



**STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD**

AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES  
LOCAL 3299,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,

Respondent.

UNFAIR PRACTICE  
CASE NO. SF-CE-1421-H

PROPOSED DECISION  
(July 31, 2025)

**PERB Decision No. HO-U-1851-H  
August 21, 2025**

Appearances: Leonard Carder, LLP, by Amanda Eaton, Attorney, for American Federation of State, County & Municipal Employees Local 3299; Sloan Sakai Yeung & Wong LLP, by Timothy G. Yeung, Ellen M. Taylor, and Patrick Cardwell, Attorneys, for Regents of the University of California.

Before Dexter F. Rappleye, Administrative Law Judge.

INTRODUCTION

Charging Party American Federation of State, County & Municipal Employees Local 3299 (Federation) alleges that the Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA) and the Public Employment Communication Chapter (PECC) by failing to provide the Federation with information relevant to its representation of bargaining unit employees.<sup>1</sup> The University denies any wrongdoing.

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<sup>1</sup> HEERA and the PECC are respectively codified at California Government Code sections 3560 et seq. and 3555 et seq.

For the reasons stated below, I find and conclude that the University committed the alleged violations.

### PROCEDURAL HISTORY

On April 5, 2023, the Federation filed the underlying Unfair Practice Charge in this matter. On November 9, 2023, PERB's Office of the General Counsel (OGC) issued a Complaint alleging that the University (1) violated the PECC by failing to provide the Federation with complete and accurate employee contact information; (2) violated its duty to meet and confer under HEERA by failing to provide relevant and necessary information requested by the Federation; and (3) interfered with employee rights by failing to provide the Federation with requested contact information for bargaining unit employees. On November 22, 2023, the University filed an Answer to the Complaint, denying any liability and asserting various affirmative defenses.

On May 14, 2024, the parties attended an informal settlement conference but were unable to resolve the dispute. On September 19, 2024, the case was transferred to PERB's Division of Administrative Law for adjudication.

The parties participated in a virtual formal hearing on January 14 and 15, 2025. Both parties were represented by counsel, and had the opportunity to examine and cross-examine witnesses and present evidence in support of their respective positions.

Without objection, I took official notice of the contents of PERB's case file in this matter. Over the University's objection, I also took official notice pursuant to Evidence

Code section 452, subdivision (c)<sup>2</sup> of a proposed decision issued by PERB Administrative Law Judge (ALJ) Donn Ginoza in a previous case between the same parties, PERB Case No. SF-PE-1-H (Proposed Decision). I also took official notice of a non-precedential PERB Decision issued in the same case, captioned *Regents of the University of California* (2021) PERB Decision No. 2759-H (*UC Regents*).<sup>3</sup>

During the hearing, the parties jointly requested that certain exhibits be sealed from public inspection on the grounds that they contain confidential information of University employees, including personal contact information. I granted the request and ordered these exhibits sealed from public inspection pursuant to Government Code Section 11425.20, subdivisions (a)(1) and (a)(2), and pursuant to PERB Regulation 32170, subdivision (b)(11).<sup>4</sup>

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<sup>2</sup> Subdivision (c) of Section 452 recognizes that judicial notice may be taken of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” When considering requests for official notice, the Board applies standards for taking judicial notice used in state courts. (*Santa Clara County Superior Court* (2014) PERB Decision No. 2394-C, p. 16.)

<sup>3</sup> PERB routinely takes official notice of “its own records and files.” (*Alliance Judy Ivie Burton Technology Academy High et al.* (2020) PERB Decision No. 2719, p. 2 fn. 3.)

<sup>4</sup> Section 11425.20, subdivision (a)(1) permits the presiding officer in an administrative hearing to “order closure of a hearing or make other protective orders to the extent necessary or proper” to “satisfy the United States Constitution, federal or state statute, or other law, including, but not limited to, laws protecting privileged, confidential, or other protected information.” Subdivision (a)(2) permits entry of a protective order as necessary “[t]o ensure a fair hearing in the circumstances of a particular case.” PERB Regulation 32170, subdivision (b)(11) authorizes Board agents to “[i]ssue any needed protective orders limiting use of, or access to, records produced pursuant to a subpoena, exhibits, transcripts, and any other parts of the hearing file.”

The parties submitted post-hearing briefs on March 28, 2025 and reply briefs on April 17, 2025, whereupon the matter was fully submitted for a proposed decision.

## FINDINGS OF FACT

### I. Parties

The University is a higher education employer and public employer within the meanings of HEERA section 3562, subdivision (g), and PECC section 3555.5, subdivision (a), respectively. The University system comprises several campuses and other facilities throughout the state.

The Federation is an exclusive representative within the meanings of HEERA section 3562, subdivision (i), and PECC section 3555.5, subdivision (b)(1), representing the following three bargaining units of University employees: (1) the systemwide Patient Care Technical or “EX” unit; (2) the systemwide Service or “SX” unit; and (3) the Skilled Crafts or “K7” unit consisting of certain employees at UC Santa Cruz. The three units comprise over 30,000 total employees. Separate collective bargaining agreements (CBAs) cover each unit.

### II. Relevant Prior Litigation Between the Parties

In March of 2018, the Federation filed an unfair practice charge against the University in PERB Case No. SF-PE-1-H. In addition to other allegations not relevant here, the Federation alleged that the University failed to provide it with various categories of personal contact information for employees in the SX and EX bargaining units in violation of Section 3558 of the PECC, and thereby also interfered with employee rights in violation of HEERA Section 3571, subdivision (a).

The parties attended a formal hearing, and on November 26, 2019, PERB Administrative Law Judge Donn Ginoza issued his Proposed Decision. The parties

filed limited exceptions to the Proposed Decision, which the Board addressed in *UC Regents, supra*, PERB Decision No. 2759-H.<sup>5</sup> As relevant here, the parties did not except to the ALJ's conclusion that the University violated the PECC by failing to timely provide the Federation with complete and accurate employee contact information. (*UC Regents, supra*, p. 3 fn. 3.) Therefore, the ALJ's factual findings and legal conclusions with respect to that issue are binding on the parties to this case but are without precedent for future cases. (PERB Regulation 32305, subd. (a), 32215; *California School Employees Association (Williams)* (2019) PERB Decision No. 2643, p. 2 fn. 2.)

### III. The Parties' Practices Regarding the Provision of Employee Contact Information

Article 1 in the CBAs for both the EX and SX units requires the University to provide the Federation with certain information every month. Specifically, these provisions require the University to "provide [the Federation] with an electronic list via File Transfer Protocol (FTP) of all employees in the bargaining unit" that includes each employee's name, title, title code, date of hire, annual salary, percentage appointment, and hiring unit. The FTP list also includes employees' home addresses, telephone and cellular phone numbers, and personal e-mail addresses. The CBA exempts from

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<sup>5</sup> Prior to the formal hearing, Case No. SF-PE-1-H was consolidated with another case, PERB Case No. SF-PE-2-H, which arose from a charge filed by a different union, the University Professional and Technical Employees, Communication Workers of America, Local 9119. That charge has no relevance to this case. Any discussion of the Proposed Decision or the Board decision in *UC Regents* will therefore be limited to those findings and conclusions dealing with the Federation's unfair practice charge in Case No. SF-PE-1-H.

disclosure contact information for specific employees who have submitted a request to the Federation indicating that they do not want their personal contact information released.

The CBA for the K7 unit does not require the University to provide an FTP list, but the University generally provides the same information to the Federation for employees in the K7 unit in the same manner as it does for employees in the EX and SX units.

As of the hearing in this case, only 19 total employees in the three relevant bargaining units had submitted requests to the Federation indicating they did not consent to the University sharing their personal contact information with the Federation.

The FTP list is made available on or around the first day of each month for the Federation to download from the University's website via a platform called "GoAnywhere." The University provides the raw data for the list in a ".txt" file format. The .txt file contains the raw data organized into rows and columns but does not include headings designating what the numbers or other information in each column represents. The University separately sends the Federation a document called a "key" which contains headings indicating what the entries in each column of raw data represent. The headings include "Name," "Unit," "Campus," "EmployeeID," "Address," "HomePhone," "PersonalEmail," "PersonalCell," "DeptAddress," "Department," "CampusAddress," "CampusAddress2," "WorkBuilding," "WorkEmail," "WorkPhone," "WorkCell," and other categories of data.

The University also provides a “change file” on a weekly basis that details any changes to the information in the most recent comprehensive FTP list.

The Federation uses a program called Microsoft Access to convert the .txt file provided by the University into a spreadsheet compatible with Microsoft Excel and uses the key to add headings to the columns in the spreadsheet. This conversion process does not alter the substantive data provided in each row and column in the original .txt file.

The Federation utilizes employees’ personal contact information for various purposes, including contract administration, ascertaining whether the University is complying with its legal obligations, and other organizational and representational activities.

The University maintains information for the FTP lists in a dataset called the “I-254 roster.” The data in the roster, including employee contact information, is “pulled” from a software program called “UCPath.” UCPath is the University’s primary tool for storing and maintaining employee data from all its campuses and facilities in a centralized digital location. The University uses UCPath for various human resources purposes including payroll processing and generating the FTP lists shared with the Federation and other labor unions. The University’s Associate Director for Labor Operations, Michelle Snyder, testified that the UCPath system was designed as a “system of truth,” i.e., a consistent common source for maintaining and reporting out employee data.

The information in UCPath is most commonly entered by “transactors” at the various campuses and facilities when employee records are created or updated.

Transactors include anyone authorized to review or edit information in UCPATH. Some University personnel have “view only” access to UCPATH, whereas “edit level transactors” can review and modify certain categories of data in the system. Every University campus and facility has transactors.

Some employee contact information is entered into UCPATH during the application process, and other information is entered during the onboarding process. The University did not introduce evidence establishing that it has any systemwide policy requiring that any specific information be collected from all new employees during the application or onboarding process, or that any information be entered into UCPATH.

University transactors update the FTP list weekly when they obtain new information about events such as new hires, employees transferring into a new position or department, and employees leaving their employment with the University.

Employees are also able to access UCPATH through an online portal and may make changes to their own personal information stored there.

The record suggests the University’s various campuses and facilities have somewhat different practices regarding the collection of employees’ personal information. At UC Merced, employees are instructed to complete a personal data form during the onboarding process, which asks for their personal contact information including personal e-mail address, home address, home phone number, and personal cell phone number. Transactors in the Payroll Services department then enter the contact information provided into UCPATH, unless the employee has chosen not to provide the information on the form.

