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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SACRAMENTO**

13 DR. JOEL MOSKOWITZ, an individual,

14 Petitioner and Plaintiff

15 v.

16 CALIFORNIA DEPARTMENT OF
17 PUBLIC HEALTH, a California State
18 Agency,

19 Respondent and Defendant.

Case No. _____

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF UNDER
GOVERNMENT CODE SECTIONS 6258 and 6259
[Public Records Act]**

[Code Civ. Proc. §§ 1060, 1085]

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Petitioner and Plaintiff Dr. Joel Moskowitz petitions this Court pursuant to Code of Civil Procedure sections 1060 and 1085 and Government Code section 6250 et seq. for a writ of mandate and for declaratory and injunctive relief, directed to Respondent California Department of Public Health, and by this verified petition and complaint alleges as follows:

INTRODUCTION

1. The California Department of Public Health (the “Department” or “CDPH”) is the state agency responsible for protecting the health and well-being of the people of California. One of the Department’s core activities consists of investigating potential health risks and advising the public of strategies for minimizing exposure to them. One potential health risk the Department has investigated in recent years is the risk posed by the electromagnetic fields (“EMFs”) emitted by cell phones and other wireless devices.

2. The telecommunications industry estimates that there are more than 300 million cell phone users in the United States. Given the ubiquity of cell phone use, any adverse health effects associated with it would represent a widespread threat to public health. Because of the scale of this potential threat, many entities and organizations have funded scientific research into the health effects of cell phones. These funders include the telecommunications industry, independent research foundations, and government agencies such as the National Institutes of Health.

3. To inform the public of the state of scientific research on the issue, federal agencies such as the National Institutes of Health and the Centers for Disease Control and Prevention have issued public guidance documents on the results of these studies and recommendations for ways cell phone users can reduce their exposure to EMFs as a precautionary measure. At least one state's public health agency has issued a comparable

1 guidance document, as have international organizations, such as the United Nations' World
2 Health Organization.

3 4. Despite having prepared and finalized a similar document discussing the health
4 risks potentially associated with cell phones at least as early as 2011, the Department has
5 consistently, and unlawfully, kept this document from the public. Between January of 2014 and
6 January of 2015, Petitioner Dr. Joel Moskowitz submitted three requests under the California
7 Public Records Act to obtain a copy of the Department's unreleased guidance, which the
8 Department has referred to as "Cell Phone Use Guidance Documentation."¹ The Department
9 denied all three requests and has improperly refused to disclose this public record.

10 5. The California Public Records Act ("CPRA"), Government Code section 6250 et
11 seq., requires the Department to disclose the Cell Phone Use Guidance Documentation because
12 no CPRA exemption justifies its withholding. Contrary to the Department's claim, the Cell
13 Phone Use Guidance Documentation is not a "draft" exempt from disclosure under Government
14 Code section 6254 (a), because Department staff have retained the document and considered it
15 finalized for years. Moreover, the public interest in withholding the document does not clearly
16 outweigh the public's interest in disclosure.

17 6. The public has a compelling interest in evaluating how the Department is
18 responding to a potential health risk to which tens of millions of Californians are exposed. In
19 2011, the International Agency for Research on Cancer – part of the World Health Organization
20 – designated EMFs emitted by cell phones as "possibly carcinogenic to humans." Two
21 California localities (San Francisco and Berkeley) have since passed or amended right-to-know
22 ordinances about cell phone EMF radiation, both of which were challenged in court by a trade
23 association for the wireless industry, and one of which is currently on appeal at the Ninth Circuit.

24 ¹ For consistency, Petitioner will also refer to this document as the "Cell Phone Use Guidance Documentation"
25 or the "Document."

1 Since at least 2014, the Centers for Disease Control have been issuing guidance regarding the
2 health effects of cell phones. To date, 220 scientists have joined in an international appeal to the
3 United National and the World Health Organization to call for greater protection from non-
4 ionizing electromagnetic field exposures from cell phones and other devices, and greater public
5 disclosure of risks. A number of European countries, including the United Kingdom, Israel, and
6 Finland, have issued warnings about the potential hazards of non-ionizing radiation from cell
7 phones.

8 7. The public has a further interest in assessing whether CDPH is competently
9 fulfilling its responsibility to protect the health and well-being of the people of California. In
10 addition, the public has an interest in understanding how government agencies interpret and
11 evaluate scientific studies with respect to emerging environmental health threats. In light of
12 these concerns expressed by local, federal, and international regulatory agencies and the
13 scientific community at large, Californians' interest in disclosure of the Cell Phone Use
14 Guidance Documentation is significant. For those reasons, the Department's claim that the
15 Document is also exempt from release under the catch-all exemption in Government Code
16 section 6255, which requires, *inter alia*, consideration of the magnitude of the public interest in
17 disclosure, also fails.

18 8. This Petition and Complaint requests that the Court issue a writ of mandate
19 directing the Department to release the record(s) requested. Petitioner additionally seeks a
20 declaration that the requested documents are public records not exempt from disclosure under the
21 CPRA and that the Petitioner is entitled to relief.

22 PARTIES

23 9. Petitioner Dr. Joel Moskowitz is the Director of the Center for Family and
24 Community Health at the University of California, Berkeley, School of Public Health. In recent
25 years, Dr. Moskowitz has also chaired research and steering committees at the Centers for
26

1 Disease Control and Prevention, and has served as an *ad hoc* reviewer for a number of scientific
2 journals. Dr. Moskowitz's research focuses on approaches to promoting health and preventing
3 disease. The subjects of his recent publications and presentations include smoking cessation,
4 substance abuse prevention, and the emerging field of the health effects of cell phone use.

5 10. Defendant California Department of Public Health is a "public agency" and "state
6 agency" within the meaning of Government Code section 6252, subdivisions (d) and (f), with
7 headquarters in the City and County of Sacramento. According to its Mission Statement, the
8 Department "is dedicated to optimizing the health and well-being of the people in California."

9 JURISDICTION AND VENUE

10 11. This Court has jurisdiction over this action pursuant to Government Code section
11 6258.

12 12. Venue is appropriate in this district pursuant to Government Code section 6259.

13 STATEMENT OF FACTS

14 13. Department staff have prepared Cell Phone Use Guidance Documentation
15 summarizing the results of scientific studies on the health effects of EMFs emitted by mobile
16 phones and other wireless devices, and making recommendations to the public for reducing
17 health risks associated with cell phone use. Dr. Moskowitz is informed and believes that the
18 Department's Environmental Health Investigations Branch prepared the Document. Despite
19 finalizing the Document at least as early as 2011, the Department has never released it to the
20 public, or provided public recommendations on minimizing any adverse health effects of mobile
21 phones. Public health agencies in other jurisdictions have prepared and released comparable
22 guidance documents.

23 //

24 //

1 ***Dr. Moskowitz Files Initial CPRA Request for Cell Phone Use Guidance Documentation***

2 14. On January 27, 2014, Dr. Moskowitz submitted by email a request under the
3 Public Records Act to obtain copies of “all versions of cell phone use guidance documentation
4 prepared by the Environmental Health Investigations Branch” within the Department. A true and
5 correct copy of this email request is attached hereto as Exhibit 1.

6 15. On January 30, 2014, Dr. Rick Kreutzer, Chief of the Division of Environmental
7 and Occupational Disease Control within the Department, which contains the Environmental
8 Health Investigations Branch, phoned Dr. Moskowitz about his Public Records Act request. Dr.
9 Kreutzer verbally acknowledged that the Department had prepared a guidance document on the
10 health effects of cell phone use; stated that the Cell Phone Use Guidance Documentation should
11 receive final approval within three weeks; and asked Dr. Moskowitz to defer his request for that
12 period. Dr. Moskowitz declined. During the conversation, Dr. Kreutzer told Dr. Moskowitz that
13 the Department had prepared a very similar document three years earlier, but the document was
14 never released because it “stalled” while under review by the state. Dr. Kreutzer did not indicate
15 who was currently reviewing the document.

