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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN FRANCISCO**

15
16 AMERICAN CIVIL LIBERTIES UNION OF NORTHERN
CALIFORNIA, a non-profit corporation,

17
18 Petitioner,

19 v.

20 THE CALIFORNIA DEPARTMENT OF CORRECTIONS
AND REHABILITATION,

21 Respondent.

CASE NO. CPF-23-517967

**NOTICE OF MOTION AND
MOTION FOR WRIT OF
MANDATE AND PARTIAL
JUDGMENT ON THE FIRST
AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
FIRST AMENDED VERIFIED
PETITION FOR WRIT OF
MANDATE**

**Date: September 19, 2023
Time: 9:30 a.m.
Department: 302
Trial Date: Not set**

[Gov. Code, §§ 7920.000–7931.000]

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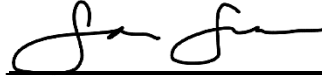
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1 Dated: July 27, 2023

Respectfully Submitted,

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Petitioner moves to compel the California Department of Corrections and Rehabilitation
4 (“CDCR”) to produce unlawfully withheld and improperly redacted records in compliance with the
5 Public Records Act (“PRA”) and the California Constitution.

6 CDCR’s ongoing improper redaction of records and vague partial denial of a PRA request
7 made by Petitioner are unlawful. CDCR has failed to specify which portion of Petitioner’s PRA
8 request (“the Request”) it is denying and has asserted unjustified and boilerplate exemptions.
9 Moreover, CDCR has produced numerous duplicate records. Between CDCR’s heavy redactions
10 and production of duplicates, it is impossible for Petitioner to discern the agency’s progress in
11 complying with the Request. Additionally, the slow pace at which the agency has produced records
12 frustrates Petitioner’s right to access information regarding CDCR’s ongoing collaboration with
13 federal immigration authorities.

14 Prompt disclosure of these records is urgent and of great public concern. On April 26, 2023,
15 members of the Senate Rules Committee publicly questioned CDCR Secretary Jeff Macomber
16 about the practices implicated in these records, raising grave concerns about whether CDCR is
17 engaging in unconstitutional discrimination and violating other provisions of state law.¹ In
18 response, Secretary Macomber stated that CDCR was in the process of drafting regulations to no
19 longer consider immigration status when evaluating people for reentry programming—a departure
20 from current policies. On April 27, 2023, incarcerated and formerly incarcerated Californians sued
21 CDCR for its discriminatory practices and policies developed to facilitate collaboration with
22 federal immigration enforcement authorities.²

23 Accordingly, Petitioner seeks a writ of mandate requiring CDCR to (1) promptly produce
24 all unlawfully withheld and improperly redacted records, (2) pursuant to an enforceable production
25 schedule, and (3) to provide an index specifically identifying the legal basis for all redactions the

26 _____
27 ¹ CDCR Secretary Confirmation Hearing, Hearing before Sen. Rules Com., at 51:25 (Apr. 26,
28 2023) *available at* <https://www.senate.ca.gov/media/senate-rules-committee-20230426/audio>.

² *Asian Prisoner Support Committee, et. al v. CDCR* (Super. Ct. Alameda County, 2023, No. 23-
CV-031986).

1 agency may claim, which Petitioner reserves the right to challenge through subsequent motions in
2 this matter. Absent the relief requested, Petitioner has no plain, speedy, or adequate remedy at law.

3 **FACTS**

4 CDCR has failed to comply with the PRA by (1) refusing to justify the basis for CDCR's
5 partial denial of the PRA request, (2) asserting overbroad and unsupported exemptions in response
6 to Petitioner's multiple requests for clarity on CDCR's improper redactions of responsive records,
7 and (3) producing records in an unmanageable manner that undermines Petitioner's right to access
8 these records.

