

**S269401**

NO. \_\_\_\_\_

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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LOS ANGELES TIMES COMMUNICATIONS LLC,

Petitioner,

v.

STATE BAR OF CALIFORNIA,

Respondent.

THOMAS V. GIRARDI,

Real Party In Interest.

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**VERIFIED PETITION FOR WRIT OF MANDATE TO  
COMPEL PUBLIC DISCLOSURE OF ATTORNEY  
DISCIPLINE INFORMATION**

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Pursuant to California Rules of Court 8.208 and 8.488, Petitioner Los Angeles Times Communications LLC (“The Times”) by and through its undersigned counsel, provides the following certification regarding entities or persons that have either (1) an ownership interest of ten percent or more in the party or parties filing this certificate, or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves:

- The Times is a wholly owned subsidiary of NantMedia Holdings, LLC, which is a privately held company. No company with a 10 percent or greater ownership share in NantMedia Holdings, LLC is publicly traded.

Dated: June 17, 2021

DAVIS WRIGHT TREMAINE LLP  
KELLI L. SAGER  
DAN LAIDMAN  
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LOS ANGELES TIMES  
COMMUNICATIONS LLC  
JEFF GLASSER

By /s/ Kelli L. Sager  
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IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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LOS ANGELES TIMES COMMUNICATIONS LLC,

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v.

STATE BAR OF CALIFORNIA,

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THOMS V. GIRARDI,

Real Party In Interest.

---

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF  
JUSTICE OF THE STATE OF CALIFORNIA, AND THE  
HONORABLE ASSOCIATE JUSTICES OF THE SUPREME  
COURT OF THE STATE OF CALIFORNIA:

Petitioner Los Angeles Times Communications LLC (“The Times”) respectfully petitions this Court for an order compelling the California State Bar to release information concerning investigations or proceedings involving Real Party in Interest Thomas V. Girardi, pursuant to California Business and Professions Code Section 6086.1(b)(2), which is necessary for the protection of the public. This Petition is brought pursuant to this

Court's inherent power over attorney discipline and its oversight authority over the State Bar, including under California Rule of Court 9.13(d), and also pursuant to this Court's original jurisdiction under Article 6, Section 10 of the California Constitution and California Rule of Court 8.485(a).

### **INTRODUCTION**

This is an extraordinary situation in which this Court's intervention is needed to restore public confidence in California's system of attorney discipline. For decades, former attorney Thomas V. Girardi wielded tremendous influence over the state's legal establishment, in large part by relying on his close ties with State Bar officials. During this same period, Girardi was the focus of numerous claims from aggrieved clients and business associates, as well as sharp rebukes from federal judges. Although the State Bar investigated Girardi on numerous occasions, it failed to take any action until this year, after The Times published investigative reports about Girardi and his connections to legal regulators, and after a court in Chicago froze his assets and referred him for criminal investigation.

On March 30, 2021, the Bar filed disciplinary charges against Girardi for the first time, alleging 14 counts of

misconduct that include misappropriation of client funds, failure to obey a court order, failure to cooperate in a bar investigation, failure to maintain client trust funds, and other alleged acts of moral turpitude. See Ex. S. But serious questions still remain about the Bar's handling of prior complaints about Girardi, including questions about why previous investigations did not result in any charges being brought against him. Given Girardi's long-standing close relationship with State Bar officials, and his prominence in California legal circles, these questions have profound significance for public trust in the state's legal regulatory system.

Consequently, The Times requested that the State Bar release information about all of its investigations of Girardi, pursuant to Business & Professions Code § 6086.1(b)(2), which provides for such disclosure "when warranted for protection of the public." Cal. Bus. & Prof. Code § 6086.1(b)(2). The Chief Trial Counsel and Chair of the State Bar have refused to provide any information, however, asserting that the provision applies only to **pending** investigations. The Bar's legal position has no basis in the statute, and serves to deprive the public of vital information about Girardi, and about the agency's own conduct in carrying

out its responsibilities to protect members of the public from attorneys who have been accused of serious wrongdoing. The Times respectfully requests that this Court exercise its inherent power to oversee all aspects of the attorney discipline system, and order the State Bar to release the requested information.

**PETITION FOR REVIEW OF STATE BAR DECISION AND/OR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF**

This Petition is authorized by this Court’s inherent power over attorney discipline and California Rule of Court 9.13(d), and also Article 6 Section 10 of the California Constitution and California Rule of Court 8.485(a). In support of this Petition, The Times alleges:

**1. Authenticity of Exhibits.**

1. All accompanying exhibits are true and accurate copies of the original documents.

**2. Beneficial Interest of Petitioner; Capacity of Respondent and Real Party in Interest.**

2. Petitioner Los Angeles Times Communications LLC (“The Times”) publishes the Los Angeles Times newspaper and the latimes.com website. It seeks the requested information in furtherance of its news reporting about the State Bar, and in

particular, about the agency's handling of disciplinary investigations of Girardi.

3. Respondent the State Bar of California is a public corporation created by the Legislature as an administrative arm of this Court, tasked with assisting in matters of admission and discipline of attorneys.

4. Real Party in Interest Thomas V. Girardi is a former attorney admitted to practice in this State, whose disciplinary record is the subject of The Times' public information requests to the State Bar.

**3. Statement of Facts.**

5. Thomas V. Girardi was a licensed California attorney from January 13, 1965 to March 9, 2021. He has been a well-known and influential figure in California's legal establishment, who served on the Judicial Council of California and the Governor's Judicial Selection Advisory Committee, among other prominent positions. See Ex. C, H-I.

6. On March 30, 2021, the State Bar filed a Notice of Disciplinary Charges against Girardi. See [In the Matter of Thomas Vincent Girardi, State Bar No. 36603](#), State Bar Court Case No. SBC-21-O-30192; Ex. S. Prosecutors have charged him

with 14 counts of misconduct, including misappropriation, misrepresentation, failure to maintain client trust accounts, failure to disburse client funds promptly, failure to obey a court order to distribute client funds, making a false statement in a settlement disbursement, and failure to cooperate in a State Bar investigation. Id. The charges arise from several different matters in which Girardi and his firm, Girardi Keese, allegedly mishandled settlement funds owed to clients. Id.

7. In one of the cases cited by the State Bar in the Notice of Disciplinary Charges, In Re: Lion Air Flight JT 610 Crash (“Lion Air”), a Multidistrict Litigation matter with the lead case in U.S. District Court for the Northern District of Illinois, U.S. District Judge Thomas M. Durkin entered an order on December 14, 2020, finding Girardi in contempt for violating an order to disburse settlement funds. Id. ¶ 45. Judge Durkin entered a \$2 million judgment against Girardi, ordered his assets frozen, and referred him to the United States Attorney’s Office for criminal investigation. Id.; Ex. O at 296:14-15, 302:24-25, 306:8-10.

