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SAN JOSE MERCURY NEWS

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA

17 COALITION OF UNIVERSITY EMPLOYEES,)
CHARLES SCHWARTZ, SAN JOSE MERCURY)
18 NEWS,)

19 Petitioners,)

20 v.)

21 THE REGENTS OF THE UNIVERSITY OF)
CALIFORNIA, DOES 1 through 100,)

22 Respondents.)
23

CASE NO. _____

**PETITION FOR WRIT OF
MANDATE TO COMPEL RELEASE
OF PUBLIC RECORDS (Government
Code §6259)**

Date:
Time:
Dept.:

24
25 **I. INTRODUCTION**

26 1. This petition, brought under the California Public Records Act (Govt. Code § 6259) by
27 a labor organization representing the working men and women of the University of California ("UC"), a
28 retired professor, and a major daily newspaper, is brought to shed light on how UC invests billions of

1 dollars of retirement funds held for the benefit of UC employees. Until recently, UC's internally-
2 managed investment program had achieved solid returns. Starting in 1999, however, the Regents of
3 UC brought in an outside investment consulting firm, Wilshire Associates, under whose advice the
4 Office of the UC Treasurer has been transformed. In 2000, the former Treasurer was pushed out and
5 \$11 billion in assets was moved to an external index fund management company. In late 2002, the
6 entire equity investment staff was fired, with the Regents' announced intention being to move many
7 billions of dollars into the hands of outside investment management companies. These major shifts in
8 UC's investment policy and strategy were studied, debated and approved in secret meetings of the
9 Regents' Committee on Investments, in violation of the state's open meetings law.

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13 2. Meanwhile, in the past two years, UC employees and retirees have seen their nest eggs
14 shrink as the market value of UC's stock portfolio has plummeted. One particularly disastrous sector
15 has been the UC investment in risky private equities, which have generated huge sums of money for
16 outside managers and venture capitalists, but which have dropped in the past two years to nearly one-
17 third of its former \$1.5 billion value. As retirees' nest eggs have shrunk, UC has adopted a policy of
18 secrecy designed to keep retirees in the dark about the performance of UC's retirement portfolio.

20 3. UC's policy of refusing to disclose the internal rate of return ("IRR") of risky venture
21 capital funds, at a time when its venture capital investments are losing money and at a time when other
22 public pension funds are disclosing the same information, flunks math, civics and history. It flunks math
23 because without public access to investment returns, UC's insular money managers may pour
24 retirement money down a rathole. It flunks civics because the First Amendment and California's Public
25 Records Act teach that government must be conducted in the open. And it flunks history because a
26 tradition of open government in our nation's history, and recent developments in other public pension
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1 funds including the California Public Employees' Retirement System (CalPERS), the nation's largest,
2 should have taught UC that the records sought here must be released. This Petition should be granted.
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4 **II. FACTS AND PARTIES**

5 4. Petitioner Coalition of University Employees (hereafter "CUE") represents
6 approximately 18,000 employees, primarily clerical employees, of the University of California ("UC").
7 Those employees depend on the UC Retirement Plan for their financial security. Petitioner Charles
8 Schwartz (hereafter "Schwartz") is a professor emeritus of physics at UC Berkeley who closely
9 watches the UC Retirement Plan. Petitioner San Jose Mercury News (hereafter "the Mercury News")
10 is a newspaper of general circulation published by Knight Ridder, Inc. based in the City of San Jose,
11 county of Santa Clara. As Silicon Valley's largest newspaper, the Mercury News devotes extensive
12 coverage to the venture capital community and to the performance of the stock market. The Mercury
13 News has a significant interest in informing its readers and the public in general about the performance
14 of UC's investments. Its reporter Matt Marshall recently won the James Madison Freedom of
15 Information Award from the Northern California Society of Professional Journalists for his efforts to
16 shed light on the secretive venture capital industry.
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20 5. Respondent The Regents of the University of California (hereafter "The Regents" or
21 "UC") is a 26-member board empowered, under Article IX, Section 9 of the California Constitution, to
22 administer UC as a public trust. The Regents are an agent and instrumentality of the State of California.
23 The Regents operate 11 institutions of higher learning and five medical centers throughout the state of
24 California, and are headquartered in Oakland, California. Venue is therefore proper in Alameda
25 County. The Regents are trustees of the University of California Retirement Plan ("UCRP"), a defined
26 benefit pension plan with a total membership of 173,343 persons, as of June 30, 2002, including
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1 36,165 retirees and beneficiaries currently receiving payments. The total UCRP assets held as
2 investments by the Regents had a market value of \$34.3 billion as of June 30, 2002, down from \$41.9
3 billion two years earlier. The Regents manage an investment portfolio comprised of endowment funds,
4 pension and retirement funds, and defined contribution funds. The UC Treasurer's most recent Annual
5 Report states that as of June 30, 2002, the UC Treasurer's Office managed \$51 billion in total assets.
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8 6. On December 24, 2002, petitioners' counsel wrote to Steven G. Rosen, UC's counsel,
9 to request public records regarding UC's investments and investment policy and planning activities
10 under the California Public Records Act ("PRA"), Government Code section 6250 et seq. A copy of
11 this letter, which followed many prior requests by petitioner Schwartz for similar information, is attached
12 as Exhibit A.
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14 7. On December 30, 2002, UC's "principal legal analyst," Sharon Thomas, wrote to
15 acknowledge the December 24, 2002 letter, and to say that a search for records was underway. A
16 copy of her letter is attached as Exhibit B.
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18 8. UC responded with a more formal letter from Ms. Thomas on January 22, 2003, which
19 promised to produce documents in response to four requests, and which identified documents in
20 response to seven requests. (A copy of the January 22 letter is attached as Exhibit C.) This letter,
21 however, withheld minutes of January and March 2000 meetings of the UC Regents' Committee on
22 Investments. UC also stated that tapes of those meetings were no longer retained. UC also took the
23 position, with respect to a request for public records concerning consultations with outside investment
24 professionals referenced in recent UC press releases dated November 26, 2002, that UC "has no
25 responsive documents" corresponding to that request. (See Exhibit C hereto at 2.)
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1 6259. Section 6258 states that PRA matters shall be heard "at the earliest possible time," and
2 petitioners therefore request a hearing in this Court on this Petition at the earliest possible time.
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4 13. UC's refusal to provide the requested information lacks legal justification and violates
5 the California Public Records Act. The information requested is disclosable under the Public Records
6 Act. Even if UC had agreed with venture capital partnerships or other private companies to make
7 certain information private, "Assurances of confidentiality by [UC] to [private companies] was not
8 sufficient to convert what was a public record into a private record." San Gabriel Tribune v. Superior
9 Court (1983) 143 Cal.App.3d 762, 775. Moreover, the public and the employees whose retirement
10 security depends upon UC's investments have a significant interest in ascertaining the soundness of
11 UC's investments which far outweighs any interest by UC and venture capital firms or private
12 investment firms in hiding from public view the performance of their retirement portfolio. Indeed,
13 CalPERS – in response to a tentative ruling from the San Francisco Superior Court – recently agreed in
14 a Stipulated Judgment to make available the internal rate of return ("IRR") of its venture capital funds,
15 the same information sought here. (See December 20, 2002 Stipulated Judgment, Exhibit G hereto.)
16 Likewise, the University of Texas Investment Management Co. ("UTIMCO"), a CalPERS and UC
17 counterpart, recently decided to release the same kind of information sought here about internal rate of
18 return. (See "VCs rattled by investor's plan to publicize results," San Jose Mercury News, September
19 26, 2002, Exhibit H hereto.)
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24 **PRAYER**

25 WHEREFORE, petitioners CUE, Charles Schwartz and the San Jose Mercury News pray as
26 follows:
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1 1. That this Court order respondent UC to release all reports, documents and other public
2 records showing the performance of private equity investments made by UC, including but not limited
3 to documents showing the internal rate of return (“IRR”), and that such reports be provided to the
4 public in the future as soon as they are available;

6 2. That this Court order disclosure of all records, including Minutes and/or Tapes, of the
7 January and March 2000 meetings of the UC Regents where the Wilshire Associates Asset Allocation
8 Study was considered, and the October 29, 2002 and November 13, 2002 meetings of the Committee
9 on Investments and Board of Regents, respectively, concerning the “Implementation of Multiple Active
10 Investment Management Programs,” also referred to as the Multiple Manager Equity Investment
11 Strategy;

14 3. That this Court order disclosure of all documents and/or public records responsive to
15 Requests 3, 4, 5, 6, 7, 9 and 11 of petitioners’ counsel’s December 24, 2002 letter (Exhibit A hereto),
16 including but not limited to records concerning consultations with outside investment professionals,
17 responsive to Request 3 of Exhibit A hereto, and/or order UC to provide a sworn declaration attesting
18 that after a reasonably diligent inquiry, UC has located no documents other than those which have been
19 produced;

22 4. Alternatively, if the records are not ordered released immediately, that this Court
23 review in camera the documents requested pursuant to Government Code section 6259;

24 5. That this Court limit the circumstances under which UC holds investment-related closed
25 sessions in the future to those related to a specific, concrete investment under immediate contemplation
26 where public discussion would impair UC’s investments;

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6. That this Court order UC to pay petitioners' reasonable attorney's fees and other court costs pursuant to, inter alia, Government Code section 6259; and

7. For such other and further relief as the Court may deem just and proper.

Dated: March ____, 2003

LEVY, RAM & OLSON LLP

By: _____

Karl Olson
Attorneys for Petitioners COALITION OF
UNIVERSITY EMPLOYEES, CHARLES
SCHWARTZ

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1 **VERIFICATION**

2 I, Charles Schwartz, am one of the petitioners in this action. I have read the foregoing Petition
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4 for Writ of Mandate. The same is true of my own knowledge, except as to matters stated on
5 information and belief, and as to them I believe them to be true.

6 I declare under penalty of perjury that the foregoing is true and correct.

7 Executed in San Francisco, California, on March __, 2003.
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11 Charles Schwartz
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