9 **Petitioner's Request for Records**

10 On September 13, 2022, Petitioner submitted a PRA request ("Request") to CDCR seeking
11 public records to understand the scope of CDCR's collaboration with ICE. (First Amended Petition
12 ("FAP") ¶ 21; Declaration of Sana Singh ("Singh Decl."), Exhibit A.) The Request sought records
13 related to CDCR's policies regarding active and potential immigration holds or detainers and
14 communications between CDCR and U.S. Immigration and Customs Enforcement ("ICE"). (*Id.*).
15 Specifically, the Request sought the following records related to CDCR's collaboration with ICE,
16 all of which are "public records" under the PRA (see Gov. Code, § 7920.530):

17 (1) Dating January 1, 2018 to the date of CDCR's response to this request, any and all records
18 related to CDCR's policies, procedures, regulations, memoranda, guidance, and forms related
19 to active or potential immigration holds or detainers.

20 (2) Dating January 1, 2021 to the date of CDCR's response to this request, any and all records of
21 communication between CDCR and U.S. Immigration and Customs Enforcement (ICE). This
22 includes any email communication between CDCR and entities using the email domain of
23 "@ice.dhs.gov."

24 (See FAP ¶ 22.) On October 14, 2022, after CDCR invoked and exceeded the limits of a statutory
25 extension to respond to the Request, CDCR notified Petitioner that it had identified over 65,000
26 responsive records, which would be produced to Petitioner in batches on a weekly basis. (*Id.* ¶¶ 24-
27 25.) CDCR did not actually begin producing responsive records until November 4, 2022. (*Id.* ¶¶
28 26-27.).

After producing several hundred records, many of which included dozens of pages which
were wholly redacted, CDCR called Petitioner and announced that production would be

1 temporarily halted due to inadvertent disclosure of confidential information – without specifying
2 the information at issue, or providing an explanation for why such information was deemed
3 confidential. (*Id.* ¶ 28.) On December 8, 2022, CDCR halted record production and removed all
4 previously uploaded documents from CDCR’s Public Records Portal. (FAP ¶ 29.) The agency
5 failed to explain why the records were exempt under any express provision of the PRA; nor did it
6 otherwise justify withholding the responsive records. (*Id.* ¶ 30.)

7 On December 16, 2022, Petitioner wrote to CDCR to ask that CDCR clarify the nature of
8 the confidential information it claimed was inadvertently disclosed and to request legal support for
9 CDCR’s demand that already produced documents be destroyed or returned. (FAP ¶ 31.) Petitioner
10 also requested a timeline for when CDCR would begin producing responsive, redacted records.
11 (*Ibid.*) Having received no response, Petitioner followed up on this request through written
12 communications on January 9, 2023 and January 30, 2023. (*Id.* ¶¶ 32-33.) CDCR did not respond
13 and failed to resume production of responsive records. (*Ibid.*) Thus, on February 15, 2023,
14 Petitioner filed a Verified Petition for Writ of Mandate with this Court to seek relief from CDCR’s
15 actions in violation of the PRA. (*Id.* ¶ 34.)

16 **CDCR’s Unlawfully Vague February 21, 2023 Communication**

17 On February 21, 2023, CDCR wrote to Petitioner via CDCR’s Public Records Portal stating
18 that it was “partially denying [Petitioner’s] request because some of the identified records are
19 exempt from disclosure.” (Singh Decl., Exhibit B at pp. 21-22.) CDCR further stated that “the
20 applicable exemptions are fully discussed below” and simply listed sections of the Government
21 Code, Penal Code, and Code of Regulations, stating that:

22 The legal basis for the redactions/ withholding is Gov. Code 7927.700 (former
23 6254(c)), as analyzed by the court in *Los Angeles Unified School District v. The*
24 *Superior Court of Los Angeles County*, 228 Cal.App.4th 222; and *United States*
25 *Department of State v. The Washington Post Company*, 456 U.S. 595. The *LAUSD* case
26 stands for the proposition that the CPRA is based on FOIA and goes on to define the
27 broad scope of GC 6254(c), which uses identical language taken from FOIA. In the
28 *Washington Post* case, the US Supreme Court held that the language in the FOIA that
is identical to GC 6254(c) operates to bar the disclosure of the citizenship information
being sought.

