to a CEQA challenge as the Court 18 recognized in its Demurrer Ruling. This absence explains the predicament Petitioner complains 19 of-the lack of an administrative record and Petitioner's fishing expedition in order to attempt 20compile the same. The cases cited by Petitioner do not resolve this issue or provide any 21 meaningful direction to the Court as to how to adjudicate the unique circumstances of this case. In 22 each of the cases Petitioner cites-and distinctly unlike the case here-petitioners challenged 23 either the approval of an Environmental Impact Report ("EIR") related to a specific project 24 (Citizens for Open Government and Citizens for Ceres) or other overt discretionary action (State 2) 25 California) for which an administrative record existed. Catalina Island Yacht Club, 242 26 Cal.App.4th 1116, did not deal with a CEQA challenge at all-instead, the case was predicated on 27 a libel and slander action, with the Court of Appeal merely determining that where a privilege log 28 TO COMPEL FURTHER RESPONSES TO PETITIONER'S **OPPOSITION TO PETITI** 

was produced in response to discovery, but was inadequate for the trial court to determine whether
 the attorney-client or attorney-work privilege applied, the trial court could order a production of a
 more detailed privilege log but could not simply waive the privileges claimed.

Both Citizens for Open Government and Citizens for Ceres dealt with whether certain 4 privileged documents, which were excluded by respondents from the administrative records on the 5 bases of privilege, should have in fact been included. (Citizens for Open Government, supra, 205 6 Cal.App.4th at 304; Citizens for Ceres, supra, 217 Cal.App.4th at 900-901.) In both cases, 7 petitioners sought to supplement the existing administrative records via a motion to augment. 8 (Citizens for Open Government, supra, 205 Cal.App.4th at 304; Citizens for Ceres, supra, 217 9 Cal.App.4th at 900-901.) Neither, notably, dealt with the issue of discovery in CEQA actions. 10 11 (Ibid.) dd

In Citizens for Open Government, the Court of Appeal found that the respondent failed to 12 carry its burden of establishing why documents should have been excluded under the deliberative 13 process privilege, but ultimately held that "reversal is not required because [petitioner] has failed 14 to meet its burden to show prejudicial error in the trial court's exclusion of these [documente] 15 from the administrative record." (Id. at 308.) Citizens for Ceres, for its part, concluded that while 16 Public Resources Code section 21167.6 "does not abrogate the attorney-client privilege or the 17 attorney-work-product doctrine," privileged documents that were disclosed to the developer prior 18 to the approval of the project resulted in a waiver of the asserted privileges and should have been 19 included in the administrative record under section 21167.6, subdivision (e). (Citizens for Ceres, 20 lved 21 *supra*, 217 Cal.App.4th at 913, 922.)

As to *State of California*, the Supreme Court indeed directed the public agency to file answers to the interrogatories propounded, as cited by Petitioner, "to the extent that [propounding party] can justify the interrogatories under [section 1094.5]." (*State of California, supra*, Cal.3d at 257.) That justification must include a showing that propounding party "possesses evidence not presented to the [public agency] which it could not have produced in the exercise of reasonable diligence or unless relevant evidence was improperly excluded at the administrative hearing." (*Ibid.*) The Supreme Court rejected petitioner's position that its right to discovery was unlimited in light of "the nature of its attack on the [public agency's] decision," specifically,
 petitioner's attempt "to establish that the [public agency] denied it a fair hearing...." (*Ibid.*) In
 short, the Supreme Court required the very type of showing from propounding party as
 promulgated by the UC.

None of these cases involved a party's motion for leave to conduct discovery or discussed 5 whether leave for discovery was even required, particularly in the absence of a project. Petitioner 6 is unable to point to any case broadly permitting any type of discovery to be propounded at any 7 time for any purpose in any CEQA action. Nor could it. The rule established by section 1094.5 8 and the courts applying it is clear: a party wishing to propound discovery must first make the 9 necessary showing warranting leave of court to do so. Propounding party may not go on a 10 "fishing expedition looking for unknown facts to support speculative theories." (Pomona Valley 11 supra, 55 Cal.App.4th at 102.) That is exactly what Petitioner seeks to do here. Recognizing that 12 a challenge to the LRDP and its EIR is barred by the statute of limitations, Petitioner is attempting 13 to bring a CEQA suit based on the speculative theory that the Enrollment Numbers are a whorky 14 separate project independently subject to CEQA. But Petitioner lacks any facts in support of sight 15 a theory and is now seeking discovery to support that baseless claim. Petitioner's Motion is that 16 made in furtherance of an attempt to prepare the record, as Petitioner characterizes it. (Mot. atp. 17 1.) It is simply an attempt to find some ground for Petitioner's claim, despite the clear authority to 18 the contrary. The Court, in accord with its reasoning in the Demurer Ruling, should reject any 19 by such efforts. 20

To the extent Petitioner asserts it was entitled to propound discovery as to its cause of 21 action for declaratory relief, that claim is entirely predicated on and indivisible from the CEQA 22 claim. Petitioner's Discovery Requests do not differentiate between discovery sought in relation 23 to its CEQA cause of action and discovery sought in relation to its declaratory relief cause of 24 action. Petitioner's failure to clearly define a project, falling within the statute of limitations, 25 under CEQA condemns both claims. Accordingly, the Court should deny Petitioner's Motion, and 26 require that Petitioner seek leave of court, having made the required showing, should it wish to 27 propound further discovery after it has clearly defined what project it seeks to challenge pursuant 28

#### 1 to Court's Demurrer Ruling.

**C**.

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Petitioner Failed to Carry Its Burden as the Moving Party to Establish Good Cause to Compel Responses Because It Did Not Specify Any Disputed Facts or Explain How the Discovery Sought Will Lead to Evidence Proving the Same

A party seeking to compel discovery must "set forth specific facts showing good cause 4 justifying the discovery sought...." (Code Civ. Proc., § 2031.310, subd. (b)(1).) "To establish 5 good cause, a discovery proponent must identify a disputed fact that is of consequence in the 6 action and explain how the discovery sought will tend in reason to prove or disprove that fact or 7 lead to other evidence that will tend to prove or disprove the fact." (Digital Music News LLC v. 8 Superior Court (2014) 226 Cal.App.4th 216, 224, disapproved of on other grounds by Williams v. 9 Superior Court (2017) 3 Cal.5th 531.) This is particularly true in light of "[a] practice [that] has 10 arisen to use the procedures of sections 2020 and 2031 as devices to determine whether documents 11 exist." (Calcor Space Facility, supra, 53 Cal.App.4th at 222, as modified (Mar. 7, 1997).) This 12 places a great burden on the responding party, a burden which should generally be borne by Court 13 party seeking the discovery." (Ibid.) 14

Petitioner fails to establish good cause. Foremost, the Motion does not specify 15 disputed facts. Instead, Petitioner broadly states that its "mandamus action seeks to enforce 16 CEQA." (Mot. at p. 2.) Notwithstanding Petitioner's April 12, 2018 Notice of Intent to She 17 stating that Petitioner is seeking to challenge UC's "adoption of the 2020 LRDP on grounds the 18 adoption does not comply with CEQA," (Pet. Ex. 1, p. 2.), Petitioner has asserted in its Opposition 19 to UC's Demurrer that it "does not challenge the 2020 LRDP based on a challenge to the 2025 20 21 EIR" and instead purports to challenge UC's "decision to increase enrollment." (Opp. at pp. 5 10.) However, any projections of student enrollment are to be included and analyzed in the LROP 22 pursuant to Public Resources Code section 21080.09. Thus, any challenge to projected enrollment 23 numbers must be brought either as a timely challenge to the adoption and certification of  $\mathbf{H}$ e 24 LRDP and accompanying EIR, or, if supplemental review of the LRDP is required, in connection 25 with a project relying on the LRDP EIR. On its own, Petitioner's challenge to the Enrollment 26 Numbers only, as discussed above, fails to identify any project or discretionary action falling 27 within the purview of CEQA. Petitioner's Motion entirely fails to address this issue or specify any 28

other relevant and disputed facts. 1

Moreover, Petitioner does not explain how the discovery sought will prove or lead to other 2 evidence regarding the issues in this case. Petitioner generally and summarily states that the 3 Document Requests "clearly meet the standard for discovery because they are reasonably 4 calculated to lead to the discovery of relevant evidence, i.e., documents that may need to be 5 included in the administrative record."1 (Mot. at p. 1 [emphasis added].) However, all of 6 Petitioner's Discovery Requests pertain to "the 2020 Long Range Development Plan," which was 7 adopted in 2005 and for which an EIR was certified in 2005. (Pet., ¶ 3.) That any challenge based 8 on the adoption of the 2005 LRDP is time barred is undisputed. (Pub. Res. Code, §§ 21167, 9 subds. (a), (b); 21167.1.) Thus, any documents "prepared in connection with the preparation of," 10 "prepared in connection with preparing any environmental document for," "prepared in connection 11 with the adoption of," or "prepared after certification of" the LRDP and EIR in 2005 would Se 12 entirely irrelevant to any purported project or discretionary action occurring over a decade after 13 the adoption and certification of the LRDP and EIR. (Lippe Decl., Ex. 2.) Petitioner's sofe 14 purpose for propounding the Discovery Requests is that the resulting documents "may" need to be 15 included in the administrative record that Petitioner chose to prepare. This strategy results In 16 nothing more than a fishing expedition, "plac[ing] a great burden on the responding party"#0 17 potentially search for and produce more than 12 years of "writings" on an issue which cannot, and 18 is not, being challenged. (Calcor Space Facility, supra, 53 Cal.App.4th at 222.) Petitioner seeks 19 to do so without offering any plausible explanation of how discovery will actually lead to apy 20evidence that should be included in an administrative record, especially where Petitioner has the 21 even alleged what "project" is at issue. Petitioner thus fails to carry its burden of demonstrating good cause for the production of the requested documents and the Motion should be denied. 22 23

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25 record of proceedings no later than 60 days from the date of service of the petition and requestoo prepare the record. (Pub. Res. Code § 21167.6, subd. (b)(1).) The petitioner may, but is not 26 obligated, choose to prepare the record or the parties may agree to an alternative method of preparation. (Pub. Res. Code § 21167.6, subd. (b)(2).) Petitioner chose to prepare the record in 27 this instance. (Lippe Decl., Ex. 1.)

28

OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES TO PETITIONER'S REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE AA00337

1	IV. CONCLUSION		
2	For all of the above reasons, the Court should deny Petitioner's Motion to Compel Further		
3	Responses.		
4	DATED: November 20, 2018 MEYERS, NAVE, RIBACK, SILVER & WILSON		
5			
6	By: Times Ohen		
7	Timothy D. Cremin Attorneys for The Regents of the University of		
8	California; Janet Napolitano, in her capacity as President of the University of California; Carol T.		
9 10	Christ, in her capacity as Chancellor of the University of California, Berkeley		
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	OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES TO PETITIONER'S REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE		

1	PROOF OF SERVICE		
2	STATE OF CALIFORNIA, COUNTY OF ALAMEDA		
3	At the time of service, I was over 18 years of age and <b>not a party to this action</b> . I am		
4	employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.		
5 6	On November 2018, I served true copies of the following document(s) described as OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES TO PETITIONER'S REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE on the		
7	interested parties in this action as follows:		
8	Thomas N. Lippe, Esq.Attorneys for Plaintiff SAVEKelly Marie Perry, Esq.BERKELEY'S NEIGHBORHOODS		
9	Law Offices of Thomas N. Lippe, APC201 Mission Street, 12th Fl.San Francisco, CA 94105Tel: (415) 777-5604Fax: (415) 777-5606		
10	Email: linnalow@conic net		
11			
12	BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and		
13	mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. Off the same day that the correspondence is placed for collection and mailing, it is deposited in the		
14 15	the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.		
16	BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the		
17	mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.		
18	I declare under penalty of perjury under the laws of the State of California that the		
19	foregoing is true and correct. Executed on November 2018, at Oakland, California.		
20	Executed on November 2018, at Oakland, Camonia.		
21 22	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 2, 2018, at Oakland, California.		
22	Melissa Bender 2		
23	Dent		
25	in the second		
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	16 OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES TO PETITIONER'S		
	REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE AA00339		

### Tab 028

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20		T. <b>IE STATE OF CALIFORNIA</b> <b>F ALAMEDA</b> Case No. RG18902751 ASSIGNED FOR ALL PRE-TRIAL PUPPOSES TO HONLEPANK POESCH	ed by the CA 1st District Court of Appeal.
18	California nonprofit public benefit corporation,	ASSIGNED FOR ALL PRE-TRIAL	$\bigcirc$
20		DEPARTMENT 24	y th
	V.	<b>RESPONDENTS' SEPARATE</b>	ed b
21 22	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET NAPOLITANO, in her connective as President of the University of	STATEMENT IN SUPPORT OF OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER DESPONSES	ceiv
	CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of California; CAROL T. CHRIST, in her	STATEMENT IN SUPPORT OF OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES Reservation No. R-2018755	nt receiv
22	CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of	STATEMENT IN SUPPORT OFOPPOSITION TO PETITIONER'SMOTION TO COMPEL FURTHERRESPONSESReservation No. R-2018755Judge: Frank RoeschDate: December 6, 2018	ment receiv
22 23 24 25	CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of California; CAROL T. CHRIST, in her capacity as Chancellor of the University of	STATEMENT IN SUPPORT OF OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER RESPONSESReservation No. R-2018755Judge: Frank Roesch Date: December 6, 2018Time: 3:45 P.M. Dept.: 24	Document receiv
22 23 24	CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of California; CAROL T. CHRIST, in her capacity as Chancellor of the University of California, Berkeley; and DOES 1 through 20,	STATEMENT IN SUPPORT OF OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER RESPONSESReservation No. R-2018755Judge: Frank Roesch Date: December 6, 2018 Time: 3:45 P.M. Dept.: 24Action Filed: April 27, 2018 Trial Date: None Set	Document received by the
<ul> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ul>	CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of California; CAROL T. CHRIST, in her capacity as Chancellor of the University of California, Berkeley; and DOES 1 through 20,	Action Filed: April 27, 2018	Document receiv
<ul> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ul>	CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of California; CAROL T. CHRIST, in her capacity as Chancellor of the University of California, Berkeley; and DOES 1 through 20,	Action Filed: April 27, 2018 Trial Date: None Set	



Respondents and Defendants The Regents of the University of California, Janet
 Napolitano, in her capacity as President of the University of California, and Carol T. Christ, in her
 capacity as Chancellor of the University of California, Berkeley (collectively, "UC") hereby
 submit this Separate Statement ("Separate Statement") in support of its Opposition to Petitioner
 and Plaintiff Save Berkeley's Neighborhoods' ("Petitioner") Motion to Compel Further Responses
 to Plaintiff's Requests for Production of Documents, Set One ("Motion").

No.	Request	Justification
1.	All writings, including internal staff	UC objected to this request on the basis that in a
	memoranda and emails, that refer or	CEQA action leave of court is required prior to
	relate to increases in student enrollment	propounding any discovery. (Lippe Decl., Ex. 3, p. 2.) Pursuant to Code of Civil Procedure
	at UC Berkeley that were prepared in	section 1094.5 as well as under <i>City of Fairfield</i>
	connection with the preparation of UC Berkeley's 2020 Long Range	<i>v. Superior Court</i> (1975) 14 Cal.3d 768,
	Development Plan.	discovery is permitted only following a showing
		by the propounding part of the specific evidence.
		sought to be discovered and its relevance to theo
		issues in the case. (See UC's Opposition ("Opp.") at pp. 5-9.)
		UC further objected to this request on the basis
		that it was "vague, unduly burdensome,
		overbroad, and oppressive" and "not reasonable
		limited as to time"; sought "information that is
		neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this $\bigcirc$
		1'
		protected by attorney-client, attorney work
		product, and the legislative/deliberative privileges, among others; requests documents that
		privileges, among others; requests documents that
		were repetitive or "already in Petitioner's possession, custody, or control"; and, was "not
		reasonably particularized." (Lippe Decl., Ex. 3)
		pp. 4-5.)
		lei
		Notwithstanding that discovery is improper
		absent leave of court, i otherener steeless to
		"writings" related to "UC Berkeley's 2020 Long Range Development Plan" did not specify the
		applicable time period for the request and was
		unduly burdensome as to the term "writing"
	1	
00	ODONIDENTS' SEDADATE STATEMENT IN SU	2 PPORT OF OPPOSITION TO PETITIONER'S MOTION TO
KE	SPUNDENTS SEFARATE STATEMENT IN SU COMPEL FU	RTHER RESPONSES
AA00341		

[defined per Evidence Code section 250 as
"handwriting, typewriting, printing, photostating
photographing, photocopying, transmitting by
electronic mail or facsimile, and every other
means of recording upon any tangible thing, any
form of communication or representation,
including letters, words, pictures, sounds, or
symbols, or combination thereof, and any record created, regardless of the manner in which the
record has been stored"). To the extent the
Second Amended Petition predicates any claim
on the 2020 LRDP and accompanying EIR, bot
of which were adopted and approved in 2005, it
is undisputed that a challenge to the LRDP and
EIR is time barred, therefore any documents
request for documents related to the LRDP and
EIR is irrelevant and not reasonably likely to le
to any admissible evidence. (Pub. Res. Code, §
21167, subds. (a), (b); 21167.1.) As held by the
Court in its Ruling on UC's Demurrer to the Second Amended Petition, Petitioners failed to
state factual allegations establishing a project within the meaning of CEQA. Thus, the
within the meaning of CEQA. Thus, the Discovery Requests are not particularized and
specific since the existence of any project subject
to challenge the date of the discretionary
approval of the project, and the date of
commencement of the project are not alleged in
the Petition. Petitioner's sole stated reason for
propounding the Discovery Requests is that the
"may" need to be included in the administrative
record, which is an insufficient basis for
Opp at np (10-11)
opp. a. pp. 10-11.)
propounding discovery in a CEQA action. ( <i>See</i> Opp. at pp. 10-11.) Additionally, and again notwithstanding that discovery is improper absent leave of court, because Petitioner's Discovery Requests were vague, overbroad, improper, and lacked any particularity, it is impossible for LIC to "identif
discovery is improper absent leave of court,
because Petitioner's Discovery Requests were
vague, overbroad, improper, and lacked any
particularity, it is impossible for 00 to reducin
with particularity any document falling within
any category of item in the demand" or provide
privilege log as argued by Petitioner.
 3 RATE STATEMENT IN SUPPORT OF OPPOSITION TO PETITIONER'S MOTION

1	2.	All writings, including internal staff memoranda and emails, that refer or	See Justification to Request No. 1.	
2		relate to increases in student enrollment at UC Berkeley or the impact on the		
3		physical environment of increasing		
4		student enrollment at UC Berkeley that were prepared in connection with		
5		preparing any environmental document		
6		for the 2020 Long Range Development Plan pursuant to the California		
7		Environmental Quality Act.		
8	3.	All writings, including internal staff	See Justification to Request No. 1.	
9		memoranda and emails, that refer or relate to increases in student enrollment		
10		at UC Berkeley that were prepared in		eal.
11		connection with the adoption of UC Berkeley's 2020 Long Range		App
12		Development Plan by the Regents of the University of California.		0
13		-	C. I. ('C. (' to Democt No. 1	DISUTICE COULT OF Appear
14	4.	All writings, including internal staff memoranda and emails, that refer or	See Justification to Request No. 1.	つ    
15		relate to increases in student enrollment		SUTIC
16		at UC Berkeley or the impact on the physical environment of increasing		·
17		student enrollment at UC Berkeley that were prepared in connection with the		
18		adoption of any environmental		5
19		document prepared for the 2020 Long Range Development Plan pursuant to		
20		the California Environmental Quality		
21		Act.	•	
22	5.	All writings, including internal staff memoranda and emails, that refer or	See Justification to Request No. 1.	
23		relate to increases in student enrollment		Jocument received by the CA 1st
24		at UC Berkeley that were prepared since the adoption of UC Berkeley's 2020		
25		Long Range Development Plan by the		nor
26		Regents of the University of California.		
27	 			
28			4	
	RE	SPONDENTS' SEPARATE STATEMENT IN SUP COMPEL FUE	PPORT OF OPPOSITION TO PETITIONER'S MOTION	TO
			AA00343	

2 3 4 5 6 7	<ul> <li>All writings, including internal staff memoranda and emails, that refer or relate to increases in student enrollment at UC Berkeley or the impact on the physical environment of increasing student enrollment at UC Berkeley that were prepared after certification of the Final Environmental Impact Report for the 2020 Long Range Development Plan pursuant to the California Environmental Quality Act.</li> </ul>
8 9 10	DATED: November 20, 2018 MEYERS, NAVE, RIBACK, SILVER & WILSON
11	By: Timtho Can
12	By: Intholan de
13	Timothy D. Cremin Attorneys for The Regents of the University of
14	Attorneys for The Regents of the University of California; Janet Napolitano, in her capacity as President of the University of California; Carol J
15	Christ, in her capacity as Chancellor of the University of California, Berkeley
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	5 RESPONDENTS' SEPARATE STATEMENT IN SUPPORT OF OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES
	COMPEL FORTHER RESPONSES AA00344

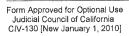
1	PROOF OF SERVICE		
2	STATE OF CALIFORNIA, COUNTY OF ALAMEDA		
3 4	At the time of service, I was over 18 years of age and <b>not a party to this action</b> . I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.		
5	On November 2018, I served true copies of the following document(s) described as RESPONDENTS' SEPARATE STATEMENT IN SUPPORT OF OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES on the interested parties		
7	in this action as follows:		
8	Thomas N. Lippe, Esq.Attorneys for Plaintiff SAVEKelly Marie Perry, Esq.BERKELEY'S NEIGHBORHOODS		
9	Law Offices of Thomas N. Lippe, APC 201 Mission Street, 12th Fl. San Francisco, CA 94105 Tel: (415) 777-5604 Fax: (415) 777-5606		
10	Emplant and and		
11	BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and		
12	<b>BY MAIL:</b> I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and		
13	mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing.		
14 15	mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. One the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.		
16	BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the		
17	document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e- $\Omega$ mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.		
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19	foregoing is true and correct.		
20	Executed on November 2, 2018, at Oakland, California.		
21	UBender .		
22	Melissa Bender		
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	RESPONDENTS' SEPARATE STATEMENT IN SUPPORT OF OPPOSITION TO PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES AA00345		

### Tab 029

	CIV-130
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Timothy D. Cremin (SBN 156725) Meyers Nave Riback Silver & Wilson 555 12 <sup>th</sup> Street, Suite 1500 Oakland, California 94607 TELEPHONE NO.: (510) 808-2000 FAX NO. (Optional): (510) 444-1108 E-MAIL ADDRESS (Optional): tcremin@meyersnave.com ATTORNEY FOR (Name): Respondents The Regents of the Univ. of California, et al. <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA</b> STREET ADDRESS: 1221 Oak Street MAILING ADDRESS:	FOR COURT USE ONLY
CITY AND ZIP CODE: Oakland, 94612 BRANCH NAME:	
PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	
NOTICE OF ENTRY OF JUDGMENT OR ORDER	case number: RG18902751
(Check one): UNLIMITED CASE (Amount demanded exceeded \$25,000) LIMITED CASE (Amount demanded was \$25,000 or less)	peal.
TO ALL PARTIES :         1. A judgment, decree, or order was entered in this action on (date): November 15, 20         2. A copy of the judgment, decree, or order is attached to this notice.         Date: November 26, 2018         Timothy D. Cremin         (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)	Document received by the CA 1st District Court of Appeal

Page 1 of 2

www.courtinfo.ca.gov





PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods CASE NUMBER: RG18902751 CASE NUMBER: RG18902751	
DESERVE AVERAGENES The Decente of the University of California, et al.	
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	
PROOF OF SERVICE BY FIRST-CLASS MAIL NOTICE OF ENTRY OF JUDGMENT OR ORDER	
(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person the notice must complete this proof of service.)	who served
<ol> <li>I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the maplace, and my residence or business address is (specify): 555 12<sup>th</sup> Street, Suite 1500 Oakland, California 94607</li> </ol>	ailing took
<ol> <li>I served a copy of the Notice of Entry of Judgment or Order by enclosing it in a sealed envelope with postage fully prepaid and (check one):</li> </ol>	
a. deposited the sealed envelope with the United States Postal Service.	
b. X placed the sealed envelope for collection and processing for mailing, following this business's usual prac with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it deposited in the ordinary course of business with the United States Postal Service.	tices, is
3. The Notice of Entry of Judgment or Order was mailed:	eal.
a. on (date): November 26, 2018	)dc
b. from (city and state): Oakland, California, 94607	[A]
<ol> <li>The envelope was addressed and mailed as follows:</li> <li>a. Name of person served: Thomas N. Lippe, Esq.</li> <li>c. Name of person served: The Law Offices of Thomas N. Lippe, APC</li> </ol>	1st District Court of Appeal
Street address: 201 Mission Street, 12th FloorStreet address:City: San FranciscoCity:	rict (
State and zip code: California 94105 State and zip code:	Dist
b. Name of person served: d. Name of person served:	
Street address: Street address:	CA
City: City:	he
State and zip code: State and zip code:	oy t
Names and addresses of additional persons served are attached. (You may use form POS-030(P).)	Document received by the (
5. Number of pages attached <u>-0-</u> .	eiv.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	ecc
Date: November 26, 2018	nt r
	nei
Melissa Bender	cui
(TYPE OR PRINT NAME OF DECLARANT) (SIGNATURE OF DECLARANT)	Do

Page 2 of 2

American LegalNet, Inc.

Law Offices of Thomas N. Lippe, APC Attn: Lippe, Thomas N. 201 Mission Street, 12th Floor San Francisco, CA 94105 Meyers, Nave, Riback, Silver & Wilson Attn: Cremin, Timothy D. 555 12th Street Suite 1500 Oakland, CA 94607

Superior Court of California, County of Alameda Rene C. Davidson Alameda County Courthouse

Save Berkeley's Neighborhoods	Plaintiff/Petitioner(s)
VS.	
The Regents of the Universi	
De (Abbreviated Titl	fendant/Respondent(s) e)

No. <u>RG18902751</u>

Order

Demurrer Sustained

The Demurrer was set for hearing on 11/15/2018 at 03:45 PM in Department 24 before the Honorable Frank Roesch. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

#### IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Demurrer by Respondents Regents of the University of California, et al. to the Second Amended Petition for Writ of Mandate is SUSTAINED, WITH LEAVE TO AMEND to clearly identify the project that is being challenged in this action, as well as the date the discretionary approval for that project was granted and when that project was commenced. (See CEQA Guidelines § 15378.)

Respondents' Request for Judicial Notice is GRANTED.

The Court did not consider (1) the declaration of Russ Acker, submitted with Respondents' moving papers, or (2) the declarations of Thomas Lippe and Phillip Bokovoy submitted with Petitioner's opposition papers. In ruling on a demurrer, the Court considers only the allegations in the challenged pleading and facts of which the Court can take judicial notice, not extrinsic evidence.

Respondents shall serve Notice of Entry of Order on Petitioner. Petitioner shall have 10 days to file and serve a Third Amended Petition, running from service of Notice of Entry of Order on Petitioner by Respondents. Respondents shall have 10 days thereafter to respond.

Dated: 11/15/2018

Front france

Judge Frank Roesch



SHORT TITLE:	CASE NUMBER:
Save Berkeley's Neighborhoods VS The Regents of the Universi	RG18902751

ADDITIONAL ADDRESSEES

Robinson, Charles F. University of California 1111 Franklin Street, 8th Floor Oakland, CA 94607-5200

1			
	Tab	030	
		FILED BY FAX	
1	Thomas N. Linna SDN 104640	ALAMEDA COUNTY	
1	Thomas N. Lippe, SBN 104640 LAW OFFICES OF THOMAS N. LIPPE, APC	November 28, 2018	
2 3	201 Mission Street, 12th Floor San Francisco, California 94105	CLERK OF THE SUPERIOR COURT By Shabra Iyamu, Deputy	
4	Tel: (415) 777-5604 Fax: (415) 777-5606	CASE NUMBER	
5	E-mail: Lippelaw@sonic.net	RG18902751	
6 7	Attorney for Plaintiff: Save Berkeley's Neighborhoo	ds	
	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA		
8	IN AND FOR THE CO	UNTY OF ALAMEDA	
9			
10 11	SAVE BERKELEY'S NEIGHBORHOODS, a California nonprofit public benefit corporation;	Case No. RG18902751	
12	Plaintiff,	THIRD AMENDED PETITION FOR WRIT	
13	vs.	OF MANDATE AND COMPLAINT FORODECLARATORY RELIEFO	
14	THE REGENTS OF THE UNIVERSITY OF	fA	
15	CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of	THIRD AMENDED PETITION FOR WRIT [reading of the second content of the second conte	
16	California; CAROL T. CHRIST, in her capacity as	Ŭ	
17	Chancellor of the University of California, Berkeley; and DOES 1 through 20,	Assigned for All Purposes to:	
18	Respondents and Defendants.	Hon. Frank Roesch, Dept. 24	
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Law Offices of Thomas N. Lipoe 201 Mission 31, 12 <sup>10</sup> Floor 3in Francisco, CA 34105 Tai: 415-7775993			
		AA00350	

Plaintiff Save Berkeley's Neighborhoods alleges:

2 Education Code section 67504 provides that "The Legislature further finds and declares that the 1. 3 expansion of campus enrollment and facilities may negatively affect the surrounding environment. 4 Consistent with the requirements of the California Environmental Quality Act (CEQA), it is the intent of 5 6 the Legislature that the University of California sufficiently mitigate significant off-campus impacts 7 related to campus growth and development." 8

9 2. Public Resources Code section 21080.09, subdivision (b) requires that "Environmental effects 10 relating to changes in enrollment levels shall be considered for each campus or medical center of public 11 higher education in the environmental impact report prepared for the long range development plan for 12 the campus or medical center." Public Resources Code section 21080.09, subdivision (d) requires that 13 14 Respondents and the University of California, Berkeley (UCB) "consider the environmental impact of 15 academic and enrollment plans" pursuant to CEQA and "that any such plans shall become effective for  $\overline{a}$ 16 campus ... only after the environmental effects of those plans have been analyzed" as required by CEQA 17 18 3. In 2005, Respondent Regents adopted a Long Range Development Plan (2020 LRDP) for UCB 19 S to achieve a number of objectives through the year 2020, including stabilizing enrollment. In or about 20Document received by the CA 2005, Respondent Regents certified a Final Environmental Impact Report for the 2020 LRDP (2005 21 22 EIR) pursuant to CEQA.

The 2020 LRDP is a discretionary project as defined in CEQA Guidelines, sections 15357 and 4. 24 25 15378 and as provided in Public Resources Code section 21080.09. The 2020 LRDP is a "program" 26 type of CEQA project and the 2005 EIR is a "program EIR" as defined in CEQA Guidelines, section 27 15168(a)(1). 28

5. The 2020 LRDP project commenced immediately after its adoption in 2005. The 2020 LRDP and 2005 EIR projected that by 2020 student enrollment at UCB would increase by 1,650 students, from

homas N. Lippe Mission St. 12<sup>1</sup> Francisco, CA ax: 415-7775606

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- 1 -Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEOA); Case No. RG18902751

the 2001-2002 two-semester average headcount of 31,800 to 33,450 students. This projected increase in 1 2 enrollment of 1,650 students was a component of the 2020 LRDP's "project description," as this term is 3 used in CEQA. (See e.g., County of Invo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 193 ["An 4 accurate, stable and finite project description is the sine qua non of an informative and legally sufficient 5 6 EIR"].) The 2020 LRDP and 2005 EIR also projected that by 2020 UCB would add 2,500 beds for 7 students. 8

9 Beginning in or about 2007, Respondents made informal, discretionary decisions to change the 6. 10 2020 LRDP project to increase enrollment at UCB over and above the 1,650 additional students 11 projected by the 2020 LRDP and disclosed in the 2005 EIR. Respondents effected these changes in the-12 2020 LRDP project "without a formal decision," as this phrase is used in Public Resources Code section 13 of 14 21167(a) and without public notice of this change.

Respondents have continued to make informal, discretionary decisions to change the 2020 LRDE 7. 16 project by continuing to enroll more students, in virtually every two-semester period since 2007, than the 17 18 1,650 additional students projected by the 2020 LRDP and disclosed in the 2005 EIR. Respondents 19 s s have effected these continuing changes in the 2020 LRDP project without formal decisions and without, 20 $\checkmark$ the C. public notice. 21

22 8. The 2005 EIR and 2020 LRDP indicate that UCB counts campus population in two ways: "by 23 actual headcounts and by full time equivalents, or FTE." According to the 2020 LRDP, "while budgets 24 25 are calculated in terms of FTE, for the purpose of environmental analysis actual headcount is the better 26 measure, since FTE tends to under-represent peak impacts. For example, two students taking six units 27 each are likely to have a greater impact than one student taking 12 units. The 2020 LRDP therefore uses 28 two-semester average headcount as the measure of campus population." (2020 LRDP, p. 14, Table 1.) 29 30 9. In March and April 2017, Plaintiff worked with City of Berkeley officials to determine the

homas N. Lippe Mission St. 12<sup>1</sup> Francisco, CA ax: 415-7775606

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- 2 -

Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEOA); Case No. RG18902751

current level of UCB enrollment in terms of "two-semester average headcount" because at that time 1 2 there was no publicly available enrollment information expressed in terms of "two-semester average 3 headcount" that could be used to compare current enrollment with the enrollment disclosed in the 2005 4 EIR. The City of Berkeley then sent a written request dated April 14, 2017, to Respondents requesting 5 6 the information. A true and correct copy of this letter is attached hereto as Exhibit 3. On October 30, 7 2017, Respondents sent to the City of Berkeley its response to the City's request for information. A true 8 and correct copy of this letter and its attachments is attached hereto as Exhibit 4. On or about October 9 10 31, 2017, the City of Berkeley provided Plaintiff with a copy of this response. 11

10. Respondents' October 30, 2017, letter to the City of Berkeley reveals that starting in about 2007
Respondent Regents and UCB changed the 2020 LRDP project by increasing enrollment at UCB over
and above the 1,650 additional students projected by the 2020 LRDP and disclosed in the 2005 EIR and
that since 2007 Respondents have continued to change the 2020 LRDP project by continuing to enroll
more students, in virtually every two-semester period, than the 1,650 additional students projected by the
2020 LRDP and disclosed in the 2005 EIR.
11. Plaintiff did not know and could not, in the exercise of reasonable diligence, have known of

Plaintiff did not know and could not, in the exercise of reasonable diligence, have known of
 Respondent Regents' and UCB's informal, discretionary decisions to increase student enrollment at
 UCB above the increase of 1,650 students projected in the 2020 LRDP and disclosed in the 2005 EIR
 until October 30, 2017, when Respondents responded to the City of Berkeley's request for information
 regarding enrollment increases by providing to the City the document attached hereto as Exhibit 4.

The increase in student enrollment over and above the 1,650 additional students projected by the
 2020 LRDP and disclosed in the 2005 EIR (hereinafter the "excess increase in student enrollment") has
 caused and continues to cause significant adverse environmental impacts that were not analyzed in the
 2005 EIR, including, without limitation, increased use of off-campus housing for and by UCB students,

Law Offices of Thomas N. Lippe 201 Mission St. 12<sup>th</sup> Floor an Francisco, CA 94102 Tel: 415-777-5804 Fax: 415-7775806

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Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEQA); Case No. RG18902751

leading to increases in off-campus noise and trash, and increased burdens on the City of Berkeley's 1 2 public safety services, including police, fire, ambulance, and Emergency Medical Technician services. 3 Plaintiff is also informed and believes and on that basis alleges that these impacts include, without 4 limitation, displacement of tenants resulting in more homeless individuals living on public streets and in 5 6 local parks; increases in the number of UCB students who are homeless; and increases in traffic and 7 transportation related congestion and safety risks. 8

9 13. Respondents have had and continue to have a legal obligation to analyze the environmental 10 effects of the excess increase in student enrollment pursuant to CEQA, including, without limitation, by preparing and certifying an Environmental Impact Report to assess the significance of impacts caused by the extraordinary increase in enrollment and to identify and adopt mitigation measures to reduce these significant impacts. Parties 14. Plaintiff SAVE BERKELEY'S NEIGHBORHOODS (Plaintiff) is a California nonprofit public. benefit corporation formed to provide education and advocacy to improve quality of life, protect the 11 12 13 14 15

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17 18 benefit corporation formed to provide education and advocacy to improve quality of life, protect the 19 environment and implement best planning practices. Plaintiff's founders, members, and directors live in  $\vec{k}$ 20the area affected by the excess increase in student enrollment, have suffered and will continue to suffer 21 by the 22 injury from adverse environmental impacts caused by the excess increase in student enrollment if the 23 legal violations alleged herein are not remedied. Plaintiff was formed and brings this action to represent and advocate the beneficial interests of its founders, members, and directors in obtaining relief from these legal violations and to improve quality of life, protect the environment and implement best planning practices in connection UCB's increases in student enrollment. 15. Respondent and Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA 24 25 26 27 28

(hereinafter "Regents") is a public trust corporation and state agency established pursuant to the

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Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEOA); Case No. RG18902751

California Constitution vested with administering the University of California including the management 1 2 and disposition of property of the University and the lead agency for the 2020 LRDP under CEQA, and 3 is thus responsible for analyzing, disclosing, and mitigating the environmental impacts of the 2020 4 LRDP and the excess increase in student enrollment. 5

6 16. Respondent and Defendant JANET NAPOLITANO is the President of the University of 7 California and is named herein solely in this capacity. Regents Policy 8103 delegates to the President of 8 the University the Regents' authority for budget or design for capital projects consistent with approved 9 10 Long Range Development Plans and minor Long Range Development Plan amendments.

