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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO
12
13

14 AMERICAN TRANSPARENCY, a 501c
15 Public Charity (d/b/a
16 OPENTHEBOOKS.COM), and ADAM
ANDRZEJEWSKI, an individual,

17 Plaintiffs-Petitioners,

18 v.

19 CALIFORNIA STATE CONTROLLER,
20

21 Defendant-Respondent.

Case No. 34-2020-80003296

**DEFENDANT-RESPONDENT'S
OPPOSITION TO PLAINTIFFS'
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
VERIFIED PETITION FOR WRIT OF
MANDATE UNDER THE CALIFORNIA
PUBLIC RECORDS ACT**

Date: September 10, 2021
Time: 11:00 a.m.
Dept.: 27
Judge: The Honorable Steven M.
Gevercer

Trial Date:
Action Filed: January 10, 2020

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Respondent the California State Controller (“SCO”) submits this memorandum of point and authorities in opposition to the Complaint for Declaratory and Injunctive Relief and Verified Petition for Writ of Mandate filed by Petitioners American Transparency and Adam Andrzejewski. This Opposition is based on and incorporates by reference the Declaration of Rick Chivaro, SCO’s Request for Judicial Notice ISO Opposition, and SCO’s Answer.

INTRODUCTION

This action concerns Petitioners’ attempt to obtain a record that does not exist and copies of all records related to state spending information whether or not in the possession of the SCO. As discussed below, Respondent has responded to Petitioners’ repeated requests for records and has engaged with Petitioners to provide information in an attempt to explain the SCO’s role in various payment processes and clarify Petitioners’ requests for records which Respondent have construed as submitted under the California Public Records Act (“PRA”) which is set forth in Government Code section 6250, et. seq.

In any given year, the State of California operates a hundred plus billion dollar budget with hundreds of millions of transactions, transfers and reallocations. (SCO’s Request for Judicial Notice (“RJN”), Exh. G, Legislative Analyst’s Office October 20, 2020 20-21 Budget Overview Report accessed at <https://lao.ca.gov/Publications/Report/4263>). The SCO itself is responsible for accounting and disbursement of over 50 million financial transactions a year. (See, Declaration of Rick Chivaro, ¶ 8; see also, <https://sco.ca.gov/Files-EO/AboutSCOFlyer.pdf> [attached as Exh. H to the RJN]). Petitioners initially sent the SCO the PRA request at issue here in August 2019 and sought records associated with all state spending. Specifically, Petitioner sought all records of *all* vendor payments, including all vendor payment warrants (essentially checks) with all their data fields, databases with vendor payment information, and all other records *related to* all vendor payments made by the State of California. Respondent engaged with Petitioner in good faith to clarify and focus the request, just as it had in 2013 when Petitioners had written to request a copy of the “state’s checkbook”, explaining the functional and practical limitations of the SCO to identify, review and produce all of its records and data potentially implicated by the request.

1 Despite these efforts, Petitioners persisted in seeking production of their overbroad and unfocused
2 request.

3 The records sought by Petitioners under the present PRA request cannot be produced by
4 Respondent for two reasons. First, Petitioners essentially seek a “checkbook” of California’s
5 spending, such a checkbook does not exist in the SCO and the SCO does not have a duty under
6 the PRA to create one. Second, the sweeping request for electronic copies of “all records relating
7 to state spending information” as originally stated and affirmed in Petitioners’ subsequent
8 clarification, is overly broad and unduly burdensome. As a result, the public interest in disclosure
9 of virtually every record in the SCO’s possession relating to state spending is clearly outweighed
10 by the public interest in preserving the limited resources of the SCO rather than assigning
11 countless staff to engage in a limitless search for documents including many that are publically
12 and readily available from another agency whose purpose is to provide such data to the public.

13 For these reasons, Respondent respectfully requests that this Court deny this Petition for
14 Writ of Mandate.

15 BACKGROUND

16 I. PETITIONERS’ 2013 PRA REQUEST

17 The discussion between Petitioners and the SCO about the requested records really began in
18 June 2013, when Petitioners submitted a Freedom of Information/Open Records Act¹ request for
19 records. At that time, Petitioners’ initial request was for “an electronic copy of ” and “all”
20 checkbook payments for the years 2008-2012. This request sought specific information about
21 presumed checkbook payments including “the vendor name, vendor address, vendor city, vendor
22 state name, vendor zip code, Check Date, Check Number, Check Amount” for each payment
23 made in a four-year period. (Chivaro Decl., Exh. F.) Chief Counsel for the SCO, Richard J.
24 Chivaro (now the Legal Advisor to the State Controller), responded to Petitioners, explaining the
25 processes of the SCO, the methods by which vendor payments are made and recorded, and sought
26 clarification of the request in light of these explanations of the processes and records used and
27 maintained by the SCO. (Chivaro Decl., Exh. F.) For example, Mr. Chivaro explained that the

28 ¹ SCO interpreted this correspondence as a request for records made under the PRA.

