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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

HOWARD ALAN ZOCHLINSKI,

Plaintiff and Appellant,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA et al.,

Defendants and Respondents.

C064600

(Super. Ct. No.
CVPT080003413)

C065103

(Super. Ct. No.
CVPT070000009)

In these consolidated appeals, petitioner Howard Zochlinski challenges the trial court's denial of his petitions for writ of mandate, continuing his efforts to obtain a Ph.D. in genetics from the University of California, Davis (UC Davis), after being disqualified from the genetics graduate department in 1993. In one appeal (No. C065103) he contends the dean of the graduate program lacked authority to reject a decision by the representative assembly of the academic senate to reinstate Zochlinski to the graduate program, and the trial court erred in upholding the dean's decision. In the other appeal

(No. C064600) he contends UC Davis abused its discretion in failing to retroactively award him a Ph.D. under what Zochlinski calls the “Three Paper Rule,” and the trial court erred in its interpretation of the applicable bylaws, rules and regulations. In both appeals, Zochlinski maintains the trial court applied the wrong standard of review.¹

In part I we conclude the trial court applied the appropriate standard of review in both cases. In part II we conclude the trial court correctly determined that the dean of the graduate program did not abuse his discretion in declining to reinstate Zochlinski. And in part III we conclude the trial court correctly determined that UC Davis did not abuse its discretion in declining to award Zochlinski a Ph.D.

We will affirm the judgments.

BACKGROUND

Appeal No. C065103

Zochlinski was admitted to the Ph.D. program of the UC Davis genetics graduate group in September 1984. Thereafter, he experienced a series of academic difficulties, which led to warnings of possible disqualification from the program. Zochlinski was placed on academic probation due to a low grade point average in 1986, and in 1989 was informed he was making unsatisfactory progress to obtain his degree. His dissertation committee approved a topic on the genetics of aging and, after several extensions, set December 31, 1992, as a final deadline for completion of his dissertation.

Zochlinski turned in a dissertation by the deadline, but his dissertation committee concluded that “[b]ased on repeated missed deadlines and the quality of the final document, we believe the dissertation does not measure up to the Ph.D. standard. Therefore, we recommend dismissal from the Graduate Program.” The committee

¹ Zochlinski also filed petitions for writ of prohibition in the trial court, but he does not present a cognizable challenge to the trial court’s denial of those petitions.

recommended that he receive a master's degree in genetics instead. The dean of graduate studies, Donald Curry, concurred and notified Zochlinski on January 28, 1993.

Zochlinski asked Dean Curry for the opportunity to submit a revised draft, claiming that the emotional trauma caused by his arrest on a stalking charge in mid-November 1992 interfered with his academic work.² Dean Curry submitted the reworked dissertation to the dissertation committee, noting that "it would certainly be a tragedy if a student did indeed have the capability to submit an acceptable dissertation, but due to extenuating and mitigating circumstances, failed to demonstrate the potential by knowingly submitting an unacceptable draft solely to meet a deadline." However, he stated that if the committee agreed unanimously that the "second version still fail[ed] to 'measure up to the Ph.D. standard,' then that decision will prevail," emphasizing that their academic judgment would be final.

The committee unanimously rejected the revised dissertation. One committee member observed that it failed to follow the agreed upon format, and another observed that it lacked focus and logical progression. The third member stated that considering the amount of time extended to Zochlinski and the fact his revised dissertation showed very little improvement, it was unlikely Zochlinski would be able to submit an acceptable dissertation within a reasonable period of time. Based on the committee's judgment, Dean Curry rejected Zochlinski's appeal.

² According to Zochlinski, he was arrested in 1972 at a war protest at UC Santa Barbara. Zochlinski asserts that the arresting officer, John Jones, Jr., arranged to have Zochlinski gang-raped in jail. Zochlinski claims that two decades later, in 1992, he discovered Jones was a member of the campus police at UC Davis, and that Jones recognized Zochlinski, falsely arrested him for stalking, and again threatened to have him gang-raped in jail.

Over the next decade, Zochlinski filed numerous grievances, appeals, and lawsuits, none of which were successful.³ Between January 1993 and August 2001, his disqualification was reviewed by the UC Davis graduate council, several deans of graduate studies, and the chair and vice chair of the UC Davis academic senate.

At this juncture, it is helpful to discuss the structural hierarchy of the University of California. The California Constitution grants governance authority over the University of California to The Regents of the University of California (the Regents). (Cal. Const., art. IX, § 9.) The Regents authorized the formation of the academic senate. The academic senate, “subject to the approval of the Board [of Regents], shall determine the conditions for admission, for certificates, and for degrees other than honorary degrees. It shall recommend to the President all candidates for degrees in course” (Standing order of the Regents, § 105.2(a).) Each campus of the University of California has its own “division” of the academic senate, which, in general, exercises the authority of the academic senate over the campus. (Academic senate bylaw 305.) The Davis division has established a number of subsidiary bodies, several of which are relevant to this action. The representative assembly, the division’s primary legislative body, is made up of representatives of each of the campus’s academic departments. (Davis academic senate bylaw 34.A.) The Davis executive council is a smaller body comprised of leaders of key committees. (Davis academic senate bylaw 73.) The executive council has formed a

³ Many of these cases are discussed by United States Magistrate Judge Peter Nowinski in *Zochlinski v. University of California* (Sept. 7, 2005, E.D.Cal.) 2005 WL 2417649 [nonpub. opn.]. In denying Zochlinski leave to amend his complaint, Judge Nowinski stated: “Plaintiff has demonstrated time and again his inability to cure deficiencies in his complaints despite ample opportunity, specific instructions and repeated extensions of time. It would, moreover, be unduly prejudicial to defendants to permit further amendment of the pending complaint. Defendants have been tasked for more than ten years with defending the same set of facts in state and federal court. Plaintiff’s repeated filings coupled with his failure adequately to present his claims suggests harassment as a motive this court should not further tolerate.” (*Id.* at p. *5.)

student petitions subcommittee to decide certain student petitions. (Davis academic senate bylaw 73; legislative ruling 7.07.)

On February 12, 2004, Zochlinski wrote to the chair of the Davis division of the academic senate, petitioning for the Davis representative assembly “to overturn [his] 1993 disqualification from graduate study in genetics and the subsequent denial of [his] appeal.” Zochlinski repeated the same arguments he had asserted in his earlier appeals. A special student petitions committee appointed to review the matter issued a report that found “no basis to support the petition,” agreed with “the denials of his previous appeals,” and recommended that “the current petition be denied as well.”

On February 28, 2005, the representative assembly heard Zochlinski’s petition in open session. It voted that Zochlinski should be reinstated “as a graduate student advanced to candidacy . . . with full credit for past work.” The representative assembly resolution made no findings and gave no rationale for its vote. The only evidence of its reasoning was a subsequent explanation by Academic Senate Chair Daniel Simmons to Graduate Studies Dean Gibeling, stating: “At the Representative Assembly meeting Mr. Zochlinski and his faculty supporters asserted that Mr. Zochlinski’s dissertation committee, and subsequently members of the Graduate Council hearing his dismissal appeals, did not appropriately take into account Mr. Zochlinski’s troubles with the police stemming from stalking charges. . . . I think that the record is clear that the dissertation submitted by Mr. Zochlinski was substandard. The issue debated by the Assembly was not the quality of the dissertation, but whether Mr. Zochlinski was given an appropriate opportunity to complete his work in light of the difficulties that he faced at the time.”

The assembly’s resolution implicated a disputed policy question regarding authority over graduate student disqualification within UC Davis. The dispute concerned whether systemwide academic senate regulation 904 (Senate Regulation 904), which provides that “[d]isqualification of graduate students is at the discretion of the Dean of the Graduate Division concerned,” conflicted with academic senate bylaws and the

standing orders of the Regents. This uncertainty led the Davis division committee on elections, rules, and jurisdiction (CERJ) to request a legislative ruling from UC Davis's academic senate committee on rules and jurisdiction (UCRJ) to clarify whether disqualification and/or reinstatement of graduate students was at the discretion of the dean of graduate studies, as provided in Senate Regulation 904.

Dean Gibeling advised the chair of the Davis academic senate that "Graduate Studies cannot respond [to the representative assembly's resolution] until a determination has been made regarding whether the Representative Assembly's action is advisory or binding." Dean Gibeling confirmed the parties' understanding that "if UCRJ determines that the delegation of authority for disqualification matters was properly delegated to the Dean, then the Senate's position will be that its February 28, 2005 action is advisory only."

The UCRJ ultimately upheld the validity of Senate Regulation 904 with legislative ruling 6.06, which states that the regulation "is consistent with the Code of the Academic Senate. Any Division wishing to assume responsibility for the disqualification of graduate students must submit a request for a variance to Senate Regulation 904, in accordance with Senate Bylaw 80.D." Thereafter, Dean Gibeling reviewed the record and determined not to reverse the disqualification or reinstate Zochlinski. Because Zochlinski claimed Gibeling was biased, Gibeling requested that Interim Provost and Executive Vice Chancellor Barbara Horwitz, the second highest ranking academic official on the Davis campus, independently review his decision. On June 7, 2008, Provost Horwitz concurred with Dean Gibeling in a lengthy written decision.

