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

A163810

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION ONE

SAVE BERKELEY'S NEIGHBORHOODS

Respondent and Cross-Appellant

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.

Appellants and Cross-Respondents

AMERICAN CAMPUS COMMUNITIES; COLLEGIATE HOUSING FOUNDATION, ET AL.

Real Parties in Interest

Appeal from August 23, 2021 Judgment in Alameda Superior Court
Hon. Brad Seligman, Case No. RG19022887 (Related Case Nos. RG18902751, RG19023058), Dept. 23, Telephone (510) 267-6939

PETITION FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

IMMEDIATE STAY REQUESTED

THE SOHAGI LAW GROUP, PLC
*Nicole H. Gordon, State Bar No. 240056
Margaret M. Sohagi, State Bar No. 126336
11999 San Vicente Boulevard, Suite 150
Los Angeles, California 90049-5136
(310) 475-5700
Email: ngordon@sohagi.com
Email: msohagi@sohagi.com

OFFICE OF THE GENERAL COUNSEL - UNIVERSITY OF CALIFORNIA
Alison L. Krumbein, State Bar No. 229728
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5201
(510) 987-0851
Email: Alison.Krumbein@ucop.edu

UC BERKELEY, OFFICE OF LEGAL AFFAIRS
David M. Robinson, State Bar No. 160412
200 California Hall, #1500
Berkeley, CA 94720
(510) 642-7791
Email: DMRobinson@berkeley.edu

Document received by the CA 1st District Court of Appeal.

Attorneys for THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.

Document received by the CA 1st District Court of Appeal.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, rule 8.208(e)(3), I certify that Appellants and Cross-Respondents THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al. know of no person or entity that must be listed under rule 8.208(e)(1) or (e)(2).

DATED: January 28, 2022

THE SOHAGI LAW GROUP, PLC

By:

NICOLE H. GORDON
Attorneys for THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Document received by the CA 1st District Court of Appeal.

TABLE OF CONTENTS

Page

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS 3

SUMMARY OF THIS PETITION 7

PETITION FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE RELIEF 11

The Parties 11

Authenticity of Exhibits 12

Timeliness of the Petition 13

Chronology of Pertinent Events 13

Why Writ Relief, and an Immediate Stay, Is Necessary and Appropriate 20

PRAYER 21

VERIFICATION 23

MEMORANDUM OF POINTS AND AUTHORITIES 24

I. THE COURT HAS BROAD DISCRETIONARY POWERS TO GRANT THE WRIT OF SUPERSEDEAS 24

II. A WRIT OF SUPERSEDEAS IS NECESSARY TO PROTECT THIS COURT'S JURISDICTION OVER THE APPEAL 25

III. THE APPEAL RAISES SUBSTANTIAL QUESTIONS 27

IV. THE STAY AND WRIT OF SUPERSEDEAS SHOULD BE GRANTED TO PREVENT IRREPARABLE HARM TO THE REGENTS, THE PUBLIC INTEREST, AND THOUSANDS OF QUALIFIED HIGH SCHOOL STUDENTS 31

V. THE HARM TO SBN, IF ANY, IS MINIMAL COMPARED TO THE HARM THAT WILL RESULT IF A WRIT OF SUPERSEDEAS IS NOT GRANTED 36

VI. CONCLUSION 37

CERTIFICATE OF COMPLIANCE 38

Document received by the CA 1st District Court of Appeal.

TABLE OF AUTHORITIES

Page

Cases

Agricultural Labor Relations Bd. v. Superior Court (1976) 16 Cal.3d 392 ..... 30, 31

California Table Grape Com. v. Dispoto (1971) 14 Cal.App.3d 314 25

Deepwell Homeowners' Protective Association v. City Council of the City of Palm (1965) 239 Cal.App.2d 63 ..... 25, 26, 27

Food & Grocery Bureau of So. Calif. v. Garfield (1941) 18 Cal.2d 174 24

In re Christy L. (1986) 187 Cal.App.3d 753 24

Mills v. County of Trinity (1979) 98 Cal.App.3d 859 ..... 24, 25, 26

People ex. rel. San Francisco Bay Conservation and Development Commission v. Town of Emeryville (1968) 69 Cal.2d 533 24

Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors (1967) 255 Cal.App.2d 51 25

Save Berkeley Neighborhoods v. The Regents of the University of California, et al. (2020) 51 Cal.App.5th 226 ..... passim

Sterling v. Santa Monica Rent Control Bd. (1985) 168 Cal.App.3d 176 27

Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd. (1994) 23 Cal.App.4th 1459 31

Document received by the CA 1st District Court of Appeal.

Statutes

Code of Civil Procedure, § 1094.5, subd. (f) 27

Code of Civil Procedure, § 923 24

Code of Civl Procedure, § 526, subd. (b)(4) 30

Education Code, § 66011 30

Education Code, § 66202, subd. (a) 30

Education Code, § 76000 30

Public Resources Code, § 21080.09 29

Public Resources Code, § 21168.9, subd. (a) 28

Public Resources Code, § 21168.9, subd. (b) 28

Other Authorities

Eisenberg, Horvitz, & Weiner,
Calif. Appeals & Writs, Rutter Group, §§ 7:260 et seq. 24

Eisenberg, Horvitz, & Weiner,
Calif. Appeals & Writs, Rutter Group, §§ 7:74 et seq. 24

Document received by the CA 1st District Court of Appeal.

SUMMARY OF THIS PETITION

On May 16, 2019, Appellants and Cross-Respondents The Regents of The University of California ("Regents") approved a project to construct two buildings – one academic and one residential – at the UC Berkeley campus called the Upper Hearst Development for the Goldman School of Public Policy ("GSPP") ("GSPP Project" or "Project"). In connection with the GSPP Project approval, the Regents prepared and certified a Supplemental Environmental Impact Report ("SEIR") pursuant to the California Environmental Quality Act ("CEQA", Pub. Resources Code, § 21000 et seq.).

On June 13, 2019, Respondent and Cross-Appellant Save Berkeley's Neighborhoods ("SBN") filed a Petition for Writ of Mandate challenging the Regents' approval of the Project and certification of the SEIR in Alameda County Superior Court Case No. RG19022887. On June 14, 2019, the City of Berkeley ("City") also filed a Petition for Writ of Mandate in the now-dismissed Alameda County Superior Court Case No. RG19023058 challenging the GSPP Project and SEIR. This petition will refer to these actions as the "GSPP Actions."

Based on the CEQA claims upon which SBN and the City prevailed in the GSPP Actions, the trial court ordered the Regents to void their decision to carry out the GSPP Project and decertify the SEIR for the GSPP Project. (Compendium of Exhibits ("Compendium"), Exh. 1, pp. 6-8.) The trial court went further, however, reaching well beyond the GSPP Project and ordering the Regents "to suspend any further increases in student

Document received by the CA 1st District Court of Appeal.

enrollment at UC Berkeley, in academic years 2022-2023 and later, above the level of student enrollment in academic year 2020-2021 until [the Regents] have demonstrated full compliance with this Judgment and Writ and the Court orders discharge of the Writ." (*Id*. at pp. 7-8.) In capping enrollment at UC Berkeley, the trial court has improperly interfered with the student enrollment goals of the UC Regents and the Legislature, which promote expansive excellence for California's growing, diverse, and qualified population of students, and has put in jeopardy the futures of thousands of high school seniors who will qualify for enrollment at UC Berkeley this fall.

