

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between MAPLight and the California First Amendment Coalition (“CFAC”) (collectively, “Petitioners”), on the one hand, and the Office of the Legislative Counsel of California and Diane F. Boyer-Vine, as the Legislative Counsel of California (collectively, “Respondents”), on the other, and is effective as of the date the last-signing party signs the Agreement (the “Effective Date”). Petitioners and Respondents are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, on July 1, and August 5, 2008, Petitioners submitted written requests to Respondents pursuant to the California Public Records Act, Government Code §§ 6250 *et seq.* (“PRA”), seeking “[t]he underlying database, both structure and content, that is used to produce the ‘Bill Information’ section of the Official California Legislative Information website” (the “Requested Records”);

WHEREAS, by letters dated July 16 and August 18, 2008, Respondents denied Petitioners’ PRA requests;

WHEREAS, on December 3, 2008, Petitioners filed a PRA petition for writ of mandate against Respondents in the Superior Court of the County of Sacramento, captioned *MAPLight and the California First Amendment Coalition v. Office of the Legislative Counsel of California, and Diane F. Boyer-Vine, as the Legislative Counsel of California*, Case No. 34-2008-80000105 (the “Action”), seeking an order directing Respondents to release the Requested Records;

WHEREAS, on January 20, 2009, Respondents filed a demurrer to Petitioners’ writ petition;

WHEREAS, on February 13, 2009, the Court sustained Respondents’ demurrer to Petitioners’ writ petition with leave to amend;

WHEREAS, on February 23, 2009, Petitioners filed an Amended Verified Petition;

WHEREAS, on March 25, 2009, Respondents filed an answer to Petitioners’ Amended Verified Petition;

WHEREAS, on or about February 11, 2009, Respondents began giving members of the public the ability to download through their public web site, www.leginfo.ca.gov, a newly created “structured database” which contains the same information previously available in different electronic formats through the “Bill Information” and “FTP file transfer” sections of the web site, but in a structured, machine-readable database format (the “Structured Database”).

WHEREAS, Petitioners conducted an examination of the Structured Database and determined that the Structured Database, at its current functional level, meets their needs; and

WHEREAS, the Parties wish to amicably resolve their dispute and settle this matter without further litigation;

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the Parties, intending to be legally bound, hereby agree as follows:

1. Inquire Database. No later than ten (10) days after the Effective Date, Respondents shall furnish to Petitioners a copy of the Inquire database, as it existed on the Effective Date, on a computer disk.

2. Reimbursement of Petitioners' Attorneys' Fees. No later than ten (10) days after the Effective Date, Respondents shall pay Petitioners the sum of \$65,000 to reimburse Respondents for a portion of their attorneys' fees and costs incurred in the Action. Payment shall be made by check, payable to the order of Holme Roberts & Owen LLP. Such payment shall constitute full satisfaction of Petitioners' claims for attorneys fees and costs arising from the Action pursuant to Government Code § 6259(d) and/or any other provision of law.

3. Second Amended Verified Petition. No later than five (5) days after Petitioners' receipt of both the database and payment described in paragraphs 1 & 2 above, Petitioners shall file a stipulation, a copy of which is attached hereto as Exhibit A, wherein the Parties stipulate that Petitioners may file a Second Amended Verified Petition for Peremptory Writ of Mandate, a copy of which is attached hereto as Exhibit B. No later than three (3) days after notification by the Court that the stipulation has been approved by the Court, Petitioners shall submit the Second Amended Verified Petition to the Court for filing. The purpose of the Second Amended Petition is to limit the effect of Petitioners' dismissal with prejudice of this action, as set forth in paragraph 4(a) below, to only those versions of the Requested Records that existed as of the dates specified in the Second Amended Verified Petition, such that Petitioners are not precluded from filing a request for records and/or a lawsuit under the PRA to obtain later versions of the Requested Records in the event the condition precedent for filing said request and/or lawsuit, as set forth in paragraph 4(b), is satisfied. Respondents' stipulation to the filing of Petitioners' Second Amended Complaint is for purposes of effectuating this settlement only, and is not an admission of the truth of any matter contained therein. In the event the stipulation attached as Exhibit A is not approved by the Court, or the Court refuses to accept the Second Amended Verified Petition attached as Exhibit B for filing, this settlement shall be of no further force or effect, and the Payment provided for in Paragraph 2 shall be returned to Respondents.

4. Dismissal Of Action.

(a) No later than five (5) days after the Second Amended Verified Petition has been filed by the Court, Petitioners shall file with the Court, and serve on counsel for Respondents, a request for dismissal with prejudice of the Action. A copy of the request is attached hereto as Exhibit C.

(b) In the event Respondents fail to maintain the Structured Database (or a similar or improved database) at the same or a better functional level as the database existed as of

the Effective Date, Petitioners' dismissal of the Action as provided in paragraph 4(a) shall not prevent them from initiating and/or prosecuting a request and/or a lawsuit or other similar legal action under the PRA to obtain access to then-existing versions of the underlying database (*i.e.*, versions postdating the dates specified in the Second Amended Verified Petition) used to produce the "Bill Information" section of the Official California Legislative Information web site.

Respondents agree not to assert *res judicata*, collateral estoppel, or other similar defenses to such action notwithstanding the dismissal of the Action with prejudice as provided in paragraph 4(a). However, Respondents may contend that such a PRA request and/or lawsuit is barred by paragraph 4(c) of this Settlement Agreement if they can show that the condition precedent set forth in this paragraph 4(b) for initiating and/or prosecuting a request or a lawsuit under the PRA has not been satisfied. Nothing in this Settlement Agreement, including this subparagraph, shall prevent Petitioners from seeking to recover their attorneys fees pursuant to Government Code § 6259(d) or any other applicable provision of law in a lawsuit filed by Petitioners pursuant to the PRA as permitted by this subparagraph. Nothing in this Settlement Agreement, including this subparagraph, shall prevent Respondents from asserting any defense other than *res judicata*, collateral estoppel or other similar defenses, to a request or a lawsuit filed by Petitioners pursuant to the PRA as permitted by this subparagraph.

(c) Notwithstanding the foregoing, Petitioners agree that so long as Respondents continue to maintain the Structured Database at the same or better functional level as it existed as of the Effective Date, Petitioners will not initiate or maintain a request or a lawsuit or other similar legal action under the PRA to obtain access to any version of the underlying database postdating those specified in the Second Amended Verified Petition used to produce the "Bill Information" section of the Official California Legislative Information web site.

(d) Prior to initiating any lawsuit or legal action as set forth in paragraph 4(b) above, Petitioners agree to meet and confer in good faith with Respondents in an attempt to avoid the need for litigation. Before commencing any legal action pursuant to paragraph 4(b), Petitioners agree they will provide written notice to Respondents describing the nature of the problems with the Structured Database and requesting that the Parties meet and confer. The Parties shall spend at least thirty (30) days after any such notice is received making reasonable attempts to reach an amicable resolution, after which Petitioners may commence legal action as set forth in paragraph 4(b). Written notice in accordance with this paragraph shall be directed to Diane F. Boyer-Vine, Office of the Legislative Counsel, State Capitol, Room 3021, Sacramento, CA 95814. This requirement is in addition to, and not a substitute for, any other prerequisites for filing a lawsuit or legal action that may exist by law.

5. Release.

(a) Except as expressly provided herein, the Parties hereby forever release and discharge each other (and any and all parent organizations, predecessors, subsidiaries, affiliates, divisions, relatives, and successors) (and any and all officers, directors, shareholders, partners, employees, attorneys, agents, representatives, alter egos, and assigns of the preceding) from any and all claims, demands, obligations, losses, causes of action, costs, expenses, including but not limited to reasonable attorneys' fees and costs, and liabilities of any nature whatsoever, whether based on contract, tort, statutory or other legal or equitable theory of recovery, both known and

unknown, anticipated or unanticipated, suspected or unsuspected, arising out of Petitioners' July 1 and August 5, 2008 PRA requests to Respondents or their Second Amended Verified Petition.

(b) The Parties are familiar with and have read the provisions of California Civil Code § 1542 and, except as expressly provided herein, waive to the full extent of the law any and all rights they may otherwise have under § 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

6. Representations and Warranties. The Parties hereto represent and warrant that each has the full right and authority to enter into this Agreement and carry out the obligations provided for herein.

7. Mutual Agreement to Cooperate. The Parties agree to cooperate fully with each other in connection with the carrying out of the terms and conditions of this Agreement and any of their respective obligations hereunder and shall execute any and all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

8. Governing Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations shall be construed and enforced in accordance with, and governed by, the laws of the State of California without giving effect to its principles of conflicts of laws.

9. Interpretation. Each of the Parties and counsel for each of the Parties have reviewed this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

10. Captions. Any captions to the paragraphs in this Agreements are solely for the convenience of the Parties, are not part of this Agreement, and shall not be used for the interpretation of, or for a determination of the validity of, this Agreement or any portion thereof.

11. Entire Agreement. This Agreement contains the entire agreement between the Parties. It supersedes any and all prior agreements, arrangements, or understandings between the Parties on all subjects in any way related to the transactions or occurrences described in the Agreement. This Agreement is subject to modification, waiver, or addition only by means of a writing signed by all Parties.

12. Counterparts, Faxed Copies. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic

transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means shall be deemed to be their original signature for all purposes.

13. No Admission. The purpose of this Settlement Agreement is to resolve disputed claims and defenses. Neither the execution of this Settlement Agreement, nor the payment of the sum provided for in paragraph 2, nor the filing of the dismissal with prejudice required by paragraph 4(a), nor any other act or agreement in furtherance of this Settlement Agreement, shall be construed in any way as an admission of liability by Respondents, or as an admission by Petitioners that Respondents are not liable. The Parties continue to believe in their respective positions on the merits of the Action and agree that the purpose for entering into this Settlement Agreement is to avoid the cost and inconvenience of litigation.

14. Reliance on Own Counsel and Information. In entering into this Settlement Agreement, no party is relying on any statement, representation, warranty or promise by any other party, except as expressly set forth in this Settlement Agreement; nor is any party relying on any obligation of any other party to disclose any material facts.

15. Agreement Not Admissible. This Settlement Agreement is a compromise and neither the Agreement nor any payment made thereunder shall be admissible into evidence in any proceeding, except as may be necessary if an action is commenced under paragraph 4(b), a defense is asserted under paragraph 4(c), or as may otherwise be necessary to enforce this Agreement.

IN WITNESS WHEREOF, the Parties executed this Agreement on the dates set forth below:

DATED: June __, 2009

MAPLIGHT
By: _____
Name: _____
Title: _____

DATED: June __, 2009

CALIFORNIA FIRST AMENDMENT
COALITION
By: _____
Name: _____
Title: _____

OFFICE OF THE LEGISLATIVE
COUNSEL OF CALIFORNIA

DATED: June __, 2009

By: _____

Name: _____

Title: _____

DIANE F. BOYER-VINE, AS THE
LEGISLATIVE COUNSEL OF
CALIFORNIA

DATED: June __, 2009

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

HOLME ROBERTS & OWEN LLP
Attorneys for MAPLight and
the California First Amendment Coalition

APPROVED AS TO FORM:

HOWARD RICE NEMEROVSKI
CANADY FALK & RABKIN
Attorneys for the Office of the Legislative
Counsel of California, and Diane F. Boyer-
Vine, as the Legislative Counsel of
California

By _____
Rachel Matteo-Boehm

By _____
Steven L. Mayer

EXHIBIT A

1 RACHEL MATTEO-BOEHM (CA State Bar No. 195492)
ISELA CASTANEDA (CA State Bar No. 223971)
2 HOLME ROBERTS & OWEN LLP
560 Mission Street, 25th Floor
3 San Francisco, CA 94105-2994
4 Telephone: (415) 268-2000
Facsimile: (415) 268-1999

5 Attorneys for Petitioners
6 MAPLIGHT and
7 CALIFORNIA FIRST AMENDMENT COALITION

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 MAPLIGHT and CALIFORNIA FIRST
AMENDMENT COALITION,

11 Petitioners,

12 v.

13 OFFICE OF THE LEGISLATIVE COUNSEL
14 OF CALIFORNIA, and DIANE F. BOYER-
15 VINE, as the Legislative Counsel of California,

16 Respondents.

CASE NO. 34-2008-80000105

**STIPULATION AND [PROPOSED] ORDER
TO FILE SECOND AMENDED VERIFIED
PETITION OF MAPLIGHT AND THE
CALIFORNIA FIRST AMENDMENT
COALITION AND FOR PEREMPTORY
WRIT OF MANDATE**

17
18 **WHEREAS**, Petitioners MAPLight and the California First Amendment Coalition
19 (“Petitioners”) filed a Verified Petition for Peremptory Writ of Mandate pursuant to the California
20 Public Records Act, Government Code §§ 6250 *et seq.* (“PRA”), seeking “[t]he underlying database,
21 both structure and content, that is used to produce the ‘Bill Information’ section of the Official
22 California Legislative Information website”;

23 **WHEREAS**, on January 20, 2009, Respondents filed a demurrer to Petitioners’ writ petition;

24 **WHEREAS**, on February 13, 2009, the Court sustained Respondents’ demurrer to
25 Petitioners writ petition with leave to amend;

26 **WHEREAS**, on or about February 11, 2009, Respondents began giving members of the
27 public the ability to download through their public website a newly created “structured database”
28

1 containing the same information previously available through the website in other electronic
2 formats;

3 **WHEREAS**, on February 23, 2009, Petitioners filed an Amended Verified Petition;

4 **WHEREAS**, on March 25, 2009, Respondents filed an answer to Petitioners' Amended
5 Verified Petition;

6 **WHEREAS**, Petitioners conducted an examination of the new "structured" database and
7 determined that, at its current functional level, the new "structured" database meets their needs;

8 **WHEREAS**, the Parties now wish to amicably resolve their dispute and settle this matter
9 without further litigation;

10 **WHEREAS**, as part of the settlement agreement between the Parties, Respondents have
11 agreed to allow Petitioners to file a Second Amended Verified Petition, a copy of which is attached
12 hereto as Exhibit A;

13 **NOW THEREFORE**, Petitioners and Respondents, through their counsel, stipulate that
14 Petitioners may file its Second Amended Verified Petition for Peremptory Writ of Mandate and
15 further stipulate that the Second Amended Verified Petition for Peremptory Writ of Mandate be
16 deemed served on Respondents as of the date the Petition is filed by the Court.

17 Dated: June __, 2009

HOLME ROBERTS & OWEN LLP
RACHEL E. MATTEO-BOEHM
ISELA CASTANEDA

18
19
20 By: _____

Rachel Matteo-Boehm
Attorneys for Petitioners MAPLight and
California First Amendment Coalition

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Dated: June ____, 2009

DIANE F. BOYER-VINE
Legislative Counsel
JEFFREY A. DELAND
Chief Deputy
OFFICE OF THE LEGISLATIVE COUNSEL

STEVEN L. MAYER
HOWARD RICE NEMEROVSKI CANADY FALK
& RABKIN
A Professional Corporation

By: _____
Steven L. Mayer
Attorney for Respondents OFFICE OF THE
LEGISLATIVE COUNSEL OF CALIFORNIA,
and DIANE F. BOYER-VINE, as the Legislative
Counsel of California

Order

The foregoing Stipulation, having been considered and good cause appearing, is approved and its terms incorporated in this Order.

Date: June ____, 2009

Patrick Marlette
Judge of the Superior Court

EXHIBIT B

1 RACHEL MATTEO-BOEHM (CA State Bar No. 195492)
ISELA CASTANEDA (CA State Bar No. 223971)
2 HOLME ROBERTS & OWEN LLP
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4 Telephone: (415) 268-2000
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5 Attorneys for Petitioners
6 MAPLIGHT and
7 CALIFORNIA FIRST AMENDMENT COALITION

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 MAPLIGHT and CALIFORNIA FIRST
AMENDMENT COALITION,

11 Petitioners,

12 v.

13 OFFICE OF THE LEGISLATIVE COUNSEL
14 OF CALIFORNIA, and DIANE F. BOYER-
15 VINE, as the Legislative Counsel of California,

16 Respondents.

CASE NO. 34-2008-80000105

**SECOND AMENDED VERIFIED
PETITION OF MAPLIGHT AND THE
CALIFORNIA FIRST AMENDMENT
COALITION AND FOR PEREMPTORY
WRIT OF MANDATE**

[Cal. Civ. Proc. Code §§ 1086, 1088.5]

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18 Comes now MAPLight (“MAPLight”) and the California First Amendment Coalition
19 (“CFAC”) (collectively, “Petitioners”), who bring this writ petition pursuant to the California Public
20 Records Act, Government Code §§ 6250 *et seq.* (“PRA”), and declare as follows:

21 **Parties**

22 1. Petitioner MAPLight is a nonprofit and nonpartisan award-winning public interest
23 organization based in Berkeley, California that is dedicated to open government. Through its
24 groundbreaking online public database, MAPLight provides members of the public with information
25 on the connection between campaign contributions and legislative votes so that the public can
26 evaluate for themselves whether legislators appear to have been influenced by the donations they
27 receive. MAPLight’s online public database combines information from the following three

1 different data sets: (1) bill texts and legislative voting records, (2) supporting and opposing interests
2 for each bill, and (3) campaign contribution data from the Center for Responsive Politics and the
3 National Institute on Money in State Politics. Through a detailed and sophisticated analysis of the
4 above information, MAPLight makes visible key information in unprecedented ways. For example,
5 MAPLight's public database makes transparent information such as the contributions given by
6 interests supporting and opposing each bill, the average donations given to legislators voting "yes"
7 and "no" on each bill, and the timeline of contributions and votes for each bill, graphically
8 indentifying when legislators received large donations before or after their vote – information that,
9 while it may be embarrassing to individual legislators, is nevertheless critical to a full understanding
10 of the actions of elected officials. True and correct copies of screenshots from MAPLight's web site,
11 reflecting examples of the type of information that can be obtained from MAPLight's database, are
12 attached as Exhibit A to this Second Amended Petition. MAPLight has won numerous awards (First
13 Prize, NetSquared Innovation Awards, May 2007; World Summit Award for e.Governance,
14 September 2007; and Knight-Batten Awards for Innovation in Journalism, August, 2008) for its
15 innovative database. MAPLight's web site can be found at www.maplight.org, which contains a link
16 to a 6-minute video about the contents of MAPLight's online public database and useful tips on
17 accessing its information. A true and correct copy of materials from MAPLight's web site providing
18 further information about MAPLight and the information it provides is attached as Exhibit B to this
19 Second Amended Petition.

20 2. Petitioner CFAC is a nonprofit public interest organization based in San Rafael,
21 California that is similarly dedicated to open government. CFAC's hundreds of members include
22 news organizations, libraries, civic organizations, academics, freelance journalists, community
23 activists, and ordinary individuals seeking help in asserting their rights under open government laws.
24 The majority of CFAC's members are based in California. Since its founding in 1988, CFAC has
25 served as a counterweight to the tendency, at all levels of government, toward greater secrecy and
26 declining accountability. CFAC's web site, which contains a variety of resources to assist members
27 of the public in enforcing the PRA and other open government laws, can be found at www.cfac.org.

1 CFAC's activities include the operation of a legal hotline devoted to open government and First
2 Amendment issues; the publication of a legal handbook and periodic newsletters; educational
3 programs; and oversight of the legislative process on bills affecting free speech and open
4 government rights. In addition, CFAC engages in litigation to further open government rights. A
5 true and correct copy of materials from CFAC's web site providing further information about CFAC
6 is attached as Exhibit C to this Second Amended Petition.

7 3. Respondent Office of the Legislative Counsel of California is a state agency within
8 the meaning of Government Code § 6252(f).

9 4. Respondent Diane F. Boyer-Vine is the Legislative Counsel of California.

10 5. Petitioners are informed and believe, and on that basis allege, that Diane F. Boyer-
11 Vine and the Office of the Legislative Counsel of California are in possession of the records sought
12 by this Petition.

13 **Factual And Legal Background**

14 6. Pursuant to Government Code § 10248, the Legislative Counsel "shall" make
15 available, for each current legislative session, certain bill information in electronic form. The
16 information required to be made available includes but is not limited to: (1) the legislative calendar;
17 (2) the schedule of legislative committee hearings; (3) a list of matters pending on the floors of both
18 houses of the Legislature; (4) a list of the committees of the Legislature and their members; (5) the
19 text of each bill introduced, including each amended, enrolled, and chaptered form of each bill;
20 (6) the history of each bill introduced and amended; (7) the status of each bill introduced and
21 amended; (8) all bill analyses prepared by legislative committees in connection with each bill; (9) all
22 vote information concerning each bill; and (10) any veto message concerning a bill. Govt. Code
23 § 10248(a).

24 7. Subdivision (b) of Government Code § 10248 requires the Legislative Counsel to
25 make the information identified in subsection (a) available to the public over the Internet, which the
26 Legislative Counsel accomplishes through the "Bill Information" section of the Official California
27 Legislative Information web site, www.leginfo.ca.gov/bilinfo.html. Through this section of the web
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1 site, an interested person can obtain information about individual bills in response to particular
2 search inquiries, which appear on the user's computer screen as text. In addition, the Legislative
3 Counsel makes the same information available through the FTP file transfer section of the web site.
4 In 2008 and through at least January 30, 2009, the files that could be transferred through FTP were
5 mostly in PDF or HTML format, both of which are displayed on a user's computer screen as text
6 files, just like a piece of paper. However, subdivision (f) also provides that the public access to the
7 bill information provided through the Internet "shall be in addition to other electronic or print
8 distribution of the information." Govt. Code § 10248(f).

9 8. Under the PRA, all records, including electronic records, containing information
10 relating to the conduct of the public's business that are prepared, owned, used, or retained by any
11 state or local agency, and that are not subject to the PRA's statutory exemptions to disclosure set
12 forth in Government Code §§ 6254 and 6255, must be made publicly available for inspection and
13 copying upon request. Govt. Code §§ 6253; 6253.9. Copies of electronic public records must be
14 made available for a fee that ordinarily does not exceed the direct cost of duplication. Govt. Code
15 §§ 6253(b); 6253.9(a) & (b). Although Government Code § 6254(m) provides a PRA exemption for
16 records in the custody of or maintained by the Legislative Counsel, this exemption explicitly states
17 that it *does not apply* to "those records in the public database maintained by the Legislative Counsel
18 that are described in [Government Code §] 10248."

19 9. In November 2004, Californians overwhelmingly approved Proposition 59, which
20 created a new constitutional right of public access to information "concerning the conduct of the
21 public's business." Cal. Const., Art. 1 § 3(b)(1). This new constitutional provision requires that a
22 "statute, court rule, or other authority, including those in effect on the effective date of this
23 subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly
24 construed if it limits the right of access." *Id.*, § 3(b)(2).

25 10. Electronic records can be held in any number of particular electronic formats. The
26 format of an electronic record often determines what can and cannot be done with that record. For
27 example, a document in Excel format can be manipulated and analyzed using Excel software, but the
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1 same document in HTML or PDF format cannot be analyzed in the same way and is thus much less
2 useful. Recognizing this fact, the PRA provides that in those instances where a non-exempt public
3 record is maintained in one or more electronic formats, the state or local agency is required to make
4 those records available “in *any* electronic format in which it holds the information.” Govt. Code §
5 6253.9(a)(1) (emph. added). Because an agency may hold the same electronic records in many
6 different electronic formats, and the requestor is entitled to obtain those records in “any” format in
7 which the agency holds the information, the requestor may be entitled to the same records in
8 multiple electronic formats. There is no requirement in § 6253.9 that a requestor specify or identify
9 a particular electronic format in order to be entitled to records in “any” format in which the agency
10 “holds” the records, nor is there any requirement that the requestor know, at the time of its request,
11 the particular formats in which a record may be held by the agency in order to be entitled to that
12 record in “any” format in which that record is held by the agency.

13 11. In addition, if the requestor seeks the records in some other electronic format – *i.e.*, a
14 format other than one of the formats in which the agency “holds” the information – the requestor is
15 entitled to obtain the records in the requested format “if the requested format is one that has been
16 used by the agency to create copies for its own use or for provision to other agencies.” Govt. Code
17 § 6253.9(a)(2). Thus, if an agency held requested records in two different electronic formats (say,
18 format A and format B), but the requestor wanted a copy of the records in a third and different
19 electronic format (format C) in which the agency did not hold the information, the requestor would
20 still be entitled to obtain the records in that third electronic format if the third format was one “that
21 ha[d] been used by the agency to create copies for its own use or for provision to other agencies.”
22 *Id.*

23 12. In 2008, and through at least January 30, 2009, the electronic records specified in
24 Government Code § 10248 in the formats available through the “Bill Information” section of the
25 Legislative Counsel’s web site, and in the formats available through the FTP file transfer section of
26 the web site, did not permit the kind of detailed and sophisticated analysis of bill information and
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1 campaign contribution data that allows members of the public to connect the dots between campaign
2 contributions and legislators' votes.

3 13. It has been MAPLight's experience that information made available on a web site
4 does not come out of thin air – rather, information available on a web site is pulled from an
5 underlying database, which is almost always machine readable and much more useful for
6 sophisticated analysis than the text that appears when one views records on a web site (essentially,
7 the equivalent of a piece of paper). Such databases may be maintained in any number of different
8 electronic formats. Thus, in the case of the information being made available on the Legislative
9 Counsel's web site, MAPLight determined that the information available through the "Bill
10 Information" section of the Legislative Counsel's web site, and the records being made available
11 through the FTP file transfer section of the web site, must necessarily come from an underlying
12 database. However, the particular electronic format(s) in which that underlying database is
13 maintained by the Legislative Counsel is not known to MAPLight.

14 14. Accordingly, on July 1, 2008, Sean Tanner, Research Director of MAPLight, sent a
15 letter to Ms. Boyer-Vine, requesting that the Legislative Counsel provide MAPLight with a copy of
16 "[t]he underlying database, both structure and content, that is used to produce the 'Bill Information'
17 section of the Official California Legislative Information web site" for the following legislative
18 sessions: 2003-2004, 2005-2006, 2007-2008, pursuant to, *inter alia*, the PRA. A true and correct
19 copy of Mr. Tanner's July 1 letter is attached as Exhibit D to this Second Amended Petition.

20 15. On July 16, 2008, Respondents, through Deputy Legislative Counsel J. Christopher
21 Dawson, sent MAPLight a letter denying its PRA request. Mr. Dawson's letter asserted that
22 "records in the custody of, or maintained by, the Legislative Counsel generally are exempt from
23 mandatory disclosure," and that "[a]lthough an exception to that exemption is made for certain
24 records in the public database maintained by the Legislative Counsel, that exception does not require
25 disclosure of the database itself." A true and correct copy of Mr. Dawson's July 16 letter is attached
26 as Exhibit E to this Second Amended Petition.

1 16. Thereafter, on August 5, 2008, CFAC Executive Director Peter Scheer sent a letter to
2 Ms. Boyer-Vine requesting, under the PRA, a copy of the same records requested by MAPLight. A
3 true and correct of Mr. Scheer's August 5 letter is attached as Exhibit F to this Second Amended
4 Petition.

5 17. On August 18, 2008, Mr. Dawson sent CFAC a letter denying CFAC's request. Mr.
6 Dawson's August 18 letter is almost identical to his July 16 letter to MAPLight and contains
7 identical language with respect to the basis for the denial. A true and correct copy of Mr. Dawson's
8 August 18 letter is attached as Exhibit G to this Second Amended Petition.

9 18. On October 9, 2008, counsel for Petitioners had a telephone conversation with Mr.
10 Dawson. During that conversation, Petitioners' counsel explained that the "Bill Information" section
11 of the web site, which requires interested persons to make a separate inquiry for each individual bill,
12 was inadequate to perform the kind of sophisticated analysis of the bill information that would be
13 possible with access to the database itself, that Petitioners' believed they were entitled to the
14 requested records under the PRA, and that Petitioners hoped the Legislative Counsel would
15 reconsider its denial of their PRA requests. Petitioners' counsel also explained that Petitioners could
16 be somewhat flexible as to the particular electronic format in which the records were provided, so
17 long as they were provided with records that could be electronically searched and analyzed together
18 with other datasets. Mr. Dawson agreed to speak with his colleagues and get back to Petitioners'
19 counsel.

20 19. On October 23, 2008, Petitioners' counsel had a subsequent conversation with Mr.
21 Dawson in which Mr. Dawson stated that he had consulted with his colleagues and it was the
22 "official office position" of the Office of the Legislative Counsel that neither § 10248(a) or the PRA
23 required the Office of the Legislative Counsel to provide the electronic database records sought by
24 MAPLight and CFAC. When asked by Petitioners' counsel why the Office of the Legislative
25 Counsel was refusing to release the database records – *i.e.*, what harm the Office of the Legislative
26 Counsel believed would come from their release – Mr. Dawson said he did not know the answer to
27 the question.

1 20. Despite Petitioners' efforts to obtain access to the underlying database as requested in
2 their July 1 and August 5 letters, and in subsequent telephone conversations described in Paragraphs
3 18-19 above, the Legislative Counsel has refused to make copies of the requested database records
4 available under the PRA in the electronic format(s) to which Petitioners are entitled to receive them
5 under Government Code § 6253.9, thus necessitating this lawsuit. Through this lawsuit, Petitioners
6 request that a copy of the database, as it existed in July and August 2008, when MAPLight and
7 CFAC submitted their PRA requests, or alternatively, as it existed on December 3, 2008, the date
8 this action was filed, be made available under the PRA in the electronic format(s) to which
9 Petitioners are entitled to receive them under Government Code § 6253.9.

10 **Respondents' Refusal To Provide The Requested Database Violates The PRA**

11 21. Government Code § 6254(m) provides that Petitioners are entitled to the "records in
12 the public database maintained by the Legislative Counsel that are described in" Government Code
13 § 10248. Pursuant to Government Code § 6253.9(a)(1), Petitioners are entitled to those records in
14 "any electronic format" in which Petitioners hold those records. On information and belief, the
15 requested underlying database exists, and the electronic format(s) in which Respondents hold the
16 underlying database are different from the formats in which those same records have been and are
17 currently being made available through the Legislative Counsel's web site. The particular electronic
18 format(s) in which Respondents hold the underlying database is a matter that Petitioners expect to be
19 able to determine after a reasonable opportunity for further investigation and discovery. Although
20 these alternative formats need not be machine-readable for Petitioner to be entitled to obtain copies
21 of the database in those formats pursuant to Government Code § 6253.9(a)(1), Petitioners believe
22 that one or more of the formats in which the underlying database is held by Respondents will be
23 machine-readable.

