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Attorney and Plaintiff
In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

STEPHEN S. SAYAD, Plaintiff, v. CALIFORNIA STATE UNIVERSITY, SACRAMENTO; CENTER FOR COLLABORATIVE POLICY; EDMUNDO AGUILAR; R. GREGORY BOURNE; J. MICHAEL HARTY; and DOES 1 through 50, inclusive, Defendants.	No. VERIFIED PETITION FOR ACCESS TO PUBLIC RECORDS AND COMPLAINT FOR DECLARATORY RELIEF, ALTERNATIVE WRIT OF MANDATE OR ALTERNATIVELY AN ORDER TO SHOW CAUSE, PEREMPTORY WRIT OF MANDATE, AND REQUEST FOR ATTORNEY'S FEES AND COSTS

Petitioner Stephen S. Sayad ("Petitioner"), a resident of the State of California, petitions this Court for a declaratory judgment, an alternative writ of mandate ordering respondents California State University, Sacramento, the Center for Collaborative Policy, Edmundo Aguilar, R. Gregory Bourne, and J. Michael Harty (collectively, "respondents") to obey the California Public Records Act, *Government Code Section 6250, et seq.,* or an order to show cause why such an order compelling compliance with the California Public Records Act should not issue, a peremptory writ of mandate upon return of the alternative writ, an order compelling production of the public records sought by Petitioner, and attorney's fees and costs, and alleges as follows:

JURISDICTION AND VENUE

1. The relief sought by Petitioner is authorized by *California Government Code Sections 6258 and 6259.* Petitioner is informed and believes that the vast majority of the records sought hereby reside within the City and County of San Francisco and relate to a "negotiated rulemaking" process that will determine whether, if at all, off-leash dog-walking may continue to

occur in portions of the Golden Gate National Recreation Area ("GGNRA"), including significant portions of the GGNRA such as Crissy Field, Ocean Beach, Fort Funston, and West Pacific Avenue in the Presidio of San Francisco. The negotiated rulemaking process is taking place in the City and County of San Francisco. Respondents Bourne and Harty were the "convenors" and are now the "facilitators" for the negotiated rulemaking process, and are and were at all times mentioned herein on the staff of defendant the Center for Collaborative Policy, a department of respondent California State University, Sacramento.

THE PARTIES

2. Petitioner is a resident of the State of California and was defendant and counsel in the action entitled *United States v. Gretchen Barley, Stephen S. Sayad, and Donald Kieselhorst, No. CR 04-0408 WHA (N.D. Cal. June 2, 2005.)* In said action, Petitioner and two other defendants successfully prevailed in demonstrating that the GGNRA's "1979 Pet Policy" was legally implemented by the GGNRA and that the GGNRA acted illegally in unilaterally rescinding said Policy in 2002 without first complying with the requirements of public notice and public comment as required by the National Park Service's own regulations found at *36 C.F.R. Section 1.5, subdivision (b).* As a result of the decision in said action, the 1979 Pet Policy continues to be the law for off-leash dog-walking within approximately one-percent of the GGNRA.

3. Respondent California State University, Sacramento ("CSUS") is a state agency within the meaning of *Government Code Section 6252, subdivision (a).* Petitioner is informed and believes and on that basis alleges that respondent CSUS has control and authority over the public records sought by Petitioner.

4. Respondent Center for Collaborative Policy ("CCP") is a unit of the College of Social Sciences and Interdisciplinary Studies at respondent CSUS. CCP was established in 1990 as the California Center for Public Dispute Resolution, a joint program of CSUS and the McGeorge School of Law, University of the Pacific. Petitioner is informed and believes and on that basis alleges that respondent CCP has control and authority over the public records sought by Petitioner.

5. Respondent Edmundo Aguilar ("Aguilar") is the General Counsel for respondent CSUS. Beginning on March 7, 2006 and continuing to the present, Petitioner has been corresponding with respondent Aguilar in an attempt to obtain the public records sought herein. Respondent Aguilar, acting as counsel for respondents CSUS, CCP, Bourne, and Harty, has illegally and willfully violated the California Public Records Act in refusing to make the public records available to Petitioner.

6. Respondent R. Gregory Bourne ("Bourne") is a staff member of respondent CSUS and respondent CCP. Respondent Bourne was initially a "convenor" for purposes of assembling a committee for the negotiated rulemaking process, and is currently acting as one of the two "facilitators" for the negotiated rulemaking taking place in the City and County of San Francisco.

7. Respondent J. Michael Harty ("Harty") is a staff member of respondent CSUS and respondent CCP. Respondent Harty was initially a "convenor" for purposes of assembling a committee for the negotiated rulemaking process, and is currently acting with respondent Bourne as a "facilitator" for the negotiated rulemaking taking place in the City and County of San Francisco.

8. Petitioner does not presently know the true names and capacities of respondents Does 1 through 50 and sues these persons or entities by such fictitious names. Petitioner will seek leave to amend this Complaint to allege their true names and capacities when ascertained.

FACTS GIVING RISE TO CLAIMS

9. "Off-leash dog use had been a long tradition at various fields and beaches within what became the Golden Gate National Recreation Area in 1974. When the GGNRA was formed, an issue arose over the extent to which this tradition should continue . . .. [N]either the National Park Service nor anyone else then suggested that park service regulations might prohibit off-leash dog use in the GGNRA. Rather, the issue was cast as one of balancing pet owners' recreation against public safety and resource protection. And, it was cast solely as a local issue for the GGNRA superintendent to decide." *(United States v. Barley, et al. supra, Order of Affirmance, p. 1.)*

10. "After considerable input via the Golden Gate National Recreation Advisory Commission, a statutory creature, 86 Stat. 1302, the GGNRA superintendent adopted a policy of allowing off-leash dog use at seven or more locations within the GGNRA, including at Crissy Field and its beach but closing other sites altogether to pets. In this regard, the Advisory Commission's recommendations were adopted 'in total' by the superintendent in 1978. In 1982, the off-leash areas were further incorporated into the GGNRA general management plan." *(Id., p. 2, citations omitted.)*

11. "Time and again, the NPS reiterated that off-leash dog use was allowed within the GGNRA (in designed areas)." *(Id., p. 2.)*

12. "In 2002, the NPS reversed field. In a Federal Register notice on January 11, 2002, the NPS acknowledged that 'for more than 20 years' a 'voice control' policy had been in place within the GGNRA but stated that this had been 'in error.' The NPS stated that this policy was in conflict with a general nationwide regulation that all pets be on leash in all [national] parks." *(Id., p. 4.)*

13. "With the 2002 notice, the GGNRA began enforcement of the general leash rule and closed the entire park to off-leash use. The 2002 notice called for public comment on whether the GGNRA should adopt a local regulation making an exception to the general leash rule. One specific option on which comment was requested was whether 'off-leash dog use' should be allowed 'in specific locations within the park.' The notice stated that 'this option would require rulemaking.'" *(Id.)*

14. "In sum, for more than twenty years, the GGNRA officially designated at least seven sites for off-leash use. This was not accidental. ***It was a carefully articulated, often studied, promulgation***. The responsible GGNRA officials in 1978 and thereafter presumably believed they were acting lawfully. Even now, the [federal] government concedes that the GGNRA had full authority at all times to relax the general leash rule at the GGNRA but argues it could have done so, at least after 1983, only via a 'special regulation.' In other words, the agency allegedly used the 'wrong' procedure back in 1978 (and thereafter) even though a 'right' procedure to reach the desired result was available and could have been used. The government

has not revealed its internal justification for following the 'wrong' process. Whatever it was, the justification was abandoned in 2002 with the two-word explanation that it had been 'in error.' With this ipse dixit, the NPS wiped away two decades of policy, practice, promulgations, and promises to the public." *(Id., p. 5, emphasis added.)*

15. Notwithstanding the decision in *United States v. Barley, et al.,* and notwithstanding that the fundamental prerequisites for use of negotiated rulemaking do not exist (such as the "need for a rule"), the GGNRA continues to insist that a "negotiated rulemaking" process proceed in order to allegedly determine whether a consensus can be reached among the committee members with respect to a rule for off-leash recreation in the GGNRA. Despite the fact that the 1979 Pet Policy has been and continues to be the rule for off-leash dog walking in the GGNRA, and there is, therefore, no "need for a rule" in order to trigger the use of negotiated rulemaking, the GGNRA along with respondents Bourne and Harty, continues to insist that the highly illegal negotiated rulemaking process respondents have implemented continue at a cost of millions of dollars to the taxpaying public.

16. In point of fact, the GGNRA, aided and abetted by respondents Bourne and Harty, is using the negotiated rulemaking process in order to entirely eliminate off-leash recreation in the GGNRA. As implemented by the GGNRA and by respondents Bourne and Harty, the current negotiated rulemaking process is rife with illegalities. One example of the illegalities is the refusal of the GGNRA and respondents Bourne and Harty to live up to their promises that should the decision in *United States v. Barley,* result in a finding of legality of the 1979 Pet Policy, the 1979 Pet Policy would be used as the baseline for the negotiated rulemaking process. Nevertheless, the GGNRA, aided and abetted by respondents Bourne and Harty, refuses even to acknowledge the Court's decision. Another example of the illegalities of the negotiated rulemaking is that the Secretary of the Interior specifically ordered the GGNRA, for purposes of the negotiated rulemaking process, to consider off-leash recreation in the entirety of the Park. Nevertheless, the GGNRA, aided and abetted by respondents Bourne and Harty, has refused to allow the negotiated rulemaking committee to consider off-leash recreation on a Park-wide basis,

and refuses to allow the process even to consider extant and legal off-leash areas as part of the rulemaking process.

17. As noted, on January 11, 2002, the NPS provided "Advanced Notice of Proposed Rulemaking" ("ANPR") in the Federal Register. The ANPR recognized several possible outcomes from a rulemaking process, but was heavily weighted against continuation of the 1979 Pet Policy. The ANPR referenced the fact that any rulemaking would be subject to Orders of the Director of the NPS.

18. On November 17, 2003, NPS Director Fran P. Mainella issued "Director's Order #75A", entitled "Civic Engagement and Public Involvement." The Order states that increased civic engagement and public involvement is necessary and applicable to, *inter alia*, rulemaking procedures and processes, including "discretionary decision-making by superintendents." The Order further acknowledged: "We expect public involvement to improve, inform, and influence our decision-making."

19. NPS Director's Order #75A additionally recognized that many NPS rulemaking procedures are subject to the Federal Advisory Committee Act. The negotiated rulemaking process is one of the procedures subject to the Federal Advisory Committee Act ("FACA"). The FACA, in relevant part, declares that "the public should be kept informed with respect to the . . . activities . . . of advisory committees." The negotiated rulemaking committee that has been convened for purposes of considering the extent, if any, of continued off-leash recreation in the GGNRA is such an advisory committee subject to the FACA. Notwithstanding the highly public nature of the negotiated rulemaking process, the GGNRA, aided and abetted by respondents Bourne and Harty, have shrouded the process in secrecy and forced committee members to sign non-disclosure agreements or be excluded from the committee. On December 20, 2005, Petitioner (and another defendant in *United States v. Barley)* sought to attend a negotiated rulemaking caucus at the GGNRA headquarters in Fort Mason. Before Petitioner entered the public building to attend the public meeting, he was met by two armed federal Rangers, one of whom was accompanied by a police dog. Petitioner was told that if he attempted to enter the public building and simply attend the public meeting, he would be arrested for trespassing.

20. Since at least 2002, respondents Bourne and Harty have been using their electronic mail accounts at respondent CSUS, and respondent CSUS' stationary, to discuss the negotiated rulemaking process both with proposed and actual committee members, with the NPS and the GGNRA, and with other persons and entities, including governmental entities.

21. By e-mail dated March 7, 2006, Petitioner made a request under the California Public Records Act to respondent Aguilar, for the following documents (from January 1, 2000 through the present):

"(1) A copy of CSUS' policy regarding e-mail usage by employees for advocacy purposes unrelated to the employee's work at CSUS;

(2) A copy of CSUS' document retention policy;

(3) Copies of all communications from or to Mr. Bourne and from or to Mr. Harty regarding off-leash dog walking sent or received on CSUS stationary and/or on Mr. Bourne's and Mr. Harty's CSUS e-mail accounts."

Petitioner's March 7, 2006 California Public Records Act Request included a Request for a Fee Waiver. The Request also asked that should CSUS withhold any responsive documents, a justification was required under *California Government Code Section 6255.* A response was requested within 10 days from respondent Aguilar as counsel for respondent CSUS. *(Exhibit A.)*

22. One day later, by e-mail dated March 8, 2006 to respondent Aguilar, as General Counsel for respondent CSUS, Petitioner supplemented his California Public Records Act request as follows: "Please produce copies of all communications from and to Mr. Bourne, and from and to Mr. Harty, regarding the subject of Negotiated Rulemaking for the Golden Gate National Recreation Area, sent or received on CSUS stationary and/or on Mr. Bourne's and Mr. Harty's CSUS e-mail accounts. This supplemental request is likewise limited to the time frame January 1, 2000 through the present. *(Exhibit B.)*

23. By e-mail sent to Petitioner on March 17, 2006, respondent Aguilar, acting as General Counsel for respondents CSUS and CCP, stated that by April 17, 2006, he would produce a copy of respondent CSUS' policy regarding e-mail usage by employees for advocacy unrelated to the employee's work at respondent CSUS, and a copy of respondent CSUS'

document retention policy. However, respondent Aguilar stated the following with respect to the communications of respondents Bourne and Harty requested by Petitioner:

> With regard to you're [sic] the request for e-mails/correspondence by Mr. Bourne and Mr. Harty I will only provide those documents which are not exempt from disclosure pursuant to Government Code Section 6255. It is my opinion that at this point in time the public interest in not disclosing *some or all* of these documents clearly outweighs the public interest served by disclosure. As you are likely aware, there has been much controversy regarding those federal regulations which apply to lease [sic] requirements for dogs in the Golden Gate Recreational Area. Recreational Area officials have decided to address this conflict by engaging in a rulemaking process with a goal of writing a new federal regulation covering dog management for the park. *As a public mediation resource,* the Center for Collaborative Policy, through the efforts of Mr. Bourne and Mr. Harty, has been engaged in facilitating a collaborative solution to this issue. *In general,* I do not believe it would be in the best interest of the public to reveal *any* of Mr. Bourne's or Mr. Harty's internal or external deliberations *at this point in time.* However, I will review that correspondence and will produce any documents which I believe ***does not compromise the process currently underway***. It is in my role as University Legal Counsel that I have made this determination. *(Exhibit C, emphasis added.)*

24. Respondent Aguilar's response on behalf of respondents CSUS, CCP, Bourne, and Harty, was illegal as it violated *Government Code Section 6257.5.* Moreover, respondents failed to produce any documents to Petitioner by the promised date of April 17, 2006.

25. By e-mail dated March 18, 2006, Petitioner replied to respondents' correspondence of March 15, 2006. *(Exhibit D.)* Initially, Petitioner pointed out that *Government Code Section 6250* sets forth the Legislature's finding and declaration "that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Petitioner also noted that respondents did not take issue with the fact that the documents requested are public records. Petitioner also pointed out that respondents' position that they would not disclose "some or all" of the records, and not disclose "any" of the records, was internally inconsistent. Petitioner then stated that (1) respondents' refusal to produce the documents because they address an ongoing negotiated rulemaking process violated *Government Code Section 6257.5,* which provides that "[t]his chapter does not allow limitations on access to a public record based on the purpose for which the record is being requested, if the record is otherwise subject to disclosure." Petitioner additionally noted that under *Government Code Section 6255,* "[t]he question is not what is 'in the best interests of the

public at this point in time', but whether there is a public interest in not disclosing the requested records that 'clearly outweighs the public interest served by disclosure,'" and that respondents had not even attempted to make the requisite showing and instead were using an illegal justification for refusing to produce the public records requested by Petitioner. Finally, Petitioner set forth several reasons why production of the documents would be in the public interest:

> The NPS rulemaking process (whether through traditional rulemaking or otherwise) has been declared to be one that requires significant public input and disclosure. In this regard, I attach NPS Director's Order 75-A. Your refusal to produce the requested documents is a clear violation of the Director's Order, one with which Mr. Bourne and Mr. Harty should be readily familiar but continue to flout.
>
> Additionally, I must address your contention that "there has been much controversy" over off-leash recreation in the GGNRA. You could not be more incorrect. As the United States District Court for the Northern District of California determined, by Order dated June 2, 2005, the GGNRA Superintendent clearly possessed the legal authority to implement the 1979 Pet Policy (during the period 1979 through 1983), and legally did so.
>
> The Court additionally found that the GGNRA's attempt to rescind the 1979 Pet Policy was illegal and that the 1979 Pet Policy governs off-leash recreation in the GGNRA. (Attached is a copy of the Court's decision.) There is, therefore, absolutely no confusion between the federal on-leash regulation *(36 C.F.R. Section 2.15(a)(2))* and the 1979 Pet Policy. That the NPS/GGNRA (along with Mr. Bourne and Mr. Harty) engages in a public relations campaign to attempt to convince the public that a controversy exists between the 1979 Pet Policy and the Code of Federal Regulations is simply demonstrative of the bad faith in which the NR is being conducted by the GGNRA and acceded to by Mr. Bourne and Mr. Harty in violation of the Negotiated Rulemaking Act. The Court's decision laid any controversy to rest.

Petitioner demanded production of the requested records no later than April 17, 2006. *(Exhibit D.)*

26. Respondents did not take issue with Petitioner's correspondence of March 18, 2006. Instead, by e-mail dated April 17, 2005, respondent Aguilar, acting on behalf of respondents CSUS, CCP, Bourne, and Harty, simply stated: "Although I previously informed you that *documents responsive to your request would be produced today,* this is to inform you that the University will not be able to provide any documents until April 28, 2006. The additional time is necessary in order to review all correspondence within the time frame you have mentioned. This review has been more time consuming that [sic] originally anticipated." *(Exhibit E, emphasis added.)*

27. By e-mail dated April 17, 2006, Petitioner replied to respondent Aguilar as follows:

> I will accede to the extension you seem to have granted yourself *only if* you immediately clarify exactly what documents you are producing, and whether you have reconsidered your original response and will be producing all of the correspondence requested in my initial and supplemental California Public Records Act requests.
>
> If you are unwilling to respond in full, I will bring legal action against the University seeking all the documents, as well as requests for my attorneys' fees and costs.
>
> In the interim, I trust you recognize that any destruction or alteration of the requested records would constitute, *inter alia,* obstruction of justice and spoliation of evidence. *(Exhibit F.)*

28. By letter dated April 28, 2006, respondent Aguilar sent Petitioner (1) a copy of respondent CSUS' policy regarding e-mail usage by employees "for advocacy purposes unrelated to the employees' work at CSUS"; and (2) a copy of CSUS' document retention policy. With respect to respondents Bourne and Harty's communications on off-leash dog-walking in the GGNRA and their communications regarding the negotiated rulemaking process, only a few documents were produced, some of which were redacted. Many of the documents produced were correspondence to and from Petitioner and respondents Bourne and Harty. Respondent Aguilar claimed that documents were redacted "in order to ensure that exempted communications are not disclosed." Respondent Aguilar went on to claim, for the first time:

> Any communication involving Mr. Bourne and/or Mr. Harty *which has not been publicly circulated* and is related to the National Park Service's current negotiated rulemaking process is not being released. *Although I initially stated that the balancing test established by Government Code Section 6255 prohibited the disclosure of some or all of their communications, after review of the various communications, related to the current rulemaking process, are exempt from disclosure pursuant to Government Code Section 6254(k).*
>
> That section provides that records prohibited from disclosure by federal law are exempt from the requirements of the public records act. Federal law prohibits the disclosure of a "neutral" party's communications if they are a "dispute resolution communication" or any communication provided in confidence. Section 574, Title 5 USC.
>
> Mr. Bourne's and Mr. Harty's communications are largely protected because they are neutral parties in a dispute resolution proceeding. As you are aware, Mr. Bourne and Mr. Harty have been designated facilitators/convenors or "neutral parties" by the National Park Service to facilitate the reaching of a consensus regarding dog management rules in the Golden Gate Recreational Area.

In addition, they are involved in dispute resolution proceeding, the Golden Gate National Recreation Area Dog Management Negotiated Rulemaking Process. See Section 571(6), Title 5, USC. *(Exhibit G, emphasis added.)*

29. Petitioner contends that pursuant to *Government Code Section 6253(c),* respondents waived any right to rely upon either *Government Code Section 6254, subdivision (k),* or any provisions of federal law, in refusing to produce the public records requested by Petitioner.

30. By e-mail dated May 1, 2006, Petitioner made the following points and posed the following questions to respondent Aguilar:

> 1. Are you claiming that correspondence from Bourne or Harty to proposed and actual Negotiated Rulemaking Committee ("NRC") members are documents that have "not been publicly circulated"? I believe your answer to this must be in the affirmative, as no such documents have been produced. If this is your "opinion", it could not be more ill-founded. The NRC is, at least in theory, acting on behalf of the general public at large. Any documents sent to proposed and actual NRC members are manifestly in the public domain and must be produced.
>
> 2. Are you still relying upon the ambiguous positions previously stated regarding the "balancing test" in refusing to produce the requested documents? If so, you have made absolutely no showing in response to the factual record I have placed before you regarding the public nature of the NR process. Obviously, you have no good faith basis for relying upon any "balancing test" in refusing to produce what are unquestionably public records. In addition to the facts previously brought to your attention, are you aware of the fact that in his "Order of Affirmance", Judge Alsup found that the controversy surrounding the 1979 Pet Policy constituted both a "significant change in use" of the lands in question, and was change in use of a "highly controversial" nature? The NR that is underway is a direct result of the illegal rescission of the 1979 Pet Policy. The documents requested are part of the public's right to know regarding this public process over significant and highly controversial NPS/GGNRA practices. The Director of the NPS has made clear that the process is to be open to the public. You have no legal basis for continuing to rely upon a "balancing test" in withholding what are indisputably public records.
>
> 3. You have completely failed even to attempt to explain how the requested documents constitute "confidential communications". Indeed, the provision upon which you now rely, Government Code Section 6254, subdivision (k), applies only to "records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to provisions of the California Evidence Code relating to privilege." Your failure to assert this exemption within the statutory time frame constitutes a waiver of that provision. However, even assuming the absence of a waiver, are you contending that the requested documents constitute privileged communications between Bourne/Harty and the NRC members or the NPS/GGNRA? That would be an astounding position given that Bourne and Harty are required under the NR Act to be unbiased mediators. If Bourne and Harty were acting confidentially with the

GGNRA, they are clearly biased and cannot act as facilitators in the NR and should have recused themselves long ago. *(Exhibit H.)*

31. The provisions of the Administrative Dispute Resolution Act of 1996, including *5 U.S.C. Section 574,* do not work to shield the public documents requested by Petitioner, for several reasons. First and foremost, *Section 574*, by its own terms, does not "preclude" the production of documents from a "dispute resolution proceeding". Indeed, subdivision (a) of *Section 574* states that "*[e]xcept as provided in subsections (d) and (e),* a neutral in a dispute resolution proceeding shall not *voluntarily* disclose or through discovery or compulsory process be required to disclose any dispute resolution communications or any communication provided in confidence to the neutral, unless. . . (2) the dispute resolution communication has already been made public; (3) *the dispute resolution communication is required by statute to be made public*. . .; or (4) a court determines that such . . . disclosure is necessary to (A) prevent a manifest injustice; (B) help establish a violation of law; or (C) prevent harm to the public health or safety . . .." Under the present circumstances, the California Public Records Act is a "statute" that "require[s]" the documents in question to be made public. Production of the public records in question will also prevent a manifest injustice and help in establishing that the negotiated rulemaking, as implemented by the GGNRA, with the aid and assistance of respondents Bourne and Harty, is illegal. In addition, the statute defines a "neutral" as "an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy." *(5 U.S.C. Section 571, subdivision (10).)* The documents requested by Petitioner do not involve "an issue in controversy", as the Court in *United States v. Barley* found that the 1979 Pet Policy was legally implemented, illegally rescinded by the NPS/GGNRA, and dismissed the citations issued to Petitioner and the other defendants in the case. Moreover, not until the first negotiated rulemaking meeting of March 6, 2006, at which Petitioner was present, were respondents Bourne and Harty made "neutrals" for purposes of the process. Prior to that date, respondents Bourne and Harty were simply "convenors" under the Negotiated Rulemaking Act for purposes of determining whether a committee could be established but having absolutely no role in functioning "specifically to aid the parties in resolving the controversy." *(Id.)* The

Negotiated Rulemaking Act of 1996 *(5 U.S.C. Sections 561-570)* defines a "convenor" as a "person who impartially assists an agency in determining *whether* establishment of a negotiated rulemaking committee is feasible and appropriate in a particular rulemaking." *(5 U.S.C. Section 562(3), emphasis added.)* This "convenor" role has nothing to do with resolving any "issue in controversy" and neither respondent Bourne nor respondent Harty could even be considered to be "neutrals" under the Administrative Dispute Resolution Act of 1996 until they were approved as "facilitators" under the Negotiated Rulemaking Act by the assembled committee on March 6, 2006. Respondents' reliance upon the Administrative Dispute Resolution Act of 1996 to deny Petitioner access to the public records in question was illegal.

32. On May 5, 2005, respondent Aguilar sent an e-mail to Petitioner stating: "I did receive this message earlier this week but due to the press of other matters have not been able to respond. I will provide a response to you by the close of business, Monday, May 8th." *(Exhibit I.)*

33. On May 5, 2006, Petitioner sent an e-mail to respondent Aguilar. In it, Petitioner stated:

> I trust you understand the law that the exemption upon which you now rely (and have waived – Government Code Section 6254(k)), only applies where there is a privilege available under the California Evidence Code. There is no statutory privilege that protects the communications that are the subject of my Public Records Act requests. Should you wish, I will forward the pertinent case law. *(Exhibit J.)*

34. Later in the day on May 5, 2006, respondent Aguilar sent Petitioner a response, stating that he "would be interested in any pertinent authorities you have." *(Exhibit K.)*

35. At 5:02 p.m. on May 5, 2006, Petitioner sent an e-mail to respondent Aguilar, stating:

> I would suggest that in reevaluating your position on the application of *Government Code Section 6254, subdivision (k)* to the public records at issue, you begin with the decision in *Cook v. Craig, 55 Cal.App.3d 773 (1976)*. That decision makes clear that said provision is not an independent exemption at all; it simply incorporates the privileges set forth in the California Evidence Code.
>
> As there is no privilege under California statutory law with respect to the public records I have requested, I again demand that CSUS produce the documents immediately.

This response in no way constitutes any waiver on my part that CSUS' untimely assertion of this provision has waived any right by CSUS to rely upon it in restricting access to what are unquestionably public records. *(Exhibit L.)*

36. On May 8, 2006, respondent Aguilar sent an e-mail to Petitioner stating that he would "review Cook v. Craig and any related authorities this afternoon and respond tomorrow." *(Exhibit M.)*

37. Respondent Aguilar, acting for himself and for respondents CSUS, CCP, Bourne, and Harty, never made good on his promise to respond to the law cited by Petitioner and refused and continues to refuse to produce the public records requested by Petitioner. *(Exhibit N.)*

PUBLIC RECORDS ACT VIOLATION

38. Petitioner hereby incorporates by this reference Paragraphs 1 through 37 as fully as though set forth at length herein.

39. The documents sought by Petitioner in his correspondence of March 7 and March 8, 2006 are "public records" as defined in *Government Code Section 6252(e)* as they contain information relating to the conduct of the public's business. Respondents have never contended that the documents sought by Petitioner are not "public records".

40. Respondents violated *Section 6253* of the *Government Code* by failing to promptly disclose the documents requested.

41. Respondents violated *Section 6255* of the *Government Code* by failing to demonstrate how the alleged public interest in withholding information required to be disclosed to the public, including documents that have been provided to potential and actual members of the negotiated rulemaking committee, clearly outweighs the public interest served by disclosure of the documents. Respondents have failed to provide any valid legal justification for withholding the public records sought by Petitioner.

42. Respondents violated *Section 6253(b)* of the *Government Code* by failing to make the public records requested by Petitioner available promptly. Moreover, respondents never took issue with Petitioner's request for a fee waiver as to the documents requested.

43. Respondents violated *Section 6253(c)* of the *Government Code* by failing, within 10 days of Petitioner's requests of March 7, 2006 and March 8, 2006, to notify Petitioner of all the

reasons respondents had relied upon for refusing to produce the public records requested. Respondents have waived any right to rely upon any provision of law other than *Government Code Section 6257.5,* as said provision was the only basis set forth within the statutory time limit for withholding of the public records sought by Petitioner. However, respondents violated the California Public Records Act by withholding the public records requested by Petitioner in relying "upon the purpose for which" the records allegedly would be used by Petitioner, in violation of *Section 6257.5* of the *Government Code.*

44. Respondents violated Section *6253(a)* of the *Government Code* by (1) failing to assist Petitioner in identifying records responsive to Petitioner's requests; (2) failing to describe the information technology and physical location in which the records exist; and (3) failing to provide suggestions for overcoming any practical basis for denying access to the records sought by Petitioner.

45. Respondents violated *Section 6254.9(d)* of the *Government Code* by failing to produce the public records requested by Petitioner that are stored in one or more computers at respondent CSUS.

