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

After proceedings were complete in Unfair Practice Case No. SF-CE-1524-H, *James O'Brien v. Regents of the University of California (Berkeley)*, in which all parties had the right to participate, the Public Employment Relations Board (PERB) found that the Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571(a) when it advised James O'Brien, a faculty member at the University's Berkeley campus that, subject to limited exceptions, he was prohibited from sharing copies of his personnel records with others.

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

A. CEASE AND DESIST FROM:

1. Interfering with employee rights by advising O'Brien that subject to limited exceptions, his personnel records were not to be shared with others.

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

1. Rescind and/or reform the July 15, 2025 communication advising O'Brien that subject to limited exceptions, his personnel records are not to be shared with others.

2. To the extent that the underling confidentiality policy remains in effect, the University shall rescind the policy and/or revise the letter advising employees not to share their personnel files with others.

3. Upon proof in compliance proceedings, make O'Brien whole for compensable injuries suffered as a direct or foreseeable result of the above-referenced conduct. Any monetary award shall be augmented by 7 percent annual interest, compounded daily, from the date of harm until the date of payment.

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.

James O'Brien v. Regents of the University of California (Berkeley)

PERB Case No. SF-CE-1524-H

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PERB Received
07/15/25 14:37 PM

PERB Filed
07/15/25

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No: SF-CE-1524-H **Date Filed: 07/15/2025**

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES ☐ **If so, Case No** NO ☒

1. CHARGING PARTY: EMPLOYEE ☒ EMPLOYEE ORGANIZATION ☐ EMPLOYER ☐ PUBLIC[1] ☐

a. Full name: James O'Brien

b. Mailing Address: 631 Soda Hall, Room 731, Berkeley, CA 94720

c. Telephone number: [redacted]

d. Name and title of agent to contact: James O'Brien **E-mail Address:** [redacted]

Telephone number: [redacted] **Fax No.:**

e. Bargaining Unit(s) involved:

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION ☐ EMPLOYER ☒

a. Full name: UC Berkeley

b. Mailing Address: OFFICE OF THE CHANCELLOR 200 CALIFORNIA HALL #1502, Berkeley, CA 94720-1502

c. Telephone number:

d. Name and title of agent to contact: Victoria C. Plaut, Vice Provost for the Faculty **E-mail Address:** [redacted]

Telephone number: **Fax No.:**

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:

b. Mailing Address:

c. Agent:

5. GRIEVANCE PROCEDURE

[1]An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569

PERB-61 (4/3/2020)

SEE REVERSE SIDE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

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PERB Filed 07/15/25

Yes ☐ No ☒ Unknown ☐

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

☐ Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)

☐ Ralph C. Dills Act (Gov. Code, § 3512 et seq.)

☒ Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)

☐ Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)

☐ Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)

☐ One of the following Public Utilities Code Transit District Acts: San Francisco Bay Area Rapid Transit District Act (SFBART Act) (Pub. Util. Code, § 28848 et seq.), Orange County Transit District Act (OCTDA) (Pub. Util. Code, § 40000 et seq.), Sacramento Regional Transit District Act (Sac RTD Act) (Pub. Util. Code, § 102398 et seq.), Santa Clara VTA, (Pub. Util. Code, § 100300 et seq.), and Santa Cruz Metro (Pub. Util. Code., § 98160 et seq.)

☐ Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)

☐ Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s) or PERB regulation section(s) alleged to have been violated is/are:

Government Code section?3571(a) -- interference, restraint or coercion

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are **(*a copy of the applicable local rule(s) MUST be attached to the charge*):**

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary*.)

Please see attached.

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief. (A Declaration will be included in the e-mail you receive from PERB once you have completed this screen. The person filing this Unfair Practice Charge is required to return a properly filled out and signed original Declaration to PERB pursuant to PERB Regulations 32140 and 32135.)

James O'Brien	[redacted]	07/15/2025
(Type or Print Name)	(Signature)	Date

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07/15/25

Statement of Facts

1. On **15 July 2025**, the Office of the Chancellor, UC Berkeley, delivered to the Charging Party a letter signed by **Victoria C. Plaut, Vice Provost for the Faculty**. A true and correct copy is attached as **Exhibit A**.

2. The letter encloses the Charging Party's "2022 five-year merit review file", redacted pursuant to APM 160-20-c-4, and states in relevant part:

> "However, it is the University's position that this file is University property, comprising confidential University documents. Accordingly, the University does not consent to your sharing copies of these documents with anyone other than your recognized agent, such as legal counsel."

3. This directive expressly forbids the Charging Party from sharing his own personnel-review documents with coworkers, Academic Senate committees, union representatives, legislators, journalists, or any other person who is not his "recognized agent."

4. On information and belief, the same or substantially similar language has been communicated to at least one other UC employee during a personnel dispute. The Charging Party believes the directive is applied broadly within the campus without oversight.

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07/15/25

5. By maintaining and disseminating this blanket prohibition, the University **interferes with and restrains employees' exercise of rights protected by HEERA section 3565**, including the right to engage in concerted activity, discuss wages and working conditions, and disclose suspected legal violations to third parties. The directive is facially over-broad and not narrowly tailored to protect only confidential academic review records relating to others than than the employee sharing the information.

Remedy Requested

• Order the University to **cease and desist** from maintaining or enforcing any rule that bars employees from sharing their own personnel documents except with legal counsel.

• Require **rescission of the directive** contained in Exhibit A and any similar campus or systemwide directives.

• Require the University to **post and e-mail a notice** to all faculty and staff that explains employees' rights under HEERA and states that UC will not interfere with those rights.

• Order appropriate **training** for HR and academic-personnel staff on lawful confidentiality limits.

• Grant any further relief the Board deems just and proper.

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Exhibit A.

PERB Filed
07/15/25

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED• RIVERSIDE • SAN DIEGO • SAN FRANCISCO SANTA BARBARA • SANTA CRUZ

OFFICE OF THE CHANCELLOR
200 CALIFORNIA HALL #1502
BERKELEY, CALIFORNIA 94720-1502

July 15, 2025

PERSONAL AND CONFIDENTIAL

Professor [redacted]
Department of Electrical Engineering and Computer Sciences
[redacted]

Dear Professor [redacted]

I am enclosing a copy of your 2022 five-year merit review case, as you have requested. The documents have been redacted in accordance with Academic Personnel Manual Section 160-20-c-4.

This file is being provided to you because it pertains to you and it is your right, in response to your request, to access it. However, it is the University's position that this file is University property, comprising confidential University documents. Accordingly, the University does not consent to your sharing copies of these documents with anyone other than your recognized agent, such as legal counsel.

Yours sincerely,

[redacted]
Victoria C. Plaut
Vice Provost for the Faculty

Enclosure

cc: Dean Chayes

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07/15/25 14:37 PM

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07/15/25

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of CA. I am over the age of 18 years. The name and address of my

Residence or business is James O'Brien, 731 Soda Hall, Room 731, EECS Dept., Berkeley, CA 94720

James O'Brien, 731 Soda Hall, Room 731, EECS Dept., Berkeley, CA 94720

On July 15, 2025 (*Date*), I served the Complaint and exhibits (*Description of document(s)*)

_____ (*Description of document(s) continued*) in Case No. Ref. No. 50949 PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

- ☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

[redacted]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 15, 2025 (*Date*),

at Berkeley (*City*) CA (*State*).

James O'Brien [redacted]

(*Type or print name*) (*Signature*)

(02/2021) Proof of Service

PERB Received
07/23/25 14:21 PM

From: **Nancy Whalen** [redacted]
Subject: Re: UCB Academic Personnel File Request Response
Date: July 16, 2025 at 7:50 AM
To: James O'Brien [UC Berkeley] [redacted]

NW

Dear Professor O'Brien,

Per the University Records policy, "All university administrative records are owned by The Regents of the University of California regardless of their physical location, even when they are in the possession of individuals."

Therefore, you are not authorized to release confidential academic review records except to your attorney. The relevant sections of the APM 160 that restrict access to these documents are:

APM 160-20-b.(1)(c) defines confidential academic review records: "Reports, recommendations, and other related documents from campus and departmental ad hoc committees concerning evaluations of the individual under applicable University criteria in connection with an academic personnel action, such as appointment, promotion, merit increase, appraisal, reappointment, nonreappointment, [sic] or terminal appointment."

APM 160-20-d.(1) is the APM section that restricts sharing of such records with colleagues.

APM 160-20-d.(4) is the APM section that prohibits sharing such confidential records with the public.

APM 160-20-d.(2) is the APM section that governs how the Committee on Privilege and Tenure (P&T) may request access to academic personnel records, including confidential records.

APM 160-20-d.(30 is the APM section that restricts access by governmental agencies to only when "required by State or Federal law."

Sincerely,
Nancy

Nancy A. Whalen
Academic HR Analyst
UC Berkeley, Academic Personnel Office
127 California Hall # 1500
[redacted]

This email may contain confidential and privileged material for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited.

I will be working remotely, except on Wednesday and Thursday.



PERB Received
08/19/25 12:35 PM

From: **Heather Archer** [redacted]
Subject: change in campus practice
Date: August 18, 2025 at 6:44 PM
To: [redacted]

Dear Professor [redacted]

I write to inform you that UC Berkeley no longer restricts the sharing of your personnel file with others. No disciplinary action will be taken against you for sharing the file, should you wish to do so.

Regards,
Heather Archer

--
Heather Archer, Assistant Vice Provost
Academic Personnel Office

PERB Received
08/19/25 12:35 PM

From: **Nancy Whalen** [redacted]
Subject: Re: UCB Academic Personnel File Request Response
Date: July 16, 2025 at 7:50 AM
To: [redacted]

Dear Professor [redacted],

Per the University Records policy, "All university administrative records are owned by The Regents of the University of California regardless of their physical location, even when they are in the possession of individuals."

Therefore, you are not authorized to release confidential academic review records except to your attorney. The relevant sections of the APM 160 that restrict access to these documents are:

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Sincerely,
Nancy

Nancy A. Whalen
Academic HR Analyst
UC Berkeley, Academic Personnel Office
127 California Hall # 1500
[redacted]

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I will be working remotely, except on Wednesday and Thursday.

CalMessages Footer

[redacted]

Hi Nancy,

I received the link and had no problems downloading the files. Thanks for sending them!

Although not immediately relevant, I was perplexed by this statement:

> *This file is being provided to you because it pertains to you and it is your right, in response to your request, to access it. However, it is the University's position that this file is University property, comprising confidential University documents. Accordingly, the University does not consent to your sharing copies of these documents with anyone other than your recognized agent, such as legal counsel.*

My understanding is that employees have rights to access these types of documents and that they also have the right to share the documents, not just with legal counsel but also with whomever they choose to. Asserting otherwise is concerning because it would allow an unscrupulous employer to abuse their employees while preventing the employees from organizing, seeking media coverage, or many of the other things that are critical to ensuring fair labor practices. Further, UC is a government institution and thus is even more constrained when it comes to limiting employee access to their own materials than a private

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institution and thus is even more constrained when it comes to limiting employee access to their own materials than a private entity would be.

Could you please provide the specific and complete legal justification relating to this assertion?

More concretely, I am worried that the position you quote exceeds the limits of both University policy and state and federal law. At the very least, please explain how the restrictions can coexist with: (i) California Labor Code (for example §§ 232 and 232.5), which prohibit employers from barring employees from sharing information about their wages and working conditions; (ii) the Higher Education Employer-Employee Relations Act (Gov. Code, for example §§ 3565 and 3571), which protects concerted activity and whistle-blowing at UC; and (iii) the California Whistleblower Protection Act (Gov. Code § 8547) and related statutes. As you know, APM-160 and APM-015 shield only a narrow category of confidential academic review records and third-party medical or student data. They do not purport to override employees' statutory rights to disclose portions of their own personnel files. Likewise, FERPA and HIPAA protect the privacy of other individuals, not one's own records. Absent a clear legal basis to the contrary, a blanket prohibition on sharing one's own materials appears to be an unjustified overreach that could chill open discussion, collective self-governance, and the exposure of potential systemic problems.

Please note that I am not an attorney, and the statutes and policies cited above reflect only my lay reading. If the University's position rests on any additional laws, regulations, or UC policies, whether they support an employee's right to share these materials or, in UC's view, limit that right, kindly provide the full analysis, including how UC concluded that each authority does or does not apply. In short, I would appreciate the University's complete and unredacted rationale so that I can understand the entire legal basis for the restriction you have asserted.

Note that I do not have any particular reason to share the materials you provided that relate to my last review. So there is no rush, but I would like to know. Any time this month would be fine.

Also, to be clear, I think that this policy assertion is an area of public interest so I might publicly share the legal justification along with my commentary on its implications.

Thanks again!

[redacted]

[redacted]

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08/19/25 12:35 PM

From: [redacted]
Subject: Re: UCB Academic Personnel File Request Response
Date: July 16, 2025 at 5:58 PM
To: Nancy Whalen [redacted]
Cc: [redacted]

Hello Nancy,

Thank you for your reply and for referring me those specific parts of APM 160.

There appear to be two distinct issues that require clarification:

(1) Scope of Confidentiality Defined by APM 160:

You referenced APM 160-20-b.(1)(c), which defines “confidential academic review records” narrowly as certain reports and recommendations generated by campus or departmental ad hoc committees in connection with specific personnel actions and accessed by employees in the course of making evaluations of others. However, the University’s broader assertion, that it “does not consent” to my sharing any documents provided to me, except with my attorney, extends far beyond that limited definition. Many of the documents in my personnel file plainly fall outside APM 160’s explicitly defined categories. Examples include:

- My own authored statements or responses;
- Letters and communications sent directly to me by University administrators. These documents were necessarily delivered to me and there is no reasonable basis to presume that I cannot share those material;
- Statements, letters, or other documents evaluating my performance as an employee. Since these evaluations directly affect me and concern my own employment, it would be inappropriate and illogical for policies designed to protect employee privacy to instead be used to restrict the employee’s right to share or discuss them;
- Basic employment facts, salary data, and general communications about University policy and procedure.

The scope of confidentiality described in APM 160 was never intended to include all such materials, and invoking it to justify a blanket restriction is, in my view, a misapplication of a policy meant to protect the privacy and rights of employees to instead deny those same employees their rights.

(2) Limitations Imposed by State and Federal Law:

Even for documents legitimately covered by APM 160’s confidentiality provisions (and again, I dispute the overly broad interpretation currently asserted), state and federal statutes expressly protect employee disclosures under certain conditions. APM provisions cannot override these explicit legal protections, which include but are not limited to:

- California Labor Code §§ 232 and 232.5, which explicitly protect an employee’s right to disclose or discuss their own wages and working conditions;
- HEERA (Government Code §§ 3565 and 3571), which protects the right of UC employees to engage in concerted activity and share information related to performance, evaluations, and workplace concerns;
- The California Whistleblower Protection Act (Government Code § 8547), which protects the right to report misconduct or violations of policy to appropriate oversight bodies;
- Relevant federal labor and whistleblower protections, including those applicable under federal law to disclosures related to workplace practices, institutional wrongdoing, or legal violations.

These statutory rights exist independently of University policies. In cases where these or other legal protection conflict with UC policy, the legal protections prevail. Furthermore, even attempting to limit the legal protections afforded to employees may itself be contrary to both UC policy and state and federal law.

Even within the limited categories explicitly defined by APM 160 and that are not preempted by law, confidentiality restrictions must be narrowly applied, never broadly to entire files, documents, or categories of documents. General statements about UC policy, factual communications, or an employee’s own statements clearly cannot be deemed confidential simply because they reside in a personnel file.

There is also a distinction between materials that come into one’s possession in the course of performing one's work functions and documents provided to a person as an individual. For instance, the protections that apply to a report that I handle when evaluating a student or another employee do not apply to documents that I am entitled to because they pertain to me directly. If an employee is entitled to certain materials by right, then the university cannot unilaterally impose conditions, such as confidentiality, as a prerequisite on receiving such materials.

To fully clarify the University’s position, I respectfully request explicit answers to the following questions. In each case, “materials” refers specifically to materials relating to an employee’s own employment:

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refers specifically to materials relating to an employee's own employment.

1. Is UC asserting categorically that employees are prohibited from sharing any materials relating to their own employment with Academic Senate committees, colleagues, journalists, legislators, public officials, and/or other third parties?
2. Would forwarding materials relating to one's own employment to the UC Whistleblower reporting hotline be prohibited by APM 160 or any other UC policy?
3. Would forwarding such materials to state or federal whistleblower reporting mechanisms be prohibited by APM 160 or any other UC policy?
4. Would submitting such materials as part of a complaint or grievance before the Academic Senate be prohibited by APM 160 or any other UC policy?
5. Would including such materials as part of a complaint to any state or federal agency be prohibited by APM 160 or any other UC policy?
6. Would forwarding such materials to agents at the Department of Justice, Department of Education, or Department of Labor be prohibited by APM 160 or any other UC policy?
7. Would sharing such materials with reporters or other investigators be prohibited by APM 160 or any other UC policy?
8. Does the University's broad assertion of confidentiality also apply to materials that document actions potentially contrary to law or that could constitute evidence of wrongdoing?
9. Has UC conducted a legal analysis of how laws such as California Labor Code §§ 232 and 232.5, HEERA, the California Whistleblower Protection Act, and applicable federal protections interact with APM 160 and University Records policy? If so, please provide a full copy of that analysis.
10. If there are additional statutes, regulations, or UC policies that UC believes either support or limit an employee's right to share materials related to their own employment, please identify them explicitly and explain their relevance.

If your answer to any of the above is yes, please provide UC's complete legal justification and specifically explain how such restrictions are consistent with the state and federal legal protections outlined above.

Please answer the above questions explicitly. Generic answers that simply quote policy remain open to interpretation, and my own interpretation of the APM and relevant laws is that all of the above mentioned activities are legally permissible. I am asking specifically what is the university's position on these issues. If no explicit answer is given then I will assume that the university is agreeing that the activity is permitted.

I am also concerned about how the university is making its positions on the above known to employees. The APM is many thousands of pages long and open to interpretation, as is the law. My reasonable interpretation does not agree with the university's position, but I would not have had any way to know this except for happenstance. It troubles me that the university is not prominently and clearly announcing its position on these issues. Only sending warnings to select employees who choose to specifically exercise their rights with respect to certain documents seems like it could be interpreted as a deliberate effort to intimidate those specific employees out of sight of other employees and the general public. Additionally, the fact that these warnings are delivered with specific materials would seem to be an implicit acknowledgment that the restrictions would be unknown and unexpected.

Finally, please confirm whether the University of California has an official electronic service address (email) for receiving administrative filings, such as PERB charges. If such an address exists, please provide it. If no such address exists or UC does not accept electronic service, please explain why the university has not agreed to electronic service and maintains a barrier making it more difficult for employees to submit legal complaints. In any case, please provide the appropriate physical mailing address for legal service of documents.

Thank you again for your attention. I look forward to your full and detailed response.

Sincerely,

[redacted]

[redacted]

Notice: This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, you are hereby notified that any use or dissemination of this communication is strictly prohibited. If you have received this email in error

PERB Received
08/19/25 12:35 PM

From: **Nancy Whalen** [redacted]
Subject: Re: UCB Academic Personnel File Request Response
Date: July 30, 2025 at 4:27 PM
To: [redacted]

Dear Professor [redacted]

Thank you for your email and we are taking your concerns under advisement. Please note that if you wish to file a grievance with P&T, per their Grievance Submission Form (see attached), no further documentation other than the form should be provided. However, by submitting the form, you provide P&T the authority to investigate the incidents in question and they may request access to review an individual's personnel file. I do not have a further substantive response to your additional questions.

Thank you.

Nancy A. Whalen
Academic HR Analyst
UC Berkeley, Academic Personnel Office
127 California Hall # 1500
[redacted]

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I will be working remotely, except on Wednesday and Thursday.

CalMessages Footer

PERB Received
08/19/25 12:35 PM

From: [redacted]
Subject: Re: change in campus practice
Date: August 19, 2025 at 3:00 PM
To: Heather Archer [redacted]

Dear AVP Archer,

Thank you for your message. However, I am not entirely clear on its meaning and would appreciate some further clarification.

1. When you wrote that "UC Berkeley no longer restricts the sharing of your personnel file with others," do you mean that I am free to share my own file, or that anyone is now free to share it? I assume you meant the former, but the wording is ambiguous.
2. Is statement about sharing one's own file intended to apply only to me, or to a small set of individuals, or is this now a general policy that applies to all UC Berkeley faculty and staff with respect to their own personnel files?
3. Is the University's position that it has/had the authority to restrict employees from sharing their own personnel files, but has chosen not to enforce that authority in my case or in general? Or is the position that employees have always had the legal right to share their own files, and UC is now acknowledging that fact?
4. Has the policy itself changed, or was the restriction communicated in previous notices (including those I received) an error? If it is a change, could you explain how it came about and who was involved? If the earlier notices were mistaken, what led to the error?
5. Was this restriction ever formally adopted or reviewed by the Academic Senate or another shared governance body? If not, on what authority was it imposed?
6. Did UC Legal review and approve the language previously sent to employees, such as the statements that UC "does not consent" to sharing? If so, is a written legal analysis or memo available?
7. Will the current position be formally documented, either through an update to policy or a campus or systemwide announcement? Will faculty and staff be notified that the previous restriction no longer applies?
8. How many individuals received similar notices about restrictions?
9. Will UC issue updated guidance or a formal retraction to employees who previously received these warnings?
10. Has any employee ever been disciplined or otherwise penalized for sharing information from their own personnel file? If so, will those actions be reviewed or reversed?
11. In cases where employees were deterred from sharing their own files due to the prior warnings, and may have experienced professional, emotional, legal, financial, or other harm as a result, will UC consider taking steps to address or remedy that harm?
12. Has UC ever refused to accept materials in a grievance, legal filing, or administrative complaint on the grounds that those materials were improperly shared from a personnel file?
13. I believe that you know that this issue is now the subject of a PERB complaint. Has the University reviewed its prior communications and policies in light of that proceeding? Has it made or will it make any disclosures to PERB acknowledging that the prior policy was mistaken or withdrawn?
14. Has UC Berkeley or the UC system been contacted by any external agency, government office, reporters, or other outside entity (other than PERB) regarding the University's policy or communications about employee rights to share their own personnel file? If so, which agencies, and what information has been provided in response?

Thank you again. I look forward to your response.

PERB Received
08/19/25 12:35 PM

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of CA. I am over the age of 18 years. The name and address of my

Residence or business is James O'Brien, 731 Soda Hall, Room 731, EECS Dept., Berkeley, CA 94720

James O'Brien, 731 Soda Hall, Room 731, EECS Dept., Berkeley, CA 94720

On Aug 19, 2025 (*Date*), I served the Complaint and exhibits (*Description of document(s)*)

_____ (*Description of document(s) continued*) in Case No. Ref. No. 50949 PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

- ☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on Aug 19, 2025 (*Date*),

at Berkeley (*City*) CA (*State*).

James O'Brien [redacted]

(*Type or print name*) (*Signature*)

(02/2021) Proof of Service

From: **Heather Archer** [redacted]
Subject: Re: change in campus practice
Date: August 19, 2025 at 5:38 PM
To: James O'Brien [UC Berkeley] [redacted]

HA

Dear Professor O'Brien,

You are free to share your own file. This change in campus practice applies to everyone and was changed in response to concerns raised by faculty. There was no written policy, but the letter had been used in its previous form for decades. Jack McKimm will be in touch regarding next steps with regards to the PERB complaint.

Regards,
Heather Archer

On Tue, Aug 19, 2025 at 12:00 PM James O'Brien [UC Berkeley] <[redacted]> wrote:

> Dear AVP Archer,
>
> Thank you for your message. However, I am not entirely clear on its meaning and would appreciate some further clarification.
>
> 1. When you wrote that "UC Berkeley no longer restricts the sharing of your personnel file with others," do you mean that I am free to share my own file, or that anyone is now free to share it? I assume you meant the former, but the wording is ambiguous.
> 2. Is statement about sharing one's own file intended to apply only to me, or to a small set of individuals, or is this now a general policy that applies to all UC Berkeley faculty and staff with respect to their own personnel files?
> 3. Is the University's position that it has/had the authority to restrict employees from sharing their own personnel files, but has chosen not to enforce that authority in my case or in general? Or is the position that employees have always had the legal right to share their own files, and UC is now acknowledging that fact?
> 4. Has the policy itself changed, or was the restriction communicated in previous notices (including those I received) an error? If it is a change, could you explain how it came about and who was involved? If the earlier notices were mistaken, what led to the error?
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> 10. Has any employee ever been disciplined or otherwise penalized for sharing information from their own personnel file? If so, will those actions be reviewed or reversed?
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> 14. Has UC Berkeley or the UC system been contacted by any external agency, government office, reporters, or other outside entity (other than PERB) regarding the University's policy or communications about employee rights to share their own personnel file? If so, which agencies, and what information has been provided in response?
>
> Thank you again. I look forward to your response.

Sincerely,

James O'Brien

> On Aug 18, 2025, at 6:43 PM, Heather Archer <[redacted]> wrote:
>
> Dear Professor O'Brien,
>
> I write to inform you that UC Berkeley no longer restricts the sharing of your personnel file with others. No disciplinary action will be taken against you for sharing the file, should you wish to do so.
>
> Regards,
> Heather Archer
>
> --
> Heather Archer, Assistant Vice Provost
> Academic Personnel Office

—

Notice: This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, you are hereby notified that any use or dissemination of this communication is strictly prohibited. If you have received this email in error, please notify the sender immediately, then delete this email without making a copy.

--
Heather Archer, Assistant Vice Provost
Academic Personnel Office

PERB Received
09/05/25 15:23 PM

PERB Filed
09/05/25

UC Berkeley People & Culture

September 5, 2025

Sent via PERB ePortal and Email

Joseph Eckhart
Deputy General Counsel
Public Employment Relations Board
San Francisco Regional Office
1515 Clay Street, Suite 2206
Oakland, CA 94612-1403

Re: **Respondent's Position Statement** – *Professor James O'Brien v. Regents of the University of California (UC Berkeley)*
Unfair Practice Charge No. SF-CE-1524-H

Dear Attorney Eckhart:

The Regents of the University of California, Berkeley (hereinafter "Employer" or "University") submit this letter as its position statement in response to the above-referenced unfair practice charge (hereinafter "Charge") filed on July 15 by Professor James O'Brien (hereinafter "Charging Party" or "Professor").

The Charge filed by the Professor states that on July 15 the University issued him a letter along with a copy of his merit review file, and advised him the University did not consent to him sharing that file with anyone other than his "recognized agent, such as legal counsel." The Charging Party claimed the University's statement effectively "interferes with and restrains employees' exercise of rights protected by HEERA section 3565, including the right to engage in concerted activity, discuss wages and working conditions, and disclose suspected legal violations to third parties." The Charge contended that "directive" was "facially over-broad and not narrowly tailored to protect only confidential academic review records relating to others than than [sic] the employee sharing the information. The Charging Party further asserted, "On information and belief, the same or substantially similar language has been communicated to at least one other UC employee," but the Charging Party "believes" this directive has been applied "broadly." In so doing, UC Berkeley allegedly violated one or more rights protected by HEERA.

Among the remedies sought by the Charging Party were that UC Berkeley "cease and desist from maintaining or enforcing any rule that bars employees from sharing their own personnel documents except with legal counsel," and that the PERB "require rescission of the directive."

On July 28, UC Berkeley received notice of the Professor's PERB Charge, pertaining to the University's "consent" to him sharing the file in question. On August 18, Heather Archer, Assistant Vice Provost (AVP) for Academic Personnel, informed the Charging Party by email, "I write to inform you that UC Berkeley no longer restricts the sharing of your personnel file with others. No disciplinary action will be taken against you for sharing the file, should you wish to do so." August 19, the Charging Party emailed AVP Archer, wherein he confirmed receipt of her email but requested "clarification" and posed 14 discovery-type questions.

The afternoon of August 19, AVP Archer emailed the Charging Party a second time: "You are free to share your own file. This change in campus practice applies to everyone and was changed in response to concerns raised by faculty," adding that, "There was no written policy" on this subject. The Charging Party emailed AVP Archer in response, acknowledging receipt of the email and awareness the Employer had changed its practice: "Thank you again for confirming that the restriction on sharing one's own personnel file has been lifted and that the change now applies across campus. I appreciate that clarification."

UC Berkeley has addressed the practice which the Charging Party brought to the attention of the PERB. The Employer has already granted the majority of the remedies sought by the Professor, insofar as the University rescinded the complained-of "directive" which was included in the Charging Party's letter, and the University ceases to and desists from sending out such letters. The Employer has voluntarily changed its practice, campus-wide, following the filing of the Professor's unfair practice charge.

Given the above, and the parties' limited time and resources, to engage in further litigation of this matter would not be in the interest of judicial economy.

Respectfully submitted,

[redacted]

Jack McKimm
Senior Employee & Labor Relations Hearing Consultant
University of California, Berkeley

Attachments: **Proof of Service**
Exhibit 1 - Unfair Practice Charge No. SF-CE-1524-H
Exhibit 2 - Email Conversation Between AVP Archer and Professor O' Brien

PERB Received
09/05/25 15:23 PM

PERB Filed
09/05/25

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of California. I am over the age of 18 years. The name and address of my

Residence or business is UC Berkeley, 2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

UC Berkeley, 2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

On 09/05/2025 (*Date*), I served the Respondent Position Description (*Description of document(s)*)

(*Description of document(s) continued*) in Case No. SF-CE-1524-H (PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

☐ personal delivery;

☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)
[redacted] (Professor James O'Brien, Charging Party)
[redacted] (PERB Agent)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 09/05/2025 (*Date*),

at Berkeley (*City*) California (*State*).

Jack McKimm (*Type or print name*) [redacted] (*Signature*)

(02/2021) Proof of Service

PERB Received
09/05/25 15:23 PM

PERB Filed
09/05/25

EXHIBIT

2

PERB Received
09/05/25 15:23 PM

PERB Filed
09/05/25

bConnected
powered by Google

Jack McKimm [redacted]

Fwd: change in campus practice

Heather Archer [redacted]
To: Jack McKimm [redacted]

Wed, Sep 3, 2025 at 11:45 AM

---------- Forwarded message ---------
From: **Heather Archer** [redacted]
Date: Tue, Aug 19, 2025 at 2:38 PM
Subject: Re: change in campus practice
To: James O'Brien [UC Berkeley] [redacted]

Dear Professor O'Brien,

You are free to share your own file. This change in campus practice applies to everyone and was changed in response to concerns raised by faculty. There was no written policy, but the letter had been used in its previous form for decades. Jack McKimm will be in touch regarding next steps with regards to the PERB complaint.

Regards,
Heather Archer

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>
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> 9. Will UC issue updated guidance or a formal retraction to employees who previously received these warnings?

[redacted] 1/3

PERB Received
09/05/25 15:23 PM

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09/05/25

10. Has any employee ever been disciplined or otherwise penalized for sharing information from their own personnel file? If so, will those actions be reviewed or reversed?

11. In cases where employees were deterred from sharing their own files due to the prior warnings, and may have experienced professional, emotional, legal, financial, or other harm as a result, will UC consider taking steps to address or remedy that harm?

12. Has UC ever refused to accept materials in a grievance, legal filing, or administrative complaint on the grounds that those materials were improperly shared from a personnel file?

13. I believe that you know that this issue is now the subject of a PERB complaint. Has the University reviewed its prior communications and policies in light of that proceeding? Has it made or will it make any disclosures to PERB acknowledging that the prior policy was mistaken or withdrawn?

14. Has UC Berkeley or the UC system been contacted by any external agency, government office, reporters, or other outside entity (other than PERB) regarding the University's policy or communications about employee rights to share their own personnel file? If so, which agencies, and what information has been provided in response?

Thank you again. I look forward to your response.

Sincerely,

James O'Brien

On Aug 18, 2025, at 6:43 PM, Heather Archer [redacted] wrote:

Dear Professor O'Brien,

I write to inform you that UC Berkeley no longer restricts the sharing of your personnel file with others. No disciplinary action will be taken against you for sharing the file, should you wish to do so.

Regards,
Heather Archer

--
Heather Archer, Assistant Vice Provost
Academic Personnel Office

—

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--
Heather Archer, Assistant Vice Provost
Academic Personnel Office

[redacted] 2/3

PERB Received
09/05/25 15:23 PM

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09/05/25

--
Heather Archer, Assistant Vice Provost
Academic Personnel Office

[redacted] 3/3

PERB Received
09/10/25 17:08 PM

PERB Filed
09/10/25

September 8, 2025

Joseph Eckhart
Deputy General Counsel
Public Employment Relations Board
1515 Clay Street, Suite 2206
Oakland, CA 94612

Re: Supplemental Statement Regarding Unfair Practice Charge SF-CE-1524-H

Dear Mr. Eckhart,

I am writing to supplement my prior submission in this matter and to respond to the University's position statement dated September 5, 2025. I appreciate the Board's attention to this case and the opportunity to provide further clarification.

While I acknowledge that the University has stated it will no longer issue the warning that employees may not share their own personnel files, I do not believe that resolves the issues raised in my original charge. To the contrary, the University's conduct, including its recent effort to pressure me to drop the case, makes a full investigation and formal resolution more important than ever.

After I filed the charge, I was contacted by the University's representative, Mr. Jack McKimm. In addition to brief email messages

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09/10/25 17:08 PM

PERB Filed
09/10/25

(please see attached), he requested a phone call, which we held on August 22. During that call, he encouraged me to withdraw the charge. He told me there was no longer any point in pursuing it and said it was common practice for the University to change its practice once a complaint was filed with PERB, at which point the complaint would typically be dropped. I explained that I disagreed, and that I think a private reversal without acknowledgment or redress is not acceptable.

I noted that I had attempted to raise this concern internally and was stonewalled. It was only after filing the charge that I received any serious response. The University's own communications now admit the warning had been used for *decades*. I believe the University cannot simply stop using a longstanding improper policy without acknowledging the harm it caused and taking steps to prevent it from returning. Many employees may have been misled, chilled, or harmed as a result of that practice. Some may have incurred legal costs, withheld complaints, or lost opportunities due to fear of violating what they were told was University policy. They deserve to be informed and have their rights clarified. Without formal notice to those previously affected, many employees may continue to believe the restriction is still in place and may continue limiting their speech or access to remedies as a result. That chilling effect remains unaddressed.

After I made these points, Mr. McKimm became abrupt, and the tone of the conversation shifted noticeably. I left the call feeling misled by his earlier collegial statements and afterward feeling pressured and concerned about consequences. I am a single faculty member, and the people involved on the other side of this matter include senior

administrators and UC labor counsel. I have seen how the University sometimes interprets policies in inconsistent or self-serving ways, and I am concerned that continuing to press this matter could put me at risk. At the same time, that pressure only reinforces why this complaint must be taken seriously. I am left wondering whether others in the past were similarly pressured to drop complaints or back away from raising valid concerns. As a Senate faculty member, I do not have the benefit of union representation. Like many faculty, I am expected to navigate these situations alone, which makes this kind of institutional pressure particularly concerning.

I also want to be clear that I do not believe this now-disavowed policy was a good-faith misinterpretation of the rules. There is no plausible reason to tell employees they cannot share documents about decisions that affect their own careers, except to prevent those decisions from being scrutinized. The policy served no legitimate institutional purpose other than to shield decisions from accountability. It was not designed to protect privacy; it was designed to suppress oversight. A decision was made to use this language as a way to block public exposure of internal decisions. This was not a mistake. It was a strategy. It is, in effect, a case of the fox tasked with guarding the chickens, instead eating the chickens, and then pretending it was an honest misunderstanding when caught.

The University's statement avoids the core issues. It does not acknowledge that the prior restriction was improper. It does not explain how the policy originated or why it was allowed to remain in use for so long. It does not commit to formally correcting the record, informing

those previously affected, or publicly clarifying the change. It does not promise that the restriction will not return in some form once the complaint is dismissed. It also does not answer the 14 specific questions I submitted to AVP Heather Archer on August 19, many of which are directly relevant to the scope of harm and the University's internal handling of this policy. The University's refusal to respond to my 14 questions, many of which are procedural and factual, not accusatory, demonstrates an ongoing failure to engage with the underlying issues.

The fact that the restriction was never written into formal policy does not lessen its impact or make it any less subject to PERB's review. It was communicated in writing and functioned as a directive that chilled protected activities. The University's claim that this was not a 'written policy' is beside the point. The restriction was communicated in formal letters and carried institutional authority. Employees were expected to comply, and many likely did.

In terms of resolution, I do not believe this matter should be closed simply because the University has stopped sending the letter. A meaningful resolution should at least include:

- A formal acknowledgment that the restriction was improper and should not have been used.
- A binding commitment that the University will not reinstate this or any similar restriction without full legal review and public notice.
- A public or campus-wide communication informing faculty and staff that the restriction no longer applies and that the University now affirms their right to share their own personnel files.

PERB Received
09/10/25 17:08 PM

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- A formal notice posted in campus communications channels and online, affirming employee rights and the University's withdrawal of the restriction, as I understand have been ordered in other PERB settlements.
- A list submitted to PERB of all individuals who previously received the restriction, along with confirmation that each has been informed in writing that the policy was incorrect and is no longer in effect. (If the university does not have readily available records of all notices, it can nevertheless search relevant email records, including attachments, for the relevant keywords to identify at least a portion of those notified.)
- A report identifying any lawsuits, grievances, administrative complaints, or other proceedings in which this policy was cited, and whether those outcomes may have been affected as a result.
- A response to the 14 questions I previously submitted, which remain unanswered and go to the heart of the University's responsibility to explain its conduct.
- A clear accounting of how this policy was implemented, how it persisted for so long, and who authorized or approved its use.

Finally, I ask PERB to consider whether other employees may have been pressured to drop complaints or discouraged from filing them because of similar pressure. I feel that the communication was improper and hope the board will take steps to determine whether this pattern of institutional pressure extends beyond my case.

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I do not believe it would be appropriate for PERB to dismiss this charge. A policy that was enforced literally for decades cannot be resolved by quietly saying it no longer applies. A full record should be made, and appropriate corrective measures should be required. Please let me know if I can provide any further information.

Sincerely,

James O'Brien

Professor, EECS Division

University of California, Berkeley

PERB Received
09/10/25 17:08 PM

PERB Filed
09/10/25

From: James O'Brien [UC Berkeley] [redacted]
Subject: Re: Time to speak?
Date: August 21, 2025 at 6:32 PM
To: Jack McKimm [redacted]

Sounds good.

> On Aug 21, 2025, at 6:25 PM, Jack McKimm [redacted] wrote:
>
> Hi James, no worries. I think I can do 4:00pm tomorrow, should we try for that? Thanks.
>
> On Thu, Aug 21, 2025 at 3:22 PM James O'Brien [UC Berkeley] [redacted] wrote:
> > Hi Jack,
> >
> > Apologies, but I was mistaken about 3-4 working. Does anything after 4pm work for you?
> >
> > > On Aug 21, 2025, at 3:21 PM, Jack McKimm [redacted] wrote:
> > >
> > > Hello Professor.
> > >
> > > I can do Friday at 3:00 Pacific if that still works for you? I know you are very busy, I won't take too much of your time, I just wondered if we could chat a little about this case and where it is at, next steps. I've found telephone to be more conversational, more efficient than emails back and forth. Thanks James!
> > >
> > > On Thu, Aug 21, 2025 at 11:40 AM James O'Brien [UC Berkeley] [redacted] wrote:
> > > > Hi Jack,
> > > >
> > > > How would tomorrow (Friday) at either 3:00, 3:30, or 4:00 work for you?
> > > >
> > > > What issues would you like to discuss?
> > > >
> > > > Best,
> > > >
> > > > James.
> > > >
> > > > > On Aug 20, 2025, at 3:53 PM, Jack McKimm [redacted] wrote:
> > > > >
> > > > > Hello, good afternoon Professor O'Brien.
> > > > >
> > > > > As you may know I am representing the employer, UC Berkeley, before the California PERB in the matter of Charge SF-CE-1524-H. I was wondering if you might have a little time to chat about that later this week? Is there a time Thursday or Friday, for example, that would work well for you? If not feel free to propose a day that works for you. Thank you.
> > > > >
> > > > > Very Respectfully,
> > > > >
> > > > > --
> > > > > Jack McKimm, JD
> > > > > Senior Labor Relations Hearing Consultant
> > > > > University of California, Berkeley
> > > > > 2850 Telegraph Avenue, Floor 4, Berkeley, CA 94705
> > > > > Phone: [redacted]
> > > > > Email: [redacted]
> > > > >
> > > > > **Need ELR assistance? Open a ServiceHub Case (HR Catalog > Employee Changes > Employee Relations)! See more ServiceHub Training Resources here.**
> > > >
> > > > --
> > > > James F. O'Brien
> > > > EECS, Computer Science Division
> > > > University of California, Berkeley
> > > >
> > > > Professor
> > > > [redacted]

--
Jack McKimm, JD
Senior Labor Relations Hearing Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4, Berkeley, CA 94705
Phone: [redacted]
Email: [redacted]

Need ELR assistance? Open a ServiceHub Case (HR Catalog > Employee Changes > Employee Relations)! See more ServiceHub Training Resources here.

--
James F. O'Brien Professor
EECS, Computer Science Division [redacted]
University of California, Berkeley

--
Jack McKimm, JD
Senior Labor Relations Hearing Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4, Berkeley, CA 94705
Phone: [redacted]
Email: [redacted]

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--
James F. O'Brien Professor
EECS, Computer Science Division [redacted]
University of California, Berkeley

PERB Received
09/10/25 17:08 PM

PERB Filed
09/10/25

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

AMENDED UNFAIR PRACTICE CHARGE

Unfair Practice Charge Case Number: SF-CE-1524-H

Date of Amended Charge: 9/10/2025

Amended Charge: ☑ **First** ☐ **Second** **Other** _____

INSTRUCTIONS: File this amended charge form via the e-PERB Portal, with proof of service. Parties exempt from using the e-PERB Portal may file the original form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items. Questions regarding your filing may also be directed to the Board agent assigned to your charge.

1. **Charging Party:** James O'Brien

2. **Respondent:** Regents of the University of California (Berkeley)

3. **PERB Regulation 32621 provides that an amended charge must provide certain information required by PERB Regulation 32615, including contact information for all parties, the statute, regulation, and/or local rule(s) alleged to be violated, and a copy of the local rule(s) if applicable.**

(*Check one box only*)

☐ The undersigned confirms that all of this information has previously been provided to PERB.

☑ To the extent that some of this information has not been previously provided, it is included herein as an attachment.

4. **Statement of Charge:**

Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary*.)

Please see attached.

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on 9/10/2025 (Date)

at Berkeley, CA (City and State).

James F. O'Brien [redacted]

(Type or Print Name) (Signature)

Title, if any: Professor

Mailing address: 731 Soda Hall, EECS Dept, UC Berkeley, Berkeley, CA 94720

Telephone Number: [redacted] E-Mail Address: [redacted]

PERB-61-amended (02/2021)

PERB Received
09/10/25 17:08 PM

PERB Filed
09/10/25

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of California. I am over the age of 18 years. The name and address of my

Residence or business is EECS Dept, UC Berkeley, Berkeley, CA 94720

On 9/10/2025 (*Date*), I served the ammened compaint and response (*Description of document(s)*)

(*Description of document(s) continued*) in Case No. SF-CE-1524-H (PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

- ☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

[redacted]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 9/10/2025 (*Date*),

at Berkeley, CA (*City*) (*State*).

James O'Brien	[redacted]
(*Type or print name*)	(*Signature*)

(02/2021) Proof of Service

PERB
California Public Employment Relations Board

San Francisco Regional Office
1515 Clay Street, Suite 802
Oakland, CA, 94612-1403
Telephone: [redacted]

September 11, 2025

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, CA 94607

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705

Re: *James O'Brien v. Regents of the University of California (Berkeley)*
Unfair Practice Charge No. SF-CE-1524-H
Notice of Amended Unfair Practice Charge

Dear Parties:

On September 10, 2025, Charging Party filed a First Amended Charge in the above-referenced matter. Respondent is hereby afforded an opportunity to file a position statement in response to the amended charge. Any response must be signed under penalty of perjury with a declaration that the response is true and complete to the best of Respondent's knowledge and belief and must be served on Charging Party. If no response is filed by **September 25, 2025**, I will proceed with my review of the amended charge and issue a complaint where appropriate. (See Cal. Code Regs., tit. 8, § 32620(c).)

Sincerely,

[redacted]

Joseph Eckhart
Deputy General Counsel

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, Sacramento Regional Office, 1031 18th Street, Sacramento, CA, 95811-4124.

On September 11, 2025, I served the Notice of Amended Unfair Practice Charge regarding Case No. SF-CE-1524-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.
____Personal delivery.
_X_Electronic service (e-mail).

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720
Email: [redacted]

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: [redacted]
Email: [redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705
Email: [redacted]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 11, 2025, at Sacramento, California.

Victoria Cherniogl	[redacted]
(Type or print name)	(Signature)

PERB Received
09/25/25 14:12 PM

UC Berkeley People & Culture

PERB Filed
09/25/25

September 25, 2025

Sent via PERB ePortal and Email

Joseph Eckhart
Deputy General Counsel
Public Employment Relations Board
San Francisco Regional Office
1515 Clay Street, Suite 2206
Oakland, CA 94612-1403

Re: **Respondent's Supplemental Position Statement** – *Professor James O'Brien v. Regents of the University of California (UC Berkeley)* Unfair Practice Charge No. SF-CE-1524-H

Dear Attorney Eckhart:

The Regents of the University of California, Berkeley (hereinafter "Employer" or "University") submit this letter in response to the supplemental statement filed on September 10 by Professor James O'Brien (hereinafter "Charging Party").

The University disagrees with the Charging Party's characterization that the University pressured him to drop the case. As explained in the University's position statement filed on September 5, the University has remedied the issues in the charge by changing our practice related to faculty personnel files going forward. Since the Charging Party was made aware of this change in practice, we reached out to simply inquire if the Charging Party would be withdrawing the charge or if he wanted to engage in settlement discussions. The University has changed its campus-wide practice and has no intention to revert to its pre-charge practice. The University is only aware of one other faculty member who requested to share their file. That individual was notified of the change around the same time as the Charging Party. Therefore, the impact noted by the Professor is speculative and it is not clear there was any further impact from the complained-of practice.

The Charging Party referenced his request that Assistant Vice Provost Heather Archer respond to 14 questions purportedly related to this charge. On the contrary, the questions are overbroad and seek information that is irrelevant, and immaterial to resolving this specific charge. For example, the historical development of, and reasoning behind, the University's practice is not relevant to the charge, particularly since the practice has been rescinded. Further, the Charging Party also seeks information that is attorney-client privileged, that is not maintained in the regular course of business and information that is not already in existence. The University is not obligated to answer these types of questions in the context of an unfair practice charge before PERB.

As stated previously, The University believes that the core issues which the Charging Party brought before PERB have been resolved.

Respectfully submitted,

Jack McKimm
Senior Employee & Labor Relations Hearing Consultant
University of California, Berkeley

Attachments: Proof of Service

PERB Received
09/25/25 14:12 PM

PERB Filed
09/25/25

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of California. I am over the age of 18 years. The name and address of my

Residence or business is 2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

On 09/25/2025 (*Date*), I served the Supplemental Position Statement (*Description of document(s)*)

UC Berkeley (*Description of document(s) continued*) in Case No. #SF-CE-1524-H (PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

☐ personal delivery;

☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

[redacted] (Charging Party)

[redacted] (PERB Agent)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 09/25/2025 (*Date*),

at Berkeley (*City*) California (*State*).

Jack McKimm (*Type or print name*) [redacted] (*Signature*)

(02/2021) Proof of Service

PERB Received
09/28/25 20:23 PM

September 28, 2025

Joseph Eckhart
Deputy General Counsel
Public Employment Relations Board
1515 Clay Street, Suite 2206
Oakland, CA 94612

Re: Response to University's September 25 Filing — Unfair Practice Charge SF-CE-1524-H

I am writing in response to the University's supplemental position statement submitted on September 25, 2025.

The University now claims that the restriction at issue was used for decades, yet also asserts that it was applied only recently to me and one other faculty member. These two claims cannot be reconciled. If the policy was truly long-standing, it likely affected many others. If it was only used twice, then its duration and significance are being misrepresented.

The University also claims that it is not obligated to explain the history or legal basis for the restriction because the practice has been rescinded. That position is deeply troubling. UC personnel policy is not supposed to be developed or sustained in secret. It is supposed to be set through shared governance and public administrative procedures. The policy at issue was enforced in writing, for years, with clear

PERB Received
09/28/25 20:23 PM

language that employees were expected to follow. Now the University invokes attorney-client privilege to avoid explaining how this policy came to exist or why it was maintained.

As I understand it, attorney-client privilege applies only to specific legal advice, and only when certain conditions are met. The University's blanket assertion of privilege suggests that relevant documents or discussions do exist. That raises an obvious contradiction as the University also claims that no such information exists or was maintained in the regular course of business. If that is true, how could they have determined that the information is privileged? You cannot declare that something is privileged unless you first locate and evaluate it. Either the documents exist, or they do not. If they do, they should be subject to review unless privilege properly applies. If they do not, then privilege cannot apply. The use of legal confidentiality here appears less about protecting legitimate attorney advice and more about shielding these now-admitted documents from PERB review.

The University also denies that I was pressured to withdraw the charge. That may reflect their view of their own intent, but it does not reflect the impact of their conduct on me. The phone call I received from Mr. McKimm was inappropriate as a whole. The first part of the conversation used a collegial tone but was clearly aimed at convincing me that the matter was resolved and that continuing would serve no purpose. Once I made clear that I did not agree, the tone shifted abruptly. The call ended on a noticeably hostile note. In my view, both phases of the call were improper. One misrepresented the reality of my rights, and the other conveyed an implicit consequence for asserting them.

PERB Received
09/28/25 20:23 PM

Finally, I reject the University's claim that my questions are irrelevant. My 14 questions, sent to AVP Heather Archer on August 19, go to the heart of this case. They seek to clarify how the policy was created, how it was used, who was affected, and what steps the University is taking to address the resulting harm. These are procedural and factual matters. The University's refusal to answer even basic questions demonstrates that the secrecy surrounding this policy continues, even after the practice has allegedly ended.

The fact that the restriction was never written into formal policy does not lessen its impact or make it any less subject to PERB's review. It was communicated in writing and functioned as a directive that chilled protected activity.

For all of these reasons, I ask PERB not to dismiss this charge. The University's recent statements are evasive, and they raise new and serious contradictions. The impact of the policy remains unaddressed. The secrecy around its use and origin has deepened, not lessened. A quiet reversal under pressure does not cure a longstanding problem, and it does not absolve the University from its responsibility to provide transparency, accountability, and corrective action.

Thank you for your continued attention to this matter.

Sincerely,
James O'Brien
Professor, Department of Electrical Engineering and Computer Science

PERB Received
09/28/25 20:23 PM

University of California, Berkeley

PERB Received
09/28/25 20:23 PM

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of California. I am over the age of 18 years. The name and address of my

Residence or business is EECS Dept, UC Berkeley, Berkeley, CA 94720

On 9/28/2025 (*Date*), I served the ammened compaint and response (*Description of document(s)*)

(*Description of document(s) continued*) in Case No. SF-CE-1524-H (PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

- ☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: [redacted]
Email: [redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705
Email: [redacted]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 9/28/2025 (*Date*),

at Berkeley, CA (*City*) (*State*).

James O'Brien [redacted]

(*Type or print name*) | (*Signature*)

(02/2021) Proof of Service

PERB
California Public Employment Relations Board

San Francisco Regional Office
1515 Clay Street, Suite 802
Oakland, CA, 94612-1403
Telephone: [redacted]

May 22, 2026

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, CA 94607

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705

Re: *James O'Brien v. Regents of the University of California (Berkeley)*
Unfair Practice Charge No. SF-CE-1524-H
COMPLAINT

Dear Parties:

The Office of the General Counsel has issued the enclosed COMPLAINT in the above-entitled matter. The Respondent is required to file an **ANSWER** within twenty (20) calendar days from the date of service of the COMPLAINT, pursuant to PERB Regulation 32644.[1] The required contents of the **ANSWER** are described in PERB Regulation 32644(b).

If you have not filed a Notice of Appearance form, one should be completed and returned with your **ANSWER**. Please be aware that once legal counsel is designated, PERB will only correspond with that individual(s).

[1] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of PERB's Regulations may be found at www.perb.ca.gov.

An informal settlement conference will be scheduled shortly. Please direct all inquiries, filings and correspondence to the undersigned. Designated legal counsel who do not attend the Informal Conference for any reason, must designate in writing consent that the meeting go forward in their absence, including, but not limited to the execution of a settlement agreement.

Sincerely,

[redacted]

Laura Davis
Principal Attorney

LZD

Enclosure

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	Case No. SF-CE-1524-H COMPLAINT

It having been charged by Charging Party that Respondent engaged in unfair practices in violation of Government Code section 3571, the General Counsel of the Public Employment Relations Board (PERB), pursuant to Government Code sections 3563(h) and 3563.2 and California Code of Regulations, title 8, section 32640, issues this COMPLAINT on behalf of PERB and ALLEGES:

1. Charging Party is an employee within the meaning of Government Code section 3562(e).

2. Respondent is an employer within the meaning of Government Code section 3562(g).

3. On or about July 15, 2025, Respondent provided Charging Party with a copy of his five-year merit review file, and informed Charging Party, in writing, that “the University does not consent to your sharing copies of these documents with anyone other than your recognized agent, such as legal counsel.”

4. By the acts and conduct described in paragraph 3, Respondent interfered with employee rights guaranteed by the Higher Education Employer-Employee Relations Act in violation of Government Code section 3571(a).

Any amendment to the complaint shall be processed pursuant to California Code of Regulations, title 8, sections 32647 and 32648.

DATED: May 19, 2026

Joseph Eckhart
Interim General Counsel

By _[redacted]_
Sarah Harris
Regional Attorney

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, Sacramento Regional Office, 1031 18th Street, Sacramento, CA, 95811-4124.

On May 22, 2026, I served the Cover Letter and Complaint regarding Case No. SF-CE-1524-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.
____Personal delivery.
_X_Electronic service (e-mail).

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720
Email: [redacted]

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: [redacted]
Email: [redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705
Email: [redacted]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 22, 2026, at Sacramento, California.

Julia Robinson
(Type or print name)

[redacted]
(Signature)

PERB Received
06/11/26 14:09 PM

Jack McKimm
University of California, Berkeley
2850 Telegraph Ave.
Berkeley, CA 94705
[redacted]

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent,	Case No.: SF-CE-1524-H ANSWER TO COMPLAINT

ANSWER TO COMPLAINT

Pursuant to Public Employment Relations Board ("PERB") Regulation 32644 (Cal. Code Regs. title 8, section 32644), the Regents of the University of California ("Respondent") answers the Complaint issued in the matter of the above-referenced unfair practice charge, as follows:

1. Respondent ADMITS the allegations contained in Paragraph 1 of the Complaint.
2. Respondent ADMITS the allegations contained in Paragraph 2 of the Complaint.
3. Respondent DENIES the allegations contained in Paragraph 3 of the Complaint.
4. Respondent contends that the allegations contained in Paragraph 4 of the Complaint constitute a legal conclusion for which no response is required. To the extent a response is required, Respondent DENIES the allegation.

PERB Received
06/11/26 14:09 PM

AFFIRMATIVE DEFENSES

The Respondent reserves the right to assert additional affirmative defenses.

Dated this 11th day of June, 2026.

[redacted]

Jack McKimm,
UC Berkeley
Sr. Employee & Labor Relations
Hearing Consultant

PERB Received
06/11/26 14:09 PM

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of California. I am over the age of 18 years. The name and address of my

Residence or business is 2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

On 06/11/2026 (*Date*), I served the Answer to Complaint (*Description of document(s)*)

Answer to Complaint (*Description of document(s) continued*) in Case No. SF CE 1524 H (PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

- ☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

[redacted]
James O'Brien, Charging Party

[redacted]
Laura Z Davis, Counsel for PERB

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 06/11/2026 (*Date*),

at Berkeley (*City*) California (*State*).

Jack McKimm (*Type or print name*) [redacted] (*Signature*)

(02/2021) Proof of Service

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	Case No. SF-CE-1524-H **PREHEARING MEMORANDUM AND NOTICE OF VIRTUAL CASE MANAGEMENT CONFERENCE** **(PERB Regs. 32170, 32207, 32690)**

PLEASE BE ADVISED that the Public Employment Relations Board (PERB or Board) will schedule a virtual Case Management Conference (CMC) in the above case. Parties and/or their designated representatives, as applicable, shall meet and confer and then advise the undersigned Administrative Law Judge (ALJ) of their mutual availability for scheduling the virtual CMC during the week of August 3-7, 2026. If the parties do not advise the ALJ of a mutually available date and time on or before July 24, 2026, the ALJ will schedule this event at his discretion.

As detailed below, the primary purpose of the CMC is to determine whether this case can be resolved on a written record pursuant to PERB Regulation 32207.[1]

BACKGROUND

On July 15, 2025, Charging Party James O'Brien filed with PERB an unfair practice charge (Original UPC) alleging that Respondent Regents of the University of California (University) violated employee rights by advising O'Brien that the University does not consent to him sharing the contents of his 2022 five-year merit review file

[1] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

"with anyone other than [his] recognized agent, such as legal counsel." Attached to the Original UPC was a partially redacted letter dated July 15, 2025 from Vice Provost for the Faculty Victoria Plaut addressed to a Professor in the Department of Electrical Engineering and Computer Sciences, which included the above-quoted passage.

On September 5, 2025, the University filed with PERB an unverified position statement.

On September 10, 2025, O'Brien filed a First Amended Unfair Practice Charge (Amended UPC) which included additional factual details but otherwise reiterated the material allegations of the Original UPC.

On May 19, 2026, PERB issued a complaint (Complaint), which was served on May 22, 2026. The Complaint alleged one count of interference with employee rights in violation of section 3571, subdivision (a) of the Higher Education Employer-Employee Relations Act (HEERA) when, on or about July 15, 2025, the University provided O'Brien with a copy of his five-year merit review file, and informed him in writing that "the University does not consent to your sharing copies of these documents with anyone other than your recognized agent, such as legal counsel."

On June 1, 2026, the University answered the Complaint by admitting some factual allegations, denying the material factual allegations referenced above, and denying liability. The Answer asserted no affirmative defenses.

On July 16, 2026, the case was transferred to PERB's Division of Administrative Law for adjudication. This case is not yet scheduled for formal hearing.

ISSUES FOR DISCUSSION AT THE CMC

PERB Regulation 32207 provides: "The parties may submit stipulated facts where appropriate to the Board agent. No hearing shall be required unless the parties dispute the facts in the case." At the CMC, the parties or their legal counsel must be prepared to address the following matters with the ALJ:

1. Theories of liability, including any disputed material facts;
2. Witnesses to be called, subjects for examination, and expected length of each witness's testimony;
3. Documents to be introduced;
4. Anticipated evidentiary issues and related objections; and
5. Any other motions that can be made before the hearing, particularly motions that may resolve issues of law.

Consideration of these matters will assist the ALJ and the parties in adjudicating this dispute in the most efficient manner.

All inquiries concerning this case should be addressed to the undersigned via e-mail at: [redacted]. All e-mail and other communications with the assigned ALJ must include the opposing party or counsel, as applicable, pursuant to PERB Regulation 32185.

DATED: July 17, 2026

By _____
Scott Miller
Administrative Law Judge

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Los Angeles, 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, Los Angeles Regional Office, 425 W. Broadway, Suite 400, Glendale, CA, 91204-1269.

On July 17, 2026, I served the Prehearing Memorandum and Notice of Virtual Case Management Conference in PERB Unfair Practice Case No. SF-CE-1524-H on the parties listed below by

_X_ Electronic service (e-mail).

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720
Email: [redacted]

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: [redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705
Email: [redacted]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 17, 2026, at Los Angeles, California.

Scott Miller	[redacted]
(Type or print name)	(Signature)

PERB Received
07/31/26 10:40 AM

Jack McKimm
University of California, Berkeley
2850 Telegraph Ave.
Berkeley, CA 94705
[redacted]

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent,	Case No.: SF-CE-1524-H AMENDED ANSWER TO COMPLAINT

AMENDED ANSWER TO COMPLAINT

Pursuant to Public Employment Relations Board ("PERB") Regulation 32644 (Cal. Code Regs. title 8, section 32644), the Regents of the University of California ("Respondent") now files this answer to the Complaint issued in the matter of the above-referenced unfair practice charge, as follows:

1. Respondent ADMITS the allegations contained in Paragraph 1 of the Complaint.
2. Respondent ADMITS the allegations contained in Paragraph 2 of the Complaint.
3. Respondent ADMITS the allegations contained in Paragraph 3 of the Complaint.
4. Respondent ADMITS the allegations contained in Paragraph 4 of the Complaint.

PERB Received
07/31/26 10:40 AM

AFFIRMATIVE DEFENSES

The Respondent will not be asserting any affirmative defenses in this matter.

Dated this 31st day of July, 2026.

[redacted]

Jack McKimm,
UC Berkeley
Sr. Labor Relations Hearing Consultant

PERB Received
07/31/26 10:40 AM

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of California. I am over the age of 18 years. The name and address of my

Residence or business is 2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

On 07/31/2026 (*Date*), I served the Amended Answer (*Description of document(s)*)

_____ (*Description of document(s) continued*) in Case No. SF CE 1524 H (PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

☐ personal delivery;

☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

[redacted]
Judge Scott Miller
Presiding ALJ

[redacted]
Professor James O'Brien
Charging Party

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 07/31/2026 (*Date*),

at Berkeley (*City*) California (*State*).

Jack McKimm (*Type or print name*) [redacted] (*Signature*)

(02/2021) Proof of Service

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	UNFAIR PRACTICE CASE NO. SF-CE-1524-H **CANCELLATION OF CASE MANAGEMENT CONFERENCE; DEADLINE FOR FILING BRIEFS** (PERB REG. 32170)

On July 31, 2026, Respondent Regents of the University of California filed an Amended Answer to the Complaint in this matter. The Amended Answer admits all allegations in the Compliant and asserts no affirmative defenses. It is therefore unnecessary to convene the virtual Case Management Conference scheduled for August 6, 2026 or to discuss preparation of a written record for this matter. The Case Management Conference is therefore cancelled.

If the parties wish to address any remaining issue(s) in this matter, they may do so by filing and serving briefs in accordance with PERB Regulations on or before August 18, 2026.

DATED: August 4, 2026

[redacted]
Scott Miller
Administrative Law Judge

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Los Angeles, 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, Los Angeles Regional Office, 425 W. Broadway, Suite 400, Glendale, CA, 91204-1269.

On August 4, 2026, I served the CANCELLATION OF CASE MANAGEMENT CONFERENCE; DEADLINE FOR FILING BRIEFS in PERB Unfair Practice Case No. SF-CE-1524-H on the parties listed below by

_X_ Electronic service (e-mail).

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720
Email: [redacted]

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: [redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705
Email: [redacted]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 4, 2026, at Glendale, California.

Scott Miller	[redacted]
(Type or print name)	(Signature)

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. **REGENTS OF THE UNIVERSITY OF CALIFORNIA,** Respondent.	**Case No. SF-CE-1524-H** **CHARGING PARTY'S BRIEF REGARDING REMEDY**

I. INTRODUCTION

Respondent's Amended Answer, filed July 31, 2026, admits every allegation in the Complaint and states that Respondent will not assert any affirmative defenses. The Administrative Law Judge's August 4, 2026 order accordingly cancelled the scheduled Case Management Conference and invited briefing on any remaining issues. Liability is therefore no longer disputed. The remaining question is the remedy necessary to effectuate the Higher Education Employer-Employee Relations Act (HEERA).

The admitted violation arose from an official written warning, transmitted with Charging Party's personnel file, stating that the University did not consent to his sharing copies of that file with anyone other than a recognized agent, such as legal counsel. A private change in practice does not fully correct that warning. Prior recipients may reasonably continue to believe the restriction remains binding, similarly situated employees have not received an authoritative statement of their rights, and the present record does not establish that the challenged language has been removed from all active templates and instructions.

Charging Party therefore requests conventional and tailored remedial relief: a cease and desist order; physical and electronic notice to the affected employee population; direct correction to identifiable prior recipients; a focused accounting of the origin, asserted basis, duration, implementation, and withdrawal of the practice; reasonable compliance measures; and preservation of make-whole relief for any identifiable current or former employee who establishes an economic loss materially caused by the admitted violation. If facts beyond the admitted Complaint are necessary to determine the scope of notice or make-whole relief, Charging Party requests a limited remedial record confined to those issues.

II. GOVERNING REMEDIAL PRINCIPLES

Government Code section 3563.3 authorizes PERB to direct an offending party to cease and desist from an unfair practice and to take such affirmative action, including back pay, as will effectuate the policies of HEERA. A properly designed remedy should restore the situation as nearly as possible to what would have existed absent the violation, make injured persons whole for

proven losses, and deter recurrence without becoming punitive. (Sacramento City Unified School District (2020) PERB Decision No. 2749 E, pp. 10 to 11.)

For conduct that interferes with protected rights, PERB's ordinary remedy includes an order that the employer cease and desist and make whole employees adversely affected by the unlawful conduct. (City and County of San Francisco (2017) PERB Decision No. 2536-M.) PERB's traditional notice remedy serves educational and preventive purposes by identifying the unlawful conduct, assuring affected employees of their rights, explaining that the controversy has been resolved, and preventing recurrence. (City and County of San Francisco (2021) PERB Decision No. 2757-M, p. 13.)

PERB also requires electronic notice when the offending party ordinarily communicates with employees by email, intranet, websites, or comparable electronic means. (City of Sacramento (2013) PERB Decision No. 2351 M, p. 44.) PERB has ordered both physical and electronic notice against the Regents of the University of California. (Regents of the University of California (2021) PERB Decision No. 2783-H.)

III. VOLUNTARY CESSATION DOES NOT ELIMINATE THE NEED FOR CORRECTIVE NOTICE

PERB has recognized that an employer remains liable after voluntarily returning to the lawful status quo, although PERB may omit a particular remedy if the return is prompt, permanent, and renders that remedy unnecessary. (Oxnard Union High School District (2022) PERB Decision No. 2803-E.) That principle does not eliminate the need for corrective notice here.

Even if Respondent has permanently stopped sending the challenged language, cessation alone does not inform prior recipients that the warning was unlawful, dissipate the residual chilling effect, establish that all active templates and instructions have been corrected, identify employees who relied on the warning, or preserve relief for economic losses caused by that reliance. The principal relief requested is therefore not merely an order to stop sending a letter that Respondent says it has already stopped sending. It is affirmative relief that corrects the written warning through an equally clear and authoritative communication and verifies that the unlawful restriction has actually been removed.

This need is supported by Respondent's own remedial communications. On August 19, 2025, Assistant Vice Provost Heather Archer informed Charging Party that the change in campus practice applied to everyone and that the letter had been used in its previous form for decades. (Declaration of James O'Brien, Exhibit 1.) A practice described as campuswide and used for decades cannot be fully corrected by a private email to two known recipients. The scope of notice should correspond to the scope of the practice. PERB has distinguished between violations limited to a particular employee group and rules affecting a broader workforce. (Kern County Hospital Authority (2022) PERB Decision No. 2847 M, pp. 18 to 19; City and County of San Francisco (2017) PERB Decision No. 2536 M.)

IV. PERB SHOULD ISSUE A CEASE AND DESIST ORDER

Respondent should be ordered to cease and desist from:

1. Informing employees that University ownership of personnel records, or the inclusion of documents in a personnel file, by itself prohibits an employee from sharing materials relating to that employee's own employment with anyone other than legal counsel or another recognized agent.
2. Maintaining, communicating, or enforcing the challenged restriction or any substantially similar blanket restriction.
3. Interfering with, restraining, or coercing employees in the exercise of rights protected by HEERA in any like or related manner.

This requested order would not adjudicate any specific restriction imposed by another law to protect information concerning a third party. It would prevent Respondent from relying solely on University ownership or placement in a personnel file as the basis for a blanket prohibition against an employee sharing materials relating to that employee's own employment.

V. PHYSICAL AND ELECTRONIC NOTICE ARE NECESSARY

The notice population should include, at minimum:

1. Current UC Berkeley faculty and academic appointees eligible to request access to academic personnel files through the same or a substantially similar process.
2. Academic Personnel Office staff, deans, department chairs, and other administrators responsible for responding to personnel file requests or communicating restrictions concerning those files.
3. Any additional employee group that Respondent identifies through the compliance search as having received the challenged language or substantially similar language.

Respondent should distribute the notice through the electronic channels it ordinarily uses to communicate academic personnel information, physically post it wherever UC Berkeley ordinarily posts PERB notices, and place it on the internal employee-facing site used to communicate academic personnel policies. Charging Party does not request posting on a public website directed principally to students, parents, or the general public.

This scope is tailored to the practice admitted in this case and to the population that could reasonably remain chilled by the official warning. If the compliance search shows that Respondent communicated the restriction more broadly, the notice population should be expanded accordingly.

VI. IDENTIFIABLE PRIOR RECIPIENTS SHOULD RECEIVE A DIRECT CORRECTION

A general campus notice may not reach former or retired employees, and it may not alert a current employee that the notice specifically corrects a warning personally received years earlier. PERB has required personal delivery where affected employees may no longer work for the employer. (Santa Monica Community College District (1979) PERB Decision No. 103-E, pp. 29-30.)

Respondent should therefore conduct a reasonable search for current and former employees who received the challenged language or substantially similar language and send each identified recipient a direct written correction stating that:

1. The former restriction has been withdrawn and disavowed.
2. The restriction was found to interfere with rights protected by HEERA.
3. Respondent will not enforce the restriction or a substantially similar blanket restriction.
4. A recipient who believes that reliance on the restriction caused an economic loss may seek make-whole relief through PERB compliance procedures.

If Respondent raises legitimate privacy concerns about recipient identities, it may submit the recipient list confidentially to PERB. Charging Party does not seek the names. Respondent should provide an aggregate accounting stating the number of recipients identified, the earliest and latest known dates of use, the offices that issued the language, the number of corrective notices sent, and the number that could not be delivered after reasonable efforts.

VII. A FOCUSED ACCOUNTING OF THE PRACTICE AND COMPLIANCE CERTIFICATION ARE NECESSARY

Because Respondent has stated that the challenged letter was used for decades, the origin, asserted basis, duration, implementation, and withdrawal of the practice are relevant to whether cessation is complete and permanent and to what corrective notice and guidance are necessary. Charging Party therefore seeks a focused accounting of how the practice arose, what authority was asserted for it, how it was applied, and how it was rescinded. Charging Party does not seek disclosure of affected employees' personal identities. Recipient identities may be submitted confidentially to PERB if necessary to provide direct notice or make-whole relief, while Charging Party receives aggregate information.

Respondent should be required to:

1. Identify and remove the challenged language and any substantially similar language from all active form letters, templates, written instructions, guidance documents, and training materials.
2. Identify every known version of the challenged language and the period during which each version was used.
3. Preserve prior versions, records sufficient to identify recipients, and records concerning withdrawal of the language until compliance is complete.
4. Issue written guidance explaining that University ownership of records or inclusion in a personnel file does not itself create a blanket prohibition against an employee sharing materials relating to that employee's own employment.
5. Identify any nonprivileged written policy, instruction, memorandum, form history, or other authority concerning the origin, asserted basis, approval, implementation, maintenance, or withdrawal of the challenged language, or certify that no such document exists.
6. Provide a nonprivileged factual account of the administrative process by which the practice was

adopted, maintained, and withdrawn, including the University offices involved and the policy or legal authority relied upon.

7. Submit a declaration from an authorized official confirming completion of the search, removal, notice, guidance, and accounting requirements.

These measures are necessary to verify that cessation is complete and permanent, determine the scope of corrective notice, and prevent recurrence. Understanding how a decades-long practice arose and what basis was asserted for it is also necessary to determine whether substantially similar restrictions remain embedded in other templates, instructions, or procedures.

VIII. PERB SHOULD PRESERVE MAKE-WHOLE RELIEF FOR AFFECTED EMPLOYEES WHO PROVE ECONOMIC LOSSES

PERB may award monetary relief even when it was not expressly pleaded in the Complaint, and evidence of financial loss may be developed during compliance proceedings. (Los Angeles Unified School District (2017) PERB Decision No. 2518-E.) PERB has specifically allowed affected employees to establish losses in compliance proceedings even where no employee loss was proven during the liability phase. (Regents of the University of California (2021) PERB Decision No. 2783 H, p. 32.) Charging Party therefore requests an order preserving make-whole relief for any identifiable current or former employee who establishes a direct or foreseeable economic loss materially caused by the admitted violation.

Potentially compensable losses may include, where supported by evidence:

1. Reasonable out-of-pocket expenses incurred to obtain legal or professional advice concerning whether the warning could lawfully be followed.
2. Additional legal or professional expenses incurred in a separate lawsuit, grievance, Academic Senate proceeding, administrative complaint, or other matter in material part to remedy, lessen, or avoid the effects of the unlawful warning.
3. Filing fees, records charges, copying expenses, service expenses, and other documented costs caused by the restriction.
4. Lost wages, lost consulting income, or other identifiable professional income materially caused by reliance on the restriction.
5. Reasonable costs incurred to correct or seek reconsideration of another proceeding materially affected by the restriction.
6. Other documented out-of-pocket economic losses materially caused by the restriction.

PERB distinguishes litigation expenses incurred merely to prosecute the present unfair practice case from expenses reasonably incurred in a separate proceeding to remedy, lessen, or stave off the effects of the underlying violation. The latter are analyzed under ordinary make-whole principles. (City of Palo Alto (2019) PERB Decision No. 2664-M, pp. 7-8 & fn. 6; Sacramento City Unified School District (2020) PERB Decision No. 2749-E, pp. 11-15.)

IX. A LIMITED REMEDIAL RECORD SHOULD BE ALLOWED IF NECESSARY

Respondent's admissions eliminate the need for evidence concerning liability. They do not necessarily establish every fact needed to determine the appropriate scope of notice, identify prior recipients, verify removal of the challenged language, or calculate economic losses.

The declaration and Exhibit 1 are submitted solely to address the appropriate remedy. If the Administrative Law Judge concludes that additional facts beyond the admitted Complaint and the evidence submitted with this brief are necessary to resolve the scope of notice, direct correction, or make whole relief, Charging Party requests leave to submit further declarations and authenticated exhibits.

X. REQUESTED RELIEF

Charging Party respectfully requests that PERB issue a decision and order:

1. Finding that Respondent violated Government Code section 3571, subdivision (a).
2. Directing Respondent to cease and desist from maintaining, communicating, or enforcing the challenged restriction or any substantially similar blanket restriction.
3. Directing Respondent not to interfere with, restrain, or coerce employees in the exercise of rights protected by HEERA in any like or related manner.
4. Requiring physical and electronic distribution of a PERB notice to the affected UC Berkeley employee population.
5. Requiring direct written correction to every identifiable current or former employee who received the challenged restriction or substantially similar language.
6. Requiring a reasonable search for prior recipients, active versions of the challenged language, and nonprivileged records concerning the origin, asserted basis, implementation, maintenance, and withdrawal of the practice.
7. Requiring removal of the challenged language from active templates, instructions, guidance, and training materials.
8. Requiring written corrective guidance to personnel administrators.
9. Requiring preservation of records necessary for notice, make-whole relief, and compliance.
10. Requiring a sworn compliance certification and aggregate accounting of the origin, duration, use, withdrawal, recipient search, and corrective notices.
11. Requiring Respondent to make whole any identifiable current or former employee for direct or foreseeable economic losses materially caused by the admitted violation, with amounts and interest determined through compliance proceedings.
12. Retaining jurisdiction over compliance and any limited remedial proceedings necessary to determine notice scope, identify affected employees, calculate economic losses, or verify compliance.
13. Granting any further relief PERB determines necessary to effectuate the purposes of HEERA.

Because the parties' briefs are due on the same date, Charging Party respectfully requests leave to file a short reply if Respondent's brief raises a new factual assertion, legal argument, or objection to relief that could not reasonably have been anticipated.

Respectfully submitted,

Dated: August 13, 2026

[redacted]

James O'Brien
Charging Party, self represented
Professor
Department of Electrical Engineering and Computer Science
University of California, Berkeley
631 Soda Hall, Room 731
Berkeley, California 94720
[redacted]

APPENDIX A
PROPOSED NOTICE TO EMPLOYEES

After an unfair practice charge was filed, the Public Employment Relations Board found that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act by informing an employee that the University did not consent to the employee sharing copies of the employee's own personnel file with anyone other than a recognized agent, such as legal counsel.

The Public Employment Relations Board has ordered UC Berkeley to post and distribute this Notice.

WE WILL NOT inform employees that University ownership of personnel records, or the inclusion of documents in a personnel file, by itself prohibits an employee from sharing materials relating to that employee's own employment with anyone other than legal counsel or another recognized agent.

WE WILL NOT maintain, communicate, or enforce the former restriction or any substantially similar blanket restriction.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of rights protected by the Higher Education Employer-Employee Relations Act in any like or related manner.

WE HAVE withdrawn and disavowed the former restriction and will not enforce it or a substantially similar blanket restriction.

UC Berkeley will provide direct written correction to identifiable current and former employees who received the former restriction or substantially similar language.

An employee who believes that reliance on the former restriction caused an economic loss may seek make-whole relief through the compliance process established by PERB.

REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____

Title: _____

Date: _____

APPENDIX B
PROPOSED ORDER

Upon the admitted allegations in the Complaint, it is ORDERED that Respondent Regents of the University of California, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Informing employees that University ownership of personnel records, or inclusion of documents in a personnel file, by itself prohibits an employee from sharing materials relating to that employee's own employment with anyone other than legal counsel or another recognized agent.
2. Maintaining, communicating, or enforcing the challenged restriction or any substantially similar blanket restriction.
3. Interfering with, restraining, or coercing employees in the exercise of rights protected by HEERA in any like or related manner.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS NECESSARY TO EFFECTUATE HEERA:

1. Post and electronically distribute the Notice to Employees attached as Appendix A in the manner directed by PERB.
2. Conduct a reasonable search for current and former employees who received the challenged language or substantially similar language and provide each identified recipient a direct written correction.
3. Submit the recipient list confidentially to PERB and provide Charging Party an aggregate accounting of the search and notices without disclosing recipient names.
4. Remove the challenged language and substantially similar language from all active form letters, templates, instructions, guidance documents, and training materials.
5. Issue written corrective guidance to administrators responsible for academic personnel records.
6. Provide PERB with a nonprivileged factual account of the administrative process by which the practice was adopted, maintained, and withdrawn, including the University offices involved and the policy or legal authority relied upon.
7. Preserve records necessary to identify prior recipients, determine make-whole claims, and verify compliance until PERB closes compliance proceedings.
8. Submit a sworn certification of compliance from an authorized official.
9. Make whole any identifiable current or former employee for direct or foreseeable economic losses materially caused by the violation, with interest, in amounts determined through compliance proceedings.
10. Comply with any additional directives issued by PERB or its General Counsel to effectuate this Order.

APPENDIX C
DECLARATION OF JAMES O'BRIEN

I, James O'Brien, declare as follows:

1. I am the Charging Party in PERB Case No. SF-CE-1524-H. I have personal knowledge of the matters stated in this declaration and could testify competently to them.

2. On August 18, 2025, I received an email from Heather Archer, Assistant Vice Provost in the UC Berkeley Academic Personnel Office, stating: "UC Berkeley no longer restricts the sharing of your personnel file with others. No disciplinary action will be taken against you for sharing the file, should you wish to do so." On August 19, 2025, I received a second email from Assistant Vice Provost Archer stating: "You are free to share your own file. This change in campus practice applies to everyone and was changed in response to concerns raised by faculty. There was no written policy, but the letter had been used in its previous form for decades." A true and correct copy of the complete email chain is attached as Exhibit 1.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 13, 2026.

[redacted]

James O'Brien

PROOF OF SERVICE

I, James O'Brien, declare that I am over 18 years of age. On August 13, 2026, I filed the following documents through the ePERB Portal in Public Employment Relations Board Case No. SF-CE-1524-H and used the portal's electronic service function to serve the current representatives of Respondent:

- Charging Party's Brief Regarding Remedy, including Appendices A through C
- Exhibit 1, complete Heather Archer email chain dated August 18 and August 19, 2025

The persons served were:

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, California 94607
[redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, California 94705
[redacted]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 13, 2026.

[redacted]

James O'Brien

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of CA. I am over the age of 18 years. The name and address of my

Residence or business is

James O'Brien, 4147 Gateway Building, EECS Dept., Berkeley, CA 94720

On Aug 13, 2026 (*Date*), I served the CHARGING PARTY'S BRIEF REGARDING REMEDY (*Description of document(s)*)

(*Description of document(s) continued*) in Case No. SF-CE-1524-H (PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

- ☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

William Teeling, Senior Counsel
University of California
[redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California
[redacted]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on Aug 13 2026 (*Date*),

at Berkeley (*City*) CA (*State*).

James O'Brien (*Type or print name*) [redacted] (*Signature*)

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STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent,	Case No.: SF-CE-1524-H **BRIEF ON REMEDIES** **AUGUST 18, 2026**

EMPLOYER'S RESPONSE TO CHARGING PARTY'S BRIEF ON REMEDIES

I. Introduction

The University of California at Berkeley ("University," "employer") generally opposes the Charging Party's requested remedies. The Charging Party states in his August 13, 2026 "Brief Regarding Remedy" ("brief") that "the remaining question" in this unfair practice case "is the remedy necessary to effectuate the Higher Education Employer-Employee Relations Act (HEERA)," but the brief proceeds to request that a plenary set of extraordinary and non-standard remedies be imposed against the University. The remedies the Charging Party requests in his brief are disproportionate to the issue in the Complaint and the conduct that the employer admitted to. Because the California Public Employment Relations Board (PERB) is remedial by design and is called to restore the status quo ante, rather than to *punish* employers, the Charging Party's unnecessary and excessive demands fall outside of PERB's statutory authority. The University respectfully requests that the Charging Party's petition for extraordinary relief be denied. The University's arguments follow.

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II. The Requested Remedies Are Unacceptable Because They Are Speculative and Punitive, and PERB's Statutory Authority Is Decidedly Restorative and Remedial

The Charging Party's request called for sweeping, unorthodox remedies, ranging from individualized letters and exhaustive internal audits to open-ended make-whole mechanisms.[1] The requests in the Charging Party's August 13 "Brief Regarding Remedy" far exceed what would be necessary or what would be remedial. These demands are overly broad, speculative, and entirely disproportionate to the violation in the operative Complaint. The purpose of a PERB remedy is not to penalize an employer or hand the charging party a windfall.[2] Rather, it is simply to restore the status quo ante, recreating the conditions that would have existed had the challenged conduct never occurred.[3] Because the circumstances here do not justify radical departures from PERB precedent, the standard remedies PERB customarily orders would be more than adequate to restore the parties to status quo ante "without becoming punitive."

III. The Requested Remedies Are Inappropriate Because PERB Remedies Must Be Tied and Proportionate to the Operative Complaint

The Charging Party's brief states in Section III that "voluntary cessation does not eliminate the need for corrective notice," yet even he acknowledged that "PERB may omit a particular remedy if the return [to the status quo] is prompt, permanent, and renders that remedy unnecessary." The University argues that is what happened in this instance, and that the PERB should credit management's good faith self-remediation.

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[1] In the Charging Party's Brief, he requested "conventional and tailored remedial relief: a cease and desist order; physical and electronic notice to the affected employee population; direct correction to identifiable prior recipients; a focused accounting of the origin, asserted basis, duration, implementation, and withdrawal of the practice; reasonable compliance measures; and preservation of make-whole relief for any identifiable current or former employee who establishes an economic loss materially caused by the admitted violation. If facts beyond the admitted Complaint are necessary to determine the scope of notice or make-whole relief, Charging Party requests a limited remedial record confined to those issues."

[2] *See, e.g., County of Kern & Kern County Hospital Authority* (2019) PERB Decision No. 2659-M, p. 26; *City of Pasadena* (2014) PERB Order No. Ad-406-M, p. 13.

[3] *See id.*

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Although the Charging Party repeatedly references "a practice described as campuswide and used for *decades*," PERB remedial authority is strictly limited to the specific violations alleged in the pleadings. The remedies for this matter properly relate back to a single, voluntarily retracted communication that has not reoccurred and has produced no ongoing harm or chilling effect. The correspondence in question does not maintain a generalized, continuing adverse impact on any terms and conditions of employment. Given the above, the expansive remedies proposed by the Charging Party are unnecessary. The University respectfully requests that the ALJ reject *any* remedy based on unpled violations, including Section III's extensive notice(s) to current and former employees. A standard and localized posting would be more than adequate to restore the parties to status quo ante.

IV. The Requested Cease-and-Desist Order is Overbroad, Vague, and Exceeds PERB's Statutory Jurisdiction

The Charging Party's cease-and-desist order in Section IV must be rejected for several reasons. The employer self-corrected more than a year ago and has never reissued the problematic language. Also, to prohibit the University from relying "solely" on property ownership would create an ambiguous, unworkable standard. The uncertainty would invite constant disputes over the University's motives behind file confidentiality.

Finally, the request exceeds PERB's jurisdiction. PERB's remedial power under HEERA is confined to rectifying proven unfair labor practices (*Regents of the University of California* (*University Professional and Technical Employees*) (1998) PERB Decision No. 1263-H). PERB's statutory authority does not extend to reviewing the core managerial policy choices and internal administrative decisions of educational organizations (*see, e.g., Regents of the University of California* (2012) PERB Decision No. 2300-H). Classifying administrative records as university property is a standard function of institutional management, which protects sensitive, proprietary, and institutional data. It is not the case that every time the University marks a file as inappropriate for general distribution, that is inherently an unfair labor practice. Therefore, an overly restrictive remedy in this area would encroach upon the organization's legitimate

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institutional interests and functions. If PERB does deem a cease-and-desist order appropriate, it should be narrowly tailored to the specific language at issue in the operative Complaint.

V. The Requested Notice(s) and Outreach Are Excessively Overbroad, Punitive, and Unwarranted Under PERB Doctrine

In Section V, the Charging Party requests several extensive forms of notice, including physical and electronic postings, plus direct outreach to individuals who received correspondence like the Charging Party. The University opposes these requests as overbroad, punitive, and disproportionate to the conduct in the operative Complaint. PERB limits remedies to the specific violation established on the record. Because the instant Complaint involves a single individual and no established third-party harm, dual (electronic *and* physical) broadcasts directed organization-wide at unaffected personnel would be clearly unnecessary. The University has no affirmative duty to issue a proactive public retraction for a rescinded matter where there is no evidence of any ongoing harm.

Under PERB doctrine, the function of notice postings is to remediate and educate affected personnel, rather than to penalize the employer (*Trustees of the California State University (East Bay)* (2015) PERB Decision No. 2408-H).[4] To extend notice requirements to unaffected groups (such as deans, chairs, and office staff who face no objective chilling effect) would render this remedy punitive rather than restorative. Also, compelling the University to search for and then engage in direct outreach to prior recipients would require speculative compliance searches. That would be an *exploratory* search, on its face, instead of a remedial measure that is reasonably related to the violation at issue (*State of California (Secretary of State)* (1990) PERB Decision No. 812-S). Given the above, the multiple forms of extensive notice requested by the Charging Party are unnecessary and improper. A standard, localized posting to the

[4] The *East Bay* ruling concluded that requiring broad, campus-wide website postings is unnecessary, as the notice's purpose is specific to the bargaining unit to which the employee belongs. The Charging Party in the instant matter is not in a Bargaining Unit, so the Academic Personnel Office (the APO is the component of the campus that administered the cover letter at issue) might be the most appropriate location for a notice.

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relevant workplace (e.g., the Academic Personnel Office) would fully satisfy PERB's educational objectives without overreaching.

VI. The Requested Remedy Extends Beyond the Complaint and Would Function as a Burdensome Time-Barred Fishing Expedition

In Section VI, the Charging Party contends that even a "*general campus notice*" would not be sufficient as it "may not reach *former or retired* employees, and it may not alert a current employee that the notice specifically corrects a warning personally received *years earlier*." The Charging Party proposes that the University "therefore conduct *a reasonable search for current and former employees* who received the challenged language *or substantially similar language and send each identified recipient a direct written correction*…"

The request for a general audit and to "direct individual corrections" across a boundless group of current, former, and retired employees is unwarranted and unduly burdensome. This remedy extends well beyond the operative Complaint and seeks to address hypothetical historical incidents occurring "years earlier," which instantly renders it vulnerable to the six-month statutory limitation period of HEERA (Gov. Code, § 3563.2(a)). The Charging Party's requested relief is not tied to the specific conduct set forth in the operative Complaint. PERB remedial orders must be strictly tied to remedying the proven unfair practice, rather than to policing collateral matters (*see, e.g., Modesto City Schools* (1983) PERB Decision No. 291). For the Charging Party to demand an intense search for other individuals who *may* have been wronged, going back "years," goes beyond restoring the Charging Party to status quo ante. The University respectfully requests that the ALJ deny the Charging Party this requested remedy.

VII. The Requested Decades-Long Audit Imposes an Unjustified, Punitive Burden and Exceeds PERB's Remedial Authority

In Section VII of his brief, the Charging Party requests that the PERB order a decades-long historical "accounting of the practice," including into the "origin, asserted basis, duration, implementation, and withdrawal of the practice" he objected to; "a focused accounting of how

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the practice arose, what authority was asserted for it, how it was applied, and how it was rescinded."[5] The Charging Party's request for a decades-long institutional audit is an overbroad and burdensome "fishing expedition." This remedy would also exceed PERB's remedial authority under HEERA, which is addressing proven unfair labor practices, not policing university administrative decisions or reviewing its historical and internal deliberations. PERB should not micromanage the employer's internal administrative forms, such as templates and trainings, given that the practice has already been corrected. To demand historical "accountings" and searches for iterations of templates within the University's proprietary holdings goes far beyond standard relief and crosses into being punitive, which places it outside PERB's jurisdiction.

An exhaustive, decades-long audit is not only legally barred by the six-month statutory limitations period, but it is also a disproportionate overreach for the singular violation in the operative Complaint. Compelling the University to collect decades of historical records in order to track down past recipients of the correspondence, as well as every iteration of a template would impose immense operational strain and administrative costs. Because the University took swift action to rescind the communication and to abandon the practice, ordering the University to engage in a self-investigation going back decades serves no purpose and does nothing to get the Charging Party closer to status quo ante. The University respectfully requests that the ALJ deny the Charging Party his requested remedy.

VIII. The ALJ should deny the Charging Party's request to "preserve" speculative and unpled make-whole relief, which violates due process and evidentiary standards

In Section VIII of his brief, the Charging Party requests that PERB preserve make-whole relief for unpled economic losses. The University respectfully requests that the ALJ deny this request. The Charging Party's proposal improperly seeks an amorphous, open-ended exploration of speculative damages (such as outside legal advice, consulting income, and separate administrative costs) that are remote, unforeseeable, and

[5] The Charging Party notes that he expects to receive "aggregate information" from this investigation.

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unrelated to the correspondence at issue in this case. To expand liability to encompass unpled individuals and incidents outside the operative Complaint would violate PERB standards. PERB requires financial harm to be direct, foreseeable, and materially caused by the unfair practice (*Bellflower Unified School District* (2022) PERB Decision No. 2544-Ea). To generally "preserve make-whole relief" for employees who *might* prove economic losses in such an open-ended manner would deny the University due process. Furthermore, the *Charging Party* bears the burden of substantiating loss.[6] That burden cannot be met by inviting late-stage submissions from individuals outside the pleadings, including "former and retired employees," to supplant the evidentiary record.

IX. The Charging Party's Request for a Secondary Record Violates Due Process, Exceeds the Complaint, and Wastes Resources

The University opposes the Charging Party's request for a conditional secondary record in Section IX. Creating a secondary evidentiary record is an unwarranted, extraordinary measure that would violate the University's due process. The Charging Party is essentially attempting to bifurcate the proceedings by unilaterally asserting that, now that liability has been resolved, the ALJ should open a secondary record that would permit rolling submissions of evidence. This is particularly inappropriate given that, after the hearing was canceled, the Charging Party proceeded to seek remedies for unpled and unproven violations which were outside the operative Complaint. What is more, this conditional, open-ended request to submit declarations piecemeal would create an ambiguous, inefficient "wait-and-see" approach that is adverse to judicial economy and would waste administrative resources. These remedies do not promote finality of the record, nor do they advance the parties toward the status quo ante. The University respectfully requests that the ALJ reject the Charging Party's proposals in Section IX.

[6] *See City and County of San Francisco* (2023) PERB Decision No. 2858-M, p. 15 (a charging party normally has the burden to establish in compliance proceedings the nature and extent of compensable harms).

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X. The University Generally Objects to the Proposed Findings and Orders in Section X. They Are Unnecessary, Punitive, and Legally Unsupportable.

The University opposes requested finding and order #2 and reiterates objections stated earlier in this brief. Any cease-and-desist order ought to be narrowly tailored to the specific language that was at issue. What is more, the phrase "substantially similar blanket restriction" is impermissibly vague. It would not place the University on clear notice as to what language was "similar" enough to be prohibited. The proposed language would invite future enforcement disputes.

The employer opposes requested orders #4 and #5 and reiterates objections stated earlier in this brief. Remedies, including notice postings, need to be tied to and proportionate to pled and proven violations. Therefore, physical *and* electronic notices organization-wide would be excessive, redundant, and punitive. The speculative "search" for unidentified third parties is costly, burdensome, and unnecessary as well. A traditional notice would fully restore the status quo ante between the parties.

The University objects to proposed order #6. Because the University admitted the conduct, promptly ceased it, and it has not reoccurred, the historical origins of the admitted practice are irrelevant. To essentially compel the University to conduct a fishing expedition against itself is unnecessary and exceeds PERB's remedial authority.

The employer objects to proposed order #7, as written. The University would not object to removing an unlawful practice from an active template, but ordering changes to *historical* training materials or inactive guidance is an administratively burdensome search and would unnecessarily micro-manage the University. Any order should be strictly prospective and ensure the University does not apply the language going *forward*.

The University objects to proposed order #8, as it infringes upon the University's core managerial prerogatives and internal operations. Instruction of personnel officers and administrators regarding compliance should remain strictly internal. A standard

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PERB notice in the Academic Personnel Office (APO) would fully satisfy the requirement to notify the relevant workforce.

The employer objects to proposed order #9 and #10. PERB's standard statement of compliance provides an adequate remedy. Requiring an aggregate accounting of the origin and duration of the practice imposes an extraordinary burden. Because the employer has self-corrected, this requirement is purely punitive and must be rejected.

The employer objects to proposed order #11's make-whole relief. Because this action alleges a pure Section 3571(a) interference claim, any claimed economic loss is entirely speculative. Financial remedies, including back pay and make-whole relief, require concrete quantification and a direct causal link to the conduct alleged in the operative Complaint.

The University objects to the proposed order in #12 regarding retained jurisdiction over compliance. No factual or legal basis warrants special, non-standard retained jurisdiction in this matter. PERB's Appeals Division already retains standard jurisdiction over compliance matters through existing regulations.

The employer objects to the proposed order in #13 ("Granting any further relief PERB determines necessary to effectuate the purposes of HEERA."). This open-ended and vague order is a fundamental due process issue. The University opposes being subject to claims and remedies that have not been raised or litigated up to this point. The Board should not reserve authority to issue remedies for hypothetical violations not raised or adjudicated in the record, and the University reiterates that the ALJ should deny any request to keep the record open for unpled or speculative damages.

Finally, at the end of the Charging Party's 14-page Brief on Remedies, the Charging Party requested that, "Because the parties' briefs are due on the same date," he "respectfully requests leave to file a short reply if Respondent's brief raises a new factual assertion, legal argument, or objection to relief that could not reasonably have been anticipated."

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The employer urges the ALJ to deny the Charging Party's request for a conditional reply brief. Simultaneous briefing schedules are intended to be final. Giving the Charging Party "the last word" would unfairly violate the procedural balance brought about by simultaneous brief submissions. Piecemeal filings would drag out this litigation and would conflict with PERB's goals of efficient case processing and harmonious workplace relations. Permitting supplemental replies and surreplies from both parties invites a rolling back-and-forth that is adverse to efficiency and finality of the record.

Respectfully submitted,

[redacted]

Jack McKimm
UC Berkeley
Sr. Labor Relations Hearing Consultant
[redacted]
University of California, Berkeley
2850 Telegraph Ave.
Berkeley, CA 94705

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XI. VERIFICATION

I have reviewed the foregoing, and I declare under penalty of perjury under the laws of the State of California that it is true and correct to the best of my knowledge and belief.

Dated 18th of August, 2026

[redacted]

Jack McKimm

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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of California. I am over the age of 18 years. The name and address of my

Residence or business is 2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

On 08/18/2026 (*Date*), I served the Respondent's Brief on Remedies (*Description of document(s)*)

(*Description of document(s) continued*) in Case No. SF-CE-1524-H (PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

- ☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

Professor James O'Brien
Charging Party
[redacted]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 08/18/2026 (*Date*),

at Berkeley (*City*) California (*State*).

Jack McKimm (*Type or print name*) [redacted] (*Signature*)

(02/2021) Proof of Service

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. **REGENTS OF THE UNIVERSITY OF CALIFORNIA,** Respondent.	**Case No. SF-CE-1524-H** **CHARGING PARTY'S REQUEST FOR LEAVE TO FILE SHORT REPLY AND REPLY REGARDING REMEDY**

I. REQUEST FOR LEAVE TO FILE THIS REPLY

Charging Party respectfully requests leave to file this focused reply to Respondent's August 18, 2026 Brief on Remedies.

Respondent's filing directly answers Charging Party's August 13, 2026 opening brief and raises factual assertions not established by the admitted Complaint. Respondent asserts that the violation involved only a "single, voluntarily retracted communication," that the communication has not recurred, that no ongoing harm or chilling effect has been established, that no third-party harm has been established, and that identifying prior recipients would impose "immense operational strain."

This reply is limited to those assertions, clarification of Charging Party's intent, and refinement of the relief requested. Charging Party does not seek to reopen liability, introduce new claims, or create a continuing sequence of replies and surreplies.

II. CHARGING PARTY SEEKS CORRECTIVE, NOT PUNITIVE, RELIEF

Respondent repeatedly characterizes Charging Party's requested relief as punitive. Charging Party apologizes for any wording in his opening brief that may have conveyed a punitive intent. That was not my purpose.

Charging Party seeks relief sufficient to correct the effects of the admitted violation, prevent recurrence, provide an authoritative correction to people who may still rely on the University's communication, and make whole any person who proves an actual economic loss caused by the violation. He does not seek to punish the University, impose unnecessary administrative costs, or obtain a monetary award unsupported by evidence.

The University sent an official written statement informing a faculty member that it did not consent to his sharing copies of his own personnel file with anyone other than a recognized agent, such as legal counsel. A faculty member receiving that statement could reasonably understand it as a warning that broader sharing was prohibited and might result in adverse institutional consequences. The communication could therefore have a threatening or coercive effect even if no threat or coercion was intended.

A corrective remedy is not punitive merely because it addresses an effect that Respondent did not subjectively intend.

III. THE RECORD DOES NOT SUPPORT TREATING THE MATTER AS NECESSARILY LIMITED TO ONE INDIVIDUAL COMMUNICATION

Respondent characterizes the violation as involving only a "single, voluntarily retracted communication." Respondent's Brief, page 3. That characterization does not address the evidence submitted with Charging Party's opening brief.

Assistant Vice Provost Heather Archer stated in writing:

> "This change in campus practice applies to everyone and was changed in response to concerns raised by faculty. There was no written policy, but the letter had been used in its previous form for decades."
>
> O'Brien Declaration, Exhibit 1.

Charging Party also has direct personal knowledge that at least one other individual received the same challenged restriction in a separate communication. This fact is offered only to show that the practice was not confined to Charging Party and that the request for a reasonable search and corrective notice is not speculative, not to seek adjudication of a separate violation involving that individual.

Neither Assistant Vice Provost Archer’s statement nor this additional known instance establishes the identity of every prior recipient, proves that every recipient suffered harm, or establishes that an exhaustive review of historical records is necessary. Together, however, they confirm that the challenged language was not created solely for Charging Party and provide a concrete basis for determining whether other readily identifiable recipients should receive a correction.

Respondent does not deny that Assistant Vice Provost Archer made the statement. Respondent also does not identify the evidentiary basis for its assertions concerning the historical scope of the practice, prior recipients, complete removal, or the burden of a reasonable search.

The record therefore does not support resolving remedy on the assumption that the challenged language was only an isolated communication directed to Charging Party.

IV. CHARGING PARTY REFINES THE RELIEF REQUESTED

To eliminate any concern that the relief originally requested was broader than necessary, Charging Party requests that the following refined remedies supersede any inconsistent or broader formulation in his opening brief.

A. Narrowly Tailored Cease and Desist Relief

Respondent argues that any cease and desist order should be narrowly tailored to the language alleged in the Complaint. Charging Party agrees.

Respondent should be ordered to cease and desist from informing an employee that University ownership of academic personnel records, or inclusion of documents in the employee's academic personnel file, by itself prohibits the employee from sharing copies of documents provided to the employee from that file with anyone other than legal counsel or another recognized agent.

This provision would not affect a restriction independently required by law to protect confidential information concerning another person. It would address only the proposition found unlawful in this case: that University ownership or personnel-file status, standing alone, prohibits the employee from sharing the documents.

B. Removal from Active Materials and Corrective Administrative Guidance

Respondent states that it "would not object to removing an unlawful practice from an active template." Respondent's Brief, page 8.

Respondent should therefore be required to review the active forms, templates, instructions, and guidance used in responding to academic personnel file requests and remove:

1. The challenged language.
2. Any materially identical language communicating the same restriction based solely on University ownership or personnel-file status.

Respondent should provide a verified compliance statement identifying the categories of active materials reviewed, confirming removal of the language, and describing the prospective steps taken to prevent recurrence.

Respondent should also issue a written internal instruction to Academic Personnel Office personnel and other administrators responsible for responding to academic personnel file requests. This would not be notice to administrators as supposedly affected employees. It would be an internal compliance measure intended to prevent the restriction from being communicated again.

The contents of that instruction may remain internal. Charging Party seeks confirmation that an appropriate instruction was issued, not disclosure of privileged deliberations.

C. Physical and Electronic Notice to the Relevant Employee Population

Charging Party does not request publication on a public University website directed to students, parents, or the general public.

He requests physical posting and electronic distribution of a Board-approved notice to current UC Berkeley faculty and academic appointees subject to the academic personnel file process in which the challenged language was used.

Electronic notice is appropriate because the restriction was delivered electronically and because the University ordinarily communicates academic personnel information through electronic channels. PERB has required electronic distribution in addition to physical posting when an employer ordinarily communicates with employees electronically. (City of Sacramento (2013) PERB Decision No. 2351-M, p. 44.)

A notice posted only inside the Academic Personnel Office would not reasonably reach the faculty and academic appointees whose records that office administers. Most of those employees do not work in that office and would have no reason to see a notice posted there.

D. A Reasonable Search for Identifiable Prior Recipients

Charging Party narrows his request for direct correction.

Respondent should not be required to restore obsolete systems, manually review every personnel file created over several decades, or undertake a search whose burden would be disproportionate to its likely remedial value.

Respondent should conduct a reasonable search of readily accessible electronic and administrative records for current and former employees who received the challenged language or materially identical language. Each readily identifiable recipient should receive the Board-approved notice, accompanied by a brief statement explaining that the notice corrects the restriction previously communicated to that recipient.

PERB has required personal delivery of remedial notice when affected employees might no longer work for the employer and therefore might not receive ordinary workplace notice. (Santa Monica Community College District (1979) PERB Decision No. 103, pp. 29-30.)

This request does not ask PERB to adjudicate separate historical violations involving each recipient. It asks that the remedy for the admitted practice reach readily identifiable people who may still rely on the same written restriction.

Charging Party does not seek recipient identities. Respondent may maintain those identities confidentially and provide them to PERB's General Counsel or designee if necessary to verify compliance. Charging Party should receive only a verified aggregate statement identifying:

1. The number of readily identifiable recipients located.
2. The approximate period during which the challenged form was used, to the extent reasonably ascertainable.
3. The number of corrective notices sent.
4. The number of notices that could not be delivered after reasonable efforts.

E. Financial Relief Only for Proven Material Economic Loss

Charging Party also narrows and clarifies his request concerning financial relief.

Charging Party does not seek an automatic monetary award merely because a person received, disagreed with, or was distressed by the University's communication. He does not ask PERB to presume that any person suffered an economic loss.

He asks only that make-whole relief remain available to any person within PERB's remedial authority who proves a material, nonduplicative economic loss caused in material part by the challenged communication.

The person seeking relief would bear the burden of proving:

1. The nature of the economic loss.
2. The amount of the economic loss.
3. A material causal connection between the unlawful communication and the loss.
4. That the requested amount is not duplicative of compensation received from another source.

If no person proves such a loss, no monetary payment would be required.

PERB has recognized that evidence of financial losses may be developed in compliance proceedings rather than during the liability phase. (Los Angeles Unified School District (2017) PERB Decision No. 2518-E.) Respondent's own cited authority states that a charging party normally bears the burden of establishing the nature and extent of compensable harm in compliance proceedings. (City and County of San Francisco (2023) PERB Decision No. 2858-M, p. 15.)

Charging Party therefore requests the following formulation:

> Respondent shall make whole any person within PERB's remedial authority who proves a material, nonduplicative economic loss caused in material part by the admitted violation, with the nature and amount of any recovery determined through ordinary compliance proceedings.

V. RESPONDENT'S NEW FACTUAL ASSERTIONS SHOULD NOT BE TREATED AS ESTABLISHED WITHOUT AN OPPORTUNITY TO RESPOND

Respondent asserts that the communication has not recurred, that the practice was abandoned, that no ongoing harm or chilling effect has been established, that no third-party harm has been established, and that a reasonable recipient search would impose immense operational strain.

Those propositions concern facts relevant to remedy. They are not established merely by Respondent's admission of the Complaint. Respondent's verification does not identify the source of the signer's knowledge concerning the Academic Personnel Office's historical use of the

language, available recipient records, removal procedures, or the technical burden of a reasonable search.

Charging Party does not request an additional evidentiary record as a matter of course. If the Administrative Law Judge decides the remedy based on the admitted Complaint, the Archer communication, and other undisputed facts, no additional submissions may be necessary.

If the Administrative Law Judge intends to rely on Respondent's factual assertions concerning complete removal, absence of other recipients, absence of continuing effects, or administrative burden, Charging Party respectfully requests a limited opportunity to submit declarations and authenticated documents directed only to those issues.

Such a procedure would not create rolling submissions. It would ensure only that disputed remedial facts are not resolved based solely on assertions made for the first time in Respondent's brief.

VI. REFINED REQUEST FOR RELIEF

Charging Party respectfully requests an order:

1. Directing Respondent to cease and desist from informing an employee that University ownership of academic personnel records, or inclusion of documents in the employee's academic personnel file, by itself prohibits the employee from sharing copies of documents provided from that file with anyone other than legal counsel or another recognized agent.
2. Directing Respondent not to interfere with, restrain, or coerce employees in the exercise of rights protected by HEERA in any like or related manner.
3. Requiring Respondent to remove the challenged language, and materially identical language communicating the same restriction, from active forms, templates, instructions, and guidance used in responding to academic personnel file requests, followed by a verified compliance statement.
4. Requiring physical posting and electronic distribution of a Board-approved notice to the current faculty and academic appointee populations subject to the relevant academic personnel file process.
5. Requiring Respondent to issue an internal corrective instruction to personnel officers and administrators responsible for academic personnel file communications.
6. Requiring a reasonable and proportional search of readily accessible electronic and administrative records for identifiable current and former recipients, followed by direct delivery of the Board-approved notice to those recipients and a verified aggregate compliance statement that does not disclose their identities to Charging Party.
7. Requiring Respondent to make whole any person within PERB's remedial authority who proves a material, nonduplicative economic loss caused in material part by the admitted violation, with the nature and amount determined through ordinary compliance proceedings.

8. Requiring Respondent to report its compliance to PERB's General Counsel or designee in the customary manner.

These measures are corrective, proportional, and administrable. They do not punish the University. They correct the reasonable effect of an official written restriction, verify that the restriction has been removed from active use, provide an authoritative correction to readily identifiable people who received it, and preserve monetary relief only where an actual material economic loss is proven.

Respectfully submitted,

Dated: August 19, 2026

[redacted]

James O'Brien
Charging Party, self-represented
Professor
Department of Electrical Engineering and Computer Sciences
University of California, Berkeley
Berkeley, California 94720
[redacted]

PROOF OF SERVICE

I, James O'Brien, declare that I am over 18 years of age.

On August 19, 2026, I filed Charging Party's Request for Leave to File Short Reply and Reply Regarding Remedy through the ePERB Portal in Public Employment Relations Board Case No. SF-CE-1524-H and used the portal's electronic service function to serve the current representatives of Respondent:

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, California 94607
[redacted]

Jack McKimm, Senior Labor Relations Hearing Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, California 94705
[redacted]

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

Executed on August 19, 2026.

[redacted]

James O'Brien

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	UNFAIR PRACTICE CASE NO. SF-CE-1524-H **ORDER GRANTING CHARGING PARTY'S REQUEST FOR LEAVE TO FILE REPLY; SETTING DEADLINE FOR RESPONDENT TO FILE SUR-REPLY** (PERB Reg. 32170)

On August 19, 2026, Charging Party James O'Brien filed a Request for Leave to File Reply and a Reply Brief Regarding Remedy. Charging Party's proposed Reply Brief will be considered to the extent it clarifies or narrows the scope of issues regarding an appropriate remedy. (*County of San Luis Obispo* (2016) PERB Order No. Ad-444-M, pp. 4-5.) On the same basis, Respondent Regents of the University of California may file and have considered a Sur-Reply on or before August 24, 2026.

IT IS SO ORDERED.

DATED: August 19, 2026

[redacted]
Scott Miller
Administrative Law Judge

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Los Angeles, 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, Los Angeles Regional Office, 425 W. Broadway, Suite 400, Glendale, CA, 91204-1269.

On August 19, 2026, I served the ORDER GRANTING CHARGING PARTY'S REQUEST FOR LEAVE TO FILE REPLY; SETTING DEADLINE FOR RESPONDENT TO FILE SUR-REPLY in PERB Unfair Practice Case No. SF-CE-1524-H on the parties listed below by

_X_ Electronic service (e-mail).

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720
Email: [redacted]

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: [redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705
Email: [redacted]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 19, 2026, at Los Angeles, California.

Scott Miller	[redacted]
(Type or print name)	(Signature)

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STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent,	Case No.: SF-CE-1524-H **AUGUST 24, 2026**

EMPLOYER'S SUPPLEMENTARY RESPONSE ON REMEDIES

The Charging Party stated in their August 19, 2026 request for leave that the Respondent University's recent brief "did not identify the source of the signer's knowledge concerning the Academic Personnel Office's" use and cessation of the language at issue. The attached August 24, 2026 Statement of Heather Archer, under penalty of perjury, addresses this concern. It also highlights the prompt and lasting corrective actions the University took in this matter, all of which is "relevant to remedy."

As stated in the University's August 18 brief, most of the Charging Party's proposed remedies are unnecessary, overbroad, and outside the PERB's statutory authority. Some remedies sought to involve individuals or incidents not within the scope of the Complaint and not on the record, or they went well beyond the statute of limitations. The University maintains and renews all previous objections to those remedies.

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We respectfully request that any remedies in this matter credit the University's prompt and good faith self-remediation, that they be narrowly tailored, proportionate, and reasonably related to the violation in the operative Complaint.

Respectfully submitted,

[redacted]

Jack McKimm
UC Berkeley
Sr. Labor Relations Hearing Consultant
[redacted]
University of California, Berkeley
2850 Telegraph Ave.
Berkeley, CA 94705

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Attachment

A

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Statement of Heather Archer

My name is Heather Archer and I am the Assistant Vice Provost for Academic Personnel at the University of California, Berkeley. As part of my duties, I oversee the Academic Personnel Office (APO) which is the central campus human resources office for all academic appointees. I have been in this role for over 18 years. The APO is the office which, among other functions, maintains the academic review files and other personnel records of our academic employees. The APO is the office which sent the cover letter that is at issue to Professor O'Brien on July 15, 2025. I have read the recent PERB filings by all the parties and I want to add the following to the record:

The problematic language was pulled from active circulation over a year ago. We have no intent to use that cover letter or any similar language ever again.

All team members in APO were instructed to use an updated template cover letter and the reason for the update. The updated template is attached as a reference.

While the APO team is already well aware of this issue, I agree with the assertion that Mr. McKimm made in the recent brief that the APO would be the most appropriate worksite for a localized notice posting. I agree that a University-wide posting would be unnecessary and excessive. A University-wide posting would reach many individuals who do not need to be educated on this subject, since our office is the one which administered the cover letter at issue and this is the only office that provides copies of personnel files to academic appointees upon their request.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on this 24th day of August, 2026.



Heather Archer, Assistant Vice Provost for Academic Personnel

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UNIVERSITY OF CALIFORNIA, BERKELEY

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OFFICE OF THE CHANCELLOR
200 CALIFORNIA HALL #1502
BERKELEY, CALIFORNIA 94720-1502

DATE

PERSONAL AND CONFIDENTIAL

Professor [FULL NAME]
[DEPT or SCHOOL]

Dear Professor [LAST NAME]:

I am enclosing a copy of your [CASE OR FILE] as you have requested. The documents have been redacted in accordance with Academic Personnel Manual Section 160-20-c-4.

Sincerely,

VCP
Vice Provost for the Faculty

cc: Dean XX

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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of California. I am over the age of 18 years. The name and address of my

Residence or business is 2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

On 08/24/2026 (*Date*), I served the Supplementary Brief on Remedies (*Description of document(s)*)

(*Description of document(s) continued*) in Case No. SF-CE-1524-H (PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

- ☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

Professor James O'Brien
Charging Party
[redacted]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 08/24/2026 (*Date*),

at Berkeley (*City*) California (*State*).

Jack McKimm (*Type or print name*) [redacted] (*Signature*)

(02/2021) Proof of Service

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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. **REGENTS OF THE UNIVERSITY OF CALIFORNIA,** Respondent.	**Case No. SF-CE-1524-H** **CHARGING PARTY'S REQUEST FOR LEAVE TO SUBMIT LIMITED REBUTTAL EVIDENCE CONCERNING RESPONDENT'S AUGUST 24, 2026 SUPPLEMENTARY RESPONSE ON REMEDIES**

I. REQUEST FOR LEAVE

Pursuant to PERB Regulation 32170, Charging Party respectfully requests leave to submit the attached Declaration of Professor [redacted] and Exhibits 1 through 6 as limited rebuttal evidence concerning the appropriate remedy.

Respondent's August 24, 2026 Supplementary Response introduced a new sworn statement from Assistant Vice Provost Heather Archer. Based on that statement, Respondent asks the Administrative Law Judge to credit what Respondent characterizes as the University's "prompt and good faith self-remediation." Respondent asserts that the challenged language was pulled from active circulation more than a year ago, that all Academic Personnel Office personnel were instructed to use an updated template, and that notice posted only within the Academic Personnel Office would be adequate.

Charging Party's August 19 reply expressly requested a limited opportunity to submit declarations and authenticated documents if the Administrative Law Judge intended to rely on Respondent's factual assertions concerning complete removal, other recipients, continuing effects, or administrative burden. Respondent has now supplied sworn factual support from the administrator who oversees the Academic Personnel Office.

The [redacted] evidence directly addresses that new sworn factual support. It shows that the challenged restriction was sent to another professor as [redacted]" deliberately applied and repeated after he objected, maintained as the University's final position through review by senior University counsel, and eventually, after this PERB case was opened, withdrawn with an express assurance that no disciplinary action would be taken.

Charging Party does not seek to reopen liability, adjudicate a separate unfair practice involving Professor [redacted] litigate Professor [redacted] California Public Records Act claims, or submit another general reply on remedy. The evidence is offered only to permit an accurate evaluation of Respondent's assertions concerning isolation, promptness, good faith, cessation, prior recipients, and the adequacy of notice limited to the Academic Personnel Office.

II. THE AUTHENTICATED MATERIALS WERE NOT PREVIOUSLY AVAILABLE TO CHARGING PARTY IN A FORM SUITABLE FOR SUBMISSION

Charging Party previously knew generally that Professor [redacted] had received the same or a materially similar restriction and had seen informal forwarded copies of some related communications. That is why Charging Party stated in his August 19 reply that he had direct knowledge of at least one

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other recipient.

Professor [redacted] had not, however, provided Charging Party with a signed declaration authenticating the documents or expressly authorizing Charging Party to identify him and submit the communications in this proceeding. Charging Party also did not possess a clean, organized set of copies suitable for filing.

After Respondent filed its August 24 Supplementary Response and the sworn Archer statement, Charging Party discussed those new assertions with Professor [redacted] On August 25, 2026, Professor [redacted] supplied clean copies of the relevant communications, executed a declaration authenticating them under penalty of perjury, and authorized Charging Party to identify him and use the materials in this case.

Charging Party does not characterize the underlying events as wholly newly discovered. Rather, the communications became directly material as rebuttal to Respondent's new sworn factual submission, and the authenticated, authorized package became available only after that submission. Charging Party has acted promptly upon receiving it.

III. THE PROPOSED EVIDENCE DIRECTLY REBUTS RESPONDENT'S FACTUAL POSITION

A. The Restriction Was Not Confined to a Single Communication to Charging Party

Respondent previously characterized the admitted violation as relating to a "single, voluntarily retracted communication."

[redacted]

The proposed evidence therefore establishes more than the existence of another recipient. It establishes that APO described the restriction as [redacted] acknowledged prior use of the same language, and applied the restriction again when Professor [redacted] obtained personnel-file records in 2024.

Charging Party does not contend that the two presently known faculty recipients constitute a random sample or permit a numerical estimate of the total number of recipients. Professor [redacted] came to Charging Party's attention because they are professors in the same department who know one another.

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That circumstance explains how Charging Party learned of Professor [redacted] experience, not why Professor [redacted] received the warning. Under Respondent's characterization of the matter as an isolated communication, it would be a notable coincidence that the only other known recipient happened to be a departmental colleague known to Charging Party. By contrast, if APO used the warning repeatedly, as its own description and Archer's acknowledgment of decades of use indicate, learning of another recipient within Charging Party's professional network is unsurprising.

Respondent's own evidence makes the continuing absence of even an approximate recipient count conspicuous. Respondent has not stated how many employees received the former language, whether it conducted any search for prior recipients, or whether readily accessible electronic or administrative records could provide an approximate count.

B. The Restriction Was Deliberately Applied and Repeated, Not Merely Left Unnoticed in an Obsolete Template

The [redacted] evidence shows that the issue extended beyond inadvertent use of stale wording.

[redacted]

The record does not identify the individual who originally drafted the restriction or first selected APM 160 and the University Records policy as its asserted basis. It does establish that the interpretation was deliberately applied and repeated by APO after Professor [redacted] asked specific questions about its scope.

This evidence is relevant to remedy because replacing one sentence in a template does not necessarily establish that the substantive interpretation used to justify it has been corrected. The evidence supports narrowly tailored corrective guidance to those responsible for academic personnel-file communications, not merely replacement of a form letter.

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C. The University Maintained the Restriction After Receiving and Understanding Detailed Objections

[redacted]

These communications do not establish that University counsel subjectively believed the restriction was unlawful. They do establish that the University received and understood detailed legal objections, did not identify a written policy or answer the central objection, and deliberately maintained the position through review by senior University counsel.

That history is directly relevant to Respondent's request for credit based on "prompt and good faith self-remediation." Professor [redacted] first raised the problem in August 2024. APO reaffirmed the restriction in January 2025. Campus counsel declared it to be UC's final position in February 2025, and the University continued to stand on that position after review by the General Counsel in March 2025. Charging Party filed this PERB charge on July 15, 2025. UC withdrew the restriction as to Professor [redacted] on August 18, 2025. The sequence is relevant to promptness regardless of what caused the eventual change.

Respondent's present statement that the template was eventually removed may be true. The [redacted] evidence nevertheless materially rebuts the characterization that the University promptly corrected an unnoticed or inadvertent communication upon learning of the problem.

D. The Restriction Extended to Communications With Colleagues and Governmental or Adjudicative Bodies

The [redacted] communications also clarify the scope of the restriction as the University itself explained it.

[redacted]

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[redacted]

The evidence is not offered to prove a new violation involving Professor [redacted] It is relevant because it shows how the standard warning was interpreted by the office that administered it. The communicated interpretation reached consultation with other employees and the proactive submission of supporting evidence to governmental and adjudicative bodies.

Although Professor [redacted] named other agencies rather than PERB, APO articulated a general restriction concerning governmental agencies. An employee receiving that explanation could reasonably understand it as limiting the employee's ability to attach personnel-file evidence to a PERB charge or provide it to an investigator unless PERB first requested the documents or disclosure was independently determined to be legally required.

That interpretation bears directly on the remedial need for an authoritative correction. Notice limited to personnel within APO would not correct the understanding of faculty recipients who may believe that the former restriction continues to limit consultation with colleagues or submission of evidence to enforcement bodies.

E. The Eventual No-Discipline Assurance Confirms the Reasonable Coercive Implication of the Prior Directive

[redacted]

The express no-discipline assurance is difficult to explain unless both the University and Professor [redacted] understood discipline as a potential consequence of violating the prior directive. It strongly supports the conclusion that the prior warning carried an objectively coercive implication.

Charging Party does not offer this evidence to establish that Professor [redacted] was expressly threatened with dismissal, that discipline certainly would have occurred, or that Professor [redacted] suffered an economic loss. It is offered to show the reasonable disciplinary implication of the University's official directive and the need for a comparably clear correction to prior recipients.

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F. The Evidence Undermines the Adequacy of Notice Posted Only Inside APO

Respondent proposes posting a remedial notice only within the Academic Personnel Office because that office administered the cover letter.

The [redacted] evidence shows why that remedy would be poorly directed. Professor [redacted] was a faculty recipient of the restriction. He did not work within APO. APO personnel already know that the template changed, according to Archer's declaration. A notice posted only in APO would principally notify personnel whom Respondent says have already been instructed, while failing to notify faculty members who received or may continue to rely upon the former restriction.

The correspondence also reached or copied APO, the Public Records Office, campus counsel, the General Counsel, deans, College academic-personnel personnel, and a department chair. It was not confined in practice to an unnoticed template controlled by one office.

Finally, UC itself sent Professor [redacted] an individualized correction. That demonstrates that direct correction to an identifiable prior recipient is feasible and that the University considered an individualized no-discipline assurance appropriate.

IV. THE EVIDENCE IS OFFERED FOR A LIMITED PURPOSE AND WILL NOT PREJUDICE RESPONDENT

Professor [redacted] separate legal claims and legal characterizations are not at issue in this proceeding and are not offered for their truth. Charging Party does not ask the Administrative Law Judge to decide whether Professor [redacted] CPRA analysis was correct, whether University counsel violated professional obligations, or whether Professor [redacted] possesses a separate claim against the University.

The communications are offered only to establish:

1. That the same restriction was applied to another faculty member.
2. That APO described it as [redacted] and acknowledged earlier use.
3. The scope APO attributed to the restriction.
4. The objections communicated to Respondent.
5. Respondent's repeated responses and continued adherence to the restriction.
6. The timing and terms of the eventual withdrawal.
7. The reasonable remedial implications of that chronology.

Charging Party relies principally on the University-authored communications. Professor [redacted] statements are relevant primarily to establish what questions and objections the University received before it reaffirmed the restriction.

The evidence is not offered to establish that Professor [redacted] was prevented from speaking, that he suffered a monetary loss, or that PERB should adjudicate an additional unfair practice involving him.

Respondent will not be unfairly surprised. Its own officers, employees, and attorneys authored or received nearly all of the communications. Professor [redacted] declaration supplies authentication, and Respondent remains free to identify any genuine authenticity issue or factual context the Administrative Law Judge considers necessary.

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V. REQUESTED RELIEF

Charging Party respectfully requests that the Administrative Law Judge:

1. Grant leave to supplement the remedial record with the Declaration of [redacted] and Exhibits 1 through 6.
2. Consider the evidence only for purposes of determining the appropriate remedy, including:
   a. Whether the restriction was isolated or part of a broader standard practice.
   b. What weight, if any, should be given to Respondent's claim of prompt and good-faith self-remediation.
   c. Whether deletion of the template language alone adequately corrected the substantive interpretation used to support the restriction.
   d. The appropriate population and method for remedial notice.
   e. Whether a reasonable search for readily identifiable prior recipients and direct correction to those recipients are appropriate.
   f. Whether corrective guidance should reach personnel responsible for interpreting and communicating restrictions concerning academic personnel records.
3. Alternatively, if the proposed evidence is not admitted, decline to treat Respondent's characterizations of the practice as isolated and promptly corrected, or its assertion that APO-only notice is adequate, as established facts.

The proposed evidence does not expand the operative Complaint. It permits the remedy to be determined on an accurate record after Respondent elected to support its remedial position through a new sworn declaration.

Respectfully submitted,

Dated: August 25, 2026

[redacted]

James O'Brien
Charging Party, self-represented
Professor
Department of Electrical Engineering and Computer Sciences
University of California, Berkeley
4147 Gateway Building
Berkeley, California 94720
[redacted]

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DECLARATION OF JAMES O'BRIEN IN SUPPORT OF REQUEST FOR LEAVE

I, James O'Brien, declare:

1. I am the Charging Party in PERB Case No. SF-CE-1524-H and have personal knowledge of the matters stated in this declaration.
2. Before Respondent filed its August 24, 2026 Supplementary Response, I knew generally that Professor [redacted] had received the same or a materially similar restriction. Professor [redacted] had previously forwarded informal copies of some related communications to me.
3. Professor [redacted] and I are professors in the same department and know one another. I learned of his experience through that professional relationship.
4. Before August 25, 2026, Professor [redacted] had not provided me with a signed declaration authenticating the documents or expressly authorized me to identify him and submit the communications in this PERB proceeding. I also did not possess a clean, organized set of the relevant communications suitable for filing.
5. After receiving Respondent's August 24 Supplementary Response and discussing the new sworn statement of Heather Archer with Professor [redacted] Professor [redacted] provided me with clean copies of the relevant communications, executed a declaration authenticating them under penalty of perjury, and authorized me to identify him and use the declaration and exhibits in this proceeding.
6. I received Professor [redacted] signed declaration and the clean authenticated exhibit package on August 25, 2026.

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

Executed on August 25, 2026, at Oakland, California.

[redacted]

James O'Brien

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PROOF OF SERVICE

I, James O'Brien, declare that I am over 18 years of age.

On August 25, 2026, I filed Charging Party's Request for Leave to Submit Limited Rebuttal Evidence Concerning Respondent's August 24, 2026 Supplementary Response on Remedies, together with the Declaration of James O'Brien, the Declaration of [redacted] and Exhibits 1 through 6, through the ePERB Portal in Public Employment Relations Board Case No. SF-CE-1524-H. I used the portal's electronic service function to serve the current representatives of Respondent:

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, California 94607
[redacted]

Jack McKimm, Senior Labor Relations Hearing Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, California 94705
[redacted]

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

Executed on August 25, 2026, at Oakland, California.

[redacted]

James O'Brien

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	UNFAIR PRACTICE CASE NO. SF-CE-1524-H **ORDER DENYING CHARGING PARTY'S REQUEST FOR LEAVE TO SUBMIT REBUTTAL EVIDENCE; ADMINISTRATIVE NOTICE OF CASE FILE CONTENTS** (PERB REG. 32170)

On August 26, 2026, Charging Party James O'Brien filed a Request for Leave to Submit Rebuttal Evidence Concerning Respondent's August 24, 2026 Supplementary Response on Remedies, including a Declaration of Professor [redacted] and Exhibits 1 through 6. O'Brien's Request is **DENIED**, as neither his proposed rebuttal evidence nor the August 24, 2026 Statement of Assistant Vice Provost for Academic Personnel Heather Archer, which was submitted as Attachment A to Respondent's August 24, 2026 Sur-Reply, will affect the outcome of the proposed decision.

The parties are hereby notified that administrative notice has been taken of the contents of the case file in PERB Unfair Practice Case No. SF-CE-1524-H, and that this matter is deemed fully submitted.

IT IS SO ORDERED.

DATED: August 26, 2026

[redacted]
Scott Miller
Administrative Law Judge

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Los Angeles, 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, Los Angeles Regional Office, 425 W. Broadway, Suite 400, Glendale, CA, 91204-1269.

On August 26, 2026, I served the ORDER DENYING CHARGING PARTY'S REQUEST FOR LEAVE TO SUBMIT REBUTTAL EVIDENCE in PERB Unfair Practice Case No. SF-CE-1524-H on the parties listed below by

_X_ Electronic service (e-mail).

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720
Email: [redacted]

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: [redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705
Email: [redacted]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 26, 2026, at Los Angeles, California.

Scott Miller	[redacted]
(Type or print name)	(Signature)

PERB
California Public Employment Relations Board

Los Angeles Regional Office
425 W. Broadway, Suite 400
Glendale, CA, 91204-1269
Telephone: [redacted]

August 27, 2026

Re: *James O'Brien v. Regents of the University of California (Berkeley)*
Unfair Practice Case No. SF-CE-1524-H

Dear Parties:

Attached is the Public Employment Relations Board (PERB or Board) agent's Proposed Decision in the above-entitled matter.

Any party to the proceeding may file with the Board itself a statement of exceptions to the Proposed Decision. The statement of exceptions should be electronically filed using the "ePERB portal" accessible from PERB's website (https://eperb-portal.ecourt.com/public-portal/). (PERB Reg. 32110, subd. (a).)[1] Individuals not represented by an attorney or union representative, are encouraged to electronically file their documents using the ePERB portal; however, such individuals may submit their documents to PERB for filing via in-person delivery, US Mail, or other delivery service. (PERB Reg. 32110, subds. (a) and (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: [redacted]

Pursuant to PERB Regulation 32300, the statement of exceptions must be filed with the Board itself within 20 days of service of this decision. A document submitted through ePERB after 11:59 p.m. on a business day, or at any time on a non-business day, will be deemed "**filed**" the next regular PERB business day. (PERB Reg. 32110, subd. (f).) A document submitted via non-electronic means will be 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); see also PERB Reg. 32130.)

The proposed decision was issued without the preparation of a transcript of the formal hearing. If you want the transcript of the formal hearing to use in filing a statement of exceptions, then you may file a request for an extension of time with the Board itself within the time set forth above. The request for extension of time to file exceptions

[1] PERB's regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

should state that you desire to have the transcript for reference in your exceptions. Service and proof of service on all parties is required. In addition, complete the enclosed transcript order form and return it to the Board itself, along with the request for extension of time.

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, including footnotes, but excluding the 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. The statement of exceptions shall: (1) clearly and concisely state why the proposed decision is in error, (2) cite to the relevant exhibit or transcript page in the case record to support factual arguments, and (3) cite to relevant legal authority to support legal arguments. Exceptions shall cite only to evidence in the record of the case and of which administrative notice may properly be taken. (PERB Reg. 32300, subd. (c).) 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).)

Within 20 days following the date of service of a statement of exceptions, any party may file with the Board a response to the statement of exceptions. The response shall be filed with the Board itself in the same manner set forth in this letter for the statement of exceptions (see paragraphs two and three of this letter). The response may contain a statement of any cross-exceptions the responding party wishes to take to the proposed decision. The response shall comply in form with the requirements of PERB 32300 set forth above, except that a party both responding to exceptions and filing cross-exceptions shall be permitted to submit up to 28,000 words total, including footnotes, without requesting permission. A response (with or without an inclusive statement of cross-exceptions) to such exceptions may be filed within 20 days. Such response shall comply in form with the provisions of PERB Regulation 32310.

All documents authorized to be filed herein must also be “served” upon all parties to the proceeding, and a “proof of service” must accompany each copy of a document served upon a party or filed with the Board itself. (See PERB Regs. 32300, subd. (a) and 32093; see also PERB Reg. 32140 for the required contents.) Proof of service forms are available for download on PERB’s website: 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.)

Any party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response thereto a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument. (PERB Reg. 32315.) All requests for oral argument shall be filed as a separate document.

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.)

Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final. (PERB Reg. 32305.)

Sincerely,



Eric J. Cu
Chief Administrative Law Judge

EJC

Enclosure

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	UNFAIR PRACTICE CASE NO. SF-CE-1524-H PROPOSED DECISION (August 27, 2026)

Appearances: James O'Brien, on his own behalf; Jack McKimm, Senior Labor Relations Hearing Consultant, for Regents of the University of California.

Before Scott Miller, Administrative Law Judge.

INTRODUCTION

A complaint issued by the Public Employment Relations Board (PERB or Board) alleged that Respondent Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA)[1] by advising Charging Party James O'Brien not to share the contents of his 2022 five-year merit review file "with anyone other than [his] recognized agent, such as legal counsel." The University admits all allegations in the Complaint and admits that it interfered with employee rights in violation of HEERA section 3571, subdivision (a). The parties disagree on an appropriate remedy.

For reasons explained below, an appropriate remedy includes PERB's standard cease-and-desist order, rescission and/or expungement of the offending

[1] HEERA is codified at Government Code section 3560 et seq.

communication, and physical and electronic notice to faculty at the University's Berkeley campus. O'Brien shall also have an opportunity in compliance proceedings to prove any compensable losses he suffered as a direct or foreseeable result of the University's unfair practice. O'Brien's request for non-standard remedies is denied.

PROCEDURAL HISTORY

On July 15, 2025, O'Brien filed an unfair practice charge (Original UPC) with PERB, and on September 10, 2025, he filed a Supplemental Statement Regarding Unfair Practice Charge, which PERB's Office of the General Counsel (OGC) treated as a First Amended Unfair Practice Charge (Amended UPC). O'Brien, who is a professor in the Electrical Engineering and Computer Science Department at the University's Berkeley campus, filed both the Original and Amended UPCs on behalf of himself as an employee. The Original and Amended UPCs gave no indication that O'Brien is a representative or agent of an employee organization, and at all times, O'Brien has been the only charging party in this case.

On September 5, and September 25, 2025, the University filed unverified position statements responding to the UPCs. The September 5, 2025 position statement asserted that on August 18, 2025, Assistant Vice Provost for Academic Personnel Heather Archer informed O'Brien by e-mail that "UC Berkeley no longer restricts the sharing of your personnel file with others" and that no disciplinary action would be taken against O'Brien for sharing his file. Both position statements also asserted that the University "has changed its campus-wide practice and has no intention to revert to its pre-charge practice."

On May 22, 2026, PERB served the Complaint on the parties. The Complaint, which identified O'Brien as the only charging party, alleged one count of interference with employee rights in violation of HEERA section 3571, subdivision (a), when, on or about July 15, 2025, the University provided O'Brien with a copy of his five-year merit review file, and informed him in a cover letter that "the University does not consent to your sharing copies of these documents with anyone other than your recognized agent, such as legal counsel."

On June 1, 2026, the University answered the Complaint by admitting some allegations, denying the material factual allegations, and denying liability.

On July 16, 2026, PERB transferred the case to the Division of Administrative Law, and on July 17, 2026, the parties were served with a Prehearing Memorandum that summarized the pleadings and invited the parties to schedule a case management conference to determine whether this case was appropriate for resolution without a formal hearing pursuant to PERB Regulation 32207.[2]

On July 31, 2026, the University filed an Amended Answer to the Complaint which admitted all factual allegations, admitted liability to the one interference claim, and asserted no affirmative defenses. On August 4, 2026, the Case Management Conference was cancelled, and the parties were advised that no hearing nor stipulated record was necessary regarding liability. They were also given an opportunity to brief any remaining issues on or before August 18, 2026.

[2] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

On August 13, 2026, O'Brien filed a Brief Regarding Remedy requesting inter alia a cease-and-desist order prohibiting the University from maintaining, communicating, or enforcing a prohibition against employees sharing materials relating to their employment with anyone other than legal counsel or another recognized agent "or any substantially similar blanket restriction"; physical and electronic notice posting; and make-whole relief for O'Brien and other similarly situated current and former employees, with interest. Attached to O'Brien's brief was a proposed order with several additional remedial measures, such as directing the University to "[c]onduct a reasonable search for current and former employees who received the challenged language or substantially similar language" so as to "provide each identified recipient a direct written correction"; a PERB-supervised accounting of a confidential "recipient list" that would, according to O'Brien, ensure compliance with his proposed class-wide relief without disclosing the identities of other employees; "written corrective guidance to [University] administrators responsible for academic personnel records"; and an order for the University to "[p]reserve records necessary to identify prior recipients, determine make-whole claims, and verify compliance until PERB closes compliance proceedings."

On August 18, 2026, the University filed a brief opposing most remedial measures requested by O'Brien as punitive, speculative, untimely, violative of due process, *ultra vires*, and/or disproportionate. The University argues that the Berkeley Academic Personnel Office ceased using the offending confidentiality language shortly after this dispute arose; that it notified O'Brien of this change; that O'Brien's proposed cease-and-desist order is unnecessary, overbroad, and *ultra vires.* The University

opposes the wording of O'Brien's proposed order in that it would direct the University to cease and desist from "informing an employee that University ownership of academic personnel records, or inclusion of documents in the employee's academic personnel file, by itself prohibits the employee from sharing copies of documents provided from that file with anyone other than legal counsel or another recognized agent." The University contends this language improperly intrudes into legitimate managerial prerogatives, including its operational need to classify administrative records as University property to protect "sensitive, proprietary, and institutional data," and that the University should not face unfair practice liability "every time [it] marks a file as inappropriate for general distribution[.]" The University also opposes proposed language prohibiting it from "interfere[ing] with, restrain[ing], or coerc[ing] employees in the exercise of rights protected by HEERA in any like or related manner" as "impermissibly vague" and insufficient to "place the University on clear notice as to what language [is] 'similar' enough to be prohibited." It urges that "[a]ny cease-and-desist order ought to be narrowly tailored to the specific language that was at issue."

The University opposes O'Brien's proposed physical *and* electronic notice posting as excessive and unduly burdensome, in that it would reach unaffected groups, such as deans, chairs, and office staff who would "face no objective chilling effect," even if the offending language were still in use. It also objects to various discovery measures proposed by O'Brien, including a "reasonable search" of University records to determine who may have received the offending confidentiality directive over the years or potentially even decades when it was used and his proposed discovery into inter alia the historical origins of the admitted practice and the

identities and unpled damages by persons who are not parties to the case. The University contends that O'Brien's attempt to "bifurcate the proceedings" by proposing class action-type discovery and a "secondary record that would permit rolling submissions of evidence" after liability has been established are unduly intrusive, would waste resources, and exceeds PERB's authority, while the information O'Brien seeks is beyond the scope of the Complaint and therefore irrelevant.

On August 19, 2026, O'Brien filed Request for Leave to File Short Reply and Reply Regarding Remedy. O'Brien's Reply denied any "punitive" intent and included a revised proposed order requesting the following remedial measures:

> "1. Directing Respondent to cease and desist from informing an employee that University ownership of academic personnel records, or inclusion of documents in the employee's academic personnel file, by itself prohibits the employee from sharing copies of documents provided from that file with anyone other than legal counsel or another recognized agent.
>
> "2. Directing Respondent not to interfere with, restrain, or coerce employees in the exercise of rights protected by HEERA in any like or related manner.
>
> "3. Requiring Respondent to remove the challenged language, and materially identical language communicating the same restriction, from active forms, templates, instructions, and guidance used in responding to academic personnel file requests, followed by a verified compliance statement.
>
> "4. Requiring physical posting and electronic distribution of a Board-approved notice to the current faculty and academic appointee populations subject to the relevant academic personnel file process.

> "5. Requiring Respondent to issue an internal corrective instruction to personnel officers and administrators responsible for academic personnel file communications.
>
> "6. Requiring a reasonable and proportional search of readily accessible electronic and administrative records for identifiable current and former recipients, followed by direct delivery of the Board-approved notice to those recipients and a verified aggregate compliance statement that does not disclose their identities to Charging Party.
>
> "7. Requiring Respondent to make whole any person within PERB's remedial authority who proves a material, nonduplicative economic loss caused in material part by the admitted violation, with the nature and amount determined through ordinary compliance proceedings.
>
> "8. Requiring Respondent to report its compliance to PERB's General Counsel or designee in the customary manner."

On August 24, 2026, the University filed a Sur-Reply that reiterated its previous points and included a Statement of Heather Archer asserting that the Academic Personnel Office no longer uses the disputed language at issue, and what purports to be a template of the revised cover letter to faculty.

On August 26, 2026, O'Brien filed a Request for Leave to Submit Rebuttal Evidence Concerning Respondent's August 24, 2026 Supplementary [sic] Response on Remedies, including Declaration of Professor [redacted] and Exhibits 1 through 6 as limited rebuttal evidence concerning the appropriate remedy.

Also on August 26, 2026, O'Brien's Request was denied, as neither his proposed rebuttal evidence nor the Archer Statement and other attachments would affect the outcome of this proposed decision. In the same order, the parties were advised that administrative notice had been taken of the case file contents (see *Antelope Valley*

Community College District (1979) PERB Decision No. 97, p. 24), and that this matter was deemed fully submitted for proposed decision.

FACTUAL FINDINGS AND LEGAL CONCLUSIONS

Under the conclusiveness of pleadings doctrine, parties are bound by well-pleaded factual and legal matters admitted in their pleadings. Such admissions are "conclusive" in that they remove the issue from controversy and prohibit the tribunal from considering contrary evidence on the issue. (*County of San Luis Obispo* (2015) PERB Decision No. 2427-M, pp. 25-29; *Regents of the University of California* (2012) PERB Decision No. 2302-H, adopting proposed decision at p. 15.)

Here, the Complaint alleges, and the University admits, that O'Brien is an employee within the meaning of HEERA section 3562, subdivision (e) and that the University is an employer within the meaning of HEERA section 3562, subdivision (g). Paragraph 3 of the Complaint alleges, and the University admits, that "[o]n or about July 15, 2025, [the University] provided [O'Brien] with a copy of his five-year merit review file, and informed [him], in writing, that 'the University does not consent to your sharing copies of these documents with anyone other than your recognized agent, such as legal counsel.'" Responding to Paragraph 4 of the Complaint, the University's Amended Answer further admits: "By the acts and conduct described in paragraph 3, Respondent interfered with employee rights guaranteed by the Higher Education Employer-Employee Relations Act in violation of Government Code section 3571(a)."

HEERA section 3565 guarantees higher education employees the right "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." PERB has interpreted this language as encompassing a "bedrock" right of employees to communicate freely with one another about their employment relations. (*Regents of the University of California* (2018) PERB Decision No. 2593-H, p. 8; *Petaluma City Elementary School District/Joint Union High School District* (2018) PERB Decision No. 2590, p. 11; see also *San Diego Unified School District* (2019) PERB Decision No. 2634, p. 18, fn. 13 and cases cited therein.) PERB does not look favorably on broad, vague employer directives that might chill lawful speech or other protected conduct. (*Los Angeles Community College District* (2014) PERB Decision No. 2404, p. 6 (*LACCD*).)

Pursuant to the conclusiveness of pleadings doctrine, the University is found to have interfered with employee rights, in violation of HEERA section 3571, subdivision (a).

REMEDY

A. Principles Governing PERB Remedies

PERB is authorized to investigate unfair practice charges or alleged violations of HEERA; to take any action and make any determinations in respect of these charges or alleged violations as necessary; and to issue a decision and order directing an offending party to cease and desist from any unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as necessary to effectuate the statute's policies. (HEERA, §§ 3563, subds. (h), (m), 3563.3.) A "properly designed remedial order seeks a restoration of the situation as nearly as possible to that which would have obtained but for the unfair labor practice." (*Modesto City Schools* (1983) PERB Decision No. 291, pp. 67-68; see

also *Bellflower Unified School District* (2022) PERB Decision No. 2544a, pp. 25-26 (*Bellflower USD*); *City of Pasadena* (2014) PERB Order No. Ad-406-M, p. 13; *Lemoore Union High School District* (1982) PERB Decision No. 271, pp. 3-4.) PERB monetary remedies serve the dual purpose of compensating for the harm caused by an unfair practice and deterring further violations. (*County of San Joaquin v. Public Employment Relations Bd*. (2022) 82 Cal.App.5th 1053, 1068.) An appropriate remedy should make injured parties to the case and employees affected by the Board's decision "whole" for the full amount of their losses and should withhold from the wrongdoer the fruits of its violation. (*Bellflower USD*, *supra*; *City of Pasadena*, *supra*.) A Board-ordered remedy should also deter misconduct, so long as the order is not a patent attempt to achieve *ultra vires* ends. (*Sacramento City Unified School District* (2020) PERB Decision No. 2749, pp. 10-11; *City of Palo Alto* (2019) PERB Decision No. 2664-M, p. 3.)

In addition to the above remedies, PERB may also order special remedies in a variety of circumstances, including where the respondent's conduct was egregious, intentional, systematic, or repeated; or when standard remedies are insufficient to fully restore parties or affected employees to their prior conditions and relationships, due to the nature or duration of the conduct. (*Hacienda La Puente Unified School District* (2024) PERB Decision No. 2930, pp. 17-19; *Regents of the University of California* (2021) PERB Decision No. 2755-H, pp. 55-56; *Children of Promise Preparatory Academy* (2018) PERB Order No. Ad-470, p. 6 & adopting administrative determination at p. 4.) A party seeking "special" or non-standard remedies bears the

burden of establishing that they are warranted under the circumstances. (*County of San Joaquin (Sheriff's Department)* (2018) PERB Decision No. 2619-M, p. 14, fn. 14.)

"Because the relation of remedy to policy is peculiarly a matter for administrative competence," as "one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge," a labor board's discretion is "at zenith" when fashioning policies, remedies, and sanctions for unfair labor practices. (*Tri-Fanucchi Farms v. ALRB* (2017) 3 Cal.5th 1161, 1168; *Fallbrook Hosp. Corp. v. NLRB* (D.C. Cir. 2015) 785 F.3d 729, 735; see also *Santa Monica Community College Dist. v. PERB* (1980) 112 Cal.App.3d 684, 691–692.) However, PERB's remedial authority has constitutional, statutory, and prudential limitations. (See, e.g., HEERA, § 3563.3.) For due process reasons, PERB cannot order remedies for claims that were not litigated. (*SunLine Transit Agency* (2024) PERB Decision No. 2928-M, p. 27; *County of Sacramento* (2020) PERB Decision No. 2745-M, pp. 12-16; *San Francisco Community College District* (1994) PERB Order No. Ad-258, pp. 4-5; *State of California (Department of Mental Health)* (1990) PERB Decision No. 840-S, pp. 4-5.) Raising an unalleged claim for the first time in a post-hearing brief provides insufficient notice for PERB to consider the issue. (*San Bernardino Public Employees Association (White)* (2018) PERB Decision No. 2572-M, pp. 12-13.)

The doctrine of standing also limits PERB's authority to order relief for current or former employees who were not named parties to the case and were not represented by an employee organization. (*United Teachers Los Angeles (Raines)* (2016) PERB Decision No. 2475, pp. 54, 69, fn. 44 (*UTLA-Raines*); cf. *Regents of the*

University of California (Teamsters Local 2010) (2020) PERB Decision No. 2699-H, pp. 5-8.) Unless acting as officer, representative, or agent of an employee organization, an employee lacks standing to bring charges on behalf of absent class members, i.e., others who are not also named charging parties in the action. (HEERA, § 3563.2, subd. (a); *UTLA-Raines*, *supra*, at p. 69, fn. 44; *CSU Employees Union, SEIU Local 2579 (Sarca)* (2010) PERB Decision No. 2137-H, pp. 3-4; *IBEW Local 1245 (Tacke)* (2006) PERB Decision No. 1857-M, adopting warning letter at p. 2; *Modesto Irrigation District* (2006) PERB Decision No. 1856-M, adopting warning letter at p. 2; *UTLA (Hopper)*, *supra*, PERB Decision No. 1441, p. 6; cf. *Los Angeles Unified School District* (2020) PERB Order No. Ad-478, pp. 5-6.) If a charging party lacks standing to bring an unfair practice claim, then PERB also lacks authority to decide liability or remedy the matter. (*City of Inglewood* (2015) PERB Decision No. 2424-M, pp. 7-9, 16; *CSU Employees Union, SEIU Local 2579 (Sarca)* (2010) PERB Decision No. 2137-H, pp. 3-4 (*CSUEU-Sarca*); *Region 4 Court Interpreter Employment Relations Committee and the Superior Court of California, County of Riverside* (2008) PERB Decision No. 1987-I, p. 11.) Because standing cannot be conferred by consent or waiver, Board agents have a duty to ensure proper standing, even if no party has raised the issue. (*City of Livermore*, *supra*, PERB Decision No. 2525-M, p. 8; *Los Angeles Community College District* (1994) PERB Decision No. 1060, p. 2.)

B. Application

Despite extensive briefing, neither party has cited any cases illustrating how PERB has remedied procedurally analogous interference cases, in which a charging

party *employee* alleged that an employer's overly broad or ambiguous communications prohibited or discouraged protected employee communications.[3] However, there is no shortage of such cases.

In *State of California (Employment Development Department)* (2001) PERB Decision No. 1365a-S, PERB found the State employer had interfered with employee rights by sending a memo to an employee that "appear[ed] to prohibit communication among employees during nonwork times and/or in nonwork areas." (*Id*. at pp. 4-5, 11.) In relevant part, the Board directed the employer to cease and desist interfering with the employee's rights, to remove and destroy the memo, and to post notice "at all work locations where notices to employees customarily are placed[.]" (*Id*. at p. 11.)[4]

In *LACCD*, *supra*, PERB Decision No. 2404, a community college district interfered with employee rights by directing an employee not to contact faculty, staff, or students during an investigative leave. (*Id*. at p. 13.) PERB's remedy included an order to cease and desist from "interfering with [the charging party's] protected rights" and to "[r]escind or remove" the no-contact directive. (*Id*. at p. 14.) PERB also

[3] O'Brien relies on *Santa Monica Community College District* (1979) PERB Decision No. 103 and *City & County of San Francisco* (2017) PERB Decision No. 2536-M as support for his proposed notice posting and his request for PERB to conduct discovery to identify current and former employees with similar claims, but neither case calls for PERB to conduct discovery to identify additional charging parties to be joined to the action, and both cases were brought by employee organizations in their representational capacity and thus provide minimal, if any, guidance for an appropriate remedy here, where the only charging party is an employee.

[4] The case predated electronic notice posting. What is now generally referred to as "physical" notice was at that time simply "notice."

ordered the employer to post notice "at all work locations where notices to faculty employees in the District customarily are posted." (*Ibid.*)[5]

In *Chula Vista Elementary School District* (2018) PERB Decision No. 2586, PERB found in relevant part that a school district interfered with an employee's right to use the District's e-mail system to contact other employees about workplace concerns. (*Id*. at p. 28, 32.) The Board ordered the school district to cease and desist from "[i]nterfering with employees' right to send protected communications," to post physical notice "at all work locations where notices to employees [in the affected bargaining unit] are customarily posted," to post electronic notice "by electronic message, intranet, internet site, and other electronic means customarily used by the District to communicate with its employees in the [affected] bargaining unit[.]" (*Id*. at p. 33.)

In *County of Santa Clara* (2018) PERB Decision No. 2613-M, PERB found, in relevant part, that a sheriff's department interfered with employee rights by instructing an employee not to discuss the terms and conditions of his employment with co-workers pending the outcome of an investigation. (*Id*. at p. 17.) The Board ordered the employer to cease and desist "[i]nterfering with [the employee's] rights to communicate with other employees about terms and conditions of employment" and to the extent the offending directive was still in effect, to rescind the language in the employer's letter prohibiting the employee and others "from discussing workplace investigations with coworkers." (*Id*. at pp. 17-18.) In addition to physical notice

[5] Although *LACCD* post-dated PERB's adoption of electronic notice posting in *City of Sacramento* (2013) PERB Decision No. 2351-M, *LACCD* included no such order nor explanation for this omission.

posting “at all work locations where notices to employees in the Sheriff’s Department customarily are posted,” the Board ordered that the notice also “be posted by electronic message, intranet, internet site and other electronic means customarily used by the County to communicate with its employees in the [affected] bargaining unit.” (*Ibid*.) The Board affirmed its reasoning in *City of Sacramento*, *supra*, PERB Decision No. 2351-M, that electronic notice was not an alternative but “shall be *in addition to* the Board’s traditional physical posting requirement . . . to ensure the continued viability of this tool[.]” (*Id*. at p. 17, emphasis added.)

In *San Diego Unified School District* (2019) PERB Decision No. 2634, a public school district prohibited a secondary school teacher from discussing her pending investigation “with any staff member.” (*Id*. at pp. 9, 18.) As an appropriate remedy, PERB ordered the employer to cease and desist interfering with the employee’s rights, to “[r]escind or remove the directive” from the employer’s letter instructing the employee not “discuss the matters of this investigation with any staff member,” to post physical “at all work locations where notices to certificated employees in the District are customarily posted,” and to post electronic notice “by electronic message, intranet, internet site, and other electronic means customarily used by the District to communicate with certificated employees.” (*Id.* at p. 20.)

In *Claremont Unified School District* (2019) PERB Decision No. 2654, PERB found, in relevant part, that a school district had interfered with employee rights by directing an employee to stop communicating with other employees, after he sent an e-mail seeking their support in work-related matters. (*Id*. at pp. 11-12.) The Board ordered the employer to cease and desist interfering with the employee’s rights; to

rescind the unlawful directive, to remove it from the employee's personnel file and destroy all copies; to post physical notice "at all work locations where notices to certificated employees in the District customarily are posted"; and to post electronic notice "by electronic message, intranet, internet site, or other electronic means customarily used . . . to communicate with certificated employees." (*Id*. at pp. 25-26.)

The above cases follow a remarkably consistent pattern in their remedial measures.[6] Following the same pattern here, an appropriate remedy for this case shall include: (1) a cease-and-desist order; (2) make-whole relief, including rescission or removal, and expungement of the offending communication and an opportunity for O'Brien to establish in PERB compliance proceedings any compensable harm he has suffered as a direct or foreseeable result of the unfair practice admitted in this case; and (3) physical and electronic notice to similarly situated employees.

1. Cease and Desist Order

Ordering the respondent to cease and desist its unlawful conduct is a ubiquitous feature of Board-ordered remedies, including in cases involving employer interference with employee rights. (*City of Commerce* (2018) PERB Decision No. 2602-M, p. 17; *LACCD*, *supra*, PERB Decision No. 2404, p. 14.) A cease-and-desist order draws its meaning from the specific violation found in the context of the entire decision. (*Bellflower USD*, *supra*, PERB Decision No. 2544a, p. 24; *William S. Hart Union High School District* (2018) PERB Decision No. 2595, p. 13.)

[6] Setting aside the omissions regarding electronic posting notice referenced above, the only, even debatable, outlier among these cases is the broader wording of the cease-and-desist order in *Chula Vista*, *supra*, PERB Decision No. 2586, which is addressed below.

a. Regardless of the Precise Wording, the Cease-and Desist Order Is Limited to the Named Parties and the Issues Admitted in this Case

Most of the parties' issues regarding a cease-and-desist order concern its proper scope. The University urges that "[a]ny cease-and-desist order ought to be narrowly tailored to the specific language that was at issue" and objects to the phrase "in any like or related manner" as "impermissibly vague" because it fails to "place the University on clear notice as to what language was 'similar' enough to be prohibited" and "would invite future enforcement disputes." Some of these concerns are well taken.

Whether analyzed under due process principles or for proper standing, the various class action-style remedial measures requested by O'Brien are inappropriate. O'Brien is not an officer, representative, or agent of an employee organization, and as the only charging party in this case, he is not authorized to assert rights on behalf of other employees, regardless of whether they may have suffered the same harm as he did. (*UTLA (Raines)*, *supra*, PERB Decision No. 2475, p. 69, fn. 44; *CSU Employees Union (Sarca)*, *supra*, PERB Decision No. 2137-H, pp. 3-4; *California Union of Safety Employees (Trevisanut, et al.)*, *supra*, PERB Decision No. 1029-S, pp. 9-10.) Likewise, because no claims by other employees (current or former) were alleged in the UPCs or the Complaint, the University has not been afforded sufficient notice for PERB to find or remedy any violation of other employees' rights. (*SunLine Transit District*, *supra*, PERB Decision No. 2928-M, p. 27; *County of Sacramento*, *supra*, PERB Decision No. 2745-M, pp. 12-16.)

The parties have also spent considerable effort briefing the precise wording to be used in the cease-and-desist order. As indicated in the above survey of cases, PERB has variously framed its cease-and-desist orders in relatively broad or narrow

language. Sometimes it has issued a general prohibition against interfering *with employee rights* (see e.g., *Chula Vista*, *supra*, PERB Decision No. 2586, p. 33), while in other cases, it has used more narrowly focused verbiage prohibiting only violations of the named charging party's (or affected employee's) rights and referencing the specific conduct relied on to find liability. (See e.g., *Claremont*, *supra*, PERB Decision No. 2654, pp. 25-26; *SDUSD*, *supra*, PERB Decision No. 2634, p. 20; *County of Santa Clara*, *supra*, PERB Decision No. 2613-M, pp. 16-17; *LACCD*, *supra*, PERB Decision No. 2404, p. 14). The parties also disagree over whether to include language prohibiting the University from "interfere[ing] with, restrain[ing], or coerc[ing] employees in the exercise of rights protected by HEERA *in any like or related manner*" or whether such language is "impermissibly vague" and insufficient to "place the University on clear notice as to what language [is] 'similar' enough to be prohibited."

While I have followed the general pattern set by most cases discussed above, I need not address every aspect of the parties' disagreement on this issue. As noted, regardless of the precise wording used, a cease-and-desist order necessarily draws its meaning from the factual and legal issues litigated in the case. (HEERA, § 3563.3; *Bellflower USD*, *supra*, PERB Decision No. 2544a, p. 24.) As the Board explained in *William S. Hart Union High School District*, *supra*, PERB Decision No. 2595, a cease-and-desist order must be read in conjunction with the specific finding of liability and the remainder of the decision. (*Id*. at pp. 13-14.) In that case, an ALJ found that the employer had unlawfully interrogated a union steward "about whether represented employees had complained to her in her capacity as a steward about another represented employee," and the proposed order directed the employer to cease and

desist "[i]nterfering with [the steward's] protected rights." (*Id*. at p. 13.) The employer challenged this language as vague and overbroad, arguing that by failing to include any specific facts, it subjected the employer to potential contempt proceedings for any future conduct, "regardless if connected in any way" to the issues litigated in that case. (*Id*. at p. 14.) PERB rejected this argument by noting that it ignored the factual and legal context of the proposed decision, and that it relied on a construction of the cease-and-desist order that was inconsistent with PERB precedent. (*Ibid*., citing *San Francisco Community College District* (1994) PERB Order No. Ad-258, p. 5 [declining to enforce cease-and-desist order based on subsequent, factually unrelated conduct].)

Thus, even if I were to fashion the cease-and-desist order along the lines of *Chula Vista*, *supra*, PERB Decision No. 2586, in which PERB prohibited the respondent from "[i]nterfering *with employees' right* to send protected communications" (*id*. at p. 33), rather than identifying the charging party or affected employee *by name* and directing the employer not to interfere with his or her rights with specific reference to the conduct supporting liability, it would be of little import. In either event, the issues are limited to the facts involving O'Brien and the University's admitted interference with his rights, though the communication was also framed as a general policy or practice affecting other employees. The resulting cease-and-desist order shall therefore refer to the University's admitted communications with O'Brien and the resulting unfair practice.[7]

[7] It is unnecessary to address the University's concern that a cease-and-desist order will intrude on its ownership of academic personnel files, as the issue before PERB is not whether such files are University property but whether it may, subject to limited exceptions, advise faculty members that they are not free to share their contents.

2. Make-Whole Principles Require Rescission/Expungement and an Opportunity for O'Brien to Prove Compensable Injuries in Compliance

Make-whole relief should expunge the consequences of an unfair practice and restore "the economic status quo that would have obtained but for the respondent's wrongful act." (*County of Kern and Kern County Hospital Authority* (2019) PERB Decision No. 2659-M, p. 26; *City of Pasadena*, *supra*, PERB Order No. Ad-406-M, p. 13.) Two aspects of make-whole relief are germane here.

a. Rescission/Reform/Removal of the Offending Document and Policy

As indicated above, restoring the prior status quo may require ordering the employer to rescind a policy, to remove or expunge a document from an employee's personnel files, or to excise the offending provision(s) of an overly broad "confidentiality" rule. However, PERB is generally not in the business of rewriting employer documents or micromanaging *how* the employer accomplishes this task. (C*ounty of Santa Clara*, *supra*, PERB Decision No. 2613-M, pp. 5, 17; *LACCD*, *supra*, PERB Decision No. 2404, p 14; see also *Capistrano Unified School District* (2015) PERB Decision No. 2440, pp. 45-46.) The University previously asserted in unverified filings that it has "changed its campus-wide practice and has no intention to revert to its pre-charge practice." Although it now makes similar assertions in the Archer declaration, there is no record in this case beyond the matters admitted in the Answer, and I decline to make new or additional factual findings based solely on a declaration submitted with a Sur-Reply, when the declaration's contents were previously known to the proponent. (PERB Reg. 32170, subd. (b)(8).) To the extent the July 15, 2025 cover letter to O'Brien or the underling confidentiality policy remains in effect, the University shall be ordered to rescind the policy and/or revise the letter advising

employees not to share their personnel files with others. (*County of Santa Clara*, *supra*, at pp. 5, 17; *LACCD*, *supra*, at p. 14.)

b. Make-Whole Relief for O'Brien Is Appropriate, Subject to Proof

PERB awards make-whole relief for all direct or foreseeable harm resulting in material part from an adjudicated unfair practice. (*Bellflower USD*, *supra*, PERB Decision No. 2544a, pp. 39-40.) A finding of liability creates a presumption that "at least some backpay is owed" (*id*. at pp. 25-26), but the charging party generally has the burden to establish in compliance proceedings the nature and extent of any compensable injuries attributable to the respondent's unlawful conduct. (*Palomar Health* (2024) PERB Decision No. 2895-M, pp. 63, 65.)

The cases surveyed above regarding overly broad, ambiguous, or otherwise unlawful confidentiality rules or no-contact directives found no compensable injuries, and the UPCs in the present case identify no compensable injuries suffered by O'Brien. However, nothing in PERB precedent categorically prohibits back pay or other monetary awards for employer interference (*Contra Costa County Fire Protection District* (2019) PERB Decision No. 2632-M, pp. 55-56; *Santa Monica Community College Dist. v. PERB*, *supra*, 112 Cal.App.3d at pp. 691-692), and in the absence of a developed record, I see no reason to rule out the possibility of a back pay award at this stage of the proceedings.

The University opposes what it characterizes as O'Brien's request "that PERB preserve make-whole relief for unpled economic losses" and "an amorphous, open-ended exploration of speculative damages (such as outside legal advice, consulting income, and separate administrative costs) that are remote, unforeseeable, and

unrelated to the correspondence at issue in this case." As discussed above, there are no other charging parties to this case, and O'Brien lacks representative standing to assert rights or seek remedies for other employees. (*UTLA-Raines*, *supra*, PERB Decision No. 2475, p. 69, fn. 44; *CSU Employees Union (Sarca)*, *supra*, PERB Decision No. 2137-H, pp. 3-4; *California Union of Safety Employees (Trevisanut, et al.)* (1993) PERB Decision No. 1029-S, pp. 9-10.) Any monetary award therefore does not extend to other employees, whether current or former.

However, to the extent O'Brien personally has incurred expenses directly or foreseeably attributable to the University's admitted conduct, he must be afforded an opportunity to present his evidence and prove the extent of the injuries suffered. Contrary to the University's objection to a "secondary record," a prevailing charging party generally has the burden and thus *the opportunity* to establish *in compliance proceedings* the nature and extent of any compensable injuries attributable to the unlawful conduct. O'Brien shall be afforded an opportunity in compliance proceedings to identify any direct or foreseeable injuries resulting in substantial part from the uncontested unfair practice in this case. (*Bellflower USD*, *supra*, PERB Decision No. 2544a, pp. 24-25.) Any monetary amount(s) shall be augmented by daily compound interest at the rate of 7 percent. (*El Centro Regional Medical Center* (2024) PERB Decision No. 2890-M, pp.19-25.)

3. Physical *and* Electronic Notice to Employees Are Appropriate

An order to post physical and electronic notice is also an essential part of the Board's standard remedy for unfair practices. (*City of Sacramento*, *supra*, PERB Decision No. 2351-M, pp. 2, 43-46.) Such notice serves to declare the parties'

respective rights and obligations and to inform affected employees of their rights under the statute and of the employer's willingness to comply with the law and the Board's order. (*Id*. at p. 44.) Since its earliest days, PERB has ordered offending parties in unfair practice cases to post notice of their unlawful conduct "to ensure that all employees affected by the Board's decision and order are notified of their rights." (*Ibid*., citing *Antelope Valley Community College District* (1979) PERB Decision No. 97; see also *State of California* (2025) PERB Order No. Ad-524-N, p. 10.)

Here, the parties disagree on the appropriate methods for notifying employees of the Board's decision and on the scope of such notice. Item No. 4 in O'Brien's revised proposed order requests both physical *and* electronic notice "to the current faculty and academic appointee populations subject to the relevant academic personnel file process." For electronic notice, Item No. 6 proposes that the University be required to conduct "a reasonable and proportional search of readily accessible electronic and administrative records for identifiable current and former recipients" of the same or similar no disclosure directive received by O'Brien "followed by direct delivery of the Board-approved notice to those recipients and a verified aggregate compliance statement that does not disclose their identities to Charging Party."

The University urges that requiring *both* physical *and* electronic posting is duplicative and burdensome, and it appears to favor only physical posting. According to the University, a "standard, localized posting to the relevant workplace . . . would fully satisfy PERB's educational objectives without overreaching." The University suggests that because O'Brien is not in a bargaining unit, the Academic Personnel Office as the University unit that issued the offending cover letter to O'Brien "might be the most

appropriate location for a notice." Neither party's position is consistent with PERB precedent or adequate under the circumstances.

a. Physical *and* Electronic Notice Posting is Appropriate

In *City of Sacramento*, *supra*, PERB Decision No. 2351-M, PERB announced that "to better conform to the realities of the 21st-century workplace," it would supplement its traditional "physical" (i.e., paper) notice posting by requiring electronic notice of the Board's decision and remedial order whenever the respondent "regularly communicates with . . . employees by email, intranet, websites, or other electronic means[.]" (*Id*. at pp. 44-45.) The discussion in *City of Sacramento* was unequivocal that electronic notice was intended to *supplement* and not *supplant* the physical notice. The Board stated: "We believe that physically posting notice of the Board's remedial orders in the workplace remains an essential tool for remedying unfair practices and furthering the policies of the statutes we administer" and that any notice posting by electronic means "shall be *in addition to* the Board's traditional physical posting requirement." (*Id*. at p. 45, original emphasis; accord *State of California*, *supra*, PERB Order No. Ad-524-N, pp. 12-15.) Finding nothing in the parties' briefs to support a contrary conclusion, physical *and* electronic notice is consistent with PERB precedent and is appropriate here. (*Claremont*, *supra*, PERB Decision No. 2654, pp. 25-26; *SDUSD*, *supra*, PERB Decision No. 2634, p. 20; *County of Santa Clara*, *supra*, PERB Decision No. 2613-M, pp. 16-17.)

b. Campus-Wide Notice Among Faculty Is Appropriate

The University cites no authority for its assertion that a "standard, localized posting to the relevant workplace . . . would fully satisfy PERB's educational objectives

without overreaching," and PERB has previously rejected similar arguments that notice should be limited to a work location, even when the unfair practice is limited to a single employee. (*City & County of San Francisco* (2021) PERB Decision No. 2757-M, p. 13.)

The University also mistakenly relies on *Trustees of the California State University (East Bay)* (2015) PERB Decision No. 2408-H for the proposition that "requiring broad, campus-wide website postings is unnecessary, as the notice's purpose is specific to the bargaining unit to which the employee belongs." The case cited provides no precedential authority for this (or any other) point of law relevant to these proceedings. In that case, an ALJ found that a higher education employer had interfered with an employee's right to file and prosecute grievances by refusing to comply with the employer's own grievance remedy but dismissed all other allegations in the case. (*Id*. at p. 1.) The charging party/employee filed exceptions to the dismissal of these other allegations, but the Board refused to consider the exceptions because of procedural deficiencies. (*Id*. at pp. 2-3.) The sole issue on which the ALJ found liability was not before the Board, and it adopted the ALJ's proposed decision and incorporated the terms of the proposed order without discussion or alteration. (*Id*. at p. 3-4.) Thus, the Board decided no issues regarding liability or an appropriate remedy, and because of this procedural posture, nothing in the ALJ's proposed decision is precedential for PERB. (See *Contra Costa Community College District* (2019) PERB Decision No. 2652, p. 11.) Because cases are not authority for issues not considered, *Trustees (East Bay)* offers no guidance here.

Moreover, limiting notice to the Academic Personnel Office, as the University proposes, is patently inadequate, given the University's own representations to PERB.

In both its original and supplemental position statements, the University's representative characterized the non-disclosure directive sent to O'Brien as a "campus-wide practice."[8] That practice, as alleged and admitted in the pleadings, was not limited to, or even primarily directed at, employees of the Academic Personnel Office. Rather, it involved that office sending an unlawful confidentiality directive to faculty members *in other departments*. Even if it has since been discontinued, the University admits that faculty members in other departments were subject to the practice when it was in effect. Posting physical and electronic notice to employees in the Academic Personnel Office rather than to faculty members in other departments would be woefully underinclusive or even misplaced. Accordingly, the University shall post physical notice at all work locations at the University's Berkeley campus where notices to faculty customarily are posted and electronic notice by e-mail, intranet, internet site, and other electronic means customarily used by the Academic Personnel Office to communicate with faculty in other departments at the Berkeley campus.

c. The Special Remedies Requested by O'Brien Are Unwarranted

Special remedies are appropriate where the Board's customary remedies are insufficient to restore the prior status quo and remove any lingering effects of the respondent's unlawful conduct. (*Regents of the University of California* (2021) PERB Decision No. 2755-H, pp. 42-43; *Alliance College-Ready Public Schools, et al*. (2017) PERB Decision No. 2545, p. 17.) The charging party has the burden of proving that

[8] To the extent necessary, I consider these statements authorized admissions regarding the subject of this litigation. (Evid. Code, § 1222; *UTLA-Raines*, *supra*, PERB Decision No. 2475, p. 52, fn. 36.)

any special remedies requested are appropriate. (*County of San Joaquin (Sheriff's Department)* (2018) PERB Decision No. 2619-M, p. 14, fn. 14.) Generally, compliance proceedings should not lead to protracted litigation and should be commensurate to the scope of relief at issue. (*Bellflower USD*, *supra*, PERB Decision No. 2544a, p. 15.)

This case was necessarily limited by the University's admissions and the conclusiveness of pleadings doctrine (*County of San Luis Obispo*, *supra*, PERB Decision No. 2427-M, p. 28, and judicial decisions cited therein [admission in the pleadings forbids consideration of contrary evidence]), and O'Brien has not shown that the Board's customary remedies are inadequate. Nor, given the due process and standing limitations discussed above, has he offered any pertinent legal authority or compelling justification for the special remedies he requests, including "a reasonable and proportional search of readily accessible electronic and administrative records for identifiable current and former recipients," a PERB-supervised audit of such records, disclosure to O'Brien of "aggregate" (anonymized) data regarding other current or former employees who may have received similar correspondence, or requiring the University to "issue an internal corrective instruction to personnel officers and administrators responsible for academic personnel file communications." (Cf. *Regents of the University of California*, *supra*, PERB Decision No. 3003-H, pp. 53-54; *County of Santa Clara* (2023) PERB Decision No. 2876-M. p. 38; *Regents of the University of California*, *supra*, PERB Decision No. 2755-H, pp. 55-56.)

Either party may ask OGC to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice for any *unforeseen* or *future* circumstances, i.e., issues *not* already raised in the

parties' briefs or resolved by this proposed decision. (*Bellflower USD*, *supra*, PERB Decision No. 2544a, pp. 14-15; *City of Pasadena*, *supra*, PERB Order No. Ad-406-M, pp. 14, 16-17.) Upon receipt of such request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.[9]

PROPOSED ORDER

Based on the uncontested pleadings in this case, it is found that REGENTS OF THE UNIVERSITY OF CALIFORNIA (University) interfered with employee rights in violation of the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571, subdivision (a), by on or about July 15, 2025 advising James O'Brien that subject to limited exceptions, the University would not consent to him sharing the contents of his personnel file with others. Pursuant to section 3563 of the Government Code, it is hereby ORDERED that the University, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

Interfering with employee rights by advising James O'Brien that subject to limited exceptions, his personnel records were not to be shared with others.

[9] The University apparently contends that *any* "bifurcated" proceedings or "secondary" evidentiary record regarding remedies is "an unwarranted, extraordinary measure that would violate the University's due process." As explained above, the material that O'Brien requests as part of a remedy, including information pertaining to other employees who are not parties to this case, is irrelevant to fashioning an appropriate remedy for this case. However, nothing in this proposed decision should be interpreted as limiting PERB's discretion to "conduct an inquiry, informal conference, investigation, or hearing, as appropriate, concerning any compliance matter" and, if warranted, to authorize or order discovery in compliance proceedings "relating to any matter within [PERB's] jurisdiction," pursuant to HEERA section 3563, subds. (g), (h), (j), (m), and PERB Regulation 32980.

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

1. Rescind and/or reform the July 15, 2025 communication to James O'Brien and any underlying policy or practice generally prohibiting faculty members at the University's Berkeley campus from sharing their personnel records with others.

2. Upon proof in compliance proceedings, make James O'Brien whole for compensable injuries suffered as a direct or foreseeable result of the above-referenced conduct. Any monetary award shall be augmented by 7 percent annual interest, compounded daily, from the date of harm until the date of payment.

3. Within 10 workdays of the service of a final decision in this matter, post at all work locations where notices to faculty employees at the University's Berkeley campus 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 at least 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 faculty employees at the University's Berkeley campus. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

4. 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 James O'Brien.

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/.

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: [redacted]

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/. 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.)

APPENDIX

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

In Unfair Practice Case No. SF-CE-1524-H, *James O'Brien v. Regents of the University of California (Berkeley)*, it has been found that the Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571, subdivision (a) by advising faculty members at the University's Berkeley campus that, subject to limited exceptions, their personnel records are not to be shared with others.

Because of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

Interfering with employee rights by advising James O'Brien that subject to limited exceptions, his personnel records were not to be shared with others.

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

1. Rescind and/or reform the July 15, 2025 communication advising James O'Brien advising James O'Brien that subject to limited exceptions, the personnel records of faculty members at the University's Berkeley campus are not to be shared with others.

2. Upon proof in compliance proceedings, make James O'Brien whole for compensable injuries suffered as a direct or foreseeable result of the above-referenced conduct. Any monetary award shall be augmented by 7 percent annual interest, compounded daily, from the date of harm until the date of payment.

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 Los Angeles, 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, Los Angeles Regional Office, 425 W. Broadway, Suite 400, Glendale, CA, 91204-1269.

On August 27, 2026, I served the Cover Letter and Proposed Decision regarding Case No. SF-CE-1524-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 Los Angeles, California.
____Personal delivery.
_X_Electronic service (e-mail).

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720
Email: [redacted]

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: [redacted]
Email: [redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705
Email: [redacted]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 27, 2026, at Glendale, California.

Norbert Hoang
(Type or print name)

[redacted]
(Signature)

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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. **REGENTS OF THE UNIVERSITY OF CALIFORNIA,** Respondent.	**Case No. SF-CE-1524-H** **CHARGING PARTY'S LIMITED STATEMENT OF EXCEPTIONS AND REQUEST FOR CLERICAL AND CLARIFYING CORRECTIONS**

Charging Party accepts the Proposed Decision's finding of liability and the substance of its remedial result. Pursuant to PERB Regulation 32300, he takes limited exception only to the wording of the Appendix Notice and to a related inconsistency between the remedy described in the Proposed Decision and Paragraph B.1 of the operative order.

The Proposed Decision explains that notice serves to inform affected employees of their rights, assure them of PERB's conclusions, and communicate the employer's readiness to comply. It therefore orders physical and electronic notice to faculty throughout the Berkeley campus rather than notice limited to the Academic Personnel Office. Proposed Decision, pp. 23-26.

The Appendix should clearly communicate that the ordered policy correction applies to Berkeley faculty members generally. In its present form, however, the operative provisions repeatedly identify James O'Brien by name and may leave readers with the mistaken impression that only he is permitted to share his personnel records. The Appendix also contains the obvious duplicated phrase "advising James O'Brien advising James O'Brien." Proposed Decision, Appendix.

1. IDENTIFY CHARGING PARTY BY NAME ONLY IN THE CASE TITLE

The introductory case identification may remain:

> In Unfair Practice Case No. SF-CE-1524-H, James O'Brien v. Regents of the University of California (Berkeley) . . .

After that identification, the Notice should use "the Charging Party" where an individual reference remains necessary.

Repeating Charging Party's full name throughout the operative provisions is unnecessary and awkward. More importantly, the repeated individual references obscure the campus-wide meaning of the ordered policy correction.

2. STATE CLEARLY THAT THE POLICY CORRECTION APPLIES TO BERKELEY FACULTY GENERALLY

The Proposed Decision orders the University to rescind or reform "any underlying policy or practice generally prohibiting faculty members at the University's Berkeley campus from sharing their personnel records with others." Proposed Decision, p. 29.

The operative language of the Notice should state that faculty-wide effect directly. Faculty receiving the Notice should understand that it concerns their own rights and that the University may not maintain a campus practice generally prohibiting Berkeley faculty members from sharing their personnel records, subject to limited exceptions. The Notice should not read as though the Proposed Decision

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created a personal exception applicable only to Charging Party.

Charging Party therefore requests that the Appendix be replaced with the corrected Notice attached below.

3. CORRECT THE DUPLICATED LANGUAGE AND CONFORM THE OPERATIVE ORDER TO THE STATED REMOVAL OR EXPUNGEMENT REMEDY

The Proposed Decision's Introduction states that the remedy includes "rescission and/or expungement of the offending communication." Proposed Decision, pp. 1-2. The remedy discussion similarly explains that restoration may require rescission of a policy and removal or expungement of an offending document from an employee's personnel records. Proposed Decision, pp. 20-21.

Paragraph B.1 of the operative order, however, requires only that the University "rescind and/or reform" the July 15, 2025 communication. Charging Party respectfully requests that Paragraph B.1 be conformed to the remedy described in the decision by stating:

> Rescind and/or reform the July 15, 2025 communication to the Charging Party; remove or expunge the offending communication, as appropriate; and rescind and/or reform any underlying policy or practice generally prohibiting faculty members at the University's Berkeley campus from sharing their personnel records with others.

This correction would not expand the relief awarded. It would make the operative order consistent with the remedy expressly described in the Proposed Decision.

REQUEST

Charging Party respectfully requests that PERB:

1. Correct the duplicated phrase in the Appendix.
2. Identify Charging Party by name only in the case title and use "the Charging Party" thereafter where an individual reference is necessary.
3. Revise the operative language of the Notice so that Berkeley faculty members understand that the ordered policy correction applies to them generally, not only to Charging Party.
4. Conform Paragraph B.1 of the operative order to the Proposed Decision's stated rescission, removal, and expungement remedy.
5. Substitute the corrected Appendix Notice set forth below.

Dated: August 28, 2026

James O'Brien
Charging Party, self-represented
Professor
Department of Electrical Engineering and Computer Sciences
University of California, Berkeley
4147 Gateway Building
Berkeley, California 94720
[redacted]

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PROPOSED CORRECTED APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

An Agency of the State of California

In Unfair Practice Case No. SF-CE-1524-H, *James O'Brien v. Regents of the University of California (Berkeley)*, it has been found that the Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571, subdivision (a), by improperly advising Berkeley faculty members that, subject to limited exceptions, their personnel records are not to be shared with others.

This Notice applies to Berkeley faculty members generally, not only to the Charging Party. The University will rescind or reform any campus policy or practice generally prohibiting Berkeley faculty members from sharing their personnel records with others, subject to limited exceptions.

Because of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

Interfering with employee rights by improperly advising Berkeley faculty members that, subject to limited exceptions, their personnel records are not to be shared with others.

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

1. Rescind and/or reform the July 15, 2025 communication to the Charging Party; remove or expunge the offending communication, as appropriate; and rescind and/or reform any underlying policy or practice generally prohibiting Berkeley faculty members from sharing their personnel records with others.
2. Upon proof in compliance proceedings, make the Charging Party whole for compensable injuries suffered as a direct or foreseeable result of the conduct found unlawful. Any monetary award shall be augmented by 7 percent annual interest, compounded daily, from the date of harm until the date of payment.

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.

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PROOF OF SERVICE

I, James O'Brien, declare that I am over 18 years of age.

On August 28, 2026, I filed **Charging Party's Limited Statement of Exceptions and Request for Clerical and Clarifying Corrections** through the ePERB Portal in Public Employment Relations Board Case No. SF-CE-1524-H and used the portal's electronic service function to serve Respondent's current representatives:

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, California 94607
[redacted]

Jack McKimm, Senior Labor Relations Hearing Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, California 94705
[redacted]

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

Executed on August 28, 2026.

[redacted]
James O'Brien

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STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent,	Case No.: SF-CE-1524-H **RESPONSE TO CHARGING PARTY'S LIMITED STATEMENT OF EXCEPTIONS** **SEPTEMBER 16, 2026**

EMPLOYER'S RESPONSE TO CHARGING PARTY'S STATEMENT OF EXCEPTIONS AND REQUEST FOR CORRECTIONS

I. Introduction

The University of California at Berkeley ("University," "employer") respectfully submits the following response to Charging Party's Limited Statement of Exceptions and Request for Clerical and Clarifying Corrections filed on August 28, 2026.

The University generally opposes the Charging Party's requested amendments to Administrative Law Judge ("ALJ") Scott Miller's Notice and Order attached as an Appendix to his August 27, 2026 Proposed Decision ("ALJ's Proposed Decision") in this matter. Specifically, the University objects to the Charging Party's request that the Notice should expressly "appl[y] to Berkeley faculty members generally, not only to the Charging Party."[1] The University also opposes the request for an expanded cease-and-desist order which would instruct the University to cease "…improperly advising Berkeley faculty members." These class-action-style remedies

[1] *See* Charging Party's Limited Statement of Exceptions and Request for Clerical and Clarifying Corrections.

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are legally untenable, contrary to the ALJ's decision, and they are excessive and unnecessary to restore the Charging Party to status quo ante. The University's arguments in support of its opposition are set forth below.

II. The Charging Party's Request is an Unjustified Departure from the ALJ's Decision

The Charging Party's request is inconsistent with, and does not logically follow from, the ALJ's decision and order. The ALJ's detailed, multi-page analysis is unambiguous that the cease-and-desist order was intended to apply exclusively to the Charging Party:[2]

> For due process reasons, PERB cannot order remedies for claims that were not litigated. (*SunLine Transit Agency* (2024) PERB Decision No. 2928-M, p. 27; *County of Sacramento* (2020) PERB Decision No. 2745-M, pp. 12-16; *San Francisco Community College District* (1994) PERB Order No. Ad-258, pp. 4-5; *State of California* (*Department of Mental Health*) (1990) PERB Decision No. 840-S, pp. 4-5.)" ... "The doctrine of standing also limits PERB's authority to order relief for current or former employees who were not named parties to the case and were not represented by an employee organization. (*United Teachers Los Angeles* (*Raines*) (2016) PERB Decision No. 2475, pp. 54, 69, fn. 44 (*UTLA-Raines*); cf. *Regents of the University of California* (*Teamsters Local 2010*) (2020) PERB Decision No. 2699-H, pp. 5-8.) … If a charging party lacks standing to bring an unfair practice claim, then PERB also lacks authority to decide liability or remedy the matter. (*City of Inglewood* (2015) PERB Decision No. 2424-M, pp. 7-9, 16; *CSU Employees Union, SEIU Local 2579* (*Sarca*) (2010) PERB Decision No. 2137-H, pp. 3-4 (*CSUEU-Sarca*); *Region 4 Court Interpreter Employment Relations Committee and the Superior Court of California, County of Riverside* (2008) PERB Decision No. 1987-I, p. 11.) Because standing cannot be conferred by consent or waiver, Board agents have a duty to ensure proper standing, even if no party has raised the issue. (*City of Livermore, supra*, PERB Decision No. 2525-M, p. 8; *Los Angeles Community College District* (1994) PERB Decision No. 1060, p. 2.)"[3]

[2] *See* ALJ's Proposed Decision, p. 17: "Regardless of the Precise Wording, the Cease-and Desist Order Is Limited to the Named Parties and the Issues Admitted in this Case."
[3] ALJ's Proposed Decision, pp. 10-12.

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The Charging Party frames his exceptions as a "request" and establishes no legal basis that would justify a departure from the ALJ's decision. Expanding this remedy to encompass other individuals would constitute an inappropriate and unsupported expansion of the ALJ's order. Because the ALJ explicitly limited his cease-and-desist remedy to the Charging Party, any broader interpretation is legally untenable and must be rejected.

III. The Charging Party's Desired Notice Is Excessively Disproportionate to both the Alleged and Admitted Conduct

The Charging Party's requested notice would also expand the remedy far beyond the singular violation at issue in the Complaint (i.e., the July 15, 2015 cover letter addressed only to Charing Party). The Charge and the Complaint did not include allegations regarding conduct by the University toward faculty members other than Charging Party, and the University did not admit to any such conduct.[4] Accordingly, the ALJ's proposed order is narrowly tailored to the Charging Party, which completely satisfies PERB's statutory goal of restoring the parties to the status quo ante without administrative overreach.[5] The ALJ's proposed cease-and-desist order aligns the remedy with the scope of the alleged and admitted conduct and should be adopted by the Board, and is tailored to fully restore the status quo ante. Enforcing anything beyond the ALJ's proposal would penalize the University for uncharged conduct, regarding which there has been no admission or adjudication, rather than restoring the status quo ante.

[4] *See* ALJ's Proposed Order, p. 16: "[B]ecause no claims by other employees (current or former) were alleged in the UPCs or the Complaint, the University has not been afforded sufficient notice for PERB to find or remedy any violation of other employees' rights. (*SunLine Transit District, supra*, PERB Decision No. 2928-M, p. 27; *County of Sacramento, supra*, PERB Decision No. 2745-M, pp. 12-16.)"

[5] *See, e.g.*, *Modesto City Schools* (1983) PERB Decision No. 291, pp. 67-68 (A "properly designed remedial order seeks a restoration of the situation as nearly as possible to that which would have obtained but for the unfair labor practice."); Board-ordered remedies should also deter future misconduct, so long as the orders do not attempt to achieve ends beyond enforcement of the statute(s) at issue. (*City of Palo Alto* (2019) PERB Decision No. 2664-M, p. 3; *San Diego, supra*, PERB Decision No. 2464-M, pp. 40-42; *Pasadena, supra*, PERB Order No. Ad-406-M, pp. 12–13).

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IV. The Charging Party's Requested Notice Substantially Alters the ALJ's Proposed Order and Constitutes an Unsupported, Excessive Remedy

Although the Charging Party characterizes his "partial" exceptions as being "limited"[6] changes, largely grammatical or clerical changes "to the wording" of the ALJ's issuance, the Charging Party's desired amendments to the ALJ's notice and order would introduce substantive, consequential changes and, if adopted, they would materially revise the remedies imposed on the University. The Charging Party requested this addition: "This Notice applies to Berkeley faculty members generally, not only to the Charging Party." However, as the ALJ made clear, the Charging Party is the sole party with standing and, for due process considerations, the notice cannot remedy "other employees' rights." Stating the notice applies "generally, not only to the Charging Party" would create confusion and administrative difficulties, because a nearby section of the notice references compliance proceedings and the possibility of monetary awards and interest – but only for the Charging Party. The Board should reject the Charging Party's attempt to pass off major substantive revisions as mere grammatical corrections or slight adjustments to "the wording" of the proposed order.

