

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

San Bernardino District - Civil
247 West Third Street

San Bernardino, CA. 924150210

CASE NO: CIVDS1507221

LEANE LEE
12277 APPLE VALLEY ROAD
#311
APPLE VALLEY CA 92308

NOTICE OF TRIAL SETTING CONFERENCE
and NOTICE OF CASE ASSIGNMENT

IN RE: LEANE LEE -V- TOWN OF APPLE VALLEY

THIS CASE HAS BEEN ASSIGNED TO: DAVID COHN IN DEPARTMENT S37
FOR ALL PURPOSES.

Notice is hereby given that the above-entitled case has been set for
Trial Setting Conference at the court located at 247 WEST THIRD STREET
SAN BERNARDINO, CA 92415-0210.

HEARING DATE: 11/17/15 at 8:30 in Dept. S37

DATE: 05/20/15 Christina M. Volkens, Clerk of the Court
By: ANDY DIAZ

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San
Bernardino at the above listed address. I am not a party to this
action and on the date and place shown below, I served a copy of the
above listed notice:

() Enclosed in a sealed envelope mailed to the interested party
addressed above, for collection and mailing this date, following
standard Court practices.

() Enclosed in a sealed envelope, first class postage prepaid in the
U.S. mail at the location shown above, mailed to the interested party
and addressed as shown above, or as shown on the attached listing.

() A copy of this notice was given to the filing party at the counter

() A copy of this notice was placed in the bin located at this office
and identified as the location for the above law firm's collection of
file stamped documents.

Date of Mailing: 05/20/15

I declare under penalty of perjury that the foregoing is true and
correct. Executed on 05/20/15 at San Bernardino, CA

BY: ANDY DIAZ

1 LEANE LEE, PRO PER
12277 Apple Valley Road, #311
2 Apple Valley, CA 92308
(760) 413-4427
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 20 2015

BY Andrew Diaz
ANDREW DIAZ, DEPUTY

5 SUPERIOR COURT OF CALIFORNIA
6 COUNTY OF SAN BERNARDINO
7

8 LEANE LEE) CASE NO. CIVDS 1507221
9 Petitioner)
10) VERIFIED PETITION FOR WRIT OF
11 v) MANDATE AND COMPLAINT FOR
12) INJUNCTIVE AND DECLARATORY
13 TOWN OF APPLE VALLEY, a Municipal) RELIEF
14 Corporation)
15 Respondent)
16

17 The following allegations are based on information and belief, unless otherwise specified:
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19 **INTRODUCTION**

20 1. The conduct of the public's business should not be a game of hide and seek with the
21 public funds and records by public officials charged with the fiduciary responsibility to conduct on
22 behalf of, representative of, and in view of the public at large. This is of primary importance in all
23 actions and behaviors that encumber, expend, disburse, commit and yes, even squander public
24 funds.
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1 *Connell v Superior Court* (1997) 56 Cal. App.4th 601; *State Bd. Of Equalization v Superior*
2 *Court* (1992) 10 Cal. App. 4th 1177, 1187.

3 In the case of *County of Los Angeles Bd. Of Supervisors v Superior Court* (2015) Cal.
4 App. 4th, the court ruled pursuant to Evidence Code Section 952, that invoices were a confidential
5 communication and exempt from disclosure under Gov. Code 6254 (k), but also went on to say, in
6 conclusion, "Because we conclude the County met its preliminary burden to show the requested
7 records were confidential communications within the meaning of Evidence Code 952, we grant the
8 County's petition and order the superior court to vacate its order compelling disclosure. In light of
9 our conclusion, we do not reach the parties' contentions regarding application of the CPRA's
10 'catchall' exemption or Business and Professions Code section 6149 and 6148." In addition,
11 in their Footnote 6, stated, "Because we conclude the attorney-client privilege precludes discovery
12 of the billing records, we express no opinion as to whether the information contained in the billing
13 records might be discoverable by some other means." And finally, the court stated "Moreover, we
14 must construe Evidence Code Section 952 to avoid absurd results and effectuate the Legislature's
15 intent." Further, "As noted, Evidence Code Section 952 defines 'confidential communication' for
16 purposes of attorney client privilege. It states as used in this article...discloses the information to
17 no third persons other than those who are present to further the interest of the client..." Petitioner
18 asserts also that a number of third parties within the employment of Respondent, have access and
19 knowledge of the invoices, not just those in a high level management position, nor restricted to a
20 single department within the organization.

21 Further in Footnote 5 the court states, "...a litigant might be required to reveal some
22 information in camera to enable the court to determine whether a communication is subject to the
23 attorney client privilege, (Cosco, supra 47 Cal. 4th at p. 737.) Evidence Code 915 'does not
24 prohibit disclosure or examination of other information to permit the court to evaluate the basis
25 for the claim' of privilege, such as whether the privilege is held by the party asserting it, whether
26 the attorney client relationship existed at the time the communication was made, or whether the
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1 client intended the communication to be confidential, (Cosco, at p. 737,) and a party is free to
2 request an in camera review of the communications at issue to aid the court, (Id. At p. 740.)

3 Petitioner's position is the above is not supportive of Respondent's claim in using the
4 attorney client exemption for disclosure. As the facts will show, Respondent is claiming attorney
5 client privilege:

6 A) Of an attorney's retainer agreement with a public agency

7 B) Of a non attorney third party, see Exhibit J, *People v Gionis* (1995) 9 Cal. 4th 1196,
8 1210, "We cannot endorse the...view that the attorney client privilege applies whenever issues
9 touching upon legal matters are discussed with an attorney. That has never been the law.

10 Significantly, a communication is not privileged, even though it may involve a legal matter, if it
11 has no relation to any professional relationship of the attorney with the client...Moreover, it is not
12 enough that the client seek advise from an attorney; such advise must be sought from the attorney
13 'in his professional capacity.'...the privilege also does not apply when the attorney acts merely
14 as a negotiator for the client or is providing business advice,,the relationship between the
15 parties to the communication is not one of attorney client."

16 In *Cosco, supra*, 47 Cal. App. At p. 732, "While the invoices themselves are privileged,
17 information that is not otherwise privilege does not become so merely by being transmitted to, or
18 ...from an attorney...it does not extend to subject matter otherwise unprivileged merely because
19 that subject matter has been communicated to the attorney...Therefore, to the extent the
20 information sought is available in a non-privileged source, the fact the invoices are privileged
21 does not necessarily protect the information itself."

22 C) Disclosure to a third party, see Exhibit E, as cited above.

23 D) Based on an ABSURD result in violation of legislative intent by both the attorney and
24 the client taking actions in violation of the Government Codes, including the Brown Act, and using
25 the attorney client privilege as a shield to cover up their willful and knowing illegal and unethical
26 acts and omissions, with the express intent to secret and suppress from the public, the contractual
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1 laws, and California Codes related to public contracts, etc., and render moot the legislative
2 and judicial authorities and remedies.

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4 **PARTIES**

5 7. Petitioner seeks a writ of mandate pursuant to Code of Civil Procedure
6 Section 1085, as well as declaratory and injunctive relief, to compel Respondent to comply with
7 their clear and present duty under the United States and California Constitutions, Codes of the
8 State of California, CPRA, the California Brown Act and California Proposition 218.

9 8. Petitioner is a taxpayer in San Bernardino County and has paid taxes in San
10 Bernardino County every year since 2007, up to and including 2015, and a resident of the Town
11 of Apple Valley. Petitioner has a beneficial interest in the accurate disclosure of the use of public
12 funds, and has no other adequate remedies available, having standing to seek this action.

13 9. Respondent, Town of Apple Valley is a municipal corporation formed in 1988, up
14 to and including 2015.

15 **JURISDICTION AND VENUE**

16 10. This Court has jurisdiction under Code of Civil Procedure Sections 525, 526a,
17 1060 and 1085.

18 11. Venue is proper in the Superior Court of San Bernardino County under Civil
19 Code of Procedure Sections 393 and 394, because Respondent in this action is a public agency
20 situated in San Bernardino County and because all of the acts and omissions complained of in this
21 Petition took place in San Bernardino County.

22 **FACTS**

23 12. Currently Respondent is operating at least three funds with a deficit, and in recent
24 past years significant portions of expenses, related to legal fees, have been the subject of fund
25 transfers. These ever increasing legal fees, while each year are originally budgeted at a reasonably
26 low level, have been moved through fund transfers and the resulting actual total of legal expenses
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1 transferred does not appear publicly until almost two years after the fact in the public budgeting
2 process. Such fund expenses are being transferred through restricted Enterprise Fund accounts in a
3 shell game fashion. See Exhibit B attached hereto.

4 13. Currently Respondent is paying "other" services through invoices for "legal
5 services" and incorrectly categorizing those "other" services as "legal services." When all
6 these incorrectly categorized service expenses are transferred to an enterprise fund such as the
7 sewer fund, that is in addition to the General Fund allocations already being made for the Town
8 Attorney. That in turn artificially inflates the basis for calculating sewer rate increases, and can
9 have the potential to violate California Proposition 218, governing how, and in what manner
10 such fees can be increased. This behavior is nothing less than an attempt to circumvent the
11 laws of the State of California as voted by the people, and constitutes an abuse of discretion.
12 The only recourse available to the public, to ascertain the validity of such "other" service
13 expenses, is by reviewing all the legal services invoices where these "other" service expenses
14 are being secreted, and transferred hither and yon.

15 14. As the following list will show, there have been significant expenditures, including
16 Petitioner's request on a warrant for \$149,644.79, and together with the following list of warrants,
17 totals \$979,087.47 in legal services, and potentially "other" services. Further, there are many
18 additional expenditures which are not contained on the warrant registers, and are being processed
19 by electronic wire transfer and not disclosed on the public warrant registers. An example, shown
20 in Exhibit C, where Hayward Consulting received a wire transfer payment, and then a warrant
21 (#110134) payment, also not included in the public warrant register. The exclusion of the warrant
22 page was not by accident, it was by design, as has occurred in the past.:

23 Best Best & Krieger warrants:

24 #109232 dated 10/30/14 in the amount of \$205,884.19

25 #108076 dated 08/14/14 in the amount of \$73,227.40

26 #107931 dated 08/08/14 in the amount of \$57,743.08

1 #107165 dated 06/26/14 in the amount of \$99,521.82
2 #106576 dated 05/22/14 in the amount of \$51,600.01
3 #106481 dated 05/21/14 in the amount of \$16,036.42
4 #105674 dated 04/17/14 in the amount of \$43,706.35
5 #105420 dated 03/26/14 in the amount of \$59,171.55
6 #104800 dated 02/27/14 in the amount of \$46,748.90
7 #104355 dated 01/30/14 in the amount of \$57,161.36
8 #103889 dated 12/17/13 in the amount of \$56,748.49
9 #103667 dated 12/11/13 in the amount of \$61,893.11

10 Are we to truly believe the \$149,644.79 warrant did not include any monthly retainer
11 costs, and if so, then it reaffirms the public's concerns regarding the expenditure of public funds?
12 It is simply incredulous to think a basic contract for a municipal attorney is not a public record.
13 There is simply no defense for this, and to affirm this failure to disclose the contract would set
14 history and the people's rights back hundreds of years. This was nothing more than an arbitrary
15 and capricious act..

16 15. On April 13, 2015, Petitioner submitted to Respondent a letter requesting public
17 records identified as follows and shown in Exhibit A, attached hereto:

18 A. Backup documentation, invoices, contracts and prior expenditures,
19 warrants, electronic transfers, and appurtenant records supporting and/or related to:

- 20 1) Warrant #110475 dated 2/6/15 to Hayward Consulting Group for
21 "contract for appraisal services" in the amount of \$45,089.88 on the
22 Town Council Agenda for action on 4/14/15.
- 23 2) Warrant #110495 dated 2/9/15 to BB&K ICO American Express
24 for "Trademark" services in the amount of \$149,644.79 on the
25 Town Council agenda for action on 4/14/15.
- 26 3) Warrant #110504 dated 2/9/15 to Daily Press ICO American
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1 Express for "ADS" services in the amount of \$8,583.98 on the
2 Town Council agenda for action on 4/14/15.

3 B. Adopted Budget of Respondent for Fiscal Year 2008-2009.

4 C. Contract with True North Research, invoices and payments, for phone
5 survey report of August, 2014, related to the take over of Apple Valley Ranchos Water.

6 D. Contract with 20/20 Network dated 2/24/15, and invoices and payments to
7 date for Public Relations services.

8 16. The request for items 1 through 3 included a request that an immediate
9 determination be made due to the imminent action of the Council, and that time was of the essence
10 The public, nor Petitioner, had any knowledge of the warrants until Friday, April 10, 2015
11 when the agenda was posted, and after Town Hall was closed for the remainder of the weekend.
12 The aforementioned request was submitted the first thing Monday morning, April 13, 2015,
13 regarding matters currently on the Town Council agenda to be acted upon the night of
14 April 14, 2015, obviously very current and active material before the Council.

15 17. The request to see the Respondent's Adopted Budget was based on the fact that
16 the Respondent's website link to the document pulls up the wrong budget year. Petitioner had
17 requested in early March, 2015, that the link be fixed, and as of May 11, 2015, Respondent was
18 still promising to fix the link.

19 18. The request for the True North Research contract was based on the fact that no such
20 contract ever came before the Council in open session, nor was there any report out of closed
21 session for reportable action, and no payments were ever processed on the public warrant registers
22 to pay for the services, even though the survey results were revealed in a special presentation at a
23 Council meeting on 08/27/2014. The only public reference was a statement by Frank Robinson,
24 Town Manager, on 07/08/2014, under Town Manager Comments and Legislative Update, "that
25 due to the overwhelming response from the Public Utility Commission Hearings, the "Town" had
26 decided to conduct a community satisfaction survey that will measure the attitude and opinions
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1 of the community regarding the water company.” There had been no prior closed session,
2 and the closed session followed the Town Manager comments, and contained only Closed
3 Session exemptions unrelated to the issue. The document ultimately provided, was not specific
4 to the survey, which Respondent, frequently uses this same company, for a variety of community
5 surveys. See Respondent’s Meeting Minutes Exhibit D.

6 The document had no date. The document, as provided, showed there was the potential for
7 the misuse and abuse of public funds by the substitution of this document to substantiate
8 expenditures at any point in time of month or year.

9 19. The request for the 20/20 Network contract was based on the Daily Press news
10 article of 03/15/2015, with the headline “Contract for PR services made a public record” and as
11 shown in Exhibit E attached hereto. The contract was provided to the Daily Press and denied to
12 Petitioner on the basis of a claim Respondent did not have it. This was nothing less than an
13 arbitrary and capricious abuse of discretion.

14 20. On April 23, 2015 Respondent stated, quoting the “unusual circumstances” clause
15 as a reason for extending compliance with Petitioner’s request for another 14 days, see letter
16 attached as Exhibit F. Yet, after a sum total of 28 days, communications between the Office of the
17 Town Clerk, Department of Finance and the Town Attorney, Respondent claimed to NOT have
18 the contract document, invoices or records of payments.

19 21. Ultimately on May 7, 2015, when Petitioner contacted Respondent, Petitioner was
20 advised Respondent was still awaiting a decision from the Town Attorney, and since Respondent
21 offices would be closed on Friday, an appointment was made for Petitioner to come to Town Hall
22 on Monday, May 11, 2015 at 9 AM. On May 11, 2015, Petitioner received the letter attached as
23 Exhibit G from Respondent.

24 Note here, that the delay put forth by Respondent was allegedly due to the “voluminous”
25 amount of documents. Of the sum total of 40 pages provided, 26 pages were related to two
26 of the first three items requested, which were a part of the current council meeting at the time
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1 of the request, and 10 pages were requested on the day of pickup after Petitioner reviewed the
2 budget. It appears the remaining 4 pages must have been the “voluminous” amount that
3 required 14 extra days to produce, although those 4 pages were produced on the day of pickup.
4 Or was it the less than one page per day of the 26 pages, that amounted to the “voluminous”
5 production that required an extension of two weeks? Then again, was it the remaining documents
6 we are to believe, that in the first 10 day wait had not been determined to be “attorney client
7 privilege” and would not be disclosed, and it required another 14 days for that determination? It
8 would appear Respondent, from the beginning, had no intention of complying with the production
9 of the documents requested, reaffirming the belief that the intent was to abuse their discretion and
10 the actions were arbitrary and capricious, and in violation of CPRA.

11 22. On May 11, 2015, Petitioner received the following in response to her requests:

12 A. Respondent claimed to have provided documents responsive to
13 Petitioner’s request. However, Respondent did NOT provide the contract nor the invoice for
14 December, 2014. No acknowledgment nor explanation for the non-disclosure was given. This
15 in fact, was a violation of CPRA Section 6253 by failing to state the reason, nor identifying the
16 person responsible for the denial.

17 B. No records pertaining to the BB&K warrant request were provided,
18 with the statement the records were exempt from disclosure under CPRA and protected by
19 “attorney client privilege,” but failed pursuant to CPRA Section 6253 to identify the individual
20 responsible for the denial.

21 C. Records were provided on the Daily Press warrant, which in fact revealed
22 what the public was seeing on public Town Council warrants, that late payments were, and are,
23 being made by Respondent. In this case, invoices for October through December, 2014, were not
24 issued a warrant and paid until February 9, 2015, when the invoice indicates on the last page if
25 payment was not received within 10 days they would begin collection action. This certainly
26 reaffirms the public concern regarding the finances and status of public funds, since it has become
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1 clear that Respondent is having problems paying their financial obligations on time, and the need
2 for public disclosure of invoices which are taking large sums of money from Respondent's
3 treasury

4 D. The requested Budget information was provided.

5 E. The request for the True North Research contract and invoices, while stating
6 documents were provided in response to request, was anything but correct. Originally Petitioner
7 received a three page proposal from True North Research, which contained not even a date nor any
8 cost information, and no signatures which was allegedly provided by the Finance Department.
9 This really does beg the question, why a document, so lacking in information would be in Finance
10 in support of expenditures? When Petitioner questioned why the Town Clerk would not have
11 contracts, staff managed to "locate" a four page document which was substituted for the 3 page
12 proposal. Again, a document with no date, and could have been something related to any number
13 of "citizen satisfaction" surveys frequently conducted by Respondent through this same company.
14 Later, while reviewing the sum total of documents provided, it became apparent that this
15 document was not what was requested. This document was for an RDD survey of 600, while the
16 Apple Valley Ranchos Water Company survey was of 400, see Exhibit H attached hereto (the
17 alleged 4 page "contract" and an excerpt from the survey results), and they appear to confirm that
18 substitution of records is exactly what occurred given the lack of appropriate protocols for
19 contracting and sets up the potential for misuse and abuse of public funds. This is nothing less
20 than egregious. The denial was not in compliance with CPRA Section 6253 by failing to explain
21 the denial of the additional documents requested, nor identifying the individual responsible for the
22 denial.

23 F. The request for the 20/20 Network contract, invoices and payments were
24 refused on the basis Respondent does not have copies. Which is even more egregious than the
25 prior act, given the prior disclosure to the local news media, as being effective until 12/31/2016.

1 And yet, this very document has been **ARBITRARILY** and **CAPRICIOUSLY** denied to the
2 Petitioner on the basis that Respondent does not have it, after taking 28 days, it still could not be
3 found? This item in particular goes to the heart of the real problem with records requests posed to
4 Respondent, because there is certainly no reason to believe the contractor has not been paid from
5 public funds, but how can Respondent's Finance Department know what the correct payment
6 should be if they have no contract, and where are the invoices or proof of payment? Has the
7 Town Attorney added an additional administrative cost to the reimbursement billed on his invoice?
8 Who would know?

9 Further is the fact that Exhibit E clearly indicates a preliminary strategic PR plan was
10 prepared, suggesting it is a separate document from the contract. However, if the document was
11 appropriate for disclosure to the news media, it is certainly unquestionably a document which
12 should have been provided to Petitioner when requested. This again sets up the potential for
13 misuse and abuse of public funds. This denial was a violation of CPRA Section 6270, which
14 states, "...no state or local agency shall sell, exchange, furnish, or otherwise provide a public
15 record subject to disclosure pursuant to this chapter to a private entity in a manner that
16 prevents a state or local agency from providing the record directly pursuant to this chapter."

