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Exempt from fees
Pursuant to Gov. Code, § 6103

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

12 **PATRICK SMOTHERMAN WRIGHT,**
13
14 **Petitioner,**
15
16 **v.**
17 **CALIFORNIA FISH AND GAME**
COMMISSION; CALIFORNIA
DEPARTMENT OF FISH AND
WILDLIFE; and DOES 1-20,
18
19 **Respondents.**

Case No. 26WM000073

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEMURRER OF RESPONDENTS
CALIFORNIA FISH AND GAME
COMMISSION AND CALIFORNIA
DEPARTMENT OF FISH AND
WILDLIFE**

Date: October 2, 2026
Time: 11:00 a.m.
Dept: 16B
Judge: The Honorable Shelleyanne
W.L. Chang
Trial Date: None
Action Filed: March 17, 2026

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1 **INTRODUCTION**

2 Petitioner Pat Wright (Petitioner) asserts two writ claims against respondents, the California
3 Fish and Game Commission (Commission) and the California Department of Fish and Wildlife
4 (Department). The first claim alleges that the respondents did not comply with the Administrative
5 Procedure Act (APA) in considering his petition “concerning the continued classification of
6 domestic ferrets as restricted animals under California law.” (Pet. at p. 1.) The second claim
7 alleges the respondents failed to respond to his Public Record Act requests. (Pet. at p. 2.)

8 In California, both statute and regulation restrict the possession and handling of certain
9 species of animals. The Fish and Game Code prohibits the import, transport, possession, or
10 release of any listed “wild animal” without a permit, including ferrets, which are in the
11 *Mustelidae* family. (See Fish & G. Code, § 2118, subd. (b).) Animals may be added to or deleted
12 from the statutory list by Commission regulations. (Fish & G. Code, § 2118, subd. (k).) The
13 regulations designate the *Mustelidae* family as “detrimental animals” because they “pose a threat
14 to native wildlife, the agriculture interests of the state or to public health or safety.” (Cal. Code
15 Regs., tit. 14, § 671, subds. (b), (c)(2)(K)(5).)

16 This is the third lawsuit Petitioner has filed related to California ferret laws. (Request for
17 Judicial Notice (RJN), ¶ 4.) Most recently, Petitioner submitted a petition requesting that the
18 Commission amend state regulations to remove ferrets from the list of restricted species. (Pet. at
19 p. 1; RJN, ¶ 1; RJN Exh. 1 at p. 7 [Fish and Game Commission Agenda for June 11–12, 2025].)
20 The Commission considered this request at its June 2025 meeting and referred the request to the
21 Department for review and recommendation. (RJN, ¶¶ 2, 3, Exh. 2 [letter to Mr. Wright regarding
22 action taken on his petition for regulation change]; see Pet. at p. 1.)

23 This case is subject to demurrer in its entirety. Petitioner cannot state an APA claim against
24 the Department because the Department lacks the relevant regulatory authority. Additionally, the
25 APA claim fails on the law because the APA does not impose a mandatory duty to issue a
26 “written determination” (Pet. at p. 2) within 60 days of a petition to amend state regulations.
27 Finally, the Public Records Act claim is so uncertain that respondents are unable to respond or to
28 prepare an administrative record, and the demurrer should be sustained on this basis.

1 California Fish and Game Commission concerning the continued classification of domestic ferrets
2 as restricted animals under California law.” (Pet. at p. 1.) Thus, as pled, this claim is directed at
3 the Commission, not the Department.

