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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO–NORTH COUNTY DIVISION**

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11 ROY B. GARRETT, and individual;)
MARY GARRETT, an individual,)

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14 vs.)

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

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18 ESCONDIDO PUBLIC LIBRARY)
BOARD OF TRUSTEES,)

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Case No.

**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.

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2 **Factual Background**

3 14. As early as March of 2017, Respondent began pursuing a “Professional Services
4 Agreement for the Operation of the Escondido Public Library” with a third party private
5 vendor, to wit: Library Systems and Services LLC, a Maryland limited liability company
6 (herein “Agreement”).

7 15. Pursuant to California Education Code § 18910, any decision concerning the
8 management of the Escondido Public Library is within the sound discretion of the
9 Escondido Public Library Board of Trustees.

10 16. Pursuant to California Education Code § 19104.5, “(t)he board of trustees . . . of a library
11 district . . . shall comply with all of the following requirements before entering into a
12 contract to operate the city’s or the district’s library or libraries with a private contractor
13 that will employ library staff to achieve cost savings . . .” Included therein are
14 provisions that the board of trustees publish notice of contemplated action, that the board
15 of trustees clearly demonstrate that the contract will result in actual overall cost savings
16 to the city, that the contract shall not be approved solely on the basis that savings will
17 result from lower contractor pay rates, that the contract not cause an existing city or
18 library district employee to incur a loss of his or her employment or employment
19 seniority or reduction in wages, benefits or hours, that the contract shall be awarded
20 through a publicized, competitive bidding process, that the contract shall include specific
21 provisions pertaining to the qualifications of the staff, that the contract shall provide that
22 it may be terminated at any time by the city or library district without penalty, and
23 specific requirements for contracts whose cost for services exceed \$100,000 annually.

24 17. On or about August 8, 2017, the Escondido Public Library Board of Trustees voted
25 unanimously against the proposal to out source the Escondido Public Library
26 management to a foreign private entity called Library, Systems & Services LLC and
27 presented their position formally in a letter to the City Council of the City of Escondido.

28 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: _____

CARE LAW GROUP PC

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

1 **Verification**

2 I, the undersigned, say:

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

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

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

9 Dated: _____
10 Roy B. Garrett, Petitioner

11 **Verification**

12 I, the undersigned, say:

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

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

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

19 Dated: _____
20 Mary Garrett, Petitioner