16 16. The Department failed to notify Dr. Moskowitz of its decision whether to disclose
17 the Document within 10 days, as required by Government Code section 6253, subdivision (c).
18 So, on February 19, 2014, Dr. Moskowitz inquired by email about its status. A true and correct
19 copy of that email is attached hereto as Exhibit 2.

20 ***After Unlawful Delay, CDPH Denies Request***

21 17. On February 24, 2014, twenty-five days after the date of the initial request, CDPH
22 sent an email to Dr. Moskowitz stating that the Department was “still reviewing records to
23 determine whether they are disclosable under the Public Records Act.” A true and correct copy
24 of that email is attached hereto as Exhibit 3.

18. On March 10, 2014, Dr. Moskowitz received an email response declining to release the Cell Phone Use Guidance Documentation requested. Although the letter characterized Document as “a work in progress” that was exempt from disclosure under Government Code sections 6254(a) and 6255, the agency reassured: “*We hope to have the final guidance out soon and will be pleased to release it to you at that time.*” (Emphasis added.) A true and correct copy of the March 10, 2014 cover e-mail and March 5, 2014 letter are attached hereto as Exhibit 4.

19. On April 8, 2014 – by which time the Department had still not released the Cell Phone Use Guidance Documentation – Dr. Moskowitz phoned Monica Wagoner, CDPH Deputy Director of Legislative Affairs, to inquire about the Document’s status. Ms. Wagoner stated that a state agency outside of CDPH was reviewing the Document. Ms. Wagoner stated that she did not know which agency was conducting the review, and could not predict when it would be complete. Ms. Wagoner promised to update Dr. Moskowitz on the status of the Document, but never did.

CDPH Declines to Explain Delay in Document Publication, Prompting Second CPRA Request for Cell Phone Use Guidance Documentation

20. On June 11, 2014, Dr. Moskowitz submitted by email a second request under the CPRA to obtain a copy of the Cell Phone Use Guidance Documentation, as well as “any email or other correspondence pertaining to this documentation.” Dr. Moskowitz’s email explained that 133 days had passed since Dr. Kreutzer phoned Dr. Moskowitz and stated that the document would be released soon, but no documents had yet been released. In the email, Dr. Moskowitz stated that he was “concerned that the California Department of Public Health has shirked its responsibility to forewarn the public about the potential harm caused by cell phone radiation and has failed to advise the public about how to reduce such risks.” A true and correct copy of the June 11, 2014 email is attached hereto as Exhibit 5.

21. On June 20, 2014, Dr. Moskowitz received a response from an email account named "CDPH Response." The email stated that some of the requested records "may be exempt from disclosure and will not be provided by CDPH," including versions of the Cell Phone Use Guidance Documentation, which the Department stated "are exempt from the Public Records Act pursuant to Government Code 6255." The email did not expressly mention Government Code section 6254, but stated that "copies of the draft guidance" are exempt from disclosure. The email further stated that the Department would notify Dr. Moskowitz of any non-exempt records and provide copies of those records on a rolling basis. The Department never produced any documents in response to this request. The Department also never explained whether it possessed additional public records responsive to Dr. Moskowitz's second request, or whether any additional responsive records were exempt from disclosure. A true and correct copy of the June 20, 2014 email is attached hereto as Exhibit 6.

CDPH Fails to Respond to Questions about Status of Document Review, Prompting Third CPRA Request for Cell Phone Use Guidance Documentation

22. On October 23, 2014 – more than six months after Ms. Wagoner had promised to update Dr. Moskowitz on the status of the review of the Cell Phone Use Guidance Documentation by an outside agency – Dr. Moskowitz emailed Ms. Wagoner to follow up on his April 8, 2014, inquiry. Ms. Wagoner never responded to this email. A true and correct copy of Dr. Moskowitz's October 23, 2014 email is attached hereto as Exhibit 7.

23. On November 19, 2014, Dr. Moskowitz emailed Dr. Kreutzer to inquire as to the status of the Cell Phone Use Guidance Documentation. Dr. Moskowitz reminded Dr. Kreutzer of his earlier statement that he expected the Document to be released in February of 2014. Dr. Kreutzer never responded. A true and correct copy of Dr. Moskowitz's November 19, 2014 email is attached hereto as Exhibit 8.

24. On January 14, 2015, Dr. Moskowitz submitted by email a third request under the Public Records Act to obtain the most recent version of the Cell Phone Use Guidance Documentation. The request explained that Dr. Moskowitz's January 27, 2014, request was purportedly denied because CDPH maintained that the Document was in "draft" form – and had apparently already been in "draft" form for three years. Dr. Moskowitz stated that he was requesting the Document because he understood it to contain "important factual information as well as recommendations pertaining to the potential health risks from cell phone use." A true and correct copy of the January 14, 2015 email is attached hereto as Exhibit 9.

After Another Unlawful Delay, CDPH Denies Request, Invoking a Different Rationale

25. On January 23, 2015, Dr. Moskowitz received an email from Dr. Kevin Sherin, Deputy Director of the Center for Chronic Disease Prevention and Health Promotion within the Department. A letter attached to the email stated that Dr. Sherin was new to the Department and would “require an additional 14 days to review [the] prior requests and the responsive documents.” The Department cited no permissible basis for extending the time limit to respond to Dr. Moskowitz’s request. (*See* Gov. Code § 6253(c) (enumerating limited lawful bases for response delay).) A true and correct copy of the January 23, 2015 email is attached hereto as Exhibit 10.

26. The Department denied Dr. Moskowitz's third CPRA request by email on February 5, 2015. A letter attached to the email stated: "In light of the updated guidance issued by the CDC [federal Centers for Disease Control] in June of 2014, CDPH has chosen not to issue a guidance document on radio frequency and cell phones." The letter also stated that "draft versions of the guidance" were exempt from disclosure under Government Code sections 6254(a) and 6255. A true and correct copy of the February 5, 2015 letter is attached hereto as Exhibit 11.

//

1 ***Dr. Moskowitz Files Additional CPRA Requests to CDPH and its Parent Agency,***
2 ***Seeking Public Records Identifying Who Has Reviewed the Cell Phone Use Guidance***
3 ***Documentation; After Unlawful Delays, Both Entities Deny Request***

4 27. On April 1, 2016, Dr. Moskowitz through counsel submitted Public Records Act
5 requests to CDPH and its parent agency, the California Health and Human Services Agency
6 (“CHHS”). The letter to CDPH requested copies of any correspondence with parties outside
7 CDPH about cell phone use guidance documents such as the Document previously requested, as
8 well as copies of any correspondence CDPH has received from outside parties about the health
9 effects of cell phones. A true and correct copy of the April 1, 2016 CPRA request to CDPH is
10 attached hereto as Exhibit 12.

11 28. CDPH failed to provide a timely response to Dr. Moskowitz’s request. (*See Gov.*
12 *Code § 6253(c).*) While CDPH acknowledged its receipt of the April 1, 2016 request and
13 indicated that it would respond on or before April 11, 2016, the agency did not provide a
14 substantive response by that date. A true and correct copy of that correspondence is attached
15 hereto as Exhibit 13.

16 29. Instead, on April 21, 2016, CDPH indicated that the request would “take extra
17 time to fulfill” because a response required CDPH to “consult with other components of the
18 Department.” A true and correct copy of CDPH’s correspondence regarding this delay is
19 attached hereto as Exhibit 14.

20 30. On May 5, 2016, CDPH stated that it did not have any records responsive to the
21 request, insofar as the only non-CDPH persons with whom it had corresponded about the Cell
22 Phone Use Guidance Documentation were “two consultants . . . [engaged in] contractual work
23 done specifically for the department.” A true and correct copy of CDPH’s correspondence is
24 attached hereto as Exhibit 15.

