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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF YOLO

PHYSICIANS COMMITTEE FOR
RESPONSIBLE MEDICINE,

Petitioner,

v.

THE REGENTS, a corporation,

Respondent.

CASE NO.: **CV2021-0963**

**FIRST AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE**

I. INTRODUCTION

Petitioner Physicians Committee for Responsible Medicine (“Physicians Committee”) requests that this Court issue a Writ of Mandate directing Respondent the Regents of the University of California (“the Regents”) to produce the withheld photos, video footage, researcher codes, and animals’ identification numbers responsive to Physicians Committee’s California Public Records Act (“CPRA”) requests, sent on September 1, 2020, April 7, 2021, and September 28, 2021, concerning invasive animal experiments that the Regents conducted in association with a private company, Neuralink. The Regents failed to segregate records subject to public disclosure, indiscriminately withholding all photos and video footage related to the experiments at issue.

The requested records concern experiments in which the Regents’ staff removed pieces of the skulls of rhesus macaque monkeys and inserted electrodes into the animals’ brains. Though public

1 employees performed these experiments at a public institution, with all video footage and photos
2 subject to the Regents’ review, the Regents entirely withheld photos and video footage, as well as
3 animals’ identification numbers. The Regents also redacted the names of individuals involved in the
4 experiments yet have failed to provide the requisite corresponding researcher codes.

5 The material already provided to Physicians Committee reveals that the Regents’ staff failed
6 to provide dying monkeys with adequate veterinary care, used an unapproved substance known as
7 “Bioglue” that killed monkeys by destroying portions of their brains, and failed to provide for the
8 psychological well-being of monkeys assigned to the experiment. As such, release of video footage
9 and photos serves the recognized public interest in taxpayer-funded animal experimentation and the
10 animal suffering it causes. While the Regents withheld these public records under the pretext of
11 preventing a chilling effect on academic research, the Regents simultaneously claims that it knows
12 nothing about the content of the video footage. Moreover, any privacy interest in the records is
13 substantially reduced because Neuralink regularly showcases the details of the experiments for
14 commercial purposes—on Twitter, in the press, and online videos.

15 II. PARTIES TO THIS ACTION

- 16 1. Petitioner Physicians Committee for Responsible Medicine is a non-profit corporation
17 headquartered at 5100 Wisconsin Ave. NW, Suite 400, Washington, DC 20016. Established in
18 1985, Physicians Committee advocates for preventive medicine, supports higher ethical standards
19 in research, and conducts clinical research. Physicians Committee’s membership includes
20 175,000 health care professionals and concerned citizens, including more than 25,000 in
21 California. For more than 35 years, Physicians Committee has worked to improve public safety
22 and public health by ensuring that (1) medical research is performed using the best scientific
23 methods consistent with the highest ethical principles, and (2) experiments involving animals
24 comport with the federal Animal Welfare Act, its implementing regulations, and the Public Health
25 Service Policy on Humane Care and Use of Laboratory Animals.
- 26 2. Respondent, the Regents of the University of California, is a corporation empowered under the
27 California Constitution to administer the University of California Davis (“UCD”), which is in the
28 County of Yolo.

1 **III.STATEMENT OF FACTS**

2 **A. Physicians Committee's Records Requests and Communications with the Regents**

3 3. On September 1, 2020, Physicians Committee submitted a request for public records pursuant to
4 CPRA Section 6250, et seq, through UCD's online Public Records Act Request Form. Physicians
5 Committee requested records covering the period of July 1, 2016, "to present" concerning
6 experiments conducted by and at UCD in association with the company Neuralink. The requested
7 records that are in dispute between the parties in this case are as follows:

8 *(From Physicians Committee's CPRA request submitted on September 1, 2020)*

- 9
- All veterinary records related to research conducted in association with the company Neuralink.
 - 10 • All photos and video footage related to research conducted in association with the company Neuralink.
 - 11 • All animal disposition records related to research conducted in association with the company Neuralink.
- 12

13 *(From Physicians Committee's CPRA request submitted on April 7, 2021)*

- 14 • Emails to and from employees of the company Neuralink related to University Services Agreement #201703919 (A17-0399).

15 4. The response that the Regents provided to Physicians Committee did not contain the requested
16 disposition records, photos, or video footage. When Physicians Committee inquired about these
17 omissions on March 16, 2021, the Regents stated that it completely withheld all such responsive
18 records on the ground that the public interest in doing so outweighed the interest in disclosure.

19 5. In an email dated August 24, 2021, the Regents further stated that "Neuralink installed, managed,
20 and subsequently removed all of their computing and storage systems" from the Regents'
21 facility—known as the California National Primate Research Center ("CNPRC")—where the
22 Regents and Neuralink conducted the experiments.

23 6. As a result, the Regents claimed (in an email dated September 18, 2021) that it possessed no video
24 footage.

25 7. After being pressed on the issue, the Regents admitted that there was video footage, but that it
26 was no longer physically at UCD.

27 8. In an email dated September 22, 2021, the Regents explained the process in more detail:

28 The videos were taken by Neuralink employees. We have no idea

1 why they took them but we assume they took them for their
2 research. They did not tell us why they were taking them. We do
3 not know what storage media Neuralink used to store them on but,
4 in all events, the media were Neuralink property. They provided
5 their own computing infrastructure and they had their own network
6 connection, and they have removed their computing infrastructure
7 from the premises. The IT staff at the California National Primate
8 Research Center were in no way involved with any aspects of the
9 creation or storage of Neuralink’s video content. They have no such
10 content at CNPRC and, as explained above, never had any.

- 11 9. In an email dated September 28, 2021, Physicians Committee once again requested certain
12 records, including photos that the Regents had withheld from a previous disclosure. Responding
13 on October 5, 2021, the Regents admitted possessing two broad categories of photographs: (1)
14 photographs taken by the Regents for “animal care management” including to “provide
15 documentation in case any is required as part of inquiries from the campus’s Institutional Animal
16 Case and Use Committee, USDA, or other regulatory agencies” and (2) photographs produced by
17 Neuralink but “acquired and retained” by the Regents as part of a “mandatory review” of “animal
18 care management.”
- 19 10. Despite the breadth of these categories of photographs, the Regents claimed that all such
20 photographs were exempt from disclosure under section 6255.
- 21 11. In a series of supplemental responses, including one on October 8, 2021, the Regents produced
22 disposition records—a category that includes death records and necropsy reports—redacted as
23 described below.