8. In January 2021, U.S. Bankruptcy Judge Barry Russell of the Central District of California ordered Girardi and

his firm into Chapter 7 bankruptcy. See Ex. Q. A recent report from the bankruptcy trustee identified more than \$23 million in settlement funds owed to Girardi clients who have not been paid, and noted that the “Trustee is contacted on nearly a daily basis by former clients of [Girardi Keese] who claim they did not receive their settlement funds.” Id. at 322.

9. Clients and business associates have sued Girardi and his firm dozens of times, over a period of many years, alleging misappropriation of funds and related misconduct. See Declaration of Dan Laidman ¶ 4, Ex. J. More than a decade ago, the Ninth Circuit formally reprimanded Girardi for “reckless” conduct in allowing his name to be signed to briefs that contained falsehoods. See In re Girardi, 611 F.3d 1027, 1039 (9th Cir. 2010).

10. Despite this lengthy record of alleged misconduct dating back more than a decade, Girardi had no record of public discipline by the State Bar until these charges were filed on March 30, 2021. See Ex. M. Although the State Bar investigated related complaints about Girardi over the years, none of the investigations led to disciplinary charges. See Exs. M, T; Declaration of Peter R. Dion-Kindem, ¶¶ 2-5, Ex. B.

11. The Times has published numerous articles about the alleged misconduct involving Girardi and his firm. See Exs. C-D. On March 6, 2021 – three weeks before the State Bar filed disciplinary charges against Girardi – The Times published a detailed investigative report concerning Girardi’s relationship with the State Bar. See Ex. C. The Times reported that for many years, Girardi had cultivated close personal and professional relationships with top State Bar officials, which included hiring some of their relatives and providing free legal services to a bar investigator. Id. One of Girardi’s colleagues previously served as the President of the State Bar; and on many occasions, Girardi’s firm hosted agency staffers at lavish events. Id. Girardi invoked these close connections to State Bar officials in legal proceedings where accusations of misconduct were made against him. See Ex. K-L

12. On February 11, 2021, Times reporter Matt Hamilton requested that the Chief Trial Counsel and/or Chair of the Bar waive confidentiality and release information about the agency’s prior investigations of Girardi, including those that did not result in formal charges, pursuant to Bus. & Prof. Code § 6086.1(b)(2).  
Declaration of Matt Hamilton ¶ 5, Ex. E.



13. On February 17, Mr. Hamilton received an email response from a State Bar employee, stating that the Chief Trial Counsel had been consulted and would not waive confidentiality. Hamilton Decl. ¶ 6, Ex. E. Mr. Hamilton responded the same day, seeking clarification as to the reasoning behind the Chief Trial Counsel's denial and requesting a formal determination from the Chair. Id. He did not receive any response. Id.

14. On May 6, The Times sent a letter to Sean SeLegue, Chair of the State Bar, asking him to waive confidentiality in the investigative records that Mr. Hamilton had requested, noting that disclosure of the requested information was particularly appropriate given the State Bar's recent filing of disciplinary charges against Girardi. See id. ¶ 7, Ex. F.

15. On May 13, the State Bar Chair sent a written response, again declining to waive confidentiality. Ex. G. The Chair's only stated justification for the decision was the legal assertion that the public disclosure provision of Section 6086.1(b)(2) applies only to "pending investigations against a licensee." Id.

16. On June 10, the State Bar Board of Trustees issued a news release announcing that it had conducted a "confidential

audit” of “past complaints against attorney Thomas V. Girardi,” which “revealed mistakes made in some investigations over the many decades of Mr. Girardi’s career going back some 40 years.” Ex. T. “In particular, the audit identified significant issues regarding the Office of Chief Trial Counsel’s investigation and evaluation of high-dollar, high-volume trust accounts.” Id. The news release stated that the Office of Chief Trial Counsel is considering various reforms to its investigative process, and quoted Mr. SeLegue stating that “[w]e must use lessons learned to strengthen the State Bar’s rules, policies, and procedures to avoid replicating problems of the past.” The news release recognized the “public interest in this matter,” but did not provide any specific information about the past investigations or the nature of the “confidential audit.”

17. On June 11, Mr. Hamilton asked the State Bar for a copy of the audit. See Hamilton Decl. ¶ 9. The State Bar denied the request the next day, stating that “the details of audits of closed cases are confidential under Business and Professions Code section 6086.1,” and that the “limited waiver that is authorized by statute for pending investigations is not applicable to closed matters,” among other grounds. Id.

**4. Statement of Issues Presented.**

18. This Petition presents the following issues: (1) is the provision of Cal. Bus. & Prof. Code § 6086.1(b)(2) that allows for public disclosure of information about disciplinary investigations limited to **pending** investigations; and (2) is disclosure of information about the State Bar's prior investigations of Girardi warranted, given the serious accusations that have been made against Girardi, and his personal connections to State Bar officials?

**5. Basis for Relief.**

19. This Court has “inherent power” over attorney discipline in this state, and can exercise that authority “at any step” of the process. Emslie v. State Bar, 11 Cal. 3d 210, 224 (1974). This inherent power gives this Court ultimate authority over decisions of the State Bar, which “is but an arm of this court” when handling disciplinary matters. Giddens v. State Bar, 28 Cal. 3d 730, 735 (1981). Consequently, this Court has the authority to review all State Bar decisions related to attorney discipline, and to order State Bar officials to release the requested information here. See Memorandum, Section II. Additionally, this Court has original jurisdiction to issue a writ of

mandate compelling the Bar to release the requested information. Id.; Cal. Const. Art. 6 § 10.

The State Bar's refusal to release information about its investigations of Girardi is based on a clear legal error; the public disclosure provision of Bus. & Prof. Code § 6086.1(b)(2) is not limited to open investigations. See Memorandum, Section IV. Furthermore, given the serious pending allegations of misconduct against Girardi, his prominent position in the California legal establishment, and his deep, long-standing connections to the State Bar, there is an overriding public interest in releasing the requested information, to ensure that the State Bar is held accountable in the performance of its disciplinary responsibilities. See Memorandum, Section V.

**6. Perfection of Remedies.**

20. The Times has requested the information at issue from the State Bar, and sought clarification of the agency's initial response from the State Bar Chair. The State Bar has confirmed that both the Chief Trial Counsel and State Bar Chair refuse to waive confidentiality and release the requested information. See Declaration of Matt Hamilton, ¶¶ 5-8; Exs. E-G.

**7. Absence (or Inadequacy) of Other Remedies.**

21. This Court is “the sole judicial entity with jurisdiction over attorney discipline.” Sheller v. Superior Court, 158 Cal. App. 4th 1697, 1710 (2008). See also Barry v. State Bar of California, 2 Cal. 5th 318, 322-23 (2017) (“a superior court lacks subject matter jurisdiction over attorney discipline matters, which are reserved to the exclusive jurisdiction of this court”).

Because The Times is not a party to any attorney disciplinary proceedings, but instead is seeking the requested information as a news organization providing information to the public, it does not have a means to challenge the decision in State Bar Court. See Cal. R. Ct. 9.13(a)-(d) (describing options for review of State Bar decisions). Nor is The Times permitted to bring an action to compel disclosure under the California Public Records Act (“CPRA”), given the express terms of the State Bar Act precluding such actions. Cal. Bus. & Prof. Code § 6086.1(b) (exempting records of disciplinary investigations from the CPRA). Consequently, The Times has no other remedy, other than to Petition this Court directly.

**PRAYER**

THEREFORE, The Times requests that:

1. This Court immediately issue an order pursuant to its inherent power and Rule of Court 9.13(d), and/or issue a writ of mandate pursuant to Article 6, Section 10 of the California Constitution and California Rule of Court 8.485(a), ordering the State Bar to release the requested information about any investigations or proceedings involving Real Party in Interest Thomas V. Girardi pursuant to California Business and Professions Code Section 6086.1(b)(2); and

2. The Court grant such other relief as is just and proper.

Dated: June 17, 2021

DAVIS WRIGHT TREMAINE LLP  
KELLI L. SAGER  
DAN LAIDMAN  
SAM F. CATE-GUMPURT

LOS ANGELES TIMES  
COMMUNICATIONS LLC  
JEFF GLASSER

By /s/ Kelli L. Sager  
Kelli L. Sager

Attorneys for Petitioner

**VERIFICATION**

I, Shelby Grad, declare:

1. I am a deputy managing editor at the Los Angeles Times, which is published by Los Angeles Times Communications LLC, the Petitioner in this action. I am authorized to make this verification on its behalf.

2. I have read the foregoing **PETITION FOR REVIEW OF STATE BAR DECISION AND/OR PETITION FOR WRIT OF MANDATE, TO COMPEL PUBLIC DISCLOSURE OF ATTORNEY DISCIPLINE INFORMATION** and know its contents. The facts stated in the Petition are either true and correct of my own personal knowledge, or I am informed and believe that such facts are true and correct, and on that basis I allege them to be true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 15, 2021, in Long Beach, California.

/s/ Shelby Grad  
Shelby Grad

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. SUMMARY OF ARGUMENT

The State Bar Act provides for the release of information about attorney discipline investigations that have not resulted in charges “when warranted for protection of the public.” Cal. Bus. & Prof. Code § 6086.1(b)(2). Public disclosure is justified when an attorney “has caused, or is likely to cause, harm to client(s), the public, or to the administration of justice,” or where transparency would promote “public confidence in the discipline system’s exercise of self-regulation,” among other grounds. State Bar Rule of Procedure 2302(d)(1)(A)-(B). See also Chronicle Publ’g Co. v. Superior Court, 54 Cal. 2d 548, 567 (1960) (history of State Bar Act shows disclosure is proper when it is “in the public interest”).

It is difficult to imagine a case where transparency is more important than the case at hand. Girardi exerted tremendous influence over the California legal establishment for decades, despite many allegations of serious misconduct over that same period. The dam finally burst toward the end of last year, when a federal judge in Chicago found Girardi in contempt for disobeying an order to disburse client funds, froze his assets, and referred him for criminal prosecution. As a result, Girardi’s law firm was



forced into bankruptcy, where the bankruptcy trustee has identified more than \$23 million in settlement funds owed to Girardi clients, with more clients coming forward each day.

On March 30, 2021, the State Bar filed 14 misconduct charges against Girardi, in the first public disciplinary action the agency has taken against him in more than five decades of practice. These charges followed The Times' publication of an investigative report that examined Girardi's unusually close relationship with State Bar officials, raising questions about why the agency failed to take any action against him in connection with previous investigations into his conduct.

As part of its reporting, The Times requested that the State Bar waive confidentiality and release information about all of its prior disciplinary investigations of Girardi, pursuant to Section 6086.1(b)(2). The State Bar categorically refused. Given the stark circumstances here, which are tailor-made for disclosure under the State Bar's own Rules of Procedure, the agency effectively has interpreted Section 6086.1(b)(2) as a dead letter, narrowly defining its application to only "pending" investigations. The Bar's position lacks legal merit, and serves to deprive the

public of vital information about how the agency has carried out its duties of protecting the public.

This Court has the inherent power to order the State Bar to release the requested information, as part of its authority to supervise and control every step of this State's attorney discipline process. See Section II. Review is particularly appropriate because the State Bar's sole justification for denying The Times' request is a legal error concerning a matter of statutory interpretation. The Bar's claim that the public disclosure provision of Section 6086.1(b)(2) only applies to pending proceedings is belied by the plain text of the statute and the Bar's own Rules, and ignores the constitutional mandate that the law be construed in favor of public access. See Section IV.

Finally, there is an overriding public interest in disclosure here, and no conceivable countervailing interest in secrecy. See Section V. The Times' request does not implicate only a single former attorney; it involves the integrity of the State Bar itself. Given Girardi's close connections to State Bar officials, and his positions of influence in the legal community, the public has a strong interest in scrutinizing the Bar's past investigations that did not result in charges, to ensure that there is "public

confidence in the discipline system's exercise of self-regulation.” Rule 2302(d)(1)(A)(i). The other factors set forth in the Bar's Rules also are easily satisfied: Girardi has been referred for criminal investigation by a federal judge for alleged large-scale misappropriation of millions of dollars in client funds. These circumstances, and the existence of so many other public proceedings where Girardi is or has been subject to substantially similar allegations, plainly eliminate any conceivable countervailing interest the Bar might have in protecting Girardi's reputation. See Section V.

For all of these reasons, The Times respectfully requests that this Court grant its Petition and order the State Bar to disclose the requested records immediately.

## **II. THIS COURT HAS AUTHORITY TO ORDER THE RELEASE OF THE REQUESTED INFORMATION**

This Court's “inherent authority over the discipline of licensed attorneys in this state is well established.” In re Attorney Discipline System, 19 Cal. 4th 582, 592 (1998). “In California, the power to regulate the practice of law, including the power to admit and to discipline attorneys, has long been recognized to be among the inherent powers of the article VI

courts.” Id. (quotation omitted). “Admission to the bar is a judicial function, and members of the bar are officers of the court, subject to discipline by the court. Hence, under the constitutional doctrine of separation of powers, the court has inherent and primary regulatory power.” Id. (quotation omitted).

This Court’s inherent power over attorney discipline necessarily includes authority over the State Bar, as it carries out that function on behalf of the judicial branch. See Giddens v. State Bar, 28 Cal. 3d 730, 735 (1981) (“in matters of discipline and disbarment, the State Bar is but an arm of this court”) (quoting Brotsky v. State Bar, 57 Cal. 2d 287, 301 (1962)). “The Legislature has acknowledged this fact explicitly” in the chapter of the Business and Professions Code addressing attorney discipline, explaining that “[n]othing in this chapter shall be construed as limiting or altering the powers of the Supreme Court of this State to disbar or discipline members of the bar as this power existed prior to the enactment of (the State Bar Act).” Id. (quoting Bus. & Prof. Code § 6087)).

