

1 BRIGGS LAW CORPORATION [FILE: 1930.00]
2 Cory J. Briggs (State Bar no. 176284)
3 Anthony N. Kim (State Bar no. 283353)
4 99 East "C" Street, Suite 111
5 Upland, CA 91786
6 Telephone: 909-949-7115

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/16/2017 at 03:05:23 PM
Clerk of the Superior Court
By Erika Engel, Deputy Clerk

7 Attorneys for Plaintiff and Petitioner Matt Valenti

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – HALL OF JUSTICE

10 _____) CASE NO. 37-2017-00044069-CU-MC-CTL
11 MATT VALENTI,)
12 Plaintiff and Petitioner,) **VERIFIED COMPLAINT FOR**
13 vs.) **DECLARATORY AND INJUNCTIVE**
14 CITY OF SAN DIEGO; and DOES 11 through 100,) **RELIEF AND PETITION FOR WRIT OF**
15 Defendants and Respondents.) **MANDATE UNDER THE CALIFORNIA**
) **PUBLIC RECORDS ACT AND OTHER**
) **LAWS**

16 Plaintiff and Petitioner MATT VALENTI ("PLAINTIFF") alleges as follows:

17 **Introductory Statement**

18 1. PLAINTIFF is filing this lawsuit because the City of San Diego has refused to release
19 public records that show a history and pattern of sexual assault and other physical abuse committed by
20 adults employed by the San Diego Junior Theatre ("SDJT") against children entrusted to them. Each
21 year the City allocates a substantial portion of its hotel-tax revenues to SDJT. Two Deputy City
22 Attorneys – Catherine Morrison and Joan Dawson – have been members of SDJT's board of directors
23 for several years. At a board meeting in August 2016, allegations of sexual and physical abuse against
24 students at SDJT were raised about two of its employees: Eric Von Metzke and James Saba. Mmes.
25 Morrison and Dawson did not report the allegations to law-enforcement authorities. Curiously, at the
26 same meeting, the board was asked to consider an amendment to SDJT's bylaws that required board
27 members to maintain confidentiality concerning the organization's information and records; the
28 amendment was proposed by Mrs. Dawson.

1 **Prayer**

2 FOR ALL THESE REASONS, PLAINTIFF respectfully prays for the following relief against
3 all Defendants/Respondents (and any and all other parties who may oppose PLAINTIFF in this lawsuit)
4 jointly and severally:

5 A. *On the First Cause of Action:*

6 1. A judgment determining or declaring that Defendants/Respondents have not
7 promptly and fully complied with the First and/or Second Request(s), the California Constitution, the
8 common law, and/or other applicable laws with regard to the First and/or Second Request(s);

9 2. A writ of mandate ordering Defendants/Respondents to promptly and fully
10 comply with the CPRA, the California Constitution, the common law, and all other applicable laws with
11 regard to the First and/or Second Request(s); and

12 3. Preliminary and permanent injunctive relief directing Defendants/Respondents
13 to fully respond to the First and/or Second Request(s) and to permit PLAINTIFF to inspect and obtain
14 copies of all responsive public records.

15 B. *On the Second Cause of Action:*

16 1. An order determining and declaring that the failure of Defendants/Respondents
17 to disclose all public records responsive to the First and/or Second Request(s) and to permit
18 PLAINTIFF to inspect and obtain copies of all responsive public records does not comply with the
19 CPRA, the California Constitution, the common law, and/or other applicable laws; and

20 2. Preliminary and permanent injunctive relief directing Defendants/Respondents
21 to respond to and disclose all public records responsive to the First and/or Second Request(s) and to
22 permit PLAINTIFF to inspect and obtain copies of all responsive public records.

23 C. *On All Causes of Action:*

24 1. An order providing for the Court’s continuing jurisdiction over this lawsuit in
25 order to ensure that Defendants/Respondents fully comply with the CPRA, the California Constitution,
26 the common law, and/or other applicable laws;

27 2. All attorney fees and other legal expenses incurred by PLAINTIFF in connection
28 with this lawsuit; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Any further relief that this Court may deem appropriate.

Date: November 16, 2017.

Respectfully submitted,

BRIGGS LAW CORPORATION

By: Cory J. Briggs
Cory J. Briggs

Attorneys for Plaintiff and Petitioner Matt Valenti

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "A"

ORIGINAL

FILED

SAN DIEGO SUPERIOR COURT

JUN 15 2017

CLERK OF THE SUPERIOR COURT

BY C. SARNO

1 BONNIE M. DUMANIS
District Attorney
2 TRISHA L. AMADOR
Deputy District Attorney, SBN 249135
3 330 West Broadway, Suite 1240
4 San Diego, CA 92101
Tel. (619) 685-6170
5 Fax (619) 685-6540
Email trisha.amador@sdca.org

6 Attorneys for Plaintiff
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO
10 CENTRAL DIVISION

11 THE PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff,

No. SCD271125
DA AED860

13 v.

SENTENCING MEMORANDUM

14 ERIC PHILLIP VONMETZKE,
15 Defendant.

Date: June 20, 2017
Time: 1:30 p.m.
Dept: 30

16
17 Comes now the plaintiff, the People of the State of California, by and through their
18 attorneys, BONNIE M. DUMANIS, District Attorney, TRISHA L. AMADOR, Deputy District
19 Attorney, and respectfully submits the following Sentencing Memorandum.

20 **STATEMENT OF THE CASE**

21 On March 14, 2016, a Felony Complaint was filed in the Superior Court of California
22 charging ERIC PHILLIP VONMETZKE (hereinafter "defendant") with (Count One) Unlawful
23 Sexual Intercourse with a Minor-more than three years younger, in violation of Penal Code
24 section 261.5(c); (Count Two) Oral Copulation with a Minor-under the age of eighteen in
25 violation of Penal Code section 288a(b)(1); and (Count Three) Sexual Penetration by Foreign
26 Object, to wit: finger(s), of a minor under the age of eighteen in violation of Penal Code section
27 289(h). On the same day, a warrant was issued for his arrest. Later that evening, he was
28 arrested by officers from the San Diego Police Department. Prior to his arraignment, the
29 defendant posted bail in the amount set at the time the warrant was signed.

1 On March 23, 2017, the defendant appeared before the Honorable Kathleen Lewis of the
2 Superior Court. At that time, based upon changed circumstances and the people learning of a
3 potential second underage victim, the people requested an increase in bail. The request was
4 denied. On the same day, defendant entered a plea of "Not Guilty."

5 On April 21, 2015, at a felony readiness conference, defendant pled guilty to (Count One)
6 Unlawful Sexual Intercourse with a Minor-more than three years younger, in violation of Penal
7 Code section 261.5(c) and (Count Two) Oral Copulation with a Minor-under the age of
8 eighteen. It was a "sentence to court" and the People indicated they would be evaluating what
9 they would be asking for in terms of a sentence based upon several factors, including but not
10 limited to: the probation report, the psychological evaluation being prepared by defense
11 counsel, the facts of the case, and the victims input. While a specific number was not discussed
12 or term of probation vs prison, the people did inform the court and defense counsel that the
13 victim and her family would be asking this court to sentence the defendant to state prison for his
14 actions. The court did not give either party an indicated as to what the sentence may be.

15 The matter is currently before the court for a sentencing hearing.

16 STATEMENT OF FACTS

17 It was previously anticipated that the following information would be presented through
18 testimony of witnesses during the preliminary hearing/trial had it commenced.

19 By way of background, in October of 2016, the thirty-four year old defendant was a
20 drama teacher at San Diego Junior Theatre. Sixteen year old Jane Doe was a student and
21 teacher's aide for the defendant. Jane Doe also knew the defendant because he was dating her
22 friend "Maddy." Maddy was eighteen years old in October of 2016. In addition, the defendant,
23 Jane Doe, and Maddy were friends with an individual by the name of "Troy." Jane Doe had
24 very strong feelings for Troy, but she was no longer talking to him at the time of the sexual
25 assault alleged in this case.

26 On January 9, 2017, San Diego Police were alerted to a possible sexual assault involving
27 a sixteen year old student and a teacher. The report was made by the Executive Director of the
28 San Diego Junior Theatre and entailed allegations of an inappropriate sexual relationship.
29 According to the report, the student disclosed to a teacher (later determined to be Michelle Gray)

1 who in turn reported it to the Executive Director. The Executive Director then reported to the
2 San Diego Police Department. The suspect was identified as the defendant and the victim was
3 identified as Jane Doe. Sergeant Tagaban contacted Jane Doe over on the phone and informed
4 her of the allegations that had been reported to the San Diego Police Department and asked if
5 she was willing to come into the office and speak about what had occurred. Jane Doe wanted to
6 know who had reported the allegations. Sergeant Tagaban did not provide her with the
7 information. Jane Doe sounded very concerned about the allegation and asked if Sergeant
8 Tagaban was going to speak with her parents. Jane Doe was informed of her rights under
9 Marcy's Law. Jane Doe denied that anything had occurred and her parents were not contacted.

10 On January 23, 2017, Jane Doe and her mother contacted the San Diego Police
11 Department and reported that Jane Doe had been sexually assaulted in October of 2016 by the
12 defendant. The case was assigned to Detective Jeremy Margolis for follow up investigation.

13 On January 31, 2017, Jane Doe participated in an interview with Detective Margolis.
14 Jane Doe reported that she met the defendant at San Diego Junior Theatre where he was a
15 teacher and she was his teacher's aide. She got to know him better when he began dating her
16 friend "Maddy" who was sixteen years old at the start of their relationship. Maddy and Jane
17 Doe were friends and would discuss Maddy's relationship with the defendant. Per Jane Doe,
18 Maddy and the defendant were in a sexual relationship. When she turned eighteen, Maddy and
19 the defendant told Maddy's parents about the relationship. Per Jane Doe, the defendant was
20 very involved with Maddy and her family and had even dated Maddy's older sister Rachel. Jane
21 Doe also discussed a person by the name of Troy who she was interested in and who the
22 defendant was friends with. Jane Doe told Detective Margolis that she had very strong feelings
23 for him; however, the relationship did not work. That being said, she would still speak with the
24 defendant and Maddy about Troy. Jane Doe told Detective Margolis about the night of the
25 sexual assault and provided details of what she recalled. Per Jane Doe, in October of 2016, she
26 texted the defendant asking how Troy was doing. She also asked how the defendant was doing
27 because she believed Maddy had cheated on him and asked him about it. The defendant
28 evidently did not know that Maddy was cheating on him and became very upset. The two got
29 off of the phone and a short time later, Maddy called Jane Doe and stated the defendant was

1 threatening to hurt himself and that it would be Jane Doe's fault if he did so. Per Jane Doe, she
2 was worried that the defendant was in fact going to hurt himself based upon things Maddy had
3 told her about the defendant and things he had done in the past. Jane Doe felt responsible and
4 decided she would "watch him" because she was a scared that if he did do something to himself,
5 it would be her fault. Jane Doe and the defendant started texting and she gave him directions to
6 her home. Shortly after midnight, she snuck out of her house and got into his car. Per Jane Doe,
7 it was obvious the defendant had been drinking and she believed he had been smoking
8 marijuana as well. The two drove to the library located down the street from Jane Doe's house
9 where they sat in the parking lot and talked. The defendant talked about how much he missed
10 Maddy and then at one point, he leaned over and kissed Jane Doe. She did not know what do to
11 and was very scared. Jane Doe stated that she was nervous about what the defendant might do if
12 she said "no" and she was "terrified." Per Jane Doe, Maddy had told her that the defendant had
13 been aggressive in the past, that he would try to hit her, and that he punched one of her windows
14 breaking it. Jane Doe told Detective Margolis that she had not discussed her knowledge of these
15 incidents with the defendant nor did she tell him that she was afraid of him. As far as the
16 defendant was aware, Jane Doe was unaware of how she was feeling, her fear, or the reasons she
17 may be afraid of him. Jane Doe told Detective Margolis that the defendant put his hand down
18 her shirt and down her pants. She told Detective Margolis (while sobbing and very emotional)
19 that she wished she could have been stronger but that she was too scared to do anything. The
20 defendant then put Jane Doe's face into his lap and made her perform oral sex on him. He then
21 pushed down her shorts and climbed on top of her. Per Jane Doe, she was frozen and terrified.
22 She started to cry at that point and was sobbing. He stopped, got off of her, and then the two of
23 them sat in the parking lot and talked. The following day, the defendant called her to see if she
24 was ok. She did not know what to say to him and said yes. The defendant contacted her
25 occasionally and she would see him at work. She acted like she was ok with what had occurred
26 and was embarrassed and always thought she was the type of person who would be able to
27 handle a situation like this. Detective Margolis asked Jane Doe a series of follow up questions
28 regarding the assault. He asked Jane Doe if the defendant had ever made any other advances
29 towards her besides the night of the sexual assault. She said besides calling her "pretty," no.

1 Detective Margolis asked Jane Doe about the incident and if she told him no or tried to resist
2 while the defendant kissed her. She did not say "no" and said that she did not do so because she
3 was nervous and scared. When asked about intercourse and what occurred between the two of
4 them, she said that the defendant talked during it and told her that having sex would help her
5 move on from Troy and told her "how tight" her vagina was and that she was "such a bad girl."
6 Per Jane Doe, the defendant inserted his penis inside of her twice and that she was crying while
7 sexual intercourse was occurring. When Detective Margolis asked if the defendant noticed that
8 she was crying, Jane Doe told him that he was not paying attention to her and was "in his own
9 head." Detective Margolis asked why the defendant stopped having sex with her and Jane Doe
10 told him that the defendant appeared to be thinking about Maddy and even said that she (Jane
11 Doe) was not as good as Maddy. Detective Margolis asked Jane Doe how sex ended. Jane Doe
12 told Detective Margolis that the defendant said "Yeah, I know. I'm no Troy and you're
13 definitely not even close to Maddy." The defendant got off of Jane Doe. The two of them sat in
14 his car and continued to talk for some time before he drove her home. Per Jane Doe, he told her
15 that they could not tell anyone about what happened. Detective Margolis asked Jane Doe if
16 there was ever an exchange of sexual photographs between her and the defendant. She
17 explained that she did send him one photo and it was of her "top area" and that she sent it
18 because the defendant demanded it. When the detective clarified how he "demanded" it, she
19 explained that he called her repeatedly and said he was on his way over. She told him not to
20 come and he demanded a picture so she sent it to him. Per Jane Doe, after the assault in the
21 library parking lot, she saw him multiple times at Junior Theatre. He also texted her and told her
22 that he wanted to meet with her. The defendant again drove to Jane Doe's house where she
23 snuck out. The defendant drove Jane Doe down the street where they talked. The defendant did
24 not make sexual advances towards her and they mostly talked about how much he missed
25 Maddy. They sat in the car for not more than twenty minutes. Jane Doe could tell the defendant
26 had been drinking again, although not as much as he was the first time he picked her up. Jane
27 Doe then went into detail with Detective Margolis about reporting what happened between her
28 and the defendant and that she had texted another teacher (Michelle Gray) on November 3, 2016
29 about the incident. Jane Doe inquired who was teaching Thanksgiving Camp. Gray responded
that she didn't know and asked why she was asking. Jane Doe texted Gray, "I did something