Meanwhile, on January 2, 2007, Zochlinski filed a petition for writ of mandate (with subheadings entitled writ of mandate A, B and C) and writ of prohibition. He challenged the decision not to reinstate him and named the Regents of the University of California, Gibeling and various other individuals as respondents. Zochlinski alleged that respondents' decision was based on racial animus or for reasons of personal animus, and

was in retaliation for Zochlinski's whistleblowing, exercise of his constitutional rights, and his status as an Orthodox Jew. Zochlinski asserted that "Gibeling's psychopathology . . . is the cause of the current situation" as well as "his near-psychotic abuse of discretion and lust for power" He maintained further that "[n]umerous people in the systemwide senate in Oakland are simply weak [and were probably chosen for that reason] and would not act properly or fairly in [his] case." Zochlinski alleged that UC Davis "has an extensive history of corruption & cover-up involving racism & misogyny; with minority individuals and women are far more likely to be victimized than White Christian males."

Respondents filed a demurrer on various grounds, including that Zochlinski's petition failed to state a cause of action.

In ruling on the demurrer, the trial court observed that Zochlinski's "simple petition" did not require "a 73-page dissertation," and suggested that in the interest of efficiency Zochlinski should present a clear and concise statement of his claims in all future filings with the court. The trial court stated, "Paring the extraneous allegations from the petition, [Zochlinski] asks the court only for an order (1) enforcing the February 28, 2005, vote by the Representative Assembly of the Academic Senate-Davis Division to reinstate [Zochlinski] to the UC Davis Genetics Ph.D. program, and (2) finding that Legislative Ruling 6.06 has no impact on [his] case."

The trial court overruled respondents' demurrer to writ of mandate A, finding that the petition sufficiently alleged that respondents acted in an arbitrary and capricious manner when they refused to abide by the vote of the representative assembly. It sustained the demurrer to writ of mandate B without leave to amend, observing that judicially noticed matters established that the rules of the Davis division did not take precedence over the bylaws, standing orders, and/or regulations of the systemwide academic senate. As for the demurrers to writ of mandate C and the writ of prohibition, the trial court sustained the demurrers with leave to amend.

In July 2008, Zochlinski filed an amended petition for writ of mandate and respondents demurred again.

The hearing on the demurrer was delayed repeatedly at Zochlinski's request, and the matter was not heard until September 2009. The trial court sustained the demurrer to all but one cause of action (labeled writ of mandate A), regarding respondents' rejection of the representative assembly's decision. The trial court granted leave to file a second amended petition by no later than October 15, 2009, and warned Zochlinski it was "not inclined to grant any request for a continuance of this deadline."

Zochlinski failed to file his second amended petition by the deadline and made an ex parte request for an extension of time. Finding no good cause for an extension, the trial court denied the request. Undeterred by the trial court's order, Zochlinski filed a second amended petition. In addition to writ of mandate A, Zochlinski asserted another writ of mandate B and C, which asked the trial court "to consider the legality of the initial disqualification" and to determine the legality of the hold that Zochlinski alleged had been placed on his transcripts and degrees. Thereafter, Zochlinski filed a motion to file the second amended petition late.

On March 29, 2010, the trial court denied Zochlinski's motion to file the second amended petition late, finding that he simply reargued the ex parte application that had been denied previously. The trial court also decided the remaining cause of action in the proceeding (writ of mandate A), stating "the issue before the Court is a narrow one: whether the respondents acted in an arbitrary or capricious manner when they decided not to adopt the Representative Assembly's February 28, 2005, decision" The trial court concluded that "what the Representative Assembly actually did in its February 28, 2005, decision is to reverse the Dean of Graduate Studies' April 7, 1993, disqualification decision," and that the representative assembly lacked authority under university policies to do so. Thus, "the Dean of Graduate Studies had the discretion to reject the Representative Assembly's February 28, 2005, recommendation." Acting as the dean's

designee, Provost Horwitz reviewed an extensive record and concluded that Zochlinski “was given adequate opportunities to complete his dissertation and his ‘personal difficulties’ were considered when the appeals of his disqualification were rejected.” The decision not to adopt the representative assembly’s recommendation was “well reasoned and . . . based on a careful consideration of the record.” Accordingly, the trial court denied Zochlinski’s petition for writ of mandate.

Appeal No. C064600

On February 13, 2008, while Zochlinski’s challenge to Gibeling’s decision not to overturn his disqualification and reinstate him was pending, Zochlinski wrote to Professor Linda Bisson, then chair of the academic senate, asking that she “consider this document a formal petition to the Representative Assembly of the Academic Senate” to grant him his Ph.D. in genetics. In Zochlinski’s estimation, he met the December 1992 deadline to submit his dissertation pursuant to the Three Paper Rule. According to Zochlinski, the Three Paper Rule “is an informal policy of many departments and groups, particularly in the sciences, under which it was stated that co-authorship of three research papers emanating from the same laboratory, published in recognized peer-reviewed journals would constitute sufficient effort and proof of competency on the part of a graduate student to meet the requirements for a Ph.D. degree.” In his petition, Zochlinski conceded that “mere co-authorship was not sufficient--the [dissertation] committee members must agree as to the candidate warranting a Ph.D. and set the criteria for the final written form of the thesis.”

