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CIVIL BUSINESS OFFICE 10
CENTRAL DIVISION

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Clerk of the Superior Court

DEC 07 2015

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA
Public Entity-Fee Exempt
(Gov't Code Section 6103)

1 **LEAL - TREJO, APC**
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7 Attorneys for Plaintiff,
8 San Ysidro School District

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 SAN YSIDRO SCHOOL DISTRICT,

12 Plaintiff,

13 vs.

14 MANUEL PAUL,

15 Defendant.

16 CASE NO.: 37-2015-00003840-CU-NP-CTL
17 Assigned for all purposes to: The Hon. Richard
18 E.L. Strauss
19 Dept: C-75

20 **SECOND AMENDED COMPLAINT FOR:**

- 21 1) DECLARATORY RELIEF;
- 22 2) GOVERNMENT WASTE;
- 23 3) BREACH OF FIDUCIARY DUTY AND VIOLATION OF PUBLIC TRUST;
- 24 4) RESTITUTION; and
- 25 5) FRAUD IN THE INDUCEMENT

26 **DEMAND FOR JURY TRIAL**

27 **PRELIMINARY STATEMENT**

28 Plaintiff **SAN YSIDRO SCHOOL DISTRICT** (hereafter "District") alleges as follows:

1. The District is a public entity in the State of California duly organized under the laws of the State of California, and more particularly the provisions of the Education Code, to provide, among other things, education to minors in public schools within the District. The District has, and at all times mentioned herein has had, its principal place of business in San Ysidro, California.

BY FAX

1 8. After the deposition, Defendant repeatedly told the District Board members that he did nothing
2 illegal, that he was innocent and that it was a mistake that could be fixed. It was unknown by the District
3 and its Board members whether Defendant was guilty of a crime or that it was a mistake that could not be
4 fixed.

5 9. At the time of his deposition in June 2012, Defendant's term was set to expire on June 30, 2013.
6 After the deposition, on June 28, 2012, the District Board met in closed session for Defendant's
7 performance evaluation. Immediately after closed session, the District Board reported out that the Board
8 unanimously voted to amend Defendant's employment agreement to add two years to Defendant's term.
9 Defendant's term would then expire on June 30, 2015. However, the final amendment to the agreement
10 was not approved during the summer of 2012.

11 10. In late July 2012, Defendant met with the District's attorney, Daniel Shinoff, at the District. Upon
12 information and belief, Defendant met with Mr. Shinoff and met with three other Board members, Yolanda
13 Hernandez, Jean Romero and Jason M.B. Wells, intermittently, on the same day at the same location – the
14 District administration building. The husband of one Board member, Raquel Marquez Madden, also
15 attended the meeting. The Board members and the husband would enter and exit the room during a
16 conversation regarding having the three members amend their Form 460s of the Fair Political Practice
17 Commission - two years after the fact. Upon information and belief, Defendant also met with Mr. Shinoff
18 and Loreto Romero in order for Loreto Romero to understand Defendant's alleged use of the \$2,500
19 payment as an alleged campaign contribution of signs for then seated Board Members, Jason M.B. Wells,
20 Yolanda M. Hernandez and Jean A. Romero (collectively hereafter "Board Members").

21 11. In August 2012, Jason M.B. Wells, Yolanda Hernandez and Jean Romero amended their Form
22 460s to declare contributions of political signs from Loreto Romero.

23 12. On September 20, 2012, the Board unanimously voted to approve the final draft of the two-year
24 extension to Defendant's contract. On October 18, 2012, the Board scheduled another performance
25 evaluation of Defendant. That same day, the Board executed the amendment to the original contract
26 adding two years.

27 13. On December 21, 2012, Defendant was indicted in state court ("State Indictment") for accepting
28 gifts in excess of \$250 from a single source relating to another third-party contractor, not Loreto Romero,

1 and construction with bond monies within the Sweetwater Union High School District and not declaring it
2 on their Form 700 (Statement of Economic Interest) of the California Political Reform Act.

3 14. On January 16, 2013, the District's Governing Board took action "to accept the request of the
4 Superintendent to be placed on paid Administrative Leave for a period of 45 days, to ensure that the
5 District will function properly without distraction." At the time, the District was conducting an
6 investigation into Defendant's payment for political signs for some Board members. In addition, the
7 Federal Bureau of Investigation was conducting its own investigation, which resulted in the United States
8 Attorney's office lodging a charge against Defendant in August 2014.

