James K.T. Hunter (State Bar No. 73369)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, California 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jhunter@pszjlaw.com

Attorney for Petitioner,
Government Accountability & Oversight, P.C.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

GOVERNMENT ACCOUNTABILITY & OVERSIGHT, P.C., Petitioner, v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	Case No. 20STCP01226 **DECLARATION OF CHRISTOPHER HORNER IN SUPPORT OF PETITION FOR WRIT** Trial Date: December 14, 2021 (*Reserved*) Time: 9:30 a.m. Place: Dept. 82 Petition filed: April 1, 2020

I, Christopher Horner, declare:

INTRODUCTION

1. I make this declaration in support of the Petition for Writ filed by Petitioner Government Accountability & Oversight, P.C. ("GAO") in the above-captioned proceeding against Respondent The Regents of the University of California ("Regents"). In this Declaration, I address the Regents' response to the California Public Records Act ("CPRA") request at issue in this matter, PRR 19-7464[1], based on my involvement with the request, its processing, and Regents' litigation of same, and also set forth my opinions based on my experience with open records requests in

[1] While the Amended Petition also references a second related CPRA request made by GAO subsequent to PRR 19-7464 (i.e., PRR 19-7567), GAO has determined that the trial on the Amended Petition should exclusively address the issues raised regarding PRR 19-7464 since those are the issues of the greatest general import.

California and nationwide. Except as qualified, I make this declaration based on my personal and firsthand knowledge of those facts hereinafter set forth and could and would testify competently thereto under oath if called as a witness.

2. I obtained my *Juris Doctor* from Washington University in St. Louis in 1991 and am admitted to practice law in the District of Columbia. I have spent the majority of my professional work since 1997 requesting or assisting others in requesting, assessing and disseminating public information, pursuant to state and federal open records laws. Those pursuits have been the principal focus of my work for more than the past decade. These requests typically seek public information to educate about how public institutions have been or are being used, with whom, and how they came to be used that way. These requests require litigation when an agency does not respond as prescribed in the relevant statute or withholds all or parts of records in ways with which I, my colleagues or my client do not agree is proper. I have made, provided legal assistance in other parties making, and/or participated in litigation over hundreds of such requests to federal agencies, state executive and attorneys general offices and other agencies, and over two dozen academic institutions.

3. I began using open records laws nearly a quarter century ago to explore public-private interplay following, and in great part inspired by, a revelatory stint with a Houston-based energy company in 1997, for which I briefly served as director of federal government relations (in a non-attorney capacity). I was gone from the company's ranks within weeks, about four years before it found itself in the news and its very name, Enron, became a cultural metaphor. Soon after beginning at Enron I helped create an uncomfortable work environment for myself by voicing concerns over the company's leading role in what was becoming a "global warming" industry, which I later learned I was not alone in doing (*infra*). I was particularly struck by a meeting I had attended on the company's behalf, in a large national law firm's Washington, D.C. conference room among a Who's Who of environmentalist pressure groups as well as senior representatives of individual companies and trade associations representing several industry sectors, discussing how, despite public and congressional opposition, to ensure U.S. participation in a "global warming" treaty that several months later would be called the Kyoto Protocol. Industry participants, like Enron, which had bought uneconomic assets or otherwise made financial arrangements ("bets") in anticipation of

getting this agenda in place — which assets would then be rewarded by government policies — joined with, e.g., the Union of Concerned Scientists (see, *infra*) to lobby for policies in the name of the threat of catastrophic man-made global warming. This would soon be re-branded as "climate change" and "clean energy economy."[2] I had to that time been unaware of just how widespread are these "Baptist-and-Bootlegger coalitions," which is the term coined by then-Professor and now Dean Emeritus at Clemson University, Bruce Yandle.[3] As set forth in a series by Lawrence Solomon of Canada's *Financial Post* exposing industry's driving role behind the Kyoto pact (subsequently extended by, e.g., Copenhagen and Paris climate agreements) and related policies, Enron was the early ringleader of the global warming industry:

> Enron Chairman Kenneth Lay...saw his opportunity when Bill Clinton and Al Gore were inaugurated as president and vice-president in 1993. To capitalize on Al Gore's interest in global warming, Enron immediately embarked on a massive lobbying effort to develop a trading system for carbon dioxide, working both the Clinton administration and Congress. Political contributions and Enron-funded analyses flowed freely, all geared to demonstrating a looming global catastrophe if carbon dioxide emissions weren't curbed. An Enron-funded study that dismissed the notion that calamity could come of global warming, meanwhile, was quietly buried.
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> To magnify the leverage of their political lobbying, Enron also worked the environmental

