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Superior Court of California
County of Los Angeles

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 LOS ANGELES COUNTY

9 EARL DE VRIES,

Case No.: BC 55 5 6 1 4

10 Plaintiff,

11 v.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

12 REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

13 Defendant.

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16 INTRODUCTION

17 1. Plaintiff Earl De Vries, a taxpayer and resident of the State of California, seeks to
18 enjoin Defendant Regents of the University of California from expending or causing the
19 expenditure of taxpayer funds and taxpayer-financed resources to exempt unlawfully present
20 aliens from paying nonresident supplemental tuition and to allow unlawfully present aliens to
21 apply for and participate in state-administered financial aid programs.

22 JURISDICTION AND VENUE

23 2. Jurisdiction in this case is founded on California's common law taxpayer standing
24 doctrine and Code of Civil Procedure § 526a, which grant California taxpayers the right to sue
25 government officials to prevent unlawful expenditures of taxpayer funds and taxpayer-financed
26 resources. *Connerly v. Schwarzenegger*, 146 Cal. App. 4th 739, 748-749, 751, fn. 5 (2007);
27 *Connerly v. State Personnel Bd.*, 92 Cal. App. 4th 16, 29-31 (2001); *Green v. Obledo*, 29 Cal. 3d
28 126, 145 (1981); *Los Altos Property Owners Assn. v. Hutcheon*, 69 Cal. App. 3d 22, 27 (1977);

1 *Blair v. Pitchess*, 5 Cal.3d 258, 268 (1971), *Ahlgren v. Carr*, 209 Cal. App. 2d 248, 252 (1962);
2 *Silver v. Los Angeles*, 57 Cal. 2d 39, 40-41 (1961).

3 3. Venue in this Court is appropriate under Section 393 of the Code of Civil
4 Procedure, as the University of California, Los Angeles – the largest University of California
5 campus by enrollment – is located in Los Angeles County. *Regents of the University of*
6 *California v. Karst*, 3 Cal. 3d 529, 542 (1970) (“[F]or the purposes of venue, the action arises in
7 the county where the agency spends the tax money that causes the alleged injury...”).

8 PARTIES

9 4. Plaintiff Earl De Vries is a resident and taxpayer of the State of California,
10 residing in San Bernardino County. Plaintiff has paid income taxes to the State of California
11 during the one-year period prior to the commencement of this action. Plaintiff also has filed a tax
12 return with the State of California during the past year demonstrating payment of those taxes.

13 5. Defendant Regents of the University of California (“Board of Regents”) is a
14 corporation charged by the California Constitution with administering the University of
15 California (“UC”), a public trust. Under the California Constitution, “Said corporation shall ...
16 have all the powers necessary or convenient for the effective administration of its trust, including
17 the power to sue and be sued.” Cal. Const., art. IX, § 9(f); *see also* Board of Regents Bylaws
18 5.1.f.

19 STATEMENT OF FACTS

20 State and Federal Legal Background

21 6. The California Constitution provides that “[t]he University of California shall
22 constitute a public trust, to be administered by the existing corporation known as ‘The Regents of
23 the University of California,’ with full powers of organization and government, subject only to
24 such legislative control as may be necessary to ensure the security of its funds and compliance
25 with the terms of the endowments of the university and such competitive bidding procedures as
26 may be made applicable to the university by statute” Cal. Const., art. IX, § 9(a); *see also* Cal.
27 Ed. Code § 68134. “The university shall be entirely independent of all political or sectarian
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1 influence and kept free therefrom in the appointment of its regents and in the administration of its
2 affairs.” Cal. Const., art. IX, § 9(f).

3 7. Courts applying these constitutional provisions have held that “the University is
4 intended to operate as independently of the state as possible” and the “power of the Regents to
5 operate, control, and administer the University is virtually exclusive.” *Regents of the University*
6 *of California v. Superior Court*, 17 Cal.3d 533, 537 (1976); *Regents of the University of*
7 *California v. Superior Court*, 3 Cal.3d 529, 540 (1970). “The University, while a governmental
8 institution and an instrumentality of the state, is not clothed with the sovereignty of the state and
9 is not the sovereign.” *Estate of Royer*, 123 Cal. 614, 624 (1899).

10 8. As UC’s administrator, the Board of Regents receives and expends taxpayer funds,
11 including taxpayer funds appropriated from the State’s General Fund. Historically, state funding
12 has been the largest single source of support for UC. In addition to providing direct support to
13 UC, the State’s Cal Grant financial aid program reimburses UC for tuition and fee costs incurred
14 by eligible students. The State’s 2013-14 Budget allocates \$2.67 billion in state funds to UC.

15 9. Under federal law, unlawfully present aliens generally are ineligible for State or
16 local public benefit. 8 U.S.C. § 1621(a). With certain exceptions not relevant here, the term
17 “State or local public benefit” means:

18 (A) any grant, contract, loan, professional license, or commercial
19 license provided by an agency of a State or local government or by
20 appropriated funds of a State or local government; and

21 (B) any retirement, welfare, health, disability, public or assisted
22 housing, postsecondary education, food assistance, unemployment benefit,
23 or any other similar benefit for which payments or assistance are provided
24 to an individual, household, or family eligibility unit by an agency of a
25 State or local government or by appropriated funds of a State or local
26 government.

27 8 U.S.C. § 1621(c). However, a “State may provide that an alien who is not lawfully present in
28 the United States is eligible for any State or local public benefit ... only through the enactment of
a State law ... which affirmatively provides for such eligibility.” 8 U.S.C. § 1621(d).

1
2 **The California Dream Act**

3 10. In 2001, the Legislature enacted a state law, commonly referred to as “AB 540,”
4 affirmatively providing that, under certain circumstances, unlawfully present aliens are eligible
5 for an exemption from paying nonresident tuition at California State University schools and
6 California Community Colleges. Cal. Ed. Code § 68130.5.

7 11. In 2011, the Legislature enacted a follow-up state law, commonly referred to as
8 “AB 131,” affirmatively providing that unlawfully present aliens who are eligible for nonresident
9 tuition exemptions under AB 540 also are eligible to apply for and participate in state-
10 administered financial aid programs. Cal. Ed. Code § 69508.5, *cross-referencing* Cal. Ed. Code §
11 68130.5. Like AB 540, AB 131 applies only to students at California State University schools
12 and California Community Colleges.

13 12. Because of UC constitutionally independent status and the Board of Regents’
14 “virtually exclusive” power to “operate, control, and administer the University,” AB 540 does not
15 and cannot affirmatively provide that unlawfully present aliens attending UC schools are eligible
16 for nonresident tuition benefits. Likewise AB 131 does not and cannot affirmatively provide that
17 unlawfully present aliens attending UC schools are eligible for state-administered financial aid
18 benefits.

19 13. The Legislative Counsel’s Digest to AB 540 notes that “[t]hese provisions are
20 applicable to the University of California only if the Regents of the University of California act to
21 make them applicable.” AB 540 itself expressly references “requirements adopted by the Regents
22 of the University of California pursuant to Section 68134 of the Education Code.” 2001 Cal.
23 ALS 814, 2001 Cal. AB 540, 2001 Cal. Stats. ch. 814, § 1(b)(1).

24 14. Similarly, the Legislative Counsel’s Digest to AB 131 notes that “[t]his provision
25 would apply to the University of California only if the regents, by appropriate resolution, act to
26 make it applicable.” Like AB 540, AB 131 expressly references “equivalent requirements
27 adopted by the Regents of the University of California.” Cal. Ed. Code § 69508.5(a). It also
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1 expressly states that “the Regents of the University of California are requested to[] establish
2 procedures and forms that enable persons who are exempt from paying nonresident tuition under
3 Section 68130.5, or who meet equivalent requirements adopted by the regents, to apply for, and
4 participate in” state-administered financial aid programs. Cal. Ed. Code § 66021.6(a).

5 **UC’s Implementation of the California Dream Act**
6 **and Subsequent Legal Proceedings**

7 15. Students at UC schools pay a base rate of tuition and fees. Students who are not
8 residents of the State of California or, because they are unlawfully present aliens, are unable to
9 satisfy residency requirements, pay this same base rate of tuition and fees, plus nonresident
10 supplemental tuition.

11 16. Following the enactment of AB 540, the Board of Regents adopted a policy
12 enabling eligible unlawfully present aliens to apply for and receive an exemption from paying
13 nonresident supplemental tuition at UC schools “as provided in Section 68310.5 (AB 540).”
14 Regents Policy 3106.1.C (adopted March 29, 2012); *see also* Standing Order 110.2 (adopted
15 January 17, 2002; amended March 29, 2012). On information and belief, the Board of Regents
16 has expended and will continue to expend taxpayer funds and taxpayer-financed resources
17 administering this policy and accepting, processing, and granting applications for tuition
18 exemptions for unlawfully present aliens.

