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James K.T. Hunter (State Bar No. 73369)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, California 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jhunter@pszjlaw.com

Attorney for Petitioner Energy Policy Advocates

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

ENERGY POLICY ADVOCATES,

Petitioner,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent.

) Case No. 22STCP03214

) **PETITIONER’S OPENING TRIAL
BRIEF**

) Date: December 14, 2023 (*Reserved*)

) Time: 9:30 a.m.

) Place: Dept. 85

) Petition filed: August 30, 2022

1 **I. INTRODUCTION**

2 By its petition (the “Petition” or “PET”), Energy Policy Advocates (“EPA”) seeks to enforce
3 its right under Government Code §§ 6250, et seq., (the “CPRA”) to receive copies of public records
4 requested from Respondent The Regents of the University of California (“Regents”). Pretrial
5 discovery and a recent partial settlement have narrowed the issues remaining to be determined to
6 those relating to Regents’ withholding of two agreements between the UCLA Environmental Law
7 Clinic (“Law Clinic”) and a law firm, Sher Edling LLP (“Sher Edling”).

8 Regents claims its withholding of the agreements (“the Law Clinic/Sher Edling
9 Agreements”) is justified on two grounds:

- 10 1. the Law Clinic/Sher Edling Agreements constitute fee agreements protected by the
11 attorney-client privilege and/or attorney work product; and
- 12 2. the release of the Law Clinic/Sher Edling Agreements would chill UCLA’s ability
13 to engage in clinical legal education to an extent that clearly outweighs the public’s interest
14 in the disclosure of those agreements.

15 **II. STATEMENT OF FACTS**¹

16 The pertinent CPRA request seeks, *inter alia*, “any agreement that included both the
17 UCLA Law School and Sher Edling, LLP from the period 2016 through 2021” (PET 24:21-25,
18 the “Law Clinic/Sher Edling Agreements”). Regents’ response asserts that the Law Clinic/Sher
19 Edling Agreements are exempt from release (1) “based upon the attorney-client privilege and
20 the attorney work product privilege ” (PET 28:26-28) and (2) because “the release of such
21 records would chill the University’s ability to work with law firms and their clients and reduce
22 important educational opportunities for students attending public institutions of higher education”
23 (PET 28:30-29:2).

24 The Law Clinic/Sher Edling Agreements’ purported “client”, Sher Edling, is a law firm that
25 specializes in bringing contingency lawsuits against fossil fuel companies on behalf of public entities

26 ¹ All of the cited facts are supported by (1) the verified Petition and Regents’ Answer filed October
27 20, 2022, or (2) the declarations of Christopher Horner (“Horner Declaration”) or James K. T.
28 Hunter (“Hunter Declaration”) to be filed with the Court on or before December 7, 2023 as part of
the Joint Evidentiary Record (“AR”). Citations will be to the pertinent page(s) and line number(s)
separated by a colon.

1 in furtherance of an activist climate change agenda. (Horner Declaration 13:16-18.) Sher Edling is
2 not seeking legal advice or services from the Law Clinic with respect to any lawsuit in which Sher
3 Edling is itself a party, but rather the free (to Sher Edling) assistance of the Law Clinic staff and
4 UCLA Law students in lawsuits brought by Sher Edling, as counsel, for Sher Edling’s clients.
5 (Hunter Declaration 2:14-3:11.) More particularly, Law Clinic never billed Sher Edling any amount
6 for expenses or attorney fees, though in the event Sher Edling prevails in any of its contingency
7 lawsuits, Regents asserts that Law Clinic would be entitled to a share of any fees awarded. (Hunter
8 Declaration 3:5-8.) Yet Law Clinic has not actually received any fees under similar “fee” agreements
9 within the last ten years. (Hunter Declaration 3:8-11.)

