

KARL OLSON (SBN 104760)
CANNATA, O'TOOLE, FICKES & ALMAZAN LLP
100 Pine Street, Suite 350
San Francisco, CA 94111
Telephone: (415) 409-8900
Facsimile: (415) 409-8904
kolson@cofalaw.com

Attorneys for Petitioner
CHECKS AND BALANCES PROJECT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN
CIVIL - UNLIMITED JURISDICTION

CHECKS AND BALANCES PROJECT,

Petitioner,

vs.

CITY OF BAKERSFIELD,

Respondent.

Case No. _____

VERIFIED PETITION FOR DECLARATORY
RELIEF AND WRIT OF MANDATE
DIRECTED TO THE CITY OF
BAKERSFIELD ORDERING CITY OF
BAKERSFIELD COMPLIANCE WITH THE
RALPH M. BROWN ACT AND
CALIFORNIA PUBLIC RECORDS ACT
(Govt. Code sections 6250 et seq.; Govt. Code
section 54960 et seq.)

INTRODUCTION

This Petition for declaratory relief and for a writ of mandate pursuant to the Ralph M. Brown Act, Government Code section 54960 et seq. (“Brown Act”), the California Public Records Act (Government Code section 6250 et seq., hereafter “the PRA”) and article I, section 3(b) of the California Constitution seeks to compel compliance by the city of Bakersfield (hereafter “City”) with its obligations under the Brown Act and the PRA. The City violated the Brown Act when it repealed the Property Assessed Clean Energy (“PACE”) financing program after coordinated communications – a “serial meeting” – with opponents of the PACE program prior to a formal vote, and has not fully complied with PRA requests seeking documentation of these meetings.

SUMMARY OF ALLEGATIONS

1. The Bakersfield City Council voted on July 19, 2017 to rescind the PACE program in Bakersfield. The formal vote was the culmination of discussions in closed sessions or “serial meetings” among council members. Representatives of the Bakersfield Association of Realtors met – by their own admission – with Bakersfield elected officials in private, without public notice, to secure their votes to repeal PACE. The author of a grant application by the Bakersfield Association of Realtors, Kim Schaefer, in her own words, said, “We have held preliminary meetings with local elected officials that are willing to lead the charge on a moratorium of local PACE financing and commit the necessary votes, but are asking for political cover via grassroots mobilization, media and arguments.” The “serial meetings” involved a majority of the City Council. In other words, “the fix was in” before the City Council held its formal vote to rescind the PACE program. The City Council’s action violated the Brown Act, and it has failed to fulfill its obligations under the Public Records Act in its responses to PRA requests which would shed further light on the Council’s actions.

1 **THE PARTIES**

2 2. Petitioner Checks and Balances Project (hereafter “petitioner” or “Checks and Balances” or
3 “CBP”) is an investigative watchdog blog, the mission of which is to shed light on the actions of
4 lobbyists, politicians and others who try to block the growth of a sustainable economy. Checks
5 and Balances Project is headquartered in Arlington, Virginia.
6

7 3. Respondent city of Bakersfield is a “local agency” as defined in the Public Records Act,
8 Government Code section 6252(a), and as defined in the Brown Act, Government Code section
9 54951. The city of Bakersfield is the ninth-largest city in California.

10 **FACTUAL BACKGROUND REGARDING BROWN ACT VIOLATION**

11 4. PACE financing helps homeowners pay for solar panels, efficient appliances and other
12 improvements that increase the energy efficiency of their homes. These PACE-financed home
13 improvements are paid back through property tax assessments. The PACE program started in
14 2008 in California, and residential PACE programs also operate in Florida and Missouri. PACE
15 programs have been established not just in Bakersfield and in Kern County, but also in several
16 other large California counties including Los Angeles, Riverside, San Bernardino and San Diego.
17 The PACE program has helped create jobs and contributed to a sustainable economy and energy
18 efficiency.
19

20 5. Lobbyists for both the real estate industry and the mortgage industry have launched a
21 coordinated attack on the PACE program, blaming it for slowing home sales.
22

23 6. The Bakersfield Association of Realtors (“BAR”) launched a campaign called “Remove
24 PACE” which was intended to operate in secrecy. BAR made a grant application seeking \$25,000
25 to the National Association of Realtors. The author of the grant application, Kim Schaefer,
26 BAR’s governmental affairs director, told the National Association of Realtors, “We have held
27 preliminary meetings with local elected officials that are willing to lead the charge on a
28

1 moratorium of local PACE financing and commit the necessary votes, but are asking for political
2 cover via grassroots mobilization, media and arguments.”

3 7. A majority of the members of the Bakersfield City Council reached a collective decision,
4 i.e. a collective commitment or promise, to rescind the PACE program through a series of
5 conversations or “serial meetings” among themselves and with opponents of the PACE program,
6 including the Bakersfield Association of Realtors and representatives of the mortgage industry,
7 prior to the formal vote of the Bakersfield City Council on July 19, 2017 to terminate the Property
8 Assessed Clean Energy Program (including the CaliforniaFIRST, E3, Figtree, HERO and Ygrene
9 Property Assessed Clean Energy programs) in the City of Bakersfield. At least four members of
10 the City Council – Bob Smith, Andrae Gonzales, Bruce Freeman and Willie Rivera –
11 communicated among themselves and with Ms. Schaefer and/or Jimmy Yee prior to formal
12 public meetings about the PACE program. Lobbyist Yee, representing the Bakersfield
13 Association of Realtors, met with City Council Members Smith and Gonzalez and emailed
14 another City Council Member, Rivera, regarding the PACE program. Gonzalez had multiple
15 meetings with Yee. The fact that “serial meetings” occurred among council members is strongly
16 suggested and/or evidenced by the fact that Gonzalez had one meeting on May 26, 2017 at the
17 Bakersfield Association of Realtors and then an hour later met with Councilman Ken Weir at a
18 local Starbucks, apparently to discuss the PACE program. Likewise, City Manager Alan Tandy
19 forwarded a list of complaints from Kim Schaefer to Andrae Gonzales, Ken Weir and Willie
20 Rivera on the same email chain, twice, on May 26, 2017.

21 8. On July 25, 2017, petitioner’s counsel, Karl Olson, wrote a letter to the Bakersfield City
22 Council demanding that the City Council “cure and correct” its decision to terminate the PACE
23 program. The July 25, 2017 letter, which is attached hereto as Exhibit A, stated that the City
24 Council’s action “is not in compliance with the Brown Act because it is the culmination of
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1 discussions in closed sessions or serial meetings of a matter that the Act does not permit to be
2 discussed in a closed session or serial meeting. Specifically, representatives of the Bakersfield
3 Association of Realtors met with Bakersfield elected officials in private, without public notice, to
4 secure their votes for the action described above.”

5
6 9. The Bakersfield City Council declined to “cure and correct” its action in a July 28, 2017
7 letter from Bakersfield City Attorney Virginia Gennaro. Ms. Gennaro, referring to the statement
8 by BAR’s Kim Schaefer about the “preliminary meetings with local elected officials that are
9 willing to lead the charge on a moratorium of local PACE financing and commit the necessary
10 votes,” conceded the “veracity of the statement” by Ms. Schaefer but claimed that it did not
11 constitute a violation of the Brown Act. A copy of Ms. Gennaro’s July 28, 2017 letter is attached
12 hereto as Exhibit B.

13 **FACTS REGARDING CPRA VIOLATIONS**

14
15 10. On July 17, 2017, Checks and Balances Project Senior Fellow Evlondo Cooper made a
16 Public Records Act request seeking records of communications regarding the PACE program and
17 communications regarding City Council Members Willie Rivera, Andrae Gonzales, Ken Weir,
18 Bruce Freeman, Jacquie Sullivan and Chris Parlier. The request sought phone messages and text
19 logs on the council members’ so-called “private” phones, as well as emails, documenting
20 communications with BAR and the mortgage industry and related to the PACE program. Copies
21 of the requests are collectively attached hereto as Exhibit C. Earlier, Mr. Cooper had sent a
22 Public Records Act request seeking records of Councilman Smith.

23
24 11. The city responded to the July 17, 2017 PRA request in an email dated July 28, 2017
25 which stated that records had been assembled and would be mailed on July 31, 2017. The records
26 were not received by petitioner until August 7, 2017. A copy of the response is attached hereto as
27 Exhibit D.
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12. The city has not fully complied with the PRA request because certain records responsive to the request have not been produced and are being withheld. The city has not supplied affidavits documenting the extent of any search for records notwithstanding the California Supreme Court's decision in *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608 stating that such affidavits should be prepared to inform requesters of the search public officials made of their personal devices for responsive emails.

