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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SACRAMENTO

10 KQED INC.,

11 Plaintiff,

12 v.

13 CALIFORNIA HIGHWAY PATROL,

14 Defendant.

Case No.

15 VERIFIED PETITION FOR WRIT OF
16 MANDATE TO ENFORCE CALIFORNIA
17 PUBLIC RECORDS ACT

1 Plaintiff KQED Inc. ("KQED") petitions this Court for a writ of mandate requiring
2 Defendant California Highway Patrol (the "CHP") to promptly and fully comply with
3 California's landmark legislation, Senate Bill 1421, which, starting on January 1, 2019,
4 required state and local agencies to disclose new categories of records related to peace-officer
5 conduct under the California Public Records Act ("CPRA"). For over 16 months the CHP has
6 repeatedly failed to produce all responsive records in its possession, constructively denying
7 KQED's CPRA requests, leaving KQED with no choice but to file this action.

8 SUMMARY OF ALLEGATIONS

9 1. On January 1, 2019, Senate Bill 1421 took effect, requiring disclosure of certain
10 peace-officer personnel files relating to officers' discharge of a firearm, use of force resulting in
11 death or serious injury, sexual misconduct, or dishonesty in certain contexts. These records
12 "shall be made available for public inspection pursuant to the California Public Records Act,"
13 "notwithstanding ... any other law." Penal Code § 832.7(b)(1), as amended by Stats. 2018, ch.
14 988 § 2 (Senate Bill 1421).

15 2. Immediately after this law went into effect, KQED, through a joint request with
16 other news organizations acting collectively as the California News Coalition ("CNC"),
17 requested some of these newly available records from Defendant CHP.

18 3. Although this landmark transparency legislation has been in place since January
19 1, 2019, for the past 16 months, the CHP has offered every possible excuse to withhold from
20 KQED and the public the responsive records it admits it has in its possession. Indeed, the
21 CHP has produced precisely *one* responsive file – and no others – since KQED first made its
22 request. The CPRA requires an agency that receives a CPRA request to determine whether the
23 requested records are exempt from disclosure within strict deadlines and to promptly release all
24 non-exempt records. It does not allow an agency to deny access while purporting to indefinitely
25 postpone making this determination, as the CHP has done for the past 16 months.

26 4. The Legislature found when it enacted S.B. 1421, the "public has a strong,
27 compelling interest in law enforcement transparency because it is essential to having a just
28

democratic society," S.B. 1421 § 4. Already, the release of records under this new law has revealed serious peace-officer misconduct that had long been hidden. *See* ¶23 *infra*.

5. KQED brings this suit to compel the CHP to comply with the law and release the many responsive records the CHP continues to withhold from KQED and the public more than 16 months later.

PARTIES

6. Plaintiff KQED is a community-supported media organization providing coverage of news and culture to Northern California via radio, television, and digital media. To fulfill its mission to inform the public, KQED depends on access to public records. As such, KQED is within the class of persons beneficially interested in the CHP's performance of its legal duties under the CPRA.

7. Defendant California Highway Patrol is a state law enforcement agency that, according to its website, employs approximately 11,000 members.

8. The CHP is a state agency under Government Code § 6252(f).

9. The CHP maintains, uses, and possesses the records sought by this Petition.

JURISDICTION AND VENUE

10. This Court has jurisdiction under Government Code §§ 6258, 6259, Code of Civil Procedure §§ 1060 and 1085, and Article VI section 10 of the California Constitution.

11. Venue is proper in this Court because the CHP is headquartered in the City and County of Sacramento. The records in question, or some portion of them, are situated in the County of Sacramento, meaning that suit may be brought in that County. Gov't Code § 6259(a); Code Civ. Pro. § 401(1).

THE CALIFORNIA PUBLIC RECORDS ACT AND
S.B. 1421'S NEW DISCLOSURE REQUIREMENTS

12. Under the California Public Records Act, Government Code §§ 6250 *et seq.*, all records "containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency" must be made publicly available for inspection and copying upon request, unless they are exempt from disclosure. Gov't. Code §§ 6253(a) and (b), 6252(e). If documents contain both exempt and non-exempt material, the government must disclose all non-exempt material. *Id.* § 6253(a).

