

1 ELECTRONIC FRONTIER FOUNDATION  
2 SAIRA HUSSAIN (SBN 300326)  
3 AARON MACKEY (SBN 286647)  
4 ADAM SCHWARTZ (SBN 309491)  
5 815 Eddy Street  
6 San Francisco, CA 94109  
7 Telephone: (415) 436-9333  
8 Email: saira@eff.org  
9 amackey@eff.org  
10 adam@eff.org

11 VALLEJO | ANTOLIN | AGARWAL | KANTER LLP  
12 MONTY AGARWAL (SBN 191568)  
13 RACHEL CHANIN (SBN 229253)  
14 3021 Citrus Circle, Suite 220  
15 Walnut Creek, CA 94598  
16 Telephone: (925) 951-6970  
17 Email: magarwal@vaakllp.com  
18 rchanin@vaakllp.com

19 Attorneys for Petitioners/Plaintiffs

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF SACRAMENTO

22 ASIAN AMERICAN LIBERATION  
23 NETWORK, a California non-profit public  
24 benefit association; KHURSHID KHOJA,  
25 an individual; ALFONSO NGUYEN, an  
26 individual,

27 Petitioners/Plaintiffs,

28 v.

29 SACRAMENTO MUNICIPAL UTILITY  
30 DISTRICT; PAUL LAU, in his official  
31 capacity as the Chief Executive Officer of  
32 the Sacramento Municipal Utility District;  
33 CITY OF SACRAMENTO; KATHERINE  
34 LESTER, in her official capacity as Chief of  
35 Police of the City of Sacramento Police  
36 Department,

37 Respondents/Defendants.

Case No.: 34-2022-80004019

**FIRST AMENDED VERIFIED  
PETITION FOR WRIT OF  
MANDATE AND COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

## INTRODUCTION

1  
2           1.       The Sacramento Municipal Utility District (“SMUD”) is searching  
3 entire zip codes’ worth of people’s private data and disclosing it, in bulk, to law  
4 enforcement without a court order and in the absence of individualized reasonable  
5 suspicion of wrongdoing. SMUD’s bulk disclosure of customer utility data turns its  
6 entire customer base into potential leads for police to chase.

7           2.       SMUD’s ongoing dragnet of its customers’ utility usage and  
8 subsequent disclosure eviscerates their reasonable expectations of privacy and  
9 violates California law. SMUD’s secret disclosures also disproportionately harm  
10 Asian customers because SMUD’s lists are used to target Asians in particular.

11           3.       Electricity usage data has always provided a view into what occurs  
12 within a home. But with the adoption of smart utility meters, the data provides a  
13 picture that is clearer and more detailed than was possible before. Today, smart  
14 meters provide usage information in 15-minute or even smaller increments. The  
15 granular information is beamed wirelessly to the utility on average six times a day  
16 and can be stored in the utility’s databases for years. A utility company’s analyst  
17 who has never been to the home can sit at a far-away terminal and glean inordinate  
18 amounts of information about what is going on inside the house. As the sensitive  
19 usage data accumulates over time, fuller pictures can be inferred about private  
20 daily routines, such as what devices are being used, when they are in use, and how  
21 this changes over time.

22           4.       Because of the power of this sensitive data and the potential for abuse,  
23 laws strictly govern when utilities can share information with law enforcement. For  
24 the 60% to 70% of Californians who get service from private utilities like PG&E and  
25 Southern California Edison, the California Public Utilities Commission’s (“CPUC”)  
26 rules allow disclosure to law enforcement only on a search warrant or a judicially  
27 approved subpoena.  
28

1           5.       Privacy laws evolved differently for local publicly owned utilities  
2 because they are not subject to CPUC jurisdiction. A local publicly owned electric  
3 utility, like SMUD, generally “shall not share, disclose, or otherwise make  
4 accessible to any third party a customer’s electrical consumption data ....” Public  
5 Utilities Code § 8381(b)(1). However, there is an exception for sharing “as required  
6 under federal or state law.” *Id.* at § 8381(f)(3).

7           6.       Certain narrow circumstances that require a local publicly owned  
8 utility, like SMUD, to disclose data are set forth in provisions of the California  
9 Public Records Act (“CPRA”), Government Code § 6254.16. Even when applicable,  
10 nothing in the narrow exceptions require SMUD to turn over private social security,  
11 driver’s license, and telephone numbers, which SMUD liberally discloses.