10 As for the purported “attorney”, the Law Clinic is not a separate entity, but a dba of Regents
11 which UCLA Law School utilizes in training students interested in environmental lawyering.
12 (Hunter Declaration 2:9-13.) Regents admits that the primary purpose of the Law Clinic is
13 furthering such training. (Hunter Declaration 3:12-13.) In an email sent on March 14, 2018, by
14 UCLA Law Professor/Law Center staff member Cara Horowitz (“Horowitz”) to board members of
15 the Emmett Institute (another Regents’ dba/UCLA Law School program), however, Horowitz
16 discloses the Law Clinic’s activist agenda and its role in supporting the Sher Edling lawsuits as
17 follows:

18 “These are busy time for those who care about climate change and the
19 environment, and we are working as hard as ever to keep things
20 moving in the right direction. I’m writing to share some of our recent
21 work.

22 ***

23 “Sean Hecht is running [the Law Clinic] this semester. Students in the
24 clinic are working, among other things, on cases filed against fossil
25 fuel companies by the City of Imperial Beach, City of Richmond, and
26 some other California cities and counties seeking abatement of climate
27 change harms. These cases give students an unparalleled chance to
28 develop cutting-edge strategies to address climate change.” (Hunter
Declaration 2:14-3:2.)

29 The gravity of the public’s interest in the disclosure of the Law Clinic/Sher Edling
30 Agreements is highlighted in three recent letters exchanged between Senator Ted Cruz (ranking

1 member of the of the U.S. Senate Committee on Commerce, Science and Transportation),
2 Congressman James Comer (Chairman of the House of Representatives Committee on Oversight and
3 Accountability) and Sher Edling’s counsel, William Pittard of the law firm KaiserDillon PLLC.
4 (Horner Declaration 13:18-14:2.) Therein, Senator Cruz and Chairman Comer seek information
5 concerning, among other matters, (1) the role played by third-party donations in Sher Edling’s
6 pursuit of its global warming agenda through litigation in federal and state courts, (2) whether “dark
7 money” is fueling Sher Edling’s litigation to accomplish a left-wing legislative goal: the eradication of
8 fossil fuels and (3) whether the California fisc effectively subsidized Sher Edling’s pursuit of its global
9 warming agenda through the Law Clinic/Sher Edling Agreements. (Horner Declaration 14:3-9.)

10 **III. ARGUMENT**

11 **A. Business and Professions Code § 6149**

12 The Law Clinic/Sher Edling Agreements set forth the basic terms under which Sher Edling
13 would assist the legal training of UCLA Law students who were interested in environmental
14 lawyering. In return, Sher Edling would receive the assistance of the Law Clinic staff and the UCLA
15 law students in Sher Edling’s pursuit of anti-fossil fuel lawsuits at no cost to Sher Edling, although
16 the agreements apparently provide that Regents might someday receive a share of any attorneys’ fees
17 awarded to Sher Edling or its clients.

18 Regents claims that the Law Clinic/Sher Edling Agreements are properly classified as
19 “written fee contracts” subject to exemption from production in their entirety pursuant to Business
20 and Professions Code § 6149, which provides as follows:

21 “A written fee contract shall be deemed to be a confidential
22 communication within the meaning of subdivision (e) of Section 6068
and of Section 952 of the Evidence Code.”

23 The Law Clinic/Sher Edling Agreements, however, are not “fee contracts” (underlining
24 added) in that the “client” (Sher Edling) has no liability to its “attorney” (Law Clinic) for any
25 expenses or fees. See, e.g., Business and Professions Code § 6148, which expressly provides that its
26 application is directed solely at cases “in which it is reasonably foreseeable that total expense to a
27 client, including attorney fees, will exceed one thousand dollars (\$1,000)” (underlining added).

1 Nor is it correct to characterize Law Clinic as an “attorney” or Sher Edling as a “client”.
2 Viewed from Regents’ perspective, the Law Clinic/Sher Edling Agreements memorialize an
3 employment agreement under which Law Clinic, as “employer”, is hiring Sher Edling, as
4 “employee”, to assist in the Law Clinic’s clinical training of UCLA law students in environmental
5 lawyering. The fact that Sher Edling’s consideration is not a salary, but the no-cost assistance of the
6 Law Clinic staff and the UCLA law students in Sher Edling’s pursuit of anti-fossil fuel lawsuits on
7 behalf of others (its clients), is concededly a distinction from Regents’ typical employment
8 agreements with its attorney instructors/professors. This distinction, however, does not transmute
9 Law Clinic into an attorney, Sher Edling into a client and the Law Clinic/Sher Edling Agreements
10 into “written fee contracts”.