13. The CPRA contains strict deadlines for the government's responses to a request for records. An agency that receives a request "shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor." Gov't Code § 6253(c).

14. "In unusual circumstances," as defined by the statute, the agency may extend this time limit "by written notice ... to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days." *Id.*; *see id.* § 6253(c)(1)-(4) (defining "unusual circumstances").

15. The CPRA also requires an agency to reasonably assist a member of the public in making a focused request, including, to the extent reasonable under the circumstances: "assist[ing] the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated" and "[p]rovid[ing] suggestions for overcoming any practical basis for denying access to the records or information sought." Gov't Code § 6253.1

16. Before S.B. 1421 was enacted, CPRA requests for peace officer personnel records – defined as all records related to the "advancement, appraisal and discipline" of peace officers – were exempt from disclosure. Penal Code §§ 832.7, 832.8; Gov't Code § 6254(k). This exemption included personnel records regarding investigations into police shootings and

1 other serious uses of force, or allegations of serious misconduct, even when the agency had
2 concluded that the officer had engaged in misconduct. *City of Hemet v. Superior Court*, 37
3 Cal. App. 4th 1411, 1431 (1995). Until S.B. 1421 was enacted, Californians were unable to
4 obtain the vast majority of records relating to the most egregious forms of police misconduct.

5 17. In 2018, reacting to public outcry concerning specific past events of police
6 misconduct, the Legislature enacted Senate Bill No. 1421 to address this situation,
7 emphasizing that "[t]he public has a right to know all about serious police misconduct, as well
8 as about officer-involved shootings and other serious uses of force." Stats. 2018 Chapt. 988 §
9 1 (declarations and findings).

10 18. This new law, effective January 1, 2019, provides broad public access to
11 records that were previously released only in limited circumstances.

12 19. Specifically, the law amended Penal Code § 832.7(b)(1) to require that
13 "[n]otwithstanding ... any other law, the following peace officer or custodial officer personnel
14 records and records maintained by any state or local agency shall not be confidential and shall
15 be made available for public inspection pursuant to the California Public Records Act ...:

16 (A) A record relating to the report, investigation, or findings of any
17 of the following:

18 (i) An incident involving the discharge of a firearm at a person by a
19 peace officer or custodial officer.

20 (ii) An incident in which the use of force by a peace officer or
21 custodial officer against a person resulted in death, or in great bodily injury.

22 (B) (i) Any record relating to an incident in which a sustained
23 finding was made by any law enforcement agency or oversight agency that a
24 peace officer or custodial officer engaged in sexual assault involving a
25 member of the public.

26

27 (C) Any record relating to an incident in which a sustained finding
28 was made by any law enforcement agency or oversight agency of dishonesty

1 by a peace officer or custodial officer directly relating to the reporting,
2 investigation, or prosecution of a crime, or directly relating to the reporting of,
3 or investigation of misconduct by, another peace officer or custodial officer,
4 including, but not limited to, any sustained finding of perjury, false
5 statements, filing false reports, destruction, falsifying, or concealing of
6 evidence.”

7 20. The new law specifies that agencies must release a broad range of records
8 relating to these incidents. *See* Penal Code § 832.7(b)(2).

9 21. At the same time, S.B. 1421 allows, and in some cases requires, agencies to
10 redact – but not withhold – records when necessary to protect personal privacy or when the
11 public interest in non-disclosure clearly outweighs the public interest in disclosure. *See* Penal
12 Code § 832.7(b)(5)(7).

13 22. The law additionally allows the government to withhold records in order to
14 protect the integrity of pending investigations and prohibits the release of complaints that are
15 frivolous or unfounded. Penal Code § 832.7(b)(7), (8).