At UC Merced, newly hired employees were formerly assigned a standardized University e-mail address, which would automatically be entered into UCPATH. In 2023, UC Merced began allowing employees to select a “vanity” e-mail address that is not standardized. Since the switch to vanity e-mail addresses, an employee’s chosen University e-mail address will be entered into UCPATH when the employee establishes a password for their new e-mail account.

UC Irvine has “onboarding teams” responsible for collecting employee data on new hires and entering the data into the UCPATH system. UC Irvine uses two different “models” for collecting employee information. A “centralized” model is used for employees who work in the UC Irvine Health system, whereas a “decentralized” model is used for other employees at UC Irvine. For employees on the centralized model, a group called “People Services” within the Human Resources department is responsible for entering data about employees’ work location and making updates when there are changes to employees’ personal data entered during the onboarding process. For employees on the decentralized model, administrators within each department called “DSAs”<sup>6</sup> are responsible for updating employee work location information.

The record does not reflect whether other University campuses or facilities use information gathering practices similar to those used at UC Irvine and UC Merced.

Beginning in November 2021, the University began providing information about the work location of several thousand employees at UC San Diego separately from the

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<sup>6</sup> The record does not include the full term of which DSA is an apparent acronym.

FTP list. UC San Diego and the UC San Diego Medical Center now utilize a system called “TRIRIGA” for collecting information on employees’ work location. Human Resources staff are able to enter work location information on employees’ behalf, and employees are also able to input and update the information themselves.

The University conducts monthly audits of the information in the TRIRIGA system and sends the reports to the various departments within UC San Diego so that the departments have an opportunity to update, correct, or supplement the information. The monthly reports are also transmitted to the Federation as spreadsheets, which contain the names of bargaining unit employees and other data regarding employees’ work locations. However, these reports do not include other categories of personal contact information such as home addresses, telephone numbers, or e-mail addresses. Nor is there evidence that any of the University’s other campuses or facilities provide work location information to the Federation separate from the monthly FTP lists.

The University did not introduce evidence that it has a practice of reviewing employee records to ensure that all items of information contained in those records are entered into UCPATH or taking any other concrete steps to verify that the information contained in UCPATH is complete and accurate.

#### IV. The Federation Notified the University in September of 2022 that the Most Recent FTP List was Missing Required Information

Consistent with the parties’ normal practice, the University provided an updated FTP list on September 1, 2022 in a .txt file format, and separately sent the Federation a “key” for that list. The Federation’s Database Consultant, Brendan O’Sullivan, then used the Microsoft Access program to convert the .txt file into an Excel spreadsheet

and used the key to add headings to the columns in the spreadsheet. The Federation reviewed the list and determined that numerous categories of employees' personal contact information and work location information were missing from the list.

On September 12, 2022, the Federation's counsel sent separate letters to the University's counsel detailing the categories of information missing from the most recent FTP list for the SX, EX, and K7 bargaining units. The Federation's letters asserted that the list did not include work, home, and/or cell telephone numbers for thousands of listed employees and contained apparently incorrect numbers for others. The Federation further asserted that the list was missing personal e-mail addresses for several thousand listed employees and was missing or contained inaccurate home addresses for other employees. The Federation also asserted that the list was missing or contained inaccurate information regarding work location for thousands of employees. The letters described how the Federation determined the numbers of employees for whom each category of contact information was missing or apparently inaccurate and demanded that the University "cure the above violations by providing accurate and complete data" within 20 calendar days pursuant to PECC Section 3558, subdivision (c)(1).

On September 20, 2022, the University responded to the Federation's September 12 letters regarding the EX and SX bargaining units. It did not respond to the letter regarding the K7 unit. The University asserted that some of the information the Federation claimed was missing did not show a violation of the PECC because the statute only requires employers to provide information that they have "on file," and some information was not provided because the University does not have the

information on file. The University also noted some discrepancies between the Federation's description of the missing information and the University's own review of the September 2022 FTP list. The University requested that the Federation provide the names and employee ID numbers of each employee whose information the Federation believed was missing or inaccurate and proposed times to meet and confer over the Federation's request.

The Federation responded the next day, September 21, 2022. It requested that the University identify each employee for whom it contends it does not have the required categories of contact information and describe how it determined that it did not possess that information "regardless of whether it is stored in UCPath." The Federation acknowledged that some numbers cited in its September 12 letters were incorrect because it had accidentally used the August 2022 FTP list to perform the calculations in that letter instead of the September list, while noting that the discrepancies between the August and September lists were "insignificant." The Federation provided revised calculations based on the September list and also provided spreadsheets listing the employees in the EX and SX units for whom each category of required contact information was still missing from the September 2022 FTP list. The Federation also provided documents describing the operations it performed to identify the employees listed in those spreadsheets.

With respect to employees' work location information, the Federation asserted that it "cannot and is not obligated to identify each and every single incorrect or inaccurate work location record because the University indisputably has that information and is in the better position to provide it." The Federation asserted that

the University could cure the failure to provide employees' work location by describing how work location information is entered into UCPATH, providing copies of instructions given to University personnel for entering that information, or by auditing that process and providing the Federation with the audit results.

Mr. O'Sullivan explained at the hearing how he prepared the spreadsheets that the Federation sent to the University on September 21, which detailed the items of missing or inaccurate information from the September FTP list. He started by "filtering" out all rows of data for employees where "Separation" or "Transfer Out" was listed under the "ActionType" column, thereby creating a list of active bargaining unit members. He then filtered out employees in the EX and SX units, creating two separate lists of active employees in each unit.

With respect to telephone numbers, Mr. O'Sullivan filtered the full FTP list to identify rows where there was no entry in columns for "WorkPhone" and "Work Cell" and determined there were 8,923 employees for whom no work telephone number was provided. He filtered to identify rows where the "HomePhone" column was left blank and a "Y" was entered in the "PhoneDisclosure" column,<sup>7</sup> and found there were 7,472 employees with no home telephone number listed. He filtered to identify rows where the "PersonalCell" column was left blank and a "Y" was entered in the "CellDisclosure" column, and found there were 15,569 employees with no personal cell phone number. He also filtered for employees for whom there was a "Y" in both the "PhoneDisclosure" and "CellDisclosure" columns and both the "HomePhone" and

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<sup>7</sup> A "Y" entry indicates that the employee has consented to the disclosure of their contact information to the Federation.

“PersonalCell” columns were blank, and found 3,473 employees for whom neither a home or cell phone number was provided. Mr. O’Sullivan also identified eight employees for whom the FTP list contained apparently inaccurate phone numbers such as “0000000000,” “9999999999,” or a number with an area code beginning with a “1.”

For employees in the SX unit, Mr. O’Sullivan performed similar operations on the data in the September list and determined there were 4,652 employees with no work telephone number, 2,974 with no home telephone number, 7,694 with no personal cell phone number, 1,206 with no home or personal cell phone number, and at least three employees with apparently inaccurate numbers listed.<sup>8</sup>

Regarding personal e-mail addresses for the EX unit, Mr. O’Sullivan filtered to identify rows where the “PersonalEmail” column was left blank and a “Y” was entered in the “EmailDisclosure” column, and found there were 5,153 employees for whom no personal e-mail address was provided. Using similar operations, he determined there were 2,859 SX employees.<sup>9</sup>

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<sup>8</sup> For the K7 unit, the Federation asserted in its initial September 12 letter that there was no work phone number listed for 19 out of 51 bargaining unit employees, no home phone number for 10 employees, no personal cell phone number for 25 employees, and no home or personal cell phone number for one employee. It did not provide additional details about this analysis on September 21, as the University did not respond to its initial letter about the K7 unit.

<sup>9</sup> In its September 12 letter for the K7 unit, the Federation noted that it found 5 K7 employees with no personal e-mail address listed.

Regarding home addresses, the Federation identified five employees by their employee ID numbers whose addresses were obviously inaccurate in that they did not contain a street name and house number.<sup>10</sup>

Regarding work location, for the EX unit, Mr. O'Sullivan filtered the list for rows where "2315 Stockton Blvd." was listed under the "CampusAddress" column, found there were 1,842 such employees, and noted that the same address was also listed in the "DeptAddress" column for those employees. The Federation explained in its letter that this information was at least partially inaccurate, as the listed address is for the UC Davis Health Center, but many of the employees listed were known to work at different locations such as a Surgery Center with a different street address. Mr. O'Sullivan also filtered for rows where "333 Golden Gate Ave" was listed under the "CampusAddress" column, found 866 such employees, and noted that the same address was listed under the "DeptAddress" column, and the phrase "Location Required" was listed under the "CampusAddress2" column. The Federation explained that the listed address was only a general address for the UC Law San Francisco campus, and that at least some of the listed employees were known not to work at that address. Mr. O'Sullivan also filtered for rows where the phrases "SEE HOME ADDRESS IF APPLICABLE," "SEE EMPLOYEE ADDRESS IF APPLIC," and "500 NO ADDRESS" were listed under the "CampusAddress" column, and noted there were 284 such employees. Lastly, he filtered out rows where the "CampusAddress2",

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<sup>10</sup> For example, one employee's home address was listed as "1." Another's was listed as "XXXX."

“WorkBuilding,” “WorkFloor,” “WorkRoom,” and “WorkCube” fields were all blank, and found 9,959 such employees.

After performing similar operations for the SX unit, Mr. O'Sullivan determined there were 75 food service employees for whom the University had listed the street address of the Residential & Student Services building at UC Berkeley, while those employees actually worked at dining halls on campus with different street addresses. There were also 137 employees at UC Irvine for whom the University listed the street address of the campus's main entrance, rather than a building where employees work. For 35 employees in the “Temporary Services Department” at UC Davis, the University listed the street address for that campus's “Shared Services Office,” which is not where those employees work. There were also 184 employees at UC Law San Francisco for whom the University listed only a general campus address that is not the location where those employees work.<sup>11</sup>

V. The University Provided an Updated FTP List that was Still Missing Required Information

On October 5, 2022, the University responded to the Federation's September 21 letters. It argued that that Section 3558 of the PECC only requires it to provide information maintained in the UCPath system. Because “UCPath is where the University maintains personal contact information,” the University asserted that its FTP list contains all information that the University has “on file.” It explained that “[a]ll University employees are asked to input their personal contact information [into

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<sup>11</sup> In its September 12 letter for the K7 Unit, the Federation also noted there were 16 of 51 employees for whom the University had only listed what appeared to be a general campus address.

