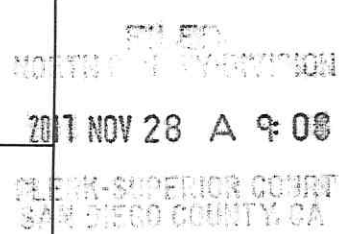


ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Alan L. Geraci, Esq. SBN108324</b> <b>CARE Law Group PC</b> <b>817 W. San Marcos Blvd.</b>  <b>San Marcos, CA 92078</b> TELEPHONE NO.: (619)231-3131 FAX NO.: (760)650-3484 ATTORNEY FOR (Name): <b>Petitioners Roy Garrett, Mary Garrett</b>		FOR COURT USE ONLY  <div style="text-align: center;">  </div>				
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>San Diego</b> STREET ADDRESS: <b>325 S. Melrose Drive</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Vista, CA 92081</b> BRANCH NAME: <b>North County</b>		CASE NUMBER: <b>Garrett vs. City of Escondido</b>  JUDGE: DEPT.: <b>37-2017-00045061-CU-WM-NC</b>				
CASE NAME: <b>Garrett v. City of Escondido</b>						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="padding: 5px;"> <b>CIVIL CASE COVER SHEET</b>  <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)     <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)             </td> <td colspan="2" style="padding: 5px;"> <b>Complex Case Designation</b>  <input type="checkbox"/> <b>Counter</b>     <input type="checkbox"/> <b>Joinder</b>                  Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)             </td> </tr> </table>			<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
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Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): **1**

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **11/28/2017**

**Alan L. Geraci, Esq. SBN108324**

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS:	325 S Melrose DRIVE
MAILING ADDRESS:	325 S Melrose DRIVE
CITY AND ZIP CODE:	Vista, CA 92081-6695
BRANCH NAME:	North County
TELEPHONE NUMBER:	(760) 201-8027
PLAINTIFF(S) / PETITIONER(S): Roy B Garrett et.al.	
DEFENDANT(S) / RESPONDENT(S): City of Escondido	
GARRETT VS. CITY OF ESCONDIDO	
<b>NOTICE OF CASE ASSIGNMENT and CASE MANAGEMENT CONFERENCE</b>	CASE NUMBER: 37-2017-00045061-CU-WM-NC

## CASE ASSIGNMENT

Judge: Jacqueline M. Stern

Department: N-27

**COMPLAINT/PETITION FILED: 11/28/2017**

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
---------------------------	------	------	------	-------

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR\* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

**COMPLAINTS:** Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

**JURY FEES:** In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

**COURT REPORTERS:** Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).

\*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).





## Superior Court of California County of San Diego

### NOTICE OF ELIGIBILITY TO eFILE AND ASSIGNMENT TO IMAGING DEPARTMENT

**This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases for rules and procedures or contact the Court's eFiling vendor at [www.onelegal.com](http://www.onelegal.com) for information.**

**This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).**

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

### ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2017-00045061-CU-WM-NC

CASE TITLE: Garrett vs. City of Escondido

**NOTICE:** All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

#### **Potential Advantages and Disadvantages of ADR**

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

##### **Potential Advantages**

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

##### **Potential Disadvantages**

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

#### **Most Common Types of ADR**

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

**Mediation:** A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

**Settlement Conference:** A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

**Arbitration:** A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.



**Other ADR Processes:** There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

### **Local ADR Programs for Civil Cases**

**Mediation:** The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

**On-line mediator search and selection:** Go to the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

**Settlement Conference:** The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

**Arbitration:** The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

**More information about court-connected ADR:** Visit the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) or contact the court's Mediation/Arbitration Office at (619) 450-7300.

**Dispute Resolution Programs Act (DRPA) funded ADR Programs:** The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at [www.ncrconline.com](http://www.ncrconline.com) or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at [www.nclifeline.org](http://www.nclifeline.org) or (760) 726-4900.

**Private ADR:** To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

### **Legal Representation and Advice**

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at [www.courtinfo.ca.gov/selfhelp/lowcost](http://www.courtinfo.ca.gov/selfhelp/lowcost).

