

1 Susan Brandt-Hawley SBN 75907  
2 BRANDT-HAWLEY LAW GROUP  
3 PO BOX 1659  
4 Glen Ellen, CA 95442  
5 707.938.3900  
6 susanbh@preservationlawyers.com

7 Attorney for Petitioner  
8 George Washington High School  
9 Alumni Association

**FILED**  
San Francisco County Superior Court

OCT 04 2019

CLERK OF THE COURT  
BY: Chelene Johnson  
Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN FRANCISCO**

12 George Washington High School  
13 Alumni Association, a California  
14 public benefit corporation;

15 Petitioner,

16 v.

17 San Francisco Unified School  
18 District; San Francisco Unified  
19 School District Board of  
20 Education; and Does 1 to 10;

21 Respondents.  
22 \_\_\_\_\_/

Case No. **CPF-19-516880**

**Petition for Writ of Mandamus**

California Environmental Quality Act  
[CEQA]

**BY FAX**  
ONE LEGAL LLC

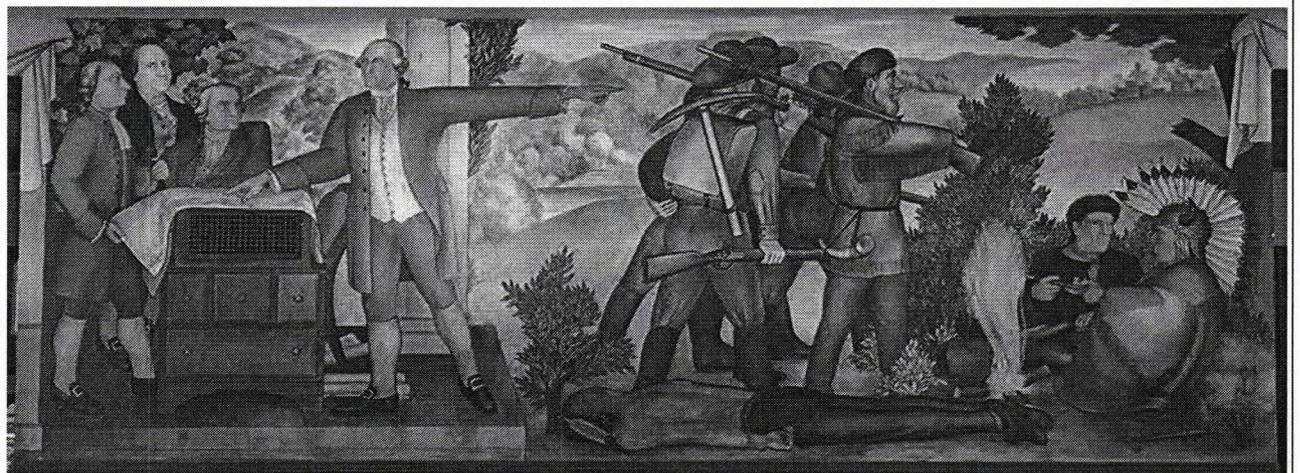
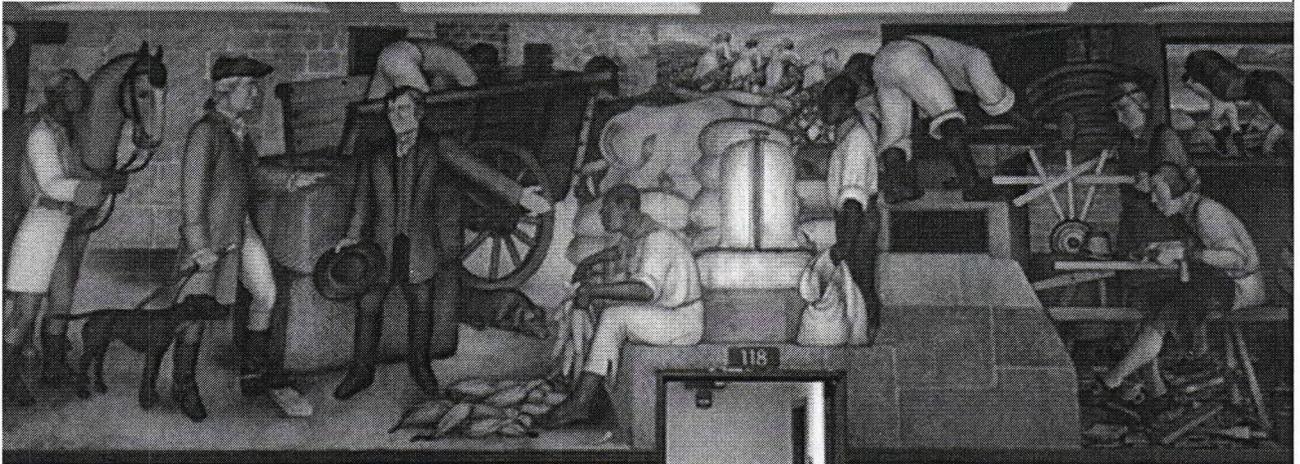
Petitioner alleges:

## Introduction

1. Ongoing public view of a dramatic 1936 mural painted on the plaster walls of San Francisco's historic George Washington High School — the "*Life of George Washington*" — is threatened. The Alumni Association urgently seeks a writ to enforce protections of state law.

Artist Victor Arnautoff completed the expansive thirteen-panel mural in the school entrance lobby and stairway under auspices of the New Deal public art program. After more than 80 years, the San Francisco Unified School District Board of Education has now voted to permanently remove the mural from public view "using solid panels or the equivalent." Why? The School Board would shield its students from any tragic realities of early America.

The Board objects to two of the thirteen frescoes. One depicts life at Mount Vernon, including Washington's ownership of African-American slaves; the other shows him standing with Benjamin Franklin and frontiersmen near the body of a Native American.



1 As anyone may still read on its website, in June and August 2019 the School Board “voted to  
2 remove” the mural “from view by covering it,” based on what it characterized as “offensive  
3 content” portraying “the racist history of America.” The vote ignored abundant and near-  
4 unanimous written and vocal public opposition based on the value of the mural as a beautiful  
educational tool that allows a greater understanding of Washington’s imperfect world.

5 The Board directed its staff to study methods to remove the thirteen frescoes from  
6 public view. The Alumni Association, with overwhelming local, state, national, and  
7 international support including from the school’s student body and alumni, profoundly  
8 disagrees that the mural’s inclusion of tragic events in the context of eleven other frescoes  
9 touting Washington’s accomplishments is traumatic to students and justifies its removal from  
10 public view. Before that question is even considered, the protections of the California  
11 Environmental Quality Act (CEQA) must be applied because removal of the mural from  
12 public view would impact a significant visual, aesthetic, cultural, educational, and historic  
13 resource. The Board’s discretion to decide the future of the mural must be preceded by a  
14 public environmental review process that includes both analysis of the significance of impacts  
15 on the protected built environment and the imposition of feasible mitigation measures and  
alternatives within an environmental impact report (EIR) process.

16 Instead, *after* the Board decided to remove the mural from public view it authorized its  
17 staff to proceed with environmental review under CEQA to address *how* best to remove it.  
18 That was too late. The *whether* to remove the mural triggers environmental impacts and  
19 requires an EIR process to inform the Board’s discretion. Absent this Court’s peremptory writ,  
20 the Board’s currently pending CEQA process would simply be an unlawful *post hoc*  
rationalization of the removal decision already made and announced.

21 The Alumni Association seeks this Court’s peremptory writ to order the School Board  
22 to set aside its decision to remove the Arnautoff mural from public view. Before considering  
23 approval, it must conduct an EIR process to consider *whether or not to leave the mural in place*,  
since its removal from public view would have significant environmental effects.

24 The School Board can correct its violation of CEQA and expeditiously resolve this  
25 action by setting aside its decisions to remove the mural from public view. Unless it does so,  
26 this Court’s issuance of a writ in the public interest will avoid egregious unstudied impacts to  
27 historic George Washington High School.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## Jurisdiction

2. This Court has jurisdiction under Public Resources Code section 21168.5 and Code of Civil Procedure section 1085. The parties and the environmental resource at issue are located in the City and County of San Francisco.

## Parties

3. Petitioner George Washington High School Alumni Association was originally formed in 1952 and incorporated as a California public benefit corporation in 2010. Among the Association's primary purposes are "to promote a high standard of excellence in education, for the benefit of the students and the community" and "to play a constructive role in the larger community." Members of the Association enjoy and appreciate the artistic, cultural, aesthetic, and visual qualities of the historic George Washington High School including the Arnautoff mural. The Association brings this petition on behalf of all others similarly situated that are too numerous to be named and brought before this Court as petitioners. Association members including its Vice-President Lope Yap, Jr., Senior Class President 1970 and Hall of Merit honoree, objected to the School Board's actions to cover the Arnautoff mural and exhausted their administrative remedies.