16 23. The new law has led to much-needed scrutiny of misconduct by peace officers.
17 For example:

18 a. Records released have led to dismissals of prosecutions reliant on a dishonest
19 detective. Alex Emslie and Sukey Lewis, *Contra Costa County DA to Dismiss*
20 *Three Cases Involving Fired Antioch Detective*, KQED, Dec. 19, 2019¹;

21 b. Records released under S.B. 1421 have revealed that a significant number of law
22 enforcement agencies in California failed to conduct internal investigations
23 following deadly uses of force. Sukey Lewis and Thomas Peele, *Some California*
24 *Police Departments Don't Review Deadly Uses of Force*, KQED, Nov. 17, 2019²;

25
26
27 ¹ Available at <https://www.kqed.org/news/11792317/contra-costa-county-da-to-dismiss-three-cases-involving-fired-antioch-detective>.

28 ² Available at <https://www.kqed.org/news/11786770/some-california-police-departments-dont-review-deadly-uses-of-force>.

- 1 c. Hundreds of case files released by the California Department of Corrections, under
2 S.B. 1421, in response to a public records request identical to that filed with the
3 CHP, revealed multiple cases of correctional officers sexually assaulting women in
4 state prisons, some of whom were never charged with crimes. Julie Small,
5 *#MeToo Behind Bars: Records Shed Light on Sexual Abuse Inside State Women's*
6 *Prisons*, KQED, Nov. 14, 2019³;
- 7 d. Records released under S.B. 1421 showed a former San Jose State University
8 police officer was found to have used excessive force, won his job back on appeal,
9 resigned, and was hired by a neighboring police department. Reporting on the case
10 preceded the officer's resignation. Robert Salonga and Sukey Lewis, *Los Gatos*
11 *Cop Resigns Amid Outcry Over Beating at San Jose State*, Bay Area News Group
12 and KQED, July 22, 2019⁴;
- 13 e. A patient confined at Napa State Hospital was beaten and jailed after what an
14 investigation found was excessive force by the hospital police chief's son, and that
15 other officers helped to cover up the misconduct. Sukey Lewis and Alex Emslie,
16 *Excessive Force by Police Chief's Son Leads to Cover-Up at Napa State Hospital*,
17 KQED, June 19, 2019⁵;
- 18 f. Long-kept secrets in the internal investigation of the shooting of Oscar Grant,
19 which found that officer Johannes Mehserle did not mistake his taser for his
20 firearm when he fatally shot Grant in the back. Alex Emslie and Dan Brekke,
1 *BART Releases Report With New Details of Officers' Roles in Oscar Grant Killing*,
2 KQED, May 1, 2019⁶;

³ Available at <https://www.kqed.org/news/11786495/metoo-behind-bars-new-records-shed-light-on-sexual-abuse-inside-state-womens-prisons>.

⁴ Available at <https://www.kqed.org/news/11762733/los-gatos-cop-resigns-amid-outcry-over-beating-at-san-jose-state>.

⁵ Available at <https://www.kqed.org/news/11755384/excessive-force-by-police-chiefs-son-leads-to-cover-up-at-napa-state-hospital>.

⁶ Available at <https://www.kqed.org/news/11744106/bart-releases-report-with-new-details-of-officers-roles-in-oscar-grant-killing>.

1 g. "Three Fairfield police officers engaged in sexual misconduct with members of the
2 public. Four others had sustained findings of dishonesty — they withheld
3 evidence, committed forgery or falsified reports." Megan Cassidy, *Multiple
4 Fairfield Police Officers Disciplined for Sexual Advances, Records Show*, San
5 Francisco Chronicle, Jan. 31, 2019⁷;

6 h. KQED and The Bay Area News Group reported that records released under S.B.
7 1421 revealed that two additional women had accused the officer of similar
8 misconduct. Alex Emslie, Sukey Lewis, and Thomas Peele, *San Mateo County DA
9 Renews Criminal Inquiry After Release of Police Misconduct Records*, KQED, Jan.
10 8, 2019.⁸ The San Mateo District Attorney specifically credited S.B. 1421's
11 disclosure requirement as a vehicle for bringing attention to hidden officer
12 misconduct, stating that KQED's reporting about information released under the
13 new law prompted the District Attorney's Office to reopen an inquiry into the
14 former Burlingame officer and "[i]f there are police agencies around this state that
15 have not been turning over potentially criminal conduct and just kept it behind
16 closed doors, then this law is going to be a very good sunlight provision." *Id.*

