Case No. A140308

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION ONE

JOHN ST. CROIX, EXECUTIVE DIRECTOR, SAN FRANCISCO ETHICS COMISSION; and SAN FRANCISCO ETHICS COMISSION,

Petitioners and Respondents,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE CITY AND COUNTY OF SAN FRANCISCO,

Respondent and Appellant,

ALLEN GROSSMAN,

Real Party in Interest.

Appeal from the Superior Court of San Francisco,
Case No. CPF13513221
The Honorable Ernest H. Goldsmith

OPPOSITION TO PETITION FOR PEREMPTORY WRIT OF MANDATE AND/OR PROHIBITION [CALIFORNIA GOVERNMENT CODE SECTION 6259(C)]

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ATTORNEYS FOR REAL PARTY IN INTEREST
ALLEN GROSSMAN

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, First **APPELLATE DISTRICT, DIVISION** One	Court of Appeal Case Number: A140308
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* Michael Ng (237915); Jasmine Singh (260318) Kerr & Wagstaffe LLP 100 Spear Street, 18th Floor San Francisco, California, 94105 TELEPHONE NO.: 415-371-8500 FAX NO. *(Optional):* 415-371-0500 E-MAIL ADDRESS *(Optional):* mng@kerrwagstaffe.com; singh@kerwrwagstaffe.com ATTORNEY FOR *(Name):* Real Party in Interest, Allen Grossman	Superior Court Case Number: CPF13513221 ***FOR COURT USE ONLY***
APPELLANT/PETITIONER: John St. Croix et.al. RESPONDENT/REAL PARTY IN INTEREST: Superior Court of San Francisco	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): Real Party in Interest, Allen Grossman

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	**Nature of interest *(Explain):***
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: December 23, 2013

Michael K. Ng.
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

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I. INTRODUCTION

The dispute here arises out of a proper public records request by Real Party in Interest Allen Grossman ("Grossman") to the San Francisco Ethics Commission and its Executive Director (collectively, "Petitioners") pursuant to the California Public Records Act, Government Code sections 6250 *et seq.* (the "CPRA") and the San Francisco Sunshine Ordinance, San Francisco Administrative Code sections 67.1 *et seq.* (the "Sunshine Ordinance"). The requested records relate to the Ethics Commission's drafting of proposed regulations governing the handling of Sunshine Ordinance Task Force referrals and direct complaints filed with the Ethics Commission under the Sunshine Ordinance.

The CPRA permits a locality to "adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set out in [the CPRA.]" (Gov. Code, § 6253, subd. (e).) The Sunshine Ordinance, adopted by an overwhelming majority of San Francisco voters in 1999, does exactly that, by providing greater access to San Francisco's public records and meetings. Of pertinence here, the Sunshine Ordinance provides that "[n]otwithstanding a department's legal discretion to withhold certain information under the California Public Records Act," upon request a San Francisco agency must produce "[a]dvice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records

Act … any San Francisco governmental ethics code, or this Ordinance [*i.e.*, the Sunshine Ordinance]." (San Francisco Admin. Code, § 67.24, subd. (b)(1).) (See Request for Judicial Notice in Support of Opposition to Petition for Peremptory Writ of Mandate ("RJN"), Ex. 1.)

Though all records requested by Grossman fall within the scope of that section, Petitioners refused to produce certain responsive communications with the San Francisco City Attorney's Office, invoking the CPRA's exemption for attorney-client privilege and attorney work product. Petitioners argue that Sunshine Ordinance section 67.24(b) is invalid because it conflicts with the general appointment in the Charter of San Francisco City and County ("City Charter") of the City Attorney as counsel for San Francisco agencies and officers. In essence, Petitioners contend that merely by naming an attorney for the city, the City Charter implicitly requires that all communications with that attorney must be confidential, notwithstanding the voters' specific mandate to the contrary.

That novel invalidation theory fails both legally and as a matter of basic logic. There is no conflict between the *general* naming of the City Attorney as counsel and a *specific* requirement that certain communications with the City Attorney remain publicly accessible. Not all communications between an attorney and his or her client are confidential—those that were never confidential in the first place are not protected by privilege. That an attorney has an obligation to protect confidential communications with a

client does not shield expressly public communications with the attorney from public access laws. Petitioners would have the Court impose a rule that having appointed the City Attorney to act for their public officials, the voters of San Francisco cannot require that certain communications between the attorney and those officials be public. There is no legal basis for that claim. Public attorneys often provide advice in public forums, including meetings that state law mandate be open, and there is nothing inherent to the provision of legal advice that *requires* that it can only be administered confidentially.

In light of California's constitutional mandate that laws be construed in favor of the public's right of access, the Court should not take the extreme step of invalidating this important provision of the Sunshine Ordinance, especially in these circumstances where Petitioners have not and cannot show that disclosure would undermine the attorney-client relationship. Grossman respectfully requests that this Petition be denied and that Petitioners be compelled to make the requested public records immediately available.

II. FACTUAL BACKGROUND

A. THE PARTIES

Grossman is a longtime San Francisco resident and an advocate for open government. For many years, he has worked with other open government advocates to push for full implementation of the Sunshine

Ordinance and greater access to public records in San Francisco. The Ethics Commission is organized under Article XV of the City Charter and is a local agency within the meaning of Government Code section 6252(b) of the CPRA. The Ethics Commission consists of five members, who appoint an Executive Director, who serves as the Commission's chief executive. (City Charter, §§ 15.100, 15.101.) (See RJN, Ex. 2.) Petitioner John St. Croix ("St. Croix") is, and at all relevant times has been, the Ethics Commission's Executive Director.

B. THE SUNSHINE ORDINANCE AND ETHICS COMMISSION REGULATIONS

Pursuant to CPRA Government Code section 6253(e), the voters of San Francisco adopted the Sunshine Ordinance in November 1999; it took effect in January 2000. Among other things, the Sunshine Ordinance enhances San Franciscans' rights of access to public records and public meetings. It also established the Sunshine Ordinance Task Force to implement and carry out certain aspects of the law and the CPRA.

