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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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**FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 VOICE OF SAN DIEGO, a California  
corporation,

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Petitioner,

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v.

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14 SAN DIEGO UNIFIED SCHOOL DISTRICT;  
and DOES 1-10, inclusive,

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Respondents.

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CASE NO.

**VERIFIED PETITION FOR WRIT OF  
MANDATE TO COMPEL COMPLIANCE  
WITH PUBLIC RECORDS ACT;  
COMPLAINT FOR DECLARATORY AND  
PRELIMINARY AND PERMANENT  
INJUNCTION**

**[Cal. Gov. Code §§ 6258 and 6259]**

Date:  
Time:  
Dept.:  
Judge:

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**INTRODUCTION**

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1. This action, brought pursuant to the California Public Records Act (Gov. Code § 6250  
21 *et seq.*) (“CPRA”) by Petitioner VOICE OF SAN DIEGO (“VOICE”), a local online news service,  
22 challenges the determination of Respondent SAN DIEGO UNIFIED SCHOOL DISTRICT  
23 (“DISTRICT”) to withhold and/or redact communications in its possession relating to improper  
24 activities at the San Diego School of Creative and Performing Arts (“SCPA”).

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2. A San Diego Grand Jury investigation determined that a DISTRICT trustee  
26 illegitimately pressured senior DISTRICT administrative staff to remove or punish SCPA staff – going  
27 well beyond the trustee’s legal authority.

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3. After investigating the matter further, VOICE determined that the trustee in question,

1 Marne Foster, then the DISTRICT Board President, directed individuals including Cindy Marten, the  
2 DISTRICT Superintendent, and other senior staff members, to remove or punish SCPA Principal Mitzi  
3 Lizarraga and Head Counselor Kim Abagat in retaliation for perceived wrongs against one or more of  
4 Ms. Foster's children enrolled at SCPA.

5 4. Trustee Foster was charged criminally by the District Attorney, agreed to a  
6 misdemeanor plea bargain admitting guilt in accepting illegal gifts, and formally resigned her  
7 DISTRICT Board position. No other individuals were charged with criminal activity.

8 5. During the course of its investigation, VOICE made repeated CPRA requests to the  
9 DISTRICT and, while the DISTRICT nominally complied, a number of public records which were  
10 likely to contain specific information regarding DISTRICT staff's actions, and those of Trustee Foster,  
11 were withheld and/or redacted on the basis of one or more CPRA exemptions not applicable given the  
12 circumstances. VOICE believes the DISTRICT withholds and/or redacts a number of responsive  
13 public records in an effort to limit damage to the public image of several high ranking public officials.

14 6. VOICE is keenly interested in the activities of the DISTRICT and its personnel and  
15 trustees, as are thousands of its readers. The DISTRICT's failure to release responsive public records  
16 in reply to a lawful CPRA request has resulted in harm to VOICE and the public at large. This Petition  
17 and the injunctive relief sought should be granted immediately.

## 18 **PARTIES**

19 7. Petitioner VOICE is an online news service based in and serving San Diego, California.  
20 As one of only a handful of investigative local news sources, VOICE devotes extensive coverage to  
21 matters of public interest with a focus on local government affairs. Relying upon the donations of an  
22 interested and informed public, VOICE has a significant interest in investigating and reporting out to  
23 its readership the region's public agency expenditures, political maneuvering and governance  
24 activities.

25 8. Respondent DISTRICT operates under its own charter and pursuant to the laws of the  
26 State of California. DISTRICT has the administrative authority as well as the responsibility under the  
27 CPRA to provide timely and complete records in its possession pursuant to requests made upon it.

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1 **STATEMENT OF FACTS**

2 16. On or about May 21, 2015, the San Diego Grand Jury released an investigative report  
3 detailing a DISTRICT trustee’s improper attempts at influencing and intimidating school  
4 staffmembers. A true and correct copy of the Grand Jury report is attached as Exhibit “B”.

5 17. Shortly thereafter, VOICE began its own exploration of the matter, publishing its first  
6 story on the topic July 29, 2015. A true and correct copy of the VOICE’s July 29, 2015 report on the  
7 matter is attached as Exhibit “C”. As this story provides, VOICE reporter Mario Koran uncovered  
8 allegations that it was Trustee Marne Foster that had solicited funds for two of her sons and meddled  
9 in the day-to-day operations of the SCPA where her son attended school.