24 **B. The Regents’ Business Partner, Neuralink, Extensively and Consistently Disclosed Details**
25 **of the Experiments for Publicity Demonstrating the High Level of Public Interest in the**
26 **Experiments and a Willingness to Publicly Discuss Aspects of the Experiments**

- 27 12. The Regents were paid by Neuralink to conduct experiments and assist Neuralink in Neuralink’s
28 mission to “develop[] large-scale neural interface devices for high-bandwidth information
transfer to and from the brain,” according to a contract between the two entities.
13. Neuralink regularly updates the public on the progress of the experiments via its public-facing
website and Twitter handle. (Neuralink Website [Feb. 4, 2022, 6:40 AM] Neuralink.com;
@neuralink Twitter feed [Feb. 4, 2022 6:41 AM] Twitter.com/neuralink.) Neuralink’s founder,

1 Elon Musk, has given public presentations on Neuralink’s quest to develop a “brain-machine
2 interface,” and those presentations are posted for anyone to view on Neuralink’s YouTube
3 channel. (*Neuralink Launch Event*, Neuralink YouTube channel [Apr. 6, 2021, 11:28 AM];¹
4 *Neuralink Progress Update*, Neuralink YouTube Channel [Apr. 6, 2021, 11:29 AM].²) *Fortune*
5 reported detailed information about Neuralink’s device and the company’s efforts to promote its
6 work. (Jeremy Kahn and Jonathan Vanian, *Inside Neuralink, Elon Musk’s Mysterious Brain Chip*
7 *Startup: A Culture of Blame, Impossible Deadlines, and a Missing CEO*, *Fortune* [Feb. 4, 2022,
8 7:19 AM].)³ *Silicon Republic* and many other news outlets recently reported Neuralink’s
9 announcement that it was hiring a clinical trial director and mentioned the company’s studies in
10 monkeys. (Vish Gain, *Neuralink: Elon Musk’s Brainchild May Soon Start Human Trials*, *Silicon*
11 *Republic* [Feb. 6, 2022, 7:58 AM].)⁴

12 14. On July 16, 2019, Neuralink published a paper that it disseminated via its Twitter handle. The
13 paper reveals the results of Neuralink’s research and development efforts. The introduction states,
14 “Here, we report Neuralink’s progress towards a flexible, scalable BMI [brain-machine interface]
15 that increases channel count by an order of magnitude over our prior work.” (Elon Musk,
16 Neuralink, *An Integrated Brain-Machine Interface Platform with Thousands of Channels*,
17 bioRxiv: the Preprint Server for Biology [Apr. 6, 2021, 11:43 AM] doi.org/10.1101/703801.) The
18 paper describes the project in scientific detail. A section on “threads” developed for insertion into
19 the brain details the sizes of the threads, measured in nanometers, and the materials of which they
20 are composed. Another section describes and includes photographs of the robot designed to
21 surgically implant the threads inside the brain of a human or animal. (*Id.* at 2.) The paper also
22 showcases apparently successful attempts to implant the system into rats and explains the
23 significance of brainwave data obtained from those experiments. (*Id.* at 7-8.)

25 ¹ https://www.youtube.com/watch?v=r-vbh3t7WVI&ab_channel=Neuralink

26 ² https://www.youtube.com/watch?v=DVvmgjBL74w&ab_channel=Neuralink

27 ³ <https://fortune.com/longform/neuralink-brain-computer-interface-chip-implant-elon-musk/>

28 ⁴ <https://www.siliconrepublic.com/machines/neuralink-elon-musk-clinical-trial-human-brain-implant>

- 1 15. Neuralink employees co-authored an October 2019 paper that provides a detailed protocol on
2 how to implement the concepts from the July 2019 paper. (Chung et al, *Chronic Implantation of*
3 *Multiple Flexible Polymer Electrode Array*, Journal of Visualized Experiments. [May 17, 2021,
4 5:36 AM] doi.org/10.3791/59957.) An 8-minute, 54-second video that accompanied publication
5 of the October 2019 paper similarly features a step-by-step explanation of the procedures,
6 performed on a rat, and is readily available for public viewing. (*Id.*)
- 7 16. During a 2021 public presentation on Neuralink’s progress, Mr. Musk demonstrated the
8 technology to measure brain activity in a pig implanted with a device developed by Neuralink.
9 The pig was alive at the presentation as data from her brain was displayed onscreen in real-time.
10 (*Neuralink Progress Update*, Neuralink YouTube Channel [April 6, 2021, 11:29 AM].)⁵
- 11 17. Neuralink again publicly shared its latest work with BMI technology in an animal by releasing a
12 video of a rhesus macaque monkey—the species currently being used in the Regents’ work for
13 Neuralink—implanted with the device. (*Monkey MindPong*, Neuralink YouTube Channel [May
14 10, 2021, 4:14 PM].)⁶ The video shows a monkey named Pager playing a video game that picks
15 up his intended moves by reading brainwaves. (*Id.*) The narrator explains that experimenters
16 implanted devices in Pager’s head six weeks before the video was filmed and points out that his
17 head is still bald where the surgery was performed. (*Id.*) Pager receives a banana at the end of the
18 video. (*Id.*) The video has been viewed more than five million times on YouTube, retweeted by
19 more than 18 thousand Twitter accounts, and covered by countless publications. (*Id.*; see *Elon*
20 *Musk’s Neuralink Shows Monkey with Brain-Chip Playing Video-Game by Thinking*, Reuters
21 [May 10, 2021, 4:18 PM];⁷ *Monkey MindPong*, Neuralink Twitter Handle [May 10, 2021, 4:19
22 PM].⁸)
- 23 18. Neuralink’s website contains a section, entitled “Animal Care,” disclosing the activities of
24