FIRST CAUSE OF ACTION (BROWN ACT VIOLATIONS)

13. Petitioner hereby realleges and incorporates by reference paragraphs 1 through 12 of this Petition.

14. Pursuant to Government Code section 54960, any interested persons, such as petitioner, may "commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations" of the Brown Act, or "to determine the applicability" of the Brown Act to "actions or threatened future action" of the legislative body, or "to compel the legislative body to audio record its closed sessions."

15. Petitioner alleges that the City of Bakersfield violated the Brown Act, including but not limited to Government Code section 54952.2(b)(1), by engaging in closed "serial meetings," without public notice, in which a majority of the members of the City Council reached a "collective decision made by a majority of the members of [the] legislative body, a collective commitment or promise by a majority of the members of [the] legislative body to make a positive...decision," or an actual vote by a majority of the City Council prior to the official July 19 vote to repeal the PACE program.

16. Petitioner also alleges that the City Council's closed discussions violated Government Code section 54953, which requires that "[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the

1 legislative body of a local agency,” and that the City also violated Government Code section
2 54962, which states that “no closed session may be held by any legislative body of any local
3 agency” unless expressly authorized by statute.

4 17. Petitioner demanded that the City “cure and correct” its Brown Act violation in its July
5 25, 2017 letter attached hereto as Exhibit A. The City refused to “cure and correct” the violation
6 in its July 28, 2017 letter, which is attached hereto as Exhibit B.

7 18. Petitioner requests that this Court hold and declare that the City violated the Brown Act by
8 holding improper closed discussions and a “serial meeting” prior to the official July 19 meeting in
9 which members of the City Council reached a collective decision or “collective commitment or
10 promise by a majority of the members of [the] legislative body” to repeal the PACE program.

11 19. Petitioner requests that this Court hold and declare that the City Council violated the
12 Brown Act on July 19, 2017 by voting to rescind and repeal the PACE program based on the
13 improper closed discussions and “serial meetings” which took place prior to the July 19 meeting.
14 Petitioner requests that this Court issue a writ of mandate compelling the City to nullify its July
15 19, 2017 action repealing the PACE program; and set the matter for a new public meeting, public
16 discussion and public vote, with a properly noticed agenda. Petitioner also requests that this
17 Court order the City to produce any recordings of any discussions of the PACE program at or
18 prior to the July 19, 2017 vote. Petitioner also requests that this Court issue a writ of mandate
19 compelling the City Council to record with videotape and audiotape its closed sessions for three
20 years following entry of judgment in this matter; to discuss and act upon in closed session only
21 those items expressly authorized to be discussed and acted upon in closed session; and to report
22 the vote or abstention of each Council member present on each action taken in closed session.

23 //

24 //

1 **SECOND CAUSE OF ACTION (CPRA VIOLATIONS)**

2 20. Petitioner hereby realleges and incorporates by reference paragraphs 1 through 19 of this
3 Petition.

4 21. Pursuant to Government Code section 6258, any person, such as Checks and Balances
5 Project, may “institute proceedings for injunctive or declaratory relief or writ of mandate in any
6 court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any
7 public record or class of public records under this chapter.”
8

9 22. The City violated the CPRA by improperly withholding records which were requested by
10 petitioner on July 17, 2017 (in Exhibit C to the Petition) related to discussions between members
11 of the City Council and between members of the City Council and PACE opponents related to the
12 decision to repeal or rescind the PACE program. Members of the City Council have not disclosed
13 all of their communications regarding the PACE program and have not provided affidavits setting
14 forth the extent of their search for records on their “private” electronic devices despite the
15 California Supreme Court’s decision in *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608
16 holding that communications on “private” electronic devices relating to public business are public
17 records, and that public officials should supply an affidavit setting forth the extent of their search
18 for such public records.
19

20 23. The records requested by petitioner in Exhibit C are public records subject to disclosure
21 and there is no exemption which would shield such records from disclosure. Petitioner has a right
22 of access to such records pursuant to Government Code section 6250 and article I, section 3(b) of
23 the California Constitution.
24

25 24. Petitioner has no plain, speedy and adequate remedy at law, other than this Petition, to
26 obtain the records sought in Exhibit C and in this Petition. Petitioner has a fundamental right of
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28

1 access to the records under Government Code section 6250 and article I, section 3(b)(1) of the
2 California Constitution.

3 25. Petitioner alleges in accordance with Government Code section 6258 that the information
4 it seeks from the City is maintained in Kern County.

