

1 FAGEN FRIEDMAN & FULFROST, LLP  
Peter K. Fagen, SBN 143118  
2 pfagen@f3law.com  
Lynn Beekman, SBN 149325  
3 lbeekman@f3law.com  
Kaley A Lichtman, SBN 286025  
4 klichtman@f3law.com  
1525 Faraday Avenue, Suite 300  
5 Carlsbad, California 92008  
Phone: 760-304-6000  
6 Fax: 760-304-6011

7 Attorney for Real Party in Interest Tim Glover

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10

11 SAN DIEGANS FOR OPEN  
GOVERNMENT,

12 Plaintiff and Petitioner,

13 vs.

14 GROSSMONT UNION HIGH SCHOOL  
15 DISTRICT; and DOES 1 through 100,

16 Defendants and Respondents;

17 TIM GLOVER; and DOES 101 through 1,000,

18 Defendants and Real Party in  
19 Interest.

CASE NO. 37-2017-00001484-CU-MC-CTL

**REAL PARTY IN INTEREST TIM  
GLOVER'S ANSWER TO VERIFIED  
COMPLAINT AND PETITION FOR  
WRIT OF MANDATE**

Assigned for All Purposes to:  
Hon. Joan M. Lewis, Dept. C-65

Action Filed: January 12, 2017  
Trial Date: None Set

20

21 Defendant and Real Party in Interest, Tim Glover ("Dr. Glover") hereby files the following  
22 Answer to the "Verified Complaint For Declaratory and Injunctive Relief and Petition For Writ of  
23 Mandate" (Petition) filed by Plaintiff and Petitioner, San Diegans for Open Government  
24 ("Petitioner") as set forth herein. Unless specifically admitted, Dr. Glover denies, both generally  
25 and specifically, each and every allegation of the Petition and denies that Petitioner is entitled to  
26 any relief whatsoever.

27 ///

28 ///

Fagen Friedman & Fulfroft, LLP  
1525 Faraday Avenue, Suite 300  
Carlsbad, California 92008  
Main: 760-304-6000 • Fax: 760-304-6011

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ANSWER TO PETITION**

**Introductory Statement**

1. Answering paragraph 1 of the Petition, Dr. Glover denies all allegations contained therein and denies that the legal authorities cited support the initiation of this lawsuit.

**Parties**

2. Answering paragraph 2 of the Petition, Dr. Glover lacks sufficient information or belief to enable him to answer the allegations contained in this paragraph and on that basis denies such allegations. In addition, the paragraph contains legal conclusions and argument to which no response is required.

3. Answering paragraph 3 of the Petition, Dr. Glover admits that Grossmont Union High School District is a "local agency" under Section 6252(a) of the CPRA.

4. Answering paragraph 4 of the Petition, Dr. Glover admits that he is the superintendent of Grossmont Union High School District (the "District"). Except as specifically admitted, Dr. Glover denies the remaining allegations contained in paragraph 4.

5. Answering paragraph 5 of the Petition, Dr. Glover lacks sufficient information or belief to enable him to respond to the allegations contained in this paragraph and therefore denies each and every allegation therein.

6. Answering paragraph 6 of the Petition, Dr. Glover admits that at all times alleged in the Petition he was the District's superintendent. Dr. Glover denies all remaining allegations.

**Jurisdiction and Venue**

7. Answering paragraph 7 of the Petition, Dr. Glover admits that this court has jurisdiction pursuant to one or more of the statutes cited. The applicability of the statutes, "common law" and "other provisions of law" at this stage of the proceedings is unknown. The statutes cited speak for themselves.

8. Answering paragraph 8 of the Petition, Dr. Glover admits that venue is proper.

///  
///  
///

1 **First Cause of Action**

2 **Violation of Open-Government Laws**

3 9. Answering paragraph 9 of the Petition, Dr. Glover re-alleges and incorporates by  
4 reference each and every response contained in paragraphs 1 through 8 above.

5 10. Answering paragraph 10 of the Petition, Dr. Glover responds that Cory Briggs,  
6 attorney of record for Petitioner, submitted (via e-mail) on or about October 26, 2016, a CPRA  
7 request "on behalf of Nick Marinovich and other clients" to the District for "certain public records  
8 sent to or from GLOVER's private e-mail address "theglov8@gmail.com" and for "mobile  
9 messages" sent to or from GLOVER using public or private devices and equipment, among other  
10 categories of public records." Dr. Glover is without sufficient information or belief to enable him  
11 to admit or deny that Petitioner was one of the "other clients" that submitted the CPRA request on  
12 or about October 26, 2016 or to admit or deny that "SDOG caused" the CPRA request to be  
13 submitted to the District and based thereon, denies such allegation. Dr. Glover denies and contests  
14 the legal conclusion that the requested records are public records. Dr. Glover admits that Exhibit  
15 "A" to the Petition is a true and correct copy of the CPRA Request. The CPRA Request set forth  
16 in Exhibit "A" speaks for itself and Dr. Glover denies all mischaracterizations or statements that  
17 are inconsistent with the contents of Exhibit "A".

