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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF ALAMEDA**

15 CITY OF BERKELEY,

16 Petitioner and Plaintiff,

17 v.

18 THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA; JANET
19 NAPOLITANO, in her official capacity as
President of the University of California;
20 UNIVERSITY OF CALIFORNIA,
BERKELEY; CAROL T. CHRIST, in her
21 official capacity as Chancellor of the
University of California, Berkeley; DOES 1
22 through 20,

23 Respondents and Defendants.

24 AMERICAN CAMPUS COMMUNITIES;
25 COLLEGIATE HOUSING
FOUNDATION; and DOES 21 through 40,

26 Real Parties in Interest.
27
28

Case No.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

California Environmental Quality Act
("CEQA"), Pub. Res. Code §§ 21000 et seq.;
Educ. Code § 67504; C.C.P. §§ 1060, 1085 &
1094.5

1 **INTRODUCTION**

2 1. This action challenges the May 16, 2019 decision of The Regents of the University
3 of California (“Regents”) to approve the Upper Hearst Development for the Goldman School of
4 Public Policy and Minor Amendment to the 2020 Long Range Development Plan (“Project”)
5 and to certify the supplemental environmental impact report (“SEIR”) for the Project. In part,
6 the challenged Project includes construction and operation of academic and residential buildings
7 associated with the Goldman School of Public Policy (“GSPP”) at the University of California,
8 Berkeley (the “University” or “UC Berkeley”). However, the Project also includes—but fails to
9 adequately analyze—a significant increase in the University’s projected enrollment through
10 2023. The 2020 enrollment projections contained in the SEIR exceed the figure assessed in the
11 University’s 2020 Long Range Development Plan (“LRDP”) by 8,000 students, and the 2023
12 enrollment projections exceed that number by 11,000 students. The magnitude of this increase
13 cannot be understated: the increase of 8,000 students by 2020 represents nearly five times the
14 LRDP’s projected increase, while the increase of 11,000 students by 2023 represents nearly 9
15 percent of the population of the City of Berkeley.

16 2. An LRDP is a physical development and land use plan to meet the academic and
17 institutional objectives for a particular campus of public higher education. An LRDP is designed
18 to guide a campus’s physical development for an established time horizon. The approval or
19 amendment of an LRDP is a project subject to the California Environmental Quality Act
20 (“CEQA”). Under CEQA, an Environmental Impact Report (“EIR”) for an LRDP must
21 consider the environmental effects relating to changes in enrollment levels at a campus. The
22 Legislature has acknowledged that the expansion of campus enrollment and facilities may
23 negatively affect the surrounding environment, and has stated its intent that the University of
24 California mitigate the significant off-campus impacts related to campus growth and
25 development.

26 3. Despite this obligation to analyze and mitigate impacts of increases in enrollment,
27 the SEIR attempts to sweep the environmental impacts of this dramatic enrollment increase
28 under the rug, in direct violation of CEQA, Public Resources Code § 21000 et seq., the CEQA

1 Guidelines, title 14 California Code of Regulations, § 15000 et seq., and the Education Code §
2 67504. For example, this increase in enrollment, coupled with the University’s failure to provide
3 sufficient housing for its students, will exacerbate the existing housing crisis in the City of
4 Berkeley, displacing some of Berkeley’s most vulnerable residents and forcing some residents
5 and students into homelessness. Displacement has physical ramifications, including those related
6 to the construction of new housing, increased traffic and air pollution associated with longer
7 commutes, and public health consequences, in addition to its social and economic ramifications.

8 4. The increase in enrollment also impacts City services and infrastructure. The City
9 of Berkeley provides the University with vital public services, including police, fire, emergency
10 medical response, and public health. The cost to the City of providing these and other services to
11 the University has increased dramatically alongside the increase in enrollment, from an
12 estimated \$11 million per year in 2003 to over \$21 million in 2018. Moreover, the University’s
13 decision to add another 11,000 people to the City’s service area will increase the number of
14 service calls—impacting traffic, air quality, etc.—and almost certainly require the City to
15 purchase new equipment and build new facilities for its police and fire departments. All of these
16 ripple effects will have environmental impacts.

17 5. The SEIR failed to analyze or mitigate these impacts. In fact, the SEIR failed to
18 clearly define the Project as including this increase. Instead, the SEIR both minimizes the role of
19 the increase in enrollment, calling it an “updated baseline,” and simultaneously purports to
20 analyze the impacts of this increase. The resulting confusion about the nature of the Project
21 renders the SEIR fundamentally flawed as an informational document.

22 6. The limited analysis the SEIR does provide about the impacts of increased
23 enrollment is incomplete and flawed. For example, the SEIR assessed the increase in enrollment
24 in the context of the increase in population in the entire Bay Area, and concluded that the
25 increase would not have a substantial effect on regional population and housing. This rationale
26 ignores the impacts of the increase on the City of Berkeley, which is the relevant area
27 experiencing the direct impacts of the University’s increased enrollment. Similarly, the SEIR
28 provided a flawed analysis of the Project’s traffic and transportation impacts. Although the SEIR

1 purported to account for the increased headcount in the analysis of these impacts, the analysis
2 relied on student commute surveys, rather than empirical data including professors, staff, and
3 employees, to determine trip generation data. The SEIR also provided an inadequate analysis of
4 the Project’s air quality impacts, including by ignoring the air emissions associated with the
5 increase in student enrollment. These and other errors render the SEIR’s purported attempt to
6 assess the impacts of the increased enrollment invalid and insufficient.

7 7. In addition to the significant errors dogging the SEIR’s analysis of the increased
8 enrollment, the SEIR also failed to properly analyze and mitigate the impacts of the GSPP
9 development. For example, the SEIR acknowledged that the development would have
10 significant impacts on adjacent historic resources, yet failed to adequately mitigate those
11 impacts. Instead, it deferred analysis and mitigation of the impacts until future redesign.

12 8. Numerous agencies, organizations, and individuals submitted comments to the
13 University and the Regents (“Respondents”), urging them to provide a more thorough
14 environmental analysis of the Project’s impacts and to require more mitigation for those
15 impacts. The City urged Respondents to clarify the Project description, to separate the analysis
16 of the increased enrollment from that of the GSPP development, and to mitigate the impacts of
17 the dramatic increase in enrollment on the City. Unfortunately, Respondents failed to respond
18 meaningfully to these comments. Instead Respondents compounded the ongoing confusion
19 about the nature of the Project and asserted—incorrectly—that Respondents were exempt from
20 analyzing or mitigating most of the impacts associated with the increased enrollment.

