

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Law Corporation
2 Clifford D. Weiler State Bar No. 73925
CWeiler@aalrr.com
3 4275 Executive Square, Suite 700
La Jolla, California 92037-1477
4 Telephone: (858) 485-9526
Fax: (858) 485-9412
5

6 Attorneys for Respondent
CORONADO UNIFIED SCHOOL DISTRICT
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO - CENTRAL
10

11 VOICE OF SAN DIEGO,
12 Petitioner,
13 v.
14 CORONADO UNIFIED SCHOOL
DISTRICT,
15 Respondent.
16

Case No. 37-2019-00012628-CU-WM-CTL
[Assigned for all purposes to Hon Richard S. Whitney, Dept. C-68]

ANSWER OF RESPONDENT CORONADO UNIFIED SCHOOL DISTRICT TO VERIFIED PETITION FOR WRIT OF MANDATE TO COMPEL COMPLIANCE WITH THE PUBLIC RECORDS ACT, COMPLAINT FOR DECLARATORY RELIEF AND PRELIMINARY AND PERMANENT INJUNCTION

IMAGED FILE

Petition Filed: March 7, 2019
Trial Date: None

[Exempt from filing fees pursuant to Government Code § 6103]

22
23 Respondent CORONADO UNIFIED SCHOOL DISTRICT (“DISTRICT” or
24 “RESPONDENT”) respectfully submits the following answer to Petitioner VOICE OF SAN
25 DIEGO’s (“PETITIONER” or “VOICE”) Petition for Writ of Mandate to Compel Compliance
26 with the Public Records Act, Complaint for Declaratory Relief and Preliminary and Permanent
27 Injunction filed March 7, 2019 (“Petition”).
28

INTRODUCTION

1
2 1. Answering paragraph 1 of the Petition, DISTRICT admits the allegations contained
3 therein, and adds that its withholding and/or redacting records was not contrary to the law.

4 2. Answering paragraph 2 of the Petition, DISTRICT admits the allegations contained
5 therein.

6 3. Answering paragraph 3 of the Petition, DISTRICT denies the allegations contained
7 therein and further answers that as indicated within PETITIONER’s Exhibit A, as was
8 DISTRICT’s initial response within the statutory 10-day “yes” or “no” deadline and the best
9 evidence of DISTRICT’s response, DISTRICT exercised its statutory right for an extension of 14
10 days and meanwhile indicated the preliminary investigation “indicates no one is aware of any such
11 substantiated claims” and added “we will continue to search,” as indicated within PETITIONER’s
12 Exhibit A attached to the Petition.

13 4. Answering paragraph 4 of the Petition, the allegations therein are so vague and
14 ambiguous, not providing any time frame or reference to an exhibit so as to prevent an ability to
15 formulate an answer, and on those bases are generally and specifically denied. To the extent, if
16 any, an answer is required, DISTRICT admits that DISTRICT produced pages as contained within
17 PETITIONER’s Exhibit G, alleges that the redactions were appropriate, denies the remaining
18 allegations as alleged, and adds that any particular correspondence upon which VOICE’s
19 allegations are based, would be the best evidence of the content of DISTRICT’s response.

20 5. Answering paragraph 5 of the Petition, the allegations therein are so vague and
21 ambiguous, not providing any time frame or reference to an exhibit, so that DISTRICT cannot
22 formulate an answer, and on those bases are generally and specifically denied. To the extent, if
23 any, an answer is required, DISTRICT admits communications occurred between PETITIONER
24 and DISTRICT regarding removing redactions and release of records and that DISTRICT
25 unredacted certain records (such as comparing PETITIONER’s Exhibits G and H to the Petition)
26 while maintaining other redactions and providing other responsive records, and at one or more
27 stages asserted no other responsive records exist. Except as expressly admitted, DISTRICT
28 generally and specifically denies the remaining allegations.

1 6. Answering paragraph 6 of the Petition, DISTRICT admits it was requested to
 2 release responsive records as to a water polo coach employed by the DISTRICT, Randall Burgess
 3 and former Reserve Officers’ Training Corps (ROTC) Instructor Martin Gallegos. In further
 4 answer, DISTRICT has no knowledge or belief as to the immaterial and irrelevant allegations as to
 5 what PETITIONER learned and therefore denies the allegations as to VOICE learning of reports
 6 of serious sexual abuse alleged against a water polo coach employed by the DISTRICT, Randall
 7 Burgess and former Reserve Officers’ Training Corps (ROTC) Instructor Martin Gallegos. In
 8 further answer, the allegation that PETITIONER “continued to pressure the DISTRICT” is so
 9 vague and ambiguous as to prevent an ability to formulate an answer and on that basis and to the
 10 extent an answer to that allegation is required, that allegation is generally and specifically denied.

