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8 Attorneys for Petitioners STEVE AND SHARON WOLFF, on their own behalf, and on behalf
9 of the People of California

FILED

MAR 05 2012

RE D

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**
8 **COUNTY OF HUMBOLDT**

9 STEVE and SHARON WOLFF

10 Petitioners,

11 v.

12 CITY OF RIO DELL and DOES 1
13 THROUGH 100, INCLUSIVE

14 Respondents

Case No.

CV 120162

**VERIFIED PETITION FOR WRIT OF
MANDATE; REQUEST FOR
INJUNCTIVE RELIEF; REQUEST
FOR DECLARATORY RELIEF**

[Filing Fee Exempt – SSI Recipient]

15 STEVEN and SHARON WOLFF (Petitioners) petition this court for a writ of mandate,
16 injunctive relief and declaratory relief all pertaining to Petitioners' efforts to persuade the
17 CITY OF RIO DELL (Respondent) to comply with its duties under the California Constitution
18 and the California Public Records Act (Government Code sections 6250, et seq.) ("CPRA").
19

20 Petitioners allege as follows:

21 **JURISDICTION AND VENUE**

22 1. Government Code §§ 6258 and 6259 authorize the relief Petitioners request.
23 Petitioners also bring suit pursuant to Code of Civil Procedure section 1085 seeking orders
24 requiring Respondents to perform ministerial duties, to exercise discretion and/or to correct
25 abuses of discretion.
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27 - 1 -

28 **PETITION FOR WRIT OF MANDATE**

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EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. There are no administrative remedies that can or would remedy the violations of Petitioners' constitutional right to the records and information they seek.

FACTS GIVING RISE TO CLAIMS

9. At all times relevant to this dispute, Respondent receives, transmits, maintains and copies – for internal use and as part of communications between local and state agencies – emails including but not limited to message text, headers, tracking information, source codes and, when applicable, attachments (“Native Format”).

10. Petitioners are independent investigative journalists whose work emphasizes transparency in government operations and accountability for official acts. Petitioners operate RioDellTimes.Com, a website devoted to promoting Respondent City’s transparency and accountability.

11. From 2009 through the present, Petitioners requested public records related to, among other things, charges of misconduct on the part of Respondent’s employees and officers. On or about January 2012, Respondent City hired a new City Attorney, which prompted Petitioners to renew some records requests that Petitioners felt had not been satisfied.

12. On January 8, 2012, Petitioners renewed their request for (1) documents pertaining to Nancy Flemming, a former City employee; and (2) documents pertaining to Jim Hale, a former City employee. A true copy of this letter is attached hereto as Exhibit 1.

13. On January 20, 2012, Respondent City’s new City Attorney, Russell Gans,

1 responded to Petitioner's January 8th renewed records request and asked for clarification. A
2 true copy of Respondent's January 20th response is attached hereto as Exhibit 2.

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4 14. On January 22, 2012, Petitioners responded to Respondent City's January 20th
5 letter and provided the clarification Respondent requested. A true copy of Petitioners' January
6 22nd letter is attached hereto as Exhibit 3.

7
8 15. On February 3, 2012, Russell Gans, on Respondent City's behalf, wrote to
9 Petitioners. A true copy of this letter is attached hereto as Exhibit 4. In this letter, Mr. Gans
10 agreed to produce a copy of Nancy Flemming's settlement/separation agreement with the City,
11 but otherwise refused to produce any other documents responsive to Petitioner's renewed
12 request that Respondent City was withholding from Petitioners and the public – including but
13 not limited to (a) a report pertaining to Jim Hale and the settlement/separation agreement; and
14 (b) a settlement agreement between Mr. Hale and Respondent City.
15

16 **FIRST CAUSE OF ACTION**

17 **(Writ of Mandate Pursuant to the CPRA)**

18
19 16. Petitioners reallege Paragraphs 1 through 15 as though fully incorporated herein.

20 17. The records Petitioners requests are identifiable records. (Government Code §
21 6252(e).)

22 18. At all times relevant, the Respondent had immediate access to some or all of the
23 records Petitioners request to inspect and could have made them available for inspection at the
24 time and day.
25

26 19. Respondents violate Petitioner's rights under the CPRA by denying Petitioners
27

1 access to the records they request.

2 20. The Court should order Respondents to produce an accurate copy of the records
3 Petitioners requests and to award all other relief the Court deems appropriate.
4

5 21. Due to Respondents' wrongful acts, Petitioners have incurred and continues to
6 incur attorney's fees and costs in association with Petitioners' efforts to obtain the documents
7 and information Respondents are wrongfully withholding.
8

9 **SECOND CAUSE OF ACTION**
10 **(Writ of Mandate Pursuant to Code of Civil Procedure § 1085 et sec.,)**

11 22. Petitioners reallege Paragraphs 1 through 21 as though fully incorporated herein.

12 23. Petitioners have a constitutional right to access the records they seek. (*See Cal.*
13 *Const. Art. I section 3(b)(1) and (2); Government Code § 6250; Filarsky v. Superior Court (2002)*
14 *28 Cal.4th 419, 425-426.*) This right extends to virtually any writing or information "owned,
15 used, or retained by any state or local agency regardless of physical form or characteristics."
16 (Section 6252(e).)
17

18 24. By failing to provide Petitioners with the records they request, Respondents have
19 either failed to perform the following ministerial duties and/or abused whatever discretion they
20 had to deny Petitioners access to the records they request:

- 21
- 22 a. Make records immediately available for inspection as required by Government
23 Code § 6252 (a).
 - 24 b. Taking nondiscretionary affirmative steps, as described in Government Code §
25 6253.1, to assist Petitioners to obtain the information they seek.
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- c. Promptly notify Petitioners of Respondents' determination and the reasons therefore as specified in Government Code § 6252(c).
- d. Failing to notify Petitioners – pursuant to Government Code § 6252(d) of the names, titled and/or positions of all persons responsible for denying access to public records; and
- e. Failing to produce electronic records in electronic format.

25. Respondents waived any objections or exemption claims that could have been made prior to producing records pursuant to Petitioners' requests.

26. The Court should order Respondents to perform all of the ministerial duties described above and correct any abuses of discretion that prevented Petitioners from receiving access to the records they request, and to award all other relief the Court deems appropriate.

27. Due to Respondents' wrongful acts, Petitioners have incurred and continues to incur attorney's fees and costs in association with Petitioners' efforts to obtain the documents and information Respondents are wrongfully withholding.

**THIRD CAUSE OF ACTION
(Injunctive Relief Pursuant to Code of Civil Procedure § 525 et sec.)**

28. Petitioners reallege Paragraphs 1 through 27 as though fully incorporated herein.

29. The Court should order Respondents to provide Petitioners with access to the records they request, and to award all other relief the Court deems appropriate.

30. Due to Respondents' wrongful acts, Petitioners have incurred and continues to incur attorney's fees and costs in association with Petitioners' efforts to obtain the documents

1 and information Respondents are wrongfully withholding.

2
3 **FOURTH CAUSE OF ACTION**
4 **(Injunctive Relief Pursuant to Code of Civil Procedure § 1060 et sec.)**

5 31. Petitioners reallege Paragraphs 1 through 30 as though fully incorporated herein.

6 32. Respondents' failure to provide Petitioners with access to the records they
7 request manifests a fundamental difference of position regarding the parties' respective rights
8 and duties under the CPRA and the California Constitution.

9 33. Petitioners request a declaration of the parties' rights and duties vis-à-vis the
10 CPRA and the California Constitution.

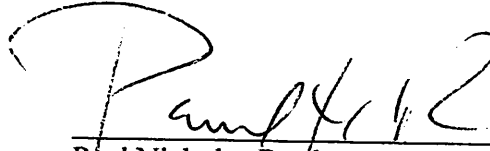
11 34. Due to Respondents' wrongful acts, Petitioners have incurred and continue to
12 incur attorney's fees and costs in association with Petitioners' efforts to obtain the documents
13 and information Respondents are wrongfully withholding.

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15 **PRIORITY**

16 35. The California Legislature recognizes more than the public's right to public
17 information – it recognizes the public's right to *prompt* access to public information.
18 Consequently, public records actions have priority; in order to decide and resolve public
19 records disputes at the earliest possible time, Government Code section 6258 empowers the
20 court to *sua sponte* set the times for responsive pleadings and hearings. Petitioner's request
21 for Declaratory relief also has priority pursuant to Code of Civil Procedure § 1062.3.
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1 Dated: February 28, 2012

PAUL NICHOLAS BOYLAN, ESQ.