5 26. Petitioner requests that, pursuant to Government Code section 6259, that this Court issue a
6 writ of mandate compelling the City to release all requested records evidencing or related to
7 communications regarding the PACE program and communications with members or
8 representatives of the Bakersfield Association of Realtors, members of the mortgage industry,
9 Yankee Communications, and any other individuals or entities communicating with council
10 members about the PACE program.

11 27. Petitioner also requests that, pursuant to Government Code section 6258, this Court hold
12 that the City violated the Public Records Act by unlawfully delaying and withholding production
13 of the requested records.
14

15 **PRAYER FOR RELIEF**

16 WHEREFORE, petitioner prays as follows:

17 **ON THE FIRST CAUSE OF ACTION (BROWN ACT VIOLATIONS)**

18 1. That this Court enter a declaratory judgment that the City violated the Brown Act by a
19 series of meetings or “serial meetings” at which a collective commitment or decision was made in
20 private meetings to terminate the PACE program;
21

22 2. That the Court issue a peremptory writ of mandate ordering the City Council to

23 A. Nullify its July 19, 2017 action terminating the PACE program, and set the matter for a
24 new public meeting, public discussion and public vote, with a properly noticed agenda;
25

26 B. Produce to petitioner and the public all documents, reports, minutes, emails, texts and
27 phone logs for closed-session or other closed meetings and discussions and communications, to
28

1 allow the Court to determine whether the City Council held discussions or meetings or
2 communications outside the formal July 19, 2017 meeting;

3 C. Produce for in camera review all such documents, reports, minutes, emails, texts and
4 phone logs for closed-session or other closed meetings and discussions and communications, to
5 allow the Court to determine whether the City Council or members thereof held discussions or
6 meetings outside the formal public July 19, 2017 meeting;

8 D. Record with videotape and audiotape all closed sessions pursuant to Government
9 Code section 54960 for three years following entry of judgment in this matter, and to maintain
10 those recordings according to law;

11 E. Discuss and act upon in closed session only those items expressly authorized to be
12 discussed and acted upon in closed sessions pursuant to Government Code section 54960.2;

14 F. Report the vote or abstention of each Council member present on each action taken
15 in closed session pursuant to Government Code section 54960.5.

16 3. That the Court enter an order awarding petitioner its reasonable attorney's fees and costs
17 incurred in bringing this action, pursuant to Government Code section 54960.5 or, in the
18 alternative, pursuant to Code of Civil Procedure section 1021.5.

19 **ON THE SECOND CAUSE OF ACTION**

20
21 1. That this Court issue a peremptory writ of mandate pursuant to Government Code sections
22 6258 and 6259 immediately directing the City to disclose to petitioner all public record it
23 requested in its July 17, 2017 PRA request, including but not limited to all records evidencing,
24 reflecting or relating to communications or meetings or conferences among or between City
25 Council members themselves and among, between or with individuals (including but not limited
26 to the Bakersfield Association of Realtors, the Kern County Taxpayers Association, and
27 representatives of the mortgage industry) relating in any way to the PACE program;
28

2. That this Court enter a declaratory judgment and/or issue a writ of mandate or other order requiring members of the City Council and other officials of the City of Bakersfield to submit affidavits describing the extent to which they searched any and all "private" electronic devices and government computers or servers for the records requested, including cell phone and text messages, as described by the California Supreme Court in *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, and thereafter order production of such records;

3. That this Court issue a declaratory judgment that the City violated the CPRA by unlawfully withholding and/or delaying production of the records requested in Exhibit C;

4. Alternatively, that the Court order the City to show cause why it should not produce all of the requested records and affidavits, and thereafter order the City to produce all requested and withheld records; and


5. That the Court award petitioner its reasonable attorney's fees and costs pursuant to Government Code section 6259(d).

ON ALL CAUSES OF ACTION

1. Petitioner requests that the Court award and grant such other and further relief as the Court may deem just and proper.

Dated: August 9, 2017

CANNATA, O'TOOLE, FICKES & ALMAZAN LLP



KARL OLSON
Attorneys for Petitioner
CHECKS AND BALANCES PROJECT

VERIFICATION

I, Scott Peterson, am the executive director of Checks and Balances Project. I have read the foregoing PETITION FOR DECLARATORY RELIEF AND WRITS OF MANDATE DIRECTED TO THE CITY OF BAKERSFIELD. The same is true of my own knowledge, except as to matters stated therein on information and belief, and as to them I believe them to be true.

