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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

JANE ROZANSKI

Plaintiff/Petitioner,

v.

CAMARILLO HEALTH CARE DISTRICT, a California Special District,

Defendant/Respondent.

GOLDEN RULE PUBLISHING, INC., a California Corporation, dba CAMARILLO ACORN,

Real Party in Interest.

Case No. 56-2016-00489673-CU-WA-VTA
Hon. Rocky J. Baio, Dept. 20
Action Filed: December 2, 2016

PETITIONER'S OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE

Hearing:
Date: March 16, 2017
Time: 10:00 a.m.
Department: 20

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I. PRELIMINARY STATEMENT

Plaintiff/Petitioner Jane Rozanski ("Petitioner") filed this case as a "Reverse-CPRA" action, seeking a writ of mandate to prevent the unlawful release to the press of Petitioner's personal and private communications with attorney Ralph Ferguson ("Ferguson") by Respondent Camarillo Health Care District ("Respondent") pursuant to requests made under the California Public Records Act ("CPRA"), Cal. Gov. Code § 6250, *et seq.* The Court has already issued a TRO and preliminary injunction to protect Petitioner's rights while this matter is fully briefed and heard. The matter is now ready for resolution by the Court on the merits.

At issue are (1) private and personal voicemails inadvertently left on a cellular phone which Petitioner returned to Respondent upon retiring in 2015 from her position as Respondent's CEO, and (2) hundreds of email communications between Petitioner and attorney Ferguson sent between January 1, 2011 and July 1, 2015. Respondent intends to release all of these private communications to Real Party in Interest Golden Rule Publishing, Inc., dba Camarillo Acorn ("Requestor") if the Court does not issue a writ of mandate prohibiting their release.

The analysis to be applied by the Court on the Petition is straightforward, and at each step supports the issuance of the writ.

First, California law authorizes a "Reverse-CPRA" action precisely of the type brought by Petitioner to prevent the improper disclosure of records by a public entity. The argument made by Requestor that a writ of mandate is unavailable because the act of responding to a CPRA request is a *discretionary* rather than *mandatory* act blatantly misstates express California law to the contrary.

Second, on the merits, the Court must determine as a threshold matter if the communications at issue are actually "public records" within the meaning of the CPRA, and therefore subject to potential disclosure. California Government Code § 6252 specifically defines "public records" as writings "containing information *relating to the conduct of the public's business* prepared, owned, used or retained by any state or local agency . . ." (emphasis added). Thus, the fact that a record exists and is held by a public agency does not automatically render it a "public record" for purposes of the CPRA. California courts have further clarified that 1) a public record "is one made by a public officer in pursuance of a duty, the objective purpose of which is to disseminate information

to the public, or to serve as a memorial of official transactions for public reference," and 2) as a necessary corollary, purely personal communications unrelated to the conduct of the public's business do not constitute public records for purposes of the CPRA. Thus, because the content of the communications in question does not relate to the public's business, they are not "public records" subject to disclosure under the CPRA.

Third, for those records, if any, which are determined under the above test to qualify generally as public records, there is an additional step in the analysis before disclosure can be permitted. The CPRA specifically exempts from disclosure certain records, "the disclosure of which would constitute an unwarranted invasion of personal privacy," (Cal. Gov't Code § 6254(c)) or where "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." Cal. Gov't Code § 6255. Thus, for each communication which purportedly qualifies as a public record, the Court must then further determine whether the potential harm to privacy interests from disclosure outweighs the public interest in disclosure. This is not a determination to be made based on broad and logically fuzzy claims that Petitioner made her alleged romantic relationship with Ferguson "the public's business" by supposedly engaging in "corruption," or bromides about the public's general right to know about the conduct of government. Here, as will be seen, public disclosure of the private content in the communications, in the community where Petitioner has lived her entire adult life and developed her stellar reputation, will cause permanent damage that outweighs any claimed public interest in disclosure.

Fourth, voicemail and email messages containing attorney-client communications, between Petitioner and attorney Ferguson, are exempted from disclosure under the CPRA. Although Respondent has claimed ownership of the privilege and asserted its right to waive it, it has not done so for obvious reasons – a waiver of that privilege will have ramifications for Respondent's claims against Petitioner in its separate litigation against her.

Finally, it is important to keep in mind what is *not* the test for disclosure on the present Petition: whether the communications would potentially be *relevant* to Respondent's lawsuit — that is, whether they show an alleged conspiracy or alleged improper relationship — is not the test

for whether they can be disclosed under a CPRA request. If a communication does not relate to the conduct of public business it is not a public record within the meaning of the CPRA even if it could be relevant to Respondent's case against Petitioner. Similarly, general arguments about the "public interest in disclosure" are misplaced because the CPRA, the exact vehicle provided by the Legislature for this public disclosure, makes clear the public is *not* entitled to the personal, private communications of public employees. Petitioner did not surrender her right of privacy, recognized by the California and United States Constitutions, when she agreed to public service. What the CPRA recognizes is the public's right to know about the *public's* business, and even then subjects that right to a balancing of privacy and public access interests. Petitioner therefore respectfully requests her Petition be granted, and the Court issue a writ of mandate preventing the disclosure of her private communications to the public.

II. FACTUAL BACKGROUND

A. The Parties

Respondent is an independent special district and public agency with a mandate to provide community-based healthcare services. *See* Declaration of Jane Rozanski, dated January 13, 2017 ("Rozanski Decl.") at ¶ 2. Respondent provides a range of health, wellness, and safety services to residents of Camarillo, primarily through education and wellness programs. *Id.*

Petitioner has lived in Camarillo, California with her husband for almost 50 years, since 1967. *Id.* at ¶ 3. Petitioner served as the CEO of Respondent from 1993 to 2015 with great success. During her 22 years on the job, Respondent's client base expanded substantially, growing from 250 per year in 1993 to more than 35,000 in 2015. *Id.*

Petitioner has made a career of public service, and is a prominent member of the Ventura County community. She was appointed by Governor Jerry Brown to the California Commission on Aging in 2013 and was elected to serve on its Executive Committee. *Id.* at ¶ 4. She has served as an Institutional Advancement Officer for the Ventura County Community College District, Executive Director of Camarillo Hospice, and Co-Owner of the Unlimited Learning Center. *Id.* She has served on the ALPHA Fund Council and in numerous roles within the Association of California Healthcare Districts (including on the Board of Directors) and the California Special