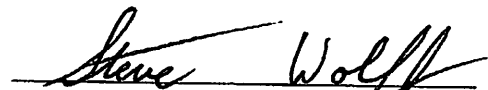
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4 
5 Paul Nicholas Boylan, Attorney for Petitioner,
6 SHARON WOLFF

7
8 **VERIFICATION**

9 WE, STEVE and SHARON WOLFF, declare:

10 1. We are the Petitioners in this action and are residents of Humboldt County. We
11 make this verification of our own knowledge. We hereby verify that the factual matters stated
12 in this Petition for Writ of Mandate are known to us personally and that they are true.

13 We declare under penalty of perjury under the laws of California that the foregoing is
14 true and that this verification was executed in Rio Dell California, on ^{February} ~~February~~ _____, 2012.

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19 STEVE WOLFF

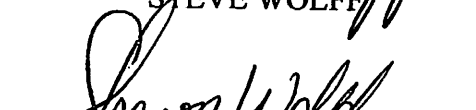
20
21 
22 SHARON WOLFF

Exhibit 1

January 8, 2012

Ron Henrickson, City Manager

Rio Dell City Hall

675 Wildwood Ave.

Rio Dell, CA 95562

Re. Renewed Public Records Act Request

Dear Mr. Henrickson:

I am hopeful that the new attorneys recently hired by Rio Dell will have a better understanding of the Public Records Act and compliance with records requests than what we have experienced with the prior attorney, Mr. Martinek. Despite clear regulations and numerous cited court precedent, almost every single request for a public document that we have submitted over the years has been summarily rejected by Mr. Martinek with the same inapplicable rationale of "personnel record" or "attorney/client privilege." There has been a tremendous amount of wasted time and effort trying to block public records from release; we can only guess at the amount of public funds that have been spent trying to prevent the public from receiving information that is clearly specified in the law. The on-going saga of our requests for public records can be read at www.riodelltimes.com/FreedomofInformationAct which will provide background information to the new attorneys if they choose. However, the requests we have made are very straight forward and clearly mandated in the law; it should be a simple matter to approve the release of public records.

I request a copy of the following:

1. Any and all documents/information - from 2003 to the present - pertaining to of any investigation involving public works, including but not limited to any investigative reports. Mr. Martinek confirmed, in writing, the existence of an investigative report into public works under then director Jim Hale, but refused to disclose the report under the guise of "personnel record." Mr. Martinek's rationale was that if any documentation involved a public employee, which they all do in some manner, then it is protected as a personnel

record. This is clearly not legitimate. Our past correspondence with Mr. Martinek provides numerous citations into applicable law and precedent surrounding investigations such as this.

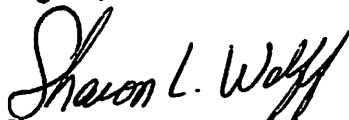
2. Any and all documents/information – from 2003 to the present - pertaining to any actions taken regarding the employment status of Jim Hale, including but not limited to any settlements or settled claims involving Mr. Hale and documentation as each council members vote (as per Gov't Code 6254.8, Brown Act § 11125.2, Gov't Code 54957.1(3)(A)).
3. Any and all documents/information – from 2003 to the present – pertaining to the employment status of Mrs. Nancy Flemming, including any settlements or settled claims involving Mrs. Flemming as well as each council members vote (as per Gov't Code 6254.8, Brown Act § 11125.2, Gov't Code 54957.1(3)(A)).

These are not new requests. These are renewals of previous request that did not result in my obtaining access to the information described in the three requests described above.

My requests were denied on the grounds that the information I am looking for is either employee personnel records or is protected by the attorney client privilege. I realize that it is always possible that some of the information I want to access is exempt from disclosure but I don't believe that these reasons are a valid excuse for preventing me from seeing all of the information I've requested. If the City holds back anything, for each individual item of information I want to know the reason why I am being denied access to that information, the date, sender or author, the recipient, the type of document or information, the number of pages and subject matter of the document being withheld. I won't accept any blanket objections. I want to know, is the City holding back a report? A letter? A paragraph? A line from an email? And if so, why can't I see it?

I look forward to finally receiving the public records that we have been requesting for almost a year now.