18 11. Answering paragraph 11 of the Petition, Dr. Glover admits to providing an initial  
19 response to the CPRA request on November 4, 2016, by and through his attorney of record. Dr.  
20 Glover is without sufficient information or belief to enable him to admit or deny that this was  
21 Petitioner's CPRA request (aka the "SDOG Request") and based thereon, denies such allegation.  
22 Dr. Glover admits that Exhibit "B" to the Petition is a true and correct copy of the District's initial  
23 response to the CPRA Request. The District's November 4, 2016, initial response to the CPRA  
24 Request set forth in Exhibit "B" speaks for itself and Dr. Glover denies all mischaracterizations or  
25 statements that are inconsistent with the contents of Exhibit "B".

26 12. Answering paragraph 12 of the Petition, Dr. Glover admits to receiving a question  
27 from Petitioner's attorney of record, Cory Briggs, on November 7, 2016 and admits that the  
28 "(partial) question" identified in paragraph 12 was one of the questions in the email. Dr. Glover is

1 without sufficient information or belief to enable him to admit or deny that "SDOG caused" Mr.  
2 Briggs to send the email to the District and based thereon, denies such allegation. Dr. Glover  
3 admits that Exhibit "C" to the Petition is a true and correct copy of the November 7, 2016 email  
4 from Mr. Briggs. Mr. Briggs' November 7, 2016, email set forth in Exhibit "C" speaks for itself  
5 and Dr. Glover denies all mischaracterizations or statements that are inconsistent with the contents  
6 of Exhibit "C".

7 13. Answering paragraph 13 of the Petition, Dr. Glover admits that on November 9,  
8 2016, the District, by and through its attorney of record, responded to Mr. Briggs' November 7,  
9 2016, email. Dr. Glover is without sufficient information or belief to enable him to admit or deny  
10 whether it was "SDOG's question" and based thereon, denies such allegation. Dr. Glover admits  
11 that Exhibit "D" to the Petition is a true and correct copy of the District's November 9, 2016  
12 response to Mr. Briggs. The District's November 9, 2016, response to Mr. Briggs speaks for itself  
13 and Dr. Glover denies all mischaracterizations or statements that are inconsistent with the contents  
14 of Exhibit "D".

15 14. Answering paragraph 14 of the Petition, Dr. Glover admits that on November 9,  
16 2016, Mr. Briggs sent another email to the District and admits the content of that email as set forth  
17 in Exhibit "E". Dr. Glover is without sufficient information or belief to enable him to admit or  
18 deny whether "SDOG caused" the email to be sent to the District and based thereon, denies such  
19 allegation. Dr. Glover admits that Exhibit "E" to the Petition is a true and correct copy of the  
20 email from Mr. Briggs. Mr. Briggs' November 9, 2016, email speaks for itself and Dr. Glover  
21 denies all mischaracterizations or statements that are inconsistent with the contents of Exhibit "E".

22 15. Answering paragraph 15 of the Petition, Dr. Glover admits that on November 18,  
23 2016, the District sent Mr. Briggs the final response to the CPRA request. Dr. Glover is without  
24 sufficient information or belief to enable him to admit or deny whether Mr. Briggs submitted the  
25 CPRA request on Petitioner's behalf and based thereon, denies such allegation. Dr. Glover admits  
26 that Exhibit "F" to the Petition is a true and correct copy of the District's final response to the  
27 CPRA request. The District's final response to the CPRA request speaks for itself and Dr. Glover  
28 denies all mischaracterizations or statements that are inconsistent with the contents of Exhibit "F".

1           16.     Answering paragraph 16 of the Petition, Dr. Glover is without sufficient  
2 information or belief to enable him to admit or deny whether the source of the subject CPRA  
3 request was "SDOG" and based thereon, denies such allegation. As to all remaining allegations in  
4 paragraph 16, Dr. Glover denies each and every allegation.

5           17.     Answering paragraph 17, subsection A, of the Petition, Dr. Glover admits that in or  
6 around October 2016, in his individual capacity as a private citizen volunteering on the Measure  
7 BB campaign, he made the statements set forth in the Answer to one or more private citizens  
8 volunteering on the campaign. Dr. Glover contends that the characterization and use of the term  
9 "subordinate employee" is not appropriate or applicable in the context of these statements and  
10 denies any and all allegations referencing that term. Dr. Glover denies that these statements are  
11 public records as defined under the CPRA and denies that these were "responsive public records"  
12 that fell within the "SDOG Request." In addition, Dr. Glover denies that any "illegal political  
13 activity" took place and that he was conducting "illegal public business" and asserts that all  
14 communications were made in his individual capacity as a private citizen volunteering on the  
15 campaign and transmitted to other like-minded citizens expressing their Constitutional rights.

16           18.     Answering paragraph 17, subsection B of the Petition, Dr. Glover is without  
17 sufficient information or belief to enable him to admit or deny whether "SDOG" caused the CPRA  
18 request to be made and based thereon, denies that allegation.