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

Executed in Arlington, Virginia, on August 8, 2017.



Scott Peterson

EXHIBIT A



Karl Olson
kolson@cofalaw.com

July 25, 2017

Via Email and U.S. Mail

Bakersfield City Council
1600 Truxtun Avenue
Bakersfield, CA 93301
AdmAtt@Bakersfieldcity.us
City_Council@bakersfieldcity.us

Re: *Cure and Correct Demand re PACE program vote*

To whom it may concern:

I am writing on behalf of my client Checks and Balances Project to demand that the Bakersfield City Council cure and correct a violation of the Ralph M. Brown Act in connection with its July 19, 2017, vote to terminate the CaliforniaFIRST, E3, Figtree, HERO, and Ygrene Property Assessed Clean Energy (PACE) programs in the City of Bakersfield.

This letter calls your attention to a potentially substantial violation of the Ralph M. Brown Act, which may jeopardize the finality of the vote taken by the Bakersfield City Council to terminate the PACE program in Bakersfield.

The nature of the violation is as follows: During its hearing on July 19, 2017, the City Council rescinded the PACE program in Bakersfield.

The action taken is not in compliance with the Brown Act because it is the culmination of discussions in closed sessions or serial meetings of a matter that the Act does not permit to be discussed in a closed session or serial meeting. Specifically, representatives of the Bakersfield Association of Realtors met with Bakersfield elected officials in private, without public notice, to secure their votes for the action described above.

The evidence for this is found in the Bakersfield Association of Realtors' grant application to the National Association of Realtors asking for \$25,000 for campaign titled "Remove PACE." According to the author of the grant, Kim Schaefer, Government Affairs Director for the Bakersfield Association of Realtors:

"We have held preliminary meetings with local elected officials that are willing to lead the charge on a moratorium of local PACE financing and commit the necessary votes, but are asking for political cover via grassroots mobilization, media and arguments."

Ms. Schaefer does not deny meeting with councilmembers. And, we believe, more evidence of this Brown Act violation will be borne out once we receive records responsive to our July 17 records request.

If it appears the conduct of the Bakersfield City Councilmembers specified herein did not amount to the taking of action, I direct your attention to Section 54952.6, which defines “action taken” for the purposes of the Act expansively, *i.e.* as “a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”

The Brown Act creates specific agenda obligations for notifying the public with a “brief description” of each item to be discussed or acted upon, and creates a legal remedy for illegally taken actions — specifically, the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), I demand Bakersfield City Councilmembers cure and correct the illegal action as follows: The City Council will formally and explicitly withdraw from any commitment made, as well as disclose why individual councilmembers voted to terminate the PACE program in the City of Bakersfield. In addition, I seek the opportunity for informed comment by members of the public at the same meeting, notice of which is to be properly included on the posted agenda.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so.

If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would also ask the court to order the City Council and the City of Bakersfield to pay our court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Very truly yours,

CANNATA, O'TOOLE, FICKES & ALMAZAN LLP

A handwritten signature in black ink, appearing to read 'Karl Olson', with a stylized flourish at the end.

KARL OLSON

KO:hs

cc: Evlondo Cooper, Checks and Balances Project (via email only)

EXHIBIT B

CITY ATTORNEY
VIRGINIA GENNARO

DEPUTY CITY ATTORNEY
Joshua H. Rudnick
Andrew Heglund
Richard Iger

ASSOCIATE CITY ATTORNEY
Viridiana Gallardo-King



1600 TRUXTUN AVENUE
FOURTH FLOOR
BAKERSFIELD, CA 93301

TELEPHONE: 661-326-3721
FACSIMILE: 661-852-2020

OFFICE OF THE CITY ATTORNEY

July 28, 2017

Karl Olson, Esq.
CANNATA, O'TOOLE, FICKES & ALMAZAN LLP
100 Pine Street, Suite 350
San Francisco, CA 94111

Re: Cure and Correct Demand re PACE Program Vote

Dear Mr. Olson:


This letter is in response to your correspondence of July 25, 2017 wherein you "demand Bakersfield City Councilmembers cure and correct" an alleged violation of the Brown Act involving their termination of the PACE program in the City of Bakersfield.

The premise of such allegation is apparently based on a quote from Kim Schaefer which you re-stated in your letter. Notwithstanding the veracity of the statement, I would note that there is nothing in the quote itself which indicates a violation of the Brown Act. A legislative member has the right, arguably a duty, to meet with his/her constituents in order to become informed about concerns and upcoming local issues.

