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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

EXIDE TECHNOLOGIES,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH,

Respondent.

Case No. N16-0737

STATEMENT OF DECISION, JUDGMENT AND WRIT OF MANDATE

I. HISTORY OF PROCEEDINGS

Petitioner Exide Technologies ("Petitioner" or "Exide") first requested the public records sought in this action on November 24, 2015. Exide conferred with Respondent California Department of Public Health ("Respondent" or "CDPH") in an effort to obtain the records without the need to pursue litigation. However, CDPH declined to provide most of records requested by Exide. On April 26, 2016, Exide filed a petition for writ of mandate pursuant to the California Constitution and the California Public Records Act ("Petition"), seeking a writ, order, and judgment requiring CDPH to disclose certain records that Petitioner had requested and that Respondent had refused to provide. On May 23, 2016, Respondent agreed to provide seven of the ten main categories of records requested by Petitioner. (Although Respondent has asserted that it had agreed to produce this subset of the requested records on April 22, 2016, prior to the filing of

the Petition, it did not unequivocally agree to provide them until May 23, 2016, after the Petition was filed.) This subset of the records was subsequently provided to Petitioner. However, Respondent refused to provide three categories of records, specifically those relating to: (a) whether an investigation (of an elevated blood lead level in an individual) was triggered; (b) the age of housing in which the subject of investigation resided; and (c) the findings of the investigation as to the exposures to and source of lead.

The Court originally set the Petition for hearing on June 29, 2016, but continued the hearing to July 6, 2016. The parties submitted briefing and declarations—including a supplemental declaration filed by Respondent a day before the hearing, to which Petitioner objected. On July 5, 2016, the Court issued a tentative order granting the Petition. At the hearing held on July 6, 2016, counsel for Respondent indicated that a resolution of the action might be possible. The Court adopted its tentative ruling subject to any resolution the parties might reach between themselves, and set a status hearing for August 17, 2016, which was subsequently continued at the request of the parties to August 31, 2016. The parties engaged in discussions but did not reach a resolution.

On August 30, 2016, without seeking or obtaining leaving of the Court or providing notice to opposing counsel, counsel for Respondent submitted additional briefing and declarations. Late on August 30, 2016, counsel for Petitioner served a status report and declaration, which was subsequently submitted to the Court. At the hearing on August 31, 2016, the Court directed the parties to engage in further settlement discussions, set another hearing date for September 21, 2016, and set a briefing schedule for the submission of supplemental briefing. The hearing date was subsequently continued to October 5, 2016 at the request of the parties. Supplemental briefing and declarations were submitted by Petitioner on September 20, 2016, and by Respondent on September 30, 2016. Because Respondent's supplemental briefing raised new issues, Petitioner sought and was granted leave to file a supplemental reply brief and declaration, and the hearing date was continued to October 26, 2016.

On October 19, 2016, the County of Los Angeles (the "County") filed a motion for leave to file an amicus brief in support of Respondent, together with an amicus brief and two

declarations. (The County also filed an opposition to a motion to strike the declarations, even though no motion to strike had been submitted.) Exide opposed the County's motion for leave to file the amicus brief and declarations. On October 24, 2016, counsel for Respondents submitted a request for leave to file a supplemental declaration, accompanied by a further declaration of Dr. Linette Scott. Petitioners objected to the supplemental declaration. As a result of the additional filings, the Court continued the hearing to November 30, 2016. In doing so, the Court stated as follows: "*Neither side shall file any additional papers without leave of court*."

Nonetheless, on November 10, 2016, counsel for Respondent submitted an additional request for leave to file a copy of an order issued by the San Francisco Superior Court in a different case involving different parties, including with its request a copy of the order proposed for submission. Petitioner sought leave to file objections to and a motion to strike Respondent's submission. On November 29, 2016, the Court issued a further, non-final decision. The Court stated that it did not have sufficient information to determine whether the remaining records at issue could be de-identified in a manner that would comply with guidelines issued by the California Department of Health Care Services (the "Data De-identification Guidelines" or the "DHCS Guidelines") and pursuant to the federal Health Insurance Portability and Accountability Act ("HIPAA"). The Court overruled Petitioner's objections to the declaration of Dr. Linette Scott, which it found admissible for the limited purpose of establishing the existence of the Data De-identification Guidelines. The Court sustained Petitioner's objections to the Amicus Declarations of Angie Toyota and Nnenne Okonko, and struck those declarations. After the hearing held on November 30, 2016, the Court took the matter under submission.

On January 10, 2017, the Court issued a memorandum removing the matter from submission and stating, in part, as follows:

> "I am inclined to set an evidentiary hearing aimed at the specific issue of data deidentification in accordance with the HIPAA and California guidelines — 1) what the guidelines require; and 2) if some and/or all of the categories of information requested can be disclosed in conformity with those guidelines.

Alternatively, you might provide this information by declaration. Please meet and confer and let me have your thoughts."[1]

At the request of the parties, the Court held a telephonic status conference on February 8, 2017. After hearing from and considering the positions of the parties, the Court ordered as follows:

- The parties and Dr. Linette Scott of the California Department of Health Care Services ("DHCS") were ordered to meet and confer regarding potential means for de-identifying the requested records, within 20 days;
- The parties were ordered to report back to the Court by March 8, 2017 regarding the results of the meet and confer;
- If the meet and confer did not produce a resolution, the parties would submit declarations addressing the issues raised by the Court; and
- If the Court still believed that additional information was needed after reviewing the declarations, the Court would order an evidentiary hearing.

The parties and their experts met and conferred at the offices of CDPH in Sacramento, California, on March 3, 2017. On March 8, 2017, counsel for Petitioner sent a letter to counsel for Respondent describing a proposed resolution pursuant to which a specified set of data fields contained in the records still at issue would be de-identified and disclosed to Petitioner.[2] On March 9, 2017, counsel for Petitioner also provided a spreadsheet designating the specific data fields that would be provided in de-identified form under Petitioner's proposal.

In addition, on March 9, 2017, the parties also participated in a further telephonic status conference with the Court. During that status conference, counsel for Respondent promised to respond to the proposal by Petitioner. The Court set a further telephonic status conference, which was held on April 13, 2017. As of that date, Respondent still had not definitively responded to Petitioner's March 8, 2017 proposal. Petitioner requested that a deadline be set for the submission

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[1] In a subsequent telephone conference with the parties, the Court clarified that the California guidelines referred to are the Data De-Identification Guidelines dated September 26, 2016, adopted by the California Department of Healthcare Services, offered into evidence by Respondent as Exhibit A to the declaration of Dr. Linette Scott submitted on October 24, 2016.