1 (*Ibid.*) On February 21, 2023 and March 14, 2023, CDCR produced several hundred heavily
2 redacted responsive records. (Singh Decl. ¶ 15.) It did not explain the basis for the redactions.
3 (*Ibid.*) Nor did it provide any chart or “key” detailing the exemptions CDCR believes apply to the
4 redactions. (*Ibid.*) CDCR has continued producing several hundred pages of heavily redacted
5 records, without explanation of the basis for the redactions, every two weeks from March 14 to the
6 present. (*Ibid.*) Nonetheless, there remain approximately 64,500 records responsive to the Request
7 that it has not yet produced. (FAP ¶ 40.)

8 **Petitioner’s Attempt to Informally Resolve these Disputes**

9 On March 17, 2023, before counsel for CDCR had appeared in this case, Petitioner sent a
10 letter to the California Attorney General’s Office seeking to resolve or narrow the issues of
11 CDCR’s unjustified redactions and partial denial. (Singh Decl., Exhibit D.) On April 3, 2023,
12 counsel for CDCR requested an extension for CDCR to file a responsive pleading. (*Id.* ¶ 17.)
13 Petitioner agreed to CDCR’s request and reiterated the importance of the issues raised in the
14 petition and March 17 letter, and Petitioner’s interest in reaching a prompt resolution. (*Ibid.*) Two
15 weeks later, Petitioner followed up with CDCR’s counsel to seek a resolution to the issues raised in
16 the March 17 letter, provide further explanation of the issues, and set a time on April 20, 2023 to
17 meet and confer. (*Id.* ¶¶ 19-21.) After the April 20 meeting between counsel, CDCR ceased
18 redacting certain information that is not exempt, but continued redacting significant amounts of
19 information that is not exempt and continued to fail to adequately explain its redactions. (*Id.* ¶¶ 21-
20 22.) Specifically, the email domain names of federal immigration authorities (i.e., “@ice.dhs.gov”),
21 corresponding federal immigration sub-offices, and some anonymized nationality information are
22 visible in some recent productions. (*Id.* ¶ 23.)

23 Soon after the April 20 meeting, Petitioner became aware of an additional problem with
24 CDCR’s production of records. In addition to heavily redacting responsive records without
25 justification, CDCR had also been removing, without notice or explanation, certain documents it
26 had previously uploaded to the Public Records Portal. (Singh Decl. ¶ 24.) Additionally, CDCR had
27 been re-uploading duplicates of documents that it had previously produced. (*Id.* ¶ 25.) Together,
28 these actions impeded Petitioner’s ability to track CDCR’s production of responsive records, and

1 give the impression of CDCR making more progress in its productions than it actually is. (*Ibid.*)

2 Petitioner subsequently also realized that several emails produced by CDCR are missing
3 apparently substantive information. Those emails contain informational tables. But the right sides
4 of those tables are cut off in CDCR’s productions, preventing Petitioner and the public from
5 knowing what information is contained in the cut-off portions of the tables and the meaning of the
6 tables more generally. (*Id.* ¶ 26.)

7 On May 4, Petitioner contacted CDCR’s counsel to request an urgent meeting to discuss
8 these additional issues and to follow up, again, on the issues raised in the March 17 letter. (*Id.* ¶
9 27.) Despite repeated follow up emails, as of the date of this filing, CDCR has not resolved these
10 issues. (*Ibid.*)

11 On July 27, 2023 Petitioner filed an Amended Petition.

12 **ARGUMENT**

13 The PRA and California Constitution require prompt disclosure of all non-exempt public
14 records. Despite CDCR’s mandatory, non-discretionary duties to produce public records, CDCR
15 has failed to meet its obligations by delaying its response to the Request, ignoring Petitioner’s
16 requests for information regarding CDCR’s partial denial of the Request, and improperly redacting
17 the records produced thus far. CDCR’s violation of the PRA and failure to follow through on
18 Petitioner’s attempts to resolve this dispute informally has impeded Petitioner’s access to records
19 of great public importance.

