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8
9 **Plaintiff In Propria Persona**

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12
13 **HERBERT LESLIE GREENBERG,**)
14 **Plaintiff,**)
15 **v.**)
16 **UNITED STATES SECURITIES AND**)
17 **EXCHANGE COMMISSION,**)
18 **Defendant.**)
19

20 **CASE NO. CV06 7878 GHK (CTX)**
21 **COMPLAINT FOR DECLARATORY**
22 **AND INJUNCTIVE RELIEF**

23 **COMES NOW plaintiff HERBERT LESLIE GREENBERG and alleges as follows:**

24 **JURISDICTION AND VENUE**

25
26 **1. This is an action brought under the Freedom of Information Act ("FOIA"), 5**
27 **U.S.C. §552 et seq., the Federal Advisory Committee Act, 5 U.S.C. App. §2, et seq.**
28 **("FACA") and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701, et seq. Plaintiff**

1 **HERBERT LESLIE GREENBERG a/k/a LES GREENBERG ("Plaintiff") alleges that**
2 **defendant UNITED STATES SECURITIES AND EXCHANGE COMMISSION ("SEC")**
3 **violated:**

4 (A) FOIA by improperly failing and, thus, refusing to produce agency
5 records pursuant to Plaintiff's request, failing to conduct an "adequate search" and
6 improperly claiming a "deliberative process privilege";

7 (B) FACA by seeking advice and recommendations concerning its
8 securities arbitration rulemaking responsibilities from the SECURITIES INDUSTRY
9 CONFERENCE ON ARBITRATION ("SICA"), a securities industry dominated advisory
10 committee that does not comply with various requirements of FACA, and, in particular, by
11 seeking recommendations and advice with respect to Plaintiff's Petition for Rulemaking
12 (SEC File No. 4-502)("Petition No. 4-502"); and,

13 (C) APA by utilizing SICA as an advisory committee, which operates in
14 violation of FACA, and failing to act properly upon Petition No. 4-502 pursuant to defendant
15 SEC's General Rule 192 ["Any person desiring the issuance, amendment or repeal of a rule
16 of general application may file a petition therefor with the Secretary. ... The Secretary shall
17 ... refer it to the appropriate division ... for consideration and recommendation. Such
18 recommendations shall be transmitted with the petition to the Commission for such action as
19 the Commission deems appropriate." (Emphasis added.)].

20
21 2. This court has jurisdiction over this action pursuant to 28 U.S.C. §1331 (action
22 arising under the laws of the United States), 28 U.S.C. §1346(a)(2) (United States as
23 defendant), 5 U.S.C. §552(a)(4)(B) (FOIA), 28 U.S.C. §1361 (mandamus), 5 U.S.C. §701
24 (APA). Venue lies in this district pursuant to 5 U.S.C. §552(a)(4)(B).

25
26 **PARTIES**

27
28 3. Plaintiff is an individual, duly licensed by the State of California as an

1 attorney at law, and resident of the County of Los Angeles, State of California. Plaintiff has
2 served as an Associate General Counsel and Compliance Director of a securities firm, which
3 was a member of the NEW YORK STOCK EXCHANGE, INC. ("NYSE"). From 1973,
4 Plaintiff has engaged in the private practice of law as a sole practitioner where substantially
5 all client representation has dealt with financial/investment disputes. Plaintiff has
6 represented many individual investors and approximately twenty (20) securities firms before
7 arbitration panels and/or in various state and/or federal courts. Plaintiff no longer
8 represents securities firms. For approximately thirty (30) years, Plaintiff has been a
9 member of securities arbitrator panels, before which disputes between public investors and
10 securities firms are resolved by means of binding arbitration. From time to time during the
11 past fifteen (15) years, Plaintiff has vigorously advocated changes to the securities
12 arbitration dispute resolution process.