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[2] After the November 2009 "Climategate" email scandal as well as poll-testing of the issue led "global warming" to be been rebranded "the climate crisis" and the focus shifting to a line that somewhat nods to the actual genesis of the agenda, "the clean energy economy." See, e.g., Edward Felker and Stephen Dinan, "Democrats urged to play down 'global warming'", *Washington Times*, June 19, 2009 https://www.washingtontimes.com/news/2009/jun/19/party-memo-urges-democrats-to-fix-pitch-on-climate/; to the displeasure of some advocates, see, e.g., "When did 'climate change' become 'clean energy'?" (print and syndication title (see, e.g., https://madison.com/ct/news/opinion/column/maxwell-t-boykoff-when-did-climate-change-become-clean-energy/article_78e0aaec-6a34-5439-b721-31085e6041a8.html), Washington Post, February 5, 2012, https://www.washingtonpost.com/opinions/a-dangerous-shift-in-obamas-climate-change-rhetoric/2012/01/26/gIQAYnwzVQ_story.html; speaking of re-branding, the Post has elected for the more ominous and lecturing on-line title, "A dangerous shift in Obama's 'climate change' rhetoric".

[3] See, e.g., Testimony before the United States Senate Committee on Environment and Public Works Honorable Barbara Boxer, Chairman On the U.S. Climate Action Partnership Report, Fred L. Smith, Jr., President, Competitive Enterprise Institute, February 13, 2007, available at https://govoversight.org/wp-content/uploads/2021/09/fred.writtentestimony.senate.pdf. "[Yandle's] theory's name, first elucidated in 1983, is meant to evoke 19th century laws banning alcohol sales on Sundays. Baptists supported Sunday closing laws for moral and religious reasons, while bootleggers were eager to stifle their legal competition. Thus, politicians were able to pose as acting to promote public morality, even while taking contributions from bootleggers."

groups. Between 1994 and 1996, the Enron Foundation donated $1-million to the Nature Conservancy and its Climate Change Project, a leading force for global warming reform, while Lay and other individuals associated with Enron donated $1.5-million to environmental groups seeking international controls on carbon dioxide.[4]

In December 1997, immediately on the heels of the Kyoto negotiation and several months after I had departed the company, Enron's John Palmisano wrote a memo titled "Implications of the Climate Change Agreement in Kyoto & What Transpired" to senior Enron executives. Palmisano was Enron's point-man on the issue (e.g., two months later Mr. Palmisano wrote a related memo to colleagues which opened with, "You know that I am responsible for developing "climate change" polices that promote our products and services"[5]). That December 1997 memo noted, *inter alia*, "this treaty is exactly what I have been lobbying for," "This agreement will be good for Enron stock!!," "if implemented, this agreement will do more to promote Enron's business than will almost any other regulatory initiative," "Enron has immediate business opportunities which derive directly from this agreement," "Enron now has excellent credentials with many 'green' interests including Greenpeace, [World Wildlife Fund], [Natural Resources Defense Council], German Watch, the U.S. Climate Action Network, the European Climate Action Network, Ozone Action, WRI, and Worldwatch," and therefore that "This position should be increasingly cultivated and capitalized on

[4] Lawrence Solomon, "Enron's Other Secret", *Financial Post* (Canada), May 30, 2009, available at https://ep.probeinternational.org/2009/05/30/enrons-other-secret/. This was "real money" at the time.
[5] Memo from John Palmisano to Steve Kean, Cynthia Sandherr, February 28, 1997, available at https://climatelitigationwatch.org/wp-content/uploads/2021/10/2.28.97-Palmisano-memo-describing-his-role-and-Enron-moves.pdf. Other records offer a revealing exchange between Palmisano and an Enron colleague, Robert Bradley, who opposed such rent-seeking, Subject line: "Climate Change/ work with me to make Enron rich." https://climatelitigationwatch.org/wp-content/uploads/2021/10/6.3.98-Palmisano-Work-with-me-to-make-Enron-rich-email.pdf; Bradley's response at https://climatelitigationwatch.org/wp-content/uploads/2021/10/6.3.98-Bradley-response-to-Palmisano-Work-with-me-to-make-Enron-rich-email.pdf.

