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Attorney and Petitioner/Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

CHRISTOPHER E. SKINNELL

Plaintiff and Petitioner,

vs.

CALIFORNIA CIVIL RIGHTS
DEPARTMENT F/K/A CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING,

Defendant and Respondent.

Case No. 34-2022-80004057

**VERIFIED COMPLAINT AND PETITION
FOR WRIT OF MANDATE**

[Gov. Code, §§ 6250, *et seq.*; Code Civ. Proc.,
§§ 1085, *et seq.*]

1 **INTRODUCTION**

2 1. Christopher E. Skinnell ("Petitioner"), on behalf of Activision Blizzard, Inc.
3 ("Activision Blizzard" or "the Company"), files this Complaint and Verified Petition to stop the
4 California Civil Rights Department's¹ ("CRD") unlawful efforts to hide its media assault on the
5 Company and the Company's court-approved settlement with the United States Equal Employment
6 Opportunity Commission ("EEOC)."

7 2. When the CRD unlawfully filed suit against Activision Blizzard on July 20, 2021,
8 CRD deliberately unleashed a hurricane of hostile media coverage against the Company based on
9 malicious and knowingly false assertions. It also worked with activists who contributed to the
10 CRD's media war. This was neither an accident nor a coincidence.

11 3. CRD orchestrated a comprehensive media campaign in an attempt to bullrush the
12 Company into settling its lawsuit using allegations that the agency knew were unsustainable at trial.
13 This was, according to one published media report, part of a pattern and deliberate strategy
14 employed by the CRD when it brought cases against companies across California:

15 Corporate regulation often begins with an investigation and ends with a devastating
16 headline, but California flipped the script, leading with the endgame in a new
17 approach that appeared designed to "overwhelm companies at the point of
18 allegation," as one lawyer put it.

19 (Taibbi, *The Lawyers Who Ate California: Part II*, TK News (May 14, 2022)
20 <https://taibbi.substack.com/p/the-lawyers-who-ate-california-part-1a8> [as of Oct. 31, 2022].)

21 4. As part of its campaign to "overwhelm" Activision Blizzard "at the point of
22 allegation," CRD and its employees—including agency Director Kevin Kish and its then-Chief
23 Counsel Janette Wipper who, published reports said was subsequently fired by CRD during the
24 pendency of this case—engaged in a systemic campaign of off-the-record media briefing and
25
26

27 ¹ Until recently, CRD was known as the Department of Fair Employment and Housing. (See *About*
28 *CRD* <https://calcivilrights.ca.gov/aboutdfeh/>; ["In July 2022, the Department of Fair Employment
and Housing's name changed to the Civil Rights Department[.]"] [as of Oct. 23, 2022].)

1 leaking to the media, all in violation of its own stated agency policy not to speak to the media about
2 ongoing matters.

3 5. When Activision Blizzard sought, pursuant to California's Public Records Act
4 ("PRA"), to unearth additional details about this concerted effort to unfairly tarnish Activision
5 Blizzard's reputation, CRD unlawfully refused to provide communications that it knows will
6 confirm its malicious actions. In some instances, CRD slow-walked responses, insisting that simple
7 information requests, that should have been provided promptly, as required by law, would take many
8 months, or even years to complete. In other instances, CRD produced documents, but unlawfully
9 redacted key portions in an attempt to hide information that would be embarrassing to the agency.
10 In some instances—including communications regarding its collusion with labor unions—CRD has
11 completely refused to produce any documents, even though they are required to do so by the law.
12 Because the California Constitution gives the people "the right of access to information concerning
13 the conduct of the people's business," (Cal. Const. art. I, § 3, subd. (b)(1)), CRD's callous attitude
14 towards its Public Records Act obligations cannot be taken lightly.

15 6. Despite this attempt to cover up their unlawful acts, the documents that Activision
16 Blizzard has been able to obtain show shocking and egregious behavior by public servants expected
17 to act with the highest ethical standards. In some instances, CRD refused to speak with reporters,
18 citing the agency policy not to "comment on open investigations." But in other instances—with
19 reporters who intended to promote CRD's false, malicious narrative—CRD arranged secretive, "off
20 the record briefings" in clear violation of agency policy.

21 7. CRD didn't stop at just disparaging Activision Blizzard. For more than a year, CRD
22 has been engaged in what one federal court has called an "unseemly" dispute with the federal Equal
23 Employment Opportunity Commission ("EEOC"). (Parrish, *Judge denies California's attempt to*
24 *intervene in Activision Blizzard settlement*, The Verge (Dec. 14, 2021)
25 [https://www.theverge.com/2021/12/14/22834691/judge-denies-california-dfeh-block-activision-](https://www.theverge.com/2021/12/14/22834691/judge-denies-california-dfeh-block-activision-blizzard-eeoc-lawsuit-settlement)
26 [blizzard-eeoc-lawsuit-settlement](https://www.theverge.com/2021/12/14/22834691/judge-denies-california-dfeh-block-activision-blizzard-eeoc-lawsuit-settlement) [as of October 26, 2022].) As part of that turf war, CRD has
27 mounted a massive media campaign—promoting itself and disparaging the EEOC. In responding
28 to PRA requests seeking to uncover the extent of *this* campaign, CRD has also repeatedly

1 disregarded its legal obligations—delaying disclosure, withholding responsive records, and, perhaps
2 most shockingly, redacting embarrassing—but clearly disclosable—information from responsive
3 records including records that clearly implicate CRD leadership in this misconduct. CRD should
4 be required to comply with the PRA, including disclosing all responsive documents promptly, and
5 without inappropriate, unlawful redactions.

6 8. Engaged by the Company, Petitioner Christopher E. Skinnell filed numerous requests
7 for public records with CRD beginning in October 2021, and as recently as October 2022, to learn
8 more about the agency's malicious activity. These requests sought information about CRD's
9 communication with the media and unions, and disclosure of reported agency misconduct relating
10 to CRD's mediation and conciliation processes. CRD's response has been to delay, withhold, and
11 obscure the documents the public is entitled by law to review.

12 9. For instance, Petitioner requested all communications with a short list of media
13 outlets, over a limited time period, and relating to the CRD's malicious action against Activision
14 Blizzard. After months of delay, CRD produced a small number of the requested records, and those
15 it did produce had unlawful redactions designed to shield its activities, including misconduct by its
16 leadership, from scrutiny.

17 10. In another example, CRD redacted the name of the recipient of this email from
18 Kirsten Grind, a reporter at the *Wall Street Journal*. The redaction was plainly improper and
19 intended to conceal the fact that the undisclosed recipient was communicating with the *Journal*.
20 The subject line is "Hi, just left you a vm," suggesting Ms. Grind was familiar with the recipient
21 and clearly demonstrating that she had the recipient's telephone number.

22 From: [REDACTED]
23 To: [REDACTED]
24 Subject: Hi, just left you a vm
25 Date: Tuesday, September 14, 2021 1:59:56 PM

26 [EXTERNAL] This email originated from outside DFEH. Do not click links or open
27 attachments unless you recognize the sender and know the content is safe.