In addition to its substantive provisions, the Sunshine Ordinance sets out the process for enforcement of that law within San Francisco government. The Ethics Commission plays a critical role in that enforcement regime. For example, the Sunshine Ordinance specifically authorizes persons to enforce that law by instituting proceedings "before the Ethics Commission if enforcement action is not taken by a city or state

official 40 days after a complaint is filed." (San Francisco Admin. Code, § 67.35, subd. (d)) (See RJN, Ex. 1.) It also instructs that "[c]omplaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission." (*Id.* at § 67.34.)

Further, because the Sunshine Ordinance Task Force has no independent enforcement power, the Sunshine Ordinance provides that the Sunshine Ordinance Task Force "shall make referrals to a municipal office with enforcement power under this ordinance ... whenever it concludes that any person has violated any provisions of this ordinance or the Acts." (San Francisco Admin. Code, § 67.30, subd. (c).) (See RJN, Ex. 1.) The Ethics Commission is the only such office, and is specifically given the power to enforce willful violations of the Sunshine Ordinance. (*Id.* § 67.35, subd. (d).) (See *Id.*) In addition, the 1996 voter-adopted City Charter authorizes the Ethics Commission to adopt "rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records." (City Charter, § 15.102.) (See RJN, Ex. 2.)

Despite that important voter-mandated role, the Ethics Commission has failed to enforce the Sunshine Ordinance. Since 2004, when the Sunshine Ordinance Task Force first referred a failure by a City

respondent to comply with its order to disclose public records, it has referred some 39 such cases to the Ethics Commission for enforcement. In each instance, the Ethics Commission declined to enforce the Order and dismissed the case. Grossman and other Sunshine Ordinance advocates have long criticized that lack of action by the Ethics Commission, as has a San Francisco civil grand jury in its 2010-2011 report, "San Francisco's Ethics Commission: The Sleeping Watch Dog."[1]

A major point of contention was the Ethics Commission's reliance on inapposite regulations in its investigation and enforcement of Sunshine Ordinance referrals. From 2000, when the Sunshine Ordinance became effective, until January 2013, the Ethics Commission had not adopted any specific regulations setting out the procedures for enforcement of Sunshine Ordinance violations. Instead, the Ethics Commission took the position that previously adopted regulations ("Ethics Commission Regulations for Investigations and Enforcement Proceedings") governing other types of investigations should also be applied to Sunshine Ordinance referrals. Those regulations, however, were adopted under a Charter provision for Ethics Commission investigations and enforcements "relating to campaign finance, lobbying, conflicts of interest and governmental ethics." (City

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[1] Available online at http://www.sfcourts.org/Modules/ShowDocument.aspx?documentid=2860.

Charter, § 15.102; Appendix C, § C3.699-13.) (See RJN, Ex.2.) Grossman and others argued to the Ethics Commission that those regulations did not govern its Sunshine Ordinance enforcement actions, and that the Ethics Commission needed new separate regulations tailored to the investigation and enforcement of Sunshine Ordinance actions.

In 2009, the Ethics Commission recognized the need for Sunshine Ordinance-specific regulations, and its staff began the process of drafting separate regulations governing (a) the enforcement of Sunshine Ordinance Task Force referrals of its Orders and (b) complaints filed directly with the Ethics Commission regarding willful violations of the Sunshine Ordinance. The development of those regulations extended over three years and, in the end, new regulations were not put in place until January 2013. The first drafts of the new regulations proposed by the Ethics Commission's staff merely would have modified the existing Ethics Commission Regulations for Investigations and Enforcement Proceedings to accommodate Sunshine Ordinance matters. Later, when it became evident that modification would not be workable, the Ethics Commission took a different approach and its staff began drafting stand-alone regulations, which, in their final form, were called "Ethics Commission Regulations for Violations of the Sunshine Ordinance."

For most of that long process, the Ethics Commission staff shared drafts of the new regulations with the Sunshine Ordinance Task Force,

which provided comment and suggestions prior to or in connection with consideration of the draft by the Ethics Commission itself. There were also three joint meetings between the Ethics Commission and members of the Sunshine Ordinance Task Force Committee with responsibility for reviewing the proposed regulations. That collaboration provided the Ethics Commission access to the expertise of the Sunshine Ordinance Task Force, and allowed the Sunshine Ordinance Task Force input into the implementation of the Ethics Commission's important role in enforcement of its referrals.

In late 2012, for unknown reasons, that changed. On September 14, 2012, without prior notice to the Sunshine Ordinance Task Force or its members, the Ethics Commission published notice that its staff had submitted another revised draft of the proposed regulations for consideration at the Ethics Commission's September 24, 2012 meeting. The lack of prior notice deprived the Sunshine Ordinance Task Force of the opportunity to provide input to the Ethics Commission or its staff. Moreover, because the Sunshine Ordinance Task Force did not have a scheduled meeting before the Ethics Commission was set to consider the proposed regulations, it was prevented from taking official action to review or comment on them.

Grossman and other advocates appeared at the Ethics Commission's September 24, 2012 meeting and objected to the Sunshine Ordinance Task

Force's exclusion from the process, without avail.

C. GROSSMAN'S RECORD REQUEST

In an effort to seek further information about the Ethics Commission's proposed draft for its September 2012 meeting and its failure to provide that draft to the Sunshine Ordinance Task Force for review, on October 3, 2012, Grossman submitted to St. Croix, in his capacity as Executive Director of the Ethics Commission, a public records request pursuant to the CPRA and Sunshine Ordinance seeking copies of certain public records relating to the Ethics Commission's draft regulations. Specifically, Grossman requested:

> [C]opies of any and all public records ... in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:
>
> (1) All prior drafts and final versions of (a) the September 14, 2012 draft of the Ethics Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the [September 14, 2012] Commission Notice [and]
>
> (2) the preparation, review, revision and distribution of all prior drafts and final versions of the Draft Regulations and Staff Report ....

