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SUPERIOR COURT OF THE STATE OF CALIFORNIA

14

COUNTY OF ORANGE

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16 CHICANXS UNIDXS DE ORANGE
COUNTY, AMERICAN CIVIL LIBERTIES
17 UNION OF NORTHERN CALIFORNIA,
AMERICAN CIVIL LIBERTIES UNION OF
SOUTHERN CALIFORNIA,

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Petitioners/Plaintiffs,

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vs.

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TODD SPITZER, in his official capacity as
the District Attorney of Orange County, and
21 THE COUNTY OF ORANGE,

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Respondents/Defendants.

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Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[Gov. Code, §§ 6250 *et seq.*; Code Civ. Proc.,
§§ 526a, 1060, 1085 *et seq.*; Civ. Code § 3422;
Cal. Const., art. I, § 3]

1 **INTRODUCTION**

2 1. Under the California Constitution, the people have a “right of access to information
3 concerning the conduct of the people’s business.” (Cal. Const., art. 1, § 3, subd. (b), par. (1).) The
4 California Legislature, in recognition of this right, enacted the California Public Records Act
5 (“PRA”), set forth at Government Code sections 6250 *et seq.* The PRA provides a comprehensive
6 framework for the disclosure of government records based on the premise that access to such
7 information is “a fundamental and necessary right of every person in this state.” (Gov. Code, §
8 6250.)

9 2. This lawsuit seeks to enforce the PRA. It concerns the public’s right to access
10 information essential to the oversight of Respondent/Defendant TODD SPITZER, in his official
11 capacity as the Orange County District Attorney (“OCDA”), who is charged with the prosecution
12 of public offenses on behalf of the people. This case also concerns the public’s right to access
13 information integral to the implementation of California’s Racial Justice Act and Racial Justice
14 for All Act, which the California Legislature enacted “to eliminate racial bias from California’s
15 criminal justice system” and “to ensure that race plays no role at all in seeking or obtaining
16 convictions or in sentencing.” (AB 2542 Criminal Procedure: Discrimination, Stats. 2020, Ch.
17 317, § 2(i); AB 256 Criminal Procedure: Discrimination, Stats. 2022, Ch. 739; Penal Code §§
18 745, 1473, 1473.7.)

19 3. Petitioners/Plaintiffs CHICANXS UNIDXS DE ORANGE COUNTY
20 (“CHICANXS UNIDXS”), AMERICAN CIVIL LIBERTIES UNION OF NORTHERN
21 CALIFORNIA (“ACLU OF NORTHERN CALIFORNIA”), and AMERICAN CIVIL
22 LIBERTIES UNION OF SOUTHERN CALIFORNIA (“ACLU OF SOUTHERN
23 CALIFORNIA”) submitted five separate PRA requests to OCDA in 2021 and 2022 seeking
24 prosecutorial data and other information relevant to the implementation of the Racial Justice Act.
25 Four of these requests sought data reflecting prosecutorial actions and case outcomes, and one
26 request sought prosecutorial policies, practices, and training materials.

27 4. OCDA’s response to these five requests fails to comply with the PRA. Although
28 OCDA acknowledged receiving each request, OCDA has refused to produce any data, asserted

1 overbroad and unsupported exemptions, withheld key policy documents, and rebuffed efforts to
2 provide statutorily required information. By acting in this manner, OCDA has impermissibly
3 insulated the office from public scrutiny and accountability, thereby thwarting the objectives of
4 the California Constitution and the PRA, and obstructing the effectuation of the Racial Justice
5 Act.

6 5. OCDA’s failure to respond to these requests is inconsistent with the Legislature’s
7 recognition of the importance of access to prosecutorial data and policies for the purposes of
8 public transparency, prosecutorial oversight, and the eradication of racial bias from the criminal
9 legal system. The Racial Justice Act exists expressly “to provide remedies that will eliminate
10 racially discriminatory practices in the criminal justice system” and “to ensure that individuals
11 have access to all relevant evidence, including statistical evidence, regarding potential
12 discrimination in seeking or obtaining convictions or imposing sentences.” (*See* AB 2542
13 Criminal Procedure: Discrimination, Stats. 2020, Ch. 317, § 2(j).) Lack of access to prosecutorial
14 data starves the RJA of its purpose.

15 6. This year, the Legislature further emphasized the importance of prosecutorial
16 oversight, especially for the purpose of eradicating discriminatory prosecutions, in making the
17 Racial Justice Act retroactive (*see* AB 256 Criminal Procedure: Discrimination, Stats. 2022, Ch.
18 739), and enacting new legislation, the Justice Data Accountability and Transparency Act, to
19 require prosecutors to make “complete, accurate, and timely data . . . available to the public.”
20 (AB 2418 Crimes: Justice Data Accountability and Transparency Act, Stats. 2022, Ch. 787.)

21 7. Of particular concern, OCDA’s legally inadequate response to the five PRA
22 requests at issue is apparently standard practice. The consistent responses of the OCDA to the
23 four data requests demonstrate a systematic refusal to produce any prosecutorial data which
24 would allow for oversight of the Office. District Attorney SPITZER is now refusing to produce
25 the exact same data that the OCDA previously produced in 2019. Further, OCDA has also
26 refused requests from public defenders who have sought data necessary to pursue Racial Justice
27 Act claims in criminal court on behalf of people facing criminal charges, whether that
28 information was requested pursuant to the PRA or the Racial Justice Act.

1 8. Because of OCDA’s blatant disregard for the PRA’s disclosure obligations,
2 Petitioners/Plaintiffs respectfully ask this Court to issue a writ of mandate compelling OCDA to
3 comply with its legal obligations and provide to Petitioners/Plaintiffs the information requested in
4 the five requests at issue here, as well as to order declaratory and injunctive relief to the same
5 effect, and to order OCDA to take affirmative steps to make certain data public in the future by
6 publishing it regularly on OCDA’s internet website. Absent the issuance of a writ of mandate and
7 the other relief requested, Petitioners/Plaintiffs have no plain, speedy, or adequate remedy at law
8 to enforce their rights.

9 **PARTIES**

10 9. Petitioner/Plaintiff CHICANXS UNIDXS DE ORANGE COUNTY is an
11 unincorporated association founded in 2006 and headquartered in the County of Orange.
12 CHICANXS UNIDXS is an entirely volunteer, member-run organization. CHICANXS
13 UNIDXS’ mission is to promote cultural and political empowerment for the
14 Chicax/Mexicanx/Indigenous communities of Orange County and to identify and challenge
15 racism, violence, and institutional oppression.

16 10. As part of its mission to challenge racism, CHICANXS UNIDXS is investigating
17 OCDA’s compliance with the Racial Justice Act. To conduct this investigation, CHICANXS
18 UNIDXS seeks disclosure of public records in OCDA’s possession related to the racial equity of
19 OCDA’s prosecutions. CHICANXS UNIDXS is a member of the public with the right under the
20 PRA to inspect and receive public records and to seek relief in a court of competent jurisdiction
21 to enforce that right. (Gov. Code, §§ 6252, subds. (b)–(c), 6253, 6258, 6259.) CHICANXS
22 UNIDXS has members who pay income, property, and other taxes in Orange County, California.

23 11. Petitioners/Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTHERN
24 CALIFORNIA and AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA
25 (together, “ACLU CALIFORNIA AFFILIATES”) are non-profit organizations under the laws of
26 the state of California. They are affiliates of the national American Civil Liberties Union
27 (“ACLU”), a non-profit, non-partisan civil liberties organization with more than 1.7 million
28

1 members dedicated to the principles of liberty and equality embodied in our civil rights laws and
2 both the United States and California Constitutions.

3 12. The ACLU is further dedicated to advancing government transparency and
4 accountability. As part of its advocacy, the ACLU relies on public records to gather information
5 and ensure that the public is informed about the conduct and practices of local, state, and federal
6 officials. The ACLU routinely uses information from public records to support civil rights
7 litigation, publish reports, and work with the press and the public at large to promote participation
8 in civil affairs. The ACLU CALIFORNIA AFFILIATES are also actively involved in seeking to
9 ensure implementation of the Racial Justice Act statewide, including by collecting and disclosing
10 information about the policies and practices of District Attorneys throughout the state. The
11 ACLU CALIFORNIA AFFILIATES are members of the public with the right under the PRA to
12 inspect and receive public records and to seek relief in a court of competent jurisdiction to
13 enforce that right. (Gov. Code, §§ 6252, subs. (b)–(c), 6253, 6258, 6259.) The ACLU of
14 Southern California has members who pay income, property and other taxes in Orange County,
15 California.

16 13. Respondent/Defendant TODD SPITZER, in his official capacity as the Orange
17 County District Attorney, is a government official responsible for the prosecution of criminal
18 offenses in the county. Pursuant to state law, District Attorney SPITZER has discretionary
19 authority to “initiate and conduct on behalf of the people all prosecutions for public offenses,” or
20 to decline to prosecute offenses. (Gov. Code, § 26500.) The Office of the OCDA is a local
21 agency within the meaning of the PRA. (Gov. Code, § 6252, subs. (a), (d).) The records that
22 Petitioners/Plaintiffs have requested are, or should be, maintained by OCDA.

23 14. Respondent/Defendant the COUNTY OF ORANGE is a local public agency within
24 the meaning of Government Code sections 6252(a) and (d).

25 **JURISDICTION AND VENUE**

26 15. This Court has jurisdiction under Government Code sections 6258 and 6259; Code
27 of Civil Procedure sections 1060, 526a, and 1085; Civil Code section 3422; and Article VI,
28 section 10 of the California Constitution.

1 16. Venue is proper in this Court because the acts and omissions complained of herein,
2 as well as the records in question, or some portion of them, are situated in this County. (Code
3 Civ. Proc., §§ 394, subd. (a), 395, subd. (a), 401, subd. (1); Gov. Code, § 6259, subd. (a).)

4 **LEGAL BACKGROUND**

5 **A. Statutory and Constitutional Rights to Public Records**

6 17. The California Constitution provides that “[t]he people have the right of access to
7 information concerning the conduct of the people’s business, and, therefore, the meetings of
8 public bodies and the writings of public officials and agencies shall be open to public scrutiny.”
9 (Cal. Const., art. 1, § 3(b)(1).) The Constitution requires that any “statute, court rule, or other
10 authority,” such as the PRA, “be broadly construed if it furthers the people’s right of access, and
11 narrowly construed if it limits the right of access.” (*Id.*, § 3(b)(2).)

12 18. Under the PRA, “access to information concerning the conduct of the people’s
13 business”—business conducted by public agencies on behalf of the people—is a “fundamental
14 and necessary right of every person in this state.” (Gov. Code, § 6250.)

15 19. The PRA requires that, in response to records requests from members of the public,
16 public agencies “make the records promptly available,” so long as the records are not expressly
17 exempt. (Gov. Code, § 6253, subd. (b).) The PRA defines a record to include “any writing
18 containing information relating to the conduct of the public’s business prepared, owned, used, or
19 retained by any state or local agency regardless of physical form or characteristics.” (*Id.*, § 6252,
20 subd. (e).) A “writing” under the PRA encompasses any “means of recording upon any tangible
21 thing any form of communication or representation,” and includes information in an electronic
22 format. (*Id.*, § 6252, subd. (g) & *id.*, § 6253.9.) Non-exempt electronic records must be made
23 available even when “the information must first be retrieved and then exported into a separate
24 record.” (*National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9
25 Cal.5th 488, 502.) The PRA requires agencies to “gather and segregate disclosable electronic data
26 and to ‘perform data compilation, extraction or computer programming if ‘necessary to produce a
27 copy of the record.’” (*Id.* at p. 503 [quoting *Sander v. Superior Court* (2018) 26 Cal.App.5th
28 651, 669] and Gov. Code, § 6253.9, subd. (b).)

1 20. The PRA codifies specific requirements and deadlines that agencies must observe
2 upon receipt of a public records request. (Gov. Code, §§ 6250 *et seq.*) Specifically, once an
3 agency receives a PRA request, it has ten days to respond. Within those ten days, the agency must
4 determine whether the request seeks disclosable public records in its possession, custody, or
5 control, and must “promptly” notify the requestor of its determination and reasoning. (*Id.*, § 6253,
6 subd. (c).) Only in “unusual circumstances” may an agency extend the time to respond by up to
7 fourteen days. (*Ibid.*) Such “unusual circumstances” are limited to certain enumerated reasons for
8 delay.¹ An agency must nonetheless explicitly notify the requestor of this extension in writing, set
9 forth the reasons for the extension, and provide an estimate as to when the records will be
10 available. (*Ibid.*)

11 21. The PRA permits delay “only to the extent reasonably necessary to the proper
12 processing of the particular request.” (Gov. Code, § 6253, subd. (c).) The same section of the
13 PRA forbids delay for any other reasons: “Nothing in this chapter shall be construed to permit an
14 agency to delay or obstruct the inspection or copying of public records.” (*Id.*, § 6253, subd. (d).)

15 22. It is an agency’s obligation to conduct record searches based on the criteria
16 identified in a specific request. (Gov. Code, §§ 6253–6253.1.) An agency may be required to
17 assist a requestor to formulate a request based on the agency’s greater knowledge of its own
18 recordkeeping system. (*Id.*, § 6253.1, subd. (a)(1)–(3).) Additionally, officials responding to a
19 PRA request must also (1) offer assistance in identifying responsive records and information; (2)
20 describe “the information technology and physical location in which the records exist”; and (3)
21 provide “suggestions for overcoming any practical basis” that might be asserted as a reason to
22 delay or deny access to the records or information sought. (*Id.*, § 6253.1, subd. (a).) Information

24 ¹ Under the PRA, unusual circumstances “means” only: “(1) The need to search for and collect the
25 requested records from field facilities or other establishments that are separate from the office
26 processing the request. (2) The need to search for, collect, and appropriately examine a
27 voluminous amount of separate and distinct records that are demanded in a single request. (3) The
28 need for consultation, which shall be conducted with all practicable speed, with another agency
having substantial interest in the determination of the request or among two or more components
of the agency having substantial subject matter interest therein. (4) The need to compile data, to
write programming language or a computer program, or to construct a computer report to extract
data.” (Gov. Code, § 6253, subd. (c)(1)–(4).)

1 produced as an electronic record should be produced “in the format requested if the requested
2 format is one that has been used by the agency to create copies for its own use or for provision to
3 other agencies.” (*Id.*, § 6253.9, subd. (a)(2).)

4 23. If an agency denies a request for records in whole or in part, it must issue that
5 denial in writing. (Gov. Code, § 6255, subd. (b).) In such correspondence, the agency must
6 “demonstrate[e] that the record in question is exempt under [the PRA’s] express provisions . . . or
7 that on the facts of the particular case the public interest served by not disclosing the record
8 clearly outweighs the public interest served by disclosure of the record.” (*Id.*, § 6255, subd. (a).)
9 The agency must also identify both the name and title of the person(s) responsible for deciding
10 not to disclose requested records. (*Id.*, §§ 6253, subd. (d)(3), 6255.) An agency must segregate
11 exempt from nonexempt material and disclose “[a]ny reasonably segregable portion of a record.”
12 (*Id.*, § 6253, subd. (a).)

13 24. “Any person” may institute proceedings for injunctive or declaratory relief or writ
14 of mandate to enforce the right to inspect or receive a copy of any nonexempt public record.
15 (Gov. Code, §§ 6258, 6259; *see also* Code Civ. Proc., §§ 1085 *et seq.*) The PRA further provides
16 that a “court shall order the officer or person charged with withholding the records to disclose the
17 public record or show cause why the officer or person should not do so” where “it is made to
18 appear by verified petition to the superior court of the county where the records or some part
19 thereof are situated that certain public records are being improperly withheld from a member of
20 the public.” (Gov. Code, § 6259, subd. (a).)

21 25. To ensure that the public’s access to information is not delayed or obstructed, the
22 PRA requires that “[t]he times for responsive pleadings and for hearings in these proceedings
23 shall be set by the judge of the court with the object of securing a decision as to these matters at
24 the earliest possible time.” (Gov. Code, § 6258.)

25 **B. The Racial Justice Act**

26 26. In addition to the foregoing constitutional and statutory directives commanding the
27 disclosure of public records, the Racial Justice Act (“RJA”) further reinforces the need for
28 disclosure of the types of records that Petitioners/Plaintiffs seek in their PRA requests.

1 27. The California Legislature enacted the RJA “to eliminate racial bias from
2 California’s criminal justice system,” “to remedy the harm to the defendant’s case and to the
3 integrity of the judicial system,” “to actively work to eradicate” racial disparities in the judicial
4 system, and “to ensure that individuals have access to all relevant evidence, including statistical
5 evidence, regarding potential discrimination in seeking or obtaining convictions or imposing
6 sentences.” (AB 2542 Criminal Procedure: Discrimination, Stats. 2020, Ch. 317, § 2(i), (j).) In
7 September 2022, California enacted new legislation to make the RJA retroactive. (AB 256
8 Criminal Procedure: Discrimination, Stats. 2022, Ch. 739.) To implement the RJA and realize the
9 legislature’s goal of eradicating racial bias from the criminal legal system, the public must be able
10 to access policies and data concerning decisions about whether and how California prosecutes
11 cases and whether such prosecutions are tainted by bias.

12 28. The RJA specifically provides that a defendant may present evidence of racial bias
13 by showing “statistical evidence or aggregate data demonstrat[ing] a significant difference in
14 seeking or obtaining convictions or in imposing sentences comparing individuals who have
15 committed similar offenses and are similarly situated, and the prosecution cannot establish race-
16 neutral reasons for the disparity.” (Penal Code, § 745, subd. (h)(1).) In recognizing that the
17 identification of racial and ethnic disparities may depend on statistical evidence or aggregate data,
18 the Legislature has presumed public access to such information, as well as confirmed that access
19 to this information is required to maintain the “integrity of the judicial system.” (AB 2542
20 Criminal Procedure: Discrimination, Stats. 2020, Ch. 317, § 2(i).)

21 **C. Justice Data Accountability and Transparency Act**

22 29. The Legislature also expressly recognized the importance of collecting and
23 publishing prosecutorial data like that at issue here when it passed prosecutorial data transparency
24 reforms this year. (AB 2418 Crimes: Justice Data Accountability and Transparency Act, Stats.
25 2022, Ch. 787.) In passing the Justice Data Accountability and Transparency Act, the Legislature
26 affirmed that “it is an important state interest to implement a data collection, aggregation, and
27 publishing process for criminal prosecutions to promote criminal justice data transparency.”
28 (*Ibid.*)

1 **FACTUAL BACKGROUND**

2 **A. OCDA’s History of Prosecutorial Misconduct, Racial Bias, and**
3 **Discriminatory Enforcement**

4 30. OCDA has a history of prosecutorial misconduct and racial discrimination. The
5 OCDA jailhouse informant scandal, where OCDA belatedly affirmed the previously undisclosed
6 use of jailhouse informants to coax confessions from defendants, has resulted in local and
7 national outrage. A recent investigation by the U.S. Department of Justice found that the OCDA
8 had committed systematic constitutional violations in connection with this scandal.² The U.S.
9 Department of Justice also rejected as deficient District Attorney SPITZER’s remedial measures
10 and identified serious ongoing problems with the Office.³ Among the serious failures the Justice
11 Department identified were gaps in information management. The Justice Department concluded
12 that, without serious remedial action related to information management, “OCDA will continue to
13 struggle to identify and maintain its case materials,” and OCDA will be unable “to manage,
14 oversee, and audit its own performance.”⁴

15 31. Despite a stated commitment to reform when taking office in 2019, District
16 Attorney SPITZER has also been criticized by his own staff for retaliation, lack of candor, and
17 political interference in high-profile cases.⁵ What limited data is publicly available shows
18 persistent racial bias in OCDA’s charging decisions, and a court has even found that District
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22 ² U.S. Dep’t of Justice Civil Rights Division, Investigation of the Orange County District
23 Attorney’s Office and the Orange County Sheriff’s Department, Oct. 13, 2022 (“DOJ Report”),
24 49-59, <https://www.justice.gov/opa/press-release/file/1542116/download>.

25 ³ *Id.* at pp. 49-59 (explaining that the OCDA’s current remedial measures “remain insufficient to
26 fully reveal or redress the violations that resulted from the informant program, or to prevent
27 similar violations from recurring”).

28 ⁴ *Id.* at p. 55.

⁵ Salvador Hernandez, “A Politically Savvy Prosecutor Is Tanking Orange County’s Justice
System Through Racism, Ego, and Retaliation, Insiders Say,” BuzzFeed, Mar. 8, 2022,
<https://www.buzzfeednews.com/article/salvadorhernandez/todd-spitzer-oc-da-retaliation>.

1 Attorney SPITZER violated the RJA himself.⁶ Instead of taking accountability, OCDA has either
2 refused to respond to criticism or responded to criticism with counterattacks.

3 32. The ACLU CALIFORNIA AFFILIATES have documented OCDA’s racially
4 disparate charging practices.⁷ In a report released in February of this year, the ACLU
5 CALIFORNIA AFFILIATES found widespread racial disparities in charging decisions: For
6 example, 2.1% of people in Orange County are Black, but Black people represented 5.8% of
7 those criminally charged in the county.⁸ OCDA is also more likely to charge Black and Latinx
8 people with felonies and sentencing enhancements than white people, and less likely to offer
9 Black and Latinx people diversion as an alternative to incarceration.⁹

10 33. The ACLU report relies on 2017 and 2018 data provided by OCDA, as well as data
11 published by the nonprofit news agency Voice of OC. OCDA refused to provide the ACLU with
12 data from the years since District Attorney SPITZER took office, instead providing only data
13 from the years when OCDA was run by his predecessor.¹⁰ In responding to the ACLU report,
14 District Attorney SPITZER criticized the findings, but did not produce any updated data to refute
15 the ACLU’s analysis and conclusions.¹¹

17 ⁶ Hannah Fry, “O.C. district attorney violated Racial Justice Act in double murder case, judge
18 finds,” L.A. Times, June 3, 2022, [https://www.latimes.com/california/story/2022-06-03/judge-
19 finds-orange-county-da-violated-racial-justice-act-in-double-murder-
case#:~:text=Todd%20Spitzer%20violated%20the%20Racial,have%20reduced%20Jamon%20Buggs%20sentence](https://www.latimes.com/california/story/2022-06-03/judge-finds-orange-county-da-violated-racial-justice-act-in-double-murder-case#:~:text=Todd%20Spitzer%20violated%20the%20Racial,have%20reduced%20Jamon%20Buggs%20sentence).

20 ⁷ ACLU OF NORTHERN CALIFORNIA, “In(Justice) in Orange County: A Case for Change and
21 Accountability,” Feb. 2022, at [https://www.aclusocal.org/sites/default/files/ocda-report-
022822.pdf](https://www.aclusocal.org/sites/default/files/ocda-report-022822.pdf).

22 ⁸ *Id.* at p. 14.

23 ⁹ *Id.* at pp. 15, 19, 24. For example, OCDA data shows that Black and Latinx people were,
24 respectively, 83.5 and 33 percent more likely than white people to be charged with a felony; that
25 Latinx and Black people were, respectively, eight and five times as likely as white people to
receive a gang enhancement; and only 6.9 percent of all cases filed against Black people were
referred to diversion programs, as compared to an overall rate of 9.1 percent of diversion referrals.

26 ¹⁰ *See* paras. 38-39, *infra*.

27 ¹¹ Nick Gerda, “DA Faces New Racial Bias Accusations as ACLU Analyzes Who Gets
28 Prosecuted,” Voice of OC, March 1, 2022, [https://voiceofoc.org/2022/03/da-faces-new-racial-bias-
accusations-as-aclu-analyzes-who-gets-prosecuted/](https://voiceofoc.org/2022/03/da-faces-new-racial-bias-accusations-as-aclu-analyzes-who-gets-prosecuted/) (OC District Attorney responded to the ACLU

1 34. On June 3, 2022, Orange County Superior Court Judge Gregg Prickett ruled that
2 District Attorney SPITZER violated the Racial Justice Act; District Attorney SPITZER is “the
3 first elected prosecutor in California found to have violated [this] law against showing racial bias
4 toward defendants.”¹² The ruling followed the widely publicized disclosure of racist remarks
5 made by District Attorney SPITZER in a closed-door OCDA strategy session about whether
6 prosecutors should seek the death sentence for a Black man.¹³ When District Attorney
7 SPITZER’s racist comments came to light and he severed all communications between
8 prosecutors and the investigating police department, the lead detective in the case at issue alleged
9 that District Attorney SPITZER was acting to cover up his wrongdoing.¹⁴

10 35. Orange County residents sought accountability for District Attorney SPITZER’s
11 racist comments, to no avail. The Orange County branch of the NAACP called on him to
12 resign¹⁵; the leader of the state’s NAACP chapter called his remarks “blatantly racist”¹⁶; and a
13 broad coalition of civil rights and community-based organizations requested that the California
14 Attorney General investigate the systemic and institutional racism within the policies and
15 practices of OCDA.¹⁷ The coalition’s request identified District Attorney SPITZER’s comments

16 _____
17 report: “this report based on outdated data is nothing more than another way to defund the police
and jeopardize public safety.”).

18 ¹² Nick Gerda, “Judge Finds OC DA Todd Spitzer Violated Racial Bias Law – Could Be First in
19 State for an Elected DA,” Voice of OC, June 6, 2022, <https://voiceofoc.org/2022/06/judge-finds-oc-da-todd-spitzer-violated-racial-bias-law-could-be-first-in-state-for-an-elected-da/>.

20 ¹³ According to an internal OCDA memo, in that October 2021 conversation, District Attorney
21 SPITZER asked if the defendant had dated white women, adding “he knows many Black people
22 who get themselves out of their bad circumstances and bad situations only by dating ‘white
women.’” *Ibid.*

23 ¹⁴ Nick Gerda, “Lead Police Detective Criticizes DA Todd Spitzer’s Statements About Race,
24 Alleges Cover-Up,” Voice of OC, Feb. 18, 2022, <https://voiceofoc.org/2022/02/lead-police-detective-criticizes-da-todd-spitzers-statements-about-race-alleges-cover-up%EF%BF%BC/>.

25 ¹⁵ Nick Gerda, “Local NAACP Chapter Calls on Todd Spitzer to Resign, Citing DA’s Treatment
26 of People of Color,” Voice of OC, March 15, 2022, <https://voiceofoc.org/2022/03/local-naacp-chapter-calls-on-todd-spitzer-to-resign-citing-das-treatment-of-people-of-color/>.

27 ¹⁶ *See supra* fn. 12.

28 ¹⁷ *See* Letter to AG: Request for an Investigation into the Orange County District Attorney’s
Office, March 15, 2022, available at <https://www.davisvanguard.org/2022/03/letter-to-ag-request-for-an-investigation-into-the-orange-county-district-attorneys-office/>.

1 as “the latest confirmation of what has been apparent for years: the policies and practices of
2 OCDA are stained by systemic racism and bias that produce measurable harms against Black and
3 Brown people in Orange County.”¹⁸ Again, OCDA criticized the messengers, calling the
4 organizations “pro-criminal and anti-victim” with an exclusive “interest [in] ruining our safe
5 communities.”¹⁹

6 36. Public oversight of OCDA’s policies and charging decisions is a matter of great
7 public importance. This need for transparency and accountability is particularly salient given
8 OCDA’s history of prosecutorial misconduct, disparate enforcement practices, and racial bias at
9 the highest level, as well as the Office’s deficient information management systems.

10 **B. Petitioners/Plaintiffs’ Four Requests for Prosecutorial Data**

11 37. Between early 2021 and the present, the ACLU CALIFORNIA AFFILIATES and
12 CHICANXS UNIDXS sent four public records requests to OCDA seeking prosecutorial data.
13 OCDA has systematically refused to provide the requested data, asserting that the requests are
14 unduly burdensome and that the OCDA does not keep the data in the requested form. This
15 violates the PRA.

16 **1. The ACLU of Northern California’s February 4, 2021 Request**

17 38. On February 4, 2021, the ACLU OF NORTHERN CALIFORNIA requested that
18 OCDA produce prosecution data for 2019 and 2020, after the OCDA had previously provided, in
19 response to an earlier ACLU OF NORTHERN CALIFORNIA PRA request, the same
20 prosecution data for the years 2017 and 2018. The February 4, 2021 PRA request also sought
21 “information or guides related to felony diversion programs.” A true and correct copy of this
22 request is attached as **Exhibit A**.

23 39. On February 28, 2021, OCDA formally responded to the PRA request and refused
24 to produce any responsive data, asserting that the request “call[ed] for a compilation of
25

26 ¹⁸ *Ibid.*

27 ¹⁹ Sean Emery, “Civil rights groups call for state AG investigation of OCDA’s office after Todd
28 Spitzer’s racial comments,” Orange County Register, March 11, 2022,
<https://www.ocregister.com/2022/03/11/civil-rights-groups-call-for-state-ag-investigation-of-ocdas-office-after-todd-spitzers-racial-comments/>.

1 information not existing” within OCDA, and that the request was “overbroad and unduly
2 burdensome.” OCDA also refused to produce the requested information related to felony
3 diversion programming, asserting it was exempt as attorney work product pursuant to
4 Government Code section 6254, subd. (k). OCDA also claimed “all applicable exemptions from
5 California Public Records Act disclosure” without any further specificity. A true and correct copy
6 of this response is attached as **Exhibit B**.

7 **2. The ACLU of Southern California’s September 27, 2021 Request**

8 40. On September 27, 2021, the ACLU OF SOUTHERN CALIFORNIA requested that
9 OCDA produce data and training materials related to sex work prosecutions. A true and correct
10 copy of this request is attached as **Exhibit C**.

11 41. On October 7, 2021, OCDA responded by email and refused to disclose any
12 responsive data, asserting that it “[did] not have a record responsive” to the request due to the
13 failure of its “Case Management System . . . [to] maintain records in the format requested.”
14 OCDA also objected to the ACLU OF SOUTHERN CALIFORNIA’s request for training
15 materials, claiming “all applicable exemptions” under the PRA without elaboration. A true and
16 correct copy of this response is attached as **Exhibit D**.²⁰

17 42. On the same day, October 7, 2021, ACLU OF SOUTHERN CALIFORNIA
18 responded by email, stating that the OCDA’s refusal to extract and/or compile otherwise
19 available data violated the PRA. On October 12, 2021, OCDA responded by email, merely
20 referring back to the OCDA’s October 7, 2021 response. A true and correct copy of the October 7
21 and 12 communications are attached as **Exhibit E**.

22 43. On October 14, 2021, October 29, 2021, December 6, 2021, and January 10, 2022,
23 ACLU OF SOUTHERN CALIFORNIA followed up by email, asking for clarification in light of
24 the fact that OCDA had previously been able to prepare its own summary report utilizing data
25 akin to what ACLU OF SOUTHERN CALIFORNIA had requested in the September 27, 2021
26 request. ACLU OF SOUTHERN CALIFORNIA also challenged OCDA’s position given that
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28 ²⁰ OCDA did respond in part to other portions of the request which are not at issue here.

1 OCDA had produced similar detailed historical data, from 2017 and 2018, in response to a
2 separate PRA request. Additionally, ACLU OF SOUTHERN CALIFORNIA again noted that it
3 had sent parallel requests to a dozen other prosecutorial agencies in California, and OCDA was
4 the *only* entity which failed to produce the requested data. A true and correct copy of these
5 communications are attached as **Exhibits E, F, G, and H.**

6 44. On February 10, 2022, OCDA wrote by email that it had “closed” the public
7 records request, asserting that “public records have been provided and response has been in made
8 in accordance with the California Public Records Act.” On February 14, 2022, ACLU OF
9 SOUTHERN CALIFORNIA again reiterated its objection to the OCDA refusal to produce the
10 requested data and again requested to speak by telephone. A true and correct copy of the
11 February 10 and 14 communications are attached as **Exhibit I.**

12 45. OCDA never called or attempted to call ACLU OF SOUTHERN CALIFORNIA
13 concerning this request.

14 **3. The ACLU of Northern California’s February 18, 2022 Request**

15 46. On February 18, 2022, the ACLU OF NORTHERN CALIFORNIA, via counsel
16 BraunHagey & Borden LLP, requested that OCDA produce certain prosecutorial data from 2015
17 to the present. A true and correct copy of this request is attached as **Exhibit J.**

18 47. By email on March 1, 2022, OCDA sent a letter to counsel for the ACLU OF
19 NORTHERN CALIFORNIA requesting an extension until March 14, 2022 to respond to the
20 February 18, 2022 request. A true and correct copy of this extension request is attached as
21 **Exhibit K.**

22 48. On March 14, 2022, OCDA sent a letter refusing to produce any responsive
23 records, asserting that the request “calls for a compilation of information not existing within the
24 Orange County District Attorney’s Office,” and that the OCDA therefore need not produce any
25 records.²¹ OCDA also asserted that the request was “overbroad and unduly burdensome,” and
26

27 ²¹ Because of a technical difficulty related to the law firm’s receipt of the OC District Attorney
28 domain address, Plaintiffs did not receive until October 7, 2022 the OCDA’s March 14
communication.