1 31. On April 1, 2016, Dr. Moskowitz additionally submitted a CPRA request to
2 CHHS through counsel. The letter requested copies of any correspondence within CHHS or
3 between CHHS and other agencies relating to the Cell Phone Use Guidance Documentation.
4 The letter also requested copies of any correspondence between CHHS and outside parties
5 seeking information about the Document. A true and correct copy of the April 1, 2016, request
6 is attached hereto as Exhibit 16.

7 32. CHHS failed to provide a timely response to Dr. Moskowitz's request. (*See Gov.*
8 *Code § 6253(c)*). CHHS acknowledged receipt of Dr. Moskowitz's request on April 11, 2016,
9 and issued a response by email on April 23, 2016 — twenty-two days after the initial request.
10 CHHS ultimately denied the request. A letter attached to the CHHS email, dated April 22, 2016,
11 stated that "the very few documents that were potentially responsive to your request were also
12 identified as being exempt from public disclosure under the exemption in the California
13 Government Code, section 6254, subdivision (k), specifically for attorney-client and attorney
14 work-product communications." A true and correct copy of the April 23, 2016 cover e-mail and
15 April 22, 2016, letter are attached hereto as Exhibit 17.

16 ***CDPH Continues to Fail to Release Cell Phone Use Guidance Documentation Publicly; to***
17 ***Provide it to Dr. Moskowitz; or to Release Any Non-Exempt Segregable Portions of the***
Document

18 33. As of the filing of this Petition and Complaint, the Department has not disclosed
19 the Cell Phone Use Guidance Documentation to Dr. Moskowitz, nor released it to the general
20 public.

21 34. Upon information and belief, staff at CDPH directly involved in the production of
22 the Document believed it to be final and scientifically sound, but were prevented by superiors at
23 CDPH or at higher levels in the executive branch from releasing the Document to the public.

24 35. Upon information and belief, there exist reasonably segregable portions of the
25 Document that consist only of factual information that must be disclosed to Dr. Moskowitz
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1 regardless of whether the Document contains any exempt content. (*See* Gov. Code § 6253(a)
2 (describing segregation obligation).) The Department has failed to produce these portions to Dr.
3 Moskowitz despite repeated requests.

4 ***Public and Media Interest in the Health Risks of Cell Phones is Substantial and Increasing***

5 36. The Department has received at least one other request for the Cell Phone Use
6 Guidance Documentation. On September 8, 2015, Danny Hakim, an Investigative Reporter for
7 the New York Times, submitted a CPRA request to obtain “any drafts of cell phone use guidance
8 documentation that have been prepared in the past by the agency.” Mr. Hakim also requested
9 copies of “any email communication with parties outside the agency about the documents.” A
10 true and correct copy of his CPRA request is attached hereto as Exhibit 18.

11 37. The Department denied Mr. Hakim’s request by email on October 1, 2015. Like
12 the Department’s denial of Dr. Moskowitz’s request of January 14, 2015, the letter of October 1,
13 2015, stated: “In light of the updated guidance issued by the CDC in June of 2014, CDPH has
14 chosen not to issue a guidance document on radio frequency EMF and cell phones.” The letter
15 also stated that “draft versions of the guidance” were exempt from disclosure under Government
16 Code sections 6254(a) and 6255. A true and correct copy of CDPH’s October 1, 2015 letter is
17 attached hereto as Exhibit 19.

18 38. The Department’s response to Mr. Hakim’s request further stated that the
19 Department was “conducting a diligent search for any emails with parties outside the agency
20 relating to the drafts of cell phone use guidance documentation.” With respect to these emails,
21 the Department indicated that it would “notify [Mr. Hakim] as to which records will be available
22 for [Mr. Hakim’s] review and which, if any, may be exempt from disclosure and why” by
23 October 15, 2015. Dr. Moskowitz is informed and believes that the Department never notified
24 Mr. Hakim as to whether its search yielded any emails or whether the Department contends that
25 any emails are exempt from disclosure.

1 39. Localities in California are debating how to address the potential health effects of
2 cell phones, and two California localities have enacted right-to-know ordinances about these
3 potential health effects. In 2010, San Francisco enacted an ordinance (amended in 2011) that
4 would have required cell phone retailers to inform customers about precautions for minimizing
5 exposure to EMFs. CTIA-The Wireless Association, a trade association for the wireless
6 industry, sued the City and County of San Francisco in the Northern District of California,
7 alleging that the ordinance is preempted and violates the First Amendment. (*CTIA-The Wireless*
8 *Ass'n v. City & Cty. of San Francisco* (N.D.Cal. 2011) 827 F.Supp.2d 1054, 1056.) The Ninth
9 Circuit ultimately affirmed the district court's order enjoining enforcement of the ordinance.
10 (*CTIA-Wireless Ass'n v. City & Cty. of San Francisco* (9th Cir. 2012) 494 F.App'x 752, 754.)

11 40. In 2015, the City of Berkeley adopted an ordinance requiring cell phone retailers
12 to provide customers with a notice about exposure to EMF radiation. The notice states that the
13 federal government requires cell phones to meet certain radio frequency exposure guidelines in
14 order to assure safety, and that users may exceed those guidelines by carrying the cell phone in a
15 pocket or bra. As it had done for San Francisco's ordinance, CTIA-The Wireless Association
16 sued the city of Berkeley, alleging that the ordinance is preempted and violates the First
17 Amendment. In January of 2016, a federal district court dissolved a preliminary injunction,
18 permitting the ordinance (with an amended notification requirement) to go into effect. (*CTIA-*
19 *The Wireless Ass'n v. City of Berkeley*, (N.D.Cal., Jan. 27, 2016, No. 15-CV-02529) 2016 WL
20 324283.) In February of 2016, CTIA-The Wireless Association filed an appeal with the Ninth
21 Circuit which is still pending.

22 41. The adoption of the Berkeley ordinance and ensuing litigation have generated
23 more than 170 news stories to date.
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25
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LEGAL BACKGROUND

42. The California Constitution provides that “[t]he people have the right of access to information concerning the conduct of the people’s business, and, therefore . . . the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const., art. I § 3(b)(1).) The California Public Records Act likewise makes plain that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code § 6250.)

43. To ensure vindication of this right, the CPRA provides that, “upon a request for a copy of records,” a government agency “shall make the records promptly available to any person.” (Gov. Code § 6253(b).) Only where a public record is exempt from disclosure by an “express provision[] of law” may an agency refuse to make a record publicly available. (*Id.*) “[A] public entity claiming an exemption must show that the requested information falls within the exemption.” (*Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 67 (citing Gov. Code §§ 6254–6255).)

44. Government Code section 6254, subdivision (a), exempts from disclosure “preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.” To withhold a record under this exemption, the agency must demonstrate that (1) the record is a preliminary draft, note, or memorandum; (2) the record is not retained by the agency in the ordinary course of business; and (3) the public interest in withholding the record clearly outweighs the public interest in disclosure. (*Citizens for a Better Environment v. Dep’t of Food & Agric.* (1985) 171 Cal.App.3d 704, 711–712.) “The burden of proof and of persuasion of the existence of each condition is the Department’s.” (*Id.* at 712.)

1 45. Government Code section 6255 “establishes a catch-all [exemption] that permits
2 the government agency to withhold a record if it can demonstrate that ‘on the facts of a particular
3 case the public interest served by not making the record public *clearly outweighs* the public
4 interest served by disclosure of the record’.” (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652
5 (quoting Gov. Code § 6255(a)) (emphasis in original).) The catch-all exemption “contemplates a
6 case-by-case balancing process, with the burden of proof on the proponent of nondisclosure to
7 demonstrate a clear overbalance on the side of confidentiality.” (*Long Beach Police Officers*
8 *Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 67.)

9 46. Consistent with the pro-disclosure policies of the CPRA, the exemptions to
10 disclosure “are to be narrowly construed.” (*Cty. of Los Angeles v. Superior Court* (2000) 82
11 Cal.App.4th 819, 825.) In 2004, California voters passed Proposition 59 to enshrine this
12 principle of construction in the California Constitution. (*See* Cal. Const., art. I, § 3(b)(2) (“A
13 statute, court rule, or other authority . . . shall be broadly construed if it furthers the people’s
14 right of access, and narrowly construed if it limits the right of access.”).)

