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9 *California Building Standards Commission*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SACRAMENTO

12 CIVIL DIVISION

13
14 **PUBLIC.RESOURCE.ORG., INC.,**

Petitioner,

15
16 v.

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18 **CALIFORNIA OFFICE OF**
ADMINISTRATIVE LAW, and the
19 **CALIFORNIA BUILDING STANDARDS**
COMMISSION,

20 Respondents.
21

Case No. 34-2021-80003612

RESPONDENT CALIFORNIA
BUILDING STANDARDS
COMMISSION'S ANSWER TO THE
VERIFIED PETITION FOR
PREEMPTORY WRIT OF MANDATE
ORDERING COMPLIANCE WITH THE
CALIFORNIA PUBLIC RECORDS ACT

Dept: 27

Judge: Steven M. Gevercer

Trial Date: Not Set

Action Filed: March 17, 2021

22 Respondent California Building and Standards Commission (BSC) hereby answers the
23 Verified Petition for peremptory Writ of Mandate (Petition) of Petitioner Public Resource Org,
24 Inc. Respondent BSC responds to the Petition by admitting, denying, averring and alleging as
25 follows:
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1 **ANSWER TO PETITIONER’S INTRODUCTORY ALLEGATIONS**

2 1. Answering paragraph 1 of the Petition, Respondent BSC admits the California Public
3 Records Act is codified in Government Code sections 6250 *et seq.* Respondent BSC also admits
4 the California Constitution addresses the public’s access to public records. (Cal. Const., art. I, §
5 3.) Respondent BSC admits that the referenced statute and California Constitution speak for
6 themselves. Respondent BSC admits that a writ of mandate may be used pursuant to Government
7 Code section 6258 to enforce rights under the California Public Records Act. Except as
8 otherwise admitted or denied above, Respondent BSC denies each and every remaining allegation
9 contained in paragraph 1.

10 2. Answering paragraph 2 of the Petition, Respondent BSC admits it received a request
11 for records under the public Records Act from Petitioner sometime between December 2020 and
12 February 2021. Respondent BSC denies that it refused the request and that its responses did not
13 comply with the Public Records Act. To the extent this paragraph references correspondence
14 between Petitioner and Respondent California Office of Administrative Law (“OAL”),
15 Respondent BSC lacks sufficient knowledge to form a belief as to the truth of such allegations
16 and on that basis denies those allegations. Except as otherwise admitted or denied above,
17 Respondent BSC denies each and every remaining allegation contained in paragraph 2.

18 3. Answering paragraph 3 of the Petition, the allegations in this paragraph constitute
19 legal argument and conclusion, and on such basis Respondent BSC denies the allegations. To the
20 extent the allegations pertain to actions of Respondent OAL, or what Respondent OAL possesses,
21 Respondent BSC lacks sufficient knowledge to form a belief as to the truth of such allegations
22 and on that basis denies those allegations. Except as otherwise admitted or denied above,
23 Respondent BSC denies each and every remaining allegation contained in paragraph 3.

24 4. Answering paragraph 4 of the Petition, Respondent BSC denies that Petitioner is
25 entitled to the relief requested, or to any relief at all. Except as otherwise admitted or denied
26 above, Respondent BSC denies each and every remaining allegation contained in paragraph 4.

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1 13. Answering paragraph 13 of the Petition, Respondent BSC lacks sufficient knowledge
2 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each
3 and every allegation contained in paragraph 13.

4 14. Answering paragraph 14 of the Petition, Respondent BSC lacks sufficient knowledge
5 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each
6 and every allegation contained in paragraph 14.

7 15. Answering paragraph 15 of the Petition, Respondent BSC lacks sufficient knowledge
8 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each
9 and every allegation contained in paragraph 15.

10 16. Answering paragraph 16 of the Petition, Respondent BSC lacks sufficient knowledge
11 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each
12 and every allegation contained in paragraph 16. Except as otherwise admitted or denied above,
13 Respondent BSC denies each and every remaining allegation contained in paragraph 16.