19           19.     Answering paragraph 17, subsection B (1) of the Petition, Dr. Glover admits that  
20 District's Information Technology ("IT") personnel performed searches for responsive public  
21 records on the District's server. Dr. Glover admits that he did not perform any searches on his  
22 private, personal accounts, devices or equipment. In addition, Dr. Glover categorically denies and  
23 contests the legal conclusion that all records requested were public records as defined under the  
24 CPRA or that the District had control over, or access to, his private, personal accounts, devices or  
25 equipment.

26           20.     Answering paragraph 17, subsection B (2) of the Petition, Dr. Glover admits that  
27 District IT personnel performed searches for responsive public records on the District's server. Dr.  
28 Glover admits that he did not perform any searches on his private, personal accounts, devices or

1 equipment. In addition, Dr. Glover categorically denies and contests the legal conclusion that all  
2 records requested were public records as defined under the CPRA or that the District had control  
3 over, or access to, his private, personal accounts, devices or equipment.

4 21. Answering paragraph 17, subsection B (3) of the Petition, Dr. Glover is without  
5 sufficient information or belief to enable it to admit or deny that "nobody performed any search  
6 for responsive public records beyond those found on GUHSD' s server" and based thereon, denies  
7 that allegation. Dr. Glover admits that District's Information Technology personnel ("IT")  
8 performed searches on the District server for responsive public records. In addition, Dr. Glover  
9 denies and contests the legal conclusion that all records requested were public records or that the  
10 District had control over, or access to, his private, personal accounts, devices or equipment.

11 22. Answering paragraph 17, subsection B (4) of the Petition, Dr. Glover is without  
12 sufficient information or belief to enable him to admit or deny that "nobody performed a thorough  
13 search for responsive public records beyond those found on GUHSD's server" and based thereon,  
14 denies that allegation. Dr. Glover admits that District's Information Technology personnel ("IT")  
15 performed searches on the District server for responsive public records. In addition, Dr. Glover  
16 denies and contests the legal conclusion that all records requested were public records or that the  
17 District had control over, or access to, his private, personal accounts, devices or equipment.

18 23. Answering paragraph 17, subsection C of the Petition, Dr. Glover is without  
19 sufficient information or belief to enable him to admit or deny whether "SDOG" caused the CPRA  
20 request to be made and based thereon, denies that allegation.

21 24. Answering paragraph 17, subsection C (1) of the Petition, Dr. Glover admits that he  
22 did not perform any searches for "Mobile Messages" on any "GUHSD device or equipment" or his  
23 private, personal accounts, devices or equipment. In addition, Dr. Glover categorically denies and  
24 contests the legal conclusion that all records requested were public records as defined under the  
25 CPRA or that the District had control over, or access to, his private, personal accounts, devices or  
26 equipment.

27 25. Answering paragraph 17, subsection C (2) of the Petition, Dr. Glover admits that he  
28 did not perform any searches for "Mobile Messages" on any "GUHSD device or equipment" or his

1 private, personal accounts, devices or equipment. In addition, Dr. Glover categorically denies and  
2 contests the legal conclusion that all records requested were public records as defined under the  
3 CPRA or that the District had control over, or access to, his private, personal accounts, devices or  
4 equipment.

5         26.     Answering paragraph 17, subsection C (3) of the Petition, Dr. Glover admits that he  
6 did not perform any searches for "Mobile Messages" on any "GUHSD device or equipment" or his  
7 private, personal accounts, devices or equipment. In addition, Dr. Glover categorically denies and  
8 contests the legal conclusion that all records requested were public records as defined under the  
9 CPRA or that the District had control over, or access to, his private, personal accounts, devices or  
10 equipment.

11         27.     Answering paragraph 17, subsection C (4) of the Petition, Dr. Glover denies that  
12 "nobody performed any searches for responsive public records." Dr. Glover admits that District  
13 IT personnel performed searches on the District server for responsive public records. In addition,  
14 Dr. Glover categorically denies and contests the legal conclusion that all records requested were  
15 public records as defined under the CPRA or that the District had control over, or access to, his  
16 private, personal accounts, devices or equipment.

17         28.     Answering paragraph 17, subsection C (5) of the Petition, Dr. Glover denies that  
18 "nobody performed a thorough [sic] for responsive public records." Dr. Glover admits that  
19 District IT personnel performed searches on the District server for responsive public records. In  
20 addition, Dr. Glover categorically denies and contests the legal conclusion that all records  
21 requested were public records as defined under the CPRA or that the District had control over, or  
22 access to, his private, personal accounts, devices or equipment.

23         29.     Answering paragraph 17, subsection C (6) of the Petition, Dr. Glover admits that  
24 there are no "cell phones owned or controlled by GUHSD" and that, therefore, no searches were  
25 performed on "cell phones owned or controlled by GUHSD." Dr. Glover admits that District IT  
26 personnel performed searches on the District server for responsive public records. In addition, Dr.  
27 Glover categorically denies and contests the legal conclusion that all records requested were  
28 public records as defined under the CPRA or that the District had control over, or access to, his

1 private, personal accounts, devices or equipment.

2 30. Answering paragraph 17, subsection D of the Petition, Dr. Glover is without  
3 sufficient information or belief to enable him to admit or deny whether "SDOG" caused the CPRA  
4 request to be made and based thereon, denies that allegation.

