

1 DAVID L. AXELROD, Esq.
2 California State Bar No. 138790
3 Sierra Law Office of David L. Axelrod
4 121 Duncan Way, Sonora, CA 95370
5 sierralaw0@gmail.com
6 (209) 533-4270

7 Attorney for the Petitioners and Plaintiffs, MAKE UC A GOOD NEIGHBOR (MUCGN),
8 PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and
9 PEOPLE'S PARK COUNCIL (PPC)

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**
12 **FOR THE COUNTY OF ALAMEDA, CALIFORNIA**

13 MAKE UC A GOOD NEIGHBOR,
14 PEOPLE'S PARK HISTORIC
15 DISTRICT ADVOCACY GROUP
16 (PPHDAG), AND PEOPLE'S
17 PARKCOUNCIL (PPC),
18 Petitioners and Plaintiffs,

19 vs.

20 REGENTS OF THE UNIVERSITY
21 OF CALIFORNIA, D.B.A. U.C.
22 BERKELEY, etc., et al.
23 Respondents and Defendants

Case No. RG 21105966

PETITIONERS' OPPOSITION
TO DEMURRER, AND MOTION
TO STRIKE, FILED BY THE
UNIVERSITY OF CALIFORNIA.

CCP §430.10, et seq.

Date: July 20, 2023

Time: 3:30 p.m.

Dept: 17

24 TO THE COURT, THE DEFENDANTS, AND THEIR COUNSEL OF RECORD:

25 THE PETITIONERS AND PLAINTIFFS, MAKE UC A GOOD
26 NEIGHBOR (MUCGN), PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY

OPPOSITION TO DEMURRER BY REGENTS OF U.C.

1 GROUP (PPHDAG), and PEOPLE’S PARK COUNCIL (PPC), hereby respectfully
2 oppose the Demurrer of the Regents of the University of California, Respondents and
3 Defendants, dated June 23, 2023, filed in response to the Petitioners’ Fourth Amended
4 Petition for Writ of Mandamus, for Injunctive and Declaratory Relief, and Complaint for
5 Breach of Contract and Breach of Ordinances, for Enforcement of Law, and for Attorney
6 Fees and Costs (hereinafter referred to as the “Complaint”).

7 Said Petitioners and Plaintiffs also hereby respectfully oppose the Motion to
8 Strike the Fourth Amended Petition and Complaint, filed by the Regents of the University
9 of California, Respondents and Defendants, and dated June 23, 2022.

10 Petitioners’ Opposition to the Demurrer, and Objection to the Motion to
11 Strike, shall be and are based upon the Fourth Amended Petition and Complaint, including
12 the Appendix of Exhibits to the Complaint, “A” to “L,” California Code of Civil Procedure
13 §430.10, et seq., California Tort Claims Act (CTCA), §§ 810, et seq., and 900, et seq., *Las*
14 *Lomas Land Co. v. City of LA* (2009), 177 Cal.App.4th 837, 847, and *Schifando v. City of*
15 *Los Angeles* (2003), 31 Cal.App.4th 1074, 1081, the following Memorandum of Points and
16 Authorities, the attached Declaration of DAVID L. AXELROD, the record of these
17 proceedings, and such additional argument and documentation as may be submitted at the
18 hearing of the Demurrer and Motion to Strike.
19
20

21
22 **REQUEST FOR JUDICIAL NOTICE**

23 The Petitioners, MAKE UC A GOOD NEIGHBOR, PEOPLE'S PARK HISTORIC
24 DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE’S PARK COUNCIL (PPC), hereby

1 respectfully request the Court to take judicial notice of the Stay Order from the Court of
2 Appeal in the related action of Make UC a Good Neighbor, et al. v. Regents of the
3 University of California, Fifth Appellate District Case No. A165451, Alameda Superior
4 Court Case No. RG21110142, and presently on review before the California State
5 Supreme Court, as Case S279242.
6

7
8 **STANDARD OF REVIEW**

9 The court assumes the truth of “properly pleaded factual allegations.” See Las
10 Lomas Land Co. v. City of LA (2009), 177 Cal.App.4th 837, 847.
11

12 At the demurrer phase, the court must “assume the truth” of the Petitioners’
13 allegations, within the four corners of their Petition. Las Lomas Land Co. v. City of LA
14 (2009), 177 Cal.App.4th 837, 847, citing Schifando v. City of Los Angeles (2003), 31
15 Cal.App.4th 1074, 1081.
16

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 The Petitioners and Plaintiffs herein, MAKE UC A GOOD NEIGHBOR, PEOPLE’S
19 PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE’S PARK COUNCIL
20 (PPC), respectfully urge the Court to deny Respondent’s and Defendant’s General
21 Demurrer to Entire Complaint, Special Demurrers to the First, Second and Third Causes
22 of Action, and Motion to Strike, as unfounded and without merit.
23
24

1 Respondent and Defendant REGENTS OF THE UNIVERSITY OF CALIFORNIA and
2 the UNIVERSITY OF CALIFORNIA D.B.A. U.C. BERKELEY shall hereinafter be referred to
3 simply as “UC.”