Districts Association. *Id.* She has also served as a Member of the Ventura County United Way Board, President of the Camarillo Branch of the AAUW, Treasurer of the Ventura County Taxpayer's Association, Board Member of the Boys and Girls Club of Camarillo, member of the Ventura County Chapter of the American Red Cross, President of the Ventura County Chapter of the National Charity League, and President of the Ventura County Medical Resource Foundation Board. *Id.*

Petitioner has received a number of accolades for her work. She has been recognized as Woman of the Year by the California Legislature, Ventura County Special District General Manager of the Year, California Special Districts General Manager of the Year, Healthcare Professional of the Year from the Ventura County Medical Resource Foundation, Woman of Distinction from the Girl Scouts of Tres Condados, the Camarillo Chamber of Commerce Woman of the Year, Top 50 Women in Business by the Pacific Coast Business Times, and recipient of the Ventura county Long Term Care Ombudsman's Omni Award. *Id.* at ¶ 5. In June of 2015, Petitioner was recognized by the United States Congress, when Congresswoman Julia Brownley, of the 26th District of California, spoke of her as a "remarkable visionary and dedicated leader to the aging population of Ventura County...." *Id.* Petitioner retired from her position with Respondent in 2015. At the time, Respondent's President of the Board Rodger Brown stated, "Jane's leadership and service to the community during her tenure at the Camarillo Health Care District has been remarkable." *Id.* at ¶ 6.[1]

B. Petitioner's Use Of Electronic Devices Provided By Respondent

Petitioner was issued electronic devices to facilitate her role as Respondent's CEO. *Id.* at ¶ 8. This included a cellular phone and laptop computer. *Id.* The Employment Agreement between Petitioner and Respondent, a copy of which is attached as Exhibit A to the Complaint filed by Respondent against Petitioner, itself attached as Exhibit 2 to the Appendix of Exhibits in Support of

[1] Since her retirement, Petitioner has continued to serve her community as a member of the Rotary Club of Camarillo (Past President), by working on Assembly member Jacquie Irwin's Older Adult Population Advisory Committee, the Somis Union School District's Measure S Oversight Committee, and as an Advisory Committee Member and Founder of the Ventura County Leadership Committee, among other things. *Id.* at ¶ 7.

Petitioner's Opening Brief ("Appendix"), provides no guidance for the use of electronic devices. Respondent's Employee Handbook, relevant portions of which are attached as Exhibit A to the Declaration of Kara Ralston, itself attached as Exhibit 3 to the Appendix, provides that such items remain the property of Respondent, and that Respondent "reserves the right to inspect the contents of all District property...." Exhibit 3 to the Appendix. At no point did the parties agree that the data contained on the cellular phone, laptop, or any other electronic device would be considered or treated as public records, or that such data would be turned over to the press or the public. *See* Rozanski Decl. at ¶ 10.

Petitioner used her cellular phone for both personal and work correspondence. *Id.* at ¶ 11. She routinely received from, and made phone calls to, her family members and close friends, as well as business associates and coworkers. *Id.* Such uses were common among employees of Respondent. *Id.* Petitioner also used her laptop and cellular phone to send and receive email communications, including with coworkers, business associates, family members, and close friends. *See* Supplemental Declaration of Jane Rozanski ("Rozanski Supplemental Decl."), filed concurrently herewith, at ¶ 2.

Petitioner never intended for any of her emails or voicemails to be read or received by anyone other than herself and the senders or intended recipients. *See* Rozanski Decl. at ¶ 12; *see also* Rozanski Supplemental Decl. at ¶ 3. At no time did Respondent inform Petitioner that any correspondence on her communication devices would be disclosed to a newspaper or to the public at large. *See* Rozanski Decl. at ¶ 12; *see also* Rozanski Supplemental Decl. at ¶ 3.

C. Respondent's Review of Personal Communications on Petitioner's Cellular Phone and Laptop

After Petitioner retired as CEO and returned the cellular phone and laptop to Respondent, Respondent examined Petitioner's communications. *Id.* at ¶ 13; *see also* Exhibit 2 to Appendix; *see also* Rozanski Supplemental Decl. at ¶ 4. Respondent discovered private voicemails remaining on her cellular phone from attorney Ferguson. *See* Rozanski Decl. at ¶ 13; *see also* Exhibit 2 to Appendix at ¶ 22. Petitioner was not aware that the voicemails remained on the cellular phone, or that they could be accessed by Respondent. *See* Rozanski Decl. at ¶ 13. Petitioner did not intend to

preserve the voicemails on the cellular phone, to turn them over to Respondent, or to have anyone listen to the voicemails other than her. *Id.* Respondent also accessed Petitioner's private email communications on her laptop. *See* Rozanski Supplemental Decl. at ¶ 4. Petitioner was not aware that the emails remained on her laptop or that they could be accessed by Respondent. *Id.* Petitioner did not intend to preserve the emails on her laptop, to turn them over to Respondent, or to have anyone review the emails other than her. *Id.*

The presence of the communications on the cellular phone and laptop at the time they were turned over to Respondent was inadvertent and accidental. *See* Rozanski Decl. at ¶ 14; Rozanski Supplemental Decl. at ¶ 5. Petitioner never intended the voicemails or emails to be shared with Respondent, much less Requestor or any other entity or person. *See* Rozanski Decl. at ¶ 14; Rozanski Supplemental Decl. at ¶ 5. Petitioner had a realistic expectation that her communications, including her emails and voicemails, would be kept private and confidential. *See* Rozanski Decl. at ¶ 14; Rozanski Supplemental Decl. at ¶ 5.

The voicemails were left only for Petitioner, and the emails were intended only for Petitioner or Ferguson. *See* Rozanski Decl. at ¶ 15; Rozanski Supplemental Decl. at ¶ 6. They were meant solely for her receipt, and did not seek to relay any information to anyone other than Petitioner. *See* Rozanski Decl. at ¶ 15; Rozanski Supplemental Decl. at ¶ 6. The voicemails and emails were not intended to be heard by any third party, and neither Petitioner nor Ferguson ever contemplated that the voicemails and emails would be heard or reviewed by anyone other than Petitioner. *See* Rozanski Decl. at ¶ 15; Rozanski Supplemental Decl. at ¶ 6.

Attached as Exhibit 1 to the Appendix is a transcription of each of the voicemail messages that Respondent otherwise intends to produce pursuant to Requestor's CPRA Request. *See* Declaration of Andrew M. Gilford in Support of Petitioner's Opening Brief, dated January 13, 2017 ("Gilford Decl."), ¶ 2. Exhibit 21 to the Supplemental Appendix of Exhibits in Support of Petitioner's Opening Brief ("Supplemental Appendix") contains each email communication Respondent intends to produce to which Petitioner objects.[2] *See* Supplemental Declaration of

[2] Petitioner objects to the production of only a limited subset of the emails identified by Respondent

Andrew M. Gilford in Support of Petitioner's Opening Brief ("Gilford Supplemental Decl.") at ¶ 3. Exhibits 1 and 21 have been lodged conditionally under seal.

D. Respondent's Lawsuit Against Rozanski And The Ensuing CPRA Requests

Ferguson's billing practices were under review by Respondent at the time Petitioner retired from her position as CEO, and Respondent is presently litigating that claim against Ferguson. *Id.* at ¶ 16; *see also* Exhibit 2 to Appendix at ¶¶ 18-21.

On October 7, 2016, Respondent filed a Complaint in Ventura County Superior Court against Petitioner (the "District Complaint"), alleging that the voicemails and emails evidence a personal, intimate relationship between Petitioner and Ferguson, and that because of that relationship Petitioner and Ferguson conspired together to charge excessive legal fees to Respondent, to the benefit of Ferguson. A copy of the District Complaint is attached as Exhibit 2 to the Appendix. These allegations are absolutely false. *See* Rozanski Decl. at ¶ 17.

The District Complaint was picked up by local media, including Requestor. Requestor published articles on the allegations made by the District, and on November 11, 2016, and again on November 15, 2016, Requestor submitted a CPRA Request to Respondent for the voicemails. *See* Exhibit 4 to the Appendix. Rather than protecting the privacy of its former CEO, Respondent agreed to disclose *all* of the voicemails absent a ruling by this Court preventing the disclosure. *Id.*

On December 22, 2016, Requestor made another CPRA Request to Respondent for all email communications between Petitioner and Ferguson sent between January 1, 2011 and July 1, 2015. *See* Exhibit 22 to Supplemental Appendix. Respondent has also stated that it will release the emails to Requestor absent a writ from this Court preventing such a release. *See* Gilford Supplemental Decl. at ¶ 2. The Parties have agreed that this Court should evaluate the two CPRA Requests together, given the identical issues raised by the two requests. *Id.* at ¶ 5.

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as those Respondent intends to produce in response to the CPRA Request made by Requestor. *See* Supplemental Gilford Decl. at ¶ 2. Petitioner notified Respondent of this fact, and identified those emails to which Petitioner does not object. *Id.* Exhibit 21 to the Supplemental Appendix contains only those emails to which Petitioner objects. *Id.* at ¶ 3.

Petitioner did not consent to the CPRA Requests, and therefore filed a Verified Complaint and Petition for Writ of Mandate, along with an *ex parte* application for a Temporary Restraining Order, on December 2, 2016. *See* Gilford Decl. at ¶ 6.[3] On December 5, 2016, the Court issued a Temporary Restraining Order prohibiting the release of the voicemails. *See* Order to Show Cause and Temporary Restraining Order re Preliminary Injunction, dated December 5, 2016. On December 19, 2016, the Court issued a Preliminary Injunction and set a hearing on the Petition for February 10, 2016. *See* Order Issuing Preliminary Injunction and Establishing Briefing and Hearing Schedule, dated December 30, 2016. In response to the additional CPRA Request seeking the email communication, Petitioner served an Amended Verified Complaint and Petition for Writ of Mandate on February 6, 2017. *See* Gilford Supplemental Decl. at ¶ 6.

III. THIS MATTER IS PROPERLY RESOLVED ON A WRIT PETITION

A. Under California Law Mandamus Is The Proper Procedure For A "Reverse-CPRA" Action

The proper procedure for challenging the disclosure of records by a public agency under the CPRA – a "reverse-CPRA action" – is a writ petition in the Superior Court. This procedure was laid out in *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250 (2012). *Marken* held that "mandamus should be available to prevent a public agency from acting in an unlawful manner by releasing information the disclosure of which is prohibited by law.... A petition for writ of mandate is the appropriate procedure to present the issue to the court." *Marken*, 202 Cal. App. 4th at 1266-67. Other California cases have similarly permitted interested parties to contest an agency's improper disclosure of records. *See Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal. 4th 59 (2014) (police officers initiated action and requested injunctive relief preventing disclosure, disclosure permitted on the merits); *see also Los Angeles Unified Sch. Dist. v. Superior Court*, 228 Cal. App. 4th 222 (2014), *review denied* (Nov. 12, 2014) (teacher's writ petition to Court of Appeal permitted after trial court ordered production by LAUSD to LA Times);

[3] Ferguson has also refused to consent to the disclosure of the voicemails, including in an email to the District dated November 30, 2016, on privacy and on attorney-client privilege grounds. *See* Exhibit 5 to the Appendix.

see also Pasadena Police Officers Ass'n v. Superior Court, 240 Cal. App. 4th 268 (2015) ("reverse-CPRA" action, records disclosed subject to redactions).

Marken brought California in line with cases interpreting the federal Freedom of Information Act ("FOIA"), which have long held that "reverse-FOIA" cases are permitted. *See, e.g., Chrysler Corp. v. Brown*, 441 U.S. 281, 285 (1979); *Gulf Oil Corp. v. Brock*, 778 F.2d 834, 835 (D.C. Cir. 1985); *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1133 (D.C. Cir. 1987); *Campaign for Family Farms v. Glickman*, 200 F.3d 1180, 1182 (8th Cir. 2000); *John Doe #1 v. Veneman*, 380 F.3d 807, 810 (5th Cir. 2004). Reverse-FOIA cases fall under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* (*Chrysler*, 441 U.S. at 288-89), which specifically states that "writs of prohibitory or mandatory injunction" are available in an action for judicial review of an agency action. 5 U.S.C. § 703. *Marken* clearly instructs that, not only is a "reverse-CPRA" action permissible in California, but also that a petition for writ of mandate is the proper procedural remedy.

Requestor has nevertheless made the remarkable argument, citing *Marken*, that mandamus is not the proper procedure because Respondent's decision as to whether to release the records is *discretionary*, not *mandatory*. This argument both misquotes *Marken* and ignores its direct holding.

In its opposition to the order to show cause re issuance of preliminary injunction, Requestor argued that a writ of mandate is not available to Petitioner because Respondent's decision to disclose records is a discretionary agency decision, and "[m]andamus will not lie to control an exercise of discretion, i.e. to compel an official to exercise in a particular manner." *Marken*, 202 Cal. App. 4th at 1266. But Requestor blatantly misquotes *Marken*, which states in the sentence directly following the one quoted by Requestor that "Mandamus may issue, however, to compel an official to both exercise his discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law." *Id. Marken* goes on to hold in the same paragraph that "Thus, mandamus should be available to prevent a public agency from acting in an unlawful manner by releasing information the disclosure of which is prohibited by law." *Id.*, *citing County of Del Norte v. City of Crescent City*, 71 Cal. App. 4th 965, 973 (1999) (permanent injunction in mandamus proceeding "is appropriate to restrain action which, if carried out, would be unlawful").

The *Marken* court recognized that the CPRA itself authorizes disclosure of records "unless disclosure is otherwise prohibited by law." *Id.* at 1262; *see also* Section 6254 ("Nothing in this Section prevents any agency from opening its records concerning the administration of the agency to public inspection, *unless the disclosure is otherwise prohibited by law*."). Thus, the issue on a reverse CPRA action is not whether the disclosure by agency is mandatory or permissive, but whether the disclosure contemplated by the agency is prohibited by law, *e.g.*, would violate a constitutional right of privacy. *Marken* held that the *only* remedy available for an affected party to obtain judicial review of an agency's decision to improperly release confidential documents is mandamus:

> Second, and equally important, although the CPRA provides a specific statutory procedure for the resolution of disputes between the party seeking disclosure and the public agency, no comparable procedure exists for an interested third party to obtain a judicial ruling precluding a public agency from improperly disclosing confidential documents. If the public agency elects to disclose records in response to a CPRA request, absent an independent action or traditional mandamus, no judicial forum will exist in which a party adversely affected by the disclosure can challenge the lawfulness of the agency's action.

Id. at 1267. As the *Marken* court stated, "Whether an anticipated agency disclosure of confidential information is 'otherwise prohibited by law' relates to the merits of the mandamus proceeding, not the petitioner's right to bring it." *Id.* at n. 12.

B. <u>The Standard Of Review On This Writ Petition Is *De Novo*</u>

In reviewing this Petition, the Court must exercise its own independent judgment *de novo* as to whether Respondent's decision to release the emails and voicemails was proper; there is no deference to the agency's decision. "If the administrative decision involved or substantially affected a 'fundamental vested right,' the superior court exercises its independent judgment upon the evidence disclosed in a limited trial de novo in which the court must examine the administrative record for errors of law and exercise its independent judgment upon the evidence." *JKH Enterprises, Inc. v. Dep't of Indus. Relations*, 142 Cal. App. 4th 1046, 1057 (2006); *see also Bixby v. Pierno*, 4 Cal. 3d 130, 144–146 (1971); *see also* Code Civ. Proc. § 1094.5(c).

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This Petition implicates the fundamental vested right of privacy, which is enshrined in the California Constitution and has long been deemed a "fundamental right." *See Comm. To Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 275 (1981) (privacy is "among the most intimate and fundamental of all constitutional rights."); *see also Long Beach City Employees Assn. v. City of Long Beach*, 41 Cal. 3d 937, 951-952 (1986) ("[A] public sector employee, like any other citizen, is born with a constitutional right of privacy. A citizen cannot be said to have waived that right in return for the 'privilege' of public employment, or any other public benefit unless the government demonstrates a compelling need."). Thus, "[t]he trial court must not only examine the administrative record for errors of law, but must also conduct an independent review of the entire record to determine whether the weight of the evidence supports the administrative findings." *Wences v. City of Los Angeles*, 177 Cal. App. 4th 305, 313 (2009).

Although the standard of review is *de novo*, California courts have not resolved the issue of which party bears the burden of proof in a reverse-CPRA action. In an ordinary CPRA action, the public agency would have the burden of demonstrating that the records should be withheld. *See Regents of Univ. of California v. Superior Court*, 222 Cal. App. 4th 383, 398, n. 10 (2013). In *Regents*, the court stated that no California case had addressed the burden of proof on the threshold issue of whether a document is a "public" record but, citing to federal authority, "assume[d], without deciding," that the public agency had the burden. *Id.* In federal courts, the burden on a FOIA request is on the party seeking to prevent disclosure. *See Nat'l Bus. Aviation Ass'n, Inc. v. F.A.A.*, 686 F. Supp. 2d 80, 85 (D.D.C. 2010).

IV. THE COMMUNICATIONS ARE NOT PUBLIC RECORDS SUBJECT TO A CPRA REQUEST

A. Only Records That Relate To The Conduct Of The Public's Business Are Subject To A CPRA Request

California Government Code § 6253 provides that "public records" are open to inspection by the public. Section 6252 specifically defines "public records" as writings "containing information *relating to the conduct of the public's business* prepared, owned, used or retained by any state or local agency. . . ." (emphasis added). It is therefore contemplated in the Government

Code itself that not all records are "public," and only those "public" records are required to be disclosed.

California courts have further clarified what is and is not a public record subject to disclosure under the CPRA. "[P]urely personal information unrelated to 'the conduct of the public's business' could be considered exempt from this definition, *i.e.*, the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities." *San Gabriel Tribune v. Superior Court*, 143 Cal. App. 3d 762, 774 (1983). "A public record, strictly speaking, is one made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference." *People v. Olson*, 232 Cal. App. 2d 480, 486 (1965). The courts have repeatedly held that purely personal information unrelated to the "conduct of the public's business" is not a public record. *See, e.g., Sander v. State Bar of California*, 58 Cal. 4th 300, 322 (2013).

The Colorado Supreme Court in *Denver Pub. Co. v. Bd. of Cty. Comm'rs of Cty. of Arapahoe*, 121 P. 3d 190 (Colo. 2005) ("*Denver*") held that sexually explicit and romantic e-mails exchanged between a county recorder and the recorder's assistant chief deputy were not "public records" within the scope of Colorado's public records act.[4] There, the court distinguished between: "1) messages that address the performance of public functions that do not contain any personal information or sexually-explicit content; 2) messages that do not address the performance of public functions and do contain sexually-explicit content or other private communications; and 3) mixed messages containing both types of the foregoing communications." *Id.* at 204. As to the first group of records, the court agreed with the disclosure of the records by the court below. As to

[4] The public records acts of California and Colorado are both patterned on the federal Freedom of Information Act. *See California State Univ. v. Superior Court*, 90 Cal. App. 4th 810, 824 (2001); *Wick Commc'ns Co. v. Montrose Cty. Bd. of Cty. Comm.*, 81 P.3d 360, 362 (Colo. 2003). Colorado's act specifically excludes from the definition of public records correspondence "[w]ithout a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds." Colo. Rev. Stat. Ann. § 24-72-202. The CPRA similarly exempts from disclosure records that do not "relat[e] to the conduct of the public's business." Cal. Gov't. Code § 6252(e).

the second group of records, the court held they were not subject to disclosure: "The second group of e-mail messages contains those types of private communications the General Assembly intended to protect as private and fall outside the "public records" definition. These messages were sent and received in furtherance of the personal relationship between Baker and Sale and do not address the performance of their public functions." *Id.* at 205. Even though there was an allegation of wrongdoing against the public official, the court held that communications simply related to that official's personal relationship were not related to her public duties. That is exactly the test under the CPRA.

As for the third category — the mixed messages — the Court allowed for redactions "to exclude from disclosure those communications within the messages that do not address the performance of public functions." *Id.*

> Requiring disclosure of the entire e-mail message under the circumstances would contravene the General Assembly's intent to protect such communications and make what is otherwise a private communication a public communication simply because it was sent in the same message. In reaching such a conclusion, not only would we discourage public service, we would create an arena of gossip and scandal instead of facilitating a forum of open and frank discussion about issues concerning public officials and the citizenry they serve.

Id.

B. <u>The Communications Do Not Relate To The Conduct Of The Public's Business</u>

Here, the vast majority of the voicemails and emails fall into the second category identified by *Denver* – wholly personal and private communications.[5] These records are plainly unrelated to the conduct of the public's business. None of these messages constitutes a record "made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information

[5] *See* voicemail message nos. 1-13, 17-22, 24-31, 34-48, 50-120, 123-25, 128-131, 133-142, 144-160, 174, and 182, Exhibit 1 to Appendix; *see also* emails Bates Nos. CHCD 22-23, 25-27, 46-95, 97-129, 134-163, 165-185, 187-202, 208-216, 219-222, 225, 236-242, 243-257, 263, 267-69, 277, 290, 297-99, 309-310, 325-27, 431-438, 439-441, 452, 469, 488, 502, 514-15, 539, 551, 562-66, 578-79, 604-05, 611-16, 631-32, 635-37, 642-45, 657, 658-661, 673-77, 679, 680, 693-700, 705-06, 707, 714, 738-750, 757-58, 767-68, 774-75, 790-92, 796-806, 823, 833, 857, 869-874, 902-03, 941, 956, 960, 996-99, 1056-1060, 1072, 1075, 1123-27, 1143, 1144, 1149-1154, 1164-1176, 1191-96, 1198-1208, 1214-1252, 1259-1260, Exhibit 21 to Supplemental Appendix.

to the public, or to serve as a memorial of official transactions for public reference." *People v. Olson*, *supra*, 232 Cal. App. 2d at 486. The messages are "totally void of reference to governmental activities." *San Gabriel Tribune*, *supra*, 143 Cal. App. 3d at 774. As such, the messages do not constitute "public records" and are not subject to disclosure under the CPRA.

C. Respondent Misunderstands The Test For A Public Record Under The CPRA

1. Ownership Of The Electronic Device Is Irrelevant

Respondent has argued that the fact that the communications were received on a device owned by Respondent makes them automatically public records subject to disclosure under the CPRA. Respondent cited *City of San Jose v. Superior Court*, 225 Cal. App. 4th 75 (2014), *review granted*, 326 P.3d 976,[6] for the proposition that communications on a public official's *private* electronic device are not "public records." From this, Respondent attempts to extrapolate that all records held on a *publicly-owned* device must automatically be public records. Not only is this not the holding in *San Jose*, which says nothing about publicly-owned electronic devices, it is not how the determination is made about whether a given record is a public record within the meaning of the CPRA.

As discussed in Section IV(A), *supra*, not every record within the possession of a public agency is a "public record." "The mere custody of a writing by a public agency does not make it a public record, but if a record is kept by an officer because it is necessary or convenient to the discharge of his official duty, it is a public record." *Braun v. City of Taft*, 154 Cal. App. 3d 332, 340 (1984).

Respondent's position that every communication between Petitioner and Ferguson should be considered a public record, regardless of the content of the message, simply because she used her agency-issued phone or laptop for the communications is not the standard under the CPRA and the cases interpreting it. The Legislature, in providing a definition of "public record" in the statute, made clear the public is *not* entitled to the personal, private communications of public employees.

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[6] As noted, review has been granted by the California Supreme Court of the decision in the *San Jose* matter. Respondent's citation to, and reliance on, *San Jose* is improper. *See* Cal. Rules of Court, Rule 8.1105(e).

What the CPRA recognizes is the public's right to know about the *public's* business, and even then subjects that right to a balancing of privacy and public access interests.

2. Respondent's "Corruption" Claim Does Not Make Purely Private Communications Public Records

Several times, in writing and in arguments before the Court in connection with the preliminary injunction, Respondent has asserted that when Petitioner, as Respondent's CEO, chose to hire Ferguson as outside counsel to Respondent, she "made her relationship with Ferguson the public's business." *See* Respondent's Opposition to TRO Application at 1; *see also* Transcript of Hearing, Exhibit 20 to Appendix, at 20. While this may be an appealing sound bite, it falls short as legal analysis.

A private communication admittedly having nothing to do with the public's business is not a public record, regardless of whether the record has some tangential relevance to alleged wrongdoing. Put a different way, the fact one or more of the parties to a communication may be alleged to have been engaged in wrongdoing, does not change the fundamental nature of the communication as either a public record within the meaning of the CPRA or not.

The test for what is a public record is set forth in the statute, *i.e.*, whether it is a record "relating to the conduct of the public's business." Thus the test requires examining the content of the record to see if it relates to private matters or the conduct of public business. The test is not, as Respondent's counsel urged at the hearing on the preliminary injunction, whether the communications evidence "behavior which has a *direct impact* on the public's business." Transcript of Hearing, Exhibit 20 to Appendix, at 21 (emphasis added).

Under the CPRA, in order for the communications to be public records, they must actually discuss the public's business. A purely private communication which reveals the relationship between individuals and which therefore might somehow be related to Respondent's claim of "corruption" can also be entirely unrelated to the conduct of public business – *e.g.*, a voicemail message or email stating "Happy Birthday" is clearly not a public record within the meaning of the CPRA because it does not relate to the conduct of the public's business, even if Respondent believes that the message might show a relationship relevant to Respondent's case.

Respondent's argument improperly expands the definition to make any document relevant to its case a "public record" because Respondent contends that the alleged *corruption*, not the document itself, relates to the conduct of the public's business. Remember, the Court is not ruling on a discovery dispute where Petitioner is claiming a right of privacy which precludes inquiry by Respondent into her personal communications. This Petition asks the Court to apply the standard in the statute and the cases as to whether certain private communications are public records required to be produced under the CPRA. Other actions, legal or illegal, by the parties involved in the communications simply have no bearing on this issue. To hold otherwise would be to create out of whole cloth an exception to the statute's definition of public records for certain purely private communications where someone alleges they fit into a broader context which is claimed to somehow impact the public's business. This amorphous definition of a public record, which would turn not on the content of the record, but on what can be *alleged* by other parties, is clearly not what the Legislature contemplated, and finds zero support in the case law.

V. THE VOICEMAILS AND EMAILS ARE PRIVATE COMMUNICATIONS PROTECTED BY THE CALIFORNIA CONSTITUTION AND CANNOT BE DISCLOSED UNDER THE CPRA

A. California Law Recognizes That Petitioner And Ferguson Have A Constitutional Right Of Privacy In Their Private Communications

If any of the voicemails or emails are somehow determined to be "public records," the Court must next consider the harm to Petitioner's and Ferguson's privacy interests in disclosing the records. As stated in *BRV, Inc. v. Superior Court*, 143 Cal. App. 4th 742, 750 (2006), *as modified on denial of reh'g* (Oct. 26, 2006) ("*BRV*") *quoting Gilbert v. City of San Jose*, 114 Cal. App. 4th 608 (2003), "[R]ecognition of the importance of preserving individual privacy is also evident in the [CPRA]. The [CPRA] begins with the phrase: 'In enacting this chapter, the Legislature is mindful of the right of individuals to privacy. . . .' 'Disclosure of public records thus involves two fundamental yet competing interests: (1) prevention of secrecy in government, and (2) protection of individual privacy.'"

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In California, an individual has an overriding right to privacy in her personal, intimate contacts. The California Constitution recognizes an "inalienable" right to privacy: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and *privacy*." Cal. Const. art. I, § 1 (emphasis added).

This "inalienable" right includes the privacy of one's own romantic choices, even if those choices are, as alleged here, outside the bounds of one's marriage. "This right to privacy applies to sexual relations outside of marriage." *Rider v. Superior Court*, 199 Cal. App. 3d 278, 282 (1988). Communications which purportedly contain information related to intimate relationships have been determined to be exempt from disclosure by courts around the country. *See, e.g., Kentucky Bd. of Examiners of Psychologists & Div. of Occupations & Professions, Dep't for Admin. v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 328–29 (Ky. 1992) (records which contained allegations of sexual misbehavior between a psychologist and a client were private and not subject to disclosure under Kentucky's version of the CPRA); *see also Denver, supra*, 121 P.3d 190.

B. Petitioner's Constitutional Right Of Privacy Outweighs Any Tangential Public Interest In Disclosure

The CPRA contains two separate provisions which exempt private records from disclosure. Section 6254(c) exempts from disclosure "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Section 6255, referred to in the cases as the statute's "catchall exception," exempts records from disclosure where "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." Even though Section 6254(c) references personal privacy, and Section 6255 refers to a "public interest," the courts have held the tests under the two sections are the same. *See Teamsters Local 856 v. Priceless, LLC*, 112 Cal. App. 4th 1500 (2003), 1511; *Braun*, 154 Cal. App. 3d at 347.

> Thus, under either provision, a court determining whether personnel records should be disclosed first must determine whether disclosure of the information would compromise substantial privacy interests; if privacy interests in given information are *de minimis* disclosure would not amount to a clearly unwarranted invasion of personal privacy.

> Second, the court must determine whether the potential harm to privacy interests from disclosure outweighs the public interest in disclosure. In weighing the competing interests, we must determine the extent to which disclosure of the requested item of information will shed light on the public agency's performance of its duty.

BRV, 143 Cal. App. 4th at 755 (internal citations and quotations omitted); *see also Caldecott v. Superior Court*, 243 Cal. App. 4th 212 (2015).[7]

Petitioner has a very significant privacy interest in the communications. The communications contain highly personal and private information, all of which was intended to be kept private between Petitioner and Ferguson.[8] The communications were plainly not intended for third parties, much less the public and the press. Disclosure of these communications would constitute an unwarranted invasion of Petitioner's right to privacy, and Respondent should be prevented from making this disclosure even if it were to be determined that the communications are "public records" (they are not).

Case law recognizes that otherwise "public records" should not be disclosed where privacy interests are implicated. In *Kentucky Bd. of Examiners of Psychologists & Div. of Occupations & Professions, Dep't for Admin. v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 328–29 (Ky. 1992), the Kentucky Supreme Court held that records which contained allegations of sexual misbehavior between a psychologist and a client were private and not subject to disclosure under Kentucky's version of the CPRA:

> We must conclude that the information contained in the complaint file is of a personal nature—indeed, of a *very* personal nature—and that

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[7] At the hearing on Petitioner's application for a preliminary injunction, Respondent's counsel argued incorrectly that this balancing of interests was unnecessary — that once the Court concluded a particular communication dealt directly with public business there could be no privacy interest "that can outweigh the public's right to know the public business." Transcript of Hearing, Exhibit 20 to Appendix, at 19. But determining that a communication deals with public business merely establishes it as a public record possibly subject to disclosure. As set forth in the authorities above, the balance of personal privacy and public interest must then be weighed before the record can be required to be disclosed.