11 Viewed from Sher Edling’s perspective, the Law Clinic/Sher Edling Agreements set forth the
12 terms under which Sher Edling, as lead counsel of record, obtained co-counsel to assist Sher Edling
13 in providing legal services to Sher Edling’s clients. Again, this aspect of the Law Clinic/Sher Edling
14 Agreements cannot accurately be characterized as a “written fee contract” since Sher Edling is not a
15 “client” paying a “fee” to its “attorney” (Law Clinic), but an attorney obtaining co-counsel at no cost
16 to either Sher Edling or Sher Edling’s clients.

17 Furthermore, Business and Professions Code § 6149 was enacted before Section 3(b) of
18 Article 1 of the California Constitution, which provides, in relevant part, as follows:

19 “(1) The people have the right of access to information concerning the
20 conduct of the people’s business, and, therefore, the meetings of public
21 bodies and the writings of public officials and agencies shall be open
to public scrutiny.

22 “(2) A statute, court rule, or other authority, including those in effect
23 on the effective date of this subdivision, shall be broadly construed if it
24 furthers the people’s right of access, and narrowly construed if it limits
the right of access.....”

25 Here, a fair and reasonable construction of Business and Professions Code 6149 precludes
26 the Law Clinic/Sher Edling Agreements being deemed “written fee contracts” for all of the above-
27 noted reasons. Even if the language of Business and Professions Code § 6149 could be broadly
28 construed to embrace those agreements, Section 3(b) of Article 1 of the California Constitution

1 mandates that such a broad construction must be eschewed.

2 Being “in the dark” as to the specific text of the agreements, EPA cannot confute that Sher
3 Edling may have included some material legitimately covered by the attorney-client privilege or the
4 attorney work product within the Law Clinic/Sher Edling Agreements. If so, the redaction of any
5 such material would be permissible. The California Supreme Court’s decision in *Los Angeles County*
6 *Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 292, 212 Cal. Rptr. 3d 107, 112 (“*LA*
7 *Supervisors*”) holds, however, that the CPRA’s exemption for privileged portions of government
8 records does not justify withholding entire documents but instead requires that all reasonably
9 segregable portions of the documents be produced:

10 “As with any of the PRA's statutory exemptions, ‘[t]he fact that
11 parts of a requested document fall within the terms of an exemption
12 does not justify withholding the entire document.’ (*CBS, Inc. v.*
13 *Block* (1986) 42 Cal.3d 646, 653 [230 Cal.Rptr. 362, 725 P.2d
14 470].) What the PRA appears to offer is a ready solution for records
15 blending exempt and nonexempt information: ‘Any reasonably
16 segregable portion of a record shall be available for inspection by any
17 person requesting the record after deletion of the portions that are
18 exempted by law.’ (§ 6253, subd. (a).) While this provision does not
19 dictate which parts of a public record are privileged, it requires public
20 agencies to use the equivalent of a surgical scalpel to separate those
21 portions of a record subject to disclosure from privileged portions. At
22 the same time, the statute places an express limit on this surgical
23 approach—public agencies are not required to attempt selective
24 disclosure of records that are not ‘reasonably segregable.’ (*Ibid.*) To
25 the extent this standard is ambiguous, the PRA must be construed in
26 “‘whichever way will further the people's right of access.’” (*Ardon v.*
27 *City of Los Angeles* (2016) 62 Cal.4th 1176, 1190 [199 Cal. Rptr. 3d
28 743, 366 P.3d 996]; see also Cal. Const., art. I, § 3, subd. (b)(2).)”
(Underlining added.)

21 As applied to the Law Clinic/Sher Edling Agreements , *LA Supervisors* establishes that
22 general information about the structuring of the relationship between the Law Clinic and Sher Edling
23 may not be deleted. The only permissible redactions would be (1) any confidential communications
24 between Sher Edling and its anti-fossil fuel clients or (2) Sher Edling’s disclosure of confidential
25 legal theories or strategy.

26 /

27 /

1 **B. Government Code § 6255(a)**

2 Regents alternatively contends that even if the Law Clinic/Sher Edling Agreements cannot
3 properly be classified as “written fee contracts” exempted from production pursuant to Business and
4 Professions Code § 6149, they may still be withheld in their entirety pursuant to Government Code §
5 6255(a), which provides in relevant parts as follows:

6 “The agency shall justify withholding any record by demonstrating ...
7 that on the facts of the particular case the public interest served by not
8 disclosing the record clearly outweighs the public interest served by
disclosure of the record.”

9 Regents’ blatantly self-serving claim that the release of the Law Clinic/Sher Edling
10 Agreements would chill UCLA’s ability to engage in clinical legal education at all, much less
11 materially, is simply not plausible and should be rejected by this Court based on its judicial
12 experience and common sense . Any future law firm interested in obtaining the assistance of the Law
13 Clinic staff and UCLA Law students in pursuing claims brought by that firm on behalf of its clients
14 at no cost to the firm or its clients would hardly be deterred from doing so because the general terms
15 of the contract between the Law Clinic and the firm would be subject to disclosure in response to a
16 CPRA request.

17 Again, EPA concedes, and this Court’s judgment may expressly confirm, that any
18 legitimately attorney-client privileged or attorney work product material in such a contract may be
19 redacted in records produced in response to a CPRA request. To the extent the public has any
20 interest in the non-disclosure of the Law Clinic/Sher Edling Agreements, that interest does not
21 outweigh, much less clearly outweigh, the public’s interest in monitoring what firms are selected on
22 what terms to help in the clinical training of UCLA Law students, particularly where Sher Edling’s
23 selection assisted that firm in its pursuit of a highly controversial, anti-fossil fuel climate change
24 agenda.

25 **IV. CONCLUSION**

26 This Court should order complete copies of the Law Clinic/Sher Edling Agreements to be
27 promptly produced to EPA. If Regents contends that any segregable portion of either of the

1 agreements should be redacted, Regents may provide copies with the redaction(s) and, separately as
2 to each redaction, a statement of the basis upon which the redaction was made.

3
4 Dated: October 27, 2023

/s/ JAMES K.T. HUNTER
Attorney for Petitioner,
Energy Policy Advocates

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES)

4 I, Maria R. Viramontes, am employed in the city and county of Los Angeles, State of
5 California. I am over the age of 18 and not a party to the within action; my business address is
6 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067-4003.

7 On October 27, 2023, I caused to be served the **PETITIONER'S OPENING TRIAL
8 BRIEF** in this matter by sending a copy of said document(s) as follows:

<p>9 Jean-Paul P. Cart 10 Antonia I. Stabile 11 Venable LLP 12 101 California Street, Suite 3800 13 San Francisco, CA 94111 14 Email: JPCart@Venable.com 15 AISTabile@Venable.com</p> <p>16 Attys for Respondent, 17 The Regents of the University of California</p>	
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- 18 (BY MAIL) I am readily familiar with the firm's practice of collection and processing
19 correspondence for mailing. Under that practice it would be deposited with the U.S.
20 Postal Service on that same day with postage thereon fully prepaid at Los Angeles,
21 California, in the ordinary course of business. I am aware that on motion of the party
22 served, service is presumed invalid if postal cancellation date or postage meter date is
23 more than one day after date of deposit for mailing in affidavit.
- 24 (BY EMAIL) I caused to be served the above-described document by email to the party
25 indicated above at the indicated email address.
- 26 (BY FAX) I caused to be transmitted the above-described document by facsimile
27 machine to the fax number(s) as shown. The transmission was reported as complete and
28 without error. (Service by Facsimile Transmission to those parties listed above with fax
numbers indicated.)
- (BY OVERNIGHT DELIVERY) By sending by FEDERAL EXPRESS to the
addressee(s) as indicated above.
- (BY HAND DELIVERY) I caused to be served the above-described document by hand
delivery to the party indicated above at the indicated address.

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

31 Executed on October 27, 2023, at Los Angeles, California.

32 /s/Maria R. Viramontes
33 Maria R. Viramontes