4 Insofar as any perceived defect may exist in the form or substance of the
5 Fourth Amended Petition and Complaint, it can be amended to cure any such difficulty.

6 I. THE UC GENERAL DEMURRER SHOULD BE DENIED.

7 The demurring party, UC, asserts four (4) grounds for General Demurrer:

8 A) Lack of standing on the part of the Petitioners and Plaintiffs; B) Failure to
9 exhaust administrative remedies; C) Misjoinder of parties; and D) Insufficient facts. See
10 Regents of the University of California’s Notice of Demurrer and Demurrer (hereinafter
11 referred to as “Demurrer”) at page 3, lines 2 to 15.

12 Petitioners and Plaintiffs will address these contentions in order, as follows:

13 A. JURISDICTION AND STANDING ARE PROPER.

14 Certain contractual agreements were concluded between People’s Park
15 representatives (by and through People’s Park Project/ Native Plant Forum) and the UC
16 Berkeley campus administration. Two (2) such written agreements are included in the
17 Appendix of Exhibits, namely the “Letter of Agreement” of May 8, 1978, attached as
18 Exhibit H, beginning at page 037, and the “Letter of Understanding” of January 5, 1979,
19 attached as Exhibit I, beginning at page 038.

20 The Letter of August 31, 1979, from Associate Vice Chancellor T. H. (“TED”)
21 CHENOWETH to Vice Chancellor R. F. (“BOB”) KERLEY, attached as Exhibit J, beginning
22

1 at page 040, both acknowledges developments in the existing agreements and
2 memorializes other previously unwritten agreements between the People's Park
3 organizations and UC.

4 The "Letter of Agreement" of May 8, 1978, see Exhibit H, expressly states as
5 follows: "At such time as a broad-based People's Park student community neighborhood
6 association can organize itself, PPP/NPF may request that the Chancellor's Office transfer
7 the above functions to said association." Exhibit H, Section B "Communications," third
8 paragraph, page 037.

9 Thus the "Letter of Agreement" anticipated the formation of People's Park
10 Council (hereinafter referred to as "PPC") as a "broad-based People's Park student
11 community neighborhood association" to coordinate use of the Park, including but not
12 limited to the building, maintenance and management of the People's Stage on the West
13 End of People's Park the following year.

14 The letter in Exhibit J expressly acknowledges the fact that People's Park
15 Project/ Native Plant Forum (hereinafter referred to as PPP/ NPF) indeed transferred to
16 PPC its contractual rights and responsibilities, including such day-to-day functions as
17 coordination of Park use and management of the People's Stage therein.

18 Indeed, Exhibit J explicitly confirms and memorializes the discussions leading
19 to agreement on the People's Stage-Use Guidelines developed by PPC as a "Coordinating
20 Council" for People's Park.

1 Thus, People’s Park Council (PPC), of which PPP/ NPF is itself a founder and
2 constituent part, was specifically recognized by the UC Berkeley campus administration
3 as succeeding to or inheriting the rights and responsibilities negotiated and set forth in
4 each of the relevant Exhibits attached to the Complaint, namely Exhibits H, I, and J.

5 “My general agreement with the People's Park Council and the PPP
6 /NPF is that if the guidelines will be followed and the general procedure
7 outlined above is also followed, the Chancellor's Office will usually
8 approve any reasonable request for use of the area. Any approval by the
9 Chancellor's Office will always be based upon input and support from the
10 People's Park Council.” Letter of August 31, 1979, from Associate Vice
11 Chancellor T. H. (“TED”) CHENOWETH to Vice Chancellor R. F. (“BOB”)
12 KERLEY, attached as Exhibit J, at page 042.