12           7.       In recent years, SMUD has given a slew of protected customer data to  
13 the Sacramento Police Department (“Sacramento Police”). Sacramento Police asked  
14 SMUD to provide this information on an ongoing basis. Sacramento uses the data  
15 SMUD hands over to police as part of an abusive penalty scheme. In 2017,  
16 Sacramento Police started issuing large penalties to owners of properties where  
17 cannabis is found under a new city ordinance. In just two years, they levied nearly  
18 \$100 million. These actions have been endorsed by city leaders. At one public  
19 meeting, a City Councilperson bluntly said, “I’d love to see how much money we  
20 confiscate ...” At another, Sacramento’s Mayor asked that “collection of these  
21 resources be a high priority” because “we’re going to have a budget this year that is  
22 going to be lean.”

23           8.       Sacramento Police assessed 86% of the penalties, in the two years  
24 before September 1, 2019,<sup>1</sup> against owners whose names are discernably Asian.  
25 This skew did not happen accidentally. In generating police leads, a SMUD analyst  
26 excluded homes in a predominately white neighborhood. And one police architect of  
27

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28 <sup>1</sup> Sacramento was sued on September 12, 2019 for, among other things, an Equal Protection violation in a different matter.

1 Sacramento’s program removed non-Asian names on a SMUD list and sent only the  
2 Asian names onward for further attention. At one appeal hearing, a city prosecutor  
3 demanded of an Asian property manager if he knew there was a “problem with  
4 Asian people and grow houses.” In another, a second prosecutor insinuated that the  
5 Asian owner was involved with “organized crime,” an accusation later rejected as  
6 baseless by a superior court judge.

7 9. SMUD is supposed to prevent the disclosure of electricity usage and  
8 customer data because of its potential for abuse. SMUD’s policies say that “privacy  
9 is fundamental,” that it “strictly enforce[s] privacy safeguards,” and that it discloses  
10 to law enforcement only as allowed by law. SMUD’s practice, however, is to search  
11 its extensive trove of customer data and to turn over protected information, in bulk,  
12 whenever police request it.

13 10. Sacramento Police do not obtain court orders to get customer data from  
14 SMUD. Nor is there evidence that police have any suspicion of a particular home  
15 when SMUD’s dragnet provides details about every home in a zip code that uses  
16 more than a particular threshold of energy.

17 11. Sacramento Police and SMUD’s data-sharing practices and policies  
18 violate mandatory duties imposed on both under the California Constitution, Public  
19 Utilities Code § 8381, and Government Code § 6254.16. Petitioners seek a writ of  
20 mandate and declaratory and injunctive relief.

## 21 **THE PARTIES**

22 12. Petitioner ASIAN AMERICAN LIBERATION NETWORK (“AALN”) is  
23 a California non-profit benefit association.

24 13. AALN is a Sacramento-area community-based organization originally  
25 founded in 2020 as the Sacramento Asian/Pacific Islander Regional Network. In  
26 2021, Petitioner transitioned to a 501(c)(3) non-profit organization under the official  
27 name Asian American Liberation Network, with a mission to build power in the  
28 Asian American community to advance social justice and collective liberation.

1 Among its accomplishments over the past two years, Petitioner has dedicated  
2 significant efforts to engaging in anti-racism education, discussing issues of Asian  
3 Americans and the justice system, and addressing the harmful impacts of over-  
4 policing on the Asian community.

5 14. As an advocate for the Asian community in SMUD's service area,  
6 including the City of Sacramento, AALN has a clear, present, and beneficial interest  
7 in Respondents' performance of their statutory and constitutional duties, as set  
8 forth in this complaint. AALN's interest is distinct from the interest of the public at  
9 large because Respondents' failure to comply with their statutory and constitutional  
10 obligations has resulted in the targeting of the Asian community whose rights,  
11 among others, AALN and its members have committed to protect. AALN has an  
12 interest in maintaining the confidentiality of the vast trove of data maintained by  
13 SMUD and in ensuring that the data is not released in an unlawful manner that  
14 allows government, including the government of the City of Sacramento, to target  
15 any community, including the Asian community.

16 15. In addition to its beneficial interest, AALN, through its members, who  
17 rely on SMUD's services and live in the City of Sacramento and Sacramento Valley,  
18 are interested as citizens in having Respondents' statutory and constitutional duties  
19 enforced. There is a substantial public interest in the enforcement of Respondents'  
20 duties to safeguard the confidentiality of electricity usage and subscriber data  
21 because the disclosure of such sensitive information can be misused to target  
22 members of a particular community. Additionally, Respondents' unlawful practices  
23 have led to huge penalties being wrongly imposed on innocent property owners and  
24 undermined the fair administration of the laws. Respondents are public officials  
25 who are engaged in purposeful and systematic violations of their public duties, so  
26 this Court's intervention is the only adequate remedy available to AALN.