5 31. Answering paragraph 17, subsection D (1) of the Petition, Dr. Glover admits that  
6 he did not perform any searches for "Mobile Messages" any "GUHSD device or equipment" or on  
7 his private, personal accounts, devices or equipment. In addition, Dr. Glover categorically denies  
8 and contests the legal conclusion that all records requested were public records as defined under  
9 the CPRA or that the District had control over, or access to, his private, personal accounts, devices  
10 or equipment.

11 32. Answering paragraph 17, subsection D (2) of the Petition, Dr. Glover admits that  
12 he did not perform any searches for "Mobile Messages" any "GUHSD device or equipment" or on  
13 his private, personal accounts, devices or equipment. In addition, Dr. Glover categorically denies  
14 and contests the legal conclusion that all records requested were public records as defined under  
15 the CPRA or that the District had control over, or access to, his private, personal accounts, devices  
16 or equipment.

17 33. Answering paragraph 17, subsection D (3) of the Petition, Dr. Glover admits that  
18 he did not perform any searches for "Mobile Messages" any "GUHSD device or equipment" or on  
19 his private, personal accounts, devices or equipment. In addition, Dr. Glover categorically denies  
20 and contests the legal conclusion that all records requested were public records as defined under  
21 the CPRA or that the District had control over, or access to, his private, personal accounts, devices  
22 or equipment.

23 34. Answering paragraph 17, subsection D (4) of the Petition, Dr. Glover denies  
24 "nobody performed any search for responsive public records." Dr. Glover admits that District IT  
25 personnel performed searches on the District server for responsive public records. In addition, Dr.  
26 Glover categorically denies and contests the legal conclusion that all records requested were  
27 public records as defined under the CPRA or that the District had control over, or access to, his  
28 private, personal accounts, devices or equipment.



1           35.     Answering paragraph 17, subsection D (5) of the Petition, Dr. Glover denies that  
2 "nobody performed a thorough [sic] for responsive public records." Dr. Glover admits that  
3 District IT personnel performed searches on the District server for responsive public records. In  
4 addition, Dr. Glover categorically denies and contests the legal conclusion that all records  
5 requested were public records as defined under the CPRA or that the District had control over, or  
6 access to, his private, personal accounts, devices or equipment.

7           36.     Answering paragraph 17, subsection D (6) of the Petition, Dr. Glover admits that  
8 there are no "cell phones owned or controlled by GUHSD" and that, therefore, no searches were  
9 performed on "cell phones owned or controlled by GUHSD." Dr. Glover admits that District IT  
10 personnel performed searches on the District server for responsive public records. In addition, Dr.  
11 Glover categorically denies and contests the legal conclusion that all records requested were  
12 public records as defined under the CPRA or that the District had control over, or access to, his  
13 private, personal accounts, devices or equipment.

14           37.     Answering paragraph 17, subsection E of the Petition, Dr. Glover is without  
15 sufficient information or belief to enable him to admit or deny whether "SDOG" caused the CPRA  
16 request to be made and based thereon, denies that allegation.

17           38.     Answering paragraph 17, subsection E (1) of the Petition, Dr. Glover admits that he  
18 did not perform any searches for "Mobile Messages" on his private, personal accounts, devices or  
19 equipment. In addition, Dr. Glover categorically denies and contests the legal conclusion that all  
20 records requested were public records as defined under the CPRA or that the District had control  
21 over, or access to, his private, personal accounts, devices or equipment.

22           39.     Answering paragraph 17, subsection E (2) of the Petition, Dr. Glover admits that he  
23 did not perform any searches for "Mobile Messages" on his private, personal accounts, devices or  
24 equipment. In addition, Dr. Glover categorically denies and contests the legal conclusion that all  
25 records requested were public records as defined under the CPRA or that the District had control  
26 over, or access to, his private, personal accounts, devices or equipment.

27 ///

28 ///

1           40.     Answering paragraph 17, subsection E (3) of the Petition, Dr. Glover denies that  
2 "nobody performed any search for responsive public records." Dr. Glover admits that District IT  
3 personnel performed searches on the District server for responsive public records. In addition, Dr.  
4 Glover categorically denies and contests the legal conclusion that all records requested were  
5 public records as defined under the CPRA or that the District had control over, or access to, his  
6 private, personal accounts, devices or equipment.

7           41.     Answering paragraph 17, subsection E (4) of the Petition, Dr. Glover denies that  
8 "nobody performed a thorough [sic] for responsive public records." Dr. Glover admits that  
9 District IT personnel performed searches on the District server for responsive public records. In  
10 addition, Dr. Glover categorically denies and contests the legal conclusion that all records  
11 requested were public records as defined under the CPRA or that the District had control over, or  
12 access to, his private, personal accounts, devices or equipment.

13           42.     Answering paragraph 17, subsection F of the Petition, Dr. Glover is without  
14 sufficient information or belief to enable him to admit or deny whether "SDOG" caused the CPRA  
15 request to be made and based thereon, denies that allegation.