(Exhibits in Support of Petition for Writ of Mandate and for Prohibition ("Petition Exhibits"), p. 19.)

On October 12, 2012, the Ethics Commission responded to Grossman's request and produced 123 electronic files, six of which were partially redacted. However, it informed Grossman that additional records were being withheld:

> We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.

(Petition Exhibits, pp. 22-23.) The withheld public records were not identified in any way, including by category, and included no information about the number of records withheld. The statutory sections cited in the Ethics Commission's letter define the attorney-client privilege (Evid. Code, §§ 952, 954), and the attorney work product protection (Code Civ. Proc., § 2018.030). The CPRA provision cited, Government Code section 6254(k), is not a privilege or exemption in itself but incorporates into the CPRA exceptions privileges, such as the above two, set out elsewhere in state or federal law.

On October 21, 2012, Grossman responded by letter challenging the Ethics Commission's blanket assertion of privilege in support of its refusal to produce the withheld records. (Petition Exhibits, pp. 25-28.) Having received no response, he sent a follow-up email on November 1, 2012 requesting attention to his previous inquiry. (*Id.*, p. 30.) On November 2, 2012, St. Croix answered Grossman's email, stating that all responsive

documents had been produced: "You have already received all documents responsive to your request." (*Id.*, p. 32.)

D. GROSSMAN'S COMPLAINT AND THE SUNSHINE ORDINANCE TASK FORCE ORDER

Faced with St. Croix's refusal to produce the requested public records, or to provide the required written justification for his assertion of privilege, Grossman filed a complaint against St. Croix with the Sunshine Ordinance Task Force on November 19, 2012. (Petition Exhibits, pp. 34-48.)

St. Croix responded to the Complaint by letter dated December 6, 2012. (Petition Exhibits, pp. 50-53.) In that response, St. Croix again claimed the attorney-client privilege and attorney work product protection, and asserted that his bare citation to the code sections setting out those privileges was sufficient to satisfy compliance with the Sunshine Ordinance's requirements for a written justification for any withholding. The Sunshine Ordinance Task Force conducted a hearing on the complaint at its June 5, 2013 public meeting, at which both Grossman and St. Croix appeared, spoke, and responded to questions from Task Force members. St. Croix testified that he did not know the number of records withheld, that he did not personally review them, and that he could not testify regarding which of those claimed exemptions would apply to any or which withheld record.

In a written Order of Determination dated June 24, 2013, the Sunshine Ordinance Task Force held that St. Croix violated Sections 67.21 (b) and 67.24(b)(1) of the Sunshine Ordinance by improperly withholding records subject to disclosure, and ordered him to produce them to Grossman. (Petition Exhibits, pp. 55-56.) St. Croix did not comply with that order. (*Id.*, p. 9, line 20.)

On November 21, 2013, the Sunshine Ordinance Task Force referred Mr. St. Croix's non-compliance with its June 24, 2013 Order to the Ethics Commission. To date, the Ethics Commission has not acted on it. (See RJN, Ex. 5 [Agendas and minutes from Ethics Commission meetings from June 24, 2013 through present].)

During the pendency of this dispute, at its November 2012 meeting, the Ethics Commission adopted the Ethics Commission Regulations for Violations of the Sunshine Ordinance. The regulations took effect January 25, 2013.

E. THE SUPERIOR COURT'S ORDER

On September 18, 2013, Grossman filed a verified petition for a writ of mandate ("Petition") in the Superior Court below seeking an order compelling Petitioners to produce the public records he had requested nearly a year earlier. (Petition Exhibits, p. 1.) Petitioners filed a written opposition, in which they admitted that four documents were improperly withheld. (*Id.*, p. 104, ¶ 6.) Petitioners' opposition also specified, for the

first time, that 24 documents had been withheld on the basis of attorney-client privilege and the attorney work product doctrine, consisting of 15 requests from the Ethics Commission's staff to the City Attorney's Office for legal advice concerning the proposed regulations, and nine documents allegedly including legal advice from the City Attorney's Office in response. (*Id.*, p. 104 ¶ 7.)

The matter came before the Superior Court for hearing on October 25, 2013. On October 29, 2013, the court issued the order requested by Grossman, requiring Petitioners to produce the requested documents. (Petition Exhibits, pp. 204-206.) Petitioners did not produce the records. On November 22, 2013, the City filed this Petition for Peremptory Writ of Mandate and/or Prohibition under California Government Code section 6259(c), along with a Motion to Stay under California Government Code section 6259(c).

III. ARGUMENT

A. PETITIONERS IMPROPERLY ASSERT THIS WRIT

This writ is ostensibly filed on behalf of the Ethics Commission and its Executive Director. The Ethics Commission has not, however, authorized this proceeding, and public records indicate that it may not even be aware it was filed. (See RJN, Ex. 5.) For that reason alone, the Petition is void and should not be considered.

To bring this Petition, Petitioners were required to follow proper procedure laid out by the Brown Act. The decision to file this Petition is an "action taken" under the Brown Act because it is "a collective commitment…of a legislative body to make a positive…decision." (Gov. Code, § 54952.6.) Before taking such an "action" the Ethics Commission is required to comply with Section 54954.2(a) of the Act, which requires, among other things (1) posting an agenda at least 72 hours before the meeting containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in a closed session, and (2) that no action or discussion shall be undertaken on any item not appearing on the posted agenda. Should the action involve litigation and should the legislative body have a need to hold a closed session to discuss that litigation, it must first announce that closed session and identify the litigation to be discussed. (Gov. Code, § 54956.9.) The Ethics Commission's bylaws specifically require that it abide by this provision. (*See* Article I, Section 3 ["The Commission shall comply with all applicable laws, including, but not limited to, the San Francisco Charter, San Francisco Sunshine Ordinance…the Ralph M. Brown Act…"].) (See RJN, Ex. 3.)

