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9 Sacramento, Sacramento County, and California

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**
11 **COUNTY OF SACRAMENTO**

12 JOE RUBIN

13 Petitioner,

14 v.

15 THE COUNTY OF SACRAMENTO, THE
16 CALIFORNIA DEPARTMENT OF TOXIC
17 SUBSTANCE CONTROL, and DOES 1-100

18 Respondents/Defendants

19 Case No.

20 **VERIFIED PETITION FOR**
21 **ALTERNATE AND PEREMPTORY**
22 **WRIT OF MANDATE, FOR**
23 **DECLARATORY AND INJUNCTIVE**
24 **RELIEF RE ACCESS TO PUBLIC**
25 **RECORDS AND INFORMATION.**

26 **INTRODUCTION**

27 JOE RUBIN (Petitioner) requested access to records in the possession of and/or
28 controlled by THE COUNTY OF SACRAMENTO and THE CALIFORNIA DEPARTMENT
OF TOXIC SUBSTANCE CONTROL (Respondents). Respondents wrongfully and unlawfully
denied Petitioner access to public records, thereby violating Petitioner's constitutional, statutory,
regulatory and common law rights to examine the records and information Respondent's is
withholding. Respondents' refusal justifies an order or orders requiring Respondents to respond
to records requests in writing and to provide access to the information Petitioner seek and
further justifies a declaration determining the rights and duties between the parties in reference
to requests for immediate access to public records.

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JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to per Government Code §§ 6258, 6259, Code of Civil Procedure §§ 1060, 1085 and California Constitution, Article VI, Section 10.

2. Venue is proper in this Court: Respondents have their primary places of business in Sacramento County. All of Petitioner’s claims arose as a result of the acts or omissions of Respondents by and through their officers and employee, all of who work, reside or conduct business in Sacramento County. (Code of Civil Procedure §§ 393, 394(a).) All of the records or information sought by this Petition are located in Sacramento County. (Government Code § 6259; Code of Civil Procedure § 401(1).)

3. The California Constitution provides:

- a. The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny; and
- b. statutes, court rules, or other authority shall be broadly construed to further the people's right of access information concerning the people’s business, including but not limited to the writings of public officials; whereas statutes, court rules, or other authority shall be narrowly construed if an interpretation limits the same right of access. (Cal. Const. Art. I § 3(b) (1) and (2).)

4. The California Public Records Act (CPRA) and the case authority interpreting the CPRA provide:

- a. The public’s right to access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in California. (Government Code § 6250.)
- b. A “public record” includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or

1 local agency regardless of physical form or characteristics. (Government Code §
2 6252(e).)

3 c. Upon receiving a request to access records that reasonably describes identifiable
4 records, the CPRA imposes duties upon a local or state agency including but not
5 limited to:

6 i. Respond within 10 days in a writing that describes the reasons for denying
7 the request and identifies the person making the decision to deny the
8 request;

9 ii. make reasonable efforts to locate records responsive to a request for those
10 records, including canvassing agency officers, officials and employees (*City*
11 *of San Jose v. Superior Court* (2017) 2 Cal.5th 608);

12 iii. affirmatively assisting the requester to access the records the requester
13 seeks (Government Code § 6253.1); and

14 iv. avoid delaying the public's exercise of the right to access public records
15 and information.

16 5. Government Code § 6253 provides in pertinent part:

17 “(a) Public records are open to inspection at all times during the office
18 hours of the state or local agency and every person has a right to inspect
19 any public record, except as hereafter provided. Any reasonably
20 segregable portion of a record shall be available for inspection by any
21 person requesting the record after deletion of the portions that are
22 exempted by law.”

23 6. It is unlawful for a local or state agency to discriminate between requesters and
24 cannot deny access to records based on the identity of the requester or the purpose underlying
25 the request.

1 of information and records relating to the public’s business, records (1) Petitioner sought to
2 access, (2) that are not exempt from disclosure; but (3) that Respondent is nevertheless
3 wrongfully withholding.

4 14. Respondent CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCE
5 CONTROL (the “Agency”) is subject to duties and obligations to provide the public with
6 access to public records. The Agency is in possession of information and records relating to the
7 public’s business, records (1) Petitioner sought to access, (2) that are not exempt from
8 disclosure; but (3) that Respondent is nevertheless wrongfully withholding.

9 **FACTS GIVING RISE TO CLAIM**

10 15. Petitioner realleges Paragraphs 1 through 14 as though fully incorporated herein.

11 16. Utilizing the California Public Records Act, Petitioner investigated toxic lead
12 contaminating residential parts of the City of Sacramento – an issue of intense public interest
13 and importance. The documents and records Petitioner accessed from Respondents revealed
14 negligent and possibly intentional acts contrary to the public interest committed by public
15 officials, officers and employees associated with the City of Sacramento.

16 17. Petitioner informed the public of the aforementioned findings through a series of
17 published news articles, after which the City of Sacramento announced that steps would be
18 taken to address pressing public health and safety concerns regarding lead contamination.

19 18. Respondents became involved in the City’s clean up process. Petitioner requested
20 records from Respondents – all of which fall within the definition of public records set forth in
21 Government Code § 6252(e) - pertaining to the lead clean up process. However, Respondents’
22 records access practices changed, becoming more restrictive, wrongfully withholding records
23 on grounds previously not asserted - including but not limited to claiming that records
24 documenting the City’s evolving plans to clean up the mess lead the contamination the City
25 caused and then attempted to hide are exempt from public access because they are incomplete
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1 “drafts.”

