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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF YUBA**

13 GRETCHEN FLOHR

14 Petitioner/Plaintiff,

15 v.

16 THE NORTH YUBA WATER
17 DISTRICT, and DOES 1 THROUGH
18 100, INCLUSIVE

19 Respondents/Defendants

Case No. CVPT19-00503

**VERIFIED PETITION FOR
ALTERNATE AND PEREMPTORY
WRIT OF MANDATE; COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RE ACCESS TO
RECORDS AND INFORMATION**

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INTRODUCTION

GRETCHEN FLOHR (Petitioner) seeks records controlled, actually and/or constructively possessed and/or used by THE NORTH YUBA WATER DISTRICT (Respondent) that Respondent is wrongfully withholding. Petitioner now seeks a writ of mandate, declaratory and injunctive relief to enforce Petitioner's constitutional, statutory and common law substantive and procedural rights to access the records she requests and to correct Respondent's abuses of discretion and to enforce performance of Respondent's duties - including but not limited to promptly providing the public with access to and copies of public records and information, to respond to records requests within 10 days, to segregate/redact exempt information from records, to provide copies of electronic records in electronic form, and to take affirmative steps necessary to provide Petitioner with access to the records she seeks.

JURISDICTION

1. The California Constitution provides:
 - a. the people have the right of access to information concerning the conduct of the people's business; and
 - b. statutes, court rules, or other authority shall be broadly construed to further the people's right of access information concerning the people's business, including but not limited to the writings of public officials; whereas statutes, court rules, or other authority shall be narrowly construed if an interpretation limits the same right of access. (Cal. Const. Art. I § 3(b) (1) and (2).)
2. A document within the actual or constructive possession of a local agency that containing information relating to the conduct of the public's business is a public record.
3. Delay violates the California Public Records Act and public agencies have an affirmative duty to avoid delay. (Government Code §§ 6258 and 6253(b), (c), (d) and (f); *see also, Open Am. v. Watergate Special Prosecution Force* (1976) 547 F.2d 605, 617 [delay in providing access to records is tantamount to denying access].)

1 4. Upon receiving a request for a copy of a public record that an agency controls,
2 the agency must perform duties on behalf of and to the benefit of the public, including but
3 not limited to:

- 4 a. replying to the request in writing within 10 days if the local agency intends
5 on withholding records responsive to the request (Government Code § 6253
6 (c));
- 7 b. affirmatively assisting the requester to access the records the requester seeks
8 (Government Code § 6253.1);
- 9 c. if the agency alleges that any of the information within any record responsive
10 to the request is exempt from disclosure, the agency must produce the records
11 with the allegedly exempt information redacted (Government Code § 6253
12 (a));
- 13 d. if the requested records are maintained in an electronic form, the agency must
14 provide access to or copies of these records in the electronic format in which
15 the records are maintained (Government Code § 6253.9); and
- 16 e. if a citizen asks for copies, a public agency can charge only the “direct costs”
17 for making copies (Government Code §§ 6253(b) and 6253.9(a)(2)).

18 5. Whenever a member of the public believes that a local agency is failing in
19 part or in whole to perform the duties necessary to provide the public with access to a
20 record, that member of the public may bring a verified petition to the superior court of the
21 county where the records are situated for an order requiring the officer or person charged
22 with withholding the records to disclose the public records/information. (Government
23 Code §§ 6258 and 6259(a).)

24 6. Whenever it is made to appear by verified petition to the superior court of the
25 county where the records or some part thereof are situated that certain public records are
26 being improperly withheld from a member of the public

- 27 a. the reviewing court shall examine records in dispute *in camera* (Government
28 Code § 6259(a));

1 b. the court shall order the officer or person charged with withholding the
2 records to disclose the records or show cause why she or she should not do so
3 (Government Code § 6259(a));

4 c. if the Court finds that Respondent's decision to refuse disclosure is not
5 justified, the Court shall order Respondent to make the record public
6 (Government Code § 6259(b)); and

7 7. Code of Civil Procedure § 1085 et al. provides the public with the right to
8 enforce, via court order, the performance of ministerial duties and/or the right to correct
9 abuses concerning discretionary duties.

10 8. Code of Civil Procedure § 1060 provides the public the right to seek a
11 determination of the parties' statutory and/or contractual rights.

12 9. Code of Civil Procedure § 525 et al. provides the public with the right to
13 injunctive relief to prevent or address irreparable injury.

14 10. Independent of the California Constitution and California statutes, California
15 common law provides the public with the right to access records pertaining to the public's
16 business. (*Sander v. State Bar of California* (2013) 58 Cal.4th 300; *Mushet v. Department*
17 *of Public Service* (1917) 35 Cal. App. 630.)

18 **VENUE**

19 11. Petitioner realleges Paragraphs 1 through 10 as though fully incorporated
20 herein.

21 12. Venue in Yuba County is proper because Respondent's place of business is
22 in Yuba County and the records in dispute are located in Yuba County

23 **THE PARTIES**

24 13. Petitioner realleges Paragraphs 1 through 12 as though fully incorporated
25 herein.

26 14. Petitioner is a resident of Yuba County and an elected member of
27 Respondent's Board of Directors.

28 15. Respondent is a local agency operating under and subject to the laws of the

1 State of California, including but not limited to the CPRA.

2 16. Petitioner does not know the true names and capacities of Does 1 through 100
3 and therefore sues these Respondents fictitiously. Petitioner will allege their true names
4 and capacities when they are ascertained.

5 **FACTS COMMON TO ALL CLAIMS**

6 17. Petitioner realleges Paragraphs 1 through 16 as though fully incorporated
7 herein.

8 18. Prior to her election to Respondent's Board of Directors, Petitioner requested
9 access to and copies of identifiable records Respondent maintains, used and/or
10 constructively possesses pertaining to the conduct of the public's business.

11 19. Respondent (1) did not respond to Petitioner's records requests within 10
12 days, (2) did not request an additional 14 days to respond to Petitioner's requests; (3) did
13 not take affirmative steps to assist Petitioner to access the records she requested; (4) did
14 not provide access to records/information Petitioner requested; and (5) failed to segregate
15 exempt information from nonexempt information, and otherwise engaged in a pattern of
16 conduct that caused and continues to cause unnecessary delay.

17 20. After Petitioner was elected to Respondent's Board of Directors, she renewed
18 the records requests she made prior to her election. Respondent (1) did not respond to
19 Petitioner's post-election records requests within 10 days, (2) did not request an additional
20 14 days to respond to Petitioner's requests; (3) did not take affirmative steps to assist
21 Petitioner to access the records she requested; (4) did not provide access to
22 records/information Petitioner requested; and (5) failed to segregate exempt information
23 from nonexempt information, and otherwise engaged in a pattern of conduct that caused
24 and continues to cause unnecessary delay.

25 21. On March 12, 2019, Petitioner renewed her pre-election and post-election
26 requests via email and warned Respondent that if Respondent did not reply by March 15,
27 2019, then Petitioner would seek a judicial remedy. Respondent did not reply to Petitioner's
28 renewed records request.

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1 22. There are no administrative remedies that can or would remedy the violations
2 of Petitioner's constitutional and statutory right to the records and information she seeks.

3 **FIRST CAUSE OF ACTION**

4 **(Traditional Mandamus – as to all Defendants – CCP §1085 et seq.)**

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

7 24. As a member of the public, as an elected member of Respondent's Board of
8 Directors, and a holder of the aforementioned constitutional right to access public records,
9 Petitioner has a present beneficial interest in the outcome of these proceedings and has a
10 clear, present and substantial right to the relief sought herein. (Cal. Const. Art. 1 § 3;
11 Government Code §§ 6252.5, 6253, 6253.9, 6258, 6259.)

12 25. Respondent failed to perform its duties owed to the public and to Petitioner,
13 including but not limited to (1) timely respond to Petitioner's records requests; (2) request
14 additional time to respond to Petitioner's records requests; (3) take affirmative steps to
15 assist Petitioner to access the records she requested provide records; (4) provide access to
16 any of the records or information Petitioner requested; (5) segregate exempt information
17 from nonexempt information, and otherwise engaged in a pattern of conduct that caused
18 and continues to cause unnecessary delay.

19 26. Petitioner requests relief as specified below.

20 **SECOND CAUSE OF ACTION**

21 **(Writ of Mandate– as to all Defendants – Government Code § 6258)**

22 27. Petitioner realleges Paragraphs 1 through 26 as though fully incorporated
23 herein.

24 28. Respondent failed to provide and is wrongfully denying Petitioner's request
25 to access and obtain copies of identifiable records Respondent maintains, used and/or
26 constructively possesses that relate to the conduct of the public's business.

27 29. Petitioner requests relief as specified below.

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1 **THIRD CAUSE OF ACTION**

2 **(Injunctive Relief – as to all Defendants – Government Code § 6258**
3 **and/or Code of Civil Procedure § 525)**

4 30. Petitioner realleges Paragraphs 1 through 29 as though fully incorporated
5 herein.

6 31. Petitioner seeks to enforce her constitutional, statutory and common law
7 rights to obtain copies of records related to the conduct of the public's business, the
8 violation of which automatically establishes irreparable harm that cannot be remedied
9 through an action at law. (*Smith v. Novato Unified School Dist.* (2007) 150 Cal.App.4th
10 1439, 1465 (quoting *Elrod v. Burns* (1976) 427 U.S. 347, 373).)

11 32. Unless Petitioner is provided access to and copies of the documents and
12 information she seeks, the public's right to examine records pertaining to the public's
13 business will continue to be frustrated and Petitioner's constitutional rights will continue
14 to be violated.