15 47. A public interest in disclosure exists where disclosure of records “would
16 contribute significantly to public understanding of government activities,” or where disclosure
17 “would serve the legislative purpose of shedding light on an agency’s performance of its
18 statutory duties.” (*Los Angeles Unified Sch. Dist. v. Superior Court* (2014) 228 Cal.App.4th 222,
19 241.)

20 48. A cognizable public interest in nondisclosure pertains only to the interests of
21 members of the public; an agency’s own desire to withhold a document to avoid controversy is
22 not a legitimate basis for withholding a record. (*See ACLU of N. Cal. v. Superior Court*, (2011)
23 202 Cal.App.4th 55, 71 (holding that the public interest in disclosing the names of
24 pharmaceutical companies from whom the Department of Corrections and Rehabilitation sought
25 to obtain the execution drug sodium thiopental clearly outweighed the public interest in
26

1 nondisclosure, where the Department's actions had been the subject of controversy and
2 impassioned debate).)

3 49. Where a party alleges that a public agency is unlawfully withholding public
4 records, "the court shall order the officer or person charged with withholding the records to
5 disclose the public record or show cause why he or she should not do so." (Gov. Code §
6 6259(a).) "If the court finds that the public official's decision to refuse disclosure is not justified
7 under section 6254 or 6255, [the court] shall order the public official to make the record public."
8 (*Id.* § 6259(b).)

9 50. If a record contains both exempt and non-exempt portions, the agency must sever
10 the exempt portions and disclose the non-exempt portions. (*See* Gov. Code § 6253(a) ("Any
11 reasonably segregable portion of a record shall be available for inspection by any person
12 requesting the record after deletion of the portions that are exempted by law.").)

13 51. In a CPRA case, "[t]he court shall award court costs and reasonable attorney fees
14 to the plaintiff should the plaintiff prevail in litigation." (*Id.* § 6259(d).)

15 FIRST CAUSE OF ACTION

16 (Traditional Mandate: Violation of Article I, Section 3(b) of the California 17 Constitution and the California Public Records Act)

18 52. Dr. Moskowitz realleges and incorporates by reference each and every allegation
19 in the preceding paragraphs as if set forth in full.

20 53. Defendant has unlawfully denied Dr. Moskowitz's Public Records Act requests
21 and withheld the Cell Phone Use Guidance Documentation – a public record – from Petitioner
22 Moskowitz, in violation of Government Code section 6253. The Document is not exempt from
23 disclosure under Government Code section 6254 or 6255, or any other California statute or law.

24 54. The Department has a clear, present, and ministerial duty to comply with the
25 California Constitution and with Government Code section 6250 et seq. by disclosing the

1 requested Document. The Department has the ability to perform, but has failed to perform, this
2 duty.

3 55. Dr. Moskowitz is a member of the public and is beneficially interested in the
4 outcome of these proceedings. Dr. Moskowitz has no adequate remedies at law. Monetary
5 damages will not adequately compensate him for the Department's refusal to disclose the Cell
6 Phone Use Guidance Documentation. Dr. Moskowitz is accordingly entitled to injunctive relief,
7 pursuant to Government Code section 6258.

8 SECOND CAUSE OF ACTION

9 (Declaratory Relief: Violation of Article I, Section 3(b) of the California 10 Constitution and the California Public Records Act)

11 56. Dr. Moskowitz realleges and incorporates by reference each and every allegation
12 in the preceding paragraphs as if set forth in full.

13 57. As a result of Defendant's unlawful withholding of public records, Dr. Moskowitz
14 is entitled to declaratory relief against Defendant pursuant to Government Code sections 6258
15 and 6259.

16 58. Declaratory relief is appropriate under Code of Civil Procedure section 1060
17 because an actual controversy has arisen and now exists between Dr. Moskowitz and the
18 Department. Dr. Moskowitz contends, and the Department disputes, that Dr. Moskowitz has a
19 right to receive a copy of the Cell Phone Use Guidance Documentation in response to his Public
20 Records Act requests dated January 27, 2014; June 11, 2014; and January 14, 2015.

21 59. Dr. Moskowitz is entitled to a judicial declaration of his rights and the
22 Department's duties under the CPRA, Government Code section 6250 et seq.

23 //

24 //

1 **PRAYER FOR RELIEF**

2 Wherefore, Petitioner prays:

3 1. That the Court issue a writ of mandate requiring the Department to make the
4 requested document(s) immediately available to Dr. Moskowitz, and to provide them to any
5 other member of the public upon request.

6 2. That the Court issue an order:

7 a. Declaring that the Cell Phone Use Guidance Documentation is not
8 exempt from disclosure under the Public Records Act;

9 b. Declaring that Defendant has failed and refused to comply with the
10 Public Records Act; and

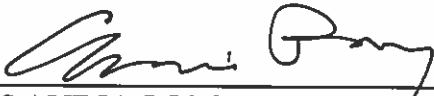
11 c. Ordering Defendant to release the Cell Phone Use Guidance
12 Documentation immediately to Petitioner and provide a copy of the same.

13 3. That the Court issue an order and judgment awarding Petitioner his costs and
14 reasonable attorneys' fees pursuant to Government Code section 6259.

15 4. That the Court award such other and further relief as it deems just and proper.

16
17 Dated: May 26, 2016

Respectfully submitted,

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20 _____
21 CLAUDIA POLSKY
22 *Attorney for Petitioner and Plaintiff*
23 *Dr. Joel Moskowitz*
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Executed on May 26, 2016, at Berkeley, California

Dr. Joel Moskowitz
Petitioner and Plaintiff

EXHIBIT 1

(January 27, 2014, PRA Request)

From: Joel MOSKOWITZ <jmm@berkeley.edu>
Date: Mon, Jan 27, 2014 at 1:09 PM
Subject: Public Record Request: cell phone use guidance documentation
To: cdph.internetadmin@cdph.ca.gov

Dear Sir or Madam:

Under the California Public Records Act § 6250 et seq., I would like to obtain copies of all versions of **cell phone use guidance documentation prepared by the Environmental Health Investigations Branch** of the California Department of Public Health.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$25.00. However, I would also like to request a waiver of all fees because the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding about the health effects associated with cell phone use. This information is being sought for research I am conducting and not for commercial purposes.

The California Public Records Act requires a response within ten business days. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

Joel M. Moskowitz, Ph.D.

Director
Center for Family and Community Health
The UC Berkeley Prevention Research Center
School of Public Health
University of California, Berkeley
Mail: 50 University Hall
Berkeley, CA 94720-7360

Phone: 510-643-7314
E-mail: jmm@berkeley.edu
WWW: <http://cfch.berkeley.edu>

EXHIBIT 2

(February 19, 2014, Email from Dr. Moskowitz)

From: **Joel MOSKOWITZ** <jmm@berkeley.edu>
Date: Wed, Feb 19, 2014 at 4:41 PM
Subject: Fwd: Public Record Request: cell phone use guidance documentation
To: cdph.internetadmin@cdph.ca.gov
Cc: "Dr. Rick Kreutzer" <rick.kreutzer@cdph.ca.gov>

Dear Sir or Madam:

Could you please give me an update on the public records request I submitted on January 27?

On January 30, Dr. Kreutzer called me to ask if I would defer my request for three weeks until the document was finalized. I opted not to defer my request since the original version of the document "stalled" in the department's review process three years ago.

It has now been 15 business days since I submitted my request. Under the California Public Records Act, CDPH has 10 days to honor my request, or in "unusual" cases the agency may, upon written notice to the requester, give itself an additional 14 days to respond.

Thank you for your assistance.

Sincerely,

Joel M. Moskowitz, Ph.D.

