



1 history of attempted purchase and sale of the property at 1921 Walnut Street, Berkeley CA, 94704  
2 ("1921 Walnut"). 1921 Walnut is an affordable housing property for Petitioner and several other  
3 long-term tenants. Respondent recently purchased 1921 Walnut and made clear its intent to destroy  
4 the property to build more student housing. For nine months, Respondent denied Petitioner all  
5 access to public records regarding the Respondent's purchase and development of 1921 Walnut  
6 Street by failing to substantively respond to Petitioner's request. For both of these initial requests,  
7 Petitioner sent Respondent multiple correspondence inquiring about the status of the records. While  
8 Respondent has yet to respond to these requests, it plans to evict Petitioner and Petitioner's fellow  
9 tenants from the building, despite public outcry and opposition.

10 3. Not only does the CPRA *require* prompt transparency on issues related to the  
11 people's business, the urgency of Petitioner's requests is compounded by Respondent's January 26,  
12 2021 correspondence indicating a plan to eventually evict all tenants. Respondent failed to comply  
13 with the CPRA while at the same time moving forward with projects that directly impact the public.  
14 Respondent's failure to comply with the CPRA further shrouds the issues caused by displacing the  
15 building's long-term tenants despite opposition from residents in the City of Berkeley. The value of  
16 prompt transparency is apparent: in matters of public affairs, prompt transparency is required if  
17 prompt accountability is to be possible.

18 4. Respondent violated all its obligations under the CPRA. The CPRA requires that  
19 public agencies provide, at a minimum, a determination of disclosability within 10 days of the  
20 initial request. Respondent failed to provide an estimated date of production and a determination of  
21 disclosability in response to Petitioner's requests. Respondent failed to confirm whether disclosable  
22 records do exist; it is unclear if Respondent has even conducted a search. Respondent delays in  
23 providing records that the public needs to remain informed about Respondent's potential decision to  
24 evict the tenants at 1921 Walnut by the fall of 2021. Respondent has an obligation to *promptly*  
25 produce all responsive, disclosable records under the CPRA. Respondent denied Petitioner access to  
26 the responsive records in the Respondent's possession and, thus, its violations of the CPRA are  
27 substantive and ongoing.

28 5. By this Petition and pursuant to the Code of Civil Procedure §§ 1085, *et seq.* and

1 Government Code §§ 6250, *et seq.*,<sup>1</sup> Petitioner respectfully requests from this Court: a writ of  
2 mandate to command Respondent to immediately disclose all non-exempt records Petitioner  
3 requested and a declaration that the records Petitioner seeks are disclosable, were not produced  
4 promptly, and that Respondent's conduct fails to comply with the CPRA.

### 5 JURISDICTION AND VENUE

6 6. This Court has jurisdiction under Gov't Code §§ 6258, 6259, Code of Civ. Proc.  
7 § 1085, and Article VI, Section 10 of the California Constitution.

8 7. Venue is proper in this Court. The records in question, or some portion of them, are  
9 situated in the County of Alameda, Gov't Code § 6259; the acts or omissions complained of  
10 occurred in the County of Alameda, Code of Civ. Proc. § 393; and, Respondent is located in the  
11 County of Alameda, Code of Civ. Proc. § 395.

### 12 PARTIES

13 8. Petitioner, Natalie Logusch is resident at 1921 Walnut Street Berkeley, California  
14 and is a member of the public within the meaning of §§ 6252(b)-(c).

15 9. Respondent is a corporation empowered under the California Constitution, Article  
16 IX, Section 9, to administer the University of California. Respondent is a public agency within the  
17 meaning of § 6252(d).

### 18 FACTUAL ALLEGATIONS

#### 19 Background Information

20 10. 1921 Walnut is a 112-year-old, rent-controlled apartment building in downtown  
21 Berkeley. Petitioner has lived in the building for over 10 years; multiple tenants have lived in the  
22 building for over 20 years.