27 16. AALN, through its members, also challenges Respondents' illegal  
28 government actions in their capacity as a taxpayer to restrain and prevent their

1 illegal expenditures. AALN's members have paid one or more taxes that fund the  
2 City of Sacramento within one year of the date of this Complaint, and on  
3 information and belief, have also paid, in the one year prior to this Complaint, one  
4 or more taxes that fund SMUD. Respondents LAU and LESTER are expending  
5 public funds in furtherance of an illegal scheme to release confidential and sensitive  
6 data. Respondents' expenditure of public funds, including their payment of salaries  
7 to employees to administer and implement the complained of practices, is an  
8 unlawful use of funds and should be enjoined.

9 17. Petitioner KHURSHID KHOJA is a resident of the City of Sacramento  
10 and a SMUD subscriber.

11 18. KHOJA has long been an advocate for the broader Asian community,  
12 including by way of serving as a prior board member and president of two Bay Area  
13 Asian American bar associations and as a board director of one of the nation's oldest  
14 Asian legal advocacy organizations. KHOJA is also an attorney who advises clients  
15 in the legal regulated cannabis industry in California. As part of his legal practice  
16 and commitment to public service, KHOJA has worked on social equity issues,  
17 including advancing the reform of cannabis laws and the protection of the legal  
18 cannabis industry through serving on the Board of Directors of the National  
19 Cannabis Industry Association, the California Cannabis Industry Association, and  
20 the Minority Cannabis Business Association.

21 19. KHOJA challenges Respondents' illegal government actions in his  
22 capacity as a taxpayer to restrain and prevent their illegal expenditures. KHOJA  
23 has paid one or more taxes that fund the City of Sacramento within one year of the  
24 date of this Complaint, and on information and belief, has also paid, in the one year  
25 prior to this Complaint, one or more taxes that fund SMUD. Respondents LAU and  
26 LESTER are expending public funds in furtherance of illegal practices to release  
27 confidential and sensitive data. Respondents' expenditure of public funds, including  
28

1 their payment of salaries to employees to administer and implement the complained  
2 of practices, is an unlawful use of funds and should be enjoined.

3         20. KHOJA also has a clear, present, and beneficial interest in  
4 Respondents' performance of their statutory and constitutional duties, as set forth  
5 in this complaint. He is an advocate for the broader Asian community and an  
6 attorney working on protection of and compliance with the legal cannabis industry.  
7 Also, KHOJA has a substantial public interest in the enforcement of Respondents'  
8 duties to safeguard the confidentiality of electricity usage and subscriber data  
9 because the disclosure of such sensitive information can be misused to target  
10 members of a particular community. Additionally, Respondents' unlawful practices  
11 have led to huge penalties being wrongly imposed on innocent property owners and  
12 undermined the fair administration of the laws. Respondents are public officials  
13 who are engaged in purposeful and systematic violations of their public duties, so  
14 this Court's intervention is the only adequate remedy available to KHOJA.

15         21. Petitioner ALFONSO NGUYEN works as an adjunct counselor at  
16 Consumnes River College and is a resident of Sacramento County, where he has  
17 lived with his elderly mother since approximately 2001. NGUYEN's residence  
18 receives electricity from SMUD. Neither NGUYEN nor any member of his  
19 household has ever cultivated cannabis at the residence or anywhere else.

20         22. Law enforcement, specifically deputies with the Sacramento County  
21 Sheriff's Department, have twice appeared at NGUYEN's home in the recent past  
22 demanding to search the home even though the deputies did not have a warrant.

23         23. The first encounter occurred in the 2015-2017 period. At  
24 approximately 9:00 PM, two deputies came to NGUYEN's home. When NGUYEN  
25 refused entry because the deputies did not have warrant, one of the deputies pushed  
26 open the door, pushed aside NGUYEN, and proceeded to conduct a search of  
27 NGUYEN's home. The search revealed nothing. On information and belief, the  
28

1 deputy, without a warrant, searched NGUYEN's home because of data supplied by  
2 SMUD to law enforcement.

3         24.     The second encounter occurred on May 29, 2020, when two sheriff's  
4 deputies appeared at the gate of NGUYEN's property and demanded to be let in to  
5 search the residence. NGUYEN asked the deputies why they wanted to search the  
6 property. Deputy J.W. Berkshire told NGUYEN that SMUD had told the sheriff's  
7 office that his home used too much electricity. Berkshire accused NGUYEN of  
8 growing marijuana, which NGUYEN denied. Berkshire, nonetheless, demanded  
9 that if NGUYEN had nothing to hide, he should let the deputies search the home.  
10 When NGUYEN told Berkshire to get a warrant, the deputy put his hand over his  
11 holstered gun as if preparing to draw it. He also screamed at NGUYEN, called  
12 NGUYEN a liar, and stated that he would come back with a warrant to arrest  
13 NGUYEN. NGUYEN complained in writing to the Sacramento County Sheriff's  
14 Department. He also called SMUD. SMUD initially denied that it had provided any  
15 information to law enforcement about NGUYEN's home. But a few days later  
16 SMUD acknowledged that it had in fact disclosed information about NGUYEN's  
17 home energy usage.