EXHIBIT 3

(February 24, 2014, Email from CDPH)

From: **CDPH INTERNET ADMIN** <CDPH.INTERNETADMIN@cdph.ca.gov>
Date: Mon, Feb 24, 2014 at 8:53 AM
Subject: FW: Public Record Request: cell phone use guidance documentation
To: "jmm@berkeley.edu" <jmm@berkeley.edu>

Dear Dr. Moskowitz:

We apologize for the delay in responding to your request. We are still reviewing records to determine whether they are disclosable under the Public Records Act.

Thank you.

Tami Lizarraga

Division of Chronic Disease and Injury Control

(916) 449-5704

EXHIBIT 4

(CDPH's Denial of January 27, 2014, PRA Request)

Subject: Response to Public Records Act Request - Cell Phone Use Guidance Documentation
Date: Monday, March 10, 2014 at 4:47:19 PM Pacific Daylight Time
From: Allino, Renuka (CDPH-DEODC)
To: 'jmm@berkeley.edu'

(Sent on behalf of Rick Kreutzer, MD, Chief)

Good afternoon Dr. Moskowitz,
Please find attached the California Department of Public Health's response to your request under the California Public Records Act § 6250 et seq., for copies of all versions of cell phone use guidance documentation prepared by our Environmental Health Investigations Branch.

Sincerely,

Renuka Allino

Division of Environmental & Occupational Disease Control

California Department of Public Health

850 Marina Bay Parkway, Building P, 3rd Floor

Richmond, CA 94804

(510) 620-3131 – Phone (510) 620-3141 - Fax

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RON CHAPMAN, MD, MPH
Director

State of California—Health and Human Services Agency
California Department of Public Health



EDMUND G. BROWN JR.
Governor

March 5, 2014

Joel M. Moskowitz, Ph.D.
Center for Family and Community Health
The UC Berkeley Prevention Research Center
School of Public Health
50 University Hall
Berkeley, CA 94720

Dear Dr. Moskowitz:

Thank you for your California public records email request seeking the disclosure of all drafts of the California Department of Public Health's (CDPH) proposed public guidance on radio frequency EMF exposure from cell phones. As you know the final guidance is a work in progress that has not yet been finalized.

While CDPH shares your concerns about the necessity for public guidance on radio frequency EMF, we believe that disclosing preliminary drafts that include inaccurate information, as well as recommendations not yet finally reviewed and approved, is contrary to the public interest. Multiple drafts in circulation, including drafts that do not represent the Department's final conclusions, would likely lead to public confusion and misunderstanding of this important subject.

The California Public Records Act allows agencies to withhold preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business where the public interest in withholding those records clearly outweighs the public interest in disclosure (See Government Code 6254(a)). In addition, records may also be withheld under the Public Records Act pursuant to Government Code 6255 where disclosure of the requested materials would undermine an agency's ability to internally engage in a free exchange of ideas while formulating a final decision. (See Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325, 1339-1344.) As you might imagine, an agency's internal discussions would be chilled substantially if participants believed that any idea expressed at any stage, whether kept in or discarded, had to in all cases be released to the public. For these reasons we

must respectfully decline your request to release working papers and preliminary drafts of the EMF Guidance document.

We hope to have the final guidance out soon and will be pleased to release it to you at that time. In the interim period before the Department issues a final guidance document, the public may refer to alternative sources of information, such as the CDC's guidance "Frequently Asked Questions about Cell Phones and Your Health."

If you have any questions, please contact me at rick.kreutzer@cdph.ca.gov or 510-620-3126.

Sincerely,



Rick Kreutzer, M.D., Chief
Division of Environmental and Occupational Disease Control

cc: Public Records Coordinator

EXHIBIT 5

(June 11, 2014, PRA Request)

From: Joel MOSKOWITZ <jmm@berkeley.edu>
Date: Wed, Jun 11, 2014 at 4:34 PM
Subject: California's Cell Phone Use Warnings: Public Records Request
To: cdph.internetadmin@cdph.ca.gov
Cc: "Dr. Rick Kreutzer" <rick.kreutzer@cdph.ca.gov>

California's Cell Phone Use Warnings: Public Records Request

Under the California Public Records Act § 6250 et seq., I am submitting a **second request** to obtain a copy of the **cell phone use guidance documentation prepared by the Environmental Health Investigations Branch of the California Department of Public Health (CDPH)** and any email or other correspondence pertaining to this documentation. My initial request was submitted to the State on January 27, 2014.

On January 30, I received a call from Rick Kreutzer, MD, Chief of the Division of Environmental and Occupational Disease Control at CDPH. Dr. Kreutzer informed me that the document I requested was under review and asked me to defer my request for three weeks when a final approved version should be available. He also told me that the document review was "freshly re-started this year," and that the current draft is similar to the **original version that "stalled three years ago"** while under review by the State. Since three years seemed more than adequate for the State to finalize these health warnings, I opted not to defer my request.

On March 10, CDPH responded to my request with a denial indicating that the State does not release draft documents under the California Public Records Act. The State took 26 business days to respond to my initial request which exceeded the mandate in the California Public Records Act to respond within ten business days.

It has now been 133 days since Dr. Kreutzer called me, and 112 days past the date when Dr. Kreutzer believed the document would be finalized.

I am concerned that the California Department of Public Health has shirked its responsibility to forewarn the public about the potential harm caused by cell phone radiation and has failed to advise the public about how to reduce such risks. Three years is too long for a health warning to be "stalled" in the State bureaucracy when the public's health is at stake.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and please notify me of the appeal procedures available to me under the law.

I have bcc:ed the EMF group of the Collaborative for Health and the Environment and some journalists and policy makers who have demonstrated interest in informing the public about this potential health risk.

Thank you for considering my request.

Sincerely,

Joel M. Moskowitz, Ph.D.

--

Joel M. Moskowitz, Ph.D.

Director
Center for Family and Community Health
The UC Berkeley Prevention Research Center
School of Public Health
University of California, Berkeley
Mail: 50 University Hall
Berkeley, CA 94720-7360

Electromagnetic Radiation Safety

Website: <http://www.saferemr.com>
Facebook: <http://www.facebook.com/SaferEMR>
News Releases: <http://pressroom.prlog.org/jmm716/>
Twitter: @berkeleyprc

EXHIBIT 6

(CDPH's Response to June 11, 2014, PRA Request)

From: **CDPH Response** <CDPHResponse@cdph.ca.gov>
Date: Fri, Jun 20, 2014 at 1:07 PM
Subject: re: California's Cell Phone Use Warnings: Public Records Request
To: "jmm@berkeley.edu" <jmm@berkeley.edu>

Dear Dr. Moskowitz:

CDPH has received your request for a copy of the cell phone use guidance document prepared by the Environmental Health Investigations Branch of the California Department of Public Health (CDPH) and any email or other correspondence pertaining to it. Some of the records you have asked to review may be exempt from disclosure and will not be provided by CDPH for your review. These records include copies of the draft guidance which are exempt from the Public Records Act pursuant to Government Code 6255. In order to respond to your request as quickly as possible, CDPH will notify you of exempt records and provide you with any non-exempt records on a rolling basis.

California Department of Public Health

Please do not respond or reply to this e-mail message; this e-mail address cannot receive incoming mail. For further information, please go to www.cdph.ca.gov

EXHIBIT 7

(October 23, 2014, Email from Dr. Moskowitz)

From: **Joel MOSKOWITZ** <jmm@berkeley.edu>
Date: Thu, Oct 23, 2014 at 12:09 PM
Subject: CDPH Cell Phone Use Guidance Document
To: Monica Wagner <monica.wagoner@cdph.ca.gov>

Dear Ms. Wagoner,

I am writing to follow up on an inquiry I made on April 8th of this year. Prior to contacting you, I had submitted (1/27/14) a public records request to the California Department of Public Health (CDPH) for a cell phone use guidance document that was prepared by the Environmental Health Investigations Branch (EHIB) in 2011 but was never released to the public. You informed me that the document was being reviewed outside of CDPH, and you promised to update me periodically on its progress. It is now approximately four years after the original document was drafted by the EHIB.

