

BAUTE CROCHETIERE & GILFORD LLP  
777 South Figueroa Street, Suite 4900  
Los Angeles, CA 90017  
Tel (213) 630-5000 • Fax (213) 683-1225

1 ANDREW M. GILFORD (State Bar No. 144994)  
JESSICA R. CORPUZ (State Bar No. 279237)  
2 **BAUTE CROCHETIERE & GILFORD LLP**  
agilford@bautelaw.com  
3 jcorpuz@bautelaw.com  
777 South Figueroa Street, Suite 4900  
4 Los Angeles, California 90017  
Telephone: (213) 630-5000  
5 Facsimile: (213) 683-1225

6 Attorneys for Plaintiff/Petitioner Jane Rozanski

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9  
10 **COUNTY OF VENTURA**

11 JANE ROZANSKI, an individual,  
12 Plaintiff/Petitioner,

13 v.

14 CAMARILLO HEALTH CARE DISTRICT, a  
California Special District,  
15 Defendant/Respondent.

16 CAMARILLO ACORN,  
17 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 REPLY IN SUPPORT OF  
ORDER TO SHOW CAUSE RE  
ISSUANCE OF PRELIMINARY  
INJUNCTION**

Reservation No.: 2207485

Hearing:

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

1 **I. PRELIMINARY STATEMENT**

2 Plaintiff/Petitioner Jane Rozanski (“Petitioner”) filed this action on December 2, 2016 (the  
3 “Petition”), because her former employer, Respondent Camarillo Health Care District (“Respondent”),  
4 threatened to turn over her personal, private voicemail communications to a local newspaper, Real  
5 Party in Interest the Camarillo Acorn (“Requestor”), unless Petitioner obtained a temporary restraining  
6 order. Petitioner did so.

7 Respondent has filed an Opposition to Petitioner’s request for an injunction pending resolution  
8 of the Petition on the merits. Respondent argues for the wholesale release of its former employee’s  
9 private voicemails despite conceding, in a declaration provided by its outside counsel, that it has not  
10 even listened to all of them. Requestor, in contrast, has not filed a written opposition and did not  
11 oppose the issuance of the temporary restraining order. It is clear that Respondent’s enthusiasm for the  
12 public release of voicemails which would irreparably injure Petitioner’s reputation, and cause pain to  
13 her and her family, goes beyond the duty of a public agency to respond to a request under the California  
14 Public Records Act (“CPRA”), or a legitimate concern for public access. Respondent’s position with  
15 respect to the issuance of an injunction, like its decision to ignore an arbitration clause and file its  
16 allegations against Petitioner in the Superior Court, are properly seen as efforts to publicly “tar and  
17 feather” Petitioner in a misguided effort to advance Respondent’s litigation objective.

18 Respondent misunderstands the analysis to be undertaken by this Court on Petitioner’s request  
19 for a preliminary injunction. The question is whether there is good cause to preserve the status quo –  
20 that is, prevent the release of the voicemails – until such time as the Court can rule on the merits of the  
21 Petition. Central to that analysis is consideration of the balance of hardships if the voicemails are  
22 released or not, and whether Petitioner will suffer irreparable injury if the injunction does not issue.  
23 Both of these issues are ignored in Respondent’s Opposition. Respondent makes no effort to show  
24 hardship to the Requestor or Respondent if release of the voicemails is delayed until the Petition can be  
25 resolved. That is because there is none. Respondent also does not respond to Petitioner’s showing that  
26 the release of the voicemails will cause irreparable harm to her and her family, and attorney Ferguson,  
27 and moot this Petition entirely before it can be considered on the merits. Petitioner’s showing is now  
28 uncontroverted, and under California law is sufficient to justify issuance of the preliminary injunction.