[2] During prior discussions seeking to resolve the matter, Respondent provided record layouts and data dictionaries describing the nature and arrangement of the information in the database containing the records still at issue, but not including any actual information from those records. These materials were used by Petitioner to focus its request for disclosure on the key information contained in the records.

of additional declarations by the parties. The Court did not set such deadlines, but asked Respondent to commit to a date by which it would respond to Petitioner's proposal, and Respondent agreed to do so by May 4, 2017. The Court set another telephonic status conference for May 8, 2017. On May 4, 2017, counsel for Respondent sent a letter to counsel for Petitioner rejecting Petitioner's March 8, 2017 proposal. Due to changed circumstances, the Court was not available to conduct the telephonic status conference on May 8, 2017, and the conference was continued to June 5, 2017.

On June 5, 2017, a further telephonic status conference was held. The court instructed the parties to submit additional declarations addressing whether the remaining records at issue could be de-identified and disclosed in compliance with HIPAA guidance and the DHCS Guidelines. The court also permitted briefs of up to 10 pages explaining the evidence. Respondent was directed to make an initial submission within about 30 days, Petitioner was directed to respond about 30 days after that, and Respondent was permitted to submit a rebuttal 15 days after that response. The court stated that it would then decide the matter on the basis of the additional declarations and briefs, if possible. If not, the court would notify the parties that an evidentiary hearing would be held. The parties were instructed to agree on a briefing schedule.

On July 7, 2017, the Court issued an order specifying the briefing schedule and the issues to be addressed in the supplemental declarations and briefing by the parties. (The briefing schedule was subsequently modified at the request of the parties.) On July 10, 2017, Respondent submitted its initial supplemental briefing and declarations. On September 18, 2017, Petitioner submitted its supplemental response brief and declarations, including a Joint Declaration of Fritz Scheuren, Ph.D., and Patrick Baier, DPhil (the "Scheuren/Baier Declaration"). On November 6, 2017, Respondent submitted its supplemental rebuttal brief and further declarations. On December 18, 2017, Petitioner filed an application for leave to submit a sur-rebuttal. Petitioner's application was accompanied by its proposed sur-rebuttal brief and a sur-rebuttal declaration of Fritz Scheuren, Ph.D., and Patrick Baier, DPhil. On December 21, 2017, Respondent filed an opposition to Petitioner's application. Finding good cause for the submission of Petitioner's sur-

rebuttal papers, the Court entered an order granting Petitioner's application on December 21, 2017.

On January 24, 2018, the Court entered an order granting the Petition and ordering Respondent to provide the records described in Petitioner's March 8, 2017 letter, de-identified according to one of the options described in the Scheuren/Baier Declaration. Notice of entry of that order was served on January 30, 2018. Respondent thereafter sent a letter to the Court requesting a statement of decision. On February 14, 2018, the Court's February 7, 2018 Intended Decision was entered, directing Petitioner to prepare a statement of decision and judgment in accordance with California Rule of Court 3.1590.

II. RESPONDENT IS REQUIRED TO PROVIDE THE REMAINING RECORDS REQUESTED BY PETITIONER, IN DE-IDENTIFIED FORM

A. The Right to Access Public Records

California law provides broad rights of access to public records. The California Constitution establishes a fundamental right of access "to information concerning the conduct of the public's business." (Cal. Const., Art. I, § 3(b).) The California Public Records Act (the "CPRA") provides further rights of access to public records and sets forth a procedure for exercising those rights. (Gov. Code §§ 6250 et seq.) The purpose of the CPRA is "to safeguard the accountability of government to the public." (*Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901.)

Courts have also recognized the fundamental importance of access to information about the conduct of public agencies. "Openness in government is essential to the functioning of a democracy. Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 164 (*Sierra Club*) [citations and quotations omitted].) Thus, the CPRA favors disclosure. (*California State University, Fresno Assn. Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 831.) Similarly, the California Constitution expressly requires courts to broadly construe any law that furthers the

public's right of access, and to apply any limitations on the right of access as narrowly as possible. (Cal. Const., art I, § 3(b)(2).)

B. The Records Still at Issue

Petitioner seeks de-identified records held by CDPH regarding the blood lead levels of people living in Los Angeles County, including people living near a former battery recycling facility owned by Exide that is located in the city of Vernon, in Los Angeles County. Petitioner originally requested the following information, in de-identified form:

- Any unique identification numbers or codes assigned to subjects of testing, including any unique identifier(s) that are or can be used to determine if a subject was tested more than once within a year, but not including any potentially public identification numbers or codes utilized for purposes, such as Social Security Number or Driver's License Number;
- Blood lead level (ug/dL);
- Blood lead level detection limit;
- Date that blood lead was sampled;
- Age of person tested in bands (i.e., less than 6 years, Age 6 to 21 years, over 21 years);
- City in which the individual tested resides;
- Zip code in which the individual tested resides;
- Collection method (capillary, venous, etc.);
- Whether the blood lead concentration triggered an investigation, and the conclusion of that investigation (including, any conclusion or data as to the source of the lead);
- Age of the building in which the individual resides;
- Collection method (capillary or venous); and
- Whether the blood lead concentration triggered an investigation, and the conclusion of that investigation (including any conclusion or data as to the source of the lead).

(Pet. ¶¶ 18-19, Exh. A.) Petitioner also requested three tables of data that the CDPH maintains. (*Id.* ¶ 20.)

After Petitioner filed this action, Respondent agreed to provide most of the records requested by Petitioner. (Chadwick Declaration of June 22, 2016 ("Chadwick Reply Decl.") ¶ 2.)

Respondent, however, continued to withhold three categories of records: those showing (a) whether an investigation was triggered, (b) the age of housing in which the subject of the investigation resided and (c) the findings as to the exposure to and source of lead. (*Id.*.) These three remaining categories of records are referred to herein as the "Requested Records."

C. Petitioner Met Its Burden of Demonstrating that the Requested Records Are Public Records Subject to the Rights of Access Under the California Public Records Act and the California Constitution

The public is entitled to information contained in public records. (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774 (*San Gabriel Tribune*).) Once the person seeking the records shows that the requested information is contained in public records, the burden shifts to the public agency withholding the records to prove that its non-disclosure of the records is justified by law. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476 (*Rogers*); *San Gabriel Tribune, supra*, 143 Cal.App.3d at p. 773.)

Petitioner has satisfied its burden of showing the Requested Records are public records. Public records include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (Gov. Code § 6252, subd. (e).) The legislative history of this definition demonstrates that courts should give it the broadest possible interpretation:

> This definition is intended to cover every conceivable kind of record that is involved in the governmental process.... Only purely personal information unrelated to "the conduct of the public's business" could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.

(Assemb. Comm. on Statewide Info. Policy, Appendix 1 to Journal of Assembly (1970 Reg. Sess.) Final Report, p. 9; *see also San Gabriel Tribune*, *supra*, 143 Cal.App.3d at p. 774; 58 Ops. Cal. Atty. Gen. (1975) 629, 633-34.)