Although I never heard from you after April 8th, today I heard from someone at CDPH that staff were delighted with my January request as it got the guidance document moving, but once again it is stuck in the state bureaucracy. This person suggested that media coverage would facilitate the document's release.

Reporters from several California and national publications have been seeking my advice about important story ideas on the topic of cell phone safety. I plan to release this story on Monday if I don't hear from you with concrete information that describes the State's plans for publication of the cell phone use guidance document.

Thank you in advance for your consideration of this matter.

Sincerely,

Joel M. Moskowitz

--

Joel M. Moskowitz, Ph.D.

Director
Center for Family and Community Health
The UC Berkeley Prevention Research Center
School of Public Health
University of California, Berkeley
Mail: 50 University Hall
Berkeley, CA 94720-7360

Phone: 510-643-7314
E-mail: jmm@berkeley.edu
WWW: <http://cfch.berkeley.edu>

Electromagnetic Radiation Safety

Website: <http://www.saferemr.com>
Facebook: <http://www.facebook.com/SaferEMR>
News Releases: <http://pressroom.prlog.org/jmm716/>
Twitter: @berkeleyprc

EXHIBIT 8

(November 19, 2014, Email from Dr. Moskowitz)

From: **Joel MOSKOWITZ** <jmm@berkeley.edu>
Date: Wed, Nov 19, 2014 at 5:34 PM
Subject: CDPH Cell Phone Use Guidance Document
To: "Dr. Rick Kreutzer" <rick.kreutzer@cdph.ca.gov>

Dear Dr. Kreutzer,

You may recall that I submitted a California Public Records Request in January for any information pertaining to the cell phone guidance use document that EHIB had drafted.

You called to tell me that the document was recently revised and re-submitted for approval. At the time you thought that the document would be finalized in three weeks. My request was eventually denied.

Could you please give me an update on the status of the document?

Thanks,
Joel

--

Joel M. Moskowitz, Ph.D.

Director
Center for Family and Community Health
The UC Berkeley Prevention Research Center
School of Public Health
University of California, Berkeley
Mail: 50 University Hall
Berkeley, CA 94720-7360

Phone: 510-643-7314
E-mail: jmm@berkeley.edu

EXHIBIT 9

(January 14, 2015, PRA Request)

From: Joel MOSKOWITZ <jmm@berkeley.edu>
Date: Wed, Jan 14, 2015 at 8:39 PM
Subject: Public Records Act Request
To: CDPH Public Records <CDPH.InternetAdmin@cdph.ca.gov>
Cc: Richard Kreutzer <rick.kreutzer@cdph.ca.gov>, Monica Wagoner <monica.wagoner@cdph.ca.gov>, Ron Chapman <ron.chapman@cdph.ca.gov>, Diana Dooley <diana.dooley@chhs.ca.gov>, Laura Zuckerman <Laura.Zuckerman@doj.ca.gov>

Dear Sir or Madam:

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I request a copy of the following, which I understand to be held by your agency.

I ask to obtain the most recent version of the **cell phone use guidance document** authored by staff in the Environmental Health Investigations Branch of the California Department of Public Health. My understanding is that the guidance document contains important factual information as well as recommendations pertaining to the potential health risks from cell phone use.

I submitted a similar request for this documentation on January 27, 2014. CDPH denied this request in a letter from Dr. Richard Kreutzer dated March 5, 2014 because the document was in "draft" form.

Prior to the denial, Dr. Kreutzer phoned me (January 30, 2014) and said the guidance document had been **in draft form for three years** and would soon be finalized and sent to me. I have neither received the document nor become aware of its release to the public.

If you deny this request, please cite each specific exemption you feel justifies the denial and notify me of the appeal procedures available to me under the law.

Thank you.

Sincerely,

Joel M. Moskowitz, Ph.D.

Director
Center for Family and Community Health
The UC Berkeley Prevention Research Center
School of Public Health
University of California, Berkeley

Mail: 50 University Hall
Berkeley, CA 94720-7360

Phone: 510-643-7314

EXHIBIT 10

(January 23, 2015, Email from Dr. Sherin)



RON CHAPMAN, MD, MPH
Director & State Health Officer

State of California—Health and Human Services Agency
California Department of Public Health



EDMUND G. BROWN JR.
Governor

January 23, 2015

Joel M. Moskowitz, Ph.D.
Center for Family and Community Health
The UC Berkeley Prevention Research Center
School of Public Health
50 University Hall
Berkeley, CA 94720

Dear Dr. Moskowitz:

On January 15, 2015, the California Department of Public Health (CDPH), received your Public Records Act request for the most recent version of the cell phone use guidance document authored by staff in the Environmental Health Investigations Branch of the California Department of Public Health. I have been informed that you made similar requests in January and June of 2014 and that those requests were denied on the basis that the public interest in disclosure of the drafts was outweighed by the public interest in non-disclosure.

I am new to the Department of Public Health and the Center for Chronic Disease and Health Promotion and will require an additional 14 days to review your prior requests and the responsive documents. I will respond to your request for the most recent version of the cell phone use guidance document by February 6, 2015. Thank you for your patience.

Sincerely,

Kevin Sherin MD, MPH
Deputy Director
Center for Chronic Disease Prevention and Health Promotion
California Department of Public Health

EXHIBIT 11

(CDPH's Denial of January 14, 2015, PRA Request)



Michael Wilkening
Acting Director

State of California—Health and Human Services Agency
California Department of Public Health



EDMUND G. BROWN JR.
Governor

February 5, 2015

Joel M. Moskowitz, Ph.D.
Center for Family and Community Health
The UC Berkeley Prevention Research Center
School of Public Health
50 University Hall
Berkeley, CA 94720

Dear Dr. Moskowitz:

The California Department of Public Health (CDPH) received your California public records email request on January 15, 2015, in which you asked for the most recent version of the cell phone use guidance document authored by staff in the Environmental Health Investigations Branch of the California Department of Public Health.

In light of the updated guidance issued by the CDC in June of 2014, CDPH has chosen not to issue a guidance document on radio frequency EMF and cell phones.

The draft versions of the guidance, which would not normally be retained by CDPH in the ordinary course of business, are exempt from disclosure pursuant to Government Code section 6254, subdivision (a). Release of drafts that do not represent the Department's position on radio frequency EMF would likely lead to public confusion and misunderstanding. The drafts are also exempt from disclosure under Government Code 6255, as disclosure of the requested materials would undermine CDPH's ability to internally engage in a free exchange of ideas while formulating a final decision. (See *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1339-1344.)

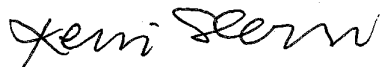
For questions related to radio frequency EMF and cell phones, CDPH recommends that you refer to the CDC's guidance "Frequently Asked Questions about Cell Phones and Your Health."

Joel M. Moskowitz, Ph.D.

Page 2

February 5, 2015

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Sherin". The signature is fluid and cursive, with the first name "Kevin" and last name "Sherin" clearly distinguishable.

