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8 Petitioner, In Pro Per

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO

11 Date: October 2, 2026

12 Time: 11:00 a.m.

13 Dept.: 16B

14 Judge: Hon. Shelleyanne W. L. Chang

Case No.: 26WM000073

15 PATRICK SMOTHERMAN WRIGHT,

16 Petitioner,

PETITIONER'S OPPOSITION TO RESPONDENTS'

17 vs.

DEMURRER TO PETITION

18
19 CALIFORNIA FISH AND GAME

20 COMMISSION;

21 CALIFORNIA DEPARTMENT OF FISH

22 AND WILDLIFE;

23 and DOES 1-20,

24 Respondents
25
26

1 **I. INTRODUCTION**

2
3 Respondents’ demurrer should be overruled.

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5 The Petition (“Petition”) alleges that the California Fish and Game Commission formally
6 accepted regulatory Petition 2025-003 on June 11, 2025, referred the matter to the California
7 Department of Fish and Wildlife (“CDFW”) for evaluation, and then allowed the Petition to
8 remain unresolved for more than ten months without issuing a final written determination,
9 scheduling a public hearing, or transmitting any disposition to the Office of Administrative Law
10 as contemplated by Government Code section 11340.7.

11
12 At the demurrer stage, the Court must accept all properly pleaded factual allegations as true and
13 liberally construe the Petition in Petitioner’s favor. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.)

14
15 Petitioner does not seek to compel Respondents to legalize domestic ferrets or dictate the
16 substantive outcome of any regulatory decision. Rather, Petitioner seeks to compel Respondents
17 to complete the procedural framework established by Government Code section 11340.7 after
18 formally accepting Petition 2025-003 into the Administrative Procedure Act (“APA”) process.

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21 The Petition alleges that Respondents accepted Petition 2025-003 for further consideration,
22 referred it for internal review, failed to issue any final disposition, failed to schedule a public
23 hearing, failed to transmit any written disposition to the Office of Administrative Law, and failed
24 to take corrective action even after receiving formal notice of statutory noncompliance.

25
26 Respondents attempt to characterize the entire administrative process as wholly discretionary and
27 therefore insulated from judicial review. However, a prior case involving the same Respondent
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1 agency, *Marshall Farms USA Inc. v. California Fish & Game Commission* (San Diego Super. Ct.
2 No. 706133, Jan. 9, 1998), rejected a substantially similar defense and held that the Commission
3 possesses a “mandatory duty to determine” the regulatory status of ferrets and that courts may
4 compel the Commission to act even where the ultimate substantive determination remains
5 discretionary.

7
8 An administrative agency cannot use internal referral mechanisms to create indefinite
9 administrative limbo or perpetuate an unreviewable standstill after formally accepting a Petition
10 into the APA process. Whether Respondents’ prolonged failure to complete the administrative
11 process constitutes unreasonable delay presents factual questions inappropriate for resolution on
12 demurrer.

13
14 Because the Petition adequately alleges unreasonable administrative delay, failure to complete
15 mandatory procedural obligations, and factual disputes inappropriate for resolution at the
16 pleading stage, Respondents’ demurrer should be overruled.

19
20 **II. STATEMENT OF FACTS**

21
22 Government Code section 11340.7 establishes a procedure by which any interested person may
23 petition a state agency to adopt, amend, or repeal a regulation. Under that procedure, after acting
24 upon a petition, the agency must either deny the Petition in writing with reasons or schedule the
25 matter for public hearing. The statute further provides for transmission of the agency’s
26 disposition to the Office of Administrative Law (“OAL”).
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1 On or about June 11, 2025, Respondent California Fish and Game Commission (“Commission”)
2 formally accepted Petition 2025-003, submitted by Petitioner pursuant to Government Code
3 section 11340.7, seeking amendment of California Code of Regulations, title 14, section 671
4 concerning the restricted-species status of domestic ferrets.
5

6 Upon accepting Petition 2025-003, the Commission referred the matter to Respondent California
7 Department of Fish and Wildlife (“CDFW”) for staff review, technical evaluation, and
8 administrative recommendation.
9

10 As a result of that referral, CDFW assumed responsibility for maintaining and processing
11 administrative materials associated with Petition 2025-003, including staff analyses,
12 correspondence, internal evaluations, and related records generated during agency review of the
13 Petition.
14

15
16 Following the Commission’s acceptance of Petition 2025-003, no final written determination
17 granting, denying, or partially denying the Petition was issued. Respondents likewise did not
18 schedule the Petition for public hearing.
19

20 More than ten months elapsed between the Commission’s acceptance of the Petition and the
21 filing of this action without any final written disposition being issued.
22

23 No written disposition concerning Petition 2025-003 has been transmitted to the Office of
24 Administrative Law or published in the California Regulatory Notice Register.
25
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1 On March 2, 2026, Petitioner served Respondents with a Final Notice of Statutory
2 Noncompliance identifying the absence of any written disposition or hearing scheduling and
3 requesting corrective action. Respondents did not provide any substantive response.
4