1 SCO does not pay the vast majority of the state's vendors. In most cases, vendors are paid
2 directly by the agency contracting for the services. (Chivaro Decl., Exh. F.) That vendor data may
3 only be subsequently provided to the SCO in a request for replenishment of an agency's funds,
4 but those supporting records are not provided to or maintained by Respondent in a line-by-line or
5 checkbook format. (Chivaro Decl., Exh. F.) Mr. Chivaro additionally provided examples of how
6 the SCO stores and processes claims and vendor payments in order to illuminate the unfocused
7 and overbroad nature of the request as cast. (Chivaro Decl., Exh. F.)

8 Over several months, Respondent continually engaged in good faith discussions with
9 Petitioners explaining the function of the SCO and the structural and practical limitations on
10 producing records of all payments made by the State on any given day, let alone for a multi-year
11 period. Mr. Chivaro pointed out that the SCO receives literally thousands of claims for payment
12 daily and that claims are batched by date received and are not segregated, logged or otherwise
13 tracked by agency, employee or payment type. (Chivaro Decl., Exh. F.) Petitioners even thanked
14 Respondent for their willingness and cooperation in explaining the processes of the SCO and
15 working with Petitioners. (Chivaro Decl., Exh. F.) However, in response to Respondent's
16 explanation that there was no central database or "checkbook" for all financial transactions for the
17 State of California, Petitioners expressed disbelief that the SCO could not simply run a report
18 from any software package that would produce the records requested. "But I still do not
19 understand how any software package being used by a State would be unable to run reports such
20 as a vendor report to comply with public records." (Chivaro Decl., Exh. F.) Despite Respondent's
21 efforts, Petitioners still failed to appreciate the variety, complexity and volume of financial
22 transactions they were seeking. As Petitioners did not engage further, Respondents treated the
23 request as withdrawn or completed.

24 **II. PETITIONERS' CURRENT PRA REQUEST AND RESPONDENT'S RESPONSE**

25 Petitioners² submitted a PRA request to Respondent on August 23, 2019. In this request
26 Petitioners' requested the following records:

27
28 ² The August 23, 2019 correspondence stated Cause of Action Institute was making the
PRA request on behalf of Petitioners.

1 1) An electronic copy of all records relating to state spending information,
2 including but not limited to all vendor (transfer of property or services) payee
3 payments, checkbook payment data, warrant payment information, line-by-line
4 vendor payment, batched claim reports, and batched claim depository data,

5 2) Any current or past iteration of a compendium, collection, software package,
6 or report record of all state vendor payment warrants with all available fields,
7 including but not limited to (i) check date/ACH Date, (ii) payee/vendor name, (iii)
8 payee/vendor address, iv) check number/ACH code, (v) check amount/ACH amount
9 (vi) description of products or services, (vii) organization/agency identifier number,
10 (viii) purpose of payment, (ix) department, agency, and (x) type of payment (i.e.
11 contract, grant, etc.)

12 3) To the extent not covered by each of Items One or Two, records of all vendor
13 payments for California State purchases made and services rendered for the
14 applicable time period stated below.

15 The request sought records for at least a twenty-month period of time, beginning January
16 2018 through the date Respondent began a search for records. On October 16, 2019, Counsel for
17 Petitioners, sent a letter to Respondent seeking an update as to the status of any production. In a
18 letter dated November 4, 2019, SCO's Chief Counsel, Richard J. Chivaro, responded by
19 confirming that the request had been received and noted that this request was a duplicate of a
20 request made by Petitioners several years earlier. (Chivaro Decl., Exh. C.) Respondent again
21 addressed the inability of the SCO to produce a vendor "checkbook" of every financial
22 transaction conducted by the State of California. As all three parts of Petitioners' request
23 addressed vendor payments, the response focused on the impediments to producing vendor
24 information in the form and manner sought by Petitioners. Mr. Chivaro detailed the process by
25 which a state agency can pay its own vendors to highlight the difficulties with Petitioners request.
26 For example, there are approximately 500 state boards, agencies, departments which can contract
27 and be billed directly for the delivery of goods and services. The contracting agency pays the
28 vendor directly to take advantage of prompt payment discounts. At some later date, the
contracting agency requests that the SCO replenish the agency's revolving fund account and
sends a list of expenditures made from that account. The backup or supporting information may
take many forms, including hard copies of claim forms with supporting documentation, or
scanned electronic copies of records which are not-text searchable. The supporting documentation
for the claim schedules, which are utilized by the agency to document their need for