Kevin Sherin, MD, MPH, MBA

Deputy Director

Center for Chronic Disease Prevention and
Health Promotion

cc: Public Records Coordinator

EXHIBIT 12

(April 1, 2016, PRA Request to CDPH)

April 1, 2016

Via Email Only

Public Records Act Coordinator
California Department of Public Health
CDPH.InternetAdmin@cdph.ca.gov

Dear Sir or Madam:

We represent Dr. Joel Moskowitz with respect to his requests under the California Public Records Act (“PRA”), Government Code section 6250 *et seq.*, for the cell phone use guidance document prepared by staff at the California Department of Public Health (CDPH). This letter follows multiple requests by our client to obtain the cell phone use guidance document. It is our understanding that staff within CDPH's Environmental Health Investigations Branch authored a cell phone use guidance document that contains important factual information regarding potential health risks from cell phone use, as well as precautionary recommendations for minimizing any such risk. CDPH has acknowledged its possession of the document — and indeed its apparent retention, and possible revision, over a period of years — but has not released any iteration of this document to our client despite repeated requests. A summary of Dr. Moskowitz's previous requests, and a new request for distinct records, are as follows:

Previous Public Records Act Requests

- Dr. Moskowitz — by correspondence dated January 27, 2014; June 11, 2014; and January 15, 2015 — requested from CDPH copies of the most recent cell phone use guidance document.
- In response, CDPH — by letters dated March 5, 2014, and January 23, 2015 — refused to release any version of the cell phone guidance document, relying on the exemptions from disclosure contained in Government Code sections 6254(a) and 6255.
- On November 30, 2015, Dr. Moskowitz requested copies of any other requests to CDPH for the cell phone guidance document and CDPH's responses.
- In its response on December 9, 2015, CDPH produced only correspondence with Dr. Moskowitz and with reporter Danny Hakim of the New York Times. CDPH did not indicate whether it was in possession of any other correspondence related to the cell phone use guidance document.

While we vigorously dispute the applicability of Government Code sections 6254(a) and 6255 to the cell phone guidance document, Dr. Moskowitz now submits the following distinct request under the Public Records Act:

New Public Records Act Request

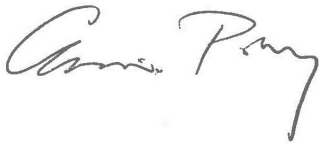
- Dr. Moskowitz requests copies of any correspondence with parties outside CDPH about cell phone use guidance documentation, including any requests from CDPH to others outside the

Department requesting scientific or other review of the contents of the cell phone guidance document.

- Dr. Moskowitz requests copies of any correspondence that CDPH has received from outside parties related to the health effects of cell phones, including correspondence from trade groups such as CTIA/The Wireless Association, as well as CDPH's responses to the correspondence.

We ask that the records requested be made available to us electronically, for provision to our client, within 10 business days from the date of this letter. If CDPH does not produce any correspondence with parties outside CDPH about cell phone use guidance documentation, please specify whether CDPH contends such correspondence does not exist, or whether CDPH instead contends such correspondence is exempt from disclosure under the Public Records Act. To the extent that CDPH contends that portions of any responsive documents are exempt from disclosure, we request — and the PRA requires — that CDPH provide all segregable non-exempt material. Thank you for your prompt attention to this matter.

Sincerely,



Claudia Polsky
Director, Environmental Law Clinic
& Assistant Clinical Professor of Law
University of California, Berkeley
School of Law
434 Boalt Hall (North Addition)
Berkeley, CA 94720-7200
(510) 642-5398
cpolsky@law.berkeley.edu

Tim Horgan-Kobelski
Nimit Dhir
Student Clinicians, Environmental Law Clinic

cc: Richard Kreutzer (rick.kreutzer@cdph.ca.gov)
Joel Moskowitz (jmm@berkeley.edu)

EXHIBIT 13

(April 8, 2016, Email from CDPH)

From: CDPH INTERNET ADMIN <CDPH.INTERNETADMIN@cdph.ca.gov>
Date: April 8, 2016 at 8:34:39 AM PDT
To: Joel MOSKOWITZ <jmm@berkeley.edu>, CDPH INTERNET ADMIN <CDPH.INTERNETADMIN@cdph.ca.gov>
Cc: "Kreutzer, Rick (CDPH-DEODC-EHIB)" <Rick.Kreutzer@cdph.ca.gov>, "Claudia Polsky" <cpolsky@law.berkeley.edu>
Subject: RE: Public Records Act request on behalf of Dr. Joel Moskowitz – Environmental Law Clinic

Good Morning,

Your public records request was received on April 4, 2016 and assigned to our Environmental & Occupational Disease Control office who will respond to your office directly on or before the assigned due date of April 11, 2016.

If your office does not receive a response at that time, please do not hesitate to follow up within this email address.

Thank you,

CDPH INTERNET ADMIN

EXHIBIT 14

(April 21, 2016, Email from Dr. Kreutzer)

Subject: RE: Public Records Act request on behalf of Dr. Joel Moskowitz - Environmental Law Clinic

Date: Thursday, April 21, 2016 at 4:34:22 PM Pacific Daylight Time

From: Kreutzer, Rick (CDPH-DEODC-EHIB)

To: Claudia Polsky, Joel MOSKOWITZ

CC: Neumeyer, Melanie (CDPH-EXEC-OLS)

Dear Claudia Polsky:

The California Department of Public Health (CDPH) received your email dated April 1, 2016, requesting records under the Public Records Act. Unfortunately, this request was sent while I was on vacation and was not seen in a timely manner. CDPH is in the process of considering how we may provide the requested records. Your request will take extra time to fulfill because:

In order to fulfill your request, we must consult with other components of the Department.

Consequently, CDPH is exercising its authority under Government Code, section 6253, subdivision (c), to extend the time to reply to a Public Records Act request. By May 5th, 2016, CDPH will notify you as to which records will be available for your review and which, if any, may be exempt from disclosure and why.

If you have any questions regarding this matter, please contact Melanie Neumeyer:

Attorney
California Department of Public Health
1415 L Street, Suite 500
Sacramento, CA 95814

(916)440-7356

Sincerely,

Rick Kreutzer, MD, Chief
Division of Environmental and Occupational Disease Control, CDPH
850 Marina Bay Parkway, Building P, 3rd Floor
Richmond, CA 94804
Phone 510-620-3126
Fax 510-620-3141

EXHIBIT 15

(CDPH's Denial of April 1, 2016, PRA Request)

Subject: PRA response
From: Neumeyer, Melanie (CDPH-EXEC-OLS) <Melanie.Neumeyer@cdph.ca.gov>
Date: Thursday, May 5, 2016 11:14 PDT
To: Claudia Polsky <cpolsky@law.berkeley.edu>
CC: Nimit Dhir <ndhir@clinical.law.berkeley.edu>
Horgan-Kobelski, Tim <thorgankobelski@clinical.law.berkeley.edu>
Rainville, Mike (CDPH-EXEC-OLS) <Mike.Rainville@cdph.ca.gov>
Schwartz, Karin (CDPH-OLS) <Karin.Schwartz@cdph.ca.gov>
Reply-To: Neumeyer, Melanie (CDPH-EXEC-OLS) <Melanie.Neumeyer@cdph.ca.gov>

Dear Ms. Polsky,

CDPH has reviewed our records in response to your April 1, 2016 request for:

- Copies of any correspondence with parties outside CDPH about cell phone use guidance documentation, including any requests from CDPH to others outside the Department requesting scientific or other review of the contents of the cell phone guidance document.
- Copies of any correspondence that CDPH has received from outside parties related to the health effects of cell phones, including correspondence from trade groups such as CTIA/The Wireless Association, as well as CDPH's responses to the correspondence.

CDPH does not have any records to produce in response to this request. CDPH does not have any correspondence from, or responses to, outside parties, including trade groups such as CTIA/The Wireless Association. CDPH did contract with two consultants to provide services directly to CDPH to work on the guidance, but does not construe these persons as outside parties to the extent that any communications were strictly within the scope of contractual work done specifically for the department.