1 asserted without elaboration “all applicable exemptions.” A true and correct copy of this
2 communication is attached as **Exhibit L**.

3 49. On September 21, 2022, counsel for the ACLU OF NORTHERN CALIFORNIA
4 objected to the nonresponsiveness of the OCDA to this PRA request. A true and correct copy of
5 this communication is attached as **Exhibit M**.

6 50. On October 5, 2022, OCDA responded with a confirmation of its prior refusal to
7 produce any responsive data. A true and correct copy of this communication is attached as
8 **Exhibit N**.²²

9 51. On October 13, 2022, the ACLU OF NORTHERN CALIFORNIA reiterated its
10 objection to the OCDA’s refusal to produce any data. A true and correct copy of this
11 communication is attached as **Exhibit O**.

12 52. On October 17, 2022, OCDA responded reiterating its prior refusal to produce the
13 requested data. A true and correct copy of this communication is attached as **Exhibit P**.

14 4. Chicanxs Unidxs’ July 8, 2022 Request

15 53. On July 8, 2022, CHICANXS UNIDXS, through counsel Peace and Justice Law
16 Center, submitted a PRA request seeking prosecutorial data from 2000 to the date of the request.
17 As an example of the types of information it was seeking, CHICANXS UNIDXS attached to the
18 request an electronic spreadsheet of information that District Attorney SPITZER’s predecessor
19 had produced in response to a different entity’s similar PRA request. A true and correct copy of
20 this request is attached as **Exhibit Q**.

21 54. On July 18, 2022, OCDA replied by email to CHICANXS UNIDXS with a written
22 refusal to provide any responsive records. OCDA claimed that the request called for “a
23 compilation of information in a digital spreadsheet that does not exist within the Orange County
24 District Attorney’s Office” and that their case management system “does not maintain records in
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26 ²² OCDA’s October 5, 2022 communication made the ACLU OF NORTHERN CALIFORNIA
27 aware of a technical difficulty related to the law firm’s receipt of the OC District Attorney domain
28 address, resulting in the ACLU OF NORTHERN CALIFORNIA not receiving various
communications from OCDA at the time that they were sent. In response to a request from the
ACLU OF NORTHERN CALIFORNIA, OCDA resent the unreceived communications.

1 the format requested.” Therefore, OCDA claimed, there was “no record responsive” to the
2 request. OCDA further objected that satisfying the request would be unduly burdensome and
3 claimed, without further elaboration, “all applicable exemptions from the California Public
4 Records Act disclosure.” A true and correct copy of this reply is attached as **Exhibit R**.

5 55. Later that same day, July 18, 2022, counsel for CHICANXS UNIDXS responded
6 by email, requesting OCDA’s assistance in making a focused and effective request for
7 documents, as is statutorily required of a public entity. Specifically, CHICANXS UNIDXS
8 requested that OCDA advise as to “what data can be provided from your case management
9 system” and to describe “what volume of data, in your opinion, would not be unduly
10 burdensome.” A true and correct copy of this email is attached as **Exhibit S**.

11 56. OCDA did not respond to this July 18, 2022 email.

12 57. Approximately two months later, on September 15, 2022, CHICANXS UNIDXS,
13 through counsel, sent another email to OCDA, asking to discuss OCDA’s objections and for
14 assistance in resolving them. A true and correct copy of this email is attached as **Exhibit T**.

15 58. On September 26, 2022, OCDA responded by email to CHICANXS UNIDXS
16 reiterating that it would not produce any responsive records. A true and correct copy of this
17 response is attached as **Exhibit U**.

18 C. Request for Policies, Training Materials and Communications

19 59. In addition to its data-related PRA requests, ACLU OF NORTHERN
20 CALIFORNIA separately requested that OCDA produce prosecutorial policies, training materials
21 and other records related to the implementation of the Racial Justice Act. But OCDA failed to
22 produce critical policy documents, training materials, and other responsive records. OCDA
23 asserted that it was entitled to withhold certain records on the grounds of deliberative process
24 privilege, attorney work product, or copyright; or because the request was unduly burdensome.
25 However, OCDA never provided specificity as to the records withheld, which exemptions applied
26 to which records, or the requisite justification for the withholding. The limited number of records
27 that OCDA did produce were on a rolling basis with no identified end date. OCDA also refused
28 to justify any of the numerous redactions on these select documents.

1 60. On July 23, 2021, the ACLU OF NORTHERN CALIFORNIA, via counsel,
2 requested a series of records related to OCDA’s policies, training materials, records concerning
3 the RJA and its implementation, and investigations into *Batson-Wheeler* motions. A true and
4 correct copy of this request is attached as **Exhibit V**.

5 61. On August 5, 2021, OCDA responded to the ACLU OF NORTHERN
6 CALIFORNIA’s July 23, 2021 request asking for an additional 14 days to complete their review
7 of records. A true and correct copy of this response is attached as **Exhibit W**.

8 62. In response to the ACLU OF NORTHERN CALIFORNIA’s July 23, 2021 request,
9 OCDA produced fewer than fifty responsive records over the past fifteen months, a slow rolling
10 production with no specified or estimated end date.

11 63. By email and letter on August 19, 2021, OCDA issued a formal response, including
12 boilerplate and unsupported exemptions, and produced approximately thirteen documents. A true
13 and correct copy of this response is attached as **Exhibit X**. The records that OCDA produced on
14 August 19, 2021 were: four documents concerning OCDA’s diversion policies and practices;
15 three other OCDA policy documents; an OCDA training bulletin concerning “The California
16 Racial Justice Act”; three heavily redacted RJA Team Agendas; the 2020 Superior Court
17 Uniform Bail Schedule; and the Superior Court’s Information and Instructions for a Petition for
18 Resentence or Reclassification pursuant to PC 1170.18. OCDA’s August 19, 2021 written
19 communication also referenced three publicly available OCDA records.

20 64. OCDA produced a smattering of documents over the subsequent year: three
21 additional records on November 9, 2021—publicly-available reports prepared by non-
22 governmental entities concerning racial disparities in the criminal legal system; one additional
23 record on December 13, 2021—a redacted PowerPoint presentation titled “Social Media 101”;
24 one additional record on February 14, 2022—slides for a presentation entitled “Building and
25 Maintaining a Safe, Respectful and Inclusive Community”; one more record on June 15, 2022—a
26 redacted training bulletin entitled “Hate Crimes for Law Enforcement”; and on July 15, 2022,
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1 nine brief case summaries, all but one with significant unexplained redactions.²³ A true and
2 correct copy of these responses are attached as **Exhibits Y, Z, AA, and BB.**

3 65. On September 21, 2022, counsel for the ACLU OF NORTHERN CALIFORNIA
4 objected to the nonresponsiveness of the OCDA to this request and to the February 18, 2022
5 request for prosecutorial data. A true and correct copy of this communication is attached as
6 **Exhibit M.**

7 66. On October 5, 2022, OCDA responded with a confirmation of its prior productions,
8 and its ongoing “rolling” production. OCDA did not identify whether it had any additional
9 records and continued to claim “all applicable exemptions.” A true and correct copy of this
10 communication is attached as **Exhibit CC.**

11 67. On October 5 and 6, 2022, OCDA produced additional records—on October 5, a
12 slide presentation and three linked articles and reports prepared by outside organizations; and on
13 October 6, two short training outlines, four single-page undated slides from presentations, and
14 article excerpts concerning cannabis and tests for driving under the influence.²⁴ A true and correct
15 copy of these responses are attached as **Exhibit DD.**

16 68. On October 13, 2022, the ACLU OF NORTHERN CALIFORNIA reiterated its
17 objection to the OCDA’s nonresponsiveness. A true and correct copy of this communication is
18 attached as **Exhibit O.**

19 69. On October 17, 2022, OCDA responded, reiterating its previously stated boilerplate
20 objections and its ongoing rolling production without a specified end date. A true and correct
21 copy of this communication is attached as **Exhibit P.** On the same date, OCDA also produced
22 seven additional records—four training presentations and three externally produced reports. A
23 true and correct copy of these communications is attached as **Exhibit EE.**

24
25 _____
26 ²³ Because of a technical difficulty related to the law firm’s receipt of the OC District Attorney
27 domain address, Plaintiffs did not receive until October 2022 OCDA’s February 14, June 15, and
28 July 15, 2022 productions.

²⁴ Because of a technical difficulty related to the size of the article excerpts, Plaintiffs did not
receive until October 13, 2022 these records. Plaintiffs are unaware as to what portion of the PRA
request the article excerpts respond to.

1 70. In total, OCDA produced only ten policy records. OCDA did *not* produce
2 responsive policy records known to exist, including policy records identified in the U.S.
3 Department of Justice’s report.²⁵ OCDA also acknowledged over 3,000 trainings conducted in the
4 time period at issue in this PRA request, but produced only a small number of training
5 documents—seven PowerPoint presentations, four individual slides from presentations, two
6 training outlines, two training bulletins, three articles or reports related to a presentation, and nine
7 case summaries, many of which contain significant unexplained redactions.²⁶ In response to the
8 PRA request concerning RJA-related communications and other records, OCDA produced only
9 three heavily redacted RJA meeting agendas.

10 71. In additional email communications – on September 16 and October 14, 2021, and
11 on January 13, March 16, April 15, and May 16, 2022 – OCDA indicated that they were engaged
12 in an ongoing search which had not at those times produced any further responsive records.²⁷ A
13 true and correct copy of these responses is attached as **Exhibit FF**.

14 **D. OCDA’s Systemically Inadequate Responses to PRA Requests**

15 72. OCDA has a pattern and practice of failing to comply promptly and fully with the
16 PRA. OCDA has failed to provide complete and adequate responses under the PRA to Petitioners
17 and other requestors seeking records necessary for prosecutorial oversight. This includes a failure
18 of OCDA to produce records necessary for defendants and defense counsel to make claims under
19 the Racial Justice Act.

21 ²⁵ See, e.g., DOJ Report, *supra* fn. 2, at p. 49 (referencing “policy and training programs within the
22 [OCDA] Office” aimed at addressing prosecutorial misconduct); see also *ibid.* (referencing July
23 2020 OCDA “special report” on prosecutorial misconduct and concluding that at least “two
24 prosecutors had ‘committed malpractice due to intentional negligence’”); *id.* at p. 52 (referencing
25 “two policies addressing the prosecution’s duty to disclose *Brady* material to the defense”); *id.* at
26 p. 53 (referencing fact that OCDA provides its prosecutors “training focused on prosecutors’
27 obligations to comply with *Brady*, including the duty to disclose material within the possession of
28 the prosecution team”).

26 ²⁶ OCDA also produced excerpts related to cannabis, psychosocial tests for DWI arrests, and drug
detection procedures without identifying their responsiveness to the request.

27 ²⁷ Because of a technical difficulty related to the law firm’s receipt of the OC District Attorney
28 domain address, Plaintiffs did not receive until October 2022 OCDA’s March 16, April 15, and
May 16, 2022 communications.

1 73. In a May 10, 2021 request to OCDA under the PRA, Deputy Public Defender Abby
2 Taylor requested data regarding OCDA prosecutions needed to make a prima facie case for
3 discovery under the Racial Justice Act for her client. In its May 18, 2021 response, OCDA
4 refused to provide the requested records. OCDA claimed it had no responsive records and no
5 obligation “to create a record that does not exist.” OCDA further claimed that portions of the
6 request were unduly burdensome and that portions of the request related to arrest reports are
7 exempt from the PRA. OCDA also asserted broad, catchall exemptions without elaboration.

8 74. Deputy Public Defender Taylor replied on June 2, 2021, reiterating her request,
9 pointing to relevant law stating agencies have an obligation to “perform data compilation,
10 extraction, or computer programming.” On June 18, 2021, OCDA replied, reiterating its
11 objections and offering the internet addresses to their press release web page and to the Orange
12 County Superior Court’s Vision system as their only assistance. A true and correct copy of these
13 communications are attached as **Exhibit GG**.

14 75. In a June 10, 2022 request to OCDA under the PRA, Senior Deputy Alternate
15 Public Defender Lee Stonum requested data regarding OCDA prosecutions needed to make a
16 prima facie case for discovery under the RJA for his client. OCDA refused to provide the
17 requested records. In support of its refusal, OCDA claimed the request was unduly burdensome
18 and that their case management system “does not maintain records in the requested format.” They
19 also objected that documents responsive to Senior Deputy Alternate Public Defender Stonum’s
20 request for OCDA policies regarding special circumstance charges are privileged. A true and
21 correct copy of these communications is attached as **Exhibit HH**.

22 **FIRST CAUSE OF ACTION**

23 **For Writ of Mandate for Violation of Government Code §§ 6250 et seq.; Article I, § 3 of the**
24 **California Constitution; and Code of Civil Procedure § 1085**

25 76. Petitioners/Plaintiffs incorporate by reference the foregoing paragraphs as though
26 fully set forth herein.