4 That this claim is directed at the Commission, rather than the Department, is also reflected
5 in the underlying statutory scheme. Ferrets are designated restricted “wild animals” by statute.
6 (See Fish & G. Code, § 2118, subd. (b) [listing the family *Mustelidae*, including ferrets, “because
7 such animals are undesirable and a menace to native wildlife, the agricultural interests of the
8 state, or to the public health or safety”].) It is not clear that the Commission has authority to alter
9 this designation through regulation because the Fish and Game Code evinces an express
10 legislative intent to restrict animals in the family *Mustelidae* for health and safety reasons. (*San*
11 *Bernardino City Unified School District v. State Allocation Board* (2022) 79 Cal.App.5th 12, 18
12 [“A regulation is invalid and unenforceable if it conflicts with the Legislature’s intent as
13 manifested in the statute”].) But even assuming ferrets’ designation could be altered through
14 regulation, the Commission is charged with determining what constitutes a “wild animal,” not the
15 Department. (Fish & G. Code, § 2116; see Cal. Code Regs., tit. 14, § 671 [listing animals that the
16 Commission determined are not normally domesticated, i.e., “wild animals”].) Therefore, as pled
17 and as reflected in statute, the Department does not have authority to consider Petitioner’s
18 requested regulatory amendment or to make determinations under the provisions of the Fish and
19 Game Code pertaining to “Restricted Live Wild Animals.” (Gov. Code, §§ 2116–2128.)
20 Therefore, as to the Department, the Court should sustain the demurrer to the APA claim without
21 leave to amend.

22 **B. The Petition Does Not Sufficiently Allege Failure to Perform a Mandatory**
23 **Duty under the Administrative Procedure Act**

24 Petitioner has not identified a ministerial duty under the APA that the respondents failed to
25 perform, and therefore Petitioner does not state a cause of action for mandamus. (See *Keyes v.*
26 *Bowen* (2010) 189 Cal.App.4th 647, 656–657.) “The APA establishes the procedures by which
27 _____
28 adopted by the Department, except where the code requires the Commission to adopt regulations.
(Fish & G. Code, § 702.)

1 state agencies may adopt regulations.” (*Tidewater Marine Western, Inc. v. Bradshaw* (1996)
2 14 Cal.4th 557, 568 (*Tidewater*) [the process includes public notice, opportunity for public
3 comment, and the provision of underlying materials].) This includes how to handle “a petition
4 requesting the adoption, amendment, or repeal of a regulation.” (Gov. Code, § 11340.7.)

5 Government Code section 11340.7 states, in relevant part:

6 (a) Upon receipt of a petition requesting the adoption, amendment, or repeal of a
7 regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall
8 notify the petitioner in writing of the receipt and shall within 30 days deny the petition
9 indicating why the agency has reached its decision on the merits of the petition in writing or
10 schedule the matter for public hearing in accordance with the notice and hearing
11 requirements of that article.

12 (b) A state agency may grant or deny the petition in part, and may grant any other
13 relief or take any other action as it may determine to be warranted by the petition and shall
14 notify the petitioner in writing of this action.

15 Here, facts subject to judicial notice reflect that the Commission considered Petitioner’s
16 request to amend state regulations to “Remove ferrets from the restricted species list” at a public
17 meeting on June 11–12, 2025. (RJN, Exh. 1, at p. 7; Pet. at p. 2 [alleging that the Commission
18 “accepted the petition on June 11, 2025”].) The Commission referred the petition to the
19 Department for further review and recommendation. (RJN, ¶ 3; RJN Exh. 2.) Thus, the
20 Commission considered Petitioner’s request at a public meeting and took an action that falls
21 within the broad category of “any other action,” as authorized by Government Code
22 section 11340.7, subd. (b).

23 However, Petitioner contends that Government Code section 11340.7 imposes “a
24 mandatory and ministerial” duty upon a state agency “to issue a *written determination on a*
25 *rulemaking petition* within sixty (60) days after receipt of such petition.” (Pet. at p. 4, italics
26 added.) This assertion is not supported by the plain language of the APA. The APA requires an
27 agency to provide written notice that it has received the petition, notice if it denies the petition on
28 the merits, and/or of notice the action taken on the petition, which can include granting or
denying in whole or in part, or taking “any other action as [the agency] may determine to be
warranted.” (See Gov. Code, § 11340.7, subs. (a), (b).)