1 replenishment of their revolving fund accounts, are not batched or organized or searchable by the
2 vendor name, address, check number, or other fields identified by Petitioners. Under this
3 decentralized payment method, since the SCO issues “payment” to the agency revolving fund and
4 not a particular vendor, the vendor payments made by that agency are not recorded in the SCO’s
5 systems and cannot be extracted and produced as a “checkbook” or “line-by-line vendor
6 payment”. Additionally, the SCO is also responsible for other financial transactions such as
7 disbursing money appropriated by the Legislature for various state and local programs, the
8 transfer of investment dollars, and bond payments, those records would need to be distinguished
9 from vendor payments. (Chivaro Decl., Exh. C.) Therefore, the task of producing “checkbook
10 payment data” or “line-by-line vendor payments” with each line detailing the information in the
11 data fields of each state vendor payment warrant would be an extraordinarily overwhelming
12 burden on Respondent.

13 Petitioners assert they provided Respondent with clarification of their August 2019 request
14 in their November 11, 2019 letter. (Chivaro Decl., Exh. E). The correspondence did not however
15 provide any actual clarification. Instead, it reaffirmed an already overbroad and unfocused
16 description of records sought which Respondent had already explained could not be produced in
17 the method and matter sought. Petitioner’s November 11, 2019, letter states, that it “serves as a
18 clarification of the August request and should be administratively treated as a new request... .”
19 Regardless of whether this November 11, 2019 letter was to be treated as a new request or a
20 clarification, the records sought were the same. As in Petitioners’ initial 2019 letter, Petitioners
21 requested production of “*all* records relating to state spending information,” including “records of
22 *all* vendor payments.” (Emphasis Original) Petitioners stated that “all such records should be
23 treated as responsive, regardless of the particular method by which they are received, retained, or
24 used by the Controller.” (Chivaro Decl., Exh. E.) Petitioners made no effort to narrow the request
25 – simply repeating that it wanted *all* records set forth in the original request—or to acknowledge
26 any of the details about the SCO’s systems, records, and inability to provide the requested records
27 that Mr. Chivaro outlined in his November 4 letter.

Respondent's November response provided detailed explanations of the methods by which vendor payments are made, as all three of Petitioners' requests referenced vendor payments. The "clarified" November request from Petitioners was not functionally different from the original request however, and remained overbroad and unfocused. Petitioners' repeated their request for all records in possession of the SCO which "related" to state spending. The only element that distinguished the original August 2019 request from the November 2019 one was that the November "clarification" removed any reference to a time period for which records were sought thereby making it even broader in scope.

Petitioners' request for all records which relate to state spending would require Respondent to review nearly every record within its possession for responsiveness, as all records used, maintained, produced, prepared, or otherwise in the possession of a state agency may be argued to relate broadly to state spending. Similarly, the term "state spending" is not limited to payment of bills for goods and services – it also includes state employee salaries, state equipment, and state facilities. (Chivaro Decl., ¶ 8). In addition, the SCO executes appropriations to local governments and schools which necessarily involve receipt and exchange of records related to state spending. (*Id.*) The SCO is also tasked with processing tax refunds, regional center client services reimbursement which involve the processing of records related to state spending. (*Id.*) As such, Petitioners' request implicates countless records related to millions of annual transactions.

III. THE LEGISLATURE ESTABLISHED FISCAL TO SERVE AS THE STATE'S "CHECKBOOK"

Respondents do not dispute that clarity into government spending is of fundamental importance to California taxpayers. Despite Petitioners' assertions to the contrary, California has recognized the need for increased transparency in the state budget and spending and to that end has taken meaningful steps toward that goal. Precisely because the State's financial systems were de-centralized and in many instances, antiquated or obsolete, the Legislature established the Financial Information System for California, to be known as FISCAL. (Chivaro Decl., ¶ 11.) Various state agencies, including the Department of Finance, the SCO, and the California State Treasurer, have worked collaboratively to create what is now an independent agency with the

1 same name. (*Id.*, see also RJN, Exh. I.) FI\$Cal (the system) is intended to eliminate the use of
2 hundreds of legacy systems used across state government and to combine, in a publically
3 accessible database, the state's accounting, budgeting, cash management, and procurement
4 operations into a single financial-management system. (See, [https://fiscal.ca.gov/about-us/what-](https://fiscal.ca.gov/about-us/what-is-fiscal/)
5 [is-fiscal/](https://fiscal.ca.gov/about-us/what-is-fiscal/) [attached as Exh. J to the RJN]; see also, Gov. Code, §§ 13300 et seq.) While FI\$Cal
6 (the department) continues to add functionality and resources to its system, for a majority of state
7 agencies the public already can access the very data points Petitioners seek from Respondent. In
8 fact, the public facing system, Open FI\$Cal, allows users to download expenditures and create
9 reports including the following data fields: date; accounting date and type; vendor name; account
10 description; fund name, code/classification, and description; payment amount; as well as monthly
11 vendor transactions for each department. (RJN, Exhs. K-M.) Despite all this publicly available
12 information, Petitioners insist that Respondent must be compelled to review, reorganize and
13 compile hundreds of millions of records that exist in hard copy or in antiquated legacy systems to
14 create a new record—a “checkbook” or report with the specific information Petitioners seek—or,
15 in the alternative, to produce every record related to state spending.

16 LEGAL STANDARD

17 The PRA provides for the inspection of public records maintained by state and local
18 agencies. (Gov. Code, § 6250 et seq.) However, the right to access public records is not absolute.
19 The PRA recognizes that certain records should not - for reasons of privacy, safety, and efficient
20 government operations - be made public. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061,
21 1064, emphasis added.) While the PRA embodies a strong policy in favor of disclosure of public
22 records, it includes two exceptions for (1) materials expressly exempt from disclosure pursuant to
23 sections 6254 et seq.; and (2) materials meeting the balancing test exception of section 6255.
24 (Gov. Code, §§ 6254, 6255.) If a requested record does not fall within a specific exemption, but
25 the government agency establishes that “on the facts of the particular case the public interest
26 served by not disclosing the record clearly outweighs the public interest served by disclosure of
27 the record,” the record should be withheld. (Gov. Code, § 6255(a).) A PRA request must be
28 balanced against relevant competing public interest factors, which may properly include

1 reasonableness considerations about the fiscal impact and workload burden being imposed upon a
2 public agency by a particular request. (*Fredericks v. Superior Court* (2015), 233 Cal.App.4th
3 209, 235, citing Gov. Code, § 6255, subd. (a).) While the 2004 amendment to the California
4 Constitution explicitly recognizes the right of access to information regarding the government's
5 business, it specifically preserved existing statutory exemptions and "other authorities" providing
6 exemptions, such as case law. (Cal. Const., art. I, § 3.)

7 To the extent Petitioners generally seek records concerning state expenditures, those
8 records are "public records" under the PRA (Gov. Code, § 6252, subd. (e).) Therefore, this matter
9 turns on whether any exemptions to disclosure apply to the records sought here. Every challenge
10 to an agency's response to a PRA request is "unique and fact-specific," and courts assess the
11 PRA's coverage on a case-by-case basis. (*Bertoli v. City of Sebastopol* (2015), 233 Cal.App.4th
12 353, 377.) While the PRA does anticipate that any request will impose some burden on an
13 agency, the degree of the burden imposed is properly a consideration in determining the
14 reasonable scope of a request on government agencies in responding. (*American Civil Liberties*
15 *Foundation v. Deukmejian* (1982), 32 Cal.3d. 440, 453.)

16 ARGUMENT

17 The PRA is intended to provide individuals "access to information concerning the conduct
18 of the people's business..." (Gov. Code, § 6250.) Individuals and entities are entitled to all
19 public records that are not exempt from disclosure. (Gov. Code, § 6253, subd. (b).) Because the
20 PRA serves this important public interest by securing public access to government records, it is
21 construed broadly in favor of access, and exemptions from disclosure are construed narrowly.
22 (*Rogers v. Superior Court* (1993), 19 Cal.App.4th 469, 476.) The request must describe the
23 documents clearly enough to permit the agency to determine whether such documents exist and
24 are under the agency's possession or control. (Govt. Code, § 6253(b).) However, the request must
25 also be focused and specific so as to permit the agency to identify the requested records. If the
26 agency does not maintain the records, it is under no obligation to create records to satisfy the
27 request. (*Sander v. Superior Court* (2018) 26 Cal.App.5th 651.)