The Regents have filed a notice of appeal from the Judgment. (Compendium, Exh. 2.) The appeal will demonstrate, among other things, that the Judgment far exceeds the bounds of the court's jurisdiction. This is because enrollment decisions were simply not before the trial court in this case. The Regents' approval of the GSPP Project did not include any decision to increase enrollment, and there is no legal or practical justification for capping student enrollment based on alleged defects with the environmental analysis for the GSSP Project. In fact, the trial court itself acknowledged that enrollment decisions were not at issue in this proceeding. In denying a motion to consolidate the challenges to the GSPP Project with a separate lawsuit (also filed by SBN and dubbed the "Enrollment Action"),[1] the trial court correctly distinguished the

[1] This Court is familiar with that separate lawsuit. It resulted in this Court's June 25, 2020 decision: *Save Berkeley Neighborhoods v. The Regents of the University of California, et al.* (2020) 51 Cal.App.5th 226, which explained that "a public university's decision to increase enrollment levels can be a

Document received by the CA 1st District Court of Appeal.

Enrollment Action, which "challenges a series of decisions to increase student enrollment at UC," from the GSPP Project actions, which only "challenge UC's May 16, 2019 approval" of the GSPP Project and "alleg[e] as one defect that UC's analysis of the effects of increased student enrollment were insufficient." (Compendium, Exh. 4, at p. 156.)

Complying with the Judgment's enrollment cap at UC Berkeley will have serious, immediate, and irreparable consequences. These include, but are not limited to:

- A catastrophic impact on UC Berkeley's ability to admit low-income, under-represented students.
- Negatively altering the course of thousands of high school students' lives who would otherwise be offered the chance to attend "the best school in the country" (according to Forbes' 2021 list of America's Top Colleges) in the fall of 2022 for a fraction of the price of comparable private universities.
- Ill effects across all of society from the loss of a more skilled and educated workforce, and the social mobility that comes with it.
- The risk that academic offerings at UC Berkeley will be limited due to low enrollment, and a commensurate decline in the quality of education UC Berkeley can offer.

'project' subject to CEQA whether or not it is related to a development plan." (*Id*. at 240.) In so finding, this Court made clear that its decision "in no way caps enrollment at the University of California or obstructs the Regents' authority." (*Id*. at 242.)

Document received by the CA 1st District Court of Appeal.

- Severe economic impacts due to the loss of approximately $57 million in tuition, annually, for at least the next four years.
- Exacerbation of negative impacts from the unplanned and unexpectedly low level of enrollment that resulted from admitted students who did not want to participate in remote learning during the pandemic year of 2020, taking a semester or year off from their studies.
- A reduction in financial assistance for low-income students, and facilities operations and maintenance to make up for the lost tuition.
- Impairment of UC's obligation to provide affordable, high-quality education to California residents.

These consequences are unwarranted and untenable. The Regents immediately need a stay of the Judgment's enrollment cap to ensure that thousands of matriculating high school seniors deserving of admission to UC Berkeley are not denied that admission during the pendency of the appeal as a result of an erroneous order that far-exceeds the trial court's jurisdiction.

This petition is timely, and urgently needed, because the suspension of enrollment increases is self-enforcing, and to meet its enrollment targets, UC Berkeley must start issuing its first set of letters of acceptance in early February, followed by letters for regular acceptance in March. Any delay in this process will have immediate negative consequences on the Regents and the public interest.

Document received by the CA 1st District Court of Appeal.

SBN, by contrast, will suffer no prejudice from a stay or writ. The Regents have already fully analyzed the environmental impacts of student enrollment at UC Berkeley in years 2022-2023 and beyond pursuant to CEQA in a separate EIR prepared for UC Berkeley's 2021 LRDP. That EIR was certified on July 22, 2021, just a few weeks after the trial court filed its order in the GSPP actions granting the petitions for writ of mandate, and a month before it entered the Judgment.

Further, the scope of the stay and writ sought by Regents is narrow. It seeks relief only from the prohibitory enrollment cap established in Section 4 of the Judgment. Because the rest of the judgment is mandatory in nature, it was automatically stayed by the filing of the appeal, and no further action is necessary to preserve the status quo.

PETITION FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE RELIEF

By this verified petition, Appellants and Cross-Respondents THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al. ("the Regents") petition this Court to immediately stay enforcement of that portion of the Judgment entered in the Superior Court of California, County of Alameda, on August 23, 2021, ("Judgment") that orders the Regents "to suspend any further increases in student enrollment at UC Berkeley, in academic years 2022-2023 and later, above the level of student enrollment in academic year 2020-2021," until determination by this Court of the pending appeal from the Judgment.

The Parties

1. Appellants and Cross-Respondents The Regents of the University of California, Janet Napolitano, in her capacity as President of

Document received by the CA 1st District Court of Appeal.

the University of California, University of California, Berkeley ("UC Berkeley"), and Carol T. Christ, in her capacity as Chancellor of the University of California, Berkeley (collectively, "the Regents") were respondents in the action below (Alameda Superior Court Case No. RG19022887).

2. Respondent and Cross-Appellant Save Berkeley's Neighborhoods ("SBN") is a non-profit organization and was petitioner in the action below.

3. Real Parties in Interest American Campus Communities and Collegiate Housing Foundation are companies that would construct, finance and operate the GSPP Project, the approval of which resulted in the challenge in the action below.

Authenticity of Exhibits

4. The exhibits accompanying this petition, labeled numerically and consecutively paginated, are true and correct copies of original documents on file in the superior court in the underlying case and related Case Numbers RG18902751 and RG19023058. All exhibits are incorporated by reference as if fully set forth in this petition.

5. Filed concurrently with this petition are: (i) a supporting declaration from UC Berkeley's Associate Vice Chancellor of Enrollment & Dean of Undergraduate Admission Olufemi Ogundele ("Ogundele Dec."), (ii) a supporting declaration from Director, Physical and Environmental Planning, at the Office of the President of the University of California, Brian Harrington ("Harrington Dec."); and (iii) a Motion for Judicial Notice ("MJN") of documents on file in the Alameda County Superior Court in a separate challenge to UC Berkeley's 2021 LRDP.

Document received by the CA 1st District Court of Appeal.

Timeliness of the Petition

6. UC Berkeley is currently in the throes of reviewing almost 150,000 applications for the fall 2022 freshman class and making admissions decisions. (Ogundele Dec., ¶ 4.) But for the order directing the Regents to freeze enrollment at 2020-2021 levels in academic years 2022-2023 and later, UC Berkeley would mail the first letters of admission for the 2022-2023 academic year on February 11, 2022, which means internal decision need to be finalized by February 4. (*Id.*, ¶ 5.) This would be followed by regular admission letters on March 24, 2022, with internal decisions by March 17, 2022. (*Id*., ¶ 6.) Thus, a stay is needed immediately to prevent the irreparable harm that will be suffered by thousands of qualified students that would otherwise be offered admission to UC Berkeley, and which will be disproportionately felt by low-income, underrepresented students, as well as ongoing harm to the quality of education UC Berkeley will be able to offer for years to come. (*Id*., ¶¶ 8, 18-24.)

