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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DO NO HARM et al.,
Plaintiffs,
and
THE UNITED STATES OF
AMERICA,
Plaintiff-Intervenor,
v.
THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA, et
al.,
Defendants.

Case No. 2:25-cv-04131-JWH-JDE

**DEFENDANT'S REPLY IN
SUPPORT OF MOTION TO
DISMISS PLAINTIFF-
INTERVENOR'S AMENDED
COMPLAINT-IN-INTERVENTION**

Date: October 20, 2026
Time: 10:00 am
Place: Courtroom 9D
Judge: Hon. John W. Holcomb

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INTRODUCTION

The Government’s Amended Complaint alleges that UCLA’s David Geffen School of Medicine (“DGSOM”) is violating Title VI. The Regents will show those allegations have no merit. Regardless, the Government seeks relief well beyond the limited scope of Title VI’s strictly remedial scheme. Indeed, as the Government now concedes (Opp. 9), Title VI does not permit the remedies the Government seeks. The Government cannot make an end run around the strictures of Title VI’s narrow remedial scheme by recasting its claim as a common-law breach of contract claim. And even if that were possible under the law, the breach of contract claim alleged here fails because the Government does not plausibly allege breach, or that rescission or restitution are appropriate, available remedies.

The Government’s Opposition attacks strawman arguments and rehashes allegations that The Regents does not challenge at the pleading stage, but this does not salvage its claims from dismissal. Rather, it underscores the Government’s attempts to circumvent Title VI’s limits and exposes the unprecedented nature of the draconian remedies the Government seeks.

First, as The Regents established in its opening memorandum, the Government seeks remedies Congress never authorized. Title VI expressly restricts funding termination to the “part []of” the federally funded program that violates Title VI. And here, the “part of” UCLA at issue with respect to the Government’s allegations is DGSOM, and specifically the admissions process at DGSOM. But the Government impermissibly seeks to terminate and claw back federal grant money with no apparent connection to DGSOM. In its Opposition, the Government concedes that it has not attempted to comply with this statutory limitation, and instead argues that the plain language of Title VI is “outdated law.” Opp. 12. Not so. The authority the Government relies on—the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259 (“CRRA”)—is irrelevant here because it does not expand the scope of remedies available to the Government. In fact, the CRRA embraced the

1 very principle the Government asks this Court to reject: that “Federal funds
2 earmarked for a specific purpose would not be terminated unless discrimination was
3 found *in the use of those funds*.” S. Rep. No. 100-64, at 20 (1987) (emphasis added).
4 Claims for remedies that are unavailable as a matter of law should be dismissed
5 under Rule 12(b)(6), and that is precisely the situation here.

6 *Second*, The Regents argues that the Government’s breach of contract claim,
7 which is based solely on alleged violations of Title VI, also should be dismissed. In
8 its Opposition, the Government concedes that it is pursuing a contract claim because
9 Title VI does not permit the backward-looking remedies it seeks. But the
10 Government cannot so easily evade the statute’s restrictions. When it enforces Title
11 VI, it is bound by the limits Congress established in Title VI. In any event, the
12 Government does not plausibly allege that purported noncompliance with Title VI
13 in DGSOM admissions materially breached the terms of federal grants to UCLA.
14 The Government points to no facts from which this Court could infer that Title VI
15 compliance in DGSOM admissions was a material term the Government insisted
16 upon when making the four grants at issue here.

17 The Government tries to distract from these pleading defects by reiterating its
18 unproven allegations of discrimination. Opp. 3-8, 16-17. It vastly inflates its factual
19 allegations, claiming that a “clear” case of discrimination can be established based
20 on the use of holistic admissions rather than rigid adherence to test scores, and on a
21 university making general statements about the benefits of diversity. Opp. 5 (citing
22 AC ¶¶ 13-57).

23 The Government also overstates the effect of *Students for Fair Admissions*,
24 *Inc. v. President & Fellows of Harvard College* (“*SFFA*”), 600 U.S. 181 (2023),
25 suggesting that it rendered unlawful any and all practices reflecting a university’s
26 interest in “the diversity of its classes” or its “commitment to enrolling”
27 underrepresented students. Opp. 5. But *SFFA* did not announce that categorical
28 rule—in fact, it confirmed that universities may consider an applicant’s lived

1 experience, so long as they are evaluating “his or her experiences as an individual”
2 or “unique ability to contribute to the university,” rather than his or her race. *SFFA*,
3 600 U.S. at 230-231. The Court should grant The Regents’ motion.

