

1 RUTAN & TUCKER, LLP  
Ash Pirayou (State Bar No. 180869)  
2 apirayou@rutan.com  
Alan B. Fenstermacher (State Bar No. 278171)  
3 afenstermacher@rutan.com  
3000 El Camino Real, Suite 200  
4 Palo Alto, CA 94306-9814  
Telephone: 650-320-1500  
5 Facsimile: 650-320-9905

6 Attorneys for Petitioner/Plaintiff  
SANTA CLARA FAMILY HEALTH FOUNDATION, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA CLARA

10 SANTA CLARA FAMILY HEALTH  
FOUNDATION, INC., a California nonprofit  
11 corporation,

12 Petitioner and Plaintiff,

13 vs.

14 SANTA CLARA COUNTY HEALTH  
AUTHORITY, dba SANTA CLARA FAMILY  
15 HEALTH PLAN, a public agency, and DOES 1  
through 25, inclusive,

16 Respondents and Defendants.

17  
18 METRO PUBLISHING, INC., dba METRO  
NEWSPAPERS, a California corporation, and  
19 ROES 26 through 100, inclusive,

20 Real Parties In Interest.

Case No. 113CV246316

VERIFIED PETITION FOR WRIT OF  
MANDATE (CCP § 1085) AND  
COMPLAINT FOR (1) INJUNCTIVE  
RELIEF AND (2) DECLARATORY  
RELIEF; REQUEST FOR ALTERNATIVE  
WRIT

IMMEDIATE STAY REQUESTED

21  
22 Petitioner and Plaintiff SANTA CLARA FAMILY HEALTH FOUNDATION, INC.  
23 ("Petitioner" or "Foundation") hereby alleges as follows:

24 INTRODUCTION

25 1. This case concerns a wrongful determination made by Defendant and Respondent  
26 SANTA CLARA COUNTY HEALTH AUTHORITY, doing business as the SANTA CLARA  
27 FAMILY HEALTH PLAN, ("SCFHP"), that it must produce certain documents in its possession  
28 that have been requested by Real Party in Interest METRO PUBLISHING, INC, doing business as

1 METRO NEWSPAPERS ("Metro") pursuant to the Public Records Act ("PRA") (Gov. Code §  
2 6250 *et. seq.*) (the "Request"), which relate *solely* to the Foundation, a *private*, nonprofit  
3 corporation, and its employees in their capacity as such. The requested documents in no way  
4 relate to the SCFHP and/or the conduct of the public's business. Indeed, the *only* reason the  
5 requested records are in the SCFHP's possession is because the Foundation shares - pursuant to an  
6 Administrative Services Agreement and lease agreement - office space and computers with the  
7 SCFHP.

8 2. By this action, the Foundation seeks a writ of mandate and/or a preliminary and  
9 permanent injunction ordering the City to refrain from producing any documents to Metro  
10 pursuant to the Request, as the Foundation is not subject to the Act and the requested documents  
11 are not public records. In order to preserve the status quo, the Foundation requests that the Court  
12 immediately issue an alternative writ and immediate stay and/or temporary restraining order  
13 ("TRO") enjoining the SCFHP from producing any documents pursuant to Metro's Request, at  
14 least until such time that the Court may hear arguments on the merits of this Petition/Complaint.  
15 As such, in addition to a writ of mandate, the Foundation seeks the issuance of an immediate stay.

16 3. The Foundation will suffer irreparable harm if the Court does not grant immediate  
17 relief by granting the Foundation's *ex parte* application for an alternative writ of mandate/TRO, as  
18 once these records have been produced to Metro, they will presumably be disclosed to the public,  
19 which is a bell that cannot be "unrung." No monetary amount will compensate the Foundation for  
20 the violation of its privacy rights that is sure to occur if the Foundation is not granted immediate  
21 relief. By contrast, neither the SCFHP nor Metro will suffer any harm from a potentially minor  
22 delay in the production of the requested documents in the event the Court ultimately determines, at  
23 a hearing on the merits, that the requested documents should be produced.