4. Respondents San Francisco Unified School District and its Board of Education (collectively, the School Board or the Board) is the governmental body that approved the removal of the Arnautoff mural from public view and is the lead agency under CEQA.

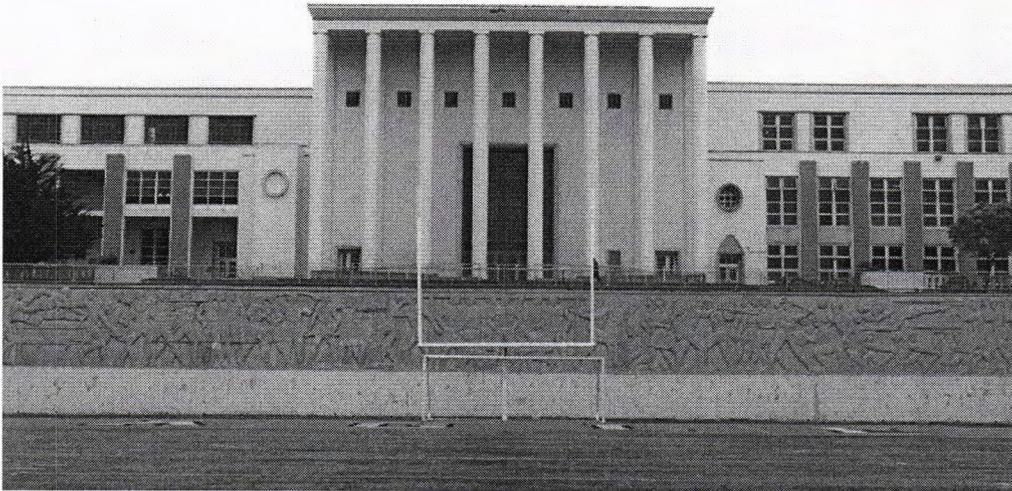
5. Does 1 to 10 are fictitiously named respondents whose true names and capacities are currently unknown to the Alumni Association. If and when their true names and capacities are known, the Association will amend this petition to assert them.

6. The paragraphs below refer to and rely on information in documents relating to this action, all of which will be filed with this Court as part of the record of proceedings and are here incorporated by reference.

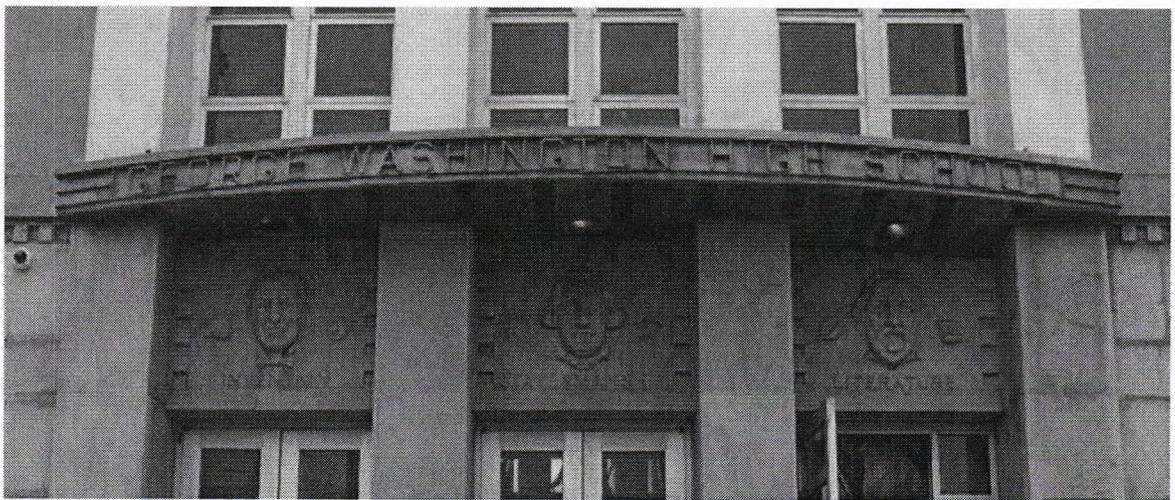
## ***Environmental Setting***

7. **George Washington High School.** The high school is located on four square blocks at 600 32nd Avenue in San Francisco's Outer Richmond District. It is eligible for historic designation as a San Francisco City Landmark, built in phases in the Streamline Moderne style between 1935 and 1952 under the auspices of the federal Public Works Administration. Its

1 architect was Timothy Pflueger, one of the most important northern California architects of  
2 his time. The historic campus is a cultural resource that provides views of the Golden Gate  
3 Bridge, the Marin Headlands, and downtown San Francisco, with large sports fields, a football  
4 stadium, and significant landscaping. The high school has had few structural alterations.



