

1 FAGEN FRIEDMAN & FULFROST, LLP
 Roy A. Combs, SBN 123507
 2 rcombs@f3law.com
 L. Carlos Villegas, SBN 242251
 3 cvillegas@f3law.com
 Jen Michael-Stevens, SBN 286646
 4 jmichael-stevens@f3law.com
 6300 Wilshire Boulevard, Suite 1700
 5 Los Angeles, California 90048
 Phone: 323-330-6300
 6 Fax: 323-330-6311

7 Attorneys for REGENTS OF THE UNIVERSITY
 OF CALIFORNIA

8
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 DAVID ABRAMS,

12 Plaintiff,

13 vs.

14 REGENTS OF THE UNIVERSITY OF
 15 CALIFORNIA,

16 Defendant.

CASE NO. 19STCP03648

**REPLY TO PETITIONER'S
 OPPOSITION TO MOTION TO STRIKE**

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

Fagen Friedman & Fulfroft, LLP
 6300 Wilshire Boulevard, Suite 1700
 Los Angeles, California 90048
 Main 323-330-6300 • Fax 323-330-6311

17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

1 **The Regents of the University of California's Reply to Petitioner's Opposition to Motion to**
2 **Strike**

3 The Regents of the University of California ("UCLA"), hereby submits this Reply to
4 Petitioner David Abram's Opposition to UCLA's Motion to Strike portions of the Petition.

5 **I. INTRODUCTION**

6
7 In its Motion, UCLA demonstrated that the Court should strike Petitioner's claim for
8 attorney's fees because, as a pro se litigant, Petitioner is not entitled to recover attorney's fees.
9 UCLA also showed that the Court should strike the allegations in the Petition that relate to
10 Petitioner's past conduct, specific allegations about an unrelated party, allegations that relate to the
11 USAID program generally, and broad assertions about the student group in question because the
12 Public Records Act provides for a narrow cause of action based solely on whether the
13 Respondent's withholding of documents was valid.

14 Petitioner's Opposition fails to rebut either of those showings. Plaintiff cannot avoid the
15 striking of his claim for attorney's fees merely by claiming that he may, at some unspecified time
16 in the future, retain counsel who might then be entitled to fees. The Motion is properly brought
17 now and, based on the undisputed fact that Petitioner is proceeding pro se, he is not entitled to
18 recover attorney's fees. Similarly, Petitioner has not demonstrated that the allegations in his
19 complaint related to his background, Dr. Kollab, UCLA's USAID obligations, and old allegations
20 about the student group in question are material to the resolution of his claim that UCLA
21 improperly determined that the identities of the event presenters¹ are exempt from disclosure
22 under the Public Records Act. The Court should strike these allegations as irrelevant to the single
23 cause of action in the Petition to properly set the bounds for discovery and merits briefing.

24 //

25 //

26
27 ¹ Petitioner accuses UCLA of misrepresenting his position by referring to the subjects of his request as "organizers" rather than
28 "presenters." UCLA's use of "organizer" was not intended to be a mischaracterization, rather UCLA interpreted "organizer" as
synonymous with "presenter" and the relief UCLA seeks is proper no matter how the individuals at issue are described.

1 **II. ARGUMENT**

2
3 A. Petitioner’s request for attorney’s fees is unsupported by the facts pled in the
4 Petition.

5 Petitioner offered two reasons why the Court should deny Respondent’s motion to strike
6 Petitioner’s request for attorney’s fees. Both are without merit.

7 First, Petitioner contends that he may recover attorney fees because he “has already
8 consulted with a California attorney and may expend actual consideration for attorney services in
9 the future....” (Pet.’s Opp., p. 3, 17-18.) This is an insufficient basis to deny the motion for two
10 reasons. As an initial matter, consulting with an attorney does not entitle a pro se litigant to
11 recover fees. Even if it did, this assertion appears only in Petitioner’s Opposition. It is not pled in
12 the Petition. When analyzing a motion to strike, the court may only consider the contents of the
13 pleading at issue. (Code Civ. Proc., § 437, subd. (a).) For both of these reasons, Petitioner’s first
14 argument fails.