11 7. Answering paragraph 7 of the Petition, the allegations are vague and ambiguous
 12 especially as to “for several months” and “made a sudden turn and ostensibly agreed,” so as to
 13 prevent an ability to formulate an answer and on that basis, the allegations are generally and
 14 specifically denied. In further answering paragraph 7, DISTRICT alleges it at first declined to
 15 provide documents regarding Burgess but subsequently indicated it would disclose some
 16 documents relating to Burgess.

17 In further answering paragraph 7, DISTRICT answers that whatever documents relating to
 18 Burgess or Gallegos were requested, documents were provided eventually except documents and
 19 portions of documents which were not required to be provided within the scope of
 20 PETITIONER’s request for documents and within the scope of the California Public Records Act
 21 (“CPRA”).

22 8. Answering paragraph 8 of the Petition, DISTRICT admits the allegations therein.

23 9. Answering paragraph 9 of the Petition, DISTRICT admits that VOICE joined the
 24 Burgess litigation (as Real Party in Interest and Intervenor) and that the Court upheld
 25 DISTRICT’S request for disclosure of some of the documents at issue therein and correspondingly
 26 denied the requests by Burgess that the DISTRICT not disclose certain documents to VOICE..
 27 DISTRICT denies the allegation that VOICE successfully overcame all efforts to resist the
 28 DISTRICT’s release of what was understood to be the records responsive to VOICE’s November

1 21, 2017 CPRA request, DISTRICT adding that the DISTRICT had continuously desired to
 2 release the records that were the subject of the *Burgess* litigation and did not attempt non-release
 3 of those records at issue in that litigation. DISTRICT also denies the allegation that it engaged in
 4 proactive efforts to withhold the release of documents owed to the public. DISTRICT further
 5 alleges that some of the documents at issue were determined by the court, via Judge Judith F.
 6 Hayes, as not required to be disclosed. In further answer to paragraph 9, DISTRICT admits the
 7 immaterial and irrelevant allegations that it withheld certain of its own filings in the *Burgess*
 8 litigation from VOICE and further alleges that those withholdings were pursuant to and as directed
 9 by the court on one or more occasions. Except as expressly admitted herein, DISTRICT generally
 10 and specifically denies the remaining allegations contained therein.

11 10. Answering paragraph 10 of the Petition, DISTRICT admits the allegations
 12 contained therein.

13 11. Answering paragraph 11 of the Petition, DISTRICT admits Randall Burgess
 14 challenged the release of records which DISTRICT considered responsive to the August 7, 2018
 15 CPRA request and which DISTRICT desired to release, and that a court order was issued for the
 16 release of documents held by the DISTRICT. DISTRICT further alleges the release ordered by
 17 the court specifically allowed for redactions to documents. Except as expressly admitted,
 18 DISTRICT generally and specifically denies the remaining allegations contained therein.

19 12. Answering paragraph 12 of the Petition, DISTRICT admits the allegations
 20 contained therein.

21 13. Answering paragraph 13 of the Petition, DISTRICT admits that it disclosed
 22 publically available court filings made by Randall Burgess in response to his suspension by
 23 DISTRICT and a public letter and comments made to the DISTRICT relating to Burgess, adding
 24 that redactions to the latter documents were as authorized by the court. In further answering
 25 paragraph 13: DISTRICT lacks sufficient information and belief and has no personal knowledge as
 26 to materials being reviewed by VOICE and what VOICE found and on that basis generally and
 27 specifically denies those allegations. In further answering paragraph 13, VOICE’s allegation that
 28 the materials contained “little information” is vague and ambiguous, subjectively argumentative,

1 and cannot be answered, and on those bases DISTRICT generally and specifically denies those
 2 allegations. In further answering paragraph 13, DISTRICT alleges that the information released,
 3 based upon VOICE’s CPRA request of August 7, 2018, relating to the allegation within paragraph
 4 10 hereinabove, included a copy of a Government Code claim involving Randall Burgess with
 5 redactions. In further answering paragraph 13, DISTRICT denies it conducted an investigation
 6 into said claims and alleges it does not possess any public records relating to the outcome of said
 7 claims. In further answering paragraph 13, DISTRICT alleges that the redactions within
 8 documents disclosed were appropriate and supported by court order. In further answering
 9 paragraph 13, DISTRICT alleges it disclosed all public documents to VOICE which were
 10 responsive to its requests pursuant to the CPRA. In further answering paragraph 13, except as
 11 expressly admitted herein, DISTRICT generally and specifically denies the remaining allegations
 12 contained therein.

