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OF ORIGINAL FILED  
Los Angeles Superior Court

**APR 13 2018**

Sherri R. Carter, Executive Officer/Clerk

By Shaunya Bolden, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 CITY OF DIAMOND BAR, a municipal  
14 corporation,

15 Petitioner,

16 v.

17 CITY OF INDUSTRY, a municipal corporation,  
18 acting by and through its city council,  
19 commissions, committees, staff, agencies,  
20 departments and officials; SUCCESSOR  
21 AGENCY TO THE INDUSTRY URBAN-  
22 DEVELOPMENT AGENCY; OVERSIGHT  
23 BOARD OF THE SUCCESSOR AGENCY TO  
24 THE INDUSTRY URBAN-DEVELOPMENT  
25 AGENCY, and DOES 1 through 50, inclusive,

26 Respondents,

27 SAN GABRIEL VALLEY WATER AND  
28 POWER, LLC, a California limited liability  
company; and DOES 51 through 100, inclusive,

Real Parties in Interest.

Case No.

**BS 1 7 3 2 2 4**

**VERIFIED PETITION FOR  
PEREMPTORY WRIT OF  
MANDATE (CALIFORNIA  
PUBLIC RECORDS ACT)**

(Cal. Gov't Code § 6258 and Cal. Civ.  
Proc. Code § 1085)

1 In support of its Verified Petition for Peremptory Writ of Mandate (the  
2 "Petition"), petitioner City of Diamond Bar ("Diamond Bar") alleges as follows:

3  
4 **INTRODUCTION**

5 1. Diamond Bar seeks a peremptory writ of mandate to compel  
6 respondents City of Industry ("Industry"), the Successor Agency to the Industry Urban-  
7 Development Agency (the "Successor Agency"), and the Oversight Board of the Successor  
8 Agency (the "Oversight Board") (collectively, "Respondents") to disclose pursuant to the  
9 California Public Records Act (the "PRA") public records that Respondents have failed to  
10 disclose for over eight months after Diamond Bar first requested them in August 2017 and  
11 for over one year after the City of Chino Hills ("Chino Hills") first requested them in  
12 February 2017.

13 2. The public records at issue concern Industry's plans for Tres  
14 Hermanos Ranch ("Tres Hermanos"), which includes approximately 2,445 acres of largely  
15 undeveloped land located entirely within the boundaries of Diamond Bar and Chino Hills.  
16 Tres Hermanos has been owned by the Successor Agency since shortly after the California  
17 Legislature's passage of the Redevelopment Dissolution Act in 2012.

18 3. Industry has done all it can to keep its plans for Tres Hermanos  
19 hidden from the public, dating back at least to May 2016, when Industry entered into a  
20 master ground lease (the "Original Master Lease") with real party in interest San Gabriel  
21 Valley Water and Power, LLC ("San Gabriel WP") to develop 450 megawatts of solar  
22 projects (the "Solar Project") on Tres Hermanos and 3,245 acres of contiguous land.  
23 Diamond Bar is informed and believes, and thereon alleges, that the Industry City Council,  
24 or some subset of the members thereof, considered the Original Master Lease and four  
25 subsequent amendments thereto (collectively, the "Master Lease") either in closed session  
26 or in private meetings and without any notice to or input from the public regarding its  
27 actions.

1           4.     Beginning in February 2017, after the Oversight Board declined to  
2 approve Industry's initial attempt to purchase Tres Hermanos from the Successor Agency  
3 at a greatly discounted price of \$41.65 million, Chino Hills and Diamond Bar submitted  
4 several PRA requests to Respondents seeking disclosure of public records related to Tres  
5 Hermanos and the Solar Project.

6           5.     Industry (ostensibly, on behalf of all three Respondents) has  
7 responded to those PRA requests with unreasonable and indefinite delay, as follows:

8                 a.     Industry has consistently taken the position that it is entitled to  
9 disclose records on a "rolling basis" without identifying an estimated date when the  
10 disclosure would be complete, contrary to the plain language of Section 6253(c) of the  
11 Government Code, which provides that "if the agency determines that the request seeks  
12 disclosable public records, the agency shall state the estimated date and time when the  
13 records will be made available."

14                 b.     Diamond Bar is informed and believes, and thereon alleges,  
15 that Industry failed for almost one year to communicate the substance of Diamond Bar's  
16 PRA requests to persons with custody of responsive records, as required under the PRA.  
17 Specifically, on February 9, 2018, one year after Chino Hills' initial PRA request, Industry  
18 informed Diamond Bar that Industry was at that time still collecting and reviewing three  
19 classes of documents that had not previously been disclosed: (1) records of Tony Bouza,  
20 an attorney for Industry and the Industry Public Utility Commission who had worked on  
21 the Solar Project, (2) thousands of emails from Industry staff servers and (3) documents  
22 from unidentified "third parties" that possibly had worked on the Solar Project. Similarly,  
23 on March 3, 2018, Industry informed Diamond Bar that Industry had just begun the  
24 process of reviewing the files of former City Manager Paul Philips for responsive records.  
25 Industry did not provide any justification for its failure to collect documents from those  
26 sources for nearly one year following the initial PRA request.

27                 c.     Records made available by Industry have included scores of  
28 documents that are incomplete and illegible, many of which are obstructed by the word

1 "DEMO" written in bold block letters or watermark across the face of the document, and in  
2 some cases by a symbol of unknown origin or meaning that resembles the head of a duck.  
3 These obstructions on the face of the documents have often rendered their contents  
4 indecipherable and led to substantial delay as Diamond Bar and Chino Hills have been  
5 forced to submit successive PRA requests asking for clean, complete and legible copies of  
6 documents. Industry's most recent production of documents responsive to Diamond Bar's  
7 PRA requests yet again includes numerous documents that are obscured by the word  
8 "DEMO" written in watermark on the documents.

9                   d.     Industry disclosed only an incomplete draft of the Original  
10 Master Lease in response to Chino Hills' February 2017 PRA request, despite that Industry  
11 executed the Original Master Lease in May 2016. It took several successive PRA requests  
12 issued by Chino Hills over the next three months before Industry disclosed a complete,  
13 executed copy of the Original Master Lease in mid-May of 2017. Similarly, Industry did  
14 not disclose the four amendments to the Original Master Lease until October 2017, after  
15 several PRA requests and after Diamond Bar sent Industry a demand letter threatening  
16 legal action under the Brown Act for Industry's violation of open meeting laws in  
17 approving the Master Lease.

18                   6.     Industry has failed to make available scores of records responsive to  
19 Diamond Bar's PRA requests, as follows:

20                   a.     Diamond Bar has repeatedly requested any and all memoranda,  
21 reports, studies, plans, analyses, maps, contracts, notes, emails, communications and  
22 correspondence relating in any manner to the sale of the development of Solar Projects on  
23 Tres Hermanos and/or any other portion of the Total Site, including without limitation any  
24 such documents relating to (i) the location, planning, design, engineering or scheduling for  
25 the Solar Project, (ii) the environmental review for the Solar Project, including all CEQA  
26 documents and related technical reports, studies and schedules, (iii) the financing for the  
27 Solar Project, (iv) the purchase and sale and/or use of power generated by the Solar Project  
28

1 and (v) political support for the Solar Project (collectively, the "Solar Project  
2 Documents").

3                   b.       Diamond Bar is informed and believes, and thereon alleges,  
4 that Industry has thus far paid approximately \$20 million to a bevy of consultants and  
5 attorneys that San Gabriel WP retained in early 2016 to assist with the design, engineering,  
6 study, environmental review, financing and development of the Solar Project (the "San  
7 Gabriel Consultants").

8                   c.       Diamond Bar is further informed and believes, and thereon  
9 alleges, that Industry has paid at least an additional approximately \$7 million to another  
10 group of consultants and attorneys that Industry has retained directly with respect to the  
11 Solar Project (the "Industry Consultants," and, together with the San Gabriel Consultants,  
12 the "Solar Project Consultants").

13                   d.       Industry has not produced to Diamond Bar any substantive  
14 Solar Project Documents except for the Master Lease, an incomplete and unexecuted draft  
15 Power Purchase Agreement, and invoices regarding some of the costs for which Diamond  
16 Bar is informed and believes, and thereon alleges, that Industry has reimbursed San  
17 Gabriel WP. The records Industry has produced do not include any of the numerous  
18 environmental reports, CEQA documents, technical reports, studies, schedules, design  
19 plans and drawings referenced in invoices that San Gabriel WP has submitted to Industry  
20 for reimbursement.

21                   e.       Diamond Bar is informed and believes, and thereon alleges,  
22 that Industry has refused to provide copies of any of the Solar Project Documents to  
23 Diamond Bar and Chino Hills on the ground that it does not have possession of a single  
24 one of those documents. Industry has asserted this position notwithstanding that (a) as  
25 Diamond Bar is informed and believes, and thereon alleges, it has paid approximately \$27  
26 million to the Solar Project Consultants with respect to the Solar Project, (b) Section 25.1.1  
27 of the Master Lease states that, at Industry's request, San Gabriel WP is required to provide  
28 evidence and/or a copy of any work performed by the San Gabriel Consultants, so that

1 Industry knows what it is getting for its money, and (c) pursuant to Section 1.3 of the  
2 Master Lease, San Gabriel WP is required to deliver to Industry copies of all results from  
3 any and all inspections, tests, studies, investigations, analyses reports, surveys, searches  
4 and the like of, on or about the Total Site as may be necessary or desirable to determine the  
5 suitability of the Total Site for the Solar Project.

6 f. Despite Diamond Bar's request, pursuant to the PRA, that  
7 Respondents disclose any and all documents related to the Successor Agency's sale of Tres  
8 Hermanos to Industry (collectively, the "PSA Documents"), Industry has produced only a  
9 few documents that were included in agenda packets of public meetings at which the sale  
10 of Tres Hermanos was discussed. Diamond Bar is informed and believes that Respondents  
11 are in possession of numerous other disclosable PSA Documents, but have failed to  
12 produce copies of those documents to Diamond Bar.

13 g. Diamond Bar has requested any and all documents relating to  
14 the Master Lease (collectively, the "Master Lease Documents"), but Industry has produced  
15 only the Master Lease and drafts of the Original Master Lease. Diamond Bar is informed  
16 and believes, and thereon alleges, that Industry is in possession of numerous other  
17 disclosable Master Lease Documents, but has failed to produce copies of those documents  
18 to Diamond Bar.

19 7. The records that Industry has disclosed include numerous documents  
20 containing redactions that, on their face, indicate that Industry has engaged in a pattern and  
21 practice of withholding documents responsive to Diamond Bar's PRA requests based on  
22 untenable claims of exemption (the "Redacted Documents"), including:

23 a. Several emails that Industry has redacted based on claims of  
24 privilege either involved third parties or were subsequently forwarded to third parties.  
25 Even if the redacted portions of those emails involved communication between Industry  
26 and its attorneys, by disclosing or later forwarding those communications to third parties  
27 that are not covered by the privilege, Industry has waived the privilege and therefore those  
28 communications are not exempt from disclosure under the PRA.