1           Moreover, Respondent is wrong on the merits of the Petition, which Respondent prematurely  
2 asks this Court to decide. First, Respondent’s admission that it has not listened to all of the voicemails  
3 defeats its argument that they are “public records” subject to a CPRA request. Requester cannot  
4 properly contend that each voicemail message relates to the conduct of public business when  
5 Respondent has not even listened to each voicemail.

6           Second, as to whether the voicemails are records “relating to the conduct of the public’s  
7 business,” Respondent confuses records possibly relevant to its “corruption” claim with public records  
8 subject to the CPRA. That the private voicemails might “illuminate the relationship between Rozanski  
9 and Ferguson” (Opposition at 5) may be relevant to Respondent’s litigation position, but it does not  
10 make them public records.

11           Third, Respondent’s contention that a record left on a publicly-owned cell phone is, solely by  
12 virtue of that fact alone, a public record is obviously wrong. The definition of a public record is a  
13 record relating to the conduct of the public’s business, not any record owned or possessed by the public  
14 agency. Similarly, the issue is not the privacy of the voicemails as against the District. Rather,  
15 Petitioner has an expectation of privacy that her private communications having nothing to do with her  
16 work for Respondent will not be published in a newspaper in her home town. The public does not have  
17 a “right” to know about the private personal lives of public officials. That is why there is a specific  
18 definition of a “public record” in the statute, and why the statute expressly recognizes that the balance  
19 of the interests of individual privacy and public access must be considered on a CPRA request.

20           Finally, Respondent’s argument regarding the application of the attorney-client privilege also  
21 misses the point. Respondent argues that it can waive the privilege, but Respondent does not actually  
22 waive the privilege. Also, Respondent’s claim that the voicemails are not privileged cites to a  
23 paragraph of the Velthoen declaration which does not exist.

24           Petitioner seeks only to preserve the status quo. She seeks a preliminary injunction prohibiting  
25 the release of the voicemails until such time as the Court can make a final determination on the Petition  
26 regarding whether, in fact, the voicemails are public records. The release of the voicemails would  
27 impose significant and irreparable harm on Petitioner, and would render the Court’s ultimate  
28 determination moot, while the issuance of a preliminary injunction does no harm to Respondent or the

1 Requestor whatsoever. Petitioner therefore respectfully requests that the Court enjoin Respondent from  
2 disclosing the subject voicemails to Requestor until such time as the Court makes a final determination  
3 on the merits.

4 **II. THERE IS GOOD CAUSE TO ISSUE A PRELIMINARY INJUNCTION**

5 **A. This Case Is A Textbook Example of the Need For a Preliminary Injunction to**  
6 **Preserve the Status Quo Until There Can Be a Final Determination on the Merits**

7 Respondent's Opposition treats the request for a preliminary injunction as a final determination  
8 on the merits of the action. Respondent addresses only the ultimate issues in this case, plus a single,  
9 throwaway line in its conclusion stating that Petitioner "does not have a likelihood of success on her  
10 Petition...." Opp. at 9:11. Respondent misses the point.

11 The issue on a preliminary injunction is not whether the requesting party has succeeded on the  
12 ultimate merits of its claim. "The general purpose of [a preliminary] injunction is the preservation of  
13 the status quo until a final determination of the merits of the action." *Cont'l Baking Co. v. Katz*, 68 Cal.  
14 2d 512, 528 (1968). In fact, "[t]he ultimate goal of any test to be used in deciding whether a  
15 preliminary injunction should issue is to minimize the harm which an erroneous interim decision may  
16 cause." *IT Corp. v. Cty. of Imperial*, 35 Cal. 3d 63, 73 (1983).

17 In this case, Petitioner has filed a writ petition which seeks a determination from the Court that  
18 the voicemails at issue are not subject to disclosure to the press under the CPRA. The Court's ruling on  
19 that Petition will be a final determination on the merits of the action, and will involve an analysis of the  
20 merits of the Petition on further briefing and evidence.