13 All three (3) documents, Exhibits H, I, and J, suggest that the agreements
14 originally negotiated by PPP/ NPF and the UC Berkeley campus administration would
15 accrue to the benefit of community, student and neighborhood groups, such as the
16 Petitioners and Plaintiffs MAKE UC A GOOD NEIGHBOR, PEOPLE'S PARK HISTORIC
17 DISTRICT ADVOCACY GROUP (PPHDAG), as well as PEOPLE’S PARK COUNCIL (PPC).
18 Exhibit J leaves no doubt that PPC was explicitly named as a party, active participant,
19 and recognized holder of the contractual rights, powers, functions and responsibilities
20 described in all three (3) relevant documents, Exhibits H, I, and J.
21
22
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

B. THE “EXHAUSTION” ARGUMENT IS WAIVED BY UC.

Although Respondent and Defendant UC initially claimed that the Plaintiffs failed “to exhaust administrative remedies,” that claim should be deemed abandoned.

No further factual argument within the Memorandum of Points and Authorities was presented in support of the “exhaustion” theory, nor could there be.

Demand letters were, in fact sent to UC officials and counsel, as set forth in the Letters of February 1, 2021, and February 22, 2021, attached as Exhibits K and L, respectively. No formal claim form was required to be filed pursuant to the California Tort Claims Act (CTCA), Government Code §§ 810, et seq., and §§ 900, et seq., since the Petitioners’ and Plaintiffs’ causes of action sound in the nature of contractual claims, rather than tort claims.

Petitioner and Plaintiff PPC and PPP/ NPF did in fact timely file tort claims for damage and destruction of property in People’s Park, Berkeley, California, perpetrated on or about August 3, 2022. Breach of contract claim were properly excluded therefrom since, by definition, the California Tort Claims Act (CTCA) deals with tort claims, not breaches of contracts.

C. NO “MISJOINDER” EXISTS, AS ARGUED BY UC.

Respondent and Defendant UC argues that a “misjoinder” has occurred because the Complaint purportedly failed to join the City of Berkeley. That argument is factually erroneous.

1 It is the contractual agreements that UC concluded with People's Park
2 organizations that are at issue herein, not any agreement UC may have with the City of
3 Berkeley. Nothing in the City's agreement required UC to abrogate or breach its solemn
4 undertakings with respect to Petitioner and Plaintiff PPC, PPP/ NPF, and other authorized
5 representatives of the People's Park community. The City of Berkeley is not now and
6 never was a party to those certain agreements, attached as Exhibits H, I, and J, the breach
7 of which by UC are specifically at issue in this litigation.
8

9 D. FACTS AS ALLEGED ARE SUFFICIENT TO STATE CAUSES OF ACTION.

10 Respondent and Defendant baldly argues that Petitioners and Plaintiffs "fail to
11 state facts sufficient to constitute a cause of action." Demurrer at page 3, lines 13 to 15,
12 citing Code of Civil Procedure §430.10 (e).
13

14 In reality, and well beyond the pleading's initial introductory pages describing
15 the relevant factual background, the Complaint recounts, in excruciating clarity, the
16 specific factual basis supporting three (3) Causes of Action for Breach of Contract,
17 consuming some thirteen (13) detailed pages, from paragraph 81, page 29, line 17, to
18 paragraph 124, page 42, line 3.
19

20 Counsel for UC, lacking any valid basis for Demurrer or Motion to Strike,
21 proceeds to lapse into absurdities, as by stating that "none of the University's activities
22 alleged in the Complaint constitute a breach . . . relating to urban gardening activities by
23 a student organization." Demurrer at page 16, lines 14 to 16.
24

1 In stark contrast that baseless conclusion, however, the allegations of
2 Complaint conclude with the following words:

3 "Following the inception of this lawsuit, during the summer of the
4 following year, and particularly during late July and early August of 2022, in
5 brazen contravention of the word and spirit of its numerous agreements and
6 commitments (Petitioners' Exhibit H, I, and J), and in defiance of the barest
7 notions of basic civil respect and human decency, Respondent and Defendant
8 UC acted wantonly to saw down full-grown redwoods and other specimen
9 California trees, shredded shrubs, destroyed flowering plants, and damaged the
10 People's Stage and many other landscape features belonging to the Petitioners,
11 by whom that had been developed and dedicated for the public use and
12 enjoyment of the community." Complaint at paragraph 124, page 41, line 19,
13 to page 42, line 3.

14
15 Query, how could one possibly imagine that destruction of a garden would not
16 constitute a breach "relating to urban gardening activities..." This is especially true when
17 provisions regarding prior discussion, notice, and dispute resolution were all roundly ignored
18 and violated by UC in the run-up to and execution of the garden destruction.