Regards,


Sharon L. Wolff

3 Painter St.

Rio Dell, CA 95562

steve@riodelltimes.com

Exhibit 2

MITCHELL, BRISSO, DELANEY & VRIEZE, LLP

CLIFFORD B. MITCHELL (1927—2010)

PAUL A. BRISSO

NANCY K. DELANEY

JOHN M. VRIEZE

WILLIAM F. MITCHELL

RUSSELL S. GANS

NICHOLAS R. KLOEPEL

JAY M. HARRIS, Associate

VICTOR M. FERRO, of Counsel

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EUREKA, CA 95502

EMERY F. MITCHELL (1896 - 1991)

WALTER J. CARTER (1949 - 1993)

R. C. DEDEKAM (1929—2011)

January 20, 2012

Sharon L. Wolff
3 Painter Street
Rio Dell, CA 95562

Re: Renewed Public Records Act Request

Dear Ms. Wolff:

I have been asked to respond to your letter to Ron Henrickson dated January 8, 2012 and received on January 11, 2012. As your correspondence notes, your January 8, 2012 document request constitutes a restatement of requests previously issued by you to the City of Rio Dell and responded to by the former city attorney. This letter responds to your requests in the order in which they appear in your January 8, 2012, correspondence:

1. In order to thoroughly and adequately respond to your request, can you please forward me any specific correspondence from Mr. Martinek which you believe references the document you are seeking? Based on a review of the dated files and correspondence chain, multiple letters were apparently exchanged with Mr. Martinek. I would like to know exactly which of Mr. Martinek's letters you are referencing so that no speculation is involved. If you no longer have a copy of the letter you reference, if you can identify the letter by date (or approximate date) I can potentially locate it without any unnecessary speculation.

2. In accord with your second request, the City of Rio Dell is currently reviewing its files for the dates in question to identify if any documents exist memorializing any council member action(s). Please note, the documents described in item 2 of your January 8, 2012, correspondence appear to invoke the exemption from disclosure relative to employee personnel records appearing at California Government Code § 6254(c). However, in accord with your request, the documents will be assembled and scrutinized to determine if documents subject to disclosure exist. If documents subject to disclosure exist, they will be produced.

3. In accord with your third request, the City of Rio Dell is currently reviewing its files for the dates in question to identify if any documents exist memorializing any council member action(s). Again, the documents described in item 3 of your January 8, 2012, correspondence appear to invoke the exemption from disclosure relative to personnel records appearing at California Government Code § 6254(c). However, in accord with your request, the documents will be assembled and scrutinized to determine if documents subject to disclosure exist. If documents subject to disclosure exist, they will be produced.

Since some of the documents you seek are dated and, as noted, I don't have the benefit of participating in the prior correspondence chain in this matter, additional time will be needed to locate and review documents for production. You will receive further clarification from this office and, to the extent documents not exempt from disclosure exist, those will be produced for your inspection on or before February 4, 2012. In the interim, as noted please provide the letter from Mr. Martinek you referenced to expedite further response. Please note, once the files are located and reviewed, documents not exempt from disclosure will be produced and this office is mindful of the production requirements under the California Public Records Act.

Thank you for your time and attention to this correspondence. If you have any questions regarding the content of this letter you can contact the undersigned.

Very truly yours,

MITCHELL, BRISQ, DELANEY & VRIEZE, LLP


Russell S. Gans

RSG/jg

cc: Ron Henrickson (via e-mail)

Exhibit 3

January 22, 2012

Russell Gans

Mitchell, Brisso, Delaney & Vrieze, LLP

814 Seventh St.

Eureka, CA 95501-1114

Re. Jan. 20, 2012 Letter

Dear Mr. Gans:

We recently received your response, dated Jan. 20, 2012, to our renewed request for public records, thank you for your prompt attention. We understand that your office has only recently come to represent Rio Dell and have not been a part of our ridiculously lengthy request for public documents which are clearly subject to disclosure. Once you have had a chance to review the records we have requested we are confident that you will agree they are subject to disclosure based on California Public Records law; our prior requests to then city attorney David Martinek contain numerous references to the applicable statutes and on-point precedent.