18         25.     NGUYEN challenges Respondents SMUD and LAU's illegal  
19 government actions in his capacity as a taxpayer to restrain and prevent their  
20 illegal expenditures. On information and belief, NGUYEN has paid one or more  
21 taxes that fund SMUD within one year of the date of this First Amended Writ and  
22 Complaint. Respondent LAU is expending public funds in furtherance of illegal  
23 practices that release confidential and sensitive data. Respondent LAU's  
24 expenditure of public funds, including payment of salaries to employees to  
25 administer and implement the complained of practices, is an unlawful use of funds  
26 and should be enjoined.

27         26.     NGUYEN also has a clear, present, and beneficial interest in  
28 Respondents' performance of their statutory and constitutional duties, as set forth



1 in this complaint. NGUYEN has suffered because Respondents SMUD and LAU's  
2 failure to comply with their statutory and constitutional obligations has resulted in  
3 invasive and illegal law enforcement action at his home. NGUYEN sues to ensure  
4 that no member of the public is ever subjected to the type of law enforcement  
5 encounters he endured because of the illegal practices complained of herein.

6 27. Each of the Petitioners brings this action in the public interest and on  
7 behalf of the general public, and no Petitioner seeks any individual relief greater  
8 than the relief they seek for the general public. Specifically, Petitioners seek  
9 injunctive and declaratory relief that would prevent Respondents from unlawfully  
10 disclosing or requesting private customer utility data in the manner that  
11 Respondents have been doing for years.

12 28. Respondent SMUD is a district and public authority organized under  
13 California's Municipal Utility District Act and a local publicly owned electric utility  
14 as defined by Public Utilities Code § 224.3. It is also a local agency as defined by  
15 Government Code § 6251(a). SMUD is the nation's sixth-largest community-owned  
16 electric service provider and serves over 600,000 electric subscriber accounts in the  
17 Sacramento Valley. Respondent SMUD is directed by Respondent LAU.

18 29. Respondent PAUL LAU is SMUD's current Chief Executive Officer and  
19 is sued in his official capacity. LAU is responsible for safeguarding the privacy of  
20 SMUD's consumer data, including when law enforcement demands access.

21 30. Respondent CITY OF SACRAMENTO is a political subdivision of the  
22 State of California.

23 31. Respondent KATHERINE LESTER is the current Chief of Police of the  
24 Sacramento Police Department and is sued in her official capacity. LESTER is  
25 responsible, *inter alia*, for supervising the Sacramento Police Department and  
26 establishing the policies and practices for requesting protected information from  
27 SMUD.  
28



1           36.     Then in 2010, the California Legislature added Public Utilities Code  
2 § 8381, which further limits public utilities from disclosing customer information.  
3 (The Legislature simultaneously enacted Code § 8380, which limits disclosure by  
4 private utilities.) In general, a local public electric utility “shall not share, disclose,  
5 or otherwise make accessible to any third party a customer’s electrical consumption  
6 data ...” *Id.* at § 8381(b)(1). Such a utility, however, is not precluded from sharing  
7 “as required under federal or state law.” *Id.* at § 8381(f)(3). Under the 1997 privacy  
8 safeguards added to the CPRA for utility information, public utilities are required  
9 to disclose certain customer information (just customer name, home address, and  
10 utility usage data) in specific instances:

11           (a) To an agent or authorized family member of the person to whom  
12           the information pertains.

13           (b) To an officer or employee of another governmental agency when  
14           necessary for the performance of its official duties.

15           (c) Upon court order or the request of a law enforcement agency  
16           relative to an ongoing investigation.

17           (d) Upon determination by the local agency that the utility customer  
18           who is the subject of the request has used utility services in a manner  
19           inconsistent with applicable local utility usage policies.

20           (e) Upon determination by the local agency that the utility customer  
21           who is the subject of the request is an elected or appointed official with  
22           authority to determine the utility usage policies of the local agency,  
23           provided that the home address of an appointed official shall not be  
24           disclosed without his or her consent.

25           (f) Upon determination by the local agency that the public interest in  
26           disclosure of the information clearly outweighs the public interest in  
27           nondisclosure.

28 Cal. Gov’t Code §§ 6254.16(a)–(f).

1                                    **SMUD Rolls Out Smart Meters and Analytics Software**

2            37.     In October 2009, the U.S. Department of Energy granted SMUD  
3     \$127.5 million to help implement a smart electric grid. One major component was  
4     an Advanced Metering Infrastructure, known as “smart meters.” By 2012, SMUD  
5     had replaced over 600,000 of its older analog meters with the new smart meters.