13 14. Answering paragraph 14 of the Petition, the allegations therein are immaterial and
 14 irrelevant to this CPRA litigation, do not require a response and on those bases are generally and
 15 specifically denied. In further answering paragraph 14, the allegations therein are so vague and
 16 ambiguous as to prevent an ability to formulate an answer, and on that basis are generally and
 17 specifically denied. To the extent, if any, the allegations require a response, DISTRICT admits
 18 that VOICE has repeatedly made efforts to work with DISTRICT, denies the allegations that
 19 VOICE’s efforts were “to no avail as District’s legal counsel has refused to comply at every step”
 20 and further alleges that responsive records have been disclosed, that DISTRICT has explained to
 21 VOICE’s representative the scope and breadth of records the DISTRICT has not disclosed, and
 22 that disclosures beyond those provided to VOICE are not required within the scope of VOICE’s
 23 requests within the CPRA and within the meaning of the CPRA. In further answering paragraph
 24 14, except as expressly admitted herein, DISTRICT generally and specifically denies the
 25 remaining allegations contained therein.

26 15. Answering paragraph 15 of the Petition, the allegations therein are immaterial and
 27 irrelevant to this CPRA litigation, do not require a response and on those bases are generally and
 28 specifically denied. To the extent, if any, an answer is required, DISTRICT admits the immaterial

1 and irrelevant allegation that it (DISTRICT) was named as a defendant in Superior Court Case No.
 2 37-2017-00008091-CU-PO-CTL (as contained within Exhibit J attached to the Petition) and
 3 further alleges it was voluntarily dismissed from that litigation without payment to that Plaintiff as
 4 that Plaintiff released all claims as to DISTRICT (as contained within Exhibit L attached to the
 5 Petition). In further answer, DISTRICT lacks sufficient information and belief to enable it to
 6 formulate an answer to the remaining allegations within paragraph 15, and on that basis denies
 7 said allegations. In further answering paragraph 15, DISTRICT generally and specifically denies
 8 the remaining allegations contained therein.

9 16. Answering paragraph 16 of the Petition, DISTRICT asserts the allegations therein
 10 are argumentative and constitute legal argument and conclusions as to which no answer is
 11 required, and on that basis, generally and specifically denies each allegation therein. To the
 12 extent, if any, an answer is required, DISTRICT denies generally and specifically each and every
 13 allegation therein and further answers DISTRICT did not and has not violated the CPRA in
 14 responding to VOICE.

15 17. Answering paragraph 17 of the Petition, the allegations contain no allegations of
 16 fact, constitute legal conclusions and arguments as to which no responsive pleading is required,
 17 and on those bases and to the extent an answer is required, the allegations within paragraph 17 are
 18 generally and specifically denied.

19 In further answering paragraph 17, DISTRICT alleges it fulfilled its duties to VOICE as
 20 required by the CPRA and that any documents not disclosed or redactions made were appropriate
 21 within the CPRA and case law.

22 **PARTIES**

23 18. In answering paragraph 18, DISTRICT alleges that the allegations are immaterial
 24 and irrelevant to this CPRA litigation, do not require a response, and on those bases are generally
 25 and specifically denied. To the extent, if any, a response is required, DISTRICT admits that
 26 VOICE is an online news service based in and serving San Diego, California. In answering the
 27 remaining allegations, DISTRICT lacks sufficient information and belief to enable it to formulate
 28

1 an answer regarding the remaining allegations in paragraph 18, and on that basis denies said
2 allegations.

3 19. In answering paragraph 19, DISTRICT denies it is operating under its own charter,
4 and admits the remaining allegations contained therein.

5 20. In answering paragraph 20, DISTRICT lacks sufficient information and belief to
6 enable it to formulate an answer regarding the allegations stated therein and on that basis denies
7 said allegations.

8 **JURISDICTION AND VENUE**

9 21. In answering paragraph 21, DISTRICT admits this Court has jurisdiction pursuant
10 to California Government Code sections 6258 and 6259, California Code of Civil Procedure
11 section 1085 and article VI, section 10 of the California Constitution. In further answering
12 paragraph 21, the remaining allegations are immaterial and irrelevant to the establishment of
13 jurisdiction, do not constitute allegations of fact, constitute legal argument, do not require a
14 response, and on those bases are generally and specifically denied.

15 22. Answering paragraph 22 of the Petition, DISTRICT admits the allegations
16 contained therein.

17 23. Answering paragraph 23 of the Petition, the allegations contained therein constitute
18 legal conclusions and arguments as to which no responsive pleading is required. To the extent an
19 answer is required, DISTRICT admits the allegations contained therein.

20 24. Answering paragraph 24 of the Petition, the allegations contained therein constitute
21 legal conclusions and arguments as to which no responsive pleading is required. To the extent an
22 answer is required, DISTRICT admits VOICE has no plain, speedy and adequate remedy in the
23 ordinary course of the law unless this Court grants a writ of mandate but adds that no remedy is
24 applicable nor should be issued. In further answering paragraph 24, DISTRICT denies it has
25 violated the law through any failure to comply with the CPRA, alleges DISTRICT should not be
26 enjoined, denies it refused to perform any ministerial duty in providing public records under the
27 CPRA without redactions, and denies no legally permissible exemption exists.

28

STATEMENT OF FACTS

1
2 25. Answering paragraph 25 of the Petition, the allegations therein are immaterial and
3 irrelevant to this CPRA litigation, do not require a response, DISTRICT lacks sufficient
4 information and belief to enable it to formulate an answer, and on those bases are generally and
5 specifically denied.

6 26. Answering paragraph 26 of the Petition, the allegations therein are immaterial and
7 irrelevant to this CPRA litigation, do not require a response, DISTRICT lacks sufficient
8 information and belief to enable it to formulate an answer, and on those bases are generally and
9 specifically denied.

10 27. Answering paragraph 27, DISTRICT denies the allegations contained therein, and
11 further alleges that the CPRA request of November 21, 2017 more accurately requested:

12 All public records relating to any substantiated claims of sexual
13 misbehavior and related misconduct for any employee, official,
14 contractor, agent, or volunteer of the District arising within the last
15 10 years.

16 28. In answering paragraph 28, the allegations therein are immaterial and irrelevant to
17 this CPRA litigation, do not require a response, and on those bases are generally and specifically
18 denied. To the extent, if any, a response is required, DISTRICT admits a true and correct copy of
19 the DISTRICT's December 1, 2017 correspondence is attached to the Petition as Exhibit "A,"
20 being the best evidence, and denies that its initial response claimed that no responsive records
21 exist.

22 In further answering paragraph 28, DISTRICT asserts the December 1, 2017
23 correspondence, which was issued within the initial 10-day "yes" or "no" period, exercised the
24 statutory right for a 14-day extension, and indicated in part, "Our preliminary investigation
25 indicates no one is aware of any such substantiated claims" and, "Because of the duration and
26 scope of your request, we will continue to search."

27 29. Answering paragraph 29 of the Petition, DISTRICT admits a true and correct copy
28 of VOICE's communication on or about December 4, 2018 is attached to the Petition as Exhibit
"B" which is the best evidence of the content. In further answering paragraph 29, the remaining

1 allegations constitute subjective interpretation of and arguments as to the correspondence by
2 VOICE as to which no response is required, especially since the Exhibit “B” speaks for itself.

3 30. In answering paragraph 30, the allegations are immaterial and irrelevant to this
4 CPRA litigation, do not require a response and on those bases are generally and specifically
5 denied. To the extent, if any, a response is required, DISTRICT admits that a true and correct
6 copy of the DISTRICT’s December 15, 2017 letter, being the best evidence, is attached to the
7 Petition as Exhibit “C.” As contained within Exhibit C, in part:

8 We currently estimate that the documents will be forwarded to you
9 via U.S. mail no later than January 10, 2018, at approximately 3:00
10 p.m. If further time becomes appropriate or necessary, such as
related to ‘*Marken*’ responses, you will be provided another
estimated date of disclosure.

11 31. In answering paragraph 31, the allegations therein are immaterial and irrelevant to
12 this CPRA litigation, do not require a response and on those bases are generally and specifically
13 denied. To the extent, if any, a response is required, DISTRICT admits a true and correct copy of
14 the DISTRICT’s January 10, 2018 letter is attached to the Petition as Exhibit “D,” and that the
15 letter as the best evidence speaks for itself.

16 32. In answering paragraph 32, the allegation of “heavily redacted” is so vague and
17 ambiguous as to prevent an admission and constitutes subjective argument as to which no
18 responsive pleading is required. To the extent an answer is required, and on those bases is
19 generally and specifically denied. In further answering paragraph 32, DISTRICT admits that
20 DISTRICT provided VOICE with two sets of records totaling four pages, withholding names
21 including of alleged perpetrator(s) and names of individuals which were not responsive to the
22 Public Records Act request.

23 In further answering paragraph 32, as VOICE did not attach a copy of the January 23, 2018
24 correspondence, DISTRICT alleges that correspondence included, in part:

25 To the extent, if any, EEOC or DFEH charges were filed during the
26 relevant time-frame, they were found by an independent outside
27 government agency, after investigation(s), to have not have been
28 supported by the facts, i.e., to be not substantiated and were
dismissed. Therefore, they, if any exists, are not included in this
response.