20 **The PRA and Constitution Require Prompt Disclosure of Nonexempt Public Records.**

21 The PRA and the California Constitution create a presumptive right of access to public
22 records. (*City of San Jose v. Superior Ct.* (2017) 2 Cal.5th 608, 616-17.) Under the PRA, “access to
23 information concerning the conduct of the people’s business”—business conducted by public
24 agencies on behalf of the people—is a “fundamental and necessary right of every person in this
25 state.” (Gov. Code, § 7921.000.) The PRA evinces “a strong policy in favor of disclosure of public
26 records.” (*California State University v. Superior Ct.* (2001) 90 Cal.App.4th 810, 831.) The
27 California Constitution further requires that any “statute, court rule, or other authority,” such as the
28 PRA, “be broadly construed if it furthers the people’s right of access, and narrowly construed if it

1 limits the right of access.” (Cal. Const., art. I, § 3, subd. (b), par. (2).)

2 The PRA allows a requestor to seek a writ of mandate to enforce the right to access any
3 nonexempt public record and requires a court to order disclosure where records are being
4 improperly withheld. (Gov. Code, §§ 7923.000, 7923.100. See also Code Civ. Proc., §§ 1085 *et*
5 *seq.*) The PRA requires courts to proceed “with the object of securing a decision as to the[se]
6 matters at the earliest possible time.” (Gov. Code, § 7923.005.)

7 **CDCR’s Conduct Violates the PRA and the California Constitution.**

8 CDCR has failed to comply with the PRA’s disclosure obligations. The Request seeks
9 information essential to the oversight of state agency collaboration with federal immigration
10 enforcement. By asserting improper, unsupported and boilerplate exemptions and selectively—as
11 well as belatedly—producing limited records, CDCR has denied the fundamental right of Petitioner
12 and the public to information.

13 **CDCR’s Boilerplate and Overbroad Exemptions Are Improper and Unsupported.**

14 The PRA imposes on agencies a non-discretionary obligation to disclose public records
15 unless “exempt from disclosure by express provisions of law” or there is an overwhelming public
16 interest justification in withholding the requested record. (Gov. Code, § 7922.530, subd. (a); *id.*, §
17 7922.000.) The agency bears “the burden of affirmatively showing that withheld materials need not
18 be disclosed.” (*ACLU of Northern California v. Superior Ct.* (2011) 202 Cal.App.4th 55, 82; see
19 also Gov. Code, § 7922.000.) CDCR has failed to meet this burden in response to Petitioner’s
20 request for policies, procedures, regulations, and records of communications with ICE. First,
21 CDCR asserted exemptions generally without identifying whether it was indeed withholding in
22 whole certain records, what records it was withholding, and what justification it was asserting for
23 any withholding. Second, the asserted exemptions cannot be supported in law.

24 **CDCR’s Boilerplate Exemptions Are Insufficient and Do Not Justify Its Redactions.**

25 CDCR has not met its burden of showing that it is properly withholding information and/or
26 documents in whole. CDCR failed to provide specificity as to the records withheld, which
27 exemptions applied to which records, or the requisite justification for the withholding; and issued
28 boilerplate exemptions contrary to law.

1 Exemptions must be narrowly construed, and blanket exemptions are never appropriate.
2 (*City of San Jose, supra*, 2 Cal.5th at pp. 617, 629; *County of Santa Clara v. Superior Ct.* (2009)
3 170 Cal.App.4th 1301, 1321.) An agency is required to provide “adequate specificity to assure
4 proper justification” for withholding. (*ACLU of Northern California, supra*, 202 Cal.App.4th at p.
5 82 [quoting *Vaughn v. Rosen* (D.C. Cir. 1973) 484 F.2d 820, 827].) Such justification requires
6 more than “[c]onclusory or boilerplate assertions that merely recite statutory standards.” (*Id.* at p.
7 83.) “Because the agency has full knowledge of the contents of the withheld records and the
8 requester has only the agency’s . . . descriptions of the documents, its affidavits must be specific
9 enough to give the requester a meaningful opportunity to contest the withholding of the documents
10 and the court to determine whether the exemption applies.” (*Ibid.* [internal citations and quotations
11 omitted].) Moreover, an agency must segregate exempt from nonexempt material and disclose
12 “[a]ny reasonably segregable portion of a record.” (Gov. Code, § 7922.525, subd. (b).) If an agency
13 makes a partial denial of a request for records, it must issue that denial in writing and justify the
14 partial withholding. (Gov. Code, § 7922.540, subd. (a).)