21 9. Respondents’ actions violated CEQA by certifying an SEIR for the Project that
22 fails: (a) to provide an accurate or complete description of the Project; (b) to adequately analyze
23 or mitigate the Project’s significant individual and/or cumulative impacts on the environment,
24 including but not limited to the impacts on transportation and traffic, air quality, greenhouse gas
25 emissions, public services, inducement of growth, and cultural resources; or (c) to adequately
26 analyze alternatives to the Project. Respondents also violated CEQA by failing to support their
27 findings about the Project’s impacts and the feasibility of mitigation measures and alternatives
28 with substantial evidence, and by committing to approve the Project before certifying the SEIR

1 in violation of their obligation to consider public comment before approving projects. In
2 addition, Respondents violated the Education Code by failing to analyze and mitigate the off-
3 campus impacts of the University’s increase in enrollment.

4 10. For all of these reasons, Respondents’ approval of the Project and certification of
5 the SEIR must be overturned.

6 **PARTIES**

7 11. Petitioner City of Berkeley (“City” or “Berkeley” or “Petitioner”) is a charter city
8 duly organized and existing under Government Code sections 34000, et seq., and is located
9 within the County of Alameda, California. The City is disproportionately impacted by the
10 unanalyzed and unmitigated impacts of the Project. The City as a whole will be impacted by the
11 University’s dramatically increased enrollment, which taxes the City’s provision of public
12 services and utilities and exacerbates the housing crisis. Additionally, the proposed GSPP
13 development is located in the City of Berkeley, in an area referred to in University planning
14 documents as the “City Environs,” which is comprised mostly of city blocks served by city
15 streets and includes university properties interspersed with non-university properties. The
16 neighborhood surrounding the GSPP development will be impacted in several ways, including
17 by the development’s inconsistencies with the area’s cultural resources and by its noise impacts.
18 The City of Berkeley thus has a direct and beneficial interest in Respondents’ compliance with
19 CEQA and the CEQA Guidelines. These interests will be directly and adversely affected by the
20 Project approval, which violates provisions of law as set forth in this Petition for Writ of
21 Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”) and which would
22 cause substantial and irreversible harm to the health and welfare of Berkeley residents. The
23 maintenance and prosecution of this action will confer a substantial benefit on the public by
24 protecting the public from the environmental and other harms alleged herein.

25 12. Respondent the Regents of the University of California (“Regents”) is a public
26 trust corporation and state agency established pursuant to the California Constitution vested with
27 administering the University of California including the management and disposition of property
28 of the University. The Regents is the “lead agency” for the Project for purposes of Public

1 Resources Code section 21067, with principal responsibility for conducting environmental
2 review for and approving the Project.

3 13. Respondent Janet Napolitano is the President of the University of California and is
4 named herein solely in this capacity. Regents Policy 8103 delegates to the President of the
5 University the Regents' authority for budget or design for capital projects consistent with
6 approved Long Range Development Plans and for minor Long Range Development Plan
7 amendments.

8 14. Respondent the University of California, Berkeley ("the University" or "UC
9 Berkeley") is identified as a lead agency at several points in the Draft SEIR and in the CEQA
10 Findings document associated with the Project. UC Berkeley is also inconsistently referred to as
11 the Project Sponsor and Project Applicant in the Final SEIR and in the Notice of Determination.
12 Out of an abundance of caution based on the documents' references to UC Berkeley as a "lead
13 agency," Petitioner is naming UC Berkeley as a Respondent pursuant to Public Resources Code
14 section 21067.

15 15. Respondent Carol T. Christ is the Chancellor of the University of California,
16 Berkeley, and is named herein solely in this capacity.

17 16. Respondents Regents, Janet Napolitano, University of California, Berkeley, and
18 Carol T. Christ are hereinafter collectively referred to as "Respondents."

19 17. Petitioner is unaware of the true names and capacities of respondents fictitiously
20 named herein as DOES 1 through 10 and sues such respondents by fictitious names. When the
21 true identities and capacities of these respondents have been determined, Petitioner will amend
22 this petition, with leave of the Court if necessary, to insert such identities and capacities. Each of
23 the respondents is the agent and/or employee of another respondent, and each performed acts on
24 which this action is based within the course and scope of such respondent's agency and/or
25 employment.

26 18. Real Party in Interest American Campus Communities is a Party Undertaking the
27 Project. American Campus Communities is a Delaware corporation. Because the Notice of
28 Determination filed for the Project listed American Campus Communities as one of the Parties

1 Undertaking the Project, Petitioner is naming this entity as a Real Party in Interest pursuant to
2 Public Resources Code section 21167.6.5(a).

3 19. Real Party in Interest Collegiate Housing Foundation is a Party Undertaking the
4 Project. Collegiate Housing Foundation is an Alabama corporation. Because the Notice of
5 Determination filed for the Project listed Collegiate Housing Foundation as one of the Parties
6 Undertaking the Project, Petitioner is also naming this entity as a Real Party in Interest pursuant
7 to Public Resources Code section 21167.6.5(a).

8 20. Petitioner is unaware of the true names and capacities of real parties in interest
9 fictitiously named herein as DOES 21 through 40 and sues such real parties in interest by
10 fictitious names. When the true identities and capacities of these real parties in interest have
11 been determined, Petitioner will amend this petition, with leave of the Court if necessary, to
12 insert such identities and capacities. Each of the real parties in interest is the agent and/or
13 employee of another real party in interest, and each performed acts on which this action is based
14 within the course and scope of such real party in interest's agency and/or employment.

15 **JURISDICTION AND VENUE**

16 21. Petitioner hereby realleges and incorporates by reference the preceding paragraphs
17 in their entirety.

18 22. Pursuant to Code of Civil Procedure sections 1085 and 1094.5, and Public
19 Resources Code sections 21168, 21168.5, and 21168.9, the Alameda County Superior Court has
20 initial jurisdiction to issue a writ of mandate to set aside Respondents' decision to certify the
21 EIR and approve the Project.

22 23. Venue for this action properly lies in this Court because the cause of action alleged
23 in this Petition arose in Alameda County. The GSPP development is proposed for construction
24 in Alameda County, and the impacts of the Project will occur in Alameda County.

