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To the benefit of the City of San Diego

Attorneys for Defendant/Respondent, CITY OF SAN DIEGO

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DARRYL COTTON, an individual,
Plaintiff and Petitioner,

v.

CITY OF SAN DIEGO, a Municipal
Corporation; and DOES 1-100,

Defendant and Respondents.

) Case No. 25CU017134C

) **MEMORANDUM OF POINTS**
) **AND AUTHORITIES IN SUPPORT**
) **OF DEFENDANT AND RESPONDENT**
) **CITY OF SAN DIEGO'S DEMURRER**
) **TO COMPLAINT**

) Date: January 23, 2026

) Time: 9:00 a.m.

) Dept.: C-60

) Judge: Hon. Matthew C. Braner

) Complaint Filed: March 28, 2025

) Trial: Not Set

Defendant and Respondent CITY OF SAN DIEGO ("City"), submits this
memorandum of points and authorities in support of its demurrer to the complaint by Plaintiff
DARRYL COTTON:

I. BACKGROUND AND INTRODUCTION.

Plaintiff Darryl Cotton (Plaintiff) filed a California Public Records Act (CPRA) writ with
this Court.

However, under California law a CPRA writ is only authorized where an actual request
for public records was made – it does not authorize a CPRA writ on the basis of a request for
information as Plaintiff's CPRA request states. See Complaint at Exhibit A (PRA Request
No.25-1809).

Therefore a demurrer should be granted here.

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1 **II. MEET AND CONFER PROCESS WITH PLAINTIFF.**

2 On May 1, 2025, counsel for the City, in an attempt to fulfill meet-and-confer
3 requirements prior to filing this demurrer, sent an email to Plaintiff requesting that he dismiss his
4 complaint and advising him that the California Public Records Act only governs request for
5 documents – not questions as he posed to staff in his PRA Request No. 25-1809. See
6 Declaration of Chance Hawkins at ¶ 2, see also Complaint at Exhibit A.

7 In this email, Counsel for the City stated: “If you have a PRA request for a record that
8 has been denied – then I would ask you to file a lawsuit on that basis.” See Declaration of
9 Chance Hawkins at ¶ 3.

10 On May 3, 2025, Plaintiff responded via email and stated (in part): “. . . I am unwilling
11 to dismiss my complaint. I don’t agree that the complaint does not fall within the guidelines of
12 Cal. Gov’t § 7920.530 which defines “public records as any [emphasis added] writing containing
13 information relating to the conduct of the public’s business prepared, owned, used or retained by
14 any state or local agency regardless of physical form or characteristics. . .” See Declaration of
15 Chance Hawkins at ¶ 4.

16 It has been made clear to the City that Plaintiff is not willing to dismiss or amend his
17 Complaint. See Declaration of Chance Hawkins at ¶ 5.

18 **III. LEGAL ARGUMENT AND AUTHORITY.**

19 **a. Standards for Demurrer & Motion To Strike.**

20 A demurrer tests the legal sufficiency of the complaint. *Donabedian v. Mercury Ins. Co.*,
21 116 Cal.App.4th 968, 994 (2004). A demurrer may apply to the entire complaint or to specified
22 causes of action. Cal. Rules of Court, rule 3.1320(a) and (b). A complaint must contain
23 “[a] statement of the facts constituting the cause of action, in ordinary and concise language.”
24 Cal. Civ. Proc. Code § 425.10. If the complaint fails to contain an adequate statement of facts,
25 then the party against whom the complaint was filed may object to the complaint by demurrer on
26 the grounds that the pleading “does not state facts sufficient to constitute a cause of action,” *Id.*,
27 § 430.10(e). Failure to plead ultimate facts subjects the complaint to demurrer for failure to state
28 facts constituting a cause of action. *Berger v. California Ins. Guar. Ass’n* (2005) 128

1 Cal.App.4th 989. When a cause of action based on statute is brought against a governmental
2 entity, a plaintiff must plead his factual allegations with heightened particularity, including the
3 existence of a statutory duty. *Searcy v. Hemet Unified Sch. Dist.*, 177 Cal.App.3d 792, 802
4 (1986). “Because recovery is based on a statutory cause of action, the plaintiff must set forth
5 facts in his complaint sufficiently detailed and specific to support an inference that each of the
6 statutory elements of liability is satisfied” and “[g]eneral allegations are regarded as inadequate.”
7 *Mittenhuber v. City of Redondo Beach* (2005) Cal.App.4th 989, 1006.

8 **b. Legal And Factual Authority In Support Of Demurrer.**

9 There is no legal authority under the Government Code statutes that incorporate the
10 California Public Records Act (CPRA) for a writ based on a non-request for records. See
11 “Access to Public Records” Cal. Gov’t. Code §§ 7920.000-7931.000.

12 California law states: “‘Public records’ defined: ‘public records’ includes any writing
13 containing information relating to the conduct of the public's business prepared, owned, used, or
14 retained by any state or local agency regardless of physical form or characteristics. See Cal.
15 Gov't. Code § 7920.530 [emphasis added]. Unless a specific statutory exemption applies,
16 [CPRA] is intended to cover every conceivable kind of record that is involved in the
17 governmental process; only purely personal information unrelated to the conduct of the public's
18 business could be considered exempt from this definition. *See Sander v. State Bar of California*,
19 58 Cal.4th 300, (2013).

20 Plaintiff’s CPRA request that he bases his lawsuit on states: “Accordingly I wish to
21 modify my request and ask that no records be provided but instead respond to whether or not the
22 October 5, 2023, Adam Knopf, GSG PL post audit tax deficiency in the amount of \$542,727.07
23 has been collected in full or in part by the City. And if it has not been paid in full or in part,
24 where on the City’s Annual Comprehensive Financial Report-FY2023 or any current City
25 financials where this remains as a lump sum value of all unpaid adult-use liabilities due the City
26 can be found.” See Complaint at Exhibit A (PRA Request No. 25-1809).

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1 Accordingly, Plaintiff's lawsuit does not relate to an actual request for a public record
2 therefore there is no statutory or caselaw authority that can authorize this lawsuit against the City
3 and a demurrer should be granted here.

4 Dated: May 8, 2025

HEATHER FERBERT, City Attorney



By: _____

Chance Colbert Hawkins
Deputy City Attorney

Attorneys for Defendant and Respondent,
CITY OF SAN DIEGO