

Exempt From Filing Fee
Government Code § 6103

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

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12 DAVID ABRAMS,
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14 Petitioner,
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16 vs.
17 REGENTS OF THE UNIVERSITY OF
CALIFORNIA,
18
19 Respondent.

CASE NO. 19STCP03648

REGENTS OF THE UNIVERSITY OF CALIFORNIA'S ANSWER TO PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF AND VERIFIED PETITION FOR WRIT OF MANDATE

Action Filed: 08/22/19
Trial Date: None Set

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19 Pursuant to Sections 431.10, *et seq.*, of the California Code of Civil Procedure, Respondent
20 REGENTS OF THE UNIVERSITY OF CALIFORNIA ("Respondent") answers the Petition of
21 Petitioner DAVID ABRAMS ("Petitioner"). Respondent answers the Petition as follows and
22 denies that Petitioner is entitled to any relief whatsoever.

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I. RESPONSES TO ALLEGATIONS¹

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- 2 1. Respondent denies the allegations in the section preceding "Jurisdiction & Venue"
- 3 and paragraph 1 in the Petition. Respondent admits that the above-captioned court has
- 4 jurisdiction.
- 5 2. Respondent admits the allegations contained in Paragraph 2 of the Petition.
- 6 3. Respondent is without sufficient information to admit or deny the allegations
- 7 contained in Paragraph 3 of the Petition, and on this basis denies said allegations.
- 8 4. Respondent admits the allegations contained in Paragraph 4 of the Petition.
- 9 5. Respondent is without sufficient information to admit or deny the allegations
- 10 contained in Paragraph 5 (section I. paragraph 1)² of the Petition, and on this basis denies said
- 11 allegations.
- 12 6. Respondent is without sufficient information to admit or deny the allegations
- 13 contained in Paragraph 6 (section I. paragraph 2) of the Petition, and on this basis denies said
- 14 allegations.
- 15 7. Respondent is without sufficient information to admit or deny the allegations
- 16 contained in Paragraph 7 (section I. paragraph 3) of the Petition, and on this basis denies said
- 17 allegations.
- 18 8. Respondent admits the allegations contained in Paragraph 8 (section I. paragraph 4)
- 19 of the Petition.
- 20 9. Answering Paragraph 9 (section I. paragraph 5), Respondent neither admits nor
- 21 denies the allegation in question on the grounds that they purport to characterize a document that
- 22 speaks for itself.
- 23 10. Respondent admits the allegations contained in Paragraph 10 (section I. paragraph
- 24 6) of the Petition.
- 25

26 ¹ To the extent that Respondent's contemporaneously filed Motion to Strike results in any portion of the Petition being
27 stricken, Respondent requests that any answer to stricken material be disregarded.

28 ² The Petition resets numbering paragraphs beginning with the "Factual Allegations" section. Answer will continue to
reference the actual paragraph number as opposed to the number in the Petition in order to avoid confusion. E.g. this
paragraph is responding to "Factual Allegations" paragraph 1.

1 11. Respondent is without sufficient information to admit or deny the allegations
2 contained in Paragraph 11 (section I. paragraph 7) of the Petition, and on this basis denies said
3 allegations.

4 12. Respondent is without sufficient information to admit or deny the allegations
5 contained in Paragraph 12 (section I. paragraph 8) of the Petition, and on this basis denies said
6 allegations.

7 13. Respondent denies the allegations in Paragraph 13 (section I. paragraph 9) of the
8 Petition.

9 14. Respondent admits the allegations contained in Paragraph 14 (section II. paragraph
10 10) of the Petition.

11 15. Respondent asserts that the Exhibit speaks for itself and denies any other
12 allegations in Paragraph 15 (section II. paragraph 11) of the Petition.

13 16. Respondent is without sufficient information to admit or deny the allegations
14 contained in Paragraph 16 (section II. paragraph 12) of the Petition, and on this basis denies said
15 allegations.

16 17. Respondent denies the allegations of delay in Paragraph 17 (section II. paragraph
17 13) and asserts that the Exhibit speaks for itself.

18 18. Respondent is without sufficient information to admit or deny the allegations
19 contained in Paragraph 18 (section II. paragraph 14) of the Petition, and on this basis denies said
20 allegations.

21 19. Respondent is without sufficient information to admit or deny the allegations
22 contained in Paragraph 19 (section II. paragraph 15) of the Petition, and on this basis denies said
23 allegations.

24 20. Respondent denies the allegations in Paragraph 20 (section II. paragraph 16) of the
25 Petition.

26 21. Respondent denies the allegations in Paragraph 21 (section II. paragraph 16) of the
27 Petition.

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1 constitutional. (See *Harlow v. Fitzgerald*, 457 U.S. 800, 812 (1982); *Smiddy v. Varney*, 665 F.2d
2 261, 266 (9th. Cir. 1981).

3 **SECOND AFFIRMATIVE DEFENSE**

4 **(Compliance with the Law)**

5 30. As a separate and second affirmative defense to the Petition and each purported
6 cause of action contained therein, Respondent alleges that the actions taken by Respondent were in
7 full compliance with the law.

8 **THIRD AFFIRMATIVE DEFENSE**

9 **(Respondent Acted in Accordance with Constitution)**

10 31. As a separate and third affirmative defense to the Petition and each purported cause
11 of action contained therein, Respondent alleges that Respondent acted at all times within the scope
12 of discretion, in good faith, with due care, and pursuant to applicable rules, regulations, and
13 practices reasonably and in good faith believed to be in accordance with the Constitution and laws
14 of the United States and/or the State of California and Respondent is therefore not liable.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 **(Failure to Exhaust Administrative Remedies)**

17 32. As a separate and fourth affirmative defense to the Petition and each purported
18 cause of action contained therein, Respondent alleges that Petitioner's claims are barred because
19 Petitioner failed to exhaust his administrative remedies.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 **(Good Faith – Reasonable Belief that Actions were Necessary)**

22 33. As a separate and fifth affirmative defense to the Petition and each purported cause
23 of action contained therein, Respondent alleges that Respondent is immune from liability pursuant
24 to the Federal Civil Rights Act where it acts in good faith and entertains an honest, reasonable
25 belief that its actions were necessary. *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727 (1982).

26 **SIXTH AFFIRMATIVE DEFENSE**

27 **(Justification/Excuse)**

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1 34. As a separate and sixth affirmative defense to the Petition and each purported cause
2 of action contained therein, Respondent alleges that by virtue of the acts of the Petitioner, and/or
3 the persons and/or entities acting on his behalf, Petitioner is barred from prosecuting the purported
4 causes of action set forth in the Petition because the acts and/or omissions alleged in the Petition
5 were justified and/or excused.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 **(Ongoing Investigation)**

8 35. As a separate and seventh affirmative defense to the Petition and each purported
9 cause of action contained therein, Respondent alleges that it has not yet completed a thorough
10 investigation or study or completed the discovery of all the facts and circumstances of the subject
11 matter of the Petition and, accordingly, reserves the right to amend, modify, revise or supplement
12 its answer and to plead such other defenses and take such other further actions as it may deem
13 proper and necessary in its defense upon completion of said investigation and/or study.

14 WHEREFORE, Respondent prays for relief as follows:

- 15 1. That the Petition be dismissed, with prejudice and in its entirety;
16 2. That Petitioner take nothing by reason of this Petition and that judgment be entered
17 against Petitioner and in favor of Respondent;
18 3. That Respondent be awarded its attorneys fees and costs incurred in defending this
19 action;
20 4. That Respondent be granted such other and further relief as the Court may deem
21 just and proper.

22 DATED: October 10, 2019

FAGEN FRIEDMAN & FULFROST, LLP

23
24 By: 

25 Jen Michael-Stevens
26 L. Carlos Villegas
Attorneys for Regents of the University of California

27 801-108/4572579.1

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 not a party to this action. I am
4 employed in the County of Alameda, State of California. My business address is 70 Washington
Street, Suite 205, Oakland, CA 94607.

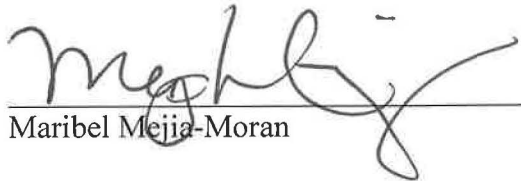
5 On October 10, 2019, I served true copies of the following document(s) described as
6 **REGENTS OF THE UNIVERSITY OF CALIFORNIA'S ANSWER TO PETITION FOR
DECLARATORY AND INJUNCTIVE RELIEF AND VERIFIED PETITION FOR WRIT
7 OF MANDATE** on the interested parties in this action as follows:

8 David Abrams
9 305 Broadway, Suite 601
10 New York, NY 10007

11 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
12 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 Fagen Friedman &
14 Fulfroft, LLP's practice for collecting and processing correspondence for mailing. On the same
15 day that correspondence is placed for collection and mailing, it is deposited in the ordinary course
16 of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
17 I am a resident or employed in the county where the mailing occurred. The envelope was placed
18 in the mail at Oakland, California.

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

21 Executed on October 10, 2019, at Oakland, California.

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Maribel Mejia-Moran

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