6            38.     SMUD’s smart meters collect a customer’s electricity usage data in 15-  
7     minute or shorter intervals and send it to SMUD. Smart meters provide a  
8     significantly more detailed view of a consumer’s energy usage and behavior than  
9     traditional meters, which are typically read manually once per month.

10          39.     After its smart meter roll-out, SMUD implemented analytics software  
11     from Detectent. The company said it would give SMUD “unprecedented  
12     intelligence” from its over 600,000 smart meters. Detectent added that its software  
13     had been “proven time and again to help utilities move to the next level of  
14     awareness with regard to how and when energy is used by their customers.”

15          40.     SMUD provided its revenue protection group, including analysts  
16     Roberg Duggan and Michael Wolff, with access to its trove of smart meter and other  
17     customer data, and the Detectent software.

18                                    **State and Local Regulation of Cannabis Cultivation**

19          41.     In 1996, California voters passed Proposition 215, the “Compassionate  
20     Use Act,” which exempted patients and caregivers from criminal penalties for  
21     cultivating marijuana for medical treatment. In 2003, in response, the California  
22     Legislature enacted the Medical Marijuana Program Act. Health & Safety Code §§  
23     11362.7 *et seq.* It allowed a qualified patient to maintain six mature or 12  
24     immature cannabis plants. It also allowed cities and counties to exceed the state  
25     limits. *Id.* § 11362.77(c).

26          42.     Sacramento elected to exceed the state limits. In 2012, it passed  
27     Ordinance No. 2012-045, which placed no limit on the number of plants a qualifying  
28     person could cultivate in a residence (though it did limit the “cumulative area” of

1 cultivation to 400 square feet). For years, Sacramento undertook little enforcement  
2 of cannabis cultivation for medicinal use.

3 43. In November 2016, California voters passed Proposition 64, the  
4 “Control, Regulate and Tax Adult Use of Marijuana Act.” Among other things, it  
5 legalized cultivation of up to six cannabis plants in a residence by any adult.  
6 Health & Safety Code § 11362.2.

7 44. In 2017, Sacramento established a Department of Cannabis Policy and  
8 Enforcement. In May 2017, its first chief, Joe Devlin described his role: “We’re  
9 going to be doing permitting, working with the police department and our code  
10 enforcement around enforcement of illegal grows and illegal manufacturing  
11 primarily taking place in residential neighborhoods while permitting and issuing  
12 licenses for what is now and will be the legal production of cannabis.”

13 45. In Summer 2017, Devlin provided the plan. Sacramento would modify  
14 the prior 400-square-foot medical marijuana cultivation ordinance and limit  
15 residential cultivation to one room and six plants. In September 2017, Sacramento  
16 Ordinance No. 2017-0047 officially adopted the new penalty. The Ordinance is  
17 enforceable by criminal sanctions, and civil penalties or administrative penalties of  
18 \$500 per plant for cultivation over six plants.

### 19 **SMUD Shares Customer Data with Sacramento Police**

20 46. As part of modifying its ordinance, Sacramento Police, including then-  
21 Captain (now-Deputy Chief) Dave Paletta and Officer Kelli Streich, had approached  
22 SMUD with a request for consumer energy usage data. SMUD analysts Duggan  
23 and/or Wolff used SMUD’s systems to search consumer records for entire regions of  
24 Sacramento. After identifying users meeting a particular energy threshold, SMUD  
25 delivered to Sacramento Police one or more lists of names, addresses, and electricity  
26 usage data. Based on this data, in the summer of 2017, chief Devlin reported that  
27 “1,000 homes in the city are estimated to have illegal residential cultivation in  
28 varying degrees.”

1           47.     Since then, SMUD has regularly provided these lists to Sacramento  
2 Police. Paletta and Streich asked Lindsey Mendoza, a Sacramento Police data  
3 analyst, to assist. Streich, Mendoza, and other officers periodically email a form to  
4 Duggan and/or Wolff at SMUD. The form typically asks SMUD for lists of all the  
5 customers within one or more specified zip codes that use more than a particular  
6 amount of energy (*e.g.*, above 3,000kWh in a month). The SMUD form used by  
7 Sacramento Police sometimes cites Government Code § 6245.16(c) as the purported  
8 basis for the request. SMUD analysts respond to the Sacramento Police’s request  
9 by disclosing lists with names, addresses, and electricity usage for a given period, as  
10 well as other assessments based on smart meter data.

11           48.     The lists disclosed by SMUD serve as the starting point for police  
12 investigations and municipal enforcement proceedings against individual residents  
13 and homeowners. In other words, prior to obtaining SMUD’s lists, law enforcement  
14 does not have individualized suspicion of any SMUD customer, resident, or  
15 homeowner.

16           49.     SMUD knows that the lists it routinely shares with law enforcement  
17 are not indicative of illegal activity. When turning over one list to Sacramento  
18 Police, a SMUD analyst said there were customers on the list “that have never had  
19 a grow pattern.” In transmitting another list, the same SMUD analyst said, “Of  
20 course there may be some high users in there that aren’t growing too.”

21           50.     Upon getting the SMUD lists, Mendoza pulls owner parcel information  
22 for each of the addresses and correlates it with the SMUD subscriber information.  
23 A subscriber name that is different from an owner name suggests a rental. Both  
24 sets of names indicate whether the tenant and/or owner may be Asian.

25           51.     For some of the properties on SMUD’s lists, Mendoza mails letters to  
26 occupants and/or owners. The form letters, which the Sacramento City Attorney’s  
27 office had translated into Chinese but no other language, say that the “Sacramento  
28

1 Police Department is concerned that your above-referenced property might be being  
2 used for indoor cultivation of cannabis,” and asks the recipient to contact police.

3 52. Some properties on SMUD lists are not sent a letter. Instead,  
4 Mendoza passes the SMUD and other information to Sacramento Police area teams  
5 which are broken out by geographic region. Only after these police teams receive  
6 Mendoza’s lists, which contain SMUD information, do they begin to conduct  
7 traditional, individualized investigations into particular customers. At this stage,  
8 officers do traditional sleuthing, *e.g.*, drive-bys and running license plates. They  
9 also frequently ask Duggan or Wolff for more current subscriber data, including  
10 social security, telephone, and drivers’ license numbers. Duggan and/or Wolff  
11 provide such information. In responding, Duggan and/or Wolff search SMUD’s  
12 repositories, including smart meter interval data, and respond with their insights,  
13 such as whether the resident is growing cannabis, or whether electricity use fell off  
14 on a particular date.

15 53. The SMUD lists have led law enforcement, including Sacramento  
16 Police, to investigate properties where no cannabis is being cultivated. For  
17 instance, in the Fall of 2018, the daughter of one person on a list that SMUD  
18 disclosed reported that her elderly mother was not growing cannabis, but rather  
19 kept her lights on at all times due to safety concerns. SMUD’s disclosures have also  
20 ensnared customers, for instance, doing nothing more than mining cryptocurrency.

21 54. When police conclude that a home or property might have an unlawful  
22 grow operation, they apply for a criminal warrant, with assistance from the  
23 Sacramento City Attorney’s office. To apply for a criminal warrant, Sacramento  
24 Police often return to Duggan and/or Wolff for more data. The SMUD analysts  
25 provide electrical consumption data for neighboring homes around a suspected  
26 property. Police then put that comparison information into the warrant, which  
27 frequently enters the public record.

28 55. If they obtain a criminal warrant, Sacramento Police raid the property.

1           56.     SMUD analysts also proactively provide customer information in the  
2 absence of a request from law enforcement. SMUD analysts actively search and  
3 mine consumer data and then invite law enforcement to submit a request. In one  
4 instance, SMUD analyst Michael Wolff proactively shared electricity usage data of  
5 two SMUD customers with a Sacramento Police officer via text message. Wolff  
6 expressly highlighted the customers were “Asian” and then invited Sacramento  
7 Police to submit a form. In another instance, a Sacramento Police officer texted  
8 SMUD analyst Robert Duggan. The text message said, “Trying to get Conner  
9 Jensen [another Sacramento Police officer] his first weed warrant this week but  
10 everything we send out is garbage.” The officer, in the text message, then asked  
11 Duggan if there was a “target you could recommend.” In response to the text  
12 message, Duggan searched SMUD’s trove of customer data and responded, “nothing  
13 big,” but nonetheless provided three addresses along with subscriber utility data.

14                           **Sacramento Monetizes SMUD’s Data**

15           57.     Sacramento Police’s use of the data SMUD discloses is not limited to  
16 prosecuting excessive cannabis cultivators. Instead, police also penalize the  
17 property owner, even when Sacramento Police have no evidence that the owner has  
18 been complicit in a tenant’s illicit cultivation. The penalties are routinely five or six  
19 figures.

20           58.     Owners can appeal to Sacramento’s administrative hearing process,  
21 which Devlin in the Summer of 2017 said would make the penalties “[e]asy to  
22 enforce.” In a September 2019 Capital Public Radio article, one attorney described  
23 the hearings more simply — “a kangaroo court.” When Sacramento prosecutors told  
24 one Superior Court judge that the hearings are “looser in nature,” the judge  
25 responded that he was “troubled by the notion that a quick, informal hearing, in  
26 which the rules of evidence are not followed, resulting in an enormous penalty” is  
27 sufficient to meet due process.  
28



1           59.     SMUD’s release of sensitive consumer data, based simply on generic  
2 requests from Sacramento Police, has resulted in Sacramento issuing about \$100  
3 million in penalties against homeowners in less than two years.

4           60.     Between the Fall of 2017 and the Fall of 2019, the vast majority—  
5 nearly 90 percent—of people against whom the city imposed fines were of Asian  
6 descent. Both public statements and publicly available information demonstrate  
7 that this outcome is the result of a concentrated and targeted effort by the  
8 Sacramento Police and the Sacramento City Attorney’s Office.

9           61.     In fulfilling Sacramento Police’s requests for data, SMUD has  
10 sometimes omitted homes in a predominantly white area. As alleged above, in one  
11 text message, a SMUD analyst highlighted to police that the disclosed customers  
12 were “Asian.” Additionally, a Sacramento Police officer, in passing along a list of  
13 names provided by SMUD, removed non-Asian names from the list, leaving only  
14 Asian-sounding names for further attention.

15           62.     The Sacramento City Attorney’s office has made several statements  
16 that show a bias against the Asian community. At one penalty appeal hearing, a  
17 Deputy City Attorney demanded of an Asian property manager if he knew there  
18 was a “problem with Asian people and grow houses.” In another, a second Deputy  
19 City Attorney insinuated that the Asian owner was involved with “organized crime,”  
20 an accusation later rejected as baseless by a superior court judge.

21           63.     SMUD regularly releases to Sacramento Police private customer data  
22 that California law requires to be kept under lock and key. Predictably, abuse  
23 follows: about \$100 million in penalties in just two years; 86% of assessments  
24 against Asians; hearings that are “looser in nature”; and a “high priority” on  
25 collections because the city budget was “lean.”

26           64.     SMUD regularly searches protected customer data and releases it to  
27 law enforcement agencies, including in other parts of SMUD’s coverage area  
28 including wider Sacramento County. On information and belief, SMUD’s unlawful

1 searches and disclosures have resulted in outrageous law enforcement conduct, as  
2 NGUYEN has twice experienced.

3 **COUNT ONE**  
4 **(Code of Civ. Proc. §§ 526a, 1085)**  
5 **(Violation of Cal. Const. Article I, Section 13)**  
6 **(All Petitioners/Complainants Against SMUD)**  
7 **(Petitioners/Complainants AALN and KHOJA Against Sacramento)**

8 65. All of the preceding allegations are incorporated by reference.

9 66. Article I, Section 13 of the California Constitution mandates, at a  
10 minimum, that government officials have individualized reasonable suspicion of a  
11 violation of the law before conducting a search or seizure for purposes of law  
12 enforcement.

13 67. All Respondents have a ministerial duty under Article I, Section 13 of  
14 the California Constitution to have individualized reasonable suspicion of a  
15 violation of the law before conducting a search or seizure for purposes of law  
16 enforcement.

17 68. SMUD customers have a reasonable expectation of privacy in their  
18 electricity usage data and their social security, telephone, and drivers' license  
19 numbers that SMUD discloses. This includes a reasonable expectation of privacy  
20 that government officials will not search or seize this data for purposes of law  
21 enforcement unless these officials have individualized reasonable suspicion of a  
22 violation of the law.

23 69. All Respondents have a pattern and practice of searching and seizing  
24 SMUD customers' electricity usage data, for purposes of law enforcement, without  
25 having individualized reasonable suspicion of a violation of the law.

26 70. Petitioners have no plain, speedy and adequate remedy in the ordinary  
27 course of law, other than the relief sought herein.

28 **COUNT TWO**

1 (Code of Civ. Proc. §§ 526a, 1085)

2 (Violations of Public Utilities Code § 8381)

3 (All Petitioners/Complainants Against SMUD)

4 (Petitioners/Complainants AALN and KHOJA Against Sacramento)

5 71. All of the preceding allegations are incorporated by reference.

6 72. SMUD is a local publicly owned electric utility within the meaning of  
7 Public Utilities Code § 8381 and § 224.3.

8 73. Public Utilities Code § 8381(b)(1) mandates that SMUD “shall not  
9 share, disclose, or otherwise make accessible to any third party a customer’s  
10 electrical consumption data,” except in limited circumstances, including disclosure  
11 “as required under state or federal law.” § 8381(f)(3).

12 74. SMUD shares with law enforcement, including Sacramento Police,  
13 electrical consumption data without SMUD’s customers’ consent.

14 75. Respondents bear the burden of proving a state or federal law requires  
15 the disclosure of private information protected by Public Utilities Code § 8381.  
16 Respondents cannot demonstrate any exception to the general bar provided for in  
17 Public Utilities Code § 8381.

18 76. Government Code § 6254.16 is a state law that contains certain  
19 disclosure requirements that are exceptions to the general bar provided for in Public  
20 Utilities Code § 8381.

21 77. Respondents cannot show, as provided in Government Code  
22 § 6254.16(b), that SMUD is required to disclose consumer energy data because it is  
23 “necessary for the performance of its official duties” by law enforcement. Obtaining  
24 customer data is not “necessary” for law enforcement’s official duties, and law  
25 enforcement’s ability to obtain such data is governed by Government Code  
26 § 6254.16(c).

27 78. Respondents cannot show that the disclosures are, as provided in  
28 Government Code § 6254.16(c), done “[u]pon court order or the request of a law

1 enforcement agency relative to an ongoing investigation.” SMUD fulfills requests  
2 from law enforcement when there is no individualized reasonable suspicion of  
3 wrongdoing, a necessary predicate for an ongoing investigation by law enforcement.  
4 SMUD discloses even when there is no pending request.

5 79. SMUD and Sacramento cannot show, as provided in Government Code  
6 § 6254.16(d), that the disclosures are provided “upon a determination” by SMUD  
7 that the utility customer who is the subject of the request has used utility services  
8 in a manner inconsistent with any applicable local utility usage policies. First, for  
9 law enforcement requests based on zip code, there is no one utility customer that is  
10 the subject of the request. Second, SMUD has no applicable local utility usage  
11 policy. Third, SMUD turns over data without the requisite “determination”: it  
12 discloses data knowing that some customers have not used utility services  
13 inconsistent with any policy – *e.g.*, as alleged above, data shared for customers who  
14 “never had a grow pattern.”

15 80. Respondents cannot show, as provided in Government Code  
16 § 6254.16(f), that the public interest in disclosure of the information clearly  
17 outweighs the public interest in nondisclosure. State law says that customers have  
18 a reasonable expectation of privacy in their utility records. There is no public  
19 interest in searching consumer energy data and sending police text messages about  
20 customers who are “Asian”; disclosing dragnet lists that include customers who  
21 “never had a grow pattern”; or erroneously identifying as cannabis growers crypto  
22 coin miners, elderly residents who prefer to leave their lights on, or—like NGUYEN,  
23 —individuals who use high rates of electricity because they live, for instance, in an  
24 older home.

25 81. Respondents CITY OF SACRAMENTO and LESTER have a  
26 ministerial duty to only seek disclosure of certain information protected by Public  
27 Utilities Code § 8381 from SMUD unless required by federal or state law.  
28



1 (b) concerning one or more specific properties, in the absence of individualized  
2 reasonable suspicion of wrongdoing or a court order.

3 3. The Court issue a declaratory judgment that Respondents' policies and  
4 practices challenged herein:

5 a. Violate Article I, Section 13 of the California Constitution.

6 b. Violate Public Utilities Code § 8381.

7 c. Constitute an illegal expenditure of taxpayer funds.

8 4. The Court enjoin the CITY OF SACRAMENTO and LESTER, and each  
9 of them, their agents, servants, and employees, from requesting customer  
10 information from SMUD (a) concerning properties in a specific area, such as within  
11 a zip code, or (b) concerning one or more specific properties, in the absence of  
12 individualized reasonable suspicion of wrongdoing or a court order;

13 5. The Court enjoin SMUD and LAU, and each of them, their agents,  
14 servants, and employees, from searching, sharing, disclosing, or otherwise making  
15 accessible to a law enforcement agency, including Sacramento Police, customer  
16 information (a) concerning properties in a specific area, such as within a zip code,  
17 or (b) concerning one or more specific properties, in the absence of individualized  
18 reasonable suspicion of wrongdoing or a court order.

19 6. The Court award costs;

20 7. The Court award reasonable attorney's fees according to California  
21 Code of Civil Procedure § 1021.5 or as otherwise provided by law; and

22 8. The Court award such other relief as the Court may deem appropriate.  
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Respectfully Submitted,

Dated: November 2, 2022

ELECTRONIC FRONTIER FOUNDATION



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SAIRA HUSSAIN  
AARON MACKEY  
ADAM SCHWARTZ  
Attorneys for Petitioners/Plaintiffs

Dated: November 2, 2022

VALLEJO | ANTOLIN |  
AGARWAL | KANTER LLP



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MONTY AGARWAL  
RACHEL CHANIN  
Attorneys for Petitioners/Plaintiffs

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**VERIFICATION**

I, Monty Agarwal, declare: I am an attorney for the Petitioners in this matter I have read the foregoing verified petition for writ of mandate and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true. I verify this Petition instead of Petitioners because Petitioners are absent from the county where I have my office.

Executed on November 2, 2022, at Contra Costa County, California.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 2, 2022



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Monty Agarwal