25 24. Petitioner has performed any and all conditions precedent to filing the instant
26 action and has exhausted any and all available administrative remedies to the extent possible and
27 required by law. Petitioner submitted numerous objections to approval of the Project and the
28 Respondents' inadequate analysis and mitigation of the Project's impacts in the SEIR prepared

1 for the Project.

2 25. Respondents have taken final agency actions with respect to adopting the SEIR
3 and approving the Project. Respondents have a duty to comply with applicable state laws,
4 including but not limited to CEQA, prior to undertaking the discretionary approvals at issue in
5 this lawsuit. Petitioner possesses no effective remedy to challenge the approvals at issue in this
6 action other than by means of this lawsuit.

7 26. On June 12, 2019, Petitioner complied with Public Resources Code section
8 21167.5 by emailing and mailing to Respondents a letter stating that Petitioner planned to file a
9 lawsuit seeking to invalidate Respondents' approval of the Project. Attached hereto as Exhibit A
10 is the true and correct copy of this letter.

11 27. On June 14, 2019, Petitioner complied with Public Resources Code section
12 21167.7 and Code of Civil Procedure section 388 by furnishing the Attorney General of the
13 State of California with a copy of the Petition. Attached hereto as Exhibit B is the true and
14 correct copy of the letter transmitting the Petition to the Attorney General.

15 28. Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner elects to
16 prepare the record of proceedings in this action. Concurrently with this Petition, Petitioner will
17 file a notice of election to prepare the administrative record.

18 29. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
19 unless this Court grants the requested writ of mandate to require Respondents to set aside their
20 adoption of the SEIR and approval of the Project. In the absence of such remedies, Respondents'
21 approval will remain in effect in violation of State law, and Petitioner and its residents will be
22 irreparably harmed. No money damages or legal remedy could adequately compensate Petitioner
23 and its residents for that harm.

24 **STATEMENT OF FACTS**

25 30. Petitioner realleges and incorporates by reference the preceding facts in their
26 entirety.

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1 **I. Factual Background**

2 **a. 2020 Long Range Development Plan**

3 31. Each University of California campus is required to develop periodically a Long
4 Range Development Plan (LRDP) “that guides [the campus’s] physical development, including
5 land use designations, the location of buildings, and infrastructure systems, for an established
6 time horizon.” The approval of an LRDP is subject to CEQA, and requires the preparation of an
7 EIR. The EIR for an LRDP must consider the “[e]nvironmental effects relating to changes in
8 enrollment levels.” The approval of a project on a particular campus is also subject to CEQA,
9 and may be addressed in a tiered environmental analysis based on an LRDP EIR.

10 32. In 2005 the University developed its 2020 LRDP to guide its growth and
11 development from 2005 through 2020. The 2020 LRDP was driven by several broad objectives,
12 including to “provide the housing, access, and services we require to support a vital intellectual
13 community and promote full engagement in campus life,” to “stabilize enrollment at a level
14 commensurate with our academic standards and our land and capital resources,” and to “plan
15 every new project to respect and enhance the character, livability, and cultural vitality of our city
16 environs.” The 2020 LRDP did not commit the University to undertake any specific projects,
17 but instead provided a strategic framework for deciding which projects to pursue when.

18 33. Campus enrollment levels were discussed extensively in the 2020 LRDP, which
19 noted that the California Master Plan for Higher Education required that the University of
20 California as a whole increase its enrollment by 63,000 students from 1998 to 2010. Pursuant to
21 the California Master Plan, UC Berkeley was expected to increase its enrollment by 4,000 full
22 time equivalent students from 1998 to 2010, which would represent an increase in enrollment of
23 roughly 13 percent. The 2020 LRDP noted that this increase would be significant for any
24 campus, “but particularly for a mature, urban campus with aging facilities and limited capacity
25 to expand.” However, once the University reached the target average of 33,450 students, the
26 2020 LRDP stated that the “enrollment at UC Berkeley should stabilize.”

27 34. To accommodate UC Berkeley’s growth, the 2020 LRDP projected that the space
28 demands of campus academic and support programs could grow by up to 18 percent over

1 current and approved space by 2020. The 2020 LRDP also called for the addition of 2,300 net
2 new parking spaces. Any substantial exceedance of either of these figures would require an
3 amendment of the 2020 LRDP. The 2020 LRDP also emphasized that “expanding and
4 improving the supply of housing near campus is critical.” Accordingly, the 2020 LRDP set a
5 goal of “increas[ing] the supply of university housing within the 2020 LRDP scope by up to 32
6 percent over current and approved bed spaces.” Thus, the 2020 LRDP called for an additional
7 2,500 student beds, and 100 additional faculty and staff beds by 2020.

8 35. The University approved the 2020 LRDP and certified the associated EIR (the
9 “2020 LRDP EIR”) on or around January 20, 2005.

10 **b. City of Berkeley’s Challenge to 2020 LRDP EIR**

11 36. In 2005, the City challenged the University’s adoption of the 2020 LRDP and
12 certification of the 2020 LRDP EIR in Alameda County Superior Court Case No. 05199505.
13 The parties settled that case in May 2005. The 2005 Settlement Agreement, which requires the
14 University to make annual payments to the City for such things as fire and emergency
15 equipment, capital improvements, and training, will terminate by its terms at the conclusion of
16 the 2020-2021 academic year.

17 **II. Procedural Background**

18 **a. The City Commented on the University’s Notice of Preparation**

19 37. In August 2018, the University issued a Notice of Preparation (“NOP”) of a Draft
20 Supplemental EIR (“DSEIR”) for the project titled “Upper Hearst Development for the
21 Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development
22 Plan.” The Project was described as accommodating the GSPP’s need for additional program
23 space for its growing programs, along with improving the availability of near-campus housing.

24 38. The University’s NOP described its plan to prepare a DSEIR tiered from the 2020
25 LRDP EIR to evaluate the potential environmental effects of the Project. The NOP noted that a
26 Supplemental EIR was necessary to accommodate two issues: “(1) changes to the [2020 LRDP]
27 land use plan to accommodate the proposed project; and (2) an increase in current and
28 foreseeable campus population levels above those analyzed in the 2020 LRDP EIR, based on a

1 general increase in student enrollment and employee levels and growing the GSPP program(s).”
2 The DSEIR was to analyze the environmental effects of the GSPP program development “on a
3 project level,” while analyzing “the increased campus population on a programmatic level.”

4 39. The NOP explained that the average student enrollment for the two semesters of
5 the 2017-2018 school year was 40,955, or 7,505 more students than analyzed in the 2020 LRDP
6 EIR. The NOP also indicated that the University “may continue to expand enrollment.”

