

**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED AND
ATTORNEY WORK PRODUCT MEMORANDUM**

PREPARED EXCLUSIVELY FOR LEGAL COUNSEL FOR
THE SAN DIEGO UNIFIED PORT DISTRICT

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To: Ellen Gross
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cc: Rebecca Harrington
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San Diego Unified Port District (“the District”)

Date: September 18, 2023

Re: Summary Report of Investigation of Commissioner Sandy Naranjo’s Conduct

I. INTRODUCTION AND BACKGROUND

On July 27, 2023, the San Diego Unified Port District retained HR Law Consultants to conduct a confidential investigation into concerns about potential retaliation, violation of law and policies, and breach of fiduciary duties engaged in by Commissioner Sandy Naranjo (“Naranjo”). The following report summarizes the investigation conducted by Jane Kow and Ilana Parmer Mandelbaum and includes a summary of the allegations and background facts, the aim and scope of the investigation, witnesses interviewed, documents reviewed, and analysis of the evidence and summary of the findings.

A. The Role and Responsibilities of the General Counsel for the District Include Vetting and Advising The Board On Conflicts of Interest

The San Diego Unified Port District (the “District” or “Port”) is governed by a seven-member Board (the “Board”) of Port Commissioners (the Commissioners are also referred to as “Board Members”), representing the five cities bordering San Diego Bay. Each Commissioner is appointed by their respective city council and serves a term of four years. The Board sets policies under which Port District staff conduct operations. The Board has three direct reports, including the District’s General Counsel, for whom it conducts performance evaluations.

The General Counsel is appointed by and serves at the will of the Board and functions as chief legal officer for the District.¹ Employee A has served as the District’s General Counsel since 2012. Employee A began his legal career in private practice, where he focused on maritime law. He then served ten years as the General Counsel for the Port of Los Angeles before joining the District. In addition to supervising other attorneys and staff in the Office of the General Counsel, his essential duties and responsibilities include providing legal advice to the District on a broad range of laws and regulations, ranging from employment, environment, real estate, construction, maritime, tort liability, public records requests, conflicts of interest and public agency powers,

¹ Port of San Diego General Counsel Class Specification, revised June 10, 2014.

obligations, and limitations. He must keep the Board apprised of status of threatened or existing litigation and furnish Commissioners and all District executives, managers, and staff with legal guidance as “necessary to the performance of their duties as prescribed by law and by Board policies.”²

As General Counsel, [Employee A] represents and advises the Board on all legal matters that impact the District, but he does not represent or advise any individual Commissioner on any legal matters. [Employee A] generally briefs each Commissioner individually before Board meetings on upcoming agenda items. Commissioners can also schedule regular and/or ad hoc one-on-one meetings with [Employee A] at a frequency of their choosing. Some Commissioners schedule biweekly meetings with [Employee A] others meet with [Employee A] less frequently and on an as needed basis.

As the designated Ethics Officer for the District, [Employee A] must interpret the District’s Code of Ethics in reference to State laws and obtain guidance from outside counsel or the Fair Political Practices Commission (“FPPC”) as necessary to set guidelines and dispense legal advice to the District to avoid any conflicts of interest between the ongoing activities and decisions of the Commission and a Commissioner’s outside employment or activities.³ Some of the Commissioners also retain their own counsel to advise on ethics matters.

Commissioners are required to submit a Form 700 - Statements of Economic Interest - to ensure that their outside income sources, employment, and activities are vetted to avoid any conflicts of interest with the Commissioner’s contractual obligations, bid proposals, and decisions that are made by the Board. [Employee A] contacts each new Commissioner as soon as they are appointed to the Board to ensure timely completion of their Form 700 and to discuss any potential conflicts of interest. The General Counsel’s Office will notify a Commissioner if a potential conflict of interest exists and Commissioners on their own accord will seek guidance from the General Counsel’s office where they or their family member’s activities may present a potential conflict of interest or impact the performance of their duties. The General Counsel’s Office will then advise on how to navigate the conflict, including recusal from the discussion or vote on a particular item warranting a Board decision.

The following chronology of events helps to set the context for the events at issue in this investigation.

B. [Employee A] Attempted To Address Multiple Scenarios Pertaining to Naranjo and Her Husband’s Outside Business Interests, Income Sources, and Activities That Posed a Potential Conflict of Interest with Her Role As A Commissioner

Commissioner Sandy Naranjo (“Naranjo”) was appointed by National City to the Board in December 2020 and was sworn into service on January 1, 2021. [Employee A] called Naranjo when she was appointed to introduce himself and offer assistance with her Form 700. Naranjo asked [Employee A] opinion on whether she could accept an offer as the Chief Climate Policy Advisor for the San Diego County Board of Supervisors through Board Member Nora Vargas. [Employee A] advised Naranjo against taking the offer, since the County is often involved with the District on policy issues, and thus, it could create a conflict of interest. According to Naranjo, the then Mayor of National City informed her that these simultaneous appointments would create such a conflict of interest that if she undertook that position, she would ensure Naranjo’s removal from the Commission. This ultimately resulted in Naranjo declining the job offer in order to retain her position as a Commissioner for the District.

The conflicts of interest issues [Employee A] analyzed for Naranjo concerned 1) her husband’s work for Baker Electric, a prominent electrical construction and renewable energy services company in San Diego, which had historically provided electric services for some District projects; and 2) Common Wealth Action Consulting, a company she formed with her husband on January

² *Id.*; Board of Port Commissioners (BPC) Policy No. 022.

³ *Id.*

11, 2021 and dissolved on December 17, 2021, which sought to solicit consulting services from unions that could be performing services on behalf of the District or District tenants. According to Employee A over the course of these two matters, the Commission retained two separate law firms and sought two opinion letters from the FPPC in an effort to resolve the multiple potential conflicts of interest without cooperation from Naranjo despite the potential dire consequences for the District if any of these conflicts of interest had to be disclosed to the public in the course of a bond issuance for a key project as described below. Employee A efforts to obtain critical information to resolve these issues undoubtedly created tension between him and Naranjo, who resisted responding to his inquiries and contended that he was unfairly targeting her for scrutiny and mistreatment.

C. During The December 13, 2022, Closed Session To Discuss Employee A Performance Evaluation, Naranjo Confronted Employee A About His Involvement With a Former Port of LA Commissioner Whose Company Had Been Sued For Fraud

Employee A 2022 performance review was on the agenda for the Board's Closed Session set for the morning of December 13, 2022. About 10 minutes beforehand, Naranjo came into the then Chair of the Board's office, reached into her bag and took out a stack of papers that pertained to a District contract with Clean Air Engineering – Maritime, Inc. ("CAEM") from May 2022, a company that was owned by Nick Tonsich, a former president of the LA Port Commission during part of the time that Employee A served as its General Counsel. Naranjo was concerned about Employee A potential involvement with Tonsich due to their overlapping time at the Port of Los Angeles, so she wanted to raise the matter during the Closed Session. The Commissioner claims that he suggested Naranjo provide this information to District staff to research it, but also told Naranjo that as a Commissioner she was free to raise what she wanted.

As recounted by each of the other Commissioners, Employee A received uniformly positive feedback during the Closed Session discussion of his 360-degree performance review. The results were tabulated anonymously, so it was not possible to attribute ratings to each reviewer, but with only two exceptions, he received "effective" and "extremely effective" ratings from the Commissioners.⁴ After Employee A offered a summary of his accomplishments and areas for improvement based on the feedback received,⁵ the Commissioners each began providing their feedback. One Commissioner was laudatory of Employee A "Employee A you've made me a better attorney. You're one of the best attorneys I've ever interacted with in my entire career." Each of the other Commissioners followed suit by providing praise for Employee A performance and his contributions to the District.

When it was Naranjo's turn to speak, she asked that the outside consultant Drew Dougherty (who had compiled Employee A performance feedback) leave the room. Then, according to five of the Commissioners, Naranjo began to cross examine Employee A about his relationship with Nick Tonsich, whose company had been sued for fraud, among other tort and contract claims by Pasha LP, a third-party Plaintiff that conducts business with several ports, including the Port of Los Angeles and is a District tenant at the District's National City Marine Terminal. She interrogated him about whether he had ever represented Tonsich, and if called upon, would he be able to sue Tonsich on behalf of the District. Naranjo revealed that Tonsich was the president of a company which the District had just entered into a contract. According to the other Commissioners, Naranjo waved the pleadings in her hand as she aggressively interrogated Employee A was seemingly shocked by her insinuation, but he nonetheless maintained his composure as he continued to answer her questions, denying any present relationship with Tonsich or awareness of the pending lawsuit. He explained that his only connection to Tonsich was when he was General Counsel of the Port of Los Angeles and Tonsich served on the LA Port Commission, but he did not have a personal relationship with Tonsich, nor did he know about the lawsuit. He also stated that he would defend the District and institute any action against Tonsich in the event of litigation without any conflict of interest.

⁴ Feedback for Employee A November 2022

⁵ Office of the General Counsel 2022 Highlights

One Commissioner interjected to interrupt Naranjo's interrogation, by exclaiming, "Enough! This kind of inquisition is not appropriate." Another Commissioner asked to see the papers Naranjo was waving in her hand, which the Commissioner described as an unverified complaint and therefore amounted to not yet proven allegations made by a third party against Tonsich's company. A third Commissioner finally put an end to Naranjo's "deposition." None of the Commissioners believed there was any truth to the implication that Employee A was in any way connected with the company that had been sued for fraud, that he had a personal relationship with Tonsich or knew about the alleged faulty product sold by the company. Naranjo's questions implying that Employee A had failed to disclose a relationship with Tonsich and a potential conflict of interest with a contractor accused of fraud, and thereby engaged in misconduct in the midst of his positive performance feedback session, shocked the other Commissioners. They were alarmed that she failed to provide Employee A or the Commissioners with advance notice of these allegations or provide Employee A with an adequate opportunity to meaningfully respond to these charges.