The delegation of attorney disciplinary responsibilities to the State Bar “is alternative and cumulative to the inherent power of this court in such matters.” Emslie v. State Bar, 11 Cal.

3d 210, 224 (1974) (quotation omitted). Consequently, “[t]his court retains its inherent power to control such disciplinary procedure at any step.” Id. at 224-25 (emphasis added). See also Giddens, 28 Cal. 3d at 735 (“this court retains its power to control any such disciplinary proceeding at any step”).

This Court’s inherent power to control the attorney discipline process “at any step” necessarily includes ultimate control over the State Bar’s release of information about its disciplinary investigations. Id. That is especially true where, as here, the requested information bears not merely on the alleged misconduct of a particular attorney, but also on the integrity of the attorney disciplinary system itself. See Section IV.B; Conroy v. State Bar, 53 Cal.3d 495, 503-504 (1991) (“[o]ur principal concern in State Bar disciplinary proceedings is always the protection of the public and the courts, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standards for attorneys”).

Consequently, this Court plainly has the ability to order the State Bar to release the information requested by The Times, as an integral part of its “inherent supervisory powers” over the State Bar and the system of attorney discipline in California.

Giddens, 28 Cal. 3d at 734. This Court also has statutory authority to review the State Bar’s denial of The Times’ request under Rule of Court 9.13(d), which provides for a “petition to the Supreme Court to review any other decision ... of the Board of Trustees of the State Bar, or of any board or committee appointed by it and authorized to make a determination under the provisions of the State Bar Act, or of the chief executive officer of the State Bar or the designee of the chief executive officer.” Cal. R. Ct. 9.13(d).<sup>1</sup>

Under this provision, “[d]eterminations and recommendations of the bar in matters of discipline and admission are directly reviewable in this court.” Saleeby v. State Bar, 39 Cal. 3d 547, 557 (1985). Review is not limited to disciplinary actions themselves, but extends to “any decision by the State Bar related to disciplinary matters.” Jacobs v. State Bar, 20 Cal. 3d 191, 198 (1977); Cal. R. Ct. 9.13(d) (providing for

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<sup>1</sup> This includes decisions made by the Chief Trial Counsel, as well as by the Chair of the State Bar. See Cal. St. Bar R. Proc. 2101 (“[t]he Board of Trustees of the State Bar delegates to the Office of Chief Trial Counsel exclusive jurisdiction to review inquiries and complaints, conduct investigations and determine whether to file notices of disciplinary charges in the State Bar Court”).

review of “any other decision” in addition to separate provisions addressing this Court’s review of disbarment or suspension).<sup>2</sup>

Finally, this Court also has the power to grant The Times’ requested relief by construing its Petition as a request for a writ of mandate. See Cal. Const. Art. 6 § 10 (this Court has “original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition”). This Court “has long exercised such original extraordinary writ jurisdiction with respect to public officials’ exercise of their official conduct.”

Vandermost v. Bowen, 53 Cal. 4th 421, 451 (2012). “We will invoke our original jurisdiction where the matters to be decided are of sufficiently great importance and require immediate resolution.” Cal. Redevelopment Ass’n v. Matosantos, 53 Cal.4th 231, 253 (2011). As discussed below, there is an imperative need for transparency concerning the State Bar’s conduct, which is necessary to ensure public confidence in the state’s attorney

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<sup>2</sup> The procedures for this Court to review State Bar decisions under the Rules of Court supplement its inherent powers, and do not limit them in any way. See Cal. R. Ct. 9.10(g) (“[n]othing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the lawyer discipline and admissions system”).

discipline system. Consequently, this Court may issue a writ of mandate directing the State Bar to release the requested information as an additional form of relief.

### III. STANDARD OF REVIEW

In handling attorney discipline, “the bar’s role has consistently been articulated as that of an administrative assistant to or adjunct of this court,” and “[t]hus the judicial power in disciplinary matters remains with this court, and was not delegated to the State Bar.” Lebbos v. State Bar, 53 Cal. 3d 37, 47 (1991). Consequently, this Court independently reviews both the law and facts in such matters. See In re Silverton, 36 Cal.4th 81, 89 (2005) (“the State Bar Court’s findings and recommendations are merely advisory ... [t]he ultimate decision rests with this court”) (quotation omitted); Pineda v. State Bar, 49 Cal.3d 753, 758 (1989) (recognizing that this Court conducts an independent review in matters related to attorney discipline).

And where, as here, a dispute involves a question of law regarding statutory interpretation, the standard of review is de novo. See Connerly v. State Personnel Bd., 37 Cal.4th 1169, 1176 (2006) (“question of law” is “reviewed by us de novo”); People v. Gonzalez, 2 Cal.5th 1138, 1141 (2017) (on “issues of statutory



interpretation, our review is de novo") (quotation omitted). Thus, this Court should engage in independent review of this matter.<sup>3</sup>

#### **IV. THE COURT SHOULD ORDER THE RELEASE OF THE REQUESTED INFORMATION ABOUT THE GIRARDI INVESTIGATIONS**

"The State Bar is subject to the State Bar Act, which contains numerous statutes that make various of its activities and records public and others confidential." Sander v. State Bar of California, 58 Cal. 4th 300, 310 (2013) (citing Bus. & Prof. Code, § 6000 et seq.). In all of its functions, the "highest priority" of the State Bar is the "[p]rotection of the public ...." Bus. & Prof. Code § 6001.1 (State Bar Act, titled "Protection of the Public as the Highest Priority"). Consequently, the State Bar Act includes an interpretative mandate that, "[w]henver the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." Id.

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<sup>3</sup> The same would be true even if this were construed as a writ proceeding, because this Court independently reviews questions of law, and can issue writs of mandate to compel officials to exercise discretion "under a proper interpretation of the applicable law." Common Cause v. Board of Supervisors, 49 Cal. 3d 432, 442 (1989).

Consistent with this purpose, Section 6086.1 of the Act provides that “hearings and records of original disciplinary proceedings in the State Bar Court shall be public, following a notice to show cause.” Bus. & Prof. Code § 6086.1(a)(1). The Act also ensures that the “hearings and records” of all types of disciplinary proceedings are public once the proceedings commence. Id. § 6086.1(a)(2).

However, the statute also provides that “disciplinary investigations are confidential until the time that formal charges are filed.” Id. § 6086.1(b). The rationale for this general rule for investigations that do not result in discipline is that there is a very low bar for accepting complaints, which means that many tend to be frivolous. As this Court has explained, “[t]he State Bar will accept a complaint from any member of the public who feels, whether rightly or wrongly, that he has been aggrieved by the action of the attorney, or feels interested in complaining about an attorney, no matter how informally made the complaint may be.” Chronicle Publ’g Co. v. Superior Court, 54 Cal. 2d 548, 567 (1960). “Many such complaints found to be unfounded are never brought to the attention of the attorney involved,” and indeed the “vast majority of the charges made against attorneys are by

disgruntled clients and completely without foundation, and are so found by the State Bar.” Id.