19 17. Since the enactment of AB 131 and commencing with the Fall 2013 academic
20 term, the Board of Regents also has allowed unlawfully present aliens exempted from paying
21 nonresident supplemental tuition at UC schools to apply for and participate in state-administered
22 financial aid programs, including taxpayer-funded Cal Grants and partially taxpayer-funded UC
23 grants and scholarships. On information and belief, the Board of Regents has not adopted a
24 formal policy to this effect, but nonetheless allows unlawfully present alien students to apply for
25 and participate in these benefit programs. Also on information and belief, the Board of Regents
26 has expended and will continue to expend taxpayer funds and taxpayer-finances resources
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1 administering this informal policy and has caused and will continue to cause taxpayer fund and
2 taxpayer-financed resources to be expended as a result of this informal policy.

3 18. In 2013-14, nonresident supplemental tuition for undergraduates attending UC
4 schools was \$22,878 per student. Consequently, the benefit to unlawfully present aliens granted
5 an exemption from paying nonresident supplemental tuition at UC schools was at least \$22,878
6 per student for the 2013-14 academic year.

7 19. The UC Office of the President estimates that, as of November 2013, 900 students
8 enrolled at UC schools were unlawfully present aliens, approximately 95 percent of whom were
9 undergraduates. Assuming that all of these students qualified for a tuition exemption, the value of
10 this benefit would be approximately \$19.6 million (900 students x 95% x \$22,878 per student =
11 \$19,560,690).

12 20. UC has estimated that some 800 undergraduates will qualify for taxpayer-funded
13 Cal Grants worth about \$7 million and that approximately 300 of these undergraduates are
14 unlawfully present aliens. UC also has estimated that some 440 unlawfully present aliens
15 exempted from paying nonresident supplemental tuition at UC schools will qualify for
16 approximately \$4.3 million in UC grants and scholarships.

17 21. In 2010, the California Supreme Court found that the Legislature's enactment of
18 AB 540 satisfied 8 U.S.C. § 1621(d), at least for the purpose of making unlawfully present aliens
19 eligible for an exemption from nonresident tuition at California State University schools and
20 California Community Colleges. *Martinez v. Regents of the University of California*, 50 Cal. 4th
21 1277, 1296 (2010). California State University schools and California Community Colleges lack
22 UC's independent constitutional status, however. Unlike UC, California State University schools
23 and California Community Colleges are subject to the control of the Legislature.

24 22. While the parties in *Martinez* stipulated that the Board of Regents had, by
25 resolution, made AB 540 applicable to UC schools, neither the parties nor the Court addressed
26 UC's unique constitutional status. *Martinez*, 50 Cal. 4th at 1287, fn. 1 (*citing* Standing Order
27 110.2).

1 23. The parties in *Martinez* also did not address, and the Court in *Martinez* did not
2 decide, whether a resolution, standing order, or policy of the Board of Regents, as opposed to a
3 law enacted by the State, could ever satisfy the requirement 8 U.S.C. § 1621(d). *See* H.R. Rep.
4 No. 104-725, 2d Sess., p. 383 (1996) (“Only the affirmative enactment of a law by a State
5 legislature and signed by the Governor after the date of enactment of this Act ... will meet the
6 requirements of this section.”). Nor did the parties or the Court address the Legislature’s
7 subsequent enactment of AB 131.

8 24. To date, the State of California has not enacted a law affirmatively providing that
9 unlawfully present aliens attending UC schools are eligible for an exemption from paying
10 nonresident supplemental tuition. Nor has the State of California enacted a law affirmatively
11 providing that unlawfully present aliens attending UC schools are eligible to apply for and
12 participate in state-administered financial aid programs.

13 25. The Board of Regents nonetheless has expended and will continue to expend
14 substantial taxpayer funds and taxpayer-financed resources exempting unlawfully present aliens
15 from paying nonresident supplemental tuition at UC schools and allowing unlawfully present
16 aliens attending UC schools to apply for and participate in state-administered financial aid
17 programs. The Board of Regents also has caused and will continue to cause the expenditure of
18 substantial taxpayer funds and taxpayer-financed resources exempting unlawfully present aliens
19 from paying nonresident supplemental tuition at UC schools and allowing unlawfully present
20 aliens attending UC schools to apply for and participate in state-administered financial aid
21 programs.

22 **FIRST CAUSE OF ACTION – TUITION BENEFITS**

23 26. Plaintiff incorporates paragraphs 1 to 26 by reference as if fully set forth herein
24 and further alleges as follows:

25 27. An actual and justiciable controversy has arisen and now exists between Plaintiff
26 and Defendant. Plaintiff contends that Defendant is violating 8 U.S.C. § 1621 by providing
27 unauthorized tuition benefits to unlawfully present aliens attending UC schools. On information
28

1 and belief, Defendant contends that the tuition benefits it provides to unlawfully present aliens are
2 authorized and do not violate 8 U.S.C. § 1621.

3 28. Plaintiff has been irreparably harmed and will continue to be irreparably harmed
4 by expenditures of taxpayer funds and taxpayer-financed resources on illegal tuition benefits for
5 unlawfully present aliens attending UC schools. On information and belief, these expenditures
6 will continue unless the unauthorized tuition benefits are declared to be unlawful.

7 29. A judicial declaration pursuant to California Code of Civil Procedure § 1060 is
8 necessary and appropriate so that the parties may ascertain their respective legal rights and duties
9 with respect to expenditures of taxpayer funds and taxpayer-financed resources on illegal tuition
10 benefits for unlawfully present aliens attending UC schools.

11 30. Plaintiff also has no adequate remedy at law.

12 **SECOND CAUSE OF ACTION – FINANCIAL AID BENEFITS**

13 31. Plaintiff incorporates paragraphs 1 to 30 by reference as if fully set forth herein
14 and further alleges as follows:

15 32. An actual and justiciable controversy has arisen and now exists between Plaintiff
16 and Defendant. Plaintiff contends that Defendant is violating 8 U.S.C. § 1621 by providing
17 unauthorized financial aid benefits to unlawfully present aliens attending UC schools. On
18 information and belief, Defendant contends that the financial aid benefits it provides to
19 unlawfully present aliens are authorized and do not violate 8 U.S.C. § 1621.

20 33. Plaintiff has been irreparably harmed and will continue to be irreparably harmed
21 by expenditures of taxpayer funds and taxpayer-financed resources on illegal financial aid
22 benefits for unlawfully present aliens attending UC schools. On information and belief, these
23 expenditures will continue unless the unauthorized financial aid benefits are declared to be
24 unlawful.

25 34. A judicial declaration pursuant to California Code of Civil Procedure § 1060 is
26 necessary and appropriate so that the parties may ascertain their respective legal rights and duties
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1 with respect to expenditures of taxpayer funds and taxpayer-financed resources on illegal tuition
2 benefits for unlawfully present aliens attending UC schools.

3 35. Plaintiff also has no adequate remedy at law.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for the following relief against Defendant:

6 **First Cause of Action – Tuition Benefits**

7 1. A judgment declaring that the tuition benefits Defendant provides to unlawfully
8 present aliens attending UC schools violate 8 U.S.C. § 1621 and are illegal;

9 2. An injunction permanently prohibiting Defendant from expending or causing the
10 expenditure of taxpayer funds or taxpayer-financed resources to provide illegal tuition benefits to
11 unlawfully present aliens attending UC schools, ordering Defendant to cease and desist from all
12 UC employee activities, including activities of any and all UC officers, officials, employees, or
13 agents, concerning, related to, or in furtherance of providing illegal tuition benefits to unlawfully
14 present aliens attending UC schools, and ordering Defendant to collect full, nonresident
15 supplemental tuition from all students whenever required by law;

16 3. Costs of suit herein;

17 4. Reasonable attorney's fees under the Private Attorney General Statute, Code of
18 Civil Procedure § 1021.5, the Common Fund Doctrine, and the Substantial Benefit Doctrine; and

19 5. Such other relief as the Court deems just and proper.

20 **Second Cause of Action – Financial Aid Benefits**

21 1. A declaration that Defendant's financial aid benefits violate 8 U.S.C. § 1621 and
22 are unlawful;

23 2. An injunction permanently prohibiting Defendant from expending or causing the
24 expenditure of taxpayer funds or taxpayer-financed resources to provide financial aid benefits to
25 unlawfully present aliens attending UC schools and ordering Defendant to cease and desist from
26 all UC employee activities, including activities of any and all UC officers, officials, employees,
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1 or agents, concerning, related to, or in furtherance of providing illegal financial aid benefits to
2 unlawfully present aliens attending US schools;

3 3. Costs of suit herein;

4 4. Reasonable attorney's fees under the Private Attorney General Statute, Code of
5 Civil Procedure § 1021.5, the Common Fund Doctrine, and the Substantial Benefit Doctrine; and

6 5. Such other relief as the Court deems just and proper.

7 Dated: August 26, 2014

By: 
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