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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF MONTEREY
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14 ROYAL CALKINS, an Individual,
15 Petitioner,

16 v.

17 CITY OF CARMEL-BY-THE-SEA, and
Does 1 -through 10, inclusive
18 Respondents.
19

Case No.:

PETITION FOR WRIT OF MANDATE

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

23 **PARTIES**

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

2 2. Respondent City is a general law city located in the County of Monterey,
3 State of California and is a “local agency” within the meaning of Government Code §6252.

4 3. Petitioner is ignorant of the true names and capacities of other persons or
5 entities who or which may be responsible for the violations of the Public Records Act alleged
6 herein, and Petitioner therefore identifies such respondents as “Doe 1 through Doe 10.” Petitioner
7 will amend this Petition to set forth said true names and capacities once the same have become
8 known to Petitioner. Petitioner is informed and believes that each of the respondents so named
9 contributed to the violations of the Public Records Act addressed herein.

10 **FACTS**

11 4. Early in 2017, Don Freeman, City’s City Attorney for 33 years, announced
12 his intention to resign that position sometime in 2017. The Carmel City Council (“Council”)
13 appointed two of its members, Carolyn Hardy and Jan Reimers, as the *ad hoc* committee
14 (“Committee”) to facilitate the City Attorney selection process to locate a successor to Mr.
15 Freeman. The Committee coordinated the preparation of a Request for Qualifications (“RFQ”)
16 that was made available to all persons seeking to succeed Mr. Freeman as City Attorney. The City
17 received 16 responses by March 10, 2017, the deadline for submission of responses to the RFQ.
18 One of those responses was submitted by candidate Glen R. Mozingo (“Mozingo”).

19 5. Following an unknown level of review and verification by the Committee of
20 the contents of the 16 responses City received to the RFQ, it recommended three candidates for
21 interview by the Council. Mozingo was one of those three. After the completion of those three
22 interviews, the Council selected Mozingo as its preferred choice. Thereafter, On July 11, 2017,
23 “G. R. Mozingo, Esq. APC” and the City entered into a City Attorney Legal Service Agreement
24 under which Mozingo’s law firm, as an independent contractor, would provide legal services to the
25 City for one year with the possibility of renewal at the end of that year. One requirement of the
26 agreement was that the “City Attorney shall be truthful with the City . . .” Several representations
27 made by Mozingo in his response to the RFQ were anything but truthful.

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

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

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

21 9. In his response to the RFQ, Mozingo represented that “[a]s founder of the
22 firm Mozingo and Patel, A.P.C., [he] served as lead counsel for 37 years, from 1979 through
23 December 31, 2016.” That statement appears to be contradicted by public records. According to
24 the California Bar Association (“Bar”), Mozingo was admitted to practice law in the State of
25 California on November 29, 1979, but Kinnery Patel, his partner in Mozingo and Patel, A.P.C .,
26 was not admitted to practice law in the State of California until May 3, 2003. California Rule of
27 Professional Conduct 1-310 provides that a “member shall not form a partnership with a person
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1 who is not a lawyer if any activities of that partnership consist of the practice of law.”
2 Accordingly, and absent a violation of Rule 1-310, there could not have been a firm of Mozingo
3 and Patel, A.P.C., until May of 2003, when Ms. Patel was first licensed to practice in California.
4 Moreover, according to the California Secretary of State, the professional corporation of Mozingo
5 and Patel, A.P.C., did not exist until registered as such by the California Secretary of State on
6 February 6, 2004 (under the name “The Mozingo Law Firm” that was changed to “Mozingo &
7 Patel, a Professional Corporation on January 8, 2010). In addition, according to the records of the
8 California Court of Appeal, Fourth Appellate District, Division 3, Case No. G012342, Mozingo
9 represented one of the parties in the referenced appeal in 1992 and 1993, and identified himself in
10 as a member of the firm of Millar, Hodges, Bemis & Mozingo.

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

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

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

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

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

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

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

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

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

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

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

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

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28 The City never responded to that letter.

APPLICABLE LAW

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

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

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

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

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

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

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

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

17 WHEREFORE, PETITIONER PRAYS FOR JUDGMENT AS FOLLOWS

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

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

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

27 4. For costs of suit incurred herein; and

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

Dated: July 7, 2018

NEIL L. SHAPIRO
LAW OFFICES OF NEIL L. SHAPIRO

By _____
Neil L. Shapiro
Attorneys for Petitioner ROYAL CALKINS

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VERIFICATION

I, Royal Calkins, declare:

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

Executed at Carmel, California, this ___ day of July, 2018. I declare under penalty of perjury that the foregoing is true and correct.

Royal Calkins