The allegation that the PACE topic was not appropriately agendized is also without merit. Government Code § 54954.2 and the cases interpreting such section make it clear that a general description of agenda items generally need not exceed 20 words. The PACE agenda item was clearly identified and indicated it was a hearing to consider the termination of such programs.

Therefore, there is no need for the City of Bakersfield to cure and correct a violation of the Brown Act since no such violation occurred.

Very truly yours,


VIRGINIA GENNARO
City Attorney

VG:lsc

cc: Honorable Mayor and City Councilmembers
Alan Tandy, City Manager
Chris Gerry, Acting City Clerk

EXHIBIT C



July 17, 2017

Kern County Board of Supervisors
1115 Truxtun Avenue, Fifth Floor
Bakersfield, California 93301

To Whom It May Concern:

My name is Evlondo Cooper, Senior Fellow at Checks and Balances Project, a watchdog blog focused on bringing greater accountability to lobbyists, politicians, corporate managers and others who block progress toward a more sustainable economy.

Media reports about a recent vote taken by the [Kern County Board of Supervisors to terminate Property Accessed Clean Energy, known as PACE](#), have raised concerns that board members may have violated the Ralph M. Brown Act.

According to a [Bakersfield Association of Realtors' grant application](#) for \$25,000 to fund a campaign titled "Remove PACE":

We have held preliminary meetings with local elected officials that are willing to lead the charge on a moratorium of local PACE financing and commit the necessary votes, but are asking for political cover via grassroots mobilization, media and arguments.

With this in mind, under the California Public Records Act, Govt. Code section 6250 et seq., and article I, section 3(b) of the California Constitution, I am requesting to inspect or obtain copies of public records prepared, sent or received by the following Kern County Supervisors from September 1, 2015, through today:

- David Couch
- Zack Scrivner
- Mike Maggard
- Leticia Perez

Records to Include:

Please produce records that include the following:

- Emails from the public and personal accounts of the above-named supervisors with the individuals, groups and agencies listed below:
 - Jimmy Yee or any representative, employee of affiliate of Yankee Communications;
 - Kim Schaefer or any representative, employee of affiliate of the Bakersfield Association of REALTORS;
 - Any representative, employee or affiliate of the Kern County Taxpayers Association;

- All meeting calendars for the above-referenced dates, electronic or paper, irrespective of device.
- Any communications made by other electronic means (such as, without limitation, electronic chat and instant messaging), or other means of contemporaneous interactive communication, that the above-named supervisors might have used to conduct public business with the above-referenced individuals, group, entities and associations.
- Information and data maintained in printed form as well as electronic form such as computer hard drive, tape and diskette. It also includes photographs and electronic mail.
- All paper and electronic records. Again, responsive emails must be disclosed whether they were sent from public or private email accounts.

The records sought above are subject to disclosure both under the California Public Records Act and independently under article I, section 3(b)(1) of the California Constitution, which provides a right of access to "the writings of public officials." And the precedent established by the California Supreme Court's March 2, 2017, decision in *City of San Jose et al. v. The Superior Court of Santa Clara County (2017) 2 Cal. 5th 608* holds that writing refers to any kind of communication on electronic devices.

Notably, the California Supreme Court held that affidavits could be provided to city employees and public officials to document the extent of their search for public records residing on their so-called "private" electronic devices. The San Jose case involved a third-party who was communicating with (lobbying) a member of the City Council regarding a matter on which the City Council was voting. In addition, affidavits should be used to document whether an employee or public official chose to withhold responsive records. These affidavits could be used in potential court proceedings.

Article I, section 3(b) of the California Constitution states that the public has a right of access to the writings of public officials. It and the San Jose decision, in accordance with prior case law, create a strong presumption of public access to the writings of public officials and places the burden on public agencies and officials to justify withholding any public records, including those residing on public or "private" electronic devices.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$100. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of government and lobbying. The records may be used in web posting. This information is not being sought for commercial purposes.

The California Public Records Act requires a response within ten business days. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies or the ability to inspect the requested records.

July 17, 2017

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If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Please contact me with any questions whatsoever. In addition to email, you can reach me by phone at 504-521-7440.

Regards,

A handwritten signature in black ink, appearing to read 'E. Cooper', with a stylized flourish at the end.