UCPath] at the time of hire.” The University further noted that it has posted banners in the UCPath system which are visible to employees when they log into the system and which direct employees to enter their personal contact information. The University also asserted that it had sent a letter to all bargaining unit employees on September 21, 2022, requesting that they enter their personal contact information into UCPath.<sup>12</sup>

Also on October 5, the University provided the Federation with an updated FTP list. It explained that the list “include[d] updates made by the individual locations,” but did not identify what updates were made or any steps taken to verify or supplement the information in the list, other than sending the September 21 letter to employees requesting that they enter their information into UCPath.

Mr. O’Sullivan analyzed the data in the updated FTP list using the same methodology described above. He found that most of the information missing from the September list was still missing from the list provided on October 5. The list was still missing various categories of contact information for thousands of employees and had inaccurate information for other employees.

There were 8,141 EX employees for whom no work phone number was provided, as compared with 8,923 employees in the September list. There were also 3,440 SX employees and 3 K7 employees with no work phone number listed, as compared with 4,652 SX and 19 K7 employees in the September list. There were 7,570 EX employees, 2,981 SX employees, and 2 K7 employees with no home phone number listed, as compared with 7,472, 2,974 and 10 employees from these units in

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<sup>12</sup> This letter was not submitted into evidence.

the September list. There were also 15,364 EX employees, 7,407 SX employees, and 9 K7 employees with no personal cell phone number listed, as compared with 15,569, 7,694, and 25 employees in the corresponding September list. And there were 3,332 EX employees, 1,154 SX employees, and 1 K7 employee for whom no home or personal cell phone number whatsoever was listed, compared with 3,473, 1,206, and 1 from each unit in the September list.

The October 5 FTP list also included no personal e-mail address for 5,012 EX employees, 2,774 SX employees, and 1 K7 employee, as compared with 5,153, 2,859 and 5 employees in the September list.

The October list also still contained obviously inaccurate home addresses for four out of the five employees whom the Federation had identified in the September list.

The list still included inaccurate or missing work location information as well. There were 1,800 EX employees for whom the general address for the UC Davis Health Center was listed as both the Campus and Department address; 299 employees for whom the UC Law San Francisco address was provided as the Campus Address, even though they were known to work at UC San Francisco; 69 food service employees who still had the Berkeley Dining Office address listed rather than the dining halls or cafes where they actually work; and 6 employees in the Temporary Employment Services Department at UC Davis for whom the address of the Shared Services Office was listed rather than their actual worksite. There were also still 282 EX employees and 14 SX employees for whom the phrases "SEE HOME ADDRESS IF APPLICABLE," "SEE EMPLOYEE ADDRESS IF APPLIC," and "500 NO

ADDRESS” were listed as the Campus Address, and there were 10,009 EX employees, 3,004 SX employees, and 21 K7 employees for whom the fields CampusAddress2, WorkBuilding, WorkFloor, WorkRoom, and WorkCube were blank.

The Federation performed a similar analysis of the FTP list that the University provided in February of 2023 and found that the list was still missing the same items of personal contact information that were missing from the lists provided in September and October for thousands of bargaining unit employees.

The University’s witnesses did not dispute the accuracy of Mr. O’Sullivan’s methodology for identifying instances of missing or inaccurate employee contact information. They did note that many University employees, such as custodians, do not work in a single designated location. For these employees, the University records in a “work location form”<sup>13</sup> that they are “non-stationary” and gives the employees the option to designate a “check-in” location as their work location. The University’s witnesses also noted that not all employees are provided with a phone such that they would have a business phone number.

### ISSUES

1. Did the University violate the PECC by failing to timely provide complete and accurate employee contact information to the Federation?

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<sup>13</sup> The University did not admit any of these forms into evidence or provide any information about the forms including what information they contain, which University campuses and facilities use the forms, who is charged with completing the forms, or when they are typically completed.

2. Did the University, in failing to provide the Federation with employee contact information requested on September 12 and 21, 2022, fail or refuse to meet and confer in good faith in violation of HEERA?

3. Did the University, by failing to timely provide complete and accurate employee contact information to the Federation, interfere with employee rights in violation of HEERA?

### CONCLUSIONS OF LAW

#### I. PECC Violation

##### A. The Federation Established that the University Failed to Provide All of the Statutorily Required Information

The purpose of the PECC is to ensure the effectiveness of state labor relations statutes by providing exclusive representatives meaningful access to the employees they represent. (Gov. Code, § 3555.) The statute imposes an affirmative duty on public employers to provide exclusive representatives with certain categories of employee contact information, including the “name, job title, department, work location, work, home, and personal cell phone numbers, personal e-mail addresses on file with the employer, and home address of any newly hired employee.” (Gov. Code, § 3558, subd. (a).) This information must be provided to the employee organization “within 30 days of the date of hire or by the first pay period of the month following hire” for new employees, and “at least every 120 days” for all other employees in the bargaining unit. (*Id.*) Before filing a charge alleging a violation of this obligation, the exclusive representative must give written notice of the violation and give the public employer 20 calendar days to cure it by providing all of the

required contact information that was not initially provided within the prescribed time frame. (Gov. Code, § 3558, subds. (b) & (c).)

Here, the Federation alleges that the FTP list provided by the University in September of 2022 was missing required items of employee contact information for thousands of employees, the Federation provided written notice of the deficiencies on September 12, 2022, and the University failed to provide the missing information or correct the inaccuracies within 20 days. In support of these allegations, the Federation introduced a spreadsheet containing the full dataset obtained from the University in September, another spreadsheet of the full dataset provided on October 5, 2022, and a third spreadsheet of the dataset provided in February 2023. It also provided spreadsheets listing the employees for whom required categories of information were missing or inaccurate in the September 2022 list, and documents summarizing the methodology used to create those spreadsheets and the key findings. The Federation provided similar summaries of the same methodology and findings for the October 2022 and February 2023 FTP lists. Mr. O'Sullivan testified and explained the analysis that he performed on the data provided by the University and how he concluded that each of the three data sets was missing required employee contact information.

The University does not challenge Mr. O'Sullivan's analysis of the data contained in the spreadsheets the Federation introduced into the record, and apparently does not contest that those spreadsheets were in fact missing data or contained inaccurate data regarding the work location, home and personal phone numbers, or personal e-mail addresses for thousands of bargaining unit employees as

reflected in Mr. O'Sullivan's analysis. Rather, as to the initial question of whether the University failed to provide all required information for each employee in the three bargaining units, the University's only argument is that the Federation failed to meet its burden because it did not introduce any of the I-254 rosters in their original format.

While it is true that the Federation relied on spreadsheets that it created rather than the original files that the University produced, the absence of the original rosters does not necessarily preclude the Federation from meeting its burden. In a PERB hearing, the charging party's burden is to prove the allegations of the complaint by a preponderance of the evidence. (PERB Regulation 32178; *City of Santa Monica* (2019) PERB Decision No. 2635-M, p. 7 fn. 6.) This evidentiary standard requires "that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325, italics omitted, quoting *People v. Miller* (1916) 171 Cal. 649, 652.)

At the hearing, Mr. O'Sullivan explained how he created the spreadsheets on which the Federation bases its prima facie case. He testified that he used the Microsoft Access program to convert the .txt file into an Excel spreadsheet, and used the key provided by the University to add column headings to the spreadsheet. Based on Mr. O'Sullivan's testimony, it is reasonable to infer that the spreadsheets the Federation introduced into the record accurately reflect the information the University provided in September and October of 2022, and February of 2023.

The University cross-examined Mr. O’Sullivan and did not identify any inconsistencies in his testimony or impeach his credibility in any way. Moreover, to the extent the data in the original .txt files might differ from that in the Federation’s spreadsheets, the University had the opportunity to rebut the Federation’s evidence by introducing the original files into the record and identifying those inconsistencies. They did not do so, nor did they introduce any other evidence controverting any aspect of Mr. O’Sullivan’s testimony. Therefore, I find that the Federation’s spreadsheets accurately reflect the employee contact information that the University provided to the Federation in September and October of 2022.<sup>14</sup>

The Federation has therefore met its burden to establish by a preponderance of the evidence that the University did not provide all of the items of employee contact information required under Section 3558 of the PECC in September of 2022. The Federation has also established that it gave notice of the alleged violation on September 12, 2022, and the University failed to cure the violation within 20 days as required by Section 3558, subdivision (c)(1).

B. The PECC Required the University to Provide Additional Information Not Contained in the UCPATH System

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<sup>14</sup> Reliance on Mr. O’Sullivan’s spreadsheets is also appropriate under the Secondary Evidence Rule, which permits the “content of a writing” to be proved by secondary evidence unless (1) a genuine dispute exists concerning the material terms and justice requires exclusion of the secondary evidence, or (2) admission of the evidence would be unfair. (Evid. Code, § 1521, subd. (a).) The University has not raised a genuine dispute as to the contents of the FTP list or shown that admission of Mr. O’Sullivan’s spreadsheets would be unfair.

The University also argues that it was not required to provide any contact information missing from the September and October 2022 FTP lists because that information was not “on file” with the University within the meaning of Section 3558, subdivision (a). The Federation argues that this defense is precluded by collateral estoppel, as it was considered and rejected by ALJ Ginoza in his Proposed Decision in PERB Case No. SF-PE-1-H, which is binding on the parties. I find that the ALJ’s Proposed Decision is preclusive with respect to this issue and forecloses the University’s argument. Additionally, in the alternative, I reject the University’s defense on the merits.

1. The University’s Narrow Construction of the Phrase “On File” is Precluded by Collateral Estoppel

Collateral estoppel, also known as issue preclusion, is a principle whereby parties are precluded from relitigating an issue that has already been decided in another proceeding where: “(1) the issue is identical to that decided in the former proceeding, (2) the issue was actually litigated in the former proceeding, (3) the issue was necessarily decided in the former proceeding, (4) the decision in the former proceeding is final and on the merits, and (5) preclusion is sought against a person who was a party or in privity with a party to the former proceeding.” (*City and County of San Francisco* (2023) PERB Decision No. 2867-M, pp. 41-42, quoting *Castillo v. City of Los Angeles* (2001) 92 Cal.App.4th 477, 481 (*Castillo*).) Where those requirements are met, collateral estoppel should be applied if its application “will further the public policies of ‘preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by

vexatious litigation.” (*Castillo, supra*, 92 Cal.App.4th at 481, quoting *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 343.)