9 15. During negotiations for Defendant's separation, Defendant told the public and the District that if he
10 was guilty of any crime, he would reimburse the District.

11 16. A Memorandum of Understanding ("MOU"), although dated June 12, 2013, was voted on and
12 approved on June 13, 2013. The MOU between the District Board and Defendant related to Defendant's
13 days of work while an Assistant Superintendent. Although paid a monthly salary, Defendant requested to
14 be paid for days designated as work days from 2002-2007, which was six-years after the fact. Under the
15 MOU, the District paid Defendant \$44,015.40 pursuant to this agreement. On the same date, June 13,
16 2013, the District and Defendant also entered into an employment agreement entitled, "RETIREMENT
17 AGREEMENT AND GENERAL RELEASE BETWEEN MR. MANUEL PAUL AND THE SAN
18 YSIDRO SCHOOL DISTRICT," (hereafter, "Separation Agreement"). Pursuant to the Separation
19 Agreement, Defendant was paid a total cash settlement of \$211,347.42. Per the terms of the Separation
20 Agreement, the District did not release unknown claims against Defendant and did not agree to a Civil
21 Code section 1542 waiver.

22 17. Pursuant to the Separation Agreement, Defendant retired from his employment with the District,
23 effective June 30, 2013. Defendant was on paid administrative leave from the District during the time
24 period of January 17, 2013 through June 30, 2013. While on paid administrative leave Defendant was paid
25 a total salary of \$80,104.70.

26 18. Nearly six months after the MOU and Separation Agreement were signed and executed, on
27 December 6, 2013, Defendant pled guilty to the State Indictment solely on a misdemeanor charge.
28

1 19. On August 20, 2014, over one year after execution of the MOU and Separation Agreement, the
2 United States Attorney's Office charged Defendant for "Deprivation of Benefit for Political Contribution,"
3 pursuant to Title 18, U.S.C. Sec. 601. The information filed by the U.S. Attorney noted the following:

4 Beginning in or about June 2010 and continuing up to and including September 2010, within the
5 Southern District of California and elsewhere, defendant MANUEL PAUL did knowingly cause
6 another person, Contractor A, to make a contribution of \$2,500 for the benefit of three Candidates,
7 Candidates A, B, and C, for the 2010 San Ysidro School District Governing Board by threatening
8 to deprive Contractor A of work for the San Ysidro School District to wit, commercial construction
9 contracts for the San Ysidro School District, an agency of a political subdivision of the State of
10 California, which work was made possible, in part, by an Act of Congress, in violation of 18
11 U.S.C. § 601.

12 20. The District is informed and believes and on that basis alleges that during the negotiations for his
13 separation from the District in 2013, Defendant affirmatively expressed that he was innocent of any
14 charges and any wrongdoing. The District was unaware that Defendant was, as later admitted, guilty of
15 threatening to deprive Loreto Romero of work for the District.

16 21. A year after the MOU and Separation Agreement were executed, Defendant was sentenced in June
17 2014 to probation, community service, and a fine.

18 22. Two years after the MOU and Separation Agreement were executed, on January 15, 2015, the
19 Honorable William V. Gallo entered Judgment against Defendant and sentenced Defendant to a two-
20 month prison term, a \$5,000 fine, and probation.

21 GOVERNMENT CODE SECTIONS

22 23. Subdivision (a) of section 53260 provides:

23 All contracts of employment between an employee and a local agency employer shall include a
24 provision which provides that regardless of the term of the contract, if the contract is terminated,
25 the maximum cash settlement that an employee may receive shall be an amount equal to the
26 monthly salary of the employee multiplied by the number of months left on the unexpired term
27 of the contract. However, if the unexpired term of the contract is greater than 18 months, the
28 maximum cash settlement shall be an amount equal to the monthly salary of the employee
multiplied by 18.

29 24. Subdivision (c) of section 53261 provides:

The cash settlement specified in Section 53260 shall not include any other noncash items except
health benefits, which may be continued for the same duration of time as covered in the

1 settlement, pursuant to the same time limitations as provided in Section 53260, or until the
2 employee finds other employment, whichever occurs first.

3 25. Defendant's employment agreement dated October 22, 2009 contained a provision that stated:

4 Each of the parties agree that as a condition to the District's right to terminate this agreement "at
5 will" the District shall pay a maximum cash settlement, concurrently with the termination of the
6 Superintendent, of an amount equal to twelve (12) months of salary, or the salary due on the
7 remainder of the contract term, whichever is less, including health benefits only. The parties agree
8 such payment is a fair, just and reasonable liquidated damage for the emotional distress or other
9 compensable damages associated with separation under the circumstances existing at the time of
10 the execution of this agreement.