46. Respondents violated CSUS' own [Public] Records Access Manual in refusing to produce the documents requested by Petitioner. As a result, respondents violated *Section 6253.4(a)* of the *Government Code* in refusing to produce the public records requested by Petitioner. In particular, respondent CSUS' "*Records Access Manual*" (Revised March 2005) recognizes (1) that the California Public Records Act, "embedded in the [California] constitution", "was enacted to give the public information about how their business is being conducted"; (2) that "CSU must respond to any Public Records Act request within ten days after receipt"; (3) that the Act is to "be broadly construed" in favor of disclosure of public records "and that exemptions or exceptions limiting public access are to be narrowly construed"; (4) that "**all** records maintained by CSU are potentially subject to disclosure under this Act"; and (5) that "the courts will construe every exception narrowly, and the CSU will always have the burden of establishing that the record was properly not disclosed." (Emphasis original.)

47. Respondent Aguilar, in contending that respondents Bourne and Harty's communications with the GGNRA are confidential, has admitted that Bourne and Harty violated respondent CSUS' "University Computer and Network User Code of Ethics", which provides that "University research and instructional [computer] accounts must not be used for private consulting. . .."

48. As a result of respondents' refusals to comply with the provisions of the Public Records Act, Petitioner has sustained and continues to sustain irreparable damage and injury in that Petitioner is and continues to be denied access to information regarding matters of fundamental public interest concerning such matters as off-leash recreation in the GGNRA, and an illegally implemented negotiated rulemaking process that has a predetermined outcome to eliminate or substantially reduce off-leash recreation in the GGNRA.

49. An actual controversy exists between Petitioner and respondents in that Petitioner contends that the public records requested by him on March 7, 2006 and March 8, 2006 are required to be disclosed and made promptly available to Petitioner. Respondents' only timely objection to production of the public records requested by Petitioner expressly violated *Section 6257.5* of the *Government Code.* Accordingly, Petitioner and the public have been, and will continue to be, unable to obtain access to public records due to respondents' unlawful and illegal acts. Pursuant to *Government Code Section 6258,* Petitioner is entitled to an order declaring that the documents he seeks are public records within the meaning of the Public Records Act and must be disclosed.

50. Pursuant to *Section 6258* of the *Government Code,* Petitioner is additionally entitled to institute proceedings for a writ of mandate to enforce his right and the public's right to obtain the public records requested. Further, under *Section 6258* of the *Government Code,* Petitioner is entitled to have these proceedings resolved on an expedited basis consistent "with the object of securing a decision as to these matters at the earliest possible time."

51. Petitioner has incurred and will continue to incur attorneys' fees and costs associated with these proceedings and pursuant to any further proceedings necessary to secure the specific relief requested herein.

RELIEF DEMANDED

Therefore, Petitioner demands judgment as follows:

1. That this Court issue an alternative writ of mandate commanding respondents, and each of them, to provide the public records requested by Petitioner on March 7, 2006 and March 8, 2006, or to show cause before this Court at an expedited time specified by Court order why it should not be done and why a peremptory writ should not issue;

2. On return of the alternative writ and hearing on the order to show cause, that this Court issue a peremptory writ of mandate compelling respondents to immediately provide Petitioner with each document requested by him on March 7, 2006 and March 8, 2006;

3. For a declaration that respondents violated *Government Code Section 6253* by not segregating allegedly exempt information from public information and making that information "promptly available" to Petitioner;

4. For a declaration that access to the public records requested by Petitioner cannot be denied based on the purpose for which the records allegedly will be used, as such a basis for refusing to produce the documents is a violation of the Public Records Act and a violation of NPS Director's Order #75A, as the documents involve issues about which the public has a fundamental right of access in order to determine whether the people's business is being conducted in accordance with state and federal law;

5. For attorneys' fees and costs in this action according to proof pursuant to *Government Code Section 6259*; and

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

Dated this 12th day of June, 2006.

Stephen Samuel Sayad
In Propria Persona

VERIFICATION

I, Stephen Samuel Sayad, declare:

I am the Petitioner in this action and am an attorney at law duly licensed to practice before all the Courts of the State of California. With the exception of those matters stated in the Petition on information and belief, I have personal knowledge of all such matters and, if called an sworn as a witness, I could and would competently testify thereto. As to those matters stated on information and belief, I believe them to be true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification is executed on June 12, 2006.

Stephen Samuel Sayad