For the following reasons, I find that ALJ Ginoza’s Proposed Decision in Case No. SF-PE-1-H has collateral estoppel effect as to those issues on which the parties did not file exceptions. I further find that the issue of whether Section 3558 only requires the University to provide employee contact information that is maintained in the UCPath system was decided by the ALJ in his Proposed Decision, such that collateral estoppel bars the University’s identical argument here.

a. Collateral Estoppel Applies to Issues Decided in a PERB ALJ’s Proposed Decision that Has Become Final

In order to decide whether the Federation is entitled to rely on collateral estoppel, I must first address whether the doctrine can apply at all to a PERB ALJ’s proposed decision.<sup>15</sup> An administrative agency’s decision is only entitled to collateral estoppel effect where “(1) the agency is acting in a judicial capacity; (2) it resolves disputed issues of fact properly before it; and (3) the parties have had an adequate opportunity to litigate such disputed issues.” (*City and County of San Francisco* (2022) PERB Order No. Ad-497-M, pp. 27-28, citing *State of California* (1987) PERB Decision No. 619-S, pp. 14-15; see also *State of California (California Correctional Health Care Services)* (2024) PERB Decision No. 2888-S, pp. 24-25 [collateral estoppel should only apply to decision of an administrative agency that “acted in a

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<sup>15</sup> The University did not discuss collateral estoppel in its either of its post-hearing briefs. Regardless, I discuss the issue here because it was directly raised by the Federation, and the Board has not specifically clarified whether collateral estoppel can be applied under these circumstances.

neutral, judicial capacity to decide an issue over which it had jurisdiction”], citing *Noble v. Draper* (2008) 160 Cal.App.4th 1, 10.) The doctrine is “discretionary” and does not apply “where application would fail to promote judicial or administrative economy, protect litigants from vexatious litigation, and/or otherwise preserve fairness and integrity in the administration of justice.” (*State of California (California Correctional Health Care Services)*, *supra*, at p. 25, citing *Castillo*, *supra*, 92 Cal.App.4th at 481, 483.)

The Board has not squarely addressed whether collateral estoppel applies to a proposed decision that has become final pursuant to PERB Regulation 32305, subdivision (a), but its precedents suggest that the doctrine can apply in appropriate cases where the substantive standards for collateral estoppel are otherwise met.

In *Regents of the University of California* (1990) PERB Decision No. 806-H, p. 2, a charging party argued that an ALJ’s decision in a prior case between the same parties was “controlling” and required issuance of a complaint. The Board rejected this argument, noting that “PERB hearing officer decisions are nonprecedential decisions which are binding on the parties only with respect to the specific controversy involved.” (*Id.* at p. 2, citing PERB Regulation 32215.) The Board further found that the issue presented in the prior case was “distinguishable from the present dispute,” as the prior case dealt with a different theory of liability involving a different contract provision. (*Id.* at pp. 3-5.) While the Board’s emphasis on the non-precedential nature of an ALJ’s proposed decision could imply a reticence to apply collateral estoppel to such a decision, the Board left open that collateral estoppel could apply in a case

involving an issue *identical* to one that was finally resolved by an ALJ in a prior case between the same parties.

Subsequently, in *Grossmont Union High School District* (2010) PERB Decision No. 2126, p. 2 fn.2, the Board held that a Board agent's decision to dismiss an unfair practice charge does not have preclusive effect because no issue is "actually litigated" in the course of a Board agent's review and investigation of a charge. However, the Board's reasoning acknowledged that the "actually litigated" requirement is met where an issue is "decided based on the presentation of evidence at a hearing," suggesting that unlike OGC's dismissal of a charge, an ALJ's proposed decision may be entitled to preclusive effect in appropriate circumstances. (*Ibid.*)

More recently, in *Mt. San Jacinto Community College District* (2018) PERB Decision No. 2605, adopting proposed decision at 2, 12, the Board adopted an ALJ's proposed decision finding—based on the parties' express agreement—that another ALJ's decision in a prior PERB case between the parties had collateral estoppel effect.<sup>16</sup>

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<sup>16</sup> Notably, while the parties in the instant case did not expressly agree that ALJ Ginoza's proposed decision has collateral estoppel effect as to any specific issue, the University's counsel did assert an objection to testimony from Federation witness Sean Patel regarding the prior proceedings in Case No. SF-PE-1-H "on the basis of res judicata and collateral estoppel," arguing that Mr. Patel "shouldn't be testifying to issues in a previous hearing where there's already been a decision." I sustained the University's objection with respect to "questions that are solely pertinent to the facts or the legal issues that were decided in the prior case," reasoning that such testimony is not relevant here because those issues "have been conclusively established in that prior case." Thus, like the employer in *Mt. San Jacinto Community College District*, *supra*, PERB Decision No. 2605, adopting proposed decision at 2, 12, the University has arguably "acknowledged and agreed" that ALJ Ginoza's proposed decision has collateral estoppel effect as to those issues on which the decision became final, to the

The authorities cited above confirm that an unfair practice hearing before a PERB ALJ is a judicial or quasi-judicial proceeding where parties have an adequate opportunity to litigate disputed issues, such that an ALJ's proposed decision that becomes final may have collateral estoppel in future cases between the same parties. Application of collateral estoppel is complicated, however, by PERB Regulation 32215, which provides that “[u]nless expressly adopted by the Board itself, a proposed or final Board agent decision, including supporting rationale, shall be without precedent for future cases.” The language of Regulation 32215 is not restricted to “future cases” involving *different parties*. Thus, if the application of collateral estoppel to a proposed decision is considered a form of reliance on the decision as “precedent,” then collateral estoppel would not apply in a future case between the same parties.

While the state courts do not appear to have addressed this issue directly, a few courts have reasoned that application of collateral estoppel is different from treating a decision as legal precedent. (*State Comp. Ins. v. Department of Ins.* (2023) 96 Cal.App.5th 227, 237 [reasoning that an administrative agency’s designation of a decision as precedential under Government Code section 11425.60,<sup>17</sup> “much like an appellate decision, permits reliance on that decision in other actions *involving other parties*,” but does not necessarily prevent the application of collateral estoppel in future cases between the same parties], emphasis added; *Prince v. Pacific Gas &*

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extent those same issues are in dispute in this case.

<sup>17</sup> Section 11425.60 permits agencies to “designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur.”

*Elec. Co.* (2006) 145 Cal.App.4th 289, 296, rev'd on other grounds, superseded (Cal. 2009) 45 Cal.4th 1151 [reasoning that a court's reliance on a decision "as legal precedent" does not necessarily "implicate the doctrine of collateral estoppel"].) Applying the reasoning in these decisions to the case at hand, I find that the term "without precedent" in Regulation 32215 is at least ambiguous regarding the question of whether a proposed decision can have preclusive effect.

In the absence of any Board or court decision holding that an ALJ's proposed decision cannot have collateral estoppel effect, I find that it can, notwithstanding the language in PERB Regulation 32215 barring reliance on proposed decisions as precedent.

b. Collateral Estoppel Precludes the University's Argument that Only Information Contained in UCPath is "On File" Within the Meaning of PECC Section 3558

Turning to the substantive elements of collateral estoppel, I find that ALJ Ginoza's Proposed Decision in Case No. SF-PE-1-H precludes the University's argument that the PECC only requires it to provide contact information that has been entered into UCPath.

In Case No. SF-PE-1-H, the Federation alleged, *inter alia*, that the University violated the PECC by failing to provide employee contact information for thousands of employees in the SX and EX bargaining units. In his Proposed Decision, ALJ Ginoza noted that the Federation's charge presented a case of first impression as to the meaning and scope of an employer's duty under the PECC. (Proposed Decision, *supra*, Case No. SF-PE-1-H, p. 23.) He found that the statute imposes "mandates"

with regard to both the categories of information that an employer must provide and the requirement that the information be provided periodically every 120 days. (*Ibid.*)

ALJ Ginoza discussed the UCPATH system as well as its predecessor, referred to as the Personnel Payroll System (PPS). (Proposed Decision, *supra*, Case No. SF-PE-1-H, pp. 7-8.) The University argued that the PECC should be construed only to require the provision of employee contact information that an employer maintains in a “readily available” form, i.e., an electronic format such as UCPATH or PPS, and that the statute does not require employers to “*affirmatively gather*” additional information. (*Id.* at pp. 24-25, internal quotations omitted, italics in original.)

The ALJ found that the declaration of intent in Government Code Section 3555, as well as the legislative history reported in the Legislative Counsel’s Digest, indicate that the Legislature had “a goal of comprehensiveness,” and intended “that the listed categories of information must be provided for all employees in the bargaining unit.” (Proposed Decision, *supra*, Case No. SF-PE-1-H, pp. 26-27.) With respect to the phrase “on file,” the ALJ rejected the University’s argument that the phrase limits the scope of the PECC to information “currently stored in electronic form.” (*Id.* at p. 29.) He noted that “nothing in the statutory language or legislative history hints at support for” the University’s interpretation, and reasoned that the Legislature intended for employers to rely on paper files in complying with their obligations because such files “continue to be of critical importance to the human resources function.” (*Ibid.*) Thus, he concluded that the phrase “on file” in PECC Section 3558 encompasses

employees' contact information that is maintained in the form of paper documents and files as well as electronic databases. (*Id.* at pp. 29-30.)<sup>18</sup>

The ALJ found that the University did maintain some employee contact information in paper form, including individual employment applications, "UPAY" forms that the University uses for payroll reporting purposes, and other documents in individual employees' personnel files. (Proposed Decision, *supra*, Case No. SF-PE-1-H, at pp. 29-30.) He further found that when the PECC was enacted, the University never took the step of reviewing all bargaining unit employees' personnel files and other individual records to gather any additional items of employee contact information in its possession that had not been entered into UCPATH. Rather, the University made a "strategic decision" not to issue "a directive for manual retrieval" of such additional information from paper files. (*Id.* at p. 33.) The University's failure to provide all required items of employee contact information that were not entered in UCPATH, but

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<sup>18</sup> The parties in Case No. SF-PE-1-H also disputed whether the phrase "on file with the employer" in Section 3558 modifies only the category "personal email address," or whether it applies to all categories of contact information referenced in the statute. The ALJ declined to decide this textual question, finding it was "not critical for deciding the larger issues in the case" because there was no dispute that the University had not provided other categories of contact information for numerous employees in addition to e-mail addresses. (Proposed Decision, *supra*, Case No. SF-PE-1-H, p. 28.) The parties repeat those same arguments here, with the University arguing that the phrase "on file" modifies all of the categories of employee contact information listed in Section 3558, and the Federation arguing that the phrase only applies to personal e-mail addresses. I similarly find it unnecessary to decide this textual question here for the same reasons articulated by the ALJ in his Proposed Decision in Case No. SF-PE-1-H. The University's FTP lists in the record were missing personal e-mail addresses for thousands of bargaining unit employees, as well as various other required categories of contact information.

which the University maintained in employees' individual personnel files and other employment records, violated the PECC. (*Id.* at p. 34.)

The foregoing discussion shows that the issue of whether the phrase “on file” as used in Section 3558 applies only to information the University maintains in an electronic or other readily available form was necessarily decided in ALJ Ginoza's Proposed Decision in Case No. SF-PE-1-H. The decision was also final and on the merits, as neither party filed exceptions to the ALJ's finding that the University violated the PECC. (PERB Regulation 32305, subd. (a); *California School Employees Association (Williams)*, *supra*, PERB Decision No. 2643, p. 2 fn. 2.)

I further find that the issue described above is identical to the issue presented in this case, as the University is again relying on a defense that the phrase “on file” includes only information maintained electronically in the UCPath system. In its post-hearing brief, the University argues that there are “numerous reasons that a category of information in the [FTP list] may be blank[,]” noting that “employees may edit, withdraw or enter personal contact information from UCPath at any time.” This argument apparently concedes that the University's FTP lists do not include information that employees have failed to enter into UCPath or have withdrawn from UCPath, even if the information exists in records within the University's possession or control. Moreover, in its October 5, 2022 letters responding to the Federation's notices that information was missing from the September 2022 FTP list, the University argued that that: (1) the PECC “only requires that an employer disclose information that it has ‘on file[;]’” (2) UCPath is “where the University maintains personal contact

information[;]" and therefore (3) the updated FTP list provided on October 5 "contains all information that is 'on file.'"

The University's brief and its October 5 response letters show that the University continues to maintain its practice of producing only those items of employee contact information that are maintained in electronic form in the UCPATH system, and has not taken steps to ensure that all required items of employees' personal contact information that are contained in records in the University's possession or control are entered into UCPATH. The only actions reflected in the record that the University has taken to enhance the completeness of the FTP list are (1) posting "banners" in June and October of 2021 and September of 2022 prompting employees when logging into UCPATH to enter their personal contact information; and (2) sending a letter urging employees to input their information. But these steps only confirm that the University still has never taken the step of manually retrieving all employee contact information from individual employment records in the University's possession such as personnel files, employment applications, or UPAY forms, which the ALJ held were necessary to comply with the PECC.<sup>19</sup>

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<sup>19</sup> In the University's most recent statement in the ongoing compliance proceedings in Case No. SF-PE-1-H, filed shortly after it provided the September 2022 FTP list to the Federation, the University took the position that the remedial order issued in that case did not require manual retrieval of information contained in individual employees' personnel files or other paper records. (See Second Supplemental Statement of Compliance with PERB Decision No. 2759-H, PERB Case No. SF-PE-1-H, Sept. 9, 2022, p. 2 ["The University takes issue with, and objects to, the Board agent's opinion that the Order requires the University to manually retrieve personal contact information that employees have (presumably) declined to provide via UCPATH."].) While I do not address here the question of whether the University has complied with the Board's Order in that case, an issue that is within the jurisdiction of PERB's OGC (see PERB Regulation 32980, subd. (a)), the University's filing further

It could be argued that the instant case does not involve an issue identical to the issue decided by ALJ Ginoza in Case No. SF-PE-1-H because the instant case involves a new set of facts regarding events that occurred after the hearing in that case.<sup>20</sup> The “identical issue” element of collateral estoppel “addresses whether ‘identical factual allegations’ are at stake in the two proceedings, not whether the ultimate issues or dispositions are the same.” (*Textron Inc. v. Travelers Casualty & Surety Co.* (2020) 45 Cal.App.5th 733, 747 (*Textron*), quoting *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511–512 (*Hernandez*).) In other words, “the factual predicate of the legal issue decided in the prior case must be sufficient to frame the identical legal issue in the current case, even if the current case involves other facts or legal theories that were not specifically raised in the prior case.” (*Textron, supra*, 45 Cal.App.5th at 747.) In determining whether this standard is met, “courts look carefully at the entire record from the prior proceeding, including the pleadings, the evidence, the jury instructions, and any special jury findings or verdicts.” (*Hernandez, supra*, 46 Cal.4th at 511, citations omitted.)

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supports a finding that in September of 2022, there still existed items of required employee contact information in files and records in the University’s possession which had not been entered into UCPATH and were not included in the FTP lists provided to the Federation. I therefore take official notice of this filing and any other relevant documents in the case file for Case No. SF-PE-1-H.

<sup>20</sup> As noted above, the University did not address collateral estoppel at all in its closing brief or its reply brief, even though the Federation explained during the hearing that it believed collateral estoppel applied to ALJ Ginoza’s Proposed Decision and then made the argument explicitly in its post-hearing brief. However, the University did oppose the Federation’s request for administrative notice of the Proposed Decision, arguing in part that the prior case was not relevant because it involved different facts and different issues than the instant case.

The fact that a case arises from new events does not necessarily prevent a finding that the case involves some issues identical to those resolved in a prior case. For example, in *City and County of San Francisco, supra*, PERB Decision No. 2867-M, p. 42, the Board held that its prior decisions in *City and County of San Francisco* (2017) PERB Decision No. 2536-M, and *City and County of San Francisco* (2020) PERB Decision No. 2691-M, were preclusive as to the issue of whether California’s “home rule” doctrine prevented the Board from declaring provisions of the San Francisco City Charter invalid on the grounds that they conflict with the Myers-Milias Brown Act (MMBA).<sup>21</sup> While those cases arose from challenges to different charter provisions and different instances where those provisions were applied, they were nevertheless preclusive as to the specific issue of whether the home rule doctrine permits the maintenance and enforcement of a city charter that conflicts with the MMBA. (*City and County of San Francisco, supra*, PERB Decision No. 2867-M, p. 42; cf. *Bellflower Unified School District* (2017) PERB Decision No. 2544, pp. 6-7 [reasoning that the Board’s interpretation of a disputed contract term is binding in a subsequent case between the same parties].)

Here, while the Federation alleges that the University violated the PECC in the same manner as in Case No. SF-PE-1-H, the violations at issue occurred years after the hearing in that case, and ALJ Ginoza’s Proposed Decision therefore cannot have preclusive effect as to the ultimate question of whether the University failed in 2022 to provide information required by the PECC. By contrast, with respect to the specific

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<sup>21</sup> The MMBA is codified at Government Code section 3500 et seq.

issue of whether the PECC requires the University to provide employee contact information beyond what is included in the UCPath system, I do not discern any material differences in the facts of this case that bear on that issue. As noted above, the University's own briefs, its October 5 responses to the Federation's notices of non-compliance, and its filings in the compliance proceedings in Case No. SF-PE-1-H all show that the University has not taken steps to ensure that all required items of employee contact information that are contained in individual employment files in the University's possession or control are entered into UCPath and included in the monthly FTP list. Thus, the University is taking the identical position that it took in the prior case, and its argument is foreclosed by collateral estoppel.

## 2. The University's Construction Fails on the Merits

Even if collateral estoppel did not apply, I would reject the University's argument that the PECC only requires it to produce information contained in UCPath.

When interpreting statutes, PERB's "fundamental task" is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Regents of the University of California* (2021) PERB Decision No. 2755-H, p. 20.) PERB "first examine[s] the statutory language, affording the words their ordinary and usual meaning." (*Regents of the University of California* (2022) PERB Decision No. 2835-H, p. 13, quotations omitted.) "[S]tatutes are to be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers." (*Regents of the University of California, supra*, PERB Decision No. 2755-H, p. 20, quotations omitted.) Where a statute is subject to multiple reasonable interpretations, "the interpretation which will harmonize rather than conflict with other

provisions thereof should be adopted.” (*Id.* at p. 21, quotations omitted.) PERB also “turn[s] to extrinsic aids such as legislative history and the wider historical circumstances of the statute’s enactment only when the plain meaning of a statute is unclear.” (*Regents of the University of California, supra*, PERB Decision No. 2835-H, p. 14.)

The ordinary meaning of the phrase “on file” means “in or as if in a file for ready reference.” (Merriam-Webster Online Dictionary <<https://www.merriam-webster.com/dictionary/file>> [as of July 31, 2025].) The word “file” can refer to paper or electronic records. (*Ibid.* [defining “file” alternatively as “a device (such as a folder, case, or cabinet) by means of which papers are kept in order” and “a collection of related data records (as for a computer)”].) Nothing in the PECC’s text or legislative history indicates that the Legislature intended to limit the scope of an employer’s obligation to produce only employee contact information that it already maintains in a centralized database or in electronic form, or information that individual employees affirmatively enter into a particular database. Rather, the ordinary meaning of the phrase includes information contained in employee’s personnel files and other employment records in the University’s possession, whether in paper or electronic form.

This broad construction is also the most consistent with the PECC’s apparent purpose and intent, as well as its other provisions. PECC Section 3555 expressly states that the law’s purpose is to ensure “that recognized exclusive representatives of California’s public employees be provided meaningful access to their represented members,” including the ability “to meaningfully communicate” with those members

“through cost-effective and efficient means.” Section 3558 expressly requires employers to provide “an accurate and complete list” of all the enumerated categories of information “for *all employees in the bargaining unit* at least every 120 days.” (Emphasis added.) It permits a union and employer to agree to the provision of “more frequent or more detailed lists,” but does not permit parties to agree to provide *less* detailed lists. These provisions support a broad construction of the scope of the information that must be provided. The University’s interpretation of the phrase “on file” would undermine the statute’s intent in that it would effectively absolve employers of any obligation to affirmatively review their records and compile the items of required information contained therein.

Thus, I reject the University’s argument that the PECC only requires it to provide information that is contained in the UCPath system.

C. The University Has Not Established that it Complied with Its Obligations Sufficiently to Excuse Its Violation of the PECC

The University’s only other argument with respect to the alleged PECC violation is that it should be “excused” from strict compliance with the statute because it undertook “good faith compliance efforts.”

The Federation correctly notes that the PECC does not contain language indicating that an employer’s failure to provide the required categories of information for all employees in the bargaining unit can be excused based solely on the employer’s good faith efforts. However, in cases involving an employer’s failure to provide relevant information requested by a union, PERB does not always require absolute compliance with every aspect of a union’s demand, but holds that employers must “exercise the same diligence and thoroughness as it would in other business

affairs of importance” in complying with a union’s request. (*Butte-Glenn Community College District* (2022) PERB Decision No. 2834, p. 9 (*Butte-Glenn CCD*).) California law also recognizes the doctrine of “substantial compliance,” under which a party may be deemed to have complied with a statute’s requirements if the party can show that “a reasonable attempt has been made to comply with [the] statute in good faith . . . .” (*Burton v. Campbell* (2024) 106 Cal.App.5th 953, 965, quoting *People v. Green* (2004) 125 Cal.App.4th 360, 371.) The party relying on this defense must establish “actual compliance in respect to the substance essential to every reasonable objective of the statute,’ as distinguished from ‘mere technical imperfections of form.” (*People v. Green, supra*, 125 Cal.App.4th at 371, quoting *People v. Jacobs* (1987) 43 Cal.3d 472, 483, internal quotations omitted, emphasis in original.)

I do not find it necessary to decide whether a good faith or substantial compliance defense is available under the PECC because, even assuming these defenses are available, the University has not met its burden to prove that it complied with its obligations to an extent that would excuse its ultimate failure to provide all of the required information.

The University asserts that it utilizes “robust processes for gathering information from the time of hire through the onboarding process[,]” as well as “tools . . . to ensure that information is accurate and gathered in a timely fashion . . . .” But the evidence did not show that the University ever took reasonable steps to ensure that the information in the FTP list was complete and accurate. University witnesses testified that as a general matter, employee contact information is entered during the onboarding process, but there was no testimony showing that the University had a

systemwide policy requiring the entry of all the categories of information required by the PECC during onboarding or at any other time. Nor did the evidence establish the University had a practice of verifying that all the required information was actually being entered for each employee.

As noted above, the University did not show that it ever conducted any comprehensive review of employees' personnel files and other employment records to assess whether those records contained additional items of contact information missing from the UCPATH system. And in its October 5 letters, the University disclaimed any obligation to provide information beyond what is contained in UCPATH, suggesting that it never conducted such a review.

After the Federation notified the University in September of 2022 that the FTP list was incomplete and contained inaccuracies, the only concrete step that the University apparently took to address the deficiencies was to post banner messages in the UCPATH system urging employees to enter their contact information, and to send a letter to employees urging them to enter their information. These steps are plainly insufficient for the University to meet its compliance obligation. If an employee's contact information is contained in employment records in the University's possession or control, the fact that the employee may have neglected to affirmatively enter their information into the system does not absolve the University of the obligation to provide the information to the Federation.<sup>22</sup>

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<sup>22</sup> The University does not assert a defense based on confidentiality or third-party privacy rights. Even if it had, I would not find that an employee's failure to affirmatively enter information into UCPATH establishes a privacy interest that excuses the obligation to provide the information. (See *Golden Empire Transit District* (2004) PERB Decision No. 1704-M, p. 8 [union's interest in obtaining bargaining unit

Moreover, while the record does not establish exactly how many employees' home and cell phone numbers, home addresses, and personal e-mail addresses were actually in employment records in the University's possession, this is not the case for employees' work addresses, all of which are indisputably in the University's possession. After receiving the Federation's letters describing in detail why the address information for thousands of employees appeared to be inaccurate, the University apparently did not take any steps to verify or correct the inaccuracies. Even for the five specific employees for whom the September list contained clearly inaccurate home addresses such as "1" or "XXXX," the University failed to correct or even delete four of those false addresses. These facts undermine the University's claim that its compliance efforts were sufficient to excuse its failure to provide the required categories of information for thousands of employees.

Therefore, I find that the University violated the PECC as alleged in the Complaint.

## II. Failure to Provide Relevant and Necessary Information

An exclusive representative is presumptively entitled to all information that is necessary and relevant to its representational duties regarding mandatory subjects of

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employees' home addresses and phone numbers outweighs employees' privacy interest unless employer can prove a compelling need for privacy].) This is especially true where the University has contractually agreed to withhold information only for the 19 employees who notified the Federation that they did not consent to the release of their contact information. (See *County of Los Angeles v. Los Angeles County Employee Relations Commission* (2013) 56 Cal.4th 905, 932-33 (*LA County*) [reasoning that employers' concerns about employee privacy rights can be adequately addressed by bargaining and reaching agreement on a process for employees to opt out of sharing their contact information with a union].)

bargaining. (*Butte-Glenn CCD, supra*, PERB Decision No. 2834, p. 9; *Sacramento City Unified School District* (2018) PERB Decision No. 2597, p. 8; *Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, p. 17 (*Petaluma*).) This is a liberal, discovery-type standard, like that used by California courts to determine relevance; notably, the terms “necessary” and “relevant” are interchangeable and do not have separate meanings. (*Butte-Glenn CCD, supra*, p. 9; *Petaluma, supra*, PERB Decision No. 2485, pp. 17 & 21.)

Once a party receives a request for relevant information, it must respond promptly and either supply all of the requested information or adequately explain its reasons for not doing so, and the responding party bears the burden of proof as to any defense, limitation, or condition that it asserts. (*Butte-Glenn CCD, supra*, PERB Decision No. 2834, pp. 9-10, citing *Sacramento City Unified School District, supra*, PERB Decision No. 2597, p. 8.) If the responding party believes a request is unduly burdensome, seeks confidential information, or is otherwise overbroad, it must affirmatively assert its concerns and offer to bargain over those concerns with the requesting party. (*Butte-Glenn CCD, supra*, p. 10; see also *Petaluma, supra*, PERB Decision No. 2485, p. 19 [“Even where a request is arguably ambiguous or overly broad, the employer . . . must seek clarification [or] comply to the extent the request seeks relevant information.”].)

A responding party must exercise the same diligence and thoroughness as it would in other business affairs of importance, and a charging party need not show that a responding party’s lack of care caused it any harm. (*Butte-Glenn CCD, supra*, PERB Decision No. 2834, p. 10.) The failure to provide relevant information upon

request by itself, absent a valid defense, is a per se violation of the duty to negotiate in good faith. (*Petaluma, supra*, PERB Decision No. 2485, pp. 19-20.) Unnecessary delay in providing such information also constitutes a violation, and “[t]he fact that an employer ultimately furnishes the requested information will not excuse an unreasonable delay.” (*Ibid.*)

Here, in its letters of September 12 and 21, 2022, the Federation requested that the University provide those items of employee contact information that were missing from the September FTP list. In its September 21 letter, the Federation also requested that the University identify all employees for whom the University believed it did not have their contact information in its possession outside of the UCPath system and describe how it determined that it did not have those employees’ information. While the University provided an updated set of employee data on October 5, required items were still missing for thousands of employees, and the University did not explain how it determined that it did not have any employee’s information outside of UCPath.

While the University’s obligations under the PECC are independent of its obligation to meet and confer under HEERA, it is well established that unions have a need for bargaining unit employees’ contact information in order to communicate with employees regarding representational matters, and information including employees’ home addresses and telephone numbers is therefore necessary and relevant. (*LA County, supra*, 56 Cal.4th at 919-922; *Golden Empire Transit District, supra*, PERB Decision No. 1704-M, pp. 5-8.)

The University argues that it satisfied its duty to meet and confer because it responded to the Federation’s initial request, requested clarification, and proposed

dates to meet and confer. While an employer may request clarification of ambiguous information requests, an exclusive representative need not reassert or clarify its information request upon receiving a partial response from the employer where “it is sufficiently clear that the response did not fully satisfy the request.” (*Butte-Glenn CCD, supra*, PERB Decision No. 2834, p. 14.) Here, the University argued in its October 5 letter that it is only required to provide information in the UCPath system, and that the updated FTP list therefore contained all information that the University was obligated or willing to provide. It did not identify any employees for whom it had determined it did not have their contact information in its possession in employment records outside of UCPath, nor describe how it made that determination. The University’s express refusal to provide further information not contained in UCPath undermines its argument that the Federation should have provided further clarification or met and conferred with the University before filing an unfair practice charge.

The University also argues that its refusal was justified because it would be unduly burdensome to compile and provide the complete contact information requested for all bargaining unit employees. However, the University did not assert that the Federation’s requests were unduly burdensome in its letters of September 20 or October 5, or in any other communication at or near the time of the Federation’s request. The University therefore waived this defense. (*Imperial Irrigation District* (2023) PERB Decision No. 2861-M, pp. 46-48 [any defense to a request for relevant information must be raised promptly or it is waived]; *County of Tulare* (2020) PERB Decision No. 2697-M, p. 14 [same].)

The University's undue burden defense also fails on the merits. Employers bear the burden of proving that a request for relevant information is unduly burdensome, and "bare statements" are insufficient to meet that burden. (*Regents of the University of California* (2010) PERB Decision No. 2101-H, p. 34.) In *Regents of the University of California*, a union requested information about historical instances where bargaining unit employees were reclassified into positions outside the unit. (*Id.* at pp. 12-14.) The employer denied the request on the grounds that it was unduly burdensome, arguing that because there was "no current database system in place to collect the position histories of vacant bargaining unit positions," finding the requested information would require "searching institutional memory through individuals who do not currently have any responsibility to consider the analysis of positions which [the union] seeks," an "enormous task." (*Id.* at p. 33.) The Board rejected this defense, reasoning that "[t]he fact that the information may not have been in the form that would accommodate the interests of both [parties] does not automatically render [the union's] request unduly burdensome." (*Id.* at pp. 33-34, citing *Chula Vista City School District* (1990) PERB Decision No. 834.) The employer's assertion was not supported by actual evidence regarding the burden that would be involved in complying with the requests, and the record showed there were "manageable steps" the employer could have taken to comply with the requests, such as creating a list of relevant job vacancies and inquiring from specific campuses and departments regarding those positions. (*Regents of the University of California, supra*, at p. 34.)

Here, the University argues that "it would be nearly impossible . . . to provide complete and accurate information . . . for over thirty-seven thousand employees . . . ."

But the University did not produce evidence supporting that assertion. The University emphasizes that providing complete information would be difficult because it sometimes buys or leases new buildings, employees sometimes transfer between departments and enter or leave the relevant bargaining units, and not all employees are stationed at a specific location. While employee turnover and internal transfers might make it more difficult to ensure that each employee's work location and employment status are up-to-date at a particular time, they do not make it more burdensome to collect and provide the requested information in the first place, which the University failed to do here. With respect to the size of the bargaining unit, while there may be a substantial burden involved in compiling each employee's contact information from paper files or other individualized employment records, the University did not establish that any such burden would be undue in light of the Federation's need to communicate with bargaining unit employees. Moreover, while the bargaining units at issue may be unusually large, the University also has greater resources to devote to its legal obligations than smaller employers.