23 11. In April 2020, Petitioner received a notice from Respondent informing of its decision  
24 to potentially redevelop 1921 Walnut. The notice informed Petitioner of her rights as a tenant and  
25 stated there was "no imminent action planned" and "residents will be allowed to remain in their  
26 units for some period of time." A true and accurate copy of this correspondence is attached to this  
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28 \_\_\_\_\_  
<sup>1</sup> Unless otherwise stated, all references to code sections are to the California Government Code.

1 petition in *Exhibit A*.

2 12. In January 2021, Respondent sent confirmation that it will include 1921 Walnut in its  
3 redevelopment plans. Respondent's notice included a vague timeline for eviction and a relocation  
4 package, with no explanation for how it came to these decisions. A true and accurate copy of this  
5 correspondence is attached to this petition in *Exhibit B*.

6 13. Respondent's decision to destroy 1921 Walnut is exacerbated by the fact that, as a  
7 state institution, Respondent may be exempt from a local law requiring the replacement of any rent-  
8 controlled units if they are destroyed.

9 14. Respondent's decision to tear down the building has been met with protests and  
10 public outcry.<sup>2</sup> Even the Mayor of the City of Berkeley publicly opposed the redevelopment of 1921  
11 Walnut.<sup>3</sup> Yet, Respondent refuses to meet with those affected and, more specifically, has remained  
12 evasive in responding to Petitioner's public record requests.

13 **Respondent Denied All Access to Records by Its Unlawful Delays**

14 15. On June 24, 2020, Petitioner sent two public record requests to the Respondent.

15 16. Petitioner's first request sought all records related to 1921 Walnut ("Request No. 1").  
16 A true and accurate copy of Request No. 1 is attached to this petition in *Exhibit C*.

17 17. Petitioner's second request sought all public comments submitted to Respondent in  
18 response to its April 7, 2020 "Notice of Preparation of an Environmental Impact Report," ("NOP").  
19 The NOP concerns Respondent's update to its "Long Range Development Plan and Housing  
20 Projects #1 and #2," which includes its redevelopment of 1921 Walnut. The NOP directed that  
21 emailed comments should include "LRDP Update and Housing Projects #1 and #2 EIR" in the  
22 subject line. Petitioner, in Request No. 2, sought all public comments and included a link to the  
23 NOP in the request. A true and accurate copy of Request No. 2 and the NOP is attached to this  
24 petition in *Exhibit C*.

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27 <sup>2</sup> See e.g., <https://www.save1921walnut.org/>; <https://www.berkeleyside.com/2020/06/30/renters-rally-against-uc-berkeley-possible-attempt-to-evict-them-from-rent-controlled-building>;

28 <sup>3</sup> See e.g., [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-)

[Item 31 Resolution in Support of 1921.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-Item_31_Resolution_in_Support_of_1921.aspx); <https://twitter.com/JesseArreguin/status/1372688434150612993>

1           18.     The determination of disclosability required by Gov. Code § 6253(c) was due by  
2 July 7, 2020 for both requests. Respondent did not acknowledge Petitioner's request and did not  
3 provide a determination by this deadline.

4           19.     On July 7, 2020, Petitioner sent a follow up email regarding the status of each of her  
5 requests. She did not receive a response to this follow up. A true and accurate copy of these  
6 correspondence are attached to this petition in *Exhibit C*.

7           20.     Respondent replied the same day with a form email. This correspondence did not  
8 provide a determination of disclosability or an estimated date of production specific to Petitioner's  
9 request. Rather, it attributed some delay to "the Coronavirus" and informed Petitioner that "the  
10 estimated date of production for all new requests is ten weeks, although we are sometimes able to  
11 provide records in a shorter timeframe." A true and accurate copy of this correspondence is attached  
12 to this petition in *Exhibit C*.

13          21.     On August 31, 2020, Petitioner sent a second follow up email regarding the status of  
14 her requests. A true and accurate copy of these correspondence are attached to this petition in  
15 *Exhibit C*.

16          22.     Respondent replied the same day with the same form email from July. A true and  
17 accurate copy of this correspondence is attached to this petition in *Exhibit C*.

18          23.     On October 22, 2020, Petitioner sent another follow up email to Respondent asking  
19 when information specific to her requests would be available. A true and accurate copy of this  
20 correspondence is attached to this petition in *Exhibit C*.

21          24.     Again, Respondent replied the same day with the same generic, form email. A true  
22 and accurate copy of this correspondence is attached to this petition in *Exhibit C*.

23          25.     On November 15, 2020, Petitioner sent another email requesting an update on the  
24 CPRA requests. A true and accurate copy of this correspondence is attached to this petition in  
25 *Exhibit C*.

26          26.     Respondent did not respond to Petitioner's follow up emails nor did it produce  
27 records within 10 weeks of either Petitioner's June 24 request or its initial August 31 form email  
28 response.



1           33.     In enacting the CPRA, the legislature recognized that:

2                     A requester, having no access to agency files, may be unable to  
3                     precisely identify the documents sought. Thus, writings may be  
4                     described by their content. The agency must then determine whether it  
5                     has such writings under its control and the applicability of any  
                      exemption. An agency is thus obliged to search for records based on  
                      criteria set forth in the search request.

6     *California First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 165-66 (1998); see  
7     § 6253(b).

8           34.     When a member of the public submits a records request to an agency, the agency is  
9     given ten days to determine whether the request seeks copies of disclosable public records in the  
10    possession of the agency and must promptly notify the requestor of such determination and the  
11    reasons therefor. § 6253(c). That deadline can be extended by “no more than 14 days” and only  
12    under statutorily-defined “unusual circumstances” such as the need to search for and collect records  
13    from field facilities. § 6253(c). A public agency has a duty to make records “promptly available.” §  
14    6253(b).

15          35.     The law requires that agencies make non-exempt public records available to  
16    requestors “promptly.” (emphasis added) § 6253(b). It is unlawful for an agency “to delay or  
17    obstruct the inspection of public records.” § 6253(d).

18          36.     Where an agency withholds responsive records on the basis of a statutory exemption,  
19    “the agency . . . must disclose that fact.” *Haynie v. Super. Ct.* 26 Cal.4th 1061, 1072 (2001) (citing §  
20    6255). Even if portions of a document are exempt from disclosure, the agency must disclose the  
21    remainder of the document. § 6253(a). The agency bears the burden of justifying nondisclosure.  
22    § 6255(a). In determining whether exemptions apply, courts must follow the constitutional  
23    imperative that the applicability of exemptions must be construed narrowly and that the people’s  
24    right of access to public information must be construed broadly. Cal. Constitution, Art. I, § 3(b)(2).

25          37.     The CPRA also requires the government to “assist the member of the public [to]  
26    make a focused and effective request that reasonably describes an identifiable record or records” by  
27    taking steps to “[a]ssist the member of the public to identify records and information that are  
28    responsive to the request or to the purpose of the request, if stated.” § 6253.1. An agency that

1 receives a request must also “[p]rovide suggestions for overcoming any practical basis for denying  
2 access to the records or information sought.” *Id.*

3 38. Whenever it is made to appear by verified petition to the Superior Court of the  
4 county where the records or some part thereof are situated that certain public records are being  
5 improperly withheld from a member of the public, the Court shall order the officer or person  
6 charged with withholding the records to disclose the public record or show cause why he or she  
7 should not do so. § 6259(a). That section authorizes litigation where a public agency employs  
8 means to effectively deny all access to public records. *Galbiso v. Orosi Public Utility Dist.*, 167 Cal.  
9 App. 4th 1063, 1088 (2008).