None of the required steps were taken. While the writ is taken in the name of the Ethics Commission, the Ethics Commission did not actually bring it. Because the Ethics Commission has never authorized this Petition

or taken the action necessary to initiate and maintain it, the Court ought to deny it outright.

B. CALIFORNIA LAW PROVIDES FOR BROAD PUBLIC ACCESS TO GOVERNMENT RECORDS

The California Constitution enshrines a broad right of public access to government records:

> The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(Cal. Const., art. I, § 3.) In the CPRA, the Legislature called public access to government records a "fundamental and necessary right":

> In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

(Gov. Code, § 6250.) Therefore, the CPRA provides that "every person has a right to inspect any public record." (Gov. Code, § 6253.)

"Public records" are broadly defined to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (Gov. Code, § 6252, subd. (d).) Section 6253(b) of the CPRA requires disclosure of non-exempt public records upon request:

> Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(Gov. Code, § 6253(b).)

C. AS AUTHORIZED BY THE CPRA, THE VOTERS OF SAN FRANCISCO ELECTED TO BROADEN ACCESS TO PUBLIC RECORDS

Though the CPRA provides for certain exemptions to disclosure, the California Constitution mandates that any such limitation be narrowly construed, in favor of public access:

> A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(Cal. Const., art. I, § 3, subd. (b)(2); see also *Sander v. State Bar of California* (Dec. 19, 2013, S194951) __ Cal.4th __ [2013 WL 6670717, *7] [affirming mandate that exemptions to public disclosure be construed narrowly].) Courts have called those narrow statutory exceptions to that complete right of access "islands of privacy upon the broad seas of

enforced disclosure." (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 653 [117 Cal.Rptr. 106].)

Binding on municipalities and local agencies, the CPRA's right of access operates as a floor, not a ceiling—the law expressly authorizes any local government to "adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set out in [the CPRA.]" (Gov. Code, § 6253, subd. (e).) The provision at issue here, Sunshine Ordinance section 67.24(b)(1)(iii), is one that provides "greater access." As expressly authorized by the CPRA, the San Francisco voters opted to shrink one of the islands of privacy by precluding San Francisco agencies from invoking certain statutory exceptions for public records falling within certain narrowly defined subject areas, namely, the laws governing ethics and public access. Through the Sunshine Ordinance, the voters of San Francisco provided "enhanced rights of public access to information and records" with respect to "[a]dvice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any

San Francisco governmental ethics code, or [the Sunshine] Ordinance." (San Francisco Admin. Code, § 67.24, subd. (b)(1)(iii)) (See RJN, Ex. 1.)[2]

D. THERE IS NO CONFLICT BETWEEN THE CITY CHARTER AND THE SUNSHINE ORDINANCE

Petitioners concede that the records requested by Grossman fall within the scope of Sunshine Ordinance section 67.24(b)(1)(iii). They argue, however, that the provision is invalid because it conflicts with the City Charter sections 6.100 and 6.102. (Petition at p. 28.) There is no such conflict.

City Charter section 6.100 merely designates the City Attorney as counsel and provides that he or she will have "such additional powers and duties prescribed by state laws for their respective office." (See RJN, Ex. 2.) Section 6.102 sets out certain duties for the City Attorney, including

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[2] The Sunshine Ordinance also empowers the Sunshine Ordinance Task Force to determine when there has been a violation of the Ordinance. (San Francisco Admin. Code, § 67.21, subd. (e).) (See RJN, Ex. 2.) Pursuant to that authority, the Sunshine Ordinance Task Force June 24, 2013 Order of Determination finding a violation of Sunshine Ordinance sections 67.21(b) and 67.24(b)(1), and ordering St. Croix to produce the requested records should be given deference. To do otherwise would undermine the complaint, hearing and referral process of the Sunshine Ordinance, which was intended to give requesting parties an efficient process for resolution of public records complaints. Deference is particularly warranted here, where Petitioners did not raise the defenses on which they now rely until after Grossman filed a mandamus action in the Superior Court. Toleration of such sandbagging would encourage dragged-out litigation and further encumber the judicial system.

"provid[ing] advice or written opinion to any officer, department head or board, commission or other unit of government of the City and County." (See RJN, Ex. 2.) Section 67.24(b)(1)(iii) requires that certain categories of public records—those relating to public records laws themselves—be publicly accessible. (See RJN, Ex. 1.) The two laws can be read in perfect harmony. The City Attorney may carry out his or her duties, but when communicating or providing advice about public records laws, must do so in a manner that is publicly accessible manner.

The City Charter is silent with respect to the confidentiality of communications with the City Attorney. None of its provisions mandate that such communications take place within the boundaries of attorney-client privilege. Petitioners would have the Court read into that silence a blanket requirement that all such communications are confidential, and in doing so *create* a conflict with the express provisions of the Sunshine Ordinance, which was adopted by the same electorate a few years later. The Court should not strain to find a conflict where none exists; to the contrary, it should strive for interpretations of statutes that *avoid* conflict and do not render laws invalid. (*People v. Kennedy* (2001) 91 Cal.App.4th 288, 297 [110 Cal.Rptr.2d 203] ["It is our duty when interpreting statutes to adopt, if possible, a construction which avoids apparent conflicts between

different statutory provisions, even if the provisions appear in different codes" (citations omitted)].)[3]

Not only would such a construction bring the two municipal provisions into conflict, it would *narrow* Petitioners' obligation to allow public access to records. The California Constitution, obviously superior to any local law, expressly requires that "[a] statute...shall be broadly construed if it furthers people's right of access, and narrowly construed if it limits the right of access." (Cal. Const., art. I, § 3, subd. (b)(2); see also *Sander*, *supra*, __ Cal.4th __ [2013 WL 6670717, *7].)

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[3] Because there is no conflict, *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161 [36 Cal.Rptr.2d 521] is inapposite. In that case, the court examined whether a city charter precluded the city from implementing a program requiring bidders to engage in certain conduct as part of the competitive bid process where the charter contained no provision expressly allowing this program. In determining whether the implementation of the program conflicted with the charter, the court first "construe[d] the charter in the same manner as [it] would a statute...to ascertain and effectuate legislative intent....look[ing] first to the language of the charter, giv[ing] effect to its plain meaning..." (*Id.* at 171-172.) The court explained that since the charter did not expressly authorize or forbid the city from adopting the program, "the validity...must be ascertained with reference to the purpose" of the program." (*Id.* at 173.) The court found that there was no conflict because the program was compatible with the charter's provisions regarding bidding. Here, the purpose of the Sunshine Ordinance is not incompatible with the Charter's designation of privilege. Nothing in the Charter indicates that *all* communications between the City Attorney and his or her clients are necessarily privileged. Reading the Charter to contain such an implication does not give effect to its plain meaning.

E. THERE IS NO CONFLICT BECAUSE ATTORNEY-CLIENT COMMUNICATIONS ARE NOT NECESSARILY CONFIDENTIAL

Petitioners' argument rests on the mistaken premise that *all* communications with an attorney are *necessarily* confidential. They contend, "Because confidentiality is well-understood to apply to the attorney-client relationship and because it is fundamental to that relationship, the voters necessarily intended that the privilege apply to the City Attorney's advice." (Petition at p. 21.) However, it is plain that communications with attorneys, including advice and requests for advice, are very often non-confidential.

That is particularly true for public sector lawyers, who are subject to mandates that *require* them to provide certain types of advice in settings that must be accessible to the public. For example, this state's Brown Act mandates that meetings of local legislative and other bodies be conducted in the open, including any communications with counsel not related to pending litigation. (Gov. Code, § 54956.9.) Even when the purpose of a local legislative body's communications is "to confer with, or receive advice from … legal counsel," the body's sessions must remain public, and may go into closed session only if "open session concerning those matters would prejudice the disposition of the local agency in the litigation." (*Id.*) In other words, the Brown Act mandates that *most* attorney-client communications with a local legislative body take place in *open* session.

When the advice being sought or provided by the attorney does not concern pending litigation, that attorney-client communication must be in public. (See, e.g., *Stockton Newspapers, Inc. v. Members of Redevelopment Agency* (1985) 171 Cal.App.3d 95, 105 [214 Cal.Rptr. 561] [no exemption where "purpose of the communications with the attorney is a *legislative* commitment"].)[4]

By enacting the Brown Act, the California Legislature made clear that it believes that the relationship between a municipal body and its attorney does not *require* confidentiality, and that advice outside of the context of pending litigation must be carried out in full view of the public. Petitioners quote from various cases extolling the virtue of confidentiality in the attorney-client relationship, but those statements do not add up to a requirement that an attorney can perform his or her duties only in secret.[5]

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[4] The provision is sometimes referred to as a legislative abrogation of the attorney-client privileges. (*Shapiro v. Bd. of Directors of Ctr. City Dev. Corp.* (2005) 134 Cal.App.4th 170, 174 [35 Cal.Rptr.3d 826].)

[5] Academic studies agree that an attorney's representation of a public entity client can be fulfilled in an environment where the attorney-client privilege has been limited or altogether eliminated. The author of the leading treatise on the attorney-client privilege wrote, "Under the logic of open meetings, sunshine, and freedom of information acts, seven states" have abolished the attorney-client privilege altogether. (Paul R. Rice, *The Government's Attorney-Client Privilege: Should It Have One?*, Pub. Couns. Newsletter, (Md. St. B. Ass'n, Baltimore, MD), http://www.acprivilege.com/articles/acgov.md.htm [cited in Leong, *Attorney-Client Privilege in the Public Sector: A Survey of Government Attorneys* (2007) 20 Geo. J. Legal Ethics 163, 183].) He notes,

In San Francisco—like other California cities—the City Attorney routinely provides advice to the Board of Supervisors, the Ethics Commission, and other city boards, in open session. Other states have gone further, with some eliminating the privilege entirely. (See, e.g., *Arkansas Highway and Transp. Dept. v. Hope Brick Works, Inc.* (1988) 294 Ark. 490, 495 [744 S.W.2d 711, 714] [explaining that attorney-client privilege is not an exemption to the state's Freedom of Information Act].)

Further, the case law cited by Petitioners suggesting that an attorney-client exemption exists is inapposite. They argue that *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363 [20 Cal.Rptr.2d 330, 853 P.2d 496] stands for the proposition that written matter sent from an attorney to a government client is regulated by the Public Records Act and not the section of the Brown Act abrogating the privilege. The court in *Roberts* said "[w]e see nothing in the legislative history of the amendment suggesting the Legislature intended to abrogate the attorney-client privilege that applies under the Public Records Act, or that it intended to bring written communications from counsel to governing body within the scope of the Brown Act's open meeting requirements." (*Id.* at 377.) That logic does not extend to the specific provision in the Sunshine Ordinance that *is*

"Significantly, there have so far been no reported adverse consequences from this action." (*Id.*)

intended to bring written communications from counsel to governing body within the scope of open meeting requirements. In addition, the case is distinguishable on its facts. In *Roberts*, the court addressed whether the City of Palmdale needed to make public a letter from City Council regarding a parcel map application. The Supreme Court specifically addressed the issue of whether the letter would only be privileged where there is pending litigation. Here, no such argument is made. Grossman does not contend that a privilege cannot exist outside of pending litigation. Instead, the argument is that valid local laws provide that "[a]dvice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act…any San Francisco governmental ethics code or this Ordinance [i.e. the Sunshine Ordinance]" must be produced. (San Francisco Admin. Code, § 67.24, subd. (b)(1)(iii).) (See RJN, Ex. 1.) In other words, the records at issue here are not privileged from the outset, regardless of whether there is pending litigation.