10 18. On or about August 24, 2015, VOICE released one of a series of articles describing  
11 Trustee Foster’s alleged efforts to intimidate and influence senior DISTRICT staff to remove SCPA  
12 Principal Mitzi Lizarraga from her position, administratively punish SCPA Head Counselor Kim  
13 Abagat, release to Trustee Foster confidential student information, and overturn Principal Lizarraga’s  
14 decision to not permit Trustee Foster’s son attend prom. A true and correct copy of the VOICE’s  
15 August 24, 2015 report on the matter is attached as Exhibit “D”.

16 19. On or about September 29, 2015, under pressure from the information released by virtue  
17 of VOICE’s investigation and reporting, DISTRICT Superintendent Marten publicly released a  
18 memorandum explaining the DISTRICT’s punitive actions against Ms. Lizarraga and Ms. Abagat,  
19 attaching an investigative report and several email threads intended to show that the propriety of these  
20 actions, notwithstanding an acknowledgment that Trustee Foster. A true and correct copy of Ms.  
21 Marten’s public statement is attached as Exhibit “E”.

22 20. VOICE’s investigation into the underlying matter, involved, in part, a series of CPRA  
23 requests to the DISTRICT intended to uncover communications between and relating to Trustee Foster  
24 and senior DISTRICT staff in follow up to the Grand Jury report. VOICE takes issue with the  
25 DISTRICT’s response to four of these requests; requests designated by the DISTRICT as  
26 FY20152016.044, FY20152016.045, FY20152016.050 and FY20152016.088.

27 21. On or about September 22, 2015, Mr. Koran emailed CPRA request FY20152016.044  
28 to the DISTRICT seeking:

- 1 a) All written communication between San Diego Unified Superintendent  
2 Cindy Marten (cmarten@sandi.net) and Joe Fulcher  
(jfulcher@sandi.net) on December 4, December 5, December 6, and  
3 December 7, 2013.  
4 b) All written communication between San Diego Unified Superintendent  
5 Cindy Marten (cmarten@sandi.net) and Marne Foster  
(mfoster@sandi.net, marnef2@yahoo.com, marnef2@gmail.com) on  
6 December 4, December 5, December 6, and December 7, 2013.

7 22. On or about December 1, 2015, DISTRICT Legal Specialist Jeffrey Day provided  
8 responsive materials to CPRA request FY20152016.044 while simultaneously redacting and/or  
9 withholding an unspecified number of records pursuant to the personnel file exemption found at  
10 Government Code section 6254(c). A true and correct copy of the DISTRICT's release of responsive  
11 public records is attached as Exhibit "F". The personnel file exemption is inapplicable to matters  
12 relating to business decisions by the DISTRICT, and there appears to be little likelihood that the  
13 communications sought contained embarrassing or otherwise personal information about DISTRICT  
14 employees. Repeated efforts by VOICE's attorney to have the DISTRICT release further responsive  
15 public records were rejected by DISTRICT Counsel.

16 23. On or about September 23, 2015, Mr. Koran emailed CPRA request FY20152016.045  
17 to the DISTRICT seeking:

18 All emails and/or electronic communication, dated between Sept. Dec. [sic]  
19 1, 2013 and June 30, 2014, to or from Superintendent Cindy Marten  
(cmarten@sandi.net) and Lamont Jackson (ljackson@sandi.net) containing  
20 or related to the following keywords: "Mitzi" and/or "Lizarraga", "Kim"  
21 and/or "Abagat".

22 24. On or about December 9, 2015, Mr. Day provided responsive materials to CPRA  
23 request FY20152016.045 while simultaneously redacting and/or withholding an unspecified number  
24 of records pursuant to the attorney-client confidentiality exemption through Government Code section  
25 6254(k) and the deliberative process exemption found at Government Code section 6255(a). A true  
26 and correct copy of the DISTRICT's release of responsive public records is attached as Exhibit "G".  
27 VOICE was informed that responsive records were withheld or redacted because several messages  
28 included communications with DISTRICT Counsel and that others were held back because they  
contained the DISTRICT's public relations efforts in response to parental and student concerns  
regarding the removal of Principal Lizarraga. The deliberative process exemption offers no protection

1 for regular communications between public officials as appears to be the case in the present instance.  
2 Repeated efforts by VOICE's attorney to have the DISTRICT release further responsive public records  
3 were rejected by DISTRICT Counsel.

4 25. On or about October 5, 2015, Mr. Koran emailed CPRA request FY20152016.050 to  
5 the DISTRICT seeking:

6 All emails and/or electronic communication, dated between Sept. October  
7 20, 2013 and June 30, 2014, to or from School Board Trustee Marne Foster  
8 (mfooster@sandi.net) and Megan Blum (mblum@sandi.net) containing or  
related to the following keywords: "Mitzi" or "Lizarraga"; "Kim" or  
"Abagat"; Malachi" or "Foster" or "Sandra" or "Foster-King."