2 **IRREPARABLE HARM**

3 19. Petitioner realleges Paragraphs 1 through 18 as though fully incorporated herein.

4 20. Petitioner seeks to enforce the constitutional and statutory right to obtain access to
5 public records related to the conduct of the public’s business, the violation of which
6 automatically establishes irreparable harm that cannot be remedied through an action at law.
7 Unless Petitioner is provided access to the documents they seek, the public’s oversight right
8 and responsibility will continue to be frustrated, and Petitioner’s constitutional, statutory and
9 common law rights will continue to be violated.

10 21. Petitioner has no plain, speedy, and adequate remedy at law other than this action.
11 Respondents have a clear, mandatory and ministerial duty to provide Petitioner and the public
12 with access to the public records Petitioner request. If Respondents’ decision to deny Petitioner
13 access to public records involves discretionary acts, then Respondents have abused that
14 discretion.

15 **BENEFICIAL INTEREST**

16 22. Petitioner realleges Paragraphs 1 through 21 as though fully incorporated herein.

17 23. As a “person” described by the Public Records Act and as a holder of the
18 aforementioned constitutional right to access records, Petitioner has a present beneficial interest
19 in the outcome of these proceedings and have a clear, present and substantial right to the relief
20 sought herein. Cal. Const. Art. 1 § 3; Government Code §§ 6253, 6253.9, 6258, 6259.

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 24. Petitioner realleges Paragraphs 1 through 23 as though fully incorporated herein.

23 25. There are no administrative remedies that can or would remedy the violations of
24 Petitioner’ constitutional right to the records and information he seeks.

25 **EXISTING CONTROVERSY**

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26. Petitioner realleges Paragraphs 1 through 25 as though fully incorporated herein.

27. An actual and existing controversy exists between the parties because Petitioner contends, and Respondents disputes, that Respondents’ actions and inactions described herein violated and continue to violate the California Constitution (Art. I § 3(b)(1) and (2)) and the California Public Records Act (Government Code § 6250 et sec.).

28. Petitioner seek a judicial declaration that Respondents violated and/or continues to violate constitutional, statutory, administrative and common law provisions requiring Respondents to provide Petitioner with access to the records they request.

PRAYER FOR RELIEF

Declaratory Relief:

- ❖ The issuance of a declaratory judgment that, pursuant to Art. I § 3(b)(1) and (2) of the California Constitution and Government Code § 6250 et sec, CPRA, that Respondents has the duty to provide prompt access to public records regardless of the form of these writings or where these writings are located and/or maintained.
- ❖ The issuance of a declaratory judgment that Respondents’ actions and inaction complained of herein violate:
 - Art. I § 3(b)(1) and (2) of the California Constitution;
 - the California Public Records Act (Government Code § 6250 et sec.), including but not limited the wrongful and unlawful assertion of the “draft” exemption.
- ❖ An award of costs and fees.
- ❖ A penalty for unreasonable delay.
- ❖ Any other relief the Court deems just and proper.

Injunctive Relief:

- ❖ The issuance of a permanent injunction ordering Respondents to perform all tasks necessary for Respondents to satisfy its duties to the public and to provide Petitioner with

1 access to all documents responsive to Petitioner’ records requests.

- 2 ❖ An award of costs and fees.
- 3 ❖ A penalty for unreasonable delay.
- 4 ❖ Any other relief the Court deems just and proper.

5 **California Public Records Act:**

- 6 ❖ A peremptory writ of mandate ordering Respondents to perform all tasks necessary for
7 Respondents to satisfy its duties to the public and to provide Petitioner with access to all
8 documents responsive to Petitioner’ records requests that are located after an affirmative
9 comprehensive effort to identify and locate documents responsive to Petitioner’ request.
- 10 ❖ An award of costs and fees.
- 11 ❖ A penalty for unreasonable delay.
- 12 ❖ Any other relief the Court deems just and proper.

13 **Traditional Mandamus:**

- 14 ❖ A peremptory writ of mandate ruling and otherwise ordering that, in reference to
15 Petitioner’ records requests, Respondents perform its ministerial and/or mandatory duties
16 necessary to provide Petitioner with the access to and copies of documents/information
17 responsive to Petitioner’ request.
- 18 ❖ A peremptory writ of mandate ruling and otherwise ordering that, in reference to
19 Petitioner’ records requests, Respondents abused its discretion when it denied Petitioner
20 access to the records Petitioner sought and when Respondents asserted the “draft”
21 exemption.
- 22 ❖ An award of costs and fees.
- 23 ❖ A penalty for unreasonable delay.
- 24 ❖ Any other relief the Court deems just and proper.

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2 Dated: September 8, 2017

PAUL NICHOLAS BOYLAN, ESQ.

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5 Paul Nicholas Boylan, Attorney for
6 Petitioner

7 **VERIFICATION**

8 I, JOE RUBIN, declare:

9 1. I am a Petitioner in this action acting in both my individual and representative
10 capacities. I make this verification of my own knowledge. I hereby verify that the factual
11 matters stated in this Petition for Writ of Mandate are known to me personally and that they are
12 true.

13 I declare under penalty of perjury under the laws of California that the foregoing is true
14 and that this verification was executed in Sacramento, California, on September 8, 2017.

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16 JOE RUBIN