Zochlinski contended he should be granted the Ph.D. based on two published papers on which he was credited as sixth author, and another paper on which he was credited as third author. The papers concerned feline immunodeficiency virus (FIV), not the genetics of aging, which was the topic that had been approved for his dissertation. Zochlinski also submitted letters of support from two of the three members of his former dissertation committee, Professor Janet Yamamoto, who was by then a faculty member at

the University of Florida, and Professor Murray Gardner, who was on emeritus status. Both professors expressed sympathy for Zochlinski's current situation, but neither stated that Zochlinski had wanted, or had been approved, to pursue a Ph.D. on FIV.

The current graduate studies website instructs students: "If approved by the thesis or dissertation committee, reports of research undertaken during graduate study at UC Davis which have been published may be accepted in printed form as all or part of the master's thesis or doctoral dissertation. If you are not the sole or first author of the published material submitted, the use of co-authored materials must be approved by the department or graduate group concerned."

The graduate student handbook from the early 1990's similarly provided: "5. What about use of co-authored materials? The thesis or dissertation may be presented wholly or partly in printed form. Unless the student is the sole author of the published material, the use of co-authored materials must be approved in principal [*sic*] by the department or graduate group concerned. Any department or graduate group which desires to allow the use of co-authored printed material should inform the Graduate Division. With approval of the appropriate thesis or dissertation committees, the Graduate Division will accept theses [thesis] or dissertations containing such material."

On March 10, 2008, the secretary of the Davis division of the academic senate notified Zochlinski that, pursuant to legislative ruling 11.05, "no student petition need be forwarded to the Representative Assembly as a matter of right." Rather, she would refer Zochlinski's petition to the student petitions subcommittee, which was established over two years earlier and had authority over student petitions directed to the Davis division.

Legislative ruling 11.05 was issued by the previously mentioned CERJ, which is authorized to issue rulings interpreting the code of the Davis division of the academic senate. (Davis academic senate bylaw 71.B.6.) Legislative ruling 11.05 states that the representative assembly "has the authority to accept, reject, or modify the judgment of

any committee with respect to the subject of a student petition,” but that “the Assembly is not required to consider or take any action on any given student petition.” In addition, student petitions “are received by the Secretary [of the Davis division], who may refer each petition to an appropriate committee.” Legislative ruling 7.07 provided that appeals of committee decisions on student matters “are generally referred (at the discretion of the Secretary) to the Student Petitions Subcommittee of the Executive Council.”

On March 19, 2008, the secretary forwarded Zochlinski’s petition and the supporting letters to the student petitions subcommittee, which was comprised of five members of the UC Davis faculty. The subcommittee obtained information regarding pertinent UC Davis policies, information regarding the genetics graduate group, and procedural advice from the academic senate parliamentarian. On June 26, 2008, the subcommittee issued its decision denying Zochlinski’s petition. It noted that Zochlinski requested that he “ ‘be granted my degree based on having met the research requirements for a Ph.D. degree in genetics as of December 1992.’ ” Relying on the policies governing the use of co-authored materials, the subcommittee was “unable to grant a Ph.D. to [Zochlinski] because the co-authored materials were not approved for use by [his] dissertation committee.”

On July 18, 2008, Zochlinski sent an email to the subcommittee members requesting “immediate reconsideration or, more appropriately, presentation of the issue to the Representative Assembly of the Academic Senate for a vote on granting my Ph.D. in Genetics.” He questioned the application of legislative rulings 7.07 and 11.05 to refer the matter to the subcommittee rather than the representative assembly of the academic senate, arguing he was “grandfathered” in because his issues predated the rule changes.

On September 15, 2008, Robert Powell, the new chair of the Davis academic senate, advised Zochlinski that because legislative rulings 7.07 and 11.05 were procedural rules, they were effective immediately upon issuance and applied to Zochlinski’s petition. Under those rules, the student petitions subcommittee was not

required to consider repetitive petitions, and students had no right to have a petition placed before the representative assembly.

On December 22, 2008, Zochlinski filed a petition for writ of mandate, seeking to overturn the student petitions subcommittee's denial of his petition to be awarded a Ph.D. under the Three Paper Rule. He also sought a writ of prohibition requiring the University of California "to immediately end its 'policy, custom and practice' of retaliation against individuals engaging in activities for the enforcement of their civil rights" and requiring respondents to "immediately cease all retaliatory activities against [him]." Zochlinski sought unspecified damages and other relief, including "[t]he immediate award of a Ph.D. degree, with full benefits accorded thereto," and "employment as a tenured faculty member."

The trial court issued a tentative ruling the day before the hearing, and Zochlinski requested oral argument. After hearing argument from both parties, the trial court denied the writ on January 19, 2010. The trial court found that the denial of Zochlinski's petition for a Ph.D. under the Three Paper Rule was not arbitrary and capricious because "[t]here is no evidence that the Genetics department or graduate group approved or would have approved [Zochlinski's] use of co-authored materials," nor that his "dissertation committee approved a dissertation on [FIV], which is the topic of the articles [he] co-authored." In fact, the record was to the contrary given that the committee approved a dissertation on "The Cell Cycle and Aging" written "in the form of an NIH RO1 grant proposal."