27
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1 77. Public entities are obligated to respond to requests for public records, and search
2 for and disclose all nonexempt records, pursuant to the PRA (Gov. Code, §§ 6250 *et seq.*) and the
3 California Constitution, Article I, § 3.

4 78. Petitioners/Plaintiffs' requests each describe public records as defined by the PRA.

5 79. OCDA has failed to fulfill its obligations under the PRA and the California
6 Constitution to timely search for and promptly produce public records responsive to
7 Petitioners/Plaintiffs' record requests.

8 80. Issuance of a writ of mandate compelling OCDA to perform their duties under the
9 PRA and the California Constitution is required because there exists no plain, speedy, and
10 adequate remedy in the ordinary course of law that would protect the Petitioners/Plaintiffs' rights
11 and interests to the information sought here.

12 **SECOND CAUSE OF ACTION**

13 **For Declaratory Relief for Violation of Government Code §§ 6250 *et seq.*; Article I, § 3 of the**
14 **California Constitution; and Code of Civil Procedure §§ 526a, 1060**

15 81. Petitioners/Plaintiffs incorporate by reference the foregoing paragraphs as though
16 fully set forth herein.

17 82. Public entities are obligated to respond to requests for public records, and search
18 for and disclose all nonexempt records, pursuant to the PRA (Gov. Code, §§ 6250 *et seq.*) and the
19 California Constitution, Article I, § 3.

20 83. OCDA has failed to fulfill its obligations under the PRA and the California
21 Constitution to timely search for and promptly produce public records responsive to
22 Petitioners/Plaintiffs' record requests, and absent judicial intervention, will continue to do so.

23 84. OCDA has engaged in an ongoing pattern or practice of refusing to satisfy its
24 obligations under the PRA.

25 85. Through the expenditure of employee time and city funds to enforce their illegal
26 policies, including the costs incurred in litigating OCDA's unfounded withholding of public
27 records, OCDA's policies and practices constitute an illegal expenditure and waste of public
28 funds.

1 86. OCDA’s conduct is an illegal expenditure of public funds in violation of a non-
2 discretionary duty.

3 87. An actual controversy exists between the parties concerning whether OCDA has
4 engaged in conduct or established policies that violate the PRA and Constitution. A judicial
5 determination to resolve this actual controversy is necessary and appropriate at this time.

6 88. A declaration that OCDA has violated the PRA and the California Constitution by
7 failing to promptly produce disclosable records, and has a pattern and practice of doing so, is
8 appropriate.

9 **THIRD CAUSE OF ACTION**

10 **For Injunctive Relief for Violation of Government Code §§ 6250 *et seq.*; Article I, § 3 of the**
11 **California Constitution; Code of Civil Procedure §§ 526a, 1085; and Civil Code § 3422**

12 89. Petitioners/Plaintiffs incorporate by reference the foregoing paragraphs as though
13 fully set forth herein.

14 90. Through their practice of improperly withholding records as a matter of routine
15 practice, and refusing to promptly and fully respond to PRA requests, OCDA fails to comply with
16 its obligations under the PRA (Gov. Code §§ 6250 *et seq.*) and the California Constitution,
17 Article I, § 3. As a result of the OCDA’s actions, requesters of information must engage in
18 persistent inquiries, and ultimately litigation, to force production of records that are
19 unquestionably subject to prompt disclosure under the PRA (Gov. Code §§ 6250 *et seq.*) and the
20 California Constitution, Article I, § 3.

21 91. OCDA’s conduct discourages members of the public, including criminal
22 defendants, from obtaining public records, such as those necessary to investigate racially
23 disparate prosecutions and charging decisions. In doing so, OCDA undermines the Legislature’s
24 goal of transparency under the PRA and its expressed intent to end racially disproportionate
25 prosecutions.

26 92. OCDA has engaged in an ongoing pattern or practice of refusing to satisfy its
27 obligations under the PRA.

1 93. Through the expenditure of employee time and city funds, including all costs
2 incurred in litigating OCDA's unfounded withholding of public records, OCDA's policies and
3 practices constitute an illegal expenditure and waste of public funds.

4 94. OCDA's conduct is an illegal expenditure of public funds in violation of a non-
5 discretionary duty.

6 95. Absent intervention by this Court, OCDA will continue to deny requests, disregard
7 statutorily required duties, fail to produce records to which the public should have access, force
8 costly litigation, and prevent parties from obtaining information under the PRA.

9 96. This conduct harms Petitioners/Plaintiffs on an ongoing basis, as
10 Petitioners/Plaintiffs continue to seek access to records to investigate OCDA's prosecutorial
11 policies and practices, and their compliance with the Racial Justice Act.

12 97. An injunction should issue against OCDA prohibiting this conduct and compelling
13 prospective compliance with the PRA.

14 98. Petitioners/Plaintiffs do not have a plain, speedy, and adequate remedy in the
15 ordinary course of law.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioners/Plaintiffs pray for judgment as follows:

18 1. For issuance of a peremptory writ of mandate compelling OCDA to immediately
19 produce all non-exempt public records in its possession responsive to the five records requests at
20 issue;

21 2. For a declaration that OCDA's conduct in failing to respond properly to
22 Petitioners/Plaintiffs' PRA requests and to produce all non-exempt, requested public records in its
23 possession violates the PRA and the California Constitution;

24 3. For an injunction requiring OCDA to produce all non-exempt, requested public
25 records;

26 4. For prospective injunctive relief against OCDA compelling affirmative publication
27 of non-exempt prosecutorial data and policies as necessary to achieve accountability and
28 transparency, consistent with statutory requirements under the PRA and any other current or

1 subsequent law;


2 5. For reasonable attorneys' fees pursuant to Code Civil Procedure section 1021.5 and
3 Government Code section § 6259, subdivision (d);

4 6. For costs of suit; and

5 7. For such other and further relief as the Court may deem just and proper.

6 DATED: October 19, 2022

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By: 

Sean Garcia-Leys
PEACE AND JUSTICE LAW CENTER

Emi MacLean
Chessie Thacher
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

Robert Ponce
Eva Bitran
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN CALIFORNIA

Attorneys for Petitioners/Plaintiffs

VERIFICATION

I, Emi MacLean, am a Senior Staff Attorney of the Criminal Justice Program of the American Civil Liberties Union Foundation of Northern California. I have read the foregoing Verified Petition for Peremptory Writ of Mandate Ordering the County of Orange and the Orange County District Attorney to Comply with their Duties under the California Public Records Act. The facts as alleged therein are true to the best of my knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 19, 2022 in Los Angeles, California.

By: 

Emi MacLean
ACLU of Northern California