14  
15 8. The high school benefitted from New Deal-sponsored public arts that contribute  
16 to its historic and cultural and educational merit, including a frieze by sculptor Sargent  
17 Johnson, bas-relief portraits by Robert Howard, and murals by Lucien Labaudt, Ralph  
18 Stackpole, Gordon Langdon, Nelson Poole — *and Victor Arnautoff*, whose mural in the front  
lobby is recognized as a character-defining feature of the historic school.



28 Front entrance busts of Thomas Edison, George Washington, and Walt Whitman



1 Historian and Arnautoff biographer, Robert Cherny, describes a 'counter-narrative'  
2 to the then-standard high school treatment of the founding fathers and westward  
3 expansion that places African American, Native American, and working-class  
4 revolutionaries at the center of the major compositions of the *Life of George Washington*.  
5 High school curricula in the 1940s did not address the inconsistency between the  
6 founding fathers' adherence to the concept that 'all men are created equal' and the fact  
7 that many of them, including George Washington, profited from the ownership of  
8 African Americans as chattel slaves. Likewise, the figure of the dead Native American  
9 with the ghostly frontiersman moving over him provided students with an image that  
10 challenged the common perspective that westward expansion filled territory that had  
11 been empty and underutilized.

11. Eleven of the thirteen frescoes depict Washington's storied achievements.

### 12 ***Administrative Process***

13 12. A controversy about the mural panels' depiction of African American slavery  
14 surfaced in the 1960s when a student group of the Black Panthers objected to them. According  
15 to artist Dewey Crumpler, now an associate professor at the San Francisco Art Institute, the  
16 students did not understand that Arnautoff intended "simply to show that the Father of  
17 America owned slaves." The students wanted Crumpler to paint a response to the mural in the  
18 high school lobby adjacent to the Arnautoff mural, to reflect many positive contributions of  
19 African Americans. Crumpler eventually did so, entitling his murals *MultiEthnic Heritage*.

20 13. In 2018, the School Board convened an appointed 11-member community action  
21 committee (CAC), designated the Reflections and Actions Committee, to consider the future of  
22 the Arnautoff mural. The CAC was formed in response to the contentions of some George  
23 Washington High School parents and students that the mural should be removed or destroyed  
24 because they found some of the panels' subject matter disturbing and believed that removing  
25 them would be reparation for some of the historic harm done to African Americans and Native  
26 Americans. The CAC majority agreed, stating that in their view the Arnautoff mural "glorifies  
27 slavery, genocide, colonization, manifest destiny, white supremacy [and] oppression" contrary  
28 to current School District values of social justice. The CAC recommended to the School Board  
that because the mural was created in fresco and therefore apparently cannot be removed and  
moved elsewhere, it should be destroyed by painting with whitewash.

1           14. Alumni Association Vice-President Lope Yap, Jr. participated in the CAC and  
2 was the sole dissenting vote against removing or destroying the mural. He explained that  
3 based on his personal knowledge of George Washington High School's very diverse student  
4 body during his tenure as a student, and research by the Alumni Association regarding the  
5 school's student bodies in recent decades as well as the current student body, the mural was  
6 and is not a source of distress or negativity but was and remains well-understood as a  
7 historical lesson valued for its beauty and outstanding artistic value.

8           15. On June 18, 2019, the School Board convened a special meeting to discuss  
9 "Potential Options to Remove from Public View the Arnautoff Mural at George Washington  
10 High School." The agenda posted online stated that "[t]he CAC supports permanently  
11 removing the offensive content of the mural." Further, "[i]n recent months, numerous  
12 community members, art historians and local preservationists have voiced their concern over  
13 the District's intention to alter the mural." A power point presentation by the School District  
14 staff addressed various options and costs either to obscure the mural with a textile covering or  
15 solid panels, or removing it by painting it with whitewash.

