

Supreme Court Case No. S279242

**IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA**

MAKE UC A GOOD NEIGHBORHOOD, et al.,
Petitioners and Appellants

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,
Respondents,

RESOURCES FOR COMMUNITY DEVELOPMENT,
Real Party in Interest.

OPPOSITION TO MOTION FOR JUDICIAL NOTICE

After a published opinion of the Court of Appeal,
First Appellate District, Division 5, Case No. A165451

Appeal from July 29, 2022, Order and August 2, 2022, Order and Judgment of
the Alameda Superior Court; Hon. Frank Roesch, Dept. 17, tel: 510-267-6933,
Case No. RG21110142 (Consolidated for Purposes of Trial Only with Case Nos.
RG21109910, RG21110157 and 21CV000995)

Thomas N. Lippe, SBN 104640
Law Offices of Thomas N. Lippe, APC
50 California Street, Suite 1500
San Francisco, CA 94111
Tel: 415-777-5604
Email: Lippelaw@sonic.net
Counsel for *Petitioners/Appellants*

Patrick M. Soluri, SBN 210036
Osha R. Meserve, SBN 204240
Soluri Meserve, A Law Corporation
510 8th Street
Sacramento, CA 95814
Tel: 916-455-7300
Emails: patrick@semlawyers.com;
osha@semlawyers.com;
james@semlawyers.com
Counsel for *Petitioners/Appellants*

I. INTRODUCTION

Appellants Make UC A Good Neighbor and The People's Park Historic District Advocacy Group ("Good Neighbor") oppose the motion for judicial notice ("motion") filed on August 24, 2023, by Defendants and Respondents The Regents of the University of California, et al. ("UC").

UC seeks judicial notice of legislative history materials regarding the California Environmental Quality Act ("CEQA"). UC filed the motion concurrently with their reply brief on the merits on August 24, 2023, and expressly cite this material in section I.E of their reply brief (at pages 30-31).

Good Neighbor respectfully requests that the Court deny the motion because UC failed to comply with rule 8.252 of the California Rules of Court and the motion improperly attempts to introduce new evidence and arguments in a reply brief. Good Neighbor also respectfully requests that the Court not consider the proffered new evidence or UC's new arguments, asserted in section I.E of UC's reply brief, based on this new evidence.

II. ARGUMENT

A. Respondents' Motion fails to comply with CRC, rule 8.252(a)(2).

UC's motion fails to comply with Rule 8.252, subdivision(a)(2), which provides:

The motion must state:

- (A) Why the matter to be noticed is relevant to the appeal;
- (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice

was taken by that court;

(C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and

(D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

While UC explains why it contends the matter is relevant to the appeal, it fails to provide information required by subdivisions (B), (C), (D). The motion should be denied on that basis alone. (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 834 [failure to comply with Rule 8.252 “alone, would be a sufficient reason to reject [the] request”].) Had UC complied with this rule, they would have disclosed that the material was not presented to the trial court, which is another reason to deny the request. (*People v. Preslie* (1977) 70 Cal.App.3d 486, 493 [“as a general rule the court should not take such notice if, upon examination of the entire record, it appears that the matter has not been presented to and considered by the trial court in the first instance”].)

B. UC improperly submits this new evidence with and its arguments based on this evidence in its reply brief.

The motion should also be denied because it represents an improper attempt to introduce new evidence and arguments in a reply brief. “Points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the

argument.” (*American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453; see also, *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 548; *In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 214.) UC has not shown good cause to depart from this rule. (*Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 720, fn. 10.)¹

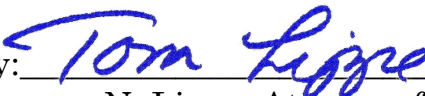
Here, as in these cases, Good Neighbor does not have an opportunity to respond to UC’s new arguments and evidence. Therefore, Good Neighbor requests that the Court not consider the proffered new evidence or UC’s arguments based on this new evidence.

III. CONCLUSION

Appellants respectfully request that the Court deny UC’s motion and not consider UC’s arguments based on this new evidence.

DATED: September 8, 2023

LAW OFFICES OF THOMAS N. LIPPE, APC

By: _____

Thomas N. Lippe, Attorney for Make UC A Good Neighbor and The People’s Park Historic District Advocacy Group

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¹(See also, *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538[denying declarations introduced on reply because opposing party would have no opportunity to respond]; *Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 744 [denying request for judicial notice in reply brief].)

PROOF OF SERVICE

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Kelly Marie

Kelly Marie Perry

SERVICE LIST

Alison Krumbein
Charles Robinson
Office of General Counsel
University of California
1111 Franklin Street, 8th Fl
Oakland, CA 94607
Tel: (510) 987-0851
emails:
charles.robinson@ucop.edu
alison.krumbein@ucop.edu

Attorney for
Respondents/Defendants:
THE REGENTS OF THE
UNIVERSITY OF
CALIFORNIA; MICHAEL
DRAKE;
UNIVERSITY OF
CALIFORNIA, BERKELEY;
and CAROL T. CHRIST

David M. Robinson, Chief
Campus Counsel
UC Berkeley, Office of Legal
Affairs
200 California Hall
Mail Code No. 1500
Berkeley, CA 94720
Tel: (510) 642-7791
email:
dmrobinson@berkeley.edu

Attorney for
Respondents/Defendants:
THE REGENTS OF THE
UNIVERSITY OF
CALIFORNIA; MICHAEL
DRAKE;
UNIVERSITY OF
CALIFORNIA, BERKELEY;
and CAROL T. CHRIST

Nicole H. Gordon
Mark J.G. Desrosiers
Margaret Sohagi
Cheron McAleece
The Sohagi Law Group, PLC
11999 San Vicente Blvd, #150
Los Angeles, CA 90049
Tel: (310) 475-5700
emails: ngordon@sohagi.com;
mdesrosiers@sohagi.com;
msohagi@sohagi.com;
cmcaleece@sohagi.com

Attorney for
Respondents/Defendants:
THE REGENTS OF THE
UNIVERSITY OF
CALIFORNIA; MICHAEL
DRAKE;
UNIVERSITY OF
CALIFORNIA, BERKELEY;
and CAROL T. CHRIST

Charles Olson
Philip J. Sciranka
Lubin Olson Niewiadomski LLP
The Transamerica Pyramid
600 Montgomery St., 14th Fl.
San Francisco, CA 94111
Tel: (415) 981-0550
emails: colson@lubinolson.com;
clee@lubinolson.com;
psciranka@lubinolson.com;
msaephan@lubinolson.com
(staff); jwilson@lubinolson.com
(staff)

Mitchell C. Tilner
Horvitz & Levy LLP
3601 West Olive Ave, 8th Fl.
Burbank, CA 91505
Tel: (818) 995-0800
email:
mtilner@horvitzlevy.com

Beth Judith Jay
Jeremy Brooks Rosen
Horvitz & Levy, LLP
505 Sansome St, Suite 375
San Francisco, CA 94111
Tel: (415) 462-5600
emails: bjay@horvitzlevy.com;
jrosen@horvitzlevy.com

Attorneys for
Respondents/Defendants:
THE REGENTS OF THE
UNIVERSITY OF
CALIFORNIA; MICHAEL
DRAKE;
UNIVERSITY OF
CALIFORNIA, BERKELEY;
and CAROL T. CHRIST

Attorneys for
Respondents/Defendants:
THE REGENTS OF THE
UNIVERSITY OF
CALIFORNIA; MICHAEL
DRAKE;
UNIVERSITY OF
CALIFORNIA, BERKELEY;
and CAROL T. CHRIST

Attorney for
Respondents/Defendants:
THE REGENTS OF THE
UNIVERSITY OF
CALIFORNIA; MICHAEL
DRAKE;
UNIVERSITY OF
CALIFORNIA, BERKELEY;
and CAROL T. CHRIST

Douglas C. Straus
Alicia C. Guerra
Buchalter APC
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Tel: (415) 227-3553
emails:
dstraus@buchalter.com;
aguerra@buchalter.com;
agetzell@buchalter.com (staff)

Michael Lozeau
Rebecca Davis
Brian B. Flynn
Lozeau Drury LLP
1939 Harrison St., Suite 150
Oakland, CA 94612
Tel: (510) 836-4200
emails:
michael@lozeaudrury.com;
rebecca@lozeaudrury.com;
brian@lozeaudrury.com;
hannah@lozeaudrury.com
(staff)

Leila H. Moncharsh
Veneruso & Moncharsh
5707 Redwood Road, Suite 10
Oakland, California 94619
Tel: (510) 482-0390
email: 101550@msn.com

*Attorneys for Real Party In
Interest:*
RESOURCES FOR
COMMUNITY
DEVELOPMENT

Attorneys for:
American Federation of State,
County & Municipal, et al., v
The Regents of the Univ. of
CA, et al., Case Nos.
RG21110157 and 21CV000995

Attorney for:
Berkeley Citizens for A Better
Plan v The Regents of the
Univ. of CA, et al., Case No.
RG21109910

Whitman F. Manley
Christopher L. Stiles
Nathan O. George
REMY MOOSE MANLEY, LLP
555 Capitol Mall, Suite 800
Sacramento, CA 95814
Tel: (916) 443-2745
emails:
wmanley@rmmenvirolaw.com;
cstiles@rmmenvirolaw.com;
ngeorge@rmmenvirolaw.com

*Attorneys for Real Parties in
Interest:*

Helen Diller Foundation, a
domestic non-profit public
benefit corporation;
Prometheus Real Estate
Group, Inc., a California
Corporation; and OSKI 360,
a limited liability California
company
Case No. RG21109910

Mary G. Murphy
Sara Ghalandari
GIBSON, DUNN &
CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Tel: (415) 393-8257
emails:
mgmurphy@gibsondunn.com;
SGhalandari@gibsondunn.com

*Attorneys for Real Parties in
Interest:*

Helen Diller Foundation, a
domestic non-profit public
benefit corporation; and OSKI
360, a limited liability
California company
Case No. RG21109910

Kathryn Oehlschlager
Downey Brand LLP
455 Market St., Suite 1500
San Francisco, CA 94105-2443
Tel: (415) 848-4820
email:
koehlschlager@downeybrand.c
om

Samuel Harbourt
Office of the Attorney General
455 Golden Gate Ave
San Francisco, CA 94102-7004
Tel: (415) 510-3919
email:
samuel.harbourt@doj.ca.gov

Clerk of the Court
California Court of Appeal
1st Appellate District, Div. 5
350 McAllister Street
San Francisco, CA 94102-3600
1dc-div5-clerks@jud.ca.gov

Brief only by U.S. Mail:
Rob Bonta
Attorney General of CA
1300 "I" Street
Sacramento, CA 95814-2919

Brief only by U.S. Mail:
Hon. Frank Roesch, Dept. 17
Alameda Superior Court
Administration Building
1221 Oak Street
Oakland CA 94612

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **MAKE UC A GOOD NEIGHBOR v. REGENTS OF THE UNIVERSITY OF CALIFORNIA (RESOURCES FOR COMMUNITY DEVELOPMENT)**

Case Number: **S279242**

Lower Court Case Number: **A165451**

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Mitchell Tilner Horvitz & Levy, LLP 93023	mtilner@horvitzlevy.com	e-Serve	9/8/2023 4:46:48 PM
Margaret Sohagi The Sohagi Law Group 126336	msohagi@sohagi.com	e-Serve	9/8/2023 4:46:48 PM
Rebecca Davis Lozeau Drury, LLP 271662	rebecca@lozeaudrury.com	e-Serve	9/8/2023 4:46:48 PM
Leila Moncharsh Veneruso & Moncharsh 74800	101550@msn.com	e-Serve	9/8/2023 4:46:48 PM
Thomas Lippe Law Offices of Thomas N. Lippe, APC 104640	Lippelaw@sonic.net	e-Serve	9/8/2023 4:46:48 PM
Whitman Manley Remy, Moose, Manley, LLP 130972	wmanley@rmmenvirolaw.com	e-Serve	9/8/2023 4:46:48 PM
Farimah Brown Berkeley City Attorney's Office 201227	fbrown@cityofberkeley.info	e-Serve	9/8/2023 4:46:48 PM
Kathryn Oehlschlager Downey Brand LLP 226817	koehlschlager@downeybrand.com	e-Serve	9/8/2023 4:46:48 PM
Kelly Perry	kmhperry@sonic.net	e-	9/8/2023

Law Offices of Thomas N. Lippe, APC		Serve	4:46:48 PM
Cheron McAleece The Sohagi Law Group, PLC	cmcaleece@sohagi.com	e- Serve	9/8/2023 4:46:48 PM
Beth Jay Horvitz & Levy, LLP 53820	bjay@horvitzlevy.com	e- Serve	9/8/2023 4:46:48 PM
Charles Olson Lubin Olson & Niewiadomski LLP 130984	colson@lubinolson.com	e- Serve	9/8/2023 4:46:48 PM
Douglas Straus Buchalter, A Professional Corporation 96301	dstraus@buchalter.com	e- Serve	9/8/2023 4:46:48 PM
Alison Krumbein Office of the General Counsel - University of California	alison.krumbein@ucop.edu	e- Serve	9/8/2023 4:46:48 PM
Michael Lozeau Lozeau Drury LLP 142893	michael@lozeaudrury.com	e- Serve	9/8/2023 4:46:48 PM
Nicole Gordon The Sohagi Law Group, PLC 240056	ngordon@sohagi.com	e- Serve	9/8/2023 4:46:48 PM
Samuel Harbourt Office of the Attorney General 313719	samuel.harbourt@doj.ca.gov	e- Serve	9/8/2023 4:46:48 PM
Jeremy Rosen Horvitz & Levy LLP 192473	jrosen@horvitzlevy.com	e- Serve	9/8/2023 4:46:48 PM
Mark Desrosiers The Sohagi Law Group, PLC 302309	mdesrosiers@sohagi.com	e- Serve	9/8/2023 4:46:48 PM
David Robinson	dmrobinson@berkeley.edu	e- Serve	9/8/2023 4:46:48 PM
Philip Scrianka 287932	psciranka@lubinolson.com	e- Serve	9/8/2023 4:46:48 PM
C Lee 294161	clee@lubinolson.com	e- Serve	9/8/2023 4:46:48 PM
M Saephan (staff)	msaephan@lubinolson.com	e- Serve	9/8/2023 4:46:48 PM
J Wilson (staff)	jwtilson@lubinolson.com	e- Serve	9/8/2023 4:46:48 PM
Alicia Guerra 188482	aguerra@buchalter.com	e- Serve	9/8/2023 4:46:48 PM
A Getzell (staff)	agetzell@buchalter.com	e- Serve	9/8/2023 4:46:48 PM
Brian Flynn 314005	brian@lozeaudrury.com	e- Serve	9/8/2023 4:46:48 PM
Hannah (staff)	hannah@lozeaudrury.com	e-	9/8/2023

		Serve	4:46:48 PM
C Stiles 280816	cstiles@rmmenvirolaw.com	e- Serve	9/8/2023 4:46:48 PM
N George 303707	ngeorge@rmmenvirolaw.com	e- Serve	9/8/2023 4:46:48 PM
Mary Murphy	mgmurphy@gibsondunn.com	e- Serve	9/8/2023 4:46:48 PM
Sara Ghalandari	SGhalandari@gibsondunn.com	e- Serve	9/8/2023 4:46:48 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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9/8/2023

Date

/s/Kelly Perry

Signature

Lippe, Thomas (104640)

Last Name, First Name (PNum)

Law Offices of Thomas N. Lippe, APC

Law Firm