However, this Court also has recognized that when a complaint is well-founded, public disclosure is appropriate even if the attorney receives a mere “private reproof.” Id. at 574. As this Court explained, “[a]n attorney who has so conducted himself as to merit a private reproof must expect that in a proper situation the facts upon which the reproof was based may be brought to light,” and “[p]ersons giving the information must realize that, just as when public disciplinary action follows, their information is subject to release, so it is when private disciplinary action is taken.” Id. In other words, the confidentiality of disciplinary investigations does not depend on whether “public disciplinary action” has been taken, but instead focuses on whether the charge “has been determined to be well founded.” Id.

Section 6086.1 also provides that the “Chief Trial Counsel or Chair of the State Bar may waive confidentiality,” where doing so is warranted “for protection of the public.” Bus. & Prof. Code § 6086.1(b)(2). Among other things, the State Bar “may issue, if appropriate, one or more public announcements or make information public confirming the fact of an investigation or

proceeding, clarifying the procedural aspects and current status, and defending the right of the licensee to a fair hearing.” Id.

Against this backdrop, and in light of the serious charges leveled at Girardi, The Times requested that the State Bar release information about any prior disciplinary investigations of him. See Exs. E-F. The Times expressly requested that the Chief Trial Counsel or Chair of the State Bar waive any claim of confidentiality for such materials, as permitted by Section 6086.1(b)(2). Id. They have declined to do so, however, asserting that “the language of the statute reflects that it is applicable only to pending investigations against a licensee,” and “the statute does not authorize the Chair to release information about closed complaints.” Ex. G.

Because the State Bar has refused The Times’ request on a clearly erroneous legal ground, and there is an overriding need for transparency here in order to protect the public, The Times respectfully requests that this Court order the State Bar to release the requested information.

**A. The State Bar’s Refusal To Release The Requested Information Is Based On A Clear Legal Error.**

The State Bar’s position that Section 6086.1 only allows for a waiver of confidentiality regarding “pending” investigations is plainly incorrect as a matter of basic statutory interpretation, and ignores the constitutional mandate that the provision must be broadly construed to favor public access.

The State Bar’s brief response letter to The Times does not cite any language in Section 6086.1 that limits the waiver of confidentiality to pending investigations. See Ex. G. Nor does any such limiting language exist. The statute provides that officials “may waive confidentiality, but only when warranted for protection of the public.” Bus. & Prof. Code § 6086.1(b)(2). It says nothing to suggest, let alone explicitly state, that it is limited to “pending” investigations. The State Bar cannot “insert qualifying provisions not included” in the statute, “and may not rewrite the statute to conform to an assumed intention which does not appear from its language.” Priebe v. Nelson, 39 Cal. 4th 1112, 1139 (2006) (quotation omitted). See also Lewco Iron Metals, Inc. v. Superior Court, 76 Cal. App. 4th 837, 843 (1999)

(when interpreting a statute, parties cannot “insert qualifying language which simply is not there”).

Although the State Bar did not point to anything specific in the statutory language that supports its narrow interpretation, the only portion that even references the “status” of an investigation states that officials may release information “confirming the fact of an investigation or proceeding, clarifying the procedural aspects and **current status**, and defending the right of the licensee to a fair hearing.” Bus. & Prof. Code § 6086.1(b)(2) (emphasis added). But this language does not suggest that the investigation must still be ongoing; its “current status” could be that it is still pending, or that it has concluded. Similarly, reminding members of the public that licensees have a right to “a fair hearing” is equally applicable to past investigations, to place those proceedings in context.

Furthermore, the State Bar’s narrow reading of the statute contradicts its own rules. State Bar Rule of Procedure 2302 sets forth a wide range of criteria for determining when it is appropriate to waive confidentiality under Section 6086.1(b)(2), none of which is limited to pending investigations. See Rule 2302. To the contrary, the Rules make clear that disclosure is

warranted when an attorney “has caused, or is likely to cause, harm to client(s), the public, or to the administration of justice.” Rule 2302(d)(1)(A) (emphasis added). The inclusion of past misconduct as a basis for disclosure is incompatible with the State Bar’s narrow reading concerning its investigations of Girardi.

The Rules also favor disclosure when an “attorney is the subject of multiple complaints and the Office of Chief Trial Counsel has determined not to pursue all of the complaints.” Rule 2302(d)(1)(D). In such instances, the Bar “may inform complainants whose allegations have not been pursued of the status of the other investigations or the manner in which the other complaint(s) against the attorney have been resolved.” Id. (emphasis added). Thus, the State Bar’s Rules expressly provide for waivers of confidentiality under Section 6086.1(b)(2) for matters that “have been resolved.” Id.

Another factor for consideration is the “status of the complaint or investigation,” which would be unnecessary if the provision only applied to “pending” investigations. Rule 2302(d)(1)(A)(vi). As this Court explained in describing the history and purpose of the predecessor to this rule, it “in effect,

reserves to the Board of Governors the right to release its information when it deems such release to be in the public interest.” Chronicle Publ’g, 54 Cal. 2d at 572. This case epitomizes a circumstance when it is in the “public interest” to disclose information about investigations that are no longer pending, to promote public confidence in the State Bar’s disciplinary system itself. See Rule 2302(d)(1)(A)(i) (one of the factors is whether disclosure would promote “public confidence in the discipline system’s exercise of self-regulation”).

If there were any ambiguity here (which there is not), the California Constitution requires that it be resolved in favor of public access. Article I, Section 3(b) provides that any statute, rule, and other legal authority “shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” Id. § 3(b)(2).

This Court has made clear that Article I, Section 3(b) is not a mere policy statement, but instead is “a rule of interpretation” that must be followed whenever legislative language or intent is unclear. Sierra Club v. Superior Court, 57 Cal. 4th 157, 166 (2013). See also City of San Jose v. Superior Court, 2 Cal. 5th 608, 620 (2017) (reiterating that Article I, Section 3(b) is a



“constitutional directive” that must be applied to ambiguous statutory language and rejecting a “narrow reading” of a statute that would have allowed a public agency to withhold records); Los Angeles County Board of Supervisors v. Superior Court, 2 Cal. 5th 282, 292 (2016) (“[t]o the extent [language in a statute] is ambiguous, [it] must be construed in whichever way will further the people’s right of access”) (quotation omitted).<sup>4</sup>

The constitutional mandate for a broad construction favoring public access applies to statutes and rules that “address access to the records of judicial branch entities, including the courts and the State Bar.” Sander, 58 Cal. 4th at 309 (emphasis added). That includes the provisions of the Business &

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<sup>4</sup> See also POET, LLC v. State Air Resources Bd., 218 Cal. App. 4th 681, 750 (2013) (“when a court is confronted with resolving a statutory ambiguity related to the public’s access to information, the California Constitution requires the court to construe the ambiguity to promote the disclosure of information to the public”); Bertoli v. City of Sebastopol, 233 Cal. App. 4th 353, 369 (2015) (broadly interpreting provision to promote public access by applying constitutional provision); Pasadena Police Officers Ass’n v. Superior Court, 240 Cal. App. 4th 268, 282-83 (2015) (recognizing that the “strong policy in favor of access” embodied in the Public Records Act is “now enshrined in the state Constitution”; interpreting statute accordingly).

Professions Code that constitute the State Bar Act, as well as the rules adopted by the Bar's governing body. Id. at 310.

In Sander, the State Bar argued that its Rule of Procedure 4.4 prohibited the release of anonymized bar admissions records, but this Court disagreed, explaining that “[i]f there were some doubt about whether rule 4.4 prohibits public access ... we nevertheless must interpret the rule in light of article I, section 3, subdivision (b) of the California Constitution.” Id. at 312.

“Consequently, we are required to interpret rule 4.4 narrowly,” in a manner that “does not bar release of the ... information that plaintiffs seek.” Id. at 313. The same analysis applies here.

Even if there were any doubt as to the scope of Section 6086.1(b)(2), it must be resolved by construing the statute in favor of public access, as required by Article I, Section 3(b). Id.

The State Bar's unduly narrow reading of Section 6086.1(b)(2) also overlooks the State Bar Act's overall mandate, which states that “[w]henver the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” Bus. & Prof. Code § 6001.1. As the circumstances of this case demonstrate, interpreting Section 6086.1(b)(2) as being limited to pending

investigations would not serve to protect the public; instead, it would frustrate efforts to hold the State Bar accountable for the exercise of its disciplinary responsibilities. The State Bar's denial of The Times' request is based on a clear legal error.

**B. There Is An Overriding Public Interest In Releasing The Requested Information.**

The State Bar's Rules elaborate on Section 6086.1(b)(2) by providing that officials "may disclose documents or information concerning a complaint(s) or investigation(s) for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality." Rules of Procedure of the State Bar of California, Rule 2302(d)(1). See also Chronicle Publ'g, 54 Cal. 2d at 572 (consistent with the intent of the State Bar Act, the rule provides for disclosure when it is "in the public interest").

In balancing these interests, the Rules explain that disclosure is appropriate when "[a]n attorney has caused, or is likely to cause, harm to client(s), the public, or to the administration of justice, such that the public ... should be advised of the nature of the allegations." Rule 2302(d)(1)(A). The

Rules provide other non-exclusive factors and considerations for when transparency should prevail:

- Disclosure would further the “maintenance of public confidence in the discipline system’s exercise of self-regulation”;
- “An attorney has committed criminal acts or is under investigation by law enforcement authorities”;
- Disclosure is warranted given the “gravity of the underlying allegations,” and/or “[t]he existence of any other public matters.”

State Bar Rules of Procedure, Rule 2302(d)(1)(A)-(C).

All of these circumstances strongly weigh in favor of transparency here, and no countervailing interests justify withholding the requested information.

**1. Disclosure Is Necessary To Maintain Public Confidence In The Bar’s Disciplinary System.**

This Petition presents precisely the kind of circumstances in which the “maintenance of public confidence in the discipline system’s exercise of self-regulation” requires maximum transparency. Rule 2302(d)(1)(A)(i). Given Girardi’s close ties to State Bar officials, and the influential positions he had in the state legal system, the agency’s failure to take any action against

him for decades – despite rampant accusations of wrongdoing – raises serious questions. It is imperative that the public be fully apprised about the nature and extent of the State Bar’s prior disciplinary investigations into Girardi’s conduct.

Indeed, public scrutiny would be warranted based solely on Girardi’s prominence in the legal establishment; over his years of practice, he and his colleagues held a number of powerful positions that gave him substantial influence over the state’s legal community. In particular, he served as one of the few private attorneys on the California Judicial Council, and he also served on a committee advising Governor Gavin Newsom on judicial appointments in Southern California. See Exs. H, I.

But as detailed in The Times’ investigative report of March 6, 2021, Girardi cultivated particularly deep connections at the State Bar. He had long-standing personal and professional relationships with State Bar executives, as well as officials who were directly involved in disciplinary investigations. See Ex. C. Howard Miller, who was president of the State Bar from 2009 to 2010, was an attorney at Girardi Keese for sixteen years, from 2002 to 2018. Id. Girardi also had a close relationship with the Bar’s former executive director, Joe Dunn, and at one point

Girardi's firm reimbursed the agency for \$5,000 in travel expenses by Dunn and State Bar investigator Tom Layton, which were the subject of an internal review. Id.

Girardi also provided free legal work to Bar investigator Tom Layton, and employed two of Layton's children; Girardi also treated Layton to expensive meals, and flew him on his private jet. Id. He also had a close relationship with Bar investigator John Noonan, as well as other personal and professional connections with State Bar attorneys. Id. Both State Bar attorneys and judges attended Girardi's lavish parties. Id.

More than once, Girardi invoked his connections with State Bar officials in legal proceedings where he had been accused of improper conduct. A former State Bar prosecutor even submitted a declaration supporting Girardi's firm when it was sued by a former client, who alleged that Girardi mishandled settlement funds. See Ex. K. On another occasion, Girardi referenced his relationship with a State Bar Court judge, when he was summoned to federal court in Philadelphia to respond to a judge's concerns about Girardi sending litigation-related correspondence that was described as so "unprofessional" that the judge said it "possibly will lead ... to disciplinary action." Ex. L at 267:1-2. In

his response to the misconduct charge, Girardi said that another judge in the Eastern District of Pennsylvania could vouch for his character, because the judge was “close” to Girardi’s friend on the State Bar Court. Id. at 271:14-15, 20-24.

Allegations of misconduct against Girardi are hardly new. During his tenure, he and his firm were sued nearly 100 times, in state and federal courts across the country. Laidman Decl. ¶ 4; Ex. C. Many of these suits were variations on the same theme: that Girardi allegedly mishandled settlement funds owed to his clients, or attorney fees meant for his co-counsel. E.g., Ex. J.

In 2010, the Ninth Circuit even formally reprimanded Girardi for “reckless” conduct, for allowing his name to be signed to briefs that contained falsehoods. See In re Girardi, 611 F.3d 1027, 1039 (9th Cir. 2010). The court recognized his “lengthy record[] of successful practice” but noted that “substantial legal experience may also be an aggravating factor, because an experienced attorney should know better than to engage in conduct that merits discipline.” Id. After initially stating in its published decision that Girardi had “no prior incidents of discipline,” the Ninth Circuit amended the opinion to clarify that

he did not have “a public record of prior discipline.” Id. at 1029 (emphasis added).

Despite frequent accusations of serious misconduct – including misconduct that resulted in disciplinary actions in other forums – the California State Bar allowed Girardi to continue practicing law without a blemish on his public record, and never brought any charges against him until March 30, 2021. Yet there is evidence that some officials within the State Bar took the numerous complaints against Girardi seriously, and launched formal probes into his conduct at various points over the years.<sup>5</sup>

For example, in 2016, Paul Kranich, a Girardi Keese client, sued Girardi and his firm, alleging that they misappropriated millions of dollars in settlement funds resulting from litigation

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<sup>5</sup> Indeed, if “a client files a complaint with the State Bar alleging that his or her trust fund is being mishandled,” the law states that “the State Bar **shall investigate**” the matter. Bus. & Prof. Code § 6091 (emphasis added). See also Cal. St. Bar P. Rule 2601 (“[e]xcept when a complaint involves allegations that an attorney mishandled a client’s trust fund account, Cal. Bus. & Prof. Code § 6091, a formal investigation is not mandatory”) (emphasis added). Given the disciplinary charges and other public proceedings against Girardi that show a pattern of alleged mishandling of client trust accounts (e.g., Ex. J, S), a reasonable conclusion can be drawn that the California State Bar received such complaints, and investigated them as required by law.



against Lockheed Corporation. See Ex. A. While the litigation was pending, Kranich’s attorney, Peter Dion-Kindem, received a letter from Edward McIntyre, a Special Deputy Trial Counsel who had been appointed by the State Bar to investigate Girardi’s conduct in connection with the Lockheed litigation. See Dion-Kindem Decl. ¶ 3, Ex. B. Mr. McIntyre indicated in the correspondence that he had been appointed as outside counsel for the Bar in the matter because the Office of the Chief Trial Counsel had recused itself. Id. Mr. Dion-Kindem produced records to assist the investigation in response to a subpoena, but did not hear anything further, and the investigation apparently did not result in any public disciplinary action. Id. ¶ 4; Ex. M.<sup>6</sup>

The State Bar’s lack of any public action against Girardi over the years – especially during time periods when his close

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<sup>6</sup> This is consistent with The Times’ report, which stated that the State Bar’s former acting executive director, Robert Hawley, had engaged private attorneys to conduct investigations of Girardi, because the agency’s own attorneys were recused because of ongoing litigation in which Girardi represented former State Bar officials Dunn and Layton in their lawsuits against the Bar after they were terminated. See Ex. C. The State Bar apparently had used outside counsel to investigate Girardi because of conflicts of interest prior to that litigation as well. Id.

allies were in powerful positions within the agency – raises an appearance of favoritism and undue influence. Given the extremely serious accusations about Girardi’s conduct discussed in the recent court proceedings, the State Bar’s inaction may have had stark consequences for other former clients and business associates. Releasing the requested information about past investigations of Girardi that did not result in formal charges would help to inform the public about whether the State Bar properly performed its duties, and – if not – shed light on why the lapses occurred, to inform discussion about how best to avoid similar lapses in the future. Transparency is an essential step to restoring public confidence in the attorney discipline system, which already has suffered.

The State Bar’s June 10 news release only underscores the need for transparency. The Bar recognized the “public interest in this matter,” acknowledged “mistakes” made in its investigations of Girardi, and stated that it is “considering” various reforms. Ex. T. But despite acknowledging the public’s interest, it did not make the audit report public, nor did it offer any details about the investigations beyond these generalities. Id. Instead, the State Bar is continuing to assert its legally erroneous

interpretation of Section 6086.1 as a basis for withholding the audit from the public. See Hamilton Decl. ¶ 9; Section III.A.

Furthermore, the only specific reforms under consideration mentioned in the press release relate to accounting and auditing practices; remarkably, the news release makes no mention of any reforms related to conflicts of interest, or any steps that will be taken to ensure that investigations are impartial. See Ex. T. Secrecy plainly enabled the “mistakes” made in the prior Girardi investigations, and continued secrecy will only serve to undermine meaningful reforms.

In the analogous context of weighing the public interest in disclosure under the California Public Records Act, this Court has recognized that “to verify accountability, individuals must have access to government files.” CBS, Inc. v. Block, 42 Cal. 3d 646, 651 (1986). “Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.” Id. Guided by this principle, this Court found an overriding public interest in releasing information from applications for concealed weapons permits, despite claims that it would infringe on the applicants’ privacy. Id.

As this Court explained, “[p]ublic inspection of the names of license holders and the reasons the licenses were requested enables the press and the public to ensure that public officials are acting properly in issuing licenses for legitimate reasons.” Id. at 654. Disclosure therefore furthered “the right of the public and the press to review the government’s conduct of its business.” Id.

The same is true here, where disclosure of the requested information is needed so that the public and press can scrutinize how State Bar officials carried out the agency’s disciplinary responsibilities. See also California State University v. Superior Court, 90 Cal. App. 4th 810, 833 (2001) (public interest favored disclosure of records under CPRA so that the “public should also be able to determine whether any favoritism or advantage has been afforded certain individuals or entities in connection with the license agreements, and whether any discriminatory treatment exists”); New York Times Co. v. Superior Court, 218 Cal. App. 3d 1579, 1585-86 (1990) (public disclosure of information about water users who exceed allocation from public agency would “ensure that certain individuals do not receive special privileges from the District, or alternatively, are not subject to discriminatory treatment”).

The “maintenance of public confidence in the discipline system’s exercise of self-regulation” is a clearly overriding interest that militates in favor of disclosure here. Rule 2302(d)(1)(A)(i).

**2. A Federal Judge Has Referred Girardi For Criminal Investigation.**

This matter also presents a situation where disclosure is warranted because the “attorney has committed criminal acts or is under investigation by law enforcement authorities.” Cal. St. Bar P. Rule 2302(d)(1)(B).

Girardi’s criminal referral stems from litigation in the Northern District of Illinois where Girardi Keese has represented widows and children of victims of the Lion Air Flight 610 crash. See Ex. N at 278. In that matter, the firm’s co-counsel complained to the court that Girardi Keese had failed to distribute some or all of the settlement proceeds, and had misappropriated funds “by converting ... and redirecting them to litigation funders, other creditors, and friends and family of GK’s sole equity owner, Tom Girardi.” Id. at 279.

At a December 14, 2020, hearing, Girardi Keese’s co-counsel in the Lion Air litigation alleged that “the Girardi firm

has been running a Ponzi scheme,” and “when money comes in, they use that to pay previous creditors, previous clients, and then they wait until more money comes,” and that “[t]hey’ve been doing it for a decade.” Ex. O at 293:11-16. U.S. District Judge Thomas M. Durkin castigated Girardi for “unconscionable” conduct, *id.* at 304:13, stating that for an attorney to spend client funds kept in trust was both a “serious ethical violation” and “probably” illegal. *Id.* at 296:6-14. Judge Durkin referred the matter to the U.S. Attorney’s Office for investigation, entered a \$2,000,000 judgment against Girardi and his firm, and froze his and the firm’s assets. *Id.* at Ex. O at 296:14-15, 302:24-25, 306:8-10; Ex. P.

Judge Durkin added, “[n]o matter what your personal financial situation is, no matter what kind of pressures you're under, if you touch client money, you're going to be disbarred and, quite possibly, **charged criminally**. And we learn that in law school. And someone as experienced as Mr. Girardi knows that as well as anyone.” Ex. O at 298:25-299:5 (emphasis added).

The court’s referral of Girardi for criminal investigation further justifies disclosure of the information requested by The Times. See Rule 2302(d)(1)(B).

### **3. The Gravity Of The Underlying Allegations Warrants Maximum Transparency.**

The State Bar Rules also favor waiving confidentiality based on the gravity of allegations made against an attorney. Cal. St. Bar P. Rule 2302(d)(1)(A)(viii). Here, Girardi stands accused of a long-standing pattern of misappropriating millions of dollars in client funds. Misappropriation of client funds is both a clear ethical violation and a “gross violation of general moral principles,” which profoundly harms clients. Brody v. State Bar, 11 Cal. 3d 347, 350 (1974). Moreover, as this Court has noted, an equally “pernicious effect” of such misappropriation is the degree to which it undermines “the public’s confidence in the legal profession.” Read v. State Bar, 53 Cal. 3d 394, 425 (1991), as modified on denial of reh’g (May 30, 1991).

The Notice of Disciplinary Charges filed against Girardi on March 30, 2021, contains 14 counts of extremely serious alleged misconduct, arising from three separate lawsuits handled by Girardi and his firm. See Ex. S. In one case, a client whose husband died in a boating accident alleges that the balance in her client trust account dropped below what she was owed on at least 10 different occasions, and Girardi failed to distribute funds owed

to her, despite repeated requests. Id. ¶¶ 1-25. In that matter, the Bar charged Girardi with misappropriation, failure to maintain the trust account and disburse the funds, and making a false statement for misrepresenting his share of the settlement proceeds. Id.

The allegations related to Girardi's other lawsuits follow a similar pattern, in which he allegedly misappropriated settlement funds, failed to maintain client trust accounts, and made false statements to his clients about why payments had not been made. Id. ¶¶ 56-70. In connection with the Lion Air case, State Bar prosecutors also charged Girardi with failure to obey a court order to disburse settlement funds, along with charges for misappropriation and misrepresentation. Id. ¶¶ 37-46.

Alleged misappropriation of monies owed to clients apparently was the subject of the past complaints against Girardi, which the State Bar investigated without charges being brought. See Dion-Kindem Decl. ¶¶ 2-3, Ex. B; Ex. O at 293:11-16, 18-19. Evidence in Girardi's bankruptcy proceeding suggests a potentially massive scale of alleged misconduct, with the trustee identifying **more than \$23 million** in funds owed to



Girardi clients thus far, and more clients expected to come forward. See Ex. R.

This Court has noted that it “will ordinarily impose the harshest discipline in ... cases” involving misappropriation of client funds.” Read, 53 Cal. 3d at 425. Consequently, the “gravity of the underlying allegations” here strongly favors the release of the requested information. See Rule 2302(d)(1)(A)(viii).

**4. There Can Be No Countervailing Interest Given The Existence Of Other Public Matters.**

The State Bar Rules also contain a catch-all provision, allowing for consideration of the “existence of any other public matters.” Rule 2302(d)(1)(A)(v). This reflects the underlying justification given for confidentiality, namely, that attorneys have an interest in protecting their reputations from the taint that would result from the disclosure of frivolous charges, which make up a large portion of State Bar complaints. See Chronicle Publ’g Co., 54 Cal. 2d at 567. But where charges are “well-founded,” that private interest in an attorney’s personal reputation must give way to the public interest in transparency, and the attorney “must realize that, just as when public

disciplinary action follows, their information is subject to release.” Id. at 574.

Accordingly, any interest in secrecy would be significantly diminished, if not obliterated entirely, by the “existence of any other public matters” involving the same attorney, particularly where those matters involve substantially the same charges. Rule 2302(d)(1)(A)(v). See Sipple v. Chronicle Publ’g Co., 154 Cal. App. 3d 1040, 1047 (1984) (“there can be no privacy with respect to a matter which is already public”); San Bernardino County Dept. of Public Social Services v. Superior Court, 232 Cal. App. 3d 188, 205 n.10 (1991) (“the fact that the parents were facing criminal charges stemming from the same facts” weighed in favor of allowing public access to juvenile court proceeding as related information would already be public).

As described above, there are many other public matters in which similar alleged misconduct by Girardi has been described in great detail. Those matters include the State Bar’s March 30 Notice of Filing of Disciplinary Charges; the court proceedings in the Lion Air case, in which the court has referred Girardi for criminal investigation; the published Ninth Circuit decision formally reprimanding Girardi; the bankruptcy case in which the

trustee has described millions of dollars being owed to Girardi's clients; and the numerous civil lawsuits against Girardi and his firm that included similar misconduct allegations. See Sections B.1-B.3, supra. Given the existence of these other public matters, there is no countervailing interest in privacy or reputation that comes close to overcoming the prevailing need for transparency here. See Rule 2302(d)(1)(A)(v).

## V. CONCLUSION

The legal framework for disclosure of information about attorney discipline recognizes that sometimes transparency about past and present investigations is needed to ensure public confidence in the integrity of the disciplinary system itself. This is precisely that case, and yet the State Bar is categorically refusing to release any information about its investigations of Girardi based on a clear legal error. This Court should exercise its inherent power to make sure that the system it oversees is accountable to the public that it is charged with protecting.

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For all of these reasons, The Times respectfully requests that this Court grant its Petition and order the State Bar to disclose the requested records immediately.

Dated: June 17, 2021

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**CERTIFICATE OF WORD COUNT**

Pursuant to California Rule of Court 8.520, the undersigned certifies that the text of this Petition, including footnotes, consists of 9,786 words in 13-point Times New Roman type as counted by the Microsoft Word 2010 word-processing program used to generate the text.

Dated: June 17, 2021

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## PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 years, employed in the City and County of Los Angeles, California, and not a party to the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 865 South Figueroa Street, Suite 2400, Los Angeles, CA 90017.

On June 17, 2021, I served the following document:  
**VERIFIED PETITION FOR WRIT OF MANDATE TO COMPEL  
PUBLIC DISCLOSURE OF ATTORNEY DISCIPLINE  
INFORMATION** as follows:

### SEE ATTACHED SERVICE LIST

**[X] U.S. Mail:** I instructed Office Personnel to serve said document on the parties referenced on the Service List by placing the document in a sealed envelope with first-class postage thereon fully prepaid, and place the envelope for collection and mailing with the United States Postal Service at Los Angeles, California.

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

Executed on June 17, 2021, at Riverside, California.

/s/ Ellen Duncan  
Ellen Duncan

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