16           16. At the public meeting, the Alumni Association objected to any consideration of  
17 obscuring or removing the mural and requested that the School Board prepare an EIR because  
18 of resultant significant environmental impacts on a unique and important aesthetic, visual,  
19 cultural, and historic resource of the City of San Francisco and State of California. Lope Yap,  
20 Jr., explained the lack of due process in the function, composition, and conduct of the CAC.

21           17. The well-attended and emotional meeting included many speakers objecting to  
22 any harm to or covering of the mural as well as many speakers urging its destruction.  
23 San Francisco Heritage submitted a comprehensive letter objecting to covering or removal of  
24 the mural with many examples of technical solutions nationwide to similar public art issues.  
25 Members of the School Board that were present expressed their desire and preference to  
26 remove the mural from public view with whitewash rather than covering it with panels.  
27 There was no consideration or discussion about leaving the mural in place and in view.

28           18. On June 25, 2019, the School Board held a public hearing to consider a Special  
Order of Business, the "Recommendation to Remove from Public View the Arnautoff Mural at  
George Washington High School. (196 -25SO1)." The School Board website "FAQ" section  
continues to recite the unanimous action taken by the School Board that day:

1           *What is planned for the mural now?*

2           The District facilities team researched options and on June 18, 2019, at the Committee of  
3           the Whole, presented options for ways to remove the mural from view to the Board of  
4           Education. *On June 25, 2019, the Board of Education voted unanimously to remove the mural*  
5           *from public view. The Board directed staff to develop a project, for the purposes of a*  
6           *CEQA ... review, that removes the mural from public view by painting over it, or, if the plan to*  
7           *paint over it would result in undue delay, remove from view using solid panels. View public*  
8           *comment and Board discussion here.*

9           19.     On August 13, 2019, the Board held an additional hearing to reconsider the  
10          "Recommendation to Remove from Public View the Arnautoff Mural at George Washington  
11          High School (198 – 13SO1)." The agenda stated that "[s]ubsequent to the June 25th meeting,  
12          staff has conducted further analysis and concluded that painting over the mural will result in  
13          undue delay in comparison to alternative means of removing the mural from public view."

14          20.     Before conducting the August 13 hearing, the Board posted on its website an  
15          "important notice regarding public comment," which decreed that it would limit public  
16          testimony on the mural agenda item to "15 minutes for speakers in favor of keeping the mural  
17          in view and 15 minutes for speakers in favor of removing the mural from public view."  
18          Approximately 50 people again spoke to the item. After closing the hearing, the Board on a  
19          split vote of 4-3 voted to supersede its action of June 25. While unwavering in its decision to  
20          permanently remove the Arnautoff mural from public view, the Board deleted the option of  
21          removing the mural from public view by painting over it due to expectation of delay.

22          21.     Following the School Board's decision to remove the Arnautoff mural from  
23          public view, the eloquent and passionate local, state, national, and international shock and  
24          outcry from university professors, artists, public leaders, preservation advocates and experts,  
25          African American public figures, historians, major newspaper editors, and scores of San  
26          Francisco residents was overwhelming.

27          22.     The Alumni Association has no plain, speedy and adequate remedy in the  
28          ordinary course of law. Issuance of a peremptory writ is needed to avoid immediate, severe,  
29          and irreparable harm to San Francisco County and California residents via removal of the  
30          Arnautoff mural from public view at the historic George Washington High School without  
31          compliance with state law. The School Board has the capacity to correct its violations of law  
32          but has failed and refused to do so.

## Violations of the California Environmental Quality Act

23. The Alumni Association incorporates all previous paragraphs as if fully set forth.

24. CEQA requires public agencies to conduct a prescribed, public EIR process before taking actions that may have a significant adverse environmental impact. The point of the process is to inform the public and to provide necessary information to allow elected officials to comply with CEQA's **substantive** mandate: to adopt feasible project mitigations and alternatives that can reduce a project's significant environmental impacts. An agency that predetermines approval of a project by vote or by bureaucratic and financial momentum with potentially significant environmental impact without first preparing an EIR violates CEQA.

25. The School Board abused its discretion and failed to act in the manner required by law in taking action to implement its decision to remove the Arnautoff mural from public view without first preparing and certifying a project EIR and meeting all mandates of CEQA. The Board unlawfully precommitted to the removal by vote, public declarations of its removal decision on its website, and further actions creating substantial bureaucratic and financial momentum that now precludes consideration of alternatives to removal.