Petitioners' initial 2019 request fails to be either focused or specific. Furthermore, even after Respondent provided background regarding the records and the process associated with payment processing at the SCO, Petitioners failed to refine the request in any meaningful way. Instead, Petitioners continued to seek all records of state spending compiled in a way that differs from how records are received or maintained by the SCO. If read in isolation, the request at first may appear to be reasonable and specific-- but when assessed in light of the limitations of and scope of documents possessed by the Respondent (as explained in the SCO's responses), the request is not reasonable and the clarification provided that "all" records "related to" any state spending cannot be viewed as anything but a very broad and open ended request.

Requests under the PRA should be weighed for reasonableness and not be overly burdensome. (Gov. Code, § 6255, subd. (a).) A limitless search of documents is not in the public interest. "Section 6255 speaks broadly of the "public interest," a phrase which encompasses public concern with the cost and efficiency of government. To refuse to place such items on the section 6255 scales would make it possible for any person requesting information, for any reason or for no particular reason, to impose upon a governmental agency a limitless obligation. Such a result would not be in the public interest." (*American Civil Liberties Union Foundation v. Deukmejian* (1982), 32 Cal.3d 440, 452-453.) Accordingly, as is explained more fully below, the Court should deny the Petition as the request for records calls for records not in the possession of the Respondent; and, the subsequent clarifications to the request are unreasonable, unspecific, and unduly burdensome.

I. THE PRA DOES NOT REQUIRE RESPONDENT TO CREATE A COMPREHENSIVE RECORD RESPONSIVE TO PETITIONERS' REQUEST WHERE ONE DOES NOT EXIST.

Petitioners seek "records of all vendor payments for California State purchases and services rendered" including but not limited to the "check date/ACH Date, payee/vendor name, payee/vendor address, check number/ACH code, check amount/ACH amount, description of products or services, organization/agency identifier number, purpose of payment, department/agency/office and type of payment. (Chivaro Decl., Exh. A.) Functionally, this is a request for the state's "checkbook" as identified in Petitioners' 2013 request. As Respondent

1 noted in its responses, SCO does not maintain, index or categorize vendor transactions based on
2 the criteria provided in Petitioners' request and as such, the records with one or more aspects of
3 the information sought would require an extraordinary effort to locate and produce. Even if
4 Petitioners' request only concerned records of vendors warrants and payments, that limitation
5 fails to identify a reasonably identifiable set of records in the possession of control of
6 Respondent. The PRA does not compel an agency to produce records which cannot be located
7 with a reasonable effort. (*California First Amendment Coalition v. Superior Court* (1998), 67
8 Cal.App.4th 159, 165–166.) In this instance, there is not a current or past iteration of a
9 compendium, collection, software package, or report record of *all* state vendor payment warrants
10 with all available fields that can be produced to Petitioners by Respondent. Petitioners' request
11 does not correspond with how the Controller receives, processes, audits, stores, or otherwise
12 records this information. As explained in Respondent's 2013 and 2019 responses, vendor
13 payments are decentralized and it is not possible to pull all data fields for each transaction from
14 the existing systems of the SCO. The Controller would have to search numerous locations and
15 review paper, electronic tape, and other electronic files including non-electronically searchable
16 records to identify, extract, and create a database with the data points identified by Petitioners.
17 (Chivaro Decl., ¶ 12.) The PRA does not compel agencies to create records that do not exist at the
18 time the request is made or that are not in the agency's possession. (*Sander v. Superior Court*
19 (2018) 26 Cal.App.5th 651.)

20 If Petitioners have an "alternative, less intrusive means of obtaining the records sought, the
21 public interest in disclosure is minimal". (*Los Angeles Unified School Dist. v. Super. Ct* (2014)
22 228 Cal.App.4th 222, 242). While FI\$Cal does not currently contain records of all state agencies,
23 Petitioners can readily access and export the very vendor transaction data fields they seek from a
24 majority of California's agencies. Respondent agrees that public "access to information
25 concerning the conduct of the people's business is a fundamental and necessary right of every
26 person[.]" (Gov. Code, § 6250.) However, what Petitioners' repeatedly failed to acknowledge is
27 that it is not the SCO but another state department that has the majority of records and
28

1 information in the formats requested. Therefore, the public interest in disclosure of the records
2 requested from the SCO is minimal. (*Los Angeles Unified School Dist.*, 228 Cal.App.4th at 242.)
3 This minimal interest in disclosure is outweighed by the simple fact that the records really being
4 sought by Petitioners is “checkbook” data maintained by FISCAL, not the SCO. The SCO does not
5 have the ability or obligation to produce public records that are not in its custody. (Gov. Code, §
6 6253, subd. (c).)