It is undisputed that CDPH collects and maintains information regarding blood-level testing conducted in California and that CDPH is a state agency subject to the CPRA. (Courtney Declaration of June 7, 2016 ("Courtney Decl.") ¶ 2.) CDPH maintains the Requested Records in an electronic database called the "RASSCLE 2" database. (*Id.* ¶¶ 4-5; Miesner Declaration of June 22, 2016 ("Miesner Decl."), ¶¶ 2, 6.) Electronic databases such as RASSCLE 2 are "public

records" within meaning of the CPRA. (Gov. Code § 6253.9. See also, e.g., *Sierra Club*, *supra*, 57 Cal.4th at p. 176 [because database at issue was "not excluded from the definition of a public record [under the CPRA]," and because no exemption to disclosure applied, county agency "must produce the ....[database] in response to [petitioner's] request 'in any electronic format in which it holds the information'"] [quoting Gov. Code 6253.9, subd. (a)(1)]; *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353, 366-367 [electronically stored information (ESI) is "clearly a type of public record that may be subject to disclosure under the [C]PRA"].)

The Requested Records concern the public's business. The Requested Records pertain to investigations of the causes of elevated blood lead levels of people in Los Angeles County whose blood lead levels were tested after 2007. (See, e.g., Pet., ¶¶ 17-18; 37; Chadwick Declaration of May 5, 2016 ("Chadwick Decl."), ¶¶ 12- 13, 27.) Petitioner seeks this information in order to analyze elevated blood lead levels of residents near the Exide facility in Vernon and throughout Los Angeles County, to assess factors that may be contributing to elevated blood lead levels, and to identify and address any potential public health concerns. (Pet., ¶ 12; Chadwick Decl., ¶ 12.) Records relating to public health, collected by a state agency such as CDPH for the express purpose of analyzing and addressing public-health concerns, clearly pertain to the public's business within the meaning of the CPRA. (See, e.g., *San Gabriel Tribune, supra*, 143 Cal.App.3d at p.774 [holding that "only purely personal information unrelated to 'the conduct of the public's business'... i.e., the shopping list phoned from home, the letter to the public officer from a friend which is totally void of reference to governmental activities" falls outside the definition of "records" subject to the Public Records Act].)

The legislation governing CDPH's collection of records regarding blood lead levels and investigations of elevated blood lead levels also supports the conclusion that the Requested Records are public records pertaining to the people's business. In passing that legislation, the Legislature specifically declared that:

> The Legislature hereby finds and declares that childhood lead exposure represents the most significant childhood environmental health problem in the state today; [and] that ***too little is known about the prevalence, long-term health care costs, severity, and location of these problems in California....***

(Health & Safety Code § 124125 [emphasis added].) In the same statute, the Legislature also found and declared that "knowledge about where and to what extent harmful childhood lead exposures are occurring in the state could lead to the prevention of these exposures, and to the betterment of the health of California's future citizens." (*Id.*) As these Legislative findings demonstrate, the Requested Records involve the public interest and the "conduct of the public's business." (See, e.g., *San Gabriel Tribune, supra*, 143 Cal.App.3d at p. 774.)

D. Respondent Failed to Meet Its Burden of Demonstrating that the Requested Records Are Exempt from Disclosure, so They Must Be Disclosed

1. Respondent Had the Burden of Demonstrating that the Requested Records Are Exempt from Disclosure under An Express Exemption or Because, on the Facts of this Particular Case, the Public Interest in Non-Disclosure Clearly Outweighs the Public Interest in Disclosure

Because Petitioner has shown that the Requested Records are public records, the burden shifts to Respondent to justify its non-disclosure of the records. (*Rogers, supra*, 19 Cal.App.4th at p. 476; *San Gabriel Tribune, supra*, 143 Cal.App.3d at p. 773.) To meet its burden, a public agency must "demonstrat[e] that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code § 6255, subd. (a).) If the agency cannot prove that one of the specifically enumerated exemptions applies, the records are subject to mandatory disclosure. (Gov. Code § 6253. subd. (b) [Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, ***shall*** make the records promptly available . . . ."] [emphasis added]; *Office of Inspector General v. Superior Court* (2010) 189 Cal.App.4th 695, 709 ["all public records are subject to disclosure unless the Legislature has expressly provided to the contrary"] [citations and quotations omitted].) The CPRA's exemptions to disclosure must be construed narrowly. (*Rogers, supra*, 19 Cal.App.4th at p. 476; *San Gabriel Tribune*, *supra*, 143 Cal.App.3d at pp. 772-73.)

2. Respondent Failed to Demonstrate that the Requested Records Are Exempt from Disclosure Under Any Express Exemption in the Public Records Act

In opposing the Petition, Respondent has relied upon two exceptions to the CPRA: Government Code sections 6254, subdivisions (c) and (k) ("Section 6254(c)" and "Section 6254(k)," respectively). Respondent has failed to satisfy its burden of showing that the Requested Records are exempt under either exception.

a. Respondent Failed to Demonstrate that the Exemption in Section 6254(k) Applies

Section 6254(k) exempts from disclosure "records the disclosure of which is exempted or prohibited pursuant to state or federal law." CDPH asserted that the entire contents of the RASSCLE 2 database are rendered absolutely confidential by Health & Safety Code sections 100330 and 124130(g) ("Section 100330" and "Section 124130(g)," respectively). The plain language of these two sections does not support this claim. Section 12430(g) provides that information about blood lead levels that laboratories provide to the state "shall be confidential, as provided in Section 100330." But the plain language of Section 100330 requires confidentiality ***only*** to the extent such records may identify an individual. (Health & Safety Code § 100330 [providing that records "in connection with special morbidity and mortality studies shall be confidential ***insofar as the identity of the individual patient is concerned.***"] [emphasis added].) Courts interpreting this statute have confirmed that "***it is the identity of the subjects that must be kept confidential, and not necessarily all of the information gathered.***" (*Wolpin v. Phillip Morris* (C.D. Cal. 1999) 189 F.R.D. 418, 427 [emphasis added].)

Petitioner has requested only *de-identified* records—*i.e.*, records that do not directly identify any individuals or raise any unreasonable risk of indirectly identifying any individuals. (Pet., ¶ 21.) Accordingly, Section 100330 does not bar release of the records sought. Moreover, if there were any doubts about whether Section 100330 or Section 12430(g) apply to the Requested Records, this Court would be obligated to construe those statutes narrowly, to the extent that they limit the public's right of access. (Cal. Const., Art. I, § 3(b); *Sierra Club, supra*, 57 Cal.4th at p. 166.)

Exide expressly sought the Requested Records in de-identified form, i.e., in a form in which the subjects of the records would not be identifiable. Respondent argued that de-identification was not possible and disclosure of the Requested Records would raise an unacceptable risk that individuals represented in the records could be re-identified. (Resp.'s Supp. Brief of Sept. 30, 2016, pp. 4:23-5:18.) The evidence, however, did not bear out these concerns. The Scheuren/Baier Declaration demonstrated that de-identification methods are available that are adequate to de-identify the data and eliminate any meaningful risk of re-identification. (Scheuren/Baier Decl., ¶ 8-18.) Respondent failed to rebut this evidence, and failed to provide any other evidence that de-identification of the records posed any meaningful risk of re-identification. At most, Respondent raised concerns about the possibility of re-identification based on CDPH's ***prior disclosure*** to Petitioner of ***other records***, which were de-identified by Respondent, using methods Respondent unilaterally selected and implemented. (Scott Declaration of July 10, 2017 ("Scott Decl."), ¶ 9; Joint Sur-Rebuttal Declaration of Scheuren and Baier, filed December 18, 2017 (Scheuren/Baier Sur-Rebuttal Decl."), ¶¶ 8-13.) Accordingly, the Court finds that the Requested Records can be adequately de-identified without raising any meaningful risk of re-identification.

b. Respondent Failed to Demonstrate that Disclosure of the Requested Records Would Violate HIPAA Regulations or California Disclosure Guidelines

Late in this action (in a declaration by Dr. Linette Scott filed October 24, 2016), Respondent for the first time asserted that disclosure of the Requested Records in de-identified form would violate regulations issued under HIPAA and guidelines adopted by DHCS. Respondent apparently contends that the Requested Records are exempt if disclosure would violate these federal regulations or state guidelines. In its July 7, 2017 order, the Court asked the parties to address whether disclosure of the Requested Records in de-identified form would violate HIPAA regulations or the DCHS guidelines.

HIPAA Compliance. HIPAA regulations permit disclosure of protected health information if the disclosure satisfies either the "Safe Harbor" or the "Expert Determination" method for de-identification. (See 45 CFR §§ 164.514(b)(1) [Expert Determination Method],

164.514(b)(2) [Safe Harbor].) Petitioner submitted a joint declaration from Drs. Scheurn and Baier, who are experts in the field of de-identification. (Scheuren/Baier Decl., ¶¶ 2-4.) In their joint declaration, they described and analyzed the three potential disclosure methods, and opined that these methods were consistent with the HIPAA guidelines because disclosure would satisfy the Expert Determination method. (Scheuren/Baier Decl., ¶¶ 8-18, 24-34.) Drs. Scheuren and Baier further explained that while the de-identification methods proposed by Petitioner would not technically comply with the Safe Harbor method, they were in fact ***more protective*** than the Safe Harbor method because all geographic units smaller than a state contain at least 50,000 people. (Scheuren/Baier Decl., ¶¶ 25-30.) Respondent did not rebut the testimony of Drs. Scheuren and Baier that Petitioner's three de-identification options were consistent with HIPAA, nor did Respondent provide any evidence showing that the de-identification of the Requested Records was inconsistent with HIPAA. Respondent's analysis focused primarily on the risk of re-identification posed by records it had previously disclosed to Exide, ***not*** the Requested Records. (Scott Decl., ¶ 9; Courtney Declaration of July 10, 2017 ("Courtney Decl."), ¶¶ 3-6, 9; Joint Courtney and Scott Rebuttal Declaration of November 6, 2017 ("Courtney/Scott Rebuttal Decl."), ¶¶ 7, 8.) Respondent's analysis of its ***previous*** disclosure of records does not prove that disclosure of the Requested Records is impermissible. Drs. Scheuren and Baier demonstrated that if de-identified in accordance with the methods proposed by Exide, the information contained in the Requested Records cannot be linked to information in the records previously disclosed. (Scheuren/Baier Decl., ¶¶ 35-68; Scheuren/Baier Sur-Rebuttal Decl., ¶¶ 8-13.) CDPH did not show that such linking was possible. (Scott Decl., ¶ 9; Courtney Decl., ¶¶ 3-6, 9; Courtney/Scott Rebuttal Decl., *passim*.)

After reviewing the evidence and briefing submitted by the parties, the Court finds that disclosure of the Requested Records in a de-identified form, pursuant to one of the methods proposed in the Scheuren/Baier Declaration, is consistent with HIPAA standards.

DHCS Compliance. As requested by the Court, the parties also submitted briefs and evidence addressing whether de-identification of the Requested Records was consistent with DHCS guidelines. Drs. Scheuren and Baier performed the analysis specified by the Data De-

Identification Guidelines, version 2.0, adopted by DHCS (the "DHCS Guidelines"). (Scheuren/Baier Decl., ¶¶ 32-34.) Their analysis demonstrated that disclosure of the requested records in accordance with Options 1-3 results in a risk score that meets the threshold for disclosure under the DHCS Guidelines without the need for any additional statistical risk mitigation. (Scheuren/Baier Decl., ¶ 33.) Thus, they concluded that the Requested Records can be disclosed in a manner consistent with the DHCS Guidelines. (Scheuren/Baier Decl., ¶¶ 8(d), 33.) In contrast, Respondent failed to address the question of whether disclosure of Requested Records complied with DHCS Guidelines. As discussed above, the declarations submitted by Respondent primarily opined on the possible re-identification risk associated with information CDPH ***already provided*** to Petitioner, and did not demonstrate that the Requested Records could not be disclosed without contravening the DHCS Guidelines. (Scott Decl., ¶ 9; Courtney Decl., ¶¶ 3-6, 9; Courtney/Scott Rebuttal Decl., *passim*.) As shown by Petitioner, there is no meaningful possibility of linking information in the Requested Records to information in the records previously disclosed by CDPH, so disclosure of the Requested Records does not violate the DHCS Guidelines. (Scheuren/Baier Decl., ¶¶ 35-68; Scheuren/Baier Sur-Rebuttal Decl., ¶¶ 8-13.)

After reviewing and considering all of the materials submitted, the Court concludes that disclosure of the Requested Records in a de-identified form, pursuant to one of the methods proposed in the Scheuren/Baier Declaration, would not violate the DHCS guidelines. The Court questions whether guidelines voluntarily adopted by a public agency can provide the basis for a claim of exemption from disclosure under the CPRA. However, in light of the Court's determination that CDPH has not met its burden of demonstrating that disclosure of the Requested Records in de-identified form would violate the DHCS guidelines, it is not necessary to address this issue.

In summary, the Court finds that Respondent has not met its burden of proving that disclosure of the Requested Records in a de-identified form poses an undue risk of invading the privacy of any person, or that it violates HIPAA or DHCS Guidelines. The exemption under Section 6254(k), to the extent that it incorporates confidentiality requirements in Health and Safety Code sections 100330 and 124130(g), therefore does not apply.

c. Respondent Failed to Demonstrate that the Exemption in Section 6254(c) Applies

Section 6254(c) exempts from disclosure "personnel, medical or similar files the disclosure of which would constitute an unwarranted invasion of personal privacy." Courts have recognized that the disclosure of de-identified records does not implicate personal privacy, and thus Section 6254(c) does not bar the disclosure of de-identified records. (See, e.g., *Poway Unified School Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1505-1506; *Bible v. Rio Properties, Inc.* (C.D. Cal. 2007) 246 F.R.D. 614, 620 [informational privacy interests under California Constitution would be protected if personal information, "such as address, date of birth, telephone number" were redacted from released records]; *London v. New Albertson's, Inc.* (S.D. Cal. 2008) 2008 WL 4492642 [claim of invasion of California constitutional privacy right based on disclosure of de-identified medical information did not allege a legally protected privacy interest].)

Petitioner seeks only de-identified records, i.e. records containing information that is ***not linked to any individual.*** Because the disclosure of de-identified records does not implicate privacy interests, the exemption in Section 6254(c) does not apply. CDPH has argued that the Requested Records cannot be adequately de-identified to eliminate privacy risks, but Respondent failed to carry its burden to prove this for the reasons stated in Section II.D below.

d. Respondent Failed to Demonstrate that There Are No Means by Which the Requested Records Could Be Adequately De-Identified

As noted, CDPH had the burden of demonstrating that the Requested Records are exempt from disclosure. (*Rogers, supra*, 19 Cal.App.4th at p. 476; Gov. Code § 6255, subd. (a).) As discussed in greater detail in Sections II.D.4 and 5 below, CDPH also has a statutory obligation to provide any and all reasonably segregable information contained in its database, even if doing so entails data extraction, data compilation, or computer programming. (Gov. Code §§ 6253, subd. (a), 6253.9, subd. (b).) Thus, CDPH not only had the obligation to prove that the de-identification methods proposed by Exide were inadequate, it also had the obligation to show that there is no method for de-identifying the Requested Records that could adequately protect against

re-identification. It made no such showing. For this reason as well, Respondent failed to show that the Requested Records are exempt from disclosure.

3. Respondent Failed to Demonstrate that the Public Interest in Non-Disclosure Clearly Outweighs the Public Interest in Disclosure

Government Code section 6255 ("Section 6255") exempts records from disclosure if the public agency withholding the records demonstrates "that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code § 6255.) As with the other exemptions under the CPRA, it is the agency's burden to demonstrate that any public interest in withholding the records prevails over the public interest in disclosing them. (*Rogers, supra*, 19 Cal.App.4th at p. 476.) Respondent has failed to satisfy this burden.

There is a profound public interest in disclosure of the Requested Records. The records sought contain information that is directly relevant to the scope, nature, causes, effects, and potential means to address elevated blood lead levels in the Los Angeles County area. (Miesner Decl., ¶ 5.) Disclosure of these records is critical because there are many potential sources of lead exposure, including lead-based paint, food items, candies, ceramics, and others. (Miesner Decl., ¶¶ 5-8 and Ex. R.) The age of a home is also closely related to the presence of lead-based paint. (Miesner Decl., ¶ 7.) Knowing the source of the lead exposure is vital not only for defining the problem but also for identifying the measures needed to address it. (Miesner Decl., ¶ 8. See also Miesner Declaration filed September 18, 2017 ("Miesner Supp. Decl."), *passim*.) The data CDPH already provides publicly regarding blood lead levels and possible sources is insufficient to meaningfully analyze these important issues, as California government officials have themselves recognized. (Miesner Decl., ¶ 9 and Ex. S; Misener Supp. Decl., ¶ 4.) Respondent has also acknowledged that "[l]ead exposure remains a serious public health concern in California," and therefore continued collection of information on lead exposure in general is of great importance. (Opp. to Pet., p. 9:3-15.)

The Court is not persuaded by Respondent's argument that the public interest in the Requested Records is "minimal at best." (Opp. to Pet., p. 9:2.) Respondent argues that the public

interest in disclosing the Requested Records will "only tangentially add to the understanding of lead exposure in California" because the state has made "great strides" in studying lead exposure during the past 30-plus years. (Opp. to Pet., pp. 8:14-9:2.) While it may be true that the state has greatly improved its understanding of lead exposure since the 1980s, the state's progress has not eliminated the need for further study of the sources and effects of lead exposure, and the possible means of addressing this problem. If this were so, there would be no reason for CDPH to continue gathering data and studying lead exposure.

Respondent also contends that the interest in disclosure is minimal because, according to CDPH, Exide seeks to use the Requested Records in relation to remediation efforts in areas surrounding its Vernon recycling plant. The intent of the requesting party, however, is not relevant to the question of public interest, and courts have further emphasized that public interest is not diminished merely because the requestor has "commercial interests." (*State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1190-1191 (*State Bd. of Equalization*) ["The Public Records Act does not differentiate among those who seek access to public information. It imposes no limits upon who may seek information or what he may do with it. What is material is the public interest in disclosure, not the private interest of a requesting party; section 6255 does not take into consideration the requesting party's profit motives or needs."] [internal citations and quotations omitted].) Moreover, disclosure of the Requested Records will not be limited to Petitioner. Any member of the public, any research body, and any government agency will be entitled to disclosure of the same de-identified records provided to Exide. In sum, Petitioner has shown that there is significant public interest in the Requested Records, and Respondent has failed to provide any evidence rebutting this public interest.

Respondent has also failed to demonstrate a meaningful public interest in withholding the Requested Records. Respondent asserts that disclosing the records would pose a significant risk of re-identifying individuals whose medical information is represented in the records, but the evidence does not support this assertion. As explained in Section II.D.2 above, the Scheuren/Baier Declaration demonstrates that the Requested Records may be adequately de-identified to eliminate any meaningful risk of re-identification. It also shows that Petitioner's

proposed methods for de-identifying the Requested Records satisfy the HIPAA standards and the DHCS standards. (Scheuren/Baier Decl., ¶¶ 8, 24-34.) Respondent has not demonstrated that the de-identification methods proposed by Petitioner, and verified by Drs. Scheuren and Baier, are inadequate to de-identify the Requested Records or to satisfy the HIPAA and DHCS standards. Nor has Respondent offered any other evidence showing the Requested Records cannot be de-identified. Therefore, there is no meaningful privacy interest in withholding the Requested Records after they are de-identified as proposed by Petitioner.