24 22. In addition, Government Code § 6253.9(a)(2) provides that Petitioners are entitled to
25 the underlying database in electronic formats other than those in which Respondents hold the
26 database, if the electronic format is one that has been used by Respondents "to create copies for its
27 own use or for provision to other agencies." On information and belief, Respondents have made
28

1 copies of the underlying database for their own use or for provision to other agencies, and the
2 formats in which these copies have been made is different from the formats in which those same
3 records have been and are currently being made available through the Legislative Counsel's web
4 site. The specific electronic format(s) in which copies of the underlying database have been made
5 for the Legislative Counsel's own use or for provision to other agencies is a matter that Petitioners
6 expect to be able to determine after a reasonable opportunity for further investigation and discovery.
7 Although these alternative formats need not be machine-readable for Petitioner to be entitled to
8 obtain copies of the database in those formats under Government Code § 6253.9(a)(2), Petitioners
9 believe that one or more of these formats will be machine-readable.

10 23. In addition to Petitioners' rights under Government Code § 6253.9(a)(1) & (2),
11 Government Code § 6254.5 provides that "whenever a state or local agency discloses a public record
12 which is otherwise exempt from this chapter, to any member of the public, this disclosure shall
13 constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provision
14 of law." To the extent Respondents have made the requested database records available to any
15 member of the public as provided by § 6254.5, which Petitioners expect to determine after a
16 reasonable opportunity for further investigation and discovery, Petitioners would also be entitled to
17 the database in the electronic format to which the database was provided to that member of the
18 public. *See Masonrite Corp. v. County of Mendocino Air Quality Mgmt. Dist.*, 42 Cal. App. 4th 436,
19 454 (1996); *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645, 656 (1974).

20 24. The Legislative Counsel's refusal to grant Petitioners' request for copies of the public
21 records described herein in the underlying database format(s) in which they have been requested is
22 not justified under either the PRA or Government Code § 10248, and the denial of access to these
23 records constitutes a willful violation of the PRA and Article 1, Section 3 of the California
24 Constitution, as amended by passage of Proposition 59 in 2004. Cal. Const. Art. 1 § 3; Govt. Code
25 §§ 6253, 6253.9.

26 25. Petitioners are not seeking any records protected by the attorney client privilege or
27 the work product doctrine.

1 26. Petitioners MAPLight and CFAC are members of the public and are parties
2 beneficially interested in the outcome of these proceedings and have a clear, present and substantial
3 right to the relief sought. Cal. Const. Art. 1 § 3; Govt. Code §§ 6253, 6253.9, 6254.5, 6258, 6259.

4 27. Unless Petitioners obtain the requested public records, the public will be denied
5 information prepared at public expense pertaining to the conduct of the public’s business that is
6 essential to monitor its government. Indeed, information pertaining to the connection between
7 campaign contributions and legislative votes – and ultimately, the law of this state – is at the heart of
8 our democracy and is critical to the public’s ability to monitor the officials it has elected to hold
9 public office.

10 28. Petitioners have no plain, speedy and adequate remedy at law other than that sought
11 in this Petition.

12 29. The PRA provides that whenever a member of the public believes that public records
13 are being improperly withheld by a covered agency, that member of the public may bring a verified
14 petition to the superior court of the county where the records or some part thereof are situated for an
15 order requiring the officer or person charged with withholding the records to disclose the public
16 records. Govt. Code § 6259(a). The PRA further provides that if the Court finds that the public
17 official’s decision to refuse disclosure is not justified, the Court shall order the public official to
18 make the record public. Govt. Code § 6259(b).

19 30. Pursuant to California Government Code § 6259(d), Petitioners are entitled to recover
20 their costs and attorneys’ fees from Respondents.

21 **“New Feature” On Respondents’ Web Site**

22 31. On February 11, 2009, approximately two months after this action was filed,
23 Petitioners were notified by Respondents that the Legislative Counsel’s web site had been changed
24 to give members of the public the ability to download a “structured database” of the information
25 available on the “Bill Information” portion of the web site. Respondents contended that in light of
26 this new feature, Petitioners’ pending writ petition was moot.

1 32. Petitioners have informed Respondents that the Legislative Counsel’s release of a
2 “structured database” does not render the instant action moot. As an initial matter, Respondents
3 have asserted that the structured database now available for download is not the same database that
4 Petitioners requested in their July and August 2008 PRA requests – *i.e.*, “the underlying database,
5 both structure and content, used to produce the ‘Bill Information’ section of the Official California
6 Legislative Information web site.”

7 33. Moreover, even if the “structured database” that is now available for download on
8 Respondents’ web site were the same database that is the subject of Petitioners’ PRA requests, this
9 action still would not be rendered moot. In those cases where records are released by an agency
10 after the filing of a PRA writ petition, the matters raised in the petition are not moot because “the
11 question of petitioner’s entitlement to the documents in the first place remains to be determined,”
12 and “[i]f the question is decided in petitioner’s favor, he will be entitled to collect his attorneys fees
13 and costs” under Government Code § 6259(d). *Fairley v. Superior Court*, 66 Cal. App. 4th 1414
14 (1998). As noted in paragraphs 18-19 above, following Respondents’ denial of Petitioners’ PRA
15 requests and before this action was filed, Petitioners attempted to work with Respondents in an
16 attempt to avoid the need for litigation; however, Respondents were not interested in pursuing such
17 discussions. As a result, MAPLight and CFAC were compelled to incur the fees and costs
18 associated with bringing and litigating this action.

