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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

VOICE OF SAN DIEGO, a California corporation,

Petitioner,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT, AND DOES 1-10, inclusive,

Respondent.

Case No. 37-2018-00026433-CU-WM-CTL
[Consolidated with Case No.
37-2018-00027282-CU-MC-CTL]

**STIPULATED [PROPOSED] ORDER
REGARDING AUTOMATIC EMAIL
DELETION PROCEDURE**

IMAGED FILE

Judge: Hon. Ronald L. Styn
Dept.: C-74
Action Filed: May 30, 2018
Trial Date: Not set

AND RELATED CONSOLIDATED CASES

**EXEMPT FROM FEES
GOVT. CODE § 6103**

WHEREAS, Voice of San Diego (“Voice”) filed a petition for writ of mandate against San Diego Unified School District (“SDUSD”) on May 30, 2018, in the Superior Court of the State of California, County of San Diego, case number 37-2018-00026433-CU-WM-CTL, alleging causes of action for violation of the California Public Records Act, declaratory relief, and injunctive relief;

WHEREAS, San Diegans for Open Government (“SDOG”) filed its complaint against SDUSD on June 1, 2018, in the Superior Court of the State of California, County of San Diego, case number 37-2018-00027282-CU-MC-CTL, alleging causes of action for violation of open-government laws, premature destruction of public/official records, and declaratory relief;

1 WHEREAS, the Superior Court, on stipulation of the parties, consolidated case number
2 37-2018-00027282-CU-MC-CTL with case number 37-2018-00026433-CU-WM-CTL on June
3 14, 2018, and designated 37-2018-00026433-CU-WM-CTL as the lead case. Case number 37-
4 2018-00027282-CU-MC-CTL and case number 37-2018-00026433-CU-WM-CTL are collectively
5 referred to herein as the “Action”;

6 WHEREAS, Voice filed an *Ex Parte* Application for a Temporary Restraining Order and
7 an Order to Show Cause Why a Preliminary Injunction Should Not Be Granted on May 31, 2018
8 (“Application for Preliminary Injunction”);

9 WHEREAS, the Application for Preliminary Injunction sought an order enjoining SDUSD
10 from implementing a proposed procedure to automatically delete all emails in its employees’
11 Outlook mailboxes older than one year, after providing its employees certain guidance and
12 instructions;

13 WHEREAS, on June 8, 2018, SDOG also filed a motion for a preliminary injunction
14 (“Injunction Motion) and joined in the Application for Preliminary Injunction;

15 WHEREAS, the Superior Court held a hearing on August 24, 2018 on the Application for
16 Preliminary Injunction and Injunction Motion and issued an order on August 24, 2018 granting the
17 requested preliminary injunction;

18 WHEREAS, on October 23, 2018, SDUSD filed a Notice of Appeal of the Court’s August
19 24, 2018 Order granting the preliminary injunction;

20 WHEREAS, the Parties now desire to fully resolve and settle the claims alleged by Voice
21 and SDOG challenging SDUSD’s automatic email deletion procedure;

22 **NOW THEREFORE,**

23 The Parties hereby stipulate and request that the Court order as follows:

24 SDUSD shall be permitted to implement the procedure approved by the SDUSD Board of
25 Education at its regularly scheduled July 25, 2017 meeting to automatically delete any non-
26 archived emails in SDUSD employees’ Outlook mailboxes, except that the procedure shall be
27 modified so that only emails that are older than two years at the time of deletion may be
28 automatically deleted (the “Automatic Deletion Procedure”);

1 Notwithstanding the foregoing, SDUSD shall not automatically delete (1) any email that is
2 identified as being subject to a litigation hold until such litigation hold expires or otherwise no
3 longer applies to such email, or (2) any email that is identified as being subject to disclosure
4 pursuant to a California Public Records Act request received by SDUSD until that email has been
5 produced pursuant to such request;

6 Going forward, upon receipt of a proper California Public Records Act request seeking
7 email records, in whole or in part, SDUSD shall, within a reasonable time, prevent responsive
8 emails from being subject to the Automatic Deletion Procedure until after such email has been
9 produced in response to the request, or reviewed and determined to be protected from disclosure;

