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District

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

11 SAN DIEGANS FOR OPEN
GOVERNMENT,

12 Petitioner 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

**RESPONDENT GROSSMONT UNION
HIGH SCHOOL DISTRICT'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 Respondent, GROSSMONT UNION HIGH SCHOOL DISTRICT,
22 ("District") hereby files the following Answer to the "Verified Complaint For Declaratory And
23 Injunctive Relief and Petition For Writ of Mandate" (Petition) filed by Plaintiff and Petitioner,
24 San Diegans for Open Government ("Petitioner") as set forth herein. Unless specifically admitted,
25 the District denies, both generally and specifically, each and every allegation of the Petition and
26 denies that Petitioner is entitled to any relief whatsoever.

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First Cause of Action

Violation of Open-Government Laws

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3 9. Answering paragraph 9 of the Petition, the District 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, the District 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." The District is without sufficient information or belief to enable it to
11 admit or deny that Petitioner was one of the "other clients" that submitted the CPRA request on or
12 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. The District denies and
14 contests the legal conclusion that the requested records are public records. The District admits that
15 Exhibit "A" to the Petition is a true and correct copy of the CPRA Request. The CPRA Request
16 set forth in Exhibit "A" speaks for itself and the District denies all mischaracterizations or
17 statements that are inconsistent with the contents of Exhibit "A".

18 11. Answering paragraph 11 of the Petition, the District admits to providing an initial
19 response to the CPRA request on November 4, 2016, by and through its attorney of record. The
20 District is without sufficient information or belief to enable it to admit or deny that this was
21 Petitioner's CPRA request (aka the "SDOG Request") and based thereon, denies such allegation.
22 The District 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 the District denies all mischaracterizations or
25 statements that are inconsistent with the contents of Exhibit "B".

26 12. Answering paragraph 12 of the Petition, the District 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. The District is

1 without sufficient information or belief to enable it to admit or deny that "SDOG caused" Mr.
2 Briggs to send the email to the District and based thereon, denies such allegation. The District
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 the District denies all mischaracterizations or statements that are inconsistent with the contents
6 of Exhibit "C".

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

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

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

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

5 17. Answering paragraph 17, subsection A, of the Petition, the District admits that in or
6 around October 2016 Dr. Glover, in his individual capacity as a private citizen volunteering on the
7 Measure BB campaign, made the statements "I want to give you a quick update about Friday
8 nights [*sic*] BB Pollster information..." and "Ps [*sic*] best to respond to my home email
9 Theglov8@gmail.com" to a private citizen volunteering on the campaign that was also a GUHSD
10 subordinate employee. The District contends that the characterization and use of the term
11 "subordinate employee" is not appropriate or applicable in the context of these statements between
12 private citizens during non-working hours. The District denies that these statements are public
13 records as defined under the CPRA and denies that these were "responsive public records" that fell
14 within the "SDOG Request." As to all remaining allegations in paragraph 17, the District is
15 without information or belief to enable it to admit or deny the allegations and based thereon,
16 denies such allegations.

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

20 19. Answering paragraph 17, subsection B (1) of the Petition, the District is without
21 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform any
22 search for responsive public records beyond those found on GUHSD' s server" and based thereon,
23 denies that allegation. In addition, the District categorically denies and contests the legal
24 conclusion that all records requested were public records or that it had control over, or access to,
25 Dr. Glover's private, personal accounts, devices or equipment.

26 20. Answering paragraph 17, subsection B (2) of the Petition, the District is without
27 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform a
28 thorough search for responsive public records beyond those found on GUHSD' s server" and based

1 thereon, denies that allegation. In addition, the District categorically denies and contests the legal
2 conclusion that all records requested were public records or that it had control over, or access to,
3 Dr. Glover's private, personal accounts, devices or equipment.

4 21. Answering paragraph 17, subsection B (3) of the Petition, the District 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. In addition, the District categorically denies and contests the legal conclusion that
8 all records requested were public records or that it had control over, or access to, Dr. Glover's
9 private, personal accounts, devices or equipment. The District admits that District's Information
10 Technology personnel ("IT") performed searches on the District server for responsive public
11 records.