(monitized)." (sic)[6] These and other subsequent revelations confirmed that monetizing a "global warming" industry through government policy was a major component of Enron's business strategy. Enron planned on making money trading ration coupons, or "carbon credits", and from government policies that, e.g., directed revenues to the then-world's largest windmill company which Enron had recently purchased (Zond Wind, which became Enron Wind). Economists call these policies "rents" and the practice of arranging for the policies "rent seeking".[7] Again quoting Lawrence Solomon, "We all know that the financial stakes are enormous in the global warming debate—many oil, coal and power companies are at risk should carbon dioxide and other greenhouse gases get regulated in a manner that harms their bottom line. The potential losses of an Exxon or a Shell are chump change, however, compared to the fortunes to be made from those very same regulations."[8]

4. Enron documents which later emerged reference a meeting, in the run-up to Kyoto, in August 1997 in the Oval Office with Lay and both President Clinton and Vice President Al Gore.[9] There, Lay advocated his position in favor of the President joining the pact expected to be proposed in Kyoto, favoring wind and solar energy and targeting denser hydrocarbon energy sources with the

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[6] Memo from John Palmisano, "Implications of the Climate Change Agreement in Kyoto & What Transpired" (1997), available at https://web.archive.org/web/20110820070144/http://www.politicalcapitalism.org/enron/121297.pdf. See also, e.g., January 27, 1998 "Policy Analysis" memo from Rob Bradley to Ken Lay, "Global Warming Comments," "Enron has aided the cause of regulating greenhouse gases more ably than any other company in the U.S. and has earned credibility and goodwill with the environmentalist groups", https://climatelitigationwatch.org/wp-content/uploads/2021/10/1.27.98-Bradley-memo-to-Ken-Lay-Global-Warming-Comments.pdf.

[7] "Cap-and-trade" legislation was for a time the approach selected by the political class, including Enron. See, e.g., Jim Tankersley, "Industry Leaders join Obama on emissions limits," *Los Angeles Times*, May 18, 2009, discussing the passage, at long last (in one legislative house, only), of the Waxman-Markey "cap-and-trade" legislation. See also President Obama's serial use of language in support of these policies, that he would "*finally make clean energy the profitable* kind of energy in America" (emphasis added)(in, e.g., 2010 State of the Union address, https://obamawhitehouse.archives.gov/the-press-office/remarks-president-state-union-address).

[8] Lawrence Solomon, "Enron's Other Secret", *Financial Post* (Canada), May 30, 2009. See also, Robert Novak, "Enron's Secret Energy Plan: Chairman's shameless backing of the Kyoto treaty was all about corporate greed," *Chicago Sun-Times*, January 17, 2002.

[9] See, e.g., Memorandum from Robert Bradley to Ken Lay, Global Climate Change Debate & Meeting with Clinton, August 1, 1997, https://climatelitigationwatch.org/wp-content/uploads/2021/10/8.1.97-Bradley-memo-to-Ken-Lay-Global-Climate-Change-Debate-Meeting-with-Clinton.pdf.

rationing program called "cap-and-trade" as a Kyoto "mechanism" — in disregard of unanimous Senate instruction to the contrary just over a week prior, on July 25, pursuant to Article II, Sec. 2 of the U.S. Constitution[10]. Notwithstanding this Senate advice that it would not consent, President Clinton did in fact enter Kyoto by the signature, on November 12, 1998, of Acting Ambassador to the United Nations Peter Burleigh. At the time, when I was still a mere six years out of law school, these coalitions and the cavalier approach to, e.g., "advice and consent" in pursuit of a political and business agenda rather shocked my naïve, younger self. The terrible economic and social costs of these "global warming" policies were not yet fully manifest, such as "energy poverty"-induced spikes in hypothermia among seniors and the poor from intentionally higher energy prices, and indeed their magnitude not fully foreseen, such as the energy crises presently unfolding across the world to which the suite of "climate" policies have served as indispensable instigators.[11] Instead, it was my Enron experience that prompted my early use of the federal Freedom of Information Act (FOIA) to probe further into the role of that company and others in advancing this agenda in the federal government, specifically the relationships, the costs, and the agendas of those serving in government. These requests sought records pertaining to the scientific, economic, and political aspects of this agenda, moving to a range of issues as they emerged or developed. With the extensive and increasing role played by academia in this campaign, this ultimately brought me to making or assisting in making requests of public universities. In the two-and-a-half decades since that revelation of rent seeking and Baptist and Bootlegger coalitions and particularly the most recent dozen years, I have maintained a strong emphasis in my work on open records requests, litigation,