The trial court noted that the examples submitted by Zochlinski of Three Paper Rule Ph.D. dissertations included approval signatures by the three members of each individual's dissertation committee. The trial court also questioned the sufficiency of the "approvals" from two of Zochlinski's former dissertation committee members 15 years after Zochlinski was disqualified from the program, given that a dissertation committee must have three members and at least two must be members of the genetics graduate

group. Zochlinski no longer had a dissertation committee because one member was deceased, another was on emeritus status and the third was no longer with the UC Davis faculty. As for Zochlinski's proposal that a new dissertation committee be formed, the trial court noted that such a remedy was not supported by any rule or competent evidence.

The trial court also found that Robert Powell's denial of Zochlinski's request for reconsideration before the student petitions subcommittee or before the representative assembly was not arbitrary and capricious. Under the applicable rules, the student petitions subcommittee was the appropriate entity to review the issue. Powell determined that the subcommittee had carefully considered Zochlinski's petition and there was no need for it to revisit the matter.

In addition, the trial court denied Zochlinski's petition for a writ of prohibition in which he sought an order that respondents "cease any and all current and . . . future interference with [Zochlinski's] education or career in any manner" and that the University of California "immediately end its 'policy, custom and practice' of retaliation against individuals engaging in activities for the enforcement of their civil rights" The trial court observed that a writ of prohibition arrests the proceedings of an entity or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of the entity or person. (Code Civ. Proc., § 1102.) It denied the petition because Zochlinski did not produce any evidence of any threatened or pending judicial act or any further judicial proceedings by the respondents that were without or in excess of jurisdiction.

STANDARD OF REVIEW

In a challenge to a judgment, it is the appellant's burden to establish error by presenting legal authority on each point made and factual analysis supported by appropriate citations to the material facts in the appellate record. If the appellant fails to do so, the claim of error is forfeited. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6; *Guthrey v. State of*

California (1998) 63 Cal.App.4th 1108, 1115-1116; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) It is the appellant's responsibility to support claims of error with citation and authority; this court is not obligated to perform that function on the appellant's behalf. (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 113.)

The appellant must present each point separately in the opening brief under an appropriate heading, showing the nature of the question to be presented and the point to be made. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830-1831, fn. 4; see also *People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19 [reviewing court may disregard claims perfunctorily asserted without development and without clear indication they are intended to be discrete contentions]; *People v. Harper* (2000) 82 Cal.App.4th 1413, 1419, fn. 4 [argument forfeited if it is not set forth under a separate argument heading and is raised in a perfunctory fashion without any supporting analysis and authority].) This is not a mere technical requirement; it is essential to the appellate process. Appellants must "present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised . . . of the exact question under consideration, instead of being compelled to extricate it from the mass." (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325; accord, *Opdyk v. California Horse Racing Bd.*, *supra*, 34 Cal.App.4th at pp. 1830-1831, fn. 4.)

Appellants may not simply incorporate by reference arguments made in papers filed in the trial court rather than brief the arguments on appeal. (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 334.) In addition, they may not attempt to rectify their omissions and oversights for the first time in their reply briefs because it deprives the respondent of an opportunity to respond. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 482, fn. 10; *American Drug Stores, Inc. v. Stroh*

(1992) 10 Cal.App.4th 1446, 1453; *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764-765.)

Lack of legal counsel does not entitle the appellant to special treatment on appeal. (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795; *Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1055; *Doran v. Dreyer* (1956) 143 Cal.App.2d 289, 290.) A pro se litigant is held to the same restrictive rules of procedure as an attorney. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639.) “A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

Here, many of Zochlinski’s factual assertions are not supported by record citations, or his citations are to mere assertions in his own pleadings. We will generally consider only those facts and arguments supported by adequate citations to evidence in the record. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1294.) Some of Zochlinski’s arguments are not confined to the point raised in the heading. Others assume that he does not have the responsibility to completely explain the factual and legal basis for his position, and that we will ferret through the voluminous record to make sense of his claims. “Although we address the issues raised in the headings, we do not consider all of the loose and disparate arguments that are not clearly set out in a heading and supported by reasoned legal argument.” (*Ibid.*) Nor will we address arguments raised for the first time in his reply briefs.

DISCUSSION

I

Zochlinski contends the trial court used the wrong standard of review in denying both writ petitions.

