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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ALAMEDA**

12 CAMILLE FASSETT,

13 Petitioner and Plaintiff,

14 vs.

15 THE REGENTS OF THE UNIVERSITY OF
16 CALIFORNIA,

17 Respondent and Defendant.
18
19
20

Case No.:

RG18907783

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[California Constitution Article I § 3; Gov't
Code § 6250, *et seq.*; Civ. Proc. Code §§ 1060,
1085; Civ. Code § 3422]

1 **INTRODUCTION**

2 1. Petitioner and Plaintiff (“Petitioner”) Camille Fassett hereby seeks a writ of mandate,
3 as well as declaratory and injunctive relief, to enforce the California Public Records Act (“CPRA”).
4 Petitioner submitted eight requests for public records to Respondent, the Regents of the University
5 of California (“UC”), via its UC Berkeley campus. These requests asked for access to clearly-
6 identifiable documentation of great importance to the public that is subject to mandatory disclosure
7 under the CPRA. Respondent failed to disclose even a single record in response to any of
8 Petitioner’s requests, thereby violating the CPRA and the California Constitution.

9 2. The public’s access to information is obstructed by Respondent’s repeated and
10 systemic violation of the CPRA. By this Petition and pursuant to the Code of Civil Procedure
11 §§ 1085, *et seq.* and Government Code §§ 6250, *et seq.*,¹ Petitioner respectfully requests from this
12 Court: a writ of mandate to command Respondent to disclose all non-exempt information Petitioner
13 requested and thereby comply with the CPRA; a declaration that Respondent’s conduct fails to
14 comply with the CPRA; and a permanent injunction enjoining Respondent from continuing its
15 pattern and practice of violating the CPRA.

16 **JURISDICTION AND VENUE**

17 3. This Court has jurisdiction under Gov’t Code §§ 6258, 6259, Code of Civ. Proc.
18 § 1085, and Article VI, Section 10 of the California Constitution.

19 4. Venue is proper in this Court. The records in question, or some portion of them, are
20 situated in the County of Alameda, Gov’t Code § 6259; the acts or omissions complained of
21 occurred in the County of Alameda, Code of Civ. Proc. § 393; and, Respondent is located in the
22 County of Alameda by way of its Berkeley, California campus, Code of Civ. Proc. § 395.

23 **PARTIES**

24 5. Petitioner Camille Fassett is a reporter with Freedom of the Press Foundation, where
25 she informs the public of issues related to privacy, surveillance, and law enforcement abuses. She
26 documents press freedom violations, including arrests of journalists, for the U.S. Press Freedom
27

28 _____
¹ Unless otherwise stated, all references to code sections are to the California Government Code.

1 Tracker database. Fassett also works with the Lucy Parsons Lab, where she conducts investigations
2 into police surveillance and law enforcement misconduct. She regularly submits public records
3 requests to various agencies to inform her research and advocacy. Fassett is a member of the public
4 within the meaning of §§ 6252(b)-(c).

5 6. Respondent is a corporation empowered under the California Constitution, Article
6 IX, Section 9, to administer the University of California and is a public agency within the meaning
7 of § 6252(d).

8 FACTUAL ALLEGATIONS

9 Requests to Which Respondent Has Denied Access by Misapplying Exemptions and 10 Failing to Conduct a Reasonable Search

11 Urban Shield Request

12 7. “Urban Shield” is a weapons exhibition and law enforcement training that takes
13 place annually in Alameda County and in which UCPD participates. Alameda County receives
14 federal funding from the Department of Homeland Security (“DHS”) to host the event. The
15 existence of Urban Shield has been hotly contested among the Bay Area community. Over 50
16 diverse community organizations have formed the Stop Urban Shield Coalition to advocate for the
17 termination of the event. In 2017, the San Francisco Board of Supervisors passed a resolution
18 urging Alameda County to suspend the event, and the Alameda County Board of Supervisors
19 initiated a County Task Force on Urban Shield to evaluate its value and its impact on the
20 community. Ultimately, in response to strong community opposition, the Alameda County Board of
21 Supervisors voted in March 2018 to discontinue its involvement in Urban Shield beginning in 2019.

22 8. On September 24, 2017, Fassett submitted a request for specific and identifiable
23 public records to Respondent. The request sought the “last 20 emails and memorandums sent by
24 UCPD containing the phrase: ‘urban shield.’” She submitted her request by email to “ucpd-
25 records@berkeley.edu,” UCPD’s designated email address for public records requests. A true and
26 accurate copy of this request is attached to this petition in *Exhibit A*.

27 9. On October 4, 2017, Respondent sent a form response to Fassett’s Urban Shield
28 request. The response stated that Fassett’s “request has been forwarded to appropriate campus

1 offices and a search for responsive documents is currently underway.” It informed Fassett that,
2 “[a]lthough the requested records have not yet been fully identified, based on the terms of the
3 request, we have made a preliminary determination that the request likely does seek disclosable
4 records within the possession of the University.” Respondent noted that it “generally process[es]
5 requests in the order in which they are received,” and that “[t]he current timeframe for fulfillment of
6 most requests is 8 weeks, although this may vary due to the nature and complexity of the request.”
7 A true and accurate copy of this response is attached to this petition in *Exhibit A*. November 19,
8 2017 marked eight weeks after Fassett submitted her request, but by that date, Respondent had not
9 provided any of the requested records or further communicated with Fassett about her request.

10 10. On January 17, 2018, 15 weeks after Fassett submitted her request, she sent an email
11 to Respondent to inquire as to the status of her request. She also asked for an estimated date by
12 which Respondent would provide the public records that she requested. A true and accurate copy of
13 this email is attached to this petition in *Exhibit A*. Respondent provided no response to this
14 communication.

15 11. On April 17, 2018, over 29 weeks after Fassett submitted her request, she sent
16 another email to Respondent inquiring as to the status of her request. Fassett communicated that her
17 public records request was still outstanding and that Respondent had not provided her with an
18 updated estimate as to when the requested records would be produced. She stated that, as a result,
19 she was “considering legal action.” A true and accurate copy of this email is attached to this petition
20 in *Exhibit A*. Respondent provided no response to this communication.

21 12. On May 22, 2018—over 34 weeks after receiving Fassett’s request, and only after
22 Fassett communicated that she was considering legal action to enforce the CPRA—Respondent
23 finally sent an email responding to the request. Respondent stated, “We are unable to determine
24 who in UCPD would have the ‘last 20 emails and memorandums’ regarding ‘urban shield.’” It
25 directed Fassett to “further narrow down the topic/sender” of her request in order for it to move
26 forward with the request. A true and accurate copy of this email is attached to this petition in
27 *Exhibit A*.

28 13. Although Respondent initially represented to Fassett that it would fulfill her request

1 within approximately eight weeks, it took eight months and threat of litigation for Respondent to
2 engage even cursorily with the request. When Respondent finally did reply to the request, it
3 declined to fulfill the request unless Fassett could more specifically identify the requested records.
4 However, Fassett—unlike Respondent itself—has no possible way of identifying which UCPD
5 employees have communicated about urban shield. To date, Respondent has failed conduct a
6 reasonable search for the requested records and has failed to disclose any of the public records that
7 Fassett requested.

8 Federal Equipment Request

9
10 14. Various federal programs facilitate the use of federal law enforcement equipment by
11 local law enforcement agencies. The “1033 Program” allows for the transfer of excess military
12 equipment to civilian law enforcement agencies; the “1122 Program” enables local governments to
13 access federal sources of supply to purchase equipment in support of counter-drug, homeland
14 security, and emergency response activities; and the “Surplus Property Donation Program” allows
15 local government agencies to access property no longer in use by federal government agencies, such
16 as firearms, vehicles, aircraft, and other equipment. Such programs have been vehemently debated,
17 with opponents arguing that they facilitate the militarization of local law enforcement and increase
18 excessive use of force and other police abuses. In particular, there has been public opposition to
19 UCPD’s acquisition of assault rifles through the 1033 program. UCPD also submitted an
20 application for funding to DHS obtain an armored vehicle, which was ultimately withdrawn in
21 response to public disapproval.

22 15. On November 4, 2017, Fassett submitted a request for specific and identifiable
23 public records to Respondent. The request sought all UCPD “applications for equipment under the
24 1033 Program, the 1122 Program and the Surplus Property Donation Program” and “[t]raining plan
25 documentation submitted by [UCPD] to the Department of Defense’s CA state coordinator for the
26 use of 1033 equipment and vehicles, as required by the Defense Logistics Agency.” She submitted
27 her request by email to “ucpd-records@berkeley.edu” and “pra@berkeley.edu.” A true and accurate
28 copy of this request is attached to this petition in *Exhibit B*.

16. On November 14, 2017, Respondent sent a form email response to Fassett’s request.

1 The response was identical to the responses to her prior requests. Again, Respondent stated that
2 “[t]he current timeframe for fulfillment of most requests is 8 weeks, although this may vary due to
3 the nature and complexity of the request.” A true and accurate copy of this response is attached to
4 this petition in *Exhibit B*. December 30, 2017 marked eight weeks after Fassett submitted her
5 request, but by that date, Respondent had not provided any of the requested records or further
6 communicated with Fassett about her request.

7 17. On January 17, 2018, approximately 10 weeks after Respondent submitted her
8 federal equipment request, she sent an email to Respondent to inquire as to the status of the request
9 and when she could expect to receive the requested documents. A true and accurate copy of this
10 email is attached to this petition in *Exhibit B*. Respondent did not provide any response to this
11 communication.

12 18. On April 17, 2018, approximately 23 weeks after Respondent submitted her federal
13 equipment request, she sent another email to Respondent to inquire as to the status of her request.
14 She stated that she was “considering legal action,” as she had not yet received the requested
15 documents or an estimate as to when the documents would be disclosed. A true and accurate copy
16 of this email is attached to this petition in *Exhibit B*.

17 19. On May 22, 2018—over 28 weeks after receiving Fassett’s request, and only after
18 Fassett communicated that she was considering legal action to enforce the CPRA—Respondent
19 finally sent an email responding to the request. Respondent stated that it possessed “no records
20 responsive” to the request, and that “[t]he department has informed us that we currently do not have
21 any equipment from the 1033 program.” It therefore continued that Fassett’s “request is now
22 considered closed.” Respondent does not appear to have fully engaged with the content of Fassett’s
23 request—which was not asking for UCPD’s current inventory of equipment under the 1033
24 program, but which asked for any *applications* for equipment under either the 1033 program, *the*
25 *1122 program, or the surplus property donation program*, as well as any *training plan*
26 *documentation* related to the 1033 program. Further, applications or training materials related to
27 UCPD’s *past* retention of 1033, 1122, or surplus property donation equipment would also be
28 responsive to the request, but it does not appear that Respondent conducted a search for that

1 material. Indeed, UCPD's own spokesperson Lt. Eric Tejada has publicly stated that UCPD has
2 previously acquired M16 rifles through the 1033 program.² A true and accurate copy of this email is
3 attached to this petition in *Exhibit B*.

4 20. Although Respondent initially represented to Fassett that it would fulfill her request
5 within approximately eight weeks, it took over six months and threat of litigation for Respondent to
6 engage even cursorily with the request. When Respondent finally did reply to the request, it
7 responded in a way that strongly suggests that it did not fully engage with the content of the request
8 and failed to search for all requested material, making it likely that Respondent withheld responsive
9 records. To date, therefore, Respondent has failed conduct a reasonable search for the requested
10 records and has failed to disclose any of the public records that Fassett requested.

11 Occupy the Farm Request

12 21. Occupy the Farm is an activist movement that advocated for the existence of an
13 urban farm on the Gill Tract agricultural area in Albany, California. The Gill Tract, which is owned
14 by Respondent, has been used for teaching and agricultural research. In approximately 2012, a
15 portion of the land was slated to be leased by Respondent for commercial development. Various bay
16 area community groups instead advocated for the use of the area as an urban farm that could
17 provide sustainably-grown food and education to the local community. In response to the
18 University's plans to commercially develop the land, a large group of activists entered the Gill Tract
19 and began farming, thereby "occupying" the space. The University publicly criticized the
20 occupation and took steps to dismantle it, such as cutting off the Gill Tract's water supply,
21 destroying plants grown in the occupation, and forcibly removing and arresting activists. The
22 movement garnered national media attention and was the subject of a documentary film titled
23 "Occupy the Farm."

24 22. On November 6, 2017, Fassett submitted a request for specific and identifiable
25 public records to Respondent. The request sought "[a]ll emails sent or received" by Dan Mogulof,
26 Assistant Vice Chancellor for Public Affairs at UC Berkeley and by the University of California
27

28 ² See <http://www.dailycal.org/2014/09/14/ucpd-among-law-enforcement-agencies-received-military-grade-assault-rifles/>.

1 Police Department (“UCPD”) “between January 1, 2012 and today’s date . . . that contain the term
2 ‘Gill Tract’ or ‘Occupy the Farm.’” Fassett submitted her request by email to “pra@berkeley.edu,”
3 the University’s designated email address for public records requests. A true and accurate copy of
4 this request is attached to this petition in *Exhibit C*.

5 23. On November 15, 2017, Respondent sent an email response refusing to provide the
6 information that Fassett requested. Respondent asserted that Fassett’s request “is extremely broad,
7 and compliance with the request would be unduly burdensome pursuant to Government Code
8 section 6255.” Respondent further stated that it may consider a “more narrowly tailored” request,
9 including a request that identified “whose records (for example, the name of person or department)
10 you may be seeking.” Given that Fassett clearly identified a specific person and a specific
11 department whose emails she was requesting, Respondent’s message appears to be merely a form
12 response, rather than a genuine suggestion as to how Fassett could narrow her request. A true and
13 accurate copy of this response is attached to this petition in *Exhibit C*.

14 24. On November 15, 2017, Fassett sent another email expressing her confusion as to
15 why Respondent considered her request overbroad. She stated that Respondent had not rejected as
16 overbroad another request she submitted that was phrased similarly. Fassett asked Respondent to
17 explain why it considered the Occupy the Farm request to be overbroad. A true and accurate copy
18 of this email is attached to this petition in *Exhibit C*.

19 25. Respondent never responded to Fassett’s request to explain why the request was
20 overbroad. Respondent has not communicated with Fassett again in the more than six months since
21 it denied her Occupy the Farm request on November 15, 2017.

22 “UC Berkeley Memes for Edgy Teens” Request

23 26. “UC Berkeley Memes for Edgy Teens” is a Facebook group where members post
24 content about student life at UC Berkeley. As of this writing, the group contains over 164,000
25 members, and its popularity has made it the object of significant media attention. Individuals post
26 commentary about a wide variety of campus happenings, ranging from final exams to campus
27 protests and police activity.

28 27. On November 6, 2017, Fassett submitted a request for specific and identifiable

1 public records to Respondent. The request sought “[a]ll emails (sent or received), meeting notes,
2 briefings, and communications” that contain the term ‘UC Berkeley Memes for Edgy Teens’ or
3 ‘UCBMFET’ between May 1, 2016 and the date this request is processed” sent by Diana Harvey,
4 Associate Vice Chancellor for Communications and Public Affairs at UC Berkeley, Dan Mogulof,
5 Assistant Vice Chancellor for Public Affairs at UC Berkeley, and Kathryn Bader, Director of Social
6 Media at UC Berkeley. Fassett submitted her request by email to “pra@berkeley.edu.” A true and
7 accurate copy of this request is attached to this petition in *Exhibit D*.

8 28. On November 15, 2017, Respondent sent an email response refusing to provide the
9 information that Fassett requested. This email is identical to the email Respondent sent in response
10 to Fassett’s Occupy the Farm request. Respondent again asserted that Fassett’s request “is
11 extremely broad, and compliance with the request would be unduly burdensome pursuant to
12 Government Code section 6255.” Respondent further stated that it may consider a “more narrowly
13 tailored” request, including a request that identified “whose records (for example, the name of
14 person or department) you may be seeking.” Again, because Fassett clearly identified the three
15 public employees whose records she was requesting, Respondent’s message appears to be part of its
16 form response, rather than a genuine suggestion as to how Fassett could narrow her request. A true
17 and accurate copy of this response is attached to this petition in *Exhibit D*.

18 Rise Above Movement and Hammerskin Nation Request

19 29. UC Berkeley has recently been the site of a number of far-right speaker appearances,
20 drawing intense protests and national attention. Some of the individuals attending these events have
21 reportedly had ties to white supremacist groups and committed acts of violence at the events. One
22 such group is reportedly the “Rise Above Movement,” a white supremacist group who describes
23 itself as “the premier MMA [mixed martial arts] club of the Alt-Right.” Another is reportedly
24 “Hammerskin Nation,” a self-described white power group that advocates for the use of violence to
25 advance white supremacy. Some community members have criticized UCPD as not taking seriously
26 enough the presence of such white supremacist groups on campus.

27 30. On December 6, 2017, Fassett submitted a request for specific and identifiable public
28 records to Respondent. The request sought all UCPD records, “including briefings, meeting notes,

1 emails, texts, and memoranda containing the terms ‘Rise Above Movement,’ ‘RAM,’ and
2 ‘Hammerskin Nation’ between 1 March 2017 to October 1 2017.” Fassett submitted her request by
3 email to “pra@berkeley.edu.” A true and accurate copy of this request is attached to this petition in
4 *Exhibit E*.

5 31. On December 7, 2017, Respondent sent a form email response refusing to provide
6 the information that Fassett requested. Again, this denial is identical to the denials Respondent sent
7 in response to Fassett’s Occupy the Farm and UC Berkeley Memes for Edgy Teens requests.
8 Respondent once again asserted that Fassett’s request “is extremely broad, and compliance with the
9 request would be unduly burdensome pursuant to Government Code section 6255.” A true and
10 accurate copy of this denial is attached to this petition in *Exhibit E*.

11 **Requests to Which Respondent Has Denied Access through Delay and Non-Response**

12 **ICE Request**

13 32. In recent months, ICE has conducted immigration “raids” in Northern California and
14 the San Francisco Bay Area in which its officers arrested scores of people. In light of developments
15 such as these, the role of local law enforcement in assisting with federal immigration enforcement
16 has been a topic of great community debate. The topic has been of such importance that, in late
17 2017, the California Legislature passed SB 54, legislation restricting under what circumstances
18 local law enforcement officers are able to assist with immigration enforcement. The bill discussed
19 in particular the undesirability of local law enforcement assisting with immigration enforcement on
20 school and university campuses.

21 33. On October 5, 2017—the same day Governor Brown signed SB 54—Fassett
22 submitted a request for specific and identifiable public records to Respondent. The request sought
23 “[p]olicies and trainings regarding trainings with and/or coordination between UCPD and
24 Immigration and Customs Enforcement” and “[t]he last 20 emails between UCPD and Immigration
25 and Customs Enforcement.” She submitted her request by email to “ucpd-records@berkeley.edu”
26 and “pra@berkeley.edu.” A true and accurate copy of this request is attached to this petition in
27 *Exhibit F*.

28 34. On October 11, 2017, Respondent sent a form email response to Fassett’s ICE

1 request. The response was identical to the response it sent in response to Fassett’s Urban Shield
2 Request, discussed above. Again, Respondent stated that “[t]he current timeframe for fulfillment of
3 most requests is 8 weeks, although this may vary due to the nature and complexity of the request.”
4 A true and accurate copy of this response is attached to this petition in *Exhibit F*. November 30,
5 2017 marked eight weeks after Fassett submitted her request, but by that date, Respondent had not
6 provided any of the requested records or further communicated with Fassett about her request.

7 35. On January 17, 2018, approximately 15 weeks after Respondent submitted her ICE
8 request, she sent an email to Respondent to inquire as to the status of the request. A true and
9 accurate copy of this email is attached to this petition in *Exhibit E*. Respondent provided no
10 response to this communication and has not provided any of the requested documents or
11 communicated with Respondent again to date. It has now been 34 weeks since Respondent
12 submitted her request.

13 Amazon Request

14 36. UC Berkeley recently entered into an agreement with Amazon—a private, for-profit
15 corporation—allowing for the operation of a brick and mortar Amazon location on the UC Berkeley
16 campus. Students and non-students can retrieve packages they order from Amazon at the location.
17 The space also advertises Amazon products, such as “Kindle” electronic readers and tablets.
18 Amazon’s Director of Student Programs has stated that the goal of the location is making students
19 “turn into lifelong customers”³ of the corporation.

20 37. In 2013, Bob Lalanne was named UC Berkeley’s first, and only, Vice Chancellor for
21 Real Estate. Lalanne is also the founder of the Lalanne Group, a San Francisco real estate
22 development firm. He resigned as Vice Chancellor for Real Estate in 2016, and UC Berkeley then
23 eliminated the Vice Chancellor for Real Estate position.

24 38. On November 6, 2017, Fassett submitted a request for specific and identifiable
25 public records to Respondent. The request sought “[a]ll emails sent or received between ex-Vice
26 Chancellor of Real Estate Bob Lalanne and representatives of Amazon between January 1, 2015,
27

28

³ See <http://www.berkeleyinside.com/2016/01/15/amazon-opens-new-store-on-uc-berkeley-campus>

1 and today's date" and "[a]ny contracts, bids, or lease agreements between UC Berkeley, Associated
2 Students of the University of California, and Capital Projects and Amazon." Fasset sent this request
3 via email to "pra@berkeley.edu." A true and accurate copy of this request is attached to this petition
4 in *Exhibit G*.

5 39. On November 15, 2017, Respondent sent a form email response to Fasset's request.
6 The response was identical to the responses to her prior requests. Again, Respondent stated that
7 "[t]he current timeframe for fulfillment of most requests is 8 weeks, although this may vary due to
8 the nature and complexity of the request." The response was erroneously addressed to "Mr. Smith."
9 A true and accurate copy of this response is attached to this petition in *Exhibit G*.

10 40. On November 15, 2017, Fasset sent an email to clarify for Respondent's records that
11 her name was not "Mr. Smith." A true and accurate copy of this email is attached to this petition in
12 *Exhibit G*.

13 41. January 1, 2018 marked eight weeks after Fasset submitted her request. It has now
14 been over 29 weeks since Fasset submitted her request. Respondent has not provided any of the
15 requested records or further communicated with Fasset about the request.

16 Rise Above Movement Request⁴

17 42. On December 7, 2017, Fasset submitted a request for specific and identifiable public
18 records to Respondent. The request sought all UCPD "records, including briefings, meeting notes,
19 emails, texts, and memoranda containing the terms 'Rise Above Movement' and 'RAM' in April
20 2017." She submitted her request by email to "pra@berkeley.edu". A true and accurate copy of this
21 request is attached to this petition in *Exhibit H*.

22 43. On December 14, 2017, Respondent sent a form email response to Fasset's request.
23 The response was again identical to the responses to her prior requests. Respondent again stated that
24 "[t]he current timeframe for fulfillment of most requests is 8 weeks, although this may vary due to
25 the nature and complexity of the request." A true and accurate copy of this response is attached to
26

27
28 ⁴ In addition to this December 7, 2017 request pertaining to the Rise Above Movement, Fasset also submitted a December 6, 2017 request pertaining to the Rise Above Movement and Hammerskin Nation, which is described in detail above.

1 this petition in *Exhibit H*.

2 44. February 1, 2018 marked eight weeks after Fassett submitted her request. It has now
3 been 25 weeks since the request. To date, Respondent has not provided any of the requested records
4 or further communicated with Fassett about her request.

5 **Factual Summary**

6 45. In sum, Respondent has to date failed to provide even one single document in
7 response to Petitioner's eight requests, although the documents Fassett requested are identifiable,
8 discreet, and of great importance to the public. For those requests to which Respondent has denied
9 access through non-responsiveness, Respondent has further failed to provide an updated estimate as
10 to when the requested records will be produced, as its initial eight-week estimates were clearly
11 inaccurate. *See* § 6253(c). Aside from the identical form emails that Respondent sent in response to
12 each of Fassett's requests—the content of which reflect that they are not, in fact, substantive
13 responses to Respondent's particular requests—Respondent has failed to communicate with Fassett
14 in any way whatsoever unless and until she has threatened litigation. Even then, Respondent has
15 failed to truly engage with the content of her requests, over-claiming exemptions and failing to
16 conduct a reasonable search for responsive records.

17 **FIRST CAUSE OF ACTION:**
18 **VIOLATION OF THE CALIFORNIA CONSTITUTION ARTICLE 1, § 3(b)**

19 46. Petitioner incorporates herein by reference the allegations of paragraphs 1 through 45
20 above, as if set forth in full.

21 47. The California Constitution provides an independent right of access to government
22 records: "The people have the right of access to information concerning the conduct of the people's
23 business, and, therefore, the meetings of public bodies and the writings of public officials and
24 agencies shall be open to public scrutiny." Cal. Constitution, Art. 1 § 3(b)(1). This provision was
25 adopted by the voters in 2004 because, as the ballot argument supporting the measure states, when
26 Californians asked questions of their government, they increasingly found "that answers are hard to
27 get." The constitutional provision is intended to reverse that trend.

1 54. Where an agency withholds responsive records on the basis of a statutory exemption,
2 “the agency . . . must disclose that fact.” *Haynie v. Super. Ct.* 26 Cal. 4th 1061, 1072 (2001) (citing
3 § 6255). Even if portions of a document are exempt from disclosure, the agency must disclose the
4 remainder of the document. § 6253(a). The agency bears the burden of justifying nondisclosure.
5 § 6255(a). In determining whether exemptions apply, courts must follow the constitutional
6 imperative that the applicability of exemptions must be construed narrowly and that the people’s
7 right of access to public information must be construed broadly. Cal. Constitution, Art. I, § 3(b)(2).

8 55. The CPRA also requires the government to “assist the member of the public [to]
9 make a focused and effective request that reasonably describes an identifiable record or records” by
10 taking steps to “[a]ssist the member of the public to identify records and information that are
11 responsive to the request or to the purpose of the request, if stated.” § 6253.1. An agency that
12 receives a request must also “[p]rovide suggestions for overcoming any practical basis for denying
13 access to the records or information sought.” *Id.*

14 56. Whenever it is made to appear by verified petition to the Superior Court of the
15 county where the records or some part thereof are situated that certain public records are being
16 improperly withheld from a member of the public, the Court shall order the officer or person
17 charged with withholding the records to disclose the public record or show cause why he or she
18 should not do so. The Court shall decide the case after examining the record in camera (if permitted
19 by the Evidence Code), papers filed by the parties, and any oral argument and additional evidence
20 as the Court may allow. § 6259(a). If the Court finds that the failure to disclose is not justified, it
21 shall order the public official to make the record public. § 6259(b).

22 57. A petitioner prevails under the CPRA where the petitioner shows that an agency
23 unlawfully denied access to records. *Community Youth Athletic Center v. City of National City*, 220
24 Cal.App.4th 1385, 1446-1447 (2013). An agency is not protected from liability merely because the
25 denial of access was due to the agency’s internal logistical problems or general neglect of its duties.
26 *Id.*

27 58. The CPRA further contains a mandatory attorney’s fee provision for the prevailing
28 plaintiff. § 6259(d). The purpose of the provision is to provide “protections and incentives for

1 members of the public to seek judicial enforcement of their right to inspect public records subject to
2 disclosure.” *Filarsky v. Super. Ct.*, 28 Cal.4th 419, 427 (2002).

3 59. Here, Respondent violated the CPRA by failing to promptly disclose the public
4 records that Fassett requested. The public records that Fassett requested are not properly subject to
5 any of the CPRA’s statutory exemptions, and Respondent acted unlawfully in flouting its duty to
6 make such records available.

7 **The Records Fassett Requested Are Not Exempt from Disclosure under the “Catchall**
8 **Exemption”**

9 60. In response to four of Fassett’s requests, Respondent refused to provide any of the
10 requested records by invoking the “catchall exemption” under § 6255. In identical form denials to
11 the Occupy the Farm, UC Berkeley Memes for Edgy Teens, and Rise Above Movement and
12 Hammerskin Nation requests, Respondent stated that the three requests were “extremely broad” and
13 that “compliance with the request[s] would be unduly burdensome pursuant to Government Code
14 section 6255” because the requests “would entail collection and review of a voluminous number of
15 documents.” For the Urban Shield request, Respondent impermissibly required Fassett to narrow
16 her request to specific UCPD employees in order to process the request, impliedly invoking § 6255.
17 In so denying Fassett’s requests, Respondent misapplied the catchall exemption and violated its
18 legal duties under the CPRA.

19 61. The catchall exemption of § 6255 states that public records may be withheld from
20 disclosure if the agency establishes that “on the facts of the particular case the public interest served
21 by not disclosing the record *clearly* outweighs the public interest served by disclosure of the
22 record.” § 6255 (emphasis added). The exemption “contemplates a case-by-case balancing process,
23 with the burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on
24 the side of confidentiality.” *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal.4th 1065,
25 1071 (2006). In determining whether the catchall exemption applies, the Court must follow the
26 constitutional imperative that the applicability of exemptions must be construed narrowly, and the
27 right of access to public information must be construed broadly. Cal. Constitution, Art. I, § 3(b)(2).

28 62. The expense and inconvenience that an agency may experience in responding to a

1 burdensome request may be considered when determining the public interest in withholding public
2 records. *See American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal.3d 440, 452-53
3 (1982). However, the burden must be significant to justify nondisclosure. Courts have found that:

4 A clearly framed request which requires an agency to search an enormous volume
5 of data for a ‘needle in the haystack’ or, conversely, a request which compels the
6 production of a huge volume of material may be objectionable as unduly
7 burdensome. Records requests, however, inevitably impose some burden on
government agencies. An agency is obliged to comply so long as the record can
be located with reasonable effort.

8 *California First Amendment Coalition v. Superior Court*, 78 Cal.Rptr.2d 847, 849 (1998)

9 (“CFAC”). Courts have held, for example, that a request that requires a public employee to work an
10 entire 40-hour week to fulfill, or a request that costs \$43,000 to fulfill, are not by definition unduly
11 burdensome to justify nondisclosure under § 6255. *Weaver v. Super. Ct. of San Diego County*, 224
12 Cal. App. 4th 746, 752 (2014); *County of Santa Clara v. Superior Court*, 170 Cal.App.4th 1301,
13 1327 (2009).

14 63. Here, Fassett’s three requests were not overly burdensome or overbroad, but quite
15 focused, discreet, and manageable. Fassett requested, respectively: 1) for the Urban Shield request,
16 only 20 emails from UCPD containing one discreet term; 2) for the Occupy the Farm Request,
17 emails containing only two discreet terms sent or received by one public employee and one
18 department over an approximately 6 year period; 3) for the UC Berkeley Memes for Edgy Teens
19 request, public records containing only two discreet terms sent or received by three specific public
20 employees over an approximately 1.5 year period; and 4) for the Rise Above Movement and
21 Hammerskin Nation request, public records containing only three discreet terms belonging to one
22 specific department over a seven month period. The requests are not akin to a “needle in a
23 haystack,” nor do they compel production of a “huge volume of material.” *CFAC*, 78 Cal.Rptr.2d at
24 849. Rather, each request is clearly framed and requests a discrete volume of records. Indeed, each
25 of the requests can be fulfilled by a simple and straightforward keyword search, placing little
26 burden on the agency. Therefore, the public interest in nondisclosure is *de minimis*.

27 64. Moreover, it is notable that Respondent does not appear to have actually engaged
28 with the content of at least three of these requests before dismissing them as overly burdensome.

1 Respondent did not provide genuine suggestions as to how Fassett could narrow her allegedly
2 overly-burdensome request, as it is required to do by the CPRA. *See* § 6253.1. Rather, it provided
3 Fassett with three identical form responses that were oftentimes senseless when considering the
4 actual content of her requests. This provides further evidence that Fassett’s requests were not in fact
5 particularly burdensome, but that Respondent dismissed the requests out of hand without truly
6 considering what would be required to fulfill them.