1 dumb with a teacher.” When Gray texted her back, asking what she did, Doe responded, “It
2 starts with s”. Gray texted her, “Sex is not an accident,” and, “I can’t know this information.
3 What you did with that teacher is a crime. If it comes out that I knew and didn’t report it I will
4 be in trouble. Just stop texting me.” Gray originally kept this information to herself, but then
5 shared the text messages with Interim Education Director in January of 2017. The Interim
6 Director asked Gray who the teacher was. She told him that Jane Doe had told her in person that
7 it was the defendant. Per Jane Doe, the school had a meeting with the defendant and as soon as
8 he got out, he called Jane Doe and told her to lie about what occurred between them or he would
9 hurt himself and that she was ruining his life. Because of this, Jane Doe lied to San Diego
10 Police Sergeant Tagaban when she called her. Jane Doe learned later from Junior Theater that
11 they were conducting their own investigation and they contacted Jane Doe’s parents. Jane Doe
12 told her parents what happened and Junior Theater told her parents that they removed the
13 defendant from the theatre and that he had been suspended.

14 On February 3, 2017, Jane Doe participated in a lengthy pretext phone call with the
15 defendant. During the call, Jane Doe told the defendant that her parents found out about their
16 sexual encounter and they were taking her to report it to the police. She asked the defendant
17 what to say to the police and also told him to admit what he did to her was wrong. During their
18 conversation, defendant did not deny the sexual acts occurred. He continuously told Jane Doe
19 that he could not talk about what happened, apologized to her, told her he needed a lawyer and
20 expressed fear of going to prison. Jane Doe said, “My parents know we had sex in your car and
21 they’re bringing me to the police next week. What do you want me to say?” Defendant replied,
22 “Why did... How do they know?” Jane Doe asked the defendant what she should say to the
23 police if they asked her if they had sex. He replied, “You say no. Because if you say yes, and
24 they figure out a way to find proof, I go to prison.” The Defendant told Jane Doe several more
25 times to deny it.

26 On February 23, 2017, Jane Doe participated in a follow up interview to clarify the facts
27 as reported. During the interview Jane Doe stated that while she and the defendant were in his
28 car on the night of the charged offenses, he reached “up” her shirt and touched her breasts
29 including her nipples. While doing so, he was saying sexual things to her. The defendant then

1 put his hand down the front of her shorts, underneath of her underwear, and touched her vagina
2 inserting his fingers. This lasted for less than one minute by her estimation. Per Jane Doe, the
3 defendant then put his right hand on the back of her head and pulled her hair/head over towards
4 him while he was using his left hand to undo his jeans and expose his penis. He forcefully
5 moved her face towards his exposed genitals. Per Jane Doe, the defendant gripped her hair tight
6 enough that she had to move her body to the left and down towards his lap. While Jane Doe
7 could not recall how much of her hair that the defendant had in his hand, she does remember
8 that he did not pull any of her hair out. During this time, Jane Doe recalls the defendant making
9 comments about him wanting her to “suck him off.” Jane Doe did not say anything to the
10 defendant. She then performed oral sex on the defendant for what she stated “felt like forever”
11 but she was not sure how long it lasted. While she was doing so, he still was holding her
12 hair/her head from behind. She did not attempt to pull away from him and he did not hold her
13 down nor did he threaten her. Per Jane Doe, she did not pull away from him or attempt to pull
14 away from him while oral sex was occurring because she was scared. She did not say “no” to
15 him; however, she began to cry when he grabbed her hair. Per Jane Doe, she is unaware if the
16 defendant knew or saw that she was crying at this point because it was a dark car and he did not
17 have time to see her crying from the time he grabbed her hair/mover her head to his crotch. The
18 oral sex stopped when the defendant let go of Jane Doe’s hair. She sat up and he pushed her
19 back into the passenger seat. He then climbed on top of her. Per Jane Doe, he “absolutely”
20 must have been able to see and hear her sobbing at this point. Per Jane Doe, although she could
21 tell he was under the influence of alcohol, she believed he knew what he was doing. At this
22 point in the interview, she again discussed sneaking out of her house a second time to meet him
23 and that there were no sexual advances made during this second encounter. She stayed in the
24 car with him for approximately twenty minutes because she did not want to be with him. The
25 two spoke about Maddy and how much he missed her. Jane Doe did not see the defendant
26 outside of work after this encounter as she wanted to avoid him.

27 On March 14, 2017, the defendant was arrested by the San Diego Police Department on
28 an outstanding warrant regarding charges filed in the instant case. He was interviewed at the
29 San Diego Police Department by Detective Jeremy Margolis said Joseph Volker from the Sex

1 Crimes Unit. The interview was recorded. Prior to the start of the interview, the defendant was
2 read his *Miranda* rights and he answered “yes” to both questions agreeing to speak with the
3 detectives. During the interview, the defendant initially denied anything occurred and then
4 admitted to the sexual encounter that occurred with Jane Doe as well as a single sexual
5 encounter with Maddy while she was seventeen years old. At the beginning of the interview, the
6 defendant explained that his employer (Junior Theatre) told him that an allegation had been
7 made against him. He claimed that he didn’t know what he was being accused of and they
8 would not tell him. He was suspended for three weeks and then was permitted back to work for
9 one day. When he came back to work, the staff told him that they had met with the accuser and
10 her parents. They told him who the accuser was and what the allegations were about. The
11 accuser was not his student but instead a teaching aide. The defendant then told the detectives
12 that she was a college student. The detective told him that she was underage to which the
13 defendant replied that he had never had any inappropriate relationship with her so she did not
14 understand what was going on. The detectives attempted to clarify with the defendant and asked
15 if the student was a college student or underage. The defendant provided them with Jane Doe’s
16 first name and clarified that she was the person he was speaking about. The detectives then
17 showed him a photograph of Jane Doe and he identified her as the person he was discussing.
18 Per the defendant, he had originally thought Jane Doe was a college student because she was
19 dating a college student who was approximately twenty years old. Per the defendant, Jane Doe
20 was his teacher’s aide and he was friends with some of her friends. He went on to say that he
21 met Jane Doe in the summer of 2015 when she was a student aid for a couple of his classes and
22 that the two of them eventually started talking and texting. He went on to say that he fully
23 admits that he probably overstepped and did not use good judgment in speaking with a
24 coworker, but that he was trying to be helpful as he was going through a breakup himself.
25 Detective Volker asked the defendant what he meant by overstepping good judgment and the
26 defendant stated that he meant any relationship outside of work. During this part of the
27 interview, the defendant discussed his relationship with Maddy and that he had lived with her with
28 family in their house. He stated that he met Maddy around the same time he met Jane Doe
29 (2015) and that he and Maddy did not date until last year and that although she was younger

1 than he was, she was not underage. He stated she was nineteen years old and did not start dating
2 her until she was nineteen. He then stated she was eighteen when they started to date. The
3 conversation returned to discussing Jane Doe and he repeated that he was unaware of Jane Doe's
4 age until the allegation was made. Detective Margolis asked the defendant if he had sex with
5 Jane Doe to which he replied "no." Detective Margolis asked the defendant if he engaged in any
6 other sexual acts to which he replied "no." The defendant said that she (Jane Doe) was very
7 flirtatious with him and that he pushed it away and they did not do anything. When asked how
8 Jane Doe was flirtatious, the defendant replied that she was going through a rough time and
9 wanted to "hang out." When asked what he meant by "hang out" he stated that she wanted to
10 talk about her boyfriend and get advice. Detective Volker told the defendant this did not really
11 explain how Jane Doe was being flirtatious. Detective Margolis directed the conversation to the
12 night of the assault and asked the defendant if he remembered picking Jane Doe up and driving
13 her to the library and asked him if he recalled what happened in the car that night. The
14 defendant said he did. When he asked what happened in the car that night, he said that they just
15 talked. He went on to say that he had heard from the Junior Theatre board that Jane Doe was
16 making allegations that he had "hooked up" with her. Detective Margolis asked the defendant
17 about allegations Jane Doe was making and why the defendant was not the person Jane Doe was
18 claiming had sex with her that night. The defendant said "because I'm not an immoral person,
19 and I like, I have a conscience. Ya know? I -I don't want to hurt other people. Um...."
20 Detective Margolis asked him why he thinks it would have been immoral. The defendant said
21 that maybe "immoral" was not the correct work but that that he was a lot older and has more
22 experience. Detective Margolis then explained what a SART examination was and asked him if
23 there as any reason that they would find the defendants DNA in Jane Doe's vagina as a result of
24 the examination she had taken. The defendant did not verbally answer but started shaking his
25 head "no." Detective Margolis told the defendant he was getting a text message and needed a
26 break. They left the room and came back a few minutes later. Detective Volker explained to the
27 defendant that they were trying to figure out what happened and the defendant knew what it
28 was. The defendant agreed and said that he was trying to be as forthcoming as possible.
29 Detective Volker asked the defendant about meeting with Jane Doe in his car in October and the

1 two of them going to the library. The defendant then began discussing Maddy and that he
2 believed he was in love with her. Detective Volker redirected the conversation back to Jane Doe
3 and asked the defendant how long he was talking with her in the car. He said about forty-five
4 minutes. He then said that he wanted to be honest and that he thought her (Jane Doe's) parents
5 knew they were hanging out. He picked her up at her house and that her parents were home. He
6 said that he fully acknowledged that he made some illogical decision in terms of hanging out
7 with her (Jane Doe) outside of work, thinking that she was a college student, and not knowing
8 her age. He then spoke for a few minutes about Jane Doe and that never knew her as a student
9 and instead a teaching aide who was dating a college kid. He went back to discussing what
10 occurred in the car and said that he was talking with Jane Doe while smoking cloves. They
11 spoke for approximately thirty five to forty five minutes and Jane Doe cried a bit. He told her
12 things would be alright and then dropped her off at home. Detective Margolis interrupted/told
13 the defendant that they knew Jane Doe called him and that the call was recorded. He went on to
14 tell the defendant that they knew he told her not to call the police, that he also knew Jane Doe
15 was underage, and that they (the police) knew they had sexual intercourse in the car. The
16 defendant stated that he was under the impression that he would need to be aware someone was
17 recording him and then stated "yeah, I screwed up." He then said that he did not know Jane Doe
18 was underage. Detective Margolis told the defendant that he said several things on the recording
19 that indicated he did in fact know she was underage. Detective Volker told the defendant that it
20 was important to be honest since they already knew a lot about the case. The defendant stated
21 that the did not want to lie and Detective Volker explained that whatever the defendant said
22 would be typed up and used in the investigation and asked the defendant to back up and start
23 with what occurred in the car between him and Jane Doe. The defendant told the detectives that
24 he and Jane Doe kissed, that she performed oral sex on him and that they very briefly had sex
25 but cut it off because he freaked out and realized what a stupid decision it was. He denied that
26 the oral sex was forced and that he remembers Jane Doe saying to him "Is it bad that I want to
27 kiss you?" He said "Obviously it was bad" and when the detectives asked why he thought it was
28 bad, the defendant replied "she wasn't old enough." The defendant said that when he met Jane
29 Doe, he thought she was in college. When the detectives clarified with him about his knowledge

1 and understanding of her age on the night of the sexual assault, he stated that he knew she was
2 underage by the time she got into his car that night. When asked how it went from kissing
3 between the two of them to oral sex, the defendant stated that he couldn't remember but he did
4 not force anything. He said it started with kissing, and then he touched her breasts and that it
5 was a very brief encounter and that while he knows it was way over the line, it was brief. The
6 defendant continued to tell the detectives that he never forced Jane Doe to do anything but that
7 yes, he should have known better, that he was the adult in the situation and that he fully
8 acknowledges that he knew she was too young for him. When asked to elaborate on the oral sex
9 portion of the assault, he stated that it occurred for approximately thirty seconds and that he
10 believed she then climbed on top of him and undressed herself. He admitted to having
11 penile/vaginal intercourse with Jane Doe and that it lasted approximately thirty seconds. Per the
12 defendant, intercourse was brief as they both realized it was a bad idea. They stopped and
13 apologized to each other and agreed not to tell Maddy or Troy about what had occurred. When
14 asked if he ever put his finger into Jane Doe's vagina, he said he couldn't remember but that it
15 was possible. When they told him that Jane Doe reported that it occurred, he told them that if
16 she said it happened, it probably did. Detective Margolis asked the defendant if Jane Doe was
17 crying during sex. He stated that she was not crying during sex but that she cried while she was
18 talking about Troy. Per the defendant, he did not think Jane Doe was afraid of him. Detective
19 Volker then asked the defendant about Maddy and his relationship with her and her family. He
20 stated that he met Maddy when she was sixteen years old. He promised the detectives that
21 nothing happened between him and Maddy until she was eighteen. Detective Margolis told the
22 defendant that he had spoken with several people at Junior Theatre and several people told him
23 that he and Maddy were dating and had been since she was sixteen years old. The defendant
24 continued to deny a sexual relationship with Maddy had occurred until she was eighteen years
25 old. Detectives then told him that phone records go back five years and asked if there was
26 anything in the phone records that would make it look like they were having sex. The defendant
27 said he did not think so. Detectives told him they would be taking his phone and downloading
28 it. The defendant said it was time for him to get a lawyer and the detectives stopped questioning
29 him; however, the defendant continued to talk stating he wanted to be honest and "to be a man

1 and own up to the shit” that he did. He then stated he did not want the detectives to leave with
2 him looking like he was withholding anything. Detective Margolis re-admonished the defendant
3 of his *Miranda* rights and he said “yes” to both questions. The defendant said that with Maddy,
4 there were feelings involved and that yes, they did engage in sexual activity before she was
5 eighteen years old. He admitted that they had sexual intercourse in his apartment one month
6 before Maddy turned eighteen and that she performed oral sex on him and that he digitally
7 penetrated her vagina. He also admitted that he knew she was under the age of eighteen at the
8 time this occurred. This encounter would have occurred in approximately August of 2016
9 shortly before the alleged sexual assault involving Jane Doe. When discussing this situation and
10 the age of the girls, the defendant stated that he always preferred women his own age. Detective
11 Volker asked what changed and the defendant sated he was lonely and depressed and getting
12 older while most of his friends were getting married and having kids. Then, when he began
13 teaching Maddy, and she thought he was the hottest thing on the planet, it made him feel good.
14 At first he did not do anything about it because it was wrong and there was no way he was going
15 to cross that bridge but then her parents were all about it and supportive. Detective Volker
16 asked the defendant if he thought it was wrong to have sex with girls who were under eighteen
17 and he said “Yea I do. But I think I made a mistake. A big mistake.” Detective Volker asked
18 the defendant about his relationship with Maddy’s older adopted sister Rachel. The defendant
19 told him that the two dated when she was nineteen years old and denied having sexual relations
20 with her before she was eighteen. The interview ended shortly thereafter and the detectives took
21 the defendant’s phone in order to process it and download it. Per the information contained
22 within the defendant’s cell phone, there was a deleted text message exchange between the
23 defendant and Jane Doe with a date range of October 3, 2016 and October 5, 2016. During the
24 exchange, the defendant and Jane Doe discuss the defendant driving to her home and the two of
25 them going somewhere to park and talk. The two then discuss not telling anyone about what
26 happened the night before.