17 Finally, as seen in Chapter 2.10 of the Town Municipal Code, Section 2.10.030 (3) (4),
18 attached as Exhibit I, shows that the Town Clerk is the official keeper of the records of
19 Respondent, so it is obvious Respondent does not appear to be in compliance with their own
20 ordinances, since the office of the Town Clerk simply does not have the records.

21 23. This is not a case of the public seeking information contained in contracts and in
22 invoices that are some kind of exempt information, which could be redacted. This is a financial
23 matter of concern to the public. On March 24, 2015, Petitioner attended a Town Council
24 meeting where Councilwoman Stanton made a specific request of Marc Puckett, Finance
25 Director, relating to information on Respondent's expenditures printed in the Apple Valley
26 Ranchos Water Company mailer. Mr. Puckett responded by belying the facts and stated
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1 citizens from seeking public records, or examining the financial transactions by Respondent,
2 putting forth unwarranted time delays, downright refusals to disclose, and putting up the barrier of
3 legal action to enforce the public's rights. It is simply blatant contempt for the laws of the State of
4 California. Therefore, Petitioner re-alleges and incorporates by reference each and every
5 allegation of paragraphs 1 through 24.

6 29. Petitioner requests that a hearing be set at the earliest practicable opportunity as
7 provided in Government Code Section 6258.

8 30. Petitioner requests the Court to conduct an in camera review of the records
9 Respondent has failed to disclose, and such other subsequent records noted herein, outstanding
10 and in question, and will be the subject of a followup CPRA request, having been discovered in
11 this writ process..

12 **PRAYER FOR RELIEF**

13 Wherefore, petitioner prays that:

14 31. The Court issue a writ of mandate compelling Respondent to immediately perform
15 their duties and produce the records as originally requested by Petitioner.

16 32. The Court issue a writ of mandate compelling Respondent to immediately perform
17 their duties and produce the additional records identified through this legal process, those records
18 being the Bartle Wells and Fiona Hutton and Associates contracts, invoices and payments, and the
19 list of BB&K invoices identified in paragraph 14 of this Petition.

20 33. The Court issue a writ of mandate compelling Respondent to immediately comply
21 with their own ordinances and properly retain all contract records with the Town Clerk.

22 34. The Court issue a writ of mandate compelling Respondent to immediately include
23 both warrants and wire transfer expenditures on the public warrant register, and produce such
24 warrant registers in their entirety, in a 30 day time frame, on the public agenda.

25 35. The Court issue a writ of mandate compelling Respondent to direct Respondent to
26 comply with the California Public Contracts Code, statutory limits on contracts without public
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1 Council approval, thereby removing the ability of the Town Manager to act outside of public
2 view, in approving personal services contracts up to \$150,000.00.

3 36. The Court issue a declaratory judgement that the current policy and practices
4 of Respondent challenged herein:

- 5 A. Violate the Constitution of the United States.
- 6 B. Violate the Constitution of the State of California
- 7 C. Violate the Government Codes of the State of California.
- 8 D. Violate the Brown Act of the State of California.
- 9 E. Violate the Public Records Act of the State of California.
- 10 F. Violate California Proposition 218.

11 37. The Court issue an order prohibiting Respondent, and their agents and
12 employees, from utilizing the current policies and practices challenged herein.

13 38. The Court order sanctions for the actions of Respondent to discourage future
14 violations, and to protect the public rights from the need for such drastic legal actions to enforce
15 those rights.

16 39. The Court award Petitioner's costs of suit.

17 40. The Court award Petitioner's reasonable attorney's fees under Code of Civil
18 Procedure Section 1021.5, Government Code 800 and other applicable statutes; and

19 41. The Court award such other and further relief as it deems proper.

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21 Respectfully submitted,

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23 Dated: May 19, 2015

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LEANE LEE, Petitioner

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VERIFICATION

I, Leane Lee, do hereby declare under penalty of perjury, I am the Petitioner in the above entitled action. I have read the foregoing verified petition for writ of mandate, and the facts alleged therein are within my knowledge and I know them to be true, except as to matters therein stated on information and belief, and as to these matters I believe them to be true.

Dated: May 19, 2015



Leane Lee