15 Second, Petitioner argues that the Motion is “premature” and suggests that a motion to
16 strike is inappropriate for a request for attorney’s fees in general. However, Respondent’s motion
17 was filed within the time restrictions as required by Code of Civil Procedure section 435,
18 subdivision (b)(1). Moreover, the purpose of a motion to strike is to correct the type of defect
19 found in the Petition. A party may move to strike out “any irrelevant, false, or improper matter
20 inserted in any pleading.” (Code Civ. Proc., § 436, subd. (a).) “The appropriate procedural device
21 for challenging a portion of a cause of action seeking an improper remedy is a motion to strike.
22 (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 385 [striking civil
23 penalties based on failure to plead compliance with the pre-filing notice and exhaustion
24 requirements in section 2699.5]) A motion to strike is generally used to challenge defects which
25 are not susceptible to challenge by demurrer. (*Grieves v. Superior Court* (1984) 157 Cal. App. 3d
26 159 (granting defendant’s motion to strike claim for punitive damages).) As noted in the
27 Respondent’s memorandum of points and authorities, the Petition is defective in that a pro se
28 litigant may not recover attorney’s fees unless they incur costs through an attorney-client

1 relationship. (See *Musaelian v. Adams* (2009) 45 Cal.4th 512, 519–520.) Given that the Petition
2 does not provide grounds for incurring attorney’s fees, the request for fees is improper. Therefore,
3 the claim that this Motion is premature and inappropriate is without merit and the court should
4 strike the request for attorney’s fees.

5 B. Petitioner’s allegations regarding the one person fired because of Canary Mission
6 are irrelevant to his PRA Claim.

7 On motion, courts should “strike out any irrelevant, false, or improper matter inserted in
8 any pleading.” (Code Civ. Proc., § 436 (a).) “Irrelevant matters” include “[a]n allegation that is
9 not essential to the statement of a claim or defense,” that is, “[a]n allegation that is neither
10 pertinent to nor supported by an otherwise sufficient claim or defense,” (Code Civ. Proc. § 431.10,
11 subds. (b)-(c).) Petitioner only states one claim under the Public Records Act. Therefore, all
12 allegations in his Petition must pertain to that claim.

13 The Public Records Act provides that a public agency may withhold documents when “on
14 the *facts of the particular case* the public interest served by not disclosing the record clearly
15 outweighs the public interest served by disclosure of the record.” (Gov. Code, § 6255)(emphasis
16 added.)

17 The Petition contains various specific allegations about Canary Mission. These allegations
18 include: an example of a person getting fired due to Canary Mission’s list, and that there is “no
19 evidence that anyone has been physically harmed as a result of having his or her name published
20 on the Canary Mission web site.” (Pt. Para 14, Opp 2, 27-28). Petitioner contends that “Defendant
21 has opened the door wide to allegations about the Canary Mission.” However, this argument
22 mischaracterizes UCLA’s position. Petitioner suggests that UCLA rejected Abram’s PRA request
23 on the grounds that the presenters would be blacklisted on Canary Mission’s website. In fact,
24 UCLA cited Canary Mission as an example of an instance when SJP members have been targeted
25 in the past. (Petition, exhibit 5). Moreover, Petitioner’s specific allegations related to Canary
26 Mission are not relevant to the facts of this case.

27 The PRA’s public interest exception will require the court to consider the public’s interest
28 in protecting the presenters from threats and harassment and the likelihood of that backlash. This

1 may only require common sense and human experience to determine. As the Court of Appeal held
2 in *Los Angeles Unified School Dist. v. Superior Court* (2014) 228 Cal.App.4th 222, 244, courts
3 may “rely on commonly understood general human behavior” when deciding whether a “feared
4 consequence will occur.” The parties may also present expert testimony related to whether the
5 public interest is served by disclosing the presenters’ names. (*Id.* at p. 243, citing *Humane Society*
6 *of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1268 [“[E]xperts often opine on what they
7 predict will be the consequences of proposed actions, and expert opinions can be admissible in this
8 setting.”]) By contrast, the experiences of a single individual who is unaffiliated with the SJP and
9 engaged in behavior dissimilar to speaking at a closed conference on UCLA property is not a “fact
10 of th[is] particular case” and is immaterial to the issue of whether disclosure will endanger the
11 presenters. (See Gov. Code, § 6255.) Accordingly, by striking these allegations, the Court will not
12 be precluding any relevant evidence; it will prevent wasting court resources on irrelevant
13 discovery, investigation, and briefing.