[10] S. Res. 98, July 25, 1997, https://www.congress.gov/bill/105th-congress/senate-resolution/98.
[11] At least one memo did hint at these consequences. "Maybe Enron can dodge the macro problem and have our micro benefits, but then again I have to think that a politicized international energy market for any reason will create as much or more downside than upside." April 1, 1999, Rob Bradley memo to Ken Lay and Jeff Skilling, "Subject: Topic of Discussion for Advisors Meeting," available at https://climatelitigationwatch.org/wp-content/uploads/2021/10/4.1.99-Bradley-memo-to-Lay-and-Skilling-re-Enron-role-and-perils-of-politicized-international-energy-industry.pdf.

and advice mostly in areas pertaining to energy and environment. I made and have continued pursuing requests on behalf of several public policy and governmental transparency groups, including Petitioner GAO on the request at issue in this matter.

5. My efforts are often successful in obtaining and broadly disseminating public information, through discussion in, e.g., the *Wall Street Journal* news, editorial and opinion pages, *Washington Times* news and opinion pages among other print outlets, as well as numerous on-line outlets. *Politico* wrote in its June 2013 article "Master of FOIA" that my work is that of "a determined digger" who "bedevils the White House" with Freedom of Information requests. This alludes to my having discovered then-U.S. Environmental Protection Agency Administrator Lisa Jackson's use of a false-identity email account in the name of "Richard Windsor," in violation of the Federal Records Act and of course increasing the chance that FOIA productions seeking Ms. Jackson's public-record correspondence as EPA Administrator would not be properly located or released. *Politico* noted, *inter alia,* "Horner's far from a pioneer in using FOIA, of course. Environmental groups file most FOIA requests with EPA, and businesses often use the law to acquire information on competitors." In 2014 *The Hill* named me one of its "100 People to Watch" for these efforts[12], and the *Washington Examiner* wrote that "Horner has been busy busting what he sees as absurd global warming claims and the federal government's deepening lack of transparency"[13]. I have given addresses on the topic of my open records work in numerous places throughout the United States, and, e.g., to policy-attuned audiences in London and Munich (some of whom I am heartened to see have picked up the mantle and begun their own public-record efforts with success). Recipients of information requests and their allies also target my work for criticism, particularly when the requests seek records from academic institutions and remarkably (as in this

[12] http://thehill.com/business-a-lobbying/315837-100-people-to-watch-this-fall-?start=7.
[13] http://washingtonexaminer.com/chris-horner-foia-watchdog-demands-transparency-from-governments-global-warming-advocates/article/2544632.

case) on the grounds that these requests reflect *the wrong kind of people* seeking access to public information. I have also been the subject of numerous open records requests made to state and federal agencies by other parties, including pressure-group activists and journalists, seeking to learn and disseminate information about how public institutions are used and with whom, which I understand to be part of the package of dealing with public entities.

6. I have written four books, three of them on energy and environmental policy and politics, two of which were national best-sellers. Three of my books included a focus on information obtained through public record requests as well as on efforts to fight the release of such information. One of these books addressed in detail the "Climategate" affair. That involved the anonymous release of thousands of pages of correspondence opening a window onto the taxpayer-financed climate-science industry, many of which records were subject to numerous open records laws — state and federal, and non-U.S. — but whose custodians, according to correspondence among themselves, were not interested in complying with or otherwise responding to requests for data (even, expressly, because that could assist the requesters in possibly finding fault with the scientists' claims, which scrutiny was previously deemed an elementary component of science). This reluctance led to one principal having, according to correspondence, "conveniently lost many emails,"[14] "moved all their emails from all the named people off their PCs and they are all on a memory stick,"[15] suggested to colleagues "to delete all emails at the end of the process" just in case it turns out the records are subject to open records laws,[16] admitting in an email to colleagues that he "deleted loads of emails" despite at first claiming, publicly, "We've not deleted any emails or data