In both cases, Zochlinski filed petitions for writs of ordinary mandate, not petitions for writs of administrative mandamus. He has not demonstrated that he was

entitled to an adjudicatory hearing before a university tribunal in either case. He seeks to compel either his reinstatement as a graduate student, or an award of his Ph.D., on the ground that respondents' actions were arbitrary and capricious. This is a classic ordinary mandate action, which involves review of an adjudicatory decision when an agency is not required by law to hold an evidentiary hearing. (*McGill v. Regents of University of California* (1996) 44 Cal.App.4th 1776, 1785; *Bunnett v. Regents of University of California* (1995) 35 Cal.App.4th 843, 848.) Review is very deferential in light of the agency's authority and presumed expertise. The agency's findings must be upheld unless arbitrary, capricious, or entirely lacking evidentiary support. (*McGill v. Regents of University of California, supra*, 44 Cal.App.4th at p. 1786; *Stone v. Regents of University of California* (1999) 77 Cal.App.4th 736, 745.)

“In reviewing a trial court's judgment on a petition for writ of ordinary mandate, the appellate court applies the substantial evidence test to the trial court's factual findings, but exercises its independent judgment on legal issues, such as the interpretation of statutes. [Citation.]” (*Abbate v. County of Santa Clara* (2001) 91 Cal.App.4th 1231, 1239; accord, *Committee for Responsible School Expansion v. Hermosa Beach City School Dist.* (2006) 142 Cal.App.4th 1178, 1184.) Nonetheless, an agency's interpretation of its own regulations is afforded significant deference by courts. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 14.)

“[B]ecause the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this ‘expertise,’ expressed as an interpretation . . . , that is the source of the presumptive value of the agency's views. (*Id.* at p. 11; see also *Exxon Mobile Corp. v. County of Santa Barbara* (2001) 92 Cal.App.4th 1347, 1357.) In light of the plenary authority of the Regents to “ ‘operate, control, and administer” ’ the university (*Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 135), this rule of construction applies with special force here.

The record reflects that the trial court used the appropriate standard of review for ordinary mandate, and that it exercised its independent judgment in construing and applying the various university regulations, giving appropriate deference to respondents' interpretation of those regulations. It appears Zochlinski believes the trial court applied the wrong standard because it "limited its authority to a narrow definition of arbitrary & capricious, within a narrow time frame of reference," rather than examining the entire history of Zochlinski's troubles with the University of California "for unfairness, bad faith, contract violations, and arbitrary & capricious actions" by respondents, "especially in relation to due process and equal treatment."

The trial court appropriately limited its review to the only issue before it in each case: (1) whether, under the applicable regulations, Dean Gibeling arbitrarily and capriciously refused to overturn Zochlinski's disqualification and readmit him to the genetics graduate department, and (2) whether UC Davis arbitrarily and capriciously refused to retroactively grant Zochlinski a Ph.D. under the Three Paper Rule. To the extent Zochlinski is attempting to revisit the propriety of his initial disqualification in 1993, his claim is barred either by (1) the statute of limitations, or (2) the doctrine of res judicata to the extent his complaints of discrimination, bias and a denial of due process were raised, or could have been raised, in his prior lawsuits against respondents.⁴

⁴ "Res judicata bars the relitigation not only of claims that were conclusively determined in the first action, but also matter that was within the scope of the action, related to the subject matter, and relevant to the issues so that it could have been raised. [Citations.] 'A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is res judicata on matters which were raised or could have been raised, on matters litigated or litigable.' [Citation.]" (*Burdette v. Carrier Corp.* (2008) 158 Cal.App.4th 1668, 1674-1675, italics omitted.) As such, the doctrine of res judicata promotes judicial economy by curtailing piecemeal litigation, with its concomitant vexation and expense to the parties and wasted effort and expense in judicial administration. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897.)

II

In his appeal in case No. C065103, Zochlinski contends the dean of the graduate program lacked authority to reject the representative assembly's decision to reinstate Zochlinski to the graduate program, and the trial court erred in upholding the dean's decision.

A

As best we can discern, Zochlinski believes the trial court confused readmission to the graduate program with overturning his disqualification. He lists various rules, regulations and bylaws that he believes support this position. Zochlinski posits that while Dean Gibeling may have had authority regarding whether to overturn Zochlinski's disqualification, the rules dictate that the academic senate had authority over readmission to the graduate program and the representative assembly of the academic senate voted to readmit him. Therefore, Dean Gibeling had no authority to overrule or reject the representative assembly's decision.

The succinct answer is that Zochlinski did not merely seek, and the representative assembly did not simply vote, to admit Zochlinski to the genetics graduate group of UC Davis. At the time Zochlinski was disqualified from the genetics graduate group, it was the policy that a disqualification rendered a student ineligible to pursue a Ph.D. degree of any kind at UC Davis. The graduate council amended the policy in 2002 to permit a disqualified student to apply for admission to a different program than the one from which the student was disqualified. Thus, Zochlinski could not be admitted to the genetics graduate group unless his disqualification was reversed. Zochlinski and the representative assembly sought to place Zochlinski in a position as if he had never been disqualified, giving him full credit for all of the work he had performed previously. In other words, they sought to overturn his disqualification even though Senate Regulation 904, and legislative ruling 6.06 from the UCRJ, gave the graduate dean sole discretion over the disqualification of graduate students. This they could not do and, as the

representative assembly's senate chair ultimately recognized, the representative assembly's vote was advisory only.

