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9 RULE PUBLISHING, INC., a California
10 corporation, dba Camarillo Acorn, erroneously
11 named as Camarillo Acorn

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF VENTURA

14 JANE ROZANSKI, an individual

15 Petitioner,

16 vs.

17 CAMARILLO HEALTH CARE DISTRICT, a
18 California Special Health Care District,

19 Respondent,

20 CAMARILLO ACORN,

21 Real Party In Interest.

22 **Case No.: 56-2016-00489673-CU-WM-VTA**
23 Related Case:
24 No. 56-2016-0048760-CU-MC-VTA
25 Complaint Filed: December 2, 2016
26 Assigned Judge: Hon. Rocky Baio, Dept. 20

27 **OPPOSITION OF REAL PARTY IN
28 INTEREST, CAMARILLO ACORN TO
APPLICATION FOR PRELIMINARY
INJUNCTION**

*[Declaration Of Daniel Wolowicz Filed
Concurrently Herewith]*

Date: December 19, 2016
Time: 1:30 p.m.
Dept: 20

29 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

30 Real Party in Interest, Golden Rule Publishing, Inc., doing business as Camarillo Acorn
31 hereby submits its opposition to the Application for an Order to Show Cause re Issuance of
32 Preliminary Injunction Petition filed by Plaintiff-Petitioner Jane Rozanski. Real Party in Interest is
33 timely serving this opposition and affidavits on all parties at least two days prior to the hearing, as
34 required by Code of Civil Procedure, section 527(e). Additionally, Real Party in Interest joins in the
35 Opposition to the Application filed by Defendant-Respondent Camarillo Health Care District.

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION**
3 **TO JANE ROZANSKI'S APPLICATION FOR PRELIMINARY INJUNCTION**

4 **I. SUMMARY OF ARGUMENT**

5 This Opposition to the Petition for a Preliminary Injunction of Jane Rozanski ("ROZANSKI")
6 is respectfully brought by the Real Party in Interest, the CAMARILLO ACORN, which publishes
7 newspapers throughout Camarillo and is authorized to do business and is doing business in the
8 County of Ventura. At all times relevant to the Petition, the CAMARILLO ACORN has been
9 engaged in the business of gathering and disseminating information to the public, including
10 information about the performance and functioning of public agencies throughout the County, such as
11 Ventura County public agencies and various city agencies, through publication of the CAMARILLO
12 ACORN and its sister dbas, the Thousand Oaks Acorn, the Simi Valley Acorn, and the Moorpark
13 Acorn, newspapers of general circulation distributed throughout the County of Ventura.

14 This Court should deny ROZANSKI's application for a preliminary injunction preventing
15 disclosure of voicemails maintained by Defendant-Respondent Camarillo Health Care District
16 ("DISTRICT"). The voicemails are the subject of the CAMARILLO ACORN's California Public
17 Records Act ("CPRA") to the DISTRICT. The public interest in disclosure of the voicemails
18 outweighs ROZANSKI's privacy interest, and thus, the California Constitution mandates the
19 newspaper's access to "information concerning the conduct of the people's business." Cal. Const.,
20 Art. I, § 3(b)(1).

21 In her Petition for a Preliminary Injunction, ROZANSKI has failed to satisfy the requisite
22 burden. She has not shown a probability of prevailing on her underlying Complaint/Writ of Mandate,
23 not only because the balance of hardships tips against shielding the information from disclosure and
24 in favor of its release to the newspaper and general public, but also because procedurally, this Court
25 has no power to grant the Writ of Mandate that ROZANSKI seeks. This is because mandamus is
26 limited to compelling action by an agency where the agency has a ministerial duty to perform the
27 action, and cannot be used to require action by an agency where the agency has discretion to perform
28 or not perform the action, as is the case here.

1 **II. SUMMARY OF PROCEDURAL FACTS**

2 On October 7, 2016, the DISTRICT filed a Complaint captioned as *Camarillo Health Care*
3 *District vs. Rozanski*, Ventura County Superior Court Case No. 56-2016-0048760-CU-MC-VTA. In
4 that case (which has been deemed related to this action), the DISTRICT seeks monetary damages for
5 ROZANSKI's fraud and breach of fiduciary duty, *inter alia*, citing the same voicemails that are the
6 subject of the CAMARILLO ACORN'S CPRA request as evidence of ROZANSKI's alleged
7 wrongful conduct. Exh. "A" to the DISTRICT's Opposition to ROZANSKI's application for a
8 TRO/Preliminary Injunction, p. 1, *ll.* 9-14.

9 On November 11 and 21, 2016, the CAMARILLO ACORN asked the DISTRICT to disclose
10 the voicemails pursuant to the CPRA. Declaration of Daniel Wolowicz ("Wolowicz Decl."), ¶¶ 2-4,
11 6, Exhs. A, B and C. The DISTRICT responded that it intended to comply with the CPRA request,
12 absent this Court's order precluding such compliance. Wolowicz Decl., ¶ 8, Exh. "D."

13 On December 2, 2016, ROZANSKI filed her Ex Parte Application re issuance of a Temporary
14 Restraining Order and Preliminary Injunction, and a corollary Verified Complaint / Petition for Writ
15 of Mandate in this court, naming the Camarillo Health Care District as a Defendant/Respondent and
16 the Camarillo Acorn (a dba of Golden Rule Publishing, Inc.) as a "Real Party Interest."

17 On December 5, 2016, the Court granted ROZANSKI's Temporary Restraining Order and set
18 a hearing date of December 19, 2016 on the Order to Show Cause re issuance of a Preliminary
19 Injunction.

20 On December 9, 2016, the CAMARILLO ACORN published an editorial detailing the public
21 interest in the voicemails and responding to ROZANSKI's claim that any interest in the voicemails
22 was "purely prurient." Wolowicz Decl., ¶ 9, Exh. "E."

23 On December 9, 2016, the CAMARILLO ACORN retained counsel.

24 **III. ARGUMENT**

25 This Court should summarily reject ROZANSKI's attempt to use judicial process to prevent
26 DISTRICT from following through on its stated desire to comply with a legitimate request for such
27 voicemails made pursuant to the California Public Records Act, Government Code, § 6250, et seq.
28 ("CPRA") by Real Party in Interest, the CAMARILLO ACORN, a Camarillo newspaper, as follows.

1 **A. The Voicemails At Issue Are Public Records.**

2 The CAMARILLO ACORN's CPRA request seeks voicemails left on ROZANSKI's district-
3 issued cellphone by Ralph Ferguson, the attorney for the public agency that formerly employed
4 ROZANSKI. The DISTRICT issued the cellphone to ROZANSKI for the express and limited purpose
5 of conducting agency business, and voicemails were expressly limited to the DISTRICT's business.
6 DISTRICT's Opposition, Exh. "A" to Declaration of Kara Ralston ("Ralston Decl."), ¶ 2 ("[C]ellular
7 phones are the property of the District ... Voicemail [is] intended for business purposes only"). The
8 voicemails relate to a public official's conduct, including but not limited to discussions regarding an
9 investigation into attorney fees paid to Mr. Ferguson by the DISTRICT under ROZANSKI's tenure.

10 Accordingly, the voicemails responsive to the CAMARILLO ACORN's CPRA request relate
11 generally to the conduct of the public's business and specifically to an investigation of misuse of
12 public funds and abuse of public trust. The voicemails are, therefore, deemed to be public records
13 pursuant to Government Code, section 6252(e). The voicemails are not exempt from disclosure under
14 any provision of the CPRA, or any other relevant statute.