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 325 S. Melrose MAILING ADDRESS: 325 S. Melrose CITY, STATE, & ZIP CODE: Vista, CA 92081-6695 BRANCH NAME: North County	<b>FOR COURT USE ONLY</b>
PLAINTIFF(S): Roy B Garrett et.al.	
DEFENDANT(S): City of Escondido	
SHORT TITLE: GARRETT VS. CITY OF ESCONDIDO	
<b>STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)</b>	CASE NUMBER: 37-2017-00045061-CU-WM-NC

Judge: Jacqueline M. Stern

Department: N-27

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- |   |  |
|---|--|
| <input type="checkbox"/> Mediation (court-connected)  | <input type="checkbox"/> Non-binding private arbitration   |
| <input type="checkbox"/> Mediation (private)  | <input type="checkbox"/> Binding private arbitration   |
| <input type="checkbox"/> Voluntary settlement conference (private)                            | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private)   | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ |  |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Alternate neutral (for court Civil Mediation Program and arbitration only): \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Plaintiff

\_\_\_\_\_  
Name of Defendant

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Plaintiff's Attorney

\_\_\_\_\_  
Name of Defendant's Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

**IT IS SO ORDERED.**

Dated: 11/28/2017

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT



1 **Alan L. Geraci, Esq.** (SBN 108324)  
2 CARE Law Group PC  
3 817 W. San Marcos Blvd  
4 San Marcos, CA 92078  
(619) 231-3131 telephone  
(760) 650-3484 facsimile  
alan@carelaw.net

FILED  
NOTING CLERK'S OFFICE  
2017 NOV 28 A 9:08  
CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

5 Attorneys for Petitioners, Roy B. Garrett and Mary Garrett

6  
7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO-NORTH COUNTY DIVISION**

10  
11 ROY B. GARRETT, and individual;  
12 MARY GARRETT, an individual,

13 Petitioners,

14 vs.

15 CITY OF ESCONDIDO, a California  
16 Municipality and DOES 1-10,

17 Respondents,

18 ESCONDIDO PUBLIC LIBRARY  
19 BOARD OF TRUSTEES,

20 Real Party in Interest.

**Garrett vs. City of Escondido**

Case No. \_\_\_\_\_

**37-2017-00045061-CU-WM-NC**

**VERIFIED PETITION FOR  
WRIT OF MANDATE FOR  
VIOLATION OF THE MUNICIPAL  
LIBRARIES ACT**

Code of Civil Procedure § 1085  
Education Code § 18900, *et seq*

21 Petitioners, ROY B. GARRETT and MARY GARRETT, petition this Court for a Writ of  
22 Mandamus directed to the CITY OF ESCONDIDO, a California Municipality (hereinafter "City  
23 of Escondido" or "Respondent"), by and through its council, and allege as follows:

24 1. This action challenges the City of Escondido's decision, Resolution 2017-139, through  
25 its City Council, on or about October 18, 2017, as void as a matter of law as an *ultra*  
26 *vires* act. Petitioners claim that the Municipal Library Act requirement, codified at  
27 California Education Code § 18910, that its public library shall be managed by a board of  
28 library trustees and such lawful management responsibility may not be usurped by

1 Respondent, through its council. A Writ of Mandate is required to order Respondent to  
2 comply with the law.

3 **Parties**

- 4 2. Petitioner ROY B. GARRETT is a resident and taxpayer of the State of California,  
5 County of San Diego, City of Escondido, residing within the City of Escondido since  
6 1969.
- 7 3. Petitioner MARY GARRETT is a resident and taxpayer of the State of California,  
8 County of San Diego, City of Escondido, residing within the City of Escondido since  
9 1969.
- 10 4. Respondent is a California Municipality organized under the California Government  
11 Code and exists in the County of San Diego, State of California. It operates its city  
12 functions and services pursuant to state law and its municipal code but does not have a  
13 city charter. At all times relevant herein, said Respondent operates through its council, to  
14 wit: Hon. Sam Abed, Mayor, Hon. John Masson, Deputy Mayor, Hon. Olga Diaz,  
15 Councilmember, Hon. Ed Gallo, Councilmember, Hon. Michael Morasco,  
16 Councilmember and manager, Jeffery Epp, City Manager.
- 17 5. Real Party in Interest is the ESCONDIDO PUBLIC LIBRARY BOARD OF TRUSTEES  
18 (herein "Escondido Public Library Board of Trustees"), charged with the duty of  
19 management of the Escondido Public Library, to wit: Ron Guiles, Trustee/President,  
20 Elmer Cameron, Trustee, Mirek Gorney, Trustee, Gary Knight, Trustee, and Mayra  
21 Salazar, Trustee/Secretary.
- 22 6. Petitioners have standing as taxpayers and residents of the City of Escondido.