Furthermore, Dean Gibeling's decision not to overturn Zochlinski's disqualification was not arbitrary or capricious. The special student petitions committee found no basis to support Zochlinski's petition. The sole basis for the representative assembly's contrary decision was that the members did not believe Zochlinski "was given an appropriate opportunity to complete his work in light of the difficulties that he faced at the time." But the matter of Zochlinski's arrest for stalking and its effect on his ability to finish his dissertation in a timely fashion had been considered prior to his disqualification and again in subsequent appeals. Because Zochlinski accused Dean Gibeling of bias in refusing to overturn the disqualification, the dean referred the matter for further review to Barbara Horwitz, the interim provost and executive vice chancellor. She reviewed the matter carefully and issued a lengthy written decision in which she agreed with Dean Gibeling and explained that even considering his personal difficulties, Zochlinski had been given a more than reasonable opportunity to complete his Ph.D. program but failed to do so.

Zochlinski may disagree with Dean Gibeling's exercise of discretion, but he has failed to demonstrate that it was arbitrary or capricious.

B

Zochlinski's opening brief includes another argument heading that states: "Court Erred in Striking Second Amended Writ; Quashing Subpoenas; Refusing to Consider the Disqualification and Subsequent History; Striking Parts of Several Declarations; All These Actions Also Are Evidence of Bias and the Problems With Rotating Judges."

Zochlinski presents a less than one-page argument covering these disparate claims of error, and does not include a single citation to the record in support of his factual assertions, or any reasoned legal argument supported by relevant case law. As we

explained in our discussion of the applicable standard of review on appeal, Zochlinski's contention(s) are forfeited.⁵

III

In his appeal in case No. C064600, Zochlinski contends UC Davis abused its discretion in failing to retroactively award him a Ph.D. under what Zochlinski calls the Three Paper Rule, and the trial court erred in its interpretation of the applicable bylaws, rules and regulations.

A

Zochlinski maintains “[t]he Court ha[d] a duty to examine the entire issue’s history from 1992 onward for unfairness, bad faith, contract violations, and arbitrary & capricious actions; and not just the question of whether [the student petitions subcommittee] considered, *behind closed doors, the evidence cherry-picked for them by [the] University.*” (Original emphasis.) He argues that even if the trial court did not have such a duty, it nevertheless erred because there was no “time limit” on the existence of his dissertation committee, and two of the original committee members approved his use of three co-authored papers for his dissertation many years after he was disqualified from the Ph.D. program.

⁵ Zochlinski filed a more than 150-page request for judicial notice on November 3, 2011, a few months after he filed his reply brief. Some of the documents, which purport to be court filings, are not signed or file stamped. Although Zochlinski states that his request is based on the accompanying memorandum of points and authorities and his declaration, the points and authorities simply quote Evidence Code sections concerning judicial notice without explaining how the code sections apply to the submitted documents, or how the submitted documents are relevant to any of the issues on appeal. He alleges that academic senate bylaw 80(B)-18, concerning disqualification, was backdated from June 5, 2002 to December 15, 1967 for nefarious purposes, without supporting this assertion with evidence. We have reviewed the attached documents and none of them alter our decision. Accordingly, the request for judicial notice is denied.

Although Zochlinski continues to assert his academic history in numerous and repetitive lawsuits, this does not mean the trial court must repeatedly address repetitious complaints. Regarding case No. C064600, the sole issue before the trial court was whether UC Davis abused its discretion in denying Zochlinski's petition to obtain his Ph.D. as of December 1992 under the Three Paper Rule. On this issue, Zochlinski must show that he met the governing requirements and there was no legitimate reason to reject his petition.

Zochlinski says the trial court stated he "could have used the three published articles he co-authored as all or part of his dissertation: as is stated in the 1991 TPR rules." According to Zochlinski, this means UC Davis fraudulently breached its contractual obligation to him. But his quote is incomplete and taken out of context. The trial court correctly found that under the rule in effect in the early 1990's (before Zochlinski's disqualification from the genetics Ph.D. program), he "could have used the three published articles he co-authored as all or part of his dissertation, upon the approval of (1) his dissertation committee and, (2) because he was not the sole or first author of any of the published articles, the Genetics department or graduate group."⁶

There is no evidence that prior to being disqualified from the Ph.D. program, Zochlinski (1) obtained the approval or would have obtained the approval of the genetics department or graduate group and his dissertation committee, (2) to use co-authored papers, (3) on a subject unrelated to the agreed-upon dissertation topic, (4) as a complete