The Board then directed Employee A to report back on the status of the lawsuit and resolution of the matter, if any. After thanking Employee A for his service, Employee A was asked to leave the room so that the Board could vote on providing Employee A with a pay raise, a merit bonus and a one year extension of his employment contract to 2025 (marking fifth extension of his employment term).⁶ According to one Commissioner, after she put on her sideshow, Naranjo voted in favor of these measures.

During the break between Closed and Open Sessions, Employee A confirmed that the District had contracted with Tonsich's company for technology that had been approved by the California Air Resources Board (CARB). The Commissioners discussed among themselves their shock and dismay over how Naranjo had confronted Employee A during the Closed Session. Two Commissioners expressed to a third Commissioner that they questioned her ability to serve the Board as Vice Chair and as Chair the following year, and whether they should appoint another Commissioner to the Vice Chair position during the appointment of officers in the upcoming Open Session.

At the end of the Open Session that followed, the Chair asked if any Commissioner wanted to make a motion to elect the new officers for the coming term. Commissioner Michael Zucchet ("Zucchet") made a motion to elect the slate of candidates that included Rafael Castellanos as Chair, Naranjo as Vice Chair, and Danielle Moore as Secretary for 2023, consistent with the Board's past practice of electing officers on a rotational basis, alternating between a Commissioner from San Diego and other District member Cities and elevating the Secretary into the Vice Chair Position and the Vice Chair to Chair.⁷ But no one seconded the motion, so Malcolm announced, "Hearing no second, the motion dies for lack of a second." He then asked if anyone wanted to make another motion, so Naranjo made the identical motion, seconded by Zucchet, but Castellanos decided to abstain from the vote. He later explained to the investigators that he could not "in good conscience" vote in favor of electing Naranjo into the Vice Chair position in light of her conduct in the Closed Session. Five Commissioners disclosed to this investigation team that they did not believe that Naranjo was fit to serve as a Commissioner let alone as Chair the following year if the Board were to continue to elect candidates on a rotational basis as before.

One Commissioner recounted that Naranjo leaned over to ask that Commissioner if the reason no one seconded Zucchet's original motion to elect the slate of candidates and Castellanos's abstention was because of what she did during the Closed Session. That Commissioner confirmed that it was because of her actions and suggested that she contact each Commissioner to apologize for her behavior. With the exception of one Commissioner, Naranjo subsequently contacted all of the other Commissioners individually and each one expressed their

⁶ See First through Eighth Amendments to Employment Agreement between Unified Port of San Diego and Port Attorney, dated September 21, 2012.

⁷ See video recording of December 13, 2022, Board meeting.

https://portofsandiego.granicus.com/player/clip/1604?view_id=1&redirect=true&h=035212523fed88804dfad8da88c80d82

dismay and disapproval of her behavior towards **Employee A** during the December 13, 2022, Closed Session, which is the focus of this investigation. Afterwards, when Naranjo met with each Commissioner privately, some bluntly chastised her for launching a surprise attack on **Employee A** without any prior notice to the Board or **Employee A**. They believed that it was unfair and a violation of **Employee A** rights as well as District policy and procedures for raising concerns about an employee's performance or conduct in such a manner. One Commissioner told her she had "really mishandled" the situation and that what transpired in Open Session was "a de facto no confidence vote." The Commissioner told her that he decided to abstain from voting in favor of the slate of candidates, which included her election to Vice Chair, because his conscience would not allow him to condone what had happened. Another Commissioner told her that what she did was "inappropriate" and that "if she had issues regarding what may or may not have taken place 15 years prior, that wasn't the right venue to bring it up."

D. The Commissioners Were Concerned That Naranjo Was Potentially Retaliating Against **Employee A And Had Violated Board and District Policies and Laws, Warranting An Investigation By An Outside Investigator**

Two Commissioners later conferred with one another, and both of them believed that Naranjo's statements were defamatory in nature, and she was likely attempting to retaliate against **Employee A** because he raised concerns about potential conflicts of interest and ethical violations related to her outside activities. They also believed that Naranjo's statements in Closed Session may have violated **Employee A** due process rights under the Ralph M. Brown Act ("Brown Act"), Cal. Gov. Code Section 54957(b)(2), which requires at least 24 hours advance written notice of any charges against an employee. Thereafter, one of those two Commissioners contacted the District's Outside Counsel, Ellen Gross to discuss what transpired, which ultimately resulted in the Board's decision to retain an outside investigator to conduct a formal investigation into the matter.⁸

After Naranjo objected to a prior investigator retained by the District's outside counsel several months after that investigation had started, the District retained the present team of investigators, Jane Kow and Ilana Parmer Mandelbaum on July 27, 2023, who are based in the San Francisco Bay Area and do not have any connections to anyone at the District. The investigators were retained to conduct a prompt, thorough, and objective investigation into Naranjo's conduct as a Commissioner and the events surrounding the December 13, 2022, Closed Session to enable the District to determine whether she had engaged in retaliation, potential violations of the District's policies and applicable laws, or breached her fiduciary duties as a Commissioner. The investigation findings are summarized below.

II. THE INVESTIGATION

A. Aim and Scope of the Investigation

The aim of this investigation was to examine whether, by raising concerns about the General Counsel's performance and implicating him in alleged misconduct during the December

⁸ One Commissioner initially suggested that the District retain Janice Brown, Principal Attorney in Meyers Nave's San Diego office, to conduct the investigation. Several months after Brown began her investigation, and after Naranjo retained Dan Gilleon as her own private counsel, Naranjo raised concerns that Brown could not conduct an unbiased investigation because Brown and that Commissioner had both served on the Board of the Economic Development Corporation of San Diego County, an entity that has numerous Board members and has no relationship to the District. Naranjo also raised concerns that Brown had a reputation of "white washing" complaints in her capacity as a defense attorney who represents organizations and would not initially agree to be interviewed by Brown. After Brown had concluded her interviews with other witnesses and had begun writing her summary report, on July 11, 2023, Naranjo finally agreed to be interviewed as part of Brown's investigation. However, by that time, the District had already decided to halt Brown's investigation in response to Naranjo's allegations about a biased investigation and decided to retain a different investigator with no prior connection to or relationship with anyone on the Board or affiliated with the District.

13, 2022 meeting, Commissioner Naranjo (1) engaged in defamation and retaliation against **Employee A** (2) violated any fiduciary duties owed by a Commissioner under Public Resources Code Section 6009.1 and District policies, and (3) violated the Brown Act's requirement of advance notice before bringing a charge or complaint against a public employee, and (4) violated the Brown Act's requirement of properly agendaing all matters to be discussed at a public meeting.

B. Witnesses Interviewed

The following were each interviewed individually via Zoom videoconference in the sequence and dates as indicated below. Naranjo's attorney Dan Gilleon attended her interview. None of the other Commissioners requested the presence of their attorney or any third party.

1. General Counsel (August 9 and September 7, 2023)
2. Commissioner (August 9, 2023)
3. Commissioner (August 9, 2023)
4. Commissioner (August 10, 2023)
5. Commissioner (August 11, 2023)
6. Commissioner (August 11, 2023)
7. Commissioner (August 22, 2023)
8. Commissioner and Vice Chair of the Board, Sandy Naranjo (August 24 and September 1, 2023)

C. Documents Reviewed

The following is a summary of relevant documents that were reviewed in the course of this investigation and are contained in the index to this summary report.

1. Port Code of Ethics Section 0.14
2. Board of Port Commission (BPC) Policy No. 020: Powers and Functions of the Board of Port Commissioners
3. BPC Policy No. 022: Powers and Functions of Port Attorney
4. Job Classification for Port of San Diego General Counsel, dated June 10, 2014 ("General Counsel Job Description")
5. CY2023 Goals and Objectives Prepared by **Employee A** Office of the General Counsel
6. Employment Agreement between Port of San Diego and **Employee A** dated September 21, 2012
 - a. First Amendment to Employment Contract, dated March 14, 2014
 - b. Second Amendment to Employment Contract, dated January 20, 2016
 - c. Third Amendment to Employment Contract, dated December 19, 2016
 - d. Fourth Amendment to Employment Contract, dated January 17, 2018
 - e. Fifth Amendment to Employment Contract, dated November 28, 2018
 - f. Sixth Amendment to Employment Contract, dated January 8, 2020
 - g. Seventh Amendment to Employment Contract, dated November 23, 2020
 - h. Eighth Amendment to Employment Contract, dated January 10, 2023
7. Office of the General Counsel 2022 Highlights.
8. Written performance feedback for **Employee A** General Counsel, Port of San Diego
9. July 21, 2021, letter from James R. Sutton, The Sutton Law Firm, to David Bainbridge, Esq., FPPC, re: Request for Formal Advice
10. August 4, 2021, memo from Nicholas Sanders to **Employee A** re Potential Conflicts of Interest Implicated by Commissioner's Consulting Firm
11. August 19, 2021, memo from Jim Sutton & Nick Sanders to Commissioner Sandy Naranjo re Potential Conflict of Interest Stemming from Vote on Chula Vista Bayfront/RIDA Project Financing
12. October 5, 2021, letter from James R. Sutton, The Sutton Law Firm, to Kevin Cornwall, Esq., FPPC, re: Request for Formal Advice
13. October 18, 2021, Advice Letter from FPPC to Nicholas Sanders.

