

**Exempt From Filing Fee**  
Government Code § 6103

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8

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

11  
12 DAVID ABRAMS,  
13 Petitioner,  
14 vs.  
15 REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,  
16 Respondent.

CASE NO. 19STCP03648

**NOTICE OF MOTION AND MOTION OF  
REGENTS OF THE UNIVERSITY OF  
CALIFORNIA TO STRIKE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

*Filed concurrently with Declaration;  
[Proposed] Order*

Judge: Hon. James C. Chalfant  
Dept.: 85  
Date: 1/7/20  
Time: 1:30 p.m.

Action Filed: 8/22/19  
Trial Date: None Set

21  
22 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

23 **PLEASE TAKE NOTICE THAT** on January 7, at 9:00 a.m., or as soon thereafter as  
24 counsel may be heard, in Department 85 of the above-captioned Court, located at Stanley Mosk  
25 Courthouse, 111 N. Hill St., Los Angeles, CA 90012, REGENTS OF THE UNIVERSITY OF  
26 CALIFORNIA ("UC," "UCLA," or "Respondent") will and hereby does move this Court for an  
27 order that the following portion of Petitioner's Petition for Writ be stricken, as such request for  
28 relief from Respondent constitutes an improper request for relief:

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- 1           **1. Page 6, Prayer for Relief line 12:**            "...reasonable attorneys' fees..."
- 2            PLEASE TAKE NOTICE THAT, at the same date, time, and place, Respondent
- 3 further will and hereby moves the Court for an order that the following portions of
- 4 Petitioner's Petition for Writ be stricken, as such allegations constitute improper or irrelevant
- 5 matters under the Petitioner's Cause of Action and Prayer for Relief:
- 6           **2. Page 1, lines 25 - 26:**            "...which has hosted, supported, and otherwise
- 7 associated with persons who are known terrorists."
- 8           **3. Page 2, lines 8 - 14:**            "Although Plaintiff does not work for Canary Mission,
- 9 it is worth nothing that to Plaintiff's knowledge, there is one and only one incident
- 10 involving a person who suffered adverse employment consequences of such a
- 11 publication: A physician named Dr. Lara Kollab was found to have announced on
- 12 Twitter that she intended to give the wrong medication to Jewish patients. As a result
- 13 of Canary Mission's publication of this tweet, Dr. Kollab lost her job. Thus it is
- 14 individuals like Dr. Kollab which the University apparently wishes to protect."
- 15           **4. Page 2, ¶3:27 - 28:**            "For example, Abrams initiated a whistleblower
- 16 complaint in 2015 against a Scandinavian NGO which resulted in USAID reaching
- 17 a \$2 million counter-terrorism settlement against the organization in question."
- 18           **5. Page 3, ¶2:7 - 9:** "SJP is known to have supported, hosted, or otherwise
- 19 associated with terrorists in the last few years. For example, in 2012, SJP hosted an
- 20 individual named Khader Adnan by video feed. Mr. Adnan is a leader of the
- 21 Palestinian Islamic Jihad, a U.S.-designated terrorist organization."
- 22           **6. Page 3, ¶3:10 - 1:**            "Similarly, in 2015 SJP hosted Rasmae Odeh who is
- 23 associated with the Popular Front for the Liberation of Palestine, another U.S.-
- 24 designated terrorist organization."
- 25           **7. Page 3, ¶4:12 - 14:**            "Upon information and belief the University has
- 26 received grants from the USAID program and thus regularly must certify to the
- 27 Department of State that it does not provide material support (broadly defined) to
- 28 anyone associated with terrorism."

1           **8. Page 3, ¶7:22 - 24:**           "Although the University deserves credit for making a  
2 minimal effort to comply with its obligation, the certifications at issue make clear  
3 that in addition to those checks, the University must consider 'all public information  
4 that is reasonably available.'"

5           **9. Page 3, ¶8:25 - 28:**           "This additional requirement is important. For  
6 example, Mr. Khader Adnan – who is apparently a leader of Palestinian Islamic Jihad  
7 – is not on the Treasury Department list but his affiliation can be discovered through  
8 a simple internet search. If the University hosted Mr. Khader Adnan as a speaker in  
9 2018, then it would potentially be a violation of its legal obligations."

10           **10. Page 4, ¶9:2 - 4:** "Based on history, there is a decent likelihood that SJP hosted  
11 actual terrorists on University property and the University would have allowed it to  
12 happen because it failed to check reasonably available public information."