7 40. The NOP described the Project as “involv[ing] minor text amendments to the 2020
8 LRDP.” These amendments would address the fact that the proposed Project conflicted with the
9 existing applicable land use plan and was not consistent with the 2020 LRDP housing element.
10 The amendments would also address the increase in current and foreseeable campus populations
11 level, which exceeded those levels analyzed in the 2020 LRDP EIR.

12 41. In its NOP, the University contended the Project was largely consistent with the
13 2020 LRDP and 2020 LRDP EIR, but determined that additional study was needed to upgrade
14 the 2020 LRDP EIR to reflect the proposed Project, to support minor amendments to the 2020
15 LRDP to allow for the proposed Project, and to “allow for increased campus headcount and
16 assess the environmental effects o[f] the unanticipated increase in campus population.”

17 42. The NOP was circulated for public review from August 16, 2018, to September
18 14, 2018 (a 30-day review period).

19 43. The City commented on the NOP, noting that the increase in the current and
20 foreseeable campus population levels above those analyzed in the 2020 LRDP EIR has impacts
21 not only on housing, but also on a range of City services, including traffic and parking
22 management, public safety, public health, solid waste management, and stormwater. The City
23 highlighted the opportunity to ensure that the impacts of the growing campus population are
24 accounted for and mitigated in the Supplemental EIR.

25 **b. The City Commented on the University’s Draft Supplemental EIR**

26 44. The University issued the DSEIR for the Project on or about February 20, 2019.

27 45. The DSEIR described the proposed Project as being comprised of the GSPP
28 development and the Minor LRDP Amendment to accommodate the proposed housing land use

1 on the Project site. The GSPP development was described as including a residential component
2 in a building up to six stories tall, along with a separate academic building four stories tall. The
3 academic building would include an event space that could accommodate up to 450 visitors at
4 maximum capacity. Two parking structures would be demolished to make way for the new
5 buildings.

6 46. The DSEIR explained that it “also establishes an updated population baseline to
7 reflect the existing campus headcount,” which exceeded the projections in the 2020 LRDP. This
8 statement was made in the “Environmental Analysis” section of the DSEIR’s Project Summary,
9 rather than in the “Proposed Project” section of the same.

10 47. The DSEIR referenced the University’s self-described “commitment to the City of
11 Berkeley that, if enrollment increased beyond the projections set forth in the 2020 LRDP, it
12 would undertake additional review under CEQA.” Accordingly, the DSEIR purported to use “an
13 updated population baseline” and to take this baseline into account for its environmental
14 analysis of each impact category.

15 48. The DSEIR was circulated for public review from February 20, 2019, to April 8,
16 2019 (a 45-day comment period). Upon request by the City, this review period was extended by
17 five days, to April 12, 2019. During this public review period, the University received 174
18 comment letters on the DSEIR.

19 49. The City timely submitted its comments on the DSEIR. In its comments, the City
20 expressed its overarching concern that the DSEIR inappropriately combined an analysis of two
21 distinct projects—the new GSPP buildings and the increased enrollment projections—in a single
22 DSEIR. The resulting analysis caused unnecessary confusion about the nature and scope of the
23 Project. The City thus requested that the University consider the two projects in separate
24 documents.

25 50. The City also noted the DSEIR’s procedural failings, including the fact that it was
26 improperly tiered off the 2020 LRDP EIR, despite being inconsistent with that document. It was
27 also improper to use a Supplemental EIR instead of a Subsequent EIR for such significant
28 modifications to the 2020 LRDP. Additionally, the City noted that the University committed to

1 the Project before certifying the SEIR in violation of its obligation under CEQA to consider
2 public comment before approving projects.

3 51. The City’s comments also highlighted significant flaws in the DSEIR’s analysis.
4 First, the DSEIR lacked a clear, stable, and finite project definition. The DSEIR’s Project
5 Description suggested that the Project was comprised only of the physical development of the
6 GSPP, but the NOP and the DSEIR’s impact analysis sections indicated that the University was
7 also analyzing the impacts of the increased student enrollment. As the City pointed out, the
8 University was required to analyze and mitigate the impacts of the increase in its population, and
9 could not simply ignore the change by referring to it as a new “baseline.” The DSEIR’s
10 purported analysis of the impacts of the increased enrollment belied its contention that the
11 increased enrollment was not a project requiring review under CEQA.

12 52. The City commented that the DSEIR’s purported analysis of the increased
13 enrollment was inadequate. The University failed to analyze impacts including exacerbating the
14 housing and homelessness crisis in the City; stressing the City’s already overtaxed public
15 services; and affecting the City’s ability to allocate resources to environmental factors including
16 local streets, storm drains, sewers, public buildings, and other infrastructure and services. The
17 City highlighted the increase in the University’s net fiscal impact on the City, which increased
18 from an estimated \$11 million in 2003 to over \$21 million in the year 2018. As the City noted,
19 the DSEIR failed to analyze and mitigate the impacts of the University’s increased enrollment
20 on the City.

21 53. With respect to the GSPP development, the City’s comment letter also highlighted
22 the DSEIR’s failure to consider measures to reduce the proposed development’s impacts on the
23 historic resources in the surrounding neighborhood, or its potentially significant noise,
24 archaeological, air quality, and other impacts. For example, the DSEIR failed to identify the
25 location or any details about the use of bioretention facilities at the development site, to provide
26 information about the dewatering process to be used during construction, or to provide any
27 information about the number, size, time of day, or frequency of events to be held at the
28 proposed academic building.

1 **c. The City Commented on the University’s Final Supplemental EIR**

2 54. The University issued the Final Supplemental Environmental Impact Report
3 (“FSEIR”) on or about May 2, 2019. Regrettably, the FSEIR failed to provide a meaningful
4 response to or to adequately address most of the issues the City raised in its comments.

5 55. After the issuance of the FSEIR, the City submitted additional comments
6 criticizing the University’s inadequate environmental review. In a letter dated May 13, 2019, the
7 City reiterated its overarching concern that the FSEIR did not properly analyze the University’s
8 increased enrollment. The FSEIR’s discussion of the increased enrollment remained confusing
9 and incomplete, as it continued to refer to the analysis of increased enrollment as an “updated
10 baseline” rather than part of the “project” itself. However, despite referring to the increase as an
11 updated baseline, the FSEIR failed to point to any specific instance in which the “updated
12 baseline” was used to analyze the impacts of the GSPP Project.