#### 24 THE PARTIES

25 4. Plaintiff and Petitioner Foundation is, and at all times mentioned herein was, a  
26 California nonprofit corporation, operating pursuant to Internal Revenue Code section 501(c)(3).  
27 The Foundation is beneficially interested in the subject of this Petition because if the writ of  
28 mandate is not granted, the Foundation's privacy rights will be violated and as a result, the

1 Foundation and its members will be harmed. The Foundation has standing to bring this “reverse  
2 Public Records Act” claim pursuant to *Marken v. Santa Monica-Malibu Unified School Dist.*  
3 (2012) 202 Cal. App. 4th 1250, 1264-1265.)

4 5. Defendant and Respondent SCFHP is, and at all times mentioned herein was, a  
5 public agency located entirely within Santa Clara County.

6 6. Real Party in Interest Metro is, and at all times mentioned herein was, a California  
7 corporation that operates a weekly newspaper in the San Francisco Bay Area. Its principle place  
8 of business is located at 550 S. First St., San Jose, CA 95113.

9 7. The Foundation is ignorant of the true names and capacities of  
10 Respondents/Defendants sued herein as Does 1 through 25 and therefore sues those  
11 Respondents/Defendants by such fictitious names. The Foundation is informed and believes and  
12 thereon alleges that each of the fictitiously-named Respondents/Defendants is in some manner  
13 responsible or liable for the events and happenings referred to herein, and that each such  
14 fictitiously named Respondent/Defendant caused injury and damage to the Foundation as alleged  
15 in this Petition. The Foundation will seek leave of Court to amend this Petition to allege the true  
16 names and capacities of such fictitiously-named Respondents/Defendants when the same are  
17 ascertained.

18 8. The Foundation is ignorant of the true names and capacities of Real Parties in  
19 Interest sued herein as Roes 26 through 100 and therefore sues those Real Parties in Interest by  
20 such fictitious names. The Foundation is informed and believes and thereon alleges that each of  
21 the fictitiously-named Real Parties in Interest is in some manner responsible or liable for the  
22 events and happenings referred to herein, and that each such fictitiously named Real Parties in  
23 Interest caused injury and damage to the Foundation as alleged in this Petition. The Foundation  
24 will seek leave of Court to amend this Petition to allege the true names and capacities of such  
25 fictitiously-named Real Parties in Interest when the same are ascertained.

26 **JURISDICTION AND VENUE**

27 9. This Court has jurisdiction over this proceeding pursuant to California Code of  
28 Civil Procedure sections 1085, 1086, 1094.5, 1060 and 526 *et seq.* Venue in this Court is proper

1 pursuant to Code of Civil Procedure section 394 and Government Code section 6259 in that  
2 Respondent and the relevant records subject to the PRA request at issue are located within the  
3 County of Santa Clara.

#### 4 GENERAL ALLEGATIONS

5 10. The Foundation is a private, nonprofit corporation organized pursuant to section  
6 501(c)(3) of the Internal Revenue Code. The Foundation is completely independent of the SCFHP  
7 and does not perform any public functions. The SCFHP has no power to appoint any members of  
8 the Foundation's Board of Directors, and the only member of the Foundation's Board of Directors  
9 who also serves on the SCFHP's Board of Directors was *directly appointed by the Foundation's*  
10 *Board of Directors* – not appointed in any way by the SCFHP's Board of Directors onto the  
11 Foundation's Board of Directors. No member of County of Santa Clara's Board of Supervisors  
12 serves on the Foundation Board.

13 11. The exception to the general rule that private corporations are not subject to the  
14 PRA is contained in Government Code section 54952, which states that the PRA is applicable to  
15 private corporations, which requires the Foundation's Board of Directors to either (i) be created by  
16 the SCFHP "in order to exercise authority that may lawfully be delegated by" the SCFHP, or; (ii)  
17 receive funds from the SCFHP, and contain a full voting member who was appointed to the  
18 Foundation's Board of Directors by the SCFHP and is a member of the SCFHP's Board of  
19 Directors. (See, Gov. Code § 5492(c)(1).) Neither of these conditions are met here.