28 I'm sure you're getting 1 million reporter calls on Activision, but it's important we speak, off
the record. Thanks,

Kirsten Grind
Wall Street Journal

BY FAX

1 Only after Petitioner complained of improper redactions did CRD finally disclose that the concealed
2 name who was communicating with the reporter was Janette Wipper, CRD's then-Chief Counsel,
3 who was overseeing the investigation and litigation involving Activision (as well as Tesla and
4 numerous other high-profile companies in California).

5
6 From: Grnd, Kirsten
To: [REDACTED]
Subject: Hi, just left you a vm
Date: Tuesday, September 14, 2021 1:59:56 PM

7
8 [EXTERNAL] This email originated from outside DFEH. Do not click links or open
attachments unless you recognize the sender and know the content is safe.

9 I'm sure you're getting 1 million reporter calls on Activision, but it's important we speak, off
the record. Thanks,

10 Kirsten Grnd
Wall Street Journal

11 11. CRD similarly redacted information critical of the agency from press emails. CRD
12 redacted this email from the *Washington Post* in its initial production:

13 Would you be willing to share perspectives on broader questions related to DFEH, beyond this
14 specific case?

15 [REDACTED]
Happy to talk off the record to explain in more detail.

16 Again, only after Petitioner complained about the impropriety of the redactions did the agency reveal
17 that it had redacted the reporter's statement that his sources were questioning CRD's motives in
18 filing its complaint against Activision Blizzard:

19 Would you be willing to share perspectives on broader questions related to DFEH, beyond this
20 specific case?

21 We have sources who have questioned the motives of this filing — and as well as other statements
made by DFEH, such as that plaintiffs in the Riot case could be one \$400 million — and would
like to give your office a chance to respond.
Happy to talk off the record to explain in more detail.

22 12. Documents CRD has produced also demonstrate that the agency plays favorites in
23 the press—perhaps rewarding reporters who advance CRD's preferred, malicious narrative. Emails
24 produced show CRD telling some members of the media that agency policy prohibits CRD from
25 speaking to the media about open matters, while having multiple—often secretive, off-the-record—
26 conversations with other members of the press who write articles supportive of the agency's
27 inappropriate actions.
28

1 From: Aliya.Fahizah@CDM
2 To: Kellan.Burns@nytimes.com
3 Subject: RE: New York Times story - Artvision Buzzard - urgent deadline
4 Date: Wednesday, July 21, 2021 6:23:00 PM
5 Attachments: [image001.png](#)
6 [image002.png](#)

7 It is not our practice to comment on open investigations.

8 *Fahizah*

9 From: Aliya.Fahizah@CDM
10 To: Rishi.Singh@nytimes.com
11 Subject: Re: [urgent] Washington Post/ Artvision Case
12 Date: Friday, July 23, 2021 2:36:35 PM

13 It has to be off of the record. What is your number? My director will call you now.

14 Sent from my iPhone

15 13. CRD's deliberate efforts to withhold information that is at best, embarrassing to the
16 agency—and more likely *confirms* CRD has committed misconduct—is not limited to its selective
17 disclosure of communications with the media. Petitioner made several requests specifically
18 targeting criticism from people who personally observed, and likely expressed concerns stemming
19 from CRD's mediation misconduct. For example, Petitioner requested email communications—
20 limited to two regularly engaged CRD mediators, over one specific week—in which either
21 expressed "concerns, complaints, or reports of alleged misconduct or unethical behavior" about the
22 way CRD conducted legally-required mediation and conciliation.

23 14. CRD refused to respond to this request for months—and when it finally produced
24 responsive documents, CRD limited its response to little more than redacted spam emails. In fact,
25 CRD specifically noted that it would *not* produce responsive documents with concerns, complaints,
26 or reports about mediation, even in redacted form, because the documents relate to mediation. But
27 complaints about misconduct or unethical behavior that relate to mediation are not inoculated from
28 production simply because there is some attenuated relationship to a mediation proceeding.
Outrageously, CRD also justified its decision to hide reports of misconduct by asserting that
somehow the "public interest in non-disclosure outweighs any public interest in disclosure."

Certain records responsive to request numbers 1 through 4 relate to specific mediations and,
therefore, are exempt from disclosure pursuant to Government Code sections 12963.7, 6254(k)
and 6255 (public interest in non-disclosure outweighs any interest in disclosure), Evidence Code
sections 1040, 1119 and 1126, CRD's Dispute Resolution Division Agreement to Mediate and
Confidentiality Agreement, as well as CRD's public records policy (Directive 600). Accordingly,
CRD will not produce these responsive records.

1 15. CRD's confusion of its interest in concealing its misconduct with the public's interest
2 is intolerable. Both the PRA and the California Constitution reflect a strong public interest in
3 transparency in government. Without public scrutiny, there is no check on the power government
4 exercises on behalf of the people. Yet repeatedly, in response to Petitioner's PRA requests, CRD
5 has buried Petitioner in useless documents—sometimes, quite literally, junk mail—while explicitly
6 refusing to produce documents addressing allegations of CRD's misconduct. That unlawful, self-
7 serving interpretation of "the public interest" to shield CRD from scrutiny cannot be allowed to
8 stand.

9 16. Furthermore, in addition to the substantive issues with its disclosures, CRD has also
10 indicated that it will violate the law by taking months to produce limited, easily identifiable records.
11 Most disturbingly, CRD has determined that extreme delay is appropriate for records as basic as
12 policies and instructions, and records as important as those reporting known CRD misconduct. The
13 chart below demonstrates *just some* of the most egregious delays in production:²

PRA Request	Date Requested	Date Received	Production
Media Communications	October 25, 2021	April 14, 2022	171-day delay for 113 pages ³
Updated Media Communications	March 15, 2022	July 1, 2022	108-day delay for 2 pages
Specific Emails Reporting CRD Misconduct in "Mediation"	July 20, 2022	November 10, 2022	113-day delay for 1,012 pages, but withholding everything related to misconduct in mediation

26 ² Petitioner's PRA requests, and CRD's responses, are included in their entirety as exhibits to this
27 Complaint.

28 ³ CRD initially produced the same 113 pages on February 18, 2022—a 116-day delay—but as explained below, Petitioner had to re-request the documents because of unlawful redactions.

PRA Request	Date Requested	Date Received	Production
General Complaints About CRD Misconduct in "Mediation"	July 20, 2022	Nothing Yet Produced CRD Claims It Will Disclose on February 17, 2023	Anticipated 212-day delay
Documents Supporting CRD Budget Requests for "Conciliation"	July 29, 2022	Nothing Yet Produced CRD Claims It Will Disclose on March 24, 2023	Anticipated 238-day delay
Media Communications	October 27, 2022	Nothing Yet Produced CRD Claims It Will Disclose on November 18, 2025	Anticipated 1118-day delay (i.e. more than three years)

17. In CRD's belated responses to Petitioner's PRA requests, CRD has illegally refused to produce entire categories of public records. For example, CRD continues to refuse to produce any communications with union groups, even though such third-party communications are clearly not privileged and must be produced under California law.

18. Finally, even when CRD has produced documents in response to some of the requests, CRD has withheld responsive documents, without even the transparency of alerting Petitioner that it was withholding documents. Instead, for instance, Petitioner is informed (by another source) and believes that there are additional, undisclosed emails documenting the Director of CRD's back-room conversations with reporters and documents regarding CRD's bad faith approach to required good faith conciliation and mediation. Consequently, it is impossible at this point to know the full extent of CRD's violation of the statute.

19. Petitioner thus asks the Court for a writ of mandate, declaratory relief, and injunctive relief to force production by CRD and enforce Petitioner's PRA requests.

1 **PARTIES**

2 20. Plaintiff and Petitioner Christopher Skinnell is an attorney and Californian who
3 specializes in election, government, government misconduct, and political law related matters. He
4 is a member of the public with a right to enforce his request for records under Government Code,
5 §§ 6252, subdivisions (b), (c) and 6258. Mr. Skinnell sought disclosure from CRD of public records
6 in its possession regarding ethical concerns with CRD, including communications with the press
7 and allegations of misconduct in mediation.

8 21. Defendant and Respondent California Civil Rights Department ("CRD") is a public
9 agency within the meaning of Government Code, § 6252, subdivision (d).

10 22. CRD is in possession of the records sought by this Petition.

11 **JURISDICTION AND VENUE**

12 23. This Court has jurisdiction under Government Code, §§ 6258 and 6259, Code of
13 Civil Procedure, §§ 1060 and 1085, and Article VI, section 10 of the California Constitution.

14 24. Venue is proper in this Court because Respondent and the records in question, or
15 some portion of them, are situated in this County. (See Gov. Code, § 6259, subd. (a).; Code Civ.
16 Proc., §§ 393, 395, subd. (a), 401, subd. (1).)

17 **THE CALIFORNIA PUBLIC RECORDS ACT**

18 25. Californians value transparency in government. Indeed, the right for a person to see
19 for herself whether the officials and agencies entrusted with public power are, in fact, exercising
20 that power appropriately, is one of the first rights articulated in the Declaration of Rights in the
21 California Constitution: "The people have the right of access to information concerning the conduct
22 of the people's business, and, therefore, the meetings of public bodies and the writings of public
23 officials and agencies shall be open to public scrutiny." (Cal. Const. art. I, § 3, subd. (b)(1).) The
24 principle that members of the public can verify, rather than blindly trust, the actions of their
25 government is reiterated throughout California law, not just in the California Public Records Act,
26 (see Gov. Code, § 6250 et seq.), but also in specific regulations that apply to CRD (see Exhibit 1
27 [Directive No. 600]).
28

BY FAX

1 26. The default rule is that *all* public records are subject to disclosure, keeping in mind
2 that a “public record” is defined broadly under the PRA. (See Gov. Code, § 6253, subd. (b).) It
3 includes “any writing” that is “prepared, owned, used, or retained” by the government, because the
4 conduct of the government is “the conduct of the public’s business.” (*Id.*, § 6252, subd. (e).)
5 “Writing” is similarly defined to include not just documents with text, but also photographs,
6 recordings, symbols, “and every other means of recording . . . any form of communication.” (*Id.*,
7 subd. (g).)

8 27. The PRA establishes rules for the timing of an agency’s disclosures in response to a
9 request for public records. An agency that receives a PRA request is required to “make the records
10 promptly available” to the requestor, upon payment of a fee where applicable. (Gov. Code, § 6253,
11 subd. (b).) The PRA also requires a government agency to respond to a PRA request “within 10
12 days from receipt of the request” to notify the requestor whether the public records exist and are
13 disclosable. (*Id.*, subd. (c).) In “unusual circumstances” only, the agency may notify the requestor
14 that the agency needs additional time to determine what records are disclosable, but even the
15 extension cannot be “for more than 14 days.” (*Ibid.*) In fulfilling PRA requests, the law requires
16 due diligence: it is illegal for an agency to “delay or obstruct the inspection or copying of public
17 records.” (*Id.*, subd. (d).)

18 28. Although some records do not have to be disclosed under the PRA, (see, e.g., Gov.
19 Code, § 6254), a government agency that withholds public records violates the law unless the agency
20 justifies its behavior (*id.*, § 6255, subd. (a)). The agency bears the burden of “demonstrating that
21 the record in question is exempt” by pointing to a specific exception in the law, or by showing that
22 “on the facts of the particular case” the public interest in keeping a record secret to the agency
23 “clearly outweighs” the public interest served by transparency. (*Ibid.*; see also *New York Times Co.*
24 *v. Superior Court* (1990) 218 Cal.App.3d 1579, 1584 [“The agency seeking to withhold the
25 information has the burden of demonstrating a need for nondisclosure.”].) Moreover, even when an
26 exemption does apply, an agency cannot simply refuse to produce the entire record. Rather, the
27 agency is required to still provide the requestor with “[a]ny reasonably segregable portion of a
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BY FAX

1 record” after deleting, or redacting, only the portions exempted by law. (Gov. Code, § 6253, subd.
2 (a).)

3 29. The California Civil Rights Department is well aware of its obligations under the
4 PRA. As recently as April 2018, CRD Director Kevin Kish distributed regulations to CRD officials
5 outlining how CRD, specifically, must implement the PRA. (See Exhibit 1 [CRD Directive 600].)
6 The Directive acknowledges not just that the PRA “requires” CRD “to make these records available
7 for copying and inspection unless they are exempt from disclosure,” but also that “public records”
8 includes documents CRD “obtains from complainants, respondents, and third parties in the course
9 of receiving, investigating, conciliating, mediating, and prosecuting complaints alleging unlawful
10 practices.” (See Exhibit 1 [CRD Directive 600] at pp. 1 & 7 [“A public record *must* be disclosed
11 unless it is exempt pursuant to the PRA.”] [italics added].) Importantly, in addition to adhering to
12 the statutory 10-day limit for a determination, with extensions only in “unusual circumstances,”
13 CRD knows that it “must produce the documents within a reasonable period of time.” (See *id.* at
14 pp. 4-5.) CRD itself defines a reasonable period of time as “generally within 20 calendar days”
15 from receipt of payment for the copies, where applicable. (See *id.* at p. 5.)

16 30. The California Constitution, the PRA, and CRD’s Directive 600 require CRD to err
17 on the side of transparency, instead of secrecy, when the law or a request is unclear. In the case of
18 ambiguity in statutes, rules, and other authorities on the PRA, the agency must interpret the authority
19 to “further[] the people’s right of access,” not to limit it. (Cal. Const. art. I, § 3, subd. (b)(2).)
20 Finally, CRD has an affirmative duty to help a member of the public “make a focused and effective
21 request” rather than deny a request that CRD deems unclear or practically difficult. (See Gov. Code,
22 § 6253.1, subd. (a); Exhibit 1 [CRD Directive 600] at pp. 5-6.)

23 31. When a government agency refuses to follow the law, the PRA also gives the public
24 a remedy. A person seeking public records may ask a judge to enforce their right to access the
25 records through “injunctive or declarative relief or writ of mandate.” (Gov. Code, § 6258.)
26 Specifically, the requestor may file a “verified petition” in the superior court of the county where
27 the records are held. (*Id.*, § 6259, subd. (a).) A judge then decides whether records “are being
28

1 improperly withheld from a member of the public,” and, if so, “*shall* order the public official to
2 make the record public.” (*Id.*, subds. (a), (b) [italics added].)

3 32. Petitioner files this Complaint because CRD’s refusal to promptly and completely
4 disclose requested public records is not justified. Petitioner seeks a court order to make CRD
5 comply with the law.

6 **FACTS**

7 **Media Alerts Public to CRD Misconduct**

8 33. In October 2021, the Legal Editor-at-Large of *The Hollywood Reporter* exposed a
9 surprising and disturbing conflict between the California Civil Rights Department (then, the
10 Department of Fair Employment and Housing) and the U.S. Equal Employment Opportunity
11 Commission (“EEOC”) surrounding the two agencies’ investigations of alleged discrimination in
12 the video game industry. (See Gardner, *Video Game Industry’s #MeToo Reckoning Erupts Into*
13 *Government Turf War*, *The Hollywood Reporter* (Oct. 11, 2021)
14 <<https://www.hollywoodreporter.com/business/digital/metoo-turf-war-1235029191>> [as of
15 October 23, 2022].) The two agencies should have been aligned—both are “tasked with addressing
16 workplace inequity.” (*Ibid.*) Instead, they were fighting “an all-out turf war” including “talk of
17 potential evidence destruction and accusations of professional misconduct.” (*Ibid.*) The article
18 detailed numerous concerning allegations lodged against CRD.

19 34. As background, under an interagency agreement where CRD and EEOC had both
20 been investigating the gaming company, Activision Blizzard, Inc., EEOC was tasked with reviewing
21 the Company’s workplace and CRD was responsible for investigating gender pay equity and
22 promotions. When EEOC completed its investigation EEOC invited CRD to participate in resolving
23 the case, which was a common practice for the two agencies.⁴ (Gardner, *Video Game Industry’s*

24
25 ⁴ According to a CRD mediator, it was common practice for CRD and EEOC to work together to
26 settle cases that they both investigated. (See, e.g., Coen, *Episode 11: All’s Fair in Employment &*
27 *Housing: Current Litigation Trends and How to Mediate with the DFEH*, *The Performance Review:*
28 *California Labor & Employment Podcast* (April 28, 2021), <https://podcasts.apple.com/us/podcast/episode-11-all-s-fair-in-employment-housing-current/id1532467271?i=1000519138808> [as of
October 23, 2022] [“We have a contract with the EEOC and when we mediate a dual filed case we
settle and close both cases.”].)

1 *#MeToo Reckoning Erupts Into Government Turf War*, The Hollywood Reporter (Oct. 11, 2021)
2 <<https://www.hollywoodreporter.com/business/digital/metoo-turf-war-1235029191/>> [as of
3 October 23, 2022].) Instead, “without reply nor notice,” CRD rejected the invitation to participate
4 in mediation by suing Activision in state court. (*Ibid.*)

5 35. Then, when the EEOC moved forward in good faith with settlement negotiations
6 without CRD, CRD “rather, incredibly,” did something unprecedented for the sister-agencies: it
7 “[sought] to intervene to *stop* the settlement.” (Gardner, *Video Game Industry’s #MeToo Reckoning*
8 *Erupts Into Government Turf War*, The Hollywood Reporter (Oct. 11, 2021)
9 <<https://www.hollywoodreporter.com/business/digital/metoo-turf-war-1235029191/>> [as of
10 October 23, 2022] [italics in original].)

11 36. Later in court, EEOC showed that CRD had an “impermissible conflict.” (Gardner.)
12 Stated simply, two former EEOC lawyers had switched sides. The two former EEOC lawyers were
13 trying to represent CRD against the EEOC. Federal and state law is very clear that government
14 lawyers **cannot** represent a different client on the same matter without the consent of their original
15 government client, and doing so is both unethical and unlawful. (See Rules Prof. Conduct, rule
16 1.11(a).) Two CRD lawyers were doing exactly that—and had been since they joined CRD a year
17 earlier. (See Gardner, *Video Game Industry’s #MeToo Reckoning Erupts Into Government Turf*
18 *War*, The Hollywood Reporter (Oct. 11, 2021)
19 <<https://www.hollywoodreporter.com/business/digital/metoo-turf-war-1235029191/>> [as of
20 October 23, 2022].)

21 37. EEOC also alerted the federal court to other unethical behavior from the CRD.
22 Specifically, female Activision employees covered by the EEOC settlement had a right to their own
23 lawyers. But instead of encouraging female employees to take advantage of such legal advice,
24 shockingly, CRD “advised female employees at Activision **not** to retain any private lawyers.”
25 (Gardner, *Video Game Industry’s #MeToo Reckoning Erupts Into Government Turf War*, The
26 Hollywood Reporter (Oct. 11, 2021) <[https://www.hollywoodreporter.com/business/digital/metoo-](https://www.hollywoodreporter.com/business/digital/metoo-turf-war-1235029191/)
27 [turf-war-1235029191/](https://www.hollywoodreporter.com/business/digital/metoo-turf-war-1235029191/)> [as of October 23, 2022].) As EEOC explained, CRD telling women *not* to
28

1 get lawyers was “at odds with both state and federal law” and “against the rules of professional
2 responsibility.” (*Ibid.*)

3 38. Finally, *The Hollywood Reporter* flagged that the EEOC settlement was apparently
4 not the first settlement for alleged discrimination victims that CRD had attempted to block. (*Ibid.*)
5 CRD also intervened in the resolution of a lawsuit against another videogame company, Riot Games,
6 even though that lawsuit was brought by a class action of female employees on their own behalf.
7 (*Ibid.*) (See also Allsup, *Women Suing Riot Games Criticize Agency Intervening in Bias Suit*,
8 Bloomberg Law (Sept. 14, 2021) <[https://news.bloomberglaw.com/daily-labor-report/women-](https://news.bloomberglaw.com/daily-labor-report/women-suing-riot-games-criticize-agency-intervening-in-bias-suit)
9 [suing-riot-games-criticize-agency-intervening-in-bias-suit](https://news.bloomberglaw.com/daily-labor-report/women-suing-riot-games-criticize-agency-intervening-in-bias-suit)> [as of October 23, 2022] [“A group of
10 plaintiffs from the class said the move to remove one of the women from the action, by questioning
11 her standing, was ‘disturbing,’ and accused [CRD] of seeking to gain ‘unfettered control over the
12 case’s process and outcome.’”].)

13 39. Petitioner began to file PRA requests to uncover the details of CRD’s misconduct.

14 **CRD Has Unlawfully Withheld Records Regarding Press Communications**

15 40. CRD has unreasonably and unjustifiably delayed providing public records to prevent
16 the public from learning about violating its policies and providing its selective communication with
17 the press and, when those public documents were ultimately produced, the records revealed that
18 CRD leadership defied its own rules to engage in a biased and misleading media campaign. What’s
19 more, Petitioner has reason to believe that CRD continues to secretly and unlawfully withhold
20 responsive records reflecting its communications with the press.

21 **Petitioner Requested Media and Union Communications**

22 41. On **October 25, 2021**, Petitioner submitted the first of several PRA requests to CRD,
23 seeking “[c]opies of communications, or records reflecting such communications” between CRD
24 and specific news organizations (*The Wall Street Journal*, *The New York Times*, *The Verge*, *The*
25 *Washington Post*, *The Sacramento Bee*, *The Los Angeles Times*, and *Bloomberg News*), related to
26 CRD’s investigation of, mediation with, and litigation against Activision Blizzard, Inc. (Exhibit 3,
27 Attachment A.) The request also sought communications with certain unions. The requested
28 records were limited “for the period from June 1, 2021, to the date of the agency’s response.” (*Ibid.*)

1 In other words, Petitioner sought a discrete, limited category of records for a narrow period of time,
2 consisting of only a few months.

3 CRD's Delayed Response

4 42. CRD took almost four months, after repeated follow up and prodding from Petitioner,
5 to produce a fraction of what was required by law to be produced—in fact CRD produced no more
6 than a 113-page PDF of largely duplicative, partially—and unlawfully—redacted, emails.
7 Specifically:

8 a. CRD responded on **November 4, 2021**, with a notification of extension for
9 determination until **November 18, 2021**. (Exhibit 3, Attachment B.) Notably, the
10 notification did not claim that the records request was extensive; it claimed the request
11 required consultation with “with another agency or multiple components of the [CRD].”

12 This letter is in response to your request for public records under the California Public Records
13 Act (PRA). (Gov. Code, § 6250 et seq.) The PRA requires the Department of Fair Employment
14 and Housing (DFEH) to notify the person making the request of its determination as to whether
15 a requestor is seeking disclosable records and the reasons for the determination within 10 days
16 of receipt of the request. Under the PRA, an agency can extend this time limit by a written
17 notice that includes the reasons for the extension. DFEH needs additional time to determine
18 whether your request seeks disclosable records because there is:

19 A need for consultation with another agency or multiple components of the DFEH which
20 have a substantial interest in the determination of the request.

21 b. On **November 18, 2021**, CRD responded with a determination that it would
22 not produce disclosable records until **February 18, 2022**. (Exhibit 3, Attachment C.)

23 DFEH estimates that any disclosable records will be made available to you on **February 18,**
24 **2022** by the close of business.

25 c. On **November 30, 2021**, Petitioner wrote to CRD—appreciative that CRD
26 committed to providing responsive records but concerned about the more than 100 day delay
27 between request and disclosure. (Exhibit 3, Attachment D.)

28 d. Receiving no response, on **January 6, 2022**, Petitioner wrote to the General
Counsel of the California Business, Consumer Services and Housing Agency. (Exhibit 2,
Attachment A.)

1 e. A week later, on **January 13, 2022**, a CRD representative responded,
2 claiming that CRD "takes very seriously its responsibilities under the PRA," yet confirming
3 that the request would not be fulfilled until **February 18, 2022**. (Exhibit 2, Attachment B.)

4 CRD Provided Obstructive Response

5 43. When responsive documents finally came, on **February 18, 2022**, the CRD claimed
6 inappropriate exemptions as a basis for redaction. (See Exhibit 3, Attachment F [citing Gov. Code,
7 §§ 6254 subd. (c), 6254 subd. (k), 6255; Evid. Code, §§ 1040, 1041].)

8 The accompanying records are true and correct copies of records kept in the regular course
9 and scope of DFEH's business that are responsive to your request, redacted pursuant to the
10 California Constitution, article 1, section 1, Government Code sections 6254(c), 6254(k), 6255
(public interest clearly outweighs any interest in disclosure), and Evidence Code sections 1040
and 1041, among other PRA exemptions, as well as redacted of information not responsive to
your request.

11 a. For example, CRD cited an exemption for "[p]ersonnel, medical, or similar
12 files" (Gov. Code, § 6254, subd. (c)), which clearly is not applicable to a request for
13 communications between the agency and members of the press or unions.

14 b. CRD also claimed "privilege" over the documents (Gov. Code, § 6254 subd.
15 (k)), even though all of the requested documents were for communications with third parties
16 that by definition could not be privileged. (See Evid. Code, § 912, subd. (a) [waiver of
17 privilege].)

18 c. Additionally, CRD claimed the "public interest clearly outweighs any interest
19 in disclosure," but failed to outline any information to demonstrate, as required by
20 Government Code section 6255, subsection (a), that "the facts of the particular case"
21 supported CRD's conclusion.

22 d. CRD's response also did not acknowledge the fact that it was not producing
23 a single record of its communication with the requested unions.

24 Petitioner Updated Request for Media Communications

25 44. Hoping to avoid unnecessary litigation, Petitioner wrote to CRD on **March 15, 2022**,
26 outlining the inappropriate withholding of public information and requesting that CRD correct its
27 response, an excerpt of which is below. (Exhibit 3, Attachment G.)
28

We are in receipt of the Department's February 18, 2022, certification and production with respect to the above-referenced Public Records Act request and have now had a chance to review it. In reviewing the documents, it appears that a significant number of the redactions are highly questionable, specifically as follows:

PDF Page No.(s)	To	From	Redaction Questioned
13	Recipient name stricken	Kirsten Grind	Recipient name stricken
20, 21, 23, 35, 92, 95, 99, 101, 103, 104, 106, 107	DFEH Legal: Alim, Fahizah@DFEH; Center: Contact@DFEH	Kellen Browning	Content of email stricken
37	noah@noahble.com; fahizah.alim@dfeh.ca.gov	shannon.liao@washpost.com	Content of email stricken
38, 42, 46, 48, 51, 54, 57	noah@noahble.com	fahizah.alim@dfeh.ca.gov	Content of email stricken
38, 42, 46, 49, 51, 54, 57, 60	fahizah.alim@dfeh.ca.gov	noah@noahble.com	Content of email stricken

45. At the same time, Petitioner sent an updated request for documents related to press communications to cover the time that had passed while CRD delayed its response. (Exhibit 7, Attachment A.) Receiving no response to his letter outlining the deficiencies in CRD's production, Petitioner emailed the General Counsel of the California Business, Consumer Services and Housing Agency on April 8, 2022. (Exhibit 2, Attachment C.)

CRD Response Confirmed CRD Violated The Law

46. CRD responded on April 14, 2022, claiming to have appropriately redacted information but, also, producing a new set of documents with fewer redactions. (Exhibit 3, Attachment H.) Comparing the two sets of productions demonstrated that CRD's initial redactions lacked support in any legitimate claim of privilege or exemption. Instead, the redactions revealed CRD's effort to obstruct the public from learning how the Director of CRD and its Chief Counsel, among others, violated CRD's own policies by exploiting the media to bolster CRD's reputation. For example:

a. CRD had redacted a reporter's request for comment on "sources who have questioned the motives" of CRD's suit against Activision Blizzard, Inc., "as well as other statements made by [CRD]." (Compare Exhibit 3, Attachment E at p. 38 with Exhibit 3, Attachment I at p. 38.)

1 b. Although CRD had previously claimed to the same reporter that CRD would
2 not “comment on open investigations,” the unredacted information made clear that CRD
3 changed course and allowed the reporter to speak directly with CRD Director Kevin Kish
4 because of a desire to protect its reputation. (Exhibit 3, Attachment I at p. 48.)

5 c. CRD had also redacted information about its investigation into Riot Games,
6 information about reporters speaking to gaming employees, and recipient information
7 demonstrating that Janette Wipper, CRD’s then-Chief Counsel, was personally
8 communicating with reporters. (Compare Exhibit 3, Attachment E at pp. 113, 45, 13 with
9 Exhibit 3, Attachment I at pp. 113, 45, 13.) None of this information falls under any
10 legitimate privilege or exemption that permitted CRD to redact the information.

11 d. Again, the documents produced did not include—and did not mention—
12 Petitioner’s request for communications involving certain unions.

13 CRD Continues to Unlawfully Withhold Public Records

14 47. On May 11, 2022, Petitioner submitted a new request for communications between
15 CRD and particular unions—this time the Communications Workers of America and/or Change to
16 Win⁵—given that CRD had completely failed to respond to the union-related requests in the past.
17 (Exhibit 10, Attachment A.) Again, CRD responded with its customary delay—that it supposedly
18 required an extension of time to respond. (Exhibit 10, Attachment B.)

19 48. With regard to Petitioner’s request attempting to review press communication to
20 date, CRD did not produce a response to Petitioner’s updated request for media communications
21 until July 1, 2022. (Exhibit 7, Attachment D.) Shockingly, though CRD had taken three-and-a-half
22 months to disclose, the production included a *single* email. (Exhibit 7, Attachment E.) To put that
23 in perspective, a recent Court of Appeals decision held that a request for forty-two *thousand* emails
24 was not overly burdensome for a government agency to produce, in less time. (See *Getz v. Superior*
25 *Court* (2021) 72 Cal.App.5th 637, 657.)

26
27
28 ⁵ Change to Win is “a democratic federation of labor unions” (see Change to Win, *About CTW*
<http://www.changetowin.org/> [as of Nov. 21, 2022]).

1 49. The same day that CRD produced a single email media communication, CRD finally
2 acknowledged that it refused to provide union communications responsive to Petitioner's October
3 25, 2021, and May 11, 2022, requests. (Exhibit 7, Attachment D.)

4 Regarding request No. 2, records responsive to your request relate to ongoing litigation and are
5 exempt from disclosure pursuant to Government Code sections 6254(b), 6254(f), 6254(k), and
6 6255 (deliberative process and public interest in non-disclosure clearly outweighs any public
7 interest in disclosure), Evidence Code sections 954, 1040, and 1041, and Code of Civil
Procedure 2018.030, among other exemptions. (See also, *Labor and Workforce Development
Agency v. Superior Court* (2018) 19 Cal.App.5th 12.) Accordingly, DFEH will not produce the
responsive records.

8 That refusal to provide the requested records of union communications, which CRD acknowledges
9 exist, is illegal.

10 50. Furthermore, Petitioner is informed and believes that, to this day, CRD has secretly
11 and unlawfully withheld additional records responsive to Petitioner's October 25, 2021 request for
12 media communications. The fact that the time period covered by the documents provided is
13 substantially shorter than the period requested, in combination with the small number of
14 communications produced, despite widespread news coverage of the Activision case, makes clear
15 that documents have been left out. Moreover, there are additional responsive press communications
16 (a portion of which Petitioner subsequently secured through other means) that further demonstrate
17 Director Kish and other CRD representatives violating CRD's policy of not commenting on pending
18 cases. For example:

19 a. Petitioner is informed and believes CRD has unlawfully refused to disclose
20 an email between CRD and a *Wall Street Journal* reporter referring to a "call on background"
21 with Director Kish;

22 b. Petitioner is informed and believes CRD has unlawfully refused to disclose
23 an email between CRD and a *Bloomberg News* reporter referring to an "off the record"
24 conversation with Director Kish;

25 c. Petitioner is informed and believes CRD has unlawfully refused to disclose
26 emails between CRD and a *Wall Street Journal* reporter scheduling a call to speak with
27 Director Kish about the EEOC settlement;
28

1 d. Petitioner is informed and believes CRD has unlawfully refused to disclose
2 emails between a *Wall Street Journal* reporter and CRD related to the EEOC settlement; and

3 e. Petitioner is informed and believes CRD has unlawfully refused to disclose
4 emails between CRD and an *LA Times* reporter referring to a call with Director Kish.

5 51. CRD has continued to withhold those records, apparently, in an effort to prevent that
6 duplicitous behavior from coming to light. Given the number of records—and the categories of
7 records—CRD has withheld, the only logical conclusion is that there are even more responsive
8 documents CRD unjustifiably hopes to keep secret in these and Petitioner's other PRA requests.

9 52. Notably, although the PRA allows agencies to withhold records related to pending
10 litigation where the agency is a party (Gov. Code, § 6254, subd. (b)), courts narrowly construe that
11 exception to include only documents prepared by the agency for use in litigation. (*Bd. of Trustees*
12 *of Cal. State Univ. v. Superior Court* (2005) 132 Cal.App.4th 889, 897.) The pending litigation
13 exemption, therefore, is also no excuse for CRD's refusal to disclose its communications with
14 unions and the media.

15 53. Given CRD's incomplete response, on October 27, 2022, Petitioner requested
16 "[c]opies of communications, or records reflecting such communications" with particular members
17 of the press from January 1, 2014, to present. (Exhibit 16, Attachment A.) Although that request
18 could largely be fulfilled through an electronic search of CRD's records, and although
19 communications with the press, by definition, could not be privileged communications, CRD claims
20 it cannot respond to this request for *three years* – until November 18, 2025. (Exhibit 16, Attachment
21 C.)

22 **CRD Has Unlawfully Withheld Records Regarding Reports of Misconduct In Mediation**
23 **Petitioner Requested Records Demonstrating That Whistleblowers Reported Misconduct in How**
24 **CRD Conducts Mediation**

25 54. Petitioner also submitted records requests relating to allegations of misconduct in
26 CRD's mediation process and CRD has failed to produce *any* responsive documents to this day,
27 without justification. Specifically:
28

1 a. On **July 20, 2022**, Petitioner requested emails “sent by, received by, or copied
2 to,” two specific CRD mediators, Angela Oh and Brandon Coen, including emails “raising
3 concerns, complaints, or reports of alleged misconduct or unethical behavior, including
4 reports related [CRD’s] internal mediation program.” (Exhibit 12, Attachment A.) Petitioner
5 narrowly limited the scope of the request to include only emails transmitted “on or between
6 January 17-25, 2022”—or essentially one week. (*Ibid.*)

7 (1) All emails sent by, received by, or copied to
8 Angela.Oh@DFEH.ca.gov transmitted on or between January 17-
9 25, 2022, raising concerns, complaints or reports of alleged
misconduct or unethical behavior, including reports related to
DFEH’s internal mediation program.