Evlondo Cooper
Senior Fellow

CC Karl Olsen



July 17, 2017

Kern County Board of Supervisors
1115 Truxtun Avenue, Fifth Floor
Bakersfield, California 93301

To Whom It May Concern:

My name is Evlondo Cooper, Senior Fellow at Checks and Balances Project, a watchdog blog focused on bringing greater accountability to lobbyists, politicians, corporate managers and others who block progress toward a more sustainable economy.

Media reports about a recent vote taken by the [Kern County Board of Supervisors to terminate Property Accessed Clean Energy programs, known as PACE](#), have raised concerns that board members may have violated the Ralph M. Brown Act.

According to a [Bakersfield Association of Realtors' grant application](#) for \$25,000 to fund a campaign titled "Remove PACE":

We have held preliminary meetings with local elected officials that are willing to lead the charge on a moratorium of local PACE financing and commit the necessary votes, but are asking for political cover via grassroots mobilization, media and arguments.

With this in mind, under the California Public Records Act, Govt. Code section 6250 et seq., and article I, section 3(b) of the California Constitution, I am requesting to inspect or obtain copies of phone logs and text message logs belonging to following Kern County Supervisors from September 1, 2015 through today:

- David Couch
- Zack Scrivner
- Mike Maggard
- Leticia Perez

Records to Include:

Please produce all relevant phone and text messages and logs, regardless of on which device the message was sent or received on, that the above-named supervisors used to conduct public business with the following:

- Jimmy Yee and/or any other representative, employee or affiliate of Yankee Communications;
- Kim Schaefer and/or any other representative, employee or affiliate of the Bakersfield Association of REALTORS;
- Any representative, employee or affiliate of the Kern County Taxpayers Association;

The records sought above are subject to disclosure both under the California Public Records Act and independently under article I, section 3(b)(1) of the California Constitution, which provides a right of access to "the writings of public officials." And the precedent established by the California Supreme

July 17, 2017

Page 2

Court's March 2, 2017, decision in *City of San Jose et al. v. The Superior Court of Santa Clara County* (2017) 2 Cal. 5th 608 holds that writing refers to any kind of communication on electronic devices.

Notably, the California Supreme Court held that affidavits could be provided to city employees and public officials to document the extent of their search for public records residing on their so-called "private" electronic devices. The San Jose case involved a third-party who was communicating with (lobbying) a member of the City Council regarding a matter on which the City Council was voting. In addition, affidavits should be used to document whether an employee or public official chose to withhold responsive records. These affidavits could be used in potential court proceedings.

Article I, section 3(b) of the California Constitution states that the public has a right of access to the writings of public officials. It and the San Jose decision, in accordance with prior case law, creates a strong presumption of public access to the writings of public officials and places the burden on public agencies and officials to justify withholding any public records, including those residing on public or "private" electronic devices.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$100. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of government and lobbying. The records may be used in web posting.

This information is not being sought for commercial purposes.

The California Public Records Act requires a response within ten business days. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Please contact me with any questions whatsoever. In addition to email, you can reach me by phone at 504-521-7440.

Regards,



Evlondo Cooper
Senior Fellow

CC Karl Olsen

EXHIBIT D

Evlondo Cooper

From: Evlondo Cooper
Sent: Friday, July 28, 2017 8:16 PM
To: Robin Bice
Cc: Richard Iger; Viridiana Gallardo-King
Subject: Re: Response to records request of July 17, 2017

Thank you very much, Robin. I'm acknowledging receipt of your voicemail and this email.

Have a good weekend.

Regards,

Evlondo

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From: Robin Bice <rbice@bakersfieldcity.us>
Sent: Friday, July 28, 2017 5:01:38 PM
To: Evlondo Cooper
Cc: Richard Iger; Viridiana Gallardo-King
Subject: Response to records request of July 17, 2017

Good Afternoon Elvando:

I tried to call you yesterday to keep you apprised of the records that we are gathering for the request sent to us on 7/17/17 regarding Council Members Willie Rivera, Andrae Gonzales, Ken Weir, Bruce Freeman, Jacquie Sullivan, and Chris Parlier, however, I was unable to reach you and left a voice mail message advising that we are still working on assembling these records.

We now have the records assembled and will be sending them out via USPS on first thing on Monday, July 31, 2017.

Regards,

Robin L. Bice

CITY CLERK'S OFFICE
1600 Truxtun Avenue
Bakersfield, CA 93301
(661) 326-3029