20 12. The Foundation does not receive any funds or other financial support from the  
21 SCFHP. In fact, the Foundation pays the SCFHP for providing administrative services, such as  
22 lease of office space and computer systems, pursuant to the parties' Administrative Services  
23 Agreement ("ASA") executed on June 1, 2002. The ASA is attached hereto as Exhibit "A".

24 13. The SCFHP does not delegate any of its public functions or authority to the  
25 Foundation. The Foundation's primary function is fundraising, and as such, the Foundation does  
26 not spend any taxpayer funds nor does the Foundation determine or decide where any taxpayer  
27 funds are spent. The Foundation does not have any authority over the expenditure of SCFHP  
28 funds. The Foundation raises funds from private and non-SCFHP public sources (e.g., First 5) for



1 various health care causes throughout the Santa Clara area, and in fact, the Foundation raises funds  
2 for the benefit of the SCFHP as part of a public-private partnership.

3 14. The Foundation does not operate any public facilities nor provide any public  
4 services, nor does it have the authority to do so. The Foundation does not provide health care  
5 services of any kind.

6 15. The Foundation and the SCFHP are entirely separate and independent agencies,  
7 and the relationship between the Foundation and the SCFHP is purely contractual. As stated in the  
8 ASA, "SCFHP and the Foundation are separate and independent entities. The relationship  
9 between SCFHP and PN [sic] is purely contractual. Neither SCFHP nor the Foundation, nor the  
10 employees, servants, agents or representatives of either, shall be considered the employee, servant  
11 agent or representative of the other." (Ex. "A", p. 1)

12 16. The CEO of the SCFHP has made statements to the Executive Director of the  
13 Foundation that the Foundation does not report to the SCFHP and the SCFHP should not take on  
14 any supervisory role with regard to the Foundation.

15 17. The Foundation is informed and believes, and alleges on that basis, that at no time  
16 has any Foundation employee been told by anyone that the Foundation is subject to public  
17 disclosure statutes such as the PRA or the Brown Act, and the Foundation is also informed and  
18 believes, and alleges on that basis, that all Foundation employees operate under the understanding  
19 that the Foundation is a private entity. Furthermore, the Foundation is informed and believes, and  
20 alleges on that basis, that third parties dealing with the Foundation, including donors and potential  
21 donors, operate under the understanding that the Foundation is a private entity not subject to  
22 public disclosure statutes such as the PRA or the Brown Act.

### 23 THE PUBLIC RECORDS REQUEST

24 18. On or about April 16, 2013, the Foundation received an email from the Metro  
25 requesting various Foundation documents pursuant to the PRA. (See, Exhibit "B") This email  
26 contains a number of factually inaccurate statements and legally invalid claims.

27 19. On or about April 17, 2013, the SCFHP received a letter from the Metro requesting  
28 various items from the SCFHP that related to the Foundation's agendas, meeting minutes, financial

1 statements, electronic communications, personnel documents, and related documents which were  
2 contained on the SCFHP's servers (the "Request"), which is attached hereto as Exhibit "C".  
3 Foundation records are contained on the SCFHP's computer systems/servers as a result of the ASA,  
4 pursuant to which the Foundation pays the SCFHP to use its computer systems. The purpose of  
5 this Petition/Complaint is to prevent the SCFHP from producing documents pursuant to this  
6 Request.

7 20. On April 19, 2013, the Foundation advised the SCFHP that it was evaluating  
8 Metro's Request with its legal counsel. (See, Exhibit "D", April 19, 2013 Email from Kathleen  
9 King to Elizabeth Darrow). The Foundation requested that the SCFHP attorneys be made available  
10 to discuss the matter with the Foundation's attorneys given the Foundation's substantial concerns  
11 relating to any production of any Foundation documents by the SCFHP. (*Id.*)

12 21. On or about April 24, 2013, the Foundation was informed that Metro had requested  
13 documents from the SCFHP that belonged to the Foundation but were potentially on the SCFHP's  
14 servers. Once again, the Foundation attempted to contact the SCFHP to discuss the situation.