21 The instant motion merely seeks to prevent the interim disclosure of the voicemails until the  
22 Court can rule on the issue. As the Court noted in issuing the Temporary Restraining Order in this case,  
23 if Respondent discloses the voicemails to Requestor, the Court's ultimate decision on the Petition will  
24 be rendered merely advisory. If the voicemails are disclosed, the privacy and privilege implications of  
25 the Petition will be moot, because the information contained in the voicemails will already be released  
26 to the public and the harm to Petitioner's reputation will already have occurred. The only way to  
27 preserve the ultimate issues in this case for the Court to determine is to issue a preliminary injunction  
28 and preserve the status quo.

1           **B. Respondent Concedes That Petitioner Will Suffer Great and Irreparable Harm if**  
2           **the Injunction is Not Issued, and that Neither Respondent Nor Requestor Will**  
3           **Suffer Harm if the Injunction is Issued**

4           Respondent effectively concedes that Petitioner will suffer great and irreparable harm if the  
5 voicemails are disclosed. The Opposition contains no evidence or argument to the contrary, choosing  
6 instead to suggest that whatever harm befalls Petitioner is her own fault. Similarly, no argument or  
7 evidence is offered that either Respondent or Requestor will be harmed in any way by a delay of a few  
8 weeks or months in the release of the voicemails. No such argument could be made. Respondent will  
9 not be affected either way by the public release of the voicemails, and, indeed, but for the CPRA  
10 request, they would never have been released. Requestor will similarly not suffer irreparable injury if  
11 release of the voicemails is delayed. Because Respondent does not dispute these points, the Court  
12 should treat it as established that Petitioner will suffer great and irreparable harm if the voicemails are  
13 disclosed, and that neither Respondent nor Requestor will suffer any harm whatsoever as a result of the  
14 injunction.

15           The strength of this single factor can tip the balance in favor of the issuance of the injunction.  
16 “The trial court’s determination must be guided by a ‘mix’ of the potential-merit and interim-harm  
17 factors; the greater the plaintiff’s showing on one, the less must be shown on the other to support an  
18 injunction.” *Butt v. State of California*, 4 Cal. 4th 668, 678 (1992).

19           Here, Petitioner has demonstrated the severity of the harm that will occur. As discussed more  
20 fully in Petitioner’s *Ex Parte* Application, the disclosure of the voicemails will undoubtedly lead to  
21 Requestor publishing articles characterizing the voicemails and reporting on the prurient details of the  
22 purported extra-marital affair. Petitioner, a well-respected community leader and public servant, will  
23 suffer public scrutiny and disgrace. Respondent does not dispute this. Respondent also does not  
24 dispute the fact that there will be no harm to it if the voicemails are not produced. There is therefore no  
25 dispute that the balance of equities strongly favors prohibiting the disclosure of the voicemails, and the  
26 Court should grant the preliminary injunction. *See Robbins v. Sup.Ct. (County of Sacramento)*, 38 Cal.  
27 3d 199, 205 (1985) (“If denial of an injunction would result in great harm to the plaintiff, and the  
28 defendants would suffer little harm if it were granted, then it is an abuse of discretion to fail to grant the

1 preliminary injunction.”).

2 C. **There is a Substantial Likelihood That Petitioner Will Prevail on the Merits of her**  
3 **Writ Petition**

4 1. **The voicemails are not public records subject to a CPRA request**

5 Respondent argues that the voicemails relate to the conduct of the public’s business because  
6 they “illuminate the relationship between Rozanski and Ferguson.” However, a private voicemail  
7 admittedly having nothing to do with the public’s business is not a public record, regardless of whether  
8 the record has some tangential relevance to alleged wrongdoing.

9 Defendant’s argument confuses two separate analyses. The test for what is a public record is set  
10 forth in the statute, i.e. whether it is a record “relating to the conduct of the public’s business.” Thus  
11 the test requires examining the content of the record to see if it relates to private matters or the conduct  
12 of public business.

