

EXHIBIT

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1 FARIMAH F. BROWN, City Attorney (SBN 201227)
SAVITH IYENGAR, Dep. City Attorney (SBN 268342)
2 JESSICA E. MAR, Dep. City Attorney (SBN 293304)
BERKELEY CITY ATTORNEY'S OFFICE
3 2180 Milvia Street, Fourth Floor
Berkeley, California 94704
4 Telephone: (510) 981-6998
Facsimile: (510) 981-6960
5 FBrown@cityofberkeley.info

6 ANDREW W. SCHWARTZ (SBN 87699)
MATTHEW D. ZINN (SBN 214587)
7 STEPHANIE L. SAFDI (SBN 310517)
SHUTE, MIHALY & WEINBERGER LLP
8 396 Hayes Street
San Francisco, California 94102
9 Telephone: (415) 552-7272
Facsimile: (415) 552-5816
10 Schwartz@smwlaw.com
Zinn@smwlaw.com
11 Safdi@smwlaw.com

12 Attorneys for Defendant
CITY OF BERKELEY

14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

17 UNITED STATES POSTAL SERVICE,
18 Plaintiff,
19 v.
20 CITY OF BERKELEY,
21 Defendant.

Case No. 3:16-cv-04815-WHA

**DEFENDANT'S RESPONSES TO
PLAINTIFF'S SECOND SET OF
REQUESTS FOR ADMISSION**

The Hon. William Alsup

Trial Date: December 4, 2017

23 PROPOUNDING PARTY: **Plaintiff United States Postal Service**

24 RESPONDING PARTY: **Defendant City of Berkeley**

25 SET NO.: **Two (2)**

1 Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant City of Berkeley
2 (“City”) responds to Plaintiff’s Second Requests for Admission by Defendant dated August 18,
3 2017 (“Requests”) as follows:

4 **GENERAL OBJECTIONS**

5 1. The City objects to each of the Requests on the grounds that they are incomplete,
6 vague, and ambiguous because Plaintiff failed to attach the referenced newspaper articles to the
7 Requests. Furthermore, Plaintiff refused to provide the articles to the City when asked,
8 indicating only that it would provide articles that the City could not find in its own search. The
9 City noted Plaintiff’s duty to provide the specific articles to ensure that the parties were relying
10 on the same versions, pointing out that articles could change from the date of original
11 publication or posting online. When the City searched for the articles on the Internet, the City
12 was unable to find seven of the articles cited in the Requests, and several of the articles that the
13 City located appeared to have different dates or were in different publications than those cited in
14 the Requests. When counsel for Plaintiff provided the seven missing articles, three were in
15 different publications than those cited in the Requests.

16 2. The City objects to each of the Requests on the grounds that they seek information
17 about the intent of City government and the subjective motivations of the City officials, which is
18 not relevant to Plaintiff’s claims, as set forth in the City’s Motion for Protective Order, Dkt. 67,
19 and its points and authorities and reply in support of that motion.

20 3. The City objects to the Requests on the grounds that the Requests are excessive in
21 number, overbroad, burdensome, and otherwise not proportional to the needs of the case.

22 4. The City objects to each of the Requests to the extent that they seek information
23 covered by a privilege, including but not limited to those addressing attorney-client
24 communication, attorney work-product, deliberative process, and mental process. Privileged
25 information will not be disclosed. Any inadvertent disclosure of privileged information by the
26 City shall not be deemed a waiver of any privilege or any other bases for immunity from
27 discovery.

28 5. The City’s investigation, discovery, and preparation in this case is ongoing. All of

1 these responses are based only on information presently available to the City, and are made
2 without prejudice to the City’s later right to use any information it might subsequently discover,
3 as well as information it might currently know, the relevance, significance, or applicability of
4 which may not be clear at this time. The City expressly reserves the right to use at trial all
5 information developed during discovery, whether or not it is included herein.

6 Each of the Specific Responses that follows is made expressly subject to and without
7 waiving these General Objections, which are incorporated into each of the Specific Responses.

8 **SPECIFIC RESPONSES**

9 **REQUEST FOR ADMISSION NO. 1:**

10 **Request:** Admit that then-Mayor Tom Bates made the following statement as set forth in
11 *Berkeleyside*, dated June 19, 2014: “There is general agreement on the council that we would
12 like to save the Post Office, and this is a good way to do it.”

13 **Objection:** The City objects that the Request is vague, uncertain, and ambiguous because
14 the statement appears in an article dated June 9, 2014, not June 19, 2014 as stated in the
15 Request.

16 **Response:** Without waiving the foregoing objection, the City responds as follows:
17 Former Mayor Bates does not recall whether he made a statement to *Berkeleyside* approximately
18 three years ago containing the same or similar substance to the statement alleged in the Request.
19 Accordingly, the City cannot admit or deny the Request.

20 **REQUEST FOR ADMISSION NO. 2:**

21 **Request:** Admit that then-Mayor Bates said that he believed the downtown zoning
22 initiative, formally known as the Green Downtown & Public Commons Initiative, would be
23 defeated in November 2014, so the City Council should take separate action to enact the Zoning
24 Ordinance, as described in *Berkeleyside*, dated June 19, 2014.

25 **Objection:** The City objects that the Request is vague, uncertain, and ambiguous because
26 the statement paraphrases an article dated June 9, 2014, not June 19, 2014 as stated in the
27 Request.

1 **Response:** Without waiving the foregoing objection, the City responds as follows:
2 Former Mayor Bates cannot recall the precise words he used in his statement to *Berkeleyside*
3 approximately three years ago, but he admits making a statement containing the same or similar
4 substance to the paraphrased statement.

5 **REQUEST FOR ADMISSION NO. 3:**

6 **Request:** Admit that then-Mayor Bates made the following statement as set forth in
7 *Berkeleyside*, dated June 19, 2014: “This way we will protect the post office by taking action in
8 the first part of September.”

9 **Objection:** The City objects that the Request is vague, uncertain, and ambiguous because
10 the statement appears in an article dated June 9, 2014, not June 19, 2014 as stated in the
11 Request.

12 **Response:** Without waiving the foregoing objection, the City responds as follows:
13 Former Mayor Bates does not recall whether he made a statement to *Berkeleyside* approximately
14 three years ago containing the same or similar substance to the statement alleged in the Request.
15 Accordingly, the City cannot admit or deny the Request.

16 **REQUEST FOR ADMISSION NO. 4:**

17 **Request:** Admit that then-Mayor Bates was referring to the Zoning Ordinance in the
18 statements cited in Requests for Admission Nos. 1 and 3 above.

19 **Objection:** The City objects that the Request is vague, uncertain, and ambiguous because
20 the statement appears in an article dated June 9, 2014, not June 19, 2014 as stated in the
21 Request.

22 **Response:** Without waiving the foregoing objection, the City responds as follows:
23 Former Mayor Bates does not recall whether he made statements to *Berkeleyside* approximately
24 three years ago containing the same or similar substance to the statements alleged in Requests
25 Nos. 1 and 3. Accordingly, he cannot admit or deny the Request.

26 **REQUEST FOR ADMISSION NO. 5:**

27 **Request:** Admit that then-Mayor Bates stated that the civic center overlay can be easily
28 described as “help save the post office,” as described in *Berkeleyside*, dated June 19, 2014.

1 **Objection:** The City objects that the Request is vague, uncertain, and ambiguous because
2 the statement appears in an article dated June 9, 2014, not June 19, 2014 as stated in the
3 Request.

4 **Response:** Without waiving the foregoing objection, the City responds as follows:
5 Former Mayor Bates cannot recall the precise words he used in his statement to *Berkeleyside*
6 approximately three years ago, but he admits making a statement containing the same or similar
7 substance to the quoted statement.

8 **REQUEST FOR ADMISSION NO. 6:**

9 **Request:** Admit that then-Mayor Bates stated said that he decided to push for an overlay
10 in June 2014 because he had grown increasingly frustrated with his dealing with the U.S. Postal
11 Service, as described in *Berkeleyside*, dated June 19, 2014.

12 **Objection:** The City objects that the Request is vague, uncertain, and ambiguous because
13 the statement appears in an article dated June 9, 2014, not June 19, 2014 as stated in the
14 Request.

15 **Response:** Without waiving the foregoing objection, the City responds as follows:
16 Former Mayor Bates cannot recall the precise words he used in his statement to *Berkeleyside*
17 approximately three years ago, but he admits making a statement containing the same or similar
18 substance to the paraphrased statement.

19 **REQUEST FOR ADMISSION NO. 7:**

20 **Request:** Admit that Councilmember Maio made the following statement as set forth in
21 the *Berkeley High Jacket*, dated November 1, 2013: “The council has joined with the
22 preservation community to use every legal means possible to save the building for public use
23 and public access, and to keep the post office operations in that building.”

24 **Objection:** The City objects that it has been unable to locate the referenced article from
25 the *Berkeley High Jacket* and that Plaintiff has failed to provide the City with an original copy of
26 the referenced article upon request. Although Plaintiff represented that it would provide the City
27 with the article, it instead provided only a copy of the USPS Morning Report sent by e-mail on
28

1 November 4, 2013. The City is unable to confirm whether the text contained in this e-mail and
2 attributed therein to the *Berkeley High Jacket* has been accurately reproduced.

3 **Response:** Without waiving the foregoing objections, the City responds as follows:
4 Councilmember Maio cannot recall the precise words she used in her statement to the *Berkeley*
5 *High Jacket* approximately four years ago, but she admits making a statement containing the
6 same or similar substance to the quoted statement.

7 **REQUEST FOR ADMISSION NO. 8:**

8 **Request:** Admit that Councilmember Maio stated that if the council had a closed session,
9 there would be discussion about what steps to take toward purchasing the Property as described
10 in the *Berkeley High Jacket*, dated November 1, 2013.

11 **Objection:** The City objects that it has been unable to locate the referenced article from
12 the *Berkeley High Jacket* and that Plaintiff has failed to provide the City with an original copy of
13 the referenced article upon request. Although Plaintiff represented that it would provide the City
14 with the article, it instead provided only a copy of the USPS Morning Report sent by e-mail on
15 November 4, 2013. The City is unable to confirm whether the text contained in this e-mail and
16 attributed therein to the *Berkeley High Jacket* has been accurately reproduced.

17 **Response:** Without waiving the foregoing objections, the City responds as follows:
18 Councilmember Maio does not recall whether she made a statement to the *Berkeley High Jacket*
19 approximately four years ago containing the same or similar substance to the statement alleged
20 in Request. Accordingly, the City cannot admit or deny the Request.

21 **REQUEST FOR ADMISSION NO. 9:**

22 **Request:** Admit that then-Mayor Bates made the following statement as set forth in *The*
23 *Daily Californian*, dated February 27, 2013: “Our post office is not for sale. It is something we
24 truly love and value . . . we are not going to stand by and watch this happen.”

25 **Response:** Former Mayor Bates cannot recall the precise words he used in his statement
26 to *The Daily California* approximately four and a half years ago, but he admits making a
27 statement containing the same or similar substance to the quoted statement.

28 **REQUEST FOR ADMISSION NO. 10:**

1 **Request:** Admit that then-Mayor Bates stated that he and the Council would fight to
2 prevent a sale of the Property as described in *Berkeleyside*, dated February 28, 2013.

3 **Response:** Former Mayor Bates cannot recall the precise words he used in his statement
4 to *The Daily Californian* approximately four and a half years ago, but he admits making a
5 statement containing the same or similar substance to the paraphrased statement.

6 **REQUEST FOR ADMISSION NO. 11:**

7 **Request:** Admit that then-Councilmember Jesse Arreguín made the following statement
8 as set forth in *Berkeleyside*, dated March 6, 2013: “I want to commend the community and the
9 City Council for slowing this down so far My hope is that we can stop this altogether.”

10 **Response:** Without waiving the foregoing objections, the City responds as follows:
11 Former Councilmember Arreguín does not recall whether he made a statement to *Berkeleyside*
12 approximately four and a half years ago containing the same or similar substance to the
13 statement alleged in the Request. Accordingly, the City cannot admit or deny the Request.

14 **REQUEST FOR ADMISSION NO. 12:**

15 **Request:** Admit that then-Councilmember Arreguín thanked his colleagues and members
16 of the public for their efforts thus far, and said he’d like to see the building and post office
17 services saved in the end, as described in *Berkeleyside*, dated March 6, 2013.

18 **Response:** Former Councilmember Arreguín cannot recall the precise words he used in
19 his statement to *Berkeleyside* approximately four and a half years ago, but he admits making a
20 statement containing the same or similar substance to the paraphrased statement.

21 **REQUEST FOR ADMISSION NO. 13:**

22 **Request:** Admit that then-Councilmember Arreguín was referring to the Postal Service’s
23 effort to sell the Property in the statements cited in Requests for Admission Nos. 11 and 12.

24 **Response:** Admitted.

25 **REQUEST FOR ADMISSION NO. 14:**

26 **Request:** Admit that then-Mayor Bates made the following statement as set forth in
27 *Berkeleyside*, dated May 3, 2013: “We’re not going quietly. We’re going to fight this every step
28 of the way. . . We are against it and the people of Berkeley are against it.”

1 **Response:** Former Mayor Bates cannot recall the precise words he used in his statement
2 to *Berkeleyside* approximately four years ago, but he admits making a statement containing the
3 same or similar substance to the quoted statement.

4 **REQUEST FOR ADMISSION NO. 15:**

5 **Request:** Admit that then-Mayor Bates was referring to the Postal Service’s effort to sell
6 the Property in the statements cited in Request for Admission No. 14.

7 **Response:** Admitted.

8 **REQUEST FOR ADMISSION NO. 16:**

9 **Request:** Admit that then-Councilmember Arreguín made the following statements as set
10 forth in the *San Jose Mercury News*, dated May 8, 2013: “The entire Berkeley City Council is
11 united on its opposition to the sale of this beloved post office . . . When has the City Council
12 ever agreed on anything? It’s because, we agree with you, that selling this building, which is
13 part of our public commons, is not only wrong, but would have a major impact on not only the
14 residences of our community but the businesses. We cannot privatize our public commons.
15 These buildings were built with taxpayer dollars; they should remain owned by the taxpayers.”

16 **Response:** Former Councilmember Arreguín cannot recall the precise words he used in
17 his statement to the *San Jose Mercury News* approximately four years ago, but he admits making
18 a statement containing the same or similar substance to the quoted statement.

19 **REQUEST FOR ADMISSION NO. 17:**

20 **Request:** Admit that Councilmember Gordon Wozniak said he thinks the building could
21 be repurposed, since 80% of it is empty, and that he would like to keep the front section as a
22 post office, but the rear could be used as a farmers market or other community use, as described
23 in *Berkeleyside*, dated October 24, 2014.

24 **Response:** Councilmember Wozniak cannot recall the precise words he used in his
25 statement to *Berkeleyside* approximately three years ago, but he admits making a statement
26 containing the same or similar substance to the paraphrased statement.

27 **REQUEST FOR ADMISSION NO. 18:**

28 **Request:** Admit that Councilmember Wozniak said that he did not think “saving the

1 building to keep it empty” was a good idea, as described in *Berkeleyside*, dated October 24,
2 2014.

3 **Response:** Councilmember Wozniak cannot recall the precise words he used in his
4 statement to *Berkeleyside* approximately three years ago, but he admits making a statement
5 containing the same or similar substance to the quoted and paraphrased statement.

6 **REQUEST FOR ADMISSION NO. 19:**

7 **Request:** Admit that Councilmember Wozniak was referring to the Property in the
8 statements cited in Requests for Admission Nos. 17 and 18.

9 **Response:** Admitted.

10 **REQUEST FOR ADMISSION NO. 20:**

11 **Request:** Admit that Councilmember Capitelli asked, as set forth in the *Contra Costa*
12 *Times*, dated November 6, 2014: “if we allow retail use (for Ace Hardware), how do we control
13 (the retail portion) in the future?”

14 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
15 the article provided by Plaintiff is attributed to the *East Bay Times*, not the *Contra Costa Times*
16 as referenced in this Request.

17 **Response:** Without waiving the foregoing objection, the City responds as follows:
18 Councilmember Capitelli cannot recall the precise words he used in his statement approximately
19 three years ago, but he admits making a statement containing the same or similar substance to
20 the paraphrased statement.

21 **REQUEST FOR ADMISSION NO. 21:**

22 **Request:** Admit that Councilmember Capitelli was referring to the Property in the
23 question cited in Request for Admission No. 20.

24 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
25 the article provided by Plaintiff is attributed to the *East Bay Times*, not the *Contra Costa Times*
26 as referenced in Request for Admission No. 20.

27 **Response:** Without waiving the foregoing objection, the City responds as follows:
28 Admitted.

1 **REQUEST FOR ADMISSION NO. 22:**

2 **Request:** Admit that then-Councilmember Arreguín made the following statement as set
3 forth in the *Contra Costa Times*, dated November 6, 2014: “If we open it up to Ace Hardware, it
4 opens the door to a whole lot of other for-profit uses.”

5 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
6 the article provided by Plaintiff is attributed to the *East Bay Times*, not the *Contra Costa Times*
7 as referenced in this Request.

8 **Response:** Without waiving the foregoing objection, the City responds as follows:
9 Former Councilmember Arreguín does not recall whether he made a statement to the *East Bay*
10 *Times* approximately three years ago containing the same or similar substance to the statement
11 alleged in the Request. Accordingly, the City cannot admit or deny the Request.

12 **REQUEST FOR ADMISSION NO. 23:**

13 **Request:** Admit that then-Councilmember Arreguín made the following statement as set
14 forth in the *Contra Costa Times*, dated November 6, 2014: “The post office just wants to sell the
15 building and make a quick buck.”

16 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
17 the article provided by Plaintiff is attributed to the *East Bay Times*, not the *Contra Costa Times*
18 as referenced in this Request.

19 **Response:** Without waiving the foregoing objection, the City responds as follows:
20 Former Councilmember Arreguín cannot recall the precise words he used in his statement to the
21 *East Bay Times* approximately three years ago, but he admits making a statement containing the
22 same or similar substance to the quoted statement.

23 **REQUEST FOR ADMISSION NO. 24:**

24 **Request:** Admit that then-Councilmember Arreguín said he’d like to see the post office
25 lease unused portions of the facility for community serving activities such as a museum or
26 performing arts, as described in the *Contra Costa Times*, dated November 6, 2014.

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1 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
2 the article provided by Plaintiff is attributed to the *East Bay Times*, not the *Contra Costa Times*
3 as referenced in this Request.

4 **Response:** Without waiving the foregoing objection, the City responds as follows:
5 Former Councilmember Arreguín cannot recall the precise words he used in his statement to the
6 *East Bay Times* approximately three years ago, but he admits making a statement containing the
7 same or similar substance to the paraphrased statement.

8 **REQUEST FOR ADMISSION NO. 25:**

9 **Request:** Admit that then-Councilmember Arreguín was referring to the Property in the
10 statements cited in Requests for Admission Nos. 22, 23, and 24.

11 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
12 the article provided by Plaintiff is attributed to the *East Bay Times*, not the *Contra Costa Times*
13 as referenced in Requests for Admission Nos. 22, 23, and 24. The City further objects to the
14 compound nature of this Request.

15 **Response:** Without waiving the foregoing objections, the City responds as follows:
16 Former Councilmember Arreguín does not recall whether he made a statement to the *East Bay*
17 *Times* approximately three years ago containing the same or similar substance to the statement
18 alleged in Request 22. Accordingly, the City cannot admit or deny Request 22. To the best of
19 former Councilmember Arreguín’s knowledge, he was referring to the Property in the
20 statements in Requests 23 and 24.

21 **REQUEST FOR ADMISSION NO. 26:**

22 **Request:** Admit that then-Mayor Bates said that Hudson McDonald’s proposal for the
23 Property would be a win-win for downtown Berkeley but that the City Council was not
24 supporting the developer’s proposal because it was not supporting taking the building in that
25 direction, as described in *Berkeleyside*, dated November 5, 2014.

26 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
27 the Request does not fully or accurately paraphrase the article (which uses the term “could”
28 rather than “would,” and includes other content excluded from the paraphrased statement).

1 **Response:** Without waiving the foregoing objection, the City responds as follows:

2 Former Mayor Bates does not recall whether he made a statement to *Berkeleyside* approximately
3 three years ago containing the same or similar substance to the statement alleged in the Request.
4 Accordingly, the City cannot admit or deny the Request.

5 **REQUEST FOR ADMISSION NO. 27:**

6 **Request:** Admit that then-Mayor Bates said that there was potential for the Postal
7 Service to pursue litigation in response to the Zoning Ordinance because such an ordinance
8 would hinder the sale and desirability of the Property, as described in *The Daily Californian*,
9 dated July 29, 2014.

10 **Response:** Former Mayor Bates cannot recall the precise words he used in his statement
11 to *The Daily Californian* approximately three years ago, but he admits making a statement
12 containing the same or similar substance to the paraphrased statement.

13 **REQUEST FOR ADMISSION NO. 28:**

14 **Request:** Admit that then-Mayor Bates said that he was confident that the council would
15 marshal its support behind passing the Zoning Ordinance to protect the post office, as described
16 in *The Daily Californian*, dated July 29, 2014.

17 **Response:** Former Mayor Bates cannot recall the precise words he used in his statement
18 to *The Daily Californian* approximately three years ago, but he admits making a statement
19 containing the same or similar substance to the paraphrased statement.

20 **REQUEST FOR ADMISSION NO. 29:**

21 **Request:** Admit that then-Mayor Bates made the following statement as set forth in *The*
22 *Los Angeles Times*, dated April 18, 2014: “It is not just that we want to save the building; we
23 want to save its use, as well . . . We want this building to remain a U.S. Post Office and a central
24 part of the Berkeley downtown community.”

25 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
26 the article provided by Plaintiff is attributed to *Berkeleyside*, not the *Los Angeles Times* as
27 referenced in this Request.

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1 **Response:** Without waiving the foregoing objection, the City responds as follows:
2 Former Mayor Bates cannot recall the precise words he used in his statement to *Berkeleyside*
3 approximately three years ago, but he admits making a statement containing the same or similar
4 substance to the quoted statement.

5 **REQUEST FOR ADMISSION NO. 30:**

6 **Request:** Admit that then-Mayor Bates said that he hopes the main post office will
7 remain and at the very least, he and other city officials hope the building isn't sold to someone
8 who will modify the building, as described in *The Berkeley Daily Planet*, dated September 14,
9 2012.

10 **Response:** Former Mayor Bates cannot recall the precise words he used in his statement
11 to *The Berkeley Daily Planet* approximately five years ago, but he admits making a statement
12 containing the same or similar substance to the paraphrased statement.

13 **REQUEST FOR ADMISSION NO. 31:**

14 **Request:** Admit that then-Mayor Bates said that the decision about the future of the main
15 post office ultimately “is in the political arena” and “is a federal issue” because it’s a federal
16 building, as described in *The Berkeley Daily Planet*, dated September 14, 2012.

17 **Response:** Former Mayor Bates does not recall whether he made a statement to *The*
18 *Berkeley Daily Planet* approximately five years ago containing the same or similar substance to
19 the statement alleged in the Request. Accordingly, the City cannot admit or deny the Request.

20 **REQUEST FOR ADMISSION NO. 32:**

21 **Request:** Admit that then-Mayor Bates made the following statement regarding the
22 Property as set forth in *The Berkeley Daily Planet*, dated September 14, 2012: “We want it to
23 remain in its current state and we’ll fight to the death.”

24 **Response:** Former Mayor Bates cannot recall the precise words he used in his statement
25 to *The Berkeley Daily Planet* approximately five years ago, but he admits making a statement
26 containing the same or similar substance to the quoted statement.

27 **REQUEST FOR ADMISSION NO. 33:**

28 **Request:** Admit that Mayor Arreguín made the following statements regarding the Postal

1 Service’s effort to sell the Property as set forth in *The Daily Californian*, dated August 24, 2016:
2 “I don’t feel that they are serious about trying to find a compromise to preserve the building.
3 They want to sell the building, they’ve made that clear over the years . . . We’re not gonna roll
4 over, we’re not gonna let our historic postal service building be sold.”

5 **Response:** Former Councilmember Arreguín cannot recall the precise words he used in
6 his statement to *The Daily Californian* approximately one year ago, but he admits making a
7 statement containing the same or similar substance to the quoted statement.

8 **REQUEST FOR ADMISSION NO. 34:**

9 **Request:** Admit that then-Councilmember Arreguín said of the Zoning Ordinance that it
10 would prevent the Property from being used for private purposes, as described in *The Daily*
11 *Californian*, dated July 29, 2014.

12 **Response:** Former Councilmember Arreguín does not recall whether he made a
13 statement to *The Daily Californian* approximately three years ago containing the same or similar
14 substance to the statement alleged in the Request. Accordingly, the City cannot admit or deny
15 the Request.

16 **REQUEST FOR ADMISSION NO. 35:**

17 **Request:** Admit that then-Councilmember Arreguín made the following statements as set
18 forth in *The Daily Californian*, dated July 29, 2014: “The things that Ralph Nader talked about
19 are things that we all need to really take very seriously and take direct action to address . . . The
20 zoning overlay is the one stick we have to protect our post office and the entire Civic Center.”

21 **Response:** Former Councilmember Arreguín cannot recall the precise words he used in
22 his statement to *The Daily Californian* approximately three year ago, but he admits making a
23 statement containing the same or similar substance to the quoted statement.

24 **REQUEST FOR ADMISSION NO. 36:**

25 **Request:** Admit that then-Mayor Bates made the following statement as set forth in *The*
26 *Daily Californian*, dated July 29, 2014, regarding the sale of post offices: “It’s a diabolical plan
27 to kill the postal service as we know it, and I’m very proud of our community for doing
28 everything we can to fight it.”

1 **Response:** Former Mayor Bates cannot recall the precise words he used in his statement
2 to *The Daily Californian* approximately three years ago, but he admits making a statement
3 containing the same or similar substance to the quoted statement.

4 **REQUEST FOR ADMISSION NO. 37:**

5 **Request:** Admit that then-Councilmember Arreguín made the following statements
6 regarding the Postal Service’s effort to sell the Property as set forth in *The Daily Californian*,
7 dated January 29, 2015: “They are just resolute that they want to sell the building, despite
8 opposition from the community and city leadership, which has left us with little options.”

9 **Response:** Former Councilmember Arreguín cannot recall the precise words he used in
10 his statement to *The Daily Californian* approximately two and a half years ago, but he admits
11 making a statement containing the same or similar substance to the quoted statement.

12 **REQUEST FOR ADMISSION NO. 38:**

13 **Request:** Admit that then-Councilmember Arreguín made the following statements
14 regarding the Property as set forth in *The Daily Californian*, dated November 7, 2014:
15 “Fundamentally, this building was paid for by taxpayer dollars . . . It shouldn’t be sold to private
16 hands.”

17 **Objection:** The City objects that the Request is vague, uncertain, and ambiguous because
18 the statement appears in an article dated November 6, 2014, not November 7, 2014 as stated in
19 the Request.

20 **Response:** Without waiving the foregoing objection, the City responds as follows:
21 Former Councilmember Arreguín cannot recall the precise words he used in his statement to *The*
22 *Daily Californian* approximately three years ago, but he admits making a statement containing
23 the same or similar substance to the quoted statement.

24 **REQUEST FOR ADMISSION NO. 39:**

25 **Request:** Admit that then-Councilmember Arreguín made the following statements
26 regarding the Property as set forth in *The Daily Californian*, dated October 2, 2014: “Obviously,
27 the postal service is concerned that the overlay will affect the potential sale of the post office . . .
28 . I am overjoyed that the zoning overlay is going to be law. This is a big victory for the people of

1 Berkeley.”

2 **Response:** Former Councilmember Arreguín does not recall whether he made a
3 statement to *The Daily Californian* approximately three years ago containing the same or similar
4 substance to the statement alleged in the Request. Accordingly, the City cannot admit or deny
5 the Request.

6 **REQUEST FOR ADMISSION NO. 40:**

7 **Request:** Admit that then-Councilmember Arreguín said of the concept of rezoning the
8 downtown historic buildings, that the proposal, in part, is intended to discourage sale of the
9 Property, as described in *The Times Herald*, dated September 27, 2013.

10 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
11 the article provided by Plaintiff is attributed to the *San Jose Mercury News*, not *The Times*
12 *Herald* as referenced in the Request.

13 **Response:** Without waiving the foregoing objection, the City responds as follows:
14 Former Councilmember Arreguín does not recall whether he made a statement to *The San Jose*
15 *Mercury News* approximately four years ago containing the same or similar substance to the
16 statement alleged in the Request. Accordingly, the City cannot admit or deny the Request.

17 **REQUEST FOR ADMISSION NO. 41:**

18 **Request:** Admit that then-Councilmember Arreguín said of the Property that, if it were
19 sold, public-serving uses such as a market hall or performing arts venue could be acceptable, as
20 described in *The Times Herald*, dated September 27, 2013.

21 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
22 the article provided by Plaintiff is attributed to the *San Jose Mercury News*, not *The Times*
23 *Herald* as referenced in the Request.

24 **Response:** Without waiving the foregoing objection, the City responds as follows:
25 Former Councilmember Arreguín cannot recall the precise words he used in his statement to *The*
26 *San Jose Mercury News* approximately four years ago, but he admits making a statement
27 containing the same or similar substance to the paraphrased statement.

28 **REQUEST FOR ADMISSION NO. 42:**

1 **Request:** Admit that then-Councilmember Arreguín made the following statements
2 regarding a proposal to develop the Property as set forth in *The Times Herald*, dated September
3 27, 2013: “What they want is a blank check and no restrictions. They want to build up They
4 want to bring in a hotel or residential—that’s not what I’ve heard from people in the community
5 about what they want. I believe it should continue as something that is public serving, something
6 that meets the specific needs of our community and not something that’s going to serve a
7 developer or a corporation.”

8 **Objection:** The City objects that the Request is vague, ambiguous, and uncertain because
9 the article provided by Plaintiff is attributed to the *San Jose Mercury News*, not *The Times*
10 *Herald* as referenced in the Request.

11 **Response:** Without waiving the foregoing objection, the City responds as follows:
12 Former Councilmember Arreguín does not recall whether he made a statement to *The San Jose*
13 *Mercury News* approximately four years ago containing the same or similar substance to the
14 statement alleged in the Request. Accordingly, the City cannot admit or deny the Request.

15 **REQUEST FOR ADMISSION NO. 43:**

16 **Request:** Admit that then-Councilmember Arreguín made the following statements
17 regarding the Property as set forth in *The Daily Californian*, dated April 24, 2013: “In the end,
18 even if the outcome of the appeal is not favorable, what we can certainly do as a city
19 government is to work with the USPS to make sure who buys the building uses it for a positive
20 use.”

21 **Objection:** The City objects that the Request is vague, uncertain, and ambiguous because
22 the statement appears in an article dated April 23, 2013, not April 24, 2013 as stated in the
23 Request.

24 **Response:** Without waiving the foregoing objection, the City responds as follows:
25 Former Councilmember Arreguín cannot recall the precise words he used in his statement to *The*
26 *Daily Californian* approximately four years ago, but he admits making a statement containing
27 the same or similar substance to the quoted statement.

28 **REQUEST FOR ADMISSION NO. 44:**

1 **Request:** Admit that then-Councilmember Arreguín made the following statements
2 regarding the Postal Service as set forth in *The Daily Californian*, dated January 31, 2014:
3 “We’ve been pleading with them for a year to meet with us and to work with us . . . It wasn’t
4 until the zoning overlay was on the table that they wanted to work out compromise.”

5 **Objection:** The City objects that the Request is vague, uncertain, and ambiguous because
6 the statement appears in an article dated January 30, 2014, not January 31, 2014 as stated in the
7 request.

8 **Response:** Without waiving the foregoing objection, the City responds as follows:
9 Former Councilmember Arreguín cannot recall the precise words he used in his statement to *The*
10 *Daily Californian* approximately three and a half years ago, but he admits making a statement
11 containing the same or similar substance to the quoted statement.

12 **REQUEST FOR ADMISSION NO. 45:**

13 **Request:** Admit that then-Councilmember Arreguín made the following statements
14 regarding the Property as set forth in *The Daily Californian*, dated July 25, 2012: “I think what’s
15 important is working to try to ensure that the building is used for a public purpose The city
16 needs to play a leadership role in finding a buyer who will put forth a public use of the space.”

17 **Response:** Former Councilmember Arreguín cannot recall the precise words he used in
18 his statement to *The Daily Californian* approximately five years ago, but he admits making a
19 statement containing the same or similar substance to the quoted statement.

20 **REQUEST FOR ADMISSION NO. 46:**

21 **Request:** Admit that then-Councilmember Arreguín made the following statements
22 regarding the Property as set forth in *The Daily Californian*, dated November 14, 2012: “I don’t
23 think it makes sense to sell a building we own in order to lease another space It’s an
24 important community resource, and selling it is going to have a negative impact. . . . It is
25 troubling that our post offices are under attack, and it is happening in Berkeley We have to
26 fight it . . . this is really a sort of battleground that is happening all over the country, and if we
27 stop it here, that will send a strong message.”
28

1 **Response:** Former Councilmember Arreguín cannot recall the precise words he used in
2 his statement to *The Daily Californian* approximately five years ago, but he admits making a
3 statement containing the same or similar substance to the quoted statement.

4 **REQUEST FOR ADMISSION NO. 47:**

5 **Request:** Admit that then-Councilmember Arreguín made the following statements
6 regarding the Property as set forth in *The Daily Californian*, dated January 31, 2013: “If for
7 whatever reason the Postal Service does go through the sale ... we need to push to make sure the
8 building will be made for positive use.”

9 **Response:** Former Councilmember Arreguín cannot recall the precise words he used in
10 his statement to *The Daily Californian* approximately four and a half years ago, but he admits
11 making a statement containing the same or similar substance to the quoted statement.

12 **REQUEST FOR ADMISSION NO. 48:**

13 **Request:** Admit that then-Mayor Bates made the following statements as set forth in *The*
14 *Daily Californian*, dated August 12, 2013: “The Postal Service is putting our historic Berkeley
15 Main Post Office building up for sale under the guise of a ‘relocation of retail services,’ I
16 believe USPS never had the intention to relocate postal services and is playing semantic games
17 with our community —what they really want is to sell the building We’re not going gently
18 into the night We’re fighting this every step of the way. This is a seven-act opera.”

19 **Response:** Former Mayor Bates cannot recall the precise words he used in his statement
20 to *The Daily Californian* approximately four years ago, but he admits making a statement
21 containing the same or similar substance to the quoted statement.

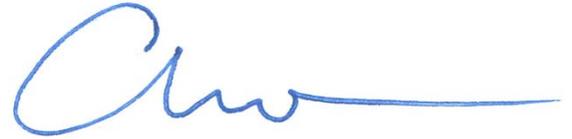
22 **REQUEST FOR ADMISSION NO. 49:**

23 **Request:** Admit that then-Councilmember Arreguín made the following statements as set
24 forth in *The Daily Californian*, dated January 29, 2015: “We’re Berkeley — we’re going to keep
25 fighting We think it’s important to fight the sale and to hold the post office accountable, so
26 we’re proceeding with the lawsuit.”

1 **Response:** Former Councilmember Arreguín cannot recall the precise words he used in
2 his statement to *The Daily Californian* approximately two and a half years ago, but he admits
3 making a statement containing the same or similar substance to the quoted statement.
4

5 DATED: September 22, 2017

SHUTE, MIHALY & WEINBERGER LLP



8 By: _____

ANDREW W. SCHWARTZ

10 Attorneys for Defendant
11 CITY OF BERKELEY

PROOF OF SERVICE

United States Postal Service v. City of Berkeley

Case No. 3:16-cv-04815-WHA

United States District Court, Northern District of California, San Francisco Division

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On September 22, 2017, I served true copies of the following document(s) described as:

DEFENDANT’S RESPONSES TO PLAINTIFF’S SECOND SET OF REQUESTS FOR ADMISSION

on the parties in this action as follows:

Benjamin C. Mizer
Joseph H. Hunt
Jacqueline Coleman Snead
Julia Berman
U.S. Department of Justice, Civil Division
20 Massachusetts Avenue, NW
Washington, DC 20001
Tel: (202) 616-8480
Fax: (202) 616-8470
Email: julia.berman@usdoj.gov

Chad A. Readler
Jennifer D. Ricketts
Jacqueline Coleman Snead
Julia Berman
Stuart J. Robinson
U.S. Department of Justice, Civil Division
450 Golden Gate Avenue
San Francisco, California 94102
Tel: (415) 436-6635
Fax: (415) 436-6632
Email: stuart.j.robinson@usdoj.gov

Attorneys for Plaintiff
UNITED STATES POSTAL SERVICE

Attorneys for Plaintiff
UNITED STATES POSTAL SERVICE

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Weibel@smwlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 22, 2017, at San Francisco, California.



David Weibel