13 56. The FSEIR also failed to analyze the impacts of the increased enrollment,
14 including the impacts on the City and its residents. Rather than analyze the impacts of the
15 increase, the University asserted that the impacts were social and economic rather than
16 environmental, and that the University was exempt from local regulations and local taxes. The
17 FSEIR failed to address the City’s comments indicating that the University’s increased
18 enrollment would result in physical impacts related to displacement, or that the increased burden
19 on public services was likely to result in physical impacts, including building new facilities. The
20 University also failed to consider its obligation to mitigate off-campus impacts of the increased
21 enrollment, including by paying its fair share of the mitigation required off-campus. The FSEIR
22 thus failed to analyze and mitigate the Project’s impacts.

23 57. With respect to the GSPP development, the City commented that the FSEIR failed
24 to correct flaws identified in the DSEIR. For example, the FSEIR added a new mitigation
25 measure ostensibly to mitigate the traffic impacts caused by special events at the new
26 development, but the measure merely deferred analysis of traffic impacts and failed to provide
27 options to meaningfully mitigate the impact it purported to address. The FSEIR also failed to
28 remedy the inadequate evaluation and mitigation of the GSPP development’s noise impacts and

1 impacts on cultural resources.

2 58. Finally, as the City pointed out, the FSEIR failed to respond to the City's concerns
3 about the DSEIR's alternatives analysis. The City proposed an alternative that the University
4 build more student housing to address the impacts of its increased enrollment, but rather than
5 consider the feasibility of such an alternative, the FSEIR merely denied that increased
6 enrollment is part of the Project being analyzed, a denial that is unsupported by the record.

7 59. The Regents certified the FSEIR and approved the Project on May 16, 2019.

8 **FIRST CAUSE OF ACTION**

9 **Violation of CEQA**

10 **Public Resources Code § 21000 et seq.; State CEQA Guidelines**

11 60. Petitioner realleges and incorporates by reference the preceding paragraphs in
12 their entirety.

13 61. CEQA requires the lead agency for a project with the potential to cause significant
14 environmental impacts to prepare an EIR that complies with the requirements of the statute,
15 including, but not limited to, the requirement to analyze the project's potentially significant
16 environmental impacts. The EIR must provide sufficient environmental analysis such that the
17 decision makers can intelligently consider environmental consequences when acting on the
18 proposed project.

19 62. CEQA also mandates that the lead agency adopt all feasible mitigation measures
20 that would reduce or avoid any of the project's significant environmental impacts. If any of the
21 project's significant impacts cannot be mitigated to a less than significant level, then CEQA bars
22 the lead agency from approving a project if a feasible alternative is available that would meet the
23 project's objectives while avoiding or reducing its significant environmental impacts. If there is
24 an environmentally superior alternative, the lead agency must either select that alternative
25 instead of the project or make formal findings, supported by substantial evidence, that the
26 alternative is infeasible.

27 63. CEQA further mandates that a lead agency may approve a project that would have
28 significant, unavoidable environmental impacts only if the agency finds that the project's

1 benefits would outweigh its unavoidable impacts.

2 64. Under CEQA, all the findings required for an agency’s approval of a project must
3 be legally adequate and supported by substantial evidence in the administrative record, and
4 CEQA further requires that an agency provide an explanation of how the evidence in the record
5 supports the conclusions the agency has reached.

6 65. Respondents failed to proceed in the manner required by law and violated CEQA
7 by committing to approve the project even before completing and certifying the EIR and by
8 certifying an EIR that is inadequate and fails to comply with the requirements of CEQA and the
9 CEQA Guidelines in numerous respects. For example:

10 a. The SEIR failed to provide a project description that described the Project
11 in a stable, consistent, complete, and accurate manner. For instance, in its impact analysis
12 sections, the SEIR treats the updated enrollment numbers as a change in the original LRDP
13 project, and purports to analyze whether the impacts of the Project’s increase in enrollment were
14 adequately assessed in the 2020 LRDP EIR. But the Draft SEIR’s project summary fails to
15 clearly describe the Project as including this increased enrollment, and the Final SEIR denies
16 that the increased enrollment is part of the Project at all. Additionally, the SEIR’s Executive
17 Summary and Introduction state that only the GSPP development is the Project, and that the
18 increase in enrollment is merely an “updated population baseline.” This inconsistent treatment
19 was also reflected in Respondents’ initial description of the Project in the Notice of Preparation
20 (“NOP”), which noted that an SEIR was necessary in part to analyze the impacts of increasing
21 campus enrollment. Since CEQA does not require a baseline to be analyzed, the SEIR’s
22 treatment of the increase in enrollment created confusion and ambiguity about whether the
23 increased enrollment is part of the Project. As a result, the SEIR’s analysis was fundamentally
24 flawed. This confusion is only magnified by the Respondents’ CEQA Findings document, which
25 analyzes the impacts of both the GSPP development and the increased enrollment separately.
26 Additionally, the project description for the GSPP development is inadequate and omits full
27 descriptions of the proposed development.

28 b. The SEIR’s purported analysis of the impacts of the University’s increased

1 enrollment was inadequate. The SEIR failed to provide the required analysis of the
2 environmental effects related to the University's change in enrollment. The University's
3 increased enrollment, coupled with its failure to provide sufficient housing for its students and
4 faculty, exacerbates the housing crisis in the City and displaces City residents, causing physical
5 impacts to the environment. Despite the serious environmental impacts associated with
6 displacement and homelessness, which include impacts related to construction of new housing,
7 traffic and emissions caused by longer commutes, and public health impacts, the SEIR deemed
8 the Project's impacts on population and housing to be less than significant. The SEIR reached
9 this flawed conclusion based on the unreasonable assumption that the increase in population
10 represented a small percentage of the projected increase in the entire Bay Area's population.
11 Such an assumption ignores the impacts on the City of Berkeley, the area most directly impacted
12 by the increase in enrollment. Additionally, the SEIR improperly deferred assessment of the
13 environmental impacts associated with displacement onto future decisionmakers. The SEIR also
14 failed to discuss or provide any mitigation for these serious impacts.

15 c. The SEIR failed to analyze the Project's significant impacts on the City's
16 provision of public services, including police, fire and emergency, and public health services,
17 along with public parks and related facilities. For example, calls to the Berkeley Police
18 Department from within the University's environs increased from 14 percent to 19 percent of the
19 citywide total from 2003 to 2018. Similarly, 37 percent of the Berkeley Fire Department's costs
20 of service in 2018 were attributed to the University. The cost to the City of providing these
21 services has increased from an estimated \$11 million in 2003 to over \$21 million in 2018. New
22 or altered facilities will be required to accommodate the increased demand for these services
23 caused by the University's increased enrollment. Additionally, the increased traffic and miles
24 driven by police, fire, and emergency personnel to meet the University's demand constitutes a
25 physical impact. Despite the magnitude of the impacts of the University's increased enrollment
26 on the City's provision of public services, the SEIR failed to adequately analyze or mitigate
27 them.

28 d. The SEIR failed to analyze any potential mitigation options related to the

1 Project’s inconsistencies with the City’s land use policies and ordinances. The SEIR
2 acknowledged that the GSPP development is inconsistent with the City’s General Plan and
3 Zoning Ordinance in several ways: it is too dense, too tall, and ignores all setback limits. The
4 Project’s inconsistencies with the City’s zoning requirements and land use policies will have
5 adverse effects on the surrounding neighborhood, which contains many historically significant
6 buildings. However, despite acknowledging that the University has ample opportunity to build
7 housing elsewhere on campus, the SEIR concluded with no analysis that mitigating the Project’s
8 inconsistencies with City land use policies beyond a slight reduction in the proposed residential
9 building’s height would impair attainment of the Project’s objectives to meet housing demand.

10 e. The SEIR also failed to conform to the policies in the 2020 LRDP. For
11 example, the 2020 LRDP requires that, in the City Environs, the University’s objectives “must
12 be informed by the plans and policies of neighboring cities, to respect and enhance their
13 character and livability through new university investment.” Despite this policy, the Project is
14 inconsistent with the City’s General Plan, zoning, and municipal code standards. As noted, the
15 GSPP development violates local zoning standards and General Plan policies. The SEIR admits
16 these inconsistencies but fails to acknowledge that, by approving the Project, the University is
17 violating its own policy. The 2020 LRDP also sets a target for providing housing to certain
18 percentages of students in each class. The University’s approval of increased enrollment without
19 providing a parallel increase in housing conflicts with this target.

20 f. The SEIR also failed to adequately consider the growth-inducing impacts of
21 the Project on the City and the surrounding areas. An increase in enrollment that represents 9
22 percent of the City’s population is a substantial growth in population. The increase in enrollment
23 directly results in population growth in the City of Berkeley, since, as the University has
24 acknowledged, most of its students will live on campus or very close by in the City. Despite this
25 significant population growth, the University reasoned in the SEIR that the increase in
26 enrollment would not substantially affect regional population because it represents a small
27 percentage of the projected increase in the entire Bay Area’s population. The SEIR also asserted
28 that the University would “accommodate” the increased headcount without exceeding the

1 physical campus development projected in the 2020 LRDP EIR. Both assessments ignore the
2 impacts on the relevant area that bears the burden of the increase: the City of Berkeley. Thus,
3 the SEIR failed to adequately analyze the significant growth-inducing effects of the increased
4 enrollment.

5 g. The SEIR was improperly certified as a tiered supplemental EIR rather than
6 as a subsequent EIR. A supplemental EIR is appropriate only when an EIR has been prepared
7 for a project, the project is subsequently changed, and only “minor additions or changes” are
8 required to make the previous EIR adequately apply to the project as changed. The significant
9 increase in enrollment does not constitute a minor change, but is rather a fundamental change to
10 the assumptions in the 2020 LRDP EIR. Additionally, the SEIR was improperly tiered off the
11 2020 LRDP EIR because tiering is appropriately only when a subsequent EIR is consistent with
12 a preceding EIR. Here the SEIR changes fundamental assumptions in the 2020 LRDP EIR, is
13 inconsistent with that EIR, and may not be tiered off of it.

14 h. The SEIR failed to provide an adequate and complete analysis of the traffic
15 impacts associated with the Project. For example, the SEIR lacked empirical data to support its
16 trip generation and parking assumptions. Instead, its conclusions about potential environmental
17 impacts from the increased headcount were based on vehicle trip generation estimates derived
18 from student commute surveys. The SEIR provided no details about the surveys, and it provided
19 no information regarding professors, employees, and staff who commute. Similarly, the SEIR
20 reached conclusions about the impacts of the loss of more than 200 parking spots with no
21 supporting evidence. The SEIR also failed to analyze traffic impacts during the GSPP
22 construction period, or to analyze the Project’s impacts on pedestrian and bicycle facilities. The
23 information provided in the SEIR related to traffic, parking, and trip generation thus fell far
24 short of substantial evidence.

25 i. The SEIR failed to adequately consider and mitigate the Project’s
26 significant impacts related to air quality. For example, the SEIR concluded—without the
27 required analysis—that the Project will not result in significant air quality impacts that conflict
28 with the regional air quality plan. The SEIR failed to account for an updated Clean Air Plan

1 issued in 2017 or to analyze whether the Project was consistent with that Plan. The SEIR relied
2 on the 2020 LRDP EIR’s assertion that, with the implementation of mitigation measures, future
3 projects “would likely” comply with air quality plans. The SEIR erred in relying on this
4 noncommittal assertion without providing evidence or analysis that this Project would actually
5 comply with the Clean Air Plan. The SEIR also failed to show that its planned mitigation
6 measures, which include working with the City and local air agencies, are occurring or would be
7 effective. The SEIR also failed to provide adequate analysis of the exposure of sensitive
8 receptors to pollutant concentrations, to provide a complete analysis of the Project’s cumulative
9 air quality impacts—not least because this analysis entirely ignored the impacts associated with
10 the increase in enrollment—or to evaluate the health risks associated with toxic air
11 contaminants.

12 j. The SEIR failed to adequately consider and mitigate the Project’s
13 significant impacts related to greenhouse gas (“GHG”) impacts. For example, the SEIR
14 underestimated the Project’s GHG emissions because it relies on a flawed analysis of traffic-
15 related impacts and an inaccurate definition of the campus’s service population. The SEIR also
16 used an inaccurate definition of the service population, resulting in a dramatic underestimation
17 of GHG emissions. The SEIR failed to provide an analysis of the GHG impacts of the GSPP
18 development, relying improperly on the 2020 LRDP EIR. The SEIR also improperly relied on
19 mitigation to determine the significance of the GHG impacts, in contravention of CEQA’s
20 requirement to identify significant impacts first, and only then to identify enforceable mitigation
21 measures. The SEIR also failed to describe the extent and severity of the Project’s contribution
22 to GHG emission impacts and inconsistencies with UC and state GHG requirements. Thus, it is
23 impossible to determine the amount of mitigation required to offset the Project’s GHG-related
24 impacts.

25 k. The SEIR failed to adequately analyze and mitigate the Project’s significant
26 noise impacts. The SEIR’s noise analysis relied improperly on misleading readings of existing
27 noise levels, which skewed the analysis of noise impacts. The SEIR also omitted several noise
28 sources at the GSPP development, including special events and HVAC operation. Additionally,

1 the SEIR proposed minimal measures to reduce the severity of the noise impacts, and no
2 measures at all to avoid these impacts.

3 1. The SEIR failed to adequately consider and mitigate the Project's
4 significant impacts related to cultural resources. For example, the SEIR failed to establish the
5 GSP development's baseline conditions for cultural resources. In particular, the SEIR omitted
6 existing cultural resources from its description of the site's existing cultural resources and failed
7 to investigate whether there are significant archaeological resources on the site. The SEIR also
8 relied on a Continuing Best Practice to minimize impacts to underground resources, but the
9 SEIR failed to provide evidence that the measure will adequately protect buried resources.
10 Additionally, the SEIR provided an incomplete evaluation of impacts to known historic
11 resources, and it failed to mitigate for identified impacts to these resources, instead deferring the
12 required mitigation.

13 m. The SEIR's analysis of the Project's water quality impacts was also
14 inadequate and flawed. The SEIR omitted information about the existing hydrologic setting of
15 the receiving waters for drainage, using outdated information. As a result, the SEIR failed to
16 provide an accurate or adequate analysis of the Project's contributions to changes in water
17 quality. The SEIR also failed to analyze the Project's impacts on the City's stormwater system,
18 because, among other reasons, it omitted an evaluation of the impacts of the increased
19 enrollment and its analysis of the impacts of the GSP development was incomplete.
20 Additionally, the SEIR failed to analyze Project-related impacts associated with dewatering
21 during construction of the GSP development.

22 n. The SEIR's analysis of impacts on utilities, including the City's wastewater
23 infrastructure and treatment system, was inadequate because it failed to evaluate the impacts
24 associated with the increased enrollment. The SEIR also failed to adequately describe the
25 existing setting of the wastewater infrastructure in the vicinity of the GSP development. The
26 SEIR acknowledged that the Project would result in significant impacts to high wet weather
27 flows at the Wastewater Treatment Plant, but it provided no information about the extent or
28 severity of that impact.

1 o. The SEIR’s cumulative impacts analysis was underinclusive and legally
2 flawed. The SEIR failed to consider the impacts of the GSPP development in combination with
3 the increased enrollment. The SEIR’s list of reasonably foreseeable future project was also
4 underinclusive, and it omitted most of the projects the City is considering. Because the increased
5 enrollment will have citywide impacts, the SEIR should have examined cumulative impacts
6 citywide.

7 p. The SEIR failed to consider Project alternatives that would have reduced
8 significant impacts while still meeting Project objectives. The SEIR’s failure to accurately
9 describe the Project as including the increase in enrollment resulted in a distorted analysis of
10 Project alternatives. Additionally, because the SEIR failed to sufficiently analyze the underlying
11 impacts of the Project, the SEIR’s comparison of the Project to the identified alternatives was
12 meaningless and violated CEQA. In particular, the SEIR should have analyzed alternatives that
13 would avoid many of the impacts associated with its increase in enrollment, but it failed to do
14 so. As a result, the SEIR’s analysis of alternatives was incomplete and flawed.

15 q. In approving the Project, Respondents adopted findings and a statement of
16 overriding considerations that are inadequate as a matter of law in that they are not supported by
17 substantial evidence in the record. The findings do not provide the reasoning, or analytic route,
18 from facts to conclusions, as required by law.

19 r. In approving the Project, Respondents also failed to make legally required
20 findings that certain mitigation measures suggested by Petitioner and other commenters were
21 infeasible, even though these measures could have reduced the Project’s admittedly significant
22 impacts on historical resources, land use incompatibility, and other resource areas. For example,
23 the findings did not even mention the Petitioner’s suggestion that housing be built elsewhere on
24 campus in order to reduce the GSPP development’s land use incompatibility.

25 s. Respondents’ override findings were inadequate and unsupported by
26 substantial evidence. The findings assert that the benefits of the Project outweigh its unavoidable
27 adverse environmental impacts, but this ignores the impacts of the increased enrollment on the
28 City and surrounding area.

1 overall growth in the entire Bay Area. This conclusion ignores the evidence of impacts on the
2 City of Berkeley, where most of the effects will be felt. In fact, the increase in enrollment results
3 in displacement of City residents, exacerbates the housing crisis in the area, and places a
4 substantial burden on the City to provide public services. These impacts manifest in physical
5 effects to the environment (e.g., construction of new housing, impacts associated with
6 homelessness, need for new police and fire facilities, impacts on existing sewer and water
7 infrastructure) as well as high costs borne by the City. However, the SEIR failed to identify and
8 to analyze these impacts.

9 c. failing to mitigate the impacts of the increased enrollment. Despite the
10 legislative intent expressed in Education Code section 67504(b)(1) that the University
11 sufficiently mitigate the significant off-campus impacts related to campus growth and
12 development, the University failed entirely to consider or adopt mitigation measures to reduce
13 the magnitude of the impacts of its increase in enrollment. The City quantified the cost of
14 accommodating the University's increasing student body, which has risen from \$11 million in
15 2003 to more than \$21 million in 2018. Nevertheless, in the SEIR the University claims it is not
16 obligated to compensate the City, thereby violating the Education Code.

17 **THIRD CAUSE OF ACTION**

18 **Declaratory Relief**

19 **Code of Civil Procedure § 1060**

20 70. Petitioner hereby realleges and incorporates by reference the preceding paragraphs
21 in their entirety.

22 71. An actual controversy and dispute exists between Petitioner and Respondents
23 regarding the nature of the Project at issue, the obligation of Respondents to mitigate the impacts
24 of the increase in enrollment, and the adequacy of the environmental review performed for the
25 Project.

26 72. Petitioner seeks a judicial declaration that the decision to increase enrollment
27 beyond the figure projected in the 2020 LRDP was a project under CEQA, and that Respondents
28 are obligated to assess and mitigate the environmental impacts of that decision under CEQA and

1 Education Code section 67504. Petitioner also seeks a judicial declaration of the respective
2 rights, responsibilities, and duties of Respondents and Petitioner with respect to mitigating the
3 impacts of the significant increase in enrollment.

4 **PRAYER FOR RELIEF**

5 Wherefore, Petitioner prays for judgment as follows:

6 1. Alternative and peremptory writs of mandate directing the Respondents to vacate
7 and set aside their certification of the SEIR and Project approval;

8 2. Alternative and peremptory writs of mandate directing the Respondents to comply
9 with the requirements of CEQA and the Education Code, and to take any other action as
10 required by Public Resources Code Section 21168.9;

11 3. For a temporary stay, temporary restraining order, and preliminary and permanent
12 injunctions restraining the Respondents and their agents, servants, and employees, and all others
13 acting in concert with the Respondents on their behalf, from taking any action to implement the
14 Project, pending full compliance with the requirements of CEQA, the CEQA Guidelines, and
15 State law;

16 4. For a judicial determination and declaration from this Court that Respondents'
17 actions in approving the Project violated CEQA, the CEQA Guidelines, and the Education
18 Code, as set forth above;

19 5. For this Court's declaration that the decision to increase enrollment beyond that
20 projected in an LRDP is a project requiring environmental review, and of the respective rights,
21 responsibilities, and duties of Petitioner and Respondents with respect to mitigating the impacts
22 of that decision;

23 6. For costs of the suit;

24 7. An order awarding Petitioner its attorneys' fees under Code of Civil Procedure
25 section 1021.5, Government Code section 800, and other applicable authority; and

26 ///

27 ///

28 ///

1 8. For such other and further relief as the Court deems just and proper.

2
3 DATED: June 14, 2019

SHUTE, MIHALY & WEINBERGER LLP

4
5 By: 

6 WINTER KING
7 ROBERT S. PERLMUTTER
8 LAUREN M. TARPEY

9 Attorneys for Petitioner and Plaintiff
10 City of Berkeley

11 1127061.7

EXHIBIT

A

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ROBERT "PERL" PERLMUTTER
Attorney
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June 12, 2019

Via E-Mail and U.S. Mail

Regents of the University of California
Office of the Secretary and Chief of Staff
to the Regents
1111 Franklin St., 12th Floor
Oakland, CA 94607
regentsoffice@ucop.edu

President Janet Napolitano
Office of the President
University of California
1111 Franklin St., 12th Floor
Oakland, CA 94607
president@ucop.edu

Chancellor Carol T. Christ
University of California, Berkeley
c/o Yvonne Edwards, Executive Assistant
to the Chancellor
Office of the Chancellor
200 California Hall #1500
Berkeley, CA 94720-1500
chancellor@berkeley.edu

Re: Notice of Commencement of CEQA and Education Code Litigation
Challenging Approval of the Upper Hearst Development for the
Goldman School of Public Policy and Minor Amendment to the
2020 Long Range Development Plan

Dear Regents of the University of California, President Napolitano, and Chancellor Christ, University of California, Berkeley:

This letter is to notify you that the City of Berkeley ("Petitioner") will file suit against the Regents of the University of California ("Regents"), President Napolitano, the University of California, Berkeley, and Chancellor Christ for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., the CEQA Guidelines, California Code of Regulations section 15000 et seq., and the California Education Code section 67504 in connection with the administrative process that culminated in the Regents' May 16, 2019 approval of the Upper Hearst Development for the Goldman School of Public Policy and

Office of the Secretary and Chief of Staff to the Regents
Janet Napolitano, Office of the President
Chancellor Carol Christ
June 12, 2019
Page 2

Minor Amendment to the 2020 Long Range Development Plan Project (“Project”) and certification of a supplemental environmental impact report for the Project. This notice is given pursuant to Public Resources Code section 21167.5.

Please note that, pursuant to Public Resources Code section 21167.6, the record of proceedings for the Respondents’ actions includes, among other items, all “internal agency communications, including staff notes and memoranda related to the project or to compliance with [CEQA].” Because e-mails and other internal communications related to the Project are part of the administrative record for the lawsuit to be filed by the City, Respondents may not destroy or delete such documents prior to the preparation of the record in this case.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Robert "Perl" Perlmutter

1129042.1

1 **PROOF OF SERVICE**

2 At the time of service, I was over 18 years of age and **not a party to this action**. I
3 am employed in the County of San Francisco, State of California. My business address is
396 Hayes Street, San Francisco, CA 94102.

4 On June 12, 2019, I served true copies of the following document(s) described as:

5 **NOTICE OF COMMENCEMENT OF CEQA SUIT**

6 on the parties in this action as follows:

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 Regents of the University of California 8 Office of the Secretary and Chief of Staff 9 to the Regents 10 1111 Franklin St., 12th Floor 11 Oakland, CA 94607 12 regentsoffice@ucop.edu | 13 President Janet Napolitano 14 Office of the President 15 University of California 16 1111 Franklin St., 12th Floor 17 Oakland, CA 94607 18 president@ucop.edu |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

11 Chancellor Carol T. Christ
12 University of California, Berkeley
13 c/o Yvonne Edwards, Executive Assistant
14 to the Chancellor
15 Office of the Chancellor
16 200 California Hall #1500
17 Berkeley, CA 94720-1500
18 chancellor@berkelev.edu

19 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed
20 to the persons at the addresses listed in the Service List and placed the envelope for
21 collection and mailing, following our ordinary business practices. I am readily familiar
22 with Shute, Mihaly & Weinberger LLP's practice for collecting and processing
23 correspondence for mailing. On the same day that the correspondence is placed for
24 collection and mailing, it is deposited in the ordinary course of business with the United
25 States Postal Service, in a sealed envelope with postage fully prepaid.

26 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
27 document(s) to be sent from e-mail address jmiao@smwlaw.com to the persons at the e-
28 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.

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

Executed on June 12, 2019, at San Francisco, California.

26 
27 _____
28 Jennifer K. Miao

EXHIBIT

B

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ROBERT "PERL" PERLMUTTER
Attorney
Perlmutter@smwlaw.com

June 14, 2019

Via U.S. Mail

Xavier Becerra
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Re: Notice of Filing of CEQA Litigation:
City of Berkeley v. Regents of the University of California, et al.

Dear Attorney General Becerra:

Enclosed please find a copy of the Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the above-captioned action. The petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope.

Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Robert "Perl" Perlmutter

Encl.: Copy of Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief