

RESOLUTION 2023-**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS:**

A) CENSURING COMMISSIONER SANDY NARANJO FOR PERSONAL VIOLATIONS OF THE BROWN ACT AND FIDUCIARY DUTIES AND RELATED MISCONDUCT; REMOVING COMMISSIONER NARANJO FROM CURRENTLY HELD BOARD OFFICE AND DISTRICT INTERNAL AND EXTERNAL COMMITTEE ASSIGNMENTS; PROHIBITING COMMISSIONER NARANJO FROM HOLDING ANY FUTURE BOARD OFFICE OR DISTRICT INTERNAL OR EXTERNAL COMMITTEE ASSIGNMENTS; AND, FROM SPEAKING ALONE TO ANY DISTRICT EMPLOYEE IN HER SCOPE AND AUTHORITY AS A COMMISSIONER

B) CONTINGENT UPON ADOPTION OF ITEM A), CONSIDERATION AND ELECTION OF OFFICERS TO VACANT OFFICER POSITIONS ON THE BOARD OF PORT COMMISSIONERS

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, Section 21 of the Port Act authorizes the Board of Port Commissioners (Board) to pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, a censure is generally understood to be "an official reprimand or condemnation; an authoritative expression of disapproval or blame." (Black's Law Dictionary (10th ed 2014).); and

WHEREAS, the United States Supreme Court has long recognized the practice of censoring legislative body members, which has been more commonly observed at the state and local level, and as early as 1833. (*Houston Community College System v. Wilson* (2022) 142 S. Ct. 1253, 1259); and

WHEREAS, public officials have the authority to censure an individual member of a legislative body, (*Braun v. City of Taft* (1984) 154 Cal. App. 3d 332, 347-348.); and

WHEREAS, a censure is one approach of distancing the public agency from bad behaviors that interfere with the agency's ability to conduct the public's business and protect its employees and the public; and

WHEREAS, following a series of inappropriate behavior, the Board undertook an exhaustive attorney-client confidential personnel investigation conducted by an independent third-party attorney located outside the County of San Diego; and

WHEREAS, the Board agendaized an item on a special open session on October 10, 2023, to address misconduct by Commissioner Naranjo and the legal liability to the District such conduct has created; and

WHEREAS, the Board finds it necessary to protect the employees of the District from Commissioner Naranjo's behavior, limit the legal liability of the District, and demonstrate to the public that improper behavior and misconduct by any District official will be addressed in an open and transparent manner to preserve the public's and employees' trust in the District and the Board; and

WHEREAS, the findings of this Resolution are based upon the confidential personnel investigation and the impetus to censure Commissioner Naranjo and include, but are not limited to:

- Commissioner Naranjo breached her duty of care by levying serious allegations against a District employee that, upon prudent or even minimal inquiry, would have readily been discredited as false. A duty of care is a requirement that all Commissioners serve the District with "reasonable care, skill and caution" as a prudent person acting in a like capacity would." *Public Resources Code* Section 6009.1(c)(1); *Tibble v. Edison Int'l*, 843 F.3d 1187, 1197 (9th Cir. 2016). Commissioner Naranjo's failure to execute her duty of care critically undermines the confidence and trust of the District's staff in the Board's leadership, exposes the District to legal liability and has the potential to compromise the integrity of the District.
- Commissioner Naranjo breached her duty of full disclosure and acted with an absence of transparency by withholding information from the Board regarding the bases and sources of her allegations against a District employee, thereby depriving the Board of material facts to determine their validity. The duty of full disclosure requires that all Commissioners disclose relevant information and documents regarding District matters in a timely manner. *Public Resources Code* Section 6009.1; *Gump v. Wells Fargo Bank Nat'l Ass'n*, 192 Cal. App. 3d 222 (1987).
- Commissioner Naranjo refused to promptly and completely cooperate in the disclosure of her external financial engagements and by unnecessarily obstructing and delaying the District's ability to enter into contracts with assurance that such contracts would be enforceable. Commissioner Naranjo exacerbated her failure to cooperate by willfully abstaining from providing any rationale for her non-disclosure.
- Commissioner Naranjo breached her fiduciary duty of loyalty when the Commissioner acted in furtherance of her own personal self-interests in retaliating against a District employee for doing their job at the expense of

the District's best interests. The duty of loyalty requires that Commissioner act in the best interests of the District rather than their own personal interests, and where the interests of the Commissioner conflict, take appropriate action to protect the District. *Public Resources Code* Section 6009.1. See also, Restatement (Third) of Trusts §78 (2007) (prohibiting 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."). Commissioner Naranjo violated her duty of loyalty by engaging in retaliatory conduct against a District employee, with reckless disregard for exposing the District to legal liability.