10 (3) All emails sent by, received by, or copied to
11 Brandon.Coen@DFEH.ca.gov transmitted on or between January
12 17-25, 2022, raising concerns, complaints or reports of potential
misconduct or unethical behavior, including reports related to
DFEH’s internal mediation program.

13 b. Also on **July 20, 2022**, Petitioner requested other information related to
14 allegations of misconduct in CRD’s mediation, including “[a]ny complaint or report made
15 by any person authorized to perform the duties of a [CRD] mediator” related to
16 independence, neutrality, or potential misconduct, and “[a]ny documents describing the
17 independence or autonomy of the [CRD’s] mediation unit. (Exhibit 13, Attachment A.)

18 (3) Any complaint or report made by any person authorized to
19 perform the duties of a DFEH mediator, including members of
20 the DFEH’s mediation unit, complaining about potential
21 misconduct by any DFEH attorney(s), including its Chief
22 Counsel, from January 1, 2018, to the present.

23 c. Finally, on **July 29, 2022**, Petitioner requested documents relating, among
24 other things, to CRD’s conciliation process, including “[a]ll policies, instructions or other
25 materials explaining the steps taken by [CRD] to engage in the ‘conciliation process,’ as
26 described in the 2022 [Budget Change Proposal].” (Exhibit 14, Attachment A.)
27
28

- 1
2 (2) All policies, instructions or other materials explaining the steps
3 taken by DFEH to engage in the “conciliation process,” as
4 described in the 2022 BCP.

5 CRD, Again, Delayed Responding to Requests About Its Misconduct

6 55. Just as with the requests for public records related to communications with the press,
7 CRD has unjustifiably delayed production of responsive documents. For example, in what has
8 proven to be the usual circumstance (rather than the “unusual circumstance” prescribed by statute),
9 CRD provided notifications of extension for determination for each of Petitioner’s requests, as it
10 has done for every request to date. (Exhibit 12, Attachment B; Exhibit 13, Attachment B; Exhibit
11 14, Attachment B.)

12 56. When CRD did provide determinations on Petitioner’s requests, it claimed to need
13 an extraordinary amount of time to fulfill even the most limited request.

14 a. On **August 8, 2022**, CRD notified Petitioner that it would not respond to the
15 narrow request for specific, time-bound mediator emails until November 11, 2022—over
16 **three months** after the request. (Exhibit 12, Attachment C.)

17 b. Also on **August 8, 2022**, CRD notified Petitioner that it would not disclose
18 documents related to potential misconduct in mediation until February 17, 2023—almost
19 **seven months** after the request. (Exhibit 14, Attachment C.)

20 c. On **August 19, 2022**, CRD notified Petitioner that it would not disclose
21 documents related to conciliation until March 24, 2023—almost **eight months** after the
22 request. (Exhibit 14, Attachment C.)

23 CRD Has Not Produced Any Records About Its Misconduct In Mediation Nor Any Records

24 About Its Obligations In Conciliation

25 57. Petitioner again sought relief from this extreme delay, to no avail, by writing to
26 CRD’s General Counsel on **August 15, 2022**. (Exhibit 2, Attachment D.) Petitioner even focused
27 the letter on the most-narrow request: the July 20, 2022 request for emails involving just two specific
28 mediators over the course of eight days. (*Id.* at p. 2.)

BY FAX

58. General Counsel responded on **August 25, 2022**, reiterating that CRD refused to respond any earlier. (Exhibit 2, Attachment E.) When CRD did finally respond, on November 10, 2022, it refused to produce any e-mails “raising concerns, complaints or reports of alleged misconduct or unethical behavior, including reports related to DFEH’s internal mediation program.” (Exhibit 12, Attachment D.) Its disclosure consisted almost entirely of newsletters, marketing e-mails (for MCLE courses and the like), and e-mails sent to Ms. Oh’s official government e-mail address from partisan political organizations soliciting campaign contributions. (Exhibit 12, Attachment E.)

59. With regards to the other outstanding requests, delayed for over half a year, CRD made no effort “to assist” Petitioner to make “a focused and effective request” (Gov. Code, § 6253.1, subd. (a)), that would minimize the delay or attempt to “overcome any practical basis for denying access to the records or information sought.” (*Ibid.*, subd. (a)(3).)

60. CRD's course of conduct over more than a year demonstrates that it considers itself above the law. Petitioner has endeavored over the course of a year to resolve these violations with correspondence, rather than litigation; it is now clear that a Court order is the only remedy that the CRD will respect.

FIRST CAUSE OF ACTION

For Writ of Mandate for Violation of Article I, § 3 of the California Constitution and the California Public Records Act, Gov. Code §§ 6250 et seq.

61. Petitioner incorporates by reference the foregoing paragraphs as though fully set forth herein.

62. The California Constitution provides the people “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.” (Cal. Const. art. I, § 3, subd. (b)(1).) Moreover, “[a] statute, court rule, or other authority . . . shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” (*Id.*, subd. (b)(2).)

1 63. The PRA further requires the government to make disclosable records "promptly
2 available" to any person who requests such records. (Gov. Code, § 6253, subd. (b).) It provides ten
3 days from receipt of the request for a government agency to notify the person making the request
4 whether the agency has determined that the records are disclosable, and to provide an estimated date
5 and time when the records will be available. (*Id.*, subd. (c).) In "unusual circumstances" only, the
6 agency may take an additional fourteen days to notify the requestor of its determination. (*Ibid.*)

7 64. Petitioner submitted valid requests for records under the PRA as detailed above. As
8 stated in the requests, Petitioner was at all times ready to pay any associated fees.

9 65. CRD possesses records responsive to Petitioner's requests and has repeatedly and
10 unreasonably delayed disclosure of public records properly requested under the PRA.

11 66. CRD has compounded its delay by routinely extending the amount of time it takes to
12 make a determination of whether the requested records are disclosable, blatantly ignoring the
13 mandate that it may seek an extension only in unusual circumstances.

14 67. Petitioner requires a writ of mandate because CRD's decision to withhold disclosable
15 records for months longer than necessary to fulfil the requests violates its legal obligation to provide
16 records promptly and without delay.

17 **SECOND CAUSE OF ACTION**

18 **For Writ of Mandate for Violation of Article I, § 3 of the California Constitution and the**
19 **California Public Records Act, Gov. Code §§ 6250 et seq.**

20 68. Petitioner incorporates by reference the foregoing paragraphs as though fully set
21 forth herein.

22 69. The California Constitution provides the people "the right of access to information
23 concerning the conduct of the people's business, and, therefore, the meetings of public bodies and
24 the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const. art. I, §
25 3, subd. (b)(1).) Moreover, "[a] statute, court rule, or other authority . . . shall be broadly construed
26 if it furthers the people's right of access, and narrowly construed if it limits the right of access."
27 (*Id.*, subd. (b)(2).)