7 65. The public interest in disclosing the records Fassett requested, however, is great. As
8 an initial matter, “[i]f the records sought pertain to the conduct of the people’s business there *is* a
9 public interest in disclosure.” *Citizens for a Better Environment v. Dept. of Food & Agriculture*, 171
10 Cal.App.3d 704, 715 (1985). The weight of that interest is heavier proportionate to “the gravity of
11 the governmental tasks sought to be illuminated and the directness with which the disclosure will
12 serve to illuminate” *Id.* Here, the interest in disclosure is especially high, in that each of the three
13 requests pertain to topics of significant public concern. The requested records involving Urban
14 Shield involve Respondent’s participation in a law enforcement training and weapons expo that has
15 drawn substantial public opposition. The requested records involving Occupy the Farm, a
16 movement which garnered national attention, shed light on a major public university’s transference
17 of public, educational land to use for private, corporate development, as well as arrests and legal
18 action taken against activists advocating for food justice. The requested records involving UC
19 Berkeley Memes for Edgy Teens sheds light on the manner in which a public university monitors
20 and views student free speech regarding campus happenings. And the requested records involving
21 the Rise Above Movement and Hammerskin Nation pertain to UCPD’s response to white
22 supremacist organizations’ presence and activity on campus. Each of these types of records is of
23 significant public concern and “would contribute significantly to public understanding of
24 government activities” if disclosed. *City of San Jose v. Super. Ct.*, 74 Cal.App.4th 1008, 1018
25 (1999). Moreover, the documentation sought is internal agency information and cannot be obtained
26 through alternate sources, further enhancing the public interest in its disclosure. *Id.* at 1020.

27 66. On balance, Respondent cannot establish that the public interest in withholding these
28 requested documents clearly outweighs the public interest served by their disclosure. *See* § 6255.

1 While the public interest in withholding is quite minimal, the public interest in disclosure of these
2 documents is very great. Respondent therefore violated its legal duty under the CPRA by refusing to
3 produce these requested documents. *See* § 6253.

4 **Respondent Has Denied Access to Fassett’s Requested Records by Failing to Engage with the**
5 **Content of Requests and Failing to Conduct a Reasonable Search for Responsive Records**

6 67. In response to Fassett’s federal equipment request, Respondent denied access to all
7 requested records by failing to conduct a reasonable search and concluding after its inadequate
8 search that it does not possess responsive records. Respondent has thereby violated the CPRA.

9 68. Fassett requested all UCPD applications for equipment under the 1033 program, the
10 1122 program, and the surplus property donation program. She further requested training plan
11 documentation submitted by UCPD to the Department of Defense for the use of 1033 equipment
12 and vehicles. However, the University’s eventual response—provided only after six months of
13 unlawful delay and non-response and after Fassett threatened litigation—was not responsive to the
14 actual content of the request. Respondent stated that “we currently do not have any equipment from
15 the 1033 program” before informing Fassett that it considered the request closed.

16 69. This response failed to inform Fassett whether UCPD had ever maintained or
17 attempted to obtain equipment from the 1033 program, which would likely have resulted in records
18 of applications or training plans for such equipment. Indeed, UCPD has publicly discussed its past
19 retention of M16 rifles which it obtained through the 1033 program; applications or training
20 materials related to these rifles would certainly be responsive to Fassett’s request. Moreover,
21 Respondent’s email only references the 1033 program and fails to provide any information about
22 whether UCPD had ever applied for equipment under the 1122 or surplus property donation
23 programs.

24 70. Respondent’s reply makes clear that it did not truly consider the content of Fassett’s
25 request and that it did not conduct a reasonable search for all requested material. Moreover,
26 Respondent’s own public statements about its past acquisition of 1033 equipment strongly indicate
27 that it does, in fact, possess records responsive to Fassett’s request. Respondent is therefore very
28 likely withholding public records of great public interest in violation of the CPRA. Respondent’s

1 failure to conduct a reasonable search and its failure to provide responsive public records violates
2 the CPRA.

3 **Respondent Has Denied Access to Fassett's Requested Records through Delay and Non-**
4 **Response**

5 71. In response to three of Fassett's requests for disclosable public records, Respondent
6 has denied access to the requested records through its pattern and practice of delay and non-
7 response. Respondent has failed to provide even one record in response to these three requests, and
8 it has failed to communicate with Fassett in any meaningful way about the disclosability of the
9 records or its estimated date of production. Respondent has thereby repeatedly violated the CPRA.

10 72. First, Respondent failed to provide Fassett with a determination as to whether her
11 requested records are disclosable—let alone to do so within the required 10-day statutory period.
12 § 6253(c). For each of these three requests, the only communications Respondent sent to Fassett
13 were form emails acknowledging receipt of her requests. Because these emails were identical form
14 responses, it is unclear whether Respondent actually engaged with the specific content of Fassett's
15 requests at all. In any event, these form emails stated that a search for responsive documents was
16 "currently underway" but that "the requested records have not yet been fully identified."
17 Respondent ambiguously stated that it made a "preliminary determination" that Fassett's requests
18 "likely . . . seek disclosable records within the possession of the University." By Respondent's own
19 admission, it did not complete a search for Fassett's requested records within the 10-day statutory
20 period, making it impossible for it to make a determination as to the records' existence or
21 disclosability. The CPRA does not require a "preliminary" determination or a "likely"
22 determination as to the existence of and disclosability of requested records—it requires a firm
23 determination. *See* § 6253(c). These responses do not comply with the CPRA.

24 73. Further, Respondent has failed to provide Fassett with an estimated date when her
25 requested records will be produced. Respondent stated in each of its form responses that "[t]he
26 current timeframe for fulfillment of most requests is 8 weeks, although this may vary due to the
27 nature and complexity of the request." Rather than engaging specifically with the content of
28 Fassett's requests, Respondent produced the same vague, form estimate for all three requests.

1 Importantly, Respondent’s eight week “estimate” has proved to be woefully inaccurate. To date,
2 Fassett has waited 34 weeks (or nearly eight months) for her ICE request, 29 weeks for her Amazon
3 request, and 25 weeks for her Rise Above Movement request. Fassett has repeatedly contacted
4 Respondent asking for updated estimates as to when these records will likely be produced, but each
5 time Respondent has ignored Fassett’s communications entirely. By repeatedly failing to provide
6 Fassett with an accurate estimated date of production, Respondent has again violated the CPRA.

7 74. Most notably, Respondent has failed to provide even one single record in response to
8 Fassett’s requests. For each of these three requests, Respondent has indicated that it believes it is
9 required to disclose records, but it has failed to do so for months. It has been over eight months
10 since Fassett’s first request, and nearly six months since her most recent request. Respondent has
11 thereby unlawfully denied access to these public records, all of which carry a strong public interest
12 in disclosure. By failing to produce even one of these records, Respondent is maintaining in a
13 shroud of secrecy records related to its communications with federal immigration officers; its use of
14 federal military equipment; and its response to white supremacist organizations on campus.
15 Respondent has failed to provide these records at all—let alone “promptly,” as required by the
16 CPRA. § 6253(b).

17 75. Respondent’s delay and failure to communicate with Fassett regarding her requests
18 not only violates the letter of the CPRA, but also its spirit. The CPRA is predicated on the principle
19 that:

20 Openness in government is essential to the functioning of democracy. Implicit in
21 the democratic process is the notion that government should be accountable for its
22 actions. In order to verify accountability, individuals must have access to
23 government files. Such access permits checks against the arbitrary exercise of
24 official power and secrecy in the political process.

25 *Int’l Fed. Of Professional and Technical Engineers, Local 21, AFL-CIO v. Super. Ct.*, 42 Cal.4th
26 319, 328-39 (2007) (internal quotations omitted). By repeatedly failing to respond to requests for
27 such long periods of time, Respondent denies the public access to vital public information, and it
28 denies access to records while they are current and most relevant to the public interest. For example,
Fassett here requested in September 2017 records related to UCPD’s involvement in Urban Shield.

1 In March 2018—6 months later—the Alameda County Board of Supervisors voted to discontinue
2 its participation in Urban Shield due to public opposition. Records related to UCPD’s involvement
3 in Urban Shield would have been relevant to inform this vote, but they were still being withheld by
4 Respondent. Even now, approximately two months after the Board of Supervisors vote, Respondent
5 has still not provided access to these requested documents. By so delaying access to records,
6 Respondent is withholding important information from the public and frustrating the democratic
7 process.

8 **THIRD CAUSE OF ACTION:**
9 **DECLARATORY RELIEF PURSUANT TO THE CALIFORNIA PUBLIC RECORDS ACT,**
10 **GOV’T CODE § 6250, *et seq.*, CODE OF CIV. PROC. § 1060**

11 76. Petitioner incorporates herein by reference the allegations of paragraphs 1 through 75
12 above, as if set forth in full.

13 77. Petitioner is entitled to seek declaratory relief due to violation of the CPRA. § 6258.
14 Petitioner has performed all conditions precedent to filing this petition. There are no administrative
15 exhaustion requirements under Government Code § 6250, *et seq.* Petitioner has no plain, speedy,
16 adequate remedy in the ordinary course of law other than the relief sought in this petition. *See Code*
17 *of Civil Procedure § 1086.*

18 78. Respondent has a clear, present, ministerial duty to comply with the California
19 Constitution and Government Code § 6250, *et seq.* Respondent has repeatedly acted and continues
20 to act in violation of the CPRA by maintaining a pattern and practice of denial of access to public
21 information through misuse of exemptions, impermissible delay, non-responsiveness, and failure to
22 engage with the specific requests it receives. § 6253(b), (d).

23 79. An actual controversy exists between the parties concerning whether Respondent has
24 engaged in conduct that violates the statutory requirements of the CPRA and the California
25 Constitution. A judicial determination to resolve this actual controversy is necessary and
26 appropriate at this time.

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Dated: May 31, 2018

Respectfully submitted,

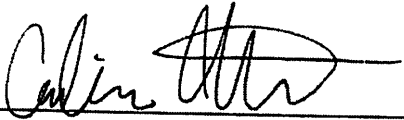


ANNA VON HERRMANN
Attorney for Petitioner and Plaintiff

VERIFICATION

1
2 I, CAMILLE FASSETT, am the Petitioner and Plaintiff in this action. I have read the
3 foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and
4 know the contents thereof. The same is true of my own knowledge, except as to those matters which
5 are therein alleged on information and belief, and, as to those matters, I also believe them to be true.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing
7 is true and correct. Executed on this the 4th day of June, 2018 in San Francisco, California.
8

9
10 A handwritten signature in cursive script, appearing to read "Camille Fasset", is written over a horizontal line.

11 CAMILLE FASSETT
12 Petitioner and Plaintiff
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