[8] *See* voicemail message nos. 14-16, 23, 32, 33, 49, 121, 122, 126, 127, 132, 143, 161-173, 175-181, and 183-85, Exhibit 1 to Appendix; *see also* emails Bates Nos. CHCD 40-45, 217, 235, 513, 690-92, 701-04, 708-713, 776-77, 780-81, 786-87, 816-17, 832-33, 858-861, 885-890, 901, 925-27, 933-34, 951-52, 963, 983-87, 1019, 1045-48, 1095-97, 1101-08, 1131, 1134, 1189-1190, Exhibit 21 to Supplemental Appendix.

> disclosure of the remainder of the public record in this case would constitute a serious invasion of the personal privacy of those who complained against Tadajewski, as well as other former clients involved in the investigation. The information sought touches upon the most intimate and personal features of private lives. Mindful that the policy of disclosure is purposed to subserve the public interest, not to satisfy the public's curiosity, and that the Board has in this case effectually promoted the public interest in regulation, and that there is a countervailing public interest in personal privacy, here strongly substantiated, we hold that further disclosure of information contained in the public record in this case would, as a matter of law, constitute a clearly unwarranted invasion of personal privacy.

Id. at 328-29; *see also Denver*, *supra*, 121 P.3d 190.

In measuring any competing public interest in disclosure of the communications, the Court must distinguish between communications, or portions of communications, containing purely personal and private content (which, as demonstrated above, are not public records) and communications involving public business. For the former, there is no public interest in this disclosure, except for a prurient interest in the private matters of others, and Requestor's interest in its readership and page views. As the saying goes, "sex sells," and Requestor's interest in the communications is purely to advance an attention-getting story of a supposed sex scandal involving a prominent and respected former government official. Requestor's effort to drape its business interests in noble public policy arguments about investigations into "misuse of public funds" and "abuse of the public trust" is belied by the language of its own first CPRA request, which specifically demands the disclosure of voicemails which "show their [alleged] romantic relationship." Exhibit 4 to Appendix.

Respondent's motives are no more noble. Respondent filed its Complaint in the Superior Court in breach of Petitioner's Employment Agreement which required that this matter be privately arbitrated. *See* Exhibit 2 to Appendix, at Exhibit A. The Complaint repeatedly used highly charged (and completely unnecessary) phrases like "romantic relationship" and "secret romantic relationship" in describing the relationship between Petitioner and Ferguson. Respondent has now belatedly agreed to stay the Superior Court action and proceed in arbitration. *See* Gilford Decl. at ¶ 3.

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Moreover, Respondent argues it is merely seeking to comply with its "responsibility to the public" even if the communications "reflect poorly on the District and the people who work there" (Transcript of Hearing, Exhibit 20 to Appendix, at 20-21), while pressing the Court to allow it to produce *all* of the communications, even those which undeniably have no connection at all to the public's business. And Respondent is anxious to waive the attorney-client privilege so the details of Petitioner's supposed relationship with Ferguson can be in the headlines.

With respect to communications which the Court determines involve public business to some extent, the generic public interest in disclosure is tempered by the fact that these records reflect private communications outside of Petitioner's work life, intended only for her. They are in Respondent's possession only through inadvertence. Regardless of their content, the public has no *right* to access personal communications of public employees which — like a private letter left on her desk — happen to be in Respondent's possession.

Moreover, the claimed significance of the few discussions in the communications about Ferguson's billings does not meet the public interest purpose of statutes like the CPRA and FOIA. As stated in *Teamsters Local 856 v. Priceless LLC*, 112 Cal. App. 4th 1500, 1519-1520 (2003), *quoting Department of Defense v. FLRA*, 510 U.S. 487, 495-496 (1994) with respect to the purpose of the FOIA, "Official information that sheds light on an agency's performance of its statutory duties falls squarely within [the purpose of the FOIA]. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct."

Here, the private communications between Ferguson and Petitioner expressing their personal opinions with respect to the inquiry into Ferguson's billings sheds no light on Respondent's conduct as an agency, or even the actual billing dispute. Again, the question is not whether the communications are relevant to an examination of the billing issue (and even that seems a stretch), but whether under the CPRA the public has such a compelling interest in the disclosure to require production of communications never intended to be public.

Finally, there is the countervailing public interest against disclosing the private communications of government employees recognized in *Denver* — making such private

communications subject to public disclosure would indeed "discourage public service" and "create an arena of gossip and scandal." *Denver*, *supra*, 121 P. 3d at 205. That is exactly what is happening in this case.

C. Respondent's Contention That Petitioner Had No Expectation Of Privacy In Her Private Communications Is Wrong

Respondent argues that Petitioner gave up any expectation of privacy in the communications recorded on her cell phone or laptop when she used her Respondent-issued cell phone and laptop for personal business, defeating any privacy interest she may have had in such communications. The argument makes too much out of the fact Respondent paid for the phone and laptop, and fails to distinguish between an expectation of privacy vis-à-vis Respondent and an expectation that the voicemails or emails would be private vis-à-vis the public at large.

First, as the Court suggested at the hearing on the application for a preliminary injunction, there is no evidence that Ferguson had knowledge that Respondent issued the cell phone or laptop upon which he communicated with Petitioner. Thus, there can be no argument that he did not have a reasonable expectation the messages he left would be private. Respondent's contention that because he knew Respondent was looking into his fees he should have understood his calls were not private is a *non sequitur*. He clearly did not, and could not, anticipate that his private messages, in which he addresses, among other things, his personal medical conditions, would be published in a local newspaper.

Second, it is undisputed that Petitioner did nothing to allow this information to come to the attention of the public. The disclosure of the information to Respondent was entirely inadvertent, the result of the return of a cellular phone and laptop upon which these private voicemails and emails were still present.

Third, Petitioner at all times had a completely reasonable and justifiable expectation of privacy in her communications in relation to the outside world. Respondent's Employee Handbook, which provides rules for the use of devices issued by Respondent, states that Respondent reserves the right to search Petitioner's cell phone and laptop, which they in fact did here. *See* Exhibit 3 to Appendix at Exhibit A. It does not state that any communication sent or

received on a Respondent-issued cell phone or laptop would automatically become a public record subject to disclosure under the CPRA, or that such communications would be turned over to the press as soon as the employee's relationship with Respondent soured.