15 22. On or about April 26, 2013, the Foundation sent a letter to Metro, which stated that  
16 the Foundation would not release any records pursuant to the PRA because the Foundation, as a  
17 private, nonprofit corporation, is not subject to the PRA. The Foundation also advised the SCFHP  
18 of this position. (See, Exhibit "E", Email to SCFHP attaching April 26, 2013 Letter from Dana  
19 Ditmore to Dan Pulcrano).

20 23. On or about May 8, 2013, the SCFHP allowed the Foundation to review the  
21 documents purportedly responsive to the Metro's Request. After review of these documents, the  
22 Foundation determined that the documents contain confidential and proprietary information  
23 relating to the Foundation's private activities.

24 24. Release and/or publication of these documents would cause immediate and  
25 irreparable harm to the Foundation's ability to conduct its private affairs because the  
26 communications contained in the documents were taking place with the expectation by all  
27 participants that the Foundation's emails were private. Production of these documents will also  
28 reveal valuable trade secrets and fundraising strategies unique to the Foundation. Not only does the

1 public have no interest in this information, but disclosure of this information would actually harm  
2 the public by impeding the Foundation's ability to raise money that benefit SCFHP and other  
3 initiatives, which benefit the public.

4 25. Disclosure of the Foundation's documents will also disclose communications from  
5 third parties who communicated with the Foundation with the understanding that the Foundation is  
6 a private corporation and not subject to disclosure pursuant to the Public Records Act. Disclosure  
7 of these documents will not only harm these third parties by violating their privacy rights, but will  
8 create a "chilling effect" on future communications between the Foundation and potential donors,  
9 again impeding future fundraising efforts, which ultimately benefit the public.

10 26. On May 10, 2013, the Foundation advised the SCFHP of its concerns regarding the  
11 release of any documents held by the SCFHP that were the Foundation's private, confidential  
12 communications. Specifically, the Foundation requested that the SCFHP refrain from producing  
13 any of the Foundation's documents in response to Metro's Request. (See, Exhibit "F", Letter from  
14 Dana Ditmore to Plan's Board of Directors)

15 27. On May 10, 2013, after it had received the above-referenced correspondence from  
16 the Foundation raising the Foundation's substantial concerns relating to the pending disclosure of  
17 the Foundation's private documents, the SCFHP advised the Foundation that it planned to release  
18 documents that it alleges are responsive to Metro's Request by May 15, 2013.

19 28. On May 13, 2013, the Foundation held an emergency meeting of its Board of  
20 Directors and approved the initiation of legal action against the SCFHP in order to prevent the  
21 disclosure of the Foundation's private records and communications.

22 29. Not all documents in the possession of a public agency are public records subject to  
23 production pursuant to the PRA. The *sole reason the SCFHP is in possession of the documents*  
24 *requested by Metro is due to the ASA*, and as a result, the Foundation emails and other records are  
25 located in the SCFHP's offices and on SCFHP's servers. None of the documents requested can be  
26 accurately categorized as public records, even if they are in the possession of a public agency,  
27 because the requested records do not relate to the conduct of the public's business, but instead  
28 entirely relate to the conduct of a *private*, nonprofit corporation.

31. Due to the fact that the documents requested by Metro in no way relate to the conduct of the public's business, but instead, relate entirely to the conduct of a *private* nonprofit corporation's business, the public has no interest in the disclosure of the requested documents. As a result, the Foundation's privacy interests in preventing disclosure greatly outweigh this nonexistent public benefit.

**(Petition for Writ of Mandate Under Code of Civil Procedure section 1085)**

33. Pursuant to Government Code sections 6252 and 54952, the PRA does not apply to the Foundation, and despite SCFHP and Metro's arguments to the contrary, the requested documents are not "public records," as that term is defined by the PRA.