Respondent and Defendant CAROL T. CHRIST is the Chancellor of the University of California ey, and named herein solely in this capacity. Respondents and Defendants Regents, Janet Napolitano, and Carol T. Christ are hereinafter ively referred to as "Respondents." 17. 12 13 Berkeley, and named herein solely in this capacity.

14 18. 15 collectively referred to as "Respondents." 16

Plaintiff does not know the true names and capacities of Respondents and Defendants fictitious 17 19. 18 named herein as DOES 1 through 20, inclusive. Plaintiff is informed and believes, and thereon alleges; 19 that such fictitiously named Respondents and Defendants are responsible in some manner for the acts or  $\overline{z}$ 20omissions complained of or pending herein. Plaintiff will amend this Petition to allege the fictitiously 21 22 named Respondents' and Defendants' true names and capacities when ascertained.

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The second provide the section of the section 21167.5, Plaintiff served Respondents with the section of the section 21167.7 and Code of Civil Procedure section of the section 21167.7 and Code of Civil Procedure section 2116 25 20. 26 written notice of commencement of this action on April 12, 2018. The Notice of Commencement of 27 Action and Proof of Service are attached hereto as Exhibit 1. 28

21.

388, Plaintiff has provided a copy of this pleading to the Attorney General's office. (See Exhibit 2

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Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEOA); Case No. RG18902751

1	attached	hereto.)	
2		Jurisdiction and Venue	
3	22. P	Plaintiff brings this action in mandamus pursuant to Code of Civil Procedure sections 1085,	
5	1088.5, a	and 1094.5, and Public Resources Code sections 21168 and 21168.5; and as a complaint for	
6	declarato	ory relief pursuant to Code of Civil Procedure section 1060. The Court has jurisdiction over	
7	these cla	ums.	
8 9		Venue is proper in Alameda County under Code of Civil Procedure section 394, subdivision (a).	
10		UCB and Respondents are situated therein.	
11	occuuse		
12		Standing	eal.
13		Plaintiff and, to the extent applicable, its members are beneficially interested in Respondents'	Appea
14	full com	pliance with CEQA. Respondents owed a mandatory duty to comply with CEQA with respect	t of .
15 16	to the 20	pliance with CEQA. Respondents owed a mandatory duty to comply with CEQA with respect 020 LRDP and the excess increase in student enrollment. Plaintiff has the right to enforce the ory duties that CEQA imposes on Respondents.	Cour
17	mandato	bry duties that CEQA imposes on Respondents.	ict (
18		Exhaustion of Administrative Remedies	Distri
19 20	25. U	JCB provides no administrative remedy for the legal claims or grounds of noncompliance with	1st
20	CEQA a	Alleged herein and Plaintiff had no opportunity to raise the grounds of noncompliance alleged of any UCB administrative proceeding. Private Attorney General Doctrine Plaintiff brings this action as a private attorney general pursuant to Code of Civil Procedure 1021.5, and any other applicable legal theory, to enforce important rights affecting the public ssuance of the relief requested herein will confer a significant benefit on a large class of person	CA
22	herein in	n any UCB administrative proceeding.	the
23			by
24		Private Attorney General Doctrine	ved
25	26. P	Plaintiff brings this action as a private attorney general pursuant to Code of Civil Procedure	ecer
26 27	section 1	1021.5, and any other applicable legal theory, to enforce important rights affecting the public	ent r
27	interest.		sume
29	27. Is	ssuance of the relief requested herein will confer a significant benefit on a large class of person	Doc
30	by ensur	ing that Respondents analyze and disclose the environmental impact of the excess increase in	
Law Offices of Thomas N. Lippe 201 Mission St. 12 <sup>th</sup> Floor San Francisco, CA 94105 Tel: 415-777-5804		- 6 -	
Tel: 415-777-5804 Fax: 415-7775806	Third	Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEQA); Case No. RG18902751	

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student enrollment. 1

2 28. Issuance of the relief requested herein will result in the enforcement of important rights affecting 3 the public interest. By compelling Respondents to complete adequate environmental review of the 4 excess increase in student enrollment under CEQA, Plaintiff will vindicate the public's important CEQA 5 6 rights to public disclosure regarding and public participation in government decisions that affect the 7 environment. 8

9 29. The necessity and financial burden of enforcement are such as to make an award of attorney's 10 fees appropriate in this proceeding because the transgressor is the agency whose duty it is to enforce the 11 laws at issue in this proceeding. 12 nnea

- 13
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First Cause of Action (Violation of CEQA: Pub. Resources Code, § 21000 et seq.) 30. Plaintiff hereby realleges and incorporates the preceding paragraphs this First Amended Petition and Complaint as though set forth herein in full. 31. Respondents prejudicially abused their discretion in violation of CEQA pursuant to Public Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5 by failing to subject the excess increase in student enrollment to the procedures and requirements of CEQA; by failing to analyze the excess increase in student enrollment pursuant to CEQA, including, without limitation, by failing to prepare and certify an Environmental Impact Report to assess the significance of impacts caused by the excess increase in student enrollment; by failing to identify and adopt mitigation measures to reduce these significant impacts; and by failing to make the findings required by Public Resources Code section 21081 before carrying out the excess increase in enrollment. 32. Plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law and will 18 19 2021 22 23 24 25 26 27 28 29 ř suffer irreparable injury unless this Court issues the relief requested herein. 30

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Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEOA); Case No. RG18902751

### **Second Cause of Action** (Declaratory Relief: Code Civ. Proc., § 1060)

33. Plaintiff hereby realleges and incorporates the preceding paragraphs of this First Amended Petition and Complaint as though set forth herein in full.

34. Since the 2007-2008 academic year, the Regents have implemented and continue to implement a policy to increase student enrollment at UCB beyond the 1,650 additional students projected by the 2020 LRDP without subjecting the excess increase in student enrollment to the procedures and requirements of CEQA; without analyzing the excess increase in student enrollment pursuant to CEQA, and without preparing and certifying an Environmental Impact Report to assess the significance of 

and without preparing and certifying an Environmental Impact Report to assess the significance of impacts caused by the excess increase in student enrollment; by failing to identify and adopt mitigation measures to reduce these significant impacts; and by failing to make the findings required by Public Resources Code section 21081 before carrying out the excess increase in enrollment. 35. Plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law and will suffer irreparable injury unless this Court issues the relief requested herein. Plaintiff seeks a judicial determination and declaration that Respondents' policy as described in paragraph 27 is unlawful because it violates CEQA, including Public Resources Code section 210980.9, and Education Code section 67504. 36. An actual controversy has arisen and now exists between Plaintiff and Respondents. Plaintiff is including Public Resources Code section 210980.9, and Education Code section 67504. 36. An actual controversy has arisen and now exists between Plaintiff and Respondents. Plaintiff is including Public Resources Code section 210980.9, and Education Code section 67504. Plaintiff is informed and believes, and based thereon alleges, that Respondents dispute these contentions. **Prayer for Relief** WHEREFORE, Plaintiff prays for the following relief: 

WHEREFORE, Plaintiff prays for the following relief:

Thomas N. Lippe Mission St. 12" Francisco, CA ax: 415-7775606

Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEOA); Case No. RG18902751

1	1. For a writ of mandate compelling Respondents to subject the excess increase in student		
2	enrollment to the procedures and requirements of CEQA, to analyze the excess increase in student		
3	enrollment pursuant to CEQA, including, without limitation, by preparing and certifying an		
5	Environmental Impact Report to assess the significance of impacts caused by the excess increase in		
6	student enrollment, and to make the findings required by Public Resources Code section 21081.		
7 8	2. For a judicial declaration that Respondents policy as described in paragraph 27 is unlawful.		
9	3. For an order retaining the Court's jurisdiction over this matter until Respondents comply with the		
10	peremptory writ;		
11			
12	4. For an order compelling Respondents to pay Plaintiff's costs of suit;		
13	5. For an order compelling Respondents to pay Plaintiff's reasonable attorneys fees related to these		
14	proceedings pursuant to Code of Civil Procedure section 1021.5; and		
15 16	6. For such other relief as the Court may deem proper.		
17	DATED: November 28, 2018 LAW OFFICES OF THOMAS N. LIPPE, APC		
18	stri		
19	Tom Ligge Ist		
20	Thomas N. Lippe		
21	Attorney for Plaintiff Save Berkeley's Neighborhoods $\Box$		
22	ocument received by the		
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Law Offices of Thomas N. Lippe			
201 Mission St. 12 <sup>th</sup> Floor San Francisco, CA 94105 Tel: 415-777-5604 Fax: 415-7775606	- 9 -		
	Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEQA); Case No. RG18902751		
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1	VERIFICATION
2 3	Save Berkeley's Neighborhoods v. The Regents of the University of California, Alameda County Superior Court, Case No. RG18902751.
4	I, Thomas N. Lippe, declare that:
5 6	1. I am an attorney at law duly admitted and licensed to practice before all courts of this State. I am
7	the attorney of record for the Plaintiff in this action.
8	2. Plaintiff has their place of business in Alameda County, California, and therefore are absent from
9 10	the county in which I have my office. For that reason, I make this verification on its behalf.
11	3. I have read the foregoing Third Amended Verified Petition for Writ of Mandate and Complaint
12	for Declaratory Relief and know the contents thereof; the factual allegations therein are true of my own
13 14	knowledge, except as to those matters which are therein stated upon my information or belief, and as to $\nabla$
14	those matters I believe them to be true.
16	I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
17	true and correct. Executed on November 28, 2018, at San Francisco, California.
18	
19 20	Tom Line to
20	Thomas N. Lippe
22	Attorney for Plaintiff Save Berkeley's Neighborhoods
23	Attorney for Plaintiff Save Berkeley's Neighborhoods T:\TL\UC Enroll\Trial\Pleadings\P025e Signed Third Amend Petition.wpd
24	T:\TL\UC Enroll\Trial\Pleadings\P025e Signed Third Amend Petition.wpd
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28 29	Doc
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Law Offices of Thomas N. Lippe	
201 Mission St. 12 <sup>th</sup> Floor San Francisco, CA 94105 Tel: 415-777-5604 Fax: 415-7775606	- 10 - Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEQA); Case No. RG18902751
	This Amended Feation for writ of Mandale and Complaint for Declaratory Kener (CEQA), Case No. K018902751
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# EXHIBIT 1

# Law Offices of THOMAS N. LIPPE, APC

201 Mission Street 12th Floor San Francisco, California 94105 Telephone: 415-777-5604 Facsimile: 415-777-5606 Email: Lippelaw@sonic.net

April 12, 2018

*By email: chancellor@berkeley.edu* Chancellor Carol T. Christ University of California, Berkeley c/o Jenny Hanson Executive Assistant to the Chancellor Office of the Chancellor 200 California Hall, #1500 Berkeley, CA 94720-1500

By email: regentsoffice@ucop.edu Regents of the University of California c/o Anne Shaw Office of the Secretary and Chief of Staff to the Regents 1111 Franklin St.,12th floor Oakland, CA 94607

# **Re:** Notice of Intent to Sue Regarding Inadequate CEQA Review of UC Berkeley's 2020 Long Range Development Plan.

Dear Chancellor Christ and Regents of the University of California:

This office represents Save Berkeley's Neighborhoods with respect to the University of California at Berkeley's legal obligations to conduct environmental review of the 2020 Long Range Development Plan (2020 LRDP) in compliance with the California Environmental Quality Act (CEQA).

One of the 2020 LRDP's objectives is to stabilize enrollment. (2020 LRDP, Environmental Impact Report (2004 EIR), p. 3.1-10.) The 2004 EIR evaluated an increase in enrollment of 1,650 students above the 2001-02 two-semester average. (2004 EIR, p. 3.1-14.) The University's October 30, 2017, response to the City of Berkeley's request for information regarding enrollment increases shows an actual increase of 8.302 enrolled students above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017). (Exhibit 1.) This represents a five-fold increase compared to the 2004 EIR's projection of a 1,650 student increase in enrollment.

This change in the project renders the 2004 EIR informationally defective because the EIR does not assess the impact of the actual increase in enrollment, which is orders of magnitude higher than the 1,650-student increase projected in the 2004 EIR. As a result, the University must prepare a supplemental or subsequent EIR to assess the significance of impacts caused by this extraordinary increase in enrollment and to identify and adopt mitigation measures to reduce these significant

Chancellor Carol T. Christ, University of California, Berkeley Regents of the University of California Notice of Intent to Sue Regarding Inadequate CEQA Review of 2020 LRDP April 12, 2018 Page 2

impacts.

This letter provides notice pursuant to Public Resources Code section 21167.5 that on or before April 20, 2018, Save Berkeley's Neighborhoods intends to file a lawsuit challenging the University's adoption of the 2020 LRDP on grounds the adoption does not comply with CEQA.

Save Berkeley's Neighborhoods is willing to discuss settling this dispute without the need for litigation. At a minimum, any such settlement must include: (1) an enforceable agreement by the University to prepare and certify a new EIR to assess the impacts of the 2020 LRDP as its project description has changed to reflect the increases in enrollment shown in the University's October 30, 2017, response to the City's request for information; (2) the new EIR must use the same environmental baseline used in the 2004 EIR; and (3) tolling the statute of limitations so that Save Berkeley's Neighborhoods is not forced to file its lawsuit to protect against the statute of limitations.

Thank you for your attention to this matter.

Very Truly Yours,

Tom Ligge

Thomas N. Lippe

cc: David M. Robinson, Interim Chief Campus Counsel By email: dmrobinson@berkeley.edu

T:\TL\UC Enroll\Corr\Counsel\C001b Sett Demand.wpd

### UNIVERSITY OF CALIFORNIA, BERKELEY



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SANTA BARBARA • SANTA CRUZ

#### BERKELEY, CALIFORNIA 94720-1382

CAPITAL STRATEGIES PHYSICAL AND ENVIRONMENTAL PLANNING A&E Bldg. (MC 1382)

30 October 2017

Mayor Jesse Arreguin City of Berkeley 2180 Milvia Street Fifth Floor Berkeley, California 94704

[Transmitted via email]

Mayor Arreguin:

My office has compiled the attached data in response to your request for information sent to former Chancellor Dirks' office on May 25, 2017. We have organized responses using the item numbers indicated in your letter. The data provided in the attachment is the current available information as of October 2017 and based on our understanding of your request.

Please contact Ruben Lizardo (rlizardo@berkeley.edu) if you have questions or would like clarification on the information that has been provided.

Sincerely,

Emply Marthusen

Emily Marthinsen Assistant Vice Chancellor/Campus Architect Physical & Environmental Planning | Capital Strategies

CC: R Lizardo, R Parikh, S Viducich, A Machamer, S Wilmot

# **EXHIBIT 1**

## ATTACHMENT 1. UC RESPONSE TO DATA REQUEST

1. Registered Student Headcount - Source: CalAnswers Student Census, UC Berkeley Office of Planning and Analysis, Accessed 10.04.2017

Academic Term Total Undergraduates		Total Graduate Students	Off-campus Undergraduates	Off-campus Graduate Program	
Fall (F) 05	23,482	10,076	381	668	
Spring (S) 06	22,643	9,571	384	674	
F06	23,863	10,070	357	713	
S07	23,351	9,592	384	732	
F07	24,636	10,317	359	752	
S08	24,032	9,809	395	766	
F08	25,151	10,258	325	743	
S09	24,448	9,735	405	758	
F09	25,530	10,393	331	757	
S10	25,061	9,854	421	773	
F10	25,540	10,298	369	777	
S11	24,969	9,789	498	762	
F11	25,885	10,257	342	782	
S12	25,277	9,764	529	788	
F12	25,774	10,125	334	789	
S13	25,181	9,610	463	800	
F13	25,951	10,253	327	881	
S14	25,473	9,834	426	954	
F14	27,126	10,455	296	1111	
S15	25,903 10,065		424	1118	
F15	27,496	10,708	335	1243	
S16	26,094	10,279	466	1252	
F16	29,310	10,863	650	1424	
S17	27,784	10,510	425	1480	
F17	30,574	11,336	560	1536	

Note: Columns indicated total number of students include all registered students, including those enrolled in off-campus programs such as online graduate degree programs, the Education Abroad Program, Global Edge (European Study Abroad), and Freshman in San Francisco. The students enrolled in these off-campus programs are tallied in the "off-campus" columns.

6	Thomas N. Lippe, SBN 104640 LAW OFFICES OF THOMAS N. LIPPE, APC 201 Mission Street, 12th Floor San Francisco, California 94105 Tel: (415) 777-5604 Fax: (415) 777-5606 E-mail: Lippelaw@sonic.net Attorney for Plaintiff: Save Berkeley's Neighborhoo	ds
7	IN THE SUPERIOR COURT OF	THE STATE OF CALIFORNIA
8	IN AND FOR THE CO	
9		
10 11	SAVE BERKELEY'S NEIGHBORHOODS, a California nonprofit public benefit corporation;	Case No.
12	Plaintiff,	PROOF OF SERVICE
13	VS.	[CALIFORNIA ENVIRONMENTAL
14	THE REGENTS OF THE UNIVERSITY OF	QUALITY ACT]
15	CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of	
	California; CAROL T. CHRIST, in her capacity as Chancellor of the University of California,	
17	Berkeley; and DOES 1 through 20,	
18 19	Respondents and Defendants.	
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Law Offices of Thomas N. Lippe 201 Mission St. 12 <sup>9</sup> Floor San Francisco, CA 94105 Tel: 415-777-5804 Fax: 415-7775606		
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1			PROOF OF SERVICE	
2	I am a	a citizen of the United S	tates, employed in the City and County of San Francisco, California.	
3	My business	My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18		
4	years and not	t a party to the above en	titled action. On April 12, 2018, I served the following document on	
5	the parties be	elow, as designated:		
6 7	•	Re: Notice of Intent t Long Range Develop	o Sue Regarding Inadequate CEQA Review of UC Berkeley's 2020 oment Plan	
8 9			MANNER OF SERVICE (check all that apply)	
10	1	By Mail:	In the ordinary course of business, I caused each such envelope to be	
11	[]	By Mail.	placed in the custody of the United States Postal Service, with	
12			postage thereon fully prepaid in a sealed envelope.	
13	[]	By Personal Service:	I personally delivered each such envelope to the office of the address	
14			on the date last written below. $\bigtriangledown$	
15 16	[]	By Overnight FedEx:	I caused such envelope to be placed in a box or other facility regular maintained by the express service carrier or delivered to an authorized	
17			courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express	
18			service carrier with delivery fees paid or provided for.	
19	[ <b>x</b> ]	By E-mail:	I caused such document to be served via electronic mail equipment	
20	[^]	by E man.	transmission (E-mail) on the parties as designated on the attached	
21			service list by transmitting a true copy to the following E-main addresses listed under each addressee below.	
22				
23	[]	By Personal Delivery by	I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the	
24		Courier:	addressee below.	
25			ceiv.	
26	l decl	are under penalty of per	jury under the laws of the State of California that the foregoing is true	
27	and correct.	Executed on April 12, 2	2018, in the City and County of San Francisco, California	
28			Kallania	
29			addresses listed under each addressee below. I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below. jury under the laws of the State of California that the foregoing is true 2018, in the City and County of San Francisco, California <u>KellyMaris</u> Kelly Marie Perry	
30				
Law Offices of				
Thomas N. Lippe 201 Mission St. 12 <sup>th</sup> Floor San Francisco, CA 94105 Tel: 415-777-5604 Fax: 415-7775606			- 1 -	
		Proof of	Service (CEQA); Case No. (To be determined)	
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1	SERVICE LIST
2	By email: chancellor@berkeley.edu
3	Chancellor Carol T. Christ
4	University of California, Berkeley c/o Jenny Hanson
	Executive Assistant to the Chancellor Office of the Chancellor
7	200 California Hall, #1500
8	Berkeley, CA 94720-1500
9	
10	By email: regentsoffice@ucop.edu Regents of the University of California
11	c/o Anne Shaw Office of the Secretary and Chief of Staff to the Regents
12	1111 Franklin St.,12th floor
13	Oakland, CA 94607
14	
15	<i>By email: dmrobinson@berkeley.edu</i> David M. Robinson, Interim Chief Campus Counsel
16	
17	
18	
19	T:\TL\UC Enroll\Trial\Pleadings\P005 POS Notice Commence 041218.wpd
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Law Offices of Thomas N. Lippe 201 Mission St. 12 <sup>th</sup> Floor	2
San Francisco, CA 94105 Tel: 415-777-5604 Fax: 415-7775606	- 2 - Proof of Service (CEQA); Case No. (To be determined)

# EXHIBIT 2

# Law Offices of THOMAS N. LIPPE, APC

201 Mission Street 12th Floor San Francisco, California 94105 Telephone: 415-777-5604 Facsimile: 415-777-5606 Email: Lippelaw@sonic.net

November 28, 2018

<u>By U.S. Mail</u> Hon. Xavier Becerra Attorney General State of California Office of the Attorney General 1300 I Street Sacramento, CA 95814

## Re: Notice of Filing - Save Berkeley's Neighborhoods v The Regents of the University of California, et al.; Alameda Superior Court Case No. RG18902751 regarding Notice of Intent to File CEQA Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief

Dear Attorney General Becerra:

Pursuant to section 21167.7 of the Public Resources Code and section 388 of the Code of Civil Procedure, I am furnishing your office with a copy of the Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief in the above referenced case. If necessary, any subsequent supplemental or amended pleadings will be forwarded.

Please note that Plaintiff is bringing this action as private attorneys general pursuant to section 1021.5 of the Code of Civil Procedure and any other applicable laws.

Thank you for your attention to this matter.

Very truly yours,

Tom Ligge

Thomas N. Lippe

P027 Ex 2 3rd Notice of Filing to AG 112818.wpd

1 2 3 4 5 6 7	Thomas N. Lippe, SBN 104640 LAW OFFICES OF THOMAS N. LIPPE, APC 201 Mission Street, 12th Floor San Francisco, California 94105 Tel: (415) 777-5604 Fax: (415) 777-5606 E-mail: Lippelaw@sonic.net Attorney for Plaintiff: Save Berkeley's Neighborhoo	
8		THE STATE OF CALIFORNIA
9	IN AND FOR THE CO	υνιι ΟΓ ΑΓΑΝΙΕΊΑ
10 11	SAVE BERKELEY'S NEIGHBORHOODS, a California nonprofit public benefit corporation;	Case No. RG18902751
12	Plaintiff,	PROOF OF SERVICE
13	vs.	[CALIFORNIA ENVIRONMENTAL
14	THE REGENTS OF THE UNIVERSITY OF	QUALITY ACT]
15	CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of	
16	California; CAROL T. CHRIST, in her capacity as	
17	Chancellor of the University of California, Berkeley; and DOES 1 through 20,	
18	Respondents and Defendants.	
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Law Offices of Thomas N. Lippe 201 Mission St. 12 <sup>®</sup> Floor San Francisco, CA 94105 Tel: 415-777-5604 Fax: 415-7775606		
	II	VVU321

1			PROOF OF SERVICE
2	I am a citizen of the United States, employed in the City and County of San Francisco, California.		
3	My business a	ddress is 201 Mission	Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18
4	years and not a	a party to the above enti	tled action. On November 28, 2018, I served the following document
5	on the parties	below, as designated:	
6			
7 8 9	•	of California, et al.; A	G - Save Berkeley's Neighborhoods v The Regents of the University Alameda Superior Court Case No. RG18902751 regarding Notice A Third Amended Petition for Writ of Mandate and Complaint ef; and
10	•	Third Amended Peti	ition for Writ of Mandate and Complaint for Declaratory Relief.
11 12			MANNER OF SERVICE
12			(check all that apply)
13	[ <b>x</b> ]	By Mail:	In the ordinary course of business, I caused each such envelope to be
15	[X]	By Mail.	placed in the custody of the United States Postal Service, with postage thereon fully prepaid in a sealed envelope.
16 17 18	[]	By Personal Service:	I personally delivered each such envelope to the office of the address on the date last written below.
19 20 21	[]	By Overnight FedEx:	I caused such envelope to be placed in a box or other facility regular maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
22	[]	By E-mail:	I caused such document to be served via electronic mail equipment
23 24		Dy L man.	transmission (E-mail) on the parties as designated on the attached
24			service list by transmitting a true copy to the following E-matrix addresses listed under each addressee below.
26	[]	By Personal	I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below.
27		Delivery by	courier or driver, in an envelope or package addressed to the
28	//	Courier:	addressee below.
29	//		Doc
30	//		
Law Offices of Thomas N. Lippe			
201 Mission St. 12 <sup>th</sup> Floor San Francisco, CA 94105 Tel: 415-777-5604 Fax: 415-7775606		Dec - f	- 1 - of Service (CEQA); Case No. RG18902751
		F1001	AA00372

1	I declare under penalty of perjury under the laws of the State of California that the foregoing is true
2	and correct. Executed on November 28, 2018, in the City and County of San Francisco, California
3	
4	<u>KellyMarie</u> KellyMarie Perry
5	Kelly Marie Perry
6	
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8	
9	SERVICE LIST
10	
11	Hon. Xavier Becerra
12	Attorney General
13	State of California Office of the Attorney General
14	1300 I Street
15	Attorney General State of California Office of the Attorney General 1300 I Street Sacramento, CA 95814
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Law Offices of Thomas N. Lippe 201 Mission St. 12 <sup>th</sup> Floor San Francisco, CA 94105 Tel: 415-777-5604	- 2 -
Fax: 415-7775606	Proof of Service (CEQA); Case No. RG18902751
	A A 0 0 2 7 3

# EXHIBIT 3



April 14, 2017

By e-mail to pra@berkeley.edu

Liane Ko

Public Records Coordinator University of California, Berkeley Office of Legal Affairs 200 California Hall, MC #1500 Berkeley, CA 94720-1500

### Dear Ms. Ko,

Pursuant to the California Public Records Act (Gov. Code §§ 6250 et seq.) I request the following public records.

- 1. Records indicating the total number of undergraduate and graduate students at the University of California, Berkeley Campus on a *per capita* basis i.e., not full time equivalents for each academic year starting with the 2005-2006 year, to date.
- 2. Records indicating the total number of beds offered and provided by the University of California, Berkeley Campus to students (undergraduate and graduate), for each academic year starting with the 2005-2006 year, to date.
- 3. Records indicating the total number of faculty and staff, full time, part time and adjunct on a *per capita basis* at the University of California, Berkeley Campus to students (undergraduate and graduate), for each academic year starting with the 2005-2006 year, to date.
- 4. Records indicating the total square footage of academic and support space operated or used by the University of California, Berkeley Campus in Berkeley.
- 5. Records indicating the total square footage of space for education or research purposes operated by or used by the University of California, Berkeley Campus in Berkeley that is leased or subleased to other users.

Fax: 510.981.6960

Document received by the CA 1st District Court of Appeal.

Liane Ko, Public Records Coordinator April 14, 2017 Page 2

- 6. Records indicating the total number and location of parking spaces constructed by the University of California, Berkeley Campus in Berkeley between May 2005 and January 1, 2015.
- 7. Records indicating the total number and location of parking spaces constructed by the University of California, Berkeley Campus in Berkeley since January 1, 2015.
- 8. Records indicating the total number and location of parking spaces owned by the University of California, Berkeley Campus in Berkeley.
- 9. Records indicating the total number and location of parking spaces constructed by the University of California, Berkeley Campus at the Underhill site.
- 10. Records indicating the total number and location of parking spaces that are not owned, but are operated by the University of California, Berkeley Campus in Berkeley.
- 11. Records indicating the total number and location of parking spaces that are not owned or operated, but are leased, rented or regularly used by the University of California, Berkeley Campus in Berkeley.
- 12. Records indicating the total number and location of parking spaces that are owned, operated or leased by the University of California, Berkeley Campus in Berkeley and are leased, rented to or regularly used by an entity other than the University of California, Berkeley Campus in Berkeley.
- 13 Records indicating the development and implementation of a localpurchasing program for prioritizing the purchase of goods and services in Berkeley, or any determination that such a program was not feasible.
- 14. Records indicating the establishment of an Employee Volunteer Release Time program enabling employees to work with at risk young people in Berkeley.

Very truly yours,

Zach Cowan City Attorney

# EXHIBIT 4

Response to City Request for Information dated May 25, 2017

### UNIVERSITY OF CALIFORNIA, BERKELEY



BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

#### BERKELEY, CALIFORNIA 94720-1382

CAPITAL STRATEGIES PHYSICAL AND ENVIRONMENTAL PLANNING A&E Bldg. (MC 1382)

30 October 2017

Mayor Jesse Arreguin City of Berkeley 2180 Milvia Street Fifth Floor Berkeley, California 94704

[Transmitted via email]

Mayor Arreguin:

My office has compiled the attached data in response to your request for information sent to former Chancellor Dirks' office on May 25, 2017. We have organized responses using the item numbers indicated in your letter. The data provided in the attachment is the current available information as of October 2017 and based on our understanding of your request.

Please contact Ruben Lizardo (rlizardo@berkeley.edu) if you have questions or would like clarification on the information that has been provided.

Sincerely,

Emply Marthusen

Emily Marthinsen Assistant Vice Chancellor/Campus Architect Physical & Environmental Planning | Capital Strategies

CC: R Lizardo, R Parikh, S Viducich, A Machamer, S Wilmot

## ATTACHMENT 1. UC RESPONSE TO DATA REQUEST

1. Registered Student Headcount - Source: CalAnswers Student Census, UC Berkeley Office of Planning and Analysis, Accessed 10.04.2017

Academic Term Total Undergraduates		Total Graduate Students	Off-campus Undergraduates	Off-campus Graduate Program	
Fall (F) 05	23,482	10,076	381	668	
Spring (S) 06	22,643	9,571	384	674	
F06	23,863	10,070	357	713	
S07	23,351	9,592	384	732	
F07	24,636	10,317	359	752	
S08	24,032	9,809	395	766	
F08	25,151	10,258	325	743	
S09	24,448	9,735	405	758	
F09	25,530	10,393	331	757	
510	25,061	9,854	421	773	
F10	25,540	10,298	369	777	
S11	24,969	9,789	498	762	
F11	25,885	10,257	342	782	
S12	25,277	9,764	529	788	
F12	25,774	10,125	334	789	
S13	25,181	9,610	463	800	
F13	25,951	10,253	327	881	
S14	25,473	9,834	426	954	
F14	27,126	10,455	296	1111	
S15	25,903	10,065	424	1118	
F15	27,496	10,708	335	1243	
S16	26,094	10,279	466	1252	
F16	29,310	10,863	650	1424	
S17	27,784	10,510	425	1480	
F17	30,574	11,336	560	1536	

Note: Columns indicated total number of students include all registered students, including those enrolled in off-campus programs such as online graduate degree programs, the Education Abroad Program, Global Edge (European Study Abroad), and Freshman in San Francisco. The students enrolled in these off-campus programs are tallied in the "off-campus" columns.

Academic Term	Residence Hall beds	Apartment beds	Total beds	
2005-06	6545	656	7201	
2006-07	6541	648	7189	
2007-08	6538	650	7188	
2008-09	6426	646	7072	
2009-10	6442	646	7088	
2010-11	6779	646	7425	
2011-12	6799	646	7445	
2012-13	6978	859	7837	
2013-14	7153	859	8012	
2014-15	7269	859	8128	
2015-16	7252	859	8111	
2016-17	7364	1188	8369	

2. Total # of Beds Offered to Students by UC Berkeley Housing (RSSP) in Apartments and Residence Hall- Source: RSSP, October 2017.

Note: The bed numbers are in facilities managed by RSSP, also including Bowles, International House, and buildings where campus has a master lease starting in the 2016-17 year. These bed numbers do not include Co-ops or Fraternity/Sorority Housing - these are managed by other housing entities.

Academic Term	Regular Faculty	Faculty Emeriti	Other Faculty Types	Other Academic	Staff
S08	1568	796	1121	3427	9034
F08	1600	811	1050	3398	9131
509	1599	806	1108	3446	9028
F09	1588	827	1002	3624	8471
S10	1582	822	1058	3648	8214
F10	1549	842	1049	3690	8155
S11	1530	852	1145	3498	8098
F11	1515	877	1131	3526	8092
S12	1526	873	1199	3603	8172
F12	1529	892	1140	3658	8443
S13	1532	892	1245	3655	8467
F13	1544	910	1197	3482	8722
S14	1549	900	1236	3495	8873
F14	1540	918	1231	3561	8959
S15	1534	917	1283	3512	8908
F15	1541	943	1257	3543	9021
S16	1547	943	1345	3482	882
F16	1558	963	1308	3464	862
S17	1546	957	1338	3448	854 <sup>-</sup>

3. Total Faculty and Staff Headcount - Source: CalAnswers Dashboard HR Census Level 1, UC Berkeley Office of Planning and Analysis, Accessed 10.04.2017

Note: Headcount data does not take into account work schedule status (e.g., telecommuting, part-time, flexible work days, etc) nor does it account for alternative work locations (e.g., off-campus natural reserves, UC Berkeley Washington DC program, etc). These counts are therefore considerably higher than actual faculty/staff population on the Berkeley campus at any one time during a typical weekday.

4. Total square footage - academic, administrative, support space (used/operated by UC Berkeley), Source: 2020 LRDP Entitlement Tracking Log, Physical & Environmental Planning, October 2017 (note: excludes parking and housing)

PROJECT/AREA	SF	SOURCE
LRDP Projected Add'l Academic & Support Space	2,200,000	2020 LRDP Table 3. Higher total distributed across zones for flexibility
Constructed/Under Construction	861,160	
Balance Remaining	1,338,840	
Campus Park	Sq Ft	Source
LRDP Envelope	1,000,000	2020 LRDP Table 3
Starr East Asian Library	67,500	2020 LRDP Draft Environmental Impact Report, January 2005
-i Ka Shing	200,000	Center for Biomedical and Health Sciences, 2020 LRDP EIR Addendum #1, February 2007
(Warren Hall Demolition)	-79,000	
Campbell Hall Replacement	81,600	Campbell Hall Replacement, 2020 LRDP Addendum #2, February 2008
(Campbell Hall Demolition)	-63,700	
Law Infill Addition	52,072	Law School Infill, 2020 LRDP EIR Addendum, June 2008
Blum Hall	13,010	Naval Architecture Restoration and Addition, 2020 LRDP EIR Addendum #4, December 2008
Lower Sproul	41,147	Lower Sproul Student Community Center Subsequent EIR, August 2011
(Girton Hall move)	-1,650	Haas North Addition and Girton Hall Move, 2020 LRDP EIR Addendum #10, July 2013
(Tolman Hall Demolition - approved)	-247,000	Berkeley Way West 2020 LRDP EIR Addendum, April 2015
Haas School North Addition (Chou Hall)	73,185	Haas North Addition and Girton Hall Move, 2020 LRDP EIR Addendum #10, July 2013
(2223 Fulton Demolition - approved)	-51,814	Building was vacated in 2015; Seismic Replacement Building 1 EIR (SCH #99122065) Sept 2000
Added to date	85,350	
Balance remaining available	914,650	
West Adjacent Blocks		
LRDP Envelope	800,000	2020 LRDP Table 3
Energy Biosciences Building	113,200	Helios Energy Research Facility & Related Improvements, 2020 LRDP EIR Addendum #7, Dec 2009
Berkeley Way West	325,000	Berkeley Way West 2020 LRDP EIR Addendum, April 2015
BAM/PFA	37,500	BAM/PFA, 2020 LRDP EIR Addendum #9, November 2011
Added to date	475,700	
Balance remaining available	324,300	
South Adjacent Blocks		

LRDP Envelope	400,000	2020 LRDP Table 3
SAHPC and CMS	260,000	Southeast Campus Integrated Projects EIR, December 2006
Added to date	260,000	
Balance remaining available Fall 2013	140,000	
North Adjacent Blocks		
LRDP Envelope	50,000	2020 LRDP Table 3
Jacobs Hall (Soda North)	23,110	Jacobs Hall 2020 LRDP EIR Addendum, March 2014
Added to date	23,110	
Balance remaining available Fall 2013	26,890	
Hill Campus - No projects as of 2017		
LRDP Envelope	100,000	2020 LRDP Table 3
Balance remaining available Fall 2013	100,000	
Southside		
LRDP Envelope	50,000	2020 LRDP Table 3
Early Childhood Edu Center, Haste St	11,000	ECEC Negative Declaration, 2005
Dwight Childcare	6,000	
Added to date	17,000	
Balance remaining available	33,000	
Other Sites - No Projects as of 2017		
LRDP Envelope	50,000	2020 LRDP Table 3
Balance remaining available	50,000	

5. Total square footage - administrative, education or research (used/operated by UC Berkeley, leased to others), Source: H. Levay, UC Berkeley Real Estate Development & Portfolio, October 2017

The campus leases approximately 185,776 square feet to others for administrative, educational and research activities; such uses are typically affiliated with campus academic programs. The campus also leases space to other uses in support of the campus's programs, such as cafes and commercial spaces -- these leases are not included in this lease space summary.

6.	Parking Changes	2005-2015	- Parking &	Transportation	September	2017
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7. Parking Changes 2015-2017 - Parking & Transportation September 2017

135	Constructed as temporary parking
-53	ECEC Negative Declaration, Spring 2005 (Haste Street)
100	Conversion of top level from tennis courts to parking
-216	UCB Parking Supply & Demand Assessment May 2010, p. 17
-7	SCIP EIR p. 4.8-13 and 2013 P&T inventory
-24	SCIP EIR p. 4.8-13 and 2013 P&T inventory
-17	Based on project drawings
-161	SCIP EIR p. 4.8-13 and 2013 P&T inventory
-121	SCIP EIR p. 4.8-13 and 2013 P&T inventory
-221	BAM/PFA, 2020 LRDP EIR Addendum #9, November 2011, p. 14
-10	Calvin Lab; 2013 P&T inventory
10	2013 P&T Inventory
447	Parking is operated by private vendor (campus permits are not valid)
-56	PHA Settlement Agreement, 11.26.2013
-11	Lower Sproul EIR
-153	Aquatics Center included 49 space lot to partially replace lost spaces
-87	Stiles Site Student Housing 2020 LRDP EIR Addendum, April 2016
-5	Reconfiguration of College Way; 2 ADA spaces returned to campus
-135	Berkeley Way West Addendum April 2015
-6	Bowles Hall Residential College Addendum 3.19.15
49	temporary short-term lease for interim parking use
250	P&T took over lot after Berkeley Way West construction began
-79	estimate to be removed Jan 2018, PHA Settlement Agreement, 11.26.2013
	-53 100 -216 -7 -24 -17 -161 -121 -221 -10 10 447 -56 -11 -153 -87 -5 -135 -6 49 250

Notes: (1) Changes exclude changes to attended parking operations between 2005 and 2017. Although the campus has operated some amount of attended parking since 2005, the operations change substantially year to year depending funding, space availability and demand. Due to the loss of campus parking facilities, use of attended parking has decreased.

#### 8. Parking Inventory - Parking & Transportation September 2017

9. Total Parking at Underhill Garage - Parking & Transportation September 2017

Parking & Transportation maintains a map of campus parking facilities, noting number of spaces, permit classifications and use restrictions, on their website and available at this link:

https://www.google.com/maps/d/u/0/viewer?hl=en&msa=0&z=15&ie=UTF8&mid=17LS4z07DDCTjJelEHggQqX7y3Y&ll=37.87124321571974%2C-122.2705315

10. Parking leased to and operated by UC Berkeley - Parking & Transportation September 2017

- 1899 Oxford at Hearst 49 spaces
- 1608 4th Street 181 spaces

11. Parking leased to UC Berkeley and operated by others - Parking & Transportation September 2017

2016 Dwight Way - 15 spaces

12. Parking leased by UC Berkeley to others - Parking & Transportation September 2017

1995 University Avenue - approximately 20 spaces

#### 13. Local Purchasing Program (Source: UC Berkeley Supplier Diversity Program - Supply Chain Management Office)

UC Berkeley strives to provide fair, open, and efficient opportunities for all suppliers interested in doing business with the campus. UC Berkeley's Supply Change Management office provides an overview of its practices here (<a href="https://supplychain.berkeley.edu/suppliers/doing-business-uc-berkeley">https://supplychain.berkeley.edu/suppliers/doing-business-uc-berkeley</a>). Over the years, the campus has made significant efforts to promote and support bidding by local business enterprises, especially Small Businesses, Women-owned Business Enterprises, Disadvantaged Business Enterprises, and Disabled Veteran Business Enterprises. Notably, the Supply Change Management office has conducted workshops for local businesses in partnership with local chambers of commerce and local business development organizations (<a href="https://supplychain.berkeley.edu/campus/supplier-diversity">https://supplychain.berkeley.edu/campus/supplier-diversity</a>). These workshops provide an overview of the goods and services UC Berkeley procure each year; information needed to secure certifications (e.g., small, women, disadvantaged, veteran) that would make the business more competitive in our procurement system; and those of other public institutions (including UCSF) that report annual spend with these types of businesses.

UC Berkeley employs practices that support the procurement of goods and services from Berkeley local businesses and those with local headquarters in the city. Other reports and data can be provided on request that include differing levels of detail including number of businesses, spend and diversity information.

#### 14. Employee Volunteer Release Time program for at-risk young people.

UC Berkeley does not have a specific program for employees interested in volunteering with at-risk youth. Nonetheless, campus employees and students are involved in a wide variety of activities in the community and with underserved communities. The UC Berkeley Public Service Center outlines some of these opportunities and how affiliates can be involved on their website

(<u>http://publicservice.berkeley.edu/faculty-and-staff</u>). The Public Service Center provides information to departments for one-time events, as well as offering VolunteerMatch for individuals looking for volunteer opportunities. Community groups

(http://publicservice.berkeley.edu/community) can also engage directly with the campus, including submitting information to publicservice@berkeley.edu, posting opportunities on VolunteerMatch, recruiting student volunteers/researchers, and participating in the Chancellor's Community Partnership Fund.

# Tab 031

NCV/29/20	13/THU 01:59 PM 🛛 Law O. Thomas Lippe	FAX No. 1-415-777-5606 P. 002	
2	Thomas N. Lippe, SBN 104640 LAW OFFICES OF THOMAS N. LIPPE, APC 201 Mission Street, 12th Floor San Francisco, California 94105 Tel: (415) 777-5604 Fax: (415) 777-5606 E-mail: Lippelaw@sonic.net Attorney for Plaintiff: Save Berkeley's Neighborho		×
8		OF THE STATE OF CALIFORNIA	
9	IN AND FOR THE C	OUNTY OF ALAMEDA	pea
10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>SAVE BERKELEY'S NEIGHBORHOODS, a California nonprofit public benefit corporation; Plaintiff,</li> <li>vs.</li> <li>THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of California; CAROL T. CHRIST, in her capacity as Chancellor of the University of California, Berkeley; and DOES 1 through 20,</li> <li>Respondents and Defendants.</li> </ul>	[CALIFORNIA ENVIRONMENTAL QUALITY ACT] Reservation No. R-2018755 Date: December 6, 2018 Time: 3:45 P.M. Dept.: 24 Judge: Hon. Frank Roesch Action Filed: April 27, 2018 Trial Date: Not Set	Document received by the CA 1st District Court of Appeal
23 24 25		Assigned for All Purposes to: Hon. Frank Roesch, Dept. 24	cument
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Law Offices of Thomas N. Lopp M. Longes N. 2007 Francisco Castron Francisco Castron Francisco Castron Francisco Castron		AA00386	

## I. INTRODUCTION

Plaintiff's First Request for Production of Documents seeks documents relating to Respondents 3 historical decision-making regarding its increasing enrollment over and above the 1,650 additional students projected by UC Berkeley's Long Range Development Plan that Respondent Regents adopted in 2005 (2020 LRDP) and disclosed in the Final Environmental Impact Report for the 2020 LRDP certified in 2005 (2005 5 EIR). (Second Amended Petition ¶¶ 3-6; Third Amended Petition, ¶¶ 3-12.) For example, Request No. 5 seeks: "All writings, including internal staff memoranda and emails, that refer or relate to increases in student enrollment at UC Berkeley that were prepared since the adoption of UC Berkeley's 2020 Long Range Development Plan by the Regents of the University of California." Thus, these requests are reasonably calculated to lead to the discovery of admissible evidence.

Respondents' opposition to Plaintiff's motion to compel, if adopted, would allow lead agencies in 11 all CEQA cases to refuse to produce documents comprising the record of proceedings to plaintiffs who have 12 elected to prepare the administrative record and to avoid all discovery intended to obtain these documents 13 This position, if adopted, would nullify Plaintiff's statutory right to prepare the record in CEQA cases 14 provided in Public Resources Code section 21167(b)(2). This would violate the rule of statutor 15 interpretation that requires courts to give effect and significance to every word and phrase of a statute 16 (Garcia v. McCutchen (1997) 16 Cal.4th 469, 476.)

17 Instead of complying with the Civil Discovery Act's requirement to "Identify with particularity an 18 document ... or electronically stored information falling within any category of item in the demand to which 19 an objection is being made" (Cal. Code Civ. Proc., § 2031.240(b)(1)), Respondents have asserted a series of boilerplate objections without disclosing what documents it has that it objects to producing. 20

Plaintiff has tried every legal method available to obtain documents from Respondents that Plaintiff 21 needs to prepare the record, including the Civil Discovery Act, the Public Records Act, and Local Rules of 22 Court. (See Declaration of Thomas N. Lippe in Support of Motion to Compel Further Responses to 23 Plaintiff's Requests for Production of Documents, Set One (Lippe Decl.), ¶ 5-16.) The Court should end 24 the Regents stonewalling now. 25

Respondents attempt to support their opposition to the motion with the fact that Plaintiff's have amended their complaint three times. This fact has no legal significance. Code of Civil Procedure section 430.41(e)(1) imposes a limit of three amendments made "in response to a demurrer and prior to the case

aw Offices of Law Offices of Fhomas N. Lippe 1 Mission St. 12<sup>th</sup> Floo n Francisco, CA 9410 Tel: 415-777-5804 Fax: 415-7775806

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being at issue." Here, only one amendment has been made in response to a demurrer. One of Plaintiff's
amendments was made in response to the meet and confer process set forth in Code of Civil Procedure
section. For Respondents to hold that against Plaintiff would be an example of "no good deed goes
unpunished."

### **II. ARGUMENT**

# The Regents' Objection That Plaintiff Needs Prior Leave of Court to Conduct Discovery Should be Overruled.

Respondents argue that Plaintiff's First Request for Production of Documents is improper because
 Plaintiff did not seek prior court approval before propounding the request. Plaintiff's opening memorandum
 fully explains why Plaintiff was not required to seek prior court approval before propounding discovery.

In addition, the premise of Respondents' objection is that the evidence in this case will be restricted
 to the "administrative record." This is incorrect for both Plaintiff's mandamus and declaratory relief causes
 of action.

Regarding Plaintiff's mandamus cause of action, "extra-record evidence may be admissible for traditional mandamus actions challenging ... administrative actions." (*Western States Petroleum Assn. Superior Court* (1995) 9 Cal.4th 559, 575.) Here, Respondents made *informal* decisions to increase enrollment over and above the 1,650 additional students projected by the 2020 LRDP and disclosed in the 2005 EIR. (Second Amended Petition ¶ 3-6; Third Amended Petition, ¶¶ 3-12.)

Plaintiff's declaratory relief cause of action is not subject to "the rule applied in administrative mandamus which limits judicial review to the record before the administrative agency." (*East Bay Muter Utility Dist. v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1113, 1122.)

# B. The Regents' Objection That Plaintiff Has Not Alleged a "CEQA Project" Should be Overruled.

Respondents argue that Plaintiff's First Request for Production of Documents is improper because the mandamus cause of action in the Petition for Writ of Mandate and Complaint for Declaratory Relief doc not allege a specific "CEQA project" challenged in mandamus. This contention fails for three reasons

First, Plaintiff's mandamus cause of action clearly challenges Respondents' failure to conduct CEQ review of increases in student enrollment the over and above the 1,650 additional students projected by the 2020 LRDP and disclosed in the2005 EIR. (Second Amended Petition ¶¶ 3-6; Third Amended Petition, ¶ 3-12.)

Law Offices of Thomas N. Lippe 201 Mission St. 12<sup>th</sup> Floc San Francisco, CA 9410 Tel: 415-777-5804 Fax: 415-7775608

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6 **A**.



On November 15, 2018, the Court sustained Respondents demurrer with leave to amend "to clearly
identify the project that is being challenged in this action, as well as the date the discretionary approval for
that project was granted and when that project was commenced." On November 28, 2018, Plaintiff filed
its Third Amended Petition, which satisfies this order. (See Third Amended Petition, ¶¶ 3-12.) Therefore,
Respondents objection to discovery on this basis is without merit.

Second, Respondents' objection on this basis does not apply to Plaintiff's declaratory relief cause of action. To the extent that Respondents' failure to conduct CEQA review of increases in student enrollment over and above the 1,650 additional students projected by the 2020 LRDP and disclosed in the 2005 EIR is not tied to a specific "CEQA project," Plaintiff's declaratory relief cause of action challenges Respondents' policy of increasing student enrollment over and above the 1,650 additional students projected by the 2020 LRDP and disclosed in the 2005 EIR without subjecting these increases to CEQA review.

11 Under Code of Civil Procedure section 1060, a declaratory relief action is an appropriate method for 12 challenging an agency policy of ignoring or violating applicable laws. (Venice Town Council, Inc. v. Cit 13 of Los Angeles (1996) 47 Cal. App. 4th 1547, 1565-1566; Californians for Native Salmon and Steelhead 14 Association v. Department of Forestry (1991) 221 Cal. App.3d 1419, 1428-29 (Californians for Native 15 Salmon).) Declaratory relief is particularly appropriate when a plaintiff challenges a policy that will likely be repeatedly applied in an unlawful manner. (*Californians for Native Salmon, supra*, 221 Cal. App. 3d ab 16 1430-1431 ("[p]iecemeal litigation of the issues in scores of individual proceedings would be an immense 17 waste of time and resources."). Also, the existence of a policy can be proved by showing the agency 18 "pattern and practice" of engaging in specific conduct. (Californians for Native Salmon, supra, 221 Cal. 19 App. 3d at 1424.) Here, the Regents disclosure, on October 30, 2017, of all increases in student enrollment 20that have occurred since 2007 disclosed its pattern and practice of increasing student enrollment. (See (Second Amended Petition ¶¶ 3-6; Third Amended Petition, ¶¶ 3-12.)

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Third, Respondents' objection on this basis contravenes the rule that the right to discovery does not depend on the status of the pleadings. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.39 1429, 1436 [sanctions upheld for refusal to make discovery because demurrer pending].) Also, discovery may continue after a demurrer has been sustained with leave to amend. (*Budget Finance Plan v. Sup. Cluber (McDowell*) (1973) 34 Cal.App.3d 794, 797].)

Moreover, Respondents have already signaled their intent to file another demurrer to Plaintiff's Thing

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Amended Petition for Writ of Mandate and Complaint for Declaratory Relief in this case. (Reply Declaration
of Thomas N. Lippe in Support of Motion to Compel Further Responses to Plaintiff's Requests for
Production of Documents, Set One (Reply Lippe Decl.), ¶ 2, Ex 1.). Thus, Plaintiff needs to obtain the
discovery it seeks in order to ensure it has enough facts to draft a complete and final statement of its causes
of action in response to Respondents' forthcoming, new demurrer. (See *Union Mut. Life Ins. Co. v. Sup.Ct.*(*Scott*) (1978) 80 Cal.App.3d 1.)

# 7 C. The Regents' Objection That Plaintiff Has Not Identified "Disputed Facts" Should Be Overruled.

Respondents object to Plaintiff's First Request for Production of Documents on grounds that Plaintiff
 has not cited any "disputed facts" to which the discovery relates, citing *Digital Music News LLC v. Superior Court* (2014) 226 Cal.App.4th 216, 224, disapproved of on other grounds by *Williams v.*

11 Superior Court (2017) 3 Cal.5th 531.

Respondents waived this objection by failing to state the objection in their response to Plaintiff
request for production of documents. (*Stadish v. Sup.Ct. (Southern Calif. Gas Co.)* (1999) 71 Cal.App.41
1130, 1141; Lippe Decl. ¶ 5, Ex 3.)

Also, this objection is inapplicable at this stage of the case because, unlike *Digital Music News LLC v. Superior Court*, Respondents have not filed an answer; therefore, Respondents have not identified the
 facts that are in dispute. (See e.g., *Digital Music News LLC v. Superior Court, supra*, 226 Cal.App.4th
 224 ["The facts of consequence in the New York lawsuit between UMG and Escape may be found in
 UMG's complaint and Escape's affirmative defenses and counterclaims"].)

In addition, this objection does not generally apply to mandamus causes of action because mandate claims raises issue of law to be decided on undisputed facts in the agency's record of proceedings. (*Westerle States Petroleum Assn. v. Superior Court*, supra, 9 Cal.4th at 570.) However, as noted above, because Respondents made *informal* decisions to increase enrollment over and above the 1,650 additional students projected by the 2020 LRDP and disclosed in the 2005 EIR, extra-record evidence may be admissible. (*M* at 575.)

D. The Regents' Objection That The Requests For Documents Do Not Specify a "Time Period Should be Overruled.

Respondents separate statement mentions its objection that the requests are not specific as to "time period," though its opposition memorandum does not brief this objection.

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In any case, each of the six requests is specific as to time.
---

Request 1 seeks documents "prepared in connection with the preparation of UC Berkeley's 2020 2 Long Range Development Plan." (Italics added.) 3

Request 2 seeks documents "prepared in connection with preparing any environmental document 4 for the 2020 Long Range Development Plan pursuant to the California Environmental Quality Act." (Italics 5 added.) 6

Request 3 seeks documents "prepared in connection with the *adoption* of UC Berkeley's 2020 Long Range Development Plan by the Regents of the University of California." (Italics added.)

Request 4 seeks documents "prepared in connection with the *adoption* of any environmental 9 document prepared for the 2020 Long Range Development Plan pursuant to the California Environmental 10 Quality Act.." (Italics added.)

11 Request 5 seeks documents that "refer or relate to increases in student enrollment at UC Berkeley 12 that were prepared since the adoption of UC Berkeley's 2020 Long Range Development Plan by the Regents 13 of the University of California." (Italics added.)

14 Request 6 seeks documents "prepared after certification of the Final Environmental Impact Report for the 2020 Long Range Development Plan pursuant to the California Environmental Quality Act." (Italies 15 added.) 16

III. CONCLUSION For the reasons described above, The Regents' objections to the requested discovery should be 18 overruled and Plaintiff's motion to compel further responses to their first document request, to produce requested, non-privileged documents, and to produce a privilege log, should be granted. DATED: November 29, 2018 LAW OFFICES OF THOMAS N. LIPPE, APC By: Tom Lippe Attorney for Plaintiff T:\TL\UC Enroll\Trial\Mtn Compel\M026b Compel Reply MPA.wpd 19 20

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aw Offices of Law Offices of Fhomas N. Lippe 1 Mission St. 12<sup>th</sup> Floo n Francisco, CA 9410 Tel: 415-777-5804 Fax: 415-7775806

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Reply Memorandum of Points and Authorities in Support of Motion to Compel Further Responses to Plaintiff's Requests for Production of Documents, Set One (CEQA); RG18902751

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FAX No. 1-415-777-5606

P. 008

# Tab 032

NCV/29/2013/THU 02:01 PM Law O. Thomas Lippe

FILED BY FAX ALAMEDA COUNTY Thomas N. Lippe, SBN 104640 1 November 29, 2018 LAW OFFICES OF THOMAS N. LIPPE, APC 2 201 Mission Street, 12th Floor CLERK OF THE SUPERIOR COURT San Francisco, California 94105 3 By Alicia Espinoza, Deputy Tel: (415) 777-5604 CASE NUMBER: 4 Fax: (415) 777-5606 RG18902751 E-mail: Lippelaw@sonic.net 5 6 Attorney for Plaintiff: Save Berkeley's Neighborhoods 7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 IN AND FOR THE COUNTY OF ALAMEDA 9 10 SAVE BERKELEY'S NEIGHBORHOODS, a Case No. RG18902751 California nonprofit public benefit corporation; 11 **REPLY DECLARATION OF THOMAS N.** Plaintiff, 12 LIPPE IN SUPPORT OF MOTION TO VS. **COMPEL FURTHER RESPONSES TO** 13 PLAINTIFF'S REQUESTS FOR THE REGENTS OF THE UNIVERSITY OF **PRODUCTION OF DOCUMENTS, SET** 14 CALIFORNIA, JANET NAPOLITANO, in her ONE capacity as President of the University of 15 California; CAROL T. CHRIST, in her capacity as **CALIFORNIA ENVIRONMENTAL** Chancellor of the University of California, 16 QUALITY ACT] Berkeley; and DOES 1 through 20, 17 Reservation No. R-2018755 Respondents and Defendants. 18 Date: December 6, 2018 Time: 3:45 P.M. 19 Dept.: 24 20 Judge: Hon. Frank Roesch 21 Action Filed: April 27, 2018 22 Trial Date: Not Set 23 Assigned for All Purposes to: Hon. Frank Roesch, Dept. 24 24 25 26 27 28

AA00392

1	I, Thomas N. Lippe, declare:
2	1. I am an attorney licensed to practice before all courts of this State. I am attorney of record for
3	Plaintiff in this action.
4	2. On November 19, 2018, Mr. Timothy Cremin, counsel for Respondents in this mater, sent me an
5	email to coordinate a hearing date on Respondents' planned demurrer to Plaintiff's Third Amended Petition
6	and Complaint, which at that time was not filed yet. A true and correct copy of this letter is attached hereto
7	as Exhibit 1.
8	I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true
9	and correct of my personal knowledge. Executed on November 29, 2018, in San Francisco, California.
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11	Thomas N. Lippe
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Law Offices of Thomas N. Lippe	1
201 Mission St. 12 <sup>th</sup> Floor San Francisco, CA 94105 Tel: 415-777-5604 Fax: 415-7775606	- 1 - Reply Declaration of Thomas N. Lippe in Support of Motion to Compel Further Responses to
	Plaintiff's Requests for Production of Documents, Set One (CEQA); RG18902751
	A A 0.0 2 0 2

AA00393

### **Tom Lippe**

From: Cremin, Tim <tcremin@meyersnav< th=""></tcremin@meyersnav<>	
Sent: Monday, November 19, 2018 9:43	
То:	lippelaw@sonic.net
Subject:	Hearing Dates

Tom – I wanted to coordinate with you for hearing dates for our planned demurrer to your third amended complaint given the holiday season. The court order set up a 10 day to amend and 10 day to respond. There is also a 35 day rule for filing notice before hearing. We both have vacations the last week of December and first week of January. I think we need to file a stip to make this work. We are willing to coordinate to accommodate schedules. Let me know if you are. Thanks. -Tim

#### **Timothy Cremin**

Principal

meyersinave

email bio website office: 510.808.2000 mobile: 510.759.4330 Oakland • Los Angeles • Sacramento • San Diego • Santa Rosa

Confidentiality Notice: This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

# **EXHIBIT 1**

<b>Tab 033</b>	21066023
	CIV-130
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Timothy D. Cremin (SBN 156725) Meyers Nave Riback Silver & Wilson 555 12 <sup>th</sup> Street, Suite 1500 Oakland, CA 94607 TELEPHONE NO.: (510) 808-2026 FAX NO. (Optional): (510) 444-1108 E-MAIL ADDRESS (Optional): tcremin@meyersnave.com ATTORNEY FOR (Name): Respondents and Defendant SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, 94612 BRANCH NAME: PLAINTIFF/PETITIONER: Save Berkeley'S Neighborhoods ' DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	FOR COURT USE ONLY FOR COUNTY DEC 10 2018 CLERK OF CHEBUP CONSCIENT BU Deputy
NOTICE OF ENTRY OF JUDGMENT OR ORDER         (Check one):       UNLIMITED CASE (Amount demanded exceeded \$25,000)       LIMITED CASE (Amount demanded was \$25,000 or less)	CASE NUMBER: RG18902751

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): December 6, 2018

2. A copy of the judgment, decree, or order is attached to this notice.

Date: December <u>1</u>, 2018

Timothy D. Cremin

(TYPE OR PRINT NAME OF

Form Approved for Optional Use [Judicial Council of California [City-130 [New January 1, 2010] ATTORNEY PA

PARTY WITHOUT ATTORNEY)

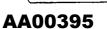
(SIGNATURE)

www.courtinfo.ca.gov



NOTICE OF ENTRY OF JUDGMENT OR ORDER

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	······································	CIV-1:	
PLAINTIFF/PETITIONER: Save Berkeley's Neighborh	oods	CASE NUMBER: RG18902751	
DEFENDANT/RESPONDENT: The Regents of the Univers	ity of California, et al.		
PROOF OF SERV	/ICE BY FIRST-CLASS	MAIL	
NOTICE OF ENTR	RY OF JUDGMENT OR OF	RDER	
IOTE: You cannot serve the Notice of Entry of Judgmen e notice must complete this proof of service.)	it or Order if you are a pa	rty in the action. The person who served	
I am at least 18 years old and <b>not a party to this action</b> . place, and my residence or business address is ( <i>specify</i> ): 555 12 <sup>th</sup> Street, Suite 1500 Oakland, CA 94607	I am a resident of or emplo	oyed in the county where the mailing took	
I served a copy of the Notice of Entry of Judgment or Orde fully prepaid and (check one):	er by enclosing it in a seale	ed envelope with postage	
<ul> <li>a. deposited the sealed envelope with the United States Postal Service.</li> <li>b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.</li> </ul>			
The Notice of Entry of Judgment or Order was mailed:			
a. on ( <i>date):</i> December <u>IC</u> 2018			
b. from (city and state): Oakland, CA 94607	· .		
The envelope was addressed and mailed as follows: a. Name of person served: Thomas N. Lippe, Esq. The Law Offices of Thomas N. Lippe, APC	c. Name of person serve	ed: .	
Street address: 201 Mission Street, 12 <sup>th</sup> Fl. City: San Francisco	Street address: City:		
State and zip code: California 94105	State and zip code:		
b. Name of person served:	d. Name of person serv	ed:	
Street address:	Street address:		
City:	City:		
State and zip code:	State and zip code:		
Names and addresses of additional persons serve Number of pages attached <u>-0-</u> . declare under penalty of perjury under the laws of the State			
Date: December $\underline{Q}$ , 2018			
Melissa Bender	· UBer	ider	
(TYPE OR PRINT NAME OF DECLARANT)		(SIGNATURE OF DECLARANT)	

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# AA00396

Law Offices of Thomas N. Lippe, APC Attn: Lippe, Thomas N. 201 Mission Street, 12th Floor San Francisco, CA 94105

# Superior Court of California, County of Alameda Rene C. Davidson Alameda County Courthouse

Save Berkeley's Neighborhoods	Plaintiff/Petitioner(s)	
. VS.		
The Regents of the Universi		
De (Abbrevisted Titl	fendant/Respondent(s)	

No. RG18902751

Meyers, Nave, Riback, Silver &

Attn: Cremin, Timothy D. 555 12th Street

Oakland, CA 94607

Wilson

Suite 1500

Order

Motion to Compel (Motion) Denied

The Motion to Compel (Motion) was set for hearing on 12/06/2018 at 03:45 PM in Department 24 before the Honorable Frank Roesch. The Tentative Ruling required that the parties appear, and the matter came on regularly for hearing.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

Plaintiff's Motion to Compel Further Responses to Request for Production of Documents is Denied.

Dated: 12/06/2018

Frend fread

Judge Frank Roesch

Order



SHORT TITLE:	CASE NUMBER:
Save Berkeley's Neighborhoods VS The Regents of the Universi	RG18902751

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<u>، د</u>

# ADDITIONAL ADDRESSEES

Robinson, Charles F. University of California 1111 Franklin Street, 8th Floor Oakland, CA 94607-5200

•

Superior Court of California, County of Alameda Rene C. Davidson Alameda County Courthouse

Case Number: RG18902751 Order After Hearing Re: of 12/06/2018

-

# DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 12/07/2018.

Chad Finke Executive Officer / Clerk of the Superior Court

-----Βv

Deputy Clerk

ſ

	Tab	034
A al T O 1 O T	Charles F. Robinson (SBN 113197) lison Krumbein (SBN 229728) lison.krumbein@ucop.edu HE UNIVERSITY OF CALIFORNIA Office of General Counsel 111 Franklin St., 8th Floor Dakland, California 94607 elephone: (510) 987-0851 acsimile: (510) 987-9757	
al T E eg M 5: O T	mrit S. Kulkarni (SBN: 202786) kulkarni@meyersnave.com imothy D. Cremin (SBN: 156725) cremin@meyersnave.com dward Grutzmacher (SBN: 228649) grutzmacher@meyersnave.com IEYERS, NAVE, RIBACK, SILVER & WILSO 55 12 <sup>th</sup> Street, Suite 1500 pakland, California 94607 elephone: (510) 808-2000 acsimile: (510) 444-1108	
C Pi C	ttorneys for The Regents of the University of alifornia; Janet Napolitano, in her capacity as resident of the University of California; Carol T hrist, in her capacity as Chancellor of the niversity of California, Berkeley	E STATE OF CALIFORNIA
	SUPERIOR COURT OF TH	E STATE OF CALIFORNIA
	COUNTY O	
C	AVE BERKELEY'S NEIGHBORHOODS, a california nonprofit public benefit orporation,	Case No. RG18902751 ASSIGNED FOR ALL PURPOSES TO
	Plaintiff,	JUDGE HON. FRANK ROESCH DEPARTMENT 24 MEMORANDUM OF POINTS AND
T	v. HE REGENTS OF THE UNIVERSITY OF	AUTHORITIES IN SUPPORT OF DEMURRER TO PETITIONER'S THIR
h	CALIFORNIA; JANET NAPOLITANO, in er capacity as President of the University of California; CAROL T. CHRIST, in her	AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF
ca	apacity as Chancellor of the University of California, Berkeley; and DOES 1 through 20,	
3	Respondents and Defendants.	RESERVATION No. R-2022686 Date: January 15, 2019 Time: 3:45p Judge: Hon. Frank Roesch Dept.: 24
		Action Filed: April 27, 2018 Trial Date: None Set

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L	<ul> <li>(1987) 189 Ca1.App.3d 91</li> <li>Friends of College of San Mateo Gardens v. San Mateo County Community College District</li> <li>(2016) 1 Ca1.5th 937.</li> <li>Ginsberg v. Gamson</li> <li>(2012) 205 Cal.App.4th 873.</li> <li>Gonzales v. State of California</li> <li>(1977) 68 Cal.App.3d 621.</li> <li>Jolley v. Chase Home Fin., LLC</li> <li>(2013) 213 Cal.App.4th 872.</li> </ul>
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### MEMORANDUM OF POINTS AND AUTHORITIES

### 2 I. INTRODUCTION

1

Petitioner Save Berkeley's Neighborhoods ("Petitioner") has had four chances, along with 3 direct guidance from this Court, to state a viable claim, but has failed. In fact, Petitioner's Third 4 Amended Petition for Writ of Mandate and Complaint for Declaratory Relief ("TAP") completely 5 fails to comply with the Order this Court issued in sustaining Respondents the Regents of the 6 University of California, Janet Napolitano, and Carol T. Christ's (collectively "UC") demurrer to 7 the Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief ("SAP"). 8 Moreover, nothing in the TAP corrects the flaws identified by UC in its demurrer to the SAP. As 9 such, this Court should sustain UC's demurrer to the TAP without leave to amend. 10

11 This Court's Order directed Petitioner to amend the SAP to clearly allege what project 12 Petitioner is challenging, the date of the discretionary approval of that project, and the date of 13 commencement of that project. The TAP does none of these things. For this reason alone, the 14 court should sustain the demurrer without leave to amend.

Petitioner's failure to amend the SAP in any substantive way also results in a TAP with and of the fatal flaws UC previously identified in its demurrer to the SAP. First, the TAP is barred by 15 16 the statute of limitations. Petitioner alleges that UC's decision to increase enrollment at the St 17 University of California, Berkeley ("UCB") above the enrollment numbers identified in the Long 18 Range Development Plan ("LRDP") and the Environmental Impact Report for the LRDP ("LRDP") EIR") occurred in 2007. Any claim brought under the California Environmental Quality Act ("CEQA") to challenge an alleged decision made more than 10 years before Petitioner filed suif would be barred by CEQA's 180-day statute of limitations. Moreover, Petitioner cannot reasonably argue that the statute of limitations should be extended because it could not have known about the alleged increased in student enrollment where Petitioner also alleges that its members have lived near UCB and been affected by the alleged environmental impacts of enrollment for the entire 10-year period. 19 20 21 22 23 24 25 enrollment for the entire 10-year period. 26

Second, changes in student enrollment levels are not a "project" under CEQA. CEQA
contains a specific statutory provision governing when, and in what manner, UC should examine
5

the potential environmental impacts associated with student enrollment. This provision requires
 UC to consider environmental effects related to projected student enrollment levels in the LRDP
 EIR. It does not, as Petitioner erroneously contends, treat enrollment as a separate or stand-alone
 "project" requiring its own CEQA analysis. Therefore, Petitioner cannot raise a CEQA claim
 based solely on alleged annual enrollment changes.

6 Third, Petitioner has failed to allege facts showing the necessary conditions for subsequent
7 or supplemental environmental review of the LRDP. CEQA prohibits UC from conducting
8 subsequent or supplemental environmental review unless certain conditions are met. Here,
9 Petitioner has failed to allege that the changes in enrollment levels meet the statutory requirements
10 necessary to allow UC to conduct subsequent or supplemental environmental review.

Petitioner has failed to allege that are thing.
necessary to allow UC to conduct subsequent or supplemental environmental review.
Fourth, any challenge to historical enrollment at UCB is moot. The TAP claims that UC
has made enrollment "decisions" allowing for "excess enrollment" as far back as 2007. UC
cannot reach into the past to change or mitigate historical enrollment decisions because these
academic years no longer exist. Student enrollment levels also change every year and have a
specific start and end date each academic year. Thus, Petitioner can gain no effective relief from the state.
Finally, Petitioner has failed to state a viable claim for declaratory relief. The declaratory of CEOA and is subject to CEOA's statute of

Finally, Petitioner has failed to state a viable claim for declaratory relief. The declaratory relief claim is based on an alleged violation of CEQA and is subject to CEQA's statute of limitations. Instead of separate enrollment "projects," Petitioner's claim for declaratory relief challenges UC's alleged adoption of a policy in 2007 to allow for "excess enrollment." However any claim that UC violated CEQA by adopting such a policy in 2007 would also be barred by CEQA's statute of limitations. Petitioner cannot revive a time-barred CEQA claim by pleading as a claim for declaratory relief. Despite being given four chances to state its case, Petitioner has failed to comply with the

Despite being given four chances to state its case, Petitioner has failed to comply with the Court's Order and has again failed to plead a viable claim. Thus, this Court should presume that the TAP represents Petitioner's strongest possible case. Because Petitioner's best effort has failed to present any cognizable claim, this Court should sustain UC's demurrer without leave to amend.

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#### STATEMENT OF FACTS 1 II.

In 2005, UC adopted an LRDP for UCB to guide campus development and . certified the 2 LRDP EIR. (TAP, ¶ 3.) The LRDP commenced after its adoption in 2005. (Id., ¶4.) According 3 to the allegations in the Petition, the LRDP estimated that enrollment at UCB would increase by 4 1.650 students above the 2001-02 two semester average. (Id.,  $\P5$ .) 5

The TAP alleges that, beginning "in or around 2007," UC "made informal, discretionary 6 decisions" to change the LRDP to increase enrollment above the 1,650 students projected in the 7 LRDP and LRDP EIR. (TAP, § 6.) UC then allegedly "continued to make informal, discretionary 8 decisions" to allow enrollment at UCB to exceed the enrollment numbers projected in the LRDP 9 "in virtually every two-semester period since 2007." (Id. at ¶ 7.) Alternatively, the TAP alleges 10that UC has "implemented and continued to implement a policy" to increase enrollment at UCB 11 above that projected in the LRDP. (Id. at ¶ 34.) The alleged increase in enrollment, the Petition 12 continues, over that "projected by the 2020 LRDP and disclosed in the 2005 EIR's ... has caused 13 and continues to cause significant adverse environmental impacts that were not analyzed in the 514 2005 EIR." (TAP.,  $\P$  12.) The TAP fails to identify when these alleged "decisions" occurred or the when the student enrollment changes commenced. 15 16

- The Petition further alleges that UC has a duty under CEQA to prepare additional CEQA 17 review to the LRDP EIR to analyze the alleged impacts caused by the alleged increases in student 18 enrollment and to adopt appropriate mitigation measures. (TAP, ¶13, 31.) The Prayer for Relief 19 20 21
- enrollment and to adopt appropriate mitigation measures. (TAP, ¶13, 31.) The Prayer for Reliefor seeks a writ of mandate compelling UC "to subject the excess increase in student enrollment to procedures and requirements of CEQA." (TAP, p. 9.) The TAP contains no allegations regarding any reasonable steps taken by Petitioner to learn of these alleged decisions, to discover the alleged increases in student enrollment or to attempt to obtain publicly available information on annual student enrollment levels. Rather, the TAP claims that Petitioner "worked with the City of Berkeley" in March April 2017 to 22 23 24 25 determine historic enrollment numbers at UCB. (TAP,  $\P$  9.) The City's alleged efforts, in total, 26 consist of sending a letter to UCB on April 14, 2017 requesting information regarding historic 27 enrollment numbers. (Ibid.) UCB responded to this request in a letter dated October 30, 2017. 28 OF DEMURRER TO PETITIONER'S THIRD IN SUPPORT MEMOR AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF

1	( <i>Ibid.</i> )

Petitioner filed this lawsuit on April 27, 2018. The First Amended Petition For Writ of
Mandate and Complaint for Declaratory Relief was filed on or about June 18, 2018. The SAP was
filed on or about October 16, 2018. UC demurred to the SAP and this Court sustained the
demurrer in an Order dated November 15, 2018. The Order granted leave to amend "to clearly
identify the project that is being challenged in this action, as well as the date the discretionary
approval for that project was granted and when that project was commenced. (See CEQA
Guidelines § 15378.)" Petitioner filed the TAP on or about November 28, 2018.

#### 9 III. ARGUMENT

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#### A. Standard of Review

A demurrer challenges defects that appear on the face of the complaint or from matters 11 outside the complaint which are judicially noticeable. (Blank v. Kirwan (1985) 39 Cal.3d 311 12 Court of 318; Code Civ. Proc., § 430.30(a).) Although the court must generally assume as true all facts 13 properly pleaded in the complaint on demurrer, Blank, supra, 39 Ca1.3d at 318; Rakestraw v. 14 California Physicians' Service (2000) 81 Cal.App.4th 39, 42-43, the court is under no obligation 15 istri to accept as true either factual or legal conclusions expressed in a complaint. (Blank, supra, at 16  $\overline{\Box}$ 318.) Evidentiary facts contained in exhibits attached to a complaint may be considered by the 17 St court in connection with the demurrer. (Frantz v. Blackwell (1987) 189 Cal.App.3d 91, 94.) 18 Additionally, the court may reject allegations by a plaintiff that are contrary to facts that the court 19 t may judicially notice. (City of Chula Vista v. County of San Diego (1994) 23 Cal.App.4th 1713 20 1719.) "Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show the 21 CelV complaint alleges facts sufficient to establish every element of each cause of action. If the 22 complaint fails to plead, or if the defendant negates, any essential element of a particular cause of 23 action," the demurrer should be sustained. (Rakestraw, supra, 81 Cal.App.4th at 43.) Where the 24 Docu is no "reasonable possibility that the defect can be cured by amendment," a demurrer should be 25 sustained without leave to amend. (Blank, supra, 39 Cal.3d at 318.) 26

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**B**.

## Petitioner Failed to Comply With The Court's Order

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# The TAP fails to comply with this Court's order sustaining UC's demurrer to the SAP and

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO PETITIONER'S THIRD AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AA00407

fails to substantively amend the petition to address the issues raised in UC's demurrer. "When a 1 plaintiff elects not to amend the complaint, it is presumed that the complaint states as strong a case 2 as is possible [Citation]; and the judgment of dismissal must be affirmed if the unamended 3 complaint is objectionable on any ground raised by the demurrer. [Citations]." (Otworth v. 4 Southern Pac. Transportation Co. (1985) 166 Cal.App.3d 452, 457; see also Gonzales v. State of 5 California (1977) 68 Cal.App.3d 621, 635 ("It is the rule that when a plaintiff is given the 6 opportunity to amend his complaint and elects not to do so, strict construction of the complaint is 7 required and it must be presumed that the plaintiff has stated as strong a case as he can"); Chicago 8 Title Ins. Co. v. Great Western Financial Corp. (1968) 69 Cal.2d 305, 327 ("Leave to amend 9 further is properly denied when a plaintiff fails to amend to correct defects on the basis of which . 10 I demurrers to a previous complaint were sustained"); *Sousa v. Capital Co.* (1963) 220 op.2d 744, 755 (court has "inherent power" to dismiss case "when plaintiffs did not, in comply with the terms upon which the court granted plaintiffs permission to amend").) Petitioner's failure to comply with the Court's Order is grounds for the Court to sustain demurrer to the TAP without leave to amend. On November 15, 2018, this Court issued an Order sustaining UC's demurrer to the SAPEC special demurrers to a previous complaint were sustained"); Sousa v. Capital Co. (1963) 220 11 Cal.App.2d 744, 755 (court has "inherent power" to dismiss case "when plaintiffs did not, in 12 effect, comply with the terms upon which the court granted plaintiffs permission to amend").) 13 Thus, Petitioner's failure to comply with the Court's Order is grounds for the Court to sustain 14 15 UC's demurrer to the TAP without leave to amend.

16 (Order, on file herein.) The Order required Petitioner to amend the SAP to "clearly identify the 17 project that is being challenged in this action, as well as the date the discretionary approval for that 18 project was granted and when that project was commenced. (See CEQA Guidelines § 15378.)" 19 Ð Ę First, the only "project" identified in the TAP is the LRDP, which Petitioner alleges was 20 approved in 2005. (TAP, ¶¶ 3-4.) Petitioner has stated that it is not challenging the adoption of ed 21 the LRDP, however, nor could it timely challenge a project adopted over twelve years ago. (Pub 22 Res. Code, § 21167; see Petitioner's MPA In Opposition to Demurrer to SAP, p. 10 ("the Petition does not challenge the 2020 LRDP based on a challenge to the 2005 EIR.) The only other allegations that could remotely concern a "project" are an unspecified series of "informal, 23 24 25 discretionary decisions to change the 2020 LRDP project to increase enrollment at UCB." (TAP, 26 ¶ 6.) However, as set forth below, the alleged "enrollment decisions" are not a "project" subject to 27 28 CEOA. (See part III.D, below.)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO PETITIONER'S THIRD AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AA00408

Assuming that Petitioner is alleging that the "enrollment decisions" are the "project" the 1 TAP challenges, the TAP fails to identify the date of any alleged discretionary approval of the 2 enrollment decisions as required by the Court's Order. The allegations concerning the timing of 3 enrollment decisions are vaguely described as beginning "in or around 2007" and continuing "in 4 virtually every two-semester period since 2007." (TAP, ¶¶ 6-7.) Such allegations do not meet the 5 Court's requirement to "clearly identify ... the date the discretionary approval ... was granted." 6

Finally, the TAP contains no allegations concerning the commencement of any alleged 7 "enrollment decision". The TAP does allege that the LRDP "commenced immediately after its 8 adoption in 2005" but contains no similar allegations concerning the commencement of any 9 enrollment decisions. Thus, the TAP fails to comply with the Court's order to "clearly identify ... 10 when that project commenced." As such, Petitioner has failed to comply with the Court's Order regarding necessary amendments to Petitioner's pleadings and the Court should sustain UC's demurrer without leave to amend. C. The TAP is barred by the statute of limitations 11 12 13

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Despite this Court's Order, Petitioner still has not clearly alleged the date any challenged 15 Dist project was approved, claiming only that ["b]eginning in or around 2007, [UC] made informal,. 16 discretionary decisions" to amend the 2020 LRDP project, or, alternatively that "[s]ince the 2007 17 2008 academic year," UC has "implemented and continued to implement a policy to increase 18 student enrollment at UCB." (TAP, ¶¶ 6, 34.) Nor has Petitioner alleged when either of these purported projects commenced. Nevertheless, whether framed as a challenge to the adoption of changes to the LRDP in 2007 or the adoption of a policy to increase enrollment in 2007, Petitioner's challenge falls outside of the statute of limitations. Public Resources Code section 21167, subdivision (a) contains the longest statute of limitations applicable to any CEQA action, providing that any such action "shall be commenced" 19 20 21 22

23 24 within 180 days from the date of the public agency's decision to carry out or approve the project  $\vec{Q}$ 25 or, if a project is undertaken without a formal decision by the public agency, within 180 days from 26 the date of commencement of the project." The statute of limitations, therefore, required any 27 28 challenge to UC's alleged adoption of changes to the LRDP in 2007, or any challenge to the THIRD IN SUPPOR

AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AA00409

alleged adoption of a policy in 2007, to be filed within 180 days of those alleged decisions or if 1 without formal decision, when project commenced. The petition was filed more ten years after 2 these alleged decisions, and, thus, is time-barred. 3

In certain circumstances, courts have held that the project does not "commence" until a 4 petitioner knew or should have known that the modified project had begun. (Concerned Citizens 5 of Costa Mesa, Inc. v. 32'd Dist. Agricultural Assn. (1986) 42 Cal.3d 929, 933 ("Concerned 6 *Citizens*").) Petitioner appears to be relying on this case in claiming that it "did not know and 7 could not, in the exercise of reasonable diligence, have known" of the alleged increases in student 8 enrollment at UCB had commenced. Petitioner's reliance on *Concerned Citizens* is misplaced. 9

Concerned Citizens addressed a situation where the project constructed differed 10 substantially from the project approved by the lead agency. There, the agency conducted CEQA 11 review for an amphitheater. (42 Cal.3d at 933.) However, after approval, but before construction, 12 1st District Court of the agency permitted changes to the project, increasing its size, adding seats, and reorienting it 13 towards a residential area. (Id. at 934.) The plaintiffs filed suit more than 180 days after 14 construction began. (Id. at 937.) Plaintiffs argued that their petition was timely because it was 15 within 180 days of the first concert and that they lacked actual or constructive notice of the 16 changes before that time. (Id. at 939.) The California Supreme Court specifically rejected this 17 CA subjective notice theory, holding that the argument was "contrary to the Legislature's intent." 18 (Id.) Rather, "the Legislature determined that the initiation of the project provides constructive (*Id.*) Rather, "the Legislature determined that the initiation of the project provides constructive of notice of a possible failure to comply with CEQA." (*Ibid.*) As the First District held, "*Concerned* 19 20 Document received Citizens did not apply the discovery rule to postpone the triggering of the limitations period . 21 Instead, the court determined that an action accrues on the date a plaintiff knew or reasonably 22 should have known of the project only if no statutory triggering date has occurred." 23 (Communities for a Better Environment vs. Bay Area Air Quality Management District (2016) 1 24

Cal.App.5th 715, 724 ("CBE") (emphasis added).) 25

Here, the TAP contains no allegations that UC approved one LRDP and implemented 26 another. Instead, Petitioner alleges that UC made subsequent discretionary decisions to change the 27 LRDP, or adopt a new policy regarding implementation of the LRDP, well after the LRDP had 28 OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER 'S THIRD AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF

commenced in 2005. (TAP, ¶¶ 6-7, 34.) Thus, to the extent any of these alleged actions constitute 1 a "project" under CEQA, the statutory triggering dates of "commencement of the project" apply. 2 (Pub. Res. Code, § 21167, subd. (a) (where no CEQA determination has been made); subd. (d) 3 (where the agency has determined the project is exempt from CEQA).) Again, the TAP contains 4 no allegations concerning when the challenged projects commenced as required by Court's Order. 5 However, at the latest, they would have commenced at the beginning of the 2007-2008 academic 6 year when the "excess" students began attending school and causing the alleged environmental 7 impacts. Therefore, Petitioner's challenge to any decision to allow for the alleged increased 8 student enrollment should have been brought, at the latest, within 180 days of the beginning of the 9 2007-2008 academic year. Because the original Petition was filed ten years later in 2017, 10 11

2007-2008 academic year. Because the original Petition was filed ten years later in 2017,
Petitioner's claims are time barred.
Similarly, to the extent that Petitioner challenges each annual enrollment change as a
separate "project," those claims would likewise be barred by the statute of limitations. Petitioner
failure to state when any of these alleged "projects" commenced does not revive these time barred
claims. All enrollment changes made from 2007-2016 would clearly be outside the 180-day
statute of limitations. Likewise, the 2017-2018 enrollment change would also be barred becaused
the enrollment changes commenced, at the latest, when instruction began for the 2017-2018
academic year began on August 23, 2017, which was 247 days before the original petition was
filed. (See Request for Judicial Notice filed ISO UC's Demurrer to the SAP ("RJN"), Ex. 2, on put file herein.)<sup>1</sup>

Even to the extent Petitioner could use *Concerned Citizens* to toll the statute of limitation, the TAP fails to include any allegations showing that it was reasonable for Petitioner not to have actual or constructive notice of the alleged increased enrollment for a decade, nor does the TAP contain any allegations that Petitioner exercised reasonable diligence in discovering that the alleged increases in student enrollment "commenced." Petitioner does allege that its "founders,

- 27 <sup>1</sup> The Court granted UC's Request for Judicial Notice in its Order sustaining UC's demurrer to the SAP. (Order, on file herein.)
- 28

1	members, and directors live in the area affected by the excess increase in student enrollment [and]
2	have suffered and will continue to suffer injury from adverse environmental impacts caused by the
3	excess increase in student enrollment." (TAP, ¶ 14.) However, despite living in the area and
4	suffering alleged injury from environmental impacts for ten years, Petitioner does not allege any
5	efforts conducted by anyone associated with Petitioner to discover the source of these alleged
6	injuries. In fact, the full scope of the inquiry conducted by anyone is a single letter sent by the
7	City of Berkeley in April 2017, seeking records under the Public Records Act. (TAP, $\P$ 9.) There
8	are no allegations showing Petitioner even attempted to find this information, through any means
9	whatsoever, at any time, including, but not limited to, contacting UC directly or in accessing
10	publicly available information regarding student enrollment. Thus, even if <i>Concerned Citizens</i>
11	could apply to delay commencement of the project, Petitioner's complete lack of inquiry into the
12	alleged approvals shows that Petitioner cannot allege the "reasonable diligence" necessary to
13	revive Petitioner's late claims.
14	<ul> <li>publicly available information regarding student enrollment. Thus, even if <i>Concerned Citizens</i></li> <li>could apply to delay commencement of the project, Petitioner's complete lack of inquiry into the alleged approvals shows that Petitioner cannot allege the "reasonable diligence" necessary to revive Petitioner's late claims.</li> <li>For all of these reasons, the Court should dismiss the TAP as time barred.</li> <li><b>D.</b> Enrollment Changes from LRDP Projections are Not a CEQA "Project"</li> <li>The TAP additionally fails to correct the error in the SAP by continuing to challenge</li> <li>enrollment changes as a "project" under CEQA. Enrollment changes, however, are not a</li> <li>"project." As a result, Petitioner cannot challenge enrollment changes under CEQA either as stand-alone projects or as changes to the LRDP requiring subsequent or supplemental</li> </ul>
15	D. Enrollment Changes from LRDP Projections are Not a CEQA "Project"
16	The TAP additionally fails to correct the error in the SAP by continuing to challenge
17	enrollment changes as a "project" under CEQA. Enrollment changes, however, are not a
18	"project." As a result, Petitioner cannot challenge enrollment changes under CEQA either as
19	stand-alone projects or as changes to the LRDP requiring subsequent or supplemental
20	environmental review.
21	a. Petitioner cannot challenge enrollment changes as stand-alone projece.
22	Public Resources Code section 21080.09 contains the Legislature's specific direction for
23	the analysis of the environmental impacts of student enrollment under CEQA, requiring that UC
24	analyze student enrollment changes as part of the LRDP EIR. Therefore, under this UC-specific
25	analyze student enrollment changes as part of the LRDP EIR. Therefore, under this UC-specific statute, enrollment changes are not a separate CEQA "project" as a matter of law.
26	Section 21080.09(b) states
27	"Environmental effects relating to changes in enrollment levels shall be considered for each campus or medical center of public higher education in the environmental impact
28	report prepared for the long range development plan for the campus or medical center."
	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO PETITIONER'S THIRD AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AA00412

#### Furthermore,

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"Compliance with this section satisfies the obligations of public higher education pursuant to this division to consider the environmental impact of academic and enrollment plans as they affect campuses or medical centers, provided that any such plans shall become effective for a campus or medical center only after the environmental effects of those plans have been analyzed as required by this division in a long range development plan environmental impact report or tiered analysis based upon that environmental impact report for that campus or medical center, and addressed as required by this division."

- Under the plain language of the statute, the LRDP (i.e. the physical development plan for
  the campus), and not student enrollment, is the project under CEQA. The statute states that
  environmental impacts of projected changes in enrollment levels must be considered in the LRDP
  EIR. In compliance with this statute, UC included estimates of future enrollment and analyzed
  environmental effects associated with such enrollment in the LRDP EIR. Under Public Resource
  Code, section 21080.09(d), this constitutes compliance with the obligation to study the impacts of future enrollment. Therefore, Petitioner's argument that enrollment changes from LRDP
  projections are a stand-alone project, separate from an LRDP, must fail.
  Petitioner cannot overcome the plain language of the CEQA statute by pleading that a
  change in enrollment from estimates included in the LRDP EIR constitute stand-alone "projects" under CEQA. It is a cardinal rule of statutory interpretation that specific statutes control over the
- 15 16 17 CA 1st general statutes. (Steilberg v. Lackner (1977) 69 Cal.App.3d 780, 788.) Thus, the specific 18 requirements of PRC sec. 21080.09 control over CEQA's general definition of "project" and 19 the requires UC to examine impacts of enrollment changes in the LRDP EIR. Here, UC has done exactly that by either analyzing enrollment changes as part of LRDP EIR. Here, OC has done for exactly that by either analyzing enrollment changes as part of LRDP EIRs or in project specific documents tiering off the LRDP EIR if required under CEQA supplemental review standards. These standards prohibit further CEQA review unless one of the specific triggers in PRC sec. 21166 and CEQA Guidelines sec. 15162 is met. (Pub. Res. Code, §, 21080.09(d).) Petitioner cannot plead its way around PRC sec. 21080.09 in an attempt to establish that enrollment level 20 21 22 23 24 25 changes are stand-alone "projects" that UC must analyze separate and apart from the analysis in 26 the LRDP EIR. Petitioner's argument directly contradicts the plain language of Public Resources 27 Code, section 21080.09.
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#### Petitioner cannot challenge enrollment changes as modifications to the b. LRDP requiring supplemental review under CEQA.

To the extent the TAP seeks subsequent or supplemental environmental review of the LRDP (hereinafter "supplemental review") based on the alleged "enrollment decisions;" the TAP fails to allege facts showing that UC was required to undertake such supplemental review under CEQA's narrow, prohibitory standards.

Public Resources Code section 21166 governs supplemental environmental review and its 7 language is prohibitory. When an EIR has already been prepared for a project, "no subsequent or 8 supplemental environmental impact report shall be required by the lead agency or by any 9 responsible agency, *unless*" there are substantial changes to the project or changed circumstances 10which would result in new or substantially more severe significant impacts than disclosed in the 11 certified EIR or "new information," which was not known and could not have been known at the 12 ourt of time the EIR was certified becomes available. (Emphasis added.)

"In the case of a certified EIR, which is a prerequisite for application of section 21166, 14 section 21167.2 mandates that the EIR be conclusively presumed valid unless a lawsuit has been 15 timely brought to contest the validity of the EIR. This presumption acts to preclude reopening of 16 the CEQA process even if the initial EIR is discovered to have been fundamentally inaccurate and 17 lst misleading in the description of a significant effect or the severity of its consequences. After certification, the interests of finality are favored over the policy of encouraging public commen 18 19 the (Laurel Heights Improvement Assn. v. Regents of Univ. of California (1993) 6 Cal.4th 1112, 1130.) "These limitations are designed to balance CEQA's central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and 20 21 22 efficiency." (Friends of College of San Mateo Gardens v. San Mateo County Community College 23 District (2016) 1 Ca1.5th 937, 949.) "A 'public agency may require a subsequent EIR only when 24 the agency grants a discretionary approval; once all discretionary approvals have been obtained, 25 no agency has jurisdiction to require a further EIR.'" (Cucamongans United for Reasonable 26 Expansion v. City of Rancho Cucamonga (2000) 82 Ca1.App.4th 473, 479; Fort Mojave Indian 27 Tribe v. Department of Health Services (1995) 38 Cal.App.4th 1574, 1597 ("a supplemental or 28

IN SUP MEMOR AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AA00414

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1 subsequent EIR must be prepared in connection with the next discretionary approval, if any").)

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As set forth above, the primary issue is that, as a matter of law, Petitioner cannot allege a "discretionary decision" necessary to trigger supplemental review. Enrollment is analyzed in the LRDP and does not constitute a stand-alone discretionary decision. Therefore, the TAP fails to allege the discretionary action required for supplemental review.

The TAP fails to meet the other elements for supplemental review as well. The TAP 6 contains no allegations concerning either the "changed circumstances" or "new information" 7 prongs of section 21166's supplemental review requirements. Thus, any claim for supplemental 8 review must stand, if at all, on the requirement that UC must have found, "on the basis of 9 substantial evidence in light of the whole record" that "[s]ubstantial changes are proposed to the 10 project which will require major revisions of the previous EIR ... due to the involvement of new 11 significant environmental effects or a substantial increase in the severity of previously identified 12 significant effects." (CEQA Guidelines, § 15162(a)(1). Petitioner has not met its burden to allege facts sufficient to show that these requirements have been met. Even assuming enrollment 13 14 decisions could be subsequent, discretionary decisions, the TAP points to no "substantial evidence" that was before UC showing that enrollment decisions would cause any of the alleged 15 16 environmental impacts. "Substantial evidence" includes "facts, reasonable assumptions predicated 17 upon facts, and expert opinions supported by facts;" it does not include "[a]rgument, speculation 18 [or] unsubstantiated opinion or narrative." (CEQA Guidelines, § 15384.) In fact, the TAP pointed to no substantial evidence at all – it merely contains a conclusory statement that "excess enrollment" causes environmental impacts. Without a showing of any substantial evidence to support the alleged impacts, Petitioner cannot support a claim that supplemental review was required for the enrollment decisions.
Therefore, to the extent the TAP seeks supplemental review of the LRDP based on the alleged "enrollment decisions", this claim must fail.
c. Enrollment Changes Will Be Analyzed In Subsequent Discretionary 19 20 21 22 23 24 25 **Enrollment Changes Will Be Analyzed In Subsequent Discretionary** 26 c. Decisions To Amend or Update the LRDP. 27 If and when UC considers a subsequent discretionary approval, it may need to account for 28

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO PETITIONER'S THIRD AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AA00415 current student enrollment numbers in any CEQA determination that relies on the LRDP EIR. For
 instance, UC is in the process of preparing a supplemental EIR to the LRDP EIR for the Goldman
 School of Public Policy's Upper Hearst Project ("GSPP"). (RJN, Ex. 1.) The EIR will analyze not
 only the GSPP, but also the increase in current and foreseeable campus population levels (students
 and employees) from that analyzed in the LRDP EIR. (*Ibid.*)

6 Therefore, the remedy being sought by Petitioner is already being undertaken by UC in
7 accordance with CEQA's supplemental review standards.

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#### E. The TAP is Moot

The SAP seeks a court order for UC to analyze the "excess increase in enrollment" under
CEQA. However, even assuming that enrollment decisions are a "project" subject to CEQA,
which they are not, any challenge to these decisions is moot because the enrollment numbers
pertain only to specific academic years, which have long since expired. No effective relief can
granted by this Court relating to student enrollment numbers for a time period that has already
passed.
A CEQA case "should be dismissed as moot when the occurrence of events renders it
impossible" for the court to grant "any effective relief." (*Cucamongans United, supra, 82*Cal.App.4th, at 479.) In *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 153%

15 16 17 1550, the court held that petitioner's claims regarding construction phase impacts of a project were 18 moot since the construction phase had ended, and the entire project was complete and open to the 19 public. Under these circumstances, the court found that there was no way the court could provide 20 "effective relief regarding construction impacts." (Ibid.) Similarly in North Coast Rivers Alliance 21 *v. Westlands Water District* (2014) 227 Cal.App.4th 832, 849, and *County Sanitation District Notes 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1628, the courts there refused to consider
 CEQA challenges to contracts that had already expired, finding that the claims were moot. There is no effective relief that can be granted here. Like the contracts in *North Coast* 22 23 24 25 Rivers Alliance and County Sanitation District No. 2, enrollment decisions made with regards to 26 past academic semesters cannot effectively be either studied or mitigated because those enrollment 27 classes no longer exist. UC cannot reach into the past to mitigate alleged environmental impacts, 28 DUM OF POINTS AND AUTHORITIES IN SUPPORT AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF

and this Court cannot grant Petitioner effective relief by commanding UC to do so. The TAP is
 moot and should be dismissed.

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F.

Petitioner Fails To State a Claim for Declaratory Relief

The TAP's second cause of action fails to state a claim for declaratory relief. "'To qualify
for declaratory relief, [a party] would have to demonstrate its action presented two essential
elements: "(1) a proper subject of declaratory relief, and (2) an actual controversy involving
justiciable questions relating to [the party's] rights or obligations." '" (*Jolley v. Chase Home Fin., LLC* (2013) 213 Cal.App.4th 872, 909.) Petitioner has failed to allege facts sufficient to
support an actual controversy involving justiciable questions.

As an alternative to the allegations that UC has made informal decisions regarding enrollment numbers, Petitioner's claim for declaratory relief alleges that, beginning with the 200 2008 academic year, UC has "implemented and continue to implement a policy to increase enrollment at UCB." (TAP, ¶¶ 34-35.) However, Petitioner's claim that UC adopted a "policy" 2007-2008 to increase enrollment above that identified in the LRDP in violation of CEQA, is, at its core, a CEQA claim, and therefore suffers the same fatal flaws as Petitioner's claim that UC in made a series of informal decisions to increase enrollment.

First, the TAP fails to comply with the Court's Order to clearly identify the date the policy was approved and when the policy commenced. The TAP contains no allegations whatsoever regarding approval or commencement of the alleged policy, only that UC has "implemented" the policy since the 2007-2008 academic year. (TAP, ¶ 34.) As set forth above, the failure to amend the pleadings in accordance with the Court's order is an independent ground for sustaining the demurrer without leave to amend. Second, any challenge to the adoption of such a policy would be outside of CEQA's 180

Second, any challenge to the adoption of such a policy would be outside of CEQA's 180<sup>4</sup>
 day statute of limitations. While, again, Petitioner alleges neither the date this policy was adopted,
 nor when the policy commenced, the allegations placing the implementation of the policy in the
 2007-2008 academic year means that Petitioner's 2017 filing of the original petition was well
 outside of CEQA's 180-day statute of limitations. Petitioner cannot escape the application of
 CEQA's statute of limitations by framing the claim as one for a judicial declaration that UC
 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO PETITIONER'S THIRD
 AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF

1	violated CEQA. (Ginsberg v. Gamson (2012) 205 Cal.App.4th 873, 883 ("The limitations period				
2	for declaratory relief claims depends on 'the right or obligation sought to be enforced,' and the				
3	statute of limitations 'generally follows its application to actions for damages or injunction on the				
4	same rights and obligations' ").)				
5	Finally, as set forth above, enrollment changes are not, in and of themselves a "project"				
6	subject to CEQA. Thus, any "policy" allegedly adopted regarding enrollment decisions is				
7	likewise not subject to CEQA. Petitioner cannot create a legal controversy regarding UC's alleged				
8	non-compliance with CEQA where the allegations in the TAP show that UC has complied with				
9	CEQA by preparing the LRDP EIR in accordance with Public Resources Code section 21080.9.				
10	Reframing enrollment decisions as a "policy" does not change the legal requirement that UC				
11	examine enrollment decisions in the LRDP, nor does it create a new, legally justiciable				
12	controversy.				
13	Therefore, Petitioner has failed to state any actual controversy involving justiciable $\Xi$				
14	questions and its claim for declaratory relief must fail.				
15	<ul> <li>Remaining enrollment decisions as a "poney" does not change the legal requirement that be examine enrollment decisions in the LRDP, nor does it create a new, legally justiciable controversy.</li> <li>Therefore, Petitioner has failed to state any actual controversy involving justiciable questions and its claim for declaratory relief must fail.</li> <li><b>IV. CONCLUSION</b></li> <li>For all of the above reasons, the Court should sustain the UC's demurrer to the Third</li> <li>Amended Petition without leave to amend.</li> <li>Respectfully submitted,</li> </ul>				
16	For all of the above reasons, the Court should sustain the UC's demurrer to the Third				
17	Amended Petition without leave to amend.				
18	Respectfully submitted,				
19	DATED: December 10, 2018 MEYERS, NAVE, RIBACK, SILVER & WILSON				
20	By: Timothy D. Cremin Attorneys for The Regents of the University of O US				
21	By: myDhem.				
22	Timothy D. Cremin Attorneys for The Regents of the University of				
23	California; Janet Napolitano, in her capacity as				
24	Christ, in her capacity as Chancellor of the $\Xi$				
25	University of California, Berkeley				
26					
27					
28	19				
	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO PETITIONER'S THIRD AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF				
	AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATOR RELEILE				

1	PROOF OF SI	ERVICE		
2	STATE OF CALIFORNIA, COUNTY OF ALAMEDA			
3	At the time of service, I was over 18 years of age and <b>not a party to this action</b> . I am employed in the County of Alameda, State of California. My business address is 555 12th Street,			
4	Suite 1500, Oakland, CA 94607.	mia. My busilless address is 555 12th Street,		
5	On December 10, 2018, I served true copies of <b>MEMORANDUM OF POINTS AND AUTHORI</b>	of the following document(s) described as TIES IN SUPPORT OF DEMURRER TO		
6	PETITIONER'S THIRD AMENDED PETITION COMPLAINT FOR DECLARATORY RELIEF	FOR WRIT OF MANDATE AND		
7	follows:	-		
8	Thomas N. Lippe, Esq. Kelly Marie Perry, Esq.	Attorneys for Plaintiff SAVE BERKELEY'S NEIGHBORHOODS		
9	Law Offices of Thomas N. Lippe, APC 201 Mission Street, 12th Fl.	Tel: (415) 777-5604 Fax: (415) 777-5606		
10 11	San Francisco, CA 94105	Email: lippelaw@sonic.net		
12	<b>BY MAIL:</b> I enclosed the document(s) in a	Email: lippelaw@sonic.net kmhperry@sonic.net sealed envelope or package addressed to the l placed the envelope for collection and am readily familiar with Meyers Nave		
13	persons at the addresses listed in the Service List and mailing, following our ordinary business practices.	l placed the envelope for collection and am readily familiar with Meyers, Nave,		
14	$D'_1 = 1  O'_1 = 0  WT'_1 $	and a series a series of damage for mailing On		
15	ordinary course of business with the United States Popostage fully prepaid.	ostal Service, in a sealed envelope with		
16	BY E-MAIL OR ELECTRONIC TRANS	<b>MISSION:</b> I caused a copy of the		
17	Riback, Sliver & Wilson's practice for collecting and processing correspondence for maining. Up the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e- mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.			
18				
19	foregoing is true and correct.	the		
20	Executed on December 10, 2018, at Oakland	, California.		
21		Milanda in		
22 23	Mel	aws of the State of California that the , California. MBAAAA lissa Bender		
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	20 MEMORANDUM OF POINTS AND AUTHORITIES IN SU			
	AMENDED PETITION FOR WRIT OF MANDATE AN	ND COMPLAINT FOR DECLARATORY RELIEF <b>AA00419</b>		

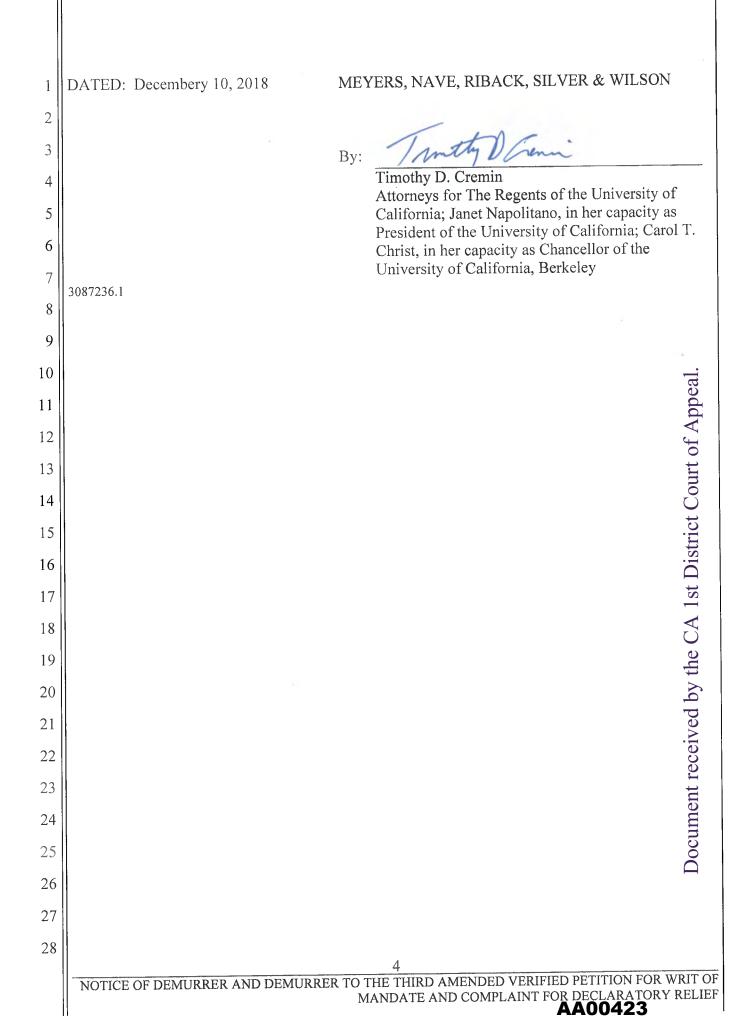
# Tab 035

1 2 3 4 5	Charles F. Robinson (SBN 113197) Alison Krumbein (SBN 229728) alison.krumbein@ucop.edu THE UNIVERSITY OF CALIFORNIA Office of General Counsel 1111 Franklin St., 8th Floor Oakland, California 94607 Telephone: (510) 987-0851 Facsimile: (510) 987-9757	
6 7 8 9 10	Amrit S. Kulkarni (SBN 202786) akulkarni@meyersnave.com Timothy D. Cremin (SBN 156725) tcremin@meyersnave.com Edward Grutzmacher (SBN 228649) egrutzmacher@meyersnave.com MEYERS, NAVE, RIBACK, SILVER & WILSO 555 12 <sup>th</sup> Street, Suite 1500 Oakland, California 94607 Telephone: (510) 808-2000 Engeimile: (510) 444 1108	_:
<ol> <li>11</li> <li>12</li> <li>13</li> <li>14</li> </ol>	Facsimile: (510) 444-1108 Attorneys for The Regents of the University of California; Janet Napolitano, in her capacity as President of the University of California; Carol T Christ, in her capacity as Chancellor of the University of California, Berkeley	Court of Ap
<ol> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>		E STATE OF CALIFORNIA E STATE OF CALIFORNIA F ALAMEDA Case No. RG18902751 ASSIGNED FOR ALL PRE-TRIAL PURPOSES TO JUDGE FRANK ROESCH DEPARTMENT 24 NOTICE OF DEMURRER AND DEMURRER TO THE THIRD AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF RESERVATION No. R-2022686 Judge: Hon. Frank Roesch Date: January 15, 2019 Time: 3:45 PM Dept.: 24 Action Filed: April 27, 2018 Tricl Date: None Set
27 28	NOTICE OF DEMURRER AND DEMURRER TO THE MAN	Trial Date: None Set THIRD AMENDED VERIFIED PETITION FOR WRIT OF DATE AND COMPLAINT FOR DECLARATORY RELIEF

# 1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2	PLEASE TAKE NOTICE that on January 15, 2019, at 3:45 p.m., or as soon thereafter as	
3	the matter may be heard, in Department 24 of the Alameda County Superior Court, located at 1221	
4	Oak Street, Oakland, CA 94612, Respondents The Regents of the University of California, Janet	
5	Napolitano, in her capacity as President of the University of California, and Carol T. Christ, in her	
6	capacity as Chancellor of the University of California, Berkeley (collectively, "UC") will, and	
7	hereby do, demur to the Third Amended Verified Petition for Writ of Mandate and Complaint for	
8	Declaratory Relief ("Petition") brought by Petitioner Save Berkeley's Neighborhoods	
9	("Petitioner"). This Demurrer is made pursuant to section 430.10 of the Code of Civil Procedure,	
10	and is based on the grounds described below. This Demurrer is based upon this Notice and the	
11	Demurrer, the accompanying Memorandum of Points and Authorities, the Declaration of Timoth	
12	D. Cremin, the records and documents on file for this matter, and any other matter properly before	
13	D. Cremin, the records and documents on file for this matter, and any other matter properly before the Court at the time of the hearing. DEMURRER UC demurs to the Petition on the following grounds: DEMURRER TO FIRST CAUSE OF ACTION (California Environmental Quality Act)	ļ
14	<u>DEMURRER</u> O	
15	UC demurs to the Petition on the following grounds:	
16	DEMURRER TO FIRST CAUSE OF ACTION	
17	(California Environmental Quality Act)	
18	UC demurs to the Petition's First Cause of Action on the grounds that the Petition has net	
19	alleged facts sufficient to state any claim under the California Environmental Quality Act . (See	
20	Code Civ. Proc., § 430.10, subds. (a), (e).)	
21	UC demurs to the Petition's First Cause of Action on the grounds that the claim(s) alleg	
22	in the Petition are barred by the statute of limitations. (See Code Civ. Proc., § 430.10, subds. (a)	
23	<ul> <li>(e).)</li> <li>UC demurs to the Petition's First Cause of Action on the grounds that the claim(s) alleged in the Petition are moot. (See Code Civ. Proc., § 430.10, subds. (a), (e).)</li> </ul>	
24	UC demurs to the Petition's First Cause of Action on the grounds that the claim(s) alleg	
25	in the Petition are moot. (See Code Civ. Proc., § 430.10, subds. (a), (e).)	
26	UC demurs to the Petition's First Cause of Action on the grounds that the Petition is	
27	uncertain as to the project challenged under CEQA. (See Code Civ. Proc., § 430.10, subd. (f).)	
28	UC demurs to the Petition's First Cause of Action on the grounds that the Petition is	
	2 NOTICE OF DEMURRER AND DEMURRER TO THE THIRD AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF <b>AA00421</b>	2

1	uncertain as to the date of approval of any project challenged under CEQA. (See Code Civ. Proc.,
2	§ 430.10, subd. (f).)
3	UC demurs to the Petition's First Cause of Action on the grounds that the Petition is
4	uncertain as to the date of commencement of any project challenged under CEQA. (See Code Civ.
5	Proc., § 430.10, subd. (f).)
6	DEMURRER TO SECOND CAUSE OF ACTION
7	(Declaratory Relief)
8	UC demurs to the Petition's Second Cause of Action on the grounds that the Petition has
9	not alleged facts sufficient to state any claim entitling Petitioner to relief requested. (See Code
10	Civ. Proc., § 430.10 subds. (a), (e).)
11	UC demurs to the Petition's Second Cause of Action on the grounds that the claim(s) alleged in the Petition are barred by the statute of limitations. (See Code Civ. Proc., § 430.10, subds. (a), (e).)
12	alleged in the Petition are barred by the statute of limitations. (See Code Civ. Proc., § 430.10,
13	subds. (a), (e).)
14	UC demurs to the Petition's Second Cause of Action on the grounds that the Petition is $\overset{5}{\overset{1}{\overset{1}{\overset{1}{\overset{1}{\overset{1}{\overset{1}{\overset{1}{$
15	uncertain as to the project challenged under CEQA. (See Code Civ. Proc., § 430.10, subd. (f).).
16	UC demurs to the Petition's Second Cause of Action on the grounds that the Petition is .
17	uncertain as to the date of approval of any project challenged under CEQA. (See Code Civ. Prog,
18	§ 430.10, subd. (f).)
19	UC demurs to the Petition's Second Cause of Action on the grounds that the Petition is
20	
21	uncertain as to the date of commencement of any project challenged under CEQA. (See Code Cov. Proc., § 430.10, subd. (f).) UC respectfully requests that the Court sustain this Demurrer in its entirety, dismiss the Petition with prejudice, and grant any further relief as this Court may deem just and proper. <u>NOTICE PER CCP SECTION 430.41</u> Pursuant to California Code of Civil Procedure section 430.41, and as set forth in more
22	UC respectfully requests that the Court sustain this Demurrer in its entirety, dismiss the 2
23	Petition with prejudice, and grant any further relief as this Court may deem just and proper.
24	NOTICE PER CCP SECTION 430.41
25	Pursuant to California Code of Civil Procedure section 430.41, and as set forth in more
26	detail in the accompanying Declaration of Timothy D. Cremin, UC informed Petitioner of UC's
27	intent to file this Demurrer on the grounds described below. The parties did not reach an
28	agreement resolving the objections raised in this Demurrer.
	3 NOTICE OF DEMURRER AND DEMURRER TO THE THIRD AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF <b>AA00422</b>



1	PROOF OF SERVICE
2	STATE OF CALIFORNIA, COUNTY OF ALAMEDA
3 4	At the time of service, I was over 18 years of age and <b>not a party to this action</b> . I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.
5	On December 10, 2018, I served true copies of the following document(s) described as NOTICE OF DEMURRER AND DEMURRER TO THE THIRD AMENDED VERIFIED
6	PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF on the interested parties in this action as follows:
7	Thomas N. Linne, Esq. Attorneys for Plaintiff SAVE
8	Kelly Marie Perry, Esq. BERKELEY'S NEIGHBORHOODS Law Offices of Thomas N. Lippe, APC
9	201 Mission Street, 12th Fl.       Tel: (415) 777-5604         San Francisco, CA 94105       Fax: (415) 777-5606
10	Email: lippelaw@sonic.net
11	App
12 13	BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
14	mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with
15	ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the
16 17	<b>BY E-MAIL OR ELECTRONIC TRANSMISSION:</b> I caused a copy of the document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
18	I declare under penalty of perjury under the laws of the State of California that the
19	foregoing is true and correct.
20	Executed on December 10, 2018, at Oakland, California.
21	LILZ CO JA
22	Melissa Bender 2
23	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 10, 2018, at Oakland, California.
24	
25	Doc
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28	5
	NOTICE OF DEMURRER AND DEMURRER TO THE THIRD AMENDED VERIFIED PETITION FOR WRIT O MANDATE AND COMPLAINT FOR DECLARATORY RELIE AA00424

Tab	036
Charles F. Robinson (SBN 113197) Alison Krumbein (SBN 229728) alison.krumbein@ucop.edu THE UNIVERSITY OF CALIFORNIA Office of General Counsel 1111 Franklin St., 8th Floor Oakland, California 94607 Telephone: (510) 987-0851 Facsimile: (510) 987-9757	
Amrit S. Kulkarni (SBN 202786) akulkarni@meyersnave.com Timothy D. Cremin (SBN 156725) tcremin@meyersnave.com Edward Grutzmacher (SBN 228649) egrutzmacher@meyersnave.com MEYERS, NAVE, RIBACK, SILVER & WILS 555 12 <sup>th</sup> Street, Suite 1500 Oakland, California 94607 Telephone: (510) 808-2000 Facsimile: (510) 444-1108	
Attorneys for The Regents of the University of California; Janet Napolitano, in her capacity as President of the University of California; Carol 7 Christ, in her capacity as Chancellor of the University of California, Berkeley	Г. HE STATE OF CALIFORNIA
SUPERIOR COURT OF TH	HE STATE OF CALIFORNIA
COUNTY O	
SAVE BERKELEY'S NEIGHBORHOODS, a California nonprofit public benefit corporation,	Case No. RG18902751 ASSIGNED FOR ALL PRE-TRIAL PURPOSES TO JUDGE FRANK ROESCH DEPARTMENT 24 DECLARATION OF TIMOTHY D. CREMIN IN SUPPORT OF DEMURRER TO THIRD AMENDED PETITION AND COMPLAINT FOR DECLARATORY RELIEF RESERVATION No. R-2022686 Judge: Hon. Frank Roesch Date: January 15, 2019 Time: 3:45 PM Dept.: 24
Petitioner and Plaintiff,	DEPARTMENT 24
V.	DECLARATION OF TIMOTHY D CREMIN IN SUPPORT OF DEMURRER
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of	TO THIRD AMENDED PETITION AND COMPLAINT FOR DECLARATORY RELIEF
California; CAROL T. CHRIST, in her capacity as Chancellor of the University of California, Berkeley; and DOES 1 through 20,	RESERVATION No. R-2022686
Respondents and Defendants.	Date: January 15, 2019 Time: 3:45 PM Dept.: 24
	Action Filed: April 27, 2018 Trial Date: None Set
DECLARATION OF TIMOTHY D. CREMIN IN SUF	PPORT OF DEMURRER TO THIRD AMENDED PETIT AND COMPLAINT FOR DECLARATORY REI <b>AA00425</b>

#### **DECLARATION OF TIMOTHY D. CREMIN** 1 2 I, Timothy D. Cremin, declare as follows: I am an attorney duly admitted to practice before this Court. I am a principal of 3 1. Meyers, Nave, Riback, Silver & Wilson, attorneys of record for Respondents and Defendants The 4 5 Regents of the University of California; Janet Napolitano, in her capacity as President of the University of California; Carol T. Christ, in her capacity as Chancellor of the University of 6 California, Berkeley (collectively, "Respondents"). I have personal knowledge of the facts set 7 8 forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the 9 matters stated herein. 2. On December 5, 2018, I had a telephone conference call with Thomas Lippe, counsel for Petitioner Save Berkeley's Neighborhoods ("Petitioner"), to meet and confer on Respondents' intention to file a demurrer to the Third Amended Petition ("TAP"). I informed Mor-Lippe of the grounds for the demurrer which included the following: (1) the TAP does not compose matters stated herein. 10 11 12 13 14 with the Court Order sustaining the Demurrer to the Second Amended Petition because it does not address the three elements required in the order granting leave to amend, namely, to clearly 15 16 identify the project that is being challenged in this action, the date the discretionary approval for 17 that project was granted and when that project was commenced; (2) the TAP fails to allege facts to 18 establish any Project, Project approval, or any action by Respondents subject to the California the 19 Environmental Quality Act ("CEQA"), especially under Public Resources Code section 21080.09; 20 (3) the Petition is untimely for failure to be filed within the statute of limitations under CEQA and 21 the TAP fails to plead sufficient facts to establish that Petitioner could not have known with the exercise of reasonable diligence of the alleged project at least 180 days before the lawsuit was filed; (4) the dispute under the FAP was moot because the student enrollment levels at the University of California, Berkeley challenged relate to academic semesters that have been 22 23 24 25 completed and the court could not grant the relief sought in the Petition; and (5) the declaratory $\widehat{}$ 26 relief claim is not a separate cause of action from the CEQA claim and is also barred by the statute 27 28 of limitations.

DECLARATION OF TIMOTHY D. CREMIN IN SUPPORT OF DEMURRER TO THIRD AMENDED PETITION AND COMPLAINT FOR DECLARATORY RELIEF AA00426

1	3. Mr. Lippe stated grounds objecting to the demurrer, including the 2005 Long
2	Range Development Plan was the CEQA project, the TAP alleged sufficient facts that cause of
3	action could not have been known greater than 180 days before the lawsuit was filed; and the
4	demurrer presented factual issues.
5	4. I informed Mr. Lippe that I disagreed with his assertions in opposition to the
6	grounds for the demurrer. The demurrer could not be resolved in the meet and confer.
7	
8	I declare under penalty of perjury under the laws of the State of California that the
9	foregoing is true and correct.
10	Executed December 10, 2018, at Oakland, California.
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12	Timothy D. Cremin 4
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	3 DECLARATION OF TIMOTHY D. CREMIN IN SUPPORT OF DEMURRER TO THIRD AMENDED PETITION
	AND COMPLAINT FOR DECLARATORY RELIEF

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1	PROOF OF SERVICE	
2	STATE OF CALIFORNIA, COUNTY OF ALAMEDA	
3	At the time of service, I was over 18 years of age and <b>not a party to this action</b> . I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.	
5	On December 10, 2018, I served true copies of the following document(s) described as	
6	<b>DECLARATION OF TIMOTHY D. CREMIN IN SUPPORT OF DEMURRER TO THIRD</b> <b>AMENDED PETITION AND COMPLAINT FOR DECLARATORY RELIEF</b> on the interested parties in this action as follows:	I
7	Thomas N. Lippe, Esq. Attorneys for Plaintiff SAVE	
8	Kelly Marie Perry, Esq. Law Offices of Thomas N. Lippe, APC	
9	201 Mission Street, 12th Fl.       Tel: (415) 777-5604         San Francisco, CA 94105       Fax: (415) 777-5606	
10	Email: lippelaw@sonic.net	• • •
11		้า
12	<b>BY MAIL:</b> I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and	4' 4 4
13	mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,	· · · ·
14	the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with	)
15	postage fully prepaid.	
16 17	document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e- ( mail addresses listed in the Service List. I did not receive, within a reasonable time after the	
18	transmission, any electronic message or other indication that the transmission was unsuccessful.	
19	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	, ,
20	Executed on December 10, 2018, at Oakland, California.	, ,
21	LILD A A A	\$
22	Melissa Bender	4
23		· · · · · · · · · · · · · · · · · · ·
24	l	
25	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 10, 2018, at Oakland, California.	>
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	4 DECLARATION OF TIMOTHY D. CREMIN IN SUPPORT OF DEMURRER TO THIRD AMENDED PETITION AND COMPLAINT FOR DECLARATORY RELI	ON IFF
	AND COMPLAINT FOR DECLARATOR TREES	1 سه م

Tab 037

JAN/02/20	19/W3D 01:12 PM Law O. Thomas Lippe	FAX No. 1-415-777-5606 F. 002/03D
2 3 4 5 6	Thomas N. Lippe, SBN 104640 LAW OFFICES OF THOMAS N. LIPPE, APC 201 Mission Street, 12th Floor San Francisco, California 94105 Tel: (415) 777-5604 Fax: (415) 777-5606 E-mail: Lippelaw@sonic.net Attorney for Plaintiff: Save Berkeley's Neighborho	FILED BY FAX ALAMEDA COUNTY January 02, 2019 CLERK OF THE SUPERIOR COURT By Cheryl Clark, Deputy CASE NUMBER: RG18902751
7	IN THE SUPERIOR COURT O	F THE STATE OF CALIFORNIA
8		DUNTY OF ALAMEDA
9	IN AND FOR THE C	JUNIT OF ALAMEDA
10	SAVE BERKELEY'S NEIGHBORHOODS, a	Case No. RG18902751
11	California nonprofit public benefit corporation;	MEMORANDUM OF POINTS AND
12	Plaintiff, vs.	AUTHORITIES IN OPPOSITION TO
13	THE REGENTS OF THE UNIVERSITY OF	DEMURRER TO THIRD AMENDED PETITION FOR WRIT OF MANDATE AND
14	CALIFORNIA; JANET NAPOLITANO, in her capacity as President of the University of	COMPLAINT FOR DECLARATORY RELIEF
15	California; CAROL T. CHRIST, in her capacity as	[CALIFORNIA ENVIRONMENTAL
16 17	Chancellor of the University of California, Berkeley; and DOES 1 through 20,	QUALITY ACT]
18	Respondents and Defendants.	Reservation No.: R-2022686
19	respondents and Porchamits.	Date: January 15, 2019 Time: 3:45 P.M.
6253.		Dept.: 24
20		Judge: Hon. Frank Roesch
21 22		Action Filed: April 27, 2018
22		Trial Date: Not Set
23		Assigned for All Purposes to: Hon. Frank Roesch, Dept. 24
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		AA00429

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10		B. CEQA Section 21080.09 Supports the Legal Sufficiency of Plaintiff's CEQA Clain	1 6
11		C. The TAP Sufficiently Alleges Compliance with CEQA's Statute of Limitations	
12		<ul><li>C. The TAP Sufficiently Alleges Compliance with CEQA's Statute of Limitations</li><li>D. The TAP States a Valid Cause of Action for Declaratory Relief</li></ul>	10
13		E. Neither Cause of Action is Moot	i€
14 15	IV.	CONCLUSION	
15	1V.	CONCLUSION.	ct G
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Law Offices of		· · · · · · · · · · · · · · · · · · ·	
Thomas N. Lippe 201 Mission St. 12 <sup>th</sup> Floor San Francisco, CA 94105 Tel: 415-777-5804 Fax: 415-7775606		- i - Memorandum of Points and Authorities in Opposition to Demurrer to Third Amended Petition	
		for Writ of Mandate and Complaint for Declaratory Relief (CEQA); RG18902751	



1	TABLE OF AUTHORITIESPage
2	
3	Cases:
4	Association for a Cleaner Environment v. Yosemite Community College Dist.
5	(2004) 116 Cal. App. 4th 629 15
6	Aubry v. Tri-City Hosp. Dist.
7	(1992) 2 Cal.4th 962
8	Buford v. State of California (1980) 104 Cal.App.3d 811
9	(1980) 104 Cal.App.3d 811
10	Californians for Alternatives to Toxics v. California Department of Pesticide Regulation (Californians for Alternatives to Toxics) (2006) 136 Cal.App.4th 1049
11	
12	Californians for Native Salmon and Steelhead Association v. Department of Forestry (1991) 221 Cal. App.3d 1419
13	
14	Citizens for a Green San Mateo v. San Mateo County Community College Dist. (2014) 116 Cal.App.4th 1572.
15	Communities for a Better Environment v. Bay Area Air Quality Management District
16	(CBE v BAAQMD) (2016) 1 Cal.App.5th 715
17	Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.
18	(1986) 42 Cal.3d 932 1,3, 4, 6-12
19	Conservatorship of Wendland
20	(2001) 26 Cal.4th 519
21	County Sanitation Dist. No. 2 v. County of Kern
22	(2005) 127 Cal. App. 4th 1544 الله المحافظة (2005) 127 Cal. App. 4th 1544 الله المحافظة
23	Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga
24	(2000) 82 Cal.App.4th 473
25	County Sanitation Dist. No. 2 v. County of Kern (2005) 127 Cal. App. 4th 1544
26	(2002) 101 Cal.App.+ul 1229
27	Davies v. Krasna (1975) 14 Cal.3d 502
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8 9	Friends of College of San Mateo Gardens v. San Mateo County Community College District (Friends of College I) (2016) 1 Cal.5th 937
10 11	Gafcon, Inc. V. Ponsor & Associates (2002) 98 Cal.App.4th 1388
12	Ginsberg v. Gamson (2012) 205 Cal.App.4th 873
13 14	Intel Fed'n of Prof'l & Technical Engineers, AFL-CIO v. city of San Francisco (1999) 76 Cal.App.4th 213.
15 16	Kirkwood y California State Automobile Assn Inter-Ins Bureau
17 18	(2011) 193 Cal.App.4th 49
19 20	Stevens v. Sup. Ct. (1999) 75 Cal.App.4th 594.
21 22	Venice Town Council, Inc. v. City of Los Angeles       Image: Constraint of the system o
23 24	Ventura Foothill Neighbors v. County of Ventura (Ventura Foothill) (2014) 232 Cal.App.4th 429 1, 3, 4, 6-8, 19
25 26	Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412.
27	Woodward Park Homeowners Assn. v. Garreks, Inc. (2000) 77 Cal. App. 4th 880.
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I

#### I. INTRODUCTION

The Regents' second demurrer in this case improperly attempts to force Plaintiff to plead evidentiary facts. This is not the function of the demurrer. A demurrer tests whether the allegations of *ultimate* facts in a complaint state a cause of action. "The 'facts' to be pleaded are those upon which liability depends, i.e., the facts constituting the cause of action. These are commonly referred to as 'ultimate facts." (*Doe v. City of Los Angeles* (2007) 42 Cal.App.4th 531, 550.) It cannot be used to conduct discovery of *evidentiary* facts.

Plaintiff's Third Amended Complaint (TAP) fully responds to the Court's November 15, 2018, Order
on the Regents' first demurrer, which allowed Plaintiff to amend the Second Amended Complaint to "clearly
identify the project that is being challenged in this action, as well as the date the discretionary approval for
that project was granted and when that project was commenced." The TAP identifies the Regents' CEQA
project as the 2020 Long Range Development Plan (2020 LRDP) that the Regents adopted in 2005 and
commenced in 2005. (TAP ¶¶ 3-5.) The Regents do not, and cannot, contest the allegation that the 2020
LRDP is a "CEQA project" because, as the TAP alleges, the Regents certified an Environmental Impact
Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. (TAP ¶ 3.)

14 The TAP also clearly describes the nature of Plaintiff's CEQA claim. The 2020 LRDP included, as 15 a project component, a plan to increase student enrollment by 1,650 students during the 15 year life of the 2020 LRDP. (TAP § 5.) Plaintiff's legal claim for relief under CEQA is that the Regents made a decision 16 or decisions to increase student enrollment over the 1,650 student increase projected in the 2020 LRDP and 17 2005 EIR but failed to subject these project changes to environmental review under CEQA. (TAP ¶ 5-7. 18 13, 31.) This is the same CEQA claim that Plaintiffs alleged in *Concerned Citizens of Costa Mesa, Inc.*  $\overline{v}$ . 19 32nd Dist. Agricultural Assn. (1986) 42 Cal.3d 929, 934, 936-937 (Concerned Citizens), and Ventuka 20Foothill Neighbors v. County of Ventura (2014) 232 Cal.App.4th 429, 435 (Ventura Foothill Neighbors 21 The Regents' contention that the action is barred by CEQA's statutes of limitations is without meric 22 The applicable limitations period is 180 days after Plaintiff knew or reasonably should have known of 23 substantial increases in student enrollment above the 1,650 student increase disclosed in the 2005 EIR 24 (Concerned Citizens, supra, at 932-933.) As discussed in section III.C below, this action was filed on April 25 27, 2018, which is less than 180 days after October 30, 2017, which is when Plaintiff knew or, in the

the 1,650 student increase disclosed in the 2005 EIR.

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exercise of reasonable diligence, should have known of substantial increases in student enrollment above



The Regents October 30, 2017, letter (Exhibit 4 to the TAP) shows that UC Berkeley gradually 1 increased enrollment at UC Berkeley after Spring 2007 and then dramatically so in the Spring of 2017. The 2 trier of fact in this case must determine when the change in enrollment became "substantial" and when 3 Plaintiff should have discovered the substantial change. Both of these determinations require proof of facts, 4 and cannot be made by ruling on a demurrer. Plaintiff can provide extensive testimony to its several year 5 effort to discover that the Regents substantially changed the 2020 LRDP by substantially increasing student 6 enrollment above the 1,650 students projected in the 2020 LRDP. (Declaration of Phillip Bokovoy in 7 Opposition to Demurrer to Third Amended Petition for Writ of Mandate and Complaint for Declaratory 8 Relief (Bokovoy TAP Decl ¶ 4, Ex 1.) But a petition for writ of mandate is not the appropriate place to 9 submit this evidentiary testimony. To obtain this testimony, the Regents may take Mr. Bokovoy's deposition 10 or use a written interrogatory. Then the Regents could use a motion for summary judgement or their merits 11 briefing to attempt to prove their statute of limitations defense.

As discussed in section III.C, CEQA section 21080.09 supports the validity of Plaintiff's claim that
 the Regents must conduct subsequent CEQA review of the enrollment changes to the LRDP and it
 contradicts the Regents' contention that they can analyze one level of enrollment increase in the 2005 EIR
 for the 2020 LRDP, then increase enrollment above that level to any degree they choose without conducting
 subsequent CEQA review of the changes.

**II. STANDARD OF REVIEW** 

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Buford v. State of California* (1980) 104 Cal.App.3d 811.) The demurrer admits the truth of all material facts pleaded (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967). Importantly for this demurrer, the allegations in a complaint must be liberally construed. (Code Civ. Proc. § 452; *Stevens v. Sup Ct.* (1999) 75 Cal.App.4th 594, 601.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Okun v. Sup.Ct. (Maple Properties)* (1981) 29 Cal.3d 442, 460.)

#### **III. ARGUMENT**

The Third Amended Complaint Responds to the Court's Order on the Regents' Previou Demurrer Because it Alleges that The Regent's 2020 LRDP, Which Includes a Plan to Increas Student Enrollment, is a "CEQA Project" Requiring Environmental Review.

This section responds to sections II.B and III.D of the Regents' demurrer brief. The Court's

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November 15, 2018, Order allowed Plaintiff to amend its Petition to "clearly identify the project that is being 1 challenged in this action, as well as the date the discretionary approval for that project was granted and when 2 that project was commenced." The Regents contention that Plaintiff did not do so is incorrect. 3

The TAP identifies the Regents' CEQA project as the 2020 LRDP that the Regents adopted in 2005 4 and that commenced in 2005. (TAP ¶¶ 3-5.) The Regents do not, and cannot, contest the allegation that the 5 2020 LRDP is a "CEQA project" because, as the TAP alleges, the Regents prepared and certified an 6 Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. (TAP ¶ 3.) 7

The TAP also clearly describes the nature of Plaintiff's mandamus claim for violation of CEQA. 8 The 2020 LRDP included, as a project component, a plan to increase student enrollment by 1,650 students 9 during the 15 year life of the 2020 LRDP. (TAP ¶ 5.) Plaintiff's legal claim for relief under CEQA is that 10 the Regents made a decision or decisions to increase student enrollment over and above the 1,650 student increase outlined in the 2020 LRDP as approximately approximately and the 2020 LRDP project to environmental review under CEQA. (TAP ¶ 5-7, 15, 51.7 mm) same CEQA claim that Plaintiff alleged in *Concerned Citizens, supra, and Ventura Foothill Neighbors supra*. In *Concerned Citizens*, the California Supreme Court described this claim as: The complaint asserts that the district had a duty to prepare a subsequent or supplemental EIR, as required by section 21166, subdivision (a), because substantial changes in the project 11 12 13 14

18 (42 Cal.3d at 934) and "The gravamen of plaintiffs' first cause of action is that the district violated section 19 21166, subdivision (a) by failing to file a subsequent EIR to reflect the substantial changes made in the 20 theater in the district's contract with West. (42 Cal.3d at 936–937.) In Ventura Foothill Neighbors, supra 21the Court of Appeal described this claim as: "Respondent ... correctly contends that it did 'not challenge the [1993] EIR as County claims.' Instead, it challenged 'the County's failure to prepare a supplemental EIR 22 23 for a 90–foot Clinic building." (232 Cal.App.4th at 435.)

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The Regents argue "Assuming that Petitioner is alleging that the 'enrollment decisions' are the 'project' the TAP challenges, the TAP fails to identify the date of any alleged discretionary approval of the 25 cumet enrollment decisions as required by the Court's Order. The allegations concerning the timing of 26 enrollment decisions are vaguely described as beginning "in or around 2007" and continuing "in 27 virtually every two-semester period since 2007." (Demurrer MPA (DMPA) 9:1.) The Regents' assumption 28

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that the "enrollment decisions are the project" is wrong because the 2020 LRDP is the "project" while the
subsequent decision or decisions to increase enrollment beyond 1,650 students represent the "project
changes" that require CEQA review. (TAP ¶¶ 3-7, 12-13, 31.)

The Regents contention that the allegations concerning the "timing of enrollment decisions are vaguely described" is incorrect, irrelevant, and self-serving. It is incorrect because the TAP incorporates the Regents' enrollment chronology, which shows that enrollment increases exceeded the 1,650 students described in the 2020 LRDP after 2007. (TAP ¶¶ 7, 10.) This is a precise allegation. It is irrelevant because, as discussed in section III.C below, the limitations period did not commence on Plaintiff's CEQA claims until they knew or could with reasonable diligence have discovered that the Regents substantially changed the 2020 LRDP by substantially increasing student enrollment above the 1,650 students projected in the 2020 LRDP. It is self-serving because the Regents have refused to provide any discovery regarding their decision-making history as it relates to increasing student enrollment. (Declaration of Thomas N. Lippe IRP Opposition to Demurrer filed on November 1, 2018 (Lippe Decl.) ¶¶ 3-18.)

13 The Regents argue that "The TAP additionally fails to correct the error in the SAP by continuing to 14 challenge enrollment changes as a 'project' under CEQA. Enrollment changes, however, are not a 'project.'" (DMPA 13:16.) The Regents are wrong, because as noted above, the 2020 LRDP is the "project" 15 while the subsequent decision or decisions to increase enrollment beyond 1,650 students represent "changes" 16 to the project that require CEQA review. (TAP ¶ 3-7, 12-13, 31.) Both Concerned Citizens and Venturia 17 Foothill Neighbors recognize that it is a valid CEQA claim to challenge an agency's failure to conduct 18 subsequent CEQA review of "substantial project changes." In Ventura Foothill Neighbors, the agency 19 approved a building based on an EIR. Later it both relocated the building and increased its height from 15 20to 90 feet based on an EIR Addendum and Notice of Determination. But both the EIR Addendum and 21 Notice of Determination only disclosed the relocation, not the change in height. It was this "project change" 22 that gave rise to the plaintiffs valid CEQA claim. (232 Cal.App.4th at 436-437; see also Concerned Citizen 23 supra, 42 Cal.3d at 938 [plaintiffs allege that the theater project was the subject of an EIR but that the actua 24 project built differed substantially from the facility described in the EIR"].) 25

The California Supreme Court recently clarified, in *Friends of College I*, the two paths by which "subsequent review" may proceed under CEQA where a project changes after initial or previous CEQA review. In that case, the Court held that when a project previously subject to CEQA review by either a

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Negative Declaration or EIR changes in a way that requires a new analysis of environmental impacts, the 1 agency may only apply CEQA's subsequent review provisions at section 21166 "if the original 2 environmental document retains some informational value despite the proposed changes." (Id., at 952.) In 3 that event, the agency proceeds to decide under CEQA section 21166 "whether project changes will require 4 major revisions to the original environmental document because of the involvement of new, previously 5 unconsidered significant environmental effects." (Id.) But if the original environmental document does not 6 "retain some informational value," the project changes are treated as a "new" project requiring an initial 7 study pursuant to CEQA section 21151 followed by preparation of either a negative declaration or, if the 8 changes "may have a significant effect on the environment," an EIR. (Id., at 945, 951 ["If the proposed 9 changes render the previous environmental document wholly irrelevant to the decisionmaking process, then 10it is only logical that the agency start from the beginning under section 21151 by conducting an initial study 11 to determine whether the project may have substantial effects on the environment"].)

12 The Regents make a number of incorrect or irrelevant arguments regarding CEQA subsequent review 13 as described in section 21166. First, the Regents argue that "any claim for supplemental review must stand, 14 if at all, on the requirement that UC must have found, 'on the basis of substantial evidence in light of the 15 whole record' that '[s]ubstantial changes are proposed to the project which will require major revisions of the previous EIR ... due to the involvement of new significant environmental effects or a substantial increase 16 in the severity of previously identified significant effects.' (CEOA Guidelines, § 15162(a)(1)). Petitioner 17 has not met its burden to allege facts sufficient to show that these requirements have been met." (DMPA 18 16:8.) If the Regents are suggesting that subsequent review is only required when the Regents say it is, the 19 suggestion is absurd, because agency decision on whether subsequent review is required is subject to judicial 20review. (See e.g., Friends of College I, supra.)

If the Regents are assuming that whether they must prepare an EIR to evaluate enrollment increases

21 22 will be judged by the standards for subsequent review provided by CEQA section 21166 rather than the 23 standards that govern the decision whether to prepare an EIR provided in CEQA section 21151, the 24 assumption is premature. These standards are very different. Under section 21166, the agency's express 25 or implied conclusion that project changes do not have significant effects is reviewed deferentially for 26 whether "substantial evidence" supports the agency's conclusion. Under section 21151, the "fair argument 27 standard applies. Under this standard, "If there was substantial evidence that the proposed project might have 28

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a significant environmental impact, evidence to the contrary is not sufficient to support a decision to
dispense with preparation of an EIR ... because it could be 'fairly argued' that the project might have a
significant environmental impact." (*Friends of College I, supra*, 1 Cal.5th at 957.) In any case, it is too early
for the Court to determine if the EIR "retains some informational value" and whether standards of section
21151 or 21166 govern because the 2005 EIR for the 2020 LRDP is not before the Court.<sup>1</sup>

If the Regents are arguing that the TAP does not allege facts that the enrollment increases above 1,650 students have caused significant environmental impacts, they are wrong. Paragraph 12 makes these allegations of ultimate facts. Nothing more is required.

The Regents attempt to use a demurrer to force Plaintiff to prove evidentiary facts, arguing that "the
TAP points to no 'substantial evidence' that was before UC showing that enrollment decisions would cause
any of the alleged environmental impacts." (DMPA 16:15.) But judicial review for "substantial evidence"
is based on a review of the record of proceedings. (Code Civ. Proc. § 1094.5(c); Pub. Res. Code § 21167.
see also, *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559.) The Regents effort
to use a demurrer to try the merits of the case should be rejected.

If such evidentiary facts are needed, the Regents *have admitted* that the increases in students of enrollment at UCB beyond the 1,650 additional students projected by the 2020 LRDP may have significant impacts and, therefore, require preparation of an environmental impact report. The Regents admitted this fact by including past and projected future increases in enrollment in the Notice of Preparation for the Upper Hearst Project and LRDP Amendments. (Request for Judicial Notice in Support of Demurrer to Second Amended Petition and Complaint for Declaratory Relief (Regents RJN) filed October 19, 2018, Ex. A.)

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# CEQA Section 21080.09 Supports the Legal Sufficiency of Plaintiff's CEQA Claim.

The Regents make two "project-related" arguments based on Public Resources Code, section 21080.09. First, they argue that enrollment changes from LRDP projections are not a "stand-alone project," This argument is irrelevant because the TAP does not challenge the enrollment changes as a "stand-alone project." As discussed, the TAP challenges the enrollment changes as changes to the previously approved and commenced 2020 LRDP, as authorized by both *Concerned Citizens* and *Ventura Foothill Neighbors*. Second, the Regents argue that "UC included estimates of future enrollment and analyzed

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<sup>&</sup>lt;sup>1</sup>The record in this case has not been prepared, certified, or lodged because the Regents refuse to cooperate with Plaintiff to allow Plaintiff to prepare it. (Lippe Decl.  $\P\P$  3-18.)

environmental effects associated with such enrollment in the LRDP EIR. Under Public Resources Code,
section 21080.09(d), this constitutes compliance with the obligation to study the impacts of future
enrollment." (DMPA 14:7.) The Regents are wrong because this statute indicates that enrollment plans must
be part of a "long range development plan" and must be analyzed in an EIR "as required by this division."
The reference to "this division" means CEQA. Nothing in this statute suggests legislative intent to overrule *Concerned Citizens* and *Ventura Foothill Neighbors*, both of which recognize that the failure to conduct
CEQA review of "substantial project changes" is a valid CEQA claim.

The Regents rely on the language of subdivision (d) of 21080.09 that "Compliance with this section 8 satisfies the obligations of public higher education pursuant to this division to consider the environmental 9 impact of academic and enrollment plans as they affect campuses or medical centers." But the section 10 continues, stating: "provided that any such plans shall become effective for a campus or medical center only 11 after the environmental effects of those plans have been analyzed as required by this division in a long range 12 development plan environmental impact report or *tiered analysis* based upon that environmental impact 13 report for that campus or medical center, and addressed as required by this division" (italics added.) 14 "Tiering" refers to the range of subsequent CEQA review documents that an agency may use to assess the impacts of changes to a project occurring after initial or previous CEQA review. (See e.g., Vinevard Area 15 *Citizens, supra,* 40 Cal.4th at 429-30, 440 [discussion of "tiering" under CEQA]; *Friends of College I, supra* 16 [discussing standards for determining if subsequent CEOA review is governed by CEOA section 21151 or 17 21166]; Ventura Foothill Neighbors [discussing use of CEQA Addendum for subsequent CEQA review] 18 Thus, section 21080.09 supports the validity of Plaintiff's claim that the Regents must conduct subsequent 19 CEQA review of the enrollment changes to the LRDP and it contradicts the Regents' contention that they can analyze one level of enrollment increase in the 2005 EIR for the 2020 LRDP, then substantially increase enrollment above that level without conducting additional CEQA review of the change.

Indeed, the Regents' interpretation of section 21080.09 would allow them to underestimate enrollment increases in an LRDP to completely avoid ever having to analyze the impacts of additional enrollment increases. This interpretation would defeat the purpose of this statute. It would also defeat the purpose of Education Code section 67504, which provides: "The Legislature further finds and declares that the expansion of campus enrollment and facilities may negatively affect the surrounding environment Consistent with the requirements of the California Environmental Quality Act (CEQA), it is the intent of

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the Legislature that the University of California sufficiently mitigate significant off-campus impacts related
 to campus growth and development." Courts will not interpret a statute in way that defeats its purpose. (*Intel Fed 'n of Prof'l & Technical Engineers, AFL-CIO v. City of San Francisco* (1999) 76 Cal.App.4th 213, 224.)

## C. The TAP Sufficiently Alleges Compliance with CEQA's Statute of Limitations.

Plaintiff's CEQA claim is that the Regents made a decision or decisions to substantially increase student enrollment over the 1,650 student increase outlined in the 2020 LRDP and 2005 EIR but failed to conduct CEQA review of this change. This is the same CEQA claim that Plaintiffs alleged in *Concerned Citizens* and *Ventura Foothill Neighbors*. The limitations period for this claim is provided by subdivision (a) of CEQA, section 21167 as "180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project." (*Concerned Citizens, supra,* 42 Cal.3d at 939.)

11 In Concerned Citizens, the Court held that a claim that an agency substantially changed a project after 12 formal approval but without notice of the change to the public, the applicable limitations period is 180 days 13 after the plaintiff knew or reasonably should have known that the project under way differs substantially 14 from the one described in the initial EIR." (Id., at 933.) The Court of Appeal followed this holding in 15 Ventura Foothill Neighbors, stating: "[T]he filing of an NOD triggers a 30-day statute of limitations for all CEQA challenges to the decision announced in the notice." [citation] ... Neither the NOD nor the EIR 16 addendum mentioned anything about a change in the building's height. Because both the NOD and 17 addendum were silent on this issue, a 180-day statute of limitations began to run from May 22, 2008, when 18 respondent's members were informed that the Clinic was going to be 90 feet high." (Id. at 436.) This is true 19 even where the project commenced more than 180 days before the lawsuit is filed. 20

Here, the Regents never "formally approved" the increases in enrollment above the 1,650 student increase disclosed in the 2005 EIR, and the Regents do not contend otherwise. (See Petition ¶¶ 6-7.) Format action requires formal notice and action by a legislative body. (*Citizens for a Green San Mateo v. San Mateo County Community College Dist.* (2014) 116 Cal.App.4th 1572, 1596 [formal approval occurred upor Board's public action, noticed under Brown Act, approving contract or improvements described in agendar packet linked to contract documents]; *Cumming v. City of San Bernardino Redevelopment Agency* (2002) 101 Cal.App.4th 1229, 1231-1232 [notice was sufficient to trigger the statute of limitations because there was a noticed public hearing].) The Petition also alleges that Plaintiff did not know and could not, in the

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exercise of reasonable diligence, have known of Respondent Regents' and UCB's informal, discretionary 1 decisions to increase student enrollment at UCB above the increase of 1,650 students projected in the 2020 2 LRDP and disclosed in the 2005 EIR until October 30, 2017...." (TAP ¶ 11), i.e., less than 180 days before 3 this action was filed on April 27, 2018. This allegation of ultimate fact was sufficent to withstand demurrer 4 in Concerned Citizens, where the Court held that when a CEQA plaintiff knew or should have known of 5 substantial project changes is a question of fact that cannot be resolved on demurrer. (Id., at 939-40 6 ["Because we review an order sustaining a demurrer without leave to amend in this case, we have to accept 7 the complaint's material factual allegations as true. ... While a trier of fact may resolve the issue of plaintiffs' 8 actual or constructive knowledge to the contrary, that is not our task as a reviewing court"].) 9

The Regents' statute of limitations argument is premised on "framing" Plaintiffs claim as a "challenge to the adoption of changes to the LRDP in 2007 or the adoption of a policy to increase enrollment in 2007." (DMPA 10:20) After framing the claim in this way, the Regents argue that the Court of Appear decision in *Communities for a Better Environment v. Bay Area Air Quality Management District* (2016) Cal.App.5th 715 (*CBE v BAAQMD*) compels a finding that "The statute of limitations, therefore, required any challenge to UC's alleged adoption of changes to the LRDP in 2007, or any challenge to the allegen adoption of a policy in 2007, to be filed within 180 days of those alleged decisions or if without format decision, when the project commenced." (DMPA 10:20)

The Regents are incorrect because Plaintiff's CEQA claim here is not the same type of CEQA claim 17 the plaintiff alleged in CBE v BAAQMD. In that case, plaintiffs challenged the agency's formal decision to 18 approve a project (a permit to refine Bakken crude oil) using the CEQA exemption for ministerial approvals. 19 Plaintiffs filed the suit more than more than 180 days after the decision and more than 180 days after the 20commencement of the project. (Id. at 719-720.) The limitations period that applied to the Plaintiff's CEO 21 claim challenging the CEQA exemption was subdivision (d) of section 21167. Plaintiff argued that the 22 "discovery rule" should apply because it had not learned that the permit allowed refining Bakken crude of 23 until January 2014. Crucially, plaintiffs in that case did not contend that the agency substantially change 24 the project after its formal approval without public notice of the change. (Id. at 723.) 25

The chronology of events in *CBE v. BAAQMD* is important. In July of 2013, upon determining that the project was "ministerial" and not subject to CEQA review, the agency issued an Authority to Construct permit. The agency did not file a Notice of Exemption pursuant to CEQA section 21167, subd (d). The

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agency later modified two conditions of the Authority to Construct: once in October of 2013 to modify
 emissions-monitoring requirements, and once in December of 2013 to require that the crude oil be
 transloaded to a different type of tanker truck. Then, in February of 2014, the agency issued a Permit to
 Operate that incorporated the modified conditions. Plaintiff filed its lawsuit on March 27, 2014.

Unlike *Concerned Citizens*, *Ventura Foothill Neighbors*, or the present case, plaintiffs' CEQA claim in *CBE v BAAQMD* did not arise from the agency's failure to conduct CEQA review of the changes in the project that were made in October 2013 or December 2013, or from incorporating these changes into the Permit to Operate issued in February of 2014. Instead, plaintiffs' CEQA claim arose from the agency's exemption determination in July of 2013, more than 180 days before Plaintiff filed the lawsuit. (Id. at 723.)

On these facts, the Court held that the discovery rule does not extend the date on which a limitation
period commenced after it has already run under one of the three statutory triggers (i.e., notice of
determination, formal approval, or project commencement), all of which provide constructive notice. (Ide
at 723-725.) The Court explained that this result is compelled by the holding in *Concerned Citizens*, stating
"the court determined that an action accrues on the date a plaintiff knew or reasonably should have known
of the project only if no statutory triggering date has occurred." (Id. at 724 (italics added).)

Here, none of the statutory triggering dates occurred because the rule applied in *CBE v BAAQMD* does not apply to the CEQA claim alleged in *Concerned Citizens, Ventura Foothill Neighbors*, or this case which is that the project substantially changed after its formal approval and without public notice or further CEQA review. For this type of claim, the Supreme Court held the limitations period is 180 days after the plaintiff knew or reasonably should have known that the project under way differs substantially from the one described in the initial EIR." (*Concerned Citizens, supra*, at 933.) *CBE v BAAQMD* cannot change this rule

The Regents argue that "The California Supreme Court specifically rejected [plaintiff's] subjective notice theory, holding that the argument was 'contrary to the Legislature's intent." (DMPA 11:17.) This is misleading. What the Supreme Court rejected was plaintiff's contention that applying the rule of discovery results in the 180-day limitations period of CEQA section 21167, subdivision (a) commencing when the first concert was held at the theater. The Court held the relevant inquiry could not be reduced to this one fact because the correct inquiry when "the plaintiff knew or reasonably should have known that the project under way differs substantially from the one described in the EIR." (*Concerned Citizens*, 42 Cal.3d at 939.)

The Regents' focus on the year 2007 is misplaced because they ignore the word "substantially"

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the Supreme Court's holding. The question is not when Plaintiff knew or should have known of any change 1 in the project, but when Plaintiff knew or should have known of a substantial change. (Id.) This is required 2 by basic legal principles governing statutes of limitation. Statutes of limitations begin to run when the cause 3 of action "accrues." (C.C.P. § 312.) A cause of action does not accrue—and the limitations period does not 4 begin to run—until the plaintiff suffers "infliction of appreciable and actual harm." (Davies v. Krasna 5 (1975) 14 Cal.3d 502, 513-14.) As the Court noted in CBE v. BAAQMD, where the discovery rule applies, 6 "the limitations period does not accrue until the aggrieved party has notice,' either actual or constructive, 7 'of the facts constituting the injury." (Id., 1 Cal.App.5th at 722.) Here, the "facts constituting the injury" 8 are UCB's "substantial increases" in enrollment over the 2020 LRDP level without CEQA review. 9

Here, the Regents October 30, 2017, letter (Exhibit 4 to the TAP) shows that UC Berkeley gradually 10 increased enrollment at UC Berkeley after Spring 2007 and then dramatically so in the Spring of 2017. The 11 total two-semester enrollment exceeded 1,650 student increase (i.e., 33,450 students) projected in the 2020 12 LRDP EIR by 947 in Spring of 2008; 1,346 in Spring of 2009; 1,969 in Spring of 2010; 1,848 in Spring of 13 2011; 2,141 in Spring of 2012; 1,895 in Spring of 2013; 2,305 in Spring of 2014; 3,324 in Spring of 2015; 14 3,838 in Spring of 2016; 5,783 in Spring of 2017; and 6,652 in Spring of 2017. (TAP, Ex 4; Bokovoy TAP 15 Decl ¶ 4, Ex 1. A graphic depiction of these changes in enrollment as a trend line is attached hereto as Exhibit 1 to the Bokovoy TAP Declaration. 16

The trier of fact in this case must determine when the change in enrollment became "substantial" and 17 when Plaintiff discovered or should have discovered the substantial change. Both of these determinations 18 require proof of facts, and cannot be made by ruling on a demurrer. 19

The Regents argue that "the TAP fails to include any allegations showing that it was reasonable for 20Petitioner not to have actual or constructive notice of the alleged increased enrollment for a decade, nor does the TAP contain any allegations that Petitioner exercised reasonable diligence in discovering that the alleged increases in student enrollment 'commenced.'" (DMPA 12:23.) This argument uses the wrong test and is incorrect on the facts. This argument uses the wrong test because the question is not when Plaintiff knew? or should have known that the alleged increases in student enrollment commenced; it is when Plaintiff knew 25 or should have known that substantial increases in student enrollment occurred. (Concerned Citizens, supra 26 42 Cal.3d at 939; Davies v. Krasna, supra, 14 Cal.3d at 513-14.)

The Regents argument is wrong on the facts because the allegations of *ultimate* fact in paragraph

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11 of the TAP, that "Plaintiff did not know and could not, in the exercise of reasonable diligence, have
 known of Respondent Regents' and UCB's informal, discretionary decisions to increase student enrollment
 ..." was sufficient to withstand demurrer in *Concerned Citizens*. (*Id.*, at 939–40.) The Regents' argument
 is a thinly disguised attempt to fish for *evidentiary* facts.

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If additional allegations regarding Plaintiff's diligence are required, Plaintiff requests leave to amend to allege that "After Respondent Regents adopted the 2020 LRDP in 2005, Plaintiff exercised reasonable diligence in discovering that Respondent Regents' changed the 2020 LRDP by substantially increasing student enrollment at UCB above the increase of 1,650 students projected in the 2020 LRDP and disclosed in the 2005 EIR."

9 If additional *evidentiary* allegations regarding Plaintiff's diligence are required, Plaintiff requests
 10 leave to amend to allege the specific evidentiary facts Plaintiff generally describes in paragraph 5 of Mr.
 11 Bokovoy's declaration filed herewith. Mr. Bokovoy estimates it would take him about 50 hours in total (20)
 12 hours already spent plus another 30 more) to write up a detailed, coherent chronology of his efforts and the produce the hundreds of emails he exchanged with others in this effort. (Bokovoy TAP Decl ¶ 5.)

14

## D. The TAP States a Valid Cause of Action for Declaratory Relief.

The Tap's second cause of action for declaratory relief is valid and not duplicative of the first cause 15 of action for mandamus. A declaratory relief action under Code of Civil Procedure section 1060 is an 16 appropriate method for challenging an agency policy of ignoring or violating applicable laws. (Venice Town 17 Council, Inc. v. City of Los Angeles (1996) 47 Cal. App. 4th 1547, 1565-1566; Californians for Native 18 Salmon and Steelhead Association v. Department of Forestry (1991) 221 Cal. App.3d 1419, 1428-29 19 (*Californians for Native Salmon*).) "Declaratory relief is a cumulative remedy (Code Civ. Proc., § 1062). 20and a proper complaint for declaratory relief cannot be dismissed by the trial court because the plaintiff 21 could have filed another form of action." (Id. at 1429.) And "Any doubt should be resolved in favor of 22 granting declaratory relief." (Id. at 1427.)

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Declaratory relief is particularly appropriate when a plaintiff challenges a policy that will likely be repeatedly applied in an unlawful manner. (*Id.* at 1430-1431 ("[p]iecemeal litigation of the issues in scores of individual proceedings would be an immense waste of time and resources."). The existence of a police can be proved by showing the agency's "pattern and practice" of engaging in specific conduct. (*Id.* at 1424.) Here, the Regents disclosure, on October 30, 2017, of all increases in student enrollment that have occurred

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1 since 2007 disclosed its pattern and practice of increasing student enrollment.

Plaintiff's declaratory relief claim is not duplicative of Plaintiff's mandamus claim because it 2 challenges a policy, not a specific administrative decision. Generally, declaratory relief is not appropriate 3 to review a specific administrative decision but is appropriate to challenge an illegal agency policy. (Id. at 4 1428-29 ["Generally, a specific decision or order of an administrative agency can only be reviewed by a 5 petition for administrative mandamus. [citations] Appellants, however, challenge not a specific order or 6 decision, or even a series thereof, but an overarching, quasi-legislative policy set by an administrative 7 agency. Such a policy is subject to review in an action for declaratory relief"].) Indeed, the Regents argue 8 in their demurrer that there is no specific administrative decision to increase enrollment above the level set 9 in the 2020 LRDP and therefore, there is no "CEQA project." (DMPA 19:5 ["enrollment changes are not, 10 in and of themselves a 'project' subject to CEQA"]') As in Californians for Native Salmon, Plaintiff 11 challenges the Regents' ongoing policy of increasing enrollment above the level set in the 2020 LRDP, and 12 this policy is shown by the Regents' pattern of practice of increasing enrollment above that level in almost 13 every year since 2007, and more drastically so since 2017.

14 Plaintiff's declaratory relief claim is also not duplicative of Plaintiff's mandamus claim because 15 is prospective in effect. "Declaratory relief operates prospectively, serving to set controversies at rest before obligations are repudiated, rights are invaded or wrongs are committed. Thus the remedy is to be used to 16 advance preventive justice, to declare rather than execute rights. [Citation.] Declaratory relief serves 17 practical purpose in stabilizing an uncertain or disputed legal relation, thereby defusing doubts which might 18 otherwise lead to subsequent litigation." (Kirkwood v. California State Automobile Assn. Inter-Ins. Bureau 19 (2011) 193 Cal.App.4th 49, 59.) "Declaratory relief operates prospectively, and not merely for the redress 20of past wrongs." (Gafcon, Inc. v. Ponsor & Associates (2002) 98 Cal.App.4th 1388, 1403.) 21

Here, the Regents argue that the limitations period for the declaratory relief claim is the same as for the mandamus claim, citing *Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 883. (DMPA 19:1.) Even if this were true, Plaintiff's claim for declaratory relief is not so barred for the same reason its mandamus claim is not barred. (See section III.B above.)

Moreover, the Regents' reliance on *Ginsberg v. Gamson* is misplaced because the declaratory relieved claim in that case arose from a single instance of alleged breach of written contract, so the four year limitations period commenced upon the alleged breach. Here, in contrast, the Regents "breach" of CEQA

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is ongoing and Plaintiff's declaratory relief claim seeks prospective relief relating to the Regents' ongoing 1 pattern and practice and policy of increasing enrollment above the level set in the 2020 LRDP. The Regents 2 frame their statute of limitations argument by referring to a "challenge to the adoption of such a policy" in 3 2007 as "outside of CEQA's 180-day statute of limitations." (DMPA 18:23.) But the TAP does not allege 4 that the Regents adopted a policy in 2007. Instead, it alleges that "Since the 2007-2008 academic year, the 5 Regents have implemented and continue to implement a policy to increase student enrollment at UCB 6 beyond the 1,650 additional students projected by the 2020 LRDP without subjecting the excess increase 7 in student enrollment to the procedures and requirements of CEQA." (TAP ¶ 34.) "A party may seek 8 declaratory relief before there has been an actual breach of an obligation; in such cases the limitations period 9 still does not begin to run until the breach occurs. (Ginsberg v. Gamson (2012) 205 Cal.App.4th 873, 883.) 10 Indeed, the Regents have admitted they intend to continue increasing enrollment by 1.5 percent per year. 11 (Regents RJN filed October 19, 2018, Ex. A, p. 2 ["At this time, UC Berkeley estimates an overall campured 12 population headcount growth of about 1.5 percent annually, on an average, in the near-term"].)

13

E.

## Neither Cause of Action is Moot.

14 "[A] trial court must proceed with caution when presented with a mootness claim. Granting the 15 motion results in dismissal and deprivation of the plaintiff's day in court. Judicial consideration of the merits is precluded." (Davis v. Superior Court (1985) 169 Cal.App.3d 1054, 1057.) There are three 16 discretionary exceptions to the rules regarding mootness: (1) when the case presents an issue of broad public 17 interest that is likely to recur; (2) when there may be a recurrence of the controversy between the parties; and 18 (3) when a material question remains for the court's determination. (Cucamongans United for Reasonable 19 Expansion v. City of Rancho Cucamonga (2000) 82 Cal.App.4th 473, 479-480.) All of these exceptions 20apply here. 21

Material questions remain for the court's determination. The unstated premise of the Regents mootness defense is that all environmental impacts of increased enrollment in any given year disappear the end of each school year. But the Regents cannot offer evidence to support the premise, because this a demurrer, not a motion for summary judgment, and because the Regents have conducted no CEQA review of these impacts. This premise also ignores the cumulative impacts of multiple consecutive years of increased enrollment, from 2007 to the present. (See Bokovoy Decl. ¶ 7, Ex 2.) This premise also ignores the fact that the 2018-2019 school year is underway now, with vastly increased enrollment above the 1,650

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1 enrollment increase disclosed in 2005.

Moreover, actions seeking mandamus relief that may ultimately result in additional environmental 2 review under CEQA are not mooted by completion of the project "on the ground" because any mandated 3 CEQA review may result in additional mitigation measures being implemented to reduce any significant 4 impacts that may be revealed as a result of the agency conducting required CEQA review. (County 5 Sanitation Dist. No. 2 v. County of Kern (2005) 127 Cal.App.4th 1544, 1626; Association for a Cleaner 6 Environment v. Yosemite Community College Dist., (2004) 116 Cal.App.4th 629, 640; Woodward Park 7 Homeowners Assn. v. Garreks, Inc. (2000) 77 Cal.App.4th 880, 888.) Here, a court order requiring the 8 Regents to conduct CEQA review of their enrollment increases or prepare an EIR to identify and mitigate 9 their adverse effects would represent effective relief.

10 This case also presents an issue of broad public interest that is likely to recur. The decision in 11 Californians for Alternatives to Toxics v. California Department of Pesticide Regulation (2006) 136 12 Cal.App.4th 1049, 1069-1070 (*Californians for Alternatives to Toxics*) is directly applicable. In that case 13 petitioners challenged the Department of Pesticide Regulation's annual decision to renew several pesticide 14 registrations for 2002. The trial court found that the petition was moot because the Department's 200 15 renewal of the pesticides effectively replaced, and thus mooted, any legal challenge to the previous year's renewal decision. The Court of Appeal reversed, finding that "the timing of renewals creates an impossible 16 burden for those seeking to challenge the Department's decisions. The annual nature of the pesticide renewak 17 program virtually ensures that litigation seeking mandamus relief against a registration renewal will not be 18 resolved before the next annual renewal occurs." (Id. at 1069; accord, Conservatorship of Wendland ( $200\overline{1}$ ) 19 26 Cal.4th 519, 524, fn. 1 ["We have discretion to decide otherwise moot cases presenting important issues 20that are capable of repetition yet tend to evade review"].) 21

The same is true here, especially because the Regents have admitted they intend to continue **Document** received increasing enrollment. (Regents RJN, Ex. A, p. 2.)

## **IV. CONCLUSION**

For the reasons described above, the Regents demurrer to the TAP should be overruled.

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1	DATED: January 2, 2019	LAW OFFICES OF THOMAS N. LIPPE, APC	
3		By: Tom Ligge	
4		Thomas N. Lippe	
5		Attorney for Plaintiff	
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201 Mission St. 12 Floor San Francisco, CA 94105 Tel: 415-777-5604 Fax: 415-7775606		es in Opposition to Demurrer to Third Amended Petition	
	for writ or Mandate and Comp	laint for Declaratory Relief (CEQA); RG18902751	•

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Tab 038

JAN/02/2019/W3D 01:20 PM Law O. Thomas Lippe FAX No. 1-415-777-5606 F. 023/030 FILED BY FAX ALAMEDA COUNTY Thomas N. Lippe, SBN 104640 1 January 02, 2019 LAW OFFICES OF THOMAS N. LIPPE, APC 2 CLERK OF THE SUPERIOR COURT 201 Mission Street, 12th Floor San Francisco, California 94105 3 By Cheryl Clark, Deputy Tel: (415) 777-5604 CASE NUMBER: 4 Fax: (415) 777-5606 RG18902751 E-mail: Lippelaw@sonic.net 5 6 Attorney for Plaintiff: Save Berkeley's Neighborhoods 7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 IN AND FOR THE COUNTY OF ALAMEDA 9 SAVE BERKELEY'S NEIGHBORHOODS, a 10 Case No. RG18902751 California nonprofit public benefit corporation; 11 DECLARATION OF PHILLIP BOKOVOY Plaintiff, 12 IN OPPOSITION TO DEMURRER TO VS. THIRD AMENDED PETITION FOR WRIT 13 OF MANDATE AND COMPLAINT FOR THE REGENTS OF THE UNIVERSITY OF **DECLARATORY RELIEF** 14 CALIFORNIA, JANET NAPOLITANO, in her capacity as President of the University of 15 **[CALIFORNIA ENVIRONMENTAL** California; CAROL T. CHRIST, in her capacity as QUALITY ACT] 16 Chancellor of the University of California, Berkeley; and DOES 1 through 20, 17 Reservation No.: R-2022686 Date: January 15, 2019 Respondents and Defendants. 18 Time: 3:45 P.M. Dept.: 24 19 Judge: Hon. Frank Roesch 20 Action Filed: April 27, 2018 21 Trial Date: Not Set 22 Assigned for All Purposes to: 23 Hon. Frank Roesch, Dept. 24 24 25 26 27 28

## I, Phillip Bokovoy, declare:

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I am the founder and President of Save Berkeley's Neighborhoods, the plaintiff in this case. The 2 1. facts set forth in this declaration reflect the results of my research into the history of enrollment at the 3 University of California, Berkeley and my extensive community organizing efforts on this issue. The 4 factual allegations set forth herein are true of my own knowledge, except as to those matters alleged on 5 information and belief, and as to those matters, I am informed and believe them to be true. 6

2. As alleged in paragraph 9 of Plaintiff's Third Amended Petition for Writ of Mandate and 7 Complaint for Declaratory Relief filed in this case, in March and April 2017, I worked with City of 8 Berkeley officials to determine the current level of UCB enrollment in terms of "two-semester average 9 headcount" because at that time there was no publicly available enrollment information expressed in 10 terms of "two-semester average headcount" that could be used to compare current enrollment with the 11 enrollment disclosed in the 2005 EIR. The City of Berkeley then sent a written request dated April 14, 12 2017, to Respondents requesting the information. A true and correct copy of this letter is attached to the Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (TAP) as Exhibit 3. 13 14 On October 30, 2017, Respondents sent to the City of Berkeley its response to the City's request for ourt 15 information. A true and correct copy of this letter and its attachments is attached to the TAP. On or about October 31, 2017, the City of Berkeley provided me with a copy of this response. 16

As alleged in paragraph 10 of Plaintiff's TAP, Respondents' October 30, 2017, letter to the City 17 3. of Berkeley reveals that starting in about 2007 Respondent Regents and UCB changed the 2020 LRDP 18 project by increasing enrollment at UCB over and above the 1,650 additional students projected by the 19 2020 LRDP and disclosed in the 2005 EIR and that since 2007 Respondents have continued to change 20the 2020 LRDP project by continuing to enroll more students, in virtually every two-semester period, 21 than the 1,650 additional students projected by the 2020 LRDP and disclosed in the 2005 EIR. 22

**Document** receivêd 4. A more detailed analysis of Respondents' October 30, 2017, letter (Exhibit 4 to the TAP) show 23 that UC Berkeley gradually increased enrollment at UC Berkeley after Spring 2007 and then 24 dramatically so in the Spring of 2017. The total two-semester enrollment exceeded the 1,650 student 25 increase (i.e., 33,450 students) projected in the 2020 LRDP EIR by:

• 947 in Spring of 2008;

• 1,346 in Spring of 2009;

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Declaration of Phillip Bokovoy in Opposition to Demurrer to Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEQA); RG18902751

- 1,969 in Spring of 2010; 1
- 1,848 in Spring of 2011; 2
- 2,141 in Spring of 2012; 3
- 1,895 in Spring of 2013; 4
- 2,305 in Spring of 2014; 5
- 3,324 in Spring of 2015; 6
- 3,838 in Spring of 2016; 7
- 5,783 in Spring of 2017; and 8
- 6,652 in Fall of 2017. 9

I prepared a summary and graphic depiction of these changes in enrollment as a trend line, a true and 10 correct copy of which is attached hereto as Exhibit 1.

11 5. In their demurrer to the TAP, the Regents argue: "nor does the TAP contain any allegations that 12 Petitioner exercised reasonable diligence in discovering that the alleged increases in student enrollment. 13 (Demurrer MPA 12:23.) In fact, I exercised more than reasonable diligence in attempting to determine if 14 the Regents changed the 2020 LRDP by substantially increasing student enrollment at UCB above the 15 increase of 1,650 students projected in the 2020 LRDP. Before working with the City of Berkeley as described in paragraph 10 of the TAP, I diligently investigated, over the course of several years, whether 16 Distri UCB substantially increased student enrollment above the increase of 1,650 students projected in the 17 2020 LRDP. I have found approximately three hundred (300) emails on my computer representing 18 S. hundreds of communications between myself and the City of Berkeley, other members of the 19 community, and UC Berkeley on this topic. I have already spent about 20 hours searching for and 20the reviewing my emails on this topic and drafting a rough written chronology of my efforts in this regard 21 for Plaintiff's counsel in this case. I estimate it would take me about 30 more hours to finish reviewing 22 my emails and to write up a detailed, coherent chronology of my efforts and to produce all of my emails that provide evidence of these efforts. 23 24

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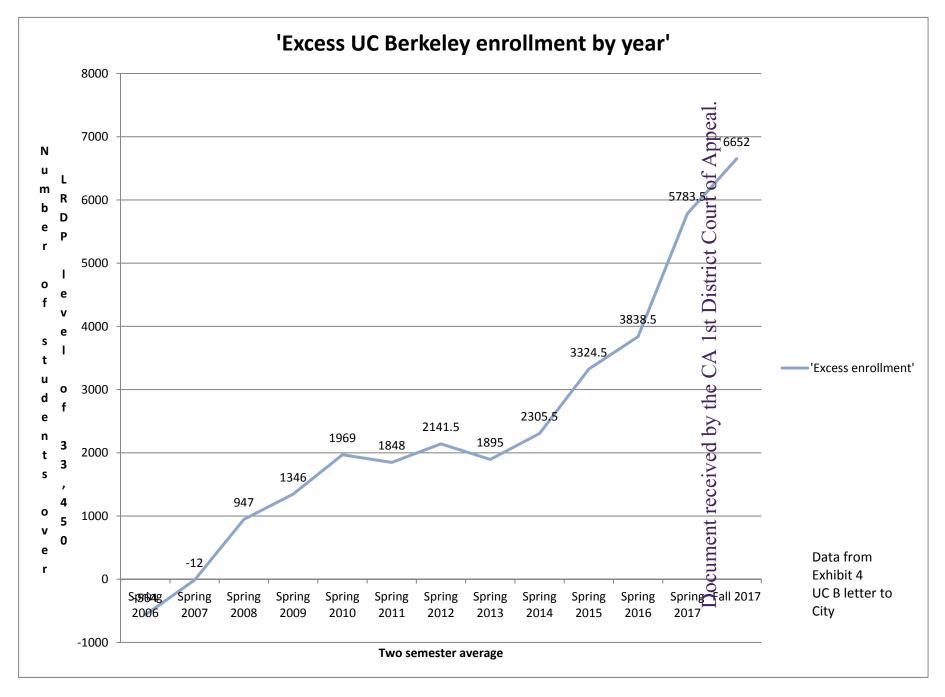
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Declaration of Phillip Bokovoy in Opposition to Demurrer to Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (CEQA); RG18902751

- 2 -



1	I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
2	true and correct of my personal knowledge. Executed on January 2, 2019, at Berkeley, California.
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5	Phillip Bokovoy
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	for Writ of Mandate and Complaint for Declaratory Relief (CEQA); RG18902751



**EXHIBIT 1** 

# Tab 039

1 2 3 4 5	Charles F. Robinson (SBN 113197) Alison Krumbein (SBN 229728) alison.krumbein@ucop.edu THE UNIVERSITY OF CALIFORNIA Office of General Counsel 1111 Franklin St., 8th Floor Oakland, California 94607 Telephone: (510) 987-0851 Facsimile: (510) 987-9757		
6 7	Amrit S. Kulkarni (SBN 202786) akulkarni@meyersnave.com Timothy D. Cremin (SBN 156725) tcremin@meyersnave.com	EXEMPT FROM FILING FEES GOV'T CODE § 6103	
8 9 10	<ul> <li>Edward Grutzmacher (SBN 228649)</li> <li>egrutzmacher@meyersnave.com</li> <li>MEYERS, NAVE, RIBACK, SILVER &amp; WILSON</li> <li>555 12<sup>th</sup> Street, Suite 1500</li> </ul>		
11	Telephone: (510) 808-2000 Facsimile: (510) 444-1108	E STATE OF CALIFORNIA F ALAMEDA Case No. RG18902751 ASSIGNED FOR ALL PRE-TRIAL	
12	Attorneys for The Regents of the University of California; Janet Napolitano, in her capacity as	fAF	
13	President of the University of California; Carol T Christ, in her capacity as Chancellor of the		
14	University of California, Berkeley	Cou	
15	SUPERIOR COURT OF TH	E STATE OF CALIFORNIA	
16	COUNTY OF ALAMEDA		
17	SAVE BERKELEY'S NEIGHBORHOODS, a	Case No. RG18902751	
18	California nonprofit public benefit corporation,	ASSIGNED FOR ALL PRE-TRIAL	
19	Petitioner and Plaintiff,	PURPOSES TO JUDGE FRANK RUESCH []	
20		REPLY TO OPPOSITION TO	
21	V.	DEMURRER TO THIRD AMENDED	
22	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET NAPOLITANO, in	AND COMPLAINT FOR DECLARATORY RELIEF	
23	her capacity as President of the University of California; CAROL T. CHRIST, in her	DECLARATOR I RELIEF $0$	
24	capacity as Chancellor of the University of California, Berkeley; and DOES 1 through 20,	RESERVATION No. R-2022686TopologicalJudge: Hon. Frank RoeschDete:Dete: January 15, 2019	
25	Respondents and Defendants.	DEPARTMENT 24 REPLY TO OPPOSITION TO DEMURRER TO THIRD AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF RESERVATION No. R-2022686 Judge: Hon. Frank Roesch Date: January 15, 2019 Time: 3:45 PM Dept.: 24	
26		Dept.: 24 Action Filed: April 27, 2018	
27		Trial Date: None Set	
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13	(2005) 127 Cal.App.4th 1544.	
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14	(2016) 1 Cal.5th 937	
15	Laurel Heights Improvement Assn. v. Regents of Univ. of California	
16	(1998) 47 Cal.3d 376.	
	Otworth v. Southern Pac. Transportation Co.	
17	(1985) 166 Cal. App. 3d 452	
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19	Snarled Traffic Obstructs Progress v. City & Cty. of San Francisco	
19	(1999) /4 Cal.App.4th /93	
20	Ventura Foothill Neighbors v. County of Ventura	
21	(2014) 232 Cal.App.4th 429	
22	Woodward Park Homeowners Assn. v. Garreks, Inc.	
22	Otworth v. Southern Pac. Transportation Co. (1985) 166 Cal.App.3d 452.       12, 13         Snarled Traffic Obstructs Progress v. City & Cty. of San Francisco (1999) 74 Cal.App.4th 793.       Yo         Ventura Foothill Neighbors v. County of Ventura (2014) 232 Cal.App.4th 429.       Yo         Woodward Park Homeowners Assn. v. Garreks, Inc. (2000) 77 Cal.App.4th 880.       Yo         Statutes AND Regulations       Yo         CALIFORNIA CODE OF REGULATIONS, TITLE 14 (CEQA GUIDELINES) Section 15162. Section 15162(a)(1).       Yo	
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24	STATUTES AND REGULATIONS	
	CALIFORNIA CODE OF REGULATIONS, TITLE 14 (CEQA GUIDELINES)	
25	Section 15162	
26	Section 15162(a)(1)	
27	PUBLICE RESOURCES CODE	
	Section 21080.09	
28	Section 21080.09(a)(2)	
	3 REPLY TO OPPOSITION TO DEMURRER TO THIRD AMENDED PETITION FOR WRIT OF MANDATE AND	
	COMPLAINT FOR DECLARATORY RELIEF	
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1	PUBLICE RESOURCES CODE (CONT.)
	Section 21094
2 3	Section 21166
3 4	OTHER AUTHORITIES
5	Cal. Constitution, Art. IX, Sec. 9
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	4 REPLY TO OPPOSITION TO DEMURRER TO THIRD AMENDED PETITION FOR WRIT OF MANDATE AND
	COMPLAINT FOR DECLARATORY RELIEF

#### 1 I. INTRODUCTION

Petitioner Save Berkeley's Neighborhood ("Petitioner") fails to address any of the defects
in its Third Amended Petition ("TAP") that Respondents the Regents of the University of
California, Janet Napolitano, and Carol T Christ (collectively "UC") raised in UC's Demurrer to
the TAP ("MPA"). As such, this Court should sustain UC's demurrer without leave to amend.

After alleging many different and vague legal theories in its multiple amended Petitions, 6 7 Petitioner has now clearly stated the core element of its "CEQA claim": the Long Range Development Plan adopted in 2005 ("LRDP") is the CEQA project and the claim is the failure to 8 9 conduct environmental review of the alleged change in enrollment analyzed under the LRDP environmental impact report ("EIR"). This claim must fail because enrollment levels are not part 10 of the development plan approved under the LRDP and any such claim is barred by the statute of limitations. At the root of Petitioner's inability to state a claim is Petitioner's fundamental misunderstanding of the LRDP. An LRDP is not an enrollment plan. It is a plan for the development of facilities to serve the academic and research activities of a University. An LRDPO 11 12 13 14 15 16 17

contains an estimated enrollment because the LRDP must plan for facilities to accommodate its
education and research mission. An LRDP does not set enrollment limits or dictate year-to-year.
enrollment levels.
Nevertheless, Petitioner claims the TAP is challenging alleged changes to UC Berkeley's
("UCB") LRDP because the actual enrollment at UCB exceeds the estimated enrollment in the
LRDP EIR. However, since enrollment levels are not a part of the project approved under the
LRDP, changes in enrollment levels are not changes to the LRDP. Once an EIR has been certified
interests of finality and presumptive correctness preclude reopening of an EIR, even if the EIR's
estimates or information prove to be incorrect. Thus, alleged incorrect enrollment estimates are not
allowable grounds for reopening CEQA review for the LRDP and its EIR.
Furthermore, even assuming, *arguendo*, that changes to enrollment levels could constituted

Furthermore, even assuming, *arguendo*, that changes to enrollment levels could constitute
changes to the LRDP, the TAP fails to allege sufficient facts necessary to state a claim for
subsequent CEQA review. Rather than pointing to facts establishing that CEQA's restrictive
requirements for subsequent environmental review are met, the POB makes several, irrelevant

arguments in an attempt to deflect attention from the defects in the TAP. CEQA prohibits UC 1 from conducting subsequent review unless CEQA's particular requirements for such review have 2 been met. The TAP does not allege facts meeting CEQA's subsequent review requirements. 3

No matter how Petitioner attempts to frame its claims, the claims are barred by the statute 4 of limitations. Under any of Petitioner's various theories, the original petition was filed more than 5 180 days after any cognizable trigger of the limitations period. The latest date for triggering any 6 claim would be the alleged enrollment decisions for the Fall 2017 class (Spring 2017) or the 7 commencement of the academic semester for that class (Summer 2017), both of which occurred 8 9 more than 180 days before the lawsuit was filed (April 27, 2018).

Moreover, Petitioner's Opposition to UC's Demurrer ("POB") fails to show that the TAP 10 complies with this Court's Order ("Order") sustaining UC's Demurrer to the Second Amended 11 Petition ("SAP") which required Petitioner to plead the CEQA project it is challenging and the 12 approval and commencement date of alleged enrollment "decisions." The TAP alleges unspecified 13 "decisions" to increase enrollment and fails to allege the approval or commencement date for these 14 decisions. The failure to comply with the Order is an independent ground for the Court to sustain UC's Demurrer to the TAP without leave to amend. Petitioner also does not address the deficiencies with the claim for declaratory relief 15 16

17 identified in the Demurrer. Most importantly, alleging a claim for declaratory relief does not curred the lack of an underlying claim of a CEQA violation. Finally, no effective relief can be granted on Petitioner's claims and its claims are therefore moot. Petitioner's alleged exceptions to the mootness doctrine do not apply.
 II. ARGUMENT

 A. Petitioner Has Failed to Allege a Claim for CEQA Subsequent or Supplemental Environmental Review Based on Enrollment Changes
 Petitioner pivots from its previous argument that UC should have conducted environmental

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review of enrollment increases as a stand-alone project to now arguing that UC was required to  $\Box$ 

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REPLY TO OPPOSITION TO DEMURRER TO THIRD AMENDED PETITION FOR WRIT OF MAND COMPLAINT FOR DECLARATORY RELIEF AA00460

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conduct subsequent CEQA review of enrollment changes as changes to the LRDP.<sup>1</sup> Petitioner has 1 not, and cannot, meet its burden to allege facts sufficient to support such a claim. 2

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#### The LRDP is not an enrollment plan. 1.

The fundamental flaw with Petitioner's claim is that changes in enrollment do not 4 constitute changes to the LRDP project and, therefore, cannot trigger the requirement to conduct 5 subsequent CEQA review of the LRDP project. 6

CEQA defines a LRDP as "a physical development and land use plan to meet the academic 7 and institutional objectives for a particular campus or medical center of higher education." (Pub. 8 Res. Code ("PRC"), § 21080.09, subd. (a)(2) (emphasis added).) The EIR for an LRDP must 9 consider the "[e]nvironmental effects relating to changes in enrollment levels," and compliance 10 ppeal with section 21080.09 satisfies UC's obligation "to consider the environmental impact of 11 academic and enrollment plans." (Id. at subds. (b), (d).) The reasons for this requirement are self 12 evident – the campus population is a factor in planning the land uses and new facilities to serve the 13 university's academic and research mission. However, nothing in CEQA or state law, states that 14 university s academic and research mission. However, nothing in CEQA or state law, states that of enrollment plans are a required component of LRDPs or that LRDPs set enrollment levels.<sup>2</sup>
 Therefore, as a matter of law, Petitioner's argument that changes in enrollment levels at ...
 UCB mandated that UC examine the environmental impacts of changes to the LRDP project must fail. UC could not, and cannot examine changes to the LRDP based on changes in enrollment levels because the enrollment levels are not part of the statutorily-defined LRDP.
 2. Enrollment changes standing alone do not trigger CEQA subsequent review standards.
 Petitioner argues that, because UC incorrectly estimated the projected future enrollment environment levels in the LRDP, the LRDP EIR is now subject to challenge. Case law makes clear, however, and the LRDP, constitute discretionary actions subject to CEQA. To the extent Petitioner maintaing 15 16 17 18 19 20 21 22 23 24 25 of the LRDP, constitute discretionary actions subject to CEQA. To the extent Petitioner maintain?

that enrollment decisions are discretionary actions subject to CEQA, please see MPA, pp. 13-14

- 26 <sup>2</sup> To the extent Petitioner argues that whether the LRDP includes an enrollment plan is an issue of fact to be decided by the tier of fact, the statutory definition of an LRDP is a legal issue and the 27 statute clearly shows that an LRDP is not an enrollment plan.
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that imprecise prognostication in an EIR is not grounds for re-opening the CEQA analysis. Courts 1 2 "do not require prophecy" in CEQA documents. (Laurel Heights Improvement Assn. v. Regents of Univ. of California (1998) 47 Cal.3d 376, 398.) Agencies are not required "to predict" in their 3 CEQA documents "precisely what the environmental effects, if any, of future activity will be." 4 5 (*Ibid.*) Once certified, an EIR "is protected by concerns for finality and presumptive correctness." (Snarled Traffic Obstructs Progress v. City & Cty. of San Francisco (1999) 74 Cal.App.4th 793, 6 797.) This is true even if the EIR estimates "w[ere] invalid or in some way defective." (Citizens 7 for a Megaplex-Free Alameda v. City of Alameda (2007) 149 Cal.App.4th 91, 110.) Therefore, 8 Petitioner is barred from re-opening a challenge to the already-certified LRDP EIR based solely on 9 new information about enrollment levels which is different from EIR estimates. 10

ppea CEQA provides a mechanism for judicial review of the environmental impacts of future 11 discretionary decisions relying on an already-certified EIR through its standards for subsequent 12 Court of environmental review and tiering. (PRC, §§ 21094, 21166; Cal. Code of Regs., tit. 14 ("CEQA 13 Guidelines"), §§ 15152, 15162.) Long term planning documents remain valid, and the EIRs for 14 those documents remain useful for tiering, so long as the predictions hold true. However, when 15 predictions become outdated, the lead agency must re-examine impacts at the time of the next 16 discretionary approval. (Id.) Enrollment decisions are not discretionary projects under CEQA. 17 (MPA, pp. 13-14.) 18

lines"), §§ 15152, 15162.) Long term planning documents remain valid, and the EIRs for O the documents remain useful for tiering, so long as the predictions hold true. However, when tions become outdated, the lead agency must re-examine impacts at the time of the *next tionary approval.* (*Id.*) Enrollment decisions are not discretionary projects under CEQA. , pp. 13-14.) For these reasons, Petitioner's argument that UC is suggesting "that subsequent review is equired when the Regents say it is" is nonsensical. (POB, p. 5.) UC is simply arguing that for subsequent environmental review must meet the strict, prohibitory standards under A. Similarly, Petitioner's argument that UC could purposefully "underestimate enrollment ses in an LRDP to completely avoid ever having to analyze the impacts of additional ment increases" is belied by CEQA's rules on tiering. (POB, p. 7.) UC has no incentive to estimate enrollment because such a practice may limit the use of the LRDP EIR for quent discretionary approvals if subsequent environmental review standards are met. 19 only required when the Regents say it is" is nonsensical. (POB, p. 5.) UC is simply arguing that 20 claims for subsequent environmental review must meet the strict, prohibitory standards under 21 CEQA. Similarly, Petitioner's argument that UC could purposefully "underestimate enrollment 22 increases in an LRDP to completely avoid ever having to analyze the impacts of additional 23 enrollment increases" is belied by CEQA's rules on tiering. (POB, p. 7.) UC has no incentive to 24 underestimate enrollment because such a practice may limit the use of the LRDP EIR for 25 subsequent discretionary approvals if subsequent environmental review standards are met. 26 The TAP failed to allege the necessary facts showing the requirements 27 3.

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for subsequent CEQA review are met.

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Even, assuming arguendo, alleged "enrollment decisions" could constitute subsequent
 discretionary decisions, the TAP has not alleged facts sufficient to show that CEQA's narrow,
 prohibitory standards for subsequent environmental review have been met. (MPA, pp. 15-16.)
 Rather than show how the TAP includes the necessary allegations, Petitioner instead makes
 several attempts at misdirection, none of which assist Petitioner in establishing its claim.

First, Petitioner complains that UC is asking that the TAP include "evidentiary facts" and 6 not the "ultimate" facts required for pleadings. (POB, pp. 1, 6.) CEQA's requirements for 7 subsequent environmental review are laid out in PRC Section 21166 and CEQA Guidelines, 8 section 15162. UC argued that the TAP failed to allege a subsequent discretionary decision, 9 because enrollment decisions do not constitute stand-alone discretionary decisions, and also that 10 Petitioner failed to allege that substantial evidence was before UC showing that the requirements 11 of CEQA Guidelines section 15162(a)(1) had been met. (MPA, p. 16.) These are the "ultimate" or CEQA Guidelines section 15162(a)(1) had been met. (MPA, p. 16.) These are the "ultimate" facts required to establish a claim for subsequent CEQA review. Petitioner does not need to prove that its facts are true at this stage of the case. However, it must allege that the statutory requirements for subsequent CEQA review have been met. Because Petitioner has not done so after *three* Petition amendments, the Demurrer should be sustained without leave to amend. Next, Petitioner attempts to latch on to UC's preparation of a supplemental EIR for the Goldman School of Public Policy's Upper Hearst Project ("GSPP") as the "ultimate facts" needed 12 13 14 15 16

17 Goldman School of Public Policy's Upper Hearst Project ("GSPP") as the "ultimate facts" needed 18 to support its claims. (POB, p. 6; Request for Judicial Notice filed in support of Demurrer to SAR 19 Ę ("RJN"), Ex. 1.).) The Notice of Preparation ("NOP") for the GSPP supplemental EIR post-dates 20 Petitioner's filing of this case by four months and, thus, cannot serve as the factual basis for Petitioner's claims. Moreover, the TAP contains no allegations concerning the GSPP whatsoever Furthermore, the NOP is not an admission that *enrollment decisions* are discretionary projects requiring subsequent CEQA review of the LRDP. Rather, it is an acknowledgment that the enrollment estimates in LRDP EIR should be updated in order for UC to rely on the EIR for the discretionary approval of the GSPP. 21 22 23 24 25 discretionary approval of the GSPP. 26

Finally, the POB contains considerable discussion of the holding of *Friends of College of* San Mateo Gardens v. San Mateo Com. College Dist. (2016) 1 Cal.5th 937, which discussed the

appropriate standard of review for a court determining whether an agency properly determined 1 that subsequent environmental review should be prepared rather than a new CEQA document for 2 project changes. This issue is not raised in the TAP and is not before this Court. 3

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Petitioner's proposed remedy is both unworkable and unnecessary. 4.

Petitioner's untenable theory would require UC to annually analyze the environmental 5 impacts of its student enrollment, which fluctuates each academic year and are not fully known 6 until the semester starts. Courts would have to resolve annual challenges to the environmental 7 analysis of enrollment levels, and could block enrollment until the analysis was done. The 8 requested remedy would throw UC's higher education mission into complete disarray. It would be 9 impossible for UC to conduct annual CEQA analysis of enrollment before commencing student \_\_\_\_ 10 impossible for UC to conduct annual CEQA analysis of enrollment before commencing student instruction each academic year. It also would be impossible for CEQA claims regarding such analysis to be resolved by trial and appellate courts before the academic year has concluded. Petitioner has not, and cannot demonstrate any legal basis for this Court to stay the beginning of student instruction on a UC campus pending CEQA review. Such a stay would contravene UC's 11 12 13 14 Student instruction on a OC campus pending CEQA review. Such a stay would contravene UC's control over public higher education under the State Constitution. (Cal. Constitution, Art. IX, Setting 9. [UC has the exclusive power to operate, control, and administer public higher education].)
9. [UC has the exclusive power to operate, control, and administer public higher education].)
Court orders and oversight controlling annual enrollment levels would contravene UC's constitutional powers.
In addition, Petitioner's requested relief is unnecessary. UC is already preparing a supplemental EIR to the LRDP EIR for the GSPP addressing enrollment level changes (see, RJN, and court remedies are available for any claims of CEQA non-compliance in that process.
B. Petitioner's Claims Are Barred By the Statute of Limitations Petitioner agrees that the statute of limitations for any of its claims is 180 days. (POB, p. 1997)
Pub. Res. Code § 21167.) All Petitioner's theories for its claims are time-barred. Despite this Court's Order, Petitioner still has not clearly alleged the project and the date of project approval and commencement that is the subject of the TAP. Under new theory. Petitioner Peti 15 16 17 18

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25 of project approval and commencement that is the subject of the TAP. Under any theory Petitioner 26 may raise, however, the claim is time-barred. If Petitioner is challenging the adoption of the LRDP 27 itself, the LRDP was approved and commenced in 2005, approximately 12.5 years before the 28 10

petition was filed. If Petitioner is challenging enrollment decisions as a CEQA project, each of the 1 enrollment decisions from 2007 to 2017 were made, and each academic year of enrollment 2 commenced, more than 180 days before the petition was filed. (See RJN filed ISO UC's Demurrer 3 to the SAP, Ex. 2, on file herein.) Likewise, if Petitioner is challenging enrollment decisions as 4 changes to the LRDP, each of the enrollment decisions were made and enrollment commenced 5 more than 180 days before the petition was filed. (Id.) Finally, to the extent Petitioner is alleging 6 that UC adopted a "policy" to increase enrollment beyond that estimated in the LRDP EIR, the 7 allegations in the Petition show that "policy" was implemented no later than 2007, approximately 8 10 years before the Petition was filed. Thus, under any theory, Petitioner's claims are barred by 9 the statute of limitations. 10

Relying on Concerned Citizens of Costa Mesa, Inc. v. 32<sup>nd</sup> Dist. Agricultural Assn. (1986) 11 42 Cal.3d 929 (*Concerned Citizens*) and *Ventura Foothill Neighbors v. County of Ventura* (2014) 232 Cal.App.4th 429, 435 (*Ventura*), Petitioner argues that it should be excused from filing its petition until 180 days after Petitioner "knew or reasonably should have known of substantial increases in student enrollment levels." (POB, pp. 1, 8-12) Neither case is applicable to Petitioner's alleged claims and neither serves to toll the statute of limitations. First, both *Concerned Citizens* and *Ventura* involved claims that an agency approved changes to a project after conducting CEQA review, but before the project was constructed. (*Concerned Citizens*, 42 Cal.3d at 936-937; *Ventura*, 232 Cal.App.4th at 431-433.) Here, as set forth above, enrollment decisions are not changes to the LRDP project. Thus, however Petitioner characterizes those enrollment decisions, *Concerned Citizens* and *Ventura* do not apply because **P** 12 13 14 15 16

17 18 19 20 There is those enrollment decisions, *Concerned Citizens* and *Ventura* do not apply because oner cannot allege changes to the LRDP based on enrollment decisions. In addition, both cases dealt with changes to physical projects. (*Id.*) Assuming, *arguendo* characterizes those enrollment decisions, Concerned Citizens and Ventura do not apply because 21 Petitioner cannot allege changes to the LRDP based on enrollment decisions. 22

23 that enrollment levels are a part of the LRDP project, enrollment still only involves the student population, not the physical facilities themselves. Analogizing to the *Concerned Citizens* case, the 24 25 Ω allegations there were that the size and capacity of the amphitheater changed, not that the 26 amphitheater was the same size, but that more concertgoers were attending events than the district 27 anticipated. Likewise here, there are no allegations that UC has increased the size or capacity of 28 REPLY TO OPPOSITION TO DEMURRER TO THIRD AMENDED PETITION FOR WRIT OF MANDATE AND

any of its physical facilities, only that the student population had increased. Petitioner's allegations 1 that enrollment has exceeded that anticipated in the LRDP EIR does not change the land use or 2 development plans in the LRDP, nor does it allow Petitioner to toll the statute of limitations until 3 such time as Petitioner discovered such increases. 4

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C.

#### The TAP Did Not Comply with the Order

As argued in the MPA, the Order required Petitioner to allege the project challenged, the 6 date that project was approved, and the date that project commenced. Petitioner's failure to 7 comply with the Order is an independent ground for sustaining the Demurrer without leave to 8 amend. (Otworth v. Southern Pac. Transportation Co. (1985) 166 Cal.App.3d 452, 457.) 9

The POB arguments do not establish compliance with the Order. Petitioner alleged that the 10 Court of Appea "project" is the LRDP, which was approved and commenced in 2005. (POB, pp. 1, 3.) Then, 11 Petitioner argues that it is challenging an unspecified "decision or decisions" to "change" the 12 enrollment levels in the LRDP, or, alternatively, a "policy" of increasing enrollment levels. (Id. 13 pp. 1, 3, 12-14.) Petitioner does not allege when these "decisions to change" were approved or 14 when the allegedly changed project commenced, because the statute of limitations did not begin to the unit of the alleged project commenced, because the statute of limitations did not begin to the unit of the alleged changes. (*Id.*, p. 4.) Petitioner.
It is the red herring that only "substantial changes" count for CEQA purposes, without actually alleging when Petitioner believes such a substantial change occurred (POB, p. 10).
Therefore, Petitioner has not pled facts to comply with the Order
D. Petitioner Has Failed To Address the Defects with its Claim For Declaratory Relief
The MPA established that Petitioner's claim for declaratory relief is legally inadequate
because the claim failed to comply with the Order, the claim is barred by the statute of limitation. 15 16 17 18 19

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22 23 and the alleged "policy" challenged is not a project subject to CEQA. (MPA, pp. 18-19.) Petitioned does not address any of these deficiencies. 24 25

Petitioner does not address at all UC's argument that Petitioner cannot create a "separate 26 claim for declaratory relief for violation of CEQA because it is derivative of his underlying claim. 27 Therefore, all the fatal flaws that apply to the underlying claim apply to the declaratory relief 28

claim and bar that claim as well. 1

Neither the TAP nor the POB explain when this alleged "policy" was approved or when it 2 commenced in violation of the Order. Petitioner's claim is also time-barred. Since the TAP alleges 3 that UC has implemented the alleged policy "[s]ince the 2007-2008 academic year," Petitioner's 4 April 27, 2018 complaint is approximately a decade too late. (TAP, ¶ 34.) Petitioner's attempt to 5 reframe its declaratory relief claim as one for prospective relief in order to escape the application 6 of the statute of limitations is inconsistent with its own TAP. (See POB, pp. 13-14.) The TAP 7 clearly alleges that the declaratory relief claim seeks to address past conduct by UC in allegedly 8 implementing this policy. (TAP, ¶ 34-36.) Therefore, UC's demurrer to Petitioner's claim for 9 declaratory relief should be sustained without leave to amend. 10 ppeal

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Ε.

## The SAP is Moot, and No Exceptions to the Mootness Doctrine Apply

Petitioner does not even attempt to argue that its claims are not moot, but rather asserts that 12 one or more of the exceptions to the mootness doctrine apply. (POB, pp. 14-15.) As set forth in the MPA, Petitioner's claims are moot. (MPA, pp 17-18.) Moreover, none of the exceptions to the mootness doctrine apply. Petitioner first argues that material questions remain for the Court's determination, but does 13 14 15

16 not state what those questions are. (POB, pp. 14-15.) Rather, Petitioner claims that UC cannot 1st 17 provide facts on demurrer that the environmental impacts of increased enrollment disappear at the 18 end of a school year and that UC ignores the cumulative impacts of multiple years of alleged by the 19 increased student enrollment. (Id.) Neither assertion explains what material questions the Court 20would still need to answer. More importantly, neither shows how either the Court, or UC, can address such alleged impacts for an academic year that no longer exists. Finally, Petitioner again 21 22 raises the 2018-2019 enrollment numbers as a "material question." However, the TAP contains no 23 ocument allegations regarding the 2018-2019 enrollment numbers, and such unfounded arguments in the 24 POB cannot serve to defeat this demurrer. 25

Next, Petitioner attempts to analogize its claims to cases where courts have found that a 26 CEQA claim is not moot. County Sanitation Dist. No. 2 v. County of Kern (2005) 127 27

Cal.App.4th 1544, 1628, examined the mootness of challenges to six contracts and found that 28

some were moot because the contracts had expired while others were not moot because the 1 contracts were still in effect and mitigation measures could still be applied. Like the expired 2 contracts, Petitioner's challenge to previous years' enrollment is moot because the those academic 3 years have expired and there is no CEQA review UC can conduct or mitigation measures that UC 4 could apply to past enrollment. Association for a Cleaner Environment v. Yosemite Community 5 College District (2004) 116 Ca1.App.4th 629 and Woodward Park Homeowners Assn. v. Garreks, 6 Inc. (2000) 77 Cal.App.4th 880 are distinguishable because they concern existing, physical 7 projects, which the agencies might physically modify or abandon, which is not the case here. 8

Finally, Petitioner relies on Californians for Alternatives to Toxics v. California

Department of Pesticide Regulation (2006) 136 Ca1.App.4th 1049 ("Alternatives") to argue that 10the Court should still decide this case because it provides an issue of broad public interest that is 11 likely to recur. (POB, p. 15.) Alternatives is inapposite. That case involved a certified CEQA-12 equivalent program which mandated the Department annually approve renewal applications. (136 13 Ca1.App.4th at 1057-1058.) Under that statutory scheme, it was indeed impossible for plaintiffs 14 complete a challenge to an annual renewal before that renewal would be replaced by the next year's renewal and become moot. In contrast, here, the Legislature has established a different statutory scheme under PRC Section 21080.09 which provides that enrollment numbers shall be 15 16 17 analyzed as a part of the LRDP. This scheme avoids the very issue raised in *Alternatives* by not O requiring UC to conduct annual CEQA review of its enrollment numbers. Thus, the SAP is moot and Petitioner has not established that any of the exceptions to the mootness doctrine apply.
III. CONCLUSION For all of the above reasons, the Court should sustain the UC's demurrer to the Third
Amended Petition without leave to amend.
DATED: January 8, 2019
MEYERS, NAVE, RIBACK, SILVER & WILSON 18 19

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By:

Timothy D. Cremin Attorneys for Respondents and Defendants

14 REPLY TO OPPOSITION TO DEMURRER TO THIRD AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AA00468

1	PROOF OF SERVICE		
2	STATE OF CALIFORNIA, COUNTY OF ALAMEDA		
3 4	employed in the County of Alameda, State of California. My business address is 555 12th Street,		
5 6 7	On January 8, 2018, I served true copies of the following document(s) described as <b>REPLY TO OPPOSITION TO DEMURRER TO THIRD AMENDED PETITION FOR</b> <b>WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF</b> on the interested parties in this action as follows:		
<b>8</b> 9 10 11	Thomas N. Lippe, Esq. Kelly Marie Perry, Esq. Law Offices of Thomas N. Lippe, APC 201 Mission Street, 12th Fl. San Francisco, CA 94105Attorneys for Plaintiff SAVE BERKELEY'S NEIGHBORHOODSTel: (415) 777-5604 Fax: (415) 777-5606 Email: lippelaw@sonic.net kmhperry@sonic.netTel: (415) 777-5604 Fax: (415) 777-5606 Email: lippelaw@sonic.net fmail: lippelaw@sonic.net		
12 13 14 15	persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. Or the same day that the correspondence is placed for collection and mailing, it is deposited in the		
16 17	BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e- mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.		
18 19	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 8, 2018, at Oakland, California.		
20	Executed on January 8, 2018, at Oakland, California.		
21	ied 1		
22	Melissa Bender		
23			
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28	15 REPLY TO OPPOSITION TO DEMURRER TO THIRD AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY BELIEF		
	COMPLAINT FOR DECLARATORY RELIEF		

## Tab 040

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12	Attorneys for The Regents of the University of C Janet Napolitano, in her capacity as President of University of California; Carol T. Christ, in her c	the Jonacity		
13 14	as Chancellor of the University of California, Be	rkeley		
14	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
16	COUNTY O	F ALAMEDA		
17	SAVE BERKELEY'S NEIGHBORHOODS, a California nonprofit public benefit	alifornia; the apacity rkeley E STATE OF CALIFORNIA F ALAMEDA Case No. RG18902751 ASSIGNED FOR ALL PRE-TRIAL PURPOSES TO HON. FRANK ROESCH DEPARTMENT 24		
18	corporation,	ASSIGNED FOR ALL PRE-TRIAL		
19	Petitioner and Plaintiff,			
20	V.	OBJECTIONS TO AND REQUEST TO STRIKE DECLARATION OF PHILLIP		
21	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET NAPOLITANO, in	BOKOVOY IN SUPPORT OF OPPOSITION TO RESPONDENTS'		
22	her capacity as President of the University of California; CAROL T. CHRIST, in her	DEMURRER TO THIRD AMENDED		
23	capacity as Chancellor of the University of California, Berkeley; and DOES 1 through 20,	AND COMPLAINT FOR DECLARATOR		
24	Respondents and Defendants.	STRIKE DECLARATION OF PHILLIP BOKOVOY IN SUPPORT OF       Image: Composition to Respondents'         OPPOSITION TO RESPONDENTS'       Image: Composition to Respondents'         DEMURRER TO THIRD AMENDED       Image: Composition for WRIT OF MANDATE         PETITION FOR WRIT OF MANDATE       Image: Composition for WRIT OF MANDATE         AND COMPLAINT FOR DECLARATOR       Image: Composition for Mandate         RELIEF       Image: Hon. Frank Roesch         Date:       January 15, 2019         Time:       3:45 PM		
25		Judge: Hon. Frank Roesch Date: January 15, 2019 Time: 3:45 PM		
26		Dept.: 24		
27		Action Filed: April 27, 2018		
28		Trial Date: None Set		
		EST TO STRIKE DECLARATION OF PHILLIP BOKOVOY		
	UBJECTIONS TO AND REQUI	AA00470		

### **INTRODUCTION** 1 I.

The Court should use its inherent authority to strike the Declaration of Phillip Bokovoy 2 ("Bokovoy Declaration"), filed in support of Petitioner Save Berkeley's Neighborhoods' 3 ("Petitioner") Opposition to University of California's ("UC") Demurrer to the Third Amended 4 Petition ("Demurrer"). (Code Civ. Proc., § 436.) 5

Petitioner attempts to improperly rely on the Bokovoy Declaration to establish that 6 Petitioner is not barred by the strict and short statute of limitation applicable to California 7 Environmental Quality Act ("CEQA") suits. Mr. Bokovoy offers numerous statements regarding 8 his efforts to determine enrollment levels at UC Berkeley and that he did not discover the Fall 9 2017 student enrollment data until approximately a month after it was publicly available. (Bokovoy Declaration., ¶¶ 1-5.) None of these allegations are present in Petitioner's Third Amended Petitioner ("TAP"), however. Instead, this is the first time that these allegations are raised in this litigation, despite the fact that Petitioner has had four opportunities since the initiation of this action to sufficiently state its claims. Mr. Bokovoy's declaration, therefore, is nothing more than an improper and irrelevant attempt to run-around the well-established demurrent standards and pleading requirements. UC objects to the Bokovoy Declaration and its effort to 10 11 12 13 14 15 16 introduce new allegations, essentially once again amending the Petition (since these allegations are 17 not currently pled in the TAP). Because of this and because the new allegations are irrelevant to 18 the issue on Demurrer (i.e., whether the TAP, as currently pled, sufficiently alleges a viable cause 19 20 21

22

of action), the Court should exercise its inherent discretion pursuant to Code of Civil Procedure section 436 and strike the Bokovoy Declaration. II. ARGUMENT Through the Bokovoy Declaration, Petitioner is seeking to introduce new allegations regarding the purported discovery of the enrollment numbers that are currently entirely omitted from Petitioner's *third* attempt at stating its case. A demurrer, however, "tests the pleadings along 23 24 25 Ω and not the evidence or other extrinsic matters." (SKF Farms v. Superior Court (1984) 153 26 Cal.App.3d 902, 905.) "The only issue involved in a demurrer hearing is whether the complaint, as 27 it stands, unconnected with extraneous matters, states a cause of action." (Ibid. [citing Griffith v. 28

> OBJECTIONS TO AND REQUEST TO STRIKE DECLARATION OF PHILLIP BOKOVOY AA004

Department of Public Works (1956) 141 Cal.App.2d 376, 381].) Petitioner's self-serving declaration, proffered at the eleventh hour, thus improperly puts forth extraneous allegations for the Court's consideration. But these improper "new facts" in no way cure the deficiencies in the TAP —to the contrary, Petitioner impliedly concedes that the TAP is insufficient to support its claims.

The Court may, in its discretion, strike out "any irrelevant, false, or improper matter" or "any pleading not drawn or filed in conformity" with the court rules. (Code Civ. Proc., § 436.) The Bokovoy Declaration falls squarely within these categories. It attempts to amend the TAP by inserting additional allegations regarding Mr. Bokovoy's purported discovery of the enrollment numbers at a date later than when the enrollment numbers were made publicly available by the UC, as discussed in UC's Demurrer. This attempt is wholly improper. Petitioner should not be permitted to repeatedly amend its pleading and then come up with new allegations in its opposition and declarations, previously unmentioned, in hopes of keeping its case afloat without limit. Moreover, that Petitioner has now put forth new allegations does not salvage the insufficient allegations in the TAP. The purportedly new allegations are irrelevant to the issue of Demurrer—that is, whether the Petition as currently pled presents sufficient factual allegations ter state a cause of action. As detailed in LIC's Demurrer and Renly, it does not Any new extraneous 

state a cause of action. As detailed in UC's Demurrer and Reply, it does not. Any new extraneous allegations Petitioner suddenly wishes to present to the Court are irrelevant in this inquiry. Petitioner's allegations in the TAP fail to overcome the deficiencies discussed in UC's Demurrer. The Court should reject Petitioner's *post hoc* attempts to supplement its insufficient allegations, having already had three opportunities to state a case.
III. CONCLUSION
For the reasons stated above, UC respectfully requests that the Court strike as improper and irrelevant the Declaration of Phillip Bokovoy filed in support of Petitioner's Opposition to UC's Demurrer. 

UC's Demurrer. 

1	DATED: January 8, 2019	MEYERS, NAVE, RIBACK, SILVER & WILSON
2		1111
3		By: Muthyllin
4		Timothy D. Cremin Attorneys for The Regents of the University of
5	(0	California; Janet Napolitano, in her capacity as President of the University of California; Carol T.
6		Christ, in her capacity as Chancellor of the University of California, Berkeley
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	OBJECTIONS	TO AND REQUEST TO STRIKE DECLARATION OF PHILLIP BOKOVOY AA00473

1	PROOF OF SERVICE			
2	STATE OF CALIFORNIA, COUNTY OF ALAMEDA			
3	At the time of service, I was over 18 years of age and <b>not a party to this action</b> . I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.			
5	On January 8, 2019, I served true copies of the following document(s) described as			
6	OBJECTIONS TO AND REQUEST TO STRIKE DECLARATION OF PHILLIP BOKOVOY IN SUPPORT OF OPPOSITION TO RESPONDENTS' DEMURRER TO THIRD AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR			
7	<b>DECLARATORY RELIEF</b> on the interested parties in this action as follows:			
8 9	Thomas N. Lippe, Esq.Attorneys for Plaintiff SAVEKelly Marie Perry, Esq.BERKELEY'S NEIGHBORHOODSLaw Offices of Thomas N. Lippe, APCStore			
9 10	201 Mission Street, 12th Fl. Tel: (415) 777-5604	•1•		
11	kmhperry@sonic.net	5		
12	BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the			
13	persons at the addresses listed in the Service List and placed the envelope for collection and	2		
14	Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. Or			
15	persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the			
16	BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the			
17 18	document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e- mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.	-		
19	I declare under penalty of perjury under the laws of the State of California that the			
20	foregoing is true and correct.	5		
21	Executed on January 8, 2019, at Oakland, California.	5		
22	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 8, 2019, at Oakland, California.			
23	Melissa Bender			
24				
25		2		
26		1		
27				
28				
	5			
	OBJECTIONS TO AND REQUEST TO STRIKE DECLARATION OF PHILLIP BOKOV AA00474	UΥ		

# Tab 041

<ul> <li>a. This statement is submitted by party (name): Defendants/Respondents The Regents of the University of California; Janet Napolitano, in her capacity as President of the University of California; and Carol T. Christ, in her capacity as Chancellor of the University of California</li> <li>b. This statement is submitted jointly by parties (names):</li> <li>2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)</li> <li>a. The complaint was filed on (date):</li> <li>b. The cross-complaint, if any, was filed on (date):</li> </ul>		CM-110		
PLAINTIF/PETITIONER: Save Berkeley's Neighborhoods         DEFENDANT/RESPONDENT: The Regenis of the Unversity of California, et al.         CASE: MANAGEMENT STATEMENT         (Check one):       UNLIMITED CASE         (Amount demanded exceeds \$25,000)       (Amount demanded is \$25,000)         Case: February 8, 2019       Time: 9:00a         Date: February 8, 2019       Time: 9:00a         Dept: 24       Div.:         Rom:       Address of court (if different from the address above):         Notice of Intent to Appear by Telephone, by (name): Timothy D. Cremin         INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.         1.       Party or parties (answer one):         a.       This statement is submitted by party (name): Defendants/Respondents The Regents of the University of California, Janet Napolitano, in her capacity as President of the University of California b.         b.       This statement is submitted by party (name): Defendants/Respondents The Regents of the University of California, if any, was field on (date):         3.       Service (to be answered by plaintiffs and cross-complaints only)         a.       All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.         b.       The following parties marked in the complaint and cross-complaint have not been dismissed (specify names):         (3)       have had	Amrit S. Kulkarni (SBN 202786); Timothy D. Cremin (SBN 156725) Meyers Nave Riback Silver Wilson 555 12 <sup>th</sup> St., Ste. 1500 Oakland, CA 94607 TELEPHONE NO.: (510) - 808-2000 E-MAIL ADDRESS (Optional): toremin@meyersnave.com ATTORNEY FOR (Name): The Regents of the University of California, et al. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1221 Oak Street MAILING ADDRESS:	FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY JAN 242010 CLERK OF THE SUPERIOR COURT		
DEFENDANT/RESPONDENT: The Regents of the Unversity of California, et al.       CASE MANAGEMENT STATEMENT UNLIMITED CASE (Amount domanded exceeds \$25,000)       CASE MANAGEMENT STATEMENT (Amount domanded exceeds \$25,000)       CASE MANAGEMENT CASE (Amount domanded exceeds \$25,000)       CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: February 8, 2019       Time: 9:00a       Dept: 24       Div.:       Room:         Address of court (if different from the address above):       Motice of Intent to Appear by Telephone, by (name): Timothy D. Cremin       INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.         1.       Party or parties (answer one): a. [X] This statement is submitted by party (name): Defendants/Respondents The Regents of the University of California; Janet Napolitano, In her capacity as President of the University of California; and Carol T. Christ, in her capacity as Chancellor of the University of California b. [] This statement is submitted jointly by parties (names): 2. Complaint and cross-complaint ( <i>Io be answered by plaintiffs and cross-complainants only</i> ) a. [] All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed. b. [] The following parties named in the complaint and cross-complaint (1) [] have had a default entered against them (specify names): (3) [] have had a default entered against them (specify names); (3) [] have had a default entered against them (specify names); (3) [] have had a default entered against them (specify names); (3) [] have had a default entered against them (specify names); (3) [] have had a default entered against them (specify names); (3) [] have had a default entered against them (specify names, nature of involvement in case, and date by which they may be served); 4. D		4		
CASE MANAGEMENT STATEMENT (Check one):       UNLIMITED CASE (Amount demanded exceeds \$25,000)       IMITED CASE (Amount demanded is \$25,000)       RG18902751         A CASE MANAGEMENT CONFERENCE is scheduled as follows:       Date: February 8, 2019       Time: 9:00a       Dept: 24       Div.:       Rcom:         Address of court (if different from the address above):       Imit: 9:00a       Dept: 24       Div.:       Rcom:         Motice of Intent to Appear by Telephone, by (name): Timothy D. Cremin       Imit: 9:00a       Dept: 24       Div.:       Rcom:         INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.       Instatement is subnitted by party (name): Defendants/Respondents The Regents of the University of California; Janet Napolitano, in her capacity as President of the University of California; and Carol T. Christ, in her capacity as Chancellor of the University of California b.       This statement is subnitted Jointly by parties (names):       Complaint and cross-complaint (b <i>e</i> answered by plaintiffs and cross-complainants only) a. The complaint was filed on (date):       Service (to be answered by plaintiffs and cross-complaint have been served, have appeared, or have been dismissed.       Div.::       Provide the provide the provide the theorem of the complaint and cross-complaint have not been served (specify names):       (2)       have not been served (specify names):       (3)       have had a default entered against them (specify names):       (3)       have had a default entered against them (specify names):       (4)       Description of case				
CASE MANAGEMENT STATEMENT				
<ul> <li>b</li></ul>	(Check one): UNLIMITED CASE (Amount demanded (Amount demanded s\$25,000)	RG18902751		
<ul> <li>b</li></ul>	A CASE MANAGEMENT CONFERENCE is scheduled as follows:	De la		
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<ul> <li>b</li></ul>				
<ul> <li>b</li></ul>	INSTRUCTIONS: All applicable boxes must be checked, and the specifie	d information must be provided.		
<ul> <li>a. Type of case in  complaint  cross-complaint (Describe, including causes of action): This is a Petition for Writ of Mandate and Complaint for Declaratory Relief pursuant to the California Environmental Quality Act ("CEQA").</li> </ul>	<ul> <li>b. This statement is submitted jointly by parties (names):</li> <li>2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)</li> <li>a. The complaint was filed on (date):</li> </ul>			
<ul> <li>a. Type of case in  complaint  cross-complaint (Describe, including causes of action): This is a Petition for Writ of Mandate and Complaint for Declaratory Relief pursuant to the California Environmental Quality Act ("CEQA").</li> </ul>	<ul> <li>3. Service (to be answered by plaintiffs and cross-complainants only)</li> <li>a. All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.</li> <li>b. The following parties named in the complaint or cross-complaint</li> </ul>			
<ul> <li>a. Type of case in  complaint  cross-complaint (Describe, including causes of action): This is a Petition for Writ of Mandate and Complaint for Declaratory Relief pursuant to the California Environmental Quality Act ("CEQA").</li> </ul>				
<ul> <li>a. Type of case in  complaint  cross-complaint (Describe, including causes of action): This is a Petition for Writ of Mandate and Complaint for Declaratory Relief pursuant to the California Environmental Quality Act ("CEQA").</li> </ul>				
<ul> <li>a. Type of case in  complaint  cross-complaint (Describe, including causes of action): This is a Petition for Writ of Mandate and Complaint for Declaratory Relief pursuant to the California Environmental Quality Act ("CEQA").</li> </ul>	(3) have had a default entered against them (specify harnes):			
<ul> <li>a. Type of case in  complaint  cross-complaint (Describe, including causes of action): This is a Petition for Writ of Mandate and Complaint for Declaratory Relief pursuant to the California Environmental Quality Act ("CEQA").</li> </ul>	c. The following additional parties may be added (specify names, nature of in they may be served):	volvement in case, and date by which		
	a. Type of case in 🛛 complaint 🔄 cross-complaint ( <i>Describe,</i> This is a Petition for Writ of Mandate and Complaint for Declaratory Re	<i>including causes of action):</i> lief pursuant to the California Page 1 of 5		

Cal. Rules of Court, rules 3.720-3.730 www.courts.ca.gov



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	(3)	This case is exempt from judicial arbitration unde mediation under Code of Civil Procedure section	1775 et seg. (specify exer	mption):	
			r rule 3 811 of the Californi	a Rules of Court or from civil action	
	(2)	Plaintiff elects to refer this case to judicial arbitrati Civil Procedure section 1141.11.			)1
	(1)	This matter is subject to mandatory judicial arbitra mediation under Code of Civil Procedure section statutory limit.	1775.3 because the amou		Do
		ral to judicial arbitration or civil action mediatio	on (if available).		m
		self-represented parties: Party has has	s not reviewed the ADR inf	formation package identified in rule 3.23	ente
	(1) For	parties represented by counsel: Counsel Anasule 3.221 to the client and reviewed ADR options with		ded the ADR information package iden	
	the Al	Information package. Please note that different Al DR information package provided by the court unde and community programs in this case.	r rule 3.221 for information	about the processes available an eaging	14.
IU.		Discussion of the statific root A	OR processes are available	e in different courts and communities; re	ea <del>d y</del>
10		re dispute resolution (ADR)			by
9.	Preference This	<b>:e</b> s case is entitled to preference ( <i>specify code sectio</i>	on): Public Resources Co	ode section 21167.1	-by the
	Adc	litional representation is described in Attachment 8.			$\mathbf{}$
	e. E-mai	l address:	g. Party rep	resented:	Y
		ss. hone number:	f. Fax numb		<b>1</b> S1
	b. Firm: c. Addre	ee'			ťΓ
	a. Attorn	ey:			)is
8.	The party of	esentation (to be answered for each party) or parties will be represented at trial  〇 by the a	ttorney or party listed in th	e caption D by the following:	CA 1st District Court of Appeal
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	b. 🛛 I	nours (short causes) <i>(specify):</i> 3			no
		days (specify number):			rt (
	The party of	or parties estimate that the trial will take (check one)	):		of
7.	/ Estimated	length of trial			Ap
	c. Dates	on which parties or attorneys will not be available fo	or trial (specify dates and e	xplain reasons for unavailability).	pe
		not, explain):		L'in the second for uppy all a hill have	al.
	b. 🖾 N	No trial date has been set. This case will be ready fo	or trial within 12 months of	the date of the filing of the complaint (i	if
6.	Trial date	The trial has been set for <i>(date):</i>			
	requesting	a jury man.			
		r parties request 🔲 a jury trial 🛛 a nonjur	ry trial. (If more than o	ne party, provide the name of each par	ly i
5.	Jury or no			the the name of each par	rtu
	(If mo	re space is needed, check this box and attach a page	ge designated as Attachm	ent 4b.)	
	the Uni	iversity of California, et al. violated CEQA due ed in the UC Berkeley 2020 Long Range Deve of mandate and declaratory relief. No damage	lopment Plan Environm		
4.	damage earning	es claimed, including medical expenses to date [indi s to date, and estimated future lost earnings. If equi	itable relief is sought, desc ds alleges that Defenda	ribe the nature of the relief.) nts and Respondents The Regents	
		the first state of the second including only domag	es (If personal injury dama	ages are sought, specify the injury and	
		RESPONDENT: The Regents of the University of		RG18902751	
		F/PETITIONER: Save Berkeley's Neighborhood	S	CASE NUMBER: RG18902751	

PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	case number: RG18902751
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

	The party or parties completing this form <b>are willing</b> to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case <b>have agreed</b> to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation		<ul> <li>Mediation session not yet scheduled</li> <li>Mediation session scheduled for (<i>date</i>):</li> <li>Agreed to complete mediation by (<i>date</i>):</li> <li>Mediation completed on (<i>date</i>):</li> </ul>
(2) Settlement conference		<ul> <li>Settlement conference not yet scheduled</li> <li>Settlement conference scheduled for (<i>date</i>):</li> <li>Agreed to complete settlement conference by (<i>date</i>) :</li> <li>Settlement conference completed on (<i>date</i>): June 12, 2018</li> </ul>
(3) Neutral evaluation		<ul> <li>Settlement conference scheduled for (<i>date</i>):</li> <li>Agreed to complete settlement conference by (<i>date</i>) :</li> <li>Settlement conference completed on (<i>date</i>): June 12, 2018</li> <li>Neutral evaluation not yet scheduled</li> <li>Neutral evaluation scheduled for (<i>date</i>):</li> <li>Agreed to complete neutral evaluation by (<i>date</i>):</li> <li>Neutral evaluation completed on (<i>date</i>):</li> </ul>
(4) Nonbinding judicial arbitration		<ul> <li>Judicial arbitration not yet scheduled</li> <li>Judicial arbitration scheduled for (<i>date</i>):</li> <li>Agreed to complete judicial arbitration by (<i>date</i>):</li> <li>Judicial arbitration completed on (<i>date</i>):</li> </ul>
(5) Binding private arbitration		<ul> <li>Private arbitration not yet scheduled</li> <li>Private arbitration scheduled for (<i>date</i>):</li> <li>Agreed to complete private arbitration by (<i>date</i>):</li> <li>Private arbitration completed on (<i>date</i>):</li> <li>ADR session not yet scheduled</li> <li>ADR session not yet scheduled</li> </ul>
(6) Other ( <i>specify</i> ):		<ul> <li>ADR session not yet scheduled</li> <li>ADR session scheduled for (<i>date</i>):</li> <li>Agreed to complete ADR session by (<i>date</i>):</li> <li>ADR completed on (<i>date</i>):</li> </ul>



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	PLAIN	NTIF	F/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: RG18902751		
DE	EFENDA	٩NT	RESPONDENT: The Regents of the University of California, et al.			
11.	Insura a b. R( c	] ese	e Insurance carrier, if any, for party filing this statement <i>(name):</i> rvation of rights: Yes No Coverage issues will significantly affect resolution of this case <i>(explain):</i>			
12.	Jurisc Indica Status	te a Ba	ion Iny matters that may affect the court's jurisdiction or processing of this case and Inkruptcy D Other ( <i>specify):</i>	describe the status.		
13.	a. [		cases, consolidation, and coordination         There are companion, underlying, or related cases.         (1) Name of case:         (2) Name of court:         (3) Case number:         (4) Status:         Additional cases are described in Attachment 13a.         A motion to       Consolidate	ame party):		Appeal.
14.	Bifuro	c <b>ati</b> The acti	<ul> <li>(3) Case number:</li> <li>(4) Status:</li> <li>Additional cases are described in Attachment 13a.</li> <li>A motion to  consolidate  coordinate  will be filed by (<i>n</i>.</li> <li>on</li> <li>party or parties intend to file a motion for an order bifurcating, severing, or coo on (<i>specify moving party, type of motion, and reasons</i>):</li> </ul> otions e party or parties expect to file the following motions before trial ( <i>specify moving</i> on Jacobian Jacob	rdinating the followin	ig issues or cause	Court of
15.	Other	r mo The Re	otions e party or parties expect to file the following motions before trial <i>(specify moving</i> spondents' Notice and Motion for Demurrer scheduled for hearing on Ja	r party, type of motio anuary 24, 2019.	n, and issues):	st District
16.	Discc a. [ b [		<b>ry</b> The party or parties have completed all discovery. The following discovery will be completed by the date specified <i>(describe all an</i> <u>Party</u> <u>Description</u>			ument received by the CA 1
	c. [	X	The following discovery issues, including issues regarding the discovery of elecanticipated ( <i>specify</i> ): Petitioner's discovery requests are not permitted without prior leave of under CEQA.			ument rec

Any disputes over the Administrative Record should be brought by noticed motion and addressed after the Court rules on demurrer. Petitioner has elected to prepare the Administrative Record.

. . .





PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	case number: 18902751
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	

## 17. Economic litigation

- This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code a. of Civil Procedure sections 90-98 will apply to this case.
- This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional b. discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

### 18. Other issues

The party or parties request that the following additional matters be considered or determined at the case management conference (specify):



Page 5 of 5

Attachment re Additional Counsel:

Charles F. Robinson (SBN 113197) Alison Krumbein (SBN 229728) alison.krumbein@ucop.edu The University of California, Office of General Counsel 1111 Franklin Street, 8<sup>th</sup> Floor Oakland, California 94607 Telephone: (510) 987-0851 Facsimile: (510) 987-9757 3078997.1

1	PROOF OF SERVICE				
2	STATE OF CALIFORNIA, COUNTY OF ALAMEDA				
3 4	At the time of service, I was over 18 years of age and <b>not a party to this action</b> . I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.				
5 6	On January 24, 2019, I served true copies of the following document(s) described as <b>CASE MANAGEMENT CONFERENCE STATEMENT</b> on the interested parties in this action as follows:				
7 8 9 10	Thomas N. Lippe, Esq. Kelly Marie Perry, Esq. Law Offices of Thomas N. Lippe, APC 201 Mission Street, 12th Fl. San Francisco, CA 94105 Attorneys for Plaintiff SAVE BERKELEY'S NEIGHBORHOODS Tel: (415) 777-5604 Fax: (415) 777-5606 Email: lippelaw@sonic.net kmhperry@sonic.net				
11 12	<b>BY MAIL:</b> I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and				
13 14	mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with				
15 16 17	mail addresses listed in the Service List. I did not receive, within a reasonable time after the				
18 19	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 24, 2019, at Oakland, California.				
20 21	Liberdr Ko				
22	Melissa Bender				
23	nt re				
24	ntme				
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JAN/25/2019/FRI 03:08 PM Law O. Thomas Lippe FAX No. 1-415-777-5606 F. 002

	CM-110
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Sar number, and address):	FILED BY FAX
Thomas N. Lippe, SBN 104640	LAMEDA COUNTY
201 Mission Street, 12th Floor, San Francisco, CA 94105	January 25, 2019
· · · · ·	CLERK OF
	HE SUPERIOR COURT
	y Shabra Iyamu, Deputy
ATTORNEY FOR (Name): Plaintiffs; Berkeley Hills Watershed Coalition, et al SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda	ASE NUMBER:
STREET ADDRESS: 1225 Fallon Street	RG18902751
MAILING ADDRESS: 1225 Fallon Street	
CITY AND ZIP CODE: Oakland, CA 94612	
BRANCH NAME: René C. Davidson Courthouse	
PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	
DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	
CASE MANAGEMENT STATEMENT	CASE NUMBER:
(Check one): UNLIMITED CASE LIMITED CASE	RG18902751
(Amount demanded (Amount demanded is \$25,000	
exceeds \$25,000) or less)	
A CASE MANAGEMENT CONFERENCE is scheduled as follows:	**************************************
Date: February 8, 2019 Time: 9:00a.m. Dept.: 24	Div.: Room:
Address of court (if different from the address above):	
Administration Building, 1221 Oak Street, 3rd Floor, Oakland, CA 94612	
✓ Notice of Intent to Appear by Telephone, by (name): Thomas N. Lippe	
INSTRUCTIONS: All applicable boxes must be checked, and the specified	d Information must be provided,
1. Party or parties (answer one):	
a. A This statement is submitted by party (name): Plaintiff; Save Berkeley's	Neighborhoods
b This statement is submitted jointly by parties (names):	
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainan	te ogly)
a. The complaint was filed on ( <i>date</i> ): April 27, 2018	
b. The cross-complaint, if any, was filed on (date):	
3. Service (to be answered by plaintiffs and cross-complainants only)	
	have expressed as have been discussed
<ul> <li>All parties named in the complaint and cross-complaint have been served</li> <li>The following parties parties the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint or error parties to a server be and the complaint of the complaint or error parties to a server be and the complete to a server be and the complete to a s</li></ul>	, have appeared, or have been dismissed.
b The following parties named in the complaint or cross-complaint	
<ol> <li>have not been served (specify names and explain why not):</li> </ol>	
(2) have been served but have not appeared and have not been	dismissed (specify names):
(3) have had a default entered against them (specify names).	
c. The following additional parties may be added (specify names, nature of in they may be served):	nvolvement in case, and date by which
4. Description of case	
a. Type of case in 🔽 complaint 🛄 cross-complaint (Describe, i	including causes of actin AA00482

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Document received by the CA 1st District Court of Appeal.

## CM-110

ATTODUCY OD DADTY WITHOUT ATTODUCY (New Order Device And Device An	011-1	10
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY	
Thomas N. Lippe, SBN 104640		
Law Offices of Thomas N. Lippe, APC		
201 Mission Street, 12th Floor, San Francisco, CA 94105		
TELEPHONE NO.: 415-777-5604 FAX NO. (Optional): 415-777-5606		
E-MAIL ADDRESS (Optional): Lippelaw@sonic.net		
ATTORNEY FOR (Name): Plaintiffs; Berkeley Hills Watershed Coalition, et al SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda		
street Address: 1225 Fallon Street		
MAILING ADDRESS: 1225 Fallon Street		
CITY AND ZIP CODE: Oakland, CA 94612		
BRANCH NAME: René C. Davidson Courthouse		
PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods		
DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.		
		_
	CASE NUMBER:	
(Check one): UNLIMITED CASE (Amount demanded (Amount demanded is \$25,000)	RG18902751	
(Amount demanded (Amount demanded is \$25,000 exceeds \$25,000) or less)		
A CASE MANAGEMENT CONFERENCE is scheduled as follows:		) Se
	Div.: Room:	đ
Address of court (if different from the address above):		
Administration Building, 1221 Oak Street, 3rd Floor, Oakland, CA 94612		of
✓ Notice of Intent to Appear by Telephone, by (name): Thomas N. Lippe		1st District Court of Appea
INSTRUCTIONS: All applicable boxes must be checked, and the specified	I information must be provided.	<u>jo</u>
1. Party or parties (answer one):	1	$\bigcirc$
a. This statement is submitted by party (name): Plaintiff; Save Berkeley's	Neighborhoods	ici
b. This statement is submitted <b>jointly</b> by parties (names):		str
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<b>•</b> • • • • • • • • • • • • • • • • • •		St
<ol> <li>Complaint and cross-complaint (to be answered by plaintiffs and cross-complainant a. The complaint was filed on (date): April 27, 2018</li> </ol>		
b. The cross-complaint, if any, was filed on <i>(date)</i> :		Y
		U
3. Service (to be answered by plaintiffs and cross-complainants only)		he
a. All parties named in the complaint and cross-complaint have been served,	have appeared, or have been dismissed.	Y
b The following parties named in the complaint or cross-complaint		ف_
(1) have not been served (specify names and explain why not):		ed
(2) have been served but have not appeared and have not been	dismissed (specify names):	Document received by the
		õ
(3) have had a default entered against them (specify names):		t r
c The following additional parties may be added (specify names, nature of in	valuement in access and data by which	en
they may be served):	volvement in case, and date by which	Ĩ
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4. Description of case a. Type of case in ✓ complaint Cross-complaint (Describe, in		Ц
	ncluding causes of action):	
This action seeks a writ of mandate and declaratory relief ordering the R analyzing the environmental effects of increasing enrollment at UC Berk		
analyzing the environmental enects of increasing enrollment at UC Berk		
	Page 1	of 10

Cal. Rules of Court, rules 3.720–3.730 www.courts.ca.gov

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L	PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER:	
D	DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	RG18902751	
4.	b. Provide a brief statement of the case, including any damages. (If personal injudamages claimed, including medical expenses to date [indicate source and a earnings to date, and estimated future lost earnings. If equitable relief is soug See Attachment 4b.	mount], estimated future medical expenses, lost	
	(If more space is needed, check this box and attach a page designated as	Attachment 4b.)	
5.		e than one party, provide the name of each party	
6.	<ul> <li>Trial date</li> <li>a. The trial has been set for (<i>date</i>):</li> <li>b.  No trial date has been set. This case will be ready for trial within 12 monot, explain):</li> </ul>	nths of the date of the filing of the complaint <i>(if</i>	
7.	<ul> <li>c. Dates on which parties or attorneys will not be available for trial (specify date. Mar 14, 2019 (CMC in another case); Mar 27, 2019 (hearing in anoth Apr 9, 2019 (CMC in another case); June 14-18, 2019 (child's college Estimated length of trial</li> <li>The party or parties estimate that the trial will take (check one):</li> <li>a.  days (specify number): 1</li> <li>b.  hours (short causes) (specify):</li> </ul>	er case) Mar 25- Apr 1, 2019 (vacation);	Mur v v v PPP vui
8.	<ul> <li>Trial representation (to be answered for each party)</li> <li>The party or parties will be represented at trial  ✓ by the attorney or party lis</li> <li>a. Attorney:</li> <li>b. Firm:</li> <li>c. Address:</li> <li>d. Telephone number:</li> <li>f. Fax</li> </ul>	ted in the caption by the following:	
	e. E-mail address: g. Pa	ty represented:	4
	Additional representation is described in Attachment 8.		5
9.	Preference ✓ This case is entitled to preference (specify code section): Public Resource	es Code sec. 21167.7	
10.	Alternative dispute resolution (ADR)		5
	<ul> <li>a. ADR information package. Please note that different ADR processes are average the ADR information package provided by the court under rule 3.221 for information court and community programs in this case.</li> <li>(1) For parties represented by counsel: Counsel  has  has not</li> </ul>	ailable in different courts and communities; read	ガント
	In rule 3.221 to the client and reviewed ADR options with the client.		
	(2) For self-represented parties: Party D has has not reviewed the	ADR information package identified in rule 3.22	
	<ul> <li>b. Referral to judicial arbitration or civil action mediation (if available).</li> <li>(1) This matter is subject to mandatory judicial arbitration under Code or mediation under Code of Civil Procedure section 1775.3 because the statutory limit.</li> </ul>	f Civil Procedure section 1141.11 or to civil action	TTINA
	(2) Plaintiff elects to refer this case to judicial arbitration and agrees to I Civil Procedure section 1141.11.	mit recovery to the amount specified in Code of	1
	(3) ✓ This case is exempt from judicial arbitration under rule 3.811 of the mediation under Code of Civil Procedure section 1775 et seq. (spec Rule 3.811(b)(1)	California Rules of Court or from civil action ify exemption):	

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PLAINTIFF/PETITIONER:	Save Berkeley's Neighborhoods	CASE NUMBER:
		RG18902751

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

	The party or parties completing this form <b>are willing</b> to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case <b>have agreed</b> to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation		<ul> <li>Mediation session not yet scheduled</li> <li>Mediation session scheduled for (<i>date</i>):</li> <li>Agreed to complete mediation by (<i>date</i>):</li> <li>Mediation completed on (<i>date</i>):</li> </ul>
(2) Settlement conference		<ul> <li>Settlement conference not yet scheduled</li> <li>Settlement conference scheduled for (<i>date</i>):</li> <li>Agreed to complete settlement conference by (<i>date</i>):</li> <li>Settlement conference completed on (<i>date</i>): June 12, 2018</li> </ul>
(3) Neutral evaluation		<ul> <li>Settlement conference scheduled for (<i>date</i>):</li> <li>Agreed to complete settlement conference by (<i>date</i>):</li> <li>Settlement conference completed on (<i>date</i>): June 12, 2018</li> <li>Neutral evaluation not yet scheduled</li> <li>Neutral evaluation scheduled for (<i>date</i>):</li> <li>Agreed to complete neutral evaluation by (<i>date</i>):</li> <li>Neutral evaluation completed on (<i>date</i>):</li> <li>Judicial arbitration not yet scheduled</li> </ul>
(4) Nonbinding judicial arbitration		Judicial arbitration not yet scheduled       Judicial arbitration scheduled for (date):         Judicial arbitration scheduled for (date):       Judicial arbitration by (date):         Judicial arbitration completed on (date):       Judicial arbitration completed on (date):         Private arbitration not yet scheduled       Judicial arbitration pot yet scheduled
(5) Binding private arbitration		<ul> <li>Private arbitration not yet scheduled</li> <li>Private arbitration scheduled for (<i>date</i>):</li> <li>Agreed to complete private arbitration by (<i>date</i>):</li> <li>Private arbitration completed on (<i>date</i>):</li> <li>Private arbitration not yet scheduled</li> <li>ADR session not yet scheduled</li> <li>ADR session scheduled for (<i>date</i>):</li> </ul>
(6) Other ( <i>specify</i> ):		<ul> <li>ADR session not yet scheduled</li> <li>ADR session scheduled for (<i>date</i>):</li> <li>Agreed to complete ADR session by (<i>date</i>):</li> <li>ADR completed on (<i>date</i>):</li> </ul>

	CM-110
PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	
DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	RG18902751
<ul> <li>11. Insurance</li> <li>a. Insurance carrier, if any, for party filing this statement (name):</li> <li>b. Reservation of rights: Yes No</li> <li>c. Coverage issues will significantly affect resolution of this case (explain):</li> </ul>	
<ul> <li>12. Jurisdiction</li> <li>Indicate any matters that may affect the court's jurisdiction or processing of this case and</li> <li>Bankruptcy Other (specify):</li> <li>Status:</li> </ul>	describe the status.
<ul> <li>13. Related cases, consolidation, and coordination <ul> <li>a.</li> <li>There are companion, underlying, or related cases.</li> <li>(1) Name of case:</li> <li>(2) Name of court:</li> <li>(3) Case number:</li> <li>(4) Status:</li> <li>Additional cases are described in Attachment 13a.</li> <li>b.</li> <li>A motion to consolidate coordinate will be filed by (nattachment 13).</li> </ul> </li> </ul>	ame party):
<ul> <li>(3) Case number:</li> <li>(4) Status:</li> <li>Additional cases are described in Attachment 13a.</li> <li>A motion to consolidate coordinate will be filed by (nattack and the party or parties intend to file a motion for an order bifurcating, severing, or coordination (specify moving party, type of motion, and reasons):</li> <li>15. Other motions</li> <li>The party or parties expect to file the following motions before trial (specify moving party is see Attachment 15.</li> <li>16. Discovery</li> <li>a. The party or parties have completed all discovery.</li> </ul>	dinating the following issues or causes of Contro of Con
The party or parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions before trial (specify moving parties expect to file the following motions expect to file the following motions expect to file the followin	party, type of motion, and issues):
<ul> <li>16. Discovery <ul> <li>a. The party or parties have completed all discovery.</li> <li>b. The following discovery will be completed by the date specified (describe all an Party Description</li> </ul> </li> <li>See Attachment 16.</li> </ul>	ticipated discovery):
<ul> <li>c.  The following discovery issues, including issues regarding the discovery of elecanticipated (<i>specify</i>):</li> <li>See Attachment 16.</li> </ul>	Date Provide the potential of the potent

PLAINTIFF/PETITIONER:	Save Berkeley's Neighborhoods	CASE NUMBER:
-		RG18902751
DEFENDANT/RESPONDENT:	The Regents of the University of CA, et al.	

## 17. Economic litigation

- This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code a. of Civil Procedure sections 90-98 will apply to this case.
- This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional h discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

## 18. Other issues

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<sup>]</sup> The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

## Attachment 4b: Nature of Case.

This action seeks a writ of mandate and declaratory relief ordering the Respondents to comply with CEQA by analyzing the environmental effects of increasing enrollment at UC Berkeley since 2005 and into the future.

In 2005, Respondents adopted a Long Range Development Plan (2020 LRDP) for UC Berkeley to achieve a number of objectives through the year 2020, including stabilizing enrollment. In or about 2005, UCB certified a Final Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The 2020 LRDP and 2005 EIR projected that by 2020 student enrollment at UCB would increase by 1,650 students above the 2001-02 two-semester average. The 2020 LRDP and 2005 EIR also projected that by 2020 UCB would add 2,500 beds for students.

The actual increase in student enrollment above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017) is 8,302 students. This increase represents a five-fold increase compared to the 1,650 enrollment increase projected in the 2020 LRDP and 2005 EIR. The response also shows UCB has built fewer than 1,000 beds.

The increase in student enrollment over and above the 1,650 additional students projected by the 2020 LRDP and included in the 2005 EIR's environmental impact analysis (hereinafter the "excess increase in student enrollment") has caused and continues to cause significant adverse environmental impacts that were not analyzed in the 2005 EIR.

Respondents have had and continue to have a legal obligation to analyze the environmental effects of the excess increase in student enrollment pursuant to CEQA.

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## Attachment 15: Motions.

Plaintiff filed a motion to compel further responses and production of documents responsive to its first set of requests, which was heard on December 6, 2018. On December 6, 2018, the Court (Judge Roesch presiding) denied Plaintiff's Motion to Compel Further Responses to Plaintiff's Requests for Production of Documents, Set One. Plaintiffs will be filing, by February 4, 2019, a petition for writ of mandate in the court of appeal seeking judicial review of this order.

Plaintiff needs the evidence sought in its motion to compel to prosecute its claims. Therefore, Plaintiff requests that the Court continue the CMC until after the Court of Appeal rules on the petition for writ of mandate seeking review of Judge Roesch's December 6, 2018, order.

Plaintiff intends to file a motion to compel further responses and production of documents responsive to its second set of requests.

Plaintiff intends to file a motion to compel further responses to its first set of requests for admissions.

Plaintiff intends to file a motion for summary adjudication of issues or summary judgment.

Page 7 of 10



## Attachment 16: Discovery and Preparation of the Record of Proceedings.

When Plaintiff filed this action on April 27, 2018, Plaintiff filed its election to prepare the record of proceedings. Since that time, Respondents have engaged in a pattern of obstructive conduct that has made it impossible for Plaintiff to complete preparation of the record of proceedings. A brief history of Respondents' conduct follows.

# Respondents violate then-applicable Local Rules of Court governing preparation of the record.

When this case was filed, Local Rules 3.320(a) and (d)(1) (since repealed as of August 1, 2018) required that Respondents provide Plaintiff with costs estimates for preparing the record and the location and custodian of all documents to be included in the record. On May 24, 2018, counsel for Respondents responded to these rules by sending a letter to counsel for Plaintiff declining to provide this information on the ground that "Based on the allegations in the Petition for Writ of Mandate, Respondents cannot identify the documents anticipated to be incorporated into the administrative record. Petitioner has not challenged any Project or any action subject to CEQA or any Project approval by Respondents in the Petition."

On June 4, 2018, Plaintiff's counsel responded that: "CEQA defines the term 'Project' to mean 'an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency." (PRC § 21065.) The petition identifies such an 'activity:' namely, increasing the number of students enrolled at UC Berkeley" and requested the Respondents immediately comply with the local rule of court.

On June 13, 2018, pursuant to Local Rule 3.320(d)(2) (since repealed as of August 1, 2018), Plaintiff sent to Respondents a provisional proposed index of the record of proceedings in this matter. The proposed index was "provisional" because Respondents had not complied with the local rules requiring disclosure documents to be included in the record of proceedings. The provisional proposed index listed documents that Plaintiff was able to find on and download from UC Berkeley's "Capital Strategies" website. In this letter, Counsel again asked Respondents to comply with Local Rule 3.320(d)(1).

On June 20, 2018, pursuant to Local Rule 3.320(d)(2) (since repealed as of August 1, 2018), Respondents responded to Plaintiff's provisional proposed index of the record of Page 8 of 10

proceedings by reiterating its position that it cannot comply with this rule because the Petition and Complaint do not challenge a CEQA project.

# Respondents refuse to comply with Plaintiff's first Request for Production of Documents for documents to included in the record.

On May 18, 2018, Plaintiff served on Respondents a Request for Production of Documents asking for the production of documents that may need to be included in the record of proceedings. For example, Request No. 1 seeks: "All writings, including internal staff memoranda and emails, that refer or relate to increases in student enrollment at UC Berkeley that were prepared in connection with the preparation of UC Berkeley's 2020 Long Range Development Plan."

The parties stipulated to extend the deadline for the Regents to respond to Plaintiff's first Request for Production of Documents while the parties discussed settlement of the case. As a result, the Regents' response was finally due on September 7, 2018.

On September 7, 2018, after settlement discussion concluded (without success), Respondents served on Plaintiff their Objections to Petitioners' Request for Production of Documents, in which Respondents refused to produce any documents.

On September 19, 2018, Plaintiff sent a "meet and confer" letter responding to Respondents' Objections to Petitioners' Request for Production of Documents, and setting a deadline of October 5, 2018, for Respondents to provide the requested documents, after which Plaintiff will file a motion to compel production of documents.

## The Regents ignore Plaintiff's Public Records Act Request.

On July 24, 2018, Plaintiff submitted a written request to the Regents pursuant to the California Public Records Act requesting all records showing actual and projected Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.

The Regents ignored this request.

On August 15, 2018, the Regents issued a Notice of Preparation of a Draft Supplemental Environmental Impact Report for the "Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan." (Upper Hearst NOP.) The NOP states that: " At this time, UC Berkeley estimates an overall campus Page 9 of 10

Case Management Statement; Case No. RG18902751



On September 26, 2018, Plaintiff submitted written notification to the Regents that their failure to respond to Plaintiff's July 24, 2018, Public Records Act request, within 10 days of the request or to give notice of an extension of this deadline for up to 14 days, violates the Public Records Act. (See Gov. Code§ 6253(c).) This notice again requested the same records (i.e., records showing actual and projected Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.)

## Plaintiffs serve a Second Request for Production of Documents.

On September 26, 2018, Plaintiff served a second Request for Production of Documents on the Regents asking for the same records (i.e., records showing actual and projected Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.)

The Regents objected to these requests and produced no documents.

## Additional Discovery.

On September 26, 2018, Plaintiff served on Respondents a set of requests for admissions. The Regents objected to these requests and admitted nothing.

## **Discovery Motions.**

See Attachment 15.

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Page 10 of 10



1 2 3	<b>PROOF OF SERVICE</b> I am a citizen of the United States, employed in the City and County of San Francisco, California. My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18 years and not a party to the above entitled action. On January 25, 2019, I served the following document:		
4	Case Management Statement		
5 6 7	on the parties designated on the	e attached service list; and MANNER OF SERVICE (check all that apply)	
9	[ ] By First Class Mail	In the ordinary course of business, I caused each such envelope to be placed in the custody of the United States Postal Service, with first-class postage thereon fully prepaid in a sealed envelope.	
10	[ ] By Personal Service	I personally delivered each such envelope to the office of each such addressee on the date written below.	
11 12 13 14 15	[ ] By Overnight FedEx	I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.	
16 17 18 19	<b>[X]</b> By E-mail	I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for. I caused such document to be served via electronic mail equipment transmission (E-mail) on the parties as designated on the attached service list by transmitting a true copy to the following E-mail addresses listed under each addressee below. I did not receive, within a reasonable time after the transmission was unsuccessful.	
20 21 22	[ ] By Facsimile	I caused such document to be served via facsimile electronic equipment transmission (fax) on the parties in this action by transmitting a true copy to the following fax numbers listed under each addressee below. I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below. of perjury under the laws of the State of California that the foregoing is true ary 25, 2019, in the City and County of San Francisco, California.	
23 24	[ ] By Personal Delivery by Courier	I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below.	
25 26	I declare under penalty and correct. Executed on Janua	of perjury under the laws of the State of California that the foregoing is true ary 25, 2019, in the City and County of San Francisco, California.	
27 28		<u>KellyMarie</u> Kelly Marie Perry	
Law Offices of Thomas N. Lippe 201 Mission St. 12 <sup>th</sup> Floor San Francisco, CA 94105 Tel: 415-777-5604 Fax: 415-7775606		-i -	

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Proof of Service, CMS (CEQA); RG18902751

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3	Office of General Counsel Anagha Dandekar Clifford, Senior Counsel
4	1111 Franklin Street, 8th Floor
5	Oakland, CA 94607 Email: Anagha Clifford ( <u>Anagha.Clifford@ucop.edu</u> )
6	Meyers Nave
7	555 12th Street, Suite 1500 Oakland, California 94607
0	Email: Tim Cremin ( <u>tcremin@meyersnave.com</u> )
9 10	Email: Melissa Bender ( <u>mbender@meyersnave.com</u> )
10	Meyers Nave 707 Wilshire Boulevard, 24th Floor
11	Los Angeles, California 90017
12	Email: Amrit Kulkarni ( <u>amrit@meyersnave.com</u> )
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Law Offices of Thomas N. Lippe 201 Mission St. 12 <sup>th</sup> Floor San Francisco, CA 94105 Tel: 415-777-5604	- ii -
Fax: 415-7775606	Proof of Service, CMS (CEQA); RG18902751

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