16           43.     Answering paragraph 17, subsection F (1) of the Petition, Dr. Glover admits that he  
17 did not perform any searches for "Mobile Messages" on his private, personal accounts, devices or  
18 equipment. In addition, Dr. Glover categorically denies and contests the legal conclusion that all  
19 records requested were public records as defined under the CPRA or that the District had control  
20 over, or access to, his private, personal accounts, devices or equipment.

21           44.     Answering paragraph 17, subsection F (2) of the Petition, Dr. Glover admits that he  
22 did not perform any searches for "Mobile Messages" on his private, personal accounts, devices or  
23 equipment. In addition, Dr. Glover categorically denies and contests the legal conclusion that all  
24 records requested were public records as defined under the CPRA or that the District had control  
25 over, or access to, his private, personal accounts, devices or equipment.

26           45.     Answering paragraph 17, subsection F (3) of the Petition, Dr. Glover denies that  
27 "nobody performed any search for responsive public records." Dr. Glover admits that District IT  
28 personnel performed searches on the District server for responsive public records. In addition, Dr.

1 Glover categorically denies and contests the legal conclusion that all records requested were  
2 public records as defined under the CPRA or that the District had control over, or access to, his  
3 private, personal accounts, devices or equipment.

4 46. Answering paragraph 17, subsection F (4) of the Petition, Dr. Glover denies that  
5 "nobody performed a thorough [sic] for responsive public records." Dr. Glover admits that  
6 District IT personnel performed searches on the District server for responsive public records. In  
7 addition, Dr. Glover categorically denies and contests the legal conclusion that all records  
8 requested were public records as defined under the CPRA or that the District had control over, or  
9 access to, his private, personal accounts, devices or equipment.

10 47. Answering paragraph 17, subsection G of the Petition, Dr. Glover is without  
11 sufficient information or belief to enable him to admit or deny whether "SDOG" caused the CPRA  
12 request to be made and based thereon, denies that allegation.

13 48. Answering paragraph 17, subsection G (1) of the Petition, Dr. Glover admits that  
14 he did not perform any searches of his private cell phone records for "GUHSD phone records for  
15 mobile-communication devices (e.g. cell phone, tablet, Android, iPhone, iPad, etc.)." In addition,  
16 Dr. Glover categorically denies and contests the legal conclusion that all records requested were  
17 public records as defined under the CPRA or that the District had control over, or access to, his  
18 private, personal accounts, records, devices or equipment.

19 49. Answering paragraph 17, subsection G (2) of the Petition, Dr. Glover admits that  
20 he did not perform any searches of his private cell phone records for "GUHSD phone records for  
21 mobile-communication devices (e.g. cell phone, tablet, Android, iPhone, iPad, etc.)." In addition,  
22 Dr. Glover categorically denies and contests the legal conclusion that all records requested were  
23 public records as defined under the CPRA or that the District had control over, or access to, his  
24 private, personal accounts, records, devices or equipment.

25 50. Answering paragraph 17, subsection G (3) of the Petition, Dr. Glover admits that  
26 he did not perform any searches of his private cell phone records for "GUHSD phone records for  
27 mobile-communication devices (e.g. cell phone, tablet, Android, iPhone, iPad, etc.)." In addition,  
28 Dr. Glover categorically denies and contests the legal conclusion that all records requested were

1 public records as defined under the CPRA or that the District had control over, or access to, his  
2 private, personal accounts, records, devices or equipment.

3 51. Answering paragraph 17, subsection G (4) of the Petition, Dr. Glover is without  
4 sufficient information or belief to enable him to admit or deny that "nobody performed any search  
5 for responsive public records" and based thereon, denies that allegation. In addition, Dr. Glover  
6 categorically denies and contests the legal conclusion that all records requested were public  
7 records as defined under the CPRA or that the District had control over, or access to, his private,  
8 personal accounts, records, devices or equipment.

9 52. Answering paragraph 17, subsection G (5) of the Petition, Dr. Glover is without  
10 sufficient information or belief to enable him to admit or deny that "nobody performed a thorough  
11 [sic] search for responsive public records" and based thereon, denies that allegation. In addition,  
12 Dr. Glover categorically denies and contests the legal conclusion that all records requested were  
13 public records as defined under the CPRA or that the District had control over, or access to, his  
14 private, personal accounts, records, devices or equipment.

15 53. Answering paragraph 17, subsection G (6) of the Petition, Dr. Glover admits that  
16 there are no "cell phones owned or controlled by GUHSD." Dr. Glover is without sufficient  
17 information or belief to enable him to admit or deny that "all persons other than GLOVER who  
18 performed a search for responsive public records limited their search to cell phones owned or  
19 controlled by GUHSD that they knew did not exist even though the request was not limited to cell  
20 phones." In addition, Dr. Glover categorically denies and contests the legal conclusion that all  
21 records requested were public records as defined under the CPRA or that the District had control  
22 over, or access to, his private, personal accounts, records, devices or equipment.