- Commissioner Naranjo's personal actions violated the Brown Act while simultaneously creating due process violations to the affected District employee.
- Commissioner Naranjo has participated in a pattern of ongoing retaliatory actions against a District employee. The Commissioner's actions have decreased productivity, morale and potential attrition, which in turn harms the District's operational capabilities, and impacts the public and District employees.
- None of the explanations Commissioner Naranjo provided were found credible, sincere, legitimate or exculpatory.
- Overall, Commissioner Naranjo's actions appeared to further her own self-interests at the District's expense in violation of her fiduciary duties as a Commissioner. Such actions corrode the very underpinnings of fiduciary duties and trust while setting a dangerous precedent that can contribute to systemic decay within the District and the Board; and

WHEREAS, such self-interested, reckless and potentially malicious behavior not only pose immediate legal risks but also have the potential to compromise the District's strategic objectives and erode the public's trust in its leadership; and

WHEREAS, such actions are diverting essential resources away from the District's core functions, thereby impacting its ability to serve the public effectively; and

WHEREAS, a resolution of censure must be considered by the legislative body at an open public meeting, which was done on October 10, 2023 and the subject member, Commissioner Naranjo, given notice of the censure, which she was provided; and

WHEREAS, the subject member, Commissioner Naranjo, must be given an opportunity to be heard prior to a vote on the censure, which the Board provided during its October 10, 2023, special open session meeting; and

WHEREAS, the Board considered and elected officers to vacant officer positions on the Board.

NOW, THEREFORE IT BE RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

The Board of Port Commissioners hereby finds, based on an independent third-party investigation, that:

- Commissioner Naranjo breached her duty of care by levying serious allegations against a District employee that, upon prudent or even minimal inquiry, would have readily been discredited as false. A duty of care is a requirement that all Commissioners serve the District with “reasonable care, skill and caution” as a prudent person acting in a like capacity would.” *Public Resources Code* Section 6009.1(c)(1); *Tibble v. Edison Int’l*, 843 F.3d 1187, 1197 (9th Cir. 2016). Commissioner Naranjo’s failure to execute her duty of care critically undermines the confidence and trust of the District’s staff in the Board’s leadership, exposes the District to legal liability and has the potential to compromise the integrity of the District.
- Commissioner Naranjo breached her duty of full disclosure and acted with an absence of transparency by withholding information from the Board regarding the bases and sources of her allegations against a District employee, thereby depriving the Board of material facts to determine their validity. The duty of full disclosure requires that all Commissioners disclose relevant information and documents regarding District matters in a timely manner. *Public Resources Code* Section 6009.1; *Gump v. Wells Fargo Bank Nat’l Ass’n*, 192 Cal. App. 3d 222 (1987).
- Commissioner Naranjo refused to promptly and completely cooperate in the disclosure of her external financial engagements and by unnecessarily obstructing and delaying the District’s ability to enter into contracts with assurance that such contracts would be enforceable. Commissioner Naranjo exacerbated her failure to cooperate by willfully abstaining from providing any rationale for her non-disclosure.
- Commissioner Naranjo breached her fiduciary duty of loyalty when the Commissioner acted in furtherance of her own personal self-interests in retaliating against a District employee for doing their job at the expense of the District’s best interests. The duty of loyalty requires that Commissioner act in the best interests of the District rather than their own personal interests, and where the interests of the Commissioner conflict, take appropriate action to protect the District. *Public Resources Code* Section 6009.1. *See also*, Restatement (Third) of Trusts §78 (2007) (prohibiting 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.”). Commissioner Naranjo violated her duty of loyalty by engaging in retaliatory conduct against a District employee, with reckless disregard for exposing the District to legal liability.

- Commissioner Naranjo's personal actions violated the Brown Act while simultaneously creating due process violations to the affected District employee.
- Commissioner Naranjo has participated in a pattern of ongoing retaliatory actions against a District employee. The Commissioner's actions have decreased productivity, morale and potential attrition, which in turn harms the District's operational capabilities, and impacts the public and District employees.
- None of the explanations Commissioner Naranjo provided were found credible, sincere, legitimate or exculpatory.
- Overall, Commissioner Naranjo's actions appeared to further her own self-interests at the District's expense in violation of her fiduciary duties as a Commissioner. Such actions corrode the very underpinnings of fiduciary duties and trust while setting a dangerous precedent that can contribute to systemic decay within the District and the Board; and
- Commissioner Naranjo's self-interested, reckless and potentially malicious behavior not only pose immediate legal risks but also have the potential to compromise the District's strategic objectives and erode the public's trust in its leadership.
- Commissioner Naranjo's actions are diverting essential resources away from the District's core functions, thereby impacting its ability to serve the public effectively.

NOW, THEREFORE IT BE FURTHER RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

A) Commissioner Sandy Naranjo is hereby censured for personal violations of the Brown Act and fiduciary duties and related misconduct as set forth in the findings above, and:

- Commissioner Naranjo is removed from her currently held Board office and District internal and external committee assignments; and
- Commissioner Naranjo is prohibited from holding any future Board office or District internal or external committee assignments; and
- Commissioner Naranjo is prohibited from speaking alone with any District employee in her scope and authority as a Commissioner. To institute this protective measure, should Commissioner Naranjo wish to meet or speak with a District employee, she shall text or email the District Executive Director/CEO and an attorney with the Office of the General Counsel, and any meeting or discussion will be arranged within a reasonable amount of time and with the attendance of at least two District employees.

B) The following Commissioner(s) is/are hereby elected to the following District office(s):

APPROVED AS TO FORM AND LEGALITY: