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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF MONTEREY

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14 ROYAL CALKINS, an Individual,  
15 Petitioner,

Case No.: 18CV002532

**PETITION FOR WRIT OF MANDATE**

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v.

17 CITY OF CARMEL-BY-THE-SEA, and  
Does 1 -through 10, inclusive,  
18 Respondents.

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21 Petitioner Royal Calkins (“Petitioner”) complains of Respondent City of Carmel-By-The-  
22 Sea (“City” or “Respondent”) as follows:

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**PARTIES**

24 1. Petitioner Royal Calkins was at all times here relevant and is a citizen and  
25 resident of the State of California, County of Monterey, a reporter for Voices of Monterey Bay, an  
26 on-line not-for-profit newspaper, and a member of Transparency in Government, an  
27 unincorporated association of individuals who work together to protect the public interest in an

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1           6.       Mozingo represented in his RFQ response that he was a “recipient of both  
2 the United States Congressional Medal of Distinction and the United States Gold Medal for [his]  
3 work in aiding Congressional Conferences of the United State House of Representatives and  
4 Senate, where [he] assisted in negotiating legislative proposals that resulted in the passage of  
5 significant legislation in the area of highway funding for both federal and state programs.”  
6 (Emphasis in original) That statement was and is not true.

7           7.       The Congressional Gold Medal is the highest expression of national  
8 appreciation for distinguished achievements and contributions. Many consider it the civilian  
9 equivalent of the Congressional Medal of Honor, awarded to members of the military for extreme  
10 valor and heroism. Any recipient must garner the co-sponsorship of 290 U.S. Representatives and  
11 t 67 members of the U.S. Senate to become eligible. The first recipient was George Washington in  
12 1776. Recipients since 1900 include the Wright Brothers, Charles Lindbergh, Thomas Edison, Dr.  
13 Jonas Salk, Winston Churchill, Nelson Mandela and Mother Teresa. Mozingo was never a  
14 recipient of this honor.

15           8.       The “Congressional Medal of Distinction” is not awarded by Congress, nor  
16 does it require distinction. Rather, it is awarded by the National Republican Congressional  
17 Committee (“NRCC”), the fund-raising committee for the Republican Party for the House of  
18 Representatives in the United States Congress. More specifically, the medal is awarded by a  
19 subsection of the NRCC, known as the “Business Advisory Council,” that specializes in soliciting  
20 political donations from businesses.

21           9.       In his response to the RFQ, Mozingo represented that “[a]s founder of the  
22 firm Mozingo and Patel, A.P.C., [he] served as lead counsel for 37 years, from 1979 through  
23 December 31, 2016.” That statement appears to be contradicted by public records. According to  
24 the California Bar Association (“Bar”), Mozingo was admitted to practice law in the State of  
25 California on November 29, 1979, but Kinnery Patel, his partner in Mozingo and Patel, A.P.C.,  
26 was not admitted to practice law in the State of California until May 3, 2003. California Rule of  
27 Professional Conduct 1-310 provides that a “member shall not form a partnership with a person  
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1 who is not a lawyer if any activities of that partnership consist of the practice of law.”

2 Accordingly, and absent a violation of Rule 1-310, there could not have been a firm of Mozingo  
3 and Patel, A.P.C., until May of 2003, when Ms. Patel was first licensed to practice in California.  
4 Moreover, according to the California Secretary of State, the professional corporation of Mozingo  
5 and Patel, A.P.C., did not exist until registered as such by the California Secretary of State on  
6 February 6, 2004 (under the name “The Mozingo Law Firm” that was changed to “Mozingo &  
7 Patel, a Professional Corporation on January 8, 2010). In addition, according to the records of the  
8 California Court of Appeal, Fourth Appellate District, Division 3, Case No. G012342, Mozingo  
9 represented one of the parties in the referenced appeal in 1992 and 1993, and identified himself in  
10 as a member of the firm of Millar, Hodges, Bemis & Mozingo.

11           10. Numerous other statements contained in Mozingo’s response to the RFQ  
12 appear to be false as well. For example, his claim that he served as a “special counsel to the Chief  
13 of Police, Los Angeles Police Department, (8 years), 1984-1992 Daryl Gates, Chief” where his  
14 “work was related to reviewing and consulting with the Chief of Police regarding proposed  
15 municipal ordinances . . .” is called into question by the fact that several people close to Chief  
16 Gates at that time have no memory of Mozingo. Another example from his response to the RFQ is  
17 Mozingo’s statement that he has “never been the subject of a malpractice claim, complaint to the  
18 State Bar or disciplinary action of any kind during [his] my 37 years of practice.” But, according  
19 to the records of the Orange County Superior Court, in March of 2002 Orange County certified  
20 public accountant Caren S. Ober filed a lawsuit accusing Mozingo of professional negligence,  
21 breach of fiduciary duty and fraud – all of which are forms of legal malpractice. Ten years earlier,  
22 Mozingo was sued for negligence and fraud by former client Manuel Vierra, an owner and breeder  
23 of Arabian horses.

24           11. On or about May 1, 2018, Transparency in Government, through its counsel,  
25 submitted to City a written request, made pursuant to the California Public Records Act,  
26 Government Code §§ 6250 et seq., for copies of a number of categories of public records (the  
27 “Request”), including :

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1. All records submitted to the City by or on behalf of Glen Mozingo in connection with his application for the position of City Attorney, including but not limited to his application itself, his resume or C.V., and letters or other forms of correspondence to members of the City Council, whether authored by Mr. Mozingo or by third parties, and concerning his application.

2. All records considered by the City in connection with the application of Glen Mozingo for the position of City Attorney, including but not limited to his application itself, his resume or C.V., and letters or other forms of correspondence to members of the City Council, whether authored by Mr Mozingo or by third parties and concerning Mr. Mozingo's application.

On or about May 22, 2018, the City responded to that portion of the Request by providing a copy of Mozingo's response to the RFQ and a related cover letter, representing that there were no other public records within those categories.

12. On or about June 5, 2018, the Council held a closed session before the general session of its regular meeting. In that regular session Council Member Carrie Theis read aloud the following statement:

I want the public to know that your City Council is conducting a 12-month performance review of City Attorney Glen Mozingo as required by his contract . . . . In light of recent libelous and defamatory comments challenging Mr. Mozingo's resume, he voluntarily provided to the Council an extensive and in depth review of supporting documentation to his resume that included diplomas, degrees, licenses, membership verifications and National Republican Congressional Committee awards, letters of verification and substantiation, scholastic awards, a letter confirming his appointment to the London Court of Arbitration, and letters of commendation from the Secretary of the Treasury and then-sitting Supreme Court Justice William O. Douglas. We can assure you that this thorough review confirms that Mr. Mozingo's resume was correct in every manner and that the representations, allegations and challenges to that resume are entirely without merit.

Each Council member, in turn, was asked if he or she agreed with the statement read by Ms. Theis, and each responded in the affirmative.

1           13.     On or about June 7, 2018, Petitioner sent the City an email that specifically  
2 sought to review the documents reviewed by the Council as described in the statement read by  
3 Council Member Theis. The City responded that Mr. Mozingo retrieved all of the documents he  
4 showed to the Council, and that the City has no such records.

5           14.     Also on or about June 7, 2018, Transparency in Government, through its  
6 counsel, sent City by electronic mail a letter taking issue with the position of the City. Among  
7 other things, that letter said:

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9           It is my client's position that all of the documents referenced by  
10 Council Member Theis fall within category 1 of its original request:  
11 "All records submitted to the City by or on behalf of Glen Mozingo  
12 in connection with his application for the position of City Attorney,  
13 including but not limited to his application itself, his resume or C.V.,  
14 and letters or other forms of correspondence to members of the City  
15 Council, whether authored by Mr. Mozingo or by third parties, and  
16 concerning his application." Accordingly, they should be made  
17 available for review forthwith.

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19           If the City takes the untenable position that they are not so included  
20 and that this letter therefore constitutes a new request ostensibly  
21 allowing the City to take 10 days to respond and then to delay  
22 improperly the response by an additional 14 days, it may expect the  
23 initiation of a legal action to enforce compliance with the law. Such  
24 a position is at odds with both the language and the policy of the  
25 Public Records Act and cannot be allowed to stand without  
26 challenge.

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28           The City never responded to that letter.

#### **APPLICABLE LAW**

1           15.     Under the Public Records Act, Government Code §§6250 et seq., the City as  
2 a "local agency" is obligated to grant public access to, and for a fee of no more than the actual cost  
3 of copying to provide copies of, any public records to a member of the public who properly  
4 requests such access or copies, unless any specific record is exempt from disclosure by the  
5 provisions of Government Code §§6254 *et seq.* or 6255. The purpose of the Act is made clear in §  
6 6250: "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds  
7 and declares that access to information concerning the conduct of the people's business is a

1 fundamental and necessary right of every person in this state.

2           16. Government Code §6252 (e) provides that the term “public records”  
3 includes “any writing containing information relating to the conduct of the public’s business  
4 prepared, owned, *used*, or retained by any state or local agency regardless of physical form or  
5 characteristics.” (Emphasis added). Petitioner is informed and believes that each of the records  
6 requested by Petitioner meets that definition – each was “used” by the Council in reaching its  
7 ostensible conclusion with respect to the accuracy of Mozingo’s response to the RFQ and as such  
8 is a “public record” and none is exempt from disclosure by the terms of the Public Records Act.  
9 Petitioner performed all requirements placed on him by law to entitle him to access to, and a copy  
10 of, each requested record. Because of Petitioner’s compliance with the applicable legal  
11 requirements, and because the records sought are not exempt from disclosure under the law,  
12 Petitioner has a clear, present, and substantial right to the performance by Respondent City of its  
13 duties.

14           17. Because Petitioner has in all respects complied with the requirements placed  
15 on him by the Public Records Act, and because the records to which he sought and seeks access,  
16 and of which he sought and seeks a copy, were not and are not exempt from disclosure under the  
17 provisions of the Public Records Act, Respondent has a clear, present and absolute duty to provide  
18 access to, and a copy of, each requested record. Respondent failed to perform its duties in that  
19 regard by refusing to provide Petitioner access to, or a copy of, any of the records set forth in  
20 Paragraph 13 and 14, above.

21           18. The Public Records Act grants Petitioner the right to seek the relief sought  
22 herein. Government Code §6258 provides that “[a]ny person may institute proceedings for  
23 injunctive or declaratory relief or writ of mandate in any court of competent jurisdiction to enforce  
24 his or her right to inspect or to receive a copy of any public record or class of public records under  
25 this chapter.” Moreover, “[t]he times for responsive pleadings and for hearings in these  
26 proceedings shall be set by the judge of the court with the object of securing a decision as to these  
27 matters at the earliest possible time.

1           19.     Petitioner has no plain, speedy, and adequate remedy at law other than the  
2 relief sought by way of this Petition. Without the issuance of a Writ of Mandate as prayed herein,  
3 Petitioner will not be granted access to or a copy of the above-described documents that contain  
4 substantive information about the operation and conduct of an important part of the public's  
5 government. Given the election scheduled for November, 2018, it is critical that the requested  
6 records be available to the public promptly.

7           20.     Government Code §6259(a) provides that "[w]henver it is made to appear  
8 by verified petition to the superior court of the county where the records or some part thereof are  
9 situated that certain public records are being improperly withheld from a member of the public, the  
10 court shall order the officer or person charged with withholding the records to disclose the public  
11 record or show cause why he or she should not do so." This Court should issue an Alternative  
12 Writ, compelling Respondent to disclose all requested documents, or to show cause before this  
13 Court why it should not be required to do so.

14           21.     Government Code §6259(d) provides that the "court shall award court costs  
15 and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant  
16 to this section."

17 WHEREFORE, PETITIONER PRAYS FOR JUDGMENT AS FOLLOWS

18           1.     That this Court issue an Alternative Writ of Mandate commanding Respondent City  
19 to allow the inspection of, and to provide a copy of, each requested record, or to show cause before  
20 this Court at a date and time to be specified by the Court why it has not done so, and why it should  
21 not be compelled to do so.

22           2.     That on the return of the Alternative Writ and the hearing of this Petition, this Court  
23 issue its Peremptory Writ of Mandate commanding Respondent City to allow inspection of to  
24 provide a copy of, each requested document.

25           3.     For an award of attorney's fees to Petitioner pursuant to Government Code  
26 §6259(d);

27           4.     For costs of suit incurred herein; and

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5. For such other and further relief as this Court deems just and proper.

Dated: July 7, 2018

NEIL L. SHAPIRO  
LAW OFFICES OF NEIL L. SHAPIRO

By   
Neil L. Shapiro

Attorneys for Petitioner ROYAL CALKINS

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**VERIFICATION**

I, Royal Calkins, declare:

I am the Petitioner in this action. I have reviewed the foregoing Petition for Writ of Mandate and know the contents thereof. I know of my own personal knowledge that each and every factual allegation set forth above is true and correct, except those alleged on information and belief, which I believe to be true and correct.

Executed at Carmel, California, this 5<sup>th</sup> day of July, 2018. I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Royal Calkins