[14] https://tomnelson.blogspot.com/search?q=conveniently+lost+many+emails.
[15] Id.
[16] https://tomnelson.blogspot.com/2012/01/email-4778-may-2009-phil-jones-to.html.

here at [his institution]"[17] while also instructing a colleague "delete after reading - please!,"[18] and, "With the earlier FOI requests re David Holland, I wasted a part of a day deleting numerous emails and exchanges with almost all the skeptics. So I have virtually nothing. I even deleted the email that I inadvertently sent. There might be some bits of pieces of paper, but I'm not wasting my time going through these".[19]

7. Other behavior obstructing public access to public records, which I have personally experienced in my work, involves facts similar to those present in the matter at issue here, when institutions task individuals with conducting the initial canvass for potentially responsive records to be turned over for review and possible release, even though these individuals are also principals in (i.e., authors of or parties to) the requested records. As noted herein, this situation has coincided with officials, including faculty, impeding the records request including, e.g., asserting that some or all potentially responsive records are not "public records" under the law in question, or anyway would be exempt if they were, and so the individual does not turn them over for further processing.

8. Relevant thereto, it is my practice often to take notes during certain calls, e.g., with opposing counsel or parties with whom I do not yet have an established working relationship. I took notes during GAO's November 19, 2018, introductory call on this matter with Regents' counsel John Gherini. These notes reflect, *inter alia,* "Faculty members are doing the search" and "Faculty instructed to produce all responsive docs + IT + legal who determine exemptions…" (underlining and ellipses in original).

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[17] Leo Hickman, "Climate scientist at centre of leaked email row dismisses conspiracy claims," The Guardian, November 24, 2009, https://www.theguardian.com/environment/2009/nov/24/climate-professor-leaked-emails-uea.

[18] http://tomnelson.blogspot.com/2011/11/climategate-2_8905.html.

[19] Id. See also, https://climateaudit.org/2011/02/23/new-light-on-delete-any-emails/, and Department of Commerce Inspector General's report available at Department of Commerce, Office of Inspector General, "Response to Sen. James Inhofe's Request to OIG to Examine Issues Related to Internet Posting of Email Exchanges Taken from the Climatic Research Unit of the University of East Anglia, UK," February 18, 2011, pp. 12–16, available at https://www.oig.doc.gov/OIGPublications/2011.02.18-IG-to-Inhofe.pdf.

9. My notes show that I also added a comment in the margin next to the latter, underlined item, "a la GMU". This is a reference to a 2015 request I made with the Competitive Enterprise Institute (hereafter "CEI") under the Virginia Freedom of Information Act (VFOIA) to George Mason University ("GMU"), another public university whose faculty, like UCLA's (see, *infra*), were engaged in advocacy encouraging legal prosecution of opponents of the "climate" agenda. That request ultimately required litigation after a GMU faculty member who was allowed to conduct the search for records to be processed simply denied the existence of responsive records. (I discuss this in more detail, *infra*). This was untrue, and a Virginia court ultimately ordered the production of what proved to be many hundreds of pages of responsive public records,[20] including extensive correspondence among academics about and seeking to instigate use of the Racketeer Influenced and Corrupt Organization statute ("RICO") against opponents of the "climate" agenda, and, *inter alia*, details of the acquisition and distribution of outside donor funding for University academics' climate advocacy.

10. Therefore, I am aware that this sort of obstruction occurs and, as detailed herein, in my experience it disproportionately occurs in response to requests made to public universities, rather than with requests to other public institutions such as regulatory agencies or attorneys general.

11. The use of public institutions in pursuit of the Climate Change Agenda, whether academia or law enforcement, is of great public interest, and is a principal area of focus of GAO which publishes the website ClimateLitigationWatch.org. The Climate Change Agenda is the source of or basis for much financial support by private, outside parties to these institutions and officeholders who obtain substantial contributions to use their institutions in assisting this effort.

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[20] *Horner et al. v. Rector and Visitors of George Mason University*, CL15004712-00, Circuit Court for the City of Richmond). Order and records available at https://climatelitigationwatch.org/wp-content/uploads/2018/05/Maibach-RICO-docs-II-finally-produced-in-full.pdf, https://climatelitigationwatch.org/wp-content/uploads/2018/08/GMU-Puerto-Rico-docs-not-1.pdf.