13 Respondent confuses this straightforward test with the question of whether a record is *relevant*  
14 to Respondent’s litigation position. A document which “illuminates” the relationship between  
15 individuals and which therefore might somehow be related to Respondent’s claim of “corruption” can  
16 also be entirely unrelated to the conduct of public business – e.g., a voicemail message stating “happy  
17 birthday” is clearly not a public record within the meaning of the CPRA because it does not relate to the  
18 conduct of the public’s business, even if Respondent believes that the message might somehow be  
19 relevant to Respondent’s case. Respondent’s argument improperly expands the definition to make any  
20 document relevant to its case a “public record” because Respondent contends that its case, not the  
21 document itself, relates to the conduct of the public’s business. Respondent does not, and can not,  
22 provide any authority for its assertion that purely personal communications are somehow transformed  
23 into public records, after the fact, simply because they allegedly give some insight into the relationship  
24 between the parties.

25 Respondent argues that *Denver Pub. Co. v. Bd. of Cty. Comm’rs of Cty. of Arapahoe*, 121 P.3d  
26 190 (Colo. 2005) is inapplicable because the Colorado public records act is more limited than the  
27 CPRA. *See* Opp. at 5: 13-20. However, as Petitioner pointed out in her *Ex Parte* Application, both  
28 laws are patterned on the federal Freedom of Information Act, and contain very similar language

1 restricting the definition of “public records.” *See Ex Parte* Application at 8. Further, the language used  
2 by the court in describing the nature of the subject communications is instructive: “These messages  
3 were sent and received in furtherance of the personal relationship between [the parties] and do not  
4 address the performance of their public functions.” *Denver*, 121 P.3d at 205. Even though there was an  
5 allegation of wrongdoing against the public official, the court held that communications simply related  
6 to that official’s personal relationship were not related to her public duties. That is exactly the test  
7 under the CPRA. “A public record [under the CPRA], strictly speaking, is one made by a public officer  
8 in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or  
9 to serve as a memorial of official transactions for public reference.” *People v. Olson* (1965) 232 Cal.  
10 App. 2d 480, 486. The holding in *Denver*, refusing to release the records, is directly on point.

11 Nor do the records automatically become subject to disclosure merely because they were  
12 received using a device owned by the Respondent. The CPRA was never meant to capture all  
13 communications to or from a public official. “The mere custody of a writing by a public agency does  
14 not make it a public record, but if a record is kept by an officer because it is necessary or convenient to  
15 the discharge of his official duty, it is a public record.” *Braun v. City of Taft*, 154 Cal. App. 3d 332,  
16 340 (1984). “[P]urely personal information unrelated to ‘the conduct of the public’s business’ could be  
17 considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public  
18 officer from a friend which is totally void of reference to governmental activities.” *San Gabriel*  
19 *Tribune v. Superior Court*, 143 Cal. App. 3d 762, 774 (1983).

20 This is true regardless of who owns the device. Respondent cites *City of San Jose v. Superior*  
21 *Court*, 225 Cal. App. 4th 75 (2014), *review granted*, 326 P.3d 976, for the proposition that voicemails  
22 on a public official’s *private* cellular phone are not “public records.” From this, Respondent attempts to  
23 extrapolate that all records held on a *publicly-owned* cellular phone must automatically be public  
24 records. *See Opp.* at 5, n.2. Not only is this not the holding in *San Jose*, which says nothing about  
25 publicly-owned cellular phones, it is not how the determination is made about whether a given record is  
26 a public record within the meaning of the CPRA. A “public record” is not defined as a record owned  
27 by a public agency, or in its possession. The fact that the voicemail was received on a publicly-owned  
28 device does not make it a public record.