17 i. Documents released under S.B. 1421 also have shined light onto excessive force
18 and potential perjury by officers in Rio Vista,⁹ and embezzlement of tens of
19 thousands of rounds of police ammunition by a San Bernadino Sheriff's deputy¹⁰.

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21 ⁷ Available at [https://www.sfchronicle.com/crime/article/Multiple-Fairfield-police-officers-](https://www.sfchronicle.com/crime/article/Multiple-Fairfield-police-officers-disciplined-13578919.php)
22 [disciplined-13578919.php](https://www.sfchronicle.com/crime/article/Multiple-Fairfield-police-officers-disciplined-13578919.php)

23 ⁸ Available at [https://www.kqed.org/news/11716654/san-mateo-county-da-renews-criminal-](https://www.kqed.org/news/11716654/san-mateo-county-da-renews-criminal-inquiry-following-release-of-police-misconduct-records)
24 [inquiry-following-release-of-police-misconduct-records](https://www.kqed.org/news/11716654/san-mateo-county-da-renews-criminal-inquiry-following-release-of-police-misconduct-records)

25 ⁹ Sukey Lewis, Nadine Sebai, Alex Emslie, and Thomas Peele, *Excessive Force, False Reports
26 Detailed in Rio Vista Police Misconduct Files*, KQED, Jan. 29, 2019 (available as of March 4,
27 2019 at [https://www.kqed.org/news/11721801/bad-arrests-excessive-force-and-false-reports-](https://www.kqed.org/news/11721801/bad-arrests-excessive-force-and-false-reports-detailed-in-release-of-rio-vista-police-misconduct-files)
28 [detailed-in-release-of-rio-vista-police-misconduct-files](https://www.kqed.org/news/11721801/bad-arrests-excessive-force-and-false-reports-detailed-in-release-of-rio-vista-police-misconduct-files)); Sukey Lewis and Thomas Peele,
29 *Impact: DA Dismisses Charges Against Woman Mauled by Rio Vista Police Dog*, March 4, 2019
30 (available as of March 4, 2019 at [https://www.kqed.org/news/11730477/impact-da-dismisses-](https://www.kqed.org/news/11730477/impact-da-dismisses-charges-against-woman-mauled-by-rio-vista-police-dog)
31 [charges-against-woman-mauled-by-rio-vista-police-dog](https://www.kqed.org/news/11730477/impact-da-dismisses-charges-against-woman-mauled-by-rio-vista-police-dog)).

32 ¹⁰ Thomas Peele and Sukey Lewis, *California Cop Admits Stealing Thousands of Bullets Over 30
33 Years, Escapes Theft Charges*, KQED, Feb. 14, 2019 (available as of March 4, 2019 at

1 **KQED'S REQUESTS AND THE CHP'S STEADFAST OBSTRUCTION**

2 24. On January 1, 2019, KQED submitted a request for records through a joint
3 request with the California News Coalition. Attached hereto as **Exhibit A** is a true and correct
4 copy of the January 1, 2019 request by KQED through the California News Coalition.