7. As set forth below, new appellate counsel for the Regents was substituted in on November 11, 2021, and the record on appeal was filed on December 28, 2021. Upon review of the Judgment in the context of the complete record, the Regents' new counsel alerted the Regents to the self-executing nature of the Judgment's suspension of enrollment increases and the immediate impacts on ongoing enrollment planning. This request for relief from that suspension is brought as soon as practically possible thereafter in the exercise of good faith and reasonable diligence.

Chronology of Pertinent Events

8. On May 16, 2019, the Regents approved the Upper Hearst

Document received by the CA 1st District Court of Appeal.

Development for the Goldman School of Public Policy ("GSPP") at the UC Berkeley campus ("GSPP Project"). (Compendium, Exh. 5.) The GSPP Project would provide (a) academic space for the GSPP and (b) campus-related housing. (*Ibid*.) The GSPP Project also includes a minor amendment to the then-current Long Range Development Plan ("LRDP") for UC Berkeley ("2020 LRDP"). (*Ibid*.) The 2020 LRDP was approved in 2005 and provided a framework for land use and capital investment decisions at UC Berkeley through 2020. (Compendium, Exh. 6) To accommodate the new residential development within the 2020 LRDP's Housing Zone, it was necessary to amend the 2020 LRDP to expand the Housing Zone.

9. In connection with their approval of the GSPP Project, the Regents prepared and certified a Supplemental Environmental Impact Report ("SEIR") pursuant to CEQA. (Compendium, Exh. 7.) The SEIR tiered off the programmatic EIR the Regents had prepared in 2005 for the 2020 LRDP ("2020 LRDP EIR"). (*Id*., at p. 178.)

10. By 2018, when the Regents issued a Notice of Preparation of the SEIR for the GSPP Project, UC Berkeley's 2017-2018 academic year student enrollment of 40,955 had exceeded the projections in the 2020 LRDP by approximately 7,505 students, and UC Berkeley projected additional growth in the campus headcount of approximately 3,780 students by 2022-2023, the year the GSPP Project was scheduled to be completed and occupied. (Compendium, Exh. 7, pp. 220-222.)

11. In an effort to disclose the environmental impacts of the growth in campus population beyond the numbers analyzed in the 2020 LRDP EIR, the Regents decided to analyze this growth in the GSPP SEIR. (Compendium, Exh. 7, pp. 220-222.)

Document received by the CA 1st District Court of Appeal.

12. In June 2019, SBN and the City of Berkeley ("City") each filed a petition for writ of mandate asserting the Regents failed to comply with CEQA when they approved the GSPP Project and certified the GSPP SEIR ("GSPP Actions").

13. SBN's operative complaint sought a writ of mandate ordering the Regents to void their approval of the GSPP Project and bring their determinations on the GSPP Project into compliance with CEQA. (Second Amended Petition for Writ of Mandate, *Save Berkeley's Neighborhoods v. The Regents of the University of California, et al.*, Alameda County Superior Court Case No. RG19022887 (Dec. 21, 2020) ("SBN GSPP Petition"), Compendium, Exh. 8, pp. 238-239.) The SBN GSPP Petition also sought a declaration that the Regents are estopped from contending that increases in enrollment above that projected for 2020 in the 2005 LRDP are not part of the SEIR's project description or that the SEIR's evaluation of these increases in student enrollment is not subject to judicial review by the court. (*Ibid.*) **The SBN GSPP Petition did not challenge any decision(s) related to increased enrollment; did not ask the trial court to void any decisions related to the increased enrollment; and did not ask for an order suspending further increases in enrollment**.

14. The City also sought a writ of mandate directing the Regents to vacate and set aside their SEIR certification and GSPP Project approval, and a declaration that "the decision to increase enrollment beyond that projected in an LRDP is a project requiring environmental review." (City of Berkeley Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, *City of Berkeley v. The Regents of the Univ. of Cal., et al.*, Alameda County Superior Court Case No. RG19023058 (June 14,

Document received by the CA 1st District Court of Appeal.

2019) ("City GSPP Petition"), Compendium, Exh. 9, p. 279.) **Like the SBN GSPP Petition, the City GSPP Petition did not challenge any specific decision(s) related to increased enrollment; did not ask the trial court to void any decisions related to the increased enrollment; and did not ask for an order suspending further increases in enrollment**.

15. On November 20, 2019, the trial court related the GSPP Actions for purposes of briefing and record preparation. (Order Relating Cases, Alameda County Superior Court Case Nos. RG19022887, RG19023058 (Nov. 20, 2019), Compendium, Exh. 10.)

16. On October 7, 2020, the trial court related the GSPP Actions to a third suit, which had been filed by SBN in April 2018, prior to the Regent's decision on the GSPP Project. (Compendium, Exh. 11.) In this third suit, SBN filed a petition for writ of mandate specifically challenging the Regents' decisions to increase enrollment at UC Berkeley following adoption in 2005 of UC Berkeley's 2020 LRDP without conducting CEQA review (the "Enrollment Action"). The operative petition in the Enrollment Action raises claims related to alleged environmental impacts of enrollment changes on the UC Berkeley campus from 2005-2017. (See Third Amended Petition for Writ of Mandate and Complaint for Declaratory Relief in *Save Berkeley's Neighborhoods v. The Regents of the University of California, et al.*, Alameda County Superior Court Case No. RG18902751, Compendium, Exh. 12.)

17. The Regents demurred to SBN's petition in the Enrollment Action, ultimately resulting in this Court's June 25, 2020 decision: *Save Berkeley Neighborhoods v. The Regents of the University of California, et al.* (2020) 51 Cal.App.5th 226. That decision explained that "a public

Document received by the CA 1st District Court of Appeal.

university's decision to increase enrollment levels can be a 'project' subject to CEQA whether or not it is related to a development plan." (*Id*. at 240.) This Court explicitly did not, however, impose an enrollment cap: "[O]ur decision in no way caps enrollment at the University of California or obstructs the Regents' authority." (*Id.*. at 242.)

18. In October 2020, the City of Berkeley, joined by SBN, moved to consolidate the GSPP Actions with the Enrollment Action. On November 10, 2020, the Honorable Brad Seligman denied the motion to consolidate. (Compendium, Exh. 4) The Order denying the motion distinguished the GSPP Actions from the Enrollment Actions, finding that "[t]he SBN GSPP Action and City GSPP Action both challenge UC's May 16, 2019 approval of the Upper Hearst Development Plan for the Goldman School of Public Policy ('GSPP') and a minor amendment to UC's 2020 Long-Range Development Plan ('LRDP') under the California Environmental Quality Act ('CEQA'), alleging as one defect that UC's analysis of the effects of increased student enrollment were insufficient. The Enrollment Action presents a CEQA challenge to the University's decisions to increase student enrollment beyond the levels whose impacts were studied and mitigated when it adopted the 2020 LRDP in 2005." (*Id.*, at p. 156) Because the GSPP Actions did not challenge the Regents' decision to increase student enrollment, and because "the administrative record supporting those decisions will look quite different from those in the GSPP Actions," the trial court declined to consolidate them with the Enrollment Action. (*Ibid*.)

