

1 Charles F. Robinson, Bar No. 113197
Christopher M. Patti, Bar No. 118283
2 Margaret L. Wu, Bar No. 184167
UNIVERSITY OF CALIFORNIA
3 Office of the General Counsel
1111 Franklin Street, 8th Floor
4 Oakland, CA 94607
Telephone: (510) 987-9800
5 Facsimile: (510) 987-9757

6 William J. Carroll, Bar No. 118106
Daska P. Babcock, Bar No. 215172
7 SCHIFF HARDIN LLP
One Market, Spear Street Tower
8 Thirty-Second Floor
San Francisco, CA 94105
9 Telephone: (415) 901-8700
Facsimile: (415) 901-8701

10 Attorneys for Defendant
11 THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA (erroneously sued as UNIVERSITY
12 OF CALIFORNIA REGENTS, aka UC REGENTS
and UNIVERSITY OF CALIFORNIA AT LOS
13 ANGELES, aka UCLA)

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES

17 STOP ANIMAL EXPLOITATION NOW!,
aka SAEN, the individual JEREMY
18 BECKHAM, and DOES 1-10,

19 Plaintiffs,

20 v.

21 UNIVERSITY OF CALIFORNIA REGENTS,
aka UC REGENTS, UNIVERSITY OF
22 CALIFORNIA AT LOS ANGELES, aka
UCLA, and DOES 1-10,

23 Defendants.
24

Case No. BC402237

~~(PROPOSED)~~ ORDER DENYING
PUBLIC RECORDS ACT CLAIMS FOR
INJUNCTIVE AND DECLARATORY
RELIEF

Dept.: 30
Judge: The Honorable John A. Kronstadt

25
26 Plaintiffs' claims for declaratory and injunctive relief seeking disclosure by defendant of
27 certain public records pursuant to the California Public Records Act, Government Code
28 section 6251, *et seq.* ("PRA"), came on regularly for hearing in Department 30 of this Court on

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 16 2010

John A. Clarke, Executive Officer/Clerk
By F.T. Espinoza, Deputy

1 February 22, 2010, and April 5, 2010, the Honorable John A. Kronstadt presiding.
2 Christine L. Garcia appeared for plaintiffs Stop Animal Exploitation Now! ("SAEN") and
3 Jeremy Beckham ("Beckham"). William J. Carroll appeared for defendant The Regents of the
4 University of California ("Defendant" or "the University").

5 The Court has considered the moving papers and the opposition thereto, the evidentiary
6 objections, the entire record before the Court, and the arguments presented at the two hearings
7 held in this matter. Based thereon, the Court HEREBY ORDERS that for the reasons set forth
8 below Plaintiffs' claims should be and hereby are DENIED in their entirety.

9 **BACKGROUND**

10 Plaintiffs are each involved in educating the public concerning the use of animals in
11 scientific research. Plaintiffs have each made requests for disclosure of public records pertaining
12 to animal research at Defendant's UCLA campus pursuant to the PRA, as follows: 1) On
13 December 12, 2006, plaintiff Beckham requested research protocols for five specified UCLA
14 primate researchers; 2) on August 10, 2007, Beckham requested a copy of a census of all
15 nonhuman primates housed and utilized by UCLA; 3) in November 2007, plaintiff SAEN
16 requested UCLA to furnish all primate "daily care logs" and necropsy reports for the preceding
17 two-year period and all currently funded research protocols involving primates. Defendant
18 initially produced redacted protocols for the five specified researchers, but as a result of incidents
19 occurring in early 2007, including the firebombing of a car owned by one of the specified
20 researchers and death threats against another, Defendant declined to produce additional records,
21 citing, among other reasons, the safety threats posed by disclosure of the requested records.
22 Plaintiffs filed the instant action for declaratory and injunctive relief under the PRA, seeking an
23 order compelling disclosure of the requested records.

24 **DISCUSSION**

25 Under the PRA, the burden is on the University, as the party seeking to prevent disclosure,
26 to demonstrate that the records in question are exempt under the express provisions of the PRA or
27 that, on the facts of the particular case, the public interest served by not disclosing the records
28 clearly outweighs the public interest served by disclosure. Gov. Code § 6255(a). A party

1 resisting disclosure must show a clear overbalance on the side of confidentiality. *City of San Jose*
2 *v. Superior Court (San Jose Mercury News, Inc.)* (1999) 74 Cal.App.4th 1008, 1018.

3 Defendant has demonstrated, with substantial evidence, the existence of a serious threat to
4 the personal safety of researchers and their immediate families resulting from the sustained and
5 persistent activities of certain animal rights activists. The evidence shows that the activists have
6 engaged in repeated acts of violence and intimidation directed against researchers, often in their
7 homes with their families present, including death threats, home break-ins, firebombings, and
8 other acts of vandalism and destruction of personal property (e.g., Fairbanks Decl. ¶¶ 5-7; 10-12;
9 15, 16, 18; Rosenbaum Decl. ¶¶ 4, 6, 8, 13, 16-17, ¶ 18 (p. 5, lines 5-6, 9), ¶¶ 19-20, 23, and
10 Exs. 1-4; Way Decl. ¶¶ 2, 4-6, ¶ 7 (p. 2 at line 26), ¶ 8, and Exs. 1-2; London Decl. ¶¶ 8, 11, 13,
11 and Exs. 1-4; Lačan Decl. ¶¶ 2-4, 6, ¶ 7 (p. 3 at lines 3, 5-7), ¶¶ 8-9, and Exs. 1-3; Jentsch Decl.
12 ¶¶ 2-5; Ringach Decl., Ex. 1 at ¶ 4, lines 13-19 and ¶ 6).

13 These activities have had a detrimental impact on scientific research at UCLA, deterring
14 some faculty from using animals in their research or publicizing the results of such research (e.g.,
15 Peccei Decl. ¶¶ 7, 15, 17, and Ex. 2; Ringach Decl., Ex. 1 at ¶¶ 9-12, 14). Defendant also has
16 demonstrated a causal nexus between its disclosure of animal research records and subsequent
17 attacks on the researchers identified in such records after they are disseminated to the public via
18 the internet (e.g., Burnside Decl. ¶ 5, Ex. A; Rosenbaum Decl., Exs. 3, 4). Defendant's
19 evidentiary showing of the threats posed to the personal safety of researchers and their families is
20 substantial and includes explicit death threats to researchers, firebombings of cars owned (or
21 thought to be owned) by researchers, the flooding of the interior of a home owned by one
22 researcher's husband, and nighttime intrusions into researchers' homes.

23 The Court finds that the University's disclosure of the requested research protocols and
24 other animal research records would result in a significant and specific risk of unlawful
25 intimidation and physical harm to the researchers involved in the research and to their families.

26 Further, the Court is convinced that the risks of disclosure cannot be adequately mitigated
27 by redacting researchers' names and identifying information from the requested records. As
28 Defendant has shown, there are a number of ways in which an individual can utilize public

1 databases to trace the identity of researchers from information disclosed in redacted protocols or
2 other redacted records.

3 Plaintiffs maintain that disclosure of the requested records advances the public's interest
4 in enforcing laws regulating the care and use of animals in scientific research and in ensuring that
5 the use of animals in such research is scientifically justified and not wasteful of public funds.
6 The Court finds that the records requested by Plaintiffs have a limited bearing on these interests.
7 The Court further finds that such interests are more substantially addressed by the University's
8 other public disclosures, including UCLA's Animal Research and Animal Welfare Disclosure
9 Report (Wadsworth Decl., Ex. 1) and UCLA's 2008 Program Description Report for the
10 Association for Assessment and Accreditation of Laboratory Animal Care (Wadsworth Decl.,
11 Ex. 3). These reports include detailed information about the external and internal oversight of
12 UCLA's animal care and use programs, the veterinary care provided to animals housed at UCLA,
13 the training required for researchers, veterinarians, and staff, and the methods and facilities used
14 to house and manage animals. The reports also provide detailed preventive medicine procedures
15 for housed animals, describe procedures by which pain and distress are assessed and minimized,
16 report on inspections of animal facilities located on campus, and furnish information regarding
17 the review and approval of protocols addressing animal research. Taken together, these reports
18 furnish a detailed description of the means by which the University attains compliance with
19 applicable animal welfare laws, regulations, and policies.


20 When considered against the backdrop of this publicly available information, the public
21 interest advanced by disclosure of the records sought by Plaintiffs is minimal. *See, e.g., Forest*
22 *Service Employees for Environmental Ethics v. U.S. Forest Svc.* (9th Cir. 2008) 524 F.3d 1021,
23 1023-24. The Court finds that the public interests in non-disclosure of the requested records —
24 avoiding harm to University researchers and their families and preventing the impairment of
25 research activities at the University — clearly outweigh the public interest in disclosure under the
26 facts presented here. Accordingly, the Court finds that Defendant has met its burden under
27 Government Code section 6255, subsection (a), thereby relieving it of the obligation to produce
28 the requested public records.

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
28

For the foregoing reasons, Plaintiffs' requests for declaratory and injunctive relief requiring disclosure of the requested records are hereby DENIED.

IT IS SO ORDERED.

Dated: JUL 16 2010, 2010



The Honorable John A. Kronstadt
Superior Court Judge

SP9712467.1

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is One Market, Spear Street Tower, 32nd Floor, San Francisco, California. On the date stated below, at San Francisco, California, I served the attached document(s) on the parties in this action as follows:

**NOTICE OF ENTRY OF ORDER DENYING PUBLIC RECORDS ACT
CLAIMS FOR INJUNCTIVE AND DECLARATORY RELIEF**

- By placing the document(s) listed above in a sealed Federal Express envelope, addressed and affixing a pre-paid air bill. I am readily familiar with the practice of Federal Express at my place of business to collect and process correspondence and documents for overnight delivery (pursuant to C.C.P. § 1013)

Christine L. Garcia
The Animal Law Office
2404 California Street, #4
San Francisco, CA 94115
Phone: 415-297-3109
Fax: 415-358-9937
Email: christine@animalattorney.com
Attorneys for Plaintiffs

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

Executed this 21st day of July 2010, at San Francisco, California.



Leann F. Love

SF9274108.1