4 **ARGUMENT**

5 **I. THE GOVERNMENT REQUESTS REMEDIES IT HAS NO AUTHORITY TO SEEK**

6 To remedy an alleged Title VI violation by DGSOM, the Government asks
7 the Court: (1) to “[r]escind all previous grants and/or payments made to UCLA by
8 the DOJ” since June 29, 2023 and order “return of all such monies received by
9 UCLA to the United States”; (2) to “[t]erminate any existing DOJ grant agreements;”
10 and (3) for “[a] damages award to the United States.” AC ¶ 94. Under the remedial
11 scheme that Congress established in Title VI, these remedies are unavailable.

12 **A. The Government Cannot Impose Campus-Wide Or Backward-** 13 **Looking Remedies Under Title VI**

14 Congress has placed restrictions on the Government’s authority to enforce
15 Title VI. 42 U.S.C. § 2000d-1. Under one of those restrictions, when the
16 Government issues a finding of noncompliance with Title VI and seeks to terminate
17 federal funding, “such termination ... shall be limited in its effect to the particular
18 program, *or part thereof*, in which such noncompliance has been so found.” *Id.*
19 (emphasis added). The Government’s requested relief here ignores that limit. It
20 seeks termination and clawback of *all* DOJ grants to *all* of UCLA. *See* AC ¶¶ 68,
21 94(D)-(E). In its memorandum, The Regents explained that none of the grants
22 identified in the Amended Complaint has any apparent nexus to DGSOM—let alone
23 to DGSOM admissions, which is the only “part” of UCLA where the Government
24 purports to have found a Title VI violation. *See* Mem. 12-13; AC ¶ 70. And the
25 Government concedes that it failed to allege any such nexus, claiming (erroneously)
26 that Title VI allows it to terminate “federal financial assistance at the entire
27 university, not just the school of medicine or the admissions office.” Opp. 12.

28 The Government instead indulges in an extended discussion of legal

1 developments that have no bearing on its claims. Opp. 13-16. It falsely suggests the
2 “part thereof” limitation is “outdated law.” Opp. 12. In reality, Congress not only
3 preserved that restriction, but also embraced The Regents’ position that it prevents
4 the Government from seeking the campus-wide clawback of grants it pursues here.

5 In *Grove City College v. Bell*, 465 U.S. 555 (1984), the Supreme Court held
6 that federal civil rights laws and regulations that prohibited discrimination under a
7 “program or activity” did not “impose institution-wide obligations” on universities
8 that received federal funding, but instead covered only the particular functions of the
9 university that received federal funding, *id.* at 573-575. Congress reacted to this
10 ruling by enacting the CRRA, *see National Collegiate Athletic Ass’n v. Smith*, 525
11 U.S. 459, 466 n.4 (1999), which redefined “program or activity” to mean all of a
12 university’s operations, 42 U.S.C. § 2000d-4a.

13 The Government touts the CRRA as rendering the “part thereof” limitation
14 “outdated,” Opp. 12, but it did no such thing. The CRRA stands for the
15 uncontroversial proposition that every component of a university that receives
16 federal funding must comply with Title VI’s nondiscrimination mandate. The
17 CRRA has no bearing on, and says nothing relating to, the Government’s authority
18 to *terminate* funding when it finds that a single component of a university has
19 violated Title VI. The Government’s authority to seek remedies for alleged Title VI
20 violations is circumscribed by the statutory language of 42 U.S.C. § 2000d-1, which
21 Congress left untouched in enacting the CRRA. Through 42 U.S.C. § 2000d-1,
22 Congress has constrained the Government’s termination power to the “part []of” a
23 particular program where noncompliance has been found. *Id.* That limitation is
24 specific to the termination power—it does not, for example, stop the Government
25 from seeking injunctive relief to enforce compliance with Title VI. *See id.*

26 Contemporary statements from Congress leave no doubt that the CRRA was
27 not intended to amend that statutory limitation on the termination power. The Senate
28 committee responsible for the CRRA explained that Title VI’s substantive

1 protections against discrimination applied broadly, but were enforceable through a
2 “narrow funding termination provision.” S. Rep. No. 100-64, at 5 (1987). And the
3 committee explained that, far from “repudiat[ing]” *Board of Public Instruction of*
4 *Taylor County v. Finch*, 414 F.2d 1068 (5th Cir. 1969), as the Government claims
5 (Opp. 14), the CRRA endorsed the principle from *Finch* that “[f]ederal funds
6 earmarked for a specific purpose would not be terminated unless discrimination was
7 found *in the use of those funds*,” S. Rep. No. 100-64, at 20 (emphasis added). DOJ
8 itself recognized that “the CRRA left intact the ‘pinpoint’ provision that limits any
9 fund termination to the ‘program, or part thereof, in which noncompliance has been
10 so found.’” U.S. Dep’t of Just., *Title VI Legal Manual* 98 (Jan. 11, 2001) (citing 42
11 U.S.C. § 2000d-1); *see id.* at 94-98 (relying on *Finch* to interpret Title VI).

12 Notwithstanding these authorities, the Government characterizes its position
13 to the contrary as “not even a close call.” Opp. 13. But the courts disagree,
14 consistently holding that grant terminations must be limited to the “part []of” a
15 recipient in which noncompliance is found. *See American Ass’n of Univ. Professors*
16 *v. Trump*, 815 F. Supp. 3d 907, 963-964 (N.D. Cal. 2025); *Maine v. U.S. Dep’t of*
17 *Agric.*, 778 F. Supp. 3d 200, 229-230 (D. Me. 2025).

18 The Government’s attempt to rely on the wholly irrelevant line of school-
19 desegregation cases fares no better. Opp. 16-17 (citing *Keyes v. Sch. Dist. No. 1*,
20 413 U.S. 189, 207-213 (1973)). *Keyes* applied an evidentiary rule to a vile practice
21 the Government does not allege is at issue—*de jure* racial segregation. 413 U.S. at
22 208. *Keyes* held that if a plaintiff proves there is intentional segregation “in a
23 meaningful portion of a school system,” school officials have the burden to show
24 that segregation in other parts of the system was unintentional. *Id.* That burden-
25 shifting framework is irrelevant here. The Government’s conclusory assertion that
26 UC leadership has “expressed views supportive of discrimination in the name of
27 diversity” comes nowhere close to explaining how its Amended Complaint alleges
28 intentional racial discrimination in any part of the UC system, let alone

1 “systemwide” discrimination. Opp. 17. It clearly does not.

2 The Government also concedes that Title VI’s express government
3 enforcement mechanism is “prospective.” Opp. 4. Accordingly, the Government
4 now clarifies that it only seeks backward-looking remedies under its contract claim.
5 Opp. 8-9. But that limitation is not clear from the Amended Complaint. This
6 concession thus merits granting The Regents’ motion to dismiss the Government’s
7 Title VI claim to the extent it seeks termination and clawback of federal grants.

8 **B. The Court Can And Should Use Rule 12(b)(6) To Dismiss Claims**
9 **For Remedies That Are Unavailable As A Matter Of Law**

10 This Rule 12(b)(6) motion is the appropriate mechanism for seeking dismissal
11 of the Government’s claims for unauthorized relief. *Whittlestone, Inc. v. Handi-*
12 *Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2010) (holding a Rule 12(b)(6) motion is the
13 proper vehicle to seek dismissal of claims where the associated remedy is precluded
14 as a matter of law); *accord Reinhardt v. Gemini Motor Transp.*, 869 F. Supp. 2d
15 1158, 1174 (E.D. Cal. 2012) (“[W]hen challenging a complaint’s request for
16 damages that are unavailable as a matter of law, Rule 12(b)(6) ... is the proper
17 mechanism.”). Courts in the Ninth Circuit have dismissed claims for remedies that
18 were unavailable as a matter of law at the pleading stage. *Smith v. Pac. Props. &*
19 *Dev. Corp.*, 358 F.3d 1097, 1106 (9th Cir. 2004) (affirming 12(b)(6) dismissal of
20 disgorgement claim as a matter of law where preconditions to receive that relief were
21 not met); *Gradney v. Polar Beverages*, 797 F. Supp. 3d 1016, 1031 (N.D. Cal. 2025)
22 (granting 12(b)(6) dismissal of claims for equitable relief where plaintiffs failed to
23 sufficiently explain why other legal remedies were inadequate); *Reinhardt*, 869 F.
24 Supp. 2d at 1175 (dismissing claim for disgorgement of profits because those
25 damages “are unavailable as a matter of law”). That result is warranted here.

26 The Government does not seriously dispute that if it seeks remedies that are
27 unavailable as a matter of law, then its claims for those remedies can be adjudicated
28 at the pleading stage. Instead, the Government argues that it seeks these remedies

1 only after a determination of liability at trial. Opp. 8. But that argument confuses
2 the question of whether the Government can prove its allegations with the distinct
3 question of whether the relief it seeks would be available if it did. The Regents does
4 not ask the Court to resolve the Government’s Title VI allegations at the pleading
5 stage; rather, it asks this Court to determine that, even if the Government could prove
6 its allegations, it could not obtain the relief it seeks.

7 **II. THE GOVERNMENT’S CONTRACT CLAIM FAILS**

8 The Government cannot obtain the campus-wide, retrospective remedies it
9 seeks here under Title VI, and it cannot circumvent the statutory limitations on its
10 enforcement authority by bringing a common-law contract claim. The
11 Government’s own explanation of its strategy illustrates that it seeks to
12 impermissibly evade Title VI’s statutory limits. Conceding that it cannot seek
13 “retrospective relief” for “Title VI violations,” the Government argues it may seek
14 “[r]etropective relief ... in the context of a breach of contract claim” for DGSOM’s
15 “failure to comply with Title VI.” Opp. 9 (quoting AC ¶ 93).

16 Even if the Government could pursue its contract claim here, it fails to
17 plausibly allege a material breach. The Government puts forth no allegation of
18 nonperformance and makes no attempt to explain how the Title VI violations in
19 DGSOM admissions alleged here were so central to the particular DOJ grants at the
20 time they were made as to defeat their purpose. In fact, another federal agency has
21 conceded that the Government’s assertion of materiality is a change in position,
22 adopted for the first time in October 2025. *See* Dep’t of Health & Human Servs.,
23 Grants Policy Statement § 2.5.4.3 (Oct. 2025). In any event, regardless of the
24 Government’s recent insistence to the contrary, compliance with Title VI in
25 DGSOM admissions was not plausibly a material term of every DOJ grant to UCLA.

26 **A. The Government Cannot Skirt Title VI’s Limitations Through A** 27 **Breach Of Contract Claim**

28 The Regents is not aware of any court that has permitted the Government to

1 pursue the campus-wide and retrospective relief barred by Title VI through a
2 common-law contract action. *See* Mem. 14. The Government points to none in its
3 Opposition. And another federal district court has already held that the Government
4 could not sustain a breach of contract claim based on alleged Title VI violations
5 where the Government’s enforcement efforts were incompatible with its authority
6 under 42 U.S.C. § 2000d-1. *See United States v. President & Fellows of Harv.*
7 *College (“Harvard”),* 2026 WL 2343193, at *1-2 (D. Mass. Aug. 13, 2026).

8 Contrary to the Government’s argument (Opp. 8), *Bennett v. Kentucky*
9 *Department of Education*, 470 U.S. 656 (1985), does not allow it to disregard
10 express statutory limits on its enforcement power under Title VI by bringing a breach
11 of contract claim. Instead, *Bennett* recognized that “federal grant programs originate
12 in and remain governed by statutory provisions expressing the judgment of Congress
13 concerning desirable public policy.” *Id.* at 669. *Bennett* involved Title I of the
14 Elementary and Secondary Education Act of 1965, a grant program to “support
15 compensatory education programs for disadvantaged children” by supplementing
16 (but not replacing) state and local funding. *Id.* at 659-660. The Department of
17 Education claimed Kentucky had misspent these federal funds to defray the costs of
18 certain state education programs. *Id.* at 661. To resolve that claim, the Supreme
19 Court looked to the “structure” of Title I, *id.* at 669, which contained “detailed
20 provisions” expressly outlining the Department’s “right to recover misused funds,”
21 *id.* at 664-665; *see also id.* at 664 n.2. The Supreme Court held that this right was
22 triggered because the Title I funds granted to Kentucky were used to supplant state
23 and local funds for educationally deprived children, *see id.* at 670-671, and “spent
24 contrary to the terms of the grant agreement,” *id.* at 664. Those facts allowed the
25 Government to seek return of the particular funds misused. *Bennett* therefore
26 recognized that the Government could exercise its statutory authority under a
27 particular grant program (Title I) to recover misspent Title I funds. It in no way
28 empowered the Government to *circumvent* the “statutory provisions” governing

1 federal grants and “expressing the judgment of Congress concerning desirable public
2 policy.” *Id.* at 669.