15 **B. The Case ROZANSKI Relies Upon for Her "Reverse-CPRA Action" Is Authority**
16 **For This Court's Denial of The Preliminary Injunction.**

17 ROZANSKI expressly relies on *Marken v. Santa Monica-Malibu Unified School Dist.* (2012)
18 202 Cal.App.4th 1250, as the model for her reverse-CPRA action. Verified Complaint, p. 3, *ll.* 3-6.
19 *Marken*, however, unambiguously supports the CAMARILLO ACORN's position that this Court
20 should deny the request for a preliminary injunction. In *Marken*, a teacher, who had been placed on
21 administrative leave during a sexual harassment investigation and then returned to his classroom
22 following a reprimand, filed a complaint for injunctive relief and a petition for mandamus to prevent
23 the school district's release of the investigation report in response to a public records request by a
24 parent. *Id.*, 1265.

25 Like ROZANSKI, the teacher applied for a TRO followed by a preliminary injunction in order
26 to prevent the school from complying with a parent's CPRA request. The teacher claimed that his
27 privacy interest in information related to the school's investigation into the teacher's conduct
28 precluded the school's compliance with a CPRA request. The trial court initially granted the TRO but

1 denied the preliminary injunction. After appeal, the court in *Marken* agreed with the trial court that
2 the employee's privacy interest in the information was substantially outweighed by the legitimate
3 public interest therein. *Id.*, 1274-1276 (recognizing a "reverse-CPRA" procedure but affirming the
4 trial judge's denial of the teacher's request for a preliminary injunction).

5 Here, similarly, this Court will be affirmed should it deny the preliminary injunction and find
6 that the information sought by the CAMARILLO ACORN's CPRA request. The request represents a
7 legitimate public interest in the information that outweighs ROZANSKI's privacy interest. The
8 interest includes *inter alia*, the public's desire for transparency in government and for accountability
9 of public officials for actions they purportedly take on the public's behalf, as well as concern over
10 alleged misuse of public funds and abuse of the public trust, and the impact such misuse and abuse
11 could have on elderly and sick members of the Camarillo community. Wolowicz Decl., ¶¶ 6, 7, and 9,
12 Exh. "C" and "E."

13 Moreover, in *Marken*, unlike here, the court was required to analyze disclosure in light of a
14 statutory exemption based on the personnel record exemption. Govt. Code 6254(c). In light of the
15 school's findings, however, that the teacher violated board policy prohibiting harassment, the trial
16 judge, in denying the injunction request, properly found that the exemption was inapplicable and
17 disclosure was required. *Marken, supra*, 202 Cal.App.4th at 1276. Here, no statutory exemption to the
18 CPRA is at issue. Rather, as stated *supra*, the voicemails were maintained on a cell phone issued by
19 the district, and was subject to an express written policy limiting voicemails to "business purposes
20 only." Ralston Decl., ¶ 2. Accordingly, the facts in this case are even more compelling than those
21 found in *Marken* to require this Court's denial of ROZANSKI's request for a preliminary injunction.

22 **C. The California Public Records Act Serves An Important Policy By Providing the**
23 **Public with Access to Government.**

24 California, like virtually every other state and the federal government, has a public records act
25 that mandates the immediate disclosure, upon request of any member of the public, of records
26 reflecting the functioning of state and local agencies. Gov't Code § 6250, et seq. The California Public
27 Records Act ("CPRA") reflects a fundamental public policy in California to facilitate the public's
28 strong interest in overseeing the actions of public officials. The press regularly uses public records to

1 obtain information about government agencies. In California, the press obtains the public records
2 necessary to report on these agencies pursuant to the provisions of the CPRA.

3 Even where a statutory exemption to the CPRA applies (here, none do), such exemptions must
4 be narrowly construed. *Marken, supra*, 202 Cal.App.4th at 1262. “[M]aximum disclosure of the
5 conduct of governmental operations [is] to be promoted by the act.” *CBS v. Block* (1986) 42 Cal.3d
6 646, 651-52.

7 Significantly, the People of California have elevated the right to open government to one
8 protected by their State Constitution. Cal. Const., Art. I, § 3(b)(1) (“The people have the right of
9 access to information concerning the conduct of the people’s business, and, therefore, the ... writings
10 of public officials and agencies shall be open to public scrutiny”). The corollary California Public
11 Records Act provides the public with the means to access such information. Gov’t. Code § 6250 (“In
12 enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares
13 that access to information concerning the conduct of the people’s business is a fundamental and
14 necessary right of every person in this state”).

15 Accordingly, granting the preliminary injunction and precluding the DISTRICT from
16 complying with the CAMARILLO ACORN’s CPRA request would impermissibly limit the public’s
17 constitutional right to access communications concerning the conduct of the people’s business. The
18 preliminary injunction should be denied.

19 **D. ROZANSKI Cannot Show The Requisite Probability of Prevailing.**

20 ROZANSKI cannot meet the requisite burden for grant of a preliminary injunction. First, the
21 balance of hardships tips against shielding the voicemails from disclosure and in favor of their release
22 to the CAMARILLO ACORN. Second, ROZANSKI has not shown that she is likely to prevail in her
23 underlying Petition for Writ of Mandate. *Marken, supra*, 202 Cal.App.4th at 1260.

24 As shown above, based on the strong public interest in disclosure, ROZANSKI has failed to
25 show that the balance of harms tilts in her favor. Nor has she cited a statutory exemption to the CPRA
26 that precludes disclosure. She has attempted, but has not succeeded in arguing that the voicemails are
27 privileged. ROZANSKI, in her pleadings seeking to block disclosure of the voicemails, curiously
28 states that the voicemails are within the attorney-client privilege, but fails to explain (let alone offer

1 admissible evidence) how it could be that ROZANSKI was a client of Ralph Ferguson during the
2 relevant time, when Ferguson was retained by the DISTRICT to represent the DISTRICT's interests.
3 At any rate, the DISTRICT has stated that the voicemails are not privileged, and that the DISTRICT
4 intends to disclose the voicemails to the CAMARILLO ACORN, absent a court order precluding such
5 disclosure. Wolowicz Decl., ¶ 8, Exh. "D."

6 The burden of showing a probability of prevailing is insurmountable for ROZANSKI -- not
7 only because she cannot show an objectively reasonable privacy interest in the communications she
8 seeks to conceal, but also because a writ of mandate must be directed at an agency's ministerial
9 obligations. ROZANSKI cannot use the procedural device of a writ of mandate to compel the
10 DISTRICT to exercise its discretionary power in a particular manner; i.e., to refuse to comply with a
11 legitimate CPRA request. *California Public Records Research, Inc. v. County of Yolo* (2016) 4
12 Cal.App.5th 150, 177. A writ of mandate "may be issued by any court ... to compel the performance
13 of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station ..."
14 Code Civ. Proc., § 1085(a). The petitioner, however, must demonstrate the public official or entity
15 had a ministerial duty to perform, and the petitioner had a clear and beneficial right to performance.
16 *AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th
17 693, 700. A ministerial act is an act that a public officer is required to perform in a prescribed manner
18 in obedience to the mandate of legal authority and without regard to his or her own judgment or
19 opinion concerning such act's propriety or impropriety, when a given state of facts exists. Discretion
20 is the power conferred on public functionaries to act officially according to the dictates of their own
21 judgment. *Id.*, p. 700–701.

22 Absent a statutory exemption, disclosure pursuant to the CPRA is a discretionary agency
23 decision. *Marken, supra*, 202 Cal.App.4th at 1270. "Mandamus will not lie to control an exercise of
24 discretion, i.e., to compel an official to exercise in a particular manner." *Id.*, 1266. As stated above,
25 no statutory exemption to the CPRA applies in the facts presented here. Accordingly, ROZANSKI
26 cannot prevail on her underlying Complaint/Writ of Mandate because the DISTRICT's decision to
27 comply with the CPRA request is discretionary, not mandatory.

1 Finally, on equitable grounds, ROZANSKI is estopped from seeking the Court's assistance in
2 blocking the CAMARILLO ACORN's CPRA request. ROZANSKI petition represents a misguided
3 hail-Mary attempt to obscure improper (if not criminal) conduct in which she may have engaged
4 while serving as a salaried chief executive officer of a public agency. Bringing sunlight to such
5 conduct is at the very heart of the legislative intent underlying the CPRA. Thus, this Court should
6 deny ROZANSKI's petition for a preliminary injunction.

7 **IV. BOND REQUIREMENT**

8 The CAMARILLO ACORN's interest in the voicemails includes *inter alia*, the public's desire
9 for transparency in government and for accountability of public officials for actions they purportedly
10 take on the public's behalf, as well as concern over alleged misuse of public funds and abuse of the
11 public trust, and the impact such misuse and abuse could have on elderly and sick members of the
12 Camarillo community. Wolowicz Decl., ¶¶ 6, 7, and 9, Exh. "C" and "E."

13 If, notwithstanding the above, should this Court grant the preliminary injunction, based on the
14 strong public interest in disclosure of the voicemails, the CAMARILLO ACORN asks that an
15 undertaking be ordered in the amount of \$1,000,000. Code Civ. Proc. § 529. "Whenever an
16 application for a preliminary injunction is granted, a proposed order must be presented to the judge
17 for signature, with an undertaking in the amount ordered, within one court day after the granting of
18 the application or within the time ordered. Unless otherwise ordered, any restraining order previously
19 granted remains in effect during the time allowed for presentation for signature of the order of
20 injunction and undertaking. If the proposed order and the undertaking required are not presented
21 within the time allowed, the TRO may be vacated without notice." Rule of Court, Rule 3.1150(f).

22 **V. CONCLUSION**

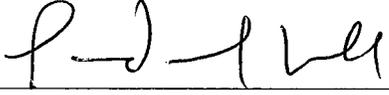
23 ROZANSKI, by filing her Petition for Preliminary Injunction and for Writ of Mandate, has
24 impaired CAMARILLO ACORN's ability to gain information necessary to report on the activities of
25 the DISTRICT, in violation of CAMARILLO ACORN's right pursuant to the California Constitution,
26 Article I, Section 3, and the California Public Records Act.

27 For this and all of the reasons presented in this Opposition, the pleadings on file, and other
28 documents and arguments to be presented at the hearing on this matter, this Court should deny the

1 preliminary injunction, and permit DISTRICT to disclose the communications to the CAMARILLO
2 ACORN.

3 DATED: December 16, 2016

BENTON, ORR, DUVAL & BUCKINGHAM

4
5 By 

6 Panda Kroll, Esq., Attorneys for Interested Party,
7 GOLDEN RULE PUBLISHING, INC., a California
8 corporation, dba Camarillo Acorn
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PROOF OF SERVICE
Rozanski v. Camarillo Health Care District
Ventura Superior Court - Case No.: 56-2016-00489673-CU-WM-VTA

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. My business address is 39 N. California Street, Ventura, CA 93001.

On December 16, 2016, I served the foregoing document(s) described as: **OPPOSITION OF REAL PARTY IN INTEREST TO APPLICATION FOR PRELIMINARY INJUNCTION** on the interested parties in this action by placing ___ an original a copy thereof addressed as follows:

Attorney for Plaintiff/Petitioner, Jane Rozanski

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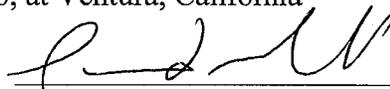
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(BY E-MAIL) I delivered a copy by e-mail to the above addresses pursuant to the Court's December 8, 2016 order.

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

Executed on December 16, 2016, at Ventura, California



Panda Kroll