1                   b.     Industry has redacted invoices for work by attorneys that  
2 represent San Gabriel WP. Any privilege claim for those invoices is held by San Gabriel  
3 WP, but by sending the invoices to Industry for reimbursement, San Gabriel WP has  
4 waived any claim it may have had that the invoices were privileged. The invoices that San  
5 Gabriel WP has submitted to Industry for reimbursement are not exempt from disclosure  
6 under the PRA.

7                   8.     Industry's responses to Diamond Bar's PRA requests also indicate that  
8 Industry has withheld documents entirely based on the attorney-client privilege, the work-  
9 product doctrine, the deliberative process privilege and the closed session privilege  
10 (together with the Redacted Documents, the "Privilege-Claimed Documents"). Industry  
11 has refused Diamond Bar's request that it provide information on the nature of the  
12 Privilege-Claimed Documents or the grounds on which the privilege was asserted.  
13 Diamond Bar is informed and believes, and thereon alleges, that the Privilege-Claimed  
14 Documents include numerous non-exempt, responsive documents.

15                  9.     It has become clear to Diamond Bar that its efforts to obtain all of the  
16 responsive, non-exempt records from Respondents as required by the PRA have been  
17 futile. Absent an order from this Court, Respondents will continue to delay and  
18 unjustifiably withhold responsive, non-exempt records in violation of their obligations  
19 under the PRA.

20                  10.    Diamond Bar requests that this Court immediately issue an  
21 interlocutory order requiring Respondents to produce to Diamond Bar and the Court a  
22 privilege log that provides information sufficient for Diamond Bar to assess and, if  
23 necessary, dispute the validity of Industry's claims of exemption with respect to the  
24 Privilege-Claimed Documents. In the alternative, Diamond Bar requests an order  
25 requiring Respondents to lodge the Privilege-Claimed Documents under seal for this Court  
26 to conduct an *in camera* review of those documents and evaluate the veracity of  
27 Respondents' exemption claims.

28



1 the Successor Agency's records are maintained by Industry staff and housed in Industry's  
2 files.

3           15. Diamond Bar is informed and believes, and thereon alleges, that  
4 respondent Oversight Board is, and at all times relevant herein was, a public body  
5 established pursuant to HSC Section 34173 to oversee the Successor Agency's dissolution  
6 and winding down of the former Industry Redevelopment Agency, including the oversight  
7 and approval of Successor Agency's disposal of the assets and properties of the former  
8 Industry Redevelopment Agency. Diamond Bar is informed and believes, and thereon  
9 alleges, that the Oversight Board's records are maintained by Industry staff and housed in  
10 Industry's files.

11           16. Diamond Bar is informed and believes, and thereon alleges, that San  
12 Gabriel WP is a California limited liability company organized under the laws of the State  
13 of California with its primary offices in San Diego County. Diamond Bar is informed and  
14 believes, and thereon alleges, that San Gabriel WP maintains public records that are in  
15 Industry's constructive possession.

16           17. Diamond Bar is ignorant of the true names and capacities, whether  
17 individual, corporate, associate, or otherwise, of respondents, Does 1 through 50, inclusive.  
18 Such fictitious respondents are sued pursuant to the provisions of California Code of Civil  
19 Procedure Section 474. When Diamond Bar ascertains the exact nature and identification  
20 of such fictitious respondents it will seek to amend this Petition and all proceedings herein  
21 to set forth the same.

22           18. Diamond Bar is ignorant of the true names and capacities, whether  
23 individual, corporate, associate, or otherwise, of real parties in interest, Does 51 through  
24 100, inclusive. Such fictitious real parties in interest are sued pursuant to the provisions of  
25 California Code of Civil Procedure Section 474. When Diamond Bar ascertains the exact  
26 nature and identification of such fictitious real parties in interest it will seek to amend this  
27 Petition and all proceedings herein to set forth the same.  
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**JURISDICTION AND VENUE**

19. The Court has jurisdiction over this matter under the PRA and Code of Civil Procedure Section 1085. Venue is proper in this Court under California Government Code Section 6258 and California Code of Civil Procedure Section 393 because, upon information and belief, all or part of the Withheld Documents sought herein are located in LA County.

20. Diamond Bar is informed and believes, and thereon alleges, that certain Withheld Documents are the public records of Respondents maintained by Industry staff at Industry City Hall in LA County.

21. Diamond Bar is informed and believes, and thereon alleges, that certain Withheld Documents are public records within Industry's possession or control, maintained at the offices of San Gabriel WP and the Solar Project Consultants.

**THE UNDERLYING LAWSUITS**

22. This case derives from Diamond Bar's efforts to collect documents necessary to prepare the administrative record for a prior lawsuit that is pending in the Court, Case No. BS171295 (Verified Petition for Peremptory Writ of Mandate filed on November 1, 2017, and First Amended Verified Petition for Peremptory Writ of Mandate filed on February 13, 2018) (the "Underlying Diamond Bar Lawsuit"). The Underlying Diamond Bar Lawsuit alleges eight causes of action against Respondents and Real Party in Interest, including three causes of action under the California Environmental Quality Act ("CEQA"), which all relate to (a) the approval of a purchase and sale agreement pursuant to which Industry would acquire Tres Hermanos from the Successor Agency for a purchase price of \$41.65 million (the "Tres Hermanos PSA") and (b) the approval of the Master Lease. To support these claims and ensure that the administrative record includes all pertinent documents, Diamond Bar has sought relevant public records from Industry through the PRA.

1           23. Chino Hills has filed an almost identical lawsuit that is pending in the  
2 Court, Case No. BS171398 (Verified Petition for Peremptory Writ of Mandate filed on  
3 November 1, 2017, and First Amended Verified Petition for Peremptory Writ of Mandate  
4 filed on February 13, 2018) (collectively with the Underlying Diamond Bar Lawsuit, the  
5 "Underlying Lawsuits").

6  
7                           **THE MASTER LEASE AND POWER PURCHASE AGREEMENT**

8           24. In May 2016, Industry, as landlord, and San Gabriel WP, as tenant,  
9 entered into the Original Master Lease, which contemplates the Solar Project, from which  
10 Industry would receive significant financial benefit.

11           25. Diamond Bar is informed and believes, and thereon alleges, that the  
12 Industry City Council, or some subset of the members thereof, considered the Original  
13 Master Lease either in closed session or in private meetings and without any notice to or  
14 input from the public regarding its actions. Industry did not publicly disclose the content  
15 of the Master Lease until October 10, 2017, and then only in response to Diamond Bar's  
16 letter contending that consideration of the Master Lease either in closed session or in  
17 private meetings violated the Brown Act and demanding that Industry cure the violation.

18           26. The Master Lease includes the following provisions:

19                   a. Section 1.3 provides that

20                           "[San Gabriel WP] and its agents, consultants, contractors and  
21 subcontractors shall have the right to conduct or make any and all  
22 inspections, tests, studies, investigations, analyses reports,  
23 surveys, searches and the like of, on or about the Total Site as  
24 may be necessary or desirable to determine the suitability of the  
Total Site for [San Gabriel WP's] proposed use (the 'Site  
Diligence')."

25                   b. Section 1.3 also provides that

26                           "[San Gabriel WP] shall deliver to [Industry] . . . a copy of all  
27 results from the Site Diligence obtained and/or prepared pursuant  
28 to the provisions of this Section 1.3 and which shall also be  
addressed to [Industry]."

1 c. Section 24.2 provides that, with respect to all photovoltaic  
2 solar projects proposed for Tres Hermanos and other portions of the Total Site, San  
3 Gabriel WP will submit a "request for Industry to participate therein and contribute  
4 financially thereto" and describes the voluminous materials and information that must be  
5 submitted to Industry for its review, which include (i) a thorough detailed, narrative,  
6 description of the Solar Project, (ii) a detailed map showing the applicable portion of the  
7 Total Site, (iii) an entitlement analysis and schedule showing the entitlements, approval,  
8 authorizations and/or permits required from all governmental authorities, (iv) a detailed  
9 schedule showing, among other things, the entitlement, development, construction and  
10 other phases of such Solar Project and the timing of such events, (v) a detailed  
11 development and construction budget for the entire Solar Project, (vi) the proposed sources  
12 and uses of funds, (vii) a description of the number, type and design of solar modules to be  
13 constructed and the reasonably anticipated aggregate annual output thereof, and (viii) a  
14 financial model.

15 d. Section 25.1 requires Industry to advance or reimburse funds in  
16 an aggregate amount of not more than \$20 million to San Gabriel WP for reasonable third-  
17 party fees and costs incurred by San Gabriel WP in connection with exploring the  
18 feasibility of, and seeking approvals for, the planning and development of Solar Projects  
19 and the transmission and/or storage of the power generated thereby on Tres Hermanos and  
20 other portions of the Total Site.

21 e. Section 25.1.1 provides that the advances and reimbursements  
22 provided for in Section 25.1 are subject to San Gabriel WP's completion and delivery of a  
23 written request for payment setting forth the dates, amounts, and payees with respect to all  
24 sums being requested by San Gabriel WP, and a description of the work performed or to be  
25 performed by each payee, plus, at Industry's request, evidence and/or a copy of any such  
26 work performed (to the extent applicable).

27 27. Diamond Bar is informed and believes that Industry and San Gabriel  
28 WP entered into the First Amendment to Original Master Lease, dated November 15,

1 2016 (the "First Amendment"), a Second Amendment to Original Master Lease, dated  
2 April 13, 2017 (the "Second Amendment"), a Third Amendment to Original Master Lease,  
3 dated May 23, 2017 (the "Third Amendment"), and a Fourth Amendment to the Original  
4 Master Lease, dated June 30, 2017 (the "Fourth Amendment," and, together with the First  
5 Amendment, Second Amendment and Third Amendment, the "Master Lease  
6 Amendments").

7 28. Diamond Bar is informed and believes, and thereon alleges, that San  
8 Gabriel WP has assembled an extensive team of consultants and attorneys to develop Solar  
9 Projects on Tres Hermanos (previously defined as the "San Gabriel Consultants").

10 Diamond Bar is further informed and believes, and thereon alleges, that as of the date of  
11 this Petition, Industry has reimbursed San Gabriel WP for the services of the San Gabriel  
12 Consultants in an aggregate amount of approximately \$20 million. Diamond Bar is further  
13 informed and believes, and thereon alleges, that the Industry City Council has approved  
14 Industry's reimbursements to San Gabriel WP in closed session and the reimbursements  
15 have not been disclosed to the public. The San Gabriel Consultants include:

- 16 • Ambient Communities/Sustainable Water and Power (total environmental  
17 process, including negotiating subcontractor agreements, managing hiring of  
18 vendors, managing biological and construction scheduling and costs, and  
EIR completion)
- 19 • DAMG Advisors (project and budget financing, contract negotiation)
- 20 • JGM Design, Inc. (environmental surveying, civil engineering, planning  
services, construction management)
- 21 • ZGlobal Power Engineering (pre-application to SCE, preparation of  
interconnection requests to the CAISO and SCE)
- 22 • Blue Oak Energy (geotechnical engineering and exploration services, soil  
23 borings, field electrical resistivity, percolation testing, evaluation and  
suitability for slope stability, thermal resistivity testing, corrosion laboratory  
24 testing, pile installation, pile testing, pile extraction)
- 25 • Kimley Horn & Associates (base map preparation, preliminary civil  
engineering, conceptual site plan, preliminary energy modeling, surveying  
26 services, environmental and biological services, geotechnical analysis,  
entitlement and permitting coordination (including CEQA and FEMA), final  
27 engineering design, conduit design and layout, utility coordination)
- 28 • Terracon Consultants, Inc. (geology, boring and soil analysis)

- 1 • Solar Engineering Consultants (specialize in solar energy and storage projects and technologies)
- 2 • Helix (preparation of draft EIR, coordination of biology studies to engineering layouts, study of visual impact and neighbors)
- 3 • Kitchell (construction advisor)
- 4 • Arcadis (technical, environmental, engineering and business advisory support services, including business case development, development management, delivery structure advice, operation and maintenance advice, statutory compliance advice and technical and environmental due diligence)
- 5 • Randall MacDougall (direct and assess entity assets, oversee project finance and architecture modeling, analysis of potential investment opportunities)
- 6 • Brooks Kincaid (modeling project finances and architecture, coordinating with Ambient Communities and other consultants, researching component technologies)
- 7 • Sonia Walcott (organizational filing, office bookkeeping, permit tracking)
- 8 • Dennis & Dennis LP (accounting)
- 9 • Forward Realty/Michael Christopher (consulting)
- 10 • Downey Brand (land use and EIR)
- 11 • Dechert LLP (corporate and tax advice, financial structure)
- 12 • Day, Carter & Murphy (interconnection regulatory issues)
- 13 • Orrick, Herrington & Sutcliffe (bond counsel)
- 14 • Dongell Lawrence Finney (governmental relations with regard to CAISO and California Public Utilities Commission).

16 29. Diamond Bar is informed and believes, and thereon alleges, that  
 17 Industry has assembled its own consultant and legal team with respect to the development  
 18 of Solar Projects on Tres Hermanos (previously defined as the "Industry Consultants").

19 Diamond Bar is informed and believes, and thereon alleges, that for the period  
 20 commencing on or about January 2016 and ending on or about January 2018, the Industry  
 21 Consultants billed a minimum of at least \$7 million for their collective services. The  
 22 Industry Consultants include the following individuals and entities:

- 23 • Cordoba Engineering (real estate advisory services, energy consultants)
- 24 • CNC Engineering (engineering services)
- 25 • DAMG Advisors (project and budget financing, contract negotiation)
- 26 • Lang, Hansen, O'Malley (lobbyist)
- 27 • Dolphin Communications (public relations)
- 28 • Bouza Law Firm (energy legal services).

1           30. Diamond Bar is informed and believes, and thereon alleges, that in  
2 November 2016, a San Gabriel WP attorney prepared a draft of a 49-page facility power  
3 purchase agreement (the "Power Purchase Agreement") with regard to the contemplated  
4 solar facilities on Tres Hermanos and other portions of the Total Site, to be executed by  
5 SGV Solar ProjectCo 1, LLC, which Diamond Bar is informed and believes, and thereon  
6 alleges, is affiliated with San Gabriel WP, as seller, and the Industry Public Utilities  
7 Commission (the "IPUC"), as buyer. It states that "Seller wishes to develop, construct,  
8 own, operate and maintain a solar photovoltaic electric generation facility . . . with a  
9 designed output of 135 MW AC to be located at the Premises . . .," and to sell the  
10 electricity produced by the solar facility to the IPUC.

11           31. Diamond Bar is informed and believes, and thereon alleges, that San  
12 Gabriel WP retained Helix Environmental Planning to prepare a draft EIR for the proposed  
13 Tres Hermanos solar project. Helix submitted an invoice in the amount of \$300,000 for its  
14 professional services through February 2017, which included (a) coordinating biology  
15 studies to engineering layouts, (b) studying visual impacts to neighbors and corresponding  
16 open space and (c) studying how the discovery of the Burrowing Owl affects solar panel  
17 layout. The invoice states that a "final draft" of the draft EIR should be prepared by the  
18 end of March 2017.

19  
20           **INDUSTRY'S PURPORTS TO PURCHASE TRES HERMANOS FROM THE**  
21           **SUCCESSOR AGENCY AT A GREATLY DISCOUNTED PRICE**

22           32. On September 8, 2016, nearly four months *after* Industry agreed to  
23 lease Tres Hermanos to San Gabriel WP pursuant to the Original Master Lease, Industry  
24 tried to purchase Tres Hermanos from the Successor Agency for only **\$41.65 million**,  
25 notwithstanding that the Successor Agency's Long Range Management Plan estimated the  
26 value to be \$85-122 million and that the Successor Agency had received a detailed and  
27 credible offer of \$101 million from a residential developer. On September 29, 2016,  
28 however, the Oversight Board rejected the Successor Agency Board's approval of the

1 \$41.65 million purchase agreement because the purchase price was based on a deeply  
2 flawed appraisal, which determined that the value of Tres Hermanos was \$41.65 million in  
3 reliance on a "hypothetical condition," "contrary to known facts," that Tres Hermanos  
4 would be restricted to open space in perpetuity.

5           33. Diamond Bar is informed and believes, and thereon alleges, that  
6 although Industry had entered into the Original Master Lease in May 2016, at no time prior  
7 to September 29, 2016 were the members of the Oversight Board or the public made aware  
8 of Industry's intent to develop a major solar project on Tres Hermanos, except for  
9 Industry's representatives on the Board, who were Paul Philips and Esteban Torres.

10           34. On January 13, 2017, the Industry City Council and the Successor  
11 Agency Board approved a revised Tres Hermanos purchase and sale agreement with a  
12 purchase price of \$100 million. The Successor Agency Board's approval was scheduled  
13 for review and approval by the Oversight Board at its August 24, 2017 meeting. However,  
14 the Oversight Board never took action on that agreement. Instead, Industry's City Manager  
15 Paul Philips, who was also a member of the Oversight Board, made a motion to approve a  
16 purchase and sale agreement with a \$41.65 million purchase price (previously defined as  
17 the "Tres Hermanos PSA"), subject to the Oversight Board's imposition of a covenant that  
18 limited the use of Tres Hermanos to "open space, public use or preservation." The  
19 Oversight Board narrowly approved the motion by a 4-3 vote with Mr. Philips casting the  
20 deciding vote.

21           35. Industry and the Successor Agency representatives have done all they  
22 possibly can to conceal the existence of the Solar Project and all documentation relating to  
23 it. To date, notwithstanding repeated PRA requests for all documents relating to the Solar  
24 Project discussed below, Diamond Bar has not received any substantive Solar Project  
25 Documents except for the Master Lease, an incomplete and unexecuted draft Power  
26 Purchase Agreement, work proposals for some of the San Gabriel Consultants, and  
27 invoices regarding some of the costs for which Diamond Bar is informed and believes, and  
28 thereon alleges, that Industry has reimbursed San Gabriel WP. Industry representatives, in

1 particular Mr. Philips and James Casso, Industry's City Attorney, have repeatedly and  
2 disingenuously stated at public meetings that, despite the execution of the Master Lease  
3 and the enormous expenditures over an extended period (which they almost never publicly  
4 acknowledge), Industry still has no development plan or documentation whatsoever that it  
5 can share with the public regarding the planned Solar Project on Tres Hermanos.

6  
7 **CHINO HILLS' INITIAL PRA REQUESTS AND INDUSTRY'S RESPONSE**

8 36. Diamond Bar is informed and believes, and thereon alleges, that the  
9 first PRA request to Industry and the Successor Agency related to Tres Hermanos was  
10 delivered by Chino Hills on February 9, 2017 (the "Chino Hills February 9 PRA  
11 Request"), shortly after Industry agreed to purchase Tres Hermanos from the Successor  
12 Agency for \$100 million. Chino Hills' request asked Industry and the Successor Agency to  
13 disclose records regarding Industry's plans for Tres Hermanos, plans which to that date  
14 (and for long afterwards) Industry had made behind closed doors and without notice to the  
15 public. The Chino Hills' February 9 PRA Request would begin an arduous process that  
16 would last for over a year, at which time, Chino Hills would be left without a single  
17 document detailing the specifics of the planned Solar Project on Tres Hermanos.

18 37. Diamond Bar is informed and believes, and thereon alleges, that  
19 although the Original Master Lease had been executed in May 2016, almost nine months  
20 before the Chino Hills February 9 PRA Request, Industry produced to Chino Hills only an  
21 unexecuted and incomplete draft of the Original Master Lease. In addition, Diamond Bar  
22 is informed and believes, and thereon alleges, that although Industry had entered into and  
23 executed the First Amendment as of November 15, 2016, Industry inexplicably withheld  
24 the First Amendment from its disclosure. In addition, Industry did not disclose a single  
25 Solar Project Document in response to the Chino Hills February 9 PRA Request. This was  
26 the first of a long string of inadequate and incomplete responses to PRA requests that  
27 Industry would offer over the next year.

28

1           38. Diamond Bar is informed and believes, and thereon alleges, that over  
2 the course of the next year Chino Hills submitted several successive PRA requests to  
3 Respondents, including on April 14, 2017, August 8, 2017, September 25, 2017, and  
4 October 12, 2017.

5           39. Diamond Bar is informed and believes, and thereon alleges, that  
6 despite numerous successive PRA requests by Chino Hills, Industry has not disclosed to  
7 Chino Hills (a) the draft Environmental Impact Report that was scheduled to be completed  
8 in March 2017, or any other Solar Project Documents reflecting the work performed by the  
9 Solar Project Consultants with respect to the Solar Project, (b) any PSA Documents that  
10 were not included in agenda packets of public meetings, or (c) any Master Lease  
11 Documents besides the Master Lease and drafts of the Original Master Lease.

12  
13           **DIAMOND BAR'S INITIAL PRA REQUESTS AND INDUSTRY'S RESPONSE**

14           40. On June 27, 2017 Diamond Bar submitted a PRA request to Industry  
15 ("Diamond Bar's June 27 PRA Request") asking Industry to disclose all writings related to  
16 the Solar Project. The request specifically asked that Industry disclose the Solar Project  
17 Documents (*i.e.*, all records related to consultant contracts, project studies, environmental  
18 studies, and other records that relate to the Solar Project). The time frame of the request  
19 was narrowed to January 1, 2014 – June 27, 2017.

20           41. Industry did not respond to Diamond Bar's June 27 PRA Request.  
21 Consequently, on August 3, 2017, Diamond Bar submitted a second PRA request to  
22 Industry ("Diamond Bar's August 3 PRA Request"), which asked Industry to disclose the  
23 same documents as Diamond Bar's June 27 PRA Request.

24           42. Also on August 3, 2017, Diamond Bar submitted a separate PRA  
25 request to the Successor Agency ("Diamond Bar's August 3 Successor Agency PRA  
26 Request"), which asked the Successor Agency to disclose all records related to the Solar  
27 Project. The Successor Agency never responded to Diamond Bar's August 3 Successor  
28 Agency PRA Request.

1           43.    On August 10, 2017, Industry responded to Diamond Bar's August 3  
2 PRA Request ("Industry's August 10 Response") and stated that it had identified and  
3 would produce responsive records. Industry indicated that it was withholding responsive  
4 documents that were subject to the attorney-client and work-product privileges and that  
5 certain documents had been redacted to protect financial (*i.e.*, bank account) information.  
6 Industry did not specify that any documents had been withheld based on the deliberative  
7 process privilege or on any other grounds. Industry specified that "given the voluminous  
8 nature of this request, the City will produce the responsive documents on a rolling basis."  
9 Industry did not, however, provide an estimated date on which the balance of responsive  
10 records would be disclosed as required by Government Code section 6253(c), which  
11 provides that "if the agency determines that the request seeks disclosable public records,  
12 the agency shall state the estimated date and time when the records will be made  
13 available." Industry's August 10 Response was signed by Diane M. Schlichting, Chief  
14 Deputy City Clerk, who attested that she was responsible for the determination concerning  
15 Diamond Bar's PRA request.

16           44.    Enclosed with Industry's August 10 Response was a single CD  
17 containing responsive records. Although Diamond Bar is informed and believes, and  
18 thereon alleges, that Industry had, at the time of its August 10 Response, spent millions of  
19 dollars on the Solar Project Consultants, Industry did not provide a copy of a single Solar  
20 Project Document. So, Diamond Bar was still left in the dark as to the planned Solar  
21 Project and how that project would impact Diamond Bar residents.

22           45.    The public records that Industry disclosed on August 10 indicated the  
23 existence of numerous other records that were not, and would not in the future be,  
24 disclosed by Industry. As one of many such examples, a Professional Services Agreement  
25 between San Gabriel WP and Kimley-Horn and Associates ("Kimley-Horn"), dated  
26 October 14, 2016, indicated the services that Kimley-Horn would provide to San Gabriel  
27 WP included preparation of a base map, slope analysis, an exhibit identifying usable land  
28 for the proposed solar installations, a conceptual site plan identifying the overall project

1 boundary and solar array layout, and additional services. As of the date of this Petition,  
2 Industry has not disclosed any of the records identified in the Professional Services  
3 Agreement to Diamond Bar, despite multiple PRA requests.

4           46. At the time of Industry's August 10 Response, Industry had not only  
5 entered into the Original Master Lease more than a year earlier, it had, by that time,  
6 executed the four Master Lease Amendments. And yet, the CD that Industry delivered to  
7 Diamond Bar on August 10 did not contain a complete, executed copy of the Original  
8 Master Lease, copies of any of the Master Lease Amendments, or any documents that  
9 evidenced the existence of the Master Lease Amendments.

10           47. Diamond Bar and Chino Hills did not discover the existence of any of  
11 the Master Lease Amendments until September 2, 2017, when Industry produced to Chino  
12 Hills invoices that made reference to the First Amendment and Second Amendment. On  
13 September 25, 2017, Chino Hills delivered a new PRA request to Industry requesting  
14 copies of the First Amendment, the Second Amendment and all other amendments to the  
15 Original Master Lease.

16           48. Diamond Bar is informed and believes, and thereon alleges, that the  
17 first time Industry provided any public notice regarding the existence of the Master Lease  
18 was in the Agenda for the October 12, 2017 Industry City Council meeting, attached to  
19 which were copies of the Original Master Lease and each Master Lease Amendment.

20           49. Prior to reviewing the October 12, 2017 Agenda package, neither  
21 Diamond Bar nor Chino Hills had ever seen copies of the four Master Lease Amendments,  
22 notwithstanding that they had, for many months, requested copies of all agreements  
23 between Industry and San Gabriel WP, and all documents related to the Solar Project  
24 pursuant to PRA requests.

25  
26                           **DIAMOND BAR'S NOVEMBER 9 PRA REQUESTS**  
27                           **AND INDUSTRY'S INITIAL RESPONSE**  
28

1                   50.    On November 9, 2017, Diamond Bar's counsel submitted a  
2 supplemental PRA request to Industry and the Successor Agency ("Diamond Bar's  
3 November 9 Industry PRA Request", attached hereto at Exhibit 1). The request noted that  
4 "Industry has thus far failed to produce any documents (other than invoices) prepared by  
5 any City employees or any consultants with respect to the planned solar project on Tres  
6 Hermanos or any email or other correspondence relating thereto, notwithstanding that the  
7 large teams of consultants retained by Industry and [San Gabriel WP] to develop the solar  
8 project have already been paid many millions of dollars and have presumably prepared and  
9 delivered significant work product."

10                   51.    Diamond Bar's November 9 Industry PRA Request asked Industry to  
11 provide copies of the following documents:

- 12                   a.    The balance of the responsive documents to Diamond Bar's  
13 June 27 PRA Request and Diamond Bar's August 3 PRA Request.
- 14                   b.    Responsive documents to Diamond Bar's August 3 Successor  
15 Agency PRA Request.
- 16                   c.    Documents responsive to Diamond Bar's June 27 PRA  
17 Request, Diamond Bar's August 3 PRA Request and Diamond Bar's August 3 Successor  
18 Agency PRA Request that had been created, obtained or come into Industry's possession  
19 since the date of those requests.
- 20                   d.    Agendas and meeting minutes from meetings at which Tres  
21 Hermanos was discussed, including a list of specific documents that had been omitted from  
22 Industry's prior disclosures.
- 23                   e.    Agendas and meeting minutes from meetings at which the  
24 Master Lease was discussed.
- 25                   f.    All of the Solar Project Documents, which included any and all  
26 memoranda, reports, studies, plans, analyses, maps, contracts, notes, emails,  
27 communications and correspondence relating in any manner to the sale of the development  
28 of Solar Projects on Tres Hermanos and/or any other portion of the Total Site, including

1 without limitation any such documents relating to (i) the location, planning, design,  
2 engineering or scheduling for the Solar Project, (ii) the environmental review for the Solar  
3 Project, including all CEQA documents and related technical reports, studies and  
4 schedules, (iii) the financing for the Solar Project, (iv) the purchase and sale and/or use of  
5 power generated by the Solar Project and (v) political support for the Solar Project.

6 g. The PSA Documents.

7 h. The Master Lease Documents.

8 i. Permit and other applications or approvals relating to the Solar  
9 Project.

10 j. Correspondence with specifically enumerated state and federal  
11 regulatory agencies relating to the Solar Project.

12 k. Any power purchase agreements related to the Solar Project.

13 l. Contracts and agreements between Industry and San Gabriel  
14 WP relating to the Solar Project.

15 m. A legible copy of the February 2016 J. P. Laurain appraisal  
16 report for Tres Hermanos that was not obstructed by the word "DEMO" written in block  
17 letters.

18 n. Documents relating to the Department of Finance's rejection of  
19 the Successor Agency's October 8, 2013 Long Range Property Management Plan  
20 ("LRPMP").

21 o. Documents related to the Successor Agency's amendments and  
22 revisions to the February 6, 2014 LRPMP.

23 p. Any appraisal report or document prepared by Keyser Marston  
24 in or around 2013 that estimated the value of Tres Hermanos for the LRPMP and any other  
25 document that reflects the basis of the current estimated value of Tres Hermanos in the  
26 LRPMP.

27 q. The most recent Statements of Economic Interest, California  
28 Fair Political Practices Commission Form 700, filings of Industry officials;

1 r. The Successor Agency's conflict-of-interest code.

2 s. The most recent Statements of Economic Interest, California  
3 Fair Political Practices Commission Form 700, filings of Successor Agency officials.

4 52. Also on November 9, 2017, Diamond Bar submitted a PRA request to  
5 the Oversight Board ("Diamond Bar's November 9 Oversight Board PRA Request,"  
6 attached hereto as **Exhibit 2**) asking it to provide copies of documents relating to Tres  
7 Hermanos, the PSA Documents and its governing documents.

8 53. On November 21, 2017, counsel for the parties in the Underlying  
9 Litigation convened a conference call to discuss preparation of the administrative record.  
10 The participants included James Casso and Bianca Sparks, counsel for Industry and the  
11 Successor Agency, Jack Rubens and Zachary Norris, counsel for Diamond Bar, Mark  
12 Hensley and Elizabeth Calciano, counsel for Chino Hills, and Suzanne Bryant, counsel for  
13 the Oversight Board. On that call, at Industry's request, Diamond Bar granted Industry an  
14 extension to Industry's obligation to respond to Diamond Bar's November 9 Industry PRA  
15 Request and Diamond Bar's November 9 Oversight Board PRA Request (collectively,  
16 "Diamond Bar's November 9 PRA Requests") until December 4, 2017.

17 54. On that November 21 conference call, when asked why Industry had  
18 not produced any of the Solar Project Documents, Mr. Casso represented that Industry did  
19 not have any Solar Project Documents in its possession, but rather that the Project  
20 Documents might be in the possession of Industry's lessee, San Gabriel WP, and the San  
21 Gabriel Consultants. Mr. Rubens responded that surely Industry must possess some of the  
22 Solar Project Documents, given the vast amount of money it had already expended on the  
23 Solar Project, and again questioned why Diamond Bar had not received any of the Solar  
24 Project Documents from Industry. Ms. Sparks indicated that Industry had produced "some  
25 emails from Cordoba," one of the Industry Consultants. When again asked whether  
26 Industry would disclose the Solar Project Documents, Mr. Casso refused to answer  
27 directly, but assured Diamond Bar that Industry would disclose all responsive, non-exempt  
28 records.

1           55.    On December 4, 2017, Industry responded to Diamond Bar's  
2 November 9 Industry PRA Request ("Industry's December 4 Response"). Industry stated  
3 that it had identified responsive documents with respect to all categories of requested  
4 documents, except for the requests regarding permits, applications, and correspondence  
5 with regulators relating to the Solar Project. Industry further stated that, due to the  
6 "voluminous nature of the request," it would "provide documents to Diamond Bar on a  
7 rolling basis," with the first set of documents to be made available on December 8, 2017.

8           56.    Once again, Industry's December 4 Response, in violation of the PRA,  
9 did not state an estimated date on which it would disclose all responsive records. Industry  
10 stated that it was withholding documents from production pursuant to the attorney-client  
11 and work-product privileges and that certain documents had been redacted so as not to  
12 disclose bank account numbers. The letter was signed by William P. Morrow, City  
13 Clerk/Board Secretary, who attested that he was responsible for the determination  
14 concerning Diamond Bar's PRA request.

15           57.    Also on December 4, 2017, Industry responded to Diamond Bar's  
16 November 9 Oversight Board PRA Request. Industry stated that it had produced  
17 responsive documents pursuant to Diamond Bar's previous requests and agreed to provide  
18 additional responsive documents in its possession on December 8, 2017. This letter was  
19 also signed by Mr. Morrow, City Clerk/Board Secretary, who attested that he was  
20 responsible for the determination concerning Diamond Bar's PRA request.

21           58.    On December 7, 2017, Zachary Norris, counsel for Diamond Bar, sent  
22 a letter to Industry stating that Industry's response that records would be produced on a  
23 "rolling basis" fails to satisfy the PRA's requirements because the PRA requires Industry to  
24 identify the estimated date that the remaining records will be made available. Pursuant to  
25 Government Code Section 6253(c), "if the agency determines that the request seeks  
26 disclosable public records, the agency shall state the estimated date and time when the  
27 records will be made available."  
28



1 quickly determined that 668 of the 686 pages of the PDF were identical in every respect to  
2 one of the PDF files that Industry had produced on December 8, 2017.

3           63. On January 2, 2018, Mr. Rubens distributed to counsel for all parties  
4 to the Underlying Lawsuits a proposed Stipulation re Administrative Record  
5 ("Stipulation") that commemorated the agreements reached on the December 13  
6 conference call. Specifically, (a) Industry would, by January 26, 2018, provide all records  
7 responsive to Diamond Bar's November 9 Requests, (b) Diamond Bar would review all  
8 produced documents by February 21, (c) the parties would hold the CEQA settlement  
9 conference on March 7 and (d) Respondents would file and serve the required preliminary  
10 notification regarding the administrative record by March 9. On the same day, Ms. Sparks  
11 responded to Mr. Rubens' email and confirmed receipt of the draft stipulation.

12           64. On January 4, Ms. Sparks responded to Mr. Rubens with Industry's  
13 requested revisions to the proposed Stipulation. Notably, Industry did not alter the date by  
14 which it agreed to produce all documents responsive to Diamond Bar's November 9 PRA  
15 Requests, which remained January 26, 2018.

16           65. Also on January 4, the Court in Department 82 held a status  
17 conference with respect to the Underlying Lawsuits at which counsel for Industry and the  
18 Successor Agency, the Oversight Board, San Gabriel WP, Diamond Bar and Chino Hills  
19 made appearances. During a discussion of preparation of the administrative record for  
20 those lawsuits, counsel for Industry and the Successor Agency represented to the Court  
21 that the parties had reached agreement in principle regarding timing and were working on a  
22 stipulation. Counsel for Diamond Bar indicated that Industry had not yet, and likely would  
23 not, produce any substantive documents related to the Solar Project, in which case a PRA  
24 lawsuit would be required. The Court continued the status conference to March 20, 2018.

25           66. On January 9, 2018, counsel for Diamond Bar circulated to all parties  
26 to the Underlying Lawsuits a revised Stipulation that incorporated a number of the changes  
27 requested by Industry. As with the previous versions, the revised Stipulation stated that  
28

1 Industry would produce all documents responsive to Diamond Bar's November 9 PRA  
2 Requests by January 26, 2018.

3           67. After reviewing the documents Industry produced on December 22,  
4 counsel for Diamond Bar sent a January 10, 2018 letter to Industry, which pointed out that  
5 Industry had yet to produce any Solar Project Documents, notwithstanding that Industry  
6 had already reimbursed San Gabriel WP at least \$10 million of public funds for such work  
7 product, and asked for an explanation of why no Solar Project Documents had been  
8 disclosed. Diamond Bar's letter also noted that the December 22 documents were almost  
9 entirely duplicative of previous productions and asked that Industry refrain from providing  
10 more duplicative documents in order to avoid unnecessary document review costs.

11           68. For more than two weeks, Industry did not respond to the January 9  
12 email attaching the revised Stipulation. On January 24, counsel for Diamond Bar sent an  
13 email to all parties to the Underlying Lawsuits, reminding them that they had represented  
14 to the Court that the Stipulation was pending and requesting a response to the January 9  
15 email attaching the revised Stipulation. Counsel for Industry responded later that day with  
16 proposed minor revisions, all of which were acceptable to Diamond Bar.

17           69. On January 26, 2018, Industry disclosed what Diamond Bar  
18 understood to be the final set of documents responsive to Diamond Bar's November 9 PRA  
19 Requests. Industry produced two CDs, one that contained a single PDF with a video of  
20 drone footage showing Tres Hermanos and the other containing 18 PDFs with  
21 approximately 6,316 pages of documents ("Industry's January 26 Response").

22           70. The cover letter accompanying Industry's January 26 Response  
23 characterized that response as a "supplement" to Industry's December 4 Response.  
24 Although Industry had, on December 4, 2017, indicated that it did not possess any records  
25 responsive to Diamond's request for correspondence with the enumerated federal and state  
26 regulatory agencies relating to the Solar Project, Industry's January 26 Response indicated  
27 that it did, in fact, have such documents in its possession, including a March 15, 2017 letter  
28

1 from Industry to California's Independent System Operator that Industry had inexplicably  
2 concealed for almost ten months.

3           71. In addition, Industry's January 26 Response, delivered seven months  
4 after Diamond Bar's first PRA request, for the first time indicated that Industry was  
5 withholding responsive documents pursuant to the deliberative process and closed session  
6 privileges. Industry did not provide any details to support its invocation of the deliberative  
7 process privilege other than to say "disclosure would discourage candid discussion within  
8 the City and thereby undermine the agency's ability to perform its function." Industry's  
9 invocation of the closed session privilege similarly lacked detail sufficient to verify its  
10 veracity. Industry's January 26 Response was signed by Ms. Sparks, who stated she was  
11 responsible for the determination regarding Diamond Bar's information request.

12           72. Also on January 26, 2018, Industry responded to Mr. Norris' January  
13 10 letter. Industry refused to "accommodate" Diamond Bar's request that Industry cease  
14 from producing large numbers of duplicative documents. Industry responded in general  
15 terms to Diamond Bar's inquiries regarding certain redacted documents, but refused to  
16 provide any information supporting the privileges Industry claimed. Industry's letter was,  
17 not surprisingly, silent regarding whether it would produce any of the Solar Project  
18 Documents and did not provide any explanation of the grounds on which Industry is  
19 withholding them.

20                           **INDUSTRY ATTEMPTS TO FURTHER DELAY**  
21                           **THE UNDERLYING LAWSUITS**

22           73. On January 29, 2018, Mr. Norris circulated by email to all counsel in  
23 the Underlying Lawsuits the final version of the Stipulation, which incorporated the final  
24 revisions requested by Industry, as well as a related stipulation with respect to the Chino  
25 Hills Underlying Lawsuit (collectively, the "Stipulations"). Mr. Norris asked everyone to  
26 sign the Stipulations and email back the signature pages, and stated that Diamond Bar and  
27 Chino Hills would then file the Stipulations.

1           74. Ms. Sparks responded later that day and confirmed that Industry had  
2 received the final Stipulations. She added that, on January 25, 2018, Industry and the  
3 Industry Public Utility Commission had terminated their agreements with attorney  
4 Anthony Bouza, "who was responsible for handling the Tres Hermanos matter." Ms.  
5 Sparks represented that Industry would require time to review Mr. Bouza's files to  
6 determine whether there were "any additional, non-exempt documents responsive to the  
7 PRA requests." Ms. Sparks did not explain why Industry had apparently not, at the time  
8 Chino Hills submitted its first PRA request to Industry in February 2017, or even at the  
9 time Diamond Bar submitted Diamond Bar's June 27 and November 9 PRA Requests,  
10 required Mr. Bouza to review his files and produce any responsive, non-exempt  
11 documents.

12           75. On February 5, 2017, Mr. Norris, counsel for Diamond Bar, emailed  
13 all counsel in the Underlying Lawsuits and requested an update regarding execution of the  
14 Stipulations. Within one day thereafter, Diamond Bar received signed copies of the  
15 Stipulations from Chino Hills, San Gabriel WP and the Oversight Board. It still, however,  
16 did not receive any response from Industry and the Successor Agency.

17           76. On the afternoon of February 6, Mr. Norris emailed Ms. Sparks and  
18 Mr. Casso, counsel for Industry and the Successor Agency, and asked whether Industry's  
19 position on the Stipulations had changed.

20           77. On February 7, 2018, Ms. Sparks sent an email to Mr. Norris that  
21 read, in its entirety: "A matter has come up that requires us to consult with our client. We  
22 hope to be able to circle back with you tomorrow afternoon."

23           78. On February 9, 2018, counsel for Industry, the Successor Agency,  
24 Chino Hills and Diamond Bar participated in a conference call. On that call, Industry  
25 advised that it would like to "generously" extend its deadline to respond to Diamond Bar's  
26 November 9 PRA Requests. Ms. Sparks advised that, after Industry's January 26  
27 document production, "City staff did an additional sweep of emails" and located on the  
28 order of 5,000-10,000 emails that were potentially responsive to Diamond Bar's November

1 9 PRA Requests. She also reiterated that Industry was reviewing the files of attorney Tony  
2 Bouza for additional responsive documents. Finally, Ms. Sparks stated that Industry was  
3 "in the process of trying to obtain additional documents from third parties."

4           79. What Industry did *not* state on the February 9 conference call is  
5 noteworthy. Despite repeated questions on the subject, counsel for Industry were unable to  
6 explain why 5,000-10,000 emails, the records of an attorney working on the Solar Project,  
7 and unspecified third-party documents had not previously been produced. When  
8 repeatedly asked to identify the specific third parties to which they referred, Ms. Sparks  
9 and Mr. Casso responded cryptically that they were "third parties that have a contract with  
10 the city or related to the transaction." Ms. Sparks and Mr. Casso refused to respond  
11 directly to the point-blank question of whether San Gabriel WP or its affiliates were among  
12 those third parties, although they later implied that San Gabriel WP was among the third-  
13 parties. Similarly, when asked whether Industry would produce any Solar Project  
14 Documents, Mr. Casso once again demurred, stating: "I would love to tell you what  
15 documents we will be able to produce, but I haven't seen them." When asked why, after  
16 many months of back-and-forth, Industry still had not produced any Solar Project  
17 Documents, Ms. Sparks curiously stated "we were not the attorneys handling that,"  
18 notwithstanding that Ms. Sparks had personally signed the Industry's January 26 Response  
19 letter and stated she was responsible for Industry's response.