23 **Legislative Background**

- 24 7. The Escondido Public Library is a public library system serving the city of Escondido,  
25 which is situated in San Diego County, California. The collection of the library contains  
26 166,629 volumes, circulates 514,792 items per year and serves a population of 151,613  
27 residents.
- 28 8. The Escondido Public Library Association was established in 1893. On the March 13,



1 1893 meeting of the association, the by-laws and constitution were adopted and a week  
2 later, a Public Library Board of Trustees were elected for a term of one year.

3 9. In April of 1898, the City of Escondido made the Escondido Public Library a city  
4 department.

5 10. Public library legislation in California dates back to 1878 when legislation was passed to  
6 "... establish and maintain free public libraries and reading rooms." (Stats. 1878, ch.  
7 266, §§ 1-8, pp. 329-331.) In 1901, the Municipal Libraries Act was enacted and  
8 included provisions authorizing a special tax for the purpose of maintaining municipal  
9 libraries. (Stats. 1901, ch. 170, § 7, p. 559.) In both landmark provisions, law mandated  
10 that governance of the library be by a board of five library trustees whose members held  
11 office for three-year terms. (Stats. 1901, ch.170, §§3-6, pp. 558-559.) Trustees were  
12 "appointed by the mayor, president of the board of trustees or other executive head of the  
13 municipality, with the consent of the legislative body of said municipality." (Stats. 1901,  
14 ch. 170, §3, p. 558.) The 1901 act declared that "(e)very library established under this  
15 act shall be forever free to the inhabitants and non-resident taxpayers of the municipality,  
16 subject always to such rules, regulations and by-laws as may be made by boards of  
17 trustees." (Stats. 1901, ch.170, §9, p. 559.)

18 11. In 1943, comprehensive legislation was enacted creating the California Educations Code.  
19 (Stats. 1943., ch.71.) The Municipal Libraries Act was incorporated into the California  
20 Educations Code and substantially unchanged. (*Formally* California Educations Code  
21 §§22201-22265.) Amendments in 1959, 1971 and 1976, largely reorganized the codified  
22 statute to be a more logical sequence of law. (Stats. 1959, ch.2, §1, p. 595; Stats. 1971,  
23 ch. 438, § 83, p. 880; Stats 1976, ch. 1010, pp. 2882-2885.)

24 12. Education Code §18910 provides that a public library established under the act "shall be  
25 managed by a board of library trustees, consisting of five members,..." This duty is  
26 absolute and nondelegable by law.

27 13. Use of the word "shall" in a statute imports that its provisions are mandatory and is in  
28 accord with the legislative intent.

//

### **Factual Background**

14. As early as March of 2017, Respondent began pursuing a "Professional Services Agreement for the Operation of the Escondido Public Library" with a third party private vendor, to wit: Library Systems and Services LLC, a Maryland limited liability company (herein "Agreement").
15. Pursuant to California Education Code § 18910, any decision concerning the management of the Escondido Public Library is within the sound discretion of the Escondido Public Library Board of Trustees.
16. Pursuant to California Education Code § 19104.5, "(t)he board of trustees . . . of a library district . . . shall comply with all of the following requirements before entering into a contract to operate the city's or the district's library or libraries with a private contractor that will employ library staff to achieve cost savings . . ." Included therein are *provisions that the board of trustees publish notice of contemplated action, that the board of trustees clearly demonstrate that the contract will result in actual overall cost savings to the city, that the contract shall not be approved solely on the basis that savings will result from lower contractor pay rates, that the contract not cause an existing city or library district employee to incur a loss of his or her employment or employment seniority or reduction in wages, benefits or hours, that the contract shall be awarded through a publicized, competitive bidding process, that the contract shall include specific provisions pertaining to the qualifications of the staff, that the contract shall provide that it may be terminated at any time by the city or library district without penalty, and specific requirements for contracts whose cost for services exceed \$100,000 annually.*
17. On or about August 8, 2017, the Escondido Public Library Board of Trustees voted unanimously against the proposal to out source the Escondido Public Library management to a foreign private entity called Library, Systems & Services LLC and presented their position formally in a letter to the City Council of the City of Escondido.
18. Despite the Escondido Public Library Board of Trustees' decision, the City Council of



1 the City of Escondido continued to pursue Agreement.

2 19. On or about September 27, 2017, the Escondido Public Library Board of Trustees sent a  
3 signed letter to Respondent's Mayor and Councilmembers stating its continued  
4 opposition to outsourcing Escondido Public Library management to Library Systems &  
5 Services LLC.

6 20. Notwithstanding the Escondido Public Library Board of Trustees' rejection of Agreement  
7 and repeated opposition to such a plan, the Escondido City Council held a public hearing  
8 and ignored the legal duties of the Escondido Public Library Board of Trustees.

9 21. On October 18, 2017, the City of Escondido City Council voted 4-1 to contract with  
10 Maryland-based Library Systems & Services LLC to operate the library.  
11 Councilmembers Ed Gallo, Michael Morasco, John Masson, and Mayor Sam Abed voted  
12 in favor of the 10-year contract, with Councilmember Olga Diaz in opposition. As part  
13 of its rationale therefor, the City Council expressly stated that it wished to avoid  
14 contractual pension obligations to library employees.

#### 15 **FIRST CAUSE OF ACTION**

##### 16 **Writ of Mandate for Violation of Cal. Education Code § 18910**

17 22. California Education Code § 18910 provides that public libraries in general law  
18 municipalities "shall be managed by a board of library trustees, consisting of five  
19 members to be appointed by the mayor . . . with the consent of the legislative body of the  
20 municipality."

21 23. The Escondido Public Library Board of Trustees were duly appointed and acting within  
22 their lawful scope of authority pursuant to California Education Code §§ 18910, 19104.5  
23 when it rejected Agreement and further requested that the Escondido City Council direct  
24 city staff to submit a request to the County of San Diego's Chief Administrative Office to  
25 develop a proposal for the integration of the Escondido Public Library into the County  
26 Library System.

27 24. The Escondido City Council acted *ultra vires* when it ignored the decision and request of  
28 the Escondido Public Library Board of Trustees and voted, instead, to enter into

- 1 Agreement with Library System and Services LLC.
- 2 25. *Ultra vires* acts are void as a matter of law.
- 3 26. By these actions, Respondent violated their clear duty to Petitioners and to the citizens of  
4 the City of Escondido to use their powers in a manner consistent with the laws of the  
5 State of California and not to interfere with the Escondido Public Library Board of  
6 Trustees' duty to manage the Library's affairs. The Escondido City Council had an  
7 ability to perform this duty yet failed to do so.
- 8 27. Petitioners have no plain, speedy, or adequate remedy at law other than by this petition.
- 9 28. Petitioners are entitled to a Writ of Mandate to compel Respondent (1) to annul, rescind,  
10 and withdraw the official action of the City Council directing the City Manager or city  
11 department to enter into Agreement; (2) to depublish the official action of the City  
12 Council in the same manner in which it was published; (3) to require that Respondent  
13 City of Escondido act in accordance with the Municipal Library Act and restore  
14 management of the Escondido Public Library to the Escondido Public Library Board of  
15 Trustees.
- 16 29. Petitioners are entitled to attorney fees and costs including those available pursuant to  
17 California Code of Civil Procedure § 1021.5.
- 18 WHEREFORE, Petitioner prays that:
- 19 1. An alternative Writ of Mandamus be issued finding Respondent's action to  
20 enter into Agreement with third party, Library Services and Systems LLC *ultra*  
21 *vires* and declaring such actions as void and restoring management of the  
22 Escondido Public Library to the Escondido Public Library Board of Trustees  
23 according to California Education Code § 18910;
- 24 2. A declaration of the rights, duties and obligations of the parties pursuant to law;
- 25 3. Pending a hearing on this petition, a temporary restraining order or  
26 preliminary injunction staying Respondent's attempts to further pursue  
27 Agreement;
- 28 4. For attorney fees pursuant to Code of Civil Procedure § 1021.5;



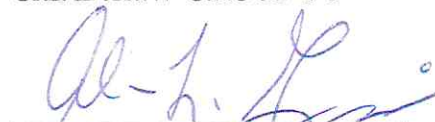
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5. For costs of suit; and

6. Petitioner be granted such other and further relief as may be appropriate and  
just.

Dated: 11/28/17

**CARE LAW GROUP PC**



By: Alan L. Geraci, Attorney for Petitioners Roy  
B. Garrett and Mary Garret

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**Verification**

I, the undersigned, say:

1. I am a Petitioner in the above-entitled action.

2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE and know the contents thereof; that the same is true of my knowledge, except as to the matters which are therein stated on my information or belief and as to those matters that I believe it to be true.

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

Dated: 27 Nov 2017

  
\_\_\_\_\_  
Roy B. Garrett, Petitioner

**Verification**

I, the undersigned, say:

1. I am a Petitioner in the above-entitled action.

2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE and know the contents thereof; that the same is true of my knowledge, except as to the matters which are therein stated on my information or belief and as to those matters that I believe it to be true.

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

Dated: 27 Nov 2017

  
\_\_\_\_\_  
Mary Garrett, Petitioner