1 Respondent would have every communication between Petitioner and Ferguson be considered a  
2 public record, regardless of the content of the message, simply because she used her agency-issued  
3 phone for the communications. That is not the standard under the CPRA and the cases interpreting it.  
4 California courts have consistently held that private communications unrelated to the conduct of the  
5 public's business are not a "public record" under the CPRA. *See, e.g., Sander v. State Bar of California*  
6 (2013) 58 Cal. 4th 300, 322; *Braun v. City of Taft* (1984) 154 Cal. App. 3d 332, 340. As the Court of  
7 Appeal in *San Jose* expressly stated, "[e]ven if we accept the [ ] premise, that a local agency can act  
8 only through its officials, it does not follow that every act of an official is necessarily an act of the  
9 agency." *San Jose, supra*, 225 Cal. App. 4th at 88. The voicemails are wholly private and personal  
10 communications not subject to disclosure under the CPRA.

11 **2. The disclosure of the voicemails would be an unwarranted invasion of**  
12 **Petitioner's personal privacy**

13 Respondent argues that the voicemails do not fall within the "personnel, medical, or similar  
14 files, the disclosure of which would constitute an unwarranted invasion of personal privacy"  
15 contemplated in Cal. Gov't. Code § 6254(c) because Petitioner had no reasonable expectation of  
16 privacy in her voicemails. Respondent confuses Petitioner's right to claim privacy as to Respondent,  
17 her employer, with her expectation that her private voicemails having nothing to do with her work  
18 would not be disseminated for public consumption.

19 Respondent first argues that its Employee Handbook provides rules for the use of devices issued  
20 by Respondent, and that Petitioner could never have expected a right of privacy in any communications  
21 made through a device issued by Respondent. *See Opp.* at 6-7. The Handbook provides that  
22 Respondent reserves the right to search Petitioner's cell phone, which they in fact did here. *See Exhibit*  
23 *A to Ralston Decl.*, at 45. It does not state that any communication sent or received on a Respondent-  
24 issued cell phone would automatically become a public record subject to disclosure under the CPRA, or  
25 that such communications would be turned over to the press as soon as the employee's relationship with  
26 Respondent soured.

27 There is a significant difference between having an expectation of privacy with respect to your  
28 employer versus the public at large. Petitioner understood that Respondent had the right to review her

1 activities conducted on devices owned by Respondent. But nowhere did she agree that every single  
2 such communication would become a public record and be disclosed to the public pursuant to a CPRA  
3 request. Petitioner reasonably expected that her communications would be shielded from public view  
4 to the extent they did not touch on the performance of her public duties.

5 Respondent cites the federal case of *Sunbelt Rentals, Inc. v. Victor*, 43 F. Supp. 3d 1026 (N.D.  
6 Cal. 2014), arguing that an employee has no expectation of privacy in communications stored on his or  
7 her employer-issued cellular phone. However, *Sunbelt* is not a CPRA case. It deals only with the  
8 disclosure of information to the employer, not to the public. Petitioner does not presently argue here  
9 that it was improper of Respondent to have accessed her emails, but rather that it would be improper to  
10 release them to the public.

11 Lastly, Respondent's "public interest in disclosure" argument is misplaced. Notably, the  
12 Requestor did not file an opposition, only Respondent did. Although the public may be interested in  
13 having access to the voicemails, the public has no *right* to access. The public is not entitled to the  
14 personal, private communications of public employees. Petitioner did not surrender her right of  
15 privacy, recognized by the California and United States Constitution, when she agreed to public service.  
16 What the CPRA recognizes is the public's right to know about the *public's* business, and even then  
17 subjects that right to a balancing of privacy and public access interests. Given Respondent's  
18 enthusiastic and aggressive advocacy for the release of the voicemails, it appears that the only interest  
19 served by the disclosure is Respondent's own.

20 **3. The disclosure of the voicemails would violate the Attorney-Client Privilege**

21 Respondent argues that, because Respondent holds the attorney-client privilege with Ferguson,  
22 it can waive it. However, Respondent does not tell the Court that, in fact, Respondent is waiving any  
23 attorney-client privilege. Absent such express waiver, the privilege applies. Further, although  
24 Respondent's Opposition asserts that the voicemails do not reflect privileged communications  
25 (Opposition at 9, n. 3), it cites to a non-existent paragraph in the Velthoen Declaration for this  
26 contention. This assertion is thus made without evidentiary support. Further, such an assertion would  
27 be unsupported because Respondent concedes that it has not reviewed all of the voicemails.

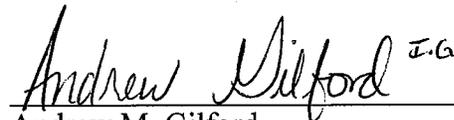
1 Finally, Respondent cannot unilaterally waive the privilege, because it was not the only client.  
2 Mr. Ferguson has stated that he represented not just Respondent, but the Association of California  
3 Healthcare Districts, Inc. (“ACHD”) and the ALPHA Fund, a joint powers authority composed of more  
4 than 70 healthcare districts. See Exhibit F to the Declaration of Andrew M. Gilford in Support of  
5 Petitioner’s Ex Parte Application. Mr. Ferguson has previously served as Chief Executive Officer and  
6 Chief Corporate Counsel of the ACHD and the Alpha Fund. *Id.* To the extent that any of the  
7 voicemails relate to the business of those entities, the attorney-client privilege cannot be waived by  
8 Respondent unilaterally. Thus, the records are attorney-client privileged pursuant to the Evidence  
9 Code, and cannot be disclosed under the CPRA. See Cal. Gov. Code § 6254(k); see also *STI Outdoor*  
10 *v. Superior Court* (2001) 91 Cal. App. 4th 334 (holding that attorney-client privileged communications  
11 were exempt from disclosure under the CPRA).

12 **III. CONCLUSION**

13 For the foregoing reasons, Petitioner respectfully requests issuance of a Preliminary Injunction  
14 restraining and enjoining Respondent, pending final judgment, from disclosing the voicemails to  
15 Requestor.

17 DATED: December 14, 2016

ANDREW M. GILFORD  
JESSICA R. CORPUZ  
**BAUTE CROCHETIERE & GILFORD LLP**

19  
20   
21 Andrew M. Gilford  
22 Attorneys for Plaintiff/Petitioner Jane Rozanski  
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24  
25  
26  
27  
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BAUTE CROCHETIERE & GILFORD LLP  
777 South Figueroa Street, Suite 4900  
Los Angeles, CA 90017  
Tel (213) 630-5000 • Fax (213) 683-1225

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**PROOF OF SERVICE**

Rozanski v. Camarillo  
Case No. Case No. 56-2016-00489673-CU-WA-VTA  
[2306.1]

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 777 South Figueroa Street, Suite 4900, Los Angeles, CA 90017.

On December 14, 2016, I served true copies of the following document(s) described as **PETITIONER'S REPLY IN SUPPORT OF ORDER TO SHOW CAUSE RE ISSUANCE OF PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

Michael A. Velthoen  
Ferguson Case Orr Paterson LLP  
1050 S. Kimball Road  
Ventura, CA 93004  
Email: mvelthoen@fcoplaw.com  
Tel.: (805) 659-6800  
Fax: (805) 659-6818

Attorneys for Defendant  
*Camarillo Health Care District*

Panda Kroll  
Benton Orr Duval & Buckingham  
39 N. California Street  
Ventura, CA 93001-2620  
E-mail: pkroll@bentonorr.com  
Tel.: (805) 648-5111  
Fax: (805) 648-7218

Attorneys for Real Party In Interest  
*Camarillo Acorn*

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address igomez@bautelaw.com to the persons at the e-mail addresses listed in the Service List. The document(s) were transmitted at or before 5:00 p.m. 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 December 14, 2016, at Los Angeles, California.

  
\_\_\_\_\_  
Irma Gomez