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13 Attorneys for Bennett Goldberg and Linda Kuckuk in their joint capacities as intestate successors  
14 in interest to Aaryn Goldberg, an individual, on behalf of themselves and all others  
similarly situated

15 SUPERIOR COURT

16 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

17 STATE OF CALIFORNIA

18 BENNETT GOLDBERG and LINDA  
KUCKUK in their joint capacities as  
19 intestate successors in interest to Aaryn  
Goldberg, an individual, on behalf of  
20 themselves and all others similarly situated,

21 Plaintiffs,

22 v.

23 STEPHENS INSTITUTE, a California  
corporation,

24 Defendant.  
25  
26  
27  
28

ENDORSED  
FILED  
San Francisco County Superior Court

MAR 30 2017

CLERK OF THE COURT  
BY: KALENE APOLONIO  
Deputy Clerk

Case No. **CGC-17-557866**

**COMPLAINT FOR PENAL FINES**

**BY FAX**  
ONE LEGAL LLC

1 Come now Plaintiffs Bennett Goldberg and Linda Kuckuk (Plaintiffs) and allege as  
2 follows:

3 **The Parties**

4 1. Plaintiffs are individual persons who are the parents of Aaryn Goldberg, deceased  
5 (Aaryn). Plaintiffs bring this case in their joint capacity as the intestate successors in interest to  
6 Aaryn and on behalf of the Class, as that term is defined, *infra*. Prior to her death in 2015 Aaryn  
7 was a registered student in good standing with Academy (as that term is defined, *infra*) who had  
8 occupied and was occupying Academy Residential Units (as that term is defined, *infra*) pursuant  
9 to the terms of certain Student Bed Licenses (as that term is defined, *infra*).

10 2. Defendant Stephens Institute aka the Academy of Art University (Academy) is a  
11 for-profit California corporation certified by the Western Association of Schools and Colleges as  
12 an institution of higher learning.

13 **Jurisdiction and Venue**

14 3. Jurisdiction in this Court is proper in that this case seeks only an award of certain  
15 penal fines under the Rent Ordinance (as that term is defined, *infra*) on account of Academy's  
16 tenant harassment of both Plaintiffs and Class (as that latter term is defined, *infra*).

17 4. Venue is appropriate in the City and County of San Francisco, California, because  
18 Academy has its principal place of business here.

19 **Limitation of Actions**

20 5. On May 13, 2016, an action named *Goldberg v. Stephens Institute (Academy I)*,  
21 Case No. 3:16-cv-02613 (N.D. Cal.), was filed by Plaintiffs on behalf of Class (as that term is  
22 defined, *infra*) in the federal court, all based on the supposition that *Robins v. Spokeo, Inc.*  
23 (*Spokeo I*), 742 F.3d 409 (9th Cir. 2014) meant that the federal court had jurisdiction over  
24 *Academy I* under the Class Action Fairness Act, 28 U.S.C. § 1332(d). Subsequently, *Spokeo I*  
25 was reversed by *Spokeo, Inc. v. Robins (Spokeo II)*, 136 U.S. 1540 (2015), and remanded to the  
26 Ninth Circuit for further proceedings (*Spokeo III*) not inconsistent with *Spokeo II*, and where  
27 *Spokeo III* remains undecided. As a direct result of the decision in *Spokeo II*, and on March 29,  
28 2017, the federal court to which *Academy I* had been assigned ordered *Academy I* dismissed

1 without prejudice to its being refiled in this court (this present case is hereafter designated as  
2 *Academy II*). The one year statute of limitations otherwise applicable to *Academy II* pursuant to  
3 Code of Civil Procedure section 340(a) as that statute of limitations is otherwise applicable to a  
4 Rent Ordinance (as that term is defined, *infra*) claim for penal fines on account of tenant  
5 harassment by Academy has thus been tolled from May 13, 2016, through March 29, 2017. *See*  
6 *Addison v. State*, 21 Cal. 3d 313, 319 (1978); *Bjorndal v. Superior Court*, 211 Cal. App. 4th  
7 1100, 1108 (2012) (“the filing of a federal lawsuit equitably tolls the statute of limitations for  
8 filing state claims based on ‘the same set of facts.’”).

### 9 **Definitions of Relevant Terms**

10 6. The relevant terms “building,” “first certificate of occupancy,” “institution of  
11 higher learning,” “post-secondary educational institution,” “rental unit,” “rental housing unit,”  
12 “residential unit,” and “student housing” shall have the technical meanings ascribed to them by  
13 Chapter 37 of the San Francisco Administrative Code (Rent Ordinance) and/or the San Francisco  
14 Planning Code (Planning Code) and/or the First Amended Complaint filed on July, 1, 2016, in  
15 *People v. Stephens etc.*, San Francisco Superior Court Case No. CGC-16-551832 (Government  
16 Enforcement Case Complaint and Government Enforcement Case, respectively) the contents of  
17 both of which are hereby fully incorporated herein by reference at this point.

18 7. The ordinary meaning of the term “dormitory” is “a room for sleeping.”  
19 *See* <http://www.merriam-webster.com/dictionary/dormitory>.

20 8. The ordinary meaning of the term “dwelling” is “a place where a person lives.”  
21 *See* <http://www.merriam-webster.com/dictionary/dwelling>.

22 9. The ordinary meaning of the term “own” is “to legally possess (something).” *See*  
23 <http://www.merriam-webster.com/dictionary/own>.

### 24 **Charging Allegations**

25 10. Academy is a post-secondary educational institution, which, pursuant to the terms  
26 of certain written master leases, leases the whole of certain buildings from the owners of such  
27 buildings, which buildings are all located in the City and County of San Francisco and, to the  
28 extent this information is presently known to exist by Plaintiffs, are further described by their

1 physical street addresses as follows: 168 Bluxome Street; 1080 Bush Street; 1153 Bush Street;  
2 575 Harrison Street; 1900 Jackson Street; 736 Jones Street; 1727 Lombard Street; 1916 Octavia  
3 Street; 2209 Van Ness Avenue; 2211 Van Ness Avenue; 1055 Pine Street; 560 Powell Street;  
4 620 Sutter Street; 655 Sutter Street; 680 Sutter Street; 817-831 Sutter Street; and 860 Sutter  
5 Street (hereafter, collectively, Academy Buildings).

6 11. Academy Buildings' first certificates of occupancy for new construction, as those  
7 certificates were initially issued to the original owners of Academy Buildings by the San  
8 Francisco Department of Building Inspection, described all of Academy Buildings as containing  
9 residential units (Academy Residential Units).

10 12. At all times relevant herein, Academy has been licensing what it calls "bed spaces"  
11 within Academy Residential Units to Academy's registered students in good standing, specifically  
12 including Aaryn, for use by those students as dwellings.

13 13. Licensing of bed spaces within Academy Residential Units to Academy's  
14 registered students in good standing, specifically including Aaryn, is accomplished by means of  
15 Academy's requiring that, as a condition of occupancy, Academy's registered students in good  
16 standing, specifically including but not limited to Aaryn, execute written agreements materially in  
17 the form attached hereto as Exhibit 1 (Student Bed Licenses).

18 14. Student Bed Licenses all read, in pertinent part:

19 This Agreement grants Student permission to use a bed space within a University residence  
20 hall ... It is understood and agreed by Student and the University that this Agreement is a  
21 license and not a lease, and that no lease nor any other interest or estate in real property is  
22 created by this Agreement; nor are there any covenants, express or implied, such as a  
23 covenant for quiet enjoyment, created by this Agreement that are not otherwise expressly  
24 contained in this Agreement. Student is further informed and acknowledges that his or her  
25 room, which includes a room, apartment, and/or suite, does not constitute a Rental Unit as  
26 defined by the San Francisco Rent Stabilization and Arbitration Ordinance ('Rent  
27 Ordinance') or the regulations promulgated pursuant to the Rent Ordinance (San Francisco  
28 Administrative Code Section 37.2(r)(3) states that 'rental units' shall not include housing

1 accommodations in dormitories owned and operated by an institution of higher education).  
2 As such, the University may terminate the Student's license to use the room upon 24-hours  
3 written notice to Student under the terms of this Agreement and without alleging just cause  
4 under the Rent Ordinance. Any necessary eviction action shall be brought pursuant to Code  
5 of Civil Procedure Section 1161(1) ... ¶ Student must check-out within 24 hours after  
6 his/her last final exam ... ¶ I hereby acknowledge that I have received and read, and I  
7 understand and agree to the terms and conditions contained in the ... Agreement. If I  
8 violate any of the terms of this document, I understand that I would be in breach of this  
9 Agreement. Such violation may, at the [Academy's] sole discretion, cause me to be  
10 disciplined (including educational assignments, including, but not limited to, community  
11 service, reflection papers, or other projects), fined, and/or may cause the [Academy] to  
12 revoke the license to use a bed space conferred by this Agreement.

13 15. Beginning in 2013 and up until her death in 2015, Aaryn was a registered student  
14 in good standing with the Academy, and, in that capacity she executed not less than four separate  
15 Student Bed Licenses, and she thereafter resided in various Academy Residential Units located  
16 within various Academy Buildings, records of which Student Bed Licenses and Aaryn's precise  
17 dates of occupancy pursuant to said Student Bed Licenses (Aaryn's Occupancy of Purported  
18 Academy Dorms) are presently and exclusively in the possession of Academy and are not in the  
19 possession of Plaintiffs.

20 16. In connection with each separate Student Bed License which Aaryn executed,  
21 Aaryn made the specific, truthful "acknowledge[ment] that ... [she had] received and read and ...  
22 under[stood] and agree[d] to the terms and conditions" which is contained in each separate  
23 Student Bed License.

24 17. As is alleged at ¶¶ 50, 53 of Government Enforcement Case Complaint, Academy  
25 has never converted Academy Buildings into student housing otherwise suitable for use as  
26 dormitories by obtaining any of the various conditional use and/or building permits legally  
27 required by the San Francisco Planning Code in order to accomplish any conversion of Academy  
28

1 Buildings to student housing otherwise suitable for use as dormitories on any lawful basis  
2 whatsoever.

3 18. Instead, as is alleged at ¶ 54 of Government Enforcement Case Complaint, the  
4 Planning Code has, at all times relevant herein, entirely forbidden any conversion of Academy  
5 Buildings to student housing otherwise suitable for use as dormitories.

6 19. However, and while it never *de jure* converted Academy Buildings to student  
7 housing (which *de jure* conversion would have been impossible in any case), Academy did issue  
8 Student Bed Licenses to registered students in good standing with the Academy with the intention  
9 of *de facto* converting Academy Buildings into dormitories (Purported Academy Dorms).

10 20. The *de facto* conversion of Academy Buildings into Purported Academy Dorms  
11 was accomplished by way of Academy's conduct in unlawfully diminishing the already very  
12 limited supply of rent-controlled housing accommodations within the City and County of San  
13 Francisco in direct knowing violation of the Rent Ordinance. This fact has previously been  
14 admitted by Academy in connection to what Academy has previously described as Academy's  
15 path to legalization argument as is set forth in Academy's Memorandum of Points and  
16 Authorities in Support of Demurrer etc. dated August 22, 2016 (Academy Demurrer to  
17 Government Enforcement Case) on file in the Government Enforcement Case, a true and correct  
18 copy of which Academy Demurrer to Government Enforcement Case is attached as Exhibit 2  
19 hereto.

20 21. As Purported Academy Dorms are now in fact exclusively occupied by registered  
21 students in good standing with the Academy pursuant to Student Bed Licenses, and despite  
22 Academy having taken a contrary position in its Academy Demurrer to Government  
23 Enforcement Case, Academy has previously alleged in *Academy I* that, supposedly consistent  
24 with the terms of Student Bed Licenses themselves, Purported Academy Dorms are presently *de*  
25 *jure* exempt from the Rent Ordinance.

26 22. The Academy makes the above-stated allegations despite the indisputable  
27 circumstances surrounding how Purported Academy Dorms were *de facto* converted from  
28

1 Academy Buildings into dormitories in derogation of sections 37.2(r)(1) and 37.9(a) of the Rent  
2 Ordinance.

3 23. The Academy also makes the above-stated allegations despite the fact that section  
4 37.2(r)(3) of the Rent Ordinance only exempts “dormitories [which are] owned and operated by  
5 an institution of higher education” and, given that the ordinary meaning of the word “own”  
6 requires legal possession for something to be deemed the subject of proper ownership in the first  
7 place, the Purported Academy Dorms are therefore not exempt from the Rent Ordinance and  
8 never have been so exempt. Student Bed Licenses purport to strip registered students in good  
9 standing with the Academy who either have resided or still reside in various Academy  
10 Residential Units located within various Academy Buildings, specifically including, but not  
11 limited to Aaryn, of their rights under the Rent Ordinance on a continuous basis by having  
12 influenced or attempted to influence them to vacate their rental housing units through fraud,  
13 intimidation or coercion in violation of section 37.10B(a)(5) of the Rent Ordinance.

14 24. Student Bed Licenses purport to strip registered students in good standing with  
15 the Academy who either have resided or still reside in various Academy Residential Units  
16 located within various Academy Buildings, specifically including, but not limited to Aaryn, of  
17 their rights under the Rent Ordinance on a continuous basis by interfering with their rights to  
18 quiet use and enjoyment of a rental housing unit as that right is defined, in turn, by California  
19 Civil Code section 1927 in violation of section 37.10B(a)(10) of the Rent Ordinance.

20 25. Student Bed Licenses purport to strip registered students in good standing with the  
21 Academy who either have resided or still reside in various Academy Residential Units located  
22 within various Academy Buildings, specifically including, but not limited to Aaryn, of their rights  
23 under the Rent Ordinance on a continuous basis by interfering with their rights to privacy in  
24 violation of section 37.10B(a)(13) of the Rent Ordinance.

25 26. Student Bed Licenses purport to strip registered students in good standing with  
26 the Academy who either have resided or still reside in various Academy Residential Units  
27 located within various Academy Buildings, specifically including, but not limited to Aaryn, of  
28 their rights under the Rent Ordinance on a continuous basis by interfering with and otherwise

1 disturbing their rights to comfort, repose, peace and quiet in violation of section 37.10B(a)(15) of  
2 the Rent Ordinance.

3 27. Sections 37.10B(a)(5), 37.10B(a)(10), 37.10B(a)(13) and 37.10B(a)(15) of the  
4 Rent Ordinance are hereafter sometimes collectively referred to as the Relevant Tenants Rights  
5 Laws. Aaryn's rights under the Relevant Tenants Rights Laws are hereafter sometimes hereafter  
6 collectively referred to as the Relevant Tenants Rights.

