

1 ABENICIO CISNEROS, SBN 302765
Law Offices of Abenicio Cisneros
2443 Fillmore Street, #380-7379
2 San Francisco, CA 94115
707-653-0438
3 acisneros@capublicrecordslaw.com

4 ANNA VON HERRMANN, SBN 301670
Law Office of Anna von Herrmann
5 2443 Fillmore Street #380-7379
San Francisco, CA 94115
6 415-779-5619
anna@vonherrmannlegal.com

7 JOSEPH WANGLER, SBN 296901
8 Law Offices of Joseph Wangler
322 S. Campus Avenue
9 Upland, CA 91786
909-272-3958
10 josephwanglerlaw@gmail.com

11 Attorneys for Petitioners and Plaintiffs

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 KATHERINE MCNENNY and ADRIAN) Case No.: BS174784
15 RISKIN,)
16) **PETITIONERS' EX PARTE**
Petitioners and Plaintiffs,) **APPLICATION FOR ORDER TO SHOW**
17 vs.) **CAUSE RE: CONTEMPT AND**
18) **MEMORANDUM OF POINTS AND**
LOS ANGELES CHINATOWN BUSINESS) **AUTHORITIES IN SUPPORT THEREOF**
19)
COUNCIL, a non-profit corporation,)
20)
21 Respondent and Defendant) Department: 86
22) Judge: Hon. Mitchell L. Beckloff
23) Petition Filed: August 15, 2018
24) Hearing on Petition: July 24, 2019
25) Ex Parte Requested Hearing Date: 11/15/19
26)
27 TELEPHONE APPEARANCE
28)

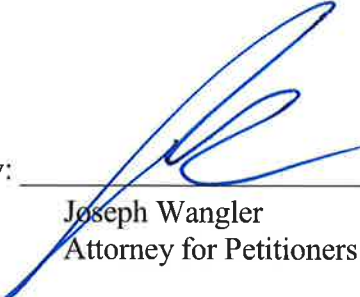
24 TO THE COURT, ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:
25 PLEASE TAKE NOTICE that on November 15, 2019, at 8:30 a.m , or as soon thereafter as
26 the matter can be heard in Department 86 of this Court, at 111 N. Hill Street, Los Angeles,
27 California 90012, Petitioners, by and through undersigned counsel, will apply *ex parte* for an order

1 directing Respondent to show cause why it should not be held in contempt of this Court, pursuant to
2 C.C.P. section 1209 (a)(5), for willful disregard of the Court's Order entered on August 19, 2019.

3 This application is made on the grounds that Respondent has willfully failed to search for
4 and provide the public records identified in the Order. Further, Respondent has not provided a date
5 upon which it will produce the records, and Respondent has ceased responding to Petitioners'
6 communications regarding this matter, showing Respondent's intention to continue to willfully
7 refuse to comply with the Order.

8 This application is based on the application itself and supporting memoranda of points and
9 authorities, the concurrently filed Declaration of Anna Von Herrmann, the exhibits submitted
10 therewith, the records on file in this case, and such further evidence and argument as may be
11 properly presented at the hearing in this Application.

12
13
14 Dated: Nov 8, 2019

By: 
Joseph Wangler
Attorney for Petitioners

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 On August 19, 2019, this Court entered an Order Granting Petition for Writ of Mandate in
4 favor of Petitioners and against Respondent. The Order requires, *inter alia*, that Respondent (“the
5 BID”) conduct an additional search for and produce public records responsive to Petitioners’
6 requests. (Von Herrmann Decl. Ex. A.) Now, over 73 days have passed and, despite being so
7 ordered, the BID has failed to produce even a single public record to which Petitioners is entitled.

8 Counsel for Petitioners have regularly contacted the BID regarding its non-compliance,
9 Counsel for Petitioners have informed the BID repeatedly that the BID’s non-response would
10 require Petitioners to take further legal action. However, as the BID has done throughout this
11 litigation, the BID has neglected its obligations. Just as the BID failed to initially respond to
12 Petitioners’ CPRA’s requests, failed to file an Answer to the Petition, failed to resolve this matter
13 via settlement, and failed to file any opposition brief to any of Petitioners’ motions, now the BID is
14 failing to comply with the Court’s Order. There is no reason to believe the BID will comply without
15 further action from this Court

16 Therefore, Petitioners respectfully seeks setting of an order to show cause: (1) why
17 Respondent, and any director of Respondent with personal knowledge of the Order, should not be
18 held in contempt for willful failure to obey of the Order issued on August 19, 2019, and (2) why
19 Respondent should not be ordered to compensate Petitioners for the reasonable attorney’s fees and
20 costs incurred in connection with this proceeding, together with any other relief the court deems just
21 and proper.

