

1 **COAST LAW GROUP, LLP**
2 MARCO A. GONZALEZ (SBN 190832)
3 LIVIA BORAK BEAUDIN (SBN 259434)
4 1140 South Coast Highway 101
5 Encinitas, CA 92024
6 Ph: (760) 942-8505
7 Fx: (760) 942-8515
8 *email: marco@coastlawgroup.com*

9 BRIGGS LAW CORPORATION [file: 1593.39]
10 Cory J. Briggs (SBN 176284)
11 Anthony N. Kim (SBN 283353)
12 99 East "C" Street, Suite 111
13 Upland, CA 91786
14 Telephone: 909-949-7115

15 Attorneys for Plaintiffs and Petitioners,
16 CHRIS SHILLING and SAN DIEGANS FOR OPEN GOVERNMENT

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

CHRIS SHILLING, an individual; SAN
DIEGANS FOR OPEN GOVERNMENT, a non-
profit California Corporation;

Plaintiffs and Petitioners,

v.

CITY OF NATIONAL CITY, a California public
agency; RON MORRISON, in his official
capacity; ALBERT MENDIVIL, in his official
capacity; JERRY CANO, in his official capacity;
and DOES 1-10, inclusive;

Defendants and Respondents.

DOES 11-100, inclusive;

Defendants and Real Parties in Interest.

) Case No. 37-2017-00016618-CU-WM-CTL

)

) **VERIFIED COMPLAINT FOR**
) **DECLARATORY AND INJUNCTIVE**
) **RELIEF AND PETITION FOR WRIT OF**
) **MANDATE**

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) [IMAGED FILE]

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1 Plaintiffs and Petitioners CHRIS SHILLING and SAN DIEGANS FOR OPEN GOVERNMENT
2 allege as follows:

3 **Parties**

4 1. Plaintiff/Petitioner CHRIS SHILLING (“SHILLING”), an individual, is a resident of Chula
5 Vista, California.

6 2. Plaintiff/Petitioner SAN DIEGANS FOR OPEN GOVERNMENT (“SanDOG”) is a non-
7 profit, social-advocacy organization formed and operating under the laws of the State of California.
8 SanDOG’s members reside in or near the City of National City, California. SanDOG’s members have an
9 interest in, among other things, ensuring open, accountable, and responsive government and in promoting
10 responsible decision-making.

11 3. Defendant/Respondent CITY OF NATIONAL CITY (“City”) is a “local agency” within the
12 meaning of Government Code Section 54951. Defendants/Respondents ALBERT MENDIVIL and JERRY
13 CANO are and at all times mentioned in this pleading were, natural persons who are members of the
14 National City City Council (“City Council”) and are being sued solely in their capacities as such.
15 Defendant/Respondent RON MORRISON (“Mayor Morrison”) is and at all times mentioned in this
16 pleading was, a natural person who is the Mayor of National City and is being sued solely in his capacity
17 as such. Pursuant to Government Code Section 34903, the Mayor is a member of the City Council . The
18 National City City Council is a “legislative body” within the meaning of Government Code Section 54952.

19 4. The true names and capacities of the Defendants/Respondents identified as DOES 1 through
20 10 and DOES 11 through 100 are unknown to Plaintiffs/Petitioners, who will seek the Court’s permission
21 to amend this pleading in order to allege the true names and capacities as soon as they are ascertained.
22 Plaintiffs/Petitioners are informed and believe and on that basis allege that each of the fictitiously named
23 Respondents/Defendants 1 through 10 has jurisdiction by law over one or more aspects of the subject matter
24 of this lawsuit and that each of the fictitiously named Real Parties in Interest has some other cognizable
25 interest in the subject matter.

26 **Background Information**

27 5. On or about December 6, 2016, at a regularly scheduled Council hearing, Councilmember
28 Sotelo-Solis, at the urging of non-profit Alliance San Diego, requested staff prepare a resolution in support

1 of creating a “welcoming community” for the Council’s consideration at the next City Council meeting.

2 6. On or about January 17, 2017, at a regularly scheduled City Council hearing, the Council
3 considered a draft “welcoming community” resolution, Item 32 on the Council agenda, as proposed by
4 Alliance San Diego.

5 7. At the January 17, 2017 hearing, a majority of the Council voted to send the draft resolution
6 back to staff for amendment and consideration at a future Council hearing.

7 8. On or about February 7, 2017, at a regularly scheduled City Council hearing, staff proposed
8 an amended resolution for Council consideration.

9 9. The draft resolution appeared on the agenda as Item 19, “Resolution of the City Council of
10 the City of National City in Support of Creating a Welcoming Community for All Residents,” (“Welcoming
11 City Resolution”).

12 10. Staff’s proposed draft resolution was provided with the agenda materials for the February
13 7, 2017 hearing, and was available on the City’s website for review and comment prior to the hearing.

14 11. Members of the public were afforded an opportunity to provide oral testimony during the
15 public hearing on the Welcoming City Resolution.

16 12. Subsequent to the close of the public comment period at the hearing on the Welcoming City
17 Resolution, Councilmember Sotelo-Solis made a motion to adopt the Welcoming City Resolution proposed
18 by staff and Councilmember Rios seconded the motion.

19 13. Before the Council had an opportunity to vote on Councilmember Sotelo-Solis’s motion,
20 Mayor Morrison proposed a substitute resolution (“Substitute Resolution”) and substitute motion to approve
21 the Substitute Resolution.

22 14. The Mayor read the Substitute Resolution aloud and did not pass out hard copies of the
23 Substitute Resolution until he was finished reading it aloud. The Substitute Resolution was not made
24 available for public review prior to the Mayor’s introduction of the Substitute Resolution at the hearing.

25 15. On information and belief, Councilmembers Sotelo-Solis and Rios were not provided copies
26 of the Substitute Resolution prior to the February 7, 2017 hearing.

27 16. Mayor Morrison’s substitute motion was seconded before the Mayor distributed copies of
28 the Substitute Resolution to the Council.

1 17. Mayor Morrison and Councilmembers Mendivil and Cano voted to approve the Substitute
2 Resolution. Councilmembers Rios and Sotelo-Solis voted no on the substitute motion.

3 18. The Substitute Resolution was approved as Resolution No. 2017-16.

4 19. On or about February 21, 2017, the Council discussed its approval of Resolution No. 2017-
5 16, which appeared on the agenda as Item 27.

6 20. At the February 21, 2017 hearing, Councilmember Sotelo-Solis made a motion to initiate an
7 investigation into a potential Brown Act violation in connection with the Council's approval of Resolution
8 No. 2017-16. Councilmember Rios seconded the motion, but it ultimately failed with Mayor Morrison and
9 Councilmembers Mendivil and Cano voting against it.

10 21. On or about February 24, 2017, Plaintiffs/Petitioners SANDOG and SHILLING submitted
11 a Public Records Act Request ("PRA Request") for all documents, including emails, notes, reports and
12 memoranda, and texts related to Agenda Item 19 on the City's February 7, 2017 Council agenda and Item
13 27 on the City's February 21, 2017 agenda. Plaintiffs/Petitioners specifically clarified that messages sent
14 and received by public officials or employees on their private electronic devices or private accounts were
15 within the scope of the request. A true and correct copy of the PRA Request is attached hereto as Exhibit
16 A.

17 22. Believing that Defendants'/Respondents' approval of Resolution No. 2017-16 constituted
18 a violation of the Ralph M. Brown Act ("Brown Act"), on or about March 8, 2017, Plaintiffs/Petitioners sent
19 the City a Brown Act Demand for Cure and Cease and Desist Letter. A true and correct copy of the Cure
20 Request and Cease and Desist is attached hereto as Exhibit B and is incorporated by reference as if fully set
21 forth herein.

22 23. On or about March 30, 2017, the City responded to Plaintiffs'/Petitioners' PRA Request.
23 The City withheld certain documents under Section 6254(a) as "preliminary drafts" and provided some
24 responsive documents.

25 24. The City also provided Plaintiffs/Petitioners with virtually identical "Declarations of Search"
26 from the Mayor, Councilmembers, the Mayor's assistant, and the City Clerk, wherein each individual
27 declared they had conducted a diligent search for responsive records.

28 25. Only Councilmember Sotelo-Solis provided communications from a private account. All

1 other aforementioned individuals declared no responsive records were identified within their private
2 accounts.

3 26. On or about April 4, 2017, Plaintiffs/Petitioners sent the City a Notice of Intent to Sue,
4 demanding supplemental disclosure of public records, including those associated with private accounts.

5 27. Thereafter, Plaintiffs/Petitioners provided the City with a list of search terms to conduct a
6 search for documents responsive to the PRA Request. The City agreed to search the City database for
7 documents containing the search terms and to advise the Mayor, Councilmembers, Mayor's assistant, and
8 City Clerk to conduct a search for the aforementioned terms on their private accounts, including private
9 texts, email, Twitter and Facebook accounts.

10 28. On or about April 13, 2017, the City and Plaintiffs/Petitioners, through their respective
11 counsel, executed a tolling agreement extending the deadline to commence litigation challenging the City's
12 approval of Resolution No. 20107-16 until and including May 8, 2017.

13 29. To date, Defendants/Respondents have not cured their Brown Act violations.

14 30. The purpose of this action is to prevent actual and threatened violations of the Brown Act
15 by Defendants/Respondents, to determine the Act's applicability to past, present, and future actions of each
16 Defendant/Respondent, and to have any actions taken in violation of the law determined to be invalid and
17 void.

18 30. To date, Defendants/Respondents have not provided all documents responsive to
19 Plaintiffs'/Petitioners' PRA Request.

20 **Jurisdiction**

21 31. Plaintiffs/Petitioners bring this action and seek review by and relief from this Court under,
22 among other provisions of law and as applicable, Code of Civil Procedure Sections 526a, 1060 *et seq.*, and
23 1084 *et seq.*; Government Code Sections 54960 and 54960.1; and the National City Municipal Code.

24 32. Venue in this Court is proper because the obligations, liabilities, and violations of law alleged
25 in this pleading occurred in the City of National City.

26 33. Petitioners have no plain, speedy, adequate remedy in the ordinary course of law, since its
27 members will suffer irreparable harm as a result of the violations of the law alleged in this pleading. The
28 City Council approval of Resolution No. 2017-16 rests on Respondents' failure to satisfy a clear, present,

1 ministerial duty to act in accordance with those laws. Even when Respondents are permitted or required by
2 law to exercise their discretion in approving matters under those laws, they remain under a clear, present,
3 ministerial duty to exercise their discretion within the limits of and in a manner consistent with those laws.
4 Respondents had the capacity and ability to approve Resolution No. 2017-16 within the limits of and in a
5 manner consistent with those laws, but Respondents have failed and refuse to do so and have exercised their
6 discretion beyond the limits of and in a manner that is not consistent with those laws.

7 34. Petitioners and SanDOG’s members have a beneficial right and interest in Respondents’
8 fulfillment of all their legal and public duties, as alleged in this pleading.

9 **FIRST CAUSE OF ACTION:**
10 **Violation of the Ralph M. Brown Act Gov Code Section 54960**
(Against All Respondents)

11 35. Plaintiffs/Petitioners hereby incorporate by reference all preceding paragraphs.

12 36. In enacting the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, the California
13 Legislature found and declared that “the public commissions, boards and councils and the other public
14 agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their
15 actions be taken openly and that their deliberations be conducted openly.”

16 37. Under the Brown Act, the City of National City is a “local agency” and the City Council is
17 a “legislative body.”

18 38. Under the Brown Act, except as permitted by Government Code Section 54953, any use of
19 direct communication, personal intermediaries, or technological devices that is employed by a majority of
20 the members of the legislative body to develop a collective concurrence as to action to be taken on an item
21 by the members of the legislative body is prohibited.

22 39. The Brown Act prohibits Defendants/Respondents from participating in private meetings for
23 the purpose of developing a collective concurrence or of sharing information that could be used to develop
24 a collective concurrence.

25 40. The Brown Act prohibits Defendants and Respondents from participating in one-on-one
26 private meetings with the City Clerk for the purpose of developing a collective concurrence or of sharing
27 information that could be used to develop a collective concurrence. Such meetings constitute “serial”
28 meetings.

1 41. On information and belief, Defendants/Respondents constituting a majority of the City
2 Council, at a meeting that was not agendized, open or public, have taken action to develop a collective
3 concurrence to approve Resolution 2017-16.

4 42. Defendants/Respondents had and continue to have a mandatory legal duty to refrain from
5 taking part in private, non-agendized meetings and deliberations, including one-on-one serial meetings. The
6 Mayor’s and the Councilmembers’ participation in meetings that are not agendized, open, or public denies
7 Petitioners and other members of the public the information to which they are entitled under the Brown Act
8 and other provisions of law.

9 43. The Brown Act does not authorize an award of damages to redress Defendants’/Respondents’
10 past and threatened violations of the Brown Act. Accordingly, Plaintiffs/Petitioners have no plain, adequate,
11 speedy remedy at law to compensate them for Defendants’/Respondents’ unlawful conduct.

12 44. An actual controversy exists between Plaintiffs/Petitioners, on the one hand, and
13 Defendants/Respondents, on the other hand, concerning their respective rights and duties under the Brown
14 Act and other applicable provisions of law. As alleged in this pleading, Plaintiffs/Petitioners contend that
15 private deliberations and actions taken at private, non-agendized meetings are a violation of Government
16 Code Section 54953 and are illegal.

17 45. Defendants/Respondents dispute Petitioners’ contentions and maintain that approval of
18 Resolution No. 2017-16 is consistent with and not prohibited by the Brown Act or any other provision of
19 law.

20 46. Plaintiffs/Petitioners are informed, believe, and thereon allege Respondents, unless enjoined,
21 will continue to take part in private, non-agendized meetings and deliberations, including one-on-one serial
22 meetings .

23 47. Plaintiffs/Petitioners desire a judicial determination and declaration of the legality of the
24 private deliberations and meeting to ensure that Defendants/Respondents comply with the Brown Act and
25 all other applicable laws so that members of the public have the same information that forms the basis of
26 decisions made by Defendants/Respondents as members of the City Council and the conduct of the people’s
27 business be conducted openly.

28 //./

1 all responsive documents located within their private accounts, including private text messages, email,
2 Facebook, and Twitter accounts.

3 58. Defendants'/Respondents' failure to fully respond to and to produce all disclosable public
4 records responsive to Plaintiffs'/Petitioners' PRA Request is unlawful under the Act.
5

6 59. Plaintiffs/Petitioners have been damaged as a result of Defendants/Respondents' unlawful
7 failure to produce the disclosable public records responsive to the PRA Request.

8 **Prayer**

9 WHEREFORE, Plaintiffs and Petitioners respectfully pray for the following relief:

- 10 1. Judgment determining or declaring that Defendants/Respondents violated the Ralph M. Brown Act
11 in at least one way in approving Resolution No. 2017-16 and that Resolution No. 2017-16 is
12 therefore illegal.
- 13 2. A judgment determining or declaring that Defendants/Respondents must comply fully with the
14 Ralph M. Brown Act before any discussion may occur or action may be taken on Resolution No.
15 2017-16;
- 16 3. Judgment determining or declaring that Defendants/Respondents failed to comply fully with the
17 Ralph M. Brown Act as it relates to Resolution No. 2017-16, thus rendering all such discussions and
18 actions, including the approval of Resolution No. 2017-16 null and void;
- 19 4. Issuance of a writ of mandate requiring Defendants/Respondents to rescind any and all action taken
20 by the City Council in approving Resolution No. 2017-until Defendants/Respondents have fully
21 complied with the Ralph M. Brown Act and all other applicable laws, as determined by this Court;
- 22 5. Injunctive relief prohibiting Defendants/Respondents from further discussing or taking any further
23 action (including but not limited to the expenditure of any public funds) in connection with any
24 aspect of Resolution No. , unless and until Defendants/Respondents have fully complied with the
25 Ralph M. Brown Act and all other applicable laws;
- 26 6. An order providing for the Court's continuing jurisdiction over this action in order to ensure that
27 Defendants/Respondents comply with the Brown Act and all other applicable laws;
- 28 7. A writ of mandate ordering Respondents to promptly comply with the Public Records Act with

1 regard to Plaintiffs'/Petitioners' February 24, 2017 Public Records Act Request; and

2 8. Preliminary and permanent injunctive relief directing Respondents to respond to
3 Plaintiffs'/Petitioners' February 24, 2017 Public Records Act Request and to permit CERF to
4 inspect and obtain copies of the responsive public records.

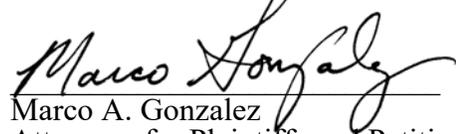
5 9. An order providing for the Court's continuing jurisdiction over this proceeding in order to ensure
6 that Defendants/Respondents comply with the Public Recors Act and all other applicable laws;

7 10. All attorney fees and other legal expenses incurred in the prosecution of this action; and

8 11. Any further relief that this Court may deem appropriate.

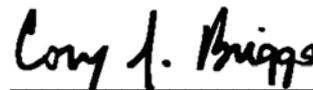
9 DATED: May 8, 2017

COAST LAW GROUP LLP



10
11 Marco A. Gonzalez
12 Attorneys for Plaintiffs and Petitioners,
13 CHRIS SHILLING and SAN DIEGANS FOR
14 OPEN GOVERNMENT

BRIGGS LAW CORPORATION



15 Cory J. Briggs
16 Attorneys for Plaintiffs and Petitioners,
17 CHRIS SHILLING and SAN DIEGANS FOR
18 OPEN GOVERNMENT

1 VERIFICATION

2 I, Chris Shilling, declare:

3 I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and Petition for
4 Writ of Mandate and know the contents thereof, except as to those matters which are alleged on information
5 and belief, and as to those matters I believe them to be true.

6 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true
7 and correct and that this verification was signed on the 8th day of May, 2017, in Chula Vista, California.

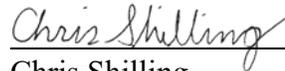
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9
10 
11 Chris Shilling

EXHIBIT A



1140 S. Coast Highway 101
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

February 24, 2017

City of National City
Office of the City Clerk
1243 National City Boulevard
National City, CA 91950-4301

Via Electronic Mail and Facsimile
clerk@nationalcityca.gov
619-336-4239

RE: Public Records Act Request
Resolution to Create Welcoming Community

Dear Mr. Dalla:

Pursuant to the California Public Records Act (PRA), California Government Code Section 6250 *et seq.*, please accept Chris Shilling and San Diegans for Open Government's request for access to the following documents:

1. All documents, including emails, notes, reports and memoranda, and texts related to the City Council's February 7, 2017 Agenda Item 19, "Resolution of the City Council of the City of National City in Support of Creating a Welcoming Community for All Residents."
 - Specifically, this includes but is not limited to: all correspondence with and between any City Councilmembers, the Mayor, the Mayor's assistant, the City Clerk, City employees, the public, and the press.
 - Please note, emails and text messages sent and received by public officials or employees on their private electronic devices or private accounts are within the scope of the instant request.

2. All documents, including emails, notes, reports and memoranda, and texts related to the City Council's February 21, 2017 Agenda Item 27, Discussion of City Council Resolution No 2017-16.
 - Specifically, this includes but is not limited to: all correspondence with and between any City Councilmembers, the Mayor, the Mayor's assistant, the City Clerk, City employees, the public, and the press.
 - Please note, emails and text messages sent and received by public officials or employees on their private electronic devices or private accounts are within the scope of the instant request.

We request access to the aforementioned documents and texts in **electronic format, if possible.** If any portions of the requested records are exempt from release, we request that all reasonable segregable, nonexempt portions of the records be released.

As this request is by and for a public interest organization interested in the complete execution of all applicable laws for the protection of the environment, human health, and open government, we request a waiver of any and all costs associated with the satisfaction of this request. A public agency is required under prevailing law to consider this fee waiver request, and the failure to do so is an abuse of discretion subject to judicial review. See, *North County Parent Organization v. Department of Education* (1994) 23 Cal. App. 4th 144, 148. Please advise us of any informational and other procedural requirements that you may have in order for this request to qualify for a fee waiver. If you are unable to provide a fee waiver, please notify us immediately of any payment required prior to subjecting our clients to such costs.

On behalf of our clients, we look forward to working with you on this document request to minimize the imposition on your staff. Should you have any questions regarding the instant request, please feel free to contact our offices directly. Thank you very much for your assistance in this matter.

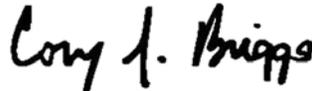
Sincerely,

COAST LAW GROUP LLP



Livia B. Beaudin

BRIGGS LAW CORPORATION



Cory J. Briggs

Attorneys for Chris Shilling and
San Diegans for Open Government

EXHIBIT B



1140 S. Coast Highway 101
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

March 8, 2017

George Eiser
Interim City Attorney
City of National City
1243 National City Boulevard
National City, CA 91950-4301

Via Electronic Mail and Facsimile
attorney@nationalcityca.gov
619-336-4239

RE: Brown Act Demand for Cure and Cease and Desist
Resolution Number 2017-16

Dear Mr. Eiser:

Please accept this correspondence on behalf of our clients San Diegans for Open Government (SanDOG) and Mr. Chris Shilling. SanDOG is a non-profit, public-interest organization that advocates for good-governance issues, including environment-related quality-of-life issues in the County of San Diego.

This letter serves as our clients' Demand for Cure and Cease and Desist in response to the City of National City's violations of the Brown Act¹ in connection with the City's approval of Resolution 2017-16, a "Resolution of the City Council of the City of National City in Support of Continuing to be a Community that Supports all Residents and Visitors," ("substitute Resolution") Agenda Item 19 on the February 7, 2017 agenda.

Californians – including our clients – have a constitutional right to an open government, where actions² are taken openly and deliberations are conducted openly. (Gov Code §54950). "The purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies." (Attorney General's Brown Act Handbook, p. 1, citing *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555).

A meeting as defined by Section 54952.2(a) includes "any congregation of a majority of the members of a legislative body at the same time and location...to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body." Serial communications ultimately involving a majority of the legislative body likewise constitute "meetings," as reflected in Section 54952.2(b).

The Mayor's last-minute introduction of the substitute Resolution, as well as the rushed vote

¹ Government Code § 54950 *et. seq.*

² Government Code section 54952.6 defines "action taken" as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance." This includes the action taken by the City Council and Mayor in approving and making a collective commitment or promise to approve the substitute Resolution.

thereon without an opportunity for public comment, strongly suggest a majority of the Council deliberated upon and discussed the matter outside of the public meeting.³ It also appears a majority of the Council made a collective commitment to approve the substitute Resolution outside of the public meeting. This constitutes a violation of Brown Act, including Sections 54953 and 54952.2.

Therefore, pursuant to Government Code Section 54960.1, this letter constitutes a demand that the City of National City, specifically the City Council and Mayor, cure and correct the illegally taken action as follows: (i) formally and explicitly withdraw the prior votes to approve the substitute Resolution; (2) properly agendize an open meeting for the consideration of a Resolution to Create a Welcoming Community, providing any proposed alternate or substitute Resolutions with the agenda materials; (3) provide an opportunity for public comment by members of the public at the aforementioned meeting; (4) provide for the open and public vote by the Council and Mayor. Notice of the meeting, a brief description of the action proposed to be taken – including the proposed Resolution(s) – and the availability of public comment must be included on a posted agenda. Any and all documents in the possession of the City related to the action taken shall also be provided with the agenda.

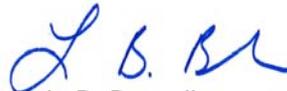
This letter further constitutes a demand pursuant to Section 54960.2 to cease and desist the aforementioned Brown Act violations, namely the discussion of and deliberation upon items subject to the jurisdiction of the City Council by a majority of the Council outside of a public meeting, including a commitment by the majority of the Council to take a position on such items.

As provided by Section 54960.1, the City has 30 days from the receipt of this demand to either cure or correct the challenged action. Should the City fail to cure or correct as demanded, SanDOG and Mr. Shilling will seek a judicial invalidation of the challenged action pursuant to Sections 54960, 54960.1 and 54960.2. SanDOG and Mr. Shilling will also seek an award of costs and reasonable attorney fees in this matter.

We urge the City to consider the public interest and citizens' right to open government in considering this request. Should you have any questions feel free to contact us directly.

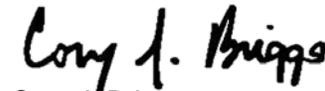
Sincerely,

COAST LAW GROUP LLP



Livia B. Beaudin

BRIGGS LAW CORPORATION



Cory J. Briggs

Attorneys for Chris Shilling and
San Diegans for Open Government

cc: Mike Dalla, City Clerk, clerk@nationalcityca.gov

³ Our clients' Public Records Act request regarding any such written communications remains outstanding.