23 54. Answering paragraph 17, subsection H of the Petition, Dr. Glover denies each and  
24 every allegation contained therein. Dr. Glover responds that in the District's final response to the  
25 CPRA request it stated, in the second paragraph from the bottom of the response, "[t]he District  
26 understands its obligation to assist you with making focused and effective requests that would  
27 facilitate identification of responsive records. To the extent the District misinterpreted your  
28 requests and you are seeking documents other than those identified in this response, please feel

1 free to contact me at your convenience." In addition, Dr. Glover categorically denies and contests  
2 the legal conclusion that all records requested were public records as defined under the CPRA or  
3 that the District had control over, or access to, his private, personal accounts, records, devices or  
4 equipment.

5 55. Answering paragraph 18 of the Petition, Dr. Glover denies each and every  
6 allegation contained therein.

7 **Second Cause of Action**

8 **Declaratory Relief under Code Civil Procedure Section 1060, *et seq.***

9 56. Answering paragraph 19 of the Petition, Dr. Glover re-alleges and incorporates by  
10 reference each and every response contained in paragraphs 1 through 55 above.

11 57. Answering paragraph 20 of the Petition, Dr. Glover admits that he disputes  
12 Petitioner's contention regarding the legal definition of "public records" and Petitioner's  
13 contentions about the rights and duties of the parties under the CPRA, the California Constitution,  
14 common law and other applicable legal authorities. The remaining portions of this paragraph do  
15 not contain factual assertions but only statements of Petitioner's desires for which no response is  
16 required.

17 58. Answering paragraph 21 of the Petition, Dr. Glover responds that this paragraph  
18 does not contain factual assertions. Rather, it only contains a statement of Petitioner's desires to  
19 which no response is required.

20 **AFFIRMATIVE DEFENSES**

21 Dr. Glover pleads the following separate and distinct affirmative defenses to the Petition:

22 **FIRST AFFIRMATIVE DEFENSE**

23 **(Failure to State a Claim)**

24 As a separate and first affirmative defense to the Petition, and to the purported causes of  
25 action set forth therein, the Petition fails to state facts sufficient to constitute a cause of action.

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SECOND AFFIRMATIVE DEFENSE**

**(All Obligations Performed)**

As a separate and second affirmative defense to the Petition and each purported cause of action contained therein, Dr. Glover alleges that he has fully and lawfully performed any and all duties and obligations he may have had to Petitioner, if any, and to "Nick Marinovich and other clients," if any.

**THIRD AFFIRMATIVE DEFENSE**

**(Requested Documents Do Not Fall Within  
the Meaning of a Public Record under the CPRA)**

As a separate and third affirmative defense to the Petition and each purported cause of action contained therein, Dr. Glover alleges Petitioner has no right to obtain or inspect documents which are not "Public Records" as defined in the CPRA and precedential case law interpreting the same.

**FOURTH AFFIRMATIVE DEFENSE**

**(Actions Legally Compliant)**

As a separate and fourth affirmative defense to the Petition and each purported cause of action contained therein, Dr. Glover alleges that that Petitioner is barred from seeking the relief sought in the Petition because his actions and conduct towards Petitioner were at all times lawful, reasonable and justified. Dr. Glover alleges that his acts were all done within the scope of his discretion, in good faith, and with due care, and with the intent that such acts conform in all respects to the laws of the State of California.

**FIFTH AFFIRMATIVE DEFENSE**

**(No Damages)**

As a separate and fifth affirmative defense to the Petition and each purported cause of action contained therein, Dr. Glover alleges that Petitioner has not suffered any damages as a proximate result of any act or omission for which he is responsible.

///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SIXTH AFFIRMATIVE DEFENSE**

**(Damages Not Recoverable – Attorney's Fees)**

As a separate and sixth affirmative defense to the Petition and each purported cause of action contained therein, Petitioner improperly seeks attorney's fees when they are not justified given the state of the law and the definition of "Public Records" at the time of the CPRA request.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Mitigation of Damages)**

As a separate and seventh affirmative defense to the Petition and each purported cause of action contained therein, Petitioner has had, and continues to have, the ability and opportunity to mitigate its damages, if any, and has failed to take reasonable and necessary steps to mitigate purported damages. Dr. Glover requested that the case be stayed pending the outcome of *City of San Jose v. Superior Court* (2014) 225 Cal.App.4<sup>th</sup> 75, review granted June 25, 2014, S218066 and will continue to make that request in order to conserve the resources of the parties and reduce attorneys' fees incurred.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Seeking Relief Beyond Declaration of Rights)**

As a separate and eighth affirmative defense to the Petition and each purported cause of action contained therein, Petitioner's cause of action for declaratory relief seeks relief beyond a declaration of rights and thus is not the proper subject of a declaratory judgment.

**NINTH AFFIRMATIVE DEFENSE**

**(Bad Faith)**

As a separate and ninth affirmative defense to the Petition and each purported cause of action contained therein, Petitioner's claims are barred by the doctrine of unclean hands and bad faith.