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

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

22 24. Answering paragraph 17, subsection C (1) of the Petition, the District is without
23 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform any
24 search for responsive public records" and based thereon, denies that allegation. In addition, the
25 District categorically denies and contests the legal conclusion that all records requested were
26 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
27 devices or equipment.

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1 25. Answering paragraph 17, subsection C (2) of the Petition, the District is without
2 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform a
3 thorough search for responsive public records" and based thereon, denies that allegation. In
4 addition, the District categorically denies and contests the legal conclusion that all records
5 requested were public records or that it had control over, or access to, Dr. Glover's private,
6 personal accounts, devices or equipment.

7 26. Answering paragraph 17, subsection C (3) of the Petition, the District is without
8 sufficient information or belief to enable it to admit or deny that Dr. Glover "limited his search for
9 responsive public records to cell phones owned or controlled by GUHSD that he knew did not
10 exist even though the request was not limited to cell phones" and based thereon, denies that
11 allegation. In addition, the District categorically denies and contests the legal conclusion that all
12 records requested were public records or that it had control over, or access to, Dr. Glover's private,
13 personal accounts, devices or equipment.

14 27. Answering paragraph 17, subsection C (4) of the Petition, the District denies that
15 "nobody performed any search for responsive public records." The District admits that District IT
16 personnel performed searches on the District server for responsive public records. In addition, the
17 District categorically denies and contests the legal conclusion that all records requested were
18 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
19 devices or equipment.

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

26 29. Answering paragraph 17, subsection C (6) of the Petition, the District admits that
27 there are no "cell phones owned or controlled by GUHSD" and that, therefore, no searches were
28 performed on "cell phones owned or controlled by GUHSD." The District admits that District IT

1 personnel performed searches on the District server for responsive public records. In addition, the
2 District categorically denies and contests the legal conclusion that all records requested were
3 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
4 devices or equipment.

5 30. Answering paragraph 17, subsection D of the Petition, the District is without
6 sufficient information or belief to enable it to admit or deny whether "SDOG" caused the CPRA
7 request to be made and based thereon, denies that allegation.

8 31. Answering paragraph 17, subsection D (1) of the Petition, the District is without
9 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform any
10 search for responsive public records" and based thereon, denies that allegation. In addition, the
11 District categorically denies and contests the legal conclusion that all records requested were
12 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
13 devices or equipment.

14 32. Answering paragraph 17, subsection D (2) of the Petition, the District is without
15 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform a
16 thorough search for responsive public records" and based thereon, denies that allegation. In
17 addition, the District categorically denies and contests the legal conclusion that all records
18 requested were public records or that it had control over, or access to, Dr. Glover's private,
19 personal accounts, devices or equipment.

20 33. Answering paragraph 17, subsection D (3) of the Petition, the District is without
21 sufficient information or belief to enable it to admit or deny that Dr. Glover "limited his search for
22 responsive public records to cell phones owned or controlled by GUHSD that he knew did not
23 exist even though the request was not limited to cell phones" and based thereon, denies that
24 allegation. In addition, the District categorically denies and contests the legal conclusion that all
25 records requested were public records or that it had control over, or access to, Dr. Glover's private,
26 personal accounts, devices or equipment.

27 34. Answering paragraph 17, subsection D (4) of the Petition, the District denies that
28 "nobody performed any search for responsive public records." The District admits that District IT

1 personnel performed searches on the District server for responsive public records. In addition, the
2 District categorically denies and contests the legal conclusion that all records requested were
3 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
4 devices or equipment.

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

11 36. Answering paragraph 17, subsection D (6) of the Petition, the District states that
12 there are no "cell phones owned or controlled by GUHSD." The District admits that District IT
13 personnel performed searches on the District server for responsive public records" and that,
14 therefore, no searches were performed on "cell phones owned or controlled by GUHSD." In
15 addition, the District categorically denies and contests the legal conclusion that all records
16 requested were public records or that it had control over, or access to, Dr. Glover's private,
17 personal accounts, devices or equipment.