5 Thereafter, Petitioner submitted requests under the California Public Records Act (“CPRA”)
6 seeking records relating to Respondents’ review and evaluation of Petition 2025-003. In
7 response, Respondents stated that no responsive records concerning active review or evaluation
8 of Petition 2025-003 could be located.
9

10 The Commission’s historical conduct demonstrates that it has long treated the regulatory status
11 of domestic ferrets as a matter within its administrative rulemaking authority, including prior
12 amendments to ferret-related regulations, permit classifications, environmental review activity,
13 and consideration of prior ferret-related regulatory proposals.
14

15
16 Petitioner brings this proceeding under Code of Civil Procedure section 1085 to compel
17 completion of the administrative process initiated under Government Code section 11340.7 and
18 to remedy unreasonable administrative delay.
19
20

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22 **III. LEGAL STANDARD**
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24 A demurrer tests only the legal sufficiency of a pleading and does not resolve factual disputes or
25 the merits of the action. The Court must accept as true all material factual allegations properly
26 pleaded, together with those matters reasonably inferred from the pleading, and must construe
27

1 the Petition liberally in favor of Petitioner. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318; Code
2 Civ. Proc., § 452.)

3
4 A demurrer must be overruled if the Petition alleges facts showing entitlement to relief under any
5 viable legal theory. (Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26, 38.) At
6 the pleading stage, the Court may not weigh evidence, resolve factual disputes, or determine the
7 truth of competing interpretations of agency conduct.
8

9 Traditional mandamus under Code of Civil Procedure section 1085 is available “to compel the
10 performance of an act which the law specially enjoins.” To state a claim for traditional
11 mandamus, a Petitioner need only allege:
12

- 13 1. A clear, present, and ministerial duty on the part of the respondent; and
- 14 2. A clear, present, and beneficial right in the Petitioner to performance of that duty.
15

16 (Santa Clara Organization for Planning the Environment v. County of Santa Clara (2023) 92
17 Cal.App.5th 1010, 1025.)
18

19 Mandamus lies not only to compel purely ministerial acts, but also to require an agency to
20 exercise its discretion where it has failed or refused to act. (Kavanaugh v. West Sonoma County
21 Union High School Dist. (2003) 29 Cal.4th 911, 916.) Although a court may not dictate the
22 substantive outcome of an agency’s discretionary determination, it may compel the agency to
23 complete the administrative process and render a decision.
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1 Whether administrative delay has become unreasonable is generally a question of fact
2 inappropriate for resolution on demurrer. (Common Cause v. Board of Supervisors (1989) 49
3 Cal.3d 432, 442.)
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7 **IV. ARGUMENT**

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9 **A. The Petition Adequately Alleges a Mandatory Duty to Complete the Procedural**
10 **Framework Established by Government Code Section 11340.7**

11
12 Respondents argue that because the Commission retains ultimate discretion regarding whether to
13 grant or deny a regulatory petition, judicial review is unavailable as a matter of law. The
14 argument mischaracterizes the Petition

15
16 Petitioner does not seek to control the substance of the Commission’s eventual decision, nor does
17 Petitioner seek an order compelling legalization of domestic ferrets. Rather, Petitioner seeks to
18 compel completion of the procedural framework established by Government Code section
19 11340.7.
20

21 While Government Code section 11340.7 grants discretion regarding the substance of an
22 agency’s ultimate determination, the statute establishes a mandatory procedural framework
23 requiring the agency to either deny the Petition in writing with reasons or schedule the matter for
24 public hearing.
25

26
27 The statute does not authorize a petition to remain indefinitely suspended following formal
28 acceptance by the agency.

1 The principle is particularly applicable here. In *Marshall Farms USA Inc. v. California Fish &*
2 *Game Commission* (San Diego Super. Ct. No. 706133, Jan. 9, 1998), the superior court rejected
3 the Commission’s attempt to avoid judicial review through claims of administrative discretion
4 and concluded that the Commission possessed a mandatory duty to determine the regulatory
5 status of ferrets.
6

7
8 The Petition alleges that the Commission formally accepted Petition 2025-003 and thereafter
9 failed for more than ten months to issue a written denial, schedule a public hearing, or transmit
10 any written disposition to the Office of Administrative Law. Those allegations are sufficient to
11 state a claim for relief under Code of Civil Procedure section 1085.
12

13 **B. The Petition Adequately Alleges Unreasonable Administrative Delay**
14

15 Respondents further contend that the Commission’s referral of Petition 2025-003 to CDFW for
16 “further review and recommendation” precludes any claim for unreasonable delay because
17 Government Code section 11340.7 contains no express sub-deadlines governing internal agency
18 review.
19

20 The argument improperly conflates discretionary evaluation with indefinite administrative
21 inaction.
22

23 Where a statute imposes a duty but does not specify a precise deadline for performance, the law
24 implies a requirement that the duty be performed within a reasonable time. (*Common Cause v.*
25 *Board of Supervisors* (1989) 49 Cal.3d 432, 442.)
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1 The Petition alleges that more than ten months elapsed following formal acceptance of Petition
2 2025-003 without any written disposition, hearing scheduling, or publication of notice to the
3 Office of Administrative Law.
4