5 25. In particular, KQED's request sought:

- 6 a. "Records from Jan. 1, 2014 to Dec. 31, 2018 of sustained findings that a peace
7 officer, including those employed by the California Highway Patrol committed
8 sexual assault or dishonesty-related misconduct. The response should
9 reasonably include all applicable records specified by statute, including but not
10 limited to: all investigative reports; photographic, audio and video evidence;
11 transcripts and recordings of interviews; all materials compiled and presented
12 for review to the district attorney or to any person or body charged with
13 determining whether to file criminal charges against an officer in connection
14 with an incident, or whether the officer's action was consistent with law and
15 agency policy for purposes of discipline or administrative action, or what
16 discipline to impose or corrective action to take documents setting forth
17 findings or recommended findings; and copies of disciplinary records relating
18 to the incident, including any letters of intent to impose discipline, any
19 documents reflecting modifications of discipline due to the Skelly or grievance
20 process, and letters indicating final imposition of discipline or other
21 documentation reflecting implementation of corrective action"; and
22 b. "Records from Jan. 1, 2014 to present relating to the report, investigation, or
findings of incidents in which the use of force by a peace officer or custodial
officer against a person resulted in death, or in great bodily injury. The
response should reasonably include all applicable records specified by statute,
including but not limited to: all investigative reports; photographic, audio and

<https://www.kqed.org/news/11726097/california-cop-admits-stealing-thousands-of-bullets-over-30-years-escapes-theft-charges>).

1 video evidence; transcripts and recordings of interviews; autopsy reports; all
2 materials compiled and presented for review to the district attorney or to any
3 person or body charged with determining whether to file criminal charges
4 against an officer in connection with an incident, or whether the officer's action
5 was consistent with law and agency policy for purposes of discipline or
6 administrative action, or what discipline to impose or corrective action to take;
7 documents setting forth findings or recommended findings; and copies of
8 disciplinary records relating to the incident, including any letters of intent to
9 impose discipline, any documents reflecting modifications of discipline due to
10 the Skelly or grievance process, and letters indicating final imposition of
11 discipline or other documentation reflecting implementation of corrective
12 action." (footnotes omitted).

13 26. KQED also offered to accept index(es) of cases to which responsive records
14 relate, so that KQED could further focus its request with the agency's assistance pursuant to
15 Gov't Code § 6253.1. **Exhibit A** at 1-2.

16 27. To the extent the CHP maintains existing index(es), database(s), or list(s) of
17 cases to which responsive records relate, KQED separately requested such index(es),
18 database(s), or list(s), subject to any appropriate redactions to remove information exempt
19 from disclosure. **Exhibit A** at 2-3.

20 28. On January 9, 2019, KQED, through the CNC wrote to Janelle Dunham (PIO)
21 and Robert Nacke (PIO) to follow-up on the status of the CPRA request. Attached as **Exhibit**
22 **B** is a true and correct copy of this correspondence.

23 29. On January 14, 2019, the CHP's Office of Risk Management responded that it
24 will take time for the CHP to search for responsive records and that the CHP was taking an
25 additional 14 days to respond. Attached as **Exhibit C** is a true and correct copy of this
26 correspondence.

30. On January 28, 2019, the CHP Office of Risk Management wrote that "the
Dept. possess records responsive to your request. Due to the volume of request received by

1 this Department . . . it is estimated that the first production of records related to your request
2 will take place on May 3, 2019." Attached as **Exhibit D** is true and correct copy of this
3 correspondence.

4 31. On May 1, 2019, in a letter from Mr. J.R. Dolce, Captain and Commander,
5 CHP Office of Risk Management, the CHP unilaterally extended the production deadline to
6 June 3, 2019. Attached as **Exhibit E** is a true and correct copy of this correspondence.

7 32. On June 3, 2019, KQED reporter Alex Emslie, through an email to the CHP,
8 followed up on the status of the CHP's promised production on June 3. Attached as **Exhibit F**
9 is a true and correct copy of this correspondence.

10 33. On June 10, 2019, the CHP, once again, unilaterally extended its deadline until
11 August 5, 2019, to produce responsive records to KQED, more than six months after KQED's
12 CPRA request. Attached as **Exhibit G** is a true and correct copy of this correspondence.

13 34. On June 14, 2020, on behalf of KQED, reporter Alex Emslie responded that the
14 CHP's purported "August" production is "entirely unacceptable". The same day, KQED
15 reporter Sukey Lewis wrote separately to note that a "rolling production" from the CHP is
16 acceptable. Attached as **Exhibit H** is a true and correct copy of this correspondence.