15 CDCR has failed to demonstrate either that the requested records fall under a specific legal
16 exemption or that the public interest served by denying disclosure “clearly outweighs” the public
17 interest that would be served by its disclosure. (Gov. Code, § 7922.000.) CDCR has given
18 Petitioner only a vague statement that it “is partially denying” the Request “because some of the
19 identified records are exempt from disclosure.” (Singh Decl., Exhibit B at pp. 21-22; see also Singh
20 Decl. ¶ 14.) This statement provides no specific basis for withholding *any* individual record, much
21 less the requisite detailed justification. Furthermore, CDCR produced redacted email
22 communications (Singh Decl. ¶¶ 14-15; Exhibit B at pp. 21-22) without specifying which
23 exemptions justified the redactions.

24 **CDCR Is Withholding Particular Types of Information That Are Clearly Not Exempt.**

25 Not only does CDCR fail to specify the basis for particular withholdings or redactions – it
26 also withholds clearly non-exempt categories of information. CDCR has not and cannot justify its
27 assertion of exemptions as to entire categories of information it routinely redacts from responsive
28 records. These include:

- The complete redaction of public court records (See Singh Decl., Exhibit F);
- Redactions of information identifying the race, nationality, national origin, citizenship status, place of birth, or other indicia of national origin, race or ethnicity of individuals in CDCR or ICE custody, in documents that do *not* include personally identifying information of the individual in custody (See Singh Decl., Exhibits G, H).³

CDCR cannot justify its redactions that fall in these categories. (See, e.g., *Copley Press, Inc. v. Superior Ct.* (1998) 63 Cal.App.4th 367, 373 [“Court records are available to the public in general ... unless a specific exception makes specific records nonpublic.”]; *ACLU Found. of Arizona v. U.S. Dept. of Homeland Security* (D. Ariz. Jan. 26, 2017, No. CV-14-02052-TUC-RM(BPV)) 2017 WL 8895339, at *24 [finding that DHS’ redactions of citizenship, nationality, and complexion information was improper where names, addresses, and other information “that would make the subject unique or vulnerable to identification” had been redacted and there was a public interest in, among other things, “understand[ing] whether Latino citizens and legal residents are disproportionately burdened by Border Patrol [operations]”]; *ACLU of Washington v. U.S. Dept. of Just.* (W.D. Wash. Mar. 10, 2011, No. C09-0642RSL) 2011 WL 887731, at *5, *on reconsideration*, (W.D. Wash. May 19, 2011, No. C09-0642RSL) 2011 WL 1900140 [finding that “descriptors that apply to whole populations, such as race, sex, country of birth, and passport country, are not reasonably likely to identify any particular individual”]⁴; *Sander v. State Bar of California* (2013) 58 Cal.4th 300, 326 [rejecting respondent’s argument that disclosure of race, sex, and ethnicity information would violate applicants’ privacy even if it could not be connected to them as individuals].) The Court should order CDCR not to withhold or redact information that falls in these two categories.

CDCR’s Delays and Haphazard Production Violate the PRA.

The PRA codifies specific requirements and deadlines that agencies must observe upon

³ These examples of unlawful redactions are not exhaustive, and Petitioner reserves the right to challenge the bases for any redactions CDCR may claim if and when it explains which exemptions purportedly apply to which redactions. See Section B.1.a, *supra* & Section C, *infra*.

⁴ “Federal statutes and cases implementing or interpreting the federal Freedom of Information Act (FOIA) are instructive [in PRA cases] because the California Act is modeled on the FOIA.” (*Michaelis, Montanari & Johnson v. Superior Ct.* (2006) 38 Cal.4th 1065, 1076.)