10 For avoidance of doubt, this Stipulated Order applies only to automatic deletion
11 procedures, and shall not prevent SDUSD employees from deleting email from their individual
12 accounts in the ordinary course of business and in compliance with the law then in effect;

13 This Stipulated Order shall not be construed as permitting any SDUSD employee to delete
14 any email he or she is required by law to retain;

15 Nothing in this Stipulated Order shall prevent SDUSD from amending the Automatic
16 Deletion Procedure, or from implementing a new automatic deletion procedure, with a retention
17 period longer than that provided for in this Order;

18 This Stipulated Order shall remain in effect for five (5) years;

19 SDOG shall withdraw its Public Records Act request for "Each and every WRITING that
20 your agency may destroy (or allowed to be destroyed) prior to the third July 1st after the date of
21 your last 'audit' as defined by section 16026 of Title 5 of the California Code of Regulations";

22 SDUSD shall pay a portion of SDOG's attorney's fees and costs incurred in the Action in
23 the amount of \$20,000 (twenty-thousand dollars) within thirty (30) days of entry of this Order in
24 full satisfaction of any obligation to pay attorney's fees and costs in this matter;

25 SDOG shall dismiss its Complaint in the Action and all claims alleged therein, with
26 prejudice, within ten (10) days after receipt of the payment required by the preceding paragraph;

27 Voice shall be deemed to have dismissed, with prejudice, all claims related to SDUSD's
28 retention of, or automatic deletion of, emails;

1 SDUSD shall pay a portion of Voice's attorney's fees and costs incurred in the Action in
2 the amount of \$32,500 (thirty-two thousand, five hundred dollars) within thirty (30) days of entry
3 of this Order;

4 Except as provided in the foregoing paragraph, Voice shall not seek to recover attorney's
5 fees for any work performed by its attorneys in the Action prior to entry of this Order and relating
6 to the retention of, or automatic deletion of, emails:

7 Promptly following entry of this Stipulated Order, SDUSD shall file a Notice of
8 Abandonment of Appeal for the appeal filed on the Order granting the preliminary injunction:

9 Upon entry of this Stipulated Order, the preliminary injunction shall be dissolved and the
10 undertaking filed by SDOG shall be fully exonerated and discharged and the bond surety shall
11 have no liability whatsoever thereunder to SDUSD; and


12 This Stipulated Order shall remain in full force and effect and be enforceable by Voice
13 and/or SDOG despite the dismissal of their respective lawsuits against SDUSD.

14 SO STIPULATED.

15
16 Dated: December 6, 2018

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP


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By: 
MICHAEL C. SULLIVAN
PAUL BATCHER
Attorneys for Respondent
SAN DIEGO UNIFIED SCHOOL DISTRICT

21
22 Dated: December 6, 2018

LAW OFFICE OF FELIX TINKOV

23
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25
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By: 
FELIX TINKOV
Attorneys for Petitioner
VOICE OF SAN DIEGO

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1 Dated: December 6, 2018

BRIGGS LAW COPORATION

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By: Cory J. Briggs
CORY J. BRIGGS
Attorneys for Plaintiff
SAN DIEGANS FOR OPEN GOVERNMENT

IT IS SO ORDERED.

DATED: December ____, 2018

Honorable Ronald L. Styn

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PROOF OF SERVICE

**Voice of San Diego v. San Diego Unified School District
Case No. 37-2018-00026433-CU-WM-CTL**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 101 West Broadway, Ninth Floor, San Diego, CA 92101-8285.

On December 7, 2018, I served true copies of the following document(s) described as **STIPULATED [PROPOSED] ORDER REGARDING AUTOMATIC EMAIL DELETION PROCEDURE** on the interested parties in this action as follows:

Felix Tinkov
Law Office of Felix Tinkov
225 Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619-862-1761
E-Mail: felix@tinkovlaw.com

Cory J. Briggs
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Upland, CA 91786
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E-Mail: cory@briggslawcorp.com
anthony@briggslawcorp.com

Attorneys for Pctitioner VOICE OF SAN DIEGO

Attorneys for Plaintiff and Petitioner SAN DIEGANS FOR OPEN GOVERNMENT

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List, with postage thereon fully prepaid. I placed each such envelope or package for deposit with United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

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

Executed on December 7, 2018, at San Diego, California.


Deborah Baranowski