

1 ROBERT E. BELSHAW (SBN 142028)
OF COUNSEL
2 GUTIERREZ & ASSOCIATES
244 California St. Ste.300
3 San Francisco, California 94111
4 Telephone: (415) 956-9590
Facsimile: (415) 986-8606

5 Attorneys for Plaintiff
6 American Small Business League

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 AMERICAN SMALL BUSINESS LEAGUE

12 Plaintiff,

13 v.

14 National Aeronautics and Space Administration

15 Defendant.
16
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CASE NO.

**COMPLAINT FOR INJUNCTIVE
RELIEF**

**FREEDOM OF INFORMATION ACT
(5 U.S.C. 552 (a)(3)(A))**

18 **COMPLAINT FOR INJUNCTIVE RELIEF**

19 1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552,
20 (“FOIA”) for injunctive and other appropriate relief to compel the disclosure and release of
21 documents improperly withheld from Plaintiff by the National Aeronautics and Space
22 Administration.
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24 **JURISDICTION AND VENUE**

25 2. This court has both subject matter jurisdiction over this action and personal
26 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction
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1 over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. §
2 552(a)(4)(B).

3 **THE PARTIES**

4 3. Plaintiff is the American Small Business League (“ASBL”), an organization
5 incorporated in California which has its principal place of business in Sonoma County,
6 California. ASBL is a national organization established to research and focus public attention
7 on emerging small business issues and to otherwise promote the interests of small businesses.
8 ASBL’s activities include the review of evolving federal and state government policy and
9 procedures to determine possible impact on small business.

10 4. Defendant National Aeronautics and Space Administration (hereinafter “NASA”)
11 is an “agency” within the meaning of 5 U.S.C. § 552 (f).

12 **PLAINTIFF’S FOIA REQUEST AND THE NASA’S RESPONSE**

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14 5. On or about March 22, 2010 pursuant to the Freedom of Information Act, ASBL
15 requested records from NASA consisting of “The Individual Subcontracting Report (ISR/SF
16 294) and the Summary Subcontracting Report (SSR/SF 295) for the contract with PIID
17 NNJ06VA01C to United Space Alliance, LLC , DUNS 944949.” The request was directed to
18 the NASA’s Johnson Space Center in Houston Texas. A true and correct copy of the request is
19 attached hereto as Exhibit A.

20 6. NASA responded on March 30, 2010 acknowledging receipt of the FOIA request
21 stating that it was *forwarding* the request to the “area which may have pertinent records” A true
22 and correct copy of NASA’s January March 30, 2010 response is attached hereto as Exhibit B.

23 7. NASA did not further respond to the ASBL’s FOIA request. On April 29, 2010
24 ASBL appealed NASA’s failure to respond to its FOIA request. A true and correct copy of
25 ASBL’s appeal is attached hereto as Exhibit C.

26 8. On May 6, 2010, ASBL received a letter dated April 23, 2010 from the Johnson
27 Space Center’s FOIA Liaison Officer denying the request, having determined that the Individual
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1 Subcontracting Report (ISR/SF 294) and the Summary Subcontracting Report (SSR/SF 295)
2 were exempt from disclosure under 5 USC 522 (b)(4) as “ commercial or financial information
3 obtained from a person which is privileged or confidential”. A true and correct copy of
4 NASA’s response is attached hereto as Exhibit D.

5 9. On May 6, ASBL filed an appeal of NASA’s determination that the requested
6 documents were exempt from disclosure. A true and correct copy of ASBL’s appeal is attached
7 hereto as Exhibit E. NASA did not respond to the Appeal.

8 10. The documents requested by ASBL are public records which contain no confidential
9 information and are required by law to be completed by government contractors to identify
10 compliance with the Small Business Act. ASBL has a right of access to the documents requested
11 pursuant to 5 U.S.C. § 552 (a)(3), and there is no legal basis for NASA’s denial of such access.
12 Accordingly, ASBL seeks an order from this court compelling NASA to provide the requested
13 information.

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15 **CAUSE OF ACTION**

16 **Violation of the Freedom of Information Act**
17 **for Wrongful Withholding of Agency Records**

18 11. NASA has wrongfully withheld documents requested by ASBL.

19 12. ASBL has exhausted the administrative remedies with respect to NASA’s
20 wrongful withholding of the requested documents.

21 13. ASBL is entitled to injunctive relief and an order from this Court compelling an
22 immediate release and disclosure of the requested documents.

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24 **PRAYER FOR RELIEF**

25 WHEREFORE, ASBL prays that this Court:

- 26 A. Issue an order compelling NASA to disclose all responsive documents in their
27 entirety;
28 B. Provide for expeditious proceedings in this action;

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- C. Award ASBL its costs and reasonable attorneys' fees incurred in this action;
and
- D. Grant such other relief as the Court may deem just and proper.

Dated: June 6, 2010

GUTIERREZ & ASSOCIATES

By: _____
ROBERT E. BELSHAW
Attorneys for Plaintiff American
Small Business League