3 Nor can the Government rely on the availability of restitution in cases of
4 contract repudiation or material breach to support a claim of campus-wide return of
5 federal grant money. Rescission and restitution may be available “where there has
6 been repudiation or a material breach,” 26 Williston on Contracts § 68:2, such as the
7 repudiation in the case cited by the Government (Opp. 10 n.30), *Amber Resources*
8 *Co. v. United States*, 538 F.3d 1358 (Fed. Cir. 2008) (government’s conduct
9 “constituted a repudiation or a total breach”). But no restitution is available here,
10 where the Government fails to plausibly allege a material breach—one that
11 “defeat[s] the object or purpose of the contract, so that the contract is essentially
12 destroyed.” Williston on Contracts § 68:2; *see infra* pp. 15-17.

13 The Government also cannot rely on *Barnes v. Gorman*, 536 U.S. 181 (2002),
14 to argue that restitution of all DOJ grants to UCLA is available for Title VI
15 violations. Opp. 9. First, *Barnes* held that because “Title VI mentions no remedies”
16 for private plaintiffs, those plaintiffs can seek the remedies traditionally available
17 for breach of contract. 536 U.S. at 187-188. But while Congress did not specify the
18 relief available to *private plaintiffs* (who have an implied right of action under Title
19 VI), *id.*, it did limit the scope of remedies *the Government* may pursue for alleged
20 Title VI violations, restricting the Government from seeking campus-wide and
21 backward-looking relief under the Government’s express right of action, *see supra*
22 pp. 8-11.

23 Second, the campus-wide clawback of federal funds the Government claims
24 here is not the kind of remedy traditionally available for breach of contract. Ordinary
25 contract principles limit restitution to the amount of the uncompensated benefit
26 conferred. *See* Restatement (Second) of Contracts § 371; Restatement (Third) of
27 Restitution and Unjust Enrichment § 38:2. Restitution of *all* funds paid to *all* of
28 UCLA through a campus-wide clawback of all DOJ grants is therefore unavailable

1 because it is an “*unusual*” remedy for which funding recipients lack notice when
2 accepting federal funds. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S.
3 212, 223 (2022); *see Landor v. Louisiana Dep’t of Corrs. & Pub. Safety*, 609 U.S.
4 59, 67-69 (2026). In fact, another judge in this district recently affirmed that a breach
5 of contract claim brought by the Government under a Spending Clause statute such
6 as Title VI must be dismissed unless the defendant had “clear notice” of the
7 conditions on federal funding allegedly breached. *See United States v. California*
8 *Interscholastic Fed’n*, 2026 WL 2575930, at *5 (C.D. Cal. Aug. 31, 2026). In
9 *California Interscholastic*, the court explained that the Government’s attempt to
10 enforce “newly announced agency positions” indicated a lack of the clear notice that
11 the Spending Clause required. *See id.* at *10 & n.12. So too here. The Regents did
12 not have clear notice, and the Government does not plausibly allege that it did. The
13 Government cannot use a contract claim to obtain campus-wide restitution based on
14 its new position that Title VI compliance is a material term of all grants.

15 The Government’s claim that it must be able to claw back federal funds under
16 a contract theory to honor “the symmetry in the relationship between government
17 and contractor,” Opp. 10, once again ignores that Congress expressly limited the
18 Government’s authority to remedy violations of Title VI. As another court recently
19 recognized, “the purpose of an enforcement action under § 2000d-1” is “not to
20 penalize a wayward funding recipient but instead to incentivize it to bring itself into
21 compliance with Title VI.” *Harvard*, 2026 WL 2343193, at *2. The Government’s
22 attempt to seek return of all DOJ grants to UCLA is an attempt to penalize The
23 Regents, not bring DGSOM admissions into compliance with Title VI.

24 **B. The Government Fails To Plead A Breach Of Contract**

25 The Government does not dispute that it must plead a breach of contract under
26 federal common law, and that “[a] party breaches a contract when it is in material
27 non-compliance with [its] terms.” *Gilbert v. Dep’t of Justice*, 334 F.3d 1065, 1071
28 (Fed. Cir. 2003). An alleged breach is not material unless it “goes to the essence of

1 the contract.” *Id.* (quoting *Thomas v. Dep’t of Hous. & Urb. Dev.*, 124 F.3d 1439,
2 1442 (Fed. Cir. 1997)). Indeed, just recently, the Government told the Supreme
3 Court that a contractual representation was material only if it “‘went to the very
4 essence of the bargain.’” *See* Brief for United States at 17, *Kousisis v. United States*,
5 No. 23-909 (U.S. Oct. 2, 2024) (quoting *Universal Health Services, Inc. v. United*
6 *States ex rel. Escobar*, 579 U.S. 176, 193 n.5 (2016)). Nor is a breach material if the
7 nonbreaching party “receive[s] a ‘substantial part’ of what [it] bargained for.” *See*
8 *Hansen Bancorp, Inc. v. United States*, 367 F.3d 1297, 1312 (Fed. Cir. 2004).