7 **II. PETITIONERS’ UNFOCUSED AND UNSPECIFIC REQUEST FOR ALL RECORDS WHICH**
8 **RELATE TO STATE SPENDING IS UNDULY BURDENSOME**

9 The SCO is responsible for accounting and disbursement of over 54 million financial
10 transactions a year. (See, <https://sco.ca.gov/Files-EO/AboutSCOFlyer.pdf>, attached as Exh. H to
11 the RJN; see also, Chivaro Decl., ¶ 8.) Its duties include management of unclaimed property;
12 auditing state disbursements and claims, allocations of funding to local governments and schools,
13 general fund cash flow management, reporting and accounting for special funds, including truck,
14 gasoline, insurance taxes, disbursement for state payrolls and retirement rolls, Medi-Cal, and
15 income tax refunds. (Chivaro Decl., ¶ 8.) It also is responsible for general fund cash flow
16 management which concerns over \$135,000,000,000 in revenues and transfers. (*Id.*, see also RJN,
17 Exh. G.)

18 In light of the above, Petitioners’ expansive request for all records of the SCO that relate to
19 state spending is therefore not focused or specific. A request for records under the PRA must be
20 focused in order to give agencies a reasonable opportunity to respond. Respondent does not
21 dispute Petitioners’ contention that the SCO possesses records which relate to state spending. The
22 SCO by design has responsibilities and some connection to almost every aspect of California’s
23 one hundred plus billion dollar budget, as such every record in its possession relates to state
24 spending. A search for records which only need to have a relation to state spending, which
25 practically speaking is Petitioners’ request, would require every division and employee of the
26 Controller’s office to review virtually every single record and database to determine if they have
27 any documents or information related to state spending. (Chivaro Decl., ¶ 12.) Because the public
28 interest in production of the information in the manner and scope Petitioners seek is clearly

1 outweighed by the public interest in avoiding the expense and inconvenience of engaging in such
2 a limitless search of documents the Court should deny Petitioners' Petition for a Writ of Mandate.
3 (Gov. Code, § 6255; *American Civil Liberties Union Foundation v. Deukmejian* (1982), 32
4 Cal.3d 440, 452-453.)

5 In addition, a request for all records which somehow *relate* to state spending is not focused
6 and does not provide Respondents sufficient notice of what records would possibly be responsive.
7 Unfocused requests compel agencies to deny them thereby leading to litigation. The request to
8 the agency therefore must itself be focused and specific, and on that basis the Court should deny
9 the present Petition. (*Rogers v. Superior Court* (1993), 19 Cal.App.4th 469, 481; *Galbiso v. Orosi*
10 *Public Utility Dist.* (2008), 167 Cal.App.4th 1063, 1088.)

11 The PRA allows for exceptions to the wholesale disclosure of records which may be in the
12 possession of an agency. "Despite the value assigned to robust public disclosure of government
13 records both in the California Constitution and in the PRA...exceptions nonetheless
14 exist...section 6255(a), the PRA's catchall provision allowing a government agency to withhold a
15 public record if it can demonstrate that 'on the facts of the particular case the public interest
16 served by not disclosing the record clearly outweighs the public interest served by disclosure of
17 the record.'" (*Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282,
18 291). Petitioners' expansive request for *all records related to all state spending* is unduly
19 burdensome. Almost every record in possession of the Respondent is in some way related to state
20 spending. An agency may legitimately raise an objection that a request is overbroad or unduly
21 burdensome, or that the documents cannot be located with reasonable effort. (*California First*
22 *Amendment Coalition v. Superior Court* (1998), 67 Cal.App.4th 159, 165-166.) Petitioners' PRA
23 request must be balanced against relevant competing public interest factors, which may properly
24 include reasonableness considerations about the fiscal impact and workload burden being
25 imposed upon a public agency by a particular request. (*Fredericks v. Superior Court* (2015), 233
26 Cal.App.4th 209, 235, citing Gov. Code, § 6255, subd. (a).) As Petitioners' own November 11
27 response states, they do not limit their request to a centralized vendor payment database or the
28 methods of batching or storage or information receipt, but "Mr. Andrzejewski's request clearly

1 states that it seeks ‘all records relating to state spending information,’ including records of all
2 vendor payments.” (Chivaro Decl., Exh. E, Emphasis in original.) A request that requires an
3 entity to search an enormous volume of data for a “needle in the haystack,” or that compels
4 production of a huge volume of material may be objectionable as unduly burdensome. (*California*
5 *First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 1166.) The search for
6 and review of “all records relating to state spending information” in the possession of the
7 Controller’s office, which necessarily would include the redaction of exempt information, would
8 be a tremendous burden and require a substantial expenditure of public resources to accomplish.
9 (Chivaro Decl., ¶ 12.) While the PRA anticipates that every request will impose some burden on
10 an agency, the degree of the burden imposed is properly a consideration in determining the
11 reasonable scope of a request on government agencies in responding. (See, *American Civil*
12 *Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 453, [rejecting that a limitless
13 obligation on a government agency would be in the public interest].)