25 ⁵ https://www.youtube.com/watch?v=DVvmgjBL74w&ab_channel=Neuralink

26 ⁶ https://www.youtube.com/watch?v=rsCul1sp4hQ&t=144s&ab_channel=Neuralink

27 ⁷ <https://www.reuters.com/technology/elon-musks-neuralink-shows-monkey-with-brain-chip-playing-videogame-by-thinking-2021-04-09/>

28 ⁸ <https://twitter.com/neuralink/status/1380303902139031553>

Neuralink’s veterinarians and behaviorists, as well as Pager’s housing conditions. (“*Animal Care*” *Blog Post*, Neuralink Website [May 12, 2021, 3:56 PM].)⁹ The section features video footage of Neuralink’s animals and Neuralink employees discussing them. (*Animal Care at Neuralink*, Neuralink YouTube channel [May 12, 2021, 3:58 PM].)¹⁰

C. Neuralink Seeks to Control the Regents’ Responses to Public Records Requests

19. The emails that the Regents produced in response to Physicians Committee’s second records request reveal that Neuralink closely monitors relevant public records requests received by the Regents pursuant to a contract between Neuralink and the Regents. In one email, an undisclosed person, presumably an employee of Neuralink, writes to an official from UCD News and Media Relations after learning that UCD received a public records request; the writer wants to know specific details about the records requested. A contemporaneous email directs UCD employees to notify Neuralink of all public records requests concerning the experiments. It suggests that the contract between the two parties be amended to provide such notification. The author writes that “[t]here will be time for press releases and the right attention but that time is not now.” (*Id.*) Another email to UCD employees from an unknown Neuralink employee admonishes that “we do take the confidentiality components of our agreement very, very seriously.”

D. The Regents Withheld All Photos Concerning Care and Treatment of Animals Despite Disclosing Similar Photos on its CNPRC Website

20. The Regents claimed in its email dated October 5, 2021, that pathologists created certain photos “for animal care management, including addressing clinical issues that arise with surgical approaches, and teaching purposes.” It is the Regents’ position that “releasing such images would jeopardize CNPRC’s and the Regent’s ability to fulfill their clinical and teaching responsibilities, as well as to provide appropriate animal care management.”

21. Yet the Regents’ CNPRC website periodically publishes photos of the primates and equipment

⁹ <https://neuralink.com/blog/>

¹⁰ https://www.youtube.com/watch?v=gMCKMHbpPFA&ab_channel=Neuralink

1 used by UCD.¹¹ A photo with the caption “Titi monkeys enjoy human visitors, especially when
2 they bring their weekly gummy bear vitamins” shows a scientist feeding monkeys vitamins.
3 Similarly, another photo captioned “Veterinarian with infant macaque” shows a person examining
4 an infant macaque monkey. Not only do the photos pertain to the animals themselves, but a photo
5 captioned “Microtome” shows a person operating a microtome machine, which is a cutting tool
6 used to produce extremely thin slices of material used in microscopy, allowing for the preparation
7 of samples for observation under transmitted light or electron radiation. Therefore, the Regents’
8 stance that disclosing any photos and video footage pertaining to experiments would jeopardize
9 CNPRC’s ability to fulfill clinical and teaching responsibilities is fanciful and self-contradictory
10 in light of CNPRC’s own dissemination of such material to the public.

11 **E. The Regents Redacted Primate Enrichment Information**

12 22. Some information in an experiment’s protocol directly relates to the experiment and its
13 procedures. Other parts concern practices common to all animal experiments; one such part
14 records enrichment efforts to keep animals comfortable and support their behavioral needs. (Ruth
15 C. Newberry, *Environmental Enrichment: Increasing the Biological Relevance of Captive*
16 *Environments*, Applied Animal Behavioral Science, Vol. 44 229-243, 230 (1995) (describing
17 enrichment as a standard procedure in stewardship of animal subjects in experiments).) Research
18 facilities must meet minimum standards for environmental enrichment provided by federal
19 regulations. (9 C.F.R. §§ 3.75-3.81.) The Regents redacted the entire protocol section dealing
20 with enrichment. Physicians Committee sought to ascertain the Regents’ level of compliance with
21 mandatory standards for animal welfare applicable to all animal experiments, especially those
22 involving non-human primates. Releasing information about enrichment efforts would not
23 provide substantive information about technology, innovations, or goals that could harm
24 individuals’ careers or lead to a chilling effect on future academic research. That the entire section
25 has been redacted shows that the Regents made a blanket determination to withhold, rather than
26 segregate, information.

27
28 ¹¹ <https://cnprc.ucdavis.edu/portfolio-items/caring-for-our-animals/>

23. The Regents withheld all descriptions of the conditions experienced by animals, whether or not the information was directly related to actual experiments conducted. This approach is drastically overbroad because disclosing information about these conditions poses little risk to academic inquiry in general or the specific activities at hand. The Regents withheld information about enrichment efforts in animal cages, food provisions, and social relations, as well as boilerplate portions providing examples of experimental procedures an animal might undergo. Releasing these records would inform the public of the Regents' compliance with ethical and legal constraints regarding animals. The freedom of academic inquiry does not necessitate complete secrecy, as demonstrated by Neuralink's publicity campaign. The Regents, a public entity, may not disclose only information that increases the brand value of a private company.

24. The following is an example of the Regents' complete redaction of enrichment information:

Protocol # [REDACTED] - Appendix C - Non-human Primate Enrichment Program Form
Section 1. Social Enrichment
[REDACTED]
[REDACTED]
Section 2. Food Enrichment
[REDACTED]
[REDACTED]
Section 3. Cage Enrichment
[REDACTED]
[REDACTED]

F. The Regents Redacted Animals' Disposition Records

25. Physicians Committee sought records containing identification numbers of animals subjected to experimentation. The Regents acknowledged that such records exist but redacted all animal identification numbers except for one instance, amounting to more than 500 redactions, instead substituting an alternate system of identification numbers created solely for responding to Physicians Committee's public records requests.

