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County of Orange
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Clerk of the Superior Court
By Veronica Acosta, Deputy Clerk

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**
14

30-2015-00782207-CU-MC-CJC

15 CITY OF NEWPORT BEACH,

Case No. Judge David T. McEachen

16 Plaintiff,

**COMPLAINT FOR VIOLATION OF
GOVERNMENT CODE SECTION 54963
AND FOR DECLARATORY AND
INJUNCTIVE RELIEF**

17 v.

18 ORANGE COUNTY REGISTER; ORANGE
COUNTY REGISTER
19 COMMUNICATIONS, INC., a California
corporation; TONY SAAVEDRA; ANDRE
20 MOUCHARD; and DOES 1-50, inclusive.

21 Defendant.

22
23 Plaintiff, CITY OF NEWPORT BEACH (“City”), alleges as follows:

24 **PARTIES**

- 25 1. City is a municipal corporation duly formed and validly existing under the laws of the
26 State of California.
27 2. Defendant, Orange County Register, is a daily newspaper published in the County of
28 Orange. City is informed and believes and alleges based thereon that Defendant Orange County

ALESHIRE &
WYNDER LLP
ATTORNEYS AT LAW





1 Register Communications, Inc., a California corporation, is the owner and publisher of the Orange
2 County Register. Defendants Orange County Register and Orange County Register Communications,
3 Inc., are referred to herein collectively as “OC Register.”

4 3. Defendant, Tony Saavedra, is an individual. The City is informed and believes and
5 alleges on that basis that Mr. Saavedra is a reporter for the OC Register.

6 4. Defendant, Andre Mouchard, is an individual. The City is informed and believes and
7 alleges on that basis that Mr. Mouchard is an editor for the OC Register.

8 5. The true names and capacities of Defendants sued herein as DOES 1 through 50,
9 inclusive, are unknown to the City at this time. The City therefore sues these Defendants by such
10 fictitious names. Each of the fictitiously named Defendants is responsible in some manner for the
11 actions and hard herein alleged. The City will amend this Complaint to show the true names of each
12 when they are ascertained. Whenever reference is made in this Complaint to any Defendant, the
13 reference shall include DOES 1 through 50, inclusive. Each of the Defendants was the agent, joint
14 venturer or joint conspirator of each of the remaining Defendants, and in doing the things hereinafter
15 alleged, each was acting within the course and scope of said agency, joint venture or joint conspiracy
16 with the advance knowledge, acquiescence or subsequent ratification of each and every Defendant.

17 **FACTS**

18 6. The agenda for the March 17, 2015, meeting of the City’s City Council included two
19 closed session items. A copy of the agenda for that meeting is attached hereto as Exhibit 1. Item
20 III.A. on that agenda was a conference with legal counsel regarding the potential initiation of litigation
21 in three matters.

22 7. The City Attorney, Aaron C. Harp, prepared and submitted a Closed Session
23 Memorandum to the City Council in relation to Agenda Item III A. The Closed Session Memorandum
24 is an attorney-client privileged communication within the scope of Evidence Code §§ 950 *et seq.* It is
25 also required to be maintained as confidential and is not to be disclosed pursuant to Government Code
26 § 54963.

27 8. The Closed Session item was discussed and direction was given to City staff.

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1 9. On April 13, 2015, Tony Saavedra left a message for the City's City Manager, Dave
2 Kiff, requesting that Mr. Kiff call him regarding said Closed Session matter, implying that he had
3 received a copy of the Closed Session Memorandum related to Item III.A. on the March 17, 2015
4 agenda.

5 10. On April 13, 2015, Mr. Harp returned Mr. Saavedra's call. During the conversation,
6 Mr. Saavedra confirmed that he was calling was to discuss said Closed Session matter. Mr. Saavedra
7 also informed Mr. Harp that he had a copy of the Closed Session Memorandum, which was dated
8 March 12, 2015. Mr. Harp asked Mr. Saavedra to return the Closed Session Memorandum to the City
9 Attorney's Office and Mr. Saavedra refused. Mr. Harp then asked for the name and contact
10 information for Mr. Saavedra's editor. Mr. Saavedra informed Mr. Harp his editor was Andre
11 Mouchard. On March 13, 2015, Mr. Harp contacted Mr. Mouchard, via telephone, and requested that
12 the Closed Session Memorandum be returned to the City Attorney's Office. Mr. Mouchard refused to
13 return said memorandum.

14 11. The City Council did not authorize disclosure of the Closed Session Memorandum or
15 its contents or any communications that occurred during the closed session to any members of the
16 public, the OC Register or any of its employees. The City does not know who disclosed the Closed
17 Session memorandum to the OC Register.

18 12. Government Code § 54963 provides as follows:

19 (a) **A person may not disclose confidential information that has been**
20 **acquired by being present in a closed session authorized by Section 54956.7,**
21 **54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a**
22 **person not entitled to receive it, unless the legislative body authorizes disclosure**
23 **of that confidential information.**

24 (b) For purposes of this section, "confidential information" means a
25 communication made in a closed session that is specifically related to the basis for the
26 legislative body of a local agency to meet lawfully in closed session under this chapter.

27 (c) Violation of this section may be addressed by the use of such remedies as
28 are currently available by law, including, but not limited to:



1 (1) **Injunctive relief to prevent the disclosure of confidential information**
2 **prohibited by this section.**

3 (2) Disciplinary action against an employee who has willfully disclosed
4 confidential information in violation of this section.

5 (3) Referral of a member of a legislative body who has willfully disclosed
6 confidential information in violation of this section to the grand jury.

7 (d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall
8 require that the employee in question has either received training as to the
9 requirements of this section or otherwise has been given notice of the requirements of
10 this section.

11 (e) A local agency may not take any action authorized by subdivision (c)
12 against a person, nor shall it be deemed a violation of this section, for doing any of the
13 following:

14 (1) Making a confidential inquiry or complaint to a district attorney or grand
15 jury concerning a perceived violation of law, including disclosing facts to a district
16 attorney or grand jury that are necessary to establish the illegality of an action taken by
17 a legislative body of a local agency or the potential illegality of an action that has been
18 the subject of deliberation at a closed session if that action were to be taken by a
19 legislative body of a local agency.

20 (2) Expressing an opinion concerning the propriety or legality of actions taken
21 by a legislative body of a local agency in closed session, including disclosure of the
22 nature and extent of the illegal or potentially illegal action.

23 (3) Disclosing information acquired by being present in a closed session under
24 this chapter that is not confidential information.

25 (f) Nothing in this section shall be construed to prohibit disclosures under the
26 whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5
27 (commencing with Section 53296) of Chapter 2 of this code.

28 (Emphasis added.)



1 13. The City Council, which is the legislative body of the City, did not authorize disclosure
2 of, or waive its attorney-client privilege with respect to, the Closed Session Memorandum or its
3 contents or any communications that took place during the closed session to any members of the
4 public, the OC Register or any of its employees.

5 14. Disclosure of the Closed Session Memorandum or its contents would enable those
6 involved in the matters on which the City may institute litigation to obstruct justice by the destruction
7 of evidence or evasion of arrest and criminal prosecution. Further, disclosure of the contents of the
8 Closed Session Memorandum would violate the City's attorney-client privilege and invade the privacy
9 of individuals identified in the Closed Session Memorandum.

10 15. The City seeks declaratory relief regarding the entitlement of the Closed Session
11 memorandum, its contents and all communications that occurred during the closed session to
12 protection under Government Code §54963 and attorney-client privilege.

13 16. The City also seeks a temporary restraining order and preliminary injunction
14 prohibiting OC Register and any of its employees or agents, including, but not limited to, Defendants
15 Saavedra and Mouchard, from disclosing the Closed Session memorandum or its contents or any
16 communications that took place during the closed session or facts set forth in the Closed Session
17 Memorandum.

18 **FIRST CAUSE OF ACTION**

19 **(Declaratory Relief)**

20 17. The allegations of paragraphs 1 through 16 are incorporated herein by this reference as
21 if set forth in full herein.

22 18. A controversy exists between the City and Defendants OC Register, Saavedra and
23 Mouchard with regard to disclosure of the Closed Session Memorandum, its contents and
24 communications that occurred during closed session. The City contends such disclosure would be
25 improper as it would be in violation of Government Code § 54963 and would violate the City's
26 attorney-client privilege. On the basis of information and belief, the City alleges Defendants contend
27 they are entitled to disclose such information, notwithstanding Government code § 54963 and the
28 attorney-client privilege.