V. Conclusion

The Charging Party once again seeks to impose general, class-action-style remedies on the University, despite the ALJ's decision detailing several reasons why such remedies were unavailable in this instance. The University respectfully asks the Board to reject the Charging Party's partial exceptions.

Respectfully submitted,

[redacted]

[6] *See* Charging Party's Limited Statement of Exceptions and Request for Clerical and Clarifying Corrections, p.1: "Charging Party accepts the Proposed Decision's finding of liability and the substance of its remedial result. … he takes limited exception *only to the wording of the Appendix Notice* and to a related inconsistency between the remedy described in the Proposed Decision and Paragraph B.1 of the operative order." (emphasis added).

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Jack McKimm
UC Berkeley
Sr. Labor Relations Hearing Consultant
[redacted]
University of California, Berkeley
2850 Telegraph Ave.
Berkeley, CA 94705

XI. VERIFICATION

I have reviewed the foregoing, and I declare under penalty of perjury under the laws of the State of California that it is true and correct to the best of my knowledge and belief.

Dated the 16th of September 2026

[redacted]

Jack McKimm

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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,

State of California. I am over the age of 18 years. The name and address of my

Residence or business is 2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

2850 Telegraph Ave., Floor 4, Berkeley, CA 94705

On 09/16/2026 (*Date*), I served the Response to Charging Party's Limited (*Description of document(s)*)

Statement of Exceptions (*Description of document(s) continued*) in Case No. SF-CE-1524-H PERB Case No., if known).

on the parties listed below by (check the applicable method(s)):

- ☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☑ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (*May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).*)

(*Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.*)

[redacted]
Professor James O'Brien, Charging Party

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 09/16/2026 (*Date*),

at Berkeley (*City*) California (*State*).

Jack McKimm (*Type or print name*) [redacted] (*Signature*)

(02/2021) Proof of Service

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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. **REGENTS OF THE UNIVERSITY OF CALIFORNIA,** Respondent.	**Case No. SF-CE-1524-H** **CHARGING PARTY'S REPLY IN SUPPORT OF LIMITED EXCEPTIONS AND PROPOSED ALTERNATIVE NOTICE LANGUAGE**

I. PURPOSE OF THIS REPLY

Charging Party submits this reply under PERB Regulation 32312 to address Respondent's September 16, 2026 response, particularly its contention that faculty-wide notice language could confuse readers about the individual monetary remedy. Consideration of this reply would assist the Board by resolving that concern through alternative language rather than requiring expansion of the individualized cease-and-desist provision. (PERB Reg. 32312, subd. (c).)

'Proposed Decision' refers to the August 27, 2026 decision; 'Proposed Order' to its order on printed pages 28-30; and 'Notice' to its Appendix Notice to Employees. 'Response' refers to Respondent's September 16 filing; 'Limited Exceptions' to Charging Party's August 28 filing. Citations use printed page numbers.

The Notice should distinguish the campus-wide policy correction from potential compensation for the Charging Party in this proceeding. It should not suggest either that other faculty members would receive compensation under the resulting order or that their independent rights and potential claims have been decided against them.

Charging Party offers alternative language preserving the individualized cease-and-desist and make-whole provisions while explaining the general policy correction. He separately requests filing guidance for other faculty. The Board may decline that guidance without rejecting the core clarification.

II. THE INDIVIDUAL MONETARY REMEDY AND THE CAMPUS-WIDE POLICY CORRECTION ARE DIFFERENT

Respondent emphasizes that no claims belonging to other faculty members were alleged in the Complaint or adjudicated in the Proposed Decision. (Response, pp. 2-4.) Charging Party is not asking the Board in this reply to award those individuals compensation, decide their claims, or reconsider the denial of individualized relief for nonparties.

But that limitation does not eliminate the separate requirement in Paragraph B.1 of the Proposed Order (Proposed Decision, p. 29) to rescind or reform:

> "any underlying policy or practice generally prohibiting faculty members at the University's Berkeley campus from sharing their personnel records with others."

(Proposed Decision, p. 29, Proposed Order, para. B.1; Limited Exceptions, p. 1, § 2.)

Paragraph B.1 of the Appendix Notice does not reproduce that separate policy-correction requirement. Instead, it refers to rescinding or reforming the July 15, 2025 communication and contains the duplicated phrase "advising James O'Brien advising James O'Brien." Explaining the underlying policy

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obligation in the Notice would conform the Notice to the Proposed Order, not create a new entitlement to compensation. (Proposed Decision, Appendix Notice, para. B.1.)

The decision also explains why notice must reach faculty throughout Berkeley rather than only personnel within the Academic Personnel Office. It relies on the University's description of a "campus-wide practice" and requires physical and electronic notice to the faculty population. (Proposed Decision, pp. 25-26.) The correction of that general campus practice is not a personal exception allowing only the Charging Party to share his records.

Respondent argues that faculty-wide language would create confusion because a nearby provision discusses potential monetary relief limited to the Charging Party. (Response, p. 4.) That concern supports distinguishing the provisions explicitly. It does not require omitting an explanation of the general policy correction.

Accordingly, Charging Party offers this alternative to the faculty-wide cease-and-desist wording in his August 28 proposed notice: retain the individualized scope of Paragraph A of the Proposed Order and the Appendix Notice, substitute "the Charging Party" for his name, and add the explanatory language in Section III of this reply.

III. PROPOSED CLARIFICATION FOR THE APPENDIX NOTICE

Charging Party requests insertion of the following two paragraphs after the Notice's opening finding and before its cease-and-desist and affirmative-action provisions. They supplement, rather than replace, those provisions. In this proposed notice text, "this order" means the final order to be issued by the Board:

> **Campus-wide policy correction.** The University is required to rescind or reform any underlying campus policy or practice generally prohibiting Berkeley faculty members from sharing their personnel records with others. This correction applies to Berkeley faculty members generally, not only to the Charging Party. It does not eliminate any separate disclosure restriction independently required by law.
>
> **Individual monetary relief in this proceeding.** Any monetary relief awarded under this order is limited to the Charging Party, the faculty member who brought this case, and depends on proof of compensable injury in PERB compliance proceedings. This order does not award compensation to other faculty members or decide whether any other faculty member has a timely or legally valid separate claim.

This wording addresses Respondent's stated concern without expanding the persons entitled to recover in this proceeding. Paragraph B.2 of the Proposed Order and the corresponding monetary provision of the Notice would otherwise remain unchanged, including the proof requirement and interest terms, with "the Charging Party" substituted for the name.

The Notice should not state simply that "only the Charging Party may receive compensation," without the qualification "under this order." Such wording could imply that the Board has foreclosed independent claims that it has not adjudicated.

A faculty member who understands that the monetary provision does not award that person compensation, but who then considers pursuing a separate claim, has understood the distinction correctly. That response is not evidence that the Notice is confusing.

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IV. SEPARATELY REQUESTED GUIDANCE ABOUT OTHER FACULTY MEMBERS' PERB CHARGES

Respondent's emphasis on the limits of this proceeding also presents an opportunity to explain those limits constructively.

Charging Party requests that the Board consider adding a short paragraph explaining that other faculty members may investigate and file their own unfair-practice charges with PERB, subject to applicable requirements. That would not award relief to absent persons. It would explain that any claim for their own relief through PERB must be pursued separately.

Government Code section 3563.2(a), part of the Higher Education Employer-Employee Relations Act (HEERA), provides for employee unfair-practice charges subject to a six-month limitations period. Receipt of a corrective notice does not automatically restart that period. PERB ordinarily looks to when the charging party knew or should have known of the underlying conduct, rather than when the person later learned its legal significance. (*Trustees of the California State University (San Marcos)* (2020) PERB Decision No. 2738-H, pp. 8, 12.)

A continuing restriction presents a different question. In County of San Diego (2020) PERB Decision No. 2721-M, the Board explained that a rule or policy that facially interferes with protected rights may be challenged when it remained in effect during the six months preceding the charge, even without a new application to the charging party during that period.

Thus, the age of an original warning does not necessarily resolve a charge challenging continued maintenance of the restriction. Whether the restriction remained operative, and when and how it was effectively withdrawn, would require a factual and legal determination in the separate case. This proceeding need not decide whether publication of the Notice would constitute effective withdrawal for any other faculty member.

Charging Party does not ask the Board to decide the deadlines of unidentified potential claimants or create a new limitations period. He requests accurate information that distinguishes an opportunity to pursue an independent claim from an entitlement to relief in this proceeding.

If the Board grants this additional request, Charging Party proposes that the following paragraph appear immediately after the two explanatory paragraphs in Section III of this reply:

> **Other faculty members' potential PERB charges.** Other faculty members who believe the restriction interfered with their protected rights may seek advice about, and may file, their own unfair-practice charges with PERB, subject to applicable requirements. HEERA generally imposes a six-month filing period. A challenge to continued maintenance of an unlawful rule may be timely if the rule remained in effect during the six months before the charge was filed. Timeliness must be determined on the particular facts and applicable law. Faculty members considering a charge should act promptly and may contact PERB for procedural information. Receipt of this Notice does not automatically create or extend a filing period or establish entitlement to relief.

This paragraph addresses independent filings expressly rather than leaving readers to infer either an automatic entitlement to compensation or an absence of any possible remedy.

This is an additional explanatory provision, not merely a typographical correction. It responds to UC's stated concern about confusing the policy correction with individual recovery. The Board may decline this paragraph without rejecting Section III's core clarification. Any paragraph the Board orders included would be mandatory for the University.

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V. THE REMAINING CORRECTIONS SHOULD BE CONSIDERED SEPARATELY

Respondent's substantive opposition concerns the asserted expansion of relief to other faculty members. It supplies no specific reason to retain the duplicated phrase in the Appendix or the repeated use of Charging Party's full name.

Charging Party continues to request that his name appear in the Notice's introductory case title and that necessary individual references thereafter use "the Charging Party." He also retains the requested phrase "by improperly advising Berkeley faculty members" in the Notice's opening finding. In the alternative proposed here, that introductory wording would not change the individualized scope of the cease-and-desist or monetary provisions.

Charging Party also maintains his request to reconcile Paragraph B.1 of the Proposed Order (Proposed Decision, p. 29) with the discussion of rescission, removal, or expungement of the July 15, 2025 communication. The decision lists those measures as part of the remedy, while the operative paragraph says only "rescind and/or reform." The final order should make clear whether removal or expungement from Charging Party's personnel records is required. This concerns the University's personnel records, not destruction of evidence in this proceeding. (Proposed Decision, pp. 1-2, 16, 20-21, 29; Limited Exceptions, p. 2, § 3.)

These requests are separable. A decision not to include guidance concerning independent charges would not require retaining the duplicated phrase, unnecessary name repetition, or ambiguity about the campus-wide policy correction.

VI. REQUEST

Charging Party respectfully requests that the Board:

1. Adopt the two explanatory paragraphs in Section III of this reply while preserving the individualized cease-and-desist and monetary provisions.
2. Consider the additional filing-guidance paragraph in Section IV of this reply, without deciding other faculty members' claims or deadlines.
3. Correct the duplicated phrase and repeated names in the Notice and clarify the Proposed Order's removal or expungement requirement, as requested in Section V of this reply.
4. Adopt the core clarification even if the Board declines the separate filing guidance.

The Notice can explain the faculty-wide policy correction and preserve other faculty members' ability to investigate separate claims without awarding them relief in this proceeding. Those explanations answer Respondent's stated concern rather than creating the confusion it predicts.

Respectfully submitted,

Dated: September 16, 2026

[redacted]

James O'Brien
Charging Party, self-represented
Professor
Department of Electrical Engineering and Computer Sciences
University of California, Berkeley
4147 Gateway Building
Berkeley, California 94720
[redacted]

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PROOF OF SERVICE

I, James O'Brien, declare that I am over 18 years of age. My business address is Department of Electrical Engineering and Computer Sciences, University of California, Berkeley, 4147 Gateway Building, Berkeley, California 94720.

On September 16, 2026, I served **Charging Party's Reply in Support of Limited Exceptions and Proposed Alternative Notice Language** through the ePERB Portal's electronic service function on Respondent's representatives:

William Teeling, Senior Counsel
University of California, Office of the General Counsel, Labor and Employment
1111 Franklin Street, 8th Floor
Oakland, California 94607
[redacted]

Jack McKimm, Senior Labor Relations Hearing Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, California 94705
[redacted]

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

Dated: September 16, 2026

[redacted]
James O'Brien

PERB
California Public Employment Relations Board

Appeals Office
1031 18th Street, Suite 210
Sacramento, CA, 95811-4124
Telephone: [redacted]

September 29, 2026

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705

Re: *James O'Brien v. Regents of the University of California (Berkeley)*
Unfair Practice Charge No. SF-CE-1524-H

Dear Parties:

This is to inform you that the filings are now complete for this case and it was placed on the Board's docket on September 29, 2026.

If a request for oral argument was made in this case, you will be advised later whether the Board will grant the request. If you have any further questions about the Board's case handling procedures, please contact me at [redacted]

Sincerely,

[redacted]

Joseph Seisa
Appeals Assistant

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 210, Sacramento, CA, 95811-4124.

On September 29, 2026, I served the Notice of Filings Complete regarding Case No. SF-CE-1524-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.
____Personal delivery.
_X_Electronic service (e-mail).

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720
Email: [redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705
Email: [redacted]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 29, 2026, at Sacramento, California.

Joseph Seisa	[redacted]
(Type or print name)	(Signature)

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES O'BRIEN, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	Case No. SF-CE-1524-H PERB Decision No. 3064-H October 14, 2026

Appearances: James O'Brien, on his own behalf; Jack McKimm, Senior Labor Relations Hearing Consultant, for the Regents of the University of California.

Before Banks, Chair; Paulson and Ortega, Members.

DECISION[1]

BANKS, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Charging Party James O'Brien to a proposed decision of an administrative law judge (ALJ). PERB's Office of the General Counsel (OGC) issued a complaint alleging that Respondent Regents of the University of California (University) interfered with employee rights guaranteed by the Higher Education Employer-Employee Relations Act (HEERA; Gov. Code, § 3560 et seq.) in violation of Government Code section 3571(a). Specifically, the complaint alleged that the University interfered with Charging Party's rights when, on July 15, 2025, it

[1] PERB Regulation 32320(d) authorizes the Board to determine whether to designate a decision, or any part thereof, as non-precedential. Having considered the regulation's criteria, we designate this decision as non-precedential. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

informed him, in writing, that he was prohibited from sharing copies of his five-year merit review file "with anyone other than [his] recognized agent, such as legal counsel."

In subsequent filings with PERB, the University's representative admitted that the correspondence sent to Charging Party was based on a campus-wide policy or practice existing at that time. The University eventually filed an Amended Answer to the Complaint that admitted all allegations and admitted liability for the one count of interference with employee rights alleged in the Complaint.

Based on the University's admissions, the ALJ informed the parties that there was need for neither a hearing nor a stipulated record regarding liability. Both parties filed briefs, reply, and/or sur-reply briefs on the limited issue of the appropriate remedy. There was extensive briefing by both parties regarding the scope and precise wording of a cease-and-desist order, the appropriateness of make-whole relief, proposed class action-style discovery regarding other faculty members, the scope of physical and electronic notice to employees, and other issues affecting the remedy.

Based on the University's admissions, the ALJ found that it had interfered with employee rights in violation of HEERA. In the proposed decision, the ALJ issued a cease-and-desist order referencing the specific facts of the case, rescission of the July 15, 2025 communication to Charging Party and any underlying policy or practice on which it was based, and an opportunity for Charging Party to prove any compensable damages for make-whole relief in compliance proceedings. The ALJ also ordered that the University provide physical and electronic notice of the order to faculty members at the University's Berkeley campus. Charging Party filed exceptions and the University filed a response.

DISCUSSION

In resolving exceptions to a proposed decision, the Board applies a de novo standard of review. (*County of Santa Clara* (2019) PERB Decision No. 2629-M, p. 6.) However, to the extent that a proposed decision has adequately addressed issues raised by certain exceptions, the Board need not further analyze those exceptions. (*Ibid*.) The Board also need not address alleged errors that would not affect the outcome. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.)

Absent good cause, we decline to consider initial exceptions filed by a prevailing party. (*Fremont Unified School District* (2003) PERB Decision No. 1528, p. 3; cf. *Oak Valley Hospital District* (2018) PERB Decision No. 2583-M, pp. 1-2 [Board resolved prevailing party's initial exceptions to prevent the parties from being bound by an erroneous legal standard should similar facts arise in the future].) Moreover, the Board may decline to consider legal theories that are cumulative or that would not affect the remedy. (*Fresno County In-Home Supportive Services Public Authority* (2015) PERB Decision No. 2418-M, p. 20.) A "properly designed remedial order seeks a restoration of the situation as nearly as possible to that which would have obtained but for the unfair labor practice." (*Modesto City Schools* (1983) PERB Decision No. 291, pp. 67-68.)

Here, the proposed order consisted of a cease-and-desist order referencing the specific facts of this case, rescission/reform of the July 15, 2025 communication, an opportunity for Charging Party to prove any compensable damages for make-whole relief in compliance proceedings, and physical and electronic notice to faculty

members at the University's Berkeley campus.[2] These remedies are consistent with PERB's typical remedies for interference conduct, and they would place Charging Party in the situation in which he would have been but for the University's misconduct. For that reason, we are disinclined to grant Charging Party's exceptions.

Moreover, Charging Party's exceptions largely reprise arguments he asserted in his briefing before the ALJ, and the ALJ adequately addressed these arguments.[3] We therefore affirm the Proposed Decision, subject to the discussion below.

The Legislature has vested PERB with broad authority to decide what remedies are necessary to effectuate the purposes and policies of California's labor relations laws. (*Mt. San Antonio Community College Dist. v. Public Employment Relations Bd.* (1989) 210 Cal.App.3d 178, 189.) PERB remedies must serve the dual purposes of compensating for the harm a violation causes and deterring further violations. (*County of San Joaquin v. Public Employment Relations Bd.* (2022) 82 Cal.App.5th 1053, 1068.)

PERB remedies should normally expunge the consequences of an unfair practice and restore the "status quo that would have obtained but for the respondent's wrongful act." (*County of Kern & Kern County Hospital Authority* (2019) PERB

[2] The proposed decision discussed expungement as an appropriate remedy but ordered the University to "[r]escind and/or reform the July 15, 2025 communication." In our view, rescission and expungement are effectively the same thing, but to the extent that any dispute remains as to the steps the University is required to take, those can be resolved in compliance proceedings.

[3] One of Charging Party's requests is clerical (that the Board delete a duplicated phrase "advising James O'Brien advising James O'Brien") in the Notice and Order, and we grant that request.

Decision No. 2659-M, p. 26.) PERB therefore attempts to "recreate the conditions and relationships that would have been had there been no unfair labor practice, even when doing so necessarily entails some degree of uncertainty as to the precise relationships." (*City of Pasadena* (2014) PERB Order No. Ad-406-M, p. 13.)

While it is true that Board-ordered remedies are not limited to named parties in all circumstances, the scope of any permissible remedy is constrained by principles of standing and due process. Employees, employee organizations, and employers generally have standing to file unfair practice charges against employee organizations or employers, but their standing is limited in certain instances by the nature of the rights and duties at issue. (*Regents of the University of California* (2020) PERB Decision No. 2699-H, pp. 4-5.) For example, because exclusive representatives and employers have the statutory duty to bargain in good faith only with one another and not with employees, individual employees lack standing to file a bad faith bargaining charge. (*Id*. at p. 5.) "Similarly, individual employees lack standing to allege violations of employee organizations' statutory rights." (*Ibid*.) In contrast, however, an employee organization, whether an exclusive representative or a nonexclusive representative, has standing to assert employees' rights on their behalf. (*Id*. at pp. 7-8.) The Board has consistently held that officers, representatives, or agents of an employee organization are authorized to assert rights on behalf of other, unnamed employees. (*United Teachers Los Angeles (Raines et al.)* (2016) PERB Decision No. 2475, p. 69, fn. 44; *CSU Employees Union, SEIU Local 2579 (Sarca)* (2010) PERB Decision No. 2137-H, pp. 3-4.

Additionally, for due process reasons, PERB cannot order remedies for claims that were not litigated. (*SunLine Transit Agency* (2024) PERB Decision No. 2928-M,

p. 27; *County of Sacramento* (2020) PERB Decision No. 2745-M, pp. 12-16; *San Francisco Community College District* (1994) PERB Order No. Ad-258, pp. 4-5; *State of California (Department of Mental Health)* (1990) PERB Decision No. 840-S, pp. 4-5.) Raising an unalleged claim for the first time in a post-hearing brief provides insufficient notice for PERB to consider the issue. (*San Bernardino Public Employees Association (White)* (2018) PERB Decision No. 2572-M, pp. 12-13.)

Here, Charging Party seeks to expand the scope of the remedies in this case by rewriting the Notice and Order to apply to all Berkeley faculty members generally and to advise other faculty members of their ability to file their own unfair practice charges. Standing and due process principles prevent these amendments, though, because the Complaint's sole allegation, indeed the University's sole admitted violation, is that the University violated HEERA with its July 15, 2025 written communication to Charging Party. As the sole, self-represented party, not acting on behalf of an employee organization, Charging Party lacks standing to obtain relief for other faculty members. Furthermore, due process bars any remedy for claims that were never pleaded or litigated. The ALJ adequately addressed Charging Party's arguments, explaining that, whether analyzed under due process principles or for proper standing, the various class action-style remedial measures Charging Party requested are inappropriate. And, because no claims by other employees (current or former) were alleged in the Unfair Practice Charge or the Complaint, the University was not afforded sufficient notice such that PERB could find or remedy any violation of other employees' rights. Moreover, rewriting the Notice to encourage other faculty to file their own charges would enlarge the remedy beyond the University's admitted

conduct, contradict the Proposed Decision, and improperly convert a single-employee interference case into relief on behalf of all faculty.

We do make one additional amendment to the Order and Notice, though. The July 15, 2025 communication was also framed as a general policy or practice affecting other employees. The ALJ addressed this in the Proposed Decision:

> "As indicated [in the Proposed Decision], restoring the prior status quo may require ordering the employer to rescind a policy, to remove or expunge a document from an employee's personnel files, or to excise the offending provision(s) of an overly broad 'confidentiality' rule. However, PERB is generally not in the business of rewriting employer documents or micromanaging *how* the employer accomplishes this task. (*County of Santa Clara*, *supra*, PERB Decision No. 2613-M, pp. 5, 17; *LACCD*, *supra*, PERB Decision No. 2404, p 14; see also *Capistrano Unified School District* (2015) PERB Decision No. 2440, pp. 45-46.) The University previously asserted in unverified filings that it has 'changed its campus-wide practice and has no intention to revert to its pre-charge practice.' Although it now makes similar assertions in the [Assistant Vice Provost for Academic Personnel's] declaration, there is no record in this case beyond the matters admitted in the Answer, and I decline to make new or additional factual findings based solely on a declaration submitted with a Sur-Reply, when the declaration's contents were previously known to the proponent. (PERB Reg. 32170, subd. (b)(8).) To the extent the July 15, 2025 cover letter to O'Brien or the underlying confidentiality policy remains in effect, the University shall be ordered to rescind the policy and/or revise the letter advising employees not to share their personnel files with others. (*County of Santa Clara*, *supra*, at pp. 5, 17; *LACCD*, *supra*, at p. 14.)"

We affirm the ALJ's determination that, to the extent the underlying confidentiality policy remains in effect, the University shall rescind the policy and/or revise the letter advising employees not to share their personnel files with others.

ORDER

Based on the foregoing and the entire record in the case, the Public Employment Relations Board (PERB) finds that the Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA), Gov. Code, § 3560 et seq.) when it advised James O'Brien, a faculty member at the University's Berkeley campus that, subject to limited exceptions, he was prohibited from sharing copies of his personnel records with others.

Pursuant to Government Code sections 3563 and 3563.3, we ORDER that the University, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Interfering with employee rights by advising O'Brien, that subject to limited exceptions, his personnel records were not to be shared with others.

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

1. Rescind and/or reform the July 15, 2025 communication advising O'Brien that subject to limited exceptions, his personnel records are not to be shared with others.

2. To the extent that the underlying confidentiality policy remains in effect, the University shall rescind the policy and/or revise the letter advising employees not to share their personnel files with others.

3. Upon proof in compliance proceedings, make O'Brien whole for compensable injuries suffered as a direct or foreseeable result of the above-referenced conduct. Any monetary award shall be augmented by 7 percent annual interest, compounded daily, from the date of harm until the date of payment.

4. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations where notices to faculty employees at the University's Berkeley campus are posted, copies of the Notice attached hereto as an Appendix. An authorized agent of the University must sign the Notice, indicating that the University will comply with the terms of this Order. The University shall maintain the posting for a period of 30 consecutive workdays. The University shall take reasonable steps to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material. In addition to physically posting this Notice, the University shall communicate it by electronic message, intranet, internet site, and other electronic means used by the University to communicate with faculty at the University's Berkeley Campus.[4]

5. Notify OGC of the actions the University has taken to follow this Order by providing written reports as directed by OGC and concurrently serving such reports on O'Brien.

Members Paulson and Ortega joined in this Decision.

[4] Either party may ask PERB's Office of the General Counsel (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.

APPENDIX

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

After proceedings were complete in Unfair Practice Case No. SF-CE-1524-H, *James O'Brien v. Regents of the University of California (Berkeley)*, in which all parties had the right to participate, the Public Employment Relations Board (PERB) found that the Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571(a) when it advised James O'Brien, a faculty member at the University's Berkeley campus that, subject to limited exceptions, he was prohibited from sharing copies of his personnel records with others.

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

A. CEASE AND DESIST FROM:

1. Interfering with employee rights by advising O'Brien that subject to limited exceptions, his personnel records were not to be shared with others.

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

1. Rescind and/or reform the July 15, 2025 communication advising O'Brien that subject to limited exceptions, his personnel records are not to be shared with others.

2. To the extent that the underling confidentiality policy remains in effect, the University shall rescind the policy and/or revise the letter advising employees not to share their personnel files with others.

3. Upon proof in compliance proceedings, make O'Brien whole for compensable injuries suffered as a direct or foreseeable result of the above-referenced conduct. Any monetary award shall be augmented by 7 percent annual interest, compounded daily, from the date of harm until the date of payment.

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 210, Sacramento, CA, 95811-4124.

On October 14, 2026, I served PERB Decision No. 3064-H regarding *James O'Brien v. Regents of the University of California (Berkeley)*, Case No. SF-CE-1524-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.
____Personal delivery.
_X_Electronic service (e-mail).

James O'Brien
631 Soda Hall, Room 731
Berkeley, CA 94720
Email: [redacted]

Jack McKimm, Senior Hearing Specialist/Consultant
University of California, Berkeley
2850 Telegraph Avenue, Floor 4
Berkeley, CA 94705
Email: [redacted]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 14, 2026, at Sacramento, California.

Joseph Seisa
(Type or print name)

[redacted]
(Signature)