13
14 4. Defendant SEC is an agency of the United States Government within the
15 meaning of 5 U.S.C. §552(f)(1). Defendant SEC has granted registration to and exercises
16 regulatory authority over securities firms and SELF-REGULATORY ORGANIZATIONS
17 ("SROs"), e.g., the NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
18 ("NASD"), NYSE. (See, e.g., Securities Exchange Act of 1934 §§3(a)(26)(28), 15, 15A.)
19 Plaintiff is informed and believes and thereupon alleges that SROs are quasi-public
20 organizations, amenable/subject to strict management by defendant SEC through defendant
21 SEC's exercise of regulatory authority, closely tied to policies of defendant SEC and
22 obligated to enforce securities laws. Further, SROs sponsor arbitration forums before which
23 disputes between public investors and securities firms are resolved. Defendant SEC
24 exercises regulatory authority with respect to the rules governing arbitration proceedings
25 heard before those forums. (See, e.g., Securities Exchange Act of 1934 §19(b).)

26
27 ////

28 ////

1 **STATEMENT OF FACTS**

2
3 **Defendant SEC "Established" and "Utilized" SICA as an "Advisory Committee"**

4
5 5. Plaintiff is informed and believes and thereupon alleges that SICA is a
6 structured group dominated by the securities industry and is composed of representatives
7 from:

8 (A) SROs, e.g., the NASD, the NYSE, each of which has members that are
9 securities firms;

10 (B) The SECURITIES INDUSTRY ASSOCIATION ("SIA"), which brings
11 together the shared interests of nearly 600 securities firms to accomplish common goals;
12 and,

13 (C) Three "Public Members," who serve subject to the concurrence of the
14 SRO participants of SICA.

15
16 6. Plaintiff is informed and believes and thereupon alleges that defendant SEC
17 prompted the creation of SICA by releasing Securities Exchange Act Release No. 34-12974
18 (November 15, 1976), which states, in part:

19 **Designation of an Advisory Committee**

20 After review of the public comments and following the public forum,
21 the Commission will designate an advisory committee to develop specific
22 recommendations for implementation of the investor dispute resolution
23 system. Among other things, the advisory committee will be expected to
24 submit to the Commission (a) a proposed mediation-arbitration code, (b)
25 operational guidelines for the small claims adjusters, and (c) recommendations
26 concerning the creation and size of the administrative entity.

27 Recommendations for persons to serve on this advisory committee
28 should be sent to the attention of the Acting Director of the Office of

1 Consumer Affairs (of defendant SEC)... For the Commission. George A.
2 Fitzsimmons, Secretary (Emphasis added.)

3
4 7. Plaintiff is informed and believes and thereupon alleges that SICA was formed
5 at the prompting/behest and with the guidance of defendant SEC, for the specific purpose of
6 obtaining advice and recommendations on matters related to rules governing arbitration
7 before forums sponsored by SROs, and SICA has been utilized by defendant SEC for
8 approximately thirty (30) years to obtain such advice and recommendations. (See, e.g.,
9 Securities Exchange Act Release No. 34-13470 [April 26, 1977] ["The New York Stock
10 Exchange, Inc. and the National Association of Securities Dealers, Inc. proposed that a
11 conference be held or that a task force be created (SICA)... The Commission believes ...
12 the Commission should consider the ... recommendations of the conference before taking
13 further direct action. ... (T)he Commission wishes to await the results of the proposed
14 conference with the expectation that such results will reflect the goals and attributes set
15 forth in Securities Exchange Act Release No. 34-12974."].)

16
17 8. Plaintiff is informed and believes and thereupon alleges that various reports
18 accurately describe the purpose, formation and/or utilization of SICA as follows:

19 (A) "In response to Commission initiatives on arbitration, the SROs
20 formed the Securities Industry Conference on Arbitration (SICA) in 1977. The purpose of
21 SICA was to develop uniform rules governing SRO arbitrations between broker-dealers and
22 customers." (Defendant SEC's "Oversight of Self-Regulatory Organization Arbitration"
23 [Audit 289, August 24, 1999].)

24 (B) "SICA was formed by the securities industry in 1977 at SEC's
25 invitation to review then existing securities arbitration procedure...." ("Securities
26 Arbitration: How Investors Fare" [GAO/GGD-92-74, May 1992].)

