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Attorneys for Petitioner
CHECKS AND BALANCES PROJECT

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

CHECKS AND BALANCES PROJECT,

Petitioner,

vs.

COUNTY OF KERN,

Respondent.

Case No. _____

VERIFIED PETITION FOR DECLARATORY
RELIEF AND WRIT OF MANDATE
DIRECTED TO THE COUNTY OF KERN
ORDERING COUNTY OF KERN
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 county of Kern (hereafter “the County”) with its obligations under the Brown Act and the PRA. The County violated the Brown Act when it repealed the Property Assessed Clean Energy (“PACE”) financing program after coordinated communications – a “serial meeting” – with opponents of the PACE program prior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 those meetings.

SUMMARY OF ALLEGATIONS

1. On July 11, 2017, the County of Kern Board of Supervisors voted to rescind the Property Assessed Clean Energy (“PACE”) program in the County. The formal vote was the culmination of discussions in closed sessions or “serial meetings” among members of the Board of Supervisors. Representatives of the Bakersfield Association of Realtors met – by their own admission – with members of the Board of Supervisors in private, without public notice, to secure their voters 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.” In other words, “the fix was in” before the Board of Supervisors held its formal vote to rescind the PACE program. The Board of Supervisors’ 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 Board’s actions.

1 **THE PARTIES**

2 2. Petitioner Checks and Balances (hereafter “petitioner,” “Checks and Balances” or “CBP”)
3 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 is headquartered in Arlington, Virginia.
6

7 3. Respondent County of Kern 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.

10 **FACTUAL BACKGROUND REGARDING BROWN ACT VIOLATIONS**

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. PACE programs have been established in several large California counties.
15

16 5. Lobbyists for both the real estate industry and mortgage industry have launched a
17 coordinated attack on the PACE program.

18 6. The Bakersfield Association of Realtors (“BAR”) launched a campaign called “Remove
19 PACE” which was intended to operate in secrecy. BAR made a grant application seeking
20 \$25,000 from the National Association of Realtors. The author of the grant application, Kim
21 Schaefer, BAR’s governmental affairs director, told the National Association of Realtors, “We
22 have held preliminary meetings with local elected officials that are willing to lead the charge on a
23 moratorium of local PACE financing and commit the necessary votes, but are asking for political
24 cover via grassroots mobilization, media and arguments.”
25

26 7. On information and belief, a majority of the members of the Kern County Board of
27 Supervisors reached a collective decision, i.e. a collective commitment or promise, to rescind the
28

1 PACE program through a series of conversations or “serial meetings” among themselves and with
2 opponents of the PACE program, including the Bakersfield Association of Realtors and
3 representatives of the mortgage industry, prior to the Kern County Board of Supervisors meeting
4 on July 11, 2017 to terminate the Property Assessed Clean Energy Program (including the
5 California FIRST, E3, Figtree, HERO and Ygrene Property Assessed Clean Energy Programs) in
6 the county of Kern.
7

8 8. On July 17, 2017, petitioner’s counsel, Karl Olson, wrote a letter to the Kern County Board
9 of Supervisors demanding that the Board of Supervisors “cure and correct” its decision to
10 terminate the PACE program. The July 17, 2017 letter, which is attached hereto as Exhibit A,
11 stated that the Board of Supervisors’ action was not in compliance with the Brown Act because it
12 was the culmination of discussions in closed session or serial meetings of a matter that the Act did
13 not permit to be discussed in a closed session or serial meeting. The letter stated that
14 representatives of the Bakersfield Association of Realtors met with Bakersfield elected officials
15 in private, without public notice, to secure their votes to terminate the PACE program.
16

17 9. Interim County Counsel Mark Nations wrote to petitioner’s counsel on July 18, 2017
18 asking that petitioner specify which sections of Government Code section 54960.1(b) the Board
19 had violated (see Exhibit B hereto), and petitioner’s counsel replied to that letter on July 19, 2017
20 (see Exhibit C hereto). Nevertheless, the County has declined to “cure and correct” its action on
21 July 11, 2017 terminating the PACE program in violation of the Brown Act.
22

23 **FACTS REGARDING CPRA VIOLATIONS**

24 10. On July 17, 2017, Checks and Balances Project Senior Fellow Evlondo Cooper made a
25 Public Records Act request to the Kern County Board of Supervisors seeking records of
26 communications among the Kern County Board of Supervisors with each other and with
27 individuals, groups and agencies who were concerned with and opposed to the PACE program,
28

1 including but not limited to Jimmy Yee or anyone with Yankee Communications; Kim Schaefer
2 or any representative, employee or affiliate of the Bakersfield Association of Realtors; or any
3 representative of the Kern County Taxpayers Association. A copy of this Public Records Act
4 request is attached as Exhibit D hereto. The Public Records Act request also sought all records of
5 communications, including communications made by electronic means, that the members of the
6 Board of Supervisors might have used to conduct public business outside the public meeting. Mr.
7 Cooper sent a separate message on July 17, 2017 requesting text message and phone logs for
8 members of the Board of Supervisors pertaining to the PACE program.

9
10 11. The County responded to the request for text messages and phone logs by letter, but in an
11 August 1, 2017 email (attached hereto as Exhibit E), Interim County Counsel Mark Nations
12 conceded that he had “overlooked the fact that [Mr. Cooper] sent a second very similar request
13 seeking emails pertaining to the PACE program.” Mr. Nations attached a few emails to the
14 August 1, 2017 email to Mr. Cooper, but on information and belief the County has not produced
15 all responsive records. The records the County produced did reveal an apparent violation of the
16 Brown Act, however, in the form of an email from mortgage advisor Tammy Engel to Supervisor
17 Zach Scrivner. Ms. Engel also wrote to an associate, “hi there, we’ve got the ear of Zack
18 Scrivner, Board of Supv 2nd District Kern County – he called me asking for info on PACE as they
19 have a hearing about it tomorrow. Fred Kreger says you’ve got the best info – what should I
20 share with Zack??” The reference to a phone call from Mr. Scrivner to Ms. Engel contradicts the
21 County’s claim that it had no records of phone calls or texts; it shows that Mr. Scrivner made at
22 least one PACE-related call.

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24
25 12. The County has not complied with petitioner’s PRA requests fully because certain records
26 responsive to the request have not been produced and are being withheld. The County has not
27 supplied affidavits documenting the extent of any search for records, notwithstanding the
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1 California Supreme Court's decision in *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608
2 stating that such affidavits should be prepared to inform requesters of the search public officials
3 made of their personal electronic devices for responsive emails. Indeed, records the County has
4 produced show that there were telephone calls which do not show up on phone and text message
5 logs, leading to the strong inference that the County has not fully searched for responsive emails
6 and records and has not fully complied with petitioner's PRA requests. Petitioner has sent a
7 followup request on August 4, 2017 (attached as Exhibit F hereto) clarifying the scope of the
8 records it sought.
9

10 **FIRST CAUSE OF ACTION (BROWN ACT VIOLATIONS)**

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

13 14. Pursuant to Government Code section 54960, any interested persons, such as petitioner,
14 may "commence an action by mandamus, injunction or declaratory relief for the purpose of
15 stopping or preventing violations or threatened violations" of the Brown Act, or "to determine the
16 applicability" of the Brown Act to "actions or threatened future action" of the legislative body, or
17 "to compel the legislative body to audio record its closed sessions."
18

19 15. Petitioner alleges that the County of Kern violated the Brown Act by engaging in closed
20 "serial meetings," without public notice, in which a majority of the members of the Board of
21 Supervisors reached a "collective decision made by a majority of the members of [the] legislative
22 body, a collective commitment or promise by a majority of the members of [the] legislative body
23 to make a positive...decision," or an actual vote by a majority of the Board of Supervisors prior to
24 the official July 11 vote to repeal the PACE program. The Board's actions violated, among other
25 laws, Government Code section 54952.2(b)(1).
26
27
28

1 16. Petitioner also alleges that the Board of Supervisors’s closed discussions violated
2 Government Code section 54953, which requires that “[a]ll meetings of the legislative body of a
3 local agency shall be open and public, and all persons shall be permitted to attend any meeting of
4 the legislative body of a local agency, and that the County also violated Government Code section
5 54962, which states that “no closed session may be held by any legislative body of any local
6 agency” unless expressly authorized by statute.
7

8 17. Petitioner demanded that the County “cure and correct” its Brown Act violation in its July
9 17, 2017 letter attached hereto as Exhibit A. The County has failed to “cure and correct” the
10 violation.
11

12 18. Petitioner requests that this Court hold and declare that the County violated the Brown Act
13 by holding improper closed discussions and deliberations and a “serial meeting” prior to the
14 official July 11 meeting, in which a majority of members of the Board of Supervisors reached a
15 collective decision or “collective commitment or promise by a majority of the members of [the]
16 legislative body” to repeal the PACE program.
17

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

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

5
6 20. Petitioner hereby realleges and incorporates by reference paragraphs 1 through 19 of this
7 Petition.