1 In further answering paragraph 32, DISTRICT alleges that comment was included within
2 the correspondence which responded to a portion of an email from VOICE’s Attorney Tinkov,
3 which email included:

4 Should the District find itself unsure whether certain activities fall
5 within the ambit of the request, you are welcome to present the
situation for Ms. McGlone’s review and determination...

6 In further answering paragraph 32, DISTRICT alleges VOICE and its representatives did
7 not challenge the non-disclosure of those EEOC or DFEH charges.

8 In further answering paragraph 32, DISTRICT alleges that it provided records later, with
9 fewer redactions, as indicated within VOICE’s Exhibit “G.”

10 In further answering paragraph 32, DISTRICT denies the remaining allegations contained
11 therein.

12 33. Answering paragraph 33 of the Petition, DISTRICT admits a true and correct copy
13 of the records and correspondence is attached to the Petition as Exhibit “E” which is the best
14 evidence of the content. In further answering paragraph 33, the remaining allegations about the
15 content of the communication constitute subjective argument by VOICE as to which no response
16 is required, especially since Exhibit “E” speaks for itself. In further answer, DISTRICT denies it
17 insufficiently responded to VOICE’s CPRA requests.

18 34. Answering paragraph 34 of the Petition, DISTRICT denies it refused to comply
19 with VOICE’s CPRA requests and admits the remaining allegations contained therein, with
20 Exhibit “F” being the best evidence of communications.

21 35. Answering paragraph 35 of the Petition, DISTRICT admits it released to VOICE
22 additional responsive records including redactions as to the identity of one or more alleged
23 perpetrators and that a true and correct copy of the records and the cover letter dated January 31,
24 2019 are attached to the Petition as Exhibit “G”. DISTRICT denies the remaining allegations
25 contained therein.

26 36. Answering paragraph 36 of the Petition, DISTRICT admits that on or about
27 February 7, 2018, it released additional responsive records, un-redacting the names of certain
28 alleged perpetrators and that a true and correct copy of the records and the cover letter dated

1 February 7, 2018 are attached to the Petition as Exhibit “H”, being the best evidence of the
 2 communication. In further answering paragraph 36, the allegation that DISTRICT was still
 3 withholding significant numbers of records which it had in its possession or control is so vague
 4 and ambiguous as to prevent an admission and constitutes subjective argument and on those bases
 5 are generally and specifically denied. DISTRICT denies the remaining allegations contained
 6 therein.

7 In further answering paragraph 36, DISTRICT alleges that redactions of student identities
 8 (names and initials) are not at issue and were acceptable to VOICE, as indicated within Exhibit
 9 “F” to the Petition (email of January 29, 2018, at 3:26 p.m., its item 3).

10 37. Answering paragraph 37 of the Petition, the allegations therein are immaterial and
 11 irrelevant to this CPRA litigation, do not require a response, DISTRICT lacks sufficient
 12 information and belief to enable it to formulate an answer regarding what VOICE allegedly
 13 discovered, and on those bases the allegations are generally and specifically denied. To the extent,
 14 if any, an answer is required, DISTRICT admits a true and correct copy of correspondence from
 15 Mr. Weiler on or about May 24, 2018, is attached to the Petition as Exhibit “I”, being the best
 16 evidence of the communication. DISTRICT denies the remaining allegations contained therein.

17 38. -Answering paragraph 38 of the Petition, DISTRICT admits that true and correct
 18 copies of correspondence are attached to the Petition as Exhibit “J,” involving communications
 19 beginning at least by July 9, 2018 through July 18, 2018, which is the best evidence of the
 20 contents of those communications. As to the remaining allegations within paragraph 38,
 21 DISTRICT lacks sufficient information and belief as to VOICE’s intent, purpose and knowledge,
 22 and as to whether or not VOICE had seen at the time nor been informed of documents existing
 23 relating to Burgess, and therefore, on that basis, generally and specifically denies those
 24 allegations. DISTRICT denies the remaining allegations contained therein.

25 39. Answering paragraph 39 of the Petition, the allegations therein are immaterial and
 26 irrelevant to this CPRA litigation, do not require a response and on those bases are generally and
 27 specifically denied. To the extent, if any, the allegations are deemed material or relevant,
 28 DISTRICT admits that on July 20, 2018, Mr. Tinkov corresponded with Mr. Weiler and that a true

1 and correct copy of that correspondence is attached to the Petition as Exhibit “K,” which is the
 2 best evidence of the contents of that correspondence. DISTRICT denies that other responsive
 3 records relating to Burgess existed. Except as expressly admitted herein, DISTRICT denies each
 4 and every allegation contained therein.

5 40. Answering paragraph 40 of the Petition, DISTRICT admits that an order was issued
 6 in case number 37-2018-00035086-CU-WM-CTL, dated July 25, 2018, enjoining the DISTRICT
 7 from releasing records to VOICE relating to Burgess and that VOICE attempted to have its motion
 8 to intervene heard but was denied the opportunity at that time by Judge Judith Hayes.

9 In further answering paragraph 40, the minute order issued by Judge Hayes included, in
 10 part, “the Court instructs Attorney Weiler not to disclose any information relating to Mr. Burgess
 11 before the 9/28/18 hearing date.” The minute order also scheduled a motion for leave to intervene
 12 for VOICE, for 09/28/2018 as well as a motion for preliminary injunction for that date.

13 41. Answering paragraph 41 of the Petition, DISTRICT admits that on August 7, 2018,
 14 DISTRICT provided additional sets of records relating to allegations made against individuals
 15 employed or previously employed by DISTRICT, including Gallegos and that a true and correct
 16 copy of those records and the cover letter thereto is attached to the Petition as Exhibit “L,” which
 17 is the best evidence of the contents of those records and that correspondence. In further answer,
 18 the allegation that DISTRICT dribbled out documents is so vague and ambiguous and subjectively
 19 argumentative as to prevent an ability to formulate an answer and on those bases is generally and
 20 specifically denied. In further answering paragraph 41, except as expressly admitted, DISTRICT
 21 denies each and every remaining allegation contained therein.

22 In further answering paragraph 41, as stated within the first paragraph of the
 23 communication to Attorney Tinkov within Exhibit “L” attached to the Petition:

24 This is another response to your email of July 31, 2018, at 4:41 p.m.
 25 I recognize these responses are “piecemeal,” but this method
 26 expedites constructively resolving these issues. Rather than wait
 27 until a totally comprehensive response, I provide the following as
 28 the District desires to comply with its obligations within the law,
 recognizing that there are conflicting interpretations as to
 obligations and prohibitions especially relating to Mr. Burgess.

1 42. Answering paragraph 42 of the Petition, DISTRICT admits on or about August 7,
 2 2018, VOICE submitted a new CPRA request to DISTRICT seeking correspondence submitted to
 3 DISTRICT relating to Burgess. In further answering paragraph 42, the remaining allegations are
 4 immaterial and irrelevant to this CPRA litigation, do not require a response, DISTRICT lacks
 5 sufficient information and belief to enable it to formulate an answer regarding the reasons or hopes
 6 of VOICE, and on those bases the allegations are generally and specifically denied.

7 43. Answering paragraph 43 of the Petition, DISTRICT admits the allegations
 8 contained therein, with Exhibit M being the best evidence of the communication.

9 44. Answering paragraph 44 of the Petition, the allegations therein are immaterial and
 10 irrelevant to this CPRA litigation, do not require a response, and on those bases are generally and
 11 specifically denied. To the extent, if any, an answer is required, DISTRICT alleges it had no duty
 12 to lodge records responsive to VOICE’s November 21, 2017 CPRA request with the Court and
 13 that no delay resulted as a result of any failing by DISTRICT.

14 45. Answering paragraph 45 of the Petition, the allegations therein are immaterial and
 15 irrelevant to this CPRA litigation, do not require a response, and on those bases are generally and
 16 specifically denied, except that DISTRICT admits that a true and correct copy of correspondence
 17 is attached to the Petition as Exhibit “N,” which is the best evidence of that communication.

18 46. Answering paragraph 46 of the Petition, the allegations therein are immaterial and
 19 irrelevant to this CPRA litigation, do not require a response, and on those bases are generally and
 20 specifically denied. To the extent, if any, a response is required, DISTRICT admits that VOICE
 21 was permitted to intervene in the *Burgess* litigation, the Court accepted some of the arguments
 22 submitted by VOICE and DISTRICT requiring the release of some of DISTRICT’s records
 23 responsive to VOICE’s November 21, 2017 CPRA request.

24 In further answering paragraph 46 of the Petition, DISTRICT denies the allegations therein
 25 and refers to the Court Minute Order issued October 5, 2018, wherein the Court, having reviewed
 26 documents numbered 001-027, “finds documents 001-005 do not relate to allegations of a
 27 ‘substantial nature.’” The Court found “Documents 006-027 do not appear to be responsive at
 28 all,” enjoined the DISTRICT from disclosing documents 001-005 to VOICE until after the hearing

1 on the Petition for Writ of Mandate, but did not enjoin DISTRICT from disclosing Documents
2 006-027.

3 47. Answering paragraph 47 of the Petition, DISTRICT admits that on October 9, 2018
4 the DISTRICT provided the records the court ordered released to VOICE, which records included
5 Burgess’s Petition for Writ of Mandate against DISTRICT, and that a true and correct copy of the
6 records and correspondence is attached to the Petition as Exhibit “O,” which is the best evidence
7 of the content. In further answering paragraph 47, the remaining allegations constitute subjective
8 argument by VOICE as to which no response is required, especially since the documents within
9 Exhibit “O” speak for themselves. DISTRICT denies the remaining allegations contained in
10 paragraph 47.

11 48. Answering paragraph 48 of the Petition, DISTRICT denies each and every
12 allegation as alleged and further alleges that on or about January 7, 2019, the Court in the *Burgess*
13 litigation ruled against Burgess and allowed the DISTRICT to release the records responsive to
14 VOICE’s CPRA request. In further answering paragraph 48, DISTRICT asserts the Court, in its
15 Minute Order of January 7, 2019, and subsequent court order denied Petitioner Burgess’s motion
16 for preliminary injunction and permitted the redactions as documents were to be released.

17 49. In answering paragraph 49 of the Petition, DISTRICT admits that on or about
18 January 28, 2019, the DISTRICT released further records responsive to VOICE’s August 7, 2018
19 CPRA request and on or about February 7, 2019, released additional records. DISTRICT
20 generally and specifically denies the remaining allegations contained therein.

21 50. Answering paragraph 50 of the Petition, the allegations contained therein are
22 argumentative conclusory statements as to which no response is required.

23 51. Answering paragraph 51 of the Petition, DISTRICT generally and specifically
24 denies each and every allegation contained therein.

25 52. Answering paragraph 52 of the Petition, the allegations contained therein constitute
26 legal conclusions and arguments as to which no responsive pleading is required. To the extent an
27 answer is required, on that basis, the allegations in paragraph 52 are generally and specifically
28 denied. In further answering paragraph 52, DISTRICT specifically denies it engaged in or is

1 engaging in any unlawful practices of withholding and/or obstructing the release of public records
2 in response to VOICE’s two CPRA requests at issue in this litigation.

3 **REASONS FOR GRANTING THIS PETITION**

4 53. Answering paragraph 53 of the Petition, DISTRICT admits the allegations
5 contained therein but adds that no remedy is applicable nor should be issued.

6 54. Answering paragraph 54 of the Petition, the allegations contained therein constitute
7 legal conclusions and arguments as to which no responsive pleading is required. In further
8 answering paragraph 54, DISTRICT alleges that the parameters of disclosure and non-disclosure
9 within the CPRA are also delineated by case law.

10 55. Answering paragraph 55 of the Petition, the allegations contained therein constitute
11 legal conclusions and arguments as to which no responsive pleading is required. To the extent an
12 answer is required, DISTRICT alleges it possesses viable bases and has provided and will provide
13 viable bases to allow for non-disclosure of documents and/or justify redactions.

14 56. Answering paragraph 56 of the Petition, the allegations contained therein constitute
15 legal conclusions and arguments as to which no responsive pleading is required. In further answer
16 as to the allegation “the requested documents are disclosable public records pursuant to the
17 CPRA,” DISTRICT denies that allegation as to documents not disclosed and as to redactions made
18 to documents which have been disclosed.

19 In further answering paragraph 56, DISTRICT alleges the renditions of case law and
20 analysis are selective, for example, VOICE omitted *Associated Chino Teachers v. Chino Valley*
21 *USD* (2018) 30 Cal.App.5th 530.

22 57. Answering paragraph 57 of the Petition, the allegations contained therein constitute
23 legal conclusions and arguments as to which no responsive pleading is required.

24 58. Answering paragraph 58 of the Petition, the allegations contained therein constitute
25 legal conclusions and arguments as to which no responsive pleading is required.

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

(VIOLATION OF CALIFORNIA PUBLIC RECORDS ACT)

1
2
3 59. DISTRICT hereby re-pleads and incorporates by this reference the answers and
4 allegations within its responses to paragraphs 1 through 58, inclusive, as though fully set forth
5 herein.

6 60. Answering paragraph 60 of the Petition, the allegations contained therein are
7 immaterial and irrelevant to this CPRA litigation and constitute legal conclusions and arguments
8 as to which no responsive pleading is required and on those bases are generally and specifically
9 denied.