F. A LAWYER'S OBLIGATION TO MAINTAIN CONFIDENCES DOES NOT CONVERT NON-CONFIDENTIAL COMMUNICATIONS TO CONFIDENTIAL ONES

Petitioners' flawed position is not rescued by their assertion that "Section 6.100 provides that the City Attorney is subject to the 'duties prescribed by state laws.'" (See RJN, Exh. 2.) The State Bar Act requires an attorney '[t]o maintain inviolate the confidence, and at every peril to

himself or herself to preserve the secrets, of his or her client.' (Cal. Bus. & Prof. Code, § 6068, subd. (e)(1).)" (Petition at p. 26.)

Petitioners also contend that Sunshine Ordinance section 67.24 (b)(1)(iii) makes it impossible for the City Attorney to carry out his obligations under Business and Professions Code section 6068(e)(1), which requires an attorney to protect a client's "confidence" and to "preserve the secrets[] of his or her client," and Rule of Professional Conduct 3-100 which similarly prohibits disclosure of client confidences. The logic is backward: what an attorney is required to do says nothing about whether his client is under an obligation to produce information. Those provisions governing an attorney's duty of confidentiality have no bearing on the principal's duties, and even with respect to the attorney, do not apply to communications that were not confidential in the first place. The City Attorney would not run afoul of his confidentiality obligations by disclosing advice provided to a local board in open session. Similarly here, he does not risk a violation governing only "secrets" and "confidence[s]" when the communications were, by operation of law, publicly accessible and therefore never confidential in the first place.[6]

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[6] The same is true with regard to Petitioners' argument that the City Attorney is subject to duties of confidentiality imposed by the Rules of Professional Conduct. (See Petition at pp. 22-23.) The argument is not relevant here because neither state law nor the Rules mandate that all communications are privileged or, even more specifically, that the

The arguments made by Petitioners here have been rejected by other courts addressing similar claims. For example, in *Dist. Atty. for Plymouth Dist. v. Bd. of Selectmen of Middleborough* (1985) 395 Mass. 629, 633–34 [481 N.E.2d 1128, 1131] the Massachusetts Supreme Judicial Council (the Commonwealth's highest court) ruled that a municipal board could not invoke the attorney-client privilege to create an exception to the state's open meeting law: "We view § 23B as a statutory public waiver of any possible privilege of the public client in meetings of governmental bodies except in the narrow circumstances stated in the statute." (*Id.* at 1131.) The Court expressly held that the law did not require attorneys to violate their ethical duties because the "attorney-client privilege is the client's privilege to waive," meaning that if "a client chooses to waive the privilege of confidentiality, the attorney is under no further ethical obligation to keep the communications secret." (*Ibid.*)

G. OPEN GOVERNMENT LAWS ARE NOT INCOMPATIBLE WITH THE ATTORNEY-CLIENT RELATIONSHIP

Petitioners' contention that Section 67.24 (b)(1)(iii) prevents the City Attorney from carrying out his duties as attorney for the City and its agencies is a gross exaggeration. The section merely provides that communications on certain subject matters, namely those *pertaining to*

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communications at issue here are privileged. They do not create a privilege where one does not otherwise exist.

open government laws, remain accessible to the public. It is not a reorganization of the relationship between the City Attorney and his clients, nor is openness fundamentally incompatible with the attorney-client privilege.[7]

The City Attorney's own "Good Government Guide" recognizes that

> [L]egal advice on ethics laws and open government laws may not be confidential for another reason. The Sunshine Ordinance provides that notwithstanding any exemption provided by law, any written legal advice about conflicts or open government laws may not be withheld from disclosure in response to a public records request. Accordingly, the practice of the City Attorney's Office is to inform any officer or employee who requests such advice in writing that the advice may be subject to disclosure upon request by a member of the public.

(See RJN, Ex. 4. at pp.22-23 (emphasis added).)

Petitioner relies on the rule that what is implied in a statute or a city charter is as "much a part of it as that which is expressed" (Petition at p. 21) to force an implied blanket of confidentiality over all attorney communications and to construct incompatibility between open government

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[7] San Francisco Administrative Code section 67.24 contains other provisions precluding San Francisco agencies from asserting CPRA exemptions that have not been challenged by the City. For example, Section 67.24(c) allows disclosure of a broad range of personnel information, and Section 67.24(h) precludes assertion of the deliberative process privilege, and Section 67.24(g) precludes reliance on the CPRA's "catch-all" provision. To Grossman's awareness, none of the above have been attacked. (See RJN, Ex. 1.)

laws and confidentiality. (See Petition at p. 21 (citing *Johnston v. Baker* (1914) 167 Cal. 260, 264 [139 P. 86] and *Currieri v. City of Roseville* (1970) 4 Cal.App.3d 997, 1001 [84 Cal.Rptr. 615]).) Neither case cited by Petitioner suggests that the Court here ought to find that voters intended for every communication with or all advice from the City Attorney to be confidential. That finding goes far beyond the implied findings in *Johnston* and *Currieri*. In *Johnston*, the court indicated that a statute authorizing the court in its discretion to dismiss an action two years after an answer was filed necessarily implied that a court could order dismissal at any time prior to the expiration of two years as well. In *Currieri*, the city charter provided that the probation period for a city employee would not exceed one year before the employee's appointment becomes permanent, "carry[ing] with [it] the necessary implication that the probationary employee, although he may be discharged summarily at any time during the probationary year, thereafter automatically attains a permanent status." (*Currieri*, *supra*, at p. 1001.) This is nothing like the broad implication of mandatory confidentiality that the Petitioner suggests here. Where the implication in *Johnston* and *Currieri* logically flows from the language and intent of the statutes, broadening privilege to apply to every attorney communication and every piece of attorney advice is not as natural a reading. To the contrary, it would be a gross expansion of the privilege doctrine and would undermine its structure by shifting the burden for proving confidentiality.