15 33. Petitioner has no plain, speedy, and adequate remedy at law other than this
16 action. Respondent has a clear, mandatory and ministerial duty to provide Petitioner with
17 copies of the records she seeks. If Respondent's decision to deny Petitioner copies of these
18 records is a discretionary act, then Respondent has abused that discretion.

19 34. Petitioner requests relief as specified below.

20 **FOURTH CAUSE OF ACTION**

21 **(Declaratory Relief – as to all Defendants – Government Code § 6258**
22 **and/or Code of Civil Procedure § 525)**

23 35. Petitioner realleges Paragraphs 1 through 34 as though fully incorporated
24 herein.

25 36. An actual and existing controversy exists between the parties pertaining to
26 Petitioner's exercise of her right to access and obtain copies of public records and
27 Respondent's patent refusal to satisfy its duties upon receiving a reasonable request for
28 public records. Respondent's actions and inactions described herein violated and continue

1 to violate the California Constitution (Art. I § 3(b)(1) and (2)), and Government Code §
2 6250 et seq. and California common law recognizing and assuring the public access to
3 records pertaining to the public's business.

4 37. Petitioner seeks a judicial declaration that Respondent has violated and/or
5 continues to violate these constitutional, statutory and administrative provisions and a
6 declaration determining the respective rights and duties of the parties.

7 38. Petitioner requests relief as specified below.

8 **PRAYER FOR RELIEF**

9 **Traditional Mandamus:**

10 ■ A peremptory writ of mandate ordering Respondent to carry out all ministerial duties
11 and correct all abuses of discretion in order to promptly provide Petitioner and all citizens
12 access to and copies of all documents responsive to their records requests.

13 ■ An alternative writ of mandate ordering Respondent to provide the relief requested
14 above or to show cause why such an order should not issue.

15 ■ Pursuant to the California Public Records Act (Government Code § 6253) Petitioner
16 requests that the Court order Respondent to show cause why it should not be compelled to
17 comply with all ministerial duties, correct all abuses of discretion pertaining to Respondent's
18 performance of any discretionary duties, and to provide access to and copies of the records
19 Petitioner seeks.

20 ■ An award of costs and fees.

21 ■ Any other relief the Court deems just and proper.

22 **Writ of Mandate per the California Public Records Act:**

23 ■ A peremptory writ of mandate ordering Respondent to provide Petitioner with access
24 to and copies of all documents responsive to Petitioner's request in electronic format; or

25 ■ An alternative writ of mandate ordering Respondent to provide the relief requested
26 above or to show cause why such an order should not issue.

27 ■ Pursuant to the California Public Records Act (Government Code § 6253) Petitioner
28 requests that the Court order Respondent to show cause why it should not be compelled to

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1 comply with all ministerial duties, correct all abuses of discretion pertaining to Respondent's
2 performance of any discretionary duties, and to provide access to and copies of the records
3 Petitioner seeks.

- 4 ■ An award of costs and fees.
- 5 ■ Any other relief the Court deems just and proper.

6 **Injunctive Relief:**

7 ■ The issuance of a permanent injunction ordering Respondent to provide Petitioner
8 with access to and copies of all documents responsive to Petitioner's records request in
9 electronic format.

- 10 ■ An award of costs and fees.
- 11 ■ Any other relief the Court deems just and proper.

12 **Declaratory Relief:**

13 ■ The issuance of a declaratory judgment that,

- 14 1. pursuant to Art. I § 3(b)(1) and (2) of the California Constitution, and the California
15 Public Records Act (Government Code § 6250 et seq.) Respondents have the duties
16 described herein the fulfillment of which are necessary to provide to the public,
17 including but not limited to Petitioner, with access to and copies of public records
18 Petitioner seeks regardless of the form of these writings or where these writings are
19 located and/or maintained.
- 20 2. Respondents violated Art. I § 3(b)(1) and (2) of the California Constitution, and/or
21 the California Public Records Act (Government Code § 6250 et seq.).

- 22 ■ An award of costs and fees.
- 23 ■ Any other relief the Court deems just and proper.

24 Dated: March 19, 2019

PAUL NICHOLAS BOYLAN, ESQ.



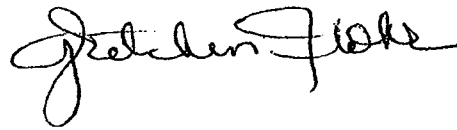
Paul Nicholas Boylan, Attorney for Petitioner,
GRETCHEN FLOHR

VERIFICATION

I, GRETCHEN FLOHR, declare:

1. I am the Petitioner in this action. I make this verification of my own knowledge. I hereby verify that the factual matters stated in this Petition/Complaint are known to me personally and that they are true.

I declare under penalty of perjury under the laws of California that the foregoing is true and that this verification was executed in Oregon House, California on March 19, 2019.



GRETCHEN FLOHR

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