

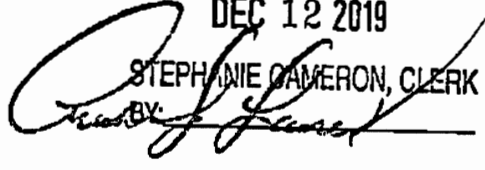
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Attorneys for City of Tulare

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

DEC 12 2019

STEPHANIE CAMERON, CLERK
BY: 

Exempt from filing fees pursuant
to Government Code Section 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF TULARE

JAMES GREGORY NUNLEY, an individual,

Petitioner,

v.

CITY OF TULARE, and Does 1 through 25,
inclusive,

Respondents.

Case No. VCU280972

**RESPONSE TO VERIFIED PETITION
FOR WRIT OF MANDATE**

Action Filed: October 28, 2019
Trial Date: Not Assigned

Respondent CITY OF TULARE ("Respondent") hereby responds to the Verified Petition for Writ of Mandate ("Petition") filed by Petitioner JAMES GREGORY NUNLEY ("Petitioner") by admitting, denying, and affirmatively alleging as follows:

I.
INTRODUCTION

1. Responding to Paragraph 1 of the Petition, Answering Paragraph 1, Respondent admits that Petitioner is an elected official of the City Council for the City of Tulare. As to the remaining allegations, Respondent either lacks sufficient knowledge or information to form a belief concerning the truth of the factual allegations contained therein and on that basis denies such allegations. Paragraph 1 further contains legal conclusions and argument as to which no response is required.

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1 2. Answering Paragraph 2, Respondent admits the allegations contained therein, but
2 Respondent denies that it improperly withheld any records.

3 3. Paragraph 3 contains legal contentions and/or conclusions to which no response is
4 required.

5 4. Paragraph 4 contains legal contentions and/or conclusions to which no response is
6 required.

7 5. Paragraph 5 contains legal contentions and/or conclusions to which no response is
8 required.

9 6. Paragraph 6 contains legal contentions and/or conclusions to which no response is
10 required, although Respondent does not dispute venue.

11 7. Answering Paragraph 7, Respondent admits that it maintains records concerning a
12 personnel complaint made by an employee, that it retained an outside attorney to investigate the
13 matter and the outside attorney drafted a report. Except as expressly admitted herein, Respondent
14 denies each and every allegation contained therein. Further, as to the legal contentions and/or
15 conclusions contained therein, Respondent is not required to respond, and therefore, does not
16 respond to those statements.

17 8. Answering Paragraph 8, Respondent admits that a report was prepared by an outside
18 attorney. Except as expressly admitted herein, Respondent denies each and every allegation
19 contained therein.

20 9. Answering Paragraph 9, Respondent admits that Petitioner requested a copy of the
21 report prepared by the outside attorney. Except as expressly admitted herein, Respondent denies
22 each and every allegation contained therein.

23 10. Answering Paragraph 10, Respondent lacks sufficient knowledge or information to
24 form a belief concerning the truth of the factual allegations contained therein and on that basis denies
25 such allegations.

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1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Records Exempt)**

3 As a separate and third affirmative defense to the Petition and each purported cause of action
4 contained therein, Respondent alleges that the requested records are exempt from production
5 pursuant to Government Code section 6254(f) and the cases interpreting the same.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 **(Disclosure)**

8 As a separate and fourth affirmative defense to the Petition and each purported cause of
9 action contained therein, Respondent alleges that it acted reasonably, properly and in good faith in
10 all matters relevant hereto, and did not directly or indirectly perform any acts whatsoever which
11 would constitute a breach of duty owed to Petitioner.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 **(Compliance with the Law)**

14 As a separate and fifth affirmative defense to the Petition and each purported cause of action
15 contained therein, Respondent alleges that the actions taken by Respondent were in full compliance
16 with the law.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 **(Authorization)**

19 As a separate and sixth affirmative defense to the Petition and each purported cause of action
20 contained therein, Respondent alleges that by virtue of the acts of the Petitioner, and/or the persons
21 and/or entities acting on his behalf, Petitioner is barred from prosecuting the purported causes of
22 action set forth in the Petition by the doctrine of authorization.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 **(Estoppel)**

25 As a separate and seventh affirmative defense to the Petition and each purported cause of
26 action contained therein, Respondent alleges that Petitioner is barred in whole or in part from
27 prosecuting the purported causes of action set forth in the Petition by the doctrine of estoppel.

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1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(Judgmental Immunity)**

3 As a separate and eighth affirmative defense to the Petition and each purported cause of
4 action contained therein, Respondent alleges the matters which are the subject of this Petition at all
5 times involved the exercise of reasoned judgment by Respondent and that Respondent did in fact
6 exercise reasoned judgment where the facts, the law and the application of the law to the facts was
7 reasonably debatable and whose application could not be predicted with certainty.

8 **NINTH AFFIRMATIVE DEFENSE**

9 **(Official and Quasi-Judicial Immunity)**

10 As a separate and ninth affirmative defense to the Petition and each purported cause of action
11 contained therein, Respondent alleges that Respondent is entitled to official and quasi-judicial
12 immunity and, therefore, not liable.

13 **TENTH AFFIRMATIVE DEFENSE**

14 **(Unclean Hands)**

15 As a separate and tenth affirmative defense to the Petition and each purported cause of action
16 contained therein, Respondent alleges that Petitioner is barred in whole or in part from prosecuting
17 the purported causes of action set forth in the Petition by the doctrine of unclean hands.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Reservation of Additional Affirmative Defenses)**

20 As a separate and eleventh affirmative defense to the Petition and each purported cause of
21 action contained therein, Respondent alleges it presently has insufficient knowledge or information
22 upon which to form a belief whether it may have additional, yet unstated, affirmative defenses.
23 Respondent, therefore, reserves the right to plead any additional further affirmative defenses in the
24 future, including, without limitation any defense available to any other potential Respondent.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Respondent requests that this Court:

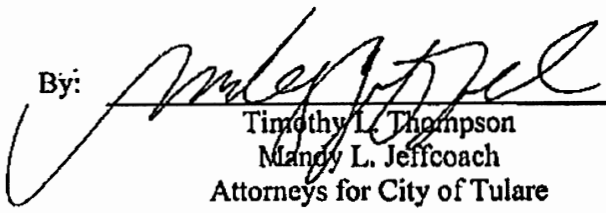
- 27 1. For an order finding that the record at issue is exempt from production;
28 2. That Petitioner take nothing by way of his Petition; and

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3. Any other relief that the Court deems appropriate.

Dated: December 12 2019

WHITNEY, THOMPSON & JEFFCOACH LLP

By: 

Timothy L. Thompson
Mandy L. Jeffcoach
Attorneys for City of Tulare

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF TULARE

I have read the foregoing **RESPONSE TO VERIFIED PETITION FOR WRIT OF MANDATE** and know its contents.

I am the City Manager for the City of Tulare, a party to this Action. As such, I am authorized to execute this Verification. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 12, 2019, at Visalia, California.

Rob Hunt

Print Name of Signatory



Signature

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PROOF OF SERVICE

**Nunley v. City of Tulare
Tulare Superior Court Case No. VCU280972**

STATE OF CALIFORNIA, COUNTY OF FRESNO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Fresno, State of California. My business address is 8050 N. Palm Avenue, Suite 110, Fresno, CA 93711.

On December 12, 2019, I served true copies of the following document(s) described as **RESPONSE TO VERIFIED PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

James H. Wilkins
Wilkins, Drolshagen & Czeshinski LLP
6785 N. Willow Avenue
Fresno, CA 93710
Tel: 559-438-2390
Fax: 559-438-2393

Attorneys for Petitioner
James Gregory Nunley

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Whitney, Thompson & Jeffcoach LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Fresno, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 12, 2019, at Fresno, California.



Monica Barsotti