1 In addition to being unsupported by the text of the APA, Petitioner’s position is contrary to
2 public policy and the legislative intent of the APA. An interpretation of the APA that required a
3 written determination on all rulemaking petitions in short timeframes would force agencies to
4 make rushed decisions on rulemaking petitions and would be contrary to the legislative purpose
5 of the APA, which was to provide greater transparency and opportunity for public participation in
6 agency rulemaking. (See *Tidewater, supra*, 14 Cal.4th at p. 568.) This interpretation of the APA
7 would also be inconsistent with the broad, discretionary authority agencies exercise when
8 adopting or amending regulations. “[T]he adoption, amendment and vacation of rules and
9 regulations are quasi-legislative acts,” not ministerial. (*Motion Picture Studio Teachers &*
10 *Welfare Workers v. Millan* (1996) 51 Cal.App.4th 1190, 1196; see also *Alameda Health, supra*,
11 100 Cal.App.5th 1159, 1178 [it is well established that a traditional writ of mandate cannot
12 control discretion conferred upon a public officer or agency].)

13 In sum, when an agency receives a rulemaking petition, it has a ministerial duty to provide
14 notice to the petitioner when it receives and takes action on the petition. (Gov. Code, § 11340.7,
15 subds. (a), (b).) But the APA does not set a hard deadline for state agencies to undertake a quasi-
16 legislative, discretionary act, and the APA expressly authorizes agencies to take action, other than
17 simply granting or denying a rulemaking petition.

18 Therefore, as a matter of law, Petitioner “did not identify any ministerial duty that the
19 [respondents] failed to perform” and failed to state a cause of action. (*Keyes v. Bowen, supra*,
20 189 Cal.App.4th at pp. 656–657.) The demurrer should be sustained on this basis.

21 **II. THE DEMURRER SHOULD BE SUSTAINED AS TO THE PUBLIC RECORDS ACT CLAIM**
22 **BECAUSE IT IS UNCERTAIN**

23 A court may sustain a demurrer to a pleading if the pleading is uncertain. (Code Civ. Proc.,
24 § 430.10, subd. (f).) A demurrer for uncertainty will lie when the pleading is so incomprehensible
25 that the defendant cannot reasonably respond. (*Morris v. JPMorgan Chase Bank, N.A.* (2022)
26 78 Cal.App.5th 279, 292; see also *Bernstein v. Piller* (1950) 98 Cal.App.2d 441, 443–444 [“Mere
27 recitals, references to or allegations of material facts which are left to surmise are subject to a
28 special demurrer for uncertainty”]; *Straughter v. Safety Sav. & Loan Ass’n* (1966)

1 244 Cal.App.2d 159, 161 [affirming dismissal where complaint failed to state facts explaining
2 how defendants performed alleged wrongs].)

3 Here, the suit does not specify what records Petitioner requested, when he submitted the
4 requests, or whether the requests were submitted to the Commission, the Department, or both.
5 Additionally, Petitioner's long history of engagement on this issue makes it difficult to identify
6 what requests are at issue in the current litigation. (E.g., RJN, ¶ 4.) Because the Petition is
7 uncertain, it is unclear what evidence the Court should consider in adjudicating this claim, i.e., the
8 scope of the administrative record. (*See* Cal. Practice Guide: Administrative Law (The Rutter
9 Group 2025) Ch. 20-A, § 20:4 [describing what the record should contain in cases challenging
10 quasi-legislative agency action under Code Civ. Proc., § 1085].) As a result, respondents cannot
11 reasonably respond to these allegations, nor can they prepare the record of proceedings.
12 Therefore, respondents' demurrer to the Public Records Act claim should be sustained.

13 CONCLUSION

14 For the reasons stated above, the Commission and Department respectfully request that this
15 Court sustain their demurrer.

16 Dated: May 8, 2026

Respectfully submitted,

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