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

21 38. Answering paragraph 17, subsection E (1) of the Petition, the District is without
22 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform any
23 search for responsive public records" and based thereon, denies that allegation. In addition, the
24 District categorically denies and contests the legal conclusion that all records requested were
25 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
26 devices or equipment.

27 39. Answering paragraph 17, subsection E (2) of the Petition, the District is without
28 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform a

1 thorough search for responsive public records" and based thereon, denies that allegation. In
2 addition, the District categorically denies and contests the legal conclusion that all records
3 requested were public records or that it had control over, or access to, Dr. Glover's private,
4 personal accounts, devices or equipment.

5 40. Answering paragraph 17, subsection E (3) of the Petition, the District denies that
6 "nobody performed any search for responsive public records." The District admits that District IT
7 personnel performed searches on the District server for responsive public records. In addition, the
8 District categorically denies and contests the legal conclusion that all records requested were
9 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
10 devices or equipment.

11 41. Answering paragraph 17, subsection E (4) of the Petition, the District denies that
12 "nobody performed a thorough search for responsive public records." The District admits that
13 District IT personnel performed searches on the District server for responsive public records. In
14 addition, the District denies and contests the legal conclusion that all records requested were
15 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
16 devices or equipment.

17 42. Answering paragraph 17, subsection F of the Petition, the District is without
18 sufficient information or belief to enable it to admit or deny whether "SDOG" caused the CPRA
19 request to be made and based thereon, denies that allegation.

20 43. Answering paragraph 17, subsection F (1) of the Petition, the District is without
21 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform any
22 search for responsive public records" and based thereon, denies that allegation. In addition, the
23 District categorically denies and contests the legal conclusion that all records requested were
24 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
25 devices or equipment.

26 44. Answering paragraph 17, subsection F (2) of the Petition, the District is without
27 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform a
28 thorough search for responsive public records" and based thereon, denies that allegation. In

1 addition, the District categorically denies and contests the legal conclusion that all records
2 requested were public records or that it had control over, or access to, Dr. Glover's private,
3 personal accounts, devices or equipment.

4 45. Answering paragraph 17, subsection F (3) of the Petition, the District denies that
5 "nobody performed any search for responsive public records." The District admits that District IT
6 personnel performed searches on the District server for responsive public records. In addition, the
7 District categorically denies and contests the legal conclusion that all records requested were
8 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
9 devices or equipment.

10 46. Answering paragraph 17, subsection F (4) of the Petition, the District denies that
11 "nobody performed a thorough search for responsive public records." The District admits that
12 District IT personnel performed searches on the District server for responsive public records. In
13 addition, the District denies and contests the legal conclusion that all records requested were
14 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
15 devices or equipment.

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

19 48. Answering paragraph 17, subsection G (1) of the Petition, the District is without
20 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform any
21 search for responsive public records" and based thereon, denies that allegation. The District
22 denies that it has any phone records for "mobile-communication devices (e.g. cell phone, tablet,
23 Android, iPhone, iPad, etc.) used by Dr. Glover...". In addition, the District categorically denies
24 and contests the legal conclusion that all records requested were public records or that it had
25 control over, or access to, Dr. Glover's private, personal accounts, devices, equipment or phone
26 records.

27 49. Answering paragraph 17, subsection G (2) of the Petition, the District is without
28 sufficient information or belief to enable it to admit or deny that Dr. Glover "did not perform a

1 thorough search for responsive public records" and based thereon, denies that allegation. The
2 District denies that it has any phone records for "mobile-communication devices (e.g. cell phone,
3 tablet, Android, iPhone, iPad, etc.) used by Dr. Glover...". In addition, the District categorically
4 denies and contests the legal conclusion that all records requested were public records or that it
5 had control over, or access to, Dr. Glover's private, personal accounts, devices, equipment or
6 phone records.

7 50. Answering paragraph 17, subsection G (3) of the Petition, the District is without
8 sufficient information or belief to enable it to admit or deny that Dr. Glover "limited his search for
9 responsive public records to cell phones owned or controlled by GUHSD that he knew did not
10 exist even though the request was not limited to cell phones" and based thereon, denies that
11 allegation. The District denies that it has any phone records for "mobile-communication devices
12 (e.g. cell phone, tablet, Android, iPhone, iPad, etc.) used by Dr. Glover...". In addition, the
13 District categorically denies and contests the legal conclusion that all records requested were
14 public records or that it had control over, or access to, Dr. Glover's private, personal accounts,
15 devices, equipment or phone records.