17 35. On August 5, 2019, Ms Lewis wrote to Captain Dolce to request a status
18 update. Attached as **Exhibit I** is a true and correct copy of this correspondence. In response,
19 the CHP produced a three page list of records available for release pursuant to Penal Code
20 832.7. Attached as **Exhibit J** is a true and correct copy of this list.

21 36. On August 6, 2019, Ms. Lewis, in an email response to the CHP, wrote to note
22 that the CHP has sent her "the wrong letter" in response to KQED's request and that the
23 records to be produced by the CHP to KQED are from the wrong time-range. Attached as
4 **Exhibit K** is a true and correct copy of this correspondence.

5 37. On August 6, 2019, the CHP sent an email attaching a letter identifying "a list
of records currently available for release and the cost to obtain them." Attached as **Exhibit L**
is a true and correct copy of this correspondence.

1 38. On August 8, 2019, reporter Thomas Peele, a member of the CNC, wrote to the
2 CHP to note that the records on the list were not responsive to CNC's CPRA request and are
3 outside of the timeframe requested by KQED's January 1, 2019 CPRA request. Mr. Peele also
4 objected to the proposed costs to be charged by the CHP. Attached as **Exhibit M** is a true and
5 correct copy of this correspondence.

6 39. On September 30, 2019, on behalf of the CNC, Mr. Emslie wrote to note that
7 no records have been provided by the CHP, in response to the January 1, 2020 CPRA request.
8 Attached as **Exhibit N** is a true and correct copy of this correspondence.

9 40. On October 11, 2019, in an email, the CHP responded that it is providing a list
10 of records currently available and the cost to access them. Attached as **Exhibit O** is a true and
11 correct copy of this correspondence.

12 41. On October 11, 2019, reporter Mr. Emslie, on behalf of the CNC, responded by
13 email that the CHP failed to include the promised list of records purportedly available.
14 Attached as **Exhibit P** is a true and correct copy of this correspondence.

15 42. On November 1, 2019, in a letter, the CHP wrote that responsive records of
16 2,609 pages are now available on a compact disc, with separate costs for printed records and
17 audio and video recordings. Attached as **Exhibit Q** is a true and correct copy of this
18 correspondence.

19 43. On November 1, 2019, on behalf of KQED, Mr. Emslie responded and objected
20 to the CHP's proposed charges and to its production of older records before newer requested
21 records are produced. Mr. Emslie also asked the CHP for information about how the agency
22 was prioritizing its response to KQED's request. Mr. Emslie also asked the CHP to provide
23 records of the CHP's direct costs of duplication of the requested records. Attached as **Exhibit**
24 **R** is a true and correct copy of this correspondence.

44. On November 12, 2019, in a letter response to Mr. Emslie's November 1, 2019
request, the CHP responded that it has no records of the agency's direct cost of
duplication. Attached as **Exhibit S** is a true and correct copy of this correspondence.

1 45. On November 27, 2019, in a letter, the CHP identified additional records to be
2 produced, and requested a cost of \$1,207 for printed records or \$5.00 for a compact disc for
3 4,025 pages. Attached as **Exhibit T** is a true and correct copy of this correspondence. In
4 response, Mr. Emslie immediately sent the CHP a personal check. Attached as **Exhibit U** is a
5 true and correct copy of this check, which has been partially redacted to exclude Mr. Emslie's
6 address and banking account information. On information and belief, Mr. Emslie's check to
7 the CHP was cashed on November 15, 2019.

8 46. On December 17, 2019, KQED reporter Sukey Lewis wrote to the CHP to
9 request an update on when records will be produced by the CHP, noting that Mr. Emslie sent a
10 check for the records "a couple of weeks ago." Attached as **Exhibit V** is a true and correct
11 copy of this correspondence.