1 receipt of a public records request. (Gov. Code, §§ 7920.000 *et seq.*) It requires that, in response to
2 a request, agencies “make the records promptly available,” so long as the records are not expressly
3 exempt. (Gov. Code, § 7922.530, subd. (a).) The requirement to make records “promptly available”
4 “typically would mean within days or a few weeks of a ‘determination,’ not months or years.”
5 (*Citizens for Resp. & Ethics in Washington v. Fed. Election Com.* (D.C. Cir. 2013) 711 F.3d 180,
6 188–89.⁵) Delay is permitted “only to the extent reasonably necessary to the proper processing of
7 the particular request.” (Gov. Code, § 7922.535.) Though the PRA contemplates that agencies will
8 need time to review and segregate exempt information (see Gov. Code, § 7922.525), “[n]othing in
9 [the PRA] shall be construed to permit an agency to delay or obstruct the inspection or copying of
10 public records” (Gov. Code, § 7922.500).

11 Here, though CDCR produced some responsive records in November of 2022, it then
12 stopped producing records for months and ignored Petitioner’s multiple communication attempts,
13 without providing either justification for the prolonged delays or any estimated timeline for the
14 completion of production. (See, e.g., Singh Dec. ¶¶ 7-12.) Nearly six months after the Request, and
15 only after the filing of the petition for writ of mandate in this action, CDCR represented that
16 “documents [would] be produced on a rolling basis” presumably until complete. (Singh Decl.,
17 Exhibit B at pp. 24-26.) Since then, approximately every two weeks, CDCR has produced varying
18 numbers of records in every batch ranging from 112 to 376. (See Singh Decl. ¶ 24) Given that
19 CDCR initially identified 65,000 responsive records, if it continues at the current rate of
20 production, it will take anywhere from 7 to 21 *years* to produce all of the responsive records. Yet
21 CDCR provides no timeline for when production might be complete or a consistent number of
22 responsive records to be processed for each production. In addition, the manner by which CDCR
23 has produced records in response to the Request is unmanageable, resulting in the disappearance of
24 some records from the Public Records Portal and the production of duplicates of those records.
25 (See Singh Decl. ¶¶ 24-25.) As a result, Petitioner is unable to meaningfully track the agency’s
26

27 ⁵ “Federal statutes and cases implementing or interpreting the federal Freedom of Information Act
28 (FOIA) are instructive [in PRA cases] because the California Act is modeled on the FOIA.”
(*Michaelis, Montanari & Johnson, supra*, 38 Cal.4th at p. 1076.)

1 progress in producing responsive records.

2 This dribble of information, coupled with CDCR’s extensive and unjustified delays and
3 haphazard manner of production, is inconsistent with CDCR’s obligations pursuant to the PRA.

4 **The Court Should Order CDCR to Produce a *Vaughn* Index and Set a Schedule for**
5 **Production of Records.**

6 California courts hearing PRA actions have broad authority to order relief to determine
7 whether records are exempt from disclosure and to provide for meaningful access to nonexempt
8 records, including requiring a *Vaughn* index⁶ and ordering that records be produced according to a
9 specified schedule. After a petition to enforce the PRA has been filed, a court may order the
10 respondent agency to produce a *Vaughn* index. (See *ACLU of Northern California, supra*, 202
11 Cal.App.4th at p. 83 “[I]n California courts . . . , ‘an adequate factual basis may be established [to
12 justify an agency’s claim of exemption] . . . through . . . a *Vaughn* Index,’” among other methods]
13 [quoting *Miccosukee Tribe, supra*, 516 F.3d at p. 1258]; *Haynie v. Superior Ct.* (2001) 26 Cal.4th
14 1061, 1072–73 [observing that courts have ordered agencies to prepare lists of records for which
15 exemptions were asserted after the filing of a petition to compel disclosure under the PRA]; *Times*
16 *Mirror Co. v. Superior Ct.* (1991) 53 Cal.3d 1325, 1356–57 [Kennard, J. dissenting] [discussing
17 utility of *Vaughn* indexes in FOIA cases]; *cf. State Bd. of Equalization v. Superior Ct.* (1992) 10
18 Cal.App.4th 1177, 1193 [PRA “does not prohibit a court from ordering the preparation of a list of
19 the documents which are sought. Providing such a list is consistent with the language and spirit of
20 the Public Records Act.”].) Here, a *Vaughn* index is appropriate because, even after Petitioner’s
21 repeated attempts to gain clarity regarding CDCR’s claimed exemptions, CDCR has failed to
22 specify which of its asserted exemptions apply to which specific records or redactions. Ordering
23 production of a *Vaughn* index is consistent with the PRA’s requirement that agencies identify
24 claimed exemptions with sufficient specificity to justify withholdings and redactions. (See Gov.