13           **11. Page 4, ¶14:18 - 20:**           "In reality, it would appear that not a single person has  
14 lost their job or otherwise been endangered as a result of being listed on the Canary  
15 Mission web site, with one exception as follows:"

16           **12. Page 4, ¶15:21 - 26:**           "The exception to this is a medical doctor named Dr.  
17 Lara Kollab. Dr. Kollab announced on Twitter that she intended to purposefully give  
18 the wrong medicine to her Jewish patients, Canary Mission discovered the Tweet and  
19 publicized it; shortly thereafter Dr. Kollab was dismissed from employment. (See  
20 Exhibit 5). This, this is the type of person that the University is attempting to protect  
21 from so-called 'harassment.' While conveniently preventing the public from  
22 investigating connections between the University and terrorism."

23           **13. Exhibit 5:** The Exhibit in its entirety.

24           This motion is brought pursuant to Code of Civil Procedure sections 435, 436 and 437 and  
25 will be based on this notice, the memorandum of points and authorities, the Declaration of Jennifer  
26 Michael-Stevens pursuant to Code of Civil Procedure section 435.5, and on the pleadings, records  
27 and files in this action, and on oral and documentary evidence that may be presented at hearing.  
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DATED: October 10, 2019

FAGEN FRIEDMAN & FULFROST, LLP

By: 

Jen Michael-Stevens  
Attorneys for Regents of the University of California

1  
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Petitioner has brought the instant Petition with a single cause of action alleging that the  
5 Regents of the University of California (“The Regents”) violated the California Constitution and  
6 the California Public Records Act by failing to identify 65 individuals who were involved in  
7 organizing an event on the Los Angeles campus. The event in question was organized by Students  
8 for Justice in Palestine, and concerned a meeting of the national organization to teach and build  
9 solidarity among its members. After the event occurred, Petitioner requested documents sufficient  
10 to identify the event’s organizers. The Regents determined that the documents in question were  
11 properly exempt from disclosure under Gov. Code section 6255, which permits public institutions  
12 to withhold documents when the public interest in withholding documents outweighs the interest  
13 in releasing them. The Regents explained that its decision was based upon the well-founded  
14 concern that release of the names might lead to harassment, threats, and blacklisting. (*See Exhibit*  
15 *4 to Petition*). Dissatisfied with this explanation, Petitioner filed this action.

16 Resolution of this matter will turn on whether The Regents’ decision that the records were  
17 exempt was proper under the Government Code. But rather than focus on that issue, the Petition  
18 includes a raft of allegations that go far beyond that issue and raise issues that are irrelevant to the  
19 matter. Petitioner also included an improper request for attorneys’ fees even though he is  
20 representing himself in this action. The Regents move to strike those allegations to avoid  
21 unnecessary discovery and briefing and to make clear the limited relief Petitioner might recover  
22 should he prevail.

23 **II. THE COURT SHOULD STRIKE PETITIONER'S REQUEST FOR ATTORNEYS**

24 **FEES**

25 Code of Civil Procedure section 435, subdivision (b)(1), provides “Any party, within the  
26 time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or  
27 any part thereof...” Upon a motion made pursuant to Code of Civil Procedure section 435, the court  
28 may “[s]trike out any irrelevant, false, or improper matter inserted in any pleading.” (Code Civ.

1 Proc., § 436, subd. (a).) Improper matters include improper demands for relief or damage claims.  
2 (*Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509, 517.)

3 “The grounds for a motion to strike shall appear on the face of the challenged pleading or  
4 from any matter of which the court is required to take judicial notice.” (Code Civ. Proc., § 437,  
5 subd. (a).) Where there is a substantive defect affecting only a portion of a claim, the proper  
6 challenge is by motion to strike. (*PH II, Inc. v. Super. Ct. (Ibershof)* (1995) 33 Cal.App.4th 1680,  
7 1682-1683.)

8 The rule that self-represented litigants cannot recover attorney fees is clearly established in  
9 California. In *Trope v. Katz* (1995) 11 Cal. 4th 274, the California Supreme Court discussed  
10 whether a self-represented attorney could recover attorney fees under Civil Code section 1717, the  
11 provision governing contractual attorney fees. *Trope* involved a law firm that represented itself  
12 and prevailed in a breach-of-contract lawsuit against its former client. (*Id.* at 278.) The law firm  
13 moved for attorney fees, citing a provision in the retainer agreement. (*Id.* at 277–278.) The Court  
14 affirmed the denial of the attorney fees motion. (*Id.*)

15 The Court held that under Civil Code section 1717, subdivision (a)7 an attorney  
16 representing himself cannot recover “reasonable attorney's fees”: “[T]he usual and ordinary  
17 meaning of the words ‘attorney's fees,’ both in legal and in general usage, is the consideration that  
18 a litigant actually pays or becomes liable to pay in exchange for legal representation. An attorney  
19 litigating in propria persona pays no such compensation.” (*Id.* at 280.)