35. The Foundation has no adequate remedy at law. The only adequate remedy is to restrain the SCFHP from producing documents responsive to the Metro's request, because once the contested documents are made public, the Foundation's privacy rights have been irreparably harmed and the Foundation cannot be made whole. No remedy at law will put the Foundation back in the same position it was in before the requested documents were produced, because once the contents of these documents are known, that bell cannot be unring. Moreover, even if the Foundation could be made whole for a violation of its privacy rights by a monetary amount, such an amount would be almost impossible to determine.





1 as well as the general public will also be harmed. Disclosure of the Foundation's documents will  
2 also disclose communications from third parties who communicated with the Foundation with the  
3 understanding that the Foundation is a private corporation and not subject to disclosure pursuant to  
4 the Public Records Act. Disclosure of these documents will not only harm these third parties by  
5 violating their privacy rights, but will create a "chilling effect" on future communications between  
6 the Foundation and potential donors, again impeding future fundraising efforts, which benefit  
7 SCFHP and other initiatives, and therefore benefit the public.

### 8 **THIRD CAUSE OF ACTION**

#### 9 **(Declaratory Relief)**

10 43. The Foundation hereby incorporates by this reference each and every allegation  
11 contained in Paragraphs 1 through 42 inclusive, of this Complaint, as if set forth herein.

12 44. An actual controversy has arisen and now exists between, on the one hand, the  
13 Foundation, and, on the other hand, the SCFHP, in that the Foundation contends, and the SCFHP  
14 denies, as follows:

15 (a) That the Foundation is not a "local agency" subject to the Public Records Act,  
16 pursuant to Government Code sections 6252 and 54952;

17 (b) That the records requested in Metro's Public Records Act request are not public  
18 records subject to disclosure under the Public Records Act;

19 (c) That the SCFHP is not required to produce any records pursuant to Metro's  
20 Request;

21 (d) That if the SCFHP produces documents to Metro concerning the Foundation, the  
22 SCFHP will unlawfully violate the Foundation's right to privacy.

23 45. The Foundation desires a judicial determination that the propositions set forth in  
24 the above Paragraph 44, subparagraphs (a) through (d), are true and correct. Such a determination  
25 is necessary and appropriate at this time in order for the parties' matters.

### 26 **PRAYER FOR RELIEF**

27 WHEREFORE, the Foundation prays for judgment as follows:

28 1. That the Court issue a writ of mandate against the SCFHP, ordering it to fulfill its

1 non-discretionary, ministerial duties to comply with the Public Records Act and reject Metro's  
2 Public Records Act request;

3 2. That the Court issue an alternative writ of mandate and immediate temporary stay  
4 order preventing the SCFHP from producing any documents pursuant to Metro's Request;

5 3. That the Court issue an injunction prohibiting the SCFHP from producing  
6 documents pursuant to Metro's Request and prohibiting Metro from requesting Foundation  
7 records from any entity pursuant to the Public Records Act;


8 4. That the Court award Foundation its reasonable attorneys' fees for prosecuting this  
9 action, pursuant to Government Code sections 800 and 6259, and Code of Civil Procedure section  
10 1717, and/or under any other applicable statutory or common law doctrines;

11 5. That the Court award the Foundation its costs for prosecuting this action; and

12 6. For any such other and further relief as this Court deems proper.

13  
14 Dated: May 15, 2013

RUTAN & TUCKER, LLP  
ASH PIRAYOU  
ALAN B. FENSTERMACHER

15  
16 By:   
17 Alan B. Fenstermacher  
18 Attorneys for Petitioner and Plaintiff  
19 SANTA CLARA FAMILY HEALTH  
20 FOUNDATION, INC.  
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE (CCP § 1085) AND COMPLAINT FOR (1) INJUNCTIVE RELIEF AND (2) DECLARATORY RELIEF; REQUEST FOR ALTERNATIVE WRIT and know its contents.

I am the Executive Director of the Santa Clara Family Health Foundation, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on May 15, 2013, at Saratoga, California.

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

SANTA CLARA FAMILY HEALTH  
FOUNDATION, INC.

By: Kathleen King  
Kathleen King, Executive Director