22 **I. Respondent Should Be Held in Contempt for Failing to Comply with a Lawful Court**
23 **Order**

24 Pursuant to California Code of Civil Procedure § 1209(a)(5)¹ “disobedience of any lawful
25 judgment, order, or process of the court” is a contempt of the authority of the court. When contempt
26 is committed outside the immediate view and presence of the Court or Judge, “an affidavit shall be

27 _____
28 ¹ Unless otherwise stated, all reference to code sections are to the California Code of Civil Procedure.

1 presented to the court or judge of the facts constituting the contempt.” § 1211(a). In addition, courts
2 have the “inherent power to punish for contempt of court,” which is “a necessary incident to the
3 execution of the powers conferred upon the court and is necessary to maintain its dignity, if not its
4 very existence.” See *In re Buckley* (1973) 10 Cal.3d 237, 247 (internal citations omitted).

5 The elements of contempt are: (1) a valid order from a court; (2) the litigant's knowledge of
6 the order; (3) the litigant's ability to comply with the order; and (4) the willful failure to comply. *In*
7 *re Ivey* (2000) 85 Cal.App.4th 793, 798. As discussed in detail below, Respondent is in contempt
8 due to its failure to comply with the Court’s lawful order.

9 A. The Court Issued a Valid Order

10 As stated above, the Court issued a Judgment and Order Granting Petition for Writ of Mandate
11 on August 19, 2019. (the “Order”) The Order required that Petitioner produce the requested records
12 within 30 days. This order was duly signed by the Judge and lawfully entered. There is no question
13 that the Order was valid.

14 B. Respondent Has Knowledge of the Order

15 Respondent clearly has knowledge of the Order. Respondent was Petitioners served a Notice
16 of Entry of Judgment, with the Judgment and Order attached thereto, on Respondent on August 22,
17 2019. (Von Herrmann Decl. Ex. A.) Second, filed the notice and proof of service with the Court on
18 the same day. (*Id.*) Finally, Petitioners, by and through undersigned counsel, have repeatedly sent
19 communications to Respondent regarding the Order. (Von Herrmann Decl. ¶ 3; Ex. B.).
20 Respondent’s knowledge of the Order is manifest.

21 C. The Court’s Order Required Respondent to Take Actions Within Its Control

22 In relevant part, the Order required Respondent to search for and produce public records
23 held by Respondent that are responsive Petitioners’ three CPRA requests. (Von Herrmann Decl. ¶ 2;
24 Ex. A.) At all times since the Order was issued, performance of the required acts—conducting a
25 search for records and producing responsive records within its possession—has been within
26 Respondent’s power. Indeed, no entity other than Respondent can comply with this Order, as the
27 requested public records that must be searched for and produced are in Respondent’s sole
28

1 possession and control. Despite its ability to comply with the Order, Respondent has failed to
2 perform these required actions.

3 D. Respondent Has Willfully Failed to Comply with the Order

4 Respondent has been granted ample time and opportunity to comply with the terms of the
5 Order. To date, approximately two-and-a-half months have passed with no action by Respondent.
6 Respondent's failure to comply with the Order has been willful and deliberate.

7 Petitioners, by and through undersigned counsel, has repeatedly contacted Respondent's
8 counsel in order to attempt to induce Respondent to comply with the Order as required by law.
9 Petitioners either mailed, called, or emailed Respondent about this matter on August 22, August 23,
10 August 26, September 13, and August 29. (Von Herrmann Decl. ¶ 3; Ex. B.) Respondent was
11 informed that if it failed to comply, Petitioners would initiate compliance proceedings. (Von
12 Herrmann Decl. ¶ 4) The BID ignored all these communications and has taken no action at all to
13 comply with the Order. (Von Herrmann Decl. ¶ 5) Respondent therefore continues to unlawfully
14 withhold records to which Petitioners and the public at large are statutorily entitled. *See* Cal. Gov't
15 Code § 6250, *et seq.*

16 Accordingly, as established by this Memorandum of Points and Authorities and the
17 Declaration of Anna Von Herrmann, Esq. filed and served herewith, Respondent's continued
18 disobedience of this Court's lawful Order is a contempt of this Court.

19 **II. Conclusion**

20 Because Respondent continues to disobey the Court's lawful Order, Petitioners respectfully
21 move this Court to issue an Order to Show Cause why Respondent should not be held in contempt
22 and made to pay an appropriate fine up to one thousand dollars, and why any individual directors of
23 Respondent with personal knowledge of the Order should not be imprisoned for five days. *See*
24 § 1218(a).

25 Petitioners also respectfully request that Respondent be ordered to compensate Petitioners
26 for reasonable attorneys' fees and costs incurred in connection with the contempt proceeding
27 pursuant to § 1218(a), in an amount to be set in response to Petitioners' forthcoming Motion for
28

1 Attorney's Fees. Petitioners further request any other relief that the Court deems just and proper.

2
3 Dated: Nov 8 October 8, 2019

By: _____

Joseph Wangler
Attorney for Petitioners

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28