1 70. Under the PRA, a government agency "shall" make requested records available to a
2 member of the public unless the agency satisfies its burden of demonstrating that the record is
3 exempt from disclosure. (Gov. Code, § 6253 subd. (b).) When the agency does claim an exemption,
4 the agency must "justify withholding any record by demonstrating that the record in question is
5 exempt under *express* provisions of this chapter or that *on the facts of the particular case* the public
6 interest served by not disclosing the record clearly outweighs the public interest served by disclosure
7 of the record." (*Id.*, § 6255, subd. (a) [italics added].)

8 71. Petitioner submitted valid requests for records under the PRA as detailed above. As
9 stated in the requests, Petitioner was at all times ready to pay any associated fees.

10 72. CRD possesses records responsive to Petitioner's requests and has withheld
11 responsive records without meeting its burden of justifying, in writing, that a specific exemption or
12 the specific facts of this case permit CRD to deny Petitioner's request.

13 73. Petitioner requires a writ of mandate because CRD's decision to withhold disclosable
14 records violates its legal obligation to provide all non-exempt records promptly and without delay.

15 **THIRD CAUSE OF ACTION – UNLAWFUL REDACTION**

16 **For Writ of Mandate for Violation of Article I, § 3 of the California Constitution and the**
17 **California Public Records Act, Gov. Code §§ 6250 et seq.**

18 74. Petitioner incorporates by reference the foregoing paragraphs as though fully set
19 forth herein.

20 75. The California Constitution provides the people "the right of access to information
21 concerning the conduct of the people's business, and, therefore, the meetings of public bodies and
22 the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const. art. I, §
23 3, subd. (b)(1).) Moreover, "[a] statute, court rule, or other authority . . . shall be broadly construed
24 if it furthers the people's right of access, and narrowly construed if it limits the right of access."
25 (*Id.*, subd. (b)(2).)

26 76. Under the PRA, a government agency "shall" make requested records available to a
27 member of the public unless the agency satisfies its burden of demonstrating that the record is
28 exempt from disclosure. (Gov. Code, § 6253, subd. (b).) When the agency does claim an exemption,

1 the agency must “justify withholding any record by demonstrating that the record in question is
2 exempt under *express* provisions of this chapter or that *on the facts of the particular case* the public
3 interest served by not disclosing the record clearly outweighs the public interest served by disclosure
4 of the record.” (*Id.*, § 6255, subd. (a) [italics added].)

5 77. Even when an exemption does apply, the agency is required to provide the requestor
6 with “[a]ny reasonably segregable portion of a record” after deleting only the portions exempted by
7 law. (Gov. Code, § 6253, subd. (a).)

8 78. Petitioner submitted valid requests for records under the PRA as detailed above. As
9 stated in the requests, Petitioner was at all times ready to pay any associated fees.

10 79. CRD possesses records responsive to Petitioner’s requests and has improperly
11 redacted responsive records without meeting its burden of justifying, in writing, that a specific
12 exemption or the specific facts of this case permit CRD to redact information within the records.

13 80. Petitioner requires a writ of mandate because CRD’s decision to improperly redact
14 disclosable information violates its legal obligation to provide all non-exempt records promptly and
15 without delay.

16 FOURTH CAUSE OF ACTION

17 For Declaratory and Injunctive Relief for Violation of Article I, § 3 of the California 18 Constitution and the California Public Records Act, Gov. Code §§ 6250 et seq.

19 81. Petitioner incorporates by reference the foregoing paragraphs as though fully set
20 forth herein.

21 82. The California Constitution provides the people “the right of access to information
22 concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and
23 the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const. art. I, §
24 3, subd. (b)(1).) Moreover, “[a] statute, court rule, or other authority . . . shall be broadly construed
25 if it furthers the people’s right of access, and narrowly construed if it limits the right of access.”
26 (*Id.*, subd. (b)(2).)

27 83. The PRA further requires the government to make disclosable records “promptly
28 available” to any person who requests such records. (Gov. Code, § 6253, subd. (b).) Additionally,

1 it provides ten days from receipt of the request for a government agency to notify the person making
2 the request whether the agency has determined that the records are disclosable, and to provide an
3 estimated date and time when the records will be available. (*Id.*, subd. (c).) In “unusual
4 circumstances” only, the agency may take an additional fourteen days to notify the requestor of its
5 determination. (*Ibid.*)

6 84. Under the PRA, a government agency “shall” make requested records available to a
7 member of the public unless the agency satisfies its burden of demonstrating that the record is
8 exempt from disclosure. (Gov. Code, § 6253, subd. (b).) When the agency does claim an exemption,
9 the agency must “justify withholding any record by demonstrating that the record in question is
10 exempt under *express* provisions of this chapter or that *on the facts of the particular case* the public
11 interest served by not disclosing the record clearly outweighs the public interest served by disclosure
12 of the record.” (*Id.*, § 6255, subd. (a) [italics added].)

13 85. Even when an exemption does apply, the agency is required to provide the requestor
14 with “[a]ny reasonably segregable portion of a record” after deleting only the portions exempted by
15 law. (Gov. Code, § 6253, subd. (a).)

16 86. Petitioner submitted valid requests for records under the PRA as detailed above. As
17 stated in the requests, Petitioner was at all times ready to pay any associated fees.

18 87. CRD possesses records responsive to Petitioner’s requests and has repeatedly refused
19 to satisfy its obligations under the PRA to timely search for and produce records responsive to
20 Petitioner’s requests. To the extent CRD has produced responsive records, it has improperly
21 withheld and/or redacted additional responsive and non-exempted information.

22 88. A declaration that CRD has violated the PRA by failing to promptly produce
23 disclosable records and improperly withholding responsive information is therefore appropriate, and
24 an injunction should issue, compelling CRD to produce all responsive records forthwith without
25 improper redaction or omission.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment as follows:

28 1. For issuance of a peremptory writ of mandate compelling CRD to immediately

1 disclose all non-exempt, requested public records in its possession;

2 2. For issuance of an alternative writ of mandate, directing and requiring CRD to
3 immediately disclose all non-exempt, requested public records in its possession, or show cause why
4 CRD should not have to; and upon return to the alternative writ, issue a peremptory writ as set forth
5 in paragraph 1, above;

6 3. For a declaration that CRD's conduct violates the PRA in failing to timely disclose
7 all non-exempt, requested public records in its possession and failing to timely respond to public
8 records requests;

9 4. For an injunction requiring CRD to produce all disclosable documents forthwith;

10 5. For reasonable attorneys' fees pursuant to Code Civ. Proc., § 1021.5 and Gov. Code,
11 § 6259, subdivision (d);

12 6. For costs of suit; and

13 7. For such other and further relief as the Court may deem just and proper.
14

15 DATED: December 5, 2022

NIELSEN MERKSAMER PARRINELLO GROSS &
LEONI, LLP

16
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18 By: 

CHRISTOPHER E. SKINNELL

Attorney and Petitioner/Plaintiff
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