**TENTH AFFIRMATIVE DEFENSE**

**(Compliance with the Law)**

As a separate and tenth affirmative defense to the Petition and each purported cause of action contained therein, Dr. Glover alleges that the actions he took were in full compliance with

1 the law, including, but not limited to, the CPRA, the California Constitution, Penal Code § 1546.1  
2 and the California Electronic Communications Privacy Act, among other laws. In addition, Dr.  
3 Glover has exercised his discretion in accordance with applicable law, has not acted in any  
4 arbitrary or capricious manner, and has not committed an abuse of discretion. In addition to  
5 producing documents by and through his employer, the District, he believed the documents  
6 produced were responsive to the CPRA request, and that the District made several attempts to  
7 clarify the scope of the CPRA request.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 **(Justification/Excuse)**

10 As a separate and eleventh affirmative defense to the Petition and each purported cause of  
11 action contained therein, Dr. Glover alleges that Petitioner is barred from prosecuting the  
12 purported causes of action set forth in the Petition because the acts and/or omissions alleged in the  
13 Petition were justified and/or legally excused.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **(Standing/Capacity)**

16 As a separate and twelfth affirmative defense to the Petition and each purported cause of  
17 action contained therein, Petitioner lacks sufficient standing to bring this Petition and it is unclear  
18 whether SDOG was the actual entity that caused the CPRA request to be submitted by "Nick  
19 Marinovich and other clients."

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 **(Laches)**

22 As a separate and thirteenth affirmative defense to the Petition and each purported cause of  
23 action contained therein, Petition is barred by the doctrine of laches.

24 **FOURTEENTH AFFIRMATIVE DEFENSE**

25 **(Lack of Deception)**

26 As a separate and fourteenth affirmative defense to the Petition and each purported cause  
27 of action contained therein, Dr. Glover alleges that his actions were not deceptive or performed  
28 with conscious disregard to California or Federal law, or Petitioner's rights, if any.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Violation of Privacy)**

As a separate and fifteenth affirmative defense to the Petition and each purported cause of action contained therein, Petitioner's purported CPRA request potentially seeks records that are subject to applicable privileges or other statutory exemptions, the disclosure of which will infringe upon the privacy rights of persons or entities that are not parties to this action, as well as the privacy rights of Dr. Glover.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Failure to Identify Records and/or Authority)**

As a separate and sixteenth affirmative defense to the Petition and each purported cause of action contained therein, Petitioner's record requests are vague, overbroad, and unduly burdensome, or fail to sufficiently identify the records sought to be reviewed and/or inspected and/or the authority permitting the review and/or inspection, in an adequately focused and specific manner that will provide Dr. Glover, by and through his employer the District, with a meaningful opportunity to respond as otherwise permitted by law.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Frivolous Petition)**

As a separate and seventeenth affirmative defense to the Petition and each purported cause of action contained therein, the Petition is frivolous, unfounded and unreasonable. Therefore, Dr. Glover is entitled to an award of reasonable attorneys' fees and costs upon judgment in his favor in accordance with applicable law, including but not limited to California Government Code section 6259(d).

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Proper Exercise of Discretion)**

As a separate and eighteenth affirmative defense to the Petition and each purported cause of action contained therein, Petitioner fails to state a basis upon which a writ of mandate can be granted because Dr. Glover properly exercised discretion, and, based upon applicable facts and

1 law, has not abused his discretion, and cannot be compelled to exercise his discretion in a  
2 particular manner.

3 **NINETEENTH AFFIRMATIVE DEFENSE**

4 **(Waiver)**

5 As a separate and nineteenth affirmative defense to the Petition and each purported cause  
6 of action contained therein, Dr. Glover alleges that Petitioner is barred in whole or in part from  
7 making the claims set forth in the Petition by the doctrine of waiver.

8 **TWENTIETH AFFIRMATIVE DEFENSE**

9 **(Estoppel)**

10 As a separate and twentieth affirmative defense to the Petition and each purported cause of  
11 action contained therein, Dr. Glover alleges Petitioner is estopped from recovering the relief  
12 sought against him.

13 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

14 **(Impossibility/Illegality)**

15 As a separate and twenty-first affirmative defense to the Petition and each purported cause  
16 of action contained therein, Dr. Glover alleges that Penal Code § 1546.1 and the California  
17 Electronic Communications Privacy Act and other applicable law prevent him from complying  
18 with Petitioner's demands and the relief sought in the Petition.

19 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

20 **(CCP §425.16)**

21 As a separate and twenty-second affirmative defense to the Petition and each purported  
22 cause of action contained therein, Dr. Glover alleges that certain aspects of this Petition appear to  
23 have been brought primarily to chill the valid exercise of the constitutional rights of freedom of  
24 speech and freedom of association and rights protected by the First Amendment to the U.S.  
25 Constitution, article I § 2 of the California Constitution and similar statutes. To the extent the  
26 Petition contains causes of action that arise from any act in furtherance of the right of free speech  
27 under the United States Constitution or the California Constitution in connection with a public  
28 issue, it violates Code of Civil Procedure § 425.16, among other laws.

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 **(Ripeness/Mootness)**

3 As a separate and twenty-third affirmative defense to the Petition and each purported cause  
4 of action contained therein, Dr. Glover alleges that the relief requested is premature and may be  
5 mooted altogether given the state of the law and the definition of "Public Records" currently  
6 existing and the pending similar issues queued up before the California Supreme Court in *City of*  
7 *San Jose v. Superior Court* (2014) 225 Cal.App.4<sup>th</sup> 75, review granted June 25, 2014, S218066.