14. October 5 and 11, 2021, emails from James Sutton to Sandy Naranjo re Confidential – conflict of interest questions
15. December 8, 2021, memo from Gary Winuk to Board of Port Commissioners re Conflict of Interest Advice – Commissioner Sandy Naranjo
16. December 13, 2022, Docket for Case Number 20STCV04623, Ocean Terminal Services, Inv. v. Pasha Stevedoring & Terminals L.P., et al.
17. Certain Filings Related to Case Number 20STCV04623, Ocean Terminal Services, Inv. V. Pasha Stevedoring & Terminals L.P., et al.
18. Articles of Incorporation for Common Wealth Action Consulting, Inc.
19. Certificate of Dissolution for Common Wealth Action Consulting, Inc.
20. Confidential Personnel Investigation Report by [REDACTED], dated June 23, 2022.
21. Documents provided by Commissioner Sandy Naranjo
 - a. Unverified complaint in California Superior Court, County of Los Angeles, filed by Pasha LP against Clean Air Engineering-Maritime, Inc.
 - b. Word draft cross-complaint by Ocean Terminal Services, Inc. against Pasha L.P. in Case No. 20STCV04623 in California Superior Court, County of Los Angeles
 - c. Letter from San Pedro and Peninsula Homeowners United, Inc. to Mr. Richard W. Corey, Executive Officer, California Air Resources Board, re: CARB Grant on Omni Green Terminal-Port of Los Angeles, dated January 15, 2020
 - d. **Employee A** Profile on Maritime Arbitration Association of the United States
 - e. Article from Random Lengths News (RLN) entitled “Former POLA president Nick Tonsich sued for \$5 million in fraud complaint,” dated July 9, 2020
 - f. Los Angeles Times article Villaraigosa Calls for Criminal Probe of Tonsich, dated May 11, 2005
 - g. Propeller patent filed with patent office on 3/11/21 by **Employee A**
 - h. Agenda, minutes, and board materials for September 12, 2023, Board meeting.
 - i. Agenda item #13 on May 10, 2022, Board meeting for approval of contract with CAEM.
 - j. Recording of presentation made by staff re Contract with CAEM at May 10, 2022, Board meeting
 - k. Staff report for agenda item #13, May 10, 2022, Board meeting
 - l. Response to Jodene Isaacs Public Records Act Request re emissions technology, sent November 8, 2022
 - m. September 2, 2021, email from Donna Morales re requests for Form 700s by San Diego Port Tenants Association
 - n. VOSD article entitled “Sandy Naranjo is National City’s Newest Port Commissioner” (2020)
 - o. KPBS article entitled “Latina San Diego Port Commissioner Fights for her Community” (2021)
 - p. The Star News article entitled “National City Wants Environmental Justice” (2021)
 - q. The San Diego Union Tribune article entitled “Past due accounts – National City wants Port to dedicate \$50 million for environmental justice” (2021)
 - r. The Star News article entitled “Port Commissioner Demands Environmental Justice (2022)
 - s. Short film featured in San Diego Union Tribune entitled “Que Viva el Barrio” (2022)
 - t. San Diego County Grand Jury Report 2023
 - u. Email from Margret Hernandez to Sandy Naranjo, cc Joe Stuyvesant, Commissioner Services Staff, and Gwynn Soebbing, re: Aguirre Tour March 6, dated March 6
 - v. Screenshot of text message from Joe Stuyvesant to Mayor Aguirre re Naranjo’s attendance at tour, undated
 - w. Email from Sandy Naranjo to Commissioner Services Staff re Mayor Paloma Port boat tour, undated
 - x. Email from Sandy Naranjo to Jodene Isaacs and Commissioner Services Staff re: Public Records Act Request re: Emission Capture Control Technology, dated November 7, 2022

- y. Email from Sandy Naranjo to Commissioner Services Staff re: Naranjo rec'd – Following up about tour of port, dated January 13, 2023
- z. Email from Janice Brown to Daniel Gilleon, cc Sandy Naranjo, re: Investigation Notice – Sandy Naranjo, dated March 6, 2023
- aa. Email from Scott Huth to Sandy Naranjo, cc Armando Vergara, re: Follow Up re Balanced Capital Program and Pepper Park Funding, dated June 13, 2023.
- bb. Word document entitled “Equipment Outlay and Other Capital Projects”
- cc. Word document entitled “Sandy Naranjo Interview Report 9.9.23

III. ANALYSIS OF THE EVIDENCE AND INVESTIGATION FINDINGS

A. Commissioner Naranjo Continually Resisted **Employee A** Efforts To Obtain Information To Address Multiple Potential Conflicts of Interest Arising From Her and Her Husband’s Outside Income Sources and Activities, Which Could Have Had Serious Consequences For the District and Board Members

In or around January, 2021, **Employee A** learned that Naranjo’s husband, Andrew McKercher, worked as an electrician at Baker Electric, a prominent electrical construction and renewable energy services company in San Diego, which had historically provided electric services for some District projects.⁹ **Employee A** raised concerns about a potential conflict of interest with Naranjo’s ability to vote on District contracts where her husband’s company could be a subcontractor on these projects. **Employee A** retained the Sutton Law Firm, specialists in public agency ethics law, to provide guidance. The Sutton Law Firm ultimately wrote to the FPPC for guidance on the matter on two separate occasions—July 21, 2021, and October 5, 2021— asking the FPPC to advise each time on how Naranjo should navigate numerous hypothetical scenarios where Baker might do business with the Port .¹⁰ The FPPC responded with an advice letter which allowed **Employee A** to confidently recommend a path forward to the Board that allowed Naranjo to recuse herself from certain votes involving Baker Electric.¹¹

At its June 15, 2021, the Board voted in open session to approve foundational agreements for a \$1.2 billion redevelopment project in the City of Chula Vista (the “Chula Vista Project”)¹². The District had been working on the Chula Vista Project for more than ten years and it was destined to be the biggest Project in the Port’s history. As part of this project, a project labor agreement (PLA) could be utilized by a developer to help secure the labor needed for the construction.

In late June 2021, while **Employee A** and the Sutton Law Firm were still analyzing Naranjo’s potential conflicts of interest involving her husband’s employment with and income from Baker Electric, **Employee A** and a Commissioner received reports that Naranjo and her husband were getting paid by local unions through a business they were running to provide consulting services to organized labor. **Employee A** declined to disclose the sources of the reports made to him, but the Commissioner disclosed that the reports were made by two outside labor leaders in the ██████████ community. These sources reported that Naranjo’s husband had been soliciting business from unions by leveraging Naranjo’s position on the Board as a decisionmaker on potential contracts for construction projects in a “Pay for Play” scheme. Records filed with the CA Secretary of State reveal that Naranjo and McKercher had formed their own corporation, Common Wealth Action Consulting, Inc. on January 11, 2021, at around the same time she joined the Board, but Naranjo had not disclosed this to **Employee A** or on her Form 700.¹³ **Employee A** was concerned that

⁹ Letter from James R. Sutton to Kevin Cornwall, Fair Political Practices Commission, re Request for Formal Advice, dated October 5, 2021.

¹⁰ Letter from James R. Sutton to Kevin Cornwall, Fair Political Practices Commission, re Request for Formal Advice, dated July 21, 2021; Letter from James R. Sutton to Kevin Cornwall, Fair Political Practices Commission, re Request for Formal Advice, dated October 5, 2021.

¹¹ Letter from FPPC to Nicholas Sanders re: Your Request for Advice, dated October 18, 2021.

¹² <https://www.portofsandiego.org/projects/chula-vista-bayfront>.

¹³ See Articles of Incorporation of Common Wealth Action Consulting, Inc.; see also Naranjo’s Form 700 2021.

Naranjo and her husband through the auspices of Common wealth Action Consulting were soliciting business and receiving income from local unions involved in the Chula Vista Project. This would not only create a conflict of interest but also potentially violate Government Code 1090, which could invalidate already approved contracts for the project and subject the Commissioners who participated in voting on the project to potential civil and criminal liability.¹⁴ Since the District was in the process of seeking financing for the Project and contemplating the issuance of a bond, the District would be required to disclose any potential conflicts of interests, including Naranjo's outside activities and her vote on the Project. This could potentially jeopardize financing for the Project and have serious consequences for the District and each Commissioner who participated in voting to approve these contracts. According to Employee A if Naranjo's involvement with Common Wealth Action Consulting did not create a conflict of interest under the Government Code Section 1090, it could still amount to a violation of the Port Ethics Code, which more broadly prohibits Commissioners from consulting for anyone that they know or should know is seeking a "benefit from or is entering into a contract with the District."¹⁵

Given the potential consequences at stake, Employee A repeatedly requested that Naranjo provide information about her and her husband's business activities so that the Sutton Law Firm could provide legal advice about how to navigate such a situation. Naranjo told Employee A that their nascent business had not generated any revenues from unions, but Employee A thought it would be prudent to obtain an opinion from outside ethics counsel on how best to navigate this situation to avoid jeopardizing the District. Over the course of the next four months, Employee A and the Sutton Law Firm tried to obtain specific answers from Naranjo to their questions about her Common Wealth Action Consulting business, but according to Employee A Naranjo refused to cooperate with these inquiries and later accused him of unfairly targeting her.¹⁶

In August 2021, Naranjo requested that Employee A provide an opinion letter to clear her conflicts of interest on the Chula Vista matter within 24 hours because the City Council for National City (the body that appointed her as Commissioner) was concerned about the allegations. At that point, Naranjo still had not answered questions posed by the Sutton Law Firm. On August 19, 2021, the Sutton Law Firm issued a memorandum to Naranjo concluding that given their understanding that the June 15, 2021 Board vote did not include a PLA and based on Naranjo's representation that she and her husband were not providing consulting work for any local labor union whose members may be employed on the Project, he did not believe Naranjo's participation in the June 15, 2021 vote created a conflict of interest issue under Government Code Section 1090.¹⁷

The other Commissioners became aware of Naranjo's potential conflicts of interests involving the Chula Vista project and asked Employee A for updates during their one-on-one meetings.

