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Attorneys for Petitioner/Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE**

GINA CLAYTON-TARVIN,  
  
Petitioner/Plaintiff,

v.

CITY OF HUNTINGTON BEACH and  
MICHAEL GATES, IN HIS OFFICIAL  
CAPACITY AS HUNTINGTON BEACH  
CITY ATTORNEY,

Defendants/Respondents.

Case No. 30-2023-01329927-CU-WM-CJC

Assigned for all Purposes to:  
— Judge Michael Strickroth —

**(VERIFIED) COMPLAINT AND  
PETITION UNDER THE CALIFORNIA  
PUBLIC RECORDS ACT AND THE  
CALIFORNIA CONSTITUTION FOR  
(1) WRIT OF MANDATE  
(2) DECLARATORY RELIEF  
(3) INJUNCTIVE RELIEF**

Action filed: June 7, 2023

1 On information and belief, Petitioner/Plaintiff GINA CLAYTON TARVIN (“Petitioner”)  
2 alleges as follows:

3 **I. INTRODUCTION**

4 1. This is a Verified Complaint and Petition for a Writ of Mandate and Declaratory  
5 and Injunctive Relief (“Petition”) made pursuant to the California Public Records Act (“Act”),  
6 codified at Gov. Code §§7920.000-7931.000, and the California Constitution, Article I, section  
7 3(b).

8 2. Petitioner GINA CLAYTON-TARVIN, an individual, petitions the Court to  
9 command Defendants/Respondents, CITY OF HUNTINGTON BEACH and MICHAEL GATES,  
10 in his official capacity as Huntington Beach City Attorney (collectively, “Respondents”), to  
11 comply with the Act, Gov. Code §§7920.000, et seq., and the California Constitution, Article I,  
12 section 3(b); to declare that Respondents have failed to do so; and to enjoin Respondents from  
13 continuing to violate the law by withholding public records to which Petitioner is legally entitled.

14 3. This Petition contests Respondents’ unlawful denial of Petitioner’s May 11, 2023,  
15 request made under the Act for “**a copy of the fully executed settlement agreement (not an**  
16 **executive summary) by parties: the City of HB and the Pacific Airshow LLC**” (“Settlement  
17 Agreement”). As set forth below, Respondents’ reasons for denying Petitioner’s request are  
18 legally and factually erroneous and the Act and the California Constitution require immediate and  
19 complete disclosure of the Settlement Agreement to Petitioner.

20 4. Petitioner seeks attorney fees and court costs as mandated by the Act. Gov. Code  
21 §7923.115.

22 **II. PARTIES**

23 5. Petitioner GINA CLAYTON-TARVIN is a resident of and homeowner in  
24 Huntington Beach, a long-time teacher at the elementary and secondary levels, an active member  
25 of several Parent-Teacher associations, and a committed volunteer engaged in many and  
26 longstanding efforts to strengthen her community. Petitioner currently serves as an elected  
27 Trustee on the Ocean View School District Board of Trustees. For these and other reasons,  
28

1 Petitioner has a significant stake in ensuring that other community leaders and elected officials  
2 honor and uphold the principles of transparency and the rule of law, and when they fail to do so,  
3 that they be held to account in accordance with the law.

4 6. Petitioner is a member of the public within the meaning of Gov. Code §7920.515,  
5 has a clear, present, and substantial right to the relief sought herein, and no plain, speedy, or  
6 adequate remedy at law other than that sought herein.

7 7. Respondent CITY OF HUNTINGTON BEACH is a “local agency” within the  
8 meaning of the Act. Gov. Code §7920.510 (“As used in this subdivision, ‘local agency’ includes  
9 any of the following...(b) A city, whether general law or chartered”). On information and belief,  
10 Respondent is in possession of public records – the Settlement Agreement – subject to mandatory  
11 disclosure under the Act and the California Constitution.

12 8. Respondent MICHAEL GATES is the elected Huntington Beach City Attorney  
13 and, on information and belief, is the public official who has unlawfully denied Petitioner access  
14 to the requested records. In unlawfully denying access to the records requested by Petitioner – the  
15 Settlement Agreement – the City’s representatives were acting on behalf and at the direction of  
16 Gates at all relevant times. Gates is sued in his official capacity.

17 **III. JURISDICTION AND VENUE**

18 9. Under Gov. Code §7923.000, “[a]ny person may institute proceedings for  
19 injunctive or declarative relief, or for a writ of mandate...to enforce that person’s right under” the  
20 Act “to inspect or to receive a copy of any public record or class of public records.”

21 10. Under Gov. Code §7923.100, “Whenever it is made to appear, by verified petition  
22 to the superior court of the county where the records or some part thereof are situated, that certain  
23 public records are being withheld from a member of the public, the court shall order the office or  
24 other person charged with withholding the records to disclose those records or show cause why  
25 that person should not do so.”