14 Furthermore, some vendor payments and claim schedules and accompanying
15 documentation include a multitude of confidential personal information and exempt data points
16 including records of medical payments, special education and regional center client
17 reimbursements, social security numbers, and other protected information. The PRA exempts
18 from disclosure “medical, or similar files, the disclosure of which would constitute an
19 unwarranted invasion of personal privacy.” (Gov. Code, § 6254, subd. (c).) As a result, the
20 Controller would have to search numerous locations and manually review paper, electronic tape,
21 and other electronic files in order to identify and redact all references to confidential information
22 that are exempt from disclosure under the PRA. (Chivaro Decl., ¶ 12.)

23 Given the tremendous burden on the SCO as outlined above, and the limited public interest
24 in disclosure of a significant amount of the information, which as explained above, is available to
25 the public from FI\$Cal, this Court should deny the petition for a writ of mandate.

1 **III. RESPONDENTS ATTEMPTED TO WORK WITH PETITIONERS IN GOOD FAITH TO**
2 **FOCUS AND NARROW THEIR REQUEST.**

3 Petitioners attempt to mischaracterize Respondent's good faith attempts to seek clarification
4 by making several reference to an "op-ed about this lawsuit." An elected official's response to a
5 story in a nonprofit online journal, which correctly noted that state disbursements and
6 expenditures are not maintained in a central location or format by Respondent, is not at issue in
7 this matter. What is at issue, is the Petitioners' request and Respondent's diligent efforts to seek
8 clarification of the request while explaining some of the records maintained by Respondent and
9 the difficulty it would have in even partially complying with the request for records.

10 Despite Respondent's good faith explanations Petitioners continue to demonstrate a
11 fundamental misunderstanding of the budgeting and payment provisions of the State of California
12 and the availability of the spending data sought and the formats in which it is retained by the
13 SCO.

14 Respondent has complied with the mandate of section 6253.1, subdivision (a), which
15 requires the agency to assist the requester to formulate a focused and effective request. (Chivaro
16 Decl., Exhs. C and F.) Respondent attempted to assist Petitioners to refine their request to records
17 which could be produced. (Chivaro Decl., Exhs. A and F.) Respondent detailed the methods and
18 manner by which agencies pay their own vendors illustrating that Respondent does not have those
19 records sought by Petitioners, in satisfaction of section 6253.1, subdivision (b). Respondent also
20 explained to Petitioners that the vendor payment process is decentralized and as such SCO does
21 not have a checkbook, or specific checkbook entries, of all state expenditures to produce.
22 (Chivaro Decl., Exhs. C and E). Petitioners did not attempt to clarify their request, despite the
23 efforts of Respondent, and attempted to recast their request for *all* records which in any way
24 relate to state spending as a "broad yet reasonable request". (Chivaro Decl., Exh. F). Respondents
25 have made a reasonable effort to work with Petitioners in an attempt to clarify their request yet as
26 the correspondence show, Petitioners' request continues to be unspecific and unfocused.
27 Unspecific and unfocused requests are contrary to the purpose of the Public Records Act. (*Rogers*
28 *v. Superior Court* (1993), 19 Cal.App.4th 469, 481; *Galbiso v. Orosi Public Utility Dist.* (2008),

1 167 Cal.App.4th 1063, 1088.) Requests that compel production of a huge volume of material,
2 such as all records in possession of the Controller that “relate” to state spending, are unduly
3 burdensome. (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th
4 159, 1166.) A request however, for all records which in any way related to state spending cannot
5 be deemed a reasonably focused request. Accordingly, this Court should deny the present Petition
6 seeking a Writ of Mandate.