12 47. On December 23, 2019, the CHP wrote that as of that date, Mr. Emslie's check
13 has not been received by the CHP. Attached as **Exhibit W** is a true and correct copy of this
14 correspondence. Mr. Emslie then reviewed the previous correspondence with CHP, and
15 realized that a second batch of records was now available. Mr. Emslie promptly sent the CHP
16 a personal check for the second set of records. Attached as **Exhibit X** is a true and correct
17 copy of this check, which has been partially redacted to exclude Mr. Emslie's address and
18 banking account information. On information and belief, Mr. Emslie's check to the CHP was
19 cashed on January 16, 2020.

20 48. On February 26, 2020, after Mr. Emslie had several telephone calls with CHP
21 representatives, Mr. Emslie sent a letter confirming that, to date, no records had been received
22 by KQED in response to the CPRA request sent to the CHP over a year ago. Within this letter,
23 in order to help identify the scope of the CHP's responsive records, Mr. Emslie requested
24 access to "any record in possession of the CHP main office and/or any of its divisions that
25 catalogues or indexes responsive case files at the CHP." The letter also referenced the
26 requirement found in California Government Code Section 6253.1 that the agency assist Mr.
27 Emslie to locate responsive records. Attached as **Exhibit Y** is a true and correct copy of this
28 correspondence.

1 49. On March 9, 2020, the CHP wrote to state that a) records involving Officer
2 Larios were sent to KQED in a separate correspondence, and records involving Officer
3 McGrew will be sent when the review process is complete; b) that the CHP has no indexes of
4 its records; and c) the CHP's 9 pages of procedure for processing 1421 records is available for
5 release for \$2.70 or a \$5.00 compact disc. Attached as **Exhibit Z** is a true and correct copy of
6 this correspondence.

7 50. On March 11, 2020, Mr. Emslie wrote to the CHP to request that the 9 pages
8 purportedly being produced by the CHP be sent by PDF/email, but additionally, Mr. Emslie
9 sent a check for \$2.70 and asked that the CHP also produce hard copies as well. Mr. Emslie is
10 informed and believes that his check was cashed on March 24, 2020. Attached as **Exhibit AA**
11 is a true and correct copy of this correspondence. The CHP produced the 9 pages to KQED
12 via email on April 14, 2020.

13 51. In spite of KQED's steadfast and repeated efforts for over 16 months, the CHP
14 has produced only a single file – but has refused to produce any of the other records sought by
15 KQED and has provided no update or confirmation when – if ever – it intends to comply with
16 KQED's January 1, 2019 CPRA request. The CHP has offered KQED no explanation as to
17 why it is not in compliance with the CPRA, California's newly enacted transparency
18 legislation (S.B. 1421), let alone when the agency intends to comply with the law and release
19 the records KQED has requested. Having repeatedly and unreasonably refused to produce all
20 responsive records in its possession for over 16 months, KQED has no choice but to deem its
21 CPRA request constructively denied and to seek relief from this Court.

22 52. For the reasons listed above, among others, the CHP's steadfast refusal to
23 comply with KQED's records requests is unlawful and ongoing and in violation of the CPRA.

24 **FIRST CAUSE OF ACTION**

25 **For Violations of the California Public Records Act, Penal Code § 832.7(b), and**
26 **Article I, § 3 of the California Constitution**

27 53. KQED incorporates herein by reference the above allegations, as if set forth in
8 full.

1 54. The CPRA, Penal Code § 832.7(b), and the California Constitution require the
2 disclosure of the records requested by KQED.

3 55. The CHP's repeated and steadfast failure to provide the requested records
4 violates the PRA, Penal Code § 832.7(b), and Article I, § 3 of the California Constitution.
5 **KQED therefore requests the following relief:**

6 1. That the Court issue a writ of mandate directing the CHP to promptly provide
7 KQED with all requested records except those records or parts thereof that the Court
8 determines may lawfully be withheld;

9 2. That the Court award KQED its attorney's fees and costs under Gov't Code §
10 6259 and any other applicable statutes or basis;

11 3. For all other and further relief that the Court deems proper and just.
12

13 DATED: May 8, 2020

DAVIS WRIGHT TREMAINE LLP
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16 By: 

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