⁶ As we stated previously, the graduate student handbook from the early 1990's provided: "The thesis or dissertation may be presented wholly or partly in printed form. Unless the student is the sole author of the published material, the use of co-authored materials must be approved in principal [*sic*] by the department or graduate group concerned. Any department or graduate group which desires to allow the use of co-authored printed material should inform the Graduate Division. With approval of the appropriate thesis or dissertation committees, the Graduate Division will accept theses [thesis] or dissertations containing such material."

replacement for his dissertation, which was supposed to be prepared in an NIH RO1 format. Rather, 15 years after he was disqualified from the genetics graduate program -- and after one member of his dissertation committee had died, another was employed by a different university and the third was on emeritus status -- he obtained letters supporting his Three Paper Rule petition from the two surviving members of his defunct dissertation committee.⁷

Zochlinski no longer has a dissertation committee, which requires three members, two of whom are members of the UC Davis genetics graduate group. (Operating Procedures Genetics Graduate Group, part V.D.1.) But even if letters from former members of a former committee could somehow be construed as a retroactive approval by the dissertation committee for using co-authored papers, Zochlinski also needed the approval of the genetics department or graduate group. He does not have such approval. It is simply too late for Zochlinski to be granted “a Ph.D. degree in genetics as of December, 1992” on the basis of the Three Paper Rule as he requested. The trial court did not abuse its discretion in finding that UC Davis was not arbitrary or capricious in denying Zochlinski’s Three Paper Rule petition.

B

Zochlinski’s opening brief also includes an argument heading stating: “The Decision by Robert Powell Denying Reconsideration by [the student petitions subcommittee] and Appeal to [the representative assembly of the academic senate] was Unreasonable, Arbitrary and Capricious.” The sum total of his argument is as follows:

⁷ According to Murray Gardner, one of the members of Zochlinski’s dissertation committee, “I thought then and still think now that [Zochlinski] should be allowed more time to complete his dissertation.” However, in January 1993, Gardner signed a letter stating that based on repeated missed deadlines and the poor quality of Zochlinski’s dissertation, the committee recommended Zochlinski’s dismissal from the graduate program. Furthermore, after he reviewed Zochlinski’s revised dissertation and found it still lacking, Gardner did not indicate that he believed Zochlinski be given more time.

“Powell denied a hearing simply because he does not have to grant one, under the amendments made in the wake of Zochlinski’s successful 2/28/05 due process hearing. This is an arbitrary imposition by Powell, and retaliatory. Zochlinski, having been a student in the 1980’s is entitled to a fair evaluation by transparent procedures -- a public hearing in [the representative assembly].”

We presume this is a reference to the fact that Powell, the chair of the Davis academic senate, rejected Zochlinski’s request to present the Three Paper Rule issue to the representative assembly of the academic senate after the student petitions subcommittee rejected his petition. The matter had been referred to the subcommittee pursuant to legislative rulings 7.07 and 11.05, which state that appeals of committee decisions on student matters “are generally referred (at the discretion of the Secretary) to the Student Petitions Subcommittee of the Executive Council,” and that “no student petition need be forwarded to the Representative Assembly as a matter of right.”

Zochlinski questioned the use of these legislative rulings to refer the matter to the subcommittee rather than the representative assembly of the academic senate, maintaining he was “grandfathered” in because his issues predated the rule changes. But Powell advised Zochlinski that because legislative rulings 7.07 and 11.05 were procedural rules, they were effective immediately upon issuance and applied to Zochlinski’s petition.

Zochlinski alleges that Powell’s rationale was incorrect, arbitrary or capricious, but he fails to present a cogent argument, supported by analysis and authority, demonstrating his contention. His allegations are not sufficient to demonstrate error under the established rules of appellate procedure. Under the circumstances, Zochlinski’s

claim is forfeited. And, in any event, Powell’s rationale was correct. (See, e.g., *In re Vaccine Cases* (2005) 134 Cal.App.4th 438, 455-456.)⁸

DISPOSITION

The judgments (orders denying the petitions) are affirmed.

MAURO, J.

We concur:

ROBIE, Acting P. J.

HOCH, J.

⁸ Zochlinski requests that we take judicial notice of an unofficial photocopy of portions of a 1992 UC Davis, graduate studies, commencement ceremony program, which he claims demonstrates that he was awarded a degree. Zochlinski asserts that the degree awarded to him “has never been revoked” and asks that we “order the University to accord Zochlinski all privileges and benefits due him and to declare a verdict that the University engaged in fraud in concealing this award and denying Zochlinski the benefits and privileges he would otherwise have received, reverse the decision of the Trial Court, decide this Writ in his favor and permit his accompanying suit for damages to go forward.” The document is not an official copy of the commencement program, is incomplete, and does not reveal what type of degree Zochlinski allegedly was awarded. Moreover, it has no bearing on the issues raised in his appeal, which concern whether UC Davis arbitrarily and capriciously denied him a degree under the Three Paper Rule in 2008. The request for judicial notice is denied.