10 61. Answering paragraph 61 of the Petition, the allegations contained therein constitute
11 legal conclusions and arguments as to which no responsive pleading is required. To the extent an
12 answer is required, on that basis, the allegations of paragraph 61 are generally and specifically
13 denied except that DISTRICT admits it has a duty to allow access to all records deemed public
14 records within the CPRA and case law, which are in its possession and control that are not
15 otherwise exempt under the CPRA, or per case law interpreting the CPRA, and that are responsive
16 to particular requests for public records as public records are defined within the CPRA.
17 DISTRICT further alleges that it need not disclose documents and may redact consistent with the
18 ability to not disclose particular information consistent with the CPRA and case law interpreting
19 the CPRA and/or which are not responsive to the particular CPRA request(s).

20 62. Answering paragraph 62 of the Petition, the allegations contained therein constitute
21 legal conclusions and arguments as to which no responsive pleading is required. To the extent an
22 answer is required, DISTRICT generally and specifically denies each and every allegation
23 contained therein.

24 63. Answering paragraph 63 of the Petition, the allegations contained therein constitute
25 legal conclusions and arguments as to which no responsive pleading is required. To the extent an
26 answer is required, DISTRICT generally and specifically denies each and every allegation
27 contained therein.

28

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 81. As a separate and eighth affirmative defense DISTRICT alleges that VOICE failed
3 to take reasonable and necessary steps in order to mitigate, lessen, and minimize any and all
4 damages incurred by VOICE.

5 **NINTH AFFIRMATIVE DEFENSE**

6 82. As a separate and ninth affirmative defense DISTRICT alleges that any award of
7 attorney fees to VOICE is to be reasonable, including pro-rated or otherwise adjusted to reflect the
8 degree of any prevailing or not prevailing upon the scope of relevant issues and documents.

9 **TENTH AFFIRMATIVE DEFENSE**

10 83. As a separate and tenth affirmative defense DISTRICT alleges that the issue in this
11 litigation involves solely what is to be disclosed pursuant to VOICE's two specific requests for
12 public records, and all other aspects and allegations are immaterial and irrelevant to that
13 determination.

14 **ADDITIONAL DEFENSES**

15 84. DISTRICT alleges that it cannot fully anticipated all affirmative defenses that may
16 be available to it with respect to the Petition and each cause of action therein, therefore DISTRICT
17 reserves the right to amend this answer and to assert additional affirmative defenses, as they
18 become known.

19 **PRAYER**

20 WHEREFORE, DISTRICT prays for an order of this court that:

- 21 1. DISTRICT did not violate its duties under the CPRA.
- 22 2. Each and all claims and causes of action alleged within the Petition and Complaint
23 be denied and/or that VOICE take nothing by way of its Petition and Complaint.
- 24 3. The Petition be denied and dismissed with prejudice.
- 25 4. The Complaint be denied and dismissed with prejudice.
- 26 5. Judgement be entered in DISTRICT's favor.
- 27 6. DISTRICT be awarded attorneys' fees and such other and further relief as this
28 Court may deem proper.

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

7. If any attorneys' fees are awarded to VOICE, that they be prorated, reasonable and based solely upon costs and fees directly incurred within this Petition and based upon fees which were not generated due to immaterial and irrelevant pleadings and/or actions.

Respectfully submitted,

Dated: April 11, 2019

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: 
Clifford D. Weiler
Attorneys for Respondent
CORONADO UNIFIED SCHOOL DISTRICT

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

(CODE CIV. PROC. § 1013A(3))

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 4275 Executive Square, Suite 700, La Jolla, California 92037-1477.

On April 11, 2019, I served the following document(s) described as: **ANSWER OF RESPONDENT CORONADO UNIFIED SCHOOL DISTRICT TO VERIFIED PETITION FOR WRIT OF MANDATE TO COMPEL COMPLIANCE WITH THE PUBLIC RECORDS ACT, COMPLAINT FOR DECLARATORY RELIEF AND PRELIMINARY AND PERMANENT INJUNCTION** on the interested parties in this action as follows:

Felix Tinkov
Law Office of Felix Tinkov
225 Broadway, Suite 1900
San Diego, CA 92101
Tel: (619) 832-1761
Email: felix@tinkovlaw.com

Attorney for Petitioner
VOICE OF SAN DIEGO

BY ELECTRONIC SERVICE VIA ONE LEGAL: Complying with California Rule of Court 2.251 and Code of Civil Procedure § 1010.6, I caused a true and correct copy of the document(s) to be served through One Legal at www.onelegal.com addressed to the parties shown herein appearing on the above-entitled case. The service transmission was reported as complete and a copy of One Legal's Receipt/Confirmation Page will be maintained with the original document in this office.

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

Executed on April 11, 2019, at La Jolla, California.



Jodi L. Thomas