Thank You,

Melanie Neumeyer
Attorney

California Department of Public Health
1415 L Street, Suite 500
Sacramento, CA 95814

(916) 440-7356

EXHIBIT 16

(April 1, 2016, PRA Request to CHHS)

April 1, 2016

Via Email Only

Public Records Act Coordinator
California Health and Human Services Agency
chhsmail@chhs.ca.gov

Dear Sir or Madam:

We represent Dr. Joel Moskowitz with respect to his requests under the California Public Records Act (“PRA”), Government Code section 6250 *et seq.*, for a cell phone use guidance document prepared by one of the California Health and Human Services Agency’s (CHHS’s) subordinate agencies: the California Department of Public Health (CDPH). It is our understanding that staff within CDPH’s Environmental Health Investigations Branch authored a cell phone use guidance document that contains important factual information as well as recommendations pertaining to mitigation of potential health risks from cell phone use. CDPH has acknowledged its possession of this document, and indeed the document’s retention across multiple years, but CDPH has not released the document despite repeated requests. Dr. Moskowitz now submits the following request to CHHS:

CHHS Public Records Act Request

- Dr. Moskowitz requests copies of any correspondence internally within CHHS, and between CHHS and any agencies it oversees or is subordinate to (including the Governor’s office), related to CDPH’s cell phone guidance document.
- Dr. Moskowitz requests copies of any correspondence between CHHS and outside parties, including correspondence from trade groups such as CTIA/The Wireless Association, seeking information about CDPH’s cell phone use guidance document and/or requesting to review the contents of the document.

To assist in processing Dr. Moskowitz’s present request, a summary of our client’s previous requests to CDPH is below.

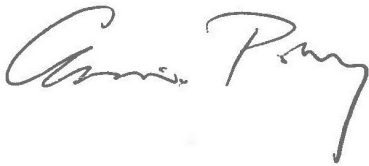
Previous Public Records Act Requests to CDPH

- Dr. Moskowitz — by correspondence dated January 27, 2014; June 11, 2014; and January 15, 2015 — requested from CDPH copies of the most recent cell phone use guidance document.
- In response, CDPH — by letters dated March 5, 2014, and January 23, 2015 — refused to release any version of the cell phone guidance document, relying on the exemptions from disclosure contained in Government Code sections 6254(a) and 6255.
- On November 30, 2015, Dr. Moskowitz requested copies of any other requests to CDPH for the cell phone guidance document and CDPH’s responses.

- In its response on December 9, 2015, CDPH produced only correspondence with Dr. Moskowitz and with reporter Danny Hakim of the New York Times. CDPH did not indicate whether it was in possession of any other correspondence related to the cell phone use guidance document.

We ask that the records requested from CHHS be made available to us electronically, for transmittal to our client, within 10 business days from the date of this letter. If CHHS does not produce any correspondence with parties internal or external to California state government about the cell phone use guidance document, please indicate whether CHHS contends such correspondence does not exist, or whether CHHS instead contends such correspondence is exempt from disclosure under the Public Records Act. To the extent that CDPH contends that portions of any responsive documents are exempt from disclosure, we request — and the PRA requires — that CDPH provide all segregable non-exempt material. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Claudia Polsky". The signature is fluid and cursive, with the first name "Claudia" written in a larger, more prominent script than the last name "Polsky".

Claudia Polsky
Director, Environmental Law Clinic
& Assistant Clinical Professor of Law
University of California, Berkeley
School of Law
434 Boalt Hall (North Addition)
Berkeley, CA 94720-7200
(510) 642-5398
cpolsky@law.berkeley.edu

Tim Horgan-Kobelski
Nimit Dhir
Student Clinicians, Environmental Law Clinic

cc: Joel Moskowitz (jmm@berkeley.edu)

EXHIBIT 17

(CHHS's Denial of April 1, 2016, PRA Request)

From: "Mitchell, Nathaniel@CHHS" <Nathaniel.Mitchell@chhs.ca.gov>
Date: Friday, April 22, 2016 at 4:27 PM
To: Claudia Polsky <cpolsky@law.berkeley.edu>
Cc: Joel MOSKOWITZ <jmm@berkeley.edu>
Subject: RE: Public Records Act request on behalf of Dr. Joel Moskowitz - Environmental Law Clinic

Ms. Polsky,

Please see attached for CHHS' response to your PRA request. Thank you.

State of California HEALTH AND HUMAN SERVICES AGENCY



DIANA S. DOOLEY
SECRETARY



Aging
Child Support Services
Community Services and
Development
Developmental Services
Emergency Medical
Services Authority
Health Care Services
Managed Health Care
Office of Patient Advocate
Office of System
Integration
Public Health
Rehabilitation
Social Services
State Hospitals
Statewide Health Planning
and Development

April 22, 2016

Via Email

Claudia Polsky
Director, Environmental Law Clinic
& Assistant Clinical Professor of Law
University of California, Berkeley
School of Law
434 Boalt Hall (North Addition)
Berkeley, CA 94720-7200

Re: Public Records Request – Cell Phone Use Guidance

Dear Ms. Polsky:

The California Health and Human Services Agency has conducted a diligent research for responsive information to address your Public Records Act (PRA) request for materials related to a cell phone use guidance policy.

Based on the review, the very few documents that were potentially responsive to your request were also identified as being exempt from public disclosure under the exemption in the California Government Code, section 6254, subdivision (k), specifically for attorney-client and attorney work-product communications.

Thank you for your inquiry. Please feel free to contact me at (916) 657-0082 or Nathaniel.Mitchell@chhs.ca.gov if you require further information related to this request.

Sincerely,

Nate R. Mitchell
Special Projects Manager
Administration and Financial Services
California Health and Human Services Agency

EXHIBIT 18

(Danny Hakim's September 8, 2015, PRA Request)

The New York Times

TO:
Records Access Officer
California Department of Public Health
CDPH.InternetAdmin@cdph.ca.gov

September 8, 2015

To Whom It May Concern,

This is a public records request under the California Public Records Act. On behalf of The New York Times, I request a copy of any drafts of cell phone use guidance documentation that have been prepared in the past by the agency. Additionally, I request copies of any e-mail communication with parties outside the agency about the documents.

I am willing to pay applicable fees for the documents. If you need to contact me I am available at the numbers and e-mail listed below.

Submitted by:

Danny Hakim
Investigative Reporter
The New York Times (London Bureau)
Office: +44 207 061 6655
Cell: +44 776 880 6708
hakim@nytimes.com

EXHIBIT 19

(CDPH's Denial of Danny Hakim's September 8, 2015, PRA Request)



KAREN L. SMITH, MD, MPH
Director & State Health Officer

State of California—Health and Human Services Agency
California Department of Public Health



EDMUND G. BROWN JR.
Governor

October 1, 2015

Danny Hakim
Investigative Reporter
The New York Times (London Bureau)
hakim@nytimes.com

Dear Mr. Hakim:

The California Department of Public Health (CDPH) received your California public records request dated September 8, 2015, in which you asked for "cop[ies] of any drafts of cell phone use guidance documentation that have been prepared in the past by the agency and copies of any e-mail communication with parties outside the agency about the documents."

In light of the updated guidance issued by the CDC in June of 2014, CDPH has chosen not to issue a guidance document on radio frequency EMF and cell phones.

The draft versions of the guidance, which would not normally be retained by CDPH in the ordinary course of business, are exempt from disclosure pursuant to Government Code section 6254, subdivision (a). Release of drafts that do not represent the Department's position on radio frequency EMF would likely lead to public confusion and misunderstanding. The drafts are also exempt from disclosure under Government Code 6255, as disclosure of the requested materials would undermine CDPH's ability to internally engage in a free exchange of ideas while formulating a final decision. (See *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1339-1344.)

For questions related to radio frequency EMF and cell phones, CDPH recommends that you refer to the CDC's guidance "Frequently Asked Questions about Cell Phones and Your Health."

Mr. Danny Hakim
Page 2
October 1, 2015

We are conducting a diligent search for any emails with parties outside the agency relating to the drafts of cell phone use guidance documentation. These records are located in multiple offices and/or facilities, and in order to fulfill your request, we must consult with other components of the Department. Consequently, CDPH is exercising its authority under Government Code, section 6253, subdivision (c), to extend the time to reply to a Public Records Act request. By Thursday, October 15, 2015, CDPH will notify you as to which records will be available for your review and which, if any, may be exempt from disclosure and why.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Starr", with a long horizontal line extending to the right.

Mark Starr, DVM, MPVM, DACVPM
Acting Deputy Director
Center for Chronic Disease Prevention and
Health Promotion

cc: Public Records Coordinator