19 34. In addition, where as here the issues raised by a PRA writ petition are “a matter of
20 public interest and continuing concern,” it is appropriate for the Court to proceed to the merits.
21 *Fairley*, 66 Cal. App. 4th at 1419. Among other things, an order confirming Petitioners’ right to the
22 requested database as it existed in July and August 2008 in the formats in which they are permitted
23 to obtain that database under Government Code § 6253.9 and, if applicable, Government Code §
24 6254.5, will ensure the continued availability of those records to the public even if Respondents later
25 decide to discontinue their newly-instituted practice of making a “structured database” available for
26 download on their web site. *Cook v. Craig*, 55 Cal. App. 3d 773, 780 (1976).

1 WHEREFORE, Petitioners MAPLight and the California First Amendment Coalition pray as
2 follows:

3 1. That the Court issue a peremptory writ of mandate directing Respondents to provide
4 Petitioners with a copy of the underlying database records requested in MAPLight's July 1 letter and
5 CFAC's August 5 letter, as those records existed on July 1, 2008 and August 5, 2008, the dates
6 MAPLight and CFAC submitted their PRA requests, or alternatively, as those records existed on
7 December 3, 2008, the date this action was filed, and that such records be provided in the electronic
8 format(s) to which Petitioners are entitled to receive them under Government Code § 6253.9;

9 2. That Petitioners be awarded their attorneys' fees and costs pursuant to Government
10 Code § 6259(d); and;

11 3. For such other and further relief as the Court deems proper and just.

12 Dated: June __, 2009

HOLME ROBERTS & OWEN LLP
RACHEL E. MATTEO-BOEHM
ISELA CASTANEDA

13
14
15
16 By: _____

Rachel Matteo-Boehm
Attorneys for Petitioners MAPLight and
California First Amendment Coalition

1 **VERIFICATION**

2 I, Rachel E. Matteo-Boehm, am a partner in the law firm of Holme Roberts & Owen, counsel
3 of record for Petitioners MAPLight and California First Amendment Coalition. I have read the
4 foregoing Petition for Writ of Mandate. With the exception of Paragraphs 1-2, 12-17, and 21-22, the
5 facts alleged in this Petition are within my own knowledge and I know these facts to be true, except
6 for those matters alleged on information and belief, and as to those matters, I believe them to be true.
7 Because of my familiarity with the relevant facts relating to my communications with Respondent's
8 counsel in this case, I, rather than Petitioners, verify this Petition.

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

11 DATED: June __, 2009

Rachel E. Matteo-Boehm

12
13
14 **VERIFICATION**

15 I, Daniel Newman, am Executive Director of Petitioner MAPLight. I have read paragraphs
16 1, 12-15, and 21-22 of the foregoing Petition for Writ of Mandate. The facts alleged in those
17 paragraphs are within my own knowledge and I know these facts to be true, except for those matters
18 alleged on information and belief, and as to those matters, I believe them to be true.

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

21 DATED: June __, 2009

Daniel Newman

VERIFICATION

I, Peter Scheer, am Executive Director of Petitioner California First Amendment Coalition. I have read paragraphs 2, 16-17, and 21-22 of the foregoing Petition for Writ of Mandate. The facts alleged in those paragraphs are within my own knowledge and I know these facts to be true, except for 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.

DATED: June __, 2009

Peter Scheer

EXHIBIT C

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Rachel Matteo-Boehm Holme Roberts & Owen LLP 560 Mission Street, 25th Floor San Francisco, CA 94105-2994	TELEPHONE NO.: 415-268-2000	FOR COURT USE ONLY CASE NUMBER: 34-2008-80000105
ATTORNEY FOR (Name): MAPLight and California First Amendment Coalition Insert name of court and name of judicial district and branch court, if any: Superior Court of California, County of Sacramento		
PLAINTIFF/PETITIONER: MAPLight and Calif. First Amendment Coalition DEFENDANT/RESPONDENT: Office of the Legislative Counsel of Cal., et al		
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Writ of Mandate under the Cal. Pub. Records Act		
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -		

1. TO THE CLERK: Please **dismiss** this action as follows:
- a. (1) With prejudice (2) Without prejudice (Per Settlement of the parties)
 - b. (1) Complaint (2) Petition
 - (3) Cross-complaint filed by (name): _____ on (date): _____
 - (4) Cross-complaint filed by (name): _____ on (date): _____
 - (5) Entire action of all parties and all causes of action
 - (6) Other (specify):*

DRAFT

Date: June 2009

Rachel Matteo-Boehm

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

(SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
- Cross - complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

(SIGNATURE)

** If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (l) or (j).

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
- Cross - complainant

(To be completed by clerk)

- 3. Dismissal entered as requested on (date): _____
- 4. Dismissal entered on (date): _____ as to only (name): _____
- 5. Dismissal **not entered** as requested for the following reasons (specify): _____
- 6. a. Attorney or party without attorney notified on (date): _____
- b. Attorney or party without attorney not notified. Filing party failed to provide _____ a copy to conformed _____ means to return conformed copy

Date:

Clerk, by _____, Deputy