8 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

9 **(Failure to Exhaust Remedies)**

10 As a separate and twenty-fourth affirmative defense to the Petition and each purported  
11 cause of action contained therein, Dr. Glover alleges that Petitioner failed to exhaust its remedies  
12 by failing to reach out to the District and further clarify the CPRA as suggested in the District's  
13 November 18, 2016 correspondence.

14 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

15 **(Violation of Real Party in Interest's Rights under the First Amendment (Free Speech and**  
16 **Freedom of Association) and Fourteenth Amendment to the U.S. Constitution)**

17 As a separate and twenty-fifth affirmative defense to the Petition and each purported cause  
18 of action contained therein, Petitioner seeks a remedy which infringes upon and seeks to chill Dr.  
19 Glover's rights of free speech and freedom of association guaranteed by the First Amendment to  
20 the U.S. Constitution and is thus barred.

21 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

22 **(Violation of Real Party of Interest's Rights under Cal. Const. Art. I, § 2 (Free Speech))**

23 As a separate and twenty-sixth affirmative defense to the Petition and each purported cause  
24 of action contained therein, Petitioner seeks a remedy which would violate Dr. Glover's free  
25 speech rights guaranteed by the California Constitution Art. I § 2, and is thus barred.

26 ///

27 ///

28 ///

Fagen Friedman & Fulfro, LLP  
1525 Faraday Avenue, Suite 300  
Carlsbad, California 92008  
Main: 760-304-6000 • Fax: 760-304-6011

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

**(Governmental Immunity)**

As a separate and twenty-seventh affirmative defense to the Petition and each purported cause of action contained therein, Dr. Glover is immune from liability for the claims in Petition pursuant to Government Code §§ 820.2, 820.9 and 822.2.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Violation of Real Party of Interest's Civil Rights)**

As a separate and twenty-eighth affirmative defense to the Petition and each purported cause of action contained therein, Petitioner seeks a remedy which would violate Dr. Glover's civil rights pursuant to 42 U.S.C. § 1983 and thus is barred.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

**(Other Defenses)**


As a separate and twenty-ninth affirmative defense to the Petition and each purported cause of action contained therein, Dr. Glover presently has insufficient knowledge or insufficient information upon which to form a belief as to whether he may have additional, yet unasserted, affirmative defenses. Dr. Glover therefore reserves the right to assert additional affirmative defenses in the event discovery indicates it would be appropriate.

WHEREFORE, Real Party in Interest, Dr. Glover, prays for relief as follows:

1. That the Petition be dismissed, with prejudice and in its entirety;
2. That Petitioner be denied any relief against Dr. Glover whether declaratory, injunctive, monetary, or otherwise;
3. For reasonable attorneys' fees and costs of this suit; and
4. That Dr. Glover be awarded such further relief as the Court deems just and proper.

DATED: March 1, 2017

FAGEN FRIEDMAN & FULFROST, LLP

By:   
Lynn Beekman  
Kaley A Lichtman  
Attorney for Real Party in Interest Tim Glover

00124-00136/3576993.1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 1525 Faraday Avenue, Suite 300, Carlsbad, CA 92008.

On March 1, 2017, I served true copies of the following document(s) described as **REAL PARTY IN INTEREST TIM GLOVER'S ANSWER TO VERIFIED COMPLAINT AND PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Fagen Friedman & Fulfroft, LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Carlsbad, California.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address mminnick@f3law.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**BY EXPRESS MAIL:** I enclosed said document(s) in an envelope or package provided by the United States Postal Service and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the United States Postal Service.

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

Executed on March 1, 2017, at Carlsbad, California.

---

Meg Minnick

Fagen Friedman & Fulfro, LLP  
1525 Faraday Avenue, Suite 300  
Carlsbad, California 92008  
Main: 760-304-6000 • Fax: 760-304-6011

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SERVICE LIST**

*San Diegans for Open Government*  
v.  
*Grossmont Union High School District; and Tim Glover*  
*San Diego Superior Court Case No. 37-2017-00001484-CU-MC-CTL*

**E-Mail Service per Agreement between Counsel**

<p>Cory J. Briggs, Esq. Anthony N. Kim, Esq. BRIGGS LAW CORPORATION 99 East "C" Street, Suite 111 Upland, CA 91786 Tel: (909) 949-7115 Fax: (909) 949-7121 E-Mail: <a href="mailto:cory@briggslawcorp.com">cory@briggslawcorp.com</a></p> <p>cc: Keri Taylor, Paralegal Email: <a href="mailto:keri@briggslawcorp.com">keri@briggslawcorp.com</a></p> <p>cc: Janna Ferraro, Paralegal Email: <a href="mailto:janna@briggslawcorp.com">janna@briggslawcorp.com</a></p>	<p><i>Counsel for Plaintiff and Petitioner San Diegans for Open Government</i></p>
---	--

00124-00136/3555724.1