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9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF MERCED**

11 LOS BANOS ENTERPRISE, LLC,
12 Plaintiff,
13 vs.
14 CITY OF LOS BANOS; and DOES 1-10,
15 inclusive,
16 Defendants.

Case No.: 24CV-03797
**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF AND
INJUNCTIVE RELIEF**

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19 Plaintiff, LOS BANOS ENTERPRISE, LLC (“Plaintiff”) hereby submits its Verified
20 Complaint for Declaratory Relief and Injunctive Relief (the “Complaint”) stating claims against
21 Defendant, CITY OF LOS BANOS (“Defendant” or the “City”), as set forth below.

22 **INTRODUCTION**

23 1. On June 18, 2024, Plaintiff, through its counsel, submitted a request to the City
24 pursuant to the California Public Records Act, (the “PRA” or “Act”) seeking six categories of
25 records, including among other things, written communications, text messages and emails
26 between the City’s mayor, staff, employees and council members.

27 2. Under the PRA, the City had ten (10) days from receipt of the Request to claim
28 any exemption. (Gov. Code. §6253(c).) The City did not timely claim an exemption for any of

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1 the requested documents. As of the date of this filing, Plaintiff has yet to receive *any* of the
2 documents requested. Accordingly, Plaintiff was forced to file this lawsuit as a result of the City's
3 failure to comply with the PRA.

4 **PARTIES, JURISDICTION, & VENUE**

5 3. Plaintiff, Los Banos Enterprise, LLC, is, and at all times mentioned herein, was a
6 limited liability company. Plaintiff, is, and at all times herein mentioned was a "person" within
7 the meaning of section 6252, subdivision (c) of the Government Code.

8 4. Plaintiff, is informed, believes, and thereon alleges that Defendant, City of Los
9 Banos is, and at all times mentioned herein, was a political subdivision of the State of California
10 organized and existing under Government Code section 23000 et seq. and its administrative
11 headquarters is located in the County of Merced.

12 5. Plaintiff is unaware of the true names and capacities of defendants sued herein as
13 Does 1 through 25, inclusive and, therefore, sues those defendants by such fictitious names.
14 Plaintiff is informed and believes and thereon alleges that each of the defendants is, in some
15 manner, responsible for the events and happenings referred to in this Complaint and caused
16 Plaintiff to suffer the damages alleged herein. Plaintiff will seek leave of court to amend this
17 Complaint to allege their true names and capacities when ascertained.

18 6. Plaintiff is informed and believes, and thereon alleges at all times herein
19 mentioned, each of the defendants, including any fictitiously named defendants, were the agents
20 and employees of each of the remaining defendants and were at all times acting in the purpose
21 and scope of said agency and employment.

22 7. Plaintiff has performed any and all conditions precedent to filing this Complaint.
23 Plaintiff has exhausted any and all administrative remedies required by law.

24 8. The Court has jurisdiction over this Complaint pursuant to section 525 et. seq. and
25 1060 et. seq. of the Code of Civil Procedure and section 6258 and 6259 of the Government Code.
26 Code of Civil Procedure section 525 provides for an injunction when it appears that the plaintiff
27 is entitled to the relief sought, and section 1060 of the Code of Civil Procedure provides for a
28 judicial declaration of a plaintiff's rights and a defendant's duties. Government Code section
6258 provides that any person may institute proceedings for injunctive or declarative relief in any

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1 court of competent jurisdiction to enforce his or her right to inspect and receive a copy of any
2 public record or class of public records under the PRA.

3 9. Venue in Merced County Superior Court is proper pursuant to section 394 of the
4 Code of Civil Procedure. Defendant is located within Merced County, the records at issue are
5 maintained in Merced County, and all occurrences giving rise to Plaintiff's claims occurred in
6 Merced County.

7 **APPLICABLE LAW**

8 10. Enacted in 1968, the PRA declares that "access to information concerning the
9 conduct of the people's business is a fundamental and necessary right of every person in this
10 state." (Govt. Code, § 6250.) In 2004, voters made this principal part of the California
11 Constitution approving Proposition 59, which provides in part: "The people have the right of
12 access to information concerning the conduct of the people's business, and, therefore...the
13 writings of public offices and agencies shall be open to public scrutiny." (Cal. Const., Art I, §2,
14 subd. (b)(1).) As the California Supreme Court explained, "[p]ublic access laws serve a crucial
15 function. Openness in government is essential to the functioning of a democracy. Implicit in the
16 democratic process is the notion that government should be accountable for its action. In order
17 to verify accountability, individuals must have access to government file. Such access permits
18 checks against the arbitrary exercise of official power and secrecy in the political process." (*City*
of San Jose v. Superior Court (2017) 2 Cal.5th 608, 615 [internal quotations omitted].)

19 11. The PRA establishes a basic rule requiring disclosure of public records upon
20 request. (Gov. Code, §6253.) Section 6253, subdivision (a) provides: "Public records are open
21 to inspection at all times during the office hours of the state or local agency and every person has
22 a right to inspect any public record, except as hereafter provided. Any segregable portion of a
23 record shall be available for inspection by any person requesting the record after deletion of the
24 portion that are exempted by law."

25 12. The PRA thus "creates a presumptive right of access to any record created or
26 maintained by a public agency that relates in any way to the business of the public agency." (*City*
of San Jose, supra, 2 Cal. 5th at p. 616 [quoting *Sander v. State Bar of California* (2013) 58 Cal.
27 4th 300, 323].) "Every such record 'must be disclosed unless a statutory exception is shown.'"
28

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1 (*Ibid.*) Exemptions for particular records are set forth in section 6254 while 6255 contained a
2 catchall provision exempting disclosure if the agency demonstrates that “public interest served
3 by not disclosing the record clearly outweighs the public interest served by disclosure.” (Gov.
4 Code, § 6255(a).) An agency shall within 10 days from receipt of the request, determine whether
5 the request, in whole or in part, seeks copies of disclosable public records in possession of the
6 agency and shall promptly notify the person making the request of the determination and reasons
7 thereof. (Gov. Code, § 6253, sub. (c).)

8 13. The PRA defines “public records” as “any writing containing information relating
9 to the conduct of the public’s business prepared, owned, used or retained by any state or local
10 agency.” (Govt. Code § 6252, subd. (e).) This definition is “broad and intended to cover every
11 conceivable kind of record that is involved in the governmental process.” (*Community Youth*
12 *Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1418 [emphasis added,
13 internal quotations omitted]; see *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 615
14 “[C]ommunications about official agency business may be subject to CPRA regardless of the
15 type of account used in their preparation or transmission”]; see also *Coronado Police Officers*
16 *Assn v. Carroll* (2003) 106 Cal.App.4th 1001, 1006.)

17 14. When an agency withholds a public record, or any portion thereof, it must “justify
18 withholding [the] record by demonstrating that the record in question is exempt under express
19 provisions of this chapter or that on the facts of the particular case the public interest served by
20 not disclosing the record clearly outweighs the public interest served by disclosures of the record.”
21 (Gov. Code, § 6255, subd. (a).) Consequently, “the burden to assert and establish [an] exemption
22 from disclosure is on the agency.” (*Getz v. Superior Court* (2021) 72 Cal.App.5th 637, 643; see
23 also, *Golden Door Properties, LLC v. Superior Court of San Diego County* (2020) 53 Cal.App.5th
24 733, 789 [“The entity attempting to deny access has the burden of proof to demonstrate that the
25 claimed exemption applies.”] [internal quotations omitted]; *Rogers v. Superior Court* (1993) 19
26 Cal.App.4th 469, 476 [agency must “justify withholding any record by demonstrating that the
27 record in question is exempt under express provisions of [PRA]”]; *Ventura County Deputy*
28 *Sherriffs’ Association v. County of Ventura* (2021) 61 Cal.App.5th 585, 592 [stating under the
PRA “the agency opposing disclosure bears the burden of proving an exemption

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1 applies”][internal quotations omitted]; *Becerra v. Superior Court* (2020) 44 Cal.App.5th 897,
2 930.)

3 15. Additionally, an agency’s disclosure of a public record to a member of the public
4 waives any exemption that may have otherwise applied. (Gov. Code, § 6254.5 [“Notwithstanding
5 any other law, if a state or local agency discloses a public record that is otherwise exempt from
6 this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions
7 specified in Section 6254 or 6254.7, or other similar provision of law.”]; see *Ardon v. City of Los*
8 *Angeles* (2106) 62 Cal.4th 1176, 1189 [“[I]n enacting section 6254.5, the Legislature intended to
9 permit state and local agencies to waive an exemption by making a voluntary and knowing
10 disclosure, while prohibiting them from selectively disclosing the records to one member of the
11 public but not others.”]; *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301,
12 1321-1322, as modified (Feb. 27, 2009)[“Disclosure to one member of the public would constitute
13 a waiver of the exemption [under section 6254.5], requiring disclosure to any other person who
14 request a copy.”].)

15 16. The PRA “includes protections and incentives for members of the public to seek
16 judicial enforcement of their right to inspect public records subject to disclosure, one of which is
17 the provision that the court shall award court costs and reasonable attorney fees to the prevailing
18 plaintiff.” (*Law Offices of Marc Grossman v. Victor Elementary School Dist.* (2015) 238
19 Cal.App.4th 1010, 1013; see Gov. Code, § 6259, subd. (d).) The very purpose of the attorney
20 fees provision is to provide protections and incentives for members of the public to seek judicial
21 enforcement of their right to inspect public records subject to disclosure” (*Id* at p. 1013 [quoting
22 *Community Youth Athletic Center, supra*, 220 Cal.App.4th at p. 1447].) Thus, the PRA “mandates
23 a fee award to a plaintiff it is prevails, and to a defendant only if the plaintiff’s case is clearly
24 frivolous.” (*Ibid.*)

25 17. Pursuant to Government Code 6258 “[a]ny person may institute proceedings for
26 injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce
27 his or her right to inspect or to receive a copy of any public record or class of public records under
28 [the Public Records Act]. The times for responsive pleadings and for hearing in these shall be set

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1 by the judge of the court with the object of securing a decision as to these matters at the earliest
2 possible time.”

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **(Declaratory Relief - Violation of Public Records Act)**

6 18. Plaintiff re-alleges and incorporates by reference the preceding paragraphs 1
7 through 17 in their entirety as though fully set forth herein.

8 19. On June 18, 2024, Plaintiff submitted, through its counsel, a request for records
9 (the “Request”) to the City under the PRA seeking six categories of records concerning including
10 among other things, written communications, text messages and emails between the City’s mayor,
11 staff, employees and council members.

12 20. On June 28, 2024, the City sent Plaintiff’s counsel a letter stating that the City
13 located records responsive to the Request, and it would be making such records available on July
14 15, 2024. No exemptions by the City were claimed in its June 28th letter.

15 21. On July 15, 2024, the City sent Plaintiff’s counsel a follow-up letter stating that
16 the City was continuing to review records that may be responsive to the Request. No documents
17 were produced by the City or were made available to Plaintiff.

18 22. On July 16, 2024, Plaintiff through its counsel, sent a letter to the City demanding
19 that documents be produced by the City. This letter went unresponded to by the City.

20 23. A clear and actual controversy exists between Plaintiff and the City regarding the
21 City’s failure to comply with the PRA. Plaintiff contends that the City has not complied with the
22 PRA, while the City contends apparently to the contrary.

23 24. This controversy exist between Plaintiff and the City creates a substantial danger
24 that the public’s right to access public records will be damages and that requirements of the PRA
25 will be ignored. As such, a judicial determination as to the parties’ rights and obligations with
26 respect to the PRA is necessary and desirable.

27 25. Accordingly, Plaintiff requests a judicial declaration that, in responding to the
28 Request, the City failed to comply with the PRA by (a) withholding documents responsive to the

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Request; (b) failing to timely claim any documents were exempt and/or (c) destroying responsive records that the City is required by law to maintain.

26. The relief request herein is authorized under 1060 et seq. of the Code of Civil Procedure and section 6258 and 6259 of the Government Code.

WHEREFORE, Plaintiff prays judgment as set forth below.

SECOND CAUSE OF ACTION

(Injunctive Relief- Compliance with the Public Records Act)

27. Plaintiff re-alleges and incorporates by reference the preceding paragraphs 1 through 26 in their entirety as though fully set forth herein.

28. Unless and until this Court issues an order directing the City to comply with the PRA in connection with the Request, and to immediately produce all responsive, non-exempt public records subject to disclosure, Plaintiff, and the public, will suffer irreparable harm by the the City’s denial of their constitutional “right of access to information concerning the conduct of the people’s business.” (Cal. Const., art. I §3, sub. (b)(1).)

29. Therefore, Plaintiff seeks a temporary restraining order, preliminary injunction and permanent injunction ordering the City, its agents, servants, employees, independent contractors, and/or any other firm, agency, entity person or party acting in concert with or under their control, to immediately produce all responsive, non-exempt public records in accordance with the PRA.

30. The relief request herein is authorized under section 525 et seq. of the Code of Civil Procedure sections 6258 and 6259 of the Government Code.

31. There is no adequate legal remedy available to resolve this controversy.

WHEREFORE, Plaintiff prays judgment as set forth below.

PRAYER

WHEREFORE, Plaintiff prays for judgment by this Court as follows:

ON THE FIRST CAUSE OF ACTION

1. For a judicial declaration that in responding to the Request, the City has failed to comply with the PRA by: (a) withholding documents responsive to the Request; (b) failing to claim that documents were exempt within the statutory timeframe under Government Code; (c) withholding

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responsive communications including both email and non-email correspondence; (d) destroying responsive records that the City was required by law to maintain.

2. For costs of suit;

3. For an award of Plaintiff's fees and costs, including attorneys' fees and expert costs, as authorized under section 6259 of the Government Code and section 1021.5 of the Code of Civil Procedure.

4. For such other and further relief as may be just and proper.

ON THE SECOND CAUSE OF ACTION

1. A temporary restraining order, preliminary injunction, and permanent injunction ordering the City, its agents, servants, employees, independent contractors, and/or any other firm agency, entity, person or party acting in concert with or under their control, to immediately produce all responsive, non-exempt public records in accordance with the PRA;

2. For costs of suit;

3. That this Court retain jurisdiction over this matter until such time as the Court has determined that the City has fully and properly complied with this Court's orders.

4. For an award of Plaintiff's fees and costs, including attorneys' fees and expert costs, as authorized under section 6259 of the Government Code and section 1021.5 of the Code of Civil Procedure.

5. For such other and further relief as the Court deems just and proper.

Dated: July 8, 2024

WILD, CARTER & TIPTON



By
MICHAEL C. TITUS
Attorney for Plaintiff
LOS BANOS ENTERPRISE, LLC

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VERIFICATION

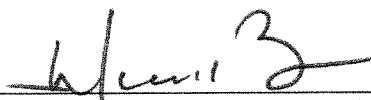
I, Michael Braa, state:

That I am the Managing Member of Los Banos Enterprise, LLC, the Plaintiff in the case of *Los Banos Enterprise, LLC v. City of Los Banos, et.al.*

I have read the foregoing **VERIFIED COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF**, and know its contents, and the same is true of my own knowledge, except as to those matters which are stated upon my 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 and of my own knowledge, and if called upon to testify thereto, I could competently do so.

Executed this 23rd day of July, 2024, at Fresno, California.


Michael Braa, Managing Member of Los Banos Enterprise, LLC