20 Later, in *Musaelian v. Adams* (2009) 45 Cal.4th 512, the California Supreme Court held  
21 that attorney fees should not be awarded to a self-represented attorney as a sanction under Code of  
22 Civil Procedure section 128.7, which allows for sanctions for frivolous lawsuits and tactics. (*Id.* at  
23 519–520, citing *Trope*, supra, 11 Cal.4th at 285.) The Supreme Court also noted that where it had  
24 upheld attorney fees awards, “attorney fees were ‘incurred’ in the sense that there was an attorney-  
25 client relationship, the attorney performed services on behalf of the client, and the attorney's right  
26 to fees grew out of the attorney-client relationship.” (*Musaelian v. Adams*, supra, 45 Cal.4th at  
27 520.) The Supreme Court indicated that a party “as in *Trope* and here, litigating his or her own  
28 case” could not recover fees. (*Id.*)

1 The Court of Appeal has applied the *Trope* holding to many fee-shifting statutes. (See, e.g.,  
2 *Carpenter & Zuckerman, LLP v. Cohen* (2011) 195 Cal.App.4th 373, 385 [denying attorney fees  
3 under Code Civ. Proc., § 425.16, subd. (c) to law firm represented by associate attorney because  
4 associate was firm employee]; *Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th  
5 510, 524 [under section 425.16, “the commonly understood definition of attorney fees applies ...  
6 and a prevailing Respondent is entitled to recover attorney fees if represented by counsel.”];  
7 *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1179 [attorney fees as monetary discovery  
8 sanction under former Code Civ. Proc., § 2023, subd. (b) not awarded to self-represented  
9 attorney].) *Trope* applies to section 6259, subdivision (d), just as in these cases, and it does not  
10 permit plaintiff to recover attorney fees here. The Petition clearly states that Petitioner filed the  
11 suit "IN PRO PER." (Petition, p. 1). Thus, this Court should strike "reasonable attorneys fees"  
12 from the Petition's Prayer for Relief.

13 **III. THE COURT SHOULD STRIKE THE IRRELEVANT PORTIONS OF THE**  
14 **PETITION**

15 As stated above, Code of Civil Procedure section 435, subdivision (b)(1), provides “Any  
16 party, within the time allowed to respond to a pleading may serve and file a notice of motion to  
17 strike the whole or any part thereof...” Upon a motion made pursuant to Code of Civil Procedure  
18 section 435, the court may “[s]trike out any irrelevant, false, or improper matter inserted in any  
19 pleading.” (Code Civ. Proc., § 436, subd. (a).) Although it is improper under the California  
20 statute enabling a court to strike out any irrelevant, false, or improper matter inserted in any  
21 pleading for a court to strike a whole cause of action of a pleading or to eliminate a matter which  
22 is essential to a cause of action, it may strike anything else it determines to be irrelevant. (See  
23 *Los Altos El Granada Investors v. City of Capitola* (9th Cir. 2009) 583 F.3d 67.) “Irrelevant  
24 matters” include “[a]n allegation that is not essential to the statement of a claim or defense,” “[a]n  
25 allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense,” or  
26 “[a] demand for judgment requesting relief not supported by the allegations of the  
27 complaint.” (C.C.P. § 431.10, subds. (b)-(c).)

28 Here, Petitioner brought an action under the California Public Records Act, which provides

1 a writ procedure for members of the public to challenge a public agency's decision not to release  
2 documents pursuant to a public records request. Throughout his Petition, he makes claims  
3 regarding matters that are not properly before this Court for adjudication and should be stricken to  
4 prevent wasting the parties' resources on irrelevant discovery, investigation, and briefing about  
5 matters related to terrorism, individuals not known to the University, and the large and far-  
6 reaching USAID program. This Court should strike the irrelevant sections in order to keep the  
7 parties focused on the narrow issues related to the nondisclosure of documents in this specific  
8 case. This case is not about whether UCLA supported terrorism or about the exploits of random  
9 individuals engaged in the Palestinian Rights movement. While there will surely be some  
10 discussion in this case of how blacklisting impacts those engaged in the Palestinian rights  
11 movement, the parties should not be litigating issues and about people unrelated to UCLA or the  
12 2018 SJP conference at the core of Petitioner's request for public records. Accordingly, the Court  
13 should strike the following:

14 **2. Page 1, lines 25 - 26: "...which has hosted, supported, and otherwise**  
15 **associated with persons who are known terrorists."**

16 This allegation is irrelevant to whether the section 6255 balancing test applies to the  
17 documents requested by the Petitioner and is an allegation that would require extensive  
18 investigation by the University completely unrelated to the Cause of Action in the Petition  
19 in order to address it.

20 **3. Page 2, lines 8 - 14: "Although Plaintiff does not work for Canary Mission,**  
21 **it is worth nothing that to Plaintiff's knowledge, there is one and only one**  
22 **incident involving a person who suffered adverse employment consequences of**  
23 **such a publication: A physician named Dr. Lara Kollab was found to have**  
24 **announced on Twitter that she intended to give the wrong medication to Jewish**  
25 **patients. As a result of Canary Mission's publication of this tweet, Dr. Kollab**  
26 **lost her job. Thus it is individuals like Dr. Kollab which the University**  
27 **apparently wishes to protect."**

28 Petitioner provides no evidence or allegations that Dr. Kollab is in any way



1 associated with UCLA or this request for production of documents. Instead, the above  
2 allegations are an irrelevant distraction from Petitioner's Cause of Action and UCLA cannot  
3 be expected to investigate these allegations as they do not relate to the Cause of Action.

4 **4. Page 2, ¶3:27 - 28: "For example, Abrams initiated a whistleblower**  
5 **complaint in 2015 against a Scandinavian NGO which resulted in USAID**  
6 **reaching a \$2 million counter-terrorism settlement against the organization in**  
7 **question."**

8 Courts in CPRA cases have long held that the intent of the Petitioner is not germane  
9 to the Court's analysis and Petitioner's alleged prior acts are not relevant to his single Cause  
10 of Action in this case and should be stricken. (See e.g. *State Bd. of Equalization v. Superior*  
11 *Court* (1992) 10 Cal.App.4th 1177, 1191)

12 **5. Page 3, ¶2:7 - 9: "SJP is known to have supported, hosted, or otherwise**  
13 **associated with terrorists in the last few years. For example, in 2012, SJP hosted**  
14 **an individual named Khader Adnan by video feed. Mr. Adnan is a leader of the**  
15 **Palestinian Islamic Jihad, a U.S.-designated terrorist organization."**

16 As discussed above, the SJP is not a party in this action and allegations regarding the  
17 organization's activities approximately seven years ago are not relevant to this lawsuit.  
18 Instead, leaving such an allegation unstricken places a burden on the UC to potentially  
19 investigate and conduct discovery on issues that are not relevant to the section 6255  
20 balancing test at the heart of the controversy in the Petition.

21 **6. Page 3, ¶3:10 - 1: "Similarly, in 2015 SJP hosted Rasmia Odeh who is**  
22 **associated with the Popular Front for the Liberation of Palestine, another U.S.-**  
23 **designated terrorist organization."**

24 For the reasons discussed above, the Court should strike this section as irrelevant and  
25 introducing improper issues into a Writ under the CPRA.

26 **7. Page 3, ¶4:12 - 14: "Upon information and belief the University has received**  
27 **grants from the USAID program and thus regularly must certify to the**  
28 **Department of State that it does not provide material support (broadly defined)**

1           **to anyone associated with terrorism."**

2           This case is not about whether or not UCLA properly complied with USAID, and is  
3 instead only about its right to withhold documents under section 6255. The Court should  
4 strike this section to prevent investigation and discovery on this issue so as to avoid  
5 broadening the scope of Petitioner's single Cause of Action.

6           **8. Page 3, ¶7:22 - 24: "Although the University deserves credit for making a**  
7 **minimal effort to comply with its obligation, the certifications at issue make**  
8 **clear that in addition to those checks, the University must consider 'all public**  
9 **information that is reasonably available.'"**

10           As discussed above, this lawsuit does not concern USAID or UCLA's participation  
11 in the program.

12           **9. Page 3, ¶8:25 - 28: "This additional requirement is important. For example,**  
13 **Mr. Khader Adnan – who is apparently a leader of Palestinian Islamic Jihad –**  
14 **is not on the Treasury Department list but his affiliation can be discovered**  
15 **through a simple internet search. If the University hosted Mr. Khader Adnan**  
16 **as a speaker in 2018, then it would potentially be a violation of its legal**  
17 **obligations."**

18           This allegation should be stricken as it is not relevant to the Petitioner's request for  
19 documents and instead is an attempt to force UCLA to litigate an issue beyond the scope of  
20 the Petition's Cause of Action.