27 (C) "The securities industry established SICA in 1977 after a request by
28 the SEC to the industry to conduct a review of existing arbitration procedures for small

1 claims." ("Securities Arbitration Reform: Report of the Arbitration Policy Task Force to
2 the Board of Governors of NASD" [January 1996].)

3 (D) "SICA was established in early April 1977. Subsequently, the
4 Commission invited proposals from SICA for improved methods for resolving investors'
5 small claims. The proposal for a small claims procedure put forth by SICA was
6 subsequently approved and adopted by the SROs and the SEC." (Twelfth Report [2003] of
7 SICA.)

8
9 9. Plaintiff is informed and believes and thereupon alleges that "Public
10 Members" of SICA have made statements that accurately describe the nature, purpose,
11 formation and/or utilization of SICA as follows:

12 (A) "SICA is an advisory committee to the SEC (Securities and Exchange
13 Commission), whose representatives are in attendance at all SICA meetings." (Emphasis
14 added.) (Website of THEODORE G. EPPENSTEIN, "Public Member" of SICA 1998 -)

15 (B) "'This is a serious issue,' says Constantine Katsoris, a law professor at
16 Fordham University and one of three of the original public members of the Securities
17 Industry Conference on Arbitration (SICA). SICA was conceived 'with the SEC's blessing
18 ... to create a uniform set of rules for all exchanges so that we could have a national
19 securities market,' says Katsoris." (Registered Representative Magazine, "California
20 Securities Arbitrations at a Standstill," September 1, 2002)

21
22 10. Plaintiff is informed and believes and thereupon alleges that defendant SEC
23 "views SICA as a sounding board" and requires SROs, in their respective rulemaking
24 requests filed with defendant SEC, to discuss SICA's action or inaction on the issues
25 presented in the rulemaking requests. (Minutes of SICA Meeting – October 20, 2004)

26
27 11. Plaintiff is informed and believes and thereupon alleges that defendant SEC
28 seeks the views, recommendations or comments of SICA with respect to Petitions for

1 **Rulemaking, which are not initiated by SROs and seek changes to the securities arbitration**
2 **process, and its own recommendations for changes to the securities arbitration process.**
3 **("The Level Playing Field," 17 Fordham Urban Law Journal 419, 429-430 [1990].)**
4

5 **12. Plaintiff is informed and believes and thereupon alleges that:**

6 **(A) SICA has held meetings for approximately thirty (30) years;**

7 **(B) SICA's meetings have not been open to the public;**

8 **(C) Timely notice of each meeting of SICA has not been published in the**
9 **Federal Register;**

10 **(D) All interested persons have not been allowed to attend, appear before,**
11 **or file statements with SICA;**

12 **(E) Records, reports, transcripts, minutes, appendixes, working papers,**
13 **drafts, studies, agenda, or other documents, which were made available to or prepared for**
14 **or by SICA, have not been made available for public inspection and copying;**

15 **(F) Defendant SEC has not:**

16 **(1) Exercised control and supervision over procedures and**
17 **accomplishments of SICA;**

18 **(2) Assembled and maintained the reports, records, and other**
19 **papers of SICA during its existence; and**

20 **(3) Carried out, on behalf of that agency, the provisions of FOIA,**
21 **with respect to such reports, records, and other papers of SICA;**

22 **(G) SICA has not been "fairly balanced in terms of the points of view**
23 **represented" and its controlling members have private interests in a regulated industry.**

24
25 **////**

26 **////**

27 **////**

28

1 **Defendant SEC Referred Plaintiff's Petition for Rulemaking to SICA for Advice and**
2 **Recommendations, Avoiding the Public Comment Procedure And Assuring Indefinite Delay**
3 **or Negative Comment If The Petition Is Presented to SEC Commissioners**
4

5 13. On or about May 13, 2005, Plaintiff filed Petition No. 4-502 with defendant
6 SEC. On June 22, 2005, Plaintiff filed Supplemental Information to Petition No. 4-502 with
7 defendant SEC. Petition No. 4-502 describes deficiencies in the process of resolving disputes
8 between public investors and securities firms by means of arbitration before forums
9 sponsored by SROs and advocates associated changes, which are contrary to the procedures
10 promulgated by SICA and/or its member SROs, e.g.:

11 (A) Specifically permit arbitration panel members, should they elect to do
12 so, to conduct legal research, or, in the alternative, forbid SRO sponsored arbitration forums
13 from restricting arbitrators from conducting legal research;

14 (B) Abolish the requirement that a securities industry arbitrator be
15 assigned to each three person panel hearing customer disputes or, in the alternative, require
16 that information presented to a panel of arbitrators by a securities industry arbitrator be
17 revealed to the parties during open hearing;

18 (C) Require SROs to conduct continuing evaluations of ability of every
19 arbitrator on their panels to perform his/her duties, including, but not limited to mandatory
20 peer evaluations;

21 (D) Require SROs to train arbitrators in applicable law;

22 (E) Require SROs to reveal in pre-dispute arbitration agreements whether
23 their arbitrators are required to follow the law in their decision-making process, the training
24 of their arbitrators in the law, and their process, if any, to evaluate their arbitrators on a
25 continuing basis.

26
27 14. On or about May 13, 2005, defendant SEC published Petition No. 4-502 on its
28 website and requested public comment. Defendant SEC received several supportive

1 comment letters that it promptly published on its website. SICA did not avail itself of that
2 process to comment upon Petition No. 4-502.

3
4 15. On or prior to August 19, 2005, defendant SEC referred Petition No. 4-502
5 and the associated public comments to SICA to obtain SICA's advice and recommendations.

6
7 16. On or about August 30, 2005, upon first learning of the referral of Petition No.
8 4-502 to SICA, in a letter sent to defendant SEC via electronic communication, which
9 Plaintiff is informed and believes and thereupon alleges that defendant SEC received, but to
10 which it has not responded, Plaintiff objected to that referral to SICA by stating, in part:

11 Referring the Petition to the Securities Industry Conference on
12 Arbitration ("SICA"), a group composed of representatives of various SROs,
13 the Securities Industry Association ("SIA") and "public" members, does not
14 provide confidence that the severe problems described in the Petition would be
15 effectively addressed. One of the SROs is the subject of the complaints set
16 forth in the Petition. In a letter to the SEC dated August 2, 2005, the SIA
17 described itself as follows: "The Securities Industry Association brings
18 together the shared interests of nearly 600 securities firms to accomplish
19 common goals." Essentially, the Petition would not receive a fair hearing
20 before the SICA as it sets forth complaints against most of the SICA's
21 members' vested interests.

22
23 17. Plaintiff is informed and believes and thereupon alleges that, at SICA's
24 meeting on October 11, 2005:

25 (A) SICA appointed a subcommittee ("Subcommittee") to present "a
26 proposed plan of action" with respect to Petition No. 4-502;

27 (B) SICA designated four (4) representatives of the securities industry, one
28 (1) "Public Member" and two (2) representatives of the securities industry as alternates to

1 be members of the Subcommittee; and,

2 (C) None of the seven (7) representatives of defendant SEC in attendance
3 registered any criticism as to the constitution of the Subcommittee. (Minutes of SICA
4 Meeting – October 11, 2005)

5
6 18. Plaintiff is informed and believes and thereupon alleges that, at SICA's
7 meeting on January 12, 2006:

8 (A) The Subcommittee reported that, in response to a request by defendant
9 SEC to "evaluate" Petition Nos. 4-502, the Subcommittee had "evaluated the issues and had
10 recommendations";

11 (B) The Subcommittee recommended that SICA submit the proposals to
12 other subcommittees and further discuss them at SICA's meeting scheduled on March 21,
13 2006;

14 (C) The Subcommittee evaluated the proposals as "unnecessary,"
15 "inappropriate," "run counter to SROs goals," and/or "strict application of the law would
16 be harmful to investors"; and,

17 (D) None of the six (6) representatives of defendant SEC in attendance
18 registered any criticism. (Emphasis added.) (Minutes of SICA Meeting – January 12, 2006)

19
20 19. Plaintiff is informed and believes and thereupon alleges that, at SICA's
21 meeting on March 21, 2006, SICA "tabled" discussion of Petition No. 4-502 due to "time
22 constraints," and none of the four (4) representatives of defendant SEC in attendance
23 registered any criticism. (Minutes of SICA Meeting – March 21, 2006)

24
25 20. On or about July 24, 2006, after Plaintiff made several inquires of defendant
26 SEC as to the status of Petition No. 4-502, defendant SEC informed Plaintiff via letter, which
27 states, in pertinent part:

28 [W]e have asked the Securities Industry Conference on Arbitration

1 ("SICA") to consider your petition and to provide us with its views. ... SICA
2 ... has appointed a subcommittee to give them (issues raised in Petition No. 4-
3 502) more thorough consideration. We have not yet received a formal
4 response or final recommendation from SICA.

5
6 21. Plaintiff is informed and believes and thereupon alleges, with respect to
7 Petition No. 4-502, that:

8 (A) When defendant SEC sought the advice and recommendations of SICA
9 or shortly thereafter, defendant SEC had the reasonable expectation that the advice or
10 recommendations would be counter to the proposal;

11 (B) Defendant SEC has not received a "formal response or final
12 recommendation" from SICA;

13 (C) Defendant SEC has no reasonable expectation that it will receive a
14 "formal response or final recommendation" from SICA; and,

15 (D) Unless and until defendant SEC receives a "formal response or final
16 recommendation" from SICA, defendant SEC will not transmit Petition No. 4-502 to the
17 Commissioners of defendant SEC pursuant to SEC General Rule 192.

18
19 **SICA Denied Plaintiff Access to Its Meeting and**
20 **Refused to Provide Its Documents**

21
22 22. During the period of July 28, 2006 to August 5, 2006, Plaintiff corresponded
23 via electronic communications, with SICA (through SICA's Chairman CONSTANTINE
24 KATSORIS) inquiring as to:

25 (A) At which quarterly SICA meetings the issues (in Petition No. 4-502)
26 were discussed;

27 (B) The date when the Subcommittee was first appointed;

28 (C) The identity and email address of the members of the Subcommittee;

1 (D) Whether the Subcommittee had issued a report with respect to the
2 issues; and,

3 (E) If the Subcommittee had not already issued such report, when the
4 Subcommittee expected that it would issue it.

5
6 23. SICA has failed and, thus, refused to answer questions (A)-(E) of Paragraph
7 22, above, or any of them. SICA responded to Plaintiff by stating, "When SICA reaches
8 definite conclusions ... we will forward them to ... the SEC...." Plaintiff further inquired,
9 "[I]s SICA under any time constraint to reach 'definite conclusions'? In other words, what
10 assurance does the SEC have that SICA will ever reach 'definite conclusions' and provide
11 that information to the SEC?" SICA responded by stating, in part, "[S]ome of your
12 suggestions are controversial and not subject to simple answers; thus, subject to serious
13 debate. ... SICA will report directly to the SEC when it has completed its study."

14
15 24. Plaintiff, in the communications described in Paragraph 22, above, requested:

16 (A) Admission to and an opportunity to present his positions related to
17 Petition No. 4-502 to members of SICA at its then forthcoming meeting in October 2006;
18 and,

19 (B) SICA to provide Plaintiff with a copy of various documents issued by
20 SICA, i.e.:

21 (1) SICA's First, Second, Third, Fourth, Fifth, Sixth, Seventh,
22 Eighth, Ninth, and Tenth Reports;

23 (2) Exhibits A ("Guidelines"), B ("printed evaluation form") and C
24 ("Memorandum") of the Final Report Securities Industry Conference on Arbitration Pilot
25 Program for Non-SRO-Sponsored Arbitration Alternatives; and,

26 (3) A writing that sets forth SICA's criteria to determine whether a
27 person qualifies as a "Public Member."

28

1 25. SICA declined to permit Plaintiff to attend its meeting (scheduled for October
2 2006) and has failed and, thus, refused to provide documents described in Paragraph 24(B),
3 above, or any of them, to Plaintiff.

4
5 26. Plaintiff provided defendant SEC with a copy of each of Plaintiff's
6 communications with SICA as the respective communications occurred. Defendant SEC has
7 not communicated with Plaintiff as to any of those communications or the content thereof.

8
9 27. On or about August 8, 2006, by letter sent to defendant SEC via electronic
10 communication, which Plaintiff is informed and believes and thereupon alleges that
11 defendant SEC received, but to which it has not responded, Plaintiff informed defendant
12 SEC that SICA had recently "declined to offer any assurance that it will ever make any
13 recommendation (concerning Petition No. 4-502) to the SEC" and, Plaintiff, in effect, stated
14 that:

15 (A) Defendant SEC's reliance upon SICA for advice or recommendations
16 concerning Petition No. 4-502 violates provisions of FACA; and,

17 (B) Pursuant to SEC General Rule 192, defendant SEC should promptly
18 proceed to act upon Petition No. 4-502.

19
20 28. On or about August 16, 2006, by letter sent to SICA via electronic
21 communication, which Plaintiff is informed and believes and thereupon alleges that
22 defendant SEC received, but to which it has not responded, Plaintiff, in effect, stated to
23 SICA that its relationship with defendant SEC violates provisions of FACA.

24
25 **Plaintiff's FOIA Request, Defendant SEC's "Final Response" and Plaintiff's Appeal**

26
27 29. On August 5, 2006, by letter sent to defendant SEC via electronic
28 communication, Plaintiff requested under FOIA ("Request"), in pertinent part:

1 ALL writings, e.g., letters, emails, audits, reports, notes of oral
2 communications and/or interviews, notices, that evidence that the Securities
3 and Exchange Commission, including its staff, (collectively "SEC") and the
4 Securities Industry Conference on Arbitration ("SICA") have communicated
5 with one another, from January 1, 1996 to the date hereof, with respect to any
6 recommendation, advice and/or opinion concerning securities arbitration
7 and/or associated proceedings, including, but not limited to: (a) SEC
8 solicitation of any recommendation, advice and/or opinion concerning
9 securities arbitration and/or associated proceedings from SICA; (b) SICA
10 providing any recommendation, advice and/or opinion concerning securities
11 arbitration and/or associated proceedings to the SEC; (c) identity of SEC
12 personnel attending meetings of SICA or any subcommittee of SICA; (d)
13 notice to SEC from SICA of anticipated meeting of SICA or any subcommittee
14 of SICA; (e) minutes of meetings of SICA or any subcommittee of SICA; (f)
15 identity of all persons who attended meetings of SICA or any subcommittee of
16 SICA; (g) notes of content of meetings of SICA or any subcommittee of SICA;
17 (h) payment by other than SEC of expense of SEC personnel with respect to
18 attending meetings of SICA or any subcommittee of SICA; (i) Exhibits A
19 ("Guidelines"), B ("printed evaluation form") and C ("Memorandum") of the
20 Final Report Securities Industry Conference on Arbitration Pilot Program for
21 Non-SRO-Sponsored Arbitration Alternatives.

22
23 30. Plaintiff is informed and believes and thereupon alleges that defendant SEC
24 has possession of and/or control over some, if not all, records described in the Request due to
25 the interactions between defendant SEC and SICA, e.g.:

26 (A) "SEC staff said they also attend SICA meetings." (GAO/GGD-00-115
27 [June 2000]);

1 **(B) "The Commission staff regularly attend (sic) SICA meetings."**
2 **("Oversight of Self-Regulatory Organization Arbitration" [Audit 289, August 24, 1999]);**

3 **(C) "The SEC ... participates in SICA's activities, providing input and**
4 **oversight in the early stages of proposed revisions to the securities arbitration system."**
5 **("Report of the Arbitration Policy Task Force to the Board of Governors of NASD"**
6 **[January 1996]);**

7 **(D) "SICA would also like to express its gratitude to Robert Love ... who**
8 **participated in its operations in a most meaningful way. As an SEC invitee, Robert Love**
9 **offered invaluable counsel and wisdom regarding the numerous proposals considered by**
10 **SICA for over 20 years." (Thirteenth [2005] Report of SICA);**