7 **IV. PETITIONERS’ REQUEST FOR AN AWARD OF ATTORNEYS’ FEES AND COSTS**
8 **SHOULD BE DENIED.**

9 “The court shall award court costs and reasonable attorney fees to the plaintiff should the
10 plaintiff prevail in litigation filed pursuant to this section.” (Gov. Code, § 6259(d).) An award of
11 costs and attorney fees pursuant to this provision is mandatory if the plaintiff prevails. (*Filarsky v.*
12 *Superior Court (City of Manhattan Beach)* (2002), 28 Cal.4th 419, 427.) A plaintiff prevails
13 within the meaning of section 6259, subdivision (d), ““when he or she files an action which
14 results in defendant releasing a copy of a previously withheld document.’ [Citation.]” (*Los*
15 *Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381,
16 1391; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 898.) An action under the Public Records
17 Act results in the release of previously withheld documents “if the lawsuit motivated the
18 defendants to produce the documents.” (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469,
19 482; *Motorola Communication & Electronics, Inc. v. Department of General Services* (1997) 55
20 Cal.App.4th 1340, 1344.) “Cases denying attorney fees to a plaintiff under the act have done so
21 because substantial evidence supported a finding that the ‘litigation did *not* cause the [agency] to
22 disclose any of the documents ultimately made available....’ [Citations.]” (*Los Angeles Times v.*
23 *Alameda Corridor Transportation Authority, supra*, at p. 1391.) In evaluating whether the
24 litigation caused the disclosure of documents requests that are not clarified or narrowed until after
25 the litigation commences or concludes have been held to not support an award of attorneys’ fees
26 and costs. (*Motorola Communication & Electronics, Inc. v. Department of General Services*
27 (1997), 55 Cal.App.4th 1340, 1350 [holding that “the inherent vagueness in a request seeking all
28

documents ‘concerning or relating to [a]ny contract and/or modification or amendment of a contract or master agreement’” could not justify an award of fees and costs.)

Petitioner’s request for attorneys’ fees and costs is inappropriate because SCO has not withheld records to which Petitioners are entitled under the PRA. As explained above, the SCO does not possess “the checkbook” or the summary of the vendor data that the Petitioners seek in their request. Respondents cannot produce records that are not in its possession. In addition, to the extent Petitioners are seeking all records related to state spending, such a request, as explained more fully above, is clearly unfocused and unduly burdensome. Unfocused and unduly burdensome requests under the PRA do not require the agency to produce responsive records. (*Bertoli v. City of Sebastopol* (2015), 233 Cal.App.4th 353, 377.) Consequently, Petitioners cannot be the prevailing party in this matter.

Accordingly, this Court should find that Petitioners are not the prevailing party in this matter, and therefore, the Court should deny Petitioners request for attorneys’ fees and costs associated with bringing this action and the present Petition for a Writ of Mandate.

CONCLUSION

The SCO has made a good faith effort to satisfy its obligations under the PRA by providing information about the SCO’s records and systems, and the limitations in those systems, and by seeking clarification from Petitioners. Each time, however, Petitioners have rejected the information provided by the SCO and repeated Petitioners’ sweeping request for records. The SCO has informed the Petitioners about the types of records within its possession and the significant technological and organizational limitations to the disclosures sought. The simple fact is that the SCO does not have the records initially sought by Respondents. As to Respondents’ clarified request, which seeks all records related to all state spending, the public interest in obtaining such records is significantly outweighed by the overwhelming and extraordinary burden that satisfying such a request would have on the SCO. For all of the reasons listed above,

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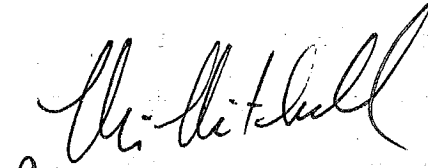
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1 Respondent respectfully requests that this Court deny Petitioners' claims in full and deny the writ
2 petition.

3
4 Dated: August 16, 2021

Respectfully submitted,

5 ROB BONTA
6 Attorney General of California
7 MICHELLE M. MITCHELL
8 Supervising Deputy Attorney General
9 KEITH WURSTER
10 DEPUTY ATTORNEY GENERAL

11 
12 for ALICIA G. BOOMER
13 Deputy Attorney General
14 Attorneys for
15 State Controller's Office

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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **American Transparency, et al. v. California State Controller**
No.: **34-2020-80003296**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On August 16, 2021, I served the following documents:

- 1. DEFENDANT-RESPONDENT'S OPPOSITION TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT;**
- 2. DECLARATION OF RICHARD J. CHIVARO SUPPORTING DEFENDANT-RESPONDENT'S OPPOSITION TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT; and**
- 3. DEFENDANT-RESPONDENT'S REQUEST FOR JUDICIAL NOTICE OF CERTAIN INFORMATION FOUND ON WEBSITE IN SUPPORT OF OPPOSITION TO PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT.**

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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Attorneys for Plaintiffs

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 16, 2021, at Sacramento, California.

Eileen A. Ennis
Declarant


Signature

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