16 51. Answering paragraph 17, subsection G (4) of the Petition, the District is without
17 sufficient information or belief to enable it to admit or deny that "nobody performed any search
18 for responsive public records" and based thereon, denies that allegation. The District denies that it
19 has any phone records for "mobile-communication devices (e.g. cell phone, tablet, Android,
20 iPhone, iPad, etc.) used by Dr. Glover...". In addition, the District categorically denies and
21 contests the legal conclusion that all records requested were public records or that it had control
22 over, or access to, Dr. Glover's private, personal accounts, devices, equipment or phone records.

23 52. Answering paragraph 17, subsection G (5) of the Petition, the District is without
24 sufficient information or belief to enable it to admit or deny that "nobody performed a thorough
25 [sic] for responsive public records" and based thereon, denies that allegation. The District denies
26 that it has any phone records for "mobile-communication devices (e.g. cell phone, tablet, Android,
27 iPhone, iPad, etc.) used by Dr. Glover...". In addition, the District categorically denies and
28 contests the legal conclusion that all records requested were public records or that it had control

1 over, or access to, Dr. Glover's private, personal accounts, devices, equipment or phone records.

2 53. Answering paragraph 17, subsection G (6) of the Petition, the District admits that
3 there are no "cell phones owned or controlled by GUHSD." The District denies that it has any
4 phone records for "mobile-communication devices (e.g. cell phone, tablet, Android, iPhone, iPad,
5 etc.) used by Dr. Glover...". In addition, the District categorically denies and contests the legal
6 conclusion that all records requested were public records or that it had control over, or access to,
7 Dr. Glover's private, personal accounts, devices, equipment or phone records.

8 54. Answering paragraph 17, subsection H of the Petition, the District denies each and
9 every allegation contained therein. The District responds that in their final response to the CPRA
10 request it stated, in the second paragraph from the bottom of the response, "[t]he District
11 understands its obligation to assist you with making focused and effective requests that would
12 facilitate identification of responsive records. To the extent the District misinterpreted your
13 requests and you are seeking documents other than those identified in this response, please feel
14 free to contact me at your convenience." In addition, the District categorically denies and contests
15 the legal conclusion that all records requested were public records or that it had control over, or
16 access to, Dr. Glover's private, personal accounts, devices, equipment or phone records.

17 55. Answering paragraph 18 of the Petition, the District denies each and every
18 allegation contained therein.

19 **Second Cause of Action**

20 **Declaratory Relief Under Code of Civil Procedure Section 1060 *et seq.***

21 56. Answering paragraph 19 of the Petition, the District re-alleges and incorporates by
22 reference each and every response contained in paragraphs 1 through 55 above.

23 57. Answering paragraph 20 of the Petition, the District admits that it disputes
24 Petitioner's contention regarding the legal definition of "public records" and Petitioner's
25 contentions about the rights and duties of the parties under the CPRA, the California Constitution,
26 common law and other applicable legal authorities. The remaining portions of this paragraph do
27 not contain factual assertions but only statements of Petitioner's desires for which no response is
28 required.

1 58. Answering paragraph 21 of the Petition, the District responds that this paragraph
2 does not contain factual assertions. Rather, it only contains a statement of Petitioner's desires to
3 which no response is required.

4 **AFFIRMATIVE DEFENSES**

5 The District pleads the following separate and distinct affirmative defenses to the Petition:

6 **FIRST AFFIRMATIVE DEFENSE**

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

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

10 **SECOND AFFIRMATIVE DEFENSE**

11 **(All Obligations Performed)**

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

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Requested Documents Do Not Fall Within**

18 **the Meaning of a Public Record under the CPRA)**

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

23 **FOURTH AFFIRMATIVE DEFENSE**

24 **(Actions Legally Compliant)**

25 As a separate and fourth affirmative defense to the Petition and each purported cause of
26 action contained therein, District alleges that that Petitioner is barred from seeking the relief
27 sought in the Petition because the District's actions and conduct towards Petitioner were at all
28 times lawful, reasonable and justified. The District alleges that its acts were all done within the

1 scope of its discretion, in good faith, and with due care, and with the intent that such acts conform
2 in all respects to the laws of the State of California.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(No Damages)**

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

8 **SIXTH AFFIRMATIVE DEFENSE**

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

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

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 **(Mitigation of Damages)**

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

22 **EIGHTH AFFIRMATIVE DEFENSE**

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

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

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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, District alleges that the actions taken by District were in full compliance with the law, including, but not limited to, the CPRA, the California Constitution, Penal Code § 1546.1 and the California Electronic Communications Privacy Act, among other laws. In addition, the District has exercised its discretion in accordance with applicable law, has not acted in any arbitrary or capricious manner, and has not committed an abuse of discretion. In addition to producing documents the District believed were responsive to the CPRA request, the District made several attempts to clarify the scope of the CPRA request.

ELEVENTH AFFIRMATIVE DEFENSE

(Justification/Excuse)

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

TWELFTH AFFIRMATIVE DEFENSE

(Standing/Capacity)

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

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1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Laches)**

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

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 **(Lack of Deception)**

7 As a separate and fourteenth affirmative defense to the Petition and each purported cause
8 of action contained therein, the District alleges that the actions taken by it were not deceptive or
9 performed with conscious disregard to California or Federal law, or Petitioner's rights, if any.

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 **(Violation of Privacy)**

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

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

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

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 **(Frivolous Petition)**

27 As a separate and seventeenth affirmative defense to the Petition and each purported cause
28 of action contained therein, the Petition is frivolous, unfounded and unreasonable. Therefore, the

1 District is entitled to an award of reasonable attorneys' fees and costs upon judgment in its favor in
2 accordance with applicable law, including but not limited to California Government Code section
3 6259(d).

4 **EIGHTEENTH AFFIRMATIVE DEFENSE**

5 **(Proper Exercise of Discretion)**

6 As a separate and eighteenth affirmative defense to the Petition and each purported cause
7 of action contained therein, Petitioner fails to state a basis upon which a writ of mandate can be
8 granted because the District properly exercised discretion, and, based upon applicable facts and
9 law, has not abused their discretion, and cannot be compelled to exercise their discretion in a
10 particular manner.

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 **(Waiver)**

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

16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 **(Estoppel)**

18 As a separate and twentieth affirmative defense to the Petition and each purported cause of
19 action contained therein, the District alleges Petitioner is estopped from recovering the relief
20 sought against the District.

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

22 **(Impossibility/Illegality)**

23 As a separate and twenty-first affirmative defense to the Petition and each purported cause
24 of action contained therein, the District alleges that Penal Code § 1546.1 and the California
25 Electronic Communications Privacy Act and other applicable law prevent the District from
26 complying with Petitioner's demands and the relief sought in the Petition.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

(CCP §425.16)

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Ripeness/Mootness)

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Remedies)

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Other Defenses)

As a separate and twenty-fifth affirmative defense to the Petition and each purported cause of action contained therein, the District presently has insufficient knowledge or insufficient information upon which to form a belief as to whether it may have additional, yet unasserted,

1 affirmative defenses. The District therefore reserves the right to assert additional affirmative
2 defenses in the event discovery indicates it would be appropriate.

3 WHEREFORE, the District prays for relief as follows:

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

9
10 DATED: March 1, 2017

FAGEN FRIEDMAN & FULFROST, LLP

11
12 By: 
13 Lynn Beckman
14 Kaley A. Lichtman
15 Attorney for Grossmont Union High School
16 District

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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 **RESPONDENT GROSSMONT UNION HIGH SCHOOL DISTRICT'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

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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: cory@briggslawcorp.com</p> <p>cc: Keri Taylor, Paralegal Email: keri@briggslawcorp.com</p> <p>cc: Janna Ferraro, Paralegal Email: janna@briggslawcorp.com</p>	<p><i>Counsel for Plaintiff and Petitioner San Diegans for Open Government</i></p>
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