14 17. Answering paragraph 17 of the Petition, Respondent BSC lacks sufficient knowledge
15 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each
16 and every allegation contained in paragraph 17. Except as otherwise admitted or denied above,
17 Respondent BSC denies each and every remaining allegation contained in paragraph 17.

18 18. Answering paragraph 18 of the Petition, Respondent BSC lacks sufficient knowledge
19 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each
20 and every allegation contained in paragraph 18.

21 19. Answering paragraph 19 of the Petition, Respondent BSC lacks sufficient knowledge
22 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each
23 and every allegation contained in paragraph 19.

24 20. Answering paragraph 20 of the Petition, Respondent BSC denies each and every
25 allegation contained in paragraph 20 including the allegations contained in footnote 2.

26 21. Answering paragraph 21 of the Petition, Respondent BSC admits it received a request
27 for records from Petitioner dated December 29, 2020 which is attached as Exhibit F. Respondent
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1 BSC admits Exhibit F speaks for itself. Except as otherwise admitted or denied above,
2 Respondent BSC denies each and every remaining allegation contained in paragraph 21.

3 22. Answering paragraph 22 of the Petition, Respondent BSC admits that it sent a
4 communication to Petitioner on January 7, 2021 which is attached to the Petition as Exhibit G.
5 Respondent BSC admits Exhibit G speaks for itself. Except as otherwise admitted or denied
6 above, Respondent BSC denies each and every remaining allegation contained in paragraph 22.

7 23. Answering paragraph 23 of the Petition, Respondent BSC admits Exhibit G speaks
8 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every
9 remaining allegation contained in paragraph 23.

10 24. Answering paragraph 24 of the Petition, Respondent BSC admits Exhibit G speaks
11 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every
12 remaining allegation contained in paragraph 24.

13 25. Answering paragraph 25 of the Petition, Respondent BSC admits Exhibit G speaks
14 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every
15 remaining allegation contained in paragraph 25.

16 26. Answering paragraph 26 of the Petition, Respondent BSC admits it received a letter
17 from Petitioner dated January 29, 2021 that is attached as Exhibit H. Respondent BSC admits
18 Exhibit H speaks for itself. Except as otherwise admitted or denied above, Respondent BSC
19 denies each and every remaining allegation contained in paragraph 26.

20 27. Answering paragraph 27 of the Petition, Respondent BSC admits Exhibit H speaks
21 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every
22 remaining allegation contained in paragraph 27.

23 28. Answering paragraph 28 of the Petition, Respondent BSC admits Exhibit H speaks
24 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every
25 remaining allegation contained in paragraph 28.

26 29. Answering paragraph 29 of the Petition, Respondent BSC admits Exhibit H speaks
27 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every
28 remaining allegation contained in paragraph 29.

1 30. Answering paragraph 30 of the Petition, Respondent BSC admits it received
2 correspondence from Petitioner dated February 24, 2021 and sent correspondence to Petitioner on
3 March 2, 2021 which are attached to the Petition as Exhibit I at pages numbered by Petitioner
4 with BATES numbers 00045-00046 and 00045 respectively. Respondent BSC admits Exhibit I
5 speaks for itself. Except as otherwise admitted or denied above, Respondent BSC denies each
6 and every remaining allegation contained in paragraph.

7 **ANSWER TO PETITIONER’S OVERVIEW OF THE CALIFORNIA PUBLIC RECORDS**
8 **ACT**

9 31. Answering paragraph 31 of the Petition, Respondent BSC admits the California
10 Public Records Act was enacted in 1968 and is codified at Government Code sections 6250 *et*
11 *seq.* Respondent BSC further admits the California Constitution addresses the public’s access to
12 public records. (Cal. Const., art. I, § 3.) Respondent BSC also admits the statute and the
13 California Constitution speak for themselves. Except as otherwise admitted or denied above,
14 Respondent BSC denies each and every remaining allegation contained in paragraph 31.

15 32. Answering paragraph 32 of the Petition, Respondent BSC admits that Government
16 Code section 6253.9 speaks for itself. Except as otherwise admitted or denied above, Respondent
17 BSC denies each and every remaining allegation contained in paragraph 32.

18 33. Answering paragraph 33 of the Petition, Respondent BSC admits that Government
19 Code sections 6252 and 6253 speak for themselves. To the extent paragraph 33 contains
20 argument and legal conclusions, Respondent BSC denies those allegations. Except as otherwise
21 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
22 in paragraph 33.

23 34. Answering paragraph 34 of the Petition, paragraph 34 constitutes argument and legal
24 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise
25 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
26 in paragraph 34.

27 35. Answering paragraph 35 of the Petition, Respondent BSC admits that Government
28 Code section 6252 speaks for itself. Respondent BSC further admits that the California Code of

1 Regulations speaks for itself. Except as otherwise admitted or denied above, Respondent BSC
2 denies each and every remaining allegation contained in paragraph 35.

3 36. Answering paragraph 36 of the Petition, Respondent BSC admits there is a statutory
4 framework governing the California Code of Regulations. Respondent BSC admits Government
5 Code section 11342.4 and Health and Safety Code section 18930, subdivision (a), speak for
6 themselves. Except as otherwise admitted or denied above, Respondent BSC denies each and
7 every remaining allegation contained in paragraph 36.

8 37. Answering paragraph 37 of the Petition, paragraph 37 contains argument and legal
9 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise
10 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
11 in paragraph 37.

12 38. Answering paragraph 38 of the Petition, paragraph 38 contains argument and legal
13 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise
14 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
15 in paragraph 38 including the allegations contained in footnote 3.

16 39. Answering paragraph 39 of the Petition, Respondent BSC admits the language of
17 Exhibits D and G speak for themselves. To the extent paragraph 39 constitutes Petitioner's legal
18 argument and legal conclusion, Respondent BSC denies such allegations. Insofar as paragraph 39
19 alleges material facts relating to Respondent OAL, Respondent BSC lacks knowledge to admit
20 the allegations and on that basis denies all such allegations. Except as otherwise admitted or
21 denied above, Respondent BSC denies each and every remaining allegation contained in
22 paragraph 39.

23 40. Answering paragraph 40 of the Petition, paragraph 40 constitutes argument and legal
24 conclusions and on that basis Respondent BSC denies such allegations. Except as otherwise
25 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
26 in paragraph 40.

27 41. Answering paragraph 41 of the Petition, paragraph 41 constitutes argument and legal
28 conclusions and on that basis Respondent BSC denies such allegations. Respondent BSC lacks

1 sufficient knowledge to form a belief as to the truth of the allegations in said paragraph and on
2 that basis denies each and every allegation contained in paragraph 41. Except as otherwise
3 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
4 in paragraph 41 including the allegations contained in footnote 4.

5 42. Answering paragraph 42 of the Petition, Respondent BSC admits Government Code
6 section 6270 speaks for itself. Paragraph 42 contains Petitioner's argument and legal conclusions,
7 and on such basis Respondent BSC denies such allegations. Except as otherwise admitted or
8 denied above, Respondent BSC denies each and every remaining allegation contained in
9 paragraph 42.

10 43. Answering paragraph 43 of the Petition, this paragraph contains argument and legal
11 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise
12 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
13 in paragraph 43.

14 44. Answering paragraph 44 of the Petition, Respondent BSC admits Exhibit G speaks
15 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every
16 remaining allegation contained in paragraph 44.

17 45. Answering paragraph 45 of the Petition, paragraph 45 constitutes argument and legal
18 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise
19 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
20 in paragraph 45.

21 46. Answering paragraph 46 of the Petition, paragraph 46 constitutes argument and legal
22 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise
23 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
24 in paragraph 46.

25 47. Answering paragraph 47 of the Petition, paragraph 47 constitutes arguments and legal
26 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise
27 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
28 in paragraph 47.

1 48. Answering paragraph 48 of the Petition, paragraph 48 constitutes arguments and legal
2 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise
3 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
4 in paragraph 48.