Burden to a public agency may also weigh in favor of withholding records, but Respondent has also failed to establish that CDPH would suffer any meaningful burden as a result of disclosing the Requested Records. Petitioner has agreed to and the Court now orders Petitioner to pay the reasonable costs of data compilation, extraction, and programming involved in de-identifying the Requested Records. Therefore, CDPH will not incur any significant expenses, other than those that the agency ordinarily bears in carrying out the requirements of the CPRA. Under these circumstances, the burden on the government of complying with a request for records does not justify non-disclosure. (See *State Bd. of Equalization v. Superior Court*, *supra,* 10 Cal.App.4th at p. 1190.)

CDPH contends that disclosure of the Requested Records will make it more difficult to promise confidentiality to people potentially affected by elevated lead levels and to obtain their cooperation in gathering their medical information. (Opp. to Pet., p. 9:12-15.) Specifically, CDPH asserts:

> The Department's ability to ensure confidentiality for individuals participating in CLPPP and OLPPP is critically important because lead exposure primarily impacts low income/minority families and these communities have been historically reluctant to work with governmental agencies without assurances of confidentiality.

(Opp. to Pet., p. 9:12-15.) This argument, however, is based on the premise that disclosure of the Requested Records will compromise the privacy of people who are the subjects of the investigations to which those records relate. As explained in Section II.D.2, the evidence does not show that disclosure in accordance with the de-identification Petitioners have proposed will create any meaningful risk of re-identification. Moreover, CDPH has already disclosed de-identified

records of approximately 1.8 million individual blood tests conducted in Los Angeles County over the same period of time, but CDPH has not presented any evidence that its disclosure of the de-identified records sought in this case has caused or will cause potential participants in CDPH programs to refuse to cooperate. The most it has offered is a declaration stating that participants have been "historically reluctant to work with governmental agencies without assurances of confidentiality." (Courtney Decl., ¶ 2.) Such assurances may still be provided. Moreover, in the absence of proof that prior disclosures have resulted in reduced cooperation, any suggestion that cooperation will become more difficult in the future would be inherently speculative and could not justify non-disclosure of public records. (See, e.g., *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 75 ["vague" and "general" concerns regarding future safety were insufficient to justify non-disclosure]; *Commission on Peace Officer Standards & Training v. Superior Court of Sacramento County* (2007) 42 Cal.4th 278, 302-303 ["purely speculative" evidence of possible future endangerment was insufficient to justify non-disclosure].)

Accordingly, the Court finds that Respondent has not shown any meaningful public interest in withholding the Requested Records. In contrast, Petitioner has demonstrated a significant public interest in disclosing the Requested Records, and Respondent has failed to rebut this evidence. Respondent has failed to prove that the interests in non-disclosure clearly outweigh the interests in disclosure. In fact, in this case, the evidence shows that the public interests in disclosure clearly outweigh the interests in non-disclosure.

4. California Law Does Not Include a "New Record" Exemption

CDPH contends that it is not required to disclose the Requested Records in de-identified form because the de-identification process will result in the creation of a "new record" and the CPRA does not require public agencies to create "new records." The Court disagrees.

First, under the CPRA, public agencies must "justify withholding any record by demonstrating that the record in question is exempt under express provisions of [the CPRA] or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code § 6255, subd. (a).) There is no express provision of the CPRA exempting "new records." In light of the plain

language of the CPRA and the mandate of the California Constitution, which requires rights of access to be construed broadly and limitations on access to be construed narrowly (Cal. Const., Art. I, § 3(b)(2)), the Court cannot create new exemptions to disclosure that are not embodied in the express provisions of the CPRA.

Second, CDPH has cited no California authority holding that the need to create a "new record" justifies non-disclosure. To the contrary, California law recognizes agencies may be required to extract and compile information that is not contained in a single existing record in order to respond to a request under the CPRA. For example, although public agencies generally may recover only the "direct costs of duplication" (Gov. Code § 6253, subd. (b)), an agency may bill the requester for costs of disclosing electronic records, including the "cost ***to construct a record***, and the cost of ***programming and computer services necessary*** to produce a copy" if "[t]he request would require ***data compilation, extraction, or programming*** to produce the record." (Gov. Code § 6253.9. subd. (b) [emphasis added]; *Santa Clara County v. Superior Court* (2009) 170 Cal.App.4th 1301, 1336 (*Santa Clara County*)). As this language demonstrates, the CPRA recognizes that public agencies may be required to "construct" a record or apply "programming and computer services," as well as "data compilation, extracting or programming" in order to produce a public record. These provisions of the CPRA cannot be reconciled with Respondent's assertion that public agencies may withhold information in public records if they require creation of a "new record."

Moreover, even if there were a "new records" exemption under the CPRA, it would not apply here because the de-identification suggested by Exide does not require the creation of "new records." Although there does not appear to be any authority under the CPRA directly addressing this issue, the California Supreme Court has recently indicated that the need for de-identification of records does not bar disclosure. In *ACLU v. Superior Court* (2017) 3 Cal.5th 1032, 1046-1047 *(ACLU)*, the Supreme Court addressed a request under the CPRA for data collected by police using automated license plate readers. Recognizing that this data could implicate privacy concerns, the requestors proposed various means of de-identification, including the replacement of actual license plate numbers with randomized numbers. (*Id.* at p. 1044.) The Supreme Court did

not reject this approach as requiring the creation of "new records." Instead, it instructed the trial court to consider on remand "the feasibility of, and interests implicated by, methods of anonymization petitioners have suggested[,]" and to explore "other methods of anonymization and redaction as well," noting that the anonymization methods proposed "may be more feasible than the trial court appeared to believe." (*Id.* at pp. 1046-1047.) Furthermore, courts considering public access laws similar to the CPRA have held that the type of searching, compilation and programming involved in de-identification does not require the creation of a "new record." (See *Schladetsch v. U.S. Dep't of HUD* (D.D.C. 2000) 2000 U.S. Dist. LEXIS 22895 [compilation of data from various databases that required computer programming was not creation of a "new record"]; *Osborn v. Bd. of Regents of the University of Wisconsin* (2002) 254 Wis.2d 266, 299-301 [redaction of information in the individual records did not create a new record under state public access statute].) This interpretation is also consistent with the Constitutional mandate to construe public records access laws broadly. (Cal. Const., Art. I, § 3(b)(2).)

Here, the evidence showed that the Requested Records consist of specified fields stored in the RASSCLE 2 electronic database created and maintained by CDPH. (Scheuren/Baier Decl., ¶ 5 and Ex. C.) The fact that CDPH previously extracted and disclosed some of the records requested by Exide demonstrates it has the ability to extract and provide the Requested Records. (Miesner Decl., ¶ 4 and Ex. Q.) Respondent has not demonstrated that extraction of the records or any other aspect of the de-identification will be difficult or otherwise go beyond the obligations of a public agency to assemble and disclose records under the CPRA.