5 The Petition further alleges that Respondents subsequently stated no responsive records
6 concerning active review or evaluation of the Petition could be located.
7

8 Accepting those allegations as true for purposes of demurrer, the pleading adequately alleges
9 unreasonable administrative delay.
10

11 **C. The Petition Adequately Alleges CDFW's Participation in the Administrative Process**
12

13 Respondents argue that CDFW is an improper party because it lacks final rulemaking authority
14 under Government Code section 11340.7.
15

16 The Petition, however, does not allege that CDFW possesses final regulatory authority. Rather,
17 the Petition alleges that the Commission formally referred Petition 2025-003 to CDFW for staff
18 review, technical evaluation, and administrative recommendation.
19

20 The Petition further alleges that CDFW maintained and processed administrative materials
21 associated with the Petition.
22

23 At the pleading stage, those allegations sufficiently establish CDFW's operational involvement
24 in the administrative process underlying the requested relief.
25

26 **D. Respondents' Claimed Lack of Authority Contradicts Their Historical Regulatory**
27 **Conduct**
28

1 Respondents assert that the Commission lacks authority to alter the regulatory status of domestic
2 ferrets administratively. However, the historical regulatory record alleged in the Petition
3 demonstrates decades of administrative regulation and classification of ferrets by the
4 Commission itself.
5

6 As alleged, the Commission has:
7

- 8 • adopted regulations concerning ferrets since the 1930s;
- 9 • modified permit structures governing ferrets;
- 10 • repealed exemptions relating to neutered ferrets;
- 11 • considered Petitions to alter ferret classification;
- 12 • directed preparation of environmental review; and
- 13 • repeatedly treated ferret classification as a matter within its administrative authority.
14

15
16 Moreover, in *Marshall Farms USA Inc. v. California Fish & Game Commission* (San Diego
17 Super. Ct. No. 706133, Jan. 9, 1998), the Superior Court held that the Commission possessed a
18 “mandatory duty to determine” whether ferrets are “normally domesticated” and rejected the
19 Commission’s assertion that it lacked authority to alter ferret classification administratively.
20

21 Respondents’ assertion that the Commission lacks administrative authority to amend Title 14,
22 section 671 is also inconsistent with the Commission’s historical regulatory conduct. Historical
23 Commission records reflect that the Commission previously processed and acted upon Petitions
24 involving amendments to the restricted-species regulations under section 671, including
25 consideration of removal of the Asian Water Buffalo (*Bubalus bubalis*) from the prohibited
26 species list in 1998.
27
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1 These historical actions further demonstrate that the Commission has long treated section 671
2 classifications as matters subject to administrative regulatory review and amendment.

3
4 **E. The Public Records Act Allegations Are Sufficiently Certain**

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6 Respondents demur to the CPRA allegations under Code of Civil Procedure section 430.10,
7 subdivision (f), contending the allegations are uncertain.

8
9 Demurrers for uncertainty are disfavored and will be sustained only where a pleading is so
10 unintelligible that the responding party cannot reasonably determine the issues to be admitted or
11 denied.

12
13 The Petition identifies the subject matter of the CPRA requests, the agencies to whom the
14 requests were directed, the Petition at issue, and the substance of Respondents' responses stating
15 that no responsive records concerning active review or evaluation of Petition 2025-003 could be
16 located.

17
18 Those allegations are sufficiently specific to permit Respondents to formulate a responsive
19 pleading.

20
21 **F. Leave to Amend Should Be Granted if the Court Identifies Any Pleading Deficiency**

22
23 Even where a court identifies deficiencies in a pleading, leave to amend must be granted where
24 there is a reasonable possibility the defect can be cured through amendment.
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1 To the extent the Court determines additional specificity is required regarding agency
2 communications, statutory provisions, or procedural chronology, Petitioner can amend the
3 pleading accordingly.
4

5 Accordingly, the demurrer should be overruled in its entirety. In the alternative, leave to amend
6 should be freely granted.
7
8

9
10 **V. CONCLUSION**
11

12 For the foregoing reasons, the Petition alleges facts establishing clear, present, and ministerial
13 procedural duties arising under Government Code section 11340.7, a prolonged failure by
14 Respondents to complete the administrative process, and an unreasonable administrative delay
15 reviewable under Code of Civil Procedure section 1085.
16

17 Respondents' arguments rely on factual disputes and characterizations of agency conduct that
18 cannot be resolved at the pleading stage.
19

20 Accepting the allegations as true, as required on demurrer, the Petition states a valid cause of
21 action for traditional mandamus.
22

23 Accordingly, Petitioner respectfully requests that the Court overrule Respondents' demurrer in
24 its entirety and order Respondents to file an Answer within the time prescribed by law.
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1 In the alternative, should the Court identify any curable pleading deficiency, Petitioner
2 respectfully requests that leave to amend be freely granted pursuant to Code of Civil Procedure
3 section 472c.
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5 Dated: May 27, 2026
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7 Respectfully submitted
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11 Patrick Smotherman Wright Petitioner, In Pro Per
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