Moreover, as in *Regents of the University of California, supra*, PERB Decision No. 2101-H, the record indicates there were manageable steps the University could have taken to collect some or all of the requested information missing from the September 2022 FTP list, which the University elected not to take. As noted above, the University still has not taken the step of manually retrieving paper employment records to gather additional employee contact information not in UCPath. Nor has the University shown that it has taken any other steps to augment the information in the FTP list, apart from sending a single letter requesting that employees enter their

information into the system. Thus, the University has not shown that it would be unduly burdensome to comply with the Federation's information requests.

### III. Interference with Employee Rights

The Complaint also alleges that the University's failure to provide the employee contact information missing from the September 2022 FTP list interfered with employee rights protected by HEERA.

HEERA protects the right of higher education employees to "form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring." (Gov. Code, § 3565.) It further prohibits higher education employers from taking actions that "interfere with, restrain, or coerce employees because of their exercise" of those protected rights. (Gov. Code, § 3571.)

In order to establish a prima facie case of unlawful interference, the charging party must establish that the respondent's conduct "tends to or does result in some harm to protected union and/or employee rights." (*Alameda Health System* (2023) PERB Decision No. 2856-M, p. 24 (*Alameda*); *see also, e.g., Regents of the University of California* (2012) PERB Decision No. 2300-H, p. 29, fn. 13; *Carlsbad Unified School District* (1979) PERB Decision No. 89, pp. 10-11.) Evidence of an unlawful motive is not required. (*Alameda, supra*, p. 24; *Regents of the University of California (Berkeley)* (2018) PERB Decision No. 2610-H, p. 56; *Los Angeles Community College District* (2014) PERB Decision No. 2404, p. 5.)

If the charging party establishes the requisite harm to employee rights, the burden shifts to the employer. (*Alameda, supra*, PERB Decision No. 2856-M, p. 24.)

The employer's burden depends on the degree of harm to protected rights caused by its actions. (*Ibid.*) Where the conduct is "inherently destructive" of employee rights, interference will be established unless the employer can show that the harm resulted from circumstances beyond its control. (*Id.* at pp. 24-25.) Where the conduct is not inherently destructive, the respondent may attempt to justify its actions based on operational necessity, and the Board will balance the asserted business need against the tendency of the employer's conduct to harm protected rights. (*Id.* at p. 25.)

Whether an employer has interfered with protected rights depends on an "objective" inquiry into whether an employer's conduct "has discouraged, or *reasonably would discourage*, employees from engaging in present or future protected activity." (*Petaluma City Elementary School District* (2018) PERB Decision No. 2590, p. 4, emphasis in original; see also *Regents of the University of California (Berkeley)*, *supra*, PERB Decision No. 2610-H, p. 56 "[T]he inquiry is an objective one which asks whether, under the circumstances, employees would reasonably be deterred from engaging in protected activity."], citing *Santa Monica Community College District* (1979) PERB Decision No. 103, pp. 19-20.)

Unlike the other statutes administered by PERB, HEERA does not grant employee organizations an independent right to represent employees. (*Regents of the University of California v. Public Employment Relations Bd.* (1985) 168 Cal.App.3d 937, 944.) However, an exclusive representative may seek redress under HEERA for conduct that would violate an employee organization's right to represent employees by showing that the conduct interfered with the right of employees to be represented or violated the employer's duty to meet and confer with the exclusive representative.

(*Regents of the University of California* (2020) PERB Decision No. 2699-H, p. 7; *Trustees of the California State University* (2014) PERB Decision No. 2384-H, p. 23, fn. 19.)

PERB may find interference with employee rights as a derivative violation where an employer has refused to provide relevant information requested by a union, but may also find interference as an independent violation in cases where the specific information requested was necessary under the circumstances in order for the union to effectively represent employees. (See *State of California (State Water Resources Control Board)* (2022) PERB Decision No. 2830-S, p. 11 “[W]hile failure to provide information always constitutes at least derivative interference with protected rights, it can also constitute an independent interference violation, for instance if it leaves a union and employee without sufficient information to allow meaningful representation at an investigatory interview.”].) To find interference with employee rights as an independent violation, however, the violation must be properly alleged in the complaint or meet the standards for consideration as an unalleged violation. (*County of San Joaquin* (2021) PERB Decision No. 2761-M, pp. 19-22.)

Here, paragraph 13 in the Complaint alleges the following:

“As set forth in paragraphs 4 and 7 above, Respondent failed to provide Charging Party with complete and accurate employee contact information. By this conduct, Respondent interfered with employee rights guaranteed by the Higher Education Employer Employee Relations Act in violation of Government Code section 3571(a).”

This language fairly alleges that the University’s conduct independently interfered with employee rights.

As the Federation notes in its post-hearing brief, both PERB and the NLRB have found that contact information for bargaining unit employees is not just relevant to an exclusive representative's representational responsibilities, but is “fundamental to the entire expanse of a union's relationship with the employees.” (*Bakersfield City School District* (1998) PERB Decision No. 1262, adopting proposed decision at p. 18 (*Bakersfield CSD*), quoting *Prudential Insurance Co. v. NLRB* (2d Cir. 1969) 412 F.2d 77, 84 (*Prudential*); see also *San Bernardino City Unified School District* (1998) PERB Decision No. 1270, adopting proposed decision at p. 76 (*San Bernardino CUSD*), quoting the same language from *Prudential*.) Without sufficient information to communicate with the employees it represents, a union cannot “perform its broad range of statutory duties in a truly representative fashion and in harmony with the employees' desires and interests.” (*Bakersfield CSD, supra*, adopting proposed decision at p. 18, quoting *Prudential, supra*, 412 F.2d at 84; *San Bernardino CUSD, supra*, adopting proposed decision at p. 76 [same].)

Here, the University has persistently failed to provide the Federation with contact information for thousands of employees in the bargaining units it represents. For example, in the October FTP list that the University provided *after* the Federation provided a detailed description of the information missing from the September list, there were 4,487 total employees across the three bargaining units for whom the University did not provide any home phone number or personal cell phone number, substantially undermining the Federation's ability to contact those employees outside of work. I find that this conduct had a reasonable tendency to interfere with the rights of employees to be represented by the Federation. Moreover, the University has not

established that its failure to provide the contact information missing from the UCPath system was justified by any operational necessity. Therefore, the University interfered with employee rights in violation of HEERA Section 3571, subdivision (a).<sup>23</sup>

#### IV. Remedy

Section 3555.5, subdivision (c)(1), of the PECC gives PERB jurisdiction over violations of the statute's requirements and provides that "[t]he powers and duties of the board described in Section 3541.3 shall apply, as appropriate, to this chapter." Subdivision (i) of Government Code section 3541.3 establishes PERB's authority in unfair practice cases to order such relief "as the board deems necessary to effectuate the policies" of the statutes it administers.

Furthermore, under HEERA section 3563.3, PERB has the remedial authority:

"to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter[.]"

In general, PERB remedies should serve the dual purposes of compensating parties for the harm caused by a violation and deterring future violations. (*County of San Joaquin v. Public Employment Relations Bd.* (2022) 82 Cal.App.5th 1053, 1068.) A "properly designed remedial order seeks a restoration of the situation as nearly as

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<sup>23</sup> In Case No. SF-PE-1-H, ALJ Ginoza similarly found that the University's failure to provide the employee contact information required by the PECC interfered with employee rights. However, the Federation did not argue in its post-hearing briefs that collateral estoppel applies to that aspect of his proposed decision. Therefore, I do not rely on any portion of the ALJ's analysis in ruling on the interference allegation in this case.

possible to that which would have obtained but for the unfair labor practice.” (*Modesto City Schools* (1983) PERB Decision No. 291, pp. 67-68.)

Where an employer has violated its duty to meet and confer by failing or refusing to provide relevant information, the remedy typically includes an order to provide the requested information upon the charging party’s request. (*Butte-Glenn CCD, supra*, PERB Decision No. 2834, p. 19; *Modesto City Schools and High School District* (1985) PERB Decision No. 518, p. 4.) An appropriate remedy also includes an order to cease and desist the employer’s unlawful conduct and an order requiring the employer to post a notice incorporating the terms of the order at all locations where the employer posts notices to bargaining unit employees, and by electronic message, intranet, internet site, and other electronic means used by the employer to communicate with bargaining unit employees. (*Butte-Glenn CCD, supra*, pp. 19-20.)

Here, the University has been found to have violated Section 3558 of the PECC by failing to provide the Federation with a complete and accurate list of contact information for all employees in the relevant bargaining units at least every 120 days. Additionally, the University has been found to have violated its duty to meet and confer and interfered with employee rights in violation of HEERA section 3571, subdivisions (a) and (c), by failing to provide the Federation with requested contact information for bargaining unit employees. More specifically, the University failed or refused to provide the accurate work location, work, home, and personal cellular telephone numbers, personal e-mail addresses, and/or home addresses for bargaining unit employees which are maintained in employment records in the University’s, its subsidiaries’, or its employees’ possession or control but have not been entered in the

UCPath system. It is therefore appropriate to order the University to produce all such information upon the Federation's request, including information contained in individual employees' personnel files, employment application forms, and any other employment records that the University maintains in paper or electronic form. Additionally, because the University failed to raise an undue burden objection in its initial responses to the Federation's requests for employee contact information, the University must bear the full cost of compiling and providing the requested information. (*Butte-Glenn CCD, supra*, PERB Decision No. 2834, p. 17 [where an employer has forfeited an undue burden defense, PERB "will order the employer to supply the information despite any burden it may impose"].)

It is further appropriate to order the University to cease and desist from its unlawful conduct and post a notice of the violations as described above.

In addition to the foregoing remedies, the Federation requests an award of civil penalties and attorney's fees under the PECC. Section 3558, subdivision (d) of the PECC contains the following remedial provisions:

"(2) In addition to any other remedy provided by law, a public employer found to have violated subdivision (a) shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000), which shall be determined by [PERB] through application of the following criteria:

"(A) The public employer's annual budget.

"(B) The severity of the violation.

"(C) Any prior history of violations by the public employer.

"(3) This penalty shall be paid to the General Fund.

“(4) [PERB] shall award to a prevailing party attorney’s fees and costs that accrue from the inception of proceedings before the board’s Division of Administrative Law until final disposition of the charge by the board. . . .”