Petitioner also cites *Welfare Rights Org. v. Crisan* (1983) 33 Cal.3d 766 [190 Cal.Rptr. 919, 661 P.2d] for the contention that representation of clients in welfare proceedings necessarily includes confidentiality protections, even where a client's representative may not be an attorney. There, the court found that the attorney-client privilege was implied by the statute allowing for hearings under the aid to families with dependent children statute. In other words, the privilege was contextual and grounded in a specific need. That is unlike Petitioner's argument here that all communications between the City Attorney and his clients are necessarily privileged, regardless of the context or circumstances.

Petitioner then cites cases extolling the virtue of protecting confidentiality as a justification for upholding the alleged privilege in this case. (See Petition at pp. 22-23 (citing *People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1146 [86 Cal.Rptr.2d 816, 980 P.2d 371]; *People v. Gionis* (1995) 9 Cal.4th 1196, 1207 [40 Cal.Rptr.2d 456, 892 P.2d 1199]; *Hunt v. Blackburn* (1888) 128 U.S. 464, 470 [9 S.Ct. 125, 32 L.Ed. 488]).) This is an exercise in shadowboxing; Grossman does not dispute that confidentiality is a key component of our legal system, that it is a public policy concern and that it allows frank and open communication between a client and his or her attorney. None of those virtues of confidentiality, however, require that *every* communication between a client and his or her attorney be

confidential. Nor do those virtues mandate a finding that the communications at issue here must be privileged.

Petitioners also cite *Roberts, supra*, 5 Cal.4th at p. 380, *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 913 [159 Cal.Rptr.3d 789] and *Sacramento Newspaper Guild v. Sacramento County Bd. of Sup'rs* (1967) 255 Cal.App.2d 51, 54 [62 Cal.Rptr. 819] for the argument that local governments, like private citizens, need to confidentially confer with their lawyers, even despite open meeting laws. As discussed at, *supra* page 23, *Roberts* is distinguishable because it specifically addressed privilege in the context of pending litigation, which has no application here. *Citizens for Ceres*, which held that a statute calling for the collection of privileged documents "does not mean agencies must disregard all privileges when assembling CEQA administrative records" is ultimately unhelpful to Petitioners because the court went on to say that courts "are required to go cautiously when interpreting statutes that might either expand or limit privileges, for we are forbidden to create privileges or establish exceptions to privileges through case-by-case decision making." (*Citizens for Ceres, supra,* at p. 912.) Here, Petitioner is expressly asking the Court to create a privilege where it otherwise does not necessarily exist. The court in *Citizens for Ceres* said that "if the Legislature had intended to abrogate all privileges for purposes of compiling CEQA administrative records, it would have said so clearly." (*Id.* at p. 913.) What was muddy in that case

is crystal clear in this one: the San Francisco Sunshine Ordinance specifically exempts from privilege the communications that are at issue.

Finally, Petitioners' reliance on *Sacramento Newspaper Guild* is misplaced, namely because Petitioners do here exactly what the court there warned against there: "Public board members, sworn to uphold the law, may not arbitrarily or unnecessarily inflate confidentiality for the purpose of deflating the spread of the public meeting law. Neither the attorney's presence nor the happenstance of some kind of lawsuit may serve as the pretext for secret consultations whose revelation will not injure the public interest. To attempt a generalization embracing the occasions for genuine confidentiality would be rash." (*Sacramento Newspaper Guild*, *supra*, 255 Cal.App.2d at p. 58.)

H. PETITIONERS CANNOT SHOW WHY DISCLOSURE OF *THESE* COMMUNICATIONS WOULD IMPEDE THE CITY ATTORNEY'S REPRESENTATION

The premise that the City Attorney cannot carry out his duties if his client may be under an obligation to make those communications public is simply wrong, and wholly incompatible with the California Legislature's judgment in the Brown Act context that an attorney's advice to local bodies *should* be carried out in public. The subject matter of Grossman's request epitomizes the type of advice that does not depend on confidentiality. He sought drafts and final versions of the Ethics Commission's regulations governing the handling of Sunshine Ordinance matters, the associated staff

report, and records relating to the "preparation, review, revision and distribution" of the drafts and staff report. The drafting of procedural regulations is akin to a legislative function—different members of the public may have different views about what the procedures should look like, but the process is fundamentally non-adversarial. No unfair advantage would be conferred by giving the public an insight into the City Attorney's views on different versions. Notably, at the most recent Ethics Commission meeting, the Deputy City Attorney provided legal advice in open session on further proposed changes to the Sunshine Ordinance regulations at issue.

Petitioners argue that "the abrogation of the privilege significantly impedes the City Attorney's function." (Petition at p. 30.) Petitioners recite a parade of horribles that might ensue if litigation adversaries could attack the attorney-client privilege through Sunshine Act or CPRA requests. Whatever justification might be found for limiting disclosure in the context of active litigation, those admittedly trickier circumstances are not found here. The drafting of regulations is a process that should be open, and the provision of candid, honest, well-reasoned and complete legal advice in connection with that process is not impeded by disclosure. There is no reason to believe the questions to the City Attorney or his answers would be any different regardless of whether communications were public or private. The Court need not reach the issue of whether a litigation

exception should be read into the law, and need only apply the law as written.