20           80. Based on the February 9, 2018 conference call with Industry's  
21 counsel, Diamond Bar is informed and believes, and thereon alleges, that, contrary to the  
22 requirements of the PRA, Industry failed, for over one year following Chino Hills'  
23 February 9 PRA Request and for over seven months following Diamond Bar's June 27  
24 PRA Request, to perform an adequate search of its staff's email servers to identify records  
25 responsive to Diamond Bar's and Chino Hills' PRA requests and that Industry failed to  
26 communicate the nature of the records requested to all of its custodians of records,  
27 including Tony Bouza and third parties involved in the Solar Project such as San Gabriel  
28 WP and the Solar Project Consultants. In the alternative, Industry is in possession of the

1 Solar Project Documents and has refused to disclose those documents based on a spurious  
2 exemption claim or in an effort to delay the Underlying Lawsuits. In either event, Industry  
3 is in violation of the PRA.

4           81. Later on February 9, Ms. Sparks distributed a further revised  
5 Stipulation with respect to the Diamond Bar Underlying Lawsuit that did indeed  
6 "generously" extend the various action dates in the Stipulation. Specifically, it (a)  
7 extended the outside date to respond to Diamond Bar's November 9 PRA Requests from  
8 January 26 to May 1 (which would have allowed Industry almost **six months** to respond to  
9 the most recent PRA requests), (b) extended Diamond Bar's outside date to review the  
10 PRA documents from February 21 to June 15, (c) extended the settlement conference date  
11 from March 7 to July 9 and (d) extended Respondents' deadline to file and serve the  
12 preliminary notification from March 9 to July 16.

13           82. In a February 14, 2018 letter, attached hereto as Exhibit 3, Mr.  
14 Rubens, counsel for Diamond Bar, responded on behalf of both Diamond Bar and Chino  
15 Hills to Industry's proposed revisions to the Stipulation. That letter provided that Diamond  
16 Bar and Chino Hills would not agree to further delays, that Industry had more than ample  
17 opportunity to provide responsive documents, and that its ongoing and unexplained failure  
18 to do so violated the PRA. It also stated that "it remains evident that Industry has no  
19 intention of providing any responsive documents relating to the planned solar project on  
20 Tres Hermanos." It then summed up the situation:

21           "It is now apparent that, whatever the reasons, Industry wants  
22 to delay the adjudication of the lawsuits and is bootstrapping its  
23 own failure to comply with the PRA to extend the litigation. It  
24 is equally apparent that Industry is not going to provide any  
25 solar project documents without a court order and has withheld  
26 other responsive documents for approximately one year.

27           Therefore, Diamond Bar and Chino Hills intend to file lawsuits  
28 to enforce the PRA and ensure that the administrative records  
include all required documents."

1 Acknowledging that "the adjudication of the PRA lawsuit will, unfortunately, delay the  
2 preparation of the administrative record," Mr. Rubens offered to extend Respondents'  
3 deadline to file the Preliminary Notification and the date for the Settlement Conference.

4 83. Ms. Sparks responded to Mr. Rubens' letter on February 15, 2018.  
5 She offered no direct response to any of the points raised by Mr. Rubens, and instead  
6 simply restated her original story. She also did not respond regarding the Preliminary  
7 Notification or Settlement Conference.

8 84. On February 25, 2018, Mr. Rubens responded to Ms. Sparks' email.  
9 He pointed out that Industry should have requested documents from Tony Bouza when  
10 Chino Hills and Diamond Bar submitted their initial PRA requests and that Industry had  
11 not provided any explanation of why, more than a year after the first PRA request, it has  
12 only now located thousands of emails that were not previously produced and was only now  
13 trying to obtain documents from third parties related to the Solar Project. He concluded:

14 Simply put, your email is virtually non-responsive to our letter  
15 and provides no credible explanation of why the three "new"  
16 categories of documents you've identified could not have been  
17 reviewed and disclosed many months ago, or by January 26. If  
18 Industry was truly acting in good faith [as Ms. Sparks had  
19 claimed], you would explain what's going on here. Since you  
20 have again declined to do so, it remains difficult to escape the  
21 conclusion that Industry seeks to further extend its response time  
22 to Diamond Bar's and Chino Hills' PRA requests to delay the  
23 timely adjudication of their lawsuits. Therefore, Industry has left  
24 Diamond Bar and Chino Hills with no choice but to enforce their  
25 rights under the PRA.

26  
27  
28  
**RESPONDENTS HAVE FAILED OR REFUSED TO PRODUCE ANY OR  
ALL OF THE SOLAR PROJECT DOCUMENTS, PSA DOCUMENTS AND  
MASTER LEASE DOCUMENTS AND HAVE WITHHELD  
RECORDS BASED ON ERRONEOUS PRIVILEGE CLAIMS**

85. To date, Industry has produced thousands of documents in response to  
Diamond Bar's and Chino Hills' various PRA requests. However, those documents have  
largely consisted of a classic "document dump" that includes thousands of pages of non-

1 responsive records that do not relate to Tres Hermanos or the Solar Project, but rather to  
2 Industry's Nelson Business Park, a MetroLink solar project (unrelated to Tres Hermanos),  
3 regrading and repaving of certain streets, Industry's On Call Traffic Proposal, the Mayor's  
4 home upgrades, and a myriad of other projects. The documents produced by Industry that  
5 do concern Tres Hermanos or the Solar Project have largely been limited to multiple  
6 copies of the same documents, including invoices submitted to Industry by San Gabriel  
7 WP for reimbursement of San Gabriel Consultant costs, email correspondence related to  
8 the reimbursement requests, various meeting agendas and attached materials, meeting  
9 minutes, documents related to the Successor Agency's LRPMP, and the governing  
10 documents of the Successor Agency and Oversight Board.

11           86. Industry has not produced a single substantive Solar Project  
12 Document in response to Diamond Bar's and Chino Hills' several PRA requests, except for  
13 the draft Power Purchase Agreement and the Master Lease, and it withheld the documents  
14 that comprise the Master Lease as long as it possibly could, until October 2017. As  
15 alleged above, Diamond Bar is informed and believes, and thereon alleges, either (a)  
16 Industry has failed to communicate the substance of the PRA requests to its third-party  
17 custodians of documents or (b) Industry is in possession of Solar Project Documents and  
18 has intentionally withheld them, apparently based on the claim that it does not have  
19 possession of any of them, notwithstanding that (i) Industry has already paid  
20 approximately \$27 million for the work product of the Solar Project Consultants and (ii)  
21 Industry directly controls the work product of the Industry Consultants for which it has  
22 already paid approximately \$7 million. Moreover, other than some of the invoices for the  
23 work performed by the Solar Project Consultants, Industry has provided only minimal and  
24 non-substantive emails or other correspondence between Industry, San Gabriel WP and the  
25 Solar Project Consultants regarding the planned Solar Project.

26           87. Industry has not produced any PSA Documents that were not included  
27 in agenda packets of public meetings at which the sale of Tres Hermanos was discussed.  
28 Diamond Bar is informed and believes that Respondents are in possession of numerous

1 other disclosable documents related to the purchase and sale of Tres Hermanos, but have  
2 failed to produce copies of those documents to Diamond Bar.

3           88. Industry has not produced any Master Lease Documents other than  
4 the Master Lease, a partial draft of the Original Master Lease, and the agenda for the  
5 October 12, 2017 Industry City Council meeting at which the City Council purported to  
6 "ratify" the Master Lease. Conspicuously omitted are any records that disclose how the  
7 Master Lease came to be and any records reflecting the negotiation or implementation of  
8 the Master Lease. Diamond Bar is informed and believes, and thereon alleges, that  
9 Respondents are in possession of numerous other disclosable documents related to the  
10 Master Lease, but have failed to produce copies of those documents to Diamond Bar.

11           89. In response to Diamond Bar's PRA requests, Industry has engaged in  
12 a pattern and practice of withholding documents based on untenable claims of exemption  
13 (previously defined as the "Redacted Documents"), including the following:

14           a. Emails between Industry staff and third parties. For example,  
15 Industry has redacted portions of an April 3, 2017 email from John Gordon, an attorney  
16 representing a developer that offered to purchase Tres Hermanos for \$101 million, to  
17 Diane Schlichting, Industry Deputy City Clerk, which Diamond Bar is informed and  
18 believes, and thereon alleges, is not subject to any PRA exemption. Similarly, Industry has  
19 redacted the entirety of an email that appears to have been sent from Bill Barkett, who  
20 Diamond Bar is informed and believes, and thereon alleges, is an officer of San Gabriel  
21 WP, to Susan Paragas, Industry's Treasurer. Ms. Paragas responded to the email on  
22 August 22, 2016 and the response is not redacted. Diamond Bar is informed and believes,  
23 and thereon alleges, that Industry does not have valid grounds on which to redact the email  
24 sent by Mr. Barkett.

25           b. Emails between Industry's public affairs consultants and  
26 members of the press and public, including the following: a September 2, 2016 email from  
27 Becky Warren of the Dolphin Group to Jason Henry, a staff reporter for the San Gabriel  
28 Valley Tribune, with the subject "RELEASE: City of Industry to Consider the Purchase of

1 Tres Hermanos Ranch"; a January 20, 2017 email from David Carmany, City Manager for  
2 the City of La Puente, to Adriana Fernandez of Elevated Public Affairs, with the subject  
3 "Tres Hermanos letter of support"; a July 7, 2017 email from Becky Warren to Jason  
4 Henry with no subject; an October 30, 2017 email from Marrienne Napoles, a reporter for  
5 Champion Newspapers and Becky Warren, with the subject "Conceptual map of solar  
6 farm"; a November 8, 2017 email from Marianne Napoles to Becky Warren requesting that  
7 Ms. Warren forward certain inquiries to James Casso, Industry's City Attorney. Diamond  
8 Bar is informed and believes, and thereon alleges, that Industry has redacted these and  
9 other emails without justification.

10 c. Numerous emails between Industry and its public relations  
11 consultants, including the following: an April 26, 2017 email from Adriana Fernandez to  
12 Becky Warren, with the subject "Tres Hermanos Ranch – April Special Oversight Board  
13 Meeting"; a May 8, 2017 email from Paul Philips to Becky Warren with no subject; an  
14 August 23, 2017 email from Paul Philips to Becky Warren, copying Adriana Fernandez,  
15 with the subject "Tres Hermanos FAQ for Review and Update"; an August 26, 2017 email  
16 from Paul Philips to Becky Warren and Adriana Fernandez, with the subject "SGVWP"; an  
17 August 30, 2017 email from Paul Philips to Becky Warren, with the subject "OB Decision  
18 to Sell Tres Hermanos"; a September 5, 2017 email from Paul Philips to Becky Warren,  
19 with the subject "Privileged and Confidential"; an October 2, 2017 email from Becky  
20 Warren to Paul Philips, with the subject "Press Release: LA County Park & Rec Agenda  
21 Item"; a November 3 email from Becky Warren to Paul Philips, with the subject "Industry  
22 OB Action 2017-05"; a November 6, 2017 email from Paul Philips to Becky Warren, with  
23 the subject "SGVT: California's Department of Finance Refuses to Review City of  
24 Industry's \$41.67 Million Purchase of Tres Hermanos Ranch". Diamond Bar is informed  
25 and believes, and thereon alleges, that Industry has redacted these and other emails without  
26 justification.

27 d. Emails between Industry's attorneys and third parties. For  
28 example, on August 22, 2016, Industry's attorney Tony Bouza responded to an inquiry

1 from Bill Barkett related to reimbursements for Solar Project costs incurred by San Gabriel  
2 WP. Industry has redacted in its entirety, however, the original inquiry from Mr. Barkett  
3 to Mr. Bouza. Diamond Bar is informed and believes, and thereon alleges, that Industry's  
4 redaction of this and other emails between Industry's attorney and third parties is  
5 unjustified.

6 e. Emails that may have been privileged at the time they were  
7 sent, but which were subsequently forwarded to third parties thereby waiving the privilege.  
8 For example, on August 22, 2016 Susan Paragas forwarded to Danielle Chupa of Cordoba  
9 Corporation "a report [she] sent to Tony Bouza regarding the additional information  
10 needed on most of the invoices submitted by Bill Barkett." The entire forwarded email is  
11 redacted, despite that by forwarding the email to Ms. Chupa, a third party, Industry waived  
12 any claim that the email was privileged.

13 f. Industry has redacted a portion of a sentence on numerous  
14 Request for Wire forms. The sentence reads: "Purpose: City Council authorized  
15 reimbursement for due diligence work related to property research [redacted text]." It is  
16 unknown on what grounds that Industry may justify redacting a portion of that sentence.

17 g. Industry has redacted portions of invoices related to work  
18 performed on the Solar Project by the law firms Downey Brand and Day, Carter &  
19 Murphy. Downey Brand and Day, Carter & Murphy represent San Gabriel WP, not  
20 Industry, and therefore Industry has no claim to attorney-client privilege for the invoices.  
21 Diamond Bar is informed and believes, and thereon alleges, that San Gabriel WP  
22 submitted the unredacted invoices to Industry as evidence of work performed to support  
23 San Gabriel WP's claim for reimbursement under Section 25.1.1 of the Master Lease. Any  
24 potential privilege claim for information contained in those invoices is held by San Gabriel  
25 WP, but by surrendering the unredacted invoices to Industry for reimbursement, San  
26 Gabriel WP waived the privilege. The invoices that San Gabriel WP submitted to Industry  
27 for reimbursement are not exempt from disclosure under the PRA.

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1           94.    Industry's failure and refusal to disclose and provide copies of the  
2 Solar Project Documents violated Section 6253(b), as follows:

3                   a.    Diamond Bar's June 27 PRA Request and Diamond Bar's  
4 August 3 PRA Request asked Industry to provide copies of all of the Solar Project  
5 Documents, including records related in any way to any solar energy project or water  
6 storage, transmission, or generating project proposed on or in the Tres Hermanos  
7 boundaries, including all records related to consultant contracts, project studies,  
8 environmental studies, as well as other records which relate in any way to the planned  
9 Solar Project.

10                   b.    Diamond Bar's November 9 Industry PRA Request asked  
11 Industry to provide copies of all of the Solar Project Documents, including any and all  
12 memoranda, reports, studies, plans, analyses, maps, contracts (and all amendments  
13 thereto), notes, emails, communications and correspondence (including in all cases all  
14 attachments thereto) relating in any manner to the development of a solar project or solar  
15 projects on Tres Hermanos and/or any other property leased to San Gabriel WP pursuant to  
16 the Master Lease, including without limitation any such documents relating to (i) the  
17 location, planning, design, engineering or scheduling for the Solar Project, (ii) the  
18 environmental review for the Solar Project, including all CEQA documents and related  
19 technical reports, studies and schedules, (iii) the financing for the Solar Project, (iv) the  
20 purchase and sale and/or use of power generated by the Solar Project and (v) political  
21 support for the Solar Project.

22                   c.    Industry has failed to disclose any substantive Solar Project  
23 Documents, except for the Master Lease and draft Power Purchase Agreement, in response  
24 to Diamond Bar's June 27, August 3, and November 9 PRA requests.

25                   d.    Government Code Section 6252(e) defines the term "public  
26 record" as "any writing containing information **relating to the conduct of the people's**  
27 **business prepared, owned, used, or retained** by any state or local agency regardless of  
28 physical form or characteristics" (emphasis added). This definition is broad and intended

1 to cover every conceivable kind of record that is involved in the governmental process.  
2 *Coronado Police Officers Assn. v. Carroll*, 106 Cal. App. 4th 1001, 1006 (2003). The  
3 Solar Project Documents are "public records" under Section 6252(e), as follows:

4 i. The Solar Project Documents "relate to the conduct of  
5 the public's business," as follows:

6 A. The public has a right to know the purpose for  
7 which Industry has expended public funds. Diamond Bar is informed and believes, and  
8 thereon alleges, that Industry has spent approximately \$20 million of taxpayer funds  
9 reimbursing San Gabriel WP for work performed by the San Gabriel Consultants related to  
10 the Solar Project. Diamond Bar is further informed and believes, and thereon alleges, that  
11 the reimbursements to San Gabriel WP have largely been approved in closed session and  
12 hidden from the public. Diamond Bar is further informed and believes, and thereon  
13 alleges, that Industry has expended over \$7 million for work that the Industry Consultants  
14 have performed related to the Solar Project.

15 B. Tres Hermanos is a large, environmentally-  
16 significant property that is among the last large tracts of undeveloped land in the greater  
17 Los Angeles area. Industry's proposed development of the planned Solar Project on Tres  
18 Hermanos would have a number of potentially significant environmental impacts,  
19 including significant impacts on wildlife, cultural resources and aesthetics. Tres Hermanos  
20 is located within Diamond Bar and Chino Hills, and not in Industry, so the impacts would  
21 fall largely on the residents of Diamond Bar and Chino Hills.

22 C. One of the goals of CEQA is to "inform  
23 governmental decision makers and the public about the potential, significant  
24 environmental effects of proposed activities." 14 Cal Code Regs § 15002(a)(1). The Solar  
25 Project Documents are instrumental to the Underlying Lawsuits, which allege, *inter alia*,  
26 that Respondents failed to comply with CEQA in approving the Master Lease and the Tres  
27 Hermanos PSA.

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1 D. Many of the parcels that comprised Tres  
2 Hermanos are zoned for residential use, including for the purpose of meeting the many  
3 mandates of State law with respect to development of affordable housing. As a result of  
4 Respondents' failure and refusal to disclose the Solar Project Documents, it is unclear  
5 whether the Solar Project will accommodate those zoning interests.

6 ii. The Solar Project Documents are "owned" by Industry,  
7 as follows:

8 A. A public agency owns a document when it has a  
9 contractual right to possess and control the document, even if it does not exercise that  
10 contractual right. *Community Youth Athletic Center v. City of National City*, 220 Cal. App.  
11 4th 1385, 1428 (2013).

12 B. Section 1.3 of the Master Lease requires San  
13 Gabriel WP to deliver to Industry a copy of all results from site diligence activities relating  
14 to a potential Solar Project. The Solar Project Documents include, but are not limited to,  
15 the results from site diligence activities that were required to have been transmitted to  
16 Industry pursuant to Section 1.3. Industry "owns" those Solar Project Documents  
17 regardless of whether San Gabriel WP actually transmitted them to Industry and regardless  
18 of whether they are physically located in Industry's or San Gabriel WP's files.

19 C. Section 24.2 of the Master Lease provides that,  
20 prior to developing any Solar Project on Tres Hermanos, San Gabriel WP will submit to  
21 Industry detailed information regarding proposed photovoltaic solar projects as described  
22 in paragraph 26.C, above. The draft Power Purchase Agreement indicates that San Gabriel  
23 WP and Industry are in the advanced stages of considering the development of at least one  
24 Solar Project on Tres Hermanos, and that San Gabriel WP may have submitted a request  
25 under Section 24.2 to Industry. The Solar Project Documents include any documents  
26 containing the information required under Section 24.2 of the Master Lease that San  
27 Gabriel WP has submitted to Industry. Industry "owns" those Solar Project Documents  
28 under the PRA regardless of whether it has retained them in its files or whether those Solar

1 Project Documents are physically located in the files of Industry, the Successor Agency,  
2 San Gabriel WP or any of the Solar Project Consultants.

3 D. Section 25.1.1 of the Master Lease provides  
4 Industry a right to demand evidence and a copy of any work performed for which San  
5 Gabriel WP has requested reimbursement from Industry. Diamond Bar is informed and  
6 believes, and thereon alleges, that Industry has reimbursed San Gabriel WP in the  
7 approximate amount of \$20 million for work by the San Gabriel Consultants on the  
8 planned Solar Project. The Solar Project Documents include evidence and copies of work  
9 performed by the San Gabriel Consultants for which San Gabriel WP has requested  
10 reimbursement from Industry, and which Industry has a right to demand under Section  
11 25.1.1 of the Master Lease. Industry "owns" those Solar Project Documents under the  
12 PRA regardless of whether it has exercised its contractual right to demand them and  
13 regardless of whether those Solar Project Documents are physically located in the files of  
14 Industry, the Successor Agency, San Gabriel WP or any of the Solar Project Consultants.

15 E. Diamond Bar is informed and believes, and  
16 thereon alleges, that Industry maintains Solar Project Documents in its files that Industry  
17 has not disclosed to Diamond Bar pursuant to Diamond Bar's PRA requests.

18 iii. The Solar Project Documents are "used" by Industry, as  
19 follows:

20 A. Section 24.2 of the Master Lease provides that,  
21 prior to developing any Solar Project at Tres Hermanos, San Gabriel WP will submit to  
22 Industry detailed information regarding proposed photovoltaic solar projects, as described  
23 in paragraph 26.C, above. Section 24.3 of the Master Lease gives Industry the right to  
24 review the materials submitted by San Gabriel WP and to either approve or disapprove the  
25 proposed Solar Project at its sole discretion. If Industry approves the request, it must (1)  
26 contribute 50% of the required capital expenditures (net of indebtedness), (2) construct and  
27 pay for required infrastructure and (3) pay for 50% of any construction overruns (the  
28 "Industry Contribution"). In return, Industry will receive the greater of (4) the fair market

1 rental value of the applicable portion of the Total Site plus 12% of the net operating  
2 income for the project, (5) 6% annual return on the Industry Contribution and (6) 50% of  
3 (a) the net operating income for the project plus (b) any net extraordinary gains from the  
4 sale or refinancing of the solar project. The draft Power Purchase Agreement indicates  
5 that San Gabriel WP and Industry are in the advanced stages of considering the  
6 development of at least one Solar Project on Tres Hermanos, and that San Gabriel WP may  
7 have already submitted a request under Section 24.2 to Industry.

8 B. The Solar Project Documents are "used" by  
9 Industry to determine the desirability and feasibility of proposed Solar Projects and to  
10 make decisions regarding whether to fund the proposed Solar Projects under Sections 24.2  
11 and 24.3 of the Master Lease.

12 C. The Solar Project Documents are also "used" by  
13 Industry to confirm expenditures for which San Gabriel WP has requested reimbursement  
14 and to verify that the San Gabriel Consultants are performing the work for which Industry  
15 has reimbursed San Gabriel WP under the Section 25.1.1 of the Master Lease.

16 iv. The Solar Project Documents are "retained" by Industry,  
17 as follows:

18 A. Whether a document is retained by a public  
19 agency does not turn on where the document is located. *City of San Jose v. Superior*  
20 *Court*, 2 Cal. 5th 608, 623 (2017). For public records to be disclosable, the public agency  
21 must possess the records. Cal. Gov't Code § 6253(c). Possession means both actual and  
22 constructive possession. *Consolidated Irrigation Dist. v. Superior Court*, 205 Cal. App.  
23 4th 697, 710 (2012). An agency has constructive possession of records if "it has the right  
24 to control the records, either directly or through another person." *Id.*

25 B. Diamond Bar is informed and believes, and  
26 thereon alleges, that all or some portion of the Solar Project Documents are retained in  
27 Industry's files, but Industry has not disclosed them in response to Diamond Bar's  
28 November 9 Industry PRA Request.

1 C. Diamond Bar is informed and believes, and  
2 thereon alleges, that all or a portion of the Solar Project Documents are physically located  
3 in the files of San Gabriel WP and the Solar Project Consultants.

4 D. Diamond Bar is informed and believes, and  
5 thereon alleges, that pursuant to its contracts with the Industry Consultants, Industry has  
6 the right to possess or control Solar Project Documents that are physically located in the  
7 files of the Industry Consultants.

8 E. Diamond Bar is informed and believes, and  
9 thereon alleges, that all or some portion of the Solar Project Documents are physically  
10 located in the files of San Gabriel WP. Diamond Bar is further informed and believes, and  
11 thereon alleges, that Industry has the right to possess or control the Solar Project  
12 Documents that are physically located in San Gabriel WP's files pursuant to Sections 1.3,  
13 24.2, and 25.1.1 of the Master Lease.

14 F. Diamond Bar is informed and believes, and  
15 thereon alleges, that all or some portion of the Solar Project Documents are physically  
16 located in the files of the San Gabriel Consultants. Diamond Bar is further informed and  
17 believes, and thereon alleges, that San Gabriel WP has the right to control or possess Solar  
18 Project Documents that are physically located in the files of the San Gabriel Consultants  
19 pursuant to its contracts with the San Gabriel Consultants.

20 G. Industry has a contractual right to possess or  
21 control the Solar Project Documents, and therefore the Solar Project Documents are  
22 "retained" by Industry under the PRA, regardless of whether the Solar Project Documents  
23 are physically located at Industry's offices or the office of the San Gabriel WP or the Solar  
24 Project Consultants.

25 95. Respondents' failure and refusal to disclose and provide copies of the  
26 PSA Documents violated Government Code Section 6253(b), as follows:

27 a. Diamond Bar's November 9, 2017 PRA Requests asked  
28 Respondents to disclose and provide copies of the PSA Documents, including "[a]ny and

1 all memoranda, reports, studies, plans, analyses, notes, contract, emails, communications,  
2 and correspondence (including in all cases all attachments thereto) relating in any manner  
3 to the sale of Tres Hermanos to the City of Industry or any other individual or entity."

4           b.       In response to Diamond Bar's November 9 PRA Requests,  
5 Respondents have disclosed only PSA Documents that were included in the agenda  
6 packets for various public meetings.

7           c.       Diamond Bar is informed and believes, and thereon alleges,  
8 that Respondents have in their possession or control numerous other PSA Documents that  
9 are not exempt from disclosure under the PRA and that have not been disclosed and  
10 provided to Diamond Bar, including, but not limited to, documents that evidence the origin  
11 of Industry's interest in purchasing Tres Hermanos, Industry's due diligence prior to the  
12 approval of the Tres Hermanos PSA, the negotiation of the terms of the Tres Hermanos  
13 PSA, as well as prior versions of the purchase and sale agreement between the Successor  
14 Agency and Industry, the Oversight Board's consideration of the reasonableness of the  
15 terms of the Tres Hermanos PSA, and Industry's intended future plans for the development  
16 of Tres Hermanos.

17           d.       Government Code Section 6252(e) defines the term "public  
18 record" as "any writing containing information relating to the **conduct of the people's**  
19 **business prepared, owned, used, or retained** by any state or local agency regardless of  
20 physical form or characteristics" (emphasis added). The definition is broad and intended  
21 to cover every conceivable kind of record that is involved in the governmental process.  
22 *Coronado Police Officers Assn. v. Carroll*, 106 Cal. App. 4th 1001, 1006 (2003). The  
23 PSA Documents are "public records" under Section 6252(e), as follows:

24           i.       The PSA documents relate to the conduct of the people's  
25 business in that they involve the Successor Agency's sale of Tres Hermanos to Industry at  
26 a greatly discounted price of \$41.65 million. Diamond Bar and Chino Hills are among the  
27 "taxing entities" entitled to a portion of the proceeds from the sale and the residents of  
28 those cities have an interest in ensuring that the Successor Agency's sale maximizes the

1 value of Tres Hermanos, as required by the Redevelopment Dissolution Act. Furthermore,  
2 the PSA Documents are instrumental to the Underlying Lawsuits, which allege, *inter alia*,  
3 that Respondents failed to comply with CEQA in approving the purchase and sale of Tres  
4 Hermanos.

5                                   ii.       Diamond Bar is informed and believes, and thereon  
6 alleges, that the PSA Documents were prepared, owned, used or retained by Respondents  
7 in that they were created and drafted by Respondents and are in Respondents' possession  
8 or control.

9                                   96.     Industry's failure and refusal to disclose and provide copies of the  
10 Master Lease Documents violated Government Code Section 6253(b), as follows:

11                                   a.       Diamond Bar's June 27 PRA Request and Diamond Bar's  
12 August 3 PRA Request asked Industry to disclose the Master Lease Documents, including  
13 records related in any way to any solar energy project or water storage, transmission, or  
14 generating project proposed within the boundaries of Tres Hermanos, including without  
15 limitation all records related to consultant contracts, project studies, and environmental  
16 studies.

17                                   b.       Diamond Bar's November 9 Industry PRA Request asked  
18 Industry to disclose and provide copies of the Master Lease Documents, including any and  
19 all memoranda, reports, studies, plans, analyses, notes, emails, communications and  
20 correspondence (including in all cases all attachments thereto) relating in any manner to  
21 the Master Lease.

22                                   c.       In response to those requests, Industry has disclosed only the  
23 Master Lease, a couple of drafts of the Original Master Lease, and an agenda packet  
24 relating to the Industry City Council's purported "ratification" of the Master Lease.

25                                   d.       Diamond Bar is informed and believes, and thereon alleges,  
26 that Industry is in possession and control of numerous other Master Lease Documents that  
27 it has not disclosed to Diamond Bar pursuant to Diamond Bar's PRA requests, including,  
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1 but not limited to, documents that evidence the origin and negotiation of the Master Lease,  
2 which are not exempt from disclosure under the PRA.

3 e. Government Code Section 6252(e) defines the term "public  
4 record" as "any writing containing information relating to the conduct of the people's  
5 business prepared, owned, used, or retained by any state or local agency regardless of  
6 physical form or characteristics." The definition is broad and intended to cover every  
7 conceivable kind of record that is involved in the governmental process. *Coronado Police*  
8 *Officers Assn. v. Carroll*, 106 Cal. App. 4th 1001, 1006 (2003). The PSA Documents are  
9 "public records" under Section 6252(e), as follows:

10 i. The Master Lease Documents relate to the conduct of  
11 the people's business because they relate to the origination, negotiation and execution of a  
12 lease of property owned by a public entity. Diamond Bar is informed and believes, and  
13 thereon alleges, that Industry agreed to lease Tres Hermanos to San Gabriel WP without  
14 any notice to or input from the public and without any competitive bidding. Furthermore,  
15 the PSA Documents are instrumental to the Underlying Lawsuits, which allege, *inter alia*,  
16 that Industry and the Industry City Council failed to comply with CEQA in approving the  
17 Master Lease in October 2017.

18 ii. Diamond Bar is informed and believes, and thereon  
19 alleges, that the Master Lease Documents were prepared, owned, used or retained by  
20 Industry in that they were created and drafted by Industry and are in Industry's possession  
21 or control.

22 97. Respondents' failure and refusal to disclose provide copies of all of  
23 the Solar Project Documents, the PSA Documents and the Master Lease Documents  
24 pursuant to Diamond Bar's PRA requests constituted a prejudicial abuse of discretion  
25 because Respondents failed to proceed in the manner required by law.

26 WHEREFORE, Diamond Bar prays for relief as set forth below.  
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**SECOND CAUSE OF ACTION**

**(Writ of Mandate – Violation of PRA Relating to Wrongfully Withholding the Privilege-Claimed Documents)**

98. Diamond Bar repeats and realleges paragraphs 1 through 93, above, and incorporates them herein by this reference as though set forth in full.

99. Respondents' failure and refusal to disclose and provide copies of the Privilege-Claimed Documents violated Section 6253(b) as follows:

a. Diamond Bar is informed and believes, and thereon alleges, that many of the Redacted Documents (which are part of the Privilege-Claimed Documents) that Industry has provided copies of to Diamond Bar have been improperly redacted based on untenable claims of exemption from the PRA, as discussed in paragraph 89, above.

b. The examples discussed in paragraph 89, above, reflect that Industry has an established pattern and practice of improperly claiming that portions of Privilege-Claimed Documents are exempt from disclosure under the PRA in reliance on baseless privilege claims.

c. Industry's January 26 Response indicates that Industry also has withheld entire Privilege-Claimed Documents that are responsive to Diamond Bar's November 9 PRA Requests on the grounds of the attorney client privilege, the work-product doctrine, protecting the privacy rights of individuals (redacted bank account info, personal email addresses, personal telephone numbers, login and password information), the deliberative process privilege, and the closed session privilege.

d. Diamond Bar is informed and believes, and thereon alleges, that Industry has withheld numerous Privilege-Claimed Documents in their entirety based on improper assertions that the documents are privileged and therefore exempt from disclosure under the PRA.

e. Industry has refused Diamond Bar's requests that it provide information sufficient to establish the grounds on which Respondents assert that the