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

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

22
23
24 23. The records requested by petitioner in Exhibit D are public records subject to disclosure
25 and there is no exemption which would shield such records from disclosure. Petitioner has a right
26 of access to such records pursuant to Government Code section 6250 and article I, section 3(b) of
27 the California Constitution.
28

1 24. Petitioner has no plain, speedy and adequate remedy at law, other than this Petition, to
2 obtain the records sought in Exhibits D and F and in this Petition. Petitioner has a fundamental
3 right of access to the records under Government Code section 6250 and article I, section 3(b)(1)
4 of the California Constitution.

5 25. Petitioner alleges in accordance with Government Code section 6258 that the information
6 it seeks from the County is maintained in Kern County.
7

8 26. Petitioner requests, pursuant to Government Code section 6259, that this Court issue a
9 writ of mandate compelling the County to release all requested records evidencing or related to
10 communications regarding the PACE program and communications with members or
11 representatives of the Bakersfield Association of Realtors, members of the mortgage industry,
12 Yankee Communications, and any other individuals or entities communicating with board
13 members about the PACE program.
14

15 27. Petitioner also requests that, pursuant to Government Code section 6258, this Court hold
16 that the County violated the Public Records Act by unlawfully delaying and withholding
17 production of the requested records.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, petitioner prays as follows:

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

21 1. That this Court enter a declaratory judgment that the County violated the Brown Act by a
22 series of meetings or “serial meetings” at which a collective commitment or decision was made in
23 private meetings to terminate the PACE program;
24

25 2. That the Court issue a peremptory writ of mandate ordering the Board of Supervisors to

26 A. Nullify its July 11, 2017 action terminating the PACE program, and set the matter for a
27 new public meeting, public discussion and public vote, with a properly noticed agenda;
28

1 B. Produce to petitioner and the public all documents, reports, minutes, emails, texts and
2 phone logs for closed-session or other closed meetings and discussions and communications, to
3 allow the Court to determine whether the Board of Supervisors held discussions or meetings or
4 communications outside the formal July 11, 2017 meeting;

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

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

13
14 E. Discuss and act upon in closed session only those items expressly authorized to be
15 discussed and acted upon in closed sessions pursuant to Government Code section 54960.2;

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

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

21
22 **ON THE SECOND CAUSE OF ACTION**

23 1. That this Court issue a peremptory writ of mandate pursuant to Government Code sections
24 6258 and 6259 immediately directing the County to disclose to petitioner all public records it
25 requested in its July 17, 2017 and August 3, 2017 PRA requests, including but not limited to all
26 records evidencing, reflecting or relating to communications or meetings or conferences among or
27 between Board of Supervisors members themselves and among, between or with individuals
28

(including but not limited to the Bakersfield Association of Realtors, the Kern County Taxpayers Association, and representatives of the mortgage industry) relating in any way to the PACE program;

2. That this Court enter a declaratory judgment and/or issue a writ of mandate or other order requiring members of the Board of Supervisors and other officials of the County of Kern 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 County violated the CPRA by unlawfully withholding and/or delaying production of the records requested in Exhibit D;

4. Alternatively, that the Court order the County to show cause why it should not produce all of the requested records and affidavits, and thereafter order the County 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 WRIT OF MANDATE DIRECTED TO THE COUNTY OF KERN. 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 17, 2017

Via Email and U.S. Mail

Zack Scrivner
Chairman
Kern County Board of Supervisors
1115 Truxtun Avenue, 5th floor
Bakersfield, CA 93301

Re: *Brown Act Violations re Property Assessed Clean Energy program vote*

Dear Mr. Scrivner:

I am writing on behalf of my client Checks and Balances Project to demand that the Kern County Board of Supervisors cure and correct a violation of the Ralph M. Brown Act in connection with its July 11, 2017 vote to rescind the Property Assessed Clean Energy ("PACE") program.

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 Kern County Board of Supervisors to terminate the PACE program in unincorporated Kern County.

The nature of the violation is as follows: During its meeting on July 11, 2017, the Board of Supervisors voted to rescind the PACE program in unincorporated areas of Kern County.

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 Kern County 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 a campaign titled "Remove PACE." According to the author of the grant application, 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."

If it appears the conduct of the Kern County Board of Supervisors specified herein did not amount to the taking of action, I direct your attention to Government Code 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 the Kern County Board of Supervisors cure and correct the illegal action as follows: The Board of Supervisors should formally and explicitly withdraw from any commitment made or vote taken, as well as disclose why individual