Petitioners cite *Scott v. Common Council of the City of San Bernardino* (1996) 44 Cal.App.4th 684 [52 Cal.Rptr.2d 161], a case where the court held that a city council could not impair the city attorney's charter duties through a budget ordinance and that only voters could change the city attorney's duties by amending the city's charter, to argue that the San Francisco City Charter controls in this case. Here, however, the Sunshine Ordinance did not constitute a change to the city attorney's *duties*. It merely requires that a certain category of documents be made available for public review, taking those documents out of the potential realm of privilege. That does not conflict with any duty set out in the City Charter, as the Charter does not require or mandate that all communications between an attorney and client be privileged and confidential in the first place.

I. IF THERE WAS A PRIVILEGE, THE VOTERS COULD WAIVE IT

Because San Francisco law requires that the public records at issue be made public, they were never confidential in the first place, and no privilege ever attached. The waiver of privilege is therefore a misleading and inapposite frame of reference here. But if disclosure here were viewed as a waiver of privilege, it is clear that the voters of San Francisco were empowered to make that waiver.

Whatever difficulty a municipal lawyer might have in ascertaining who holds the power to waive the City's privilege dissolves when the voters speak through the ballot box. The California Constitution states: "All political power is inherent in the people." (Cal. Const., art. II, § 1.) The San Francisco City Charter grants plenary legislative power through direct action by the voters, providing that "the voters of the City and County shall have the power to enact initiatives and the power to nullify acts or measure involving legislative matters by referendum." (City Charter, §14.100.) (See RJN, Ex.2.) The Sunshine Ordinance was a valid and proper exercise of that authority.

In addition, as discussed above, local enactments like Sunshine Ordinance section 67.24 (b)(1)(iii) are expressly authorized by the CPRA. (Gov. Code, § 6253, subd. (e).) It is beyond cavil that state law supersedes local law. (*Candid Enterprises, Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885 [218 Cal.Rptr. 303, 705 P.2d 876] [("If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void."].) Whatever the hierarchical relationship between a general provision of the City Charter and a detailed, specific enactment by the voters directly, the fact that the pertinent section here was authorized by express state law renders the debate of no significance.

Again, privilege is the wrong frame for this analysis because the voters' directive here is not to the *attorney*, but to the city officials who

work for and on behalf of the voters. It may be that the City Attorney is bound not to disclose privileged information, and to act zealously on behalf of his clients, but that says nothing about whether those clients may choose to give up their right to confidentiality. The voters' plenary legislative authority includes the power to compel their own officials to waive privilege.[8]

Petitioners' arguments to the contrary do not survive scrutiny. They ask, "[I]f voters could withdraw the privilege by ordinance in regard to the matters mentioned above, why could they not do the same for any subject on which the City Attorney advices City officials?" (Petition at p. 31.) They contend that the Sunshine Ordinance might be construed to allow an adversary to access litigation strategy, or to undermine the obligation of the City to provide a defense to individual police officers. (*Id.*) But this Court need not address the boundaries of extreme situations raised only hypothetically here. Petitioners suggest that this is a slippery slope, but it is not. There may be circumstances where the right of public access conflicts

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[8] Any distinction between attorney work product and attorney-client privilege makes no difference here. As a preliminary factual matter, some of the documents at issue are *requests* for advice *to* the Deputy City Attorney, so they cannot be work product. Second, Petitioners overstate the law by suggesting that a client may not disclose communications with their attorney that happen to contain work product without the attorneys' consent. The law is clear that "an attorney's work product belongs absolutely to the client." (*Kallen v. Delug* (1984) 157 Cal.App.3d 940, 950 [203 Cal.Rptr. 879].)

with other individual rights in other situations, but those issues are not raised here, and remain, if anything, a question for another day.

Finally, Petitioners place great weight on the alleged differences between the process for instituting an amendment to the City Charter and passing an ordinance. Though there are some procedural differences for placing the matter on the ballot, the fact remains that simple majority voter approval is required for both. The Sunshine Ordinance was passed by a majority of the San Francisco voters, whose express will would be undone by the action (taken on the ostensible authority) of their own elected officials here. The Court should strive to give effect to their will here, not strain to read words into statutory silence to find a conflict that it must then resolve.

IV. CONCLUSION

For the foregoing reasons, the Court should not invalidate a key provision of the Sunshine Ordinance allowing for the disclosure of documents requested by Grossman. That is especially true in these circumstances, where Petitioners fail to show that disclosure would undermine the attorney-client relationship. Grossman respectfully requests that this Petition be denied and that Petitioners be compelled to make the requested public records immediately available.

DATED: December 23, 2013

KERR & WAGSTAFFE LLP

By: _____
MICHAEL NG
Attorneys for Allen Grossman

CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

Pursuant to Rule of Court 8.204(c)(1), I certify that this Brief is proportionately spaced, has a typeface of 13-point, proportionally-spaced font, and contains 8,361 words.

DATED: December 23, 2013

KERR & WAGSTAFFE LLP

MICHAEL NG
Attorneys for Allen Grossman

PROOF OF SERVICE

I, Sarah Guzman, declare that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Kerr & Wagstaffe LLP, 100 Spear Street, 18th Floor, San Francisco, California 94105.

On December 23, 2013, I served the following document(s):

OPPOSITION TO PETITION FOR PEREMPTORY WRIT OF MANDATE AND/OR PROHIBITION [CALIFORNIA GOVERNMENT CODE SECTION 6259(C)]

on the parties listed below as follows:

Dennis J. Herrera
City Attorney
Andrew Shen
Joshua S. White
Deputy City Attorneys
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City Hall, Room 234
San Francisco, CA 94102

San Francisco County Superior Court
Appeals Division
400 McAllister Street
San Francisco, CA 94102

☒ **By first class mail** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid and placing the envelope in the firm's daily mail processing center for mailing in the United States mail at San Francisco, California.

☒ **By electronic submission** by submitting a text searchable Portable Document Format ("PDF") via the Court of Appeal online form to the Supreme Court of California pursuant to CRC 8.212(c).

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

Executed on December 23, 2013, at San Francisco, California.

Sarah Guzman