26. The Regents adheres to the Guide for the Care and Use of Laboratory Animals, which states that "[r]ecords containing basic descriptive information are essential for management of colonies of large long-lived animals and should be maintained for each animal. These records often include

1 species, animal identifier, sire and/or dam identifier, sex, birth or acquisition date, source, exit
2 date, and final disposition. Such animal records are essential for genetic management and
3 historical assessments of colonies.” (National Research Council, Guide for the Care and Use of
4 Laboratory Animals (2011) p. 75.) As a result, each animal used in experiments by a research
5 facility is assigned a unique identification number that remains constant throughout the animal’s
6 life.

7 27. Animal identification numbers allow the public to monitor and track animals involved in
8 experiments and confirm their acquisition, prior participation in experiments, and disposition.
9 The public should be permitted to cross-reference animal identification numbers in records
10 requested from facilities operated by the Regents with U.S. Department of Agriculture (“USDA”)
11 Animal Welfare Act inspection reports and Certificates of Veterinary Inspection. The alternate
12 system of identification numbers the Regents created solely for Physicians Committee’s public
13 records requests prevents the public from being able to reconcile the Regents’ public records with
14 public records obtained from various other institutions.

15 28. The Regents’ ad hoc alternate identification number system is so riddled with errors that it caused
16 the Regents to misidentify animals and thereby improperly withhold additional public records.

17 29. For example, the Regents said that monkeys “Number 4” and “Number 23” “were assigned to the
18 project for a specific period of time and were later removed from the project and were not terminal
19 during the project” such that no disposition records existed for those monkeys. But other records
20 disclosed by the Regents describe monkey “Number 4” as “euthanized” and “Number 23” as
21 “scheduled for terminal project,” which means that dispositions *must* exist for these monkeys.
22 The Regents must produce the withheld disposition records. Further, this shows the failure of this
23 alternative identification system created by the Regents.

24 30. Animals’ identification numbers do not fall within any statutory exemption and do not implicate
25 a recognized privacy interest, as non-human animals have no privacy rights under the CPRA, or
26 otherwise impair the confidentiality of an experimenter’s work. Accordingly, the Regents cannot
27
28

1 withhold animal identification numbers.¹²

2 **G. The Regents Redacted Names and Failed to Provide Corresponding Researcher Codes**

3 31. A Court previously held that when the Regents redacts a researcher's name in responding to a
4 public records request, it must provide a code in lieu of the name so that the requesting party can
5 track the identity of the individual, and if good cause is established, the requesting party can return
6 to court to have the court re-weigh the public interests and possibly order the Regents to disclose
7 the name. The Order accommodated the Regents' desire for personal privacy while also
8 recognizing that if the public demonstrates repeated and consistent failures of protocol or
9 violations of law by the same individual, then personal privacy gives way to the public interests
10 involved.

11 32. Yet in the public records produced by the Regents to Physicians Committee, the Regents redacted
12 every instance of personal names, initials, or other identifiers without ever providing a
13 corresponding code, in violation of the Order.

14 33. The Regents must provide a code for each such redaction, pursuant to the presumptive disclosure
15 policies under the CPRA and the binding effect of the prior court Order against the Regents.

16 **H. The Regents Deny Possessing Any Video Footage**

17 34. The Regents deny possessing video footage on their storage infrastructure and assert that all
18 responsive video footage that existed belonged to Neuralink and was stored and retained on only
19 Neuralink's infrastructure while that infrastructure was housed in the Regents' facility.

20 35. The Regents also assert that the "IT [information technology] staff at the California National
21 Primate Research Center were in no way involved with any aspects of the creation or storage of
22 Neuralink's video content," which defies common sense, at least with respect to the setting up of
23

24 ¹² In *White Coat Waste Project v. United States Department of Veterans Affairs* (D.D.C. 2020) 443
25 F.Supp.3d 176, White Coat Waste Project submitted a FOIA request to McGuire Veterans
26 Affairs Medical Center ("McGuire VAMC") seeking, *inter alia*, concerned animals'
27 identification numbers as the well as names of the principal investigators involved in the
28 experiments. The parties did not end up litigating over the identification numbers as
McGuire VAMC decided to release them in the final production of documents. It can be
reasonably assumed that this was done because McGuire VAMC realized that the
identification numbers could not be withheld on the basis of any privilege.

1 Neuralink's infrastructure in the Regent's facility.

2 36. In an email dated October 5, 2021, the Regents admitted to possessing photos taken by Neuralink
3 despite the removal of Neuralink's infrastructure.

4 37. The Regents claim that it enforced a mandatory pre-approval process before Neuralink was
5 allowed to take any photographs. In the email dated October 5, 2021, the Regents admitted that:

6 CNPRC staff had the images in their possession as part of their
7 duties relating to animal care management. CNPRC strictly
8 regulates photography by anyone other than Regental clinicians.
9 Prior approval is required before any photographs can be taken and
10 all images must be reviewed to ensure they comply with restrictions
designed to protect animals, staff, and the integrity of research. It
was in the course of performing that mandatory review that
CNPRC acquired and retained those images.

11 It strains credulity that the Regents would enforce strict protocols to ensure regulatory compliance
12 with respect to photography but take no analogous action with respect to video footage.

13 38. The Regents stated in an email dated December 10, 2021, that:

14 The storage media were in the hardware Neuralink brought onsite
15 and dismantled and we were not involved at all in the production
or storage of the videos. So that's really a 6252(e) issue and DCA1
in Reuters gave us the rule on that issue.

16 The Regents refers to *Regents of Univ. of Calif. v. Sup. Ct.* (2013) 222 Cal.App.4th 383 (*Reuters*).

17 In *Reuters*, "the trial court found that none of the documents sought was prepared, owned, used,
18 or retained by the Regents." (*Id.* at 399.) The issue in that case was whether Reuters was entitled
19 to confidential information regarding investments made by the Regents. The case, in essence,
20 held that a public entity has no obligation to obtain investment fund information from private
21 investment firms to respond to CPRA requests. In that case the public entity had no use for the
22 information held by the investment firm, and it was not previously on the public entity's property,
23 and thus the Regents would have obtained copies only to respond to CPRA requests.