27 The following morning (March 15, 2017), after the defendant’s interview with law
28 enforcement, Detective Volker went to Maddy’s residence and spoke with her and her parents.
29 Maddy told Detective Volker that she met the defendant when she was seventeen years old

1 while she was a teacher's aide and he was a teacher. Maddy told Detective Volker she engaged
2 in penile/vaginal intercourse with the defendant on a single occasion when she was seventeen
3 years old. Maddy believed the date would have been sometime shortly before her eighteenth
4 (18) birthday which was on September 14, 2016. Per Maddy, the defendant was currently living
5 with her and her family.

6 Detective Volker transported Maddy to the District Attorney's Office where she met with
7 D.D.A. Trisha Amador and went into additional details about her relationship with the
8 defendant. Detective Volker recorded the interview. Maddy stated that she started working as
9 teacher's aide at San Diego Junior Theatre when she was fifteen years old and that she became
10 friends with the defendant in the summer of 2015. Maddy stated that things "started to change"
11 in the summer of 2016 when she was a stage manager working on a show the defendant was
12 directing. She began to talk to the defendant more in person and the two would text each other
13 outside of the theatre. When asked if she engaged in any sexual activities with the defendant
14 before her eighteenth birthday, Maddy replied, "Yes." She stated they had penile/vaginal sexual
15 intercourse in the summer of 2016, most likely in August. Maddy remembered the time period
16 specifically in that it was after Junior Theatre summer camps but it was before her eighteenth
17 birthday. Their sexual intercourse happened after a performance of "Alice in Wonderland" in
18 which she was the stage manager and the defendant was the director. After the performance, the
19 two went out to dinner, and then they went to the defendant's apartment where they had sex.
20 Maddy believed the defendant "probably" digitally penetrated her vagina with his fingers while
21 they were having sex, but she could not remember for sure. Maddy also stated they "probably"
22 had oral sex during this incident but could not remember. Maddy could not remember if the
23 defendant used a condom during sex, but believes he probably did not. Maddy stated that the
24 two of them began "officially" dating after she turned 18.

25 On March 16, 2017, Maddy spoke with District Attorney Investigator Robert Hinkledire
26 and Deputy District Attorney Trisha Amador over the phone. She wanted to clarify her
27 statement that she had provided to Detective Volker and Deputy District Attorney Trisha on
28 March 15, 2017. Maddy stated that she had thought about the timeline she had provided and she
29 now believed she was not 17 years old and was in fact 18 years old when she and the defendant

1 first had sexual intercourse. Maddy wanted to provide documentation showing she was in fact
2 overage when they had sexual intercourse. During this conversation, the law was discussed with
3 Maddy and it was explained that there were different type of rape statutes and that it was
4 unlawful to have sex with a minor if a person was over the age of eighteen/an adult. Maddy
5 indicated that she understood the law but believed it was "lame." Maddy stated she did not want
6 to be classified as a victim and that if coming to court meant going against the defendant, she
7 would never do that. Maddy was told that if she had evidence showing she was in fact over
8 eighteen, the evidence would be provided to the court and to the defense. Maddy was assured
9 that the evidence she provided would be given to the court and the defense attorney and that the
10 defendants' rights would be protected. Maddy said she would create a timeline to include dates
11 that showed proof she was over age.

12 On March 20, 2017, Maddy was contacted in attempts of obtaining this information and
13 a voice message was left for her asking her to contact District Attorney Investigator Hinkledire.
14 He did not hear from Maddy.

15 On March 22, 2017, District Attorney Investigator Hinkledire attempted to contact
16 Maddy again via telephone. Her mother answered the phone and was asked to relay the
17 message to her.

18 On March 23, 2017, just before the defendant's arraignment in Department 12 of the
19 Superior Court, Maddy spoke with Deputy District Attorney Trisha Amador and District
20 Attorney Investigator Robert Hinkledire. Maddy had come to court to support the defendant
21 along with her mother. Maddy had not returned any calls or provided any evidence as she
22 stated she would. During the conversation, Maddy stated she did not want to be a victim in the
23 case and that she would not be providing a timeline in the case and she did not want to be
24 contacted as a victim in this case. Given the changed circumstances and lack of cooperation by
25 Maddy, the People were unable to file criminal against the defendant for the sexual encounter
26 that occurred prior to her eighteenth birthday.

27 ...
28 ...
29 ...

1 ARGUMENT

2 I.

3 The Judicial Council Rules provide the following objectives to be achieved in sentencing.

4 Rule 4.410(a)(1) Protecting society. Defendant has proven through his conduct that he
5 is a danger to the health and safety of others in this community.

6 Rule 4.410(a)(2) Punishing the defendant. All attempts to reform or rehabilitate the
7 defendant should be of secondary consideration to the primary objective of imposing
8 punishment upon him. While the People acknowledge defendant's lack of criminal history, it does
9 not excuse a series of poor decisions made by him and he must be punished accordingly. In the
10 instant case, the defendant was an active participant in the crime and his actions were by his own
11 free will. He exhibited extremely poor judgment and he engaged in sexual intercourse with a
12 student/teachers aid that was approximately eighteen (18) years younger than him. What is of
13 great concern to the people is that although he is not charged with offenses regarding Maddy, by
14 his own admission to the police, he previously engaged in sexual conduct with another
15 student/underage female, knew that it was wrong to do so, and he knew the dangers of this
16 behavior. Knowing this, he still made the decision to participate in similar conduct with little if
17 any regard for the law or his victim. Furthermore, the defendant knew what the penalties of his
18 actions could entail when he repeatedly told Jane Doe to lie about what happened and that he
19 would go to prison if the police found out the truth. This defendant, by his own words, knew the
20 consequences his actions could entail and this court should punish him accordingly by sending
21 him there.

22 Rule 4.410(a)(3) Encouraging the defendant to lead a law-abiding life in the future and
23 deterring this defendant from future offenses. Defendant must understand that his criminal activity
24 leading up to the alleged offense as well as the conduct he was charged with is unacceptable.
25 Clearly he knew his actions were wrong when he actively engaged in untruths with the detectives
26 and repeatedly denied any sexual encounter occurring with this victim. It was only after they
27 confronted him and told him they knew what happened and had evidence that he was he finally
28 truthful with them in admitting that he had engaged in sexual contact with a minor. Furthermore,
29 he admitted that he knew the conduct was wrong before he choose to have sex with this victim as

1 well as with another victim who he admittedly knew was underage. Encouraging the defendant to
2 lead a law abiding life after a term of imprisonment will hopefully not only deter other perpetrators,
3 but it will also encourage victims to report violations to law enforcement and keep individuals such
4 as the defendant from being able to engage in such conduct.

5 **Rule 4.410(a)(4)** Deterring others from criminal conduct. Unless defendant is sufficiently
6 punished and sentenced to a term of imprisonment in the state prison, the court will have
7 transmitted the message that these crimes and this behavior are unimportant in society's list of
8 priorities.

9 **Rule 4.410(a)(5)** Preventing this defendant from committing further crimes by isolating
10 him for a period of incarceration and/or keeping him away from the victim and other young women
11 in the community. By doing so, the court is sending a message to the defendant that his actions are
12 unacceptable and there are consequences for his behavior.

13 **Rule 4.410(a)(6)** Securing restitution for victims of crime. The defendant's should be
14 ordered to pay restitution to the victim in this case if it is requested.

15 **Rule 4.410(a)(7)** Achieving uniformity in sentencing.

16 II.

17 CIRCUMSTANCES IN AGGRAVATION

18 An examination of the facts presently of record establishes that the court should take into
19 consideration both the circumstances in aggravation and the circumstances in mitigation. The
20 circumstances in aggravation are as follows:

21 **Rule 4.421(a)** Facts relating to the crime including:

22 **Rule 4.421(a)(3)** The victim was particularly vulnerable. The victim was much younger
23 (approximately eighteen years) than the defendant and he was her teacher/she worked for him.

24 **Rule 4.421(a)(11)** The defendant took advantage of a position of trust or confidence to
25 commit the offense. As noted above, the defendant is the victim's teacher/instructor in the
26 program. He clearly took advantage of position of trust and confidence and then encouraged her
27 to lie about the encounter. What is even more concerning is that after he realized he was under
28 investigation, he was more concerned about his future and his feelings and completely
29 disregarded the victim, her feelings, how his actions impacted her. He then encouraged her to

1 lie to the police and her parents about what had occurred between the two of them. Nothing in
2 his actions demonstrate remorse or care for a person he was supposed to be mentoring and
3 instead, the defendant continued to use his position as an adult and a teacher to engage in
4 activity that was all about him and protecting himself.

5 III.

6 CIRCUMSTANCES IN MITIGATION

7 Several of the applicable factors in mitigation outlined in Rule 4.423 do not apply to this
8 defendant.

9 Rule 4.423(a)(1) The defendant was *not* a passive participant in the crime and he did *not*
10 play a minor role.

11 Rule 4.423(a)(3) The crime was *not* committed because of unusual circumstances, such
12 as great provocation, that is unlikely to recur.

13 Rule 4.423(a)(4) The defendant was *not* participating under duress.

14 Rule 4.423(a)(5) The defendant was *not* induced by others to commit the crime.

15 Rule 4.423(a)(7) The defendant did *not* believe the conduct was legal.

16 Rule 4.423(a)(8) The defendant was *not* motivated by desire to provide necessities.

17 Rule 4.423(a)(9) The defendant did *not* suffer any abuse from the victim.

18 IV.

19 CONCLUSION AND REQUESTED SENTENCE

20 Based upon the record in this case, this statement, oral argument to be presented, and the
21 victim impact statements, the People respectfully request this court impose a custodial sanction
22 involving state prison, sign a protective order preventing the defendant from having access to
23 the victim, and order him to register pursuant to Penal Code section 290 as is required by law.

24 Dated: June 15, 2017

25 Respectfully submitted,
26 BONNIE M. DUMANIS
27 District Attorney

28 By: 

28 TRISHA L. AMADOR
29 Deputy District Attorney

Attorneys for Plaintiff

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "B"

Request #17-1985

☑ CLOSED

As of November 16, 2017, 11:54am

Details

All records between January 1, 2016 and July 28, 2017 regarding:

The San Diego Junior Theatre (or "San Diego Junior Theater," "Junior Theatre," "Junior Theater," "SDJT" "JT" or any similar or related name) (collectively, "SDJT");

Deputy City Attorney Catherine Morrison and SDJT;

Deputy City Attorney Joan Dawson and SDJT;

Darien Webster;

Lizbeth Persons Price;

Kenneth (or Ken) Ruggiero;

Karen Quiñones;

Krista Cabrera;

David Braun;

James (or Jimmy) Saba;

Guillermo (or Gil) Cabrera and/or The Cabrera Firm A.P.C;

Edward Cramp and Duane Morris LLP

[— Read less](#)

Received

July 28, 2017 via web

Departments

Mayor

Requester

Matt Valenti

✉ mattvalenti@outlook.com
📍 3747 Brookshire St, San Diego, CA 92111
📞 619-540-2189

Requester email status list



Documents

Public

[#17-1985 SD Junior Theatre1.pdf](#)

[#17-1985 SD Junior Theatre2.pdf](#)

[PRAR #17-1985 MKF comms re SDJT 090817.pdf](#)

Requester

Only

(none)

Staff

Point of Contact

Lea Fields-Bernard

Timeline

Request Published

Public

September 17, 2017, 4:59pm

External Message

Requester + Staff

Mr. Valenti,

Thank you for your email. If you are aware of other records that are responsive, please let us know what they are. Based on the phrasing of your request we had the City Attorney and Mayor's office search for records and we produced everything that we could locate that was not exempt from disclosure.

As to the redactions that were made, please refer to the exemptions that were cited to you on August 25; namely, Government code section 6254(c) and 6254(k) [Attorney Work Product Doctrine].

Kind regards,

September 15, 2017, 12:13pm by the requester

External Message

Requester + Staff

Dear Ms. Fields-Bernard,

Thank you for the efforts your office has made to locate responsive documents. I appreciate receiving the documents you have produced to date.

However, there are numerous documents known to me, and no doubt many other related documents, which you have failed to produce. Therefore, I object to your office "closing" this request, and I reiterate my original request in full.

In addition, I object to the near wholesale redaction of one of the responsive documents your office previously produced, pages 11-12 of the first PDF production, which appears to be almost the entirety of a May 2, 2017 email sent by deputy city attorney Joan Dawson to her supervisor Gerry Braun. (Two full pages of this email are entirely blacked out.)

Your office has provided no justification for this redaction, and there appears to be no exception under the CPRA which would justify redacting this document. Please immediately produce this document in an unredacted form.

The fact that your office now claims there are no further responsive documents, together with the unjustified redaction of Ms. Dawson's email, raises serious concerns that the City is unwilling to abide by the requirements of the CPRA in this case.

As it is, I would be within my rights under the CPRA to immediately petition the Superior Court to compel the production of all responsive documents, including those unjustifiably redacted, and I am prepared to do so if necessary. As you know, a requesting party who prevails in such a case is entitled to costs and attorneys' fees under the statute. Prevailing means obtaining documents which would not have been produced were the suit not filed. In this case, since I am aware of specific, relevant documents which have been withheld, I am fully confident I would be named the prevailing party and be entitled to costs and attorneys' fees.

I would prefer to resolve this amicably, however, and am willing to give the City a short period of additional time in which to comply with the CPRA in regards to my request. Therefore, please be advised that unless I receive a full production of all responsive documents, as well as an unredacted version of Ms. Dawson's

May 2 email--or else a commitment by your office to produce them in full by a mutually agreeable date--by no later than close of business September 21, 2017, I will proceed with appropriate legal action.

Sincerely,
Matt Valenti

September 14, 2017, 6:24pm by the requester

Request Closed

Public

September 14, 2017, 4:57pm by Lea Fields-Bernard, Public Records Administration Manager

External Message

Requester + Staff

Mr. Valenti,

There are no additional responsive documents.

Kind regards,

September 14, 2017, 4:56pm by the requester

External Message

Requester + Staff

Mr. Valenti:

Attached please find another portion of records that are responsive to your Public Records Act request. Please note that we are still in the process of reviewing some remaining potentially responsive documents. Assuming other responsive documents exist, we will get them to you as soon they are available. We reserve the right to withhold and/or redact any records or information that may be exempt from disclosure under the Public Records Act, and/or other applicable legal privileges including, but not limited to, attorney work product and attorney client privileges.

We expect to be completed with your request by early next week.

Kind regards,

September 8, 2017, 3:38pm by Jacqueline Palmer, Public Records Administration Coordinator (Staff)

Document(s) Released

Public

PRAR #17-1985_MKF comms re SDJT_090817.pdf

September 8, 2017, 3:35pm by Jacqueline Palmer, Public Records Administration Coordinator

External Message

Requester + Staff

Mr. Valenti,

We should be completed with your request by early next week.

Kind regards,

August 28, 2017, 6:30pm by the requester

External Message

Requester + Staff

Thank you very much for this initial production, I appreciate your assistance.

Can you please give me an estimated date by which you will finish producing the remaining responsive records?

Thank you for your kind attention to this matter.

Sincerely,

Matt Valenti

August 25, 2017, 11:32pm by the requester

Department Assignment

Public

Removed: City Attorney.

August 25, 2017, 9:27pm by Lea Fields-Bernard, Public Records Administration Manager

External Message

Requester + Staff

Attached please find a portion of records that are responsive to your Public Records Act request. Please note that certain records have been redacted or withheld pursuant to Government Code section 6254(c) and 6254(k) [Attorney Work Product].

We are still in the process of reviewing other potentially responsive documents. Assuming other responsive documents exist, we will get them to you as soon they are available. We reserve the right to withhold and/or redact any records or information that may be exempt from disclosure under the Public Records Act, and/or other applicable legal privileges including, but not limited to, attorney work product and attorney client privileges.

Kind regards,

August 25, 2017, 9:27pm by the requester

Document(s) Released

Public

#17-1985 SD Junior Theatre1.pdf

#17-1985 SD Junior Theatre2.pdf

August 25, 2017, 9:26pm by Lea Fields-Bernard, Public Records Administration Manager

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "C"

Request #17-2567

 OPEN

As of September 19, 2017, 4:58pm

Visibility: Embargoed -- Will be auto-published 72 hours after closure

Details

1. All records related to agreements by and between the City of San Diego ("City") and the San Diego Junior Theatre ("SDJT"), dated January 1, 2012 to present.
2. All records relating to child abuse and/or suspected child abuse occurring at or related to SDJT, dated January 1, 2012 to present.
3. All records related to former SDJT employee Eric von Metzke regarding his sexual abuse of SDJT student/s, including records of investigative reports commissioned by and/or received by SDJT and records related to tips or warnings received by SDJT about von Metzke.
4. All records related to SDJT Executive Director James Saba's alleged child abuse and/or battery of a SDJT student on or around June 29, 2016, including records of all investigative reports commissioned by and/or received by SDJT regarding the alleged abuse.
5. All records of performance evaluations regarding SDJT former employee Eric von Metzke and Executive Director James Saba.
6. All records related to SDJT and inappropriate or improper teacher-student relationships, including all records of "sleepover parties" held by SDJT employees and/or independent contractors, and all records of SDJT employees and/or independent contractors "dating" or otherwise socializing with students outside of the program, dated January 1, 2012 to present.
7. All records related to SDJT policies and procedures, official or unofficial, regarding preventing child abuse, inappropriate teacher-student relationships, and mandated child abuse reporting and training, dated January 1, 2012 to present.
8. All records related to the termination and/or resignation of SDJT employees and/or independent contractors SDJT, dated January 1, 2016 to present.
9. All records of legal settlements and settlement payments made by SDJT, dated January 1, 2012 to present.
10. The audio recording made by SDJT attorney Gil Cabrera at the public meeting he held regarding child abuse allegations at SDJT on October 27, 2016.
11. All records related to private security guards hired by SDJT, dated January 1, 2012 to present.
12. All records of police reports made by SDJT dated January 1, 2012 to present.

13. All records related to SDJT Board of Trustee meetings, official or unofficial, including agendas, scheduling emails, official and unofficial minutes, notes, etc., dated January 1, 2012 to present.

Please note the following instructions:

There is a very strong public interest in information and records related to child abuse by those entrusted with the supervision of children. The safety and well-being of the children of San Diego Junior Theatre, who are ultimately in the charge of the City through its contractor and agent SDJT, is of paramount importance. Therefore, the City should act urgently and without undue delay to find and produce all relevant documents.

These requests should be construed very broadly, so as to effectuate the central purpose of the requests, which is to identify all records related to SDJT's and the City's response to well-documented instances of physical and sexual abuse of children at SDJT.

In addition to prioritizing these requests and construing these requests as broadly as possible, the City should carefully evaluate any claim of exception to the production requirements of the CPRA, and refrain from withholding or redacting a document unless there are obvious, unambiguous legal grounds to do so. The names and identifying information of minor victims should be redacted, but otherwise all doubts regarding the validity of a claimed exception or privilege should be quickly resolved in favor of full disclosure and immediate production. Specifically, the City may not withhold relevant records based on CPRA exceptions for personnel files or attorney work product. The privacy interests of individuals, and any theoretical interest of the City or SDJT in keeping attorney work product related to child abuse confidential, are vastly outweighed by a strong public interest in knowing whether government officials and their contractual agents have committed serious misconduct by abusing children in their charge or hiding, failing to report, or preventing others from reporting child abuse.

The search for these records should include not only records currently maintained by the City, but also all records in the City's constructive possession, particularly those records maintained by SDJT. *See, Consolidated Irrigation District v. Superior Court of Fresno County*, 205 Cal.App.2d 697, 710 (2012) ("For purposes of this statute, we conclude an agency has constructive possession of records if it has the right to control the records, either directly or through another person.").

The City has constructive possession of these records based on its right to control them, and therefore must promptly produce them for inspection. SDJT is a current and longtime City contractor and exclusively utilizes City-owned property; therefore SDJT records are well within the City's control. (See "Contract Between City of San Diego And San Diego Junior Theatre For Fiscal Year 2017" ("City-SDJT Contract")). Furthermore, SDJT has expressly agreed to abide by the requirements of the CPRA. (City-SDJT Contract, Section 8.1 and Exhibit B thereto.)

All documents sought by this request directly pertain to the performance of the City-SDJT Contract in that they are inextricably related to the services SDJT is contractually required to provide under Section 1.1 of the City-SDJT Contract (i.e.,

SDJT's provision of arts and culture services that "provide excellence in culture and the arts for residents and visitors," "enrich the lives of the people of San Diego," "build healthy, vital neighborhoods," as well as services related to SDJT's fulfillment of its mission statement, as incorporated into Sec 1.1 as a requirement of the contract, to "provide engaging, innovative, high-quality theatre education and productions for children...").

Records related to the child abuse and alleged child abuse of SDJT students clearly pertain to the City-SDJT Contract because they are directly relevant to and inseparable from SDJT's provision of educational services for children, as required by the City-SDJT Contract.

Finally, the City's search should also include records of emails sent from the personal accounts of SDJT board members and employees, as well as the personal email accounts of all City employees who have engaged in SDJT-related City business. As the California Supreme Court recently ruled, "Consistent with the Legislature's purpose in enacting CPRA, and our constitutional mandate to interpret the Act broadly in favor of public access (Cal. Const., art. I, § 3, subd. (b) (2)), we hold that a city employee's writings about public business are not excluded from CPRA simply because they have been sent, received, or stored in a personal account." *City of San Jose v. Superior Court*, Opinion No. S218066, March 2, 2017.

Thus, the search should include records of emails sent from the personal email accounts of all SDJT-related City employees, including but not limited to the following: Deputy City Attorneys Joan Dawson and Catherine Morrison (current SDJT trustees); Deputy City Attorney Sharon Spivak (a former SDJT trustee); and Gil Cabrera, Vice Chair of the San Diego Convention Center (a SDJT lawyer).

Should you have questions or require clarification please let me know. Thank you for your urgent attention to this important matter.

Sincerely,
Matt Valenti

— [Read less](#)

Received

September 19, 2017 via web

Departments

None Assigned

Requester

Matt Valenti

✉ mattvalenti@outlook.com

📍 3747 Brookshire St, San Diego, CA 92111

📞 619-540-2189

Documents

Public

(none)

Requester Only

(none)

Staff

Point of Contact

Lea Fields-Bernard

Timeline

Request Opened

Public


Request received via web

September 19, 2017, 4:58pm

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "D"

Request #17-2567

 OPEN

As of November 16, 2017, 11:43am

Request Visibility: Embargoed -- Will be auto-published 72 hours after closure

Details

1. All records related to agreements by and between the City of San Diego ("City") and the San Diego Junior Theatre ("SDJT"), dated January 1, 2012 to present
2. *Removed sensitive, private information from public view.*

Please note the following instructions:

There is a very strong public interest in information and records related to child abuse by those entrusted with the supervision of children. The safety and well-being of the children of San Diego Junior Theatre, who are ultimately in the charge of the City through its contractor and agent SDJT, is of paramount importance. Therefore, the City should act urgently and without undue delay to find and produce all relevant documents.

These requests should be construed very broadly, so as to effectuate the central purpose of the requests, which is to identify all records related to SDJT's and the City's response to well-documented instances of physical and sexual abuse of children at SDJT.

In addition to prioritizing these requests and construing these requests as broadly as possible, the City should carefully evaluate any claim of exception to the production requirements of the CPRA, and refrain from withholding or redacting a document unless there are obvious, unambiguous legal grounds to do so. The names and identifying information of minor victims should be redacted, but otherwise all doubts regarding the validity of a claimed exception or privilege should be quickly resolved in favor of full disclosure and immediate production. Specifically, the City may not withhold relevant records based on CPRA exceptions for personnel files or attorney work product. The privacy interests of individuals, and any theoretical interest of the City or SDJT in keeping attorney work product related to child abuse confidential, are vastly outweighed by a strong public interest in knowing whether government officials and their contractual agents have committed serious misconduct by abusing children in their charge or hiding, failing to report, or preventing others from reporting child abuse.

The search for these records should include not only records currently maintained by the City, but also all records in the City's constructive possession, particularly those records maintained by SDJT. *See, Consolidated Irrigation District v. Superior*

Court of Fresno County, 205 Cal.App.2th 697, 710 (2012) (“For purposes of this statute, we conclude an agency has constructive possession of records if it has the right to control the records, either directly or through another person.”).

The City has constructive possession of these records based on its right to control them, and therefore must promptly produce them for inspection. SDJT is a current and longtime City contractor and exclusively utilizes City-owned property; therefore SDJT records are well within the City’s control. (See “Contract Between City of San Diego And San Diego Junior Theatre For Fiscal Year 2017” (“City-SDJT Contract”).) Furthermore, SDJT has expressly agreed to abide by the requirements of the CPRA. (City-SDJT Contract, Section 8.1 and Exhibit B thereto.)

All documents sought by this request directly pertain to the performance of the City-SDJT Contract in that they are inextricably related to the services SDJT is contractually required to provide under Section 1.1 of the City-SDJT Contract (i.e., SDJT’s provision of arts and culture services that “provide excellence in culture and the arts for residents and visitors,” “enrich the lives of the people of San Diego,” “build healthy, vital neighborhoods,” as well as services related to SDJT’s fulfillment of its mission statement, as incorporated into Sec 1.1 as a requirement of the contract, to “provide engaging, innovative, high-quality theatre education and productions for children...”).

Records related to the child abuse and alleged child abuse of SDJT students clearly pertain to the City-SDJT Contract because they are directly relevant to and inseparable from SDJT’s provision of educational services for children, as required by the City-SDJT Contract.

Finally, the City’s search should also include records of emails sent from the personal accounts of SDJT board members and employees, as well as the personal email accounts of all City employees who have engaged in SDJT-related City business. As the California Supreme Court recently ruled, “Consistent with the Legislature’s purpose in enacting CPRA, and our constitutional mandate to interpret the Act broadly in favor of public access (Cal. Const., art. I, § 3, subd. (b) (2)), we hold that a city employee’s writings about public business are not excluded from CPRA simply because they have been sent, received, or stored in a personal account.” *City of San Jose v. Superior Court*, Opinion No. S218066, March 2, 2017.

Thus, the search should include records of emails sent from the personal email accounts of all SDJT-related City employees, including but not limited to the following: Deputy City Attorneys Joan Dawson and Catherine Morrison (current SDJT trustees); Deputy City Attorney Sharon Spivak (a former SDJT trustee); and Gil Cabrera, Vice Chair of the San Diego Convention Center (a SDJT lawyer).

Should you have questions or require clarification please let me know. Thank you for your urgent attention to this important matter.

Sincerely,

Matt Valenti

[— Read less](#)

Received

September 19, 2017 via web

Departments

Purchasing & Contracting, Real Estate Assets

Requester

Matt Valenti

✉ mattvalenti@outlook.com

📍 3747 Brookshire St, San Diego, CA 92111

📞 619-540-2189

Requester email status list



Documents

Public

[D3 responsive doc. #17-2567 SDJunior Theatre.pdf](#)

[12-2567 NB.pdf](#)

[17-2567 NB CD1.pdf](#)

[CCPRA 2017-2567 VALENTI San Diego Junior Theatre D5 Responsive Records w Attachments Redacted.pdf](#)

Requester

Only

(none)

Staff

Point of Contact

Jacqueline Palmer

Timeline

Department Assignment

Public

Added: Real Estate Assets. Removed: Special Events & Filming.

November 13, 2017, 4:42pm by Angela Laurita, Public Records Administration Coordinator

Department Assignment

Public

Removed: City Attorney.

November 7, 2017, 8:52am by Nancy Shapiro, Paralegal, Office of the City Attorney

External Message

Requester + Staff

The City Attorney's Office has no responsive documents.

Nancy Shapiro

Paralegal

City Attorney's Office

November 7, 2017, 8:51am by Nancy Shapiro, Paralegal, Office of the City Attorney (Staff)

Department Assignment

Public

Added: Special Events & Filming.

October 31, 2017, 9:14am by Angela Laurita, Public Records Administration Coordinator

Department Assignment

Public

Removed: City Council District 3.

October 26, 2017, 3:37pm by Vanessa Bernal

External Message

Requester + Staff

All responsive documents for Council District Three have been uploaded. Thank you.

October 26, 2017, 3:37pm by Vanessa Bernal (Staff)

Document(s) Released

Public

D3 responsive doc. #17-2567 SDJunior Theatre.pdf

October 26, 2017, 3:36pm by Vanessa Bernal

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE RELIEF AND PETITION FOR WRIT OF MANDATE etc. and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on November 16, 20 17, at San Diego, California.

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

Matt Valenti
Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of, State of California.

I am over the age of 18 and not a party to the within action; my business address is,

On, 20, I served the foregoing document described as

- by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL
I deposited such envelope in the mail at, California.
The envelope was mailed with postage thereon fully prepaid.

As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, 20, at, California.
(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, 20, at, California.
(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I
(Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
(POR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)