11 26. But for the contract extension in September 2012, Defendant's term would have naturally ended on
12 June 30, 2013. In any event, Defendant received more than 12 months of salary and health benefits
13 because he received monies under the MOU, for paid leave and for vacation pay.

14 27. The "Abuse of Office" section of the Government Code, section 53243, *et seq.*, requires
15 reimbursement of certain enumerated payments made by a local agency to an employee in the event an
16 employee is convicted of a crime involving an abuse of his or her office or position.

17 28. Government Code section 53243.4, "Abuse of office or position' defined" provides as follows:

18 For purposes of this article, "abuse of office or position" means either of the following:

19 (a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of
20 the law under color of authority.

21 (b) A crime against public justice, including, but not limited to, a crime described in Title 5
22 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7
23 (commencing with Section 92) of part 1 of the Penal Code.

24 29. The Judgment entered against Defendant for "Deprivation of Benefit for Political Contribution"
25 constitutes a crime involving an "abuse of office" as defined in Government Code section 53243.4.

26 30. Government Code section 53243.2, "Reimbursement of paid leave salary required upon conviction
27 of crime involving office or position," provides as follows:

28 On or after January 1, 2012, any contract executed or renewed between a local agency and
an officer or employee of a local agency that provides paid leave salary offered by the local
agency to the officer or employee pending an investigation shall require that any salary
provided for the purpose be fully reimbursed if the officer or employee is convicted of a
crime involving an abuse of his or her office or position.

1 31. Government Code section 53243.2, "Reimbursement of cash settlement upon conviction of crime
2 involving office or position," provides as follows:

3 On or after January 1, 2012, any contract of employment between an employee and a local
4 agency employer shall include a provision which provides that, regardless of the term of
5 the contract, if the contract is terminated, any cash settlement related to the termination that
6 an employee may receive from the local agency shall be fully reimbursed to the local
7 agency if the employee is convicted of a crime involving an abuse of his or her office or
8 position.

9 32. Government Code section 53243.3, "Reimbursement of non-contractual payments upon conviction
10 or crime involving office or position" provides as follows:

11 On or after January 1, 2012, if a local agency provides, in the absence of a contractual
12 obligation, for any of the payments described in this article, then the employee or officer
13 receiving any payments provided for those purposes shall fully reimburse the local agency
14 that provided those payments in the event that the employee or officer is convicted of a
15 crime involving the abuse of his or her office or position.

16 33. Defendant was obligated to sign his MOU and his Separation Agreement with a provision that he
17 would reimburse the District if convicted of an abuse of office provision. Because Defendant pled guilty
18 to an abuse of office offense, all payments pursuant to the MOU and Separation Agreement are void and
19 Defendant must reimburse the District for the full amount.

20 34. On August 25, 2014, the District sent Defendant a letter demanding that he reimburse the money
21 paid to Defendant in connection with the Separation Agreement.

22 35. On September 3, 2014, Defendant's attorney sent the District a letter stating that Defendant "rejects
23 any suggestion that he return any sums paid in settlement."

24 **FIRST CAUSE OF ACTION**

25 **Declaratory Relief**

26 36. The District hereby refers to and incorporates by reference the allegations contained in Paragraphs
27 1 through 35, inclusive.

28 37. The District brings this declaratory action on behalf of all the taxpayers within the City of San
Ysidro and the County of San Diego.

38. An actual controversy has arisen and now exists between the District and Defendant concerning
whether Defendant is required to reimburse the District pursuant to Government Code sections 53260 and

1 53261 and the Abuse of Office sections of the Government Code, section 53243 *et seq.*, for public
2 taxpayer money paid to Defendant in connection with the MOU and Separation Agreement and for the
3 public taxpayer funded salary paid to Defendant while he was on paid administrative leave.

4 39. The District seeks a judicial determination that the Abuse of Office section of the Government
5 Code, § 53243, *et seq.*, requires Defendant to reimburse the District for all money paid to Defendant in
6 connection with the Separation Agreement and for the salary paid to Defendant while he was on paid
7 administrative leave.

8 40. Additionally, the District seeks to enforce an important right affecting the public interest, the
9 reimbursement of taxpayer funded monies paid to Defendant. This action confers a significant pecuniary
10 benefit to the taxpayers of the City of San Ysidro and the County of San Diego, because it is the
11 reimbursement of taxpayer monies. In addition, all students and employees of the San Ysidro School
12 District will receive a pecuniary benefit because the monies will be returned to the general fund of the
13 District which budgets for salaries, expenses, textbooks, software and all other related educational
14 expenses. Upon proof at trial, the necessity and cost to the District in bringing this action will outweigh
15 and outweighs its stake in the action.

16 SECOND CAUSE OF ACTION

17 **Government Waste under Code of Civil Procedure section 526a**

18 41. The District hereby refers to and incorporates by reference the allegations contained in Paragraphs
19 1 through 40, inclusive.

20 42. The District brings this declaratory action on behalf of all the taxpayers within the City of San
21 Ysidro and the County of San Diego.

22 43. The MOU and Separation Agreement, executed after January 1, 2012, are void *ultra vires* contracts
23 because they failed to contain provisions requiring reimbursement of expenditures in the event the
24 employee committed an abuse of office offense. In addition, the contracts are void *ultra vires* because they
25 paid more than the maximum cash settlement allowed by law. The monies paid to Defendant through the
26 MOU and the Separation Agreement violated Government Code sections 53260, 53261 and 53243, *et seq.*

1 44. The MOU and the Separation Agreement were unreasonable, arbitrary, and a clear abuse of
2 discretion, and, therefore, *ultra vires*.

3 45. The acceptance by Defendant of such compensation was unreasonable, arbitrary, and a clear abuse
4 of discretion.

5 46. The District has been harmed by the payment of monies pursuant to void ultra vires contracts.

6 47. Defendant seeks damages and/or restitution from Defendant. The extent of the damage is at least
7 \$255,000. The exact amount shall be subject to proof at trial.

8
9 **THIRD CAUSE OF ACTION**

10 **Breach of Fiduciary Duty and Violation of Public Trust**

11 48. The District hereby refers to and incorporates by reference the allegations contained in Paragraphs
12 1 through 47, inclusive.

13 49. Defendant was a public employee on paid leave until June 30, 2013. He was the highest ranking
14 non-elected officer of the District. During all times he was an employee, Defendant is charged with
15 holding and reserving a public trust, and owed a fiduciary duty to the District and its constituents, and must
16 act in the interest and for the benefit of the people they serve. These duties include the duties of undivided
17 loyalty and allegiance to the District he is obligated to serve, and the faithful execution of the public trust
18 confided in him.

19 50. Defendant breached his fiduciary duties owed to the District and its constituents by inducing the
20 District to enter into the MOU and the Separation Agreement on the alleged grounds that he was innocent,
21 no cause or charge had been proven and that it was a mistake that could be fixed.

22 51. The District and its constituents suffered damages as a result of Defendant's violation of the public
23 trust and breach of his fiduciary duties in excess of \$255,000.

24 52. The District seeks its damages and/or restitution from Defendant. The exact amount shall be
25 subject to proof at trial.

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1 **FOURTH CAUSE OF ACTION**

2 **Restitution**

3 53. The District hereby refers to and incorporates by reference the allegations contained in Paragraphs
4 1 through 52, inclusive.

5 54. As alleged hereinabove, Defendant was enriched through payment in connection with the MOU
6 and the Separation Agreement and salary paid to Defendant while he was on paid administrative leave.
7 Pursuant to Government Code § 53243, *et seq.*, Defendant was required to reimburse the District for such
8 payments in the event he was convicted of a crime involving abuse of office. Defendant has failed and
9 refused to do so and has therefore been unjustly enriched in an amount to be established at trial.

10 55. As a direct and proximate result of Defendant's failure and refusal to reimburse the District as
11 required under Government Code § 53243, *et seq.*, the District has been harmed in excess of \$255,000.

12 56. The District seeks damages and/or restitution from Defendant in an amount to be established at
13 trial.

14 **FIFTH CAUSE OF ACTION**

15 **Fraud in the Inducement**

16 57. The District hereby refers to and incorporates by reference the allegations contained in Paragraphs
17 1 through 56, inclusive.

18 58. As set forth above, Defendant induced the District to enter into the MOU and Separation by
19 intentionally representing to the District that he was innocent, he did nothing wrong, no charges had been
20 proved and all that was necessary to correct the mistake was to amend the Form 460s. Defendant also told
21 the District and the public that if he was guilty of any crime, Defendant would reimburse the District.

22 59. Board Members Jean Romero, Jose F. Barajas and Jason M-B Wells justifiably relied upon
23 Defendant's statements because only Defendant and Loreto Romero were participants in the cash
24 contribution transaction, amended form 460s were filed by this time and no charges had been proven.

25 60. As set forth above, Defendant defrauded the District by intentionally misrepresenting his
26 innocence.

1 61. Defendant is guilty of acting with oppression, fraud, and/or malice for his intentional damage to the
2 District and for the despicable conduct carried on by Defendant with a willful and conscious disregard of
3 the rights and public interest of the District.

4 62. On information and belief, the Board relied on the misrepresentation, and was thus deprived of the
5 motive and opportunity to challenge the wasteful compensation given to Defendant.

6 63. Defendant's action harmed the District.

7 64. The District seeks its damages and/or restitution from Defendant. The exact amount shall be
8 subject to proof at trial.

9 **WHEREFORE**, the District prays for judgment against Defendant as follows:

- 10 1. A declaratory judgment pursuant to Government Code sections 53260, 53261 and 53243, *et seq.*,
11 that Defendant is required to reimburse the District for the money Defendant was paid in
12 connection with the MOU and the Separation Agreement and for the salary Defendant was paid
13 while on paid administrative leave;
- 14 2. A declaration that all compensation agreements and addenda of Defendant executed in and after
15 January 1, 2012 are null and void *ad initio*;
- 16 3. An order requiring Defendant to make restitution to the District for any contribution the District
17 made to CalSTRS on behalf of the Defendant as a result of the excess compensation, in an amount
18 to be proven at trial;
- 19 4. Compensatory damages against Defendant;
- 20 5. Punitive damages against Defendant;
- 21 6. For attorney's fees and costs of suit incurred herein pursuant to Code of Civil Procedure 1021.5;
22 and
- 23 7. For such other and further relief as the Court deems just and proper.

24 DATED: December 7, 2015

LEAL ■ TREJO APC

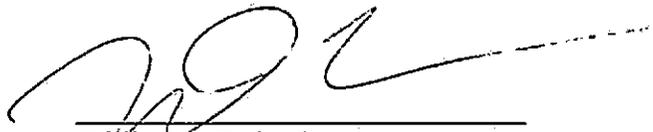
25
26 
27 William J. Trejo, Esq.
Attorney for Plaintiff,
San Ysidro School District

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3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands a trial by jury.

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6 DATED: December 7, 2015

LEAL ■ TREJO APC

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William J. Trejo, Esq.
Attorney for Plaintiff,
San Ysidro School District

1 SAN YSDIRO SCHOOL DISTRICT v. MANUEL PAUL
Case No.: 37-2015-00003840-CU-NP-CTL

DEC 7 '15 PM 3:25

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4 **PROOF OF SERVICE**

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18 years,
6 and not a party to the above-named action. My business address is: 3767 Worsham Avenue, Long
Beach, California, 90808.

7 On December 7, 2015, I served the foregoing document(s) described as:

8 **SECOND AMENDED COMPLAINT FOR:**

9 **1) DECLARATORY RELIEF; 2) GOVERNMENT WASTE; 3) BREACH OF**
10 **FIDUCIARY DUTY AND VIOLATION OF PUBLIC TRUST; 4) RESTITUTION; AND**
5) FRAUD IN THE INDUCEMENT

11 on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope(s),
12 addressed as follows:

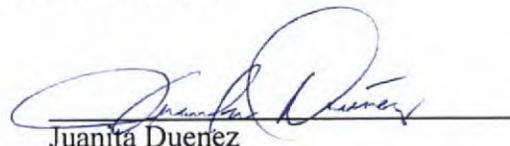
13 Dennis M. Grady, Esq. GRADY AND ASSOCIATES 3517 Camino Del Rio South, Suite 400 14 San Diego, CA 92108 Facsimile: (619) 528-1580	15 <u>Attorneys for Defendant</u> Manuel Paul
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16 **By Regular Mail:** I am "readily familiar" with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal
18 Service on this date with postage thereon fully prepaid at Long Beach, California, in the ordinary
course of business. I am aware that on motion of the party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in
the affidavit.

19 **By Facsimile:** I served/transmitted the above-described document on the interested parties in
20 this action by sending a true copy thereof by facsimile transmission pursuant to CRC §2008, from
21 facsimile machine number (213) 628-0818. The facsimile machine I used complied with CRC §2008
and no error was reported by the machine. Pursuant to CRC §2008(e) (3), I caused the machine to print
a transmission record of the transmission.

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

24 Executed on December 7, 2015, at Long Beach, California.

25 
26 Juanita Duenez