19 Counsel for UC, persistently demand proof of facts appropriate for discovery
20 and trial, rather than at the pleading stage. As noted above, within the four corners of the
21 complaint, the court should assume the truth of "properly pleaded factual allegations."

22 See *Las Lomas Land Co. v. City of LA* (2009), 177 Cal.App.4th 837, 847.

II. THE MOTION TO STRIKE SHOULD BE DENIED.

Respondent’s and Defendant’s “Notice of Motion to Strike Portions of Fourth Amended Petition and Complaint” is entirely unfounded and lacking support. Accordingly, it should be denied in its entirety.

The operative pleading, the Fourth Amended Petition and Complaint, was not filed by the Court Clerk until April 14, 2023, after an order from the Court facilitated the said filing. The pleading was thereupon timely served personally on May 3, 2023.

Earlier versions of the pleadings had also been transmitted by email to DAVID M. ROBINSON, Chief Campus Counsel, on November 17, 2022, as well as on other previous occasions. No reply was ever received. But this was of no consequence, inasmuch as these earlier pleadings were all later superseded by the Fourth Amended Petition and Complaint, timely served May 3, 2023.

CONCLUSION

For the reasons stated in the foregoing, the Petitioners herein, MAKE UC A GOOD NEIGHBOR, PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE’S PARK COUNCIL (PPC), respectfully request the Court to deny both the Demurrer and the Motion to Strike now pending, as lacking merit.

DATED: July 7, 2023

/////

/////

Respectfully submitted,



**DAVID L. AXELROD,
Attorney for the Petitioners,
MAKE UC A GOOD NEIGHBOR, PEOPLE'S PARK
HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG),
and PEOPLE'S PARK COUNCIL (PPC)**

1

2

3

4

5

6

7

8

////////

9

////////

10

////////

11

////////

12

13

////////

14

////////

15

////////

16

////////

17

////////

18

////////

19

////////

20

21

////////

22

////////

23

////////

24

////////

25

OPPOSITION TO DEMURRER BY REGENTS OF U.C.

26

27

DECLARATION OF DAVID L. AXELROD

I, DAVID L. AXELROD, declare as follow:

1. I am an attorney at law, licensed to practice in all courts of the State of California, and am counsel of record for the Petitioners herein, MAKE UC A GOOD NEIGHBOR, PEOPLE'S PARK, HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE'S PARK COUNCIL (PPC), all voluntary non-profit organizations based and doing business in Berkeley, Alameda County, California.

2. All facts set forth in the foregoing Memorandum of Points and Authorities are true and correct, including data on filing and timely service of the Fourth Amended Petition and Complaint, together with the Appendix of Exhibits "A" to "L."

3. I met and conferred in good faith with SHIRAZ D. TANGRI, an attorney for Respondent and Defendant Regents of the University of California, etc., during or about May 30, 2023, to June 12, 2023, regarding issues around the demurrer and motion to strike.

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

Executed this 7th day of July in Roseville, California.



**DAVID L. AXELROD, DECLARANT,
AND ATTORNEY FOR THE PETITIONERS,
MAKE UC A GOOD NEIGHBOR, PEOPLE'S PARK
HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG),
and PEOPLE'S PARK COUNCIL (PPC)**

PROOF OF ELECTRONIC SERVICE BY EMAIL – CCP §§1013A, 2015.5

I declare as follows: I am employed in Roseville, Placer County, California. I am over the age of eighteen years and not a party to the within-entitled cause. My business address is 121 Duncan Way, Roseville, California 95678.

On July 13, 2022, I served the following document(s):

PETITIONERS’ OPPOSITION TO DEMURRER AND MOTION TO STRIKE, RE: MAKE UC A GOOD NEIGHBOR, PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), ET AL. v. BERKELEY CITY COUNCIL, MAYOR JESSE ARREGUIN, AND THE CITY OF BERKELEY, Alameda Superior Court Case No. RG21105966,

on the other party in said cause, by electronic transmission to the email addresses sdiveley@meyersnave.com, stangri@meyersnave.com, and katharine.essick@ucop.edu, following this office's ordinary practice with which I am readily familiar, to be transmitted that day in the ordinary course of business in the by email transmission from Roseville, California, addressed as follows:

**To: Shaye Diveley, Shiraz D. Tangri,
MAYERS NAVE Law Firm,
1999 Harrison St., 9th Floor,
Oakland, CA 94612**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 13, 2022, at Roseville, Placer County, California.

DAVID L. AXELROD, Declarant
(Type or print name)



(Signature of Declarant)