5 49. Answering paragraph 49 of the Petition, Respondent BSC admits the California Code
6 of Regulations is currently widely available in various formats. Respondent BSC admits that
7 Exhibits D and G speak for themselves. Paragraph 49 contains arguments and legal conclusions,
8 and on that basis Respondent BSC denies those allegations. Except as otherwise admitted or
9 denied above, Respondent BSC denies each and every remaining allegation contained in
10 paragraph 49.

11 50. Answering paragraph 50 of the Petition, Respondent BSC admits the regulations are
12 published at the websites cited in paragraph 50. Respondent BSC further admits Exhibits D and
13 G speak for themselves. Paragraph 50 contains argument and legal conclusions and on that basis
14 Respondent BSC denies such allegations. To the extent this paragraph contains any allegations of
15 material fact, Respondent BSC denies each and every such allegation including the allegations
16 contained in footnote 5.

17 51. Answering paragraph 51 of the Petition, Respondent BSC admits that Exhibit G and
18 Government Code section 6253.9 speak for themselves. Paragraph 51 contains argument and
19 legal conclusions, and on that basis Respondent BSC denies such allegations. Except as
20 otherwise admitted or denied above, Respondent BSC denies each and every remaining allegation
21 contained in paragraph 51.

22 52. Answering paragraph 52 of the Petition, Respondent BSC admits that Exhibit D and
23 Government Code section 6250 speak for themselves. Paragraph 52 contains argument and legal
24 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise
25 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
26 in paragraph 52.

27 53. Answering paragraph 53 of the Petition, Respondent BSC admits that Government
28 Code sections 6254-6254.30 and 6255 speak for themselves. Paragraph 53 contains argument

1 and legal conclusions, and on that basis Respondent BSC denies such allegations. Except as
2 otherwise admitted or denied above, Respondent BSC denies each and every remaining allegation
3 contained in paragraph 53.

4 54. Answering paragraph 54 of the Petition, Respondent BSC admits Exhibits D, G and I
5 speak for themselves. Paragraph 54 contains argument and legal conclusions, and on that basis
6 Respondent BSC denies such allegations. Except as otherwise admitted or denied above,
7 Respondent BSC denies each and every remaining allegation contained in paragraph 54.

8 **ANSWER TO PETITIONER'S OVERVIEW OF WRIT PROCEDURE**

9 55. Answering paragraph 55 of the Petition, Respondent BSC admits Government Code
10 section 6259 speaks for itself. Paragraph 55 contains argument and legal conclusions and on that
11 basis Respondent BSC denies such allegations. Except as otherwise admitted or denied above,
12 Respondent BSC denies each and every remaining allegation contained in paragraph 55.

13 56. Answering paragraph 56 of the Petition, Respondent BSC admits Government Code
14 section 6259 speaks for itself. Paragraph 56 contains argument and legal conclusions, and on that
15 basis Respondent BSC denies such allegations. Except as otherwise admitted or denied above,
16 Respondent BSC denies each and every remaining allegation contained in paragraph 56.

17 57. Answering paragraph 57 of the Petition, Respondent BSC admits Government Code
18 section 6258 speaks for itself. Paragraph 57 contains argument and legal conclusions, and on that
19 basis Respondent BSC denies such allegations. Except as otherwise admitted or denied above,
20 Respondent BSC denies each and every remaining allegation contained in paragraph 57.

21 58. Answering paragraph 58 of the Petition, paragraph 58 contains argument and legal
22 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise
23 admitted or denied above, Respondent BSC denies each and every remaining allegation contained
24 in paragraph 58.

25 **ANSWER TO PETITIONER'S FIRST CAUSE OF ACTION**

26 59. Answering paragraph 59 of the Petition, Respondent BSC hereby incorporates by
27 reference the admissions and denials contained in paragraphs 1-58 above, and except as expressly
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1 alleged or admitted in paragraphs 1 through 58, Respondent BSC denies each and every
2 allegation.

3 60. Answering paragraph 60 of the Petition, paragraph 60 constitutes argument and legal
4 conclusions, and on that basis Respondent BSC denies the allegations. To the extent the
5 allegations pertain the actions of Respondent OAL, Respondent BSC lacks sufficient knowledge
6 to admit any alleged act or failure to act on the part of Respondent OAL and on that basis denies
7 such allegations.

8 **ANSWER TO PETITIONER'S SECOND CAUSE OF ACTION**

9 61. Answering paragraph 61 of the Petition, Respondent BSC hereby incorporates by
10 reference the admissions and denials contained in paragraphs 1-58 above, and except as expressly
11 alleged or admitted in paragraphs 1 through 58, Respondent BSC denies each and every
12 allegation.

13 62. Answering paragraph 62 of the Petition, paragraph 62 constitutes argument and legal
14 conclusions, and that basis Respondent BSC denies the allegations.

15 Respondent BSC denies that Petitioner is entitled to the relief requested set forth in the
16 prayer for relief in paragraphs 63-65 of the Petition, or to any relief at all.

17 In addition, Respondent BSC asserts the following defenses based on information and
18 belief.

19 **FIRST AFFIRMATIVE DEFENSE**

20 The Petition fails to allege facts sufficient to constitute a cause of action.

21 **SECOND AFFIRMATIVE DEFENSE**

22 Respondent BSC complied with all applicable laws at all relevant times including, but not
23 limited to, Health and Safety Code sections 18917.3, 18928, 18928.1, 18935 *et seq.* and
24 Government Code sections 6254, subdivision (k), and 6255.

25 **THIRD AFFIRMATIVE DEFENSE**

26 Respondent BSC has not knowingly or intentionally waived any exemption to disclosure,
27 applicable defense or affirmative defense.

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FOURTH AFFIRMATIVE DEFENSE

The Petition fails to allege facts sufficient to state a claim for attorneys' fees.

FIFTH AFFIRMATIVE DEFENSE

Any responsive records not disclosed by Respondent BSC to Petitioner are exempt from disclosure under the Public Records Act.

SIXTH AFFIRMATIVE DEFENSE

Because much of the Petition is alleged in conclusory terms, all affirmative defense that may be applicable cannot be fully anticipated. Accordingly, Respondent BSC reserves the right to assert additional affirmative defenses if applicable.

WHEREFORE, Respondent BSC prays for relief as follows:

1. Deny Petitioner's Petition for writ of mandate;
2. Deny Petitioner's request for attorney's fees and costs;
3. Enter judgement in favor of Respondent BSC;
4. Award Respondent BSC all costs of suit; and
5. Award Respondent BSC such further relief that the Court deems just and proper.

Dated: April 23, 2021

Respectfully Submitted,

MATTHEW RODRIQUEZ
Acting Attorney General of California
MICHELLE M. MITCHELL
Supervising Deputy Attorney General



LAURA A. RANDLES-LITTLE
Deputy Attorney General
KEITH L. WURSTER
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*Attorneys for Respondent
California Building Standards Commission*

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

Case Name: **Public.Resource.Org., Inc. v. California Office of Administrative Law,
California Building Standards Commission**
No.: **34-2021-80003612**

I declare:

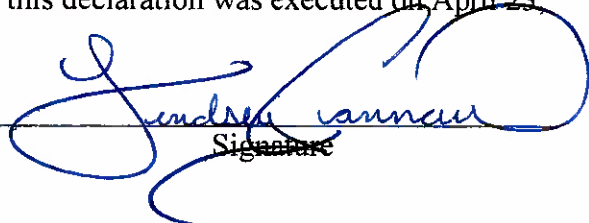
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General 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 April 23, 2021, I served the attached **RESPONDENT CALIFORNIA BUILDING STANDARDS COMMISSION'S ANSWER TO THE VERIFIED PETITION FOR PREEMPTORY WRIT OF MANDATE ORDERING COMPLIANCE WITH 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:

Matthew Caplan
Joseph D. Mornin
Ryan O'Hollaren
Cooley LLP - San Francisco
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*Attorneys for Plaintiff Public.Resource.Org,
Inc.*

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 April 23, 2021, at Sacramento, California.

Lindsey Cannan
Declarant



Signature