9 The Government fails to state a claim for breach under this standard. Nowhere
10 does the Government allege that UCLA failed to perform under its grants from DOJ
11 or failed to deliver a substantial part of what DOJ bargained for under those grants.
12 The Government also provides no basis for this Court to infer that Title VI
13 compliance in medical school admissions went to the very essence of the bargain of
14 the criminal-justice related DOJ grants at issue here. These pleading failures warrant
15 dismissal of the contract claim. The Government tries to avoid this result by arguing
16 that alleged Title VI violations in DGSOM admissions constituted a material breach
17 of the federal grants because the Government would not have awarded the grants but
18 for the required assurances of Title VI compliance. *Opp.* 10-11. This argument
19 fails.

20 To begin, a general assurance that a recipient will comply with its independent
21 legal obligation under Title VI does not equate to a material contractual term. As
22 the Supreme Court recognized when discussing materiality under the False Claims
23 Act, “statutory, regulatory, and contractual requirements are not automatically
24 material, even if they are labeled conditions of payment.” *Universal Health Servs.*,
25 579 U.S. at 191. Materiality requires “an objective inquiry into what has a ‘tendency
26 to influence’ the government, not what the government ‘deem[s]’ important.”
27 *County of King v. Turner*, 2026 WL 2489361, at *8 (9th Cir. Aug. 25, 2026)
28 (alteration in original) (quoting *Universal Health Servs.*, 579 U.S. at 193-194). The

1 Ninth Circuit thus blocked the Government’s effort to categorically label
2 compliance, in all respects, with all federal antidiscrimination laws as a material
3 condition of any grant payment from two agencies. *Id.* at *7-9. As the Government
4 has recognized elsewhere, its argument that Title VI assurances are “material” to
5 funding decisions “reflects a change in the government’s position.” Dep’t of Health
6 & Hum. Servs., Grants Policy Statement § 2.5.4.3 (Oct. 1, 2025). That further
7 undermines any inference that the civil rights assurances required of all institutions
8 tend to influence the Government’s decision to award particular federal grants.

9 The regulatory requirement to assure compliance with Title VI (as well as
10 other statutes) therefore does not transform every alleged Title VI violation by any
11 part of a university into a material breach of every DOJ grant. Here, the question is
12 whether the Government has plausibly alleged any facts from which this Court can
13 infer that compliance with Title VI in DGSOM admissions “‘constitut[ed] an
14 inducement or motive’ to enter into” these four DOJ grants to UCLA. *Kousisis v.*
15 *United States*, 605 U.S. 114, 131 (2025) (alteration in original) (citation omitted).
16 Because it has not, the Government has not alleged a material breach.

17 Contrary to the Government’s claim (Opp. 12), this Court can determine as a
18 matter of law that the Government failed to plead material noncompliance with a
19 contract. *See, e.g., Sunrez Corp. v. United States*, 157 Fed. Cl. 640, 650 (2022).
20 “[T]he determination of whether non-compliance with the terms of a contract is
21 material, so as to constitute a breach, is a mixed question of fact and law.” *Gilbert*,
22 334 F.3d at 1071. Where “the facts are undisputed, the determination of whether
23 there has been material non-compliance with the terms of a contract, and hence
24 breach, necessarily reduces to a question of law.” *Id.* Here, the Government fails to
25 allege facts that would plausibly establish material breach.

26 CONCLUSION

27 The Court should grant The Regents’ Motion to Dismiss.
28

1 Dated: October 6, 2026

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.1 AND STANDING
ORDER OF HON. JOHN W. HOLCOMB**

The undersigned, counsel of record for Defendants, certifies that this brief contains 12 substantive pages or fewer, which complies with the page limit set by the Court's Standing Order revised August 6, 2026.

Dated: October 6, 2026

/s/ Felicia H. Ellsworth

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