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8 Attorney for Petitioners

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 The CHE Café Collective, a registered student) Case No.
12 organization and 501(c)(3) nonprofit)
13 organization; and Joshua Kenchel, a UCSD) **PETITION FOR WRIT OF MANDAMUS;**
14 student,) **COMPLAINT FOR TEMPORARY**
15) **RESTRAINING ORDER, PRELIMINARY**
16) **INJUNCTION, PERMANENT**
17) **INJUNCTION AND DECLARATORY**
18) **RELIEF;**
19) **[Code of Civil Procedure § 1094.5]**
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Petitioners,

v.

The Regents of the University of California,
the Graduate Student Association of the
University of California at San Diego, and
Does 1-20,

Respondents.

I. PARTIES

1. Petitioner CHE Café Collective (“Petitioner” or “The CHE”) is a registered student organization at the University of California at San Diego (“UCSD”) with 501(c)(3) tax-exempt status from the Internal Revenue Service. The acronym stands for “Cheap Healthy Eats,” and the association’s mission is to operate a cooperatively-run and democratically-controlled food store and entertainment venue in an alcohol-free environment on the UCSD campus, which it has done since 1980.



1 10. In 1992-1993, the University brought unlawful detainer actions against the CHE
2 and other campus co-ops, which obtained a preliminary injunction to enforce the contractual
3 agreements between the parties. A resulting Memorandum of Understanding (“MOU”) was
4 negotiated to settle the dispute and keep Petitioner in possession of the CHE facility.

5 11. In 2006, the MOU was renegotiated and superseded by a Space Agreement with
6 all four campus co-ops, including the CHE. This is the operative lease at the present time and is
7 known as the Master Space Agreement (“MSA”).

8 12. The MSA provides for successive two year terms through 2016, provided certain
9 conditions are met. One of these conditions is certification by both the Associated Students
10 (“AS”) and Respondent GSA that the CHE is operating in the best interest of the students.

11 13. In 2012 and 2013, the University began taking austerity measures to compensate
12 for its budget crisis in part resulting from financing and overspending on a new student center,
13 the Price Center, which was not meeting projected revenue for the University.

14 14. The University administration began exerting undue influence on the AS and
15 GSA to eliminate the CHE, including private meetings with members, some of whom Petitioners
16 are informed and believe receive stipends from the University administration.

17 15. On May 19, 2014 the GSA held a secret meeting at which it passed Resolution #9,
18 decertifying the CHE.

19 16. On June 2, 2014, the GSA held another meeting in order to comply with the
20 notice provisions of its constitution. This time, the GSA sent by regular mail a notice to the CHE
21 post office box that a hearing would again be held on decertification of the CHE, just three days
22 before the hearing.

23 17. Because of the very late notice, only one public speaker was able to attend the
24 hearing, Petitioner Joshua Kenchel, who spoke in favor of the C.H.E. and against the proposed
25 resolution to decertify it.

26 18. The GSA then quickly voted to decertify the C.H.E. and passed Resolution #10.
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28

1 19. On June 13, 2014, the University quickly followed up with a notice of termination
2 of the CHE's lease. The notice was given in contravention of the notice requirements in the
3 MSA.

4 20. On July 7, 2014, the CHE filed a breach of contract action against the University
5 and obtained a temporary restraining order preventing the University from evicting the CHE
6 until the matter could be heard on notice.

7 21. In order to grant the TRO, which deprived the University of its right to bring an
8 unlawful detainer action, the Court required previous counsel for the CHE to stipulate that the
9 issue of occupancy would be determined on Aug. 1, 2014 based on whether the Court granted
10 Petitioner's motion for preliminary injunction or not.

11 22. Previous counsel for the CHE agreed that if the Court found Petitioner lacked
12 probability of success on the merits and denied the motion for preliminary injunction, the CHE
13 Café Collective would voluntarily vacate the space.

14 23. However, previous counsel did not have the client's authority to enter such a
15 stipulation, and the client later objected and instructed previous counsel to dismiss that action
16 without prejudice in order to not be bound by a stipulation the members of the CHE Café
17 Collective did not agree with.