11 **(E) "Chairman Katsoris bid farewell to ... and Robert Love, and asked**
12 **that the record reflect SICA's profound appreciation for their hard work and**
13 **accomplishments over the years." (Minutes of SICA Meeting – January 12, 2005)**

14 **(F) From two (2) to seven (7) representatives of defendant SEC attended**
15 **each of ten (10) meetings of SICA. (Minutes of SICA Meeting --- January 16, 2004 to March**
16 **21, 2006)**

17
18 **31. On October 30, 2006, defendant SEC issued its "final response" ("Final**
19 **Response" to Plaintiff's Request wherein defendant SEC:**

20 **(A) Granted the request for waiver of fees in the Request;**

21 **(B) Provided a copy of ten (10) Minutes of SICA Meetings, one (1) email**
22 **notice of a SICA meeting and a letter transmitting Petition No. 4-502 to SICA in response to**
23 **parts of the Request, while ignoring other parts of the Request;**

24 **(C) Claimed that defendant SEC found no document in response to parts of**
25 **the Request; and,**

26 **(D) Asserted a purported "deliberative process privilege" exemption when**
27 **refusing to produce "approximately 25-pages of handwritten notes."**

28

1 **32. On November 2, 2006, Plaintiff served his written appeal of the Final**
2 **Response upon defendant SEC.**

3
4 **33. On November 20, 2006, defendant SEC served its written response to**
5 **Plaintiff's appeal of the Final Response ("Appeal Response"), stating, in substance, that:**

6 **(A) The "approximately 25-pages of handwritten notes" are "personal" as**
7 **opposed to "agency records";**

8 **(B) Defendant SEC would not provide any further information to support**
9 **its prior claim of a deliberative process privilege with respect to the "approximately 25-**
10 **pages of handwritten notes";**

11 **(C) The only inadequacy of its search was that the search was limited to a**
12 **two-year period and defendant SEC would extend the search to the full time period specified**
13 **in the Request.**

14
15 **34. On November 25, 2006, by letter sent to defendant SEC via electronic**
16 **communication, Plaintiff requested defendant SEC to advise him promptly as to when**
17 **defendant SEC expected to complete the renewed search. Plaintiff has not received a**
18 **response to that letter.**

19
20 **35. On November 26, 2006, by letter sent to defendant SEC via electronic**
21 **communication, Plaintiff, in substance, requested that defendant SEC reconsider its**
22 **positions taken in its Appeal Response. Plaintiff has not received a response to that letter.**

23
24 **FIRST CLAIM**

25 **(Violation of Freedom of Information Act)**

26
27 **36. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1**
28 **through 35, inclusive, as if they were set forth herein in full.**

1 (A) Failing to open each meeting of SICA to the public. (Violation of FACA
2 §10(a)(1));

3 (B) Failing to publish timely notice of each meeting of SICA in the Federal
4 Register. (Violation of FACA §10(a)(2));

5 (C) Failing to allow Plaintiff and other interested persons to attend, appear
6 before, or file statements with SICA. (Violation of FACA §10(a)(3));

7 (D) Failing to make available for public inspection and copying records,
8 reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other
9 documents, which were made available to or prepared for or by SICA. (Violation of FACA
10 §10(a));

11 (E) Failing to:

12 (1) Exercise control and supervision over the procedures and
13 accomplishments of SICA;

14 (2) Assemble and maintain the reports, records, and other papers of
15 SICA during its existence; and,

16 (3) Carry out, on behalf of defendant SEC, the provisions of FOIA,
17 with respect to such reports, records, and other papers of SICA. (Violation of FACA §8(b));

18 (F) Allowing SICA to continue operations for more than two (2) years.
19 (Violation of FACA §14(a)(1));

20 (G) Failing to cause SICA to be "fairly balanced in terms of the points of
21 view represented." (Violation of FACA §5(c)).

22
23 **THIRD CLAIM**

24 (Violation of the Administrative Procedure Act/Mandamus)

25
26 44. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1
27 through 35, inclusive, Paragraphs 37 through 40, inclusive, and Paragraphs 42 through 43,
28 inclusive, as if they were set forth herein in full.