The Court finds that there is no recognized "new records" exemption under California law and that, if there were such an exemption, Respondent has not proven it would apply to exempt disclosure of the Requested Records. The Court also finds that CDPH waived any claim that the de-identification measures proposed by Exide would result in the creation of a new record by failing to adopt or propose an alternative method, or show that there is no appropriate method that would not result in the creation of a new record.

5. Respondent Has an Obligation to Provide Any and All Reasonably Segregable Information Contained in the Requested Records, and Doing So Does Not Constitute the Creation of a "New Record"

The CPRA recognizes that public records sometimes include portions that are exempt under the CPRA because they contain private, identifying information (or information that is exempt for other reasons), and portions that are non-exempt and must be disclosed. However, public agencies may not withhold an entire public record merely because a *portion* of it is exempt. Rather, public agencies must disclose public records whenever the exempt portions are "reasonably segregable" from the non-exempt portions. (Gov. Code § 6253, subd. (a) [providing that any "reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law."]; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652-653 ["The fact that parts of a requested document fall within the terms of an exemption does not justify withholding the entire document."].) Such public records are "reasonably segregable" and must be disclosed if the agency can eliminate identifying information through redaction, data extraction, data compilation, or the use of computer programming. (See *City and County of San Francisco v. Superior Court* (1951) 38 Cal.2d 156, 161-162, citing *Franchise Tax Bd. v. Superior Court* (1950) 36 Cal.2d 538 [withholding personal identities allowed release of the remaining requested information]; *North County Parents Organization v. Dept. of Education* (1994) 23 Cal.App.4th 144, 147-148 [redaction of material from records to be released under the CPRA]; *see also Sander v. State Bar of California* (2013) 58 Cal.4th 300, 325 [noting that, while "information obtained through a promise of confidentiality is not subject to the right of public access when the public interest would be furthered by maintaining confidentiality," this "principle has not prevented public access to otherwise confidential, private information in the possession of a public entity that is not linked to the individual to which it pertains"] [citing, e.g., *Zamudio v. Superior Court* (1998) 64 Cal.App.4th 24 (*Zamudio*) (requiring release of juror questionnaires with personal identifying information redacted)].)

The Requested Records contain non-exempt information as well as identifying information regarding people who have been the subjects of investigations into elevated blood lead levels. Therefore, CDPH cannot release the database without applying redaction or other de-identification

measures, such as those proposed by Petitioner. The evidence shows that the de-identification methods described in the Scheuren/Baier Declaration are adequate to de-identify the Requested Records. (Scheuren/Baier Decl., ¶¶ 8, 24-34, 45-68; Scheuren Baier Su-Rebuttal Decl., *passim.*) The Court therefore finds that the Requested Records constitute "reasonably segregable" public records that must be disclosed pursuant to the CPRA. As described above, the CPRA and the case law interpreting it demonstrate that public agencies have the obligation to disclose all "reasonably segregable" information, even if doing so entails data extraction, data compilation, or computer programming. (Gov. Code § 6253, subds. (a) and (b), and § 6253.9, subd. (b).) In other words, the process of extracting the Requested Records and de-identifying them is a function of CDPH's obligation to disclose "reasonably segregable records" and does not involve creation of a "new record." Moreover, in light of these statutory obligations, if CDPH objected to the methods proposed by Exide, it had the duty to adopt or propose other means of de-identifying the Requested Records or to demonstrate that there is no de-identification method that could adequately protect against re-identification that would not result in the creation of a new record. It did not do so. Therefore, it cannot object to the Court requiring it to provide the records according to one of the methods proposed by Exide.

6. Respondent Must Promptly Provide the Requested Records in De-Identified Form

The Court finds that Petitioner has established that the Requested Records are public records within the meaning of the CPRA and that Respondent possesses the records. Respondent has failed to satisfy its burden of showing that any of the express exemptions of the CPRA apply to shield the Requested Records from disclosure, or that the interests in non-disclosure clearly outweigh the interests in disclosure. The Requested Records are therefore subject to mandatory disclosure. (Gov. Code § 6253, subd. (b) ["Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, ***shall*** make the records promptly available. . . ."] [emphasis added].) Respondent is ordered to promptly provide the Requested Records in de-identified format, pursuant to one of the methods proposed in the

Scheuren/Baier Declaration. Further requirements and conditions for such disclosure are described in Section III.

III. PETITIONER IS REQUIRED TO PAY THE COSTS NECESSARILY AND REASONABLY INCURRED BY RESPONDENT FOR THE EXTRACTION OR COMPILATION OF DATA FROM RESPONDENT'S RECORDS, AND FOR ANY COMPUTER PROGRAMMING REQUIRED TO EXTRACT, COMPILE, OR DE-IDENTIFY THE RECORDS

A. Under California Law, the Costs of Complying with a Request for Records Are Normally Borne by the Government

Ordinarily, public agencies may only recover the "direct costs of duplication" from the requestor of public records. (Gov. Code § 6253, subd. (b); *Santa Clara County , supra*, 170 Cal.App.4th at p. 1336.) If "[t]he request would require data compilation, extraction, or programming to produce the record," agencies may also bill the requester for the costs of disclosing electronic records, including the "cost to construct a record, and the cost of programming and computer services necessary to produce a copy." (Gov. Code § 6253.9, subd. (b).) All other costs of complying with public records requests must be borne by the government. (*Santa Clara County, supra*, 170 Cal.App.4th at p. 1336 [agency may not recover costs for "ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted"] [quoting *North County Parents Org. v. Dep't of Ed.* (1994) 23 Cal.App.4th 144, 148 (*North County Parents Org.*)].)

B. It Is the Duty of the Government to Perform any Data Extraction, Data Compilation, or Computer Programming Necessary to Make Records Available to the Public, and the Government May Charge for the Reasonable Costs of Doing So

The CPRA obligates public agencies to perform any redactions, data extraction, data compilation or computer programming needed to disclose public records. (Gov. Code § 6253, subds. (a) and (b); Gov. Code § 6253.9, subd. (b); see also, e.g., *North County Parents Organization, supra*, 23 Cal.App.4th at pp. 147-148 [redaction of material from records to be released under the CPRA]; *Zamudio, supra*, 64 Cal.App.4th at p. 24 [requiring release of juror questionnaires with personal identifying information redacted].)

However, to reduce the potential burdens associated with public records requests requiring substantial pre-disclosure work, the CPRA authorizes agencies to charge the requester for the

reasonable costs of disclosing electronic records, including the "cost to construct a record, and the cost of programming and computer services necessary to produce a copy" if "[t]he request would require data compilation, extraction, or programming to produce the record." (Gov. Code § 6253.9, subd. (b).) This is an exception to the general rule that agencies may only charge requestors for the "direct costs of duplication of public records." (Gov. Code § 6253, subd. (b).) The agency, however, may not incur costs that are unnecessary or unreasonable, and it may not inflate its costs in a manner designed to deter or punish requestors or create unwarranted obstacles to obtaining compliance with the disclosure obligations imposed on the government by California law. (See *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 218 [directing trial court to determine "reasonable" allowable costs under Section 6253(b)-(c) and Section 6253.9].)