26 11. Article I, Section 3(b)(1) of the California Constitution provides as follows: “The  
27 people have the right of access to information concerning the conduct of the people’s business,  
28 and, therefore, the meeting of public bodies and the writings of public officials and agencies shall

1 be open to public scrutiny.” Moreover, under Article I, Section 3(b)(2), “a statute...shall be  
2 broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the  
3 right of access.”

4 12. Thus, the relief sought by Petitioner is expressly authorized under Gov. Code  
5 §§7923.000 and 7923.100 and under Article 1, section 3(b) of the California Constitution.

6 13. This Court has jurisdiction over Petitioner’s claims for declaratory and injunctive  
7 relief under Code Civ. Proc. §§526 and 1060 and over Petitioner’s request for a Writ of Mandate  
8 under Code Civ. Proc. §1085 and Article VI, section 10 of the California Constitution.

9 14. Venue is proper under Code Civ. Proc. §394 because the City of Huntington Beach  
10 is a local agency situated in the County of Orange and under Gov. Code §7923.100 because, on  
11 information and belief, the records which Petitioner seeks are in Orange County and the acts and  
12 events giving rise to Petitioner’s claim occurred in Orange County.

13 **IV. FACTS**

14 15. On information and belief, the City of Huntington Beach has, since 2016, hosted  
15 an airshow, commonly referred to as the “Pacific Airshow” (“Airshow”). The Airshow bills itself  
16 as a marquee event that includes airplane acrobatics, music, food, and other forms of  
17 entertainment. *See, e.g.,* <https://pacificairshowusa.com/>.

18 16. On information and belief, in October 2021, the City of Huntington Beach  
19 canceled a portion of that year’s Airshow, ongoing at the time, because of safety issues presented  
20 by an oil spill impacting costal Orange County, including the location of the Airshow. To ensure  
21 public safety and to facilitate disaster cleanup, the City closed the Airshow early. The oil spill  
22 ultimately caused significant ecological and other damage. *See* Orange County Register, October  
23 3, 2021, *Major oil spill closes OC beaches, kills wildlife in Huntington Beach*, available at  
24 [https://www.oregister.com/2021/10/03/major-oil-spill-forces-cancellation-of-air-show-in-](https://www.oregister.com/2021/10/03/major-oil-spill-forces-cancellation-of-air-show-in-huntington-beach/)  
25 [huntington-beach/](https://www.oregister.com/2021/10/03/major-oil-spill-forces-cancellation-of-air-show-in-huntington-beach/); Voice of OC, October 7, 2021, *How Were More Than a Million People*  
26 *Allowed Along Huntington Beach Coast as a Massive Oil Slick Approached?*, available at  
27 [https://voiceofoc.org/2021/10/how-were-millions-of-people-allowed-at-huntington-beach-as-a-](https://voiceofoc.org/2021/10/how-were-millions-of-people-allowed-at-huntington-beach-as-a-massive-oil-slick-approached/)  
28 [massive-oil-slick-approached/](https://voiceofoc.org/2021/10/how-were-millions-of-people-allowed-at-huntington-beach-as-a-massive-oil-slick-approached/).

1           17.     On information and belief, in October 2022, various entities behind the Airshow,  
2 including Pacific Airshow, LLC, and Code 4, an events production company, sued the City of  
3 Huntington Beach, alleging that the Airshow’s early closure violated the law on various contract,  
4 economic, and procedural grounds (“October 2022 lawsuit”).

5           18.     On May 9, 2023, the City of Huntington Beach announced that it had settled the  
6 October 2022 lawsuit. *See* Orange County Register, May 11, 2023, *Huntington Beach settles*  
7 *lawsuit with Pacific Airshow over day canceled because of oil spill*, available at  
8 [https://www.ocregister.com/2023/05/11/huntington-beach-settles-lawsuit-with-pacific-airshow-](https://www.ocregister.com/2023/05/11/huntington-beach-settles-lawsuit-with-pacific-airshow-over-day-canceled-because-of-oil-spill/)  
9 [over-day-canceled-because-of-oil-spill/](https://www.ocregister.com/2023/05/11/huntington-beach-settles-lawsuit-with-pacific-airshow-over-day-canceled-because-of-oil-spill/); Voice of OC, May 9, 2023, *Huntington Beach Reinstates*  
10 *Pacific Airshow, Settles Lawsuit with Operator*, available at  
11 [https://voiceofoc.org/2023/05/huntington-beach-reinstates-pacific-airshow-settles-lawsuit-with-](https://voiceofoc.org/2023/05/huntington-beach-reinstates-pacific-airshow-settles-lawsuit-with-operator/)  
12 [operator/](https://voiceofoc.org/2023/05/huntington-beach-reinstates-pacific-airshow-settles-lawsuit-with-operator/). Huntington Beach Mayor Tony Strickland stated, “I’m just super excited we came to  
13 this agreement” and that “Ladies and gentlemen, we saved the airshow...the Fab 4 saved the air  
14 show!” *Id.* On information and belief, the “Fab 4” are (apart from Mayor Strickland) Huntington  
15 Beach City Council members Casey McKeon, Gracey Van Der Mark, and Pat Burns.

16           19.     On information and belief, the settlement pays millions of dollars to the Airshow  
17 companies. As noted in the May 9 Voice of OC article, Huntington Beach City Attorney Michael  
18 Gates is reported to have “confirmed the city will be paying at least \$5.4 million to the airshow  
19 operator in a mixture of fees and waived expenses” and that if “the city wins any money from its  
20 lawsuit involving the oil spill for reparations, they’ll give up to \$2 million” to the Airshow  
21 companies as well. *Id.*

22           20.     The same May 9 Voice of OC article, however, reported that the full, complete,  
23 and signed settlement – that is, the Settlement Agreement – had *not* been shared with the  
24 remaining Huntington Beach City Councilmembers (Dan Kalmick, Rhonda Bolton, and Natalie  
25 Moser), even as it was apparently approved by the other Councilmembers. The same article  
26 quoted Kalmick as noting, “I have not seen an executed settlement.”

27           21.     On information and belief, to date, the Settlement Agreement has not been  
28 released to the public. While limited portions of the Settlement Agreement may have been shared

1 on an *ad-hoc*, inconsistent, limited, and / or incomplete basis, the full, executed Settlement  
2 Agreement has not. Respondent Gates has publicly opposed its release, asserting to the Voice of  
3 OC, without giving any reasons, that the Settlement Agreement is “not a public record” and that  
4 Respondent Gates is not obligated to release it to the public. *See* Voice of OC, May 30, 2023, *Surf*  
5 *City’s Settlement With Air Show Operator Raises Transparency, Ethics Concerns*, available at  
6 [https://voiceofoc.org/2023/05/surf-citys-settlement-with-air-show-operator-raises-transparency-](https://voiceofoc.org/2023/05/surf-citys-settlement-with-air-show-operator-raises-transparency-ethics-concerns/)  
7 [ethics-concerns/](https://voiceofoc.org/2023/05/surf-citys-settlement-with-air-show-operator-raises-transparency-ethics-concerns/).

8 22. In contrast, other Huntington Beach city officials have called for the release of the  
9 Settlement Agreement. For example, the same May 30 Voice of OC article reports that Mayor  
10 Strickland supports the release of the Settlement Agreement, quoting his observation that, “I  
11 believe in transparency, whatever we decide.” The article also quotes Councilmember Kalmick  
12 saying that the public “needs” to see the Settlement Agreement in its entirety and that “there is no  
13 reason to not release the entire document unless [the Huntington Beach City Council majority]  
14 and the City Attorney are trying to hide something they’re not proud of.” *Id.*

15 23. On May 11, 2023, at 10:37am, Petitioner submitted to Respondents, and  
16 specifically to Respondent Gates, a full and complete request pursuant to the Act for “**the fully**  
17 **executed settlement agreement (not an executive summary) by parties: the City of HB and**  
18 **the Pacific Airshow LLC.” Exhibit A.**

19 24. On May 11, 2023, at 10:47am, Petitioner received an email from Respondent  
20 Gates in ostensible response to Petitioner’s request with what Respondent Gates called a  
21 “substance of the agreement,” a one-page document that purports to show the “Terms of  
22 Settlement of Pacific AirShow LLC Lawsuit.” **Exhibits B, C.**

23 25. On May 11, 2023, at 11:48am, Petitioner emailed Respondent Gates indicating the  
24 insufficiency of Respondent Gates’ response, noting, “My request under the California Public  
25 Records Act was not for the ‘substance of the agreement,’ but rather for a fully-executed copy of  
26 the actual agreement that was entered into on May 9, 2023” and that “[f]ailure to provide the  
27 agreement is a violation of the California Public Records Act.” **Exhibit D.**

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1           26.     Petitioner did not thereafter receive any further email or response from Respondent  
2 Gates.

3           27.     On May 17, 2023, at 12:36pm, Petitioner received an email response from  
4 Respondents, specifically from Christina Kelemen, that denied Petitioner’s request. Kelemen’s  
5 email admitted that the City possessed records responsive to Petitioner’s request (“The City has  
6 located records responsive to your request...”) but denied Petitioner’s request, claiming that “the  
7 records were specifically exempted from disclosure” for three reasons:

- 8
- 9                   1) “Attorney-client and attorney work product (Government Code Section  
10                   7927.705, Evidence Code Section 954, California Government Code Section  
11                   54957.1);
  - 12                   2) Pending litigation to which the public agency is party (Government Code  
13                   Section(s) 7927.200, 7927.205 [formerly 6254(b), 6254.25]); and
  - 14                   3) Records in which the public interest in maintaining confidentiality outweighs  
15                   the public interest in disclosing (Government Code Section(s) 7922 [formerly  
16                   6255]).” **Exhibit E.**
- 17

18           28.     For the following reasons, the City’s stated reasons for the denial are legally and  
19 factually insufficient and do not overcome the Act’s and the California Constitution’s  
20 requirement of disclosure. Accordingly, pursuant to the Act and the California Constitution, this  
21 Court should order Respondents to immediately disclose the Settlement Agreement to Petitioner.

22     **V. SUMMARY OF LEGAL AUTHORITY**

23           29.     The legal authority supporting this action will be set forth more fully in an  
24 anticipated motion for judgment and supporting documents, but the essential legal basis for this  
25 action is set out here.

26           30.     The Act requires disclosure of a public record unless the record falls within a  
27 specific exemption from disclosure. Where an exemption is claimed, the proponent of the  
28

1 exemption bears the burden of proof on the claimed exemption. Gov. Code §7923.000 (“An  
2 agency **shall justify** withholding any record **by demonstrating that the record in question is**  
3 **exempt** under express provisions of this division...”) (emphasis added); Gov. Code §7923.100  
4 (“Whenever it is made to appear, by verified petition to the superior court of the county where the  
5 records or some part thereof are situated, that certain public records are being withheld from a  
6 member of the public, the court shall order the office or other person charged with withholding  
7 the records to disclose those records **or show cause why that person should not do so**”)  
8 (emphasis added).

9         31. The California Constitution, Article I, also establishes the public’s right of access  
10 to “the writings of public officials and agencies” – that is, to public records – and also requires, as  
11 a canon of interpretation, that relevant laws “be broadly construed if it furthers the people’s right  
12 of access, and narrowly construed if it limits the right of access.” Cal Const., art. I §3, subd. (b).

13         32. Stated succinctly, the Act and the California Constitution create a **presumption of**  
14 **access to and disclosure of public records**. Absent an adequately justified and narrowly tailored  
15 exemption, disclosure of public records is mandatory.

16         33. “Public records” are “any writing containing information relating to the conduct of  
17 the public’s business prepared, owned, used, or retained by any state or local agency regardless of  
18 physical form or characteristics.” Gov. Code. §7923.530. Here, a legal settlement agreement,  
19 prepared by Respondents and relating to the conduct of the public’s business (including, but not  
20 limited to, the use of substantial public funds), are public records within the meaning of the Act.

21         34. Under the Act, where public records are withheld, “the court shall order the officer  
22 or person charged with withholding the records to disclose the public records or show cause why  
23 the officer or person should not do so.” Gov. Code §7923.100. If the “court finds that the public  
24 official’s decision to refuse disclosure is not justified...the court shall order the public official to  
25 make the record public.” Gov. Code §7923.110(a).

26         35. Here, Respondents have no justification or legally sufficient exemptions to defeat  
27 disclosure under the Act or the California Constitution. Accordingly, Respondents must  
28 immediately disclose the Settlement Agreement to Petitioner.



1 **FIRST CAUSE OF ACTION**

2 **Writ of Mandate (Code Civ. Proc. § 1085)**

3 **Violations of the California Public Records Act (Gov. Code §§7920.000 et seq.)**

4 **Violations of Article I, Section 3(b) of the California Constitution**

5 36. Petitioner realleges and incorporates by reference paragraphs 1 through 35 of this  
6 Petition as though fully set forth herein.

7 37. Respondents claim three exemptions from disclosure under the Act: 1) “Attorney-  
8 client and attorney work product (Government Code Section 7927.705, Evidence Code Section  
9 954, California Government Code Section 54957.1); 2) Pending litigation to which the public  
10 agency is party (Government Code Section(s) 7927.200, 7927.205 [formerly 6254(b), 6254.25]);  
11 and 3) Records in which the public interest in maintaining confidentiality outweighs the public  
12 interest in disclosing (Government Code Section(s) 7922 [formerly 6255]).” All are insufficient.

13 **A. There is No “Attorney Client” Exemption Because the Settlement Agreement is Not**  
14 **an Attorney-Client Communication and Because an Agreement Signed with a Third**  
15 **Party Cannot be Covered By Attorney-Client Privilege**

16 38. Gov. Code §7927.705 exempts from disclosure under the Act public records where  
17 disclosure is “prohibited pursuant to federal or state law, including, but not limited to, provisions  
18 of the Evidence Code related to privilege.” Evid. Code §954 codifies the well-understood  
19 privilege between an attorney and a client – that is, a client is privileged to refuse to disclose  
20 communications with his lawyer.

21 39. But Evid. Code §954 has no applicability here. First, the Settlement Agreement is  
22 not a communication between an attorney and a client, but rather between Respondents *and third*  
23 *parties who had sued Respondents* – Pacific Airshow, LLC, Code Four, and an unknown number  
24 of other third parties. In short, there is no operative attorney-client relationship, communication,  
25 or privilege that covers the Settlement Agreement, and the claimed exemption simply does not  
26 meet the statutory elements of attorney-client privilege under the Evidence Code.  
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1           40.     Second, even assuming arguendo, and without conceding, that attorney-client  
2 privilege existed at some point in Respondents’ own internal discussions regarding the Settlement  
3 Agreement, that privilege was waived, never extended to, and is inapplicable to, the Settlement  
4 Agreement, which was necessarily disclosed to and signed by the third parties noted above  
5 (again, third parties who had never been “clients” but, instead, had always been litigants suing  
6 Respondents). *See* Evid. Code §912(a) (“Except as otherwise provided in this section, the right of  
7 any person to claim a privilege provided by Section 954 (lawyer-client privilege)...is waived with  
8 respect to a communication protected by the privilege if any holder of the privilege, without  
9 coercion, has disclosed a significant part of the communication or has consented to disclosure  
10 made by anyone”).

11           41.     Accordingly, Respondents’ claimed exemption of attorney-client privilege is  
12 without merit and cannot overcome required disclosure of the Settlement Agreement under the  
13 Act and the California Constitution.

14 **B.     There is no “Pending Litigation” Exemption Because Litigation Has Been Settled –**  
15 **By Its Terms, the “Settlement” Agreement Marks the End of Litigation**

16           42.     Gov. Code §7927.200 exempts from disclosure under the Act “[r]ecords  
17 pertaining to pending litigation to which the public agency is a party, **until the pending litigation**  
18 **has been finally adjudicated or otherwise settled**” (emphasis added). In the same way, Gov.  
19 Code. §7927.205 exempts from disclosure “a memorandum submitted to a state body or to the  
20 legislative body of a local agency by its legal counsel...**until the pending litigation has been**  
21 **finally adjudicated or otherwise settled**”) (emphasis added).

22           43.     Gov. Code §§7927.200 and 7927.205 have no applicability here because the  
23 “pending litigation” – that is, the litigation between Respondents and the third parties who had  
24 sued Respondents – has been settled. Indeed, the Respondents’ public statements, noted above,  
25 repeatedly make clear – and celebrate – that such a settlement has occurred. Moreover, the one-  
26 page memo that Respondent Gates sent Petitioner is titled “**Terms of Settlement** of Pacific  
27 Airshow LLC Lawsuit” (emphasis added). In short, the predicate lawsuit has settled, and thus  
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1 §§7927.200 and 7927.205, by their own terms, are not applicable and cannot justify Respondents’  
2 withholding of the Settlement Agreement.

3 44. Even if Respondents believe that there will be future litigation regarding the  
4 Settlement Agreement, that belief cannot be used to ground an exemption from required  
5 disclosure. The exemption under Gov. Code §§7927.200 and 7927.205 does not authorize  
6 withholding public records simply because they might be relevant to other litigation. Instead, it  
7 generally applies only to documents "specifically prepared for use in litigation" by the agency  
8 itself. *Board of Trustees of California State University v. Superior Court*, 132 Cal. App. 4th 889,  
9 897 (2005). Here, the Settlement Agreement, in essence a contract signed with a third party to end  
10 litigation, does not and cannot fall within this exemption.

11 45. Accordingly, Respondents’ claimed “pending litigation” exemption is without  
12 merit and cannot overcome required disclosure of the Settlement Agreement under the Act and  
13 the California Constitution.

14 **C. There is no “Public Interest” Exception Because The Public Interest is Served by**  
15 **Disclosure and Respondents Have Made No Showing Otherwise**

16 46. Gov. Code §§7922.000 permits exemption of a public record from disclosure  
17 under the Act where, “on the facts of the particular case,” the proponent of this exemption shows  
18 that “the public interest served by not disclosing the record **clearly outweighs** the public interest  
19 served by disclosure of the record” (emphasis added).

20 47. Here, Respondents have made no such showing – not remotely so. First,  
21 Respondents have offered no reasons or facts to support this exemption beyond asserting it.  
22 Necessarily, because Respondents bear the burden of proof on this claimed exemption, and have  
23 given none, the claimed exemption must fail.

24 48. Second, the intent of the Act and the California Constitution, which presume  
25 disclosure, favor disclosure here as definitionally in the public interest. Indeed, as a contract  
26 entered into by a public agency, the Settlement Agreement is the *quintessential* disclosable  
27 record. *Cf.* Gov. Code §7928.400 (“Every employment contract between a state or local agency  
28

1 and any public official or public employee is a public record that is not subject to Section  
2 7922.000 and the provisions listed in Section 7920.505.”).

3 49. Third, specific facts here point to the strong public interest served by disclosure of  
4 the Settlement Agreement. The Settlement Agreement, by Respondents’ own admissions,  
5 involves the expenditure of significant public funds. That undisputed fact alone establishes the  
6 public interest *for* disclosure. *Cf. See Register Div. of Freedom Newspapers v. County of Orange*,  
7 158 Cal. App. 3d 893, 909 (1984) (upholding disclosure of a settlement agreement against Orange  
8 County in light of “the public interest in finding out how decisions to spend public funds are  
9 formulated and in insuring governmental processes remain open and subject to public scrutiny”).

10 50. Moreover, several public officials, including Mayor Strickland and  
11 Councilmember Kalmick, have publicly called for disclosure, with Councilmember Kalmick  
12 stating that the public “needs” to see the Settlement Agreement. This support for disclosure by  
13 other Huntington Beach public officials underscore the strong public interest served by  
14 disclosure.

15 51. Accordingly, Respondents’ claimed “public interest” exemption is without merit  
16 and cannot overcome required disclosure of the Settlement Agreement under the Act and the  
17 California Constitution.

18 **SECOND CAUSE OF ACTION**

19 **Declaratory Relief (Code of Civil Procedure § 1060 and**  
20 **Government Code §§7920.000 et seq. and Article I, Section 3(b) of the California**  
21 **Constitution)**

22 52. Petitioner realleges and incorporates by reference paragraphs 1 through 51 of this  
23 Petition as though fully set forth herein.

24 53. Petitioner seeks a judicial declaration per Code Civ. Proc. §1060 and Gov. Code  
25 §§7920.000 et seq. that Respondents have violated and/or continue to violate the Act and the  
26 California Constitution and a judicial declaration determining the respective rights and duties of  
27 the parties and addressing Respondents’ violations of law.  
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Dated: June 7, 2023

**THE LAW OFFICES OF BRETT MURDOCK**

By: /s/ Brett M. Murdock  
Brett M. Murdock

Attorneys for Petitioner/Petitioner

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**VERIFICATION**

Clayton-Tarvin v. City of Huntington Beach et. al.

Case No. \_\_\_\_\_

I, GINA CLAYTON-TARVIN, declare:

I am a party to this action, and I have read the foregoing **(VERIFIED) COMPLAINT AND PETITION UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE CALIFORNIA CONSTITUTION FOR: (1) WRIT OF MANDATE; (2) DECLARATORY RELIEF; (3) INJUNCTIVE RELIEF** and know its contents. The matters stated therein are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on June 7, 2023.

/s/ Gina Clayton-Tarvin  
Gina Clayton-Tarvin  
Petitioner

**EXHIBIT A**

**EXHIBIT A**



File **Message** Help Tell me what you want to do

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CPRA



Gina Clayton-Tarvin &lt;ginaclaytontarvin@gmail.com&gt;

To michael.gates@surfcity-hb.org

Cc John Briscoe; Ed Connor; Matthew Fletcher; Lee Fink

	Reply	Reply All	Forward	
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Thu 5/11/2023 10:37 AM

**Caution:** This is an external email.

Dear City Attorney Gates:

I am requesting access to records in possession or control of the **City of Huntington Beach** for the purposes of inspection and copying pursuant to the California Public Records Act, California Government Code § 7920.000 et seq. ("CPRA"), and Article I, § 3(b) of the California Constitution. The specific records I seek are listed below. As used herein, "Record" includes "Public Records" and "Writings" as those terms are defined at Government Code § 7920.530 & 7920.545. **I request a copy of the fully executed settlement agreement (not an executive summary) by parties: the City of HB and the Pacific Airshow LLC.** A settlement was announced on Tuesday, May 9, 2023 at the Mayor's press conference. Government Code § 7922.540 requires that any response to this request that includes a determination that the request is denied, in whole or in part, must be in writing and include the name and title of the person(s) responsible for the City's response.

Government Code § 7922.500 prohibits the use of the 10-day period, or any provisions of the CPRA or any other law, "to delay access for purposes of inspecting public records." In responding to this request, please keep in mind that Article 1, § 3(b)(2) of the California Constitution expressly requires you to broadly construe all provisions that further the public's right of access, and to apply any limitations on access as narrowly as possible. If I can provide any clarification that will help expedite your attention to my request, please contact me at (714)717-7122 pursuant to Government Code § 7922.600. Thank you for your timely attention to this matter.

Sincerely,

Gina Clayton-Tarvin  
Huntington Beach ResidentVice President, Board of Trustees  
Ocean View School DistrictTeacher, 6th Grade GATE  
Site Rep, AFT Local 2317  
ABC Unified School District

(714) 717-7122

[www.ginaclaytontarvin.com](http://www.ginaclaytontarvin.com)

**EXHIBIT B**

**EXHIBIT B**



RE: CPRA



Gates, Michael &lt;Michael.Gates@surfcity-hb.org&gt;

To: Gina Clayton-Tarvin; Strickland, Tony; Van Der Mark, Gracey; McKeon, Casey

Cc: John Briscoe; Ed Connor; Matthew Fletcher; Lee Fink; Vigliotta, Mike



Thu 5/11/2023 10:47 AM

Memo re Settlement.pdf .pdf File

**Caution:** This is an external email.

Ms. Clayton-Tarvin,

Pursuant to Government Code 54957.1(a)(3)(B), please find attached the "substance of the agreement" that was entered into and effective May 9, 2023, seven days after the May 2, 2023 Council Meeting in which authority was granted by City Council.

Michael E. Gates, City Attorney  
OFFICE OF THE CITY ATTORNEY  
CITY OF HUNTINGTON BEACH

2000 Main St., Fourth Floor  
Huntington Beach, CA 92648

Ph: (714) 536-5538 Fx: (714) 374-1590

Confidentiality Notice: This email may contain material that is confidential, privileged and/or attorney work-product for the sole use of the addressee. Further, this email is protected under the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2522. Any review by, reliance, or distribution by others or forwarding to others without express permission of the author is strictly prohibited. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. Moreover, any such inadvertent disclosure shall not compromise or waive the attorney-client privilege as to this communication. If you have received this communication in error, please immediately notify the sender and delete this e-mail. Thank you.

**From:** Gina Clayton-Tarvin <[ginaclaytontarvin@gmail.com](mailto:ginaclaytontarvin@gmail.com)>**Sent:** Thursday, May 11, 2023 10:37 AM**To:** Gates, Michael <[Michael.Gates@surfcity-hb.org](mailto:Michael.Gates@surfcity-hb.org)>**Cc:** John Briscoe <[John@crestwave.org](mailto:John@crestwave.org)>; Ed Connor <[econnor@businesslit.com](mailto:econnor@businesslit.com)>; Matthew Fletcher <[mfletcher@businesslit.com](mailto:mfletcher@businesslit.com)>; Lee Fink <[Lee@browerlawgroup.com](mailto:Lee@browerlawgroup.com)>**Subject:** CPRA

Dear City Attorney Gates:

I am requesting access to records in possession or control of the **City of Huntington Beach** for the purposes of inspection and copying pursuant to the California Public Records Act, California Government Code § 7920.000 et seq. ("CPRA"), and Article I, § 3(b) of the California Constitution. The specific records I seek are listed below. As used herein, "Record" includes "Public Records" and "Writings" as those terms are defined at Government Code § 7920.530 & 7920.545. **I request a copy of the fully executed settlement agreement (not an executive summary) by parties: the City of HB and the Pacific Airshow LLC.** A settlement was announced on Tuesday, May 9, 2023 at the Mayor's press conference. Government Code § 7922.540 requires that any response to this request that includes a determination that the request is denied, in whole or in part, must be in writing and include the name and title of the person(s) responsible for the City's response.

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Sincerely,

Gina Clayton-Tarvin  
Huntington Beach Resident

**EXHIBIT C**

**EXHIBIT C**



# CITY OF HUNTINGTON BEACH

## OFFICE OF THE CITY ATTORNEY

### Terms of Settlement of Pacific AirShow LLC Lawsuit

On May 9, 2023, the City and Pacific Airshow LLC entered into a Settlement Agreement, which includes the following terms:

#### City' Consideration for Settlement:

1. The CITY will pay PA \$4,999,000.00 as follows:
  - a. \$1,999,000.00 due on or before July 31, 2023;
  - b. \$500,000.00 due by January 30, 2024;
  - c. \$500,000.00 due by January 30, 2025;
  - d. \$500,000.00 due by January 30, 2026;
  - e. \$500,000.00 due by January 30, 2027;
  - f. \$500,000.00 due by January 30, 2028; and,
  - g. \$500,000.00 plus inflation interest due by January 30, 2029. At the CITY's option, the CITY may pre-pay this payment by January 30, 2028, in order for the CITY to avoid the inflation interest.
2. The CITY will discharge \$194,945.35 PA owes related to the 2021 Air Show.
3. The CITY will refund the \$149,200.00 in fees paid by PA towards the 2022 Specific Events Invoice, in the form of a credit.
4. As with past Air Shows, for the 2023 Air Show Event, the CITY shall waive parking space fees for PA for up to 600 CITY parking lot spaces for usage during the time to prepare/load-in/set up the Air Show and takedown/load-out; and, PA will receive a parking offset consistent with what PA has received in the past for previous Special Events Permits in an amount not less than \$110,000.
5. The CITY will pay to PA up to \$2,000,000 of the CITY's recovery after attorneys' fees and costs in any of the CITY's own Oil Spill lawsuit that are attributable to the damages PA sustained.

PA will dismiss the CITY from its lawsuit, with prejudice, upon receipt of payment of the \$1,999,000 by the CITY by end of July of this year.

**EXHIBIT D**

**EXHIBIT D**

**Re: CPRA**Gina Clayton-Tarvin <[ginaclaytontarvin@gmail.com](mailto:ginaclaytontarvin@gmail.com)>

To: Gates, Michael

Cc: Strickland, Tony; Van Der Mark, Gracey; McKeon, Casey; John Briscoe; Ed Connor; Matthew Fletcher; Lee Fink; Vigliotta, Mike



Reply

Reply All

Forward



Thu 5/11/2023 11:48 AM

**Caution:** This is an external email.

Dear Mr. Gates,

My request under the California Public Records Act was not for the "substance of the agreement," but rather for a fully-executed copy of the actual agreement that was entered into on May 9, 2023. Failure to provide the agreement is a violation of the California Public Records Act.

Sincerely,

Gina Clayton-Tarvin  
Vice-President, Board of Trustees  
Ocean View School District

Teacher, 6th Grade GATE  
Site Rep., AFT Local 231, AFL-CIO  
ABC Unified School District

On Thu, May 11, 2023 at 10:47 AM Gates, Michael <[Michael.Gates@surfcity-hb.org](mailto:Michael.Gates@surfcity-hb.org)> wrote:

Ms. Clayton-Tarvin,

Pursuant to Government Code 54957.1(a)(3)(B), please find attached the "substance of the agreement" that was entered into and effective May 9, 2023, seven days after the May 2, 2023 Council Meeting in which authority was granted by City Council.

**Michael E. Gates, City Attorney**

OFFICE OF THE CITY ATTORNEY

CITY OF HUNTINGTON BEACH

2000 Main St., Fourth Floor

Huntington Beach, CA 92648

Ph: [\(714\) 536-5538](tel:(714)536-5538) Fx: [\(714\) 374-1590](tel:(714)374-1590)

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**From:** Gina Clayton-Tarvin <[ginaclaytontarvin@gmail.com](mailto:ginaclaytontarvin@gmail.com)>**Sent:** Thursday, May 11, 2023 10:37 AM

**EXHIBIT E**

**EXHIBIT E**



File Message Help Tell me what you want to do

Microsoft Office Ribbon: Delete, Archive, Reply, Reply All, Forward, Respond; Quick Steps (HB City Council..., To Manager, Team Email); Move; Mark Unread, Categorize, Follow Up, Tags; Editing; Immersive; Translate, Language; Zoom; Send to OneNote, OneNote

### Fwd: [Records Center] City Records Request :: C004251-051723

 Gina Clayton-Tarvin <ginaclaytontarvin@gmail.com>

Reply Reply All Forward ...  
 Mon 6/5/2023 5:58 PM

----- Forwarded message -----

From: **Huntington Beach CA** <[huntingtonbeachca@mycusthelp.net](mailto:huntingtonbeachca@mycusthelp.net)>  
 Date: Wed, May 17, 2023 at 12:36 PM  
 Subject: [Records Center] City Records Request :: C004251-051723  
 To: [ginaclaytontarvin@gmail.com](mailto:ginaclaytontarvin@gmail.com) <[ginaclaytontarvin@gmail.com](mailto:ginaclaytontarvin@gmail.com)>  
 Cc: [michael.gates@surfcity-hb.org](mailto:michael.gates@surfcity-hb.org) <[michael.gates@surfcity-hb.org](mailto:michael.gates@surfcity-hb.org)>, [mvigliotta@surfcity-hb.org](mailto:mvigliotta@surfcity-hb.org) <[mvigliotta@surfcity-hb.org](mailto:mvigliotta@surfcity-hb.org)>

--- Please respond above this line ---

RE: Public Records Reference # C004251-051723

Dear Gina:

This email is in response to your California Public Records Act request dated May 11, 2023 wherein you requested *I am requesting access to records in possession or control of the City of Huntington Beach for the purposes of inspection and copying pursuant to the California Public Records Act, California Government Code § 7920.000 et seq. ("CPRA"), and Article I, § 3(b) of the California Constitution. The specific records I seek are listed below. As used herein, "Record" includes "Public Records" and "Writings" as those terms are defined at Government Code § 7920.530 & 7920.545. I request a copy of the fully executed settlement agreement (not an executive summary) by parties: the City of HB and the Pacific Airshow LLC. A settlement was announced on Tuesday, May 9, 2023 at the Mayor's press conference. Government Code § 7922.540 requires that any response to this request that includes a determination that the request is denied, in whole or in part, must be in writing and include the name and title of the person(s) responsible for the City's response.*

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Sincerely,

Gina Clayton-Tarvin  
 Huntington Beach Resident.

The City has located records responsive to your request however; the records are exempt from disclosure pursuant to Government Code Section 7926 (formerly 6254) or other applicable law. Without limiting other arguments against disclosure that may exist, the records were specifically exempted from disclosure for the following reasons:

- Attorney-client and attorney work product (Government Code Section 7927.705, Evidence Code Section 954, California Government Code Section 54957.1)
- Pending litigation to which the public agency is party (Government Code Section(s) 7927.200, 7927.205 [formerly 6254(b), 6254.25])
- Records in which the public interest in maintaining confidentiality outweighs the public interest in disclosing (Government Code Section(s) 7922 [formerly 6255])

If you have any questions, please reply to this email.

Thank you,  
 Christina Kelemen