On October 14, 2021, Employee A notified Naranjo that the Board would be discussing the conflicts issue and explained why he needed answers from her to the questions posed in the October 5, 2021, opinion letter.¹⁸ He also informed Naranjo that a local reporter may publish a story about the situation. Naranjo asked Employee A if her husband could attend the November 9,

¹⁴ Government Code Section 1090(a) states that "Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity." Apart from voiding the contract, where a prohibited interest is found, the official who engaged in its making is subject to a host of civil and (if the violation was willful) criminal penalties, including imprisonment and disqualification from holding public office in perpetuity. (See § 1097; *People v. Honig*, (1996) 48 Cal.App.4th 289, 317; 89 Ops. Cal. Atty. Gen. 121, 123 (2006).)

¹⁵ Port Code of Ethics Section .14(j).

¹⁶ Emails from James Sutton to Sandy Naranjo re: CONFIDENTIAL – conflict of interest questions, dated October 5 and 11, 2021.

¹⁷ August 19, 2021 memo from Sutton and Sanders to Naranjo.

¹⁸ Emails from James Sutton to Sandy Naranjo re: CONFIDENTIAL – conflict of interest questions, dated October 5 and 11, 2021.

2021 closed session meeting, but Employee A explained that McKercher's attendance at Closed Session would be unauthorized and in violation of the Brown Act, since McKercher is not a member of the legislative Body or a person with an official role to play in the item being discussed.¹⁹ Employee A called every other Commissioner to brief them on the upcoming meeting as well.

At that point, the Board was seriously considering financing options and was about to approve fifteen contracts on the project with the City of Chula Vista. Employee A briefed the Board on the matter during its November 9, 2021, Closed Session. At the very start of the November 9, 2021, meeting, Naranjo exclaimed, "I feel unsafe. This is all political." She then demanded that Employee A leave the room. After some discussion, the Board decided that Employee A should remain in the Closed Session and retain an independent, outside attorney, Gary Winuk from the Kaufman Legal Group, to conduct an independent analysis of the potential conflicts. Naranjo also hired her own counsel, which she asked the Board to fund, but the Board declined to pay for such counsel (who could potentially take adverse action against the District).

According to Employee A Naranjo subsequently made a negative comment during Employee A November 30, 2021, performance evaluation that he needed to pay more attention to the Environmental Health Coalition (EHC), a community stakeholder group that advocates for underserved communities in San Diego. Employee A responded that he "would work on it" and started to attend monthly EHC meetings thereafter.

On December 8, 2021, Gary Winuk issued a memo ("Winuk Memo") to the Board, stating that Naranjo provided relevant information to his questions and concluding that Naranjo did not have any financial interest in past decisions on the Chula Vista Project and would not have any future interest if her financial interests remained the same.²⁰ The Winuk Memo gave the "green light" for Naranjo's and the Board's continued participation in the Project. Ultimately, however, the Board secured private financing for the Project so it was not required to make disclosures required if a bond had to be issued, and therefore managed to escape public scrutiny over any potential conflicts of interest disclosures that could have placed the entire project in jeopardy and subject the Commissioners to liability.

B. Naranjo Alleged That The Port Engaged In Systemic Discrimination and Employee A Was Targeting Her Based On Her Protected Characteristics

Two weeks after Employee A met with Naranjo and her husband about the potential Chula Vista conflict, Naranjo alleged that there was systemic discrimination at the Port and claimed that Employee A was treating her unfairly on account of her race (Latina), gender (female), and sexual orientation ("queer").

On July 2, 2021, Naranjo called another Commissioner and complained that she did not appreciate the way Employee A had treated and advised her on specific issues. She referred to the District as a racist, sexist, classist organization that was built by White men for the benefit of White men and disclosed that District personnel shared her perspective of systemic discrimination. Naranjo first complained to the other Commissioner that she felt mistreated by Employee A after Employee A called a meeting with Naranjo and her husband to discuss the Chula Vista concerns. Naranjo claimed that Employee A was "targeting" her by raising the conflicts issue to the full Board at its November 9 Closed Session, but she did not provide any examples to the other Commissioner. According to the other Commissioner, Naranjo became very upset when he informed her that the District would commence an investigation and tried to retract her complaint. The other

¹⁹ "The general rule is that closed-session access is permitted only to people who have 'an official or essential role to play' in the closed meeting," 86 Ops. Cal. Atty. Gen. 210, 215 (2003). Pursuant to Government Code Section 54963, a person may not disclose confidential information that has been acquired by attending a proper closed session to a person not entitled to receive it, unless the disclosure is authorized by the legislative body.

²⁰ December 8 memo to Port BPC from Gary Winuk of Kaufman Legal.

Commissioner informed her that he believed that he had a duty to report Naranjo's complaint of discrimination to Human Resources and the Office of the General Counsel. Given that the complaint implicated Employee A [REDACTED] and outside counsel, Ellen Gross ("Gross"), retained an outside investigator, [REDACTED], to conduct an independent investigation into Naranjo's complaint of bias,²¹ but Naranjo refused to participate in the investigation because she did not trust the District and believed her story was likely to get "whitewashed" and "buried" by the investigator and the District. In the end, the investigation concluded that Naranjo's allegations were unsubstantiated.²²

During the course of this investigation, Naranjo acknowledged that there was antagonism between herself and Employee A but she attributes this to his bias against her based on her protected characteristics and commitment towards racial equity and environmental justice. But Naranjo glossed over the fact that she did not fully cooperate with Employee A and the Sutton Law Firm's efforts to obtain information in order to resolve multiple conflict of interest issues that arose with her appointment due to her and husband's outside sources of income, employment, and activities.

During this investigation, each Commissioner confirmed that it was standard practice for a newly appointed Commissioner to submit a completed Form 700 for the General Counsel's office to vet and ensure that there are no conflicts of interest between their outside sources of income, employment, and activities that might interfere with their obligations as Board Members to act in the best interests of the Commission. The General Counsel's Office flags upcoming agenda items where a Commissioner might recuse themselves from voting on certain items due to conflicting interests. With the exception of one Commissioner, each of the Board Members recounted having to ensure that their or their family members outside employment and representation of and revenue from certain clients who did business with the District did not conflict with their duties as Board Members for the District. Commissioners recounted having to recuse themselves from voting on certain contracts or ensure that they did not do business or receive income from contractors that did business with the District. For example, one Commissioner is a partner at a law firm that represents at least two clients that do business with the District and so has had to ensure that the Commissioner personally receives no fees or revenues generated from these two clients. Similarly, a second Commissioner has declined representation of potential clients who conduct business with the District. A third Commissioner resigned from a law firm that represented clients who do business with District tenants. A fourth Commissioner has run a successful real estate investment firm and has had to recuse from votes involving business entities that the Commissioner had an ownership interest or outside relationship. A sixth Commissioner cited one instance when the Commissioner's child sought a summer job as a lifeguard at one of the beaches operated by the District and so the Commissioner sought an opinion from the General Counsel's office about how to avoid a conflict of interest. In each instance, Employee A or members of his office were involved in the resolution of these issues without resistance from individual Commissioners. So, Naranjo's reaction and failure to cooperate with his inquiries into her and her husband's outside activities was unprecedented and likely raised additional concerns about what she could have been concealing from the District that could potentially place District contracts and any bond offerings in jeopardy.

According to the Certificate of Dissolution filed with the CA Secretary of State, Common Wealth Action Consulting was dissolved on December 17, 2021—a full year after the conflicts issue surfaced.²³ Naranjo maintains that her business never generated any income nor solicited any business from unions that do any business with the District, but this account contrasts with the revelations by the labor leaders who reported to a Commissioner and the reports Employee A received about McKercher's proposed "Pay to Play" scheme whereby he attempted to leverage Naranjo's role as a Commissioner to help certain unions secure work on contracts with the District. This indicates that Naranjo was likely well aware that there were legitimate concerns about the potential

²¹ Those allegations are beyond the scope of this investigation.

²² Confidential Personnel Investigation Report by [REDACTED], dated June 23, 2022.

²³ Certificate of dissolution for Common Wealth Action Consulting, Inc.

conflicts of interest between the activities and potential income to be drawn from her business and her decisions as a Commissioner, and that the inquiries made by the General Counsel's office were based on legitimate business reasons -- not simply because Employee A was inappropriately targeting her.

The investigation did not uncover evidence that Employee A as the District's Ethics Officer was doing anything that was outside the scope of his duties by attempting to divert a potentially disastrous outcome for the District and potential criminal and civil liability for the Board Members. In fact, Employee A claimed that he spent more time analyzing Naranjo's ethics issues from 2020-21 than he did with any other Commissioner, generating two formal requests for advice from the FPPC, one formal advice letter from the FPPC and three formal memos from outside counsel. In other words, he was simply doing his job to "interpret the District's Code of Ethics in reference to State laws and obtain assistance from the Fair Political Practices Commission where formal conflicts of interest opinions and determinations are desired," but his ability to do so was thwarted by Naranjo.²⁴

C. Naranjo Attributes The Antagonism Between Herself and Employee A To His Animus Towards Her Protected Characteristics and Her Stance on Environmental Justice and Racial Equity, But None of the Four Other Commissioners of Color, Including Two Women and Two Male Latinos, Have Ever Been Mistreated By Employee A Including Castellanos Who Shares The Racial and Economic Background and Commitment to Racial Equity and Environmental Justice.

Naranjo claims that Employee A is condescending towards her and has treated her with a "lack of professionalism and respect." Naranjo contends that Employee A is biased against her because "she's a queer, woman of color, and lower income" and is a staunch advocate for racial and environmental justice. She contends that Employee A believes the District is not the place for such advocacy.

Naranjo pointed to a single closed session meeting in June 2021 where the Board was discussing terms of a proposed lease with Austal USA, a shipbuilding and repair company, for a waterfront site in National City, when Employee A cut her off mid-sentence. Naranjo was advocating for including a provision in the lease requiring that Austal hire local labor from the surrounding disadvantaged communities when Employee A reportedly interrupted her and a Commissioner allegedly had to admonish Employee A for the interruption. She recounted that a subsequent meeting about the same lease, when former Commissioner Jennifer LeSar (who is a White lesbian and whose wife, Toni Atkins, is the President pro Tempore of the State Senate), raised the same idea, Employee A supported the idea. Naranjo believed LeSar's status as the wife of a powerful politician, who is also White, made Employee A listen to her and not to Naranjo, even though LeSar also self identifies as a lesbian. Naranjo pointed to the difference in Employee A response to LeSar raising the same issue that Naranjo had previously raised. It is unclear that this episode reflects bias because the difference in Employee A reaction towards another "queer" woman could be due to the admonishment by a Commissioner about his initial response to the idea when Naranjo raised it. Naranjo does not cite any other examples of Employee A treating her differently than others.

Indeed, Naranjo could not explain why no other Commissioner on the Board—including two male Latinos, a Commissioner who identifies as an African American female, and another who identifies as a Japanese American female— has ever complained of mistreatment by Employee A on account of their protected characteristics. When this is pointed out to Naranjo, she explains that she is the only Commissioner who comes from a "lower income" background. However, during the Open Session on December 13, 2022, in response to concerns raised by members of the public about racial equity and environmental justice, a Commissioner, who is also Latino, provided a poignant description of his own background growing up in a lower income immigrant family and having to work in the mines as the impetus for his commitment to addressing any adverse

²⁴ BPC Policy No. 022: Powers and Functions of Port Attorney

environmental impact on disadvantaged communities of color. Although a determination of whether Employee A ever subjected Naranjo to mistreatment on account of her protected characteristics is beyond the scope of this investigation,²⁵ Naranjo raised this issue during her interview and offered it as an explanation for the tension between her and Employee A which undoubtedly fueled her desire to attack Employee A during the December 13, 2022, Closed Session.

D. Naranjo Claims That Employee A Was Targeting Her and Attempting To Remove Her From The Commission

Naranjo contends that when Employee A began raising the Chula Vista Project conflicts issue, he was motivated by a desire to remove her from the Board. Beginning in June 2021, in response to a credible outside report by union leaders, Employee A began asking Naranjo questions in the hopes of resolving potential conflict of interests between her activities through Common Wealth Action Consulting and her participation in votes on the Chula Vista Project. Naranjo believes that the two people who reported the ethics concern about Chula Vista to Employee A and — were politically motivated. According to Naranjo, , who was the leader of the and was planning to retire from his post in 2021, wanted to succeed to the position. But Naranjo’s husband was planning to run for the position and was a “formidable candidate.” Naranjo believed accused Naranjo and her husband of “breaking the law” by engaging in “Pay to Play” with the local unions “to minimize or discredit” Naranjo’s husband and jeopardize her position on the Board. Naranjo contends that when and reported their concerns about Common Wealth Action Consulting, Employee A seized on the opportunity to make Naranjo look bad. Instead of “trying to address it head on,” “get rid of the issue,” and “keep it minimal,” Naranjo contends that Employee A encouraged and to seek information about her Form 700 through a Public Records Act request instead of working with Naranjo to investigate the matter to clear her name, and suspects that Employee A leaked the story to a reporter. According to Naranjo, it was not until the issue was going to affect the District as a whole by putting the Chula Vista Project bond financing at risk that Employee A began diligently addressing the matter.

This account stands in stark contrast to Employee A well documented attempts to vet her conflicts of interest issues and obtain outside ethics counsel’s opinion to help the District and Naranjo to navigate these matters. Naranjo’s claim that Employee A flouted his duties to the District is belied by Employee A diligent and swift attempts to resolve the matter, given the grave risk that would pose to the District. After receiving a reliable report from outside labor leaders, Employee A immediately reached out to conflicts of interest attorney James Sutton and Naranjo. The legal team worked diligently to “get the facts” so that they could “do damage control” and not have the “taint of the June 15, 2022, vote.” On August 4, 2022, Sutton sent a memo to Employee A with a full analysis of the potential conflicts of interest implicated by Common Wealth Action Consulting, which Employee A forwarded to Naranjo and then discussed with her in a meeting the following day.²⁶ Employee A then solicited an opinion letter to be sent from Sutton directly to Naranjo on August 19, 2022, which analyzed whether Naranjo’s business dealings tainted the June 15, 2022 vote, despite Naranjo’s refusal to provide clear answers to his questions.²⁷

The issue had potentially devastating implications to the District, putting a 1.2-billion-dollar deal that was the biggest in the District’s history in jeopardy and exposing every Commissioner—not just Naranjo—to potential criminal liability for every Board member under Government Code 1090. As one Commissioner explained, it is the “mother of all conflicts,” and it is each Commissioner’s responsibility “to make sure that doesn’t happen.” Even by Naranjo’s account, Employee A began paying attention to the matter when he believed it might affect the District as a

²⁵ Confidential Personnel Investigation Report by , dated June 23, 2022.

²⁶ August 4, 2021 memo from Nicholas Sanders to Employee A re Potential Conflicts of Interest Implicated by Commissioner’s Consulting Firm

²⁷ August 19, 2021, memo from Jim Sutton & Nick Sanders to Commissioner Sandy Naranjo re Potential Conflict of Interest Stemming from Vote on Chula Vista Bayfront/RIDA Project Financing

whole, not just Naranjo individually. Thus, by Naranjo's own admission, **Employee A** interest in protecting the District outweighed his personal desire to see Naranjo taken down. She did not appear to understand that even before the financing issue came into play, the conflict would have had severe repercussions on the Project and all the Commissioners.

Naranjo claims that **Employee A** leaked or otherwise contributed to the press getting wind of the potential conflict in October 2021. But she also acknowledged that **Employee A** wanted to protect the District from a financing failure, and **Employee A** said he kept his advice on the potential conflicts matter confidential to not "spook the market." Given **Employee A** ultimate commitment to protecting the District and his personal interest in preserving his good reputation, it is not plausible that **Employee A** would have provided information to a reporter that, if publicized, was likely to negatively impact the District's ability to secure financing for the Project.

E. Naranjo Implied That **Employee A Was Associated With The Owner Of An Entity Accused of Fraud In An Effort To Discredit His Integrity and Improperly Retaliate Against Him For Perceived Slights, But Her Efforts Were Ultimately Thwarted By The Other Commissioners**

Naranjo recounted that in the Fall of 2022, she learned information from two sources that implicated **Employee A** in misconduct. Naranjo recounted that she was first contacted by Jodene Isaacs, the Program Officer for the Rose Foundation, asking for assistance with getting a response to her Public Records Act ("PRA") request for a bid that the District had accepted from a company called Clean Air Engineering – Maritime, Inc. ("CAEM") in response to a Request For Proposals ("RFP") for emissions control related technology. Then, in November, while out to dinner with a friend, Naranjo was allegedly approached by Ruben Garcia, the president of Advanced Environmental Group ("AEG"), a primary competitor of CAEM that was disqualified by the District in the bonnet system RFP because of a bankruptcy. According to Naranjo, Garcia complained that CAEM, whose president, Nick Tonsich, owned another company that was sued for its faulty technology, fraud, and other claims, should have been disqualified. Garcia allegedly disclosed that **Employee A** had approached him at a conference in Florida and said he "helped Tonsich get a contract." After the encounter at the restaurant, Garcia emailed Naranjo copies of a complaint prepared by Pasha against CAEM that had not yet been filed in Court, and a draft of a cross-complaint brought by Ocean Terminal Services, Inc. ("OTS") against Pasha.

Naranjo's account about how she learned of the information was somewhat inconsistent, casting doubt on her contention that she received the information by happenstance rather than through her own efforts to uncover damaging information that she could link to **Employee A**. Naranjo first claimed that she spoke with Isaacs about the matter at an event, and later said she never met Isaacs in person, only by email. In her initial telling of the story, Naranjo did not mention Garcia, but in her second interview session, Naranjo revealed that Garcia was the one who provided her with the damning evidence of **Employee A** involvement with Tonsich.