Petitioner never expected her communications to be disclosed to the public. Even if Petitioner knew that Respondent could review the voicemails and emails, which she did not as she did not even know they existed, she reasonably expected they would be shielded from public view. There is a significant difference between having an expectation of privacy with respect to your employer versus the public at large. Nowhere did Petitioner agree that every single such communication would become a public record and be disclosed to the public pursuant to a CPRA request. Petitioner reasonably expected that her communications would be shielded from public view to the extent they did not touch on the performance of her public duties. Because disclosure of the communications would constitute an unwarranted invasion of Petitioner's and Ferguson's right to privacy, Petitioner is entitled to a writ of mandate prohibiting their disclosure.

VI. THE COMMUNICATIONS ARE PROTECTED FROM DISCLOSURE UNDER THE ATTORNEY-CLIENT PRIVILEGE

The CPRA prevents disclosure which would violate the provisions of the Evidence Code. Cal. Gov. Code § 6254(k) exempts from disclosure "[r]ecords the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." *See also STI Outdoor v. Superior Court*, 91 Cal. App. 4th 334 (2001) (holding that attorney-client privileged communications were exempt from disclosure under the CPRA); *see also Roberts v. City of Palmdale*, 5 Cal. 4th 363, 370 (1993) (Section 6254(k) "has made the attorney-client privilege applicable to public records."). The Evidence Code provides that communications between an attorney and client are strictly privileged. Cal. Evid. Code § 954.

Any non-personal communications between Petitioner and Ferguson are privileged, to the extent that they relate to the purpose for which Ferguson was retained. At the time of the communications, Petitioner was the CEO of Respondent, an officer, and Ferguson, its general counsel. *See* Exhibit 2 to the Appendix. Petitioner was the main point of contact between

Respondent and its attorney, Ferguson. *Id.* Cal. Evid. Code § 952 provides that a "'confidential communication between client and lawyer' means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present *to further the interest of the client* in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted ...." Thus, to the extent that the communications are not personal and private, they are protected from disclosure by the attorney-client privilege pursuant to the Evidence Code, and cannot be disclosed under the CPRA. *See* Cal. Gov. Code § 6254(k); *see also STI Outdoor v. Superior Court*, 91 Cal. App. 4th 334 (2001) (holding that attorney-client privileged communications were exempt from disclosure under the CPRA).

This privilege extends to discussions related to issues of billing and fees. As the California Supreme Court recently held, in a CPRA case, "To the extent that billing information is conveyed 'for the purpose of legal representation' — perhaps to inform the client of the nature or amount of work occurring in connection with a pending legal issue — such information lies in the heartland of the attorney-client privilege." *Los Angeles County Board of Supervisors v. Superior Court*, 2 Cal. 5th 282, 297 (2016). There, the court held that "privilege turns on content and purpose, not form" and that communications related to billing matters are privileged "if they either communicate information for the purposes of legal consultation or risk exposing information that was communicated for such a purpose." *Id.* at 298. Thus, if the communications relate to the "nature or amount of the work" done by Ferguson on behalf of Respondent, such communications are privileged and may not be disclosed.

Several of the communications, to the extent that they are not personal and private, constitute communications between the District's counsel, Ferguson (whether current or former) and Petitioner, the District's point of contact with counsel, regarding billing issues and the nature, extent, and value of the work performed by counsel.[9] These communications are protected from

[9] *See* voicemail message nos. 34, 41, 44, 51-52, 54, 57-60, 62, 64-74, 80-84, 86, 89-90, 92-94, 101-

disclosure by the attorney-client privilege.

Respondent has argued that it has the right to waive the attorney-client privilege, arguing that such a waiver would remove the privilege argument entirely. But, conspicuously, Respondent has not actually made any such waiver. Moreover, to the extent Respondent claims the particular communications are not privileged, the burden to show that privilege does not apply is on the party opposing the application of the privilege. "If a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client… relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential." Cal. Evid. Code § 917(a); *see also Costco Wholesale Corp. v. Superior Court*, 47 Cal. 4th 725, 733 (2009) ("Once that party establishes facts necessary to support a *prima facie* claim of privilege, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply.").

If any of the voicemails or emails are not personal, private communications as discussed above, they are necessarily related to Petitioner's and Ferguson's work. Thus, those communications would be privileged and are barred from disclosure under the CPRA.

VII. CONCLUSION

There is no question that the vast bulk, if not all, of the communications that Respondent seeks to disclose are not public records subject to disclosure under the CPRA, and Respondent's position that it believes it is compelled to turn them *all* over to the press rings hollow. Respondent's enthusiasm to abandon the attorney-client privilege and do harm to its former CEO similarly betrays its true motivations. For those records, if any, which the Court believes relate in some way to Petitioner's public business, the balance of interests compels they not be disclosed. Any public interest in disclosure is outweighed by Petitioner's and Ferguson's privacy interests, and

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02, 104, 110, 138, 140, and 151, Exhibit 1 to Appendix; *see also* email Bates Nos. 7-8, 256-57, 260-62, 278, 300-03, 305, 308, 332-33, 423-430, 460-66, 489-495, 520-21, 534-38, 580-81, 1117-18, 1128-1130, 1253-54, Exhibit 21 to Supplemental Appendix.

the public interest in protecting the private personal communications of public officials from intrusion by the press. Finally, to the extent any communications are held by the Court to be subject to disclosure, any such communications should be redacted of any private and personal information contained within those communications.

For the foregoing reasons, Petitioner respectfully submits that she is entitled to issuance of a writ of mandate directing Respondent not to disclose the communications subject to Requestor's CPRA Requests.

DATED: February 10, 2017

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PROOF OF SERVICE

ROZANSKI v. CAMARILLO HEALTH CARE DISTRICT, et al.
Case No. 56-2016-00489673-CU-WA-VTA

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over the 18 years of age and not a party to this action. I am employed in the County of Los Angeles, California. My business address is 10250 Constellation Boulevard, Suite 2900, Los Angeles, CA 90067

On February 10, 2017, I served true copies of the following document(s) described as: **PETITIONER'S OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

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

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

Executed on February 10, 2017, at Los Angeles, California.

Violetta Price