19. On April 16, 2021, the GSPP Actions came on for a hearing on the merits before Judge Seligman in the Alameda Superior Court.

Document received by the CA 1st District Court of Appeal.

(Compendium, Exh. 3.)

20. On July 9, 2021, Judge Seligman issued an "Order Granting Petitions for Writ of Mandate" in the GSPP Actions. (Compendium, Exh. 13.)

21. On July 22, 2021, in a separate administrative proceeding, the Regents approved a new LRDP for UC Berkeley, which includes student population projections between 2018 and 2037 ("2021 LRDP"), and certified an EIR for the 2021 LRDP ("2021 LRDP EIR"). (Harrington Dec., Exh. A, Exh. B, p. 25.) The 2021 LRDP EIR analyzed the environmental impacts of enrollment levels through 2037, thus encompassing enrollment levels for the 2022-2023 academic year and beyond. (*Id*., Exh. C, p. 2-3 to 2-4.)

22. On July 23, 2021, SBN filed a proposed judgment and proposed peremptory writ of mandate. (Compendium, Exh. 14.) The Regents opposed the proposed judgment on numerous grounds. (Compendium, Exh. 15.) Relevant here is the Regents' opposition to language in the proposed judgment that would have ordered them to "suspend any further increases in student enrollment at UC Berkeley above the level of student enrollment in academic year 2020-2021 until Respondents have demonstrated full compliance with this Judgment and Writ and the Court orders discharge of the Writ." (*Id*. at pp. 379-380.) The Regents' opposed this language on the following grounds: (a) the recently-certified 2021 LRDP EIR encompasses and supersedes the GSPP SEIR's analysis of enrollment from academic years 2018-2019 to 2022-2023; (b) there was no current discretionary action related to enrollment requiring analysis; and (c) "any increase in enrollment above the level of student

Document received by the CA 1st District Court of Appeal.

enrollment in academic year 2020-2021 has already occurred and students will soon be arriving at the campus for this academic year to begin the Fall semester; therefore, if adopted, Petitioner's proposal would impose an extreme and unwarranted hardship on already accepted and committed incoming students that is completely unfair and unworkable." (*Ibid.*)

23. On August 20, 2021, SBN replied to the Regents' opposition to the proposed judgment and conceded that the Regents "make a valid point that it is too late to void their decision to increase enrollment for the academic year 2021-2022" and asked that the proposed order be revised to read "Respondents are ordered suspend any further increases in student enrollment at UC Berkeley, in academic years 2022-2023 and later, above the level of student enrollment in academic year 2020-2021 until Respondents have demonstrated full compliance with this Judgment and Writ and the Court orders discharge of the Writ." (Compendium, Exh. 16, p. 391.)

24. On August 6, 2021, the City of Berkeley filed a request for dismissal of the City GSPP Action. (Compendium, Exh. 17.)

25. On August 23, 2021, the trial court entered judgment in the SBN GSPP Action ("Judgment"). The Judgment includes the revised language submitted by SBN ordering the Regents to suspend any further increases in student enrollment at UC Berkeley, in academic years 2022-2023 and later, above the level of student enrollment in academic year 2020-2021. (Compendium, Exh. 1.) The Judgment incorporates the July 9, 2021 Order by reference, and includes a peremptory Writ of Mandate.

26. On October 18, 2021, the Regents filed and served a Notice of Appeal from the Judgment ("Appeal"). (Compendium, Exh. 2.) The

Document received by the CA 1st District Court of Appeal.

Appeal is based on the following grounds:

a. The writ of mandate issued by the trial court exceeds its jurisdiction because it interferes with separate decisions regarding student enrollment that were not before the trial court.

b. The trial court erred in finding the Regents' certification of the SEIR violated CEQA.

27. On October 25, 2021, SBN filed a cross-appeal from the Judgment ("Cross-Appeal"). (Compendium, Exh. 18.)

28. On November 12, 2021, counsel for the Regents Charles Olson, who had represented the Regents during the trial court proceedings, substituted out for new counsel Nicole Gordon. (Compendium, Exh. 19.)

29. On November 17, 2021, SBN's counsel filed and served notice of entry of the Judgment, which had occurred on November 11, 2021.(Compendium, Exh. 20.)

30. On December 28, 2021, the Clerk of this Court notified the parties that the record on appeal had been filed.

Why Writ Relief, and an Immediate Stay, Is Necessary and Appropriate

31. The Regents have no adequate remedy at law. Unless a stay is issued immediately and, thereafter, a writ of supersedeas, the Regents, the students they serve, and the public interest at large will suffer serious and irreparable harm. Specifically, more than 5,000 students deserving of offers of admission to UC Berkeley will be denied those offers. This burden will fall entirely on the shoulders of would-be incoming freshman, and will disproportionately impact low-income, disadvantaged students. It will also affect the quality of the education UC Berkeley is able to offer for years to

Document received by the CA 1st District Court of Appeal.

come. These impacts are profound and irreversible, and they will change the course of thousands of students lives for the worse.

32. SBN will suffer no prejudice from the issuance of a stay and a writ of supersedeas, because the Regents have already fully analyzed the environmental impacts of student enrollment at UC Berkeley in academic year 2022-2023 and beyond pursuant to CEQA in the 2021 LRDP EIR. (See Harrington Dec., Exhs. C, D.) Thus, the environmental impacts of this enrollment have been analyzed, and appropriate mitigation has been adopted.[2]

PRAYER

WHEREFORE, the Regents pray that this Court (1) issue an immediate stay of Section 4 of the Judgment suspending increases in enrollment at UC Berkeley in academic years 2022-2023 and later above the level of student enrollment in academic year 2020-2021, and (2) then issue its writ of supersedeas staying this same Section 4 of the Judgment until the conclusion of the Regents' appeal.

[2] Three lawsuits have been filed challenging the 2021 LRDP EIR and are currently pending in Alameda County Superior Court (Case Nos. RG21109910, RG21110157, and RG21110142.) (MJN, Exhs. A, B, C.) On October 21, 2021, the Honorable Frank Roesch denied motions for preliminary injunction in two of these cases (Case Nos. RG21109910 and RG21110142.) (MJN, Exh. D, E.)

Document received by the CA 1st District Court of Appeal.

DATED: January 28, 2022

THE SOHAGI LAW GROUP, PLC

By:

NICOLE H. GORDON
Attorneys for THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Document received by the CA 1st District Court of Appeal.

VERIFICATION

I, Nicole H. Gordon, declare:

1. I am an attorney licensed to practice in California and am one of the attorneys for THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al. I make this verification because I am familiar with the proceedings giving rise to this petition for writ of supersedeas or other appropriate relief.