7 28. Each violation of the Relevant Tenants Rights (the Relevant Tenants Rights  
8 Violations) alleged, *supra*, make Academy liable for a penal fine of \$1,000 per occurrence  
9 pursuant to section 37.10B(c)(5) of the Rent Ordinance (the Rent Ordinance Penal Fine).

10 29. The Relevant Tenants Rights Violations which have made Academy liable for a  
11 Rent Ordinance Penal Fine to Aaryn on account of Aaryn's Occupancy of Purported Academy  
12 Dorms arose out of Academy's incorrect statement in the Student Bed Licenses which Academy  
13 had Aaryn execute as a condition of her occupancy in Purported Academy Dorms which  
14 expressly represented to Aaryn that Academy Buildings did not contain rental units subject to the  
15 Rent Ordinance and that, as a consequence of that supposed fact, the Rent Ordinance did not  
16 protect Aaryn's Occupancy of Purported Academy Dorms in the same way it would have  
17 ordinarily protected any tenant's rights to occupancy of any rental unit subject to the Rent  
18 Ordinance as per the terms of the Rent Ordinance itself. This incorrect statement by the  
19 Academy as to the true scope of the coverage the Rent Ordinance afforded Aaryn's Occupancy  
20 of Purported Academy Dorms is hereafter referred to as the Statutory Injury.

21 30. The Statutory Injury was aggravated by the Student Bed Licenses' incorrect  
22 statements that Academy had certain rights (Academys Claimed Rights) under the Student Bed  
23 Licenses.

24 31. Academys Claimed Rights were entirely at odds with Relevant Tenants Rights  
25 which Relevant Tenants Rights actually protected Aaryn's Occupancy of Purported Academy  
26 Dorms as provided for by the Rent Ordinance and not on a *caveat emptor* basis. Academys  
27 Claimed Rights were, *inter alia*, set forth in the Student Bed Licenses as follows:

28

- 1 • A student who withdraws from the University, is academically dismissed, or who  
2 is dismissed for disciplinary reasons, must vacate housing within 24 hours of  
3 written notice to terminate Student’s license under this Agreement. (Student Bed  
4 License II(C).)
- 5 • The University may terminate the Student’s license to use the room upon 24-  
6 hours written notice to Student under the terms of this Agreement and without  
7 alleging just cause under the Rent Ordinance. (Student Bed License II(D).)
- 8 • If Student requires intersession housing during winter break, he or she must file  
9 an intersession request form, be approved by the University’s Department of  
10 Housing, and pay intersession fees. (Student Bed License II(F)(1).)
- 11 • Student must vacate his or her room at the close of the academic year in  
12 accordance with the University’s published schedules. All personal property of  
13 Student must be removed from all residential areas by 12:00 p.m. on the day of  
14 checkout. (Student Bed License II(F)(2).)
- 15 • The University makes no express warranties, and disclaims any and all implied  
16 warranties, with regard to the premises, room, fixtures, appliances, and furniture.  
17 (Student Bed License II(F)(4).)
- 18 • It is the sole responsibility of Student to maintain a minimum of \$500 in the  
19 Student’s deposit account at the beginning of the fall semester and \$250 at the  
20 beginning of the spring and summer semesters, even if that requires additional  
21 funds to be deposited during the term of this Agreement. All new students are  
22 required to pay the initial \$500 security deposit. (Student Bed License II(H).)
- 23 • If Student cancels after the ten (10) day period or after submission but before the  
24 start date of this Agreement, he/she will be charged a \$500 cancellation fee.  
25 (Student Bed License II(I).)
- 26 • The University may, at the University’s sole discretion, terminate Student’s  
27 license to use Student’s room upon 24-hours written notice to Student. (Student  
28 Bed License II(I).)

- 1 • No refund of the charges due under this Agreement will be given to Student for  
2 any reason after the start date. If Student vacates his/her room without written  
3 approval, is released due to disciplinary actions(s), is academically dismissed, is  
4 dismissed due to outstanding debts owed to the University, or withdraws  
5 voluntarily from the University, he/she will not be reimbursed. (Student Bed  
6 License II(J).)
- 7 • The Agreement does not grant Student exclusive use of any room, or portion  
8 thereof. (Student Bed License II(L).)
- 9 • The University, its employees, and agents reserve the right to enter any room at  
10 any time. (Student Bed License II(L).)
- 11 • The University reserves the right to change room assignments, assign a new  
12 roommate, or reassign a current Student to any available bed space at any time,  
13 and/or consolidate vacancies in the interest of health, occupancy, or for general  
14 welfare, in which event Student's account will be credited or charged the  
15 difference in room rate. (Student Bed License II(L).)
- 16 • Any behavior(s) by Student that infringes upon the rights or space usage of  
17 room/apartment/suite-mates is strictly prohibited and will result in disciplinary  
18 action. (Student Bed License II(L).)
- 19 • If Student fails to report his or her health insurance information prior to move-in,  
20 Student will be required to purchase student health insurance. (Student Bed  
21 License II(R).)
- 22 • Failure to comply with community policies may lead to consequences such as, but  
23 not limited to, revocation or termination of the license granted by this Agreement  
24 to use University campus housing. (Student Bed License III.)
- 25 • The possession, consumption, sale or manufacture of alcohol, regardless of  
26 resident and/or guest age is strictly prohibited in any University facilities (leased  
27 or owned). (Student Bed License III(CP.1).)
- 28

- 1           • The possession of alcohol paraphernalia (packaging, “trophy bottles,” empty  
2           bottles/cans, shot glasses, drinking funnels, etc.) also is prohibited. (Student Bed  
3           License III(CP.1).)
- 4           • Bringing firearms, weapons, and/or ammunition into University Campus Housing  
5           or storing them in Student’s rooms or anywhere else may be grounds for the  
6           immediate termination of this Agreement. Weapons may include knives having a  
7           blade longer than 4 inches, razors, laser pointers, toy, fake or replica guns or  
8           water guns. (Student Bed License III(CP.3).)
- 9           • A pattern of recalcitrance, irresponsible conduct, or manifest immaturity may be  
10          interpreted as a significant disciplinary problem and may result in termination of  
11          this Agreement at the University’s sole discretion, with 24-hours written notice to  
12          Student pursuant to the terms of this Agreement. (Student Bed License III(CP.4).)
- 13          • The following items are prohibited in University housing: water beds, lofted beds,  
14          microwave ovens, candles, incense, alcoholic beverages, alcohol  
15          containers/bottles/cans, automobiles, or vehicles of any kind (or parts, repair tools),  
16          accessories for any vehicle, air conditioners, dart boards, halogen lamps, sun lamps,  
17          weight lifting equipment, and live holiday decorations (including string lights). The  
18          University reserves the right to determine that an item not mentioned above is  
19          prohibited, and to remove or confiscate any and all prohibited items. (Student Bed  
20          License III(CP.8).)
- 21          • Noise and/or music are not to be heard outside windows or in the hallway at any  
22          time, night or day. (Student Bed License III(CP.9).)
- 23          • Commercial activity, solicitations or advertisements (written signs or e-mail  
24          messages) are not permitted in the residence halls unless permission has been  
25          granted by the University’s Department of Housing. (Student Bed License  
26          III(CP.11).)
- 27          • Pets (including fish & livestock) are not permitted in the residence halls. (Student  
28          Bed License III(CP.11).)



1 Discovery Sub-Class are sometimes hereafter collectively referred to as Class or Class members.

2 36. The overall Class period (Class Period) is from the beginning of time until the  
3 date a class is certified.

4 37. On information and belief, Plaintiffs allege that there are not less than 20,000  
5 Class members.

6 38. Questions of law and fact common to the Class members predominate over  
7 questions affecting only individual members.

8 39. An example of a question affecting all Class members is over what intervals of  
9 time (hourly, daily, weekly, etc.) should the Rent Ordinance Penal Fine be awarded to Class  
10 members under the Relevant Tenants Rights Laws?

11 40. An example of a question affecting only individual members of Class is what  
12 effect should the length of occupancy by a Class member in Purported Academy Dorms have on  
13 the dollar amounts of individual awards of the Rent Ordinance Penal Fine to be made available to  
14 Class members under the Relevant Tenants Rights Laws?

15 41. Treating this dispute as a class action is a superior method of adjudication. Joinder  
16 of all Class members would be impractical. The amount in controversy, while large in the  
17 aggregate, is relatively small for individual Class members, especially when compared to the  
18 expense of prosecuting individual claims.

19 42. Managing this dispute as a class action should not be difficult.

20 43. Plaintiffs' claims are typical of the claims of other Class members. They can and  
21 will adequately represent Class. They have retained competent and experienced counsel who will  
22 vigorously represent the interests of Class.

23 **Sole Claim for Relief (Penal Fines)**

24 44. Plaintiffs and Class re-allege paragraphs 1–43.

25 45. For the avoidance of doubt, Plaintiffs and Class members do ***not*** seek an award of  
26 any actual damages on account of the Statutory Injury and/or Academy's assertion of Academy's  
27 Claimed Rights in the Student Bed Licenses.

28 46. Rather, the only relief requested by Plaintiffs and Class members on account of

1 the Statutory Injury (as aggravated by Academy's assertion of Academy's Claimed Rights under  
2 the Student Bed Licenses) is an award to them of a collective Rent Ordinance Penal Fine in the  
3 amount of not less than \$5,000,000, and according to proof at trial, plus attorney fees and costs,  
4 all as same are, *inter alia*, provided for by section 37.10B(c)(5) of the Rent Ordinance.

5 WHEREFORE Plaintiffs and Class pray judgment as follows:

6 A. The Court should certify Class, appoint Plaintiffs as Class representatives, and  
7 appoint their counsel as Class counsel.

8 B. The Court should award a collective Rent Ordinance Penal Fine to Plaintiffs and  
9 Class members in an overall amount of not less than \$5,000,000, and according to proof at trial.

10 C. The Court should award attorney fees and costs on either or both a statutory  
11 and/or a common fund basis to Class counsel.

12 Dated: March 30, 2017

McGRANE PC  
shierkatz RLLP  
Of Counsel: Myron Moskovitz

13  
14 By:   
William McGrane

15 Attorneys for Plaintiffs Bennett Goldberg and Linda  
16 Kuckuk, in their joint capacities as intestate successors  
17 in interest to Aaryn Goldberg, individuals, on behalf of  
18 themselves and all others similarly situated  
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# EXHIBIT 1



## Housing License Agreement 2015 – 2016

### **INTRODUCTION**

Academy of Art University Housing system includes any living accommodations owned or leased by the University which provides housing each term to eligible students. All students must conduct themselves in a manner consistent with the University's expectations, as stated in the Student Code of Conduct, this Housing License Agreement, and any and all other applicable University policies, procedures, supplemental agreements, rules and regulations.

Academy of Art University campus housing program is managed by Century Campus Housing Management L.P. dba Campus Living Villages (the "Manager"), 1001 Fannin, Suite 1350, Houston, Texas 77002, (713) 871-5100., <http://www.campuslivingvillages.com/>.

### **PART I: ACADEMIC TERM OF LICENSE**

The term of this license is for the Fall 2015 and Spring 2016 semesters – **one FULL academic year**. Move-in dates and the start of classes are published by the University in advance and available on the University's website at [www.academyart.edu](http://www.academyart.edu).

- Any student enrolled at the University who has signed this license will be held financially liable for their residence hall assignment for the entire term indicated in this contract.
- Any student who has picked up his or her room and/or building keys at any time during the Fall 2015 or Spring 2016 semesters will be held financially liable for his or her residence hall assignment for the entire term indicated in this contract. Residence hall buildings open and close on the University's published opening and closing dates.

### **PART II: TERMS AND CONDITIONS**

- A.)** This Housing License Agreement (the "Agreement") is entered into between the individual student named on this Agreement (the "Student") and Academy of Art University (the "University").
- B.)** This Agreement is for **BOTH** the Fall and Spring semesters of the 2015 - 2016 academic year. Residence hall services, including access to the assigned room, begin on the designated opening day and end within 24 hours after the Student's last final exam, but no later than 12:00 p.m. on the published last final exam day at the University. The bed space and/or room and dining service under the license provided by this Agreement may not be sold, loaned, assigned, subleased, or transferred to any other person. This Agreement will not be accepted or processed unless the student is accepted to the University.
- C.) ELIGIBILITY:** Housing is provided only to students enrolled full-time and onsite as determined by the Office of the Registrar. Part-time and/or non-degree students are not eligible to live in campus housing unless permission is granted by the Director of Housing or his/her designee. A student who withdraws from the University, is academically dismissed, or who is dismissed for disciplinary reasons must vacate housing within 24 hours of written notice to terminate Student's license under this Agreement.
- D.) LICENSE:** This Agreement grants Student permission to use a bed space within a University residence hall during the Fall and Spring semesters of the 2015 – 2016 academic year, on the applicable start and end dates determined by the University. It is understood and agreed by Student and the University that this Agreement is a license and not a lease, and that no lease nor any other interest or estate in real property is created by this Agreement; nor are there any covenants, express or implied, such as a covenant for quiet enjoyment, created by this Agreement that are not otherwise expressly contained in this Agreement. Student is further informed and acknowledges that his or her room, which includes a room, apartment, and/or suite, does not constitute a Rental Unit as defined by the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance") or the regulations promulgated pursuant to the Rent Ordinance (San Francisco Administrative Code Section 37.2(r)(3) states that "rental units" shall not include housing accommodations in dormitories owned and operated by an institution of higher education). As such, the University may terminate the Student's license to use the room upon 24-hours written notice to Student under the terms of this Agreement and without alleging just cause under the Rent Ordinance. Any necessary eviction action shall be brought pursuant to Code of Civil Procedure Section 1161(1).
- E.) NO LANDLORD/TENANT RELATIONSHIP:** Student acknowledges that this Agreement is intended to create a license to use the residence and dining services provided by this Agreement and that this Agreement does not to create a landlord and tenant relationship. Student hereby acknowledges that he/she does not possess any rights as a tenant hereunder and hereby waives any rights of a tenant under federal, state, or local landlord/tenant laws, and waives any and all notices that a landlord would otherwise be required to provide to terminate any such tenancy. The sole right of Student to

use an assigned room and use residence and dining services shall be based upon the revocable license granted under this Agreement.

**F.) USE OF RESIDENCE HALLS:**

1. Generally, residence halls remain open during Thanksgiving and spring breaks and close during winter & summer breaks. Intersession housing is available during semester break periods. If Student requires intersession housing during winter break, he or she must file an intersession request form, be approved by the University's Department of Housing, and pay intersession fees. Acceptable reasons for an intersession housing request include: international student with travel restrictions, intercollegiate athlete whose sport is competing during the intersession, enrollment in intersession classes or extenuating circumstances. Student will be required to provide documentation in support of the intersession housing request. This Agreement does not allow the use of a room during the University's summer period unless the summer period is specifically included in the "Academic Term of License" section above.
2. Student must vacate his or her room at the close of the academic year in accordance with the University's published schedules. All personal property of Student must be removed from all residential areas by 12:00 p.m. on the day of check-out.
3. **Check-In/Check-Out:** Check-in and check-out procedures include completing all appropriate paperwork (including the Room Condition Form) within 48 hours of moving in and pick up or return of keys. Student may not check in earlier than the designated check-in date for the Fall or Spring semesters. Early or late check-in or late check-out may result in financial penalties. When Student is checking out, he or she must remove all personal items and rubbish from his or her room (see "Abandonment" under Section CP.19 below), leave the room clean, and have a University staff member inspect the room and collect keys before departure. Students will be billed for excess cleaning, removal of personal property, and loss of or damage to University property. Failure to follow these procedures may result in disciplinary action by the University.
4. **Condition of Premises:** Within 48 hours after move-in, Student must report to the University in writing any existing defects or damages to Student's room; otherwise, the room, including all fixtures, appliances and furniture therein, if any, will be considered to be in a clean, safe and good working condition and Student will be responsible for defects or damages that may have occurred before he/she used the room. Except for any existing defects or damages reported by Student to the University in writing, Student accepts the room, including all fixtures, appliances, and furniture therein, if any, in their "as-is" condition, with all faults and imperfections. The University makes no express warranties, and disclaims any and all implied warranties, with regard to the premises, room, fixtures, appliances, and furniture.
5. **Early Move-Out:** Students who move out before the ending date will be financially responsible for the Agreement until the published ending date unless there is an "acceptable reason" for early move out as specified under section "Acceptable Reasons for Cancellation" below. Student must notify Housing staff before he or she moves out and must coordinate a check-out time with Housing staff.

**G.) RATES:** Room and meal plan rates are set by the University and subject to change. The actual amount due from Student is based upon the type of room as specified in published rate sheets. Payment is due upon the published due date on or before the license start date applicable to each semester and in full prior to moving in. This section shall survive termination of this Agreement.

**H.) USE OF DEPOSIT:** The deposit submitted with the Agreement is \$500. This \$500 deposit is applied as a \$350 refundable security deposit and a ***\$75 per semester, non-refundable, mandatory building maintenance fee***. If it is determined that Student is responsible for room or common area damages and/or cleaning fees, the deposit will be applied to those charges at the time the charges are assessed. It is the sole responsibility of Student to maintain a minimum of \$500 in the Student's deposit account at the beginning of the fall semester and \$250 at the beginning of the spring and summer semesters, even if that requires additional funds to be deposited during the term of this Agreement. All new students are required to pay the initial \$500 security deposit. If the University approves or grants a deferral of the deposit at the time of application, Student remains liable for the payment of the deposit in accordance with this Agreement.

**I.) EXPIRATION, REVOCATION, AND CANCELLATION OF LICENSE:**

This is a legally binding contract. By signing this Agreement, Student assumes responsibility for the terms and conditions outlined herein. This Agreement is effective on the start date. All charges will continue unless or until the University agrees, in writing, to terminate the Agreement. This section shall survive termination of this Agreement.

- **CANCELLATION OF AGREEMENT BY STUDENT PRIOR TO START DATE:** If Student fails to cancel in writing prior to the cancellation deadlines set forth below, he or she will be held to the full terms of the Agreement, including liability for full payment of fees for both Fall and Spring semesters, regardless of whether Student is enrolled in classes at the University.
- **ACCEPTABLE REASONS FOR CANCELLATION:** Student may only cancel this Agreement after the starting date if Student meets the acceptable reasons for an early check-out and receives an approved written release by the University from the Agreement. Acceptable reasons include: early graduation after Fall semester, marriage or

domestic partnership (occurring after residence hall opening), extreme financial hardship, extenuating medical circumstances, academic internship, or student-for-student exchange. Supporting documentation will be required. Release approval will be based on the University's sole discretion.

- **OTHER CANCELLATIONS OF AGREEMENT BY STUDENT:** Unless otherwise noted in this Agreement, Student may not cancel this Agreement for divorce, loss of roommate, non-extenuating medical circumstances, or any other reason other than death, unless agreed to in writing by the University. Student may have special statutory rights to cancel the Agreement early in certain situations involving family violence or military deployment or transfer. If Student is a member of the Armed Forces on active duty and receives a change-of-station orders to permanently leave the local area; is relieved from active military duty; or is a national guard or reservist called to active duty, then Student may cancel this Agreement by giving written notice to the University and providing a copy of the official orders.
  - **CANCELLATION CHARGES:** If Student cancels, but not due to one of the acceptable reasons specified above, he or she will incur charges for breaching the Agreement. Charges are calculated based on the daily room rate for the assigned room and are charged for the number of days spent at the University prior to cancellation and/or move-out, whichever occurs first. Any refunds due to Student will be processed. Total charges will not exceed the semester room rate. If Student fails to meet the approved and acceptable reason for early move-out, he/she is responsible to pay charges until the ending date of the Agreement, and all amounts due will be immediately accelerated.
  - **CANCELLATION DEADLINES: FALL SEMESTER:** Student may cancel this Agreement without additional financial penalty if he/she notifies the University's Department of Housing in writing by **WEDNESDAY, JULY 1, 2015**. A Student who cancels this Agreement after **WEDNESDAY, JULY 1, 2015** or after submission, but before the start date of this Agreement, will be charged a \$500 cancellation fee. The deposit will be applied to the \$500 cancellation fee.
  - **CANCELLATION DEADLINES: SPRING SEMESTER:** Students *new to housing* in the spring semester may cancel this Agreement without additional financial penalty if he/she notifies the Department of Housing in writing ten (10) days from the date of this Agreement. If Student cancels after the ten (10) day period or after submission but before the start date of this Agreement, he/she will be charged a \$500 cancellation fee.
- **PETITION OF RELEASE AFTER AGREEMENT START DATE:** If Student has completed this Agreement and has begun using his/her room, but wishes to cancel for the upcoming semester and/or academic year, he/she may submit a **Petition of Release** form to the University's Housing Department. If the University's Housing Department is able offer Student a release from this Agreement, Student will be required to forego his or her remaining deposit. If the Housing Department is unable to approve Student's Petition of Release, then Student will continue to be held financially responsible for all housing charges for the entirety of this Agreement.
- **LICENSE TERMINATION BY UNIVERSITY:** The University may, at the University's sole discretion, terminate Student's license to use Student's room upon 24-hours written notice to Student. The University shall terminate Student's license for the following reasons: if Student fails to maintain full-time enrollment status at the University, withdraws from the University, is academically dismissed, is dismissed for disciplinary reasons, violates any term of this Agreement, violates the Student Code of Conduct, or violates any other applicable University policies, procedures, supplement agreement, or rules or regulations. If the University revokes the license granted under this Agreement for these defined reasons, Student will be held responsible for the full charges due under this Agreement. If Student has had his/her license revoked, he/she will no longer be permitted in any of the housing facilities owned or leased by the University.

A Student who is granted early release from the Agreement for any reason or whose license has been revoked by the University will forfeit their \$500 deposit. The University reserves the right to apply the \$500 deposit to any outstanding tuition or fee balances before initiating collection proceedings.

- J.) **REFUND POLICY:** No refund of the charges due under this Agreement will be given to Student for any reason after the start date. If Student vacates his/her room without written approval, is released due to disciplinary actions(s), is academically dismissed, is dismissed due to outstanding debts owed to the University, or withdraws voluntarily from the University, he/she will not be reimbursed.
- K.) **COSTS AND FEES:** In the event the University brings an action against Student because of his or her violation of this Agreement, the University may recover all costs or fees involved, including reasonable attorneys' fees, as part of any judgment. This section shall survive termination of this Agreement.
- L.) **ROOM ASSIGNMENTS:** This Agreement provides Student with a bed space in campus housing or University-sponsored housing only; it does not guarantee a specific building, room, rate, number of roommates, or choice of roommate(s).

Student is informed and acknowledges that this Agreement does not grant Student exclusive use of any room, or portion thereof, and that the University, its employees, and agents reserve the right to enter any room at any time (see "Right of Entry/Inspection" under Section CP.18 below). The University reserves the right to change room assignments, assign a new roommate, or reassign a current Student to any available bed space at any time, and/or consolidate vacancies in the interest of health, occupancy, or for general welfare, in which event Student's account will be credited or charged the difference in room rate.

- **Room Changes:** Requests for room assignment changes will not be accepted during the first ten (10) days of each semester. Thereafter, Student must submit requests for assignment changes in writing to the University's Housing Department. Every attempt will be made to honor requests; however, no guarantees can be made.
- **Space Usage:** Any behavior(s) by Student that infringes upon the rights or space usage of room/apartment/suite-mates is strictly prohibited and will result in disciplinary action. In addition, if such behavior(s) result in the use by Student of additional space or a private room, Student may be charged for such additional space.

**M.) DISABILITY/HEALTH RELATED ACCOMMODATIONS:** If Student is requesting disability/health related accommodations, he/she must contact the University's Department of Housing at (415) 618-6335 to discuss requests and required documentation. Individual requests will be reviewed on a case-by-case basis. If Student is approved for such an accommodation, all terms and conditions of this Agreement will apply unless specifically stated otherwise in writing by the University.

**N.) ROOMMATE ASSIGNMENT:** If Student does not match with a roommate through the self-assignment process, a person comparable to Student's gender and age group will have the ability to assign himself or herself to Student's same room or apartment, or will be assigned by the University's Housing Department.

- **Self-Assignment Period:** During the designated Self-Assignment period, assignments and meal plans are completed by Student utilizing the Self-Assignment process which allows students to apply for a room, pay the full \$500 housing deposit, and select a room assignment online. Although a prospective Student may apply for a room up to a year in advance of the anticipated start date, the Self-Assignment process for the upcoming fall semester opens in late spring or early summer. Students who are new for the spring semester will be able to utilize the Self-Assignment process beginning in late fall or early spring. All students who have a completed this Agreement and who have paid the \$500 security deposit will receive an e-mail informing them of the dates and instructions for the Self-Assignment process.
- **Manual Assignments:** After the designated Self-Assignment period, room assignments and meal plans are completed by the University's Housing staff.

**O.) DINING & MEAL PLANS:** Meal plans are available to all students residing in campus housing. If Student is assigned to any of the following buildings, he/she is required to have a meal plan and will be required to select a meal plan during the Self-Assignment process or will be automatically billed for the Platinum Meal Plan if the Self-Assignment process has ended: International House (860 Sutter Street), Commodore (825 Sutter Street), Howard Brodie (655 Sutter Street), Auguste Rodin (1055 Pine Street), Clara Gil Stephens (620 Sutter Street). If Student chooses a meal plan, but does not live in a building requiring a meal plan, he/she may cancel or change his/her meal plan only until the University's published cancellation deadline at the beginning of each semester.

**P.) UTILITIES AND SERVICES:** The University shall pay for water, trash, electricity, Internet, and gas for Student's room. However, the University may, in its discretion, pass on to Student any charges for excessive use of the aforementioned utilities. The University may provide one or more telephone jacks on the premises, but Student shall be responsible for securing and paying for telephone service.

**Q.) EMERGENCY CONTACTS:** Student must provide emergency contact information for an individual or individuals who the University's Housing staff may contact in the event of an emergency or as the University Housing staff deems necessary, including if the University's Housing staff has been unable to contact Student for more than twenty-four (24) hours. The designated emergency contact individual should be a parent, guardian, or relative, when possible.

**R.) HEALTH INSURANCE:** The University requires that all students have health insurance coverage. If Student fails to report his or her health insurance information prior to move-in, Student will be required to purchase student health insurance. The University is not responsible for costs resulting from Student's wellness care expenses including hospital stays and/or ambulance transportation. **In incidences where Student's health has the potential to put other students at risk, the University retains the right to restrict Student's access to any residential areas until Student provides a written statement from a medical professional that Student's condition is not contagious or a danger to himself or herself or any members of the community.**

**S.) NON WAIVER:** The waiver of any breach of a term or condition of this Agreement shall not constitute a waiver of any subsequent breach.

### **PART III – COMMUNITY POLICIES**

The University expects students to display honesty, integrity, and professionalism in every aspect of their behavior and work at the University. The University expects students to be mindful of their audience as they innovate through their art. Students are expected to respect themselves, other members of the University community, and the institution itself.

Students must follow all standards of conduct in these Community Policies, the University's Code of Conduct and this Agreement. Student is responsible for understanding and abiding by these policies, rules and regulations. Should Student choose to disregard any of the stated policies and/or guidelines of Student's community, elements of the Student Conduct Process may be exercised to hold Student accountable for his or her actions. In addition, Student is responsible for informing his/her guests of each policy and will be held accountable for guests' actions.

Failure to comply with community policies may lead to consequences such as but not limited to: educational assignments, housing probation, fine, restitution, revocation or termination of the license granted by this Agreement to use University campus housing. Administrative review of sanctions from a student conduct hearing is permitted and must first be addressed in writing to the University's Director of Housing (or designee). If Student is dissatisfied with this decision, a written appeal may be forwarded by mail to the Manager, Campus Living Villages, 1001 Fannin St., Suite 1350, Houston, Texas, 77002.

#### **SAFETY & SECURITY**

It is not possible the University or for the Manager to ensure "safety" or "security." The University's Department of Campus Safety & Security (CSS) provides safety services for the University's Campus Housing from time to time at their sole discretion. However, Student should not assume their presence. Student must promptly report any incident of theft, vandalism, or unsafe conditions to Academy of Art University CSS and the Housing Department. Please call the University CSS at (415) 618-3896 for non-emergencies or 911 to report any criminal activity.

The University's CCS provides an escort service each evening for persons who may be walking alone on campus. Please utilize this service by calling (415) 618-3896 or walk with a friend after hours. In accordance with the Crime Awareness and Campus Security Act of 1990, the University publishes crime statistics each year. The University cooperates with CSS in reporting crime information to make accurate statistics available.

#### Personal Security Awareness

No security system is fail-safe. Even the best security system cannot prevent crime. Always proceed as if any security systems don't exist because they are subject to malfunction, tampering, and human error. The University disclaims any express or implied warranties of security. The best safety measures are the ones Student would perform as a matter of common sense and habit.

#### Safety Tips

- Lock doors and windows, even while inside.
- Do not put identifying information, such as name, address, or phone number on your key ring.
- Dial 911 for emergencies. If an emergency arises call the appropriate governmental authorities first, and then call Campus Safety & Security.
- Mark or engrave identification on valuable personal property.
- Inform roommates of activities and expected return time.
- Do not walk alone at night.

**CP.1) ALCOHOL:** The possession, consumption, sale or manufacture of alcohol, regardless of resident and/or guest age is strictly prohibited in any University facilities (leased or owned). This includes being under the influence of alcohol. The possession of alcohol paraphernalia (packaging, "trophy bottles," empty bottles/cans, shot glasses, drinking funnels, etc.) also is prohibited. This includes items that are used or could be used in connection with drinking games or the rapid, mass, or otherwise dangerous consumption of alcohol of any type. If the University finds such items in Student's room, he/she may be subject to disciplinary action. The sale, manufacture, or dissemination of alcohol is strictly prohibited.

**CP.2) DRUGS & ILLEGAL CONTROLLED SUBSTANCES:** Federal law and University policy prohibit the use, possession, sale, manufacture, or distribution of illegal drugs and/or paraphernalia. This policy also applies to medical marijuana to the extent permitted by law, regardless of whether the user possesses a valid California medical marijuana card. Marijuana is classified as an illegal drug under the federal Controlled Substances Act (21 U.S.C. § 801 *et seq.*), and possession of any amount is punishable under federal law by imprisonment for up to a year and/or a minimum fine of \$1,000. In addition, the possession, sale, manufacture, use, or distribution of prescription drugs by a student to whom the medication was not prescribed is prohibited and will result in disciplinary action.

**CP.3) WEAPONS:** The University's Code of Conduct prohibits explosives (including fireworks), firearms, and/or weapons of any type in University campus housing, residents' rooms, or on campus grounds. Bringing firearms, weapons, and/or ammunition into University Campus Housing or storing them in Student's rooms or anywhere else may be grounds for the immediate termination of this Agreement, sanctions under the University's Code of Conduct, and criminal prosecution under California Penal Code section 626.9, punishable by imprisonment up to four years. For the purpose of the University's Housing policy, weapons may further include, but are not limited to, any daggers, knives having a blade longer than 4 inches (except over the counter silverware with

blades designed and used for eating and food preparation purposes), folding knives with a blade that locks into place, ice picks, razors with an unguarded blade, tasers, stun guns, paint guns, air guns, CO2 pressure guns, martial arts weapons, archery equipment, mace, laser pointers, tear gas, BB guns, and sling shots, toy, "fake" or "replica" guns or water guns.

**CP.4) BEHAVIOR(S):** Student is prohibited from engaging in any of the following behaviors: conduct in or about any residence halls that poses a threat to the health or safety of themselves, others, or property; behavior that interferes with the rights or well-being of others; or personal actions that violate any provision of this contract, or any rule, regulation, or policy of the University, or any applicable law. The University may immediately terminate the Agreement if Student threatens to harm himself or herself or threatens to harm another person. In addition, a student establishes an unacceptable pattern of misconduct when he or she is frequently in trouble, even where the individual offenses are minor. A pattern of recalcitrance, irresponsible conduct, or manifest immaturity may be interpreted as a significant disciplinary problem and may result in termination of this Agreement at the University's sole discretion, with 24-hours written notice to Student pursuant to the terms of this Agreement.

**CP.5) SEXUAL HARASSMENT:** Sexual harassment toward a student arises where another student/staff member:

- Explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances, request for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature; or
- Engages in sexually harassing conduct (that can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature) that is sufficiently severe, persistent, and/or pervasive to limit a student's ability to participate in or benefit from an education program or activity, or to create a hostile or abusive educational environment. Examples include, but are not limited to:
  - Unwelcome sexual advances – whether or not they involve physical touching.
  - Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life, comment on an individual's body, or comment about an individual's sexual activity, deficiencies or prowess.
  - Displaying sexually suggestive objects, pictures, or cartoons.
  - Unwelcome leering, whistling, brushing against the body, sexual gestures, or suggesting or insulting comments.
  - Inquiries into one's sexual experiences.
  - Discussion of one's sexual activities.

**CP. 6) SEX DISCRIMINATION AND SEXUAL MISCONDUCT:** Members of the University community, guests, and visitors, have the right to be free from discrimination on the basis of sex. Sexual misconduct is prohibited, and includes non-consensual sexual intercourse, non-consensual sexual contact, sexual exploitation, sexual harassment, stalking, dating violence, and domestic violence. Policy definitions:

- Effective consent – Effective consent is informed, knowing and voluntary, and mutually understandable words or actions that indicate a willingness to participate in mutually agreed-upon sexual activity. Effective consent can never be given by minors, mentally disabled persons, or those who are incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary) or those who are unconscious, unaware or otherwise physically helpless. Consent obtained as a result of physical force, threats, intimidating behavior, duress, or coercion is not effective consent. A person who knows or reasonably should have known that another person is incapacitated may not engage in sexual activity with that person. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why or how of their sexual interaction.
- Non-Consensual Sexual Intercourse – Any sexual penetration (anal, oral or vaginal), however slight, with any part of one's body or any object by a man or woman upon a man or woman without effective consent.
- Non-Consensual Sexual Contact – Any intentional sexual touching, however slight, with any part of one's body or any object by a man or woman upon a man or woman without effective consent. Any disrobing of another or exposure to another by a man or woman without effective consent.
- Sexual Exploitation – Taking sexual advantage of another person without effective consent. Examples include, but are not limited to, causing or attempting to cause the incapacitation of another person through ingestion or use of drugs or alcohol or otherwise; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate sexual utterances, sounds or images of another person; allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; and/or knowingly transmitting a sexually transmitted infection, including, but not limited to, HIV, to another person.
- Stalking – "Stalking" refers to engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. For the purpose of this definition means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveys, threatens, or communicates to or about, a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- Dating Violence - "Dating Violence" refers to violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, the existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purpose of this definition, dating

violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

- **Domestic Violence** - "Domestic Violence" refers to a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse or the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws or the jurisdiction in which the crime of violence occurred.

Student must review the University's Student and Academic Policies, and in particular the University's policies regarding sexual violence and misconduct under "Prohibited Conduct," "Definitions and Descriptions of Key Terms," "Violations of Law and Disciplinary Regulations," and "University Disciplinary Procedure."

Student may be accountable to both criminal and civil authorities and to the University for acts that constitute violations of the law and of the University's Student Code of Conduct. Disciplinary action at the University may proceed pursuant to the University's Disciplinary Procedures despite any pending criminal proceedings and will not be subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced.

**CP.7) HARASSMENT:** Members of the University community, guests and visitors, have the right to be free from Harassment, which is prohibited. "Harassment" includes, but is not limited to, written, verbal, psychological or physical abuse, sexual suggestions or acts, or false accusations.

**CP.8) PROHIBITED ITEMS:** The following items are prohibited in University housing: water beds, lofted beds, microwave ovens, television/radio antennae placed outside the room/exterior of the building or adjacent grounds, weapons (as specified under "Weapons" under Section CP.3 above), CO2 hazardous chemicals, gasoline, candles (with or without a wick), incense, illegal drugs (see Section CP.2 above), drug paraphernalia, hookahs, bongos or other smoking devices, alcoholic beverages, alcohol containers/bottles/cans, automobiles, or vehicles of any kind (or parts, repair tools), accessories for any vehicle, air conditioners, dart boards, halogen lamps, sun lamps, space heaters without a safety feature, weight lifting equipment, and live holiday decorations (including string lights), and inflatable pools. The University reserves the right to determine that an item not mentioned above is prohibited, and to remove or confiscate any and all prohibited items. The University claims no responsibility for confiscated items. Approved appliances must be UL (Underwriters Laboratories) approved. Only power strips equipped with circuit breakers, surge suppression, and a construction grade cord with a grounded third prong may be used in Student's room.

**CP.9) NOISE:** Quiet hours are established to promote an atmosphere conducive to studying and sleeping. Quiet hours are designated as follows, 10:00 p.m. to 9:00 a.m., Sunday to Thursday and from midnight to 9:00 a.m. on Friday & Saturday. During this time, Student is expected to: (a) ensure that noise cannot be heard beyond the confines of his/her room, (b) keep doors closed when entertaining his/her guests and (c) remain quiet in common areas of the building. Noise and/or music are not to be heard outside windows or in the hallway at any time, night or day. While there are standard quiet hour guidelines, courtesy hours are in effect 24 hours per day and require that all sound be kept to a reasonable level without disturbance to other members of the community. Student is expected to communicate with his/her neighbors if noise is too loud. Additionally, quiet hours are recognized on a 24-hour basis during final exam periods.

**CP.10) FIRE SAFETY:** Student is expected to observe fire safety policies and procedures. Misuse (including, but not limited to, false alarms) or damage to fire/emergency equipment (such as fire pull boxes, fire extinguishers, fire doors, fire strobe lighting, fire hoses, smoke detectors and sprinkler systems) is strictly prohibited and will result in disciplinary and/or criminal action as permitted by law. Activating false alarms or tampering with or disabling fire equipment is a misdemeanor in the State of California, punishable by up to a year in county jail and/or a fine not exceeding \$1,000. Student is not to hang anything from sprinkler heads. Damage to sprinkler heads may result in flood damage for which Student will be responsible. If a fire alarm sounds, ALL students must exit the facility at the nearest emergency exit. Student will be held responsible for alarms resulting from smoke or fire as he/she prepares food in kitchen areas. Student must closely monitor food preparation areas at all times while cooking. Participating in any act, which results in a false fire alarm, setting fires or tampering with fire safety equipment, may result in termination of this license by the University, at the University's sole discretion, with 24-hours written notice to Student pursuant to this Agreement; removal from housing; suspension; and/or expulsion from the University.

**CP.11) SALES & SOLICITATION:** Commercial activity, solicitations or advertisements (written signs or e-mail messages) are not permitted in the residence halls unless permission has been granted by the University's Department of Housing. Student is prohibited from operating any business or commercial venture out of his/her room. In the case of fundraising events recognized by the University's campus organizations, approval may be obtained through the University. Announcements and publicity items for residence hall bulletin boards must be submitted to the University and approved prior to posting.

**CP.12) NON-LIABILITY FOR STUDENT PROPERTY:** The University and the Manager shall not be held liable for any damage to, destruction of, malfunction, failure, loss, or theft of any property belonging to, or in the custody of, Student from any cause whatsoever, nor for the failure or interruption of utilities or appliances, whether such loss occurs in Student's room or other areas.

The University does not carry insurance covering personal property. Student is advised to carry property insurance in the event of damage or loss.

**CP.13) DAMAGE, THEFT, & VANDALISM:** Each Student will be held accountable for any damages, thefts, or vandalism for which he/she is responsible and will be billed accordingly. Student should notify the University Campus Housing staff immediately to confront individuals damaging, stealing, and/or vandalizing the facility. In the event that individual(s) do not take responsibility for damages, thefts, or vandalism that occurs in the facility, the repair amount will be divided among all students in the residence hall community. This amount will be billed to Student's account. Although the University understands that academic assignments may require a variety of artistic mediums, Student must be responsible in the care of the room while completing those projects. Damage resulting from Student's actions, (including, but not limited to, paint overspray on desks or walls, spray adhesive, charcoal dust staining carpets, cuts in furniture from exacto knives, etc.) will result in damage charges being assessed to Student's account.

**CP.14) KEY/ID SECURITY:** Student is responsible for being in possession of keys and his/her Student ID at all times. Keys (room, front door, and mail key) and a Student ID will be issued to him/her and recorded at the beginning of the term period of this Agreement. The keys and ID may not be transferred, duplicated, or given to other individuals. Lost keys or ID must be reported immediately to the Manager. When a key is lost, the lock may be changed and new keys issued. Any student who loses his or her room key will be billed for the cost of all changes made, including but not limited to the full cost for a replacement key and/or Student ID and the cost to install new room lock(s) and obtain new key(s). Keys reported to be temporarily mislaid, keys not returned at the end of the use period, or unauthorized duplicate keys turned in at the end of use will result in new lock(s) and key(s) being created and replacement costs being charged to Student. This paragraph shall survive termination of this Agreement.

**CP.15) LOCKOUTS:** After regular business hours for the University's Housing department, such as in the evening and on weekends, please contact the Resident Assistant on duty if Student is locked out. Student will receive one complimentary lockout outside of the University's Housing Departments regular business hours each semester. Subsequent lockout(s) will result in a \$20 service fee for each additional lockout. Proper photo identification will be required to prove identity during each lockout. Three (3) or more lockouts will result in disciplinary action.

**CP.16) SMOKING:** Student and guests are subject to University policies and California state and local laws regarding smoking. Pursuant to the San Francisco Health Code Article 19F, smoking is not permitted in or within 15 feet of any facility's exits, entrances, operable windows, or vents. This includes cigarettes, electronic cigarettes ("e-cigarettes"), vaporizers ("vapes"), medical marijuana to the extent permitted by law (prohibited by federal law and University policy), cigars, pipes, hookahs, and chewing tobacco, which are prohibited in all areas of the residence halls.

**CP.17) PETS:** For health and safety reasons, pets (including fish & livestock) are not permitted in the residence halls. Service animals as defined by the Americans with Disabilities Act are permitted within University housing following approval of the University's Director of Housing (see procedure as specified under "Disability/Health Relations Accommodations" in Section M above). Proper documentation is required and must be submitted prior to the animals' arrival on campus.

**CP.18) RIGHT OF ENTRY/INSPECTION:** The University reserves the right to inspect rooms/apartments and regulate the use of the premises according to University policies. Student's room/apartment may be entered without advance notice or consent by authorized University personnel, or authorized agents of the University, whenever there is a reasonable cause concerning the health, safety and welfare of the individual residents and/or the residence hall community at large. The University reserves the right to enter rooms/apartments for routine repairs and in emergency and/or policy violation situations, including during intersession periods. Student must ensure the security of his or her personal possessions and the University is not responsible for any theft, loss, or damage that occurs during a room inspection, routine maintenance, or repairs.

**CP.19) ABANDONMENT:** Student is responsible for removing all personal possessions when he/she vacates the room, apartment, or suite. Any possessions left in campus housing facilities after the termination of the Agreement will be considered abandoned, will be discarded by the University, and Student may be billed an additional charge for removal. Student also may face disciplinary action that could include loss of housing privileges. This paragraph shall survive termination of this Agreement.

**CP. 20) FURNITURE:** Furniture supplied by the University must remain in its designated location (room, lounge, kitchenette, etc.). Student may rearrange furniture within their rooms, but may not disassemble it, exchange it with other students, or move it to another location outside of the room. Furniture not provided by the University (e.g., Futons, sofas, papasan chairs, non-University-supplied mattress, bean bags, etc.) are prohibited from the residence halls. Public-area furnishings may not be removed from the public areas or be used in Student's room. The removal of public furnishings is considered theft of property, and community damage charges and/or disciplinary action may result.

**CP.21) COOKING:** All cooking in the residence buildings must be confined to the kitchen areas. Cooking in rooms without kitchens is not allowed. Kitchens are for use by students only. Student is only permitted to bring his/her own refrigerator and/or microwave for a room/unit in which these appliances have not been provided by the University. Hot plates, barbecues, toasters, toaster ovens, rice cookers and non-open coiled sandwich/meat grillers, such as a Foreman Grill, waffle iron, or panini press machine, are not permitted within Student's room.

**CP. 22) VISITATION:** Visitors are welcome after consideration is given to the needs and rights of roommate(s). All visitors, regardless of whether or not they are University students, are required to sign-in at the residence building front desk. Student must accompany all visitors at all times while in the residence building. Student is responsible for his/her visitors' compliance with all University policies. Visitors are not allowed in residence building premises after 10:00 p.m. Sunday through Thursday, after 12:00 a.m. on Fridays and Saturdays, or before 9:00 a.m. on any day. Requests for overnight guests must be submitted in writing one week in advance to the University's Resident Director and are contingent upon roommate and staff approval. Before having any guest sleep in a common area within a unit (apartments and lofts only), Student must obtain express and unanimous consent from all other students who use that common area. Sleeping in public areas (e.g., TV/study lounges) is not permitted. Approved non-resident guests may visit no more than three (3) consecutive nights and/or five (5) nights total during an academic semester. No overnight guests are permitted during Finals Week.

**CP.23) COHABITATION:** Cohabitation is defined as the extended presence (daily or nightly) of any person in any room or apartment to which that person is not assigned. Cohabitation is strictly prohibited. The University's Department of Housing reserves the right to restrict any guest from the residence halls at any time as determined by Housing, Campus Safety & Security or the University's staff.

**CP.24) CARE OF PREMISES:** Student is required to maintain the facilities in a clean and orderly condition and shall not obstruct any of the walkways, hallways, or surrounding premises, and shall not place any signs (including neon signs) or advertising matter in the windows, on the exterior portion of doors, or elsewhere in or on the residence hall or surrounding premises. Student is expected to keep common areas (lounges, kitchens, refrigerators, etc.) clean. Partitions or other alterations including but not limited to: installation of alternative tile, countertops, appliances, carpet, built-in cabinets or bookshelves, painting or wall papering to the facilities may not be made without written approval of the University's Housing Department. Objects may not be dropped, thrown, or hung from windows. Entering or exiting from windows, sitting on windowsills, or leaning out of windows is prohibited. Student may not use rooftops for any reason without specific written authorization from the University's Department of Housing or a direct order by the Fire Department. If the room falls below acceptable health/safety standards, Student will be required to take corrective action within twenty-four (24) hours from the time of notice. If Student fails to comply, the cost for corrective action will be charged to him/her and/or disciplinary action may be taken. Student is expected to keep his/her room/apartment door(s) locked at all times.

**CP.25) PEST CONTROL:** If Student is having a problem with bugs and pests, please advise the Resident Director of the building to make a report, and the pest control company will provide service upon notification. All rooms will be treated periodically unless a medical documentation for Student's medical provider is given to the University. Student may not refuse service if medical documentation is not on file. If aggressive pest control is necessary, Student may be required to temporarily relocate to another building. It is imperative that Student follow all prescribed instructions in the event that relocation is necessary.

**CP.26) HALL RECREATION:** Playing sports, horseplay, and other athletic or physical recreational activity in the residence halls is strictly prohibited. These include, but are not limited to, wrestling, basketball, baseball/whiffle ball, soccer, football, hockey, golf, roller skating, rollerblading, skateboarding, running, or catch/throwing. All athletic activities are to be confined to areas outside of the residence halls that are designed for that purpose. Student will be responsible for the full cost of any damage due to unauthorized recreational or athletic activities in residence halls.

**CP.27) MAIL:** As a courtesy, the University may accept mail on Student's behalf but it is not obligated to accept packages. The University is not responsible or liable for any damage or theft of mail or packages that it accepts on Student's behalf. The University will not accept responsibility for any certified or registered mail. The U.S. Postal Service delivers mail to Student's mailbox. The University is not responsible or liable for the loss or theft of packages delivered to and or left in building lobbies or common areas.

**CP.28) CURFEW:** The University complies with the City of San Francisco Curfew under Municipal Police Code (SF MPC) Section 539.

**CP.29) PARTIES/SOCIAL GATHERINGS:** Unauthorized parties or social gatherings are prohibited in the residence buildings. Student is not permitted to host anywhere in his/her residential building (including rooms and community space) a number of guests that equals twice the total capacity of his/her room (i.e., a room designated for two (2) students is only permitted to have four (4) guests at any given time within the room or common area). However, regardless of the total capacity of the room, the maximum number of guests permitted in any one room is no more than eight (8) people. At the discretion of the University's Campus Housing Staff or the Campus Safety & Security Staff, any gatherings may be required to disperse, and all non-residents escorted out of the building. Students found in violation of this policy may face disciplinary action.

**CP.30) CHECK-OUT:** Student must check-out within 24 hours after his/her last final exam, but no later than the last day of his/her contract. Appropriate arrangements must be made ahead of time for departure. Late check-outs must be approved by the University's Department of Housing, and will be pro-rated at \$60 per day. Student will be charged \$150 for an improper check-out for failure to make a check-out appointment and meet with University campus housing staff.

**CP. 31) DEFIANCE OF AUTHORITY:** Failure or refusal to comply with the request of a member of the University's Campus Safety and Security or residence hall staff is a violation of defiance of authority. This also includes failure to attend mandatory meetings, including, but not limited to, student conduct hearings, and residence hall and community meetings. Failure to satisfy the conditions of a sanction imposed as the result of a previous disciplinary hearing also constitutes defiance of authority.

**CP. 32) FALSE INFORMATION AND MISREPRESENTATION:** Student is prohibited from knowingly providing false information and/or or making misrepresentations to any University or Housing official, including Campus Safety and Security, residence hall staff, or police/fire/emergency medical personnel.

**CP.33) NON-RETALIATION:** Student has the right to and is encouraged to report potential violations of the University's and Housing's policies. Additionally, Student has the right to pursue both internal disciplinary processes and/or charges through external law enforcement authorities free of any interference or retaliation by any member of the University community. Any retaliation under these circumstances is strictly prohibited and will result in a response by the Department of Housing and/or the University that could include, among other things, immediate imposition of disciplinary measures. Retaliation includes, but is not limited to, any conduct that interferes with the alleged victim's ability to pursue the allegations.

**CP.34) INTERIM RESTRICTIONS:** The University's Director of Housing, or his/her designee, may impose immediate restrictions on Student, pending disciplinary action or medical release from appropriate providers, when deemed appropriate, such as when there are sufficient facts to demonstrate that the Student's continued presence on campus endangers the physical safety or well-being of others or himself or herself. This includes, but is not limited to, prohibiting or limiting access to a Student's room, and restriction of communications with named individuals. Violations of interim restrictions constitute a serious violation of Housing policy and will result in immediate disciplinary action.

**CP.35) PRIVACY RIGHTS OF STUDENTS' EDUCATIONAL RECORDS:** In accordance with the federal Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g; 34 C.F.R. 99) the California Information Practices Act (California Civil Code Section 1798 *et seq.*), Article 1, Section 1 of the California Constitution, and all other applicable federal and state laws and regulations that safeguard education records, privacy, and confidentiality, the University policy only allows the release of personally identifiable information to others (except to verify student status) with Student's prior consent or in the case of an extreme emergency or where there is clear and imminent danger to Student, to others, to society, or otherwise as permitted by law.

#### **PART IV: STUDENT'S ACKNOWLEDGEMENT AND ACCEPTANCE**

I hereby acknowledge that I have received and read, and I understand and agree to the terms and conditions contained in the Housing License Agreement. If I violate any of the terms of this document, I understand that I would be in breach of this Agreement. Such violation may, at the University's sole discretion, cause me to be disciplined (including educational assignments, including, but not limited to, community service, reflection papers, or other projects), fined, and/or may cause the University to revoke the license to use a bed space conferred by this Agreement.

I hereby authorize a signature submitted by me, by facsimile or other electronic transmission, to be as valid and binding as my original signature. Along with this License Agreement, I am submitting Five Hundred Dollars (\$500) to be used for the deposit required by the Agreement. I agree to pay the total amount due under this Agreement on or before the license start date applicable to each semester.

1. I have read and understand the Liability provisions below.

**LIABILITY.** To the fullest extent permitted by law, neither the University, the Manager, nor their respective executors, administrators, predecessors, employees, owners, officers, shareholders, directors, partners, associates, agents, attorneys, representatives, successors and assigns, or any parent organizations, subsidiaries, affiliates, or divisions, past, present and future (collectively the "Released Parties"), will be liable to Student or members of Student's family, Student's guests, invitees, licensees or agents, and each of their heirs, beneficiaries, relations, next of kin, executors, administrators, predecessors, agents, servants, employees, attorneys, representatives (collectively, the "Releasers") for any injury, damage, or loss to person or property caused by criminal or other conduct of any person, including, but not limited to, theft, burglary, assault, vandalism or other crimes, or any conflict with Student's roommate(s). The Releasers hereby release the Released Parties from any and all claims, losses, costs, expenses, personal injury, serious bodily harm, up to and including death, damage, or loss to person or property (including any damage or loss to any personal property left in the premises after the Agreement has terminated or expired, including early termination) caused by or associated with theft, burglary, assault or criminal or any other conduct of other persons, vandalism, fire, smoke, rain, flood, water leaks, hail ice, snow, lightning, wind, the presence of moisture or the growth of, or concurrence of, mold or mildew in the assigned bed space, room, premises, and/or property, explosion, surges or interruption of utilities, Student's personal conflict with Student's roommate(s), and for any damage or inconvenience which may arise through repair or alteration of the premises or any other cause whatsoever, **EVEN IF CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF THE RELEASED PARTIES AND REGARDLESS OF WHETHER SUCH NEGLIGENCE OR FAULT WAS SOLE, CONCURRENT OR JOINT**, and the Releasers hereby forever relinquish and acquit the Released Parties from any and all liability therefore. The Released Parties have no duty to remove ice, sleet or snow, but the Released Parties may do so in whole or in part, with or without notice to Student. *Student is urged to obtain his or her own property, liability, and accident insurance for all such*

*losses due to such causes.* **STUDENT ASSUMES FOR HIMSELF OR HERSELF AND ALL OF THE RELEASORS ANY AND ALL RISKS FROM ANY ACCIDENTS, INJURIES, OR SERIOUS BODILY HARM, UP TO AND INCLUDING DEATH, TO THE RELEASORS IN CONNECTION WITH USE OF THE ASSIGNED BED SPACE, ROOM, PREMISES, THE PROPERTY, OR THE PROPERTY'S RECREATIONAL FACILITIES OR OTHER AREAS, IT BEING UNDERSTOOD THAT ALL SUCH AREAS AND FACILITIES ARE GRATUITOUSLY SUPPLIED FOR STUDENT'S USE, AND AT THE USER'S SOLE RISK. To the fullest extent permitted by law, Student agrees to indemnify, defend and hold harmless the Released Parties from and against (i) all fines, suits, claims, demand, liabilities, and actions (including costs and expenses of defending against such claims) resulting or alleged to result from any breach, violation or non-performance of any condition in this Agreement and (ii) all claims, demands, actions, damages, losses, costs, liabilities, expenses and judgments suffered by, recovered from or asserted against any of the Released Parties on account of accident, illness, injury or serious bodily harm, up to and including death, or damage to person or property to the extent that any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by an act, omission, negligence or misconduct on the part of Student, any of the Releasors, or of any other person entering upon the premises or when any such injury or damage is the result, proximately or remotely, of the violation by Student or any of the Releasors of any law, ordinance or governmental order of any kind or of any of the rules and policies included in this Agreement, or when any such injury or damage may in any other way arise from or out of the use by Student or any of the Releasors of the property, EVEN IF THE SAME IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE RELEASED PARTIES, it being intended that the foregoing indemnity extend to and cover the negligence of such parties.**

**Student specifically agrees to look solely to Released Parties' interest in the Agreement and the income derived therefrom for the recovery of any judgment against the Released Parties, it being agreed that the Released Parties shall never be personally liable for any such judgment, and Student shall not seek or obtain any such judgment. The provisions contained in the foregoing sentences are not intended to, and shall not, limit any right that Student might otherwise have to any suit or action in connection with enforcement or collection of amounts that may become owing or payable under or on account of insurance maintained by the Released Parties. No consequential or punitive damages are recoverable against the Released Parties.**

**With respect to the matters released herein, the Releasors expressly waive any and all rights that they may have under Section 1542 of the Civil Code of the State of California, and any similar provision in any other jurisdiction, which provides as follows:**

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

**Student hereby verifies that he or she understands and acknowledges the significance and consequence of this waiver of the provisions of Section 1542 and hereby assumes full responsibility for any damage, loss, liability which any of the Releasors may hereinafter incur by reason of such waiver. This section shall survive the expiration or early termination of this Agreement.**

\_\_\_\_\_  
**STUDENT (Print Name)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**\*\*\* Students Under Age 18 Must Have a Parent or Guardian Signature \*\*\***

\_\_\_\_\_  
**PARENT/GUARDIAN (Print Name)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

# EXHIBIT 2

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8 Attorneys for Defendants  
STEPHENS INSTITUTE, d/b/a ACADEMY OF ART  
9 UNIVERSITY, et al.

10  
11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO  
13

14 THE PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. DENNIS J. HERRERA,  
15 City Attorney for the City and County of  
San Francisco, and CITY AND COUNTY OF  
16 SAN FRANCISCO, a municipal corporation,

17 Plaintiffs,

18 v.

19 STEPHENS INSTITUTE, d/b/a ACADEMY OF  
ART UNIVERSITY, a California corporation;  
20 2300 STOCKTON STREET, LLC, a Delaware  
limited liability company; 1916 OCTAVIA  
21 STREET, LLC, a Delaware limited liability  
company; 1153 BUSH STREET LLC, a Delaware  
22 limited liability company; 2209 VAN NESS  
AVENUE, LLC, a Delaware limited liability  
23 company; 1835 VAN NESS AVENUE, LLC, a  
Delaware limited liability company; 1080 BUSH  
24 STREET LLC, a Delaware limited liability  
company; 1069 PINE STREET, LLC, a Delaware  
25 limited liability company; 1055 PINE STREET,  
LLC, a Delaware limited liability company;  
26 60 FEDERAL STREET, LLC, a Delaware limited  
liability company; 491 POST STREET, LLC, a  
27 Delaware limited liability company; 701  
CHESTNUT STREET LLC, a Delaware limited  
28 liability company; 860 SUTTER STREET, LLC, a

Case No. CGC-16-551832

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEMURRER TO FIRST AMENDED  
COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF**

Hearing Date: September 30, 2016  
Time: 1:30 p.m.  
Department: 305  
Judge: Hon. Mary E. Wiss

1 Delaware limited liability company; S/F 466  
2 TOWNSD, LLC, a Delaware limited liability  
3 company; 620 RSSE, LLC, a Delaware limited  
4 liability company; 2151 VAN NESS AVENUE,  
5 LLC, a Delaware limited liability company;  
6 2211 VAN NESS AVENUE, LLC, a Delaware  
7 limited liability company; 825 SUTTER STREET,  
8 LLC, a Delaware limited liability company;  
9 601 BRANNAN STREET, LLC, a Delaware  
10 limited liability company; 1727 LOMBARD II,  
11 LLC, a Delaware limited liability company;  
12 2225 JERROLD AVENUE, LLC, a Delaware  
13 limited liability company; 460 TOWNSEND  
14 STREET, LLC, a Delaware limited liability  
15 company; 950 VAN NESS AVENUE, LLC, a  
16 Delaware limited liability company;  
17 2801 LEAVENWORTH-CANNERY, LLC, a  
18 Delaware limited liability company; and DOE  
19 ONE through DOE FIFTY, inclusive,

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Defendants.

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1 **INTRODUCTION**

2 The San Francisco City Attorney, on behalf of the City and County of San Francisco and  
3 the People of the State of California (collectively “Plaintiffs” or “the City”), alleges in this action  
4 that defendant Academy of Art University (“the Academy”) is using certain properties without  
5 proper approvals from the San Francisco Planning Commission. Based on that allegation, the  
6 City asserts claims for violation of California Business and Professions Code sections 17200-  
7 17210, the Unfair Competition Law (“UCL”), and nuisance, as well as Planning Code violations,  
8 seeking to enjoin the Academy’s uses of those properties and collect civil penalties.

9 The City Attorney’s First Amended Complaint (“FAC”) fails to inform the Court,  
10 however, of other relevant facts that are subject to judicial notice, including that:

- 11 • The Academy has for several years had pending applications for all necessary permits  
12 and authorizations to bring each of the properties into full Planning Code compliance;
- 13 • The City Planning Department and Commission delayed actions on the Academy’s  
14 applications until an Existing Sites Technical Memorandum (“ESTM”), a uniquely  
15 devised requirement never before applied to a land use applicant, and an  
16 Environmental Impact Report (“EIR”) were completed and the EIR certified;
- 17 • The Planning Commission certified the EIR on July 28, 2016;
- 18 • The City Planning Department and Commission and the Board of Supervisors will  
19 now begin considering the pending applications in hearings scheduled for September  
20 and subsequent months, based on analysis of a range of environmental issues and  
21 public policy factors, including transportation and affordable housing;
- 22 • Approvals of the Academy’s pending applications will likely be conditioned on  
23 mitigation of project impacts and/or impact fees, and the Academy has already made  
24 proposals for contributions to the City’s affordable housing stock;
- 25 • While the Academy’s applications have been pending, the Planning Department has  
26 expressly stayed Planning Code enforcement and assessment of penalties for Planning  
27 Code violations, pursuant to a consistently applied policy, developed in consultation  
28 with the City Attorney’s Office, which allows continued use of a property that is on a

1 “path to legalization.”

2 In the midst of this ongoing administrative process, the City Attorney’s Office launched  
3 this lawsuit. It did so just as the environmental review process was nearly complete, and as the  
4 Planning Commission and Board of Supervisors were about to begin the process of reviewing and  
5 acting on the Academy’s long-pending applications according to administrative procedures  
6 prescribed by the City Charter and Planning Code and based on careful consideration of all  
7 relevant environmental and public policy issues. Hearings are now scheduled for that purpose.

8 It makes no sense for this Court to consider the City Attorney’s claims until the  
9 administrative process is complete or without the benefit of the Planning Department’s expert  
10 analysis of the properties’ uses in the light of City policies and related environmental issues. That  
11 process is extremely fact-intensive and specialized. The EIR has two volumes, with over 1,000  
12 pages, covering twelve study areas and six project sites. The ESTM has three volumes and six  
13 appendices, with more than 3,000 pages, and covers a similarly broad range of topics for thirty-  
14 four sites. In acting on the pending applications, the Planning Commission will consider not only  
15 these environmental studies, but also issues such as compatibility with the neighborhood or  
16 community; whether the use will be detrimental to the general welfare of people in the vicinity of  
17 the use; whether the use will adversely affect the City’s General Plan; and whether the use will  
18 provide development that is in conformity with the stated purpose of the applicable zoning  
19 district. All of these considerations bear directly on the claims raised by the City, which would  
20 require this Court to make equitable determinations as to whether the Academy should be  
21 enjoined from its continued use of the subject properties for educational and related purposes and  
22 whether and to what degree it should be subject to civil penalties for such uses.

23 This is clearly a case in which deferral to the administrative process will “enhance[] court  
24 decisionmaking and efficiency by allowing [the Court] to take advantage of administrative  
25 expertise” and “will help [to] assure uniform application of regulatory laws” (*Farmers Ins.*  
26 *Exchange v. Superior Court* (1992) 2 Cal.4th 377, 391 [issuing writ of mandate to superior court  
27 to stay proceedings based on primary jurisdiction], citation omitted); and in which the equitable  
28 relief sought would require this Court “to assume the functions of an administrative agency” and

1 “interfere with [its] functions” (*Hambrick v. Healthcare Partners Medical Group, Inc.* (2015)  
2 238 Cal.App.4th 124, 147 [affirming dismissal based on judicial abstention]). The Court should,  
3 therefore, grant the demurrer under the doctrines of primary jurisdiction and/or judicial abstention  
4 and stay or dismiss the City’s claims until such time as the Planning Commission and Board of  
5 Supervisors have taken final action on the Academy’s pending applications.

## 6 **FACTUAL BACKGROUND**

### 7 **A. The Academy.**

8 The Academy, founded in 1929, is the largest private, regionally-accredited art and design  
9 university in the United States. Its mission is to offer hands-on, professional training for aspiring  
10 artists and designers. Many alumni go on to work at companies in San Francisco, such as Adobe,  
11 Zynga, Williams-Sonoma, and many others. The Academy contributes to the economy of the city  
12 through capital expenditures, general operating expenses, property taxes, and payroll taxes.  
13 (Request for Judicial Notice (“RJN”) Ex. A at 6.) As the Academy has grown, so has its physical  
14 presence in San Francisco, and it now operates a multi-location campus similar to other urban  
15 universities. The Academy currently utilizes 40 properties, primarily for its educational programs  
16 and student housing. (*Id.* at 8.)

### 17 **B. History and Status of San Francisco Planning Commission Proceedings.**

#### 18 **1. The Academy submits land use applications for the 23 properties.**

19 The Academy has been actively engaged since 2007 in administrative proceedings with  
20 the San Francisco Planning Commission,<sup>1</sup> Planning Department,<sup>2</sup> and Zoning Administrator to  
21 bring its properties (including all properties owned by the 23 defendant LLCs)<sup>3</sup> into full  
22

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23 <sup>1</sup> The Commission, which consists of seven members appointed by the Mayor and  
24 President of the Board of Supervisors, is tasked with hearing and deciding all conditional use  
25 applications. (S.F. Charter, art. IV, § 4.105.) See also Planning Commission, <[http://sf-  
26 planning.org/planning-commission](http://sf-planning.org/planning-commission)>.

27 <sup>2</sup> The Department, under the direction of the Commission, is in charge of administering  
28 and enforcing the Planning Code. (S.F. Charter, art. IV, § 4.105.) The Department has several  
divisions, which are in charge of tasks such as conducting environmental review, reviewing  
building permits, and ensuring compliance with the Planning Code. (*Ibid.*) See also About the  
San Francisco Planning Department, <[http://sf-planning.org/about-san-francisco-planning-  
department](http://sf-planning.org/about-san-francisco-planning-<br/>department)>.

1 compliance with the Planning Code.<sup>4</sup> After the Department notified the Academy that it would  
2 need to apply for authorizations and permits for its properties, the Academy promptly submitted  
3 all necessary applications, including applications for the properties at issue in this case.<sup>5</sup> (See  
4 RJN Ex. B at 2; *id.* Ex. C; Appendix 1.)

5 While the applications have been pending, the Department has allowed the Academy to  
6 continue to use the properties. As current Zoning Administrator Scott Sanchez has explained in  
7 hearings related to the Academy’s applications, the Department has consistently applied a policy  
8 of allowing continued use of a property in violation of the Planning Code if the property owner is  
9 working in good faith to complete environmental review and obtain a permit. (See, e.g., RJN  
10 Ex. G at 13-14; *id.* Ex. H at 4-5.) This “path to legaliz[ation]” policy was developed in  
11 consultation with the City Attorney’s office. (RJN Ex. H at 4-5.) The City, acting through the  
12 Zoning Administrator, has also continued to toll assessment of penalties subject to achievement

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13 (Footnote continued from previous page.)

14 <sup>3</sup> The Department notified the Academy of its obligation to submit an Institutional Master  
15 Plan (“IMP”) in 2006. (See RJN Ex. B at 2.) The Academy promptly submitted a draft IMP and  
16 later submitted revised drafts in response to comments from the Planning Commission. (*Ibid.*)  
17 The Planning Commission accepted the IMP in November 2011. (*Ibid.*) The Academy also  
18 submitted timely updates to the IMP in 2013 and 2015. These updates are available on the  
19 Department’s website at <[http://zasfplan.sfplanning.org/IMP/IMP\\_docs/AAU\\_2013\\_11\\_8.pdf](http://zasfplan.sfplanning.org/IMP/IMP_docs/AAU_2013_11_8.pdf)>  
20 and <[http://sf-planning.org/sites/default/files/AAU\\_2015\\_11\\_17.pdf](http://sf-planning.org/sites/default/files/AAU_2015_11_17.pdf)>.

21 <sup>4</sup> See RJN Ex. D at 1-5 – 1-8 for a list of the required entitlements for each of the  
22 properties. The Academy currently uses a majority of its properties for classrooms and student  
23 housing. (*Ibid.*) Other current uses include administrative offices, a classic vehicle museum,  
24 faculty lounges, and storage facilities. (*Ibid.*)

25 <sup>5</sup> The Academy’s applications fall into three main categories: (1) conditional use  
26 authorizations; (2) building permit applications; and (3) legislative amendments. A “conditional  
27 use” is one that is conditionally but not principally permitted in a particular zoning district.  
28 Conditional use authorizations require a hearing before the Planning Commission. The Planning  
Department must undertake an investigation prior to the hearing, and the Commission must make  
findings of fact regarding the potential impact of the conditional uses on the environment. (See  
RJN Ex. E.) (S.F. Planning Code, § 303, subd. (c).) Five of the 23 properties owned by  
defendants require only building permits. (See RJN Ex. F at 8.) Finally, eight of the Academy’s  
current properties require Planning Code amendments. (*Id.* at 6.) After an action for an  
amendment to the Planning Code is initiated by application, the Zoning Administrator sets a  
hearing for the application, which will be heard by the Commission. (S.F. Planning Code,  
§ 306.2.) Prior to the hearing, the Department is required to make necessary investigations and  
studies and submit findings to the Director of Planning. (*Id.* § 306.4, subd. (a).) If the  
Commission approves the amendment, the amendment then must be heard and approved by the  
Board of Supervisors; if the Commission denies the amendment, it may be appealed to the Board  
of Supervisors. (*Id.* § 302, subd. (c).)

1 of milestones in the environmental review process, all of which have now been achieved. (RJN  
2 Ex. B at 2-3.)

3 **2. The Department requires extensive environmental review.**

4 In 2008, after the Academy submitted its applications, the Department determined that it  
5 would require an EIR, including a Transportation Study, before it would process the pending  
6 applications. (*Id.* at 2.) The Academy submitted an EIR application on May 19, 2008, and a  
7 Transportation Study Application on August 13, 2008. (*Ibid.*) The Department’s Draft EIR  
8 (“DEIR”) was published on February 25, 2015. (*Id.* at 3.) The Department published its Final  
9 Responses to Comments on the DEIR on June 30, 2016. (RJN Ex. K, Final Responses to  
10 Comments on DEIR.) The Commission certified the Final EIR on July 28, 2016. (*Ibid.*)

11 The Department determined that it would also require a separate informational document,  
12 an ESTM, as a prerequisite to processing the pending applications. (RJN Ex. B at 3.) This study  
13 includes 34 sites. (RJN Ex. D at 1-1.) The Draft ESTM was published on May 4, 2016.<sup>6</sup> (*Id.* at  
14 Cover Page.) The Commission held a public hearing to receive comments on the Draft ESTM on  
15 May 19, 2016. (*Ibid.*) The 30-day public review period ended on June 3, 2016 (*ibid.*), and the  
16 Department published the Responses to Comments Addendum on June 30, 2016 (*id.* at Vol. 3.)

17 **a. Environmental Impact Report**

18 The EIR includes two volumes as well as Final Responses to Comments on the Draft EIR.  
19 It totals over 1,000 pages, covering 12 study areas and 6 project sites.<sup>7</sup> (RJN Ex. J.) Several  
20 members of the Department helped to prepare the report together with the San Francisco  
21 Municipal Transportation Agency and several consultants.<sup>8</sup> (*Id.* at 7-1.)

22 The EIR provides a program-level analysis of four components of the Academy’s  
23

24 <sup>6</sup> The ESTM is available on the Department’s website at: <[http://sf-  
25 planning.org/environmental-impact-reports-negative-declarations](http://sf-planning.org/environmental-impact-reports-negative-declarations)>.

26 <sup>7</sup> The EIR is available on the Department’s website at: <[http://sf-  
27 planning.org/environmental-impact-reports-negative-declarations](http://sf-planning.org/environmental-impact-reports-negative-declarations)>.

28 <sup>8</sup> Consultants are selected by and work under the direction of the Department but are compensated by the applicant. The Academy has paid more than \$6 million for consultants required by the Department. (Declaration of Corinne Quigley (“Quigley Decl.”) ¶ 7.)

1 proposed project: (1) future growth within 12 study areas; (2) a project-level review of growth at  
2 six specific sites; (3) legalization of prior unauthorized changes of use at existing sites; and (4) an  
3 analysis of an extension of the Academy’s shuttle service. (*Id.* at 2-4.)

4 As part of its analysis, the EIR reviews the potential environmental effects of  
5 implementation of the proposed project pursuant to the California Environmental Quality Act,  
6 Public Resources Code sections 21100-21177 (“CEQA”), including environmental analysis of  
7 matters such as land use, aesthetics, transportation, noise, greenhouse gas emissions, population  
8 and housing, wind and shadow, biological resources, water quality, and mineral and energy  
9 sources. (*Id.* at 2-8, 2-9.) The EIR also provides information on existing conditions, the type and  
10 magnitude of the potential individual and cumulative impacts, and feasible mitigation measures  
11 that could reduce or avoid such impacts. (*Id.* at 4-1.) It also analyzes considerations required by  
12 CEQA—including growth-inducing impacts, significant unavoidable impacts, significant  
13 irreversible impacts, and areas of known controversy and issues to be resolved—and provides an  
14 evaluation of alternatives to the project. (*Id.* at 2-10.)

15 **b. Existing Sites Technical Memorandum**

16 The ESTM is unique. It is not required by CEQA or the Planning Code. No other project  
17 has been required to prepare a similar document. The Department required an ESTM to analyze  
18 the physical environmental changes, if any, caused by prior unauthorized changes of use or tenant  
19 improvements undertaken at existing properties. (RJN Ex. D at 1-9.)

20 The ESTM, initially published on May 4, 2016,<sup>9</sup> consists of three volumes and six  
21 appendices, totaling more than 3,000 pages. It was authored by several members of the  
22 Department and required the work of fourteen consultants. (*Id.* at 5-1.)

23 The ESTM provides an in-depth analysis of the effect of potential approvals on a site-by-  
24 site basis. (*Id.* at 1-10, 4-1.) For each property, the ESTM details property information, tenant  
25 improvements and renovations, and required project approvals, and it analyzes topics similar to  
26 those required by the EIR. (*Id.* at 3-3, 1-11 – 1-15.) The ESTM also analyzes the combined

27 \_\_\_\_\_  
28 <sup>9</sup> Volume 3 of the ESTM was published on June 30, 2016.

1 effects of all of the properties. (*Id.* at 1-10, 3-1.) As part of the combined analysis, the ESTM  
2 presents a shuttle system analysis. (*Id.* at 1-10.) It also recommends conditions of approval for  
3 existing sites, such as parking improvements, shuttle stops, and signage changes. (*Id.* at Table  
4 26.) Volume 3 of the ESTM includes a Response to Comments Addendum. (*Id.* Volume 3.) The  
5 ESTM also provides individual site assessments for all discretionary review and approval actions  
6 that will come before the Commission, including conditional use authorizations, building permits,  
7 and other approvals. (*Id.* at 4-1.)

### 8 **3. Changes to the Planning Code.**

9 In 2012, while the Academy's applications remained on administrative hold pending  
10 completion of the EIR and ESTM, the Planning Code changed in two ways.

11 First, the Board of Supervisors passed the "Student Housing Legislation," which prohibits  
12 the conversion of residential units to student housing unless the units will be owned by a not-for-  
13 profit post-secondary educational institution and certain other criteria are met. (S.F. Planning  
14 Code, § 317, subds. (f), (g).) Because the Academy is a for-profit post-secondary educational  
15 institution, this legislation newly prohibited approval of the Academy's use of some properties for  
16 which the Academy had previously submitted conditional use applications. As a result, only an  
17 amendment to the Planning Code by the Board of Supervisors will authorize the Academy's use  
18 of these properties.

19 Second, in 2012, the Western SoMa Controls revised the Planning Code to prohibit  
20 educational services in the Services/Arts/Light Industrial District. (*Id.* § 846, Table at No.  
21 846.32.) A 36-month grace period was built into the ordinance for projects with pending  
22 applications. (*Id.* § 175.5, subd. (b).) On May 17, 2012, prior to the change in the law, the  
23 Academy had filed a conditional use application to change the use at 601 Brannan Street. (RJN  
24 Ex. L at 4.) But because the Commission did not act on the Academy's application within the  
25 grace period, use of the property for educational services requires an amendment to the Planning  
26 Code.

27 The Academy has submitted applications for legislative amendments for its eight affected  
28 properties. (RJN Ex. M.) On July 28, 2016, the Commission held a hearing in which it discussed

1 alternative Planning Code amendments. (RJN Ex. N at 1.) The hearing began the 20-day notice  
2 period that is required before the Commission may hold a hearing and take action on the proposed  
3 Planning Code amendments. (*Ibid.*) The Commission will hold hearings on all of the proposed  
4 amendments on September 22, 2016. (RJN Ex. N at 6.) If amendments are approved by the  
5 Commission, they will be presented to the Board of Supervisors for adoption. (S.F. Planning  
6 Code, § 302.)

7 **4. The Department issues notices of violation and penalty.**

8 On January 17, 2013, the Department issued Notices of Violation and Penalty (“NOVPs”)  
9 for 22 properties.<sup>10</sup> (RJN Ex. B at 2.) The Zoning Administrator, acting on behalf of the  
10 Department, exercised the City’s enforcement discretion and voluntarily stayed enforcement of  
11 the NOVPs pending completion of the EIR process. (*Id.* at 2-3.) On April 25, 2014, the  
12 Department withdrew its stay but continued to toll accrual of penalties subject to a deadline for  
13 publication of the Draft EIR. (*Id.* at 3.) While appeal of the Zoning Administrator’s Withdrawal  
14 Notice was pending, the Draft EIR was published on February 25, 2015. (*Ibid.*)

15 On March 31, April 7, and April 14, 2016, the Department issued Notices of Violation and  
16 Penalty Decisions (“NOVPDs”) for 22 of the 23 properties at issue in this case.<sup>11</sup> (RJN Ex. E at  
17 2.) In each of those NOVPDs, the Zoning Administrator, acting on behalf of the City,  
18 “exercis[ed] its enforcement discretion” to “toll the assessment of penalties under this Notice of  
19 Violation and Penalty Decision,” if the Response to Comments for the EIR and the ESTM were  
20 published by July 1, 2016. (RJN Ex. B at 4.) The Department published the Responses to  
21 Comments for the EIR and the final ESTM on June 30, 2016, thereby meeting the July 1, 2016  
22 deadline. Each NOVDP also noted that “no penalties are due at this time . . . under this  
23 Decision,” but that penalties would accrue “according to the terms of this Decision” unless noted  
24 compliance actions were taken or an appeal made to the Board of Appeals. (*Id.* at 5.) The  
25

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26 <sup>10</sup> NOVPs instruct a property owner that its property is not in compliance with the  
27 Planning Code and that the owner must take a specific action in order to come into compliance.  
(See RJN Ex. B at 1.)

28 <sup>11</sup> The Department had previously issued an NOVDP for 460 Townsend.

1 Academy filed timely notices of appeal of each of the NOVDPs to the Board of Appeals, which  
2 denied the appeals after a hearing on June 22, 2016. (FAC ¶ 100.)

3 **5. Upcoming administrative proceedings.**

4 The administrative processes necessary to bring the Academy's uses into compliance are  
5 ongoing. Having submitted all required applications, which are now ready for agency review  
6 after completion of the environmental review process, the Academy awaits several actions by the  
7 Department, the Commission, and the Board of Supervisors.

8 First, the Commission must hold a hearing on Planning Code amendments. On July 28,  
9 2016, the Commission initiated the amendments, which started a 20-day notice period. (RJN  
10 Ex. N at 1.) In addition to the Academy's proposed amendments, the Department staff has  
11 proposed an alternative Planning Code amendment, which it says will align with the  
12 Department's larger policy recommendations. (*Id.* at 4.) Following the 20-day notice period, the  
13 Commission will hold a hearing and take action on all of the proposed Planning Code  
14 amendments. (*Id.* at 1.)

15 The Planning Department has tentatively scheduled a Planning Commission hearing on  
16 the proposed amendments for September 22. (*Id.* at 6.) At this hearing, the Commission will  
17 consider the amendments proposed by the Academy as well as the amendment proposed by the  
18 Department. After the hearing, the Commission will make a recommendation to the Board of  
19 Supervisors, which must approve amendments.

20 Second, the Commission has indicated that it will begin to hold hearings on the  
21 Academy's applications for conditional use authorizations.<sup>12</sup> (Quigley Decl. ¶¶ 2, 3, 4, 5, 6.) On  
22 September 22, the Commission plans to hold hearings for legislative amendments and conditional  
23 use authorizations for student housing buildings, including 1080 Bush Street, 1153 Bush Street,  
24 1055 Pine Street, 860 Sutter Street, 1916 Octavia Street, 2209 Van Ness Avenue, and 2211 Van  
25 Ness Avenue, and for the legislative amendment for 601 Brannan Street (also known as 601-625

26 \_\_\_\_\_  
27 <sup>12</sup> Some of the properties require only a building permit, which can be approved by staff.  
28 The Historic Preservation Commission must also review permits for exterior alterations to certain  
buildings. (RJN Ex. E at 1.)

1 Sutter Street). (*Id.* ¶ 2.) On October 6, 2016, the Commission plans to hold hearings for  
2 conditional use authorizations for former industrial sites, including 2225 Jerrold Avenue, 460  
3 Townsend Street, and 466 Townsend Street. (*Id.* ¶ 3.) On November 3, 2016, the Commission  
4 plans to hold hearings for conditional use authorizations for former office sites, including 601  
5 Brannan Street (also known as 601-625 Sutter Street), 58-60 Federal Street, and 2340 Stockton  
6 Street (also known as 2300 Stockton Street). (*Id.* ¶ 4.) On November 17, the Commission plans  
7 to hold hearings for conditional use authorizations for former retail sites, including 2295 Taylor  
8 Street (also known as 701 Chestnut Street), 2801 Leavenworth Street, 950 Van Ness Avenue,  
9 1849 Van Ness Avenue (also known as 1835 Van Ness Avenue), and 1069 Pine Street. (*Id.* ¶ 5.)  
10 On December 1, the Commission plans to hold hearings for conditional use authorizations for  
11 former tourist hotels and churches, including 1727 Lombard Street, 817-831 Sutter Street (also  
12 known as 825 Sutter Street), 620 Sutter Street, 2151 Van Ness Avenue, and 491 Post Street. (*Id.*  
13 ¶ 6.) If the Planning Commission disapproves a conditional use authorization or Planning Code  
14 amendment, the Academy may file an appeal to the Board of Supervisors pursuant to Planning  
15 Code section 308.1.

## 16 ARGUMENT

### 17 I. THE COURT SHOULD SUSTAIN THE DEMURRER AND STAY OR DISMISS 18 ALL CLAIMS BASED ON THE DOCTRINE OF PRIMARY JURISDICTION PENDING COMPLETION OF ADMINISTRATIVE PROCEEDINGS.

#### 19 A. Legal Standard for Primary Jurisdiction Stay or Dismissal.

20 The doctrine of primary jurisdiction is closely related to the doctrine of exhaustion of  
21 administrative remedies and serves a similar policy purpose. (*Farmers, supra*, 2 Cal.4th at p.  
22 390.) But whereas exhaustion applies when only the administrative agency has jurisdiction in the  
23 first instance, “[p]rimary jurisdiction’, on the other hand, applies where a claim is originally  
24 cognizable in the courts,<sup>13</sup> and comes into play whenever enforcement of the claim requires the

25 \_\_\_\_\_  
26 <sup>13</sup> Section 176 of the San Francisco Planning Code was recently amended to provide that  
27 “the City Attorney may at any time institute civil proceedings for injunctive and monetary relief,  
28 including civil penalties, against any person for violations of the Planning Code, without regard to  
whether the Zoning Administrator has issued a notice of violation, instituted abatement  
proceedings, scheduled or held a hearing on a notice of violation or issued a final decision.” (S.F.  
Planning Code, § 176, subd. (f).) The amendment is irrelevant to the doctrine of primary

(Footnote continues on next page.)

1 resolution of issues which, under a regulatory scheme, have been placed within the special  
2 competence of an administrative body; in such a case the judicial process is suspended pending  
3 referral of such issues to the administrative body for its views.” (*Ibid.* [internal quotations  
4 omitted], quoting *United States v. Western Pac. R. Co.* (1956) 352 U.S. 59, 63-64; see also  
5 *Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.App.4th 287, 295-296.)

6 Courts apply primary jurisdiction “to stay proceedings or to dismiss a complaint without  
7 prejudice pending the resolution of an issue within the special competence of an administrative  
8 agency.” (*Clark v. Time Warner Cable* (9th Cir. 2008) 523 F.3d 1110, 1114.) Primary  
9 jurisdiction “does not permanently foreclose judicial action, but provides the appropriate  
10 administrative agency with an opportunity to act if it chooses to do so.” (*Wise, supra*,  
11 77 Cal.App.4th at p. 296.)

12 “[T]he primary jurisdiction doctrine advances two related policies: [1] it enhances court  
13 decisionmaking and efficiency by allowing courts to take advantage of administrative expertise;  
14 and [2] it helps [to] assure uniform application of regulatory laws.” (*Farmers, supra*, 2 Cal.4th at  
15 p. 391.) Application of this doctrine is a matter of discretion and “generally hinges on a court’s  
16 determination of the extent to which [these policies] are implicated in a given case.” (*Ibid.*)

17 **B. The Court Should Exercise Its Primary Jurisdiction Discretion to Stay or**  
18 **Dismiss the City’s Claims Until Administrative Proceedings Are Completed.**

19 In this case, the City Attorney asks this Court to exercise its equitable jurisdiction to  
20 determine whether the Academy should be enjoined from its uses of the subject properties and  
21 whether and to what extent civil penalties should be imposed despite the Academy’s long-  
22 pending applications—issues that will require a balancing of harms and consideration of the  
23 public interest. (See, e.g., *Law School Admission Council, Inc. v. State* (2014) 222 Cal.App.4th  
24 1265, 1280, as modified (Feb. 11, 2014), review denied (Apr. 16, 2014) [in issuing injunction  
25 courts consider “the balance of harm presented, i.e., the comparative consequences of the

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26 (Footnote continued from previous page.)

27 jurisdiction, which applies when the court has jurisdiction and there is no requirement to exhaust  
28 administrative remedies.

1 issuance and non-issuance of the injunction”].) These are matters on which the Court would  
2 unquestionably benefit from the institutional expertise of the relevant administrative agency—the  
3 San Francisco Planning Commission.

4 Moreover, this is not a case in which the agency *might* engage in relevant proceedings, but  
5 one in which *such proceedings are now in progress*, pursuant to procedures mandated by the  
6 San Francisco Charter and Planning Code, after years of study and completion of two extensive  
7 environmental reviews. The San Francisco Planning Commission will consider the uses of the  
8 subject properties based on matters within its expertise, including the impact of those uses on  
9 transportation and affordable housing and other environmental and economic impacts. It will also  
10 determine whether mitigation measures and/or impact fees are required and what they should be.  
11 This Court should not entertain the City Attorney’s requests for injunctions and penalties without  
12 the benefit of the Planning Commission’s consideration of those issues.

13 In *Farmers*, the Attorney General acting on behalf of the People of California, like the  
14 City Attorney here, alleged statutory violations (Insurance Code) and brought UCL claims,  
15 seeking an injunction and civil penalties. The trial court overruled the defendants’ demurrer,  
16 holding that the People could proceed under the UCL without first engaging in administrative  
17 proceedings, and the court of appeal affirmed. The California Supreme Court reversed and issued  
18 a writ of mandate directing the superior court to stay judicial proceedings pending proceedings  
19 before the Insurance Commissioner. Though the court had jurisdiction over the Attorney  
20 General’s claims, and there was no requirement of exhaustion of administrative remedies, the  
21 Supreme Court held that the doctrine of primary jurisdiction applied because initial review by the  
22 agency would promote judicial economy and uniform application of regulatory laws. The Court  
23 noted in *Farmers* that “the Insurance Commissioner has at his disposal a pervasive and self-  
24 contained system of administrative procedure to deal with the precise questions [presented]” and  
25 that “agency fact-finding and expertise is needed in order to both resolve complex factual  
26 questions and provide a record for subsequent judicial review.” (*Farmers, supra*, 2 Cal.4th at  
27 pp. 396-397, internal quotations and citation omitted.)

28 The same is true here. The Planning Commission procedures, which are already

1 underway, are designed to resolve as a matter of public policy land use questions presented by  
2 this action. And the expertise of the Planning Department and Commission is needed to weigh  
3 the complex questions of environmental and economic impacts that bear on whether the  
4 Academy’s primarily educational uses should be enjoined and penalized, as asserted by the City  
5 Attorney, and to provide a record for subsequent review, if necessary, by this Court. (See  
6 *Jonathan Neil & Associates, Inc. v. Jones* (2004) 33 Cal.4th 917, 934-935 [lengthy trial in which  
7 experts needed to “train” the judge and jury on complex issues confirmed the proper application  
8 of primary jurisdiction]; *Backus v. General Mills, Inc.* (N.D.Cal. 2015) 122 F.Supp.3d 909, 935  
9 [applying primary jurisdiction pending FDA action even though the agency’s determination  
10 would not have a preclusive effect on plaintiff’s UCL claims]; *Gordon v. Church & Dwight Co.*  
11 (N.D.Cal., Apr. 2, 2010, No. C 09-5585 PJH) 2010 WL 1341184, \*2 [dismissing claims based on  
12 primary jurisdiction where FDA was considering public comments regarding potential product  
13 warnings].)

14 The Court should, therefore, stay or dismiss this case based on the doctrine of primary  
15 jurisdiction until Planning Commission and Board of Supervisors proceedings on applications for  
16 uses of the subject properties are completed.

17 **II. IN THE ALTERNATIVE, THE COURT SHOULD SUSTAIN THE DEMURRER**  
18 **AND DISMISS ALL CLAIMS BASED ON THE DOCTRINE OF JUDICIAL**  
19 **ABSTENTION.**

20 **A. Legal Standard for Judicial Abstention.**

21 Under the doctrine of judicial abstention, “a trial court may abstain from adjudicating a  
22 suit that seeks equitable remedies if granting the requested relief would require a trial court to  
23 assume the functions of an administrative agency, or to interfere with the functions of an  
24 administrative agency,” or “if the lawsuit involves determining complex economic policy, which  
25 is best handled by the Legislature or an administrative agency.” (*Hambrick, supra*, 238  
26 Cal.App.4th at p. 147 [internal quotations omitted], quoting *Arce v. Kaiser Foundation Health*  
27 *Plan, Inc.* (2010) 181 Cal.App. 471, 496.) When judicial abstention in deference to agency action  
28 is appropriate, “[t]he courts are available to review the responses of those agencies, but they are  
not available to supersede [the agencies’] role in the regulatory process.” (*Center for Biological*

1 *Diversity, Inc. v. FPL Group, Inc.* (2008) 166 Cal.App.4th 1349, 1372; accord *Hambrick, supra*,  
2 238 Cal.App.4th at p. 153; see *Congress of California Seniors v. Catholic HealthCare West*  
3 (2001) 87 Cal.App.4th 491, 511 [“[T]he state courts cannot assume general regulatory powers  
4 under the guise of enforcing section 17200.”], citing *Samura v. Kaiser Foundation Health Plan,*  
5 *Inc.* (1993) 17 Cal.App.4th 1284, 1301-1302.) When judicial abstention applies, the court should  
6 sustain a demurrer and enter a judgment of dismissal. (See *Hambrick, supra*, 238 Cal.App.4th  
7 124 [affirming superior court’s sustaining of demurrer and entry of judgment of dismissal].)

8 **B. Adjudication of Plaintiffs’ Claims Would Require the Court to Interfere with**  
9 **Pending Administrative Proceedings and Determine Complex Public Policy.**

10 Even as the San Francisco Planning Department and Commission are about to take up  
11 long-pending applications for permits and authorizations of the Academy’s primarily educational  
12 uses of the subject properties, the City Attorney seeks injunctions prohibiting those uses and civil  
13 penalties for those uses. This action would, therefore, require this Court to “assume the functions  
14 of an administrative agency”—the San Francisco Planning Commission—and “interfere with [its]  
15 functions.” (*Hambrick, supra*, 238 Cal.App.4th at p. 147; see also *Blue Cross of Cal., Inc. v.*  
16 *Super. Ct.* (2009) 180 Cal.App.4th 1237, 1258 [abstention appropriate where “granting the  
17 requested relief would require a trial court to assume the functions of an administrative agency, or  
18 to interfere with the functions of an administrative agency”], citation omitted; *People ex rel. Dept.*  
19 *of Transportation v. Naegle Outdoor Advert. Co.* (1985) 38 Cal.3d 509, 523 [abstention proper  
20 regarding UCL claim arising from defendant’s alleged violations of the federal Highway  
21 Beautification Act].) The City Attorney asks this Court to determine whether the Academy’s uses  
22 of the subject properties should be allowed to continue, the very issue that is pending before the  
23 San Francisco Planning Commission.

24 Entertaining the City Attorney’s claims in this case would also “involve[] determining  
25 complex economic policy, which is best handled by the Legislature or an administrative agency.”  
26 (*Hambrick, supra*, 238 Cal.App.4th at pp. 147-148.) In ruling on the City Attorney’s requests for  
27 injunctions, the Court would be required to consider “the balance of harm presented, i.e., the  
28 comparative consequences of the issuance and non-issuance of the injunction.” (*Law School*

1 *Admission Council, supra*, 222 Cal.App.4th at p. 1280.) In making decisions on the Academy's  
2 pending applications, the City Planning Commission will consider that same balance. With  
3 expert input from the Planning Department and the benefit of extensive environmental studies,  
4 the Commission will weigh the impacts of the Academy's primarily educational uses of the  
5 properties, including whether those uses will be detrimental to the general welfare of people in  
6 the vicinity of the use or will adversely affect the City's General Plan and whether they will  
7 provide development that is in conformity with the stated purpose of the applicable Use District.  
8 (S.F. Planning Code, § 303, subd. (c).)

9 Those and related economic determinations, including the impact of the Academy's uses  
10 on the City's transportation and affordable housing, should be made by the Planning Commission  
11 in the first instance. The Academy also has long-pending applications for Planning Code  
12 amendments that will be considered by the San Francisco Board of Supervisors. Those  
13 determinations should be made in the first instance by that legislative body, not by this Court.

14 This Court should, therefore, sustain the demurrer and dismiss all claims based on judicial  
15 abstention.

### 16 CONCLUSION

17 The City Attorney's claims are premature, coming as they do in the midst of ongoing  
18 administrative proceedings addressing issues raised by this action. The Court should therefore  
19 sustain the demurrer and stay or dismiss this action based on the doctrines of primary jurisdiction  
20 and/or judicial abstention until proceedings in the San Francisco Planning Commission and San  
21 Francisco Board of Supervisors are completed.

22 Dated: August 22, 2016

MORRISON & FOERSTER LLP

23  
24 By: /s/ George C. Harris

GEORGE C. HARRIS

25 Attorneys for Defendants  
26 STEPHENS INSTITUTE, d/b/a  
27 ACADEMY OF ART UNIVERSITY,  
28 et al.

sf-3654695

# **APPENDIX 1**

**Academy of Art University Applications for Authorizations and Permits**

<b>Property</b>	<b>Description of Application(s)</b>
601 Brannan Street	On May 17, 2012, the Academy filed a conditional use application to change the use to educational services (#2012.0646C). The Academy filed an application update in 2016.
1080 Bush Street	On September 14, 2007, the Academy filed a conditional use application to change the use to group housing for a post-secondary educational institution (#2007.1070C). The Academy filed an application update in 2016.
1153 Bush Street	On September 14, 2007, the Academy filed a conditional use application to change the use to group housing for a post-secondary educational institution (#2007.1071C). The Academy filed an application update in 2016.
58-60 Federal Street	On November 13, 2012, the Academy filed a building permit application for a change of use to post-secondary educational institution (#2012.1113.4024).
2225 Jerrold Avenue	On November 13, 2012, the Academy filed a building permit application for a change of use to vehicle storage/accessory office (#2012.1113.4022). The Academy filed an application update in 2016.
2801 Leavenworth Street	On November 13, 2012, the Academy filed a building permit application to add post-secondary educational institution uses to existing office and retail uses (#2012.1113.4023).
1727 Lombard Street	On September 14, 2007, the Academy filed a conditional use application to change the use to group housing for an educational institution (#2007.1070C). On January 31, 2012, the Academy filed a conditional use application to change the use to group housing for an educational institution (#2012.0095C). On January 23, 2013, the Academy filed a building permit application to document the change of use under Section 182(c) to group housing (#201.301.23.8540). The Academy filed an application update in 2016.
1916 Octavia Street	On September 14, 2007, the Academy filed a conditional use application to change the use to group housing for a post-secondary educational institution (#2007.1073C). The Academy filed a permit application update in 2016.
1055 Pine Street	On September 14, 2007, the Academy filed a conditional use application to change the use to group housing for a post-secondary educational institution (#2007.1074C). The Academy filed an application update in 2016.
1069-1077 Pine Street	On September 14, 2007, the Academy filed a conditional use application to authorize a post-secondary educational institution use (#2007.1075C). On

Property	Description of Application(s)
	January 23, 2013, the Academy filed a building permit application to document the change of use under Section 182(c) to educational use (#2013-01-23-8537). The Academy filed an application update in 2016.
491 Post Street	On November 13, 2012, the Academy filed a building permit application for a change of use to post-secondary educational institution use (#201211134021).
2340 Stockton Street	On November 13, 2012, the Academy filed a building permit application for a change of use to post-secondary educational institution use (#2012.1113.4025).
620 Sutter Street	On January 23, 2013, the Academy filed a building permit application for a change of use to group housing (#2013.0123.8536).
817-831 Sutter Street	On September 14, 2007, the Academy filed a conditional use application to change the use to group housing for a post-secondary educational institution (#2007.1076C). The Academy filed an application update in 2016.
860 Sutter Street	On September 14, 2007, the Academy filed a conditional use application to change the use to group housing for a post-secondary educational institution (#2007.1077C). The Academy filed an application update in 2016.
2295 Taylor Street	This building was included in a conditional use application (No. 92.400IECV) filed by the SF Art Institute and approved in 1993 by the Planning Commission pursuant to Motion No. 13457. On September 14, 2007, the Academy filed a conditional use application. (#2007.1079C.) On December 3, 2014, the Academy filed a conditional use application to change the use to educational services (#2014.00231CUA). The Academy filed an application update in 2016.
460 Townsend Street	On February 2, 2012, the Academy filed a conditional use application to change the use to educational services (#2012.0107C).
466 Townsend Street	On June 7, 2012, the Academy filed a conditional use application to change the use to educational services (#2012.0720C). The Academy filed an application update in 2016.
930-950 Van Ness Avenue	On May 29, 2012, the Academy filed a conditional use application for approval of a private parking garage/auto storage (#2012.0686C). The Academy filed an application update in 2016.
1849 Van Ness Avenue	On September 14, 2007, the Academy filed a conditional use application to authorize post-secondary educational institutional use (#2007.1080C). The Academy filed an application update in 2016.
2151 Van Ness Avenue	On September 14, 2007, the Academy filed a conditional use application to authorize post-secondary educational institutional use (#2007.1081C). The

<b>Property</b>	<b>Description of Application(s)</b>
	Academy filed an application update in 2016.
2209 Van Ness Avenue	On September 14, 2007, the Academy filed a conditional use application to change the use to group housing for a post-secondary educational institution (#2007.1082C). The Academy filed an application update in 2016.
2211 Van Ness Avenue	On September 14, 2007, the Academy filed a conditional use application to change the use to group housing for a post-secondary educational institution (#2007.1083C). The Academy filed an application update in 2016.