18 24. The CHE Café Collective dismissed its breach of contract complaint without
19 prejudice on or about July 30, 2014.

20 25. The University quickly filed its unlawful detainer action on August 11, 2014.

21 26. Without the GSA resolution to decertify the CHE, which was drafted by campus
22 counsel, who was also personally present at the June 2 GSA meeting, the ability of the
23 University to prevail in an unlawful detainer action against the CHE would be dubious. This is
24 because the CHE had sought an extension of the MSA in 2008, which the University prevented
25 from being finalized due to its own contractual breaches, and the parties remained in a holding
26 pattern since then.

27 27. Rather than litigate the issue of whether the CHE should still be legally entitled to
28 take advantage of the extension provisions of the MSA it bargained for in 2006 and attempted to



1 exercise in 2008, the University chose the cleaner and more devious path of simply obtaining
2 decertification from the GSA.

3 28. However, in passing the resolution to decertify the CHE, the GSA and the
4 University acted in a manner not authorized by law, and the decision was not based on
5 substantial evidence, but instead constituted a prejudicial abuse of discretion on the part of the
6 GSA.

7 29. Petitioners now bring this writ petition to overturn the legally defective GSA
8 resolution, and complaint for a temporary restraining order, preliminary injunction and
9 permanent injunction to enjoin the University from relying on this single, flawed resolution to
10 deprive the student-controlled and democratically-run CHE Café from occupying the space they
11 have utilized for the past 34 years.

12 **IV. FIRST CAUSE OF ACTION**
13 **ADMINISTRATIVE MANDAMUS – CCP § 1094.5**

14 30. Petitioners incorporate all previous paragraphs as if fully set forth herein.

15 31. The GSA abused its discretion by failing to support its decision to decertify the
16 CHE Café Collective with any substantial evidence. In fact, all of the conditions stated in the
17 findings of the resolution were the same in 2008 when the GSA *certified* the CHE as operating in
18 the best interest of the students. By reversing itself and failing to explain how the same facts
19 could lead to a different result, the GSA abused its discretion.

20 32. The GSA also failed to proceed in a manner required by law, in that it had already
21 decided to decertify the CHE in collusion with the University administration, the hearing was not
22 a true public hearing.

23 33. Respondents also violated the Bagley-Keene Open Meeting Act, Government
24 Code §§ 11120 *et seq.* by failing to provide at least 10 days public notice of the hearing.

25 **VI. SECOND CAUSE OF ACTION**
26 **INJUNCTIVE RELIEF**

27 34. Petitioners incorporate all previous paragraphs as if fully set forth herein.
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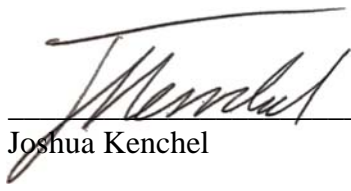
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VERIFICATION

The undersigned are Petitioners in this action. We have read the foregoing PETITION FOR WRIT OF MANDAMUS; COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION AND DECLARATORY RELIEF and know the contents thereof. The same is true of our own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, we believe it to be true.

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

Dated: Aug. 25, 2014
San Diego, California

By: 
Joshua Kenchel

Dated: Aug. 25, 2014
San Diego, California

By: _____
Rene Vera
For the CHE Café Collective



1 **VERIFICATION**

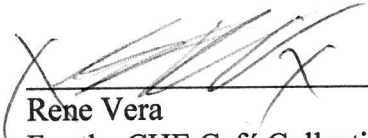
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4 PRELIMINARY INJUNCTION, PERMANENT INJUNCTION AND DECLARATORY
5 RELIEF and know the contents thereof. The same is true of our own knowledge, except as to
6 those matters which are therein alleged on information and belief, and, as to those matters, we
7 believe it to be true.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11
12 Dated: Aug. 25, 2014
San Diego, California

By: _____
Joshua Kenchel

13
14 Dated: Aug. 25, 2014
San Diego, California

15 By:  _____
Rene Vera
For the CHE Café Collective