2. I have read the foregoing petition, and either know its allegations to be true, or I believe them to be true based on the documents contained in the record of appeal filed December 28, 2021, as well as the accompanying Compendium of Exhibits, supporting declarations, and motion for judicial notice. The Compendium of Exhibits filed concurrently herewith contains true and correct copies of documents filed or lodged in the underlying case and related Case Numbers RG18902751 and RG19023058.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on January 28, 2022, in Los Angeles, California.

DATED: January 28, 2022 THE SOHAGI LAW GROUP, PLC

By:

NICOLE H. GORDON
Attorneys for THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Document received by the CA 1st District Court of Appeal.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE COURT HAS BROAD DISCRETIONARY POWERS TO GRANT THE WRIT OF SUPERSEDEAS

Because Section 4 of the Judgment orders the Regents "to suspend any further increases in student enrollment at UC Berkeley, in academic years 2022-2023 and later, above the level of student enrollment in academic year 2020-2021", it acts directly upon the Regents and requires no enforcement proceedings that could be stayed. Thus, it is prohibitory rather than mandatory (*Food & Grocery Bureau of So. Calif. v. Garfield* (1941) 18 Cal.2d 174, 167-177 ("*Food & Grocery*") and is not automatically stayed by the Regents' appeal. (Eisenberg, Horvitz, & Weiner, *Calif. Appeals & Writs*, Rutter Group, §§7:74 et seq.) Therefore, a writ of supersedeas is the Regents' only remedy. (*Id.* at §§ 7:260 et seq.)

This Court has broad and inherent power and discretion to stay a judgment during the pendency of an appeal by issuing a writ of supersedeas. (Code Civ. Proc., § 923; *In re Christy L.* (1986) 187 Cal.App.3d 753, 759; *People ex. rel. San Francisco Bay Conservation and Development Commission v. Town of Emeryville* (1968) 69 Cal.2d 533, 538-539.) The purpose of a writ of supersedeas is to preserve appellate jurisdiction pending review of the appeal and a ruling on the merits. (*Mills v. County of Trinity* (1979) 98 Cal.App.3d 859, 861 ("*Mills*").) The writ will issue when necessary to protect appellant from irreparable injury that appellant will sustain if it prevails in the appeal, giving due consideration to the injury to respondent if the judgment is ultimately affirmed. (*Food & Grocery*, *supra*, 18 Cal.2d 174 [appellant merchant would suffer irreparable

Document received by the CA 1st District Court of Appeal.

harm if long standing practice of giving trading stamps is disrupted pending appeal, but no direct harm to respondent if enforcement of prohibitory injunction is delayed]; see *Deepwell Homeowners' Protective Association v. City Council of the City of Palm* (1965) 239 Cal.App.2d 63, 65-67 ("*Deepwell*"); *Mills*, *supra*, 98 Cal.App.3d 859 [appellant would suffer irreparable harm if not allowed to collect disputed fees pending appeal, but injury to respondent would be minimal because fees can be refunded].)

Where petitioner will suffer irreparable injury and a stay will not result in "disproportionate injury to respondent" the equities tip in favor of issuing the writ. (*Mills*, *supra*, 98 Cal.App.3d at p. 861 (citing *California Table Grape Com. v. Dispoto* (1971) 14 Cal.App.3d 314, 3l6-3l7); *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors* (1967) 255 Cal.App.2d 51, 53).) A petition for writ of supersedeas should be granted when "to deny a stay would deprive the appellant of the benefit of reversal of the judgment against him." (*Deepwell*, *supra*, 239 Cal.App.2d at 66.) In such instances, the writ acts to "protect the appellate court's jurisdiction." (*Id.* at 65-66.)

II.

A WRIT OF SUPERSEDEAS IS NECESSARY TO PROTECT THIS COURT'S JURISDICTION OVER THE APPEAL

This Court should grant a writ of supersedeas because it is essential to preserving this Court's jurisdiction over the appeal in this action. If this writ does not issue, the Regents will have to enroll approximately 3,000 fewer freshman for the 2022-2023 academic year than currently planned, and will be unable to increase student enrollment at UC Berkeley beyond 2021-2022 levels during the pendency of the Appeal. Should the Regents

Document received by the CA 1st District Court of Appeal.

prevail on appeal, they will not be able to go back and admit the high school students that will graduate this Spring who would have, but for the Judgment's enrollment cap, matriculated at UC Berkeley in the Fall. The impacts of this on these students will be profound and irreversible and will permanently alter the course of their lives. By the time the Court is able to decide this case on the merits, the Court's ability to grant effective relief from the trial court's erroneous injunction will be lost. In short, denial of a stay "would deprive [the Regents] of the benefit of a reversal of the judgment against them..." (*Deepwell*, *supra*, 239 Cal.App.2d at 66.)

The court faced a similar circumstance in the *Mills* case. There, the trial court issued a writ that ordered the county to desist and refrain from enforcing provisions of a resolution that increased certain county fees. (*Mills*, *supra*, 98 Cal.App.3d at 860-861.) The court concluded that preventing collection of the increased fees during the pendency of the appeal would irreparably harm the county, which could not go back and collect the additional fees should it prevail on appeal. (*Id*.) On the other hand, should the county not prevail, the court found the excess fees could be refunded. (*Id*. at 861.) In other words, issuing a stay would ensure that the appellate court's decision to grant or deny the appeal on the merits would have its full effect, thereby preserving the court's jurisdiction.

The same reasoning applies in this action, though the stakes here are considerably higher. While the Regents, and thousands of would-be incoming freshman, would be irreparably harmed by the enrollment cap because their matriculation to UC Berkeley would be foreclosed, a stay of the enrollment cap would not affect or impede SBN's ongoing challenge to the Regents' enrollment decisions in the pending Enrollment Action

Document received by the CA 1st District Court of Appeal.

(Alameda County Superior Court Case No. RG19022887) or the pending challenges to the Regents' approval of the 2021 LRDP (Alameda County Superior Court Case Nos. RG21109910, RG21110157, and RG21110142). Nor would it prevent a court from ordering the Regents to reduce enrollment levels in the future if their decisions related to those enrollment levels were ultimately found to be an abuse of discretion.

III.

THE APPEAL RAISES SUBSTANTIAL QUESTIONS

This Court should grant a writ of supersedeas because the Regents' appeal raises substantial questions of probable error by the trial court on which the Regents are likely to prevail. (*Deepwell*, *supra*, 239 Cal.App.2d at 66.)

On appeal, the Regents will demonstrate the trial court erred in several ways by ordering a remedy that freezes student enrollment at UC Berkeley at 2020-2021 levels. First, the court had no jurisdiction to enjoin student enrollment increases in 2022-2023 or any other year. General rules governing administrative writs authorize a court only to enter judgments that command "respondent to set aside the order or decision" being challenged. (Code Civ. Proc., § 1094.5, subd. (f).) Portions of a judgment "which purport to decide issues with respect to all pending and future actions, rather than simply the one then before the court, are beyond the jurisdiction of the court." (*Sterling v. Santa Monica Rent Control Bd.* (1985) 168 Cal.App.3d 176, 187.) Decisions to increase student enrollment were not at issue in this proceeding; the only decision challenged was the Regents' approval of the GSPP Project and certification of the SEIR. In fact, in its order denying the Motion to Consolidate, the trial court correctly

Document received by the CA 1st District Court of Appeal.

distinguished the separate Enrollment Action, which "challenges a series of decisions to increase student enrollment at UC", from the GSPP Actions, which only "challenge UC's May 16, 2019 approval" of the GSSP Project and "alleg[e] as one defect that UC's analysis of the effects of increased student enrollment were insufficient." (Compendium, Exh. 4, p. 156.)