24 39. Here, however, the Regents already stated that it has a policy of pre-approving and retaining
25 analogous media. Also, the video footage was created on UCD property, as part of the
26 experiments being conducted by UCD staff, unlike the private investment materials in *Reuters*,
27 which were not created and drafted by government staff on government property. Moreover, the
28 Regents monitored the requested video footage, as discussed *infra*.

1 40. As a research facility that houses nonhuman primates, the Regents must adhere to the Animal
2 Welfare Act's regulations regarding "Humane Handling, Care, Treatment, and Transportation of
3 Nonhuman Primates." (See 9 C.F.R. §§ 3.75-3.81.) These regulations detail the responsibilities
4 of the "attending veterinarian" "in accordance with generally accepted professional and
5 husbandry practices." (9 C.F.R. §§ 3.75-3.79.)

6 41. The use of video recording devices for monitoring purposes is a generally accepted professional
7 and husbandry practice, as demonstrated by the public records produced by the Regents.

8 42. For example, in one veterinary record produced by the Regents, a member of the Regents'
9 veterinary staff describes an "animal having gasping episode 2-3 time . . . mouth gasping/retching
10 almost & then deep breaths as she appeared to collapse from exhaustion/fatigue. *Upon reviewing*
11 *the video monitoring tape* noted animal has had [unsure] episodes since 640 this am & the episode
12 are happening more closely together" (emphasis added).

13 43. The Regents possessed and used video footage that was created and maintained on the Regents'
14 premises. The Regents must produce this video footage.

15 **I. Regardless of Their Physical Location, the Requested Photo and Video Footage are Public**
16 **Records**

17 44. Appellate courts have concluded that records related to public business are subject to disclosure
18 if they are in an agency's actual or constructive possession. Constructive possession of records
19 occurs when an agency "has the right to control the records, either directly or through another
20 person." (*Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710.)
21 Because the Regents has the contractual right, via its policy under which "all images must be
22 reviewed to ensure they comply with restrictions," to review and control any footage produced
23 by Neuralink in relation to the experiments at issue, said footage is properly a considered public
24 record under the CPRA, regardless of its current physical location.

25 45. The Regents cannot avail itself of a private company to film the activities of public employees,
26 subsequently use that video footage of activities on its public property, and then argue that such
27 video footage is not a public record merely because it allowed the private company to take the
28 video footage off-site.

1 **J. The Regents Redacted the Source of Training Materials and Binding Rules, Regulations,**
2 **and Guidance for Neuralink**

3 46. The records produced by the Regents repeatedly reference internal rules, regulations, guidance,
4 and/or training materials that govern the conduct of the experiments, but the Regents took care to
5 remove the names of the entities that issued those standards so that the public is unable to verify
6 compliance and/or review the standards to which the Regents held Neuralink in conducting the
7 experiments. The following are samples of these types of redactions:

8 d. List the criteria to be used to determine when euthanasia is to be performed or the animal
9 will be removed from the study.
10 Humane endpoints “Guidelines for Humane Euthanasia of Animals on Protocols
11 at the [REDACTED].”

12 ...

13 They have been advised to self-report to their personal healthcare provider any conditions
14 that may put them at greater risk to the hazards of working with non-human primates and
15 the hazards associated with the research protocol. Training has been documented
16 on [REDACTED] responsibilities, policies, and procedures.

17 ...

18 Per [REDACTED] policy, animals can experience a weight loss of $\leq 25\%$ from time of the
19 initial surgical procedure. If animals do not rebound in weight loss following surgery and
20 remain at 20% weight loss from the initial time of surgery, and the veterinary staff
21 determine that the animal will not adequately respond to treatment, the animal will be
22 removed from study and euthanized.

23 **K. The Regents Redacted Neuralink’s Address**

24 47. The Regents redacted the business address of Neuralink in the produced contracts.

25 **L. The Regents Redacted Large Portions of Emails Between Neuralink and the Regents**

26 48. In a June 22, 2018, email, the Regents redacted approximately 80% of an email to a redacted
27 recipient even though the email’s subject line demonstrates that its content is generalized and not
28 likely to include any confidential information. John Morrison, director of the Regents’ CNPRC
was the sender. The email subject line states, “Organizational and scheduling issues.” Even if one
sentence in the email contained content that met the high burden of exemption from CPRA
disclosure, the remainder must be segregated and disclosed.

1 49. In another email dated June 13, 2018, from a redacted sender (likely a Neuralink representative)
2 to John Morrison, the Regents redacted an entire paragraph. The email specifically states that it
3 generally concerns the extension of the contract for services between the Regents and Neuralink
4 and thus would not implicate any need for a researcher's work product being kept secret.

5 IV. CAUSE OF ACTION

6 The Regents Violated California's Public Records Act

7 50. Petitioner re-alleges and incorporates by reference all of the foregoing allegations as if fully set
8 forth herein.

9 51. The people's right to public records is enshrined in California's Constitution. (Cal. Const., art. I,
10 § 3, subd. (b)(1).) "The people have the right of access to information concerning the conduct of
11 the people's business, and, therefore, the meetings of public bodies and the writings of public
12 officials and agencies shall be open to public scrutiny." (*Savaglio v. Wal-Mart Stores, Inc.* (2007)
13 149 Cal.App.4th 588, 597.)

14 52. The CPRA provides that any state or local agency shall make its records available (with specified
15 exceptions) to any person upon receiving a request that reasonably describes such records. (CAL.
16 GOV'T CODE § 6253, subd. (a).) The CPRA requires that "[a]ny reasonably segregable portion"
17 of such records "be provided to any person requesting such record after deletion of the portions
18 which are exempt by law." (*Id.*; *State Bd. of Equalization v. Superior Court* (1992) 10
19 Cal.App.4th 1177, 1187, *quoting N. Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d
20 116, 123-24.)

21 53. The CPRA codified the legislature's disapproval of government secrecy. (*San Gabriel Tribune v.*
22 *Superior Court* (1983) 143 Cal.App.3d 762, 771-72.) Public records are presumed non-exempt,
23 and exemptions "must be found, if at all, among the specific exceptions to the general policy that
24 are enumerated in the Act." (*Cal. ex rel. Div. of Industrial Safety v. Superior Court* (1974) 43
25 Cal.App.3d 778, 783.)

26 54. The Regents base the withholding of photos on the CPRA "catch-all" exemption (section 6255),
27 arguing that the public interest in withholding the photos clearly outweighs the interest in their
28 disclosure. When redacting records based on the "catch-all" exemption in California Government

Code section 6255, the public agency may do so only when it finds that there is a “clear overbalance on the side of confidentiality.” (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 657.)

55. The Regents cite case law that recognizes the value, in discrete situations, of secrecy involving ongoing academic research that could be spoiled by mandated disclosure, thereby depriving the public of the benefits of the activity. This argument must be evaluated on a case-by-case basis as the CPRA has no express exemption for general research. (*Humane Society of US v. Superior Court* (2013) 214 Cal.App.4th 1233, 1254-55.)

A. The Public Interest in Disclosure is Significant

56. Physicians Committee requested public records for the public purpose of improving public awareness of the conditions and treatment of animals in experiments conducted by individuals who receive government funding, and especially when those government agencies are outsourcing their skill sets to private enterprises.¹³ Taxpayer-funded experiments performed by a public university are of significant public interest and therefore subject to public accountability and scrutiny. (*See, e.g., Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1246 (stating that “[a]nimal testing is an area of wide-spread public concern and controversy, and the viewpoint of animal rights activists contributes to the public debate”); *White Coat Waste Project*, 443 F.Supp.3d at 195 (holding that “information about the experiments and the principal investigators’ compliance and non-compliance with the animal research protocols and applicable federal regulations clearly fall under the ambit of information that ‘let[s] citizens know ‘what their government is up to.’”)).

57. Experimentation on nonhuman primates in particular is a subject of great ethical concern and public scrutiny due to their high degree of sentience. Federal guidance requires that animals of lower phylogenetic complexity, as opposed to primates, be used in experiments wherever

¹³ State employees who receive public grants to fund their activities perform the experiments at the Regents’ facility at UCD. In addition, the National Institute of Health annually provides substantial infrastructure funding to the Regents’ CNPRC, including \$11,460,599 in the fiscal year 2020 alone. (National Institute of Health, Project Details of Grant to California National Primate Research Center, NIH RePORT (May 12, 2021, 3:25 PM).)

possible. (U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, 50 Fed. Reg. 20,864 (May 20, 1985) (adopting the Guide for the Care and Use of Laboratory Animals published by the National Research Council); National Research Council, Guide for the Care and Use of Laboratory Animals (2011) p. 5.)

58. The principles of “replacement, reduction, and refinement,” known as the “3 Rs,” promote limitations on the use of animals in experiments. The federal Animal Welfare Act implements these principles by requiring that research proposals justify the selection of species used and implement procedures to minimize pain and suffering, among other requirements. (9 C.F.R. § 2.31(e).)

59. By withholding the requested photos and video footage, the Regents denies the public a meaningful and thorough understanding of the process by which public bodies such as the Regents conduct taxpayer-funded animal experiments that purport to help humans and comply with ethical standards. Moreover, disclosure of the photos and video footage sought will allow the public to ascertain the Regents’ adherence to legal and ethical standards for animal use, particularly since, according to the Regents, a selection of the requested photos and video footage “provide documentation” for potential “inquiries from the campus’s Institutional Animal Case and Use Committee, USDA, or other regulatory agencies.”

60. In recent years, numerous reports of injury and death to animals in the Regents’ facilities raise serious questions about the Regents’ adherence to such standards, including a 2018 incident at UCD in which seven infant primates died due to poisoning. (*See Daily Democrat, Seven Baby Monkeys Died from Poisoning at UC Davis* (2019).) According to USDA inspection reports, UCD was cited for 24 violations of the federal Animal Welfare Act from 2013 through 2019, during which timespan:

- in 2013, a macaque became trapped in the “squeeze mechanism” of his cage and died “as a result of trauma to the head and neck”;
- in 2014, a macaque suffered a broken leg when he chewed through tape holding him to a “restraint board” and attempted to escape;
- in 2016, a primate suffered fractures to both legs because staff failed to properly close a

1 door;

- 2 • in 2016, a macaque was injured while attempting to escape and died after suffering
- 3 internal bleeding;
- 4 • in 2016, two primates were injured when staff failed to separate them; and
- 5 • in 2018, a rabbit died when a staff member mistakenly injected air into the animal's vein.

6 61. Additionally, unlike the records at issue in *Humane Society*, the requested public records
7 implicate “data, not prepublication thoughts, conversations, and back and forth exchanges of
8 ideas between researchers.” (214 Cal.App.4th at 1265.) Importantly, the data sought is not “highly
9 technical.” (*Network Appliance, Inc. v. Sun Microsystems Inc.*, No. C-07-06053 EDL, 2010 WL
10 841274, at *3 (N.D. Cal. Mar. 10, 2010) (granting the motion to seal where documents contained
11 “highly technical portions of [] report that would do little to aid the public’s understanding of the
12 judicial process”).) Rather, Physicians Committee seeks photos and video footage by which a
13 layperson of average intelligence may determine whether an animal may be experiencing stress
14 and discomfort through the experiments at issue, in keeping with the public’s right to know about
15 animal treatment during publicly funded experiments. (*White Coat Waste Project*, 443 F.Supp.3d
16 at 195.) The Regents cannot reasonably claim that the public is ill-equipped to understand all
17 photos and video footage of the animals used in the experiments while the Regents’ contractual
18 partner, Neuralink, disseminates handpicked photos and video footage of animals in the same
19 experiments playing videogames and receiving bananas as treats as part of its public relations
20 strategy.

21 62. By withholding the names of the entities whose rules, regulations, guidance, and training
22 materials the Regents and its contractual partners follow, the Regents keeps the public unaware
23 of the Regents’ standards for quality control and prevent the public from deterring whether, and
24 the extent to which, the Regents’ experiments comport with federal law.

25 63. The Regents cannot base the blanket redactions in its emails on a claimed need for privacy or an
26 alleged chilling effect on academic research; the emails do not concern the specifics of
27 experiments by individuals engaged in the experiments but rather concern contract extension and
28 “organizational and scheduling issues.”

64. The Regents' redaction of its contractual partner's business address is unjustified, as such redaction prevents the public from cross-checking that address's association with violations of applicable law, such as the federal regulations governing experiments that involve animals. Additionally, the disclosure the business address of a large and very public corporation that is registered to do business in the State of California and that chooses to do business with a public entity does not implicate personal privacy or a chilling effect on academic research.

B. Any Privacy Interest in the Records at Issue Does Not Clearly Outweigh the Significant Public Interest in Disclosure

65. The Regents asserted that the public interest in withholding photos and video footage clearly outweighs the public interest in disclosure, arguing that disclosure would have a chilling effect on academic research. The Regents cited *Dow Chemical v. Allen*, a Seventh Circuit case involving discovery, not the specific California law at issue—the CPRA—as support. (*Dow Chemical Co. v. Allen* (7th. Cir. 1982) 672 F.2d 1262.) The California Court of Appeal has spoken on the import of *Dow Chemical* in CPRA cases, stating that “research material, on balance, *may* be protected, depending on the facts of a case.” (*Humane Society of US v. Super. Ct.*, *supra*, 214 Cal.App.4th 1233, 1264-65 (emphasis in original), *quoting Southwest Center for Biological Diversity v. USDA* (D. Ariz. 2000) 170 F.Supp.2d. 931, 942.) The *Humane Society* court agreed with *Southwest Center*'s characterization that *Dow Chemical* does not create a categorical privilege for research data and instead stands only for the “unremarkable proposition that, in specific situations, research material may be entitled to some protection.” (*Humane Society*, 214 Cal.App.4th at 1264.)

66. The Regents must show that all of the withheld records present some public interest in nondisclosure that clearly outweighs the interest in disclosure and transparency. (*Humane Society*, at 1254-55; CAL. GOV'T CODE § 6255.) Given that the experiments' sponsor already voluntarily shared some photos and video footage online, the public interest in withholding such information is insufficient to outweigh the public interest in disclosure. Furthermore, the need for secrecy to protect the academic viability of the experiments does not support withholding information based on potential harm to the public image or commercial prospects of a private

1 company simply by virtue of being associated with a public university.

2 67. The Regents itself admits that it collected photos for “animal care management.” Requests
3 concerning the care and treatment of the animals do not implicate the underlying hypothesis,
4 method, analysis, or results of experiments. Therefore, the Regents must disclose any photos or
5 video footage that it retained for “animal care management” or to provide to regulatory bodies
6 such as the Institutional Animal Care and Use Committee or USDA.

7 **1. Any Privacy Interest in the Records is Reduced by Neuralink Having Entered into**
8 **a Contract With a Public Agency**

9 68. Companies that engage in commercial transactions with public entities for goods or services enter
10 the public sphere, diminishing their privacy interests. There is a longstanding rule that individuals
11 who contract with public agencies for commercial benefit “voluntarily diminish [] their own
12 privacy interests.” (*Cal. State Univ. v. Super. Ct.*, *supra*, 90 Cal.App.4th 810, 834, citing *Braun*
13 *v. City of Taft* (1984) 154 Cal.App.3d 332, 347 (finding that one who “is engaged in the public’s
14 business strips him of some anonymity”); *San Gabriel Tribune v. Superior Court* (1983) 143
15 Cal.App.3d 762, 780-81 (stating that voluntary entry into public sphere diminishes one’s privacy
16 interests).) Neuralink’s contractual relationship with the Regents, and the commercial benefits
17 that Neuralink receives therefrom, in turn reduces any privacy interest in the records.

18 **2. Any Privacy Interest in the Records is Reduced by Neuralink Having Disclosed**
19 **Details of the Experiments for Publicity**

20 69. Neuralink’s voluntary dissemination of information defeats any claim by the Regents to withhold
21 the photos and video footage from Physicians Committee. At a minimum, Neuralink’s extensive
22 publicity requires disclosing the same information through the withheld records. The California
23 evidentiary privilege for “official information acquired by a public employee in the course of his
24 or her duty,” which also serves as a basis for nondisclosure under the CPRA, provides that the
25 public interest no longer serves as a ground for nondisclosure once the information has been
26 voluntarily disclosed. (CAL. EVID. CODE § 1040; *see California State University, Fresno Assn.,*
27 *Inc. v. Superior Court* (2001) 90 Cal.App.4th 810.) The privilege requires the Court to balance
28 the public interest in the same manner as it does for the public interest “catch-all” exemption

1 relied on by the Regents. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 656 (“The weighing process
2 mandated by Evidence Code section 1040 requires review of the same elements that must be
3 considered under section 6255. Therefore, it is consistent with the PRA.”).) The privilege
4 specifies that it does not protect “open” or “officially disclosed” information because voluntary
5 dissemination nullifies the public interest in secrecy. (CAL. EVID. CODE § 1040(a).)

6 70. California case law holds that because the CPRA was modeled on the federal Freedom of
7 Information Act (“FOIA”), judicial construction of FOIA illuminates the CPRA, and the laws
8 should receive a parallel construction. (*Anderson-Barker v. Superior Ct.* (2019) 31 Cal.App.5th
9 528, 540 fn.10, review denied, *quoting, inter alia, County of Los Angeles v. Superior Ct.* (2000)
10 82 Cal.App.4th 819, 825.) Under FOIA, courts have repeatedly held that “[p]ublic availability of
11 information defeats an argument that the disclosure of the information would likely cause
12 competitive harm.” (*Nat’l Cmty. Reinvestment Coal. v. NCUA* (D.D.C. 2003) 290 F.Supp.2d 124,
13 134; *CNA Fin. Corp. v. Donovan* (D.C.Cir.1987) 830 F.2d 1132, 1154; *see also Worthington*
14 *Compressors, Inc. v. Costle* (D.C.Cir.1981) 662 F.2d 45, 51 (finding that “[i]f the information is
15 freely or cheaply available from other sources, such as reverse engineering, it can hardly be called
16 confidential and agency disclosure is unlikely to cause competitive harm”); *Critical Mass Energy*
17 *Project v. Nuclear Regulatory Comm’n* (D.C.Cir.1992) 975 F.2d 871, 872 (holding that
18 information may be treated as confidential if, at a minimum, it is not available to the public).)
19 Accordingly, because Neuralink disclosed to the public specific details of the experiments
20 implicated by the records, any privacy interest in the records is substantially reduced.

21 **3. Protection of Neuralink’s Public Image is Not a Legally Protected Privacy Interest**
22 **Under the CPRA**

23 71. Given the repeated attempts by Neuralink to assert control over the Regents’ responses to public
24 records requests about the experiments at issue, and the substantial public disclosure of the
25 experiments’ details by Neuralink itself, it is likely that the Regents’ overbroad withholding of
26 footage is influenced by the desire of the experiments’ sponsor, Neuralink, to portray the image
27 of a forward-thinking, benevolent company that improves the world without harming animals.
28 Neuralink’s Twitter posts, YouTube videos, and website aim to convince the public that its quest

1 to build BMI technology does not come at the cost of animal cruelty. Public awareness that
2 developing this technology involved maiming, euthanizing, or otherwise harming animals could
3 affect that image. The Regents' withholding of photos and video footage does not serve the public
4 interest when the purpose is to preserve the marketability of a commercial product or the public
5 opinion of a private company.

6 **4. The Regents Redacted Primate Enrichment Information**

7 72. The Regents' redaction of primate enrichment information serves no public interest and has no
8 relevance to personal privacy. Disclosure of such information cannot possibly have a chilling
9 effect on academic research because enrichment standards for primates are set by federal law as
10 a "means of expressing noninjurious species-typical activities. . . . Examples of environmental
11 enrichments include providing perches, swings, mirrors, and other increased cage complexities;
12 providing objects to manipulate; varied food items; using foraging or task-oriented feeding
13 methods; and providing interaction with the care giver or other familiar and knowledgeable
14 person[.]" (9 C.F.R. § 3.81(b).) Thus, the overwhelming public interest in ensuring that the
15 Regents comply with these minimum standards for primates used in experiments demands
16 disclosure of the enrichment information.

17 **C. The Regents Failed to Segregate Records that are Subject to Disclosure**

18 73. California Government Code Section 6253(a) requires that "[a]ny reasonably segregable portion
19 of a record shall be available for inspection after deleting the portions that are exempted by law."
20 (CAL. GOV'T CODE § 6253(a).) The Regents' withholding of all the relevant photos and video
21 footage indicates a failure to segregate parts of the records that are exempt from disclosure, if
22 any, from ones that are not.

23 74. The Regents withheld *all* photos and video footage relating to the conditions experienced by
24 animals, whether or not such public records were directly associated with actual experiments
25 conducted. Releasing these public records would inform the public of the Regents' compliance
26 with ethical and legal constraints regarding animals. The freedom of academic inquiry does not
27 necessitate complete secrecy, as demonstrated by Neuralink's publicity campaign.

28 75. For example, as noted above, there are likely photographs and video footage of the primates'

housing conditions, the primates' sleeping quarters, and training on handling primates as part of the Regents' duty to comply with the Animal Welfare Act's "Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates" regulations; indeed, the Regents' contract regarding these experiments requires all individuals to undergo "on-site training upon their first visit to p[er]form work under this Agreement." None of these types of records would reveal an experimenter's secrets or complicated academic principles that a layperson could not understand.

76. The Regents cannot justify blanket withholding of the photos and video footage all the while assisting a private company as it opportunistically publicizes portions of the very same public records to raise its commercial worth.

V. CONCLUSION

77. The Regents cannot withhold all photos and video footage relating to the animals used in its experiments simply because it is engaged in research-for-hire for a private company, especially when that private company publicly discusses those very experiments in great detail. The public's right to scrutinize the government's involvement with a public-facing project such as this is not clearly outweighed by a claimed risk to academic freedom that may result from disclosure.

78. The Regents' blanket withholding of all photos and video footage does not reflect a reasonable attempt to segregate information subject to public disclosure from information that may properly be withheld.

79. The Regents previously litigated, and after a final judgment, was ordered to release research "codes" in lieu of names so that the public can track them for potential for abuse or violations and then return to court to reweigh the public interests involved in disclosing the name behind the codes. The Regents failed to provide such codes to Physicians Committee.

80. The Regents cannot justify the refusal to disclose the animal identification numbers in the records based on alleged animal safety, personal safety, or academic freedom. The animal identification numbers allow the public to monitor and track animals involved in studies and confirm their acquisition, prior participation in research, and post-research disposition.

81. The Regents' aggressive redactions are unjustified, and there is no public interest served in keeping this information from the public. Specifically, the Court should order the Regents to

1 disclose: (1) enrichment information; (2) the entity or entities whose standards the Regents and
2 Neuralink are bound to follow; (3) Neuralink's business address; and (4) the content of emails
3 between the Regents and Neuralink.

4 **V. PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner respectfully prays that:

- 6 a. After hearing on this petition, this Court issue a peremptory writ commanding the Regents to
7 produce all requested records referenced in this Petition, *or in the alternative*, segregate and
8 disclose (or unredact) those records for which a CPRA exemption is unsupported;
9 b. Petitioner be awarded costs of this action and attorney's fees; and
10 c. Other relief be granted as this Court considers just and proper.

11 Respectfully submitted,

12 Dated: February 10, 2022

EVANS & PAGE

13
14 By:



15 Corey Page
16 Attorney for Petitioner Physicians Committee
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VERIFICATION

I, Ryan Merkley, am the representative of Physicians Committee for Responsible Medicine who requested the records in the above-entitled action. I have read the foregoing First Amended Verified Petition and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury, in accordance with the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on February 10, 2022, in Washington, District of Columbia.



Ryan Merkley