Naranjo explained that she wanted to bring this matter to the Board to "explore and investigate" and get "straight" to the bottom of it without making it "a bigger deal." However, this is contradicted by her admission that before she raised this for the first time during **Employee A** performance evaluation, she conducted research on Tonsich, CAEM, OTS, and their ties to **Employee A** which revealed that **Employee A** held a patent on a marine propeller that Naranjo believed somehow implicated his involvement with Tonsich's company.²⁸ Naranjo contends that she was "deeply concerned" that **Employee A** relationship with Tonsich presented a conflict of interest and if staff had disclosed the lawsuit against Tonsich, the Board may not have voted to approve the contract with Tonsich's company. But by withholding the information from the Board Chair until she sprung it on everyone on December 13, 2022, Naranjo appeared to be more concerned about taking down **Employee A** than protecting the District's interests, likely in retribution for his efforts to

²⁸ Documents provided by Naranjo re information brought to the Board on December 13, 2022.

investigate all of her prior conflicts of interest scenarios as detailed in each of the opinion letters prepared by the Sutton and Winuk Law Firms and the advice letter from the FPPC.²⁹

Naranjo claims that the Chair at the time gave her permission to raise the matter at the meeting. But Naranjo did not fully disclose to him that she planned to interrogate **Employee A** over an alleged—unproven—tie to Tonsich and his company or whether the underlying allegations were even true. Naranjo said she wanted to question **Employee A** on a lawsuit, and the former Chair told Naranjo, “You’re a Commissioner, you can do what you want,” without knowing that Naranjo planned to interrogate **Employee A**. Otherwise, he would have directed District staff to determine if there was any truth to the allegations.

Naranjo claims she wanted to allow **Employee A** the courtesy of hearing the concerns first-hand along with all the Commissioners and not “go behind his back” or start “rumors,” which she contends **Employee A** did to her previously when he raised the various conflicts of interest issues concerning her and her husband’s outside activities. However, by launching a surprise attack on **Employee A** and interrogating him about an alleged relationship with Tonsich, she clearly intended to cast doubt on **Employee A** integrity and create a conflicts of interest scenario where his past role and association as the General Counsel for the Port of LA would interfere with his ability to perform as an advocate and counsel for the District. As noted by each of the other Commissioners, this was intentionally aimed at discrediting **Employee A** reputation and jeopardizing his career, without her having done adequate research into whether her assumptions were valid.

One Commissioner described Naranjo’s questioning of **Employee A** as “antagonistic,” with an “air of retribution,” and a second Commissioner described that it left everyone in the room “struck like deer in the headlights.” One Commissioner described the event as a “radical personal encounter” executed in a way that was “egregious on a personal level.” Naranjo was essentially implicating that **Employee A** was engaged in corruption by “feathering his own bed.” The Commissioners were all “shocked” by her personal attack on **Employee A** integrity. Three Commissioners intervened at various points to question Naranjo’s motives and the authenticity of the documents she was “waving around.” One Commissioner studied the draft complaint against CAEM and declared that it was an unverified complaint. A second Commissioner questioned whether Naranjo was really looking for answers to her questions or was just trying to “stick it” to **Employee A** and finally said, “Enough.” **Employee A** was answering Naranjo’s questions but was visibly shaken. Ultimately, a third Commissioner put an end to the interrogation by declaring, “This is the end of the deposition.” The other Board Members’ reluctance to second Zucchet’s nomination of the slate of candidates to officer positions, including Naranjo to the Vice-Chair position, and Castellanos’s abstention from the vote as a statement of a “vote of no confidence” was an unprecedented response to Naranjo’s actions in Closed Session, which they deemed to be highly inappropriate.

Naranjo claimed that she was simply “asking questions about Tonsich.” When describing the meeting, she glossed over the details, recounting that people were “just surprised,” “felt uncomfortable,” and “didn’t feel like it was the appropriate place” to raise her concerns. Naranjo said she ultimately dropped the matter because the other Commissioners said they were “uncomfortable.” Naranjo compared her handling of this situation with how she was treated when inquiries were made about her conflicts of interests, “Did they give me an opportunity to respond? No.” This reveals that she was intending to turn the tables on **Employee A** in retribution for how she perceived his handling of her conflict of interest issues earlier. She justified her actions by claiming that she was acting in accordance with “transparency and accountability,” and she is now experiencing backlash for doing so, implying that she, and not **Employee A** is the real victim of unfair treatment by the District. She even asked, “why am I the respondent in this investigation?”

²⁹ July 21 request for advice from Sutton to FPPC; August 4 memo from Sutton to **Employee A**; August 19 memo from Sutton to Naranjo; October 5 request for advice from Sutton to FPPC, October 11 email from Sutton to Naranjo; October 18 letter from FPPC; December 8 memo to Port from Gary Winuk.

Naranjo denies that she was “there to get him;” rather, she is just there to do her job. Naranjo denied that she viewed Employee A performance evaluation as an opportunity to bring Employee A down. But in response to one Commissioner inquiring whether Naranjo thought Employee A should be terminated, Naranjo stated that Employee A should be terminated. Even after the December 13, 2022, Closed Session and Office of the General Counsel’s staff confirmed that CAEM’s technology had been approved and not fraudulently conveyed, Naranjo insisted that Employee A “used his prior relationship with Tonsich to accord him favorable treatment in contracting process” and that by not disclosing the conflict, he kept material information from the Board. These statements and her sneak attack on Employee A during the December 13, 2022, Closed Session evidence her desire to retaliate against Employee A whom she perceived to have unfairly targeted her. Ultimately, Naranjo did not succeed in her efforts to discredit Employee A or adversely impact his employment relationship with the District because the other Board members intercepted and voted in favor a raise, bonus, and extension of his contract term, so he did not suffer any tangible adverse employment action.

During this investigation, Naranjo also raised concerns about Employee A holding a patent to a propeller that could somehow be related to Tonsich’s company, but Employee A confirmed that he developed a propeller product on it his own time using his own funds, that the product is not yet commercialized, and that he has not discussed the product with Tonsich or anyone connected to the District. Naranjo’s mention of Employee A propeller patent is another example of Naranjo attempting to dredge up dirt on Employee A in an attempt to discredit him and damage his reputation. Employee A believes that any suggestion that he engaged in any improper conduct by securing patents on his own inventions that have nothing whatsoever to do with his work with the District are tantamount to retaliation and are slanderous.

Ultimately, Naranjo’s unfounded accusations about Employee A may have created liability for both Naranjo and the District for slander per se.³⁰ She raised unverified claims that Employee A was associated with a company accused of fraud and implied that he was negligent in failing to disclose his own conflicts of interest with his relationship with Tonsich, thereby imputing Employee A with some action that would harm his professional reputation. She communicated unfounded accusations, which were intended to reflect on Employee A integrity, as factual statements to the other Board Members present during the December 13, 2022, Closed Session, and in the process, attempted to raise questions about his integrity and qualifications, as well as damage his professional reputation. Such actions were taken clearly in furtherance of Naranjo’s own self-interests and not in the best interests of the District, as discussed more fully below.

At the conclusion of this investigation Naranjo also attempted to justify her actions as a whistleblower, who “prioritizes transparency, accountability, and community well being,” who found it necessary to inquire into Employee A conduct.³¹ She claims that as a result, she experienced retaliation for raising concerns about Employee A alleged lack of disclosure of a prior professional relationship with Tonsich and questioning whether Employee A patent license fees for a propeller he developed was being paid by Tonsich or some other entity. She claims that “in response to [her] allegations, I have been told nothing that exonerates Employee A or Chair Rafa [Castellanos] regarding these allegations—no explanations, no added information, nothing to excuse the conduct that I described in close session to my colleagues.” However, as the other Commissioners pointed out during the Closed Session on December 13, 2022, Naranjo made unfounded assumptions about Employee A involvement with Tonsich and his company based on an unverified complaint filed

³⁰ Slander per se is defined as a false and unprivileged publication, orally uttered which tends directly to injure a person “with respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits.” Civil Code section 46; *Regalia v. The Nethercutt Collection*, 172 Cal. App. 4th 361, 367, (2009) (statements that cause “injury to business reputation” most often involve “statements that reflect on the integrity and competence of the plaintiff, the clearest being allegations of unethical activity or incompetence.”).

³¹ See Sandy Naranjo Interview Report 9.9.23

in a lawsuit between a third party and Tonsich's company to besmirch his reputation without providing him with proper advance notice or placing such a serious charge on the agenda as discussed more fully below. The foregoing sequence of events leading up to the December 13, 2022, meeting reveals Naranjo's desire to retaliate against Employee A for raising red flags about her potential conflicts of interest and perceiving his efforts to resolve these matters as unfairly targeting her for violations. This investigation did not find her excuses for her conduct to be persuasive nor a valid basis for bypassing the requirements under the Brown Act or for neglecting her fiduciary duties as discussed more fully in the next sections below.

F. Naranjo Breached Her Fiduciary Duty of Loyalty By Placing Her Own Interests Above The District's When She Attempted to Tarnish Employee A Reputation And Employment Relationship With The District.

As a member of a body vested by the San Diego Unified Port Act with governing the District, Naranjo has a duty to "protect the public interest in granted trust lands" pursuant to Public Resources Code section 6009.1.³² As such, a Commissioner owes the fiduciary duties to the tidelands listed in Public Resources Code (PRC) 6009.1(c)(1)-(13), all of which are "applicable under common trust principles." This includes the duty of loyalty under PRC 6009.1(c)(1), which prohibits fiduciaries "from engaging in transactions that involve self-dealing or that otherwise involve or create a conflict between the trustee's fiduciary duties and personal interests." Restatement (Third) of Trusts § 78 (2007).

Although the case law addressing the fiduciary duty of loyalty under PRC 6009.1(c)(1) is scant, the sequence of events as summarized above show that Naranjo was acting in furtherance of her own self-interests during the December 13, 2022 Closed Session Board meeting, which was aimed at attacking Employee A integrity and competence during his performance review based on unfounded accusations simply because she felt unfairly targeted by him as he was attempting to obtain information to clear her various conflicts of interest issues as they became known to him. In other words, because she did not want to cooperate with his inquiries as the District's Ethics Officer and felt disrespected by him, she sought retribution by presenting damaging information to implicate him in the alleged fraud scheme involving Tonsich's company, of which Employee A had no knowledge or involvement. Thus, Naranjo acted in furtherance of her own self-interests at the expense of the District's best interests in violation of her fiduciary duty of loyalty as a Commissioner. Naranjo was attempting to undermine a General Counsel whose effective performance is evidenced by seven raises, four bonuses, and five extensions of his employment term. In other words, her actions were to the detriment of the District and thereby violated her duty of loyalty.

G. Naranjo Breached Her Fiduciary Duty of Care under Public Resources Code Section 6009.1(c)(2).

Naranjo claims that when she joined the Board, she was not provided with the rules or guidelines on what procedure to follow in this type of circumstance. She said she was "hoping someone would say let's stop, you're raising some serious allegations, let's talk about the appropriate way to address this." However, Commissioners have a fiduciary duty to the organization they serve to administer the trust with "reasonable care, skill, and caution" as a prudent person acting in a like capacity would. *Tibble v. Edison Int'l*, 843 F.3d 1187, 1197 (9th Cir. 2016). The duty includes administering the trust "diligently and in good faith, in accordance with the terms of the trust and applicable law." *O'Neal v. Stanislaus County Employees' Retirement Assoc.*, (2017) 8 Cal. App. 5th 1184, 1209; quoting Rest. 3d Trusts, §76. The other Commissioners each affirmed their understanding of how to properly raise concerns about the General Counsel's performance or allegations of misconduct. They each explained that if they had concerns about any District employee, they would have first discussed the matter with the Chair and directed appropriate District staff to investigate the matter beforehand. They would have given Employee A

³² Port Board of Port Commission (BPC) Policy No. 020: Powers and Functions of the Board of Port Commissioners

advance notice before bringing forth such a serious charge. Thus, a reasonably prudent Commissioner would have taken these reasonable procedural steps or sought guidance before launching an inquisition into **Employee A** alleged association with Tonsich and his company accused of fraud in reliance on an unverified complaint.

Naranjo contends that she notified the board Chair and received his approval to raise the issues before the Closed Session, but she alerted the Chair mere minutes before the meeting began and did not fully disclose the underlying serious allegations she intended to raise, suggesting she wanted to check the box of prior notice to the Chair without affording him or other Commissioners an opportunity to review the matter beforehand and direct staff to investigate it before the charge was presented to **Employee A**. Naranjo did not provide the Chair or anyone else with any substantive notice of the charges against **Employee A**.

By failing to meaningfully vet the connections between Tonsich, CAEM, the pending lawsuit, and **Employee A** failing to research the status of the lawsuit which had in fact been settled months prior, and then raising allegations of misconduct against a District employee in a forum in which they could negatively impact his evaluation and/or employment status, Naranjo did not exercise a reasonable duty of care expected of a Commissioner. Further, by not requesting that the item be placed on the agenda for the Closed Session and providing **Employee A** with prior notice of the allegations in violation of the Brown Act, Naranjo did not exercise due care.

This was evident when the staff in the General Counsel's Office was able to determine right after the Closed Session concluded, that the technology in question had been approved by CARB and that the lawsuit had already been settled. Thus, a minimum amount of research or investigation could have avoided any harm to **Employee A** reputation by the false implication that he somehow knew about the lawsuit, had failed to disclose his association with Tonsich and his company, and address this potential conflict of interest. Naranjo relied on inaccurate information that potentially jeopardized **Employee A** employment and professional reputation.

H. Naranjo Did Not Disclose or Validate Her Sources Before Implying That **Employee A Engaged In Improper Conduct In Breach Of Her Fiduciary Duty of Full Disclosure Under The Public Resources Code Section 6009.1(c)(3).**

There is scant case law interpreting a public trustee's duty of disclosure. However, under principles of general trust, "[a]ny doubt as to whether a document should be disclosed shall be resolved in favor of the beneficiaries." *Gump v. Wells Fargo Bank, Nat. Ass'n*, 192 Cal. App. 3d 222 (1987). By the plain reading of the statutory language, Naranjo violated her duty of full disclosure by withholding information from the Chair when she informed him that she intended to raise these issues during the Closed Session. Further, by failing to disclose to the Board and **Employee A** why and how she collected information about Pasha's claims against OTS, the connection between OTS and CAEM, the link between Tonsich and **Employee A** and the insinuation that **Employee A** either knew about or participated in the fraud— information that would have been material to the Board's understanding of the facts and **Employee A** ability to meaningfully defend himself—Naranjo violated her fiduciary duty of disclosure.³³

Naranjo did not fully disclose to the Chair what she planned to raise in Closed Session and how she planned to do so, which would have been material to the Chair's advice on how Naranjo should proceed. Naranjo likewise did not disclose to the Board the source of the information she was acting on, which was material to an evaluation of the veracity of the allegations. Naranjo failed to disclose that she received the draft complaints from a competitor of one of the named defendants who likely was motivated by his own self-interest after a failed contract bid -- information that would have been integral to evaluating the validity of Naranjo's allegations against

³³ Email from Naranjo to Jane Kow and Ilana Parmer Mandelbaum re Information in connection to Closed Session December 13, 2022, sent on September 1, 2023.

Employee A during the December 13, 2022 Closed Session. By so doing, Naranjo failed to adhere to her duty of full disclosure.

I. Naranjo’s Allegations of Misconduct Against Employee A During His Performance Review Violated the Brown Act, Government Code Section 54954.2.

Government Code Section 54954.2(a)-(b) requires 72 hours advance posting of items to be discussed on the Board’s agenda before a closed session, and specifically prohibits any action or discussion on items not appearing on the agenda with limited exceptions including responding to emergency situations for which there might be a need to take immediate action, or the item was continued from a prior meeting.³⁴

Naranjo contends she was raising matters related to Employee A performance and the discharge of his duties, namely his failure to conduct due diligence on companies that contract with the District and disclose his own conflicts of interests. But as described by one Commissioner, she was not actually discussing his performance, but “leveling charges of corruption.” According to another Commissioner, she was “implicating him on some inappropriate action from 10-15 years prior.” Although Naranjo claimed Employee A was not doing his job, she could not articulate what specific job functions Employee A was not performing well.

When queried about why she waited until the Closed Session on December 13, 2022, to raise the issue, she claimed she needed time to “figure out” and “evaluate” what she discovered about Employee A association with Tonsich and his company. Naranjo did not mention these concerns during the process of collecting Employee A 360-degree feedback leading up to the December 13, 2022, meeting, which suggests she did not view the allegations as truly tied to Employee A performance evaluation. She claims she did not raise these issues sooner because of the intervening Thanksgiving holiday, the fact that she is a single mom, who was busy getting a divorce, while raising two kids, and working full time. Her failure to timely place this item, or request to do so through the Chair, which was not related to Employee A performance review, on the agenda for discussion and then discussing it during the Closed Session violated the Brown Act.

J. Naranjo’s Failure To Provide Employee A With 24 Hours Advance Written Notice and An Opportunity To Address Allegations of Suspected Misconduct or Performance Issues Violated the Brown Act, Government Code Section 54957.

Government Code Section 54957(b)(2) requires that as a “condition” to holding a closed session on “specific complaints or charges brought against an employee by another person,” the subject employee must be provided with “written notice of his or her right to have the complaints or

³⁴ Gov. Code section 54954.2(a) (3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under [Section 54954.3](#). [. . .]. (b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item. (1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in [Section 54956.5](#). (2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting [. . .] that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a). (3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken. (4) To consider action on a request from a member to participate in a meeting remotely due to emergency circumstances, pursuant to [Section 54953](#), if the request does not allow sufficient time to place the proposed action on the posted agenda for the meeting for which the request is made.

charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session.”³⁵

Naranjo admitted that she raised allegations of misconduct against **Employee A** without proper advance written notice to **Employee A** and consequently, did not afford **Employee A** the opportunity to have the charges heard in open rather than closed session. Thus, by launching her surprise attack, she did not afford **Employee A** with requisite due process in violation of the Brown Act.

IV. BRIEF SUMMARY OF FINDINGS AND CONCLUSION

This investigation examined Commissioner Sandy Naranjo’s conduct towards General Counsel **Employee A** during what was supposed to be a routine annual performance review held in the Closed Session portion of December 13, 2022, Board Meeting of the San Diego Unified Port District. The interaction raised serious concerns among each of the other Commissioners about whether she had violated **Employee A** due process rights under the Brown Act and potentially violated any fiduciary duties as a Commissioner, as well as any District policies or laws, prompting this investigation. In the process of examining what occurred during the Closed Session, the investigators interviewed all seven of the present Commissioners and **Employee A** who were present during both the Closed and Open Sessions held that day. Additionally, this investigation examined the events that led up to Naranjo’s interrogation of **Employee A** which undoubtedly produced tension and fomented antagonism between the two and motivated Naranjo’s actions that day.