9 26. On or about November 2, 2015, Mr. Day provided responsive materials to CPRA  
10 request FY20152016.050 while simultaneously redacting and/or withholding an unspecified number  
11 of records the personnel file exemption found at Government Code section 6254(c) and the student  
12 privacy exemption pursuant to Government Code section 6254(k). A true and correct copy of the  
13 DISTRICT's release of responsive public records is attached as Exhibit "H". The personnel file  
14 exemption is inapplicable to matters relating to business decisions by the DISTRICT, and there appears  
15 to be little likelihood that the communications sought contained embarrassing or otherwise intimate  
16 personal information about DISTRICT employees. Repeated efforts by VOICE's attorney to have the  
17 DISTRICT release further responsive public records were rejected by DISTRICT Counsel.

18 27. On or about December 10, 2015, VOICE's attorney emailed CPRA request  
19 FY20152016.088 to the DISTRICT counsel seeking:

20 All emails and/or electronic communication, dated between Sept. 1, 2013  
21 and June 30, 2014, to or from Superintendent Cindy Marten  
22 (cmarten@sandi.net) and/or Lamont Jackson (ljackson@sandi.net)  
containing or related to the following keywords: "Mitzi" and/or  
"Lizaragga" "Kim" and/or "Abagat".

23 28. Nearly four months later, on or about March 3, 2015, Mr. Day provided responsive  
24 materials to CPRA request FY20152016.088 while simultaneously redacting and/or withholding an  
25 unspecified number of records pursuant to attorney-client privilege and student privacy through  
26 Government Code section 6254(k) and the deliberative process exemption found at Government Code  
27 section 6255. A true and correct copy of the DISTRICT's release of responsive public records is  
28 attached as Exhibit "I". VOICE understands that the deliberative process exemption was applied to

1 responsive records because they contained discussion of the DISTRICT’s public relations efforts in  
2 response to parental and student concerns regarding the treatment of SCPA employees. The  
3 deliberative process exemption offers no protection for regular communications between public  
4 officials as appears to be the case in the present instance. Moreover, Ms. Marten’s September 29, 2016  
5 public memorandum released a series of documents on the instant topic and firmly proclaimed the  
6 “public’s interest in understanding the reasons for our decision to reassign [Ms. Lizarraga] from site  
7 Principal to an arts leadership position in our district” as the basis for circulating these public records.  
8 The DISTRICT cannot now hide behind the deliberative process exemption given the acknowledged  
9 strong public interest in disclosure.

10 29. After a series of follow-on reports from VOICE and other media outlets, the District  
11 Attorney’s Office filed criminal charges against Trustee Foster. The criminal matter resulted in a plea  
12 arrangement wherein Trustee Foster admitted accepting illegal gifts, a misdemeanor charge, and  
13 resigned from her position with the DISTRICT.

14 30. VOICE, through its attorney, has made repeated efforts to demand the DISTRICT  
15 release responsive records where claimed exemptions do not appear applicable but has been rebuffed  
16 at each turn. VOICE has exhausted all avenues available to it and is left with no alternative but to ask  
17 the court to review the redacted and withheld documents *in camera* to determine the applicability of  
18 the exemptions employed pursuant to Government Code section 6259(a). VOICE wishes to resolve  
19 this matter promptly and efficiently so that the public may be further informed of the DISTRICT’s  
20 actions in this matter.

21 **REASONS FOR GRANTING THIS PETITION**

22 31. Petitioner has no plain, speedy or adequate remedy at law other than the instant Petition.  
23 This Petition is specifically authorized under California Government Code sections 6258 and 6259.  
24 Section 6258 provides that CPRA matters be heard “at the earliest possible time” and VOICE therefore  
25 requests a hearing in this Court as soon as possible.

26 32. The policy behind the CPRA favors disclosure, and a refusal to disclose information  
27 must be justified by the exemptions enumerated in the CPRA. *Cook v Craig* (1976) 55 Cal.App.3d  
28 773, 781. The courts have consistently held that exemptions must be narrowly construed. *New York*

1 *Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585. Where, as in the instant matter, the  
2 DISTRICT has failed to provide any viable basis for the court to grant an exemption, the underlying  
3 document request must be disclosed to VOICE. *Id.* at 1585-6.

4 33. The requested documents are disclosable public records pursuant to the CPRA. A  
5 public record is “any writing containing information relating to the conduct of the public’s business  
6 prepared, owned, used, or retained by any state or local agency regardless of physical form or  
7 characteristics.” Gov. Code § 6252(e). Those documents which relate to the conduct of the public’s  
8 business are inherently covered under the CPRA. *Braun v City of Taft* (1984) 154 Cal.App.3d 332,  
9 340. [“Only purely personal information unrelated to ‘the conduct of the public’s business’ could be  
10 considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public  
11 officer from a friend which is totally void of reference to governmental activities.”] Those documents  
12 which specifically relate to the activities of public officials are particularly apt for disclosure under the  
13 CPRA. *Id.* at 347; *See also, BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 746.  
14 [Californians have a constitutional right to access the records of their public agencies. They have a  
15 strong interest in knowing how government officials conduct public business, particularly when  
16 allegations of malfeasance by public officers are raised.]

17 34. The CPRA requires that complaints and/or investigations into the performance of public  
18 employees are to be disclosed whether discipline is meted or not, if they are well-founded or reasonably  
19 reliable based upon the sources provided in the course of the investigation. *Bakersfield City School*  
20 *District v. Superior Court* (2004) 118 Cal.App.4<sup>th</sup> 1041, 1046-7; *BRV, Inc., supra*, 143 Cal.App.4th at  
21 760 [unless accusations made against a public official are so unreliable that they could not be anything  
22 but false, records must be released pursuant to the CPRA due to the public’s interest overriding the  
23 official’s interest in confidentiality.]

24 35. The CPRA exempts from disclosure “[p]reliminary drafts, notes, or interagency or intra-  
25 agency memoranda that are not retained by the public agency in the ordinary course of business, if the  
26 public interest in withholding those records clearly outweighs the public interest in disclosure.” Gov.  
27 Code § 6454(a). The DISTRICT mistakenly holds that a “draft” document is automatically subject to  
28 this exemption, but this cannot be so where the record in question is in an email because such records





1 **THIRD CAUSE OF ACTION**

2 **(INJUNCTIVE RELIEF)**

3 46. PETITIONER hereby incorporates by this reference the allegations of paragraphs 1  
4 through 41, inclusive, of this Petition and Complaint as though fully set forth herein.

5 47. The DISTRICT's refusal to perform its ministerial duties under the CPRA has and  
6 continues to cause VOICE irreparable harm in that VOICE is unable to perform its work as a news  
7 agency disseminating important information about local government to the regional community.

8 48. A temporary restraining order, preliminary injunction and permanent injunction should  
9 issue directing the DISTRICT to release the responsive records sought by VOICE free of redaction  
10 where required by law.

11 49. VOICE is likely to prevail on the merits and establish that the DISTRICT, by their  
12 actions, violated Government Code § 6250 *et seq.*

13 50. Petitioner has no plain, speedy and adequate remedy at law, in that unless the  
14 DISTRICT is enjoined by this Court, as set forth herein, VOICE will lose credibility in the community  
15 (and much needed donations and grant funds) if it is not permitted to perform its sole corporate function  
16 – the gathering and dissemination of news.

17 **PRAAYER FOR RELIEF**

18 WHEREFORE, PETITIONER PRAYS FOR JUDGMENT AS FOLLOWS:

19 1. That this Court immediately order disclosure of the public records sought in CPRA  
20 requests FY20152016.044, FY20152016.045 and FY20152016.050.

21 2. Alternatively, if the records are not ordered released immediately, that this Court review  
22 *in camera* the requested documents pursuant to Gov. Code § 6259 to determine whether the materials  
23 should be released to the VOICE.

24 3. That this Court order the DISTRICT to pay Petitioner's reasonable attorneys' fees and  
25 costs of the suit pursuant to Gov. Code § 6259, Code of Civ. Proc. § 1021.5 and any other applicable  
26 provisions of law; and

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4. For such other and further relief as the Court deems just and proper.

Dated: May \_\_\_\_, 2016

LOUNSBERY, FERGUSON, ALTONA & PEAK, LLP

By: \_\_\_\_\_  
Felix M. Tinkov  
Attorney for Petitioner Voice of San Diego

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**VERIFICATION**

I am Sara Libby, Managing Editor for Petitioner VOICE OF SAN DIEGO. I have read the above Petition and know its contents. All facts alleged in the petition are true of my own personal knowledge, except those alleged on information and belief.

I declare under penalty of perjury that the foregoing is true and correct, under the laws of the State of California.

Executed in San Diego, California on May \_\_, 2016.

\_\_\_\_\_  
SARA LIBBY