The Jan. 20th letter requested more information specifically regarding the request for the investigative report involving public works under the direction of Jim Hale which Mr. Martinek had confirmed existed but had refused to disclose. The letter from Mr. Martinek which clearly confirms the existence of the report is dated Aug. 1, 2011, in which he states "The investigative report of Mr. Hale is subject to attorney client privilege and is in addition a personnel record which I am withholding." We responded to this letter on Aug. 9, 2011 where we again provided the legal basis for our request and dispel the erroneous excuses provided by Mr. Martinek. Subsequent correspondence from Mr. Martinek completely ignored this specific request and he made no further mention of the report or addressed the legal basis we had presented. All of the correspondence referenced is available at our website <http://www.riodelltimes.com/FreedomofInformationAct>.

The August 1, 2011 letter from Mr. Martinek, which confirmed the existence of the investigative report requested, came in response to a letter dated July 7, 2011 where we had reasserted the request for this report. The July 7th letter is significant as it provides the history behind the investigative report which would be useful as you get "up to speed" on the issue. We

hope that you will take the time to read the past correspondence between ourselves and Mr. Martinek as they form the continuing history of the public records request, the relevant code along with court precedent and the inapplicable excuses for refusal.

My husband Steve and I look forward to finally receiving the public records which we have sought for far too long. This letter reiterates our records request as specified in our letter of Jan. 8, 2012.

Regards,

Sharon L. Wolff

3 Painter St.

Rio Dell, CA 95562

steve@riodelltimes.com

cc Ron Henrickson, City of Rio Dell

Exhibit 4

MITCHELL, BRISSO, DELANEY & VRIEZE, LLP

CLIFFORD B. MITCHELL (1927—2010)

PAUL A. BRISSO

NANCY K. DELANEY

JOHN M. VRIEZE

WILLIAM F. MITCHELL

RUSSELL S. GANS

NICHOLAS R. KLOEPPPEL

JAY M. HARRIS, Associate

VICTOR M. FERRO, of Counsel

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EMERY F. MITCHELL (1896 - 1991)

WALTER J. CARTER (1949 - 1993)

R.C. DEDEKAM (1929—2011)

February 3, 2012

Sharon L. Wolff
3 Painter Street
Rio Dell, CA 95562

Re: Renewed Public Records Act Request

Dear Ms. Wolff:

This letter follows my correspondence to you dated January 20, 2012, and your reply to me dated January 23, 2012. With respect to the record productions requests stated in your January 8, 2012 correspondence and supplemented by your January 23, 2012 correspondence, please note the following:

Regarding your request for the production of the "investigative report" relating to Mr. Hale, I have reviewed the lengthy correspondence chain between yourself and Mr. Martinek on the subject, including the August 1, 2011, letter you recently referenced. As you are aware, on behalf of the City of Rio Dell, Mr. Martinek previously asserted that the document you seek is subject to attorney-client privilege, and is exempt from disclosure as a personnel record. Unlike the statement appearing in your January 8, 2012 correspondence, the reasons cited for withholding the document were not simply the exemption for personnel records, Mr. Martinek's August 1, 2011 correspondence clearly asserts attorney-client privilege as well. Based on a review of the matter, I must concur with the position. The report appears to fall squarely within the attorney-client privilege, and is further protected as attorney-work product. The investigation was not commissioned by the City Council or City staff, it was commissioned by the City Attorney and is the work product of the attorney's thoughts and assessments respective to the attorney's evaluation of municipal liability concerns.

Regarding your request for production of the employment "settlement agreement" with former City Manager Ms. Nancy Flemming, after further review and assessment and

Sharon L. Wolff
February 3, 2012
Page: 2

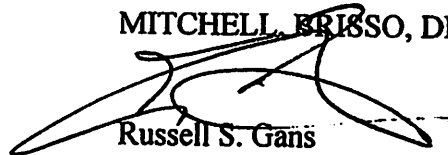
in response to your renewed request, a severance agreement entered between the City and Ms. Flemming does appear to be subject to disclosure under the California Public Records Act. I am acquiring a copy of the document from the City files now, and will mail the document to you on **February 10, 2012**, unless a Court order issues in the interim preventing disclosure.

Reviewing the remainder of the requests stated in your January 8, 2012 correspondence, it appears that all responsive documents not otherwise exempt from disclosure were produced previously in your past exchanges with Mr. Martinek, to the extent documents exist.

Thank you for your time and attention to this correspondence. If you have any questions regarding the content of this letter you can contact the undersigned.

Very truly yours,

MITCHELL BRISSE, DELANEY & VRIEZE, LLP



Russell S. Gans

RSG/jg

cc: Ron Henrickson (via e-mail)