25 _____
26 ⁶ A *Vaughn* Index is “a list containing the information claimed as exempt and the corresponding
27 exemption under which it is claimed[,]” including “‘a relatively detailed justification, specifically
28 identifying the reasons why a particular exemption is relevant and correlating those claims with the
particular part of a withheld document to which they apply.’” (*ACLU of Northern California,*
supra, 202 Cal.App.4th at p. 83 [quoting *Miccosukee Tribe of Indians of Florida v. U.S.* (11th Cir.
2008) 516 F.3d 1235, 1258].)

1 Code, § 7922.000; *ACLU of Northern California, supra*, 202 Cal.App.4th at p. 83 [“Because the
2 agency has full knowledge of the contents of the withheld records and the requester has only the
3 agency’s affidavits and descriptions of the documents, its affidavits must be specific enough to give
4 the requester ‘a meaningful opportunity to contest’ the withholding of the documents and the court
5 to determine ... whether the exemption applies.”] [citation omitted]; *cf. State Bd. of Equalization,*
6 *supra*, 10 Cal.App.4th at p. 1193.)

7 In addition, “[w]here the court finds that respondent agency has unduly delayed release of
8 documents subject to disclosure, the court may enter an appropriate order setting deadlines and
9 requiring adequate staffing of the effort.” (Asimow et al., Cal. Practice Guide: Administrative Law
10 (The Rutter Group 2022) ¶ 29:1085.) Californians’ right to access public records and the PRA’s
11 requirement of “prompt” disclosure of such records (see Gov. Code, § 7922.530, subd. (a)) are
12 rendered meaningless when agencies may delay many years in completing production. Here, there
13 is also a particular need for the records to inform the public and legislators about the important
14 issue of CDCR’s consideration of immigration status and national origin, at a time when CDCR
15 Secretary Macomber has represented that CDCR is drafting regulations on this topic and while
16 CDCR is being sued over the same topic. The extreme anticipated length of time to complete
17 production at the current rate undermines the public’s right of access to the requested documents
18 and in no way qualifies as “prompt.” CDCR also unduly delayed release of documents when it
19 stopped producing records for months and ignored Petitioner’s multiple communication attempts.
20 (See Singh Decl. ¶¶ 7-12.) In addition, the manner by which CDCR has produced records in
21 response to the Request is unmanageable, resulting in the disappearance of some records from the
22 Public Records Portal, the production of duplicates of those records, and the production of email
23 records that cut off apparently substantive information. (*Id.* ¶¶ 24-26.) As such, the Court should
24 order CDCR to complete production of all nonexempt responsive records according to a defined
25 production schedule, to be completed within a specified time.

26 ///

27 ///

28 ///

1 **Petitioner is Entitled to Recover Attorneys' Fees and Costs.**

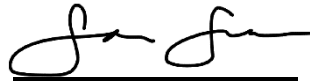
2 Because Petitioner has demonstrated that CDCR violated the PRA, it is entitled to an award
3 of attorneys' fees and costs. (Gov. Code, § 7923.115, subd. (a)-(b); *Los Angeles Times v. Alameda*
4 *Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1391.)

5 **CONCLUSION**

6 For the foregoing reasons, this Court should grant the relief requested.

7 Dated: July 27, 2023

8 Respectfully Submitted,

9 

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