Before **Employee A** joined the Port District, he served as the General Counsel for the Port of Los Angeles. **Employee A** has served as the General Counsel of the Port District since 2012, and his employment has been largely exemplary, resulting in seven raises, four bonuses, and eight extensions of his employment term.

From the outset, Naranjo’s appointment to the Board raised a number of conflict of interest issues, between her husband’s employment with Baker Electric, a contractor that worked on District projects to the outside business that Naranjo and her husband created specifically to provide consulting for unions, whose membership would provide labor for Port projects. In addition to his duties as General Counsel for the Port District, **Employee A** has served as the Ethics Officer, whose job it is to vet and advise the Commission on all legal matters as well as potential conflicts of interest that may arise from a Commissioner’s outside sources of income, employment, and activities.

According to **Employee A** Naranjo was not only resistant to providing full disclosure when queried about these issues, but she raised concerns that he was discriminating against her based on her protected characteristics as a self-described queer, Latina, female, a topic she raised in this investigation as the root cause of the tension between **Employee A** and herself. These claims were investigated by another outside investigation firm and thus, was not the focus of this investigation. However, when queried about why **Employee A** would single her out for mistreatment on the basis of the same protected classes shared by a diverse slate of Commissioners who shared the same protected characteristics, Naranjo claimed it was her advocacy in favor of racial equity and environmental justice that brought her to the crosshairs of **Employee A** efforts to remove her from the Commission, a claim that was not substantiated by this investigation, especially when another Commissioner, a fellow Latino from a lower income background also openly expressed his commitment to the same principles.

³⁵ “As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.”

The evidence examined by this investigation revealed that **Employee A** sought a total of six opinion letters and guidance from at least two law firms specializing in ethics and conflicts of interest issues involving public entities as well as the FPPC in an effort to resolve the myriad questions that arose related to Naranjo's service on the Board. Last year, as the District was in the midst of determining how to finance the Chula Vista project (that was worth \$1.2 billion), Naranjo's outside business Common Wealth Action Consulting, which she created with her husband to solicit and consult with unions on expansion of labor contract opportunities, became a focal point of **Employee A** inquiries. He was concerned that her outside activities and income generated from her business created a conflict of interest for her service on the Board, but more importantly, because she had cast a vote in favor of the contract for the Chula Vista project, which would require disclosure of any potential conflicts of interest in a bond issuance to finance the project. He believed that failure to do so could potentially result in both civil and criminal penalties for both Naranjo and the other Commissioners.

It is unclear why Naranjo was not forthcoming with the information necessary to resolve this issue at that critical juncture for the District, but she contends that she did cooperate and she and her husband were ultimately all cleared of any potential conflicts of interest. In the end, the District sought private financing in lieu of a bond issuance, so the issue became somewhat moot, but it nonetheless produced antagonism between **Employee A** and Naranjo, especially after she complained to a Commissioner that there was systemic discrimination at the District, which was an organization that was "created by White males for White males," and that **Employee A** had subjected her to biased treatment.

However, each of the other Commissioners have themselves been subject to conflict of interest inquiries and have had to seek guidance from the Office of the General Counsel or their own legal counsel to address these situations that could have impeded their ability to serve in the District's best interests. For example, one Commissioner in the Commissioner's outside law practice has declined representation of clients who do business with the District. A second Commissioner has taken measures within the Commissioner's law firm to segregate income from two clients that have business dealings with the District so that the Commissioner does not receive any revenues or profits from those entities. A third Commissioner resigned from a law firm that represented a client who had business dealings with the District. A fourth Commissioner has had to recuse from certain Board votes where there was a conflict of interest between the Commissioner's outside business interest, involving a prior company where the Commissioner was a stockholder that did business with the District. A fifth Commissioner even requested that the FPPC issue an opinion letter on whether the Commissioner's child's application for employment as a lifeguard at Imperial Beach (one of the areas over which the District has jurisdiction) would present a conflict of interest for the Commissioner's service on the Board in the event that the Commissioner had to make any decisions that could impact the beach or the Commissioner's child's employment. None of the other Commissioners questioned the validity of the process of vetting these conflicts of interests and understood the importance of ensuring that they could serve in the best interests of the District without even the appearance that they were placing their own self-interests above that of the Commission. For these reasons, the other Commissioners were alarmed, and **Employee A** was frustrated that Naranjo stalled the Commission's ability to clear any potential conflicts of interest involving her outside activities, especially given what was at stake for the District.

Naranjo claims that sometime in November 2022, individuals outside of the District approached her and provided information about a lawsuit filed that alleged fraud claims against Ocean Terminal Services, Inc. a company owned by Nick Tonsich, who was a former Commissioner at the Port of Los Angeles when **Employee A** served as its General Counsel. According to Naranjo, these individuals allegedly raised concerns about **Employee A** continued association with Tonsich and that he knowingly allowed the District to enter into a contract with Tonsich's company when it was accused of fraud and breach of contract, among other claims. She then claimed that she felt duty bound to present this scenario that raised potential conflict of interest issues to the Board as part of **Employee A** performance review process in closed session the following month.

However, she breached her duty of full disclosure of these concerns to the rest of the Board before she presented them in closed session. She also breached her duty of care by not fully researching the matter beforehand, which would have revealed that the lawsuit (based on an unverified complaint) had already been resolved and that Employee A was not involved with the parties or the underlying issues at stake. Given the sequence of events that led up to the Closed Session and the brewing tension with Employee A who was acting within the scope of his employment when seeking documents and information pertaining to Naranjo's various potential conflicts of interest issue, Naranjo acted out of a desire to seek retribution for perceived mistreatment or being targeted by Employee A. By so doing, she placed her own self-interests above those of the District and breached her duty of loyalty as a Commissioner.

Further, it is unclear why she delayed disclosure of these concerns until the following month and decided to spring it on Employee A without prior advance warning or neglected to request placement of the matter of such significance on the agenda. Her excuses included her being a busy single mom undergoing a divorce and that it was happening during the busy holiday season, but her discussion of the matter during the Closed Session without placing it on the agenda or providing a minimum of 24 hours advance written notice to Employee A about these serious charges violated the Brown Act's clear provisions.

Naranjo's efforts to create a false impression of Employee A association with Tonsich, an individual with whom he has not had a personal relationship nor spoken with in a long time, was undoubtedly aimed at casting doubt about his integrity and professional reputation, which could have resulted in liability on the part of the District and Naranjo for slander per se.

Notably, during the investigation, Naranjo raised a concern about a patent held by Employee A for one of his propellor inventions which he devised on his own time and resources without any involvement of anyone at the District. Naranjo insinuated, without specifics, that owning such a product could create a conflict of interest with the District. This seems consistent with her pattern of dredging up dirt to harm Employee A integrity and professional reputation, without any basis in fact.

Naranjo's conduct shocked the other Commissioners, each of whom expressed dismay at her inappropriate behavior and the hostile tone and aggressive manner in which she interrogated Employee A without having provided the Commissioners or staff with advance notice or opportunity to vet the issue, including inadequate research whether the lawsuit was still pending, and whether Employee A had any connection to the parties or issues involved. By so doing, Naranjo, likely driven by retribution for perceived slights and mistreatment by Employee A attempted to retaliate against him. But for the intervention of the other Commissioners who spoke up and refused to allow Naranjo to continue her interrogation, Employee A who was shaken by the experience, could have otherwise suffered tangible adverse employment action as a result of Naranjo's implication that he was somehow involved in the issues raised in the lawsuit against Tonsich's company.

Even after she was told that the investigation had concluded, Naranjo compiled and submitted information that she believed was damaging to the integrity of Employee A and one of the other Commissioners, who informed her that he could not support her nomination to Vice Chair, which is consistent with her pattern of attacking her adversaries, and justifying and deflecting responsibility for her own actions. Naranjo also attempted to justify her actions as a whistleblower, who "prioritizes transparency, accountability, and community well being," who found it necessary to inquire into Employee A conduct. However, as the other Commissioners pointed out during the Closed Session on December 13, 2022, Naranjo made unfounded assumptions about Employee A involvement with Tonsich and his company based on an unverified complaint filed in a lawsuit between a third party and Tonsich's company to besmirch his reputation without providing him with proper advance notice or placing such a serious charge on the agenda. She even compiled a timeline of events to show that she was being unfairly targeted, but in actuality, it was designed to damage the reputation and credibility of both Employee A and one other Commissioner based on allegations unrelated to this investigation, which had already been resolved.

The foregoing sequence of events leading up to the December 13, 2022, meeting reveals Naranjo's desire to retaliate against Employee A for raising red flags about her potential conflicts of interest and perceiving his efforts to resolve these matters as unfairly targeting her for violations. This investigation did not find her excuses for her conduct to be persuasive nor a valid basis for bypassing the requirements under the Brown Act or for neglecting her fiduciary duties as discussed in this summary report. Based on her pattern of attacking others for raising concerns about her conduct as summarized above, it is unlikely that she will cease doing so against those who she perceives as her adversary, even if Employee A and the other Commissioners are merely performing their prescribed duties and acting in the best interests of the District in doing so.