21           **10. Page 4, ¶9:2 - 4: "Based on history, there is a decent likelihood that SJP**  
22 **hosted actual terrorists on University property and the University would have**  
23 **allowed it to happen because it failed to check reasonably available public**  
24 **information."**

25           As argued above, this allegation is not the proper subject of a Petitioner under the  
26 CPRA and its inclusion could force the Respondent to litigate an issue about which it has no  
27 knowledge beyond the fact that it complied with USAID and the Treasury Department. The  
28 fact that the only way to respond to that allegation is to assert actions by the Respondent

1 outside the scope of the CPRA statutes should persuade the Court to strike this material.

2 **11. Page 4, ¶14:18 - 20: "In reality, it would appear that not a single person has**  
3 **lost their job or otherwise been endangered as a result of being listed on the**  
4 **Canary Mission web site, with one exception as follows:"**

5 This allegation is beyond the scope of the Petition and should be stricken as argued  
6 above.

7 **12. Page 4, ¶15:21 - 26: "The exception to this is a medical doctor named Dr.**  
8 **Lara Kollab. Dr. Kollab announced on Twitter that she intended to**  
9 **purposefully give the wrong medicine to her Jewish patients, Canary Mission**  
10 **discovered the Tweet and publicized it; shortly thereafter Dr. Kollab was**  
11 **dismissed from employment. (See Exhibit 5). This, this is the type of person**  
12 **that the University is attempting to protect from so-called 'harassment.' While**  
13 **conveniently preventing the public from investigating connections between the**  
14 **University and terrorism."**

15 As discussed above, this individual has no relevance to the matter before the Court  
16 and the allegations regarding her should be stricken as a result.

17 **13. Exhibit 5: The Exhibit in its entirety.**

18 This Exhibit is related to the above material and for the same reasons is not relevant to the  
19 Cause of Action in the Petition.

20 **IV. CONCLUSION**

21 For the reasons described above, the Court should strike the delineated material from the  
22 Petition so that the parties can avoid litigating allegations that are disallowed by law or otherwise  
23 irrelevant.

24 DATED: October 10, 2019

FAGEN FRIEDMAN & FULFROST, LLP

25  
26 By: 

27 Jen Michael-Stevens  
28 Attorneys for Regents of the University of California



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University of California  
9

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

13 DAVID ABRAMS,

14 Petitioner,

15 vs.

16 REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,

17 Respondent.  
18

CASE NO. 19STCP03648

**DECLARATION OF JEN MICHAEL-  
STEVENS IN SUPPORT OF  
RESPONDENT'S NOTICE OF MOTION  
AND MOTION TO STRIKE**

*Filed Concurrently with Notice of Motion to  
strike and Motion to Strike portions of  
Petition; Memorandum of Points and  
Authorities; [Proposed] Order*

Judge: Hon. James C. Chalfant  
Dept.: 85  
Date: 1/7/20  
Time: 1:30 p.m.

Action Filed: 8/22/19  
Trial Date: None Set

23 **DECLARATION OF JEN MICHAEL-STEVENS**

24 I, Jen Michael-Stevens, declare as follows:

25 1. I am an attorney duly licensed to practice before this Court. I am an associate with  
26 Fagen Friedman & Fulfrost, LLP, attorneys of record for Respondent Regents of the University of  
27 California and University of California, Los Angeles. If called as a witness, I could and would

28 ///

1 competently testify to all facts within my personal knowledge except where stated upon  
2 information and belief.

3 2. On September 20, 2019, at least five days before the date a responsive pleading  
4 was due to be filed, I met and conferred with David Abrams, the party who filed the Petition in the  
5 above-captioned case by phone. Later that day, I provided Mr. Abrams with a redline draft of  
6 what we proposed he strike from his Petition. We did not reach an agreement resolving matters  
7 raised by the Motion to Strike.

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

10 Executed on this 10<sup>th</sup> day of October, 2019, Oakland, California.

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13 \_\_\_\_\_  
14 Jen Michael-Stevens

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