14 C. Whether UCLA accepts USAID are irrelevant to his PRA claim.

15 As noted above, the PRA exemption under Government Code section 6255 will require the
16 Court to balance the public’s interest in disclosing versus withholding the presenters’ names.
17 Petitioner alleged that disclosure of the presenters’ identities is in the public interest because (1)
18 UCLA accepts USAID funding and must not provide “material support” to terrorists, and (2) past
19 affiliates of SJP increases the interest in learning the presenters’ identities.² However, these
20 allegations are irrelevant to the PRA claim and Respondent’s defense.

21 UCLA’s obligations under the USAID Certification (“Certification”) do not inform
22 whether the public has an interest in the presenters’ identities. It is true that UCLA has an
23 obligation under the Certification as a USAID recipient. However, that certification provides that
24 the University must “*take all reasonable steps* to ensure that it does not and will not *knowingly*
25 provide, material support or resources to an individual or entity that commits, attempts to commit,
26

27 _____
28 ² (USAID, *Certification Regarding Terrorist Financing Implementing Executive Order 13224*, at
<https://www.usaid.gov/sites/default/files/documents/1868/303mav.pdf> [as of Dec. 20, 2019].)

1 advocates, facilitates, or participates in terrorist acts.” (*Id.*, italics added.) The presenters’ names
2 do not inform whether the University took all reasonable steps or knowingly provided material
3 support to terrorists.

4 Accordingly, given that the core of this suit is whether the Respondents must turn over the
5 identity of SJP presenters, and the Petition contains allegations that concern the monitoring
6 policies of UCLA and compliance with USAID program, the court should strike those allegations.

7 D. Petitioner’s allegations related to his litigious past are irrelevant.

8
9 Petitioner claimed that his work suing organizations for violations of the USAID
10 certification is relevant but again fails to clarify how it relates to the issue of whether disclosure of
11 the presenters’ names is in the public interest. Specifically, petitioner claimed that “petitioner is
12 the most prominent member of the American public who regularly identifies and sues
13 organizations for simultaneously supporting terrorism and accepting USAID monies,” and
14 therefore, “petitioner is an important part of the public.” However, private interests and activities
15 are distinct from the public interest at large. (See *Los Angeles Unified School Dist.*, *supra*, 228
16 Cal.App.4th at p. 248.) The intent of the Petitioner is not germane to the Court's analysis. (See
17 e.g. *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1191.) Petitioner's
18 alleged prior acts are not relevant to his single Cause of Action in this case. Therefore,
19 Petitioner’s private actions that are unrelated to this case should be stricken.

20 **III. CONCLUSION**

21 For the foregoing reasons, the Respondent respectfully requests the court to grant the
22 motion to strike.

23 DATED: December 30, 2019

FAGEN FRIEDMAN & FULFROST, LLP

24

25

26

27

28

By:

Jen Michael Stevens

Attorneys for REGENTS OF THE UNIVERSITY OF
CALIFORNIA

PROOF OF SERVICE

I am employed in the county of Alameda, State of California. I am over the age of 18 and not a party to the within action. My business address is: 70 Washington St., Ste. 205 , Oakland, California 94607.

On December 30, 2019, I served a copy of the foregoing documents described as follows:

REPLY TO PETITIONER'S OPPOSITION TO MOTION TO STRIKE

on the following interested party(ies) in this action:

David Abrams
305 Broadway, Ste. 601
New York, NY 10007
Fax: 212-897-5811
Email: dnabrams@wjlf.org

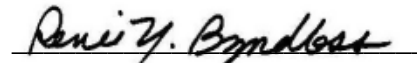
BY MAIL: by placing the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Oakland, California addressed as set forth above.

BY OVERNIGHT DELIVERY: by depositing the document(s) listed above in a sealed envelope for collection and delivery by FedEx with delivery fees paid or provided for in accordance with ordinary business practices.

BY EMAIL: by electronically transmitting a PDF version of above listed documents to the email addresses set forth above on this date.

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

Executed on December 30, 2019, at Oakland, California.


Renée Byndloss

801-108/4614855.1