Second, the prohibition in the Judgment exceeds the trial court's authority under CEQA. In a CEQA challenge, a court may not order a public agency to void a "determination, finding, or decision," unless it first finds "that any determination, finding, or decision of a public agency has been made without compliance with this division..." (Pub. Resources Code, § 21168.9, subd. (a).) Here, the trial court did not find the Regents made any determination, finding, or decision to increase enrollment without compliance with CEQA. In fact, the trial court's Order expressly found that the court did "not need to determine whether that past [enrollment] increase was part of the project under study here." (Compendium, Exh. 1, p. 16.)

Third, CEQA does not provide any basis to expand the trial court's Judgment to bar the Regents' ongoing enrollment activities. CEQA requires that "any order ... shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division." (Pub. Resources Code, § 21168.9, subd. (b).) As discussed above, the only "project activities" challenged as being out of compliance with CEQA in this case are those directly related to the Regents' May 16, 2019 approval of the GSPP Project. Freezing future student enrollment increases for the 2022-2023 academic year and beyond is far beyond what is required to achieve compliance with

Document received by the CA 1st District Court of Appeal.

CEQA for the GSPP Project approval. The Judgment does not comport with CEQA's emphasis on crafting narrow remedies.

Fourth, compliance with the enrollment cap would mean the Regents could never increase student enrollment at UC Berkeley unless and until they re-analyze the GSPP Project under CEQA. There is no justification in law or reason to allow this result. The Regents must, and do, have the ability to analyze projected campus enrollment pursuant to a separate CEQA process, regardless of any proposal related to the GSPP or any other development project. (See Pub. Resources Code, § 21080.09 ["Environmental effects relating to changes in enrollment levels at shall be considered for each campus or medical center of public higher education in the environmental impact report prepared for the long range development plan for the campus or medical center."].) So long as the Regents properly analyze projected enrollment for UC Berkeley in the EIR prepared for its LRDP, they should not be enjoined from increasing enrollment based on flaws in the analysis of the GSPP Project. Indeed, this Court's decision in *Save Berkeley's Neighborhoods v. Regents of University of California* (2020) 51 Cal.App.5th 226, identified a separate path by which the Regents could comply with CEQA for enrollment decisions, i.e., by analyzing "a range of enrollment levels in a program EIR, based on reasonable estimates for high and low scenarios, giving them CEQA coverage for year-to-year variability and for increases within the range." (*Id*. at p. 242.) Freezing enrollment until the Regents duplicate analysis of that enrollment in a potential future EIR for the GSPP project, despite the fact that the Regents can (and have already) analyzed this increased enrollment in the 2021 LRDP EIR, is inefficient, unnecessary, and excessive.

Document received by the CA 1st District Court of Appeal.

Fifth, because SBN has already challenged the Regents' decisions to increase enrollment in the pending Enrollment Action (Case No. RG19022887) and could have challenged the 2021 LRDP EIR, there is no compelling reason for the trial court to have issued the relief requested. (See *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401-402.) The 2021 LRDP EIR analyzes enrollment levels at UC Berkeley through 2037 and was certified on July 22, 2021. The ability to file a petition for writ of mandate ordering the Regents to set aside any enrollment increases in 2022-2023 and beyond based on the 2021 LRDP EIR provided SBN with an adequate remedy at law.

Sixth, an injunction cannot be granted "to prevent the execution of a public statute by officers of the law for the public benefit." (Code Civ. Proc., § 526, subd. (b)(4).) Here, Education Code section 66202.5 provides that "[t]he University of California and the California State University are expected to plan that adequate spaces are available to accommodate all California resident students who are eligible and likely to apply to attend an appropriate place within the system. The State of California likewise reaffirms its historic commitment to ensure that resources are provided to make this expansion possible, and shall commit resources to ensure that students from enrollment categories designated in subdivision (a) of Section 66202 are accommodated in a place within the system." And Education Code section 66011 declares "that all resident applicants to California institutions of public higher education, who are determined to be qualified by law or by admission standards established by the respective governing boards, should be admitted to either (1) a district of the California Community Colleges, in accordance with Section 76000, (2) the

Document received by the CA 1st District Court of Appeal.

California State University, or (3) the University of California." These and other Education Code sections provide the statutory framework for the Master Plan for Higher Education. The Master Plan for Higher Education guarantees that all California residents in the top one-eighth or top one-third of the statewide high school graduating class who apply on time be offered a place somewhere in the UC or CSU system. (Ogundele Dec., ¶ 25.) Freezing enrollment at UC Berkeley directly contravenes the Regents' mandate and authority to ensure that qualified applicants be admitted to the UC system. It thwarts the public interest and is contrary to Legislative policy.

Seventh, it is similarly not in the public interest to restrain public agencies in the performance of their duties. (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471 [citing to *Agricultural Labor Relations Bd., supra,* 16 Cal.3d at 401-402].) There is also a general rule against enjoining public officers or agencies from performing their duties.[3] (*Id.*)

IV.

THE STAY AND WRIT OF SUPERSEDEAS SHOULD BE GRANTED TO PREVENT IRREPARABLE HARM TO THE REGENTS, THE PUBLIC INTEREST, AND THOUSANDS OF QUALIFIED HIGH SCHOOL STUDENTS

The Regents – and more importantly, the population of students the Regents serve – will suffer extreme hardship if the stay and writ are not

[3] The Regents will assert additional arguments on the merits of the CEQA claims in their appeal. Here, the Regents have focused only on those aspects directly related to this Petition.

Document received by the CA 1st District Court of Appeal.

granted. Unless the enrollment cap is stayed, more than 5,000 high school students who, this Spring, would otherwise receive letters of admission to UC Berkeley for Fall 2022 will be denied that admission through no fault of their own. (Ogundele Dec., ¶ 14.) This is not because UC Berkeley plans to increase enrollment by 5,000 students this year (it does not), but because the only way to push total student enrollment numbers back down to what they were two years ago in 2020-2021 is to cut 3,050 students from the would-be incoming freshman class.[4] (*Ibid*.) To meet this target, UC Berkeley would have to deny admission to a total of 5,083 qualified students because approximately 60% of admitted students typically accept the offer (60% of 5,083 is 3,050). (*Ibid.*)

But for the enrollment cap, these students, whose achievements would put them at the top of some 150,000 applicants, would have the opportunity to matriculate at "the best school in the country" according to Forbes' 2021 list of America's Top Colleges, (Ogundele Dec., ¶ 9-10.) This opportunity would come at a fraction of the cost of comparable, private universities, and with incomparable opportunities for financial assistance. (*Id.*, ¶ 11-12.) The benefits of this education would be felt directly by these students, whose earnings potential and employment opportunities would increase substantially. (*Id.*, ¶ 13.) These benefits would also extend to society as whole, which would benefit from a more skilled and educated workforce, and the social mobility inherent within it. (*Ibid*.)