C. Respondent May Retain a Consultant to De-Identify the Requested Records, and the Requested Records Shall Be Provided to Petitioner in De-Identified Form

In this case, Petitioner offered to pay for a consultant to perform the de-identification work necessary to make the records available. Respondent may retain a qualified consultant to perform this work, because doing so will prevent the need for providing the requested records from unduly interfering with the work of key personnel of Respondent, specifically Dr. Joseph Courtney. If Respondent chooses to retain a consultant to de-identify the Requested Records, the parties will meet and confer in good faith regarding the selection of a qualified consultant to perform the de-identification, within ten (10) days of entry of this judgment. If Respondent has not selected a qualified consultant within twenty (20) days of the date of entry of this judgment, Exide may specify the consultant. Petitioner will be required to reimburse Respondent for the costs of the services provided by the consultant selected, but the consultant will be retained by Respondent and Respondent will be responsible for the work performed by the consultant. Any agreement with such a consultant may provide that invoices will be sent directly to and paid directly by Exide. Prior to disclosure of the requested records to Exide or to any member of the public, the consultant shall certify that the records have been de-identified in accordance with the selection option set forth in the Scheuren/Baier Declaration. Respondent may not object to or prevent disclosure of the Requested Records that have been so certified by the consultant. The de-identified records

shall be provided to Exide within ninety (90) days of the entry of this judgment. The de-identified records shall be provided to Exide at least thirty (30) days before they are provided to any other person or entity who has requested or may request them.

IV. PETITIONER IS THE PREVAILING PARTY AND IS ENTITLED TO RECOVER THE ATTORNEYS' FEES AND COSTS IT HAS INCURRED IN THIS ACTION

Under the CPRA, "[t]he Court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The cost and fees shall be paid by the public agency...." (Gov. Code § 6259, subd. (d).) An award of costs and attorneys' fees to a prevailing requestor is mandatory. (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 427.) A party is the prevailing party "if it succeeds on any significant issue in the litigation and achieves some of the benefit sought in the lawsuit." (*Garcia v. Bellflower Unified School Dist. Governing Bd.* (2013) 220 Cal.App.4th 1058, 1065 (*Garcia*) [requestor was prevailing party in writ petition for records under CPRA because court ordered production of some of the records sought].) In accordance with Section 6259, subdivision (d), Exide has requested court costs and attorneys' fees in an amount to be determined by later motion.

Here, with the exception of a small number of documents, CDPH refused to provide any of the records requested by Exide until after this action was commenced. While CDPH disclosed additional records prior to a determination of the merits of the petition, it did not unequivocally agree to disclose those records prior to the commencement of this action. Rather, CDPH refused to disclose certain records until ordered to do so by the Court. The Court finds that the commencement of this action resulted in the disclosure of records prior to the final determination of the petition, and the final determination of the petition has resulted in the requirement that additional records be disclosed. Therefore, Petitioner is the prevailing party, and is entitled to an award of attorneys' fees and costs in an amount to be established by a separate motion. (See *Garcia, supra*, 220 Cal.App.4th at p. 1066.)

V. A PROTECTIVE ORDER TO GOVERN THE DE-IDENTIFICATION PROCESS IS PERMISSIBLE AND WARRANTED

The Court cannot impose a protective order on a member of the public constraining the use or disclosure or records required to be made available under the Public Records Act or the California Constitution. However, to the extent necessary, the Court may impose a protective order on persons or entities that are given access to records that contain information that is exempt from disclosure in order to redact exempt information or to segregate and provide any reasonably segregable and non-exempt information. Accordingly, the Court hereby approves the issuance of a protective order prohibiting persons or entities who are provided with unredacted records that have not yet been subjected to de-identification, and that contain information exempt from disclosure, from disclosing such records to anyone other than Respondent, Respondents' representatives, or those persons or entities subject to the protective order and involved in de-identification of the requested records. The parties will submit a proposed protective order within ten (10) days of entry of this judgment.

VI. CONCLUSION

For all of the foregoing reasons, and good cause have been established and found therefor, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The petition is granted.
2. A writ of mandate is hereby issued to Respondent California Department of Public Health, requiring it to permit access by and provide copies of records to Petitioner in accordance with the Court's order of January 24, 2018 and this Judgment and Writ of Mandate.
3. Respondent shall provide Petitioner with copies of the records described in the letter from Petitioner dated March 8, 2017 and the attachment thereto, copies of which are attached hereto as **Exhibit A**, in accordance with this Judgment and Writ of Mandate.
4. The records provided pursuant to this Judgment and Writ of Mandate shall be de-identified pursuant to one of the methods described in the Joint Declaration of Fritz Scheuren, Ph.D., and Patrick Baier, DPhil, filed in this action on September 18, 2017. A copy of that

declaration (without the exhibits, which are not necessary for purposes of this Judgment and Writ of Mandate) is attached hereto as **Exhibit B**.

5. The reasonable costs of data extraction, programming, compilation, or redaction necessary to provide the records to Petitioner in accordance with this Judgment and Writ of Mandate, including the cost of retaining any consultant necessary to perform this work, shall be borne by Petitioner.

6. Respondent's refusal to provide the records required to be produced by this Judgment and Writ of Mandate violated the provisions of the Public Records Act (Gov. Code § 6250, et seq.) and the California Constitution (Art. I, § 3, subd. (b).) Petitioner has established that the records are public records subject to the disclosure requirements of the Public Records Act and the Constitution. Respondent has failed to demonstrate that the records are exempt from disclosure, for the reasons set forth in the Court's order of January 24, 2018 and in this Judgment and Writ of Mandate.

7. Petitioner is the prevailing party in this action, and is entitled to an award of attorneys' fees and costs pursuant to Government Code section 6259(d). The amount of fees and costs shall be determined pursuant to a motion to be filed with the Court within sixty (60) days of service of notice of entry of this Judgment and Writ of Mandate. This Judgment and Writ of Mandate may and will be amended to include the award of attorneys' fees and costs upon determination of the motion and issuance of a further order of the Court thereon.

8. The Court will retain jurisdiction as necessary to address any issues related to compliance with this Judgment and Writ of Mandate until the parties have fully complied with its requirements, provided that this retention of jurisdiction shall not alter the rights or obligations of the parties under Government Code section 6259(c).

Dated: 4-13-18

The Honorable Judith Craddick
Judge of the Superior Court