1 19. The City would be harmed by disclosure for the reasons set forth above in paragraph 14
2 above.

3 20. The City seeks declaratory relief regarding the respective rights of the City and
4 Defendants with regard to disclosure of the Closed Session Memorandum, its contents and
5 communications that occurred during closed session.

6 **SECOND CAUSE OF ACTION**

7 **(Injunctive Relief)**

8 21. The allegations of paragraphs 1 through 16 are incorporated herein by this reference as
9 if set forth in full herein.

10 22. The City seeks a temporary restraining order and preliminary injunction prohibiting OC
11 Register and any of its employees or agents, including, but not limited to, Defendants Saavedra and
12 Mouchard, from disclosing the Closed Session memorandum or its contents or any communications
13 that occurred during the closed session.

14 23. The City would be harmed by disclosure for the reasons set forth above in paragraph 14
15 above. The City will be irreparably harmed by disclosure because once such information has been
16 made public there is no reversing the disclosure of such information.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, the City prays for judgment as follows:

19 1. For a declaratory judgment regarding the respective rights of the City and Defendants
20 with regard to disclosure of the Closed Session Memorandum, its contents and communications that
21 occurred during closed session.

22 2. For temporary and permanent injunctive relief to prevent the violation of Government
23 Code §54963 and the City's attorney-client privilege.

24 3. For attorneys' fees according to proof;

25 4. For costs of suit incurred herein; and

26 5. For all other relief as the Court may deem just and proper.

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DATED: April 14, 2015

ALESHIRE & WYNDER, LLP
JUNE S. AILIN
ANTHONY R. TAYLOR

By: 

JUNE S. AILIN
Attorneys for CITY OF NEWPORT BEACH

VERIFIED BY OPERATION OF LAW PURSUANT TO
CODE OF CIVIL PROCEDURE § 446

ALESHIRE &
WYNDER LLP
ATTORNEYS AT LAW



CLOSE



**CITY OF NEWPORT BEACH
CITY COUNCIL AGENDA**

March 17, 2015

**CITY COUNCIL CHAMBERS - 100 CIVIC CENTER DRIVE, NEWPORT BEACH
SPECIAL MEETING - 4:00 PM**

VIDEO

- EDWARD D. SELICH, Mayor**
- DIANE B. DIXON, Mayor Pro Tem**
- KEITH D. CURRY, Council Member**
- DUFFY DUFFIELD, Council Member**
- KEVIN MULDOON, Council Member**
- SCOTT PEOTTER, Council Member**
- TONY PETROS, Council Member**

I. ROLL CALL - 4:00 PM

II. PUBLIC COMMENTS

The City provides a yellow sign-in card to assist in the preparation of the minutes. The completion of the card is not required in order to address the City Council. If the optional sign-in card has been completed, it should be placed in the box provided at the podium.

The City Council of Newport Beach welcomes and encourages community participation. Public comments are invited on items listed on the agenda and non-agenda items. Speakers must limit comments to three (3) minutes per person to allow everyone to speak. Written comments are encouraged as well. The City Council has the discretion to extend or shorten the time limit on agenda or non-agenda items.

III. CLOSED SESSION

VIDEO

A. CONFERENCE WITH LEGAL COUNSEL

**ANTICIPATED LITIGATION - INITIATION OF LITIGATION
(Government Code § 54956.9(d)(4)): 3 matters**

EXHIBIT 1

VIDEO **B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

(Government Code § 54956.9(a), (d)(1)): 1 matter
Woody's Group, Inc. v. City of Newport Beach, et al.
Orange County Superior Court Case No. 30-2013-00687091
California Court of Appeal, Division 3, Case No. 4th Civ. G050155

IV. ADJOURNMENT

NOTICE TO THE PUBLIC

The City provides a yellow sign-in card for those wishing to address the Council to assist in the preparation of the minutes. The cards are available in the lobby of the Council Chambers. Speakers are not required to submit a card as a condition to addressing the Council. If you do fill out the card, please place it in the box at the podium.

This Special Meeting of the City Council is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the agenda be posted and distributed to Council Members, and members of the media requesting notice, at least 24 hours in advance of each Special Meeting and that the public be allowed to comment on agenda items before the City Council and items not on the agenda but are within the subject matter jurisdiction of the City Council.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or cityclerk@newportbeachca.gov).