10 39. A petitioner prevails under the CPRA where the petitioner shows that an agency  
11 unlawfully denied access to public records. *Community Youth Athletic Center v. City of National*  
12 *City*, 220 Cal.App.4th 1385, 1446-1447 (2013). An agency is not protected from liability merely  
13 because the denial of access was due to the agency’s internal logistical problems or general neglect  
14 of its duties. *Id.*

15 40. Public policy favors judicial enforcement of the CPRA. The CPRA contains a  
16 mandatory attorney’s fee provision for the prevailing plaintiff. § 6259(d). The purpose of the  
17 provision is to provide “protections and incentives for members of the public to seek judicial  
18 enforcement of their right to inspect public records subject to disclosure.” *Filarsky v. Super. Ct.*, 28  
19 Cal.4th 419, 427 (2002).

20 **Respondent Violated the CPRA by Failing to Produce Records Promptly, and, In So Doing,**  
21 **Unlawfully Denied Petitioner All Access to Public Records for Many Months**

22 41. Respondent’s failure to promptly disclose requested public records violates the  
23 CPRA. The right to prompt access to public records is reflected throughout the CPRA. As stated  
24 above, upon receiving a request an agency must provide an initial determination of disclosability in  
25 only 10 days, must produce records “promptly,” and is prohibited from engaging in obstruction or  
26 delay. §§ 6253(b), 6253(c), 6253(d). When a dispute arises in the trial court as to public records, the  
27 CPRA mandates speedy resolution, requiring that “the times for responsive pleadings and for  
28 hearings in these proceedings shall be set by the judge of the court with the object of securing a



1 decision to these matters at the earliest possible time.” (emphasis added) § 6258. At the appellate  
2 level, the CPRA provides that trial court decisions are appealable by extraordinary writ, and the  
3 purpose of that procedure is to prevent public agencies from delaying disclosure of public records  
4 while an appeal is pending. *Times Mirror v. Superior Court* 53 Cal.3d 1325, 1334-1336 (1991).  
5 Thus, at every stage, from the moment an agency receives a CPRA request to its appeal of a trial  
6 court decision ordering disclosure, the law requires prompt production, prohibits the use of delay to  
7 deny access to public records, and protects the public’s right to prompt access.

8 42. Here, Respondent has denied all access to the requested public records for over 8  
9 months by failing to substantively respond to Petitioner’s requests. After submitting the requests,  
10 Petitioner contacted the Respondent multiple times regarding the status of her requests. While  
11 Respondent sent generic correspondence with no meaningful information, it has not provided any  
12 substantive update, nor has it produced any records. Respondent failed to even meet the threshold  
13 requirement of providing a determination of disclosability or an estimated date of production.

14 43. Respondent’s violation of the CPRA begins with its failure to provide a  
15 determination of disclosability and estimated date of production within the statutory deadline and is  
16 perpetuated each day it delays production, or even a search, of the requested records. While  
17 Respondent should produce records immediately, Respondent has long since violated Petitioner’s  
18 right to prompt access to public records.

19 44. Respondent, by failing to provide records promptly, has denied Petitioner all access  
20 to records. At no time has Respondent stated that it is withholding information subject to  
21 exemption. Had it done so, Petitioner would be entitled to immediately challenge the withholdings  
22 with a lawsuit and would be entitled to secure a decision to the matter at the earliest possible time. §  
23 6258. However, rather than withholding certain records by citing exemption(s), Respondent has  
24 withheld all responsive records on an ongoing basis without reference to any statutory justification.

25 45. The urgency in obtaining the requested records is paramount: Respondent plans to  
26 displace Petitioner and her fellow tenants from their home while destroying a 112-year-old  
27 property. The fate of 1921 Walnut has been the subject of ongoing public concern since May 2020.  
28 Multiple protests have been staged, the most recent of which took place this month. Groups as

1 varied as the Mayor and City Council of Berkeley, the UC Associated Students, and local tenant  
2 and architectural preservation groups have opposed Respondent's plans. Media coverage has been  
3 consistent. However, throughout this public discourse, Respondent has denied Petitioner, her fellow  
4 tenants, and the public at large access to records which would shed light on Respondent's  
5 controversial plans. In so doing, Respondent ensured that opponents of redevelopment would lack  
6 full and complete information with which to make their case to the public.

7       46. While Respondent has ignored its transparency obligations in response to  
8 Petitioner's CPRA requests, it has simultaneously continued the process of displacing Petitioner and  
9 her fellow tenants. Now, as Petitioner still lacks any estimated date of production or determination  
10 of disclosability from Respondents in response to her requests, Petitioner respectfully seeks judicial  
11 intervention to enforce her rights under the CPRA and to ensure Respondent's immediate  
12 compliance with its statutory obligations.

13       47. Additionally, declaratory relief is warranted to address Respondent's violations of its  
14 statutory duties under the CPRA, including the duty to provide a determination of disclosability and  
15 estimated date of production within statutory time limits, and the duty to provide prompt access  
16 without obstruction or delay. Judging from its form communications, it appears Respondent violates  
17 these duties as a matter of course. Declaratory relief as to these violations is important to protect the  
18 public's ability to promptly access public records in Respondent's possession and its ability to seek  
19 judicial relief as to the disclosability of those public records.

20       48. In conclusion, the CPRA is predicated on the principle that:

21       Openness in government is essential to the functioning of democracy. Implicit in  
22 the democratic process is the notion that government should be accountable for its  
23 actions. In order to verify accountability, individuals must have access to  
24 government files. Such access permits checks against the arbitrary exercise of  
25 official power and secrecy in the political process.

26 *Int'l Fed. Of Professional and Technical Engineers, Local 21, AFL-CIO v. Super. Ct.*, 42 Cal.4th  
27 319, 328-39 (2007) (internal quotations omitted). Respondent's refusal to respond to Petitioner's  
28 requests has denied Petitioner and the public all access to Respondent's files regarding the  
displacement of long-term tenants and destruction of 1921 Walnut, a matter of ongoing public

1 concern. Respondent's unlawful secrecy is harmful to the democratic process and Petitioner  
2 respectfully asks that this Court grant relief.

3 **A Writ of Mandate and Declaratory Relief are Appropriate**

4 49. Respondent has a clear, present, ministerial duty to comply with the California  
5 Constitution and Government Code § 6250, *et seq.*

6 50. Petitioner is entitled to seek relief due to violations of the CPRA. § 6258.

7 51. Petitioner has performed all conditions precedent to filing this petition. There are no  
8 administrative exhaustion requirements under Government Code § 6250, *et seq.*

9 52. An actual controversy exists between the parties concerning whether Respondent  
10 engaged in conduct that violates the statutory requirements of the CPRA and the California  
11 Constitution. A judicial determination to resolve this actual controversy is necessary and  
12 appropriate as soon as possible. *See* Code of Civil Procedure § 1060, *et seq.*

13 53. Petitioner has no plain, speedy, adequate remedy in the ordinary course of law other  
14 than the relief sought in this petition. *See* Code of Civil Procedure § 1086.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner prays for judgment as follows:

- 17 1. For issuance of a writ of mandate directing Respondent to immediately provide  
18 Petitioner with all requested records, except those records that the Court determines  
19 may lawfully be withheld;
- 20 2. For a declaration that Petitioner's Requests sought records subject to mandatory  
21 disclosure; that Petitioner's Request imposed a duty upon Respondent to conduct an  
22 adequate search, provide a determination of disclosability, an estimated date of  
23 production, and promptly provide public, non-exempt records in response; that  
24 Respondent failed those duties; and that Respondent's conduct, policies, and pattern  
25 and practice of delaying and denying access to public records violates the CPRA;
- 26 3. For Petitioner to be awarded reasonable attorneys' fees and costs; and  
27 4. For such other and further relief as the Court deems proper and just.
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Dated: March 25, 2021

Respectfully submitted,



SARA B. KOHGADAI  
Attorney for Petitioner and Plaintiff