[4] Notably, Fall 2020 enrollment numbers were abnormally low due to pandemic-related distortions. (Ogundele Dec., ¶ 14.) Limiting enrollment to this year, in particular, exacerbates the substantial harms of the enrollment cap and further penalizes students unfairly.

Document received by the CA 1st District Court of Appeal.

Instead, denying these highly-qualified students admission to UC Berkeley to comply with the enrollment cap will irretrievably alter the course of their lives and negatively impact low-income, underrepresented students disproportionately to more privileged students. (*Id.*, ¶ 18.) This is because implementing the enrollment cap would require immediate, significant, and burdensome changes to the UC Berkeley admissions process that could only be achieved at this point by delaying sending acceptance letters. (*Ibid*.) As a consequence, the recipients of those letters may receive acceptance letters from other schools first, and many qualified and deserving applicants would likely elect to enroll in other competitor schools before receiving acceptance letters from UC Berkeley. (*Ibid*.) This, in turn, would have a catastrophic impact on UC Berkeley's ability to admit low-income, under-represented students because these students typically require more financial aid counseling and assistance from UC Berkeley admissions staff during the admissions process and in advance of the nationwide May 1 tuition deposit deadline. (*Ibid*.) If these students do not have sufficient time to access that financial counseling and assistance, they are much less likely to complete the enrollment process. (*Ibid*.) By contrast, an enrollment cap would advantage more privileged students who have access to college counselors that would be aware of the newly-limited enrollment opportunities at UC Berkeley and would advise them to quickly accept the offers of admission. (*Ibid*.) Thus, while the most obvious harm would be to the 3,050 otherwise-qualified students who would have accepted the offer to attend UC Berkeley this fall, the enrollment cap would harm all of the 5,000 students who would not receive acceptance letters in the first place, foreclosing their ability to choose UC Berkeley at all.

Document received by the CA 1st District Court of Appeal.

Moreover, admissions decisions cannot be undone, and once a student is rejected, they cannot be offered admissions at a later date unless they re-apply. (Ogundele Dec., ¶ 20.) If UC Berkeley were forced to implement the enrollment cap, it could not remedy the reduced enrollment by simply sending additional offers to previously rejected applicants. In the vast majority of cases, those applicants will have permanently lost their chance to attend UC Berkeley. Some of these students may attend other universities or colleges, likely at a much higher cost, but many others may simply forgo higher education for the foreseeable future. (*Id.*, ¶ 19.)

Further, the detrimental impacts of an enrollment cap for academic year 2022-2023 would not be limited to one year. If enrollment for the 2022-2023 academic year were frozen at 2020-2021 levels, and subsequently unfrozen as a result of this Court's ruling on the Regents' appeal, UC Berkeley would not have the necessary facilities or staff to get its original enrollment targets back on track without significant difficulty. (Ogundele Dec., ¶ 21.) It would not be possible to simply admit more freshman the following year to make up the difference, as constraints on class sizes and on-campus housing limit how many first-year students can be admitted in a single year. (*Ibid*.) At an absolute minimum, UC Berkeley's enrollment would not meet current enrollment projections for another three to four years, and the school would suffer the consequences of a sudden drop in first-year enrollment in the 2022-2023 academic year during all of these years. (*Ibid*.) If enrollment levels were frozen for longer than the 2022-2023 academic year, the consequences would become progressively worse. (*Ibid*.) UC Berkeley's costs and operations are not dynamic and cannot accommodate large swings in enrollment sizes from

Document received by the CA 1st District Court of Appeal.

year to year. (*Ibid*.) Further, maintaining class size integrity is required to make sure no single department risks closure due to low enrollment, potentially harming the overall quality of the educational opportunities available to UC Berkeley students. (*Id.*, ¶ 15.)

The financial impacts would also be substantial. Lowering enrollment in the 2022-2023 academic year to match 2020-2021 enrollment numbers would mean UC Berkeley would receive approximately $57 million less in tuition than anticipated. (Ogundele Dec., ¶ 22.) UC Berkeley would not be able to recover this lost tuition by increasing enrollment in future years. This is because UC Berkeley cannot "front-load" a massive single-year increase in enrollment in the 2023-2024 academic year to meet its originally projected enrollment numbers, nor can it unilaterally increase tuition. (*Ibid*.) Tuition at UC Berkeley funds facilities maintenance, faculty and staff salaries, and financial aid for low-income students. (*Id*., ¶ 23.) The loss in tuition would reduce the amount of financial aid available for low-income students. (*Ibid.*) Furthermore, a reduction in enrollment and tuition would make it nearly impossible to continue some of the programs specific to first-year students from low-income backgrounds, including the successful "Newly Admitted Student Pathway" program, which helps students determine the types and amounts of financial aid for which they are eligible. (*Ibid.*) The reduction in tuition from reducing the incoming undergraduate class could not easily be made up and could result in tuition increases in future years, which is antithetical to the UC's goals of providing affordable, accessible higher education. (*Id.*, ¶ 24.)

This Court has already demonstrated it understands the importance of not interfering with the Regents authority to increase enrollment, noting

Document received by the CA 1st District Court of Appeal.

that its decision in *Save Berkeley's Neighborhoods v. Regents of University of California* (2020) 51 Cal.App.5th 226 "in no way caps enrollment at the University of California or obstructs the Regents' authority." (*Id*., at p. 242.) In recognition of the severe consequences of implementing an enrollment cap at UC Berkeley in Fall 2022, this Court can and should exercise its discretion to stop that harm.

V.

THE HARM TO SBN, IF ANY, IS MINIMAL COMPARED TO THE HARM THAT WILL RESULT IF A WRIT OF SUPERSEDEAS IS NOT GRANTED

On the other hand, granting the stay and writ would impose no significant hardship on SBN. SBN will likely argue, as they did at trial, that increased student enrollment will generate noise and trash and exacerbate housing shortages. But even if that were true, SBN cannot reasonably argue that a revised EIR for the GSPP Project is the only means to obtain analysis of, and mitigation for, those potential impacts. Even if this Court ultimately affirms the trial court's conclusion that the SEIR for the GSPP Project failed to adequately account for increased enrollment through 2023, the 2021 LRDP EIR analyzes the environmental impacts of student enrollment between 2018-2037. (Harrington Dec., Exhs. C, D.) The merits of this analysis are being adjudicated right now before the Honorable Frank Roesch in the Alameda County Superior Court. (MJN, Exhs. A, B, C.) If Judge Roesch determines the Regents abused their discretion in approving the 2021 LRDP, he can order an appropriate remedy. If that remedy were to include a reduction in enrollment, the Regents could comply. ((Ogundele Dec., ¶ 27.) Thus, SBN will not be harmed by any potential shortcomings

Document received by the CA 1st District Court of Appeal.

in the analysis in the GSPP Project EIR of the increased enrollment in 2022-2023 and beyond.

VI.

CONCLUSION

Given the imminent deadline to issue letters of admission to UC Berkeley's Fall 2022 Freshman Class, an immediate stay should issue, followed by a writ of supersedeas, to preserve this Court's jurisdiction to decide the Regents' appeal and to protect the Regents, the public interest, and more than 5,000 high school students against the irreparable harm that far outweighs any potential harm to SBN.

DATED: January 28, 2022

THE SOHAGI LAW GROUP, PLC

By:

NICOLE H. GORDON
Attorneys for THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Document received by the CA 1st District Court of Appeal.

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c), I certify that the total word count of this Petition for Writ of Supersedeas or Other Appropriate Relief and Memorandum of Points and Authorities, excluding covers, table of contents, table of authorities, and certificate of compliance, is 7,717.

DATED: January 28, 2022 THE SOHAGI LAW GROUP, PLC

By:

NICOLE H. GORDON
Attorneys for THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

W:\C\168\002\00698420.DOCX

Document received by the CA 1st District Court of Appeal.

PROOF OF SERVICE

Save Berkeley's Neighborhoods v. The Regents of the University of California, et al.
Alameda Superior Court, Case No. RG19022887 ("SBN Action")
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 11999 San Vicente Boulevard, Suite 150, Los Angeles, CA 90049-5136.

On January 28, 2022, I served true copies of the following document(s) described as **PETITION FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address cmcaleece@sohagi.com to the persons at the e-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.

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered users will be served by the TrueFiling system. Participants in the case who are not registered users will be served by mail or by other means permitted by the court rules.

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

Executed on January 28, 2022, at Los Angeles, California.

Cheron J. McAleece

Document received by the CA 1st District Court of Appeal.

SERVICE LIST
Save Berkeley's Neighborhoods v. The Regents of the University of California, et al.
Alameda Superior Court, Case No. RG19022887 ("SBN Action")

Court of Appeal, First Appellate District, Division 1, Case No. A163810

Alison L. Krumbein, Senior Counsel, Land Use **OFFICE OF THE GENERAL COUNSEL** **UNIVERSITY OF CALIFORNIA** 1111 Franklin Street, 8th Floor Oakland, CA 94607-5201 Telephone: (510) 987-0851 Fax: (510) 987-9757 Email: alison.krumbein@ucop.edu	**ATTORNEYS FOR THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET NAPOLITANO, IN HER CAPACITY AS PRESIDENT OF THE UNIVERSITY OF CALIFORNIA; UNIVERSITY OF CALIFORNIA, BERKELEY; CAROL T. CHRIST, IN HER CAPACITY AS CHANCELLOR OF THE UNIVERSITY OF CALIFORNIA, BERKELEY**
David M. Robinson, Chief Campus Counsel **UC BERKELEY, OFFICE OF LEGAL AFFAIRS** 200 California Hall Mail Code No. 1500 Berkeley, CA 94720 Telephone: (510) 642-7791 Fax: (510) 643-5980 Email: dmrobinson@berkeley.edu	**ATTORNEYS FOR THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET NAPOLITANO, IN HER CAPACITY AS PRESIDENT OF THE UNIVERSITY OF CALIFORNIA; UNIVERSITY OF CALIFORNIA, BERKELEY; CAROL T. CHRIST, IN HER CAPACITY AS CHANCELLOR OF THE UNIVERSITY OF CALIFORNIA, BERKELEY**

Document received by the CA 1st District Court of Appeal.

Charles R. Olson
Philip J. Sciranka
Carolyn J. Lee
LUBIN OLSON & NIEWIADOMSKI LLP
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
Telephone: (415) 981-0550
Fax: (415) 981-4343
Email: colson@lubinolson.com
Email: psciranka@lubinolson.com
Email: clee@lubinolson.com
Email: msaephan@lubinolson.com
Email: jwilson@lubinolson.com

ATTORNEYS FOR THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET NAPOLITANO, IN HER CAPACITY AS PRESIDENT OF THE UNIVERSITY OF CALIFORNIA; UNIVERSITY OF CALIFORNIA, BERKELEY; CAROL T. CHRIST, IN HER CAPACITY AS CHANCELLOR OF THE UNIVERSITY OF CALIFORNIA, BERKELEY

Thomas N. Lippe
LAW OFFICES OF THOMAS N. LIPPE, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105
Telephone: (415) 777-5604
Fax: (415) 777-5606
Email: lippelaw@sonic.net
Email: kmhperry@sonic.net

ATTORNEYS FOR SAVE BERKELEY'S NEIGHBORHOODS

Winter King
Robert Perlmutter
Lauren M. Tarpey
Mindy Jian
SHUTE MIHALY & WEINBERGER
396 Hayes Street
San Francisco, CA 94102
Telephone: (415) 552-7272
Fax: (415) 552-5816
Email: king@smwlaw.com
Email: Perlmutter@smwlaw.com
Email: ltarpey@smwlaw.com
Email: jmiao@smwlaw.com

ATTORNEYS FOR CITY OF BERKELEY

Document received by the CA 1st District Court of Appeal.

Farimah F. Brown, City Attorney
Christopher D. Jensen, Deputy City Attorney
CITY ATTORNEY, BERKELEY
2180 Milvia Street, 4th Floor
Berkeley, CA 94704
Telephone: (510) 981-6950
Fax: (510) 981-6960
Email: fbrown@cityofberkeley.info
Email: cjensen@cityofberkeley.info

ATTORNEYS FOR CITY OF BERKELEY

Ella Foley-Gannon
Phillip J. Wiese
MORGAN LEWIS & BOCKIUS LLP
1 Market Spear Street Tower
San Francisco, CA 94105
Telephone: (415) 442-1000
Fax: (415) 442-1001
Email: ella.gannon@morganlewis.com
Email: phillip.wiese@morganlewis.com

ATTORNEYS FOR AMERICAN CAMPUS COMMUNITIES; AMERICAN CAMPUS COMMUNITIES SERVICES, INC.; AMERICAN CAMPUS COMMUNITIES OPERATING PARTNERSHIP LP

Michael C. Niemeyer
HAND ARENDALL LLC
71 North Section Street, Suite B
Fairhope, Alabama 36532
Telephone: (251) 990-0079
Fax: (251) 210-0606
Email: mniemeyer@handarendall.com

ATTORNEY FOR COLLEGIATE HOUSING FOUNDATION

Document received by the CA 1st District Court of Appeal.

Amanda Monchamp
Robert Taboada
MONCHAMP MELDRUM LLP
50 Francisco Street, Suite 450
San Francisco, CA 94133
Telephone: (415) 704-8915
Fax: (415) 704-8938
Email: amonchamp@mlandlaw.com
Email: rtaboada@mlandlaw.com

ATTORNEYS FOR COLLEGIATE HOUSING FOUNDATION

Hon. Brad S. Seligman
ALAMEDA COUNTY SUPERIOR COURT
DEPARTMENT 23
1221 Oak Street
Oakland, CA 94612

BY MAIL

Document received by the CA 1st District Court of Appeal.