26. At the Board's public hearings and as later reflected on the Board's public website and via press release, the School Board members publicly announced the Board's decision to remove the Arnautoff mural from public view. They directed staff to conduct CEQA review to determine how best to accomplish the removal. Instead, to comply with CEQA, the Board must set aside its decision and conduct an EIR process to study the proposed removal of the thirteen Arnautoff frescoes from public view at the historic high school's lobby and stairway where it has been in place as a character-defining feature since 1936. As pointed out by experts, removal of the mural from public view would have significant impact and may jeopardize the high school's historic status.

27. The School Board in directing CEQA review to address *how* it wants to remove the 1936 Arnautoff mural from public view abused its discretion and failed to act in the manner required by law by failing to conduct an EIR process before determining *whether* to leave the mural in place at George Washington High School. There is substantial evidence in the record that removal of the 13-panel mural from public view may have significant visual, aesthetic, cultural, educational, and historic resource impacts. Preparation of an EIR must precede the School Board's determination of whether the mural should stay in place or be removed from view.

1 28. Before conducting any CEQA process regarding the Arnautoff mural, the School  
2 Board must set aside its actions in the summer of 2019 that precommitted to removal of the  
3 mural from public view and preapproved significant funding for that purpose. Its actions  
4 created overt bureaucratic and financial momentum prohibited by the California Supreme  
5 Court in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139:

6 ... [C]ourts should look ... to the surrounding circumstances to determine  
7 whether, as a practical matter, the agency has committed itself to the project as a  
8 whole or to any particular features, so as to effectively preclude any alternatives  
9 or mitigation measures that CEQA would otherwise require to be considered,  
10 including the alternative of not going forward ...

11 **WHEREFORE**, the Alumni Association prays:

12 1. That the Court issue a peremptory writ ordering the School Board to set aside all  
13 actions and approvals relating to removal of the Arnautoff mural from public view at George  
14 Washington High School. The writ must require that before further consideration of removal,  
15 the School Board must comply with CEQA by preparing an adequate EIR to consider whether  
16 to remove the mural, studying and adopting feasible alternatives and mitigations;

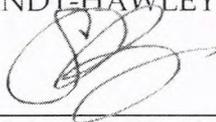
17 2. That the Court enjoin the School Board and its employees and agents from all  
18 actions furthering removal of the mural from public view while the petition is pending;

19 3. For the Alumni Association's costs and attorney fees pursuant to Code of Civil  
20 Procedure section 1021.5; and

21 4. For other and further relief as the Court finds proper.

22 October 4, 2019

BRANDT-HAWLEY LAW GROUP



23 Susan Brandt-Hawley, Attorney for  
24 George Washington High School  
25 Alumni Association

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## VERIFICATION

I, Susan Brandt-Hawley, am an attorney for the petitioner George Washington High School Alumni Association located outside of Sonoma County where I have my law offices and so I verify this petition on its behalf. I have read this petition and know its contents. The matters stated are true and correct based on my knowledge, except matters stated on information and belief that I believe to be true.

I declare under penalty of perjury that the above is true to the best of my knowledge and is executed on October 4, 2019, at Glen Ellen, California.



Susan Brandt-Hawley

5 **PROOF OF SERVICE**

6 I am a citizen of the United States and a resident of the County of Sonoma. I am  
7 over the age of eighteen years and not a party to this action. My business address is  
8 P.O. Box 1659, Glen Ellen, CA 95442.

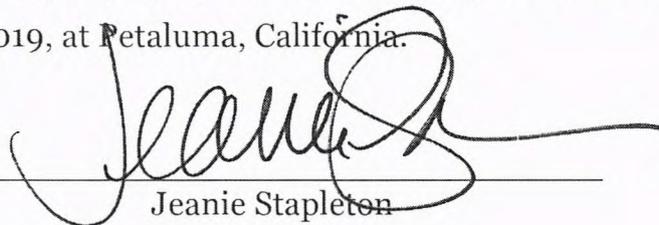
9 On October 4, 2019, I served one true copy of:

10 **Petition for Writ of Mandamus**

11  
12 by placing a true copy enclosed in a sealed envelope with prepaid postage, in the United  
13 States mail in Petaluma, California addressed to:

14 SALLY MAGNANANI, Deputy Attorney General  
15 State of California  
16 Department of Justice  
17 P.O. Box 944255  
18 Sacramento CA 94244-2550

19 I declare under penalty of perjury that the foregoing is true and correct and is  
20 executed on October 4, 2019, at Petaluma, California.

21  
22   
23 \_\_\_\_\_  
24 Jeanie Stapleton