Here, the three factors enumerated in Section 3558, subdivision (d)(2) weigh in favor of requiring the University to pay the entire civil penalty. The University’s annual budget is substantial, and likely greater than that of the majority of public employers subject to the PECC.<sup>24</sup> The University’s violation was severe in that it has persistently failed to provide required items of contact information for thousands of bargaining unit employees, and failed to cure the deficiencies in the FTP list even after the Federation identified the missing items and specifically requested them. And finally, the University has a prior history of failing to comply with the PECC, as found in Case No. SF-PE-1-H. Therefore, the University will be ordered to pay the entire civil penalty of \$10,000.

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<sup>24</sup> The Federation asserts that the University’s annual budget for 2024-25 was \$53 billion, citing to an online report from the California Legislative Analyst’s Office (LAO). (See Gabriel Petek, Legislative Analyst, The 2025-26 Budget: University of California, February 2025, available at <https://lao.ca.gov/reports/2025/4998/University-of-California-022725.pdf> [last visited July 31, 2025].) The Federation did not admit this report into evidence or request official notice of either the report itself or the University’s annual budget. Nevertheless, to the extent that the University’s exact annual budget is relevant to the assessment of civil penalties under the PECC, I take official notice of the fact that the University’s annual budget for 2024-25 was \$53.6 billion, as stated in the February 2025 LAO report, as a fact not reasonably subject to dispute, the accuracy of which can be immediately determined by resort to reasonably indisputable sources. (Evid. Code, § 452, subd. (h); see also *M.S. v. Cnty. of Ventura* (C.D. Cal. Mar. 7, 2017) No. CV16-03084-BRO (RAOx), 2017 U.S. Dist. LEXIS 230939, at \*20-21 [taking judicial notice of LAO report on grounds that it “is not subject to reasonable dispute because its accuracy can be accurately and readily determined through easily verifiable sources”]; *City of San Diego v. Shapiro* (2014) 228 Cal.App.4th 756, 779 fn. 20 [taking judicial notice of LAO analysis].)

Additionally, I find that the Federation is the prevailing party in this matter, and the University will therefore be ordered to pay the Federation's reasonable attorney's fees and costs in connection with this matter that have accrued since the case was assigned to the Division of Administrative Law on September 19, 2024, until final disposition of this case by the Board, pursuant to PECC Section 3558, subdivision (d)(4).<sup>25</sup>

Both the civil penalty awarded under Section 3558, subdivision (d)(2) and the attorney's fees and costs awarded under Section 3558, subdivision (d)(4) are "special remedies" subject to PERB Regulation 32611.8. The amount owed in attorney's fees will be determined pursuant to the procedure laid out in PERB Regulation 32611.8, subdivision (a)(1)-(6).

#### PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that REGENTS OF THE UNIVERSITY OF CALIFORNIA (University) violated the Public Employment Communication Chapter (PECC), Government Code section 3558 and PERB Regulation 32610, subdivision (e), by failing to provide the American Federation of State, County, and Municipal Employees

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<sup>25</sup> The Federation does not seek an award of attorney's fees as a litigation sanction. (See *Pasadena Area Community College District* (2024) PERB Order No. Ad-518, pp. 21-22 [noting that a party may be entitled to a fee award as "litigation sanctions" if the party can "prove that its opponent maintained a claim, defense, or motion, or engaged in another action or tactic, that was without arguable merit and pursued in bad faith"], citing *Sacramento City Unified School District* (2020) PERB Decision No. 2749, p. 11.) I therefore do not reach the issue of whether such a sanction would be appropriate here.

Local 3299 (Federation) with a complete and accurate list of contact information for all employees in the SX, EX, and K7 bargaining units at least every 120 days. It is further found that the University violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571, subdivisions (a) and (c), by failing or refusing to provide the Federation with requested contact information for bargaining unit employees.

Pursuant to sections 3541.3, 3555.5, 3558, and 3563 of the Government Code, it hereby is ORDERED that the University, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to provide the Federation with a complete and accurate list of contact information for all employees in the SX, EX, and K7 bargaining units at least every 120 days.

2. Failing or refusing to meet and confer with the Federation by failing or refusing to provide the Federation with requested contact information for bargaining unit employees.

3. Interfering with bargaining unit employees' right to be represented by the Federation.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Upon the Federation's request, provide the accurate work location, work, home, and personal cellular telephone numbers, personal e-mail addresses, and/or home addresses for all bargaining unit employees for whom such

information exists in records that are in the University's, its subsidiaries', or its employees' possession or control, including, but not limited to, individual employees' personnel files, employment applications, and all other employment records.

2. Pay a civil penalty in the amount of ten thousand dollars (\$10,000), payable to the General Fund.

3. Pay the Federation its reasonable attorney's fees and costs incurred in connection with this matter since September 19, 2024 until final disposition of this case by the Board, in an amount to be determined under the procedure described in PERB Regulation 32611.8, subdivision (a)(1)-(6).

4. Within 10 workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the EX, SX, and K7 bargaining units are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the University, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. The Notice shall also be posted by electronic message, intranet, internet site, and other electronic means used by the University to communicate with such employees. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.<sup>26</sup>

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<sup>26</sup> Either party may ask PERB's OGC to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.

5. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on the Federation.

#### RIGHT OF APPEAL

A party may appeal this proposed decision by filing with the Board itself a statement of exceptions within 20 days after the proposed decision is served. (PERB Reg. 32300.) If a timely statement of exceptions is not filed, the proposed decision will become final. (PERB Reg. 32305, subd. (a).)

The statement of exceptions must be a single, integrated document that may be in the form of a brief and may contain tables of contents and authorities, but may not exceed 14,000 words, excluding tables of contents and authorities. Requests to exceed the 14,000-word limit must establish good cause for exceeding the limit and be filed with the Board itself and served on all parties no later than five days before the statement of exceptions is due. PERB Regulation 32300, subdivision (a), is specific as to what the statement of exceptions must contain. Non-compliance with the requirements of PERB Regulation 32300 will result in the Board not considering such filing, absent good cause. (PERB Reg. 32300, subd. (d).)

The text of PERB's regulations may be found at PERB's website:

[www.perb.ca.gov/laws-and-regulations/](http://www.perb.ca.gov/laws-and-regulations/).

A. Electronic Filing Requirements

Unless otherwise specified, electronic filings are mandatory when filing appeal documents with PERB. (PERB Reg. 32110, subd. (a).) Appeal documents may be electronically filed by registering with and uploading documents to the “ePERB Portal” that is found on PERB’s website: <https://eperb-portal.ecourt.com/public-portal/>. To the extent possible, all documents that are electronically filed must be in a PDF format and text searchable. (PERB Reg. 32110, subd. (d).) A filing party must adhere to electronic service requirements described below.

B. Filing Requirements for Unrepresented Individuals

Individuals not represented by an attorney or union representative, are encouraged to electronically file their documents as specified above; however, such individuals may also submit their documents to PERB for filing via in-person delivery, US Mail, or other delivery service. (PERB Reg. 32110, subds. (a) and (b).) All paper documents are considered “filed” when the originals, including proof of service (see below), are actually received by PERB’s Headquarters during a regular PERB business day. (PERB Reg. 32135, subd. (a).) Documents may be double-sided, but must not be stapled or otherwise bound. (PERB Reg. 32135, subd. (b).)

The Board’s mailing address and contact information is as follows:

Public Employment Relations Board  
Attention: Appeals Assistant  
1031 18th Street, Suite 200  
Sacramento, CA 95811-4124  
Telephone: (916) 322-8231

C. Service and Proof of Service

Concurrent service of documents on the other party and proof of service are required. (PERB Regs. 32300, subd. (a), 32140, subd. (c), and 32093.) A proof of service form is located on PERB's website: [www.perb.ca.gov/about/forms/](http://www.perb.ca.gov/about/forms/). Electronic service of documents through ePERB or e-mail is authorized only when the party being served has agreed to accept electronic service in this matter. (See PERB Regs. 32140, subd. (b), and 32093.)

D. Extension of Time

An extension of time to file a statement of exceptions can be requested only in some cases. (PERB Reg. 32305, subds. (b) and (c).) A request for an extension of time in which to file a statement of exceptions with the Board itself must be in writing and filed with the Board at least three calendar days before the expiration of the time required to file the statement of exceptions. The request must indicate good cause and, if known, the position of each of the other parties regarding the request. The request shall be accompanied by proof of service of the request upon each party. (PERB Reg. 32132.)



**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
An Agency of the State of California**

After a hearing in Unfair Practice Case No. SF-CE-1421-H, *American Federation of State, County & Municipal Employees Local 3299 v. Regents of the University of California*, in which all parties had the right to participate, it has been found that the Regents of the University of California (University) violated the Public Employment Communication Chapter (PECC), Government Code section 3555 et seq., and the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3560 et seq.

As a result of this conduct, we have been ordered to post this Notice and we will:

**A. CEASE AND DESIST FROM:**

1. Failing to provide the American Federation of State, County, and Municipal Employees Local 3299 (Federation) with a complete and accurate list of contact information for all employees in the SX, EX, and K7 bargaining units at least every 120 days.
2. Failing or refusing to provide the Federation with requested contact information for bargaining unit employees.
3. Interfering with bargaining unit employees' right to be represented by the Federation.

**B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF HEERA:**

1. Upon the Federation's request, provide the accurate work location, work, home, and personal cellular telephone numbers, personal e-mail addresses, and/or home addresses for all bargaining unit employees for whom such information exists in records that are in the University's, its subsidiaries', or its employees' possession or control, including, but not limited to, individual employees' personnel files, employment applications, and all other employment records.
2. Pay a civil penalty in the amount of ten thousand dollars (\$10,000), payable to the General Fund.

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
An Agency of the State of California**



3. Pay the Federation its reasonable attorney's fees and costs incurred in connection with this matter since September 19, 2024, until final disposition of this case by the Board, in an amount to be determined under the procedure described in PERB Regulation 32611.8, subdivision (a)(1)-(6).

Dated: \_\_\_\_\_

Regents of the University of California

By: \_\_\_\_\_  
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

## PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, Appeals Office, 1031 18th Street, Suite 223, Sacramento, CA, 95811-4124.

On August 21, 2025, I served PERB Decision No. HO-U-1851-H regarding *American Federation of State, County & Municipal Employees Local 3299 v. Regents of the University of California*, Case No. SF-CE-1421-H on the parties listed below by

☐ I am personally and readily familiar with the business practice of the Public Employment Relations Board for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Sacramento, California.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 21, 2025, at Sacramento, California.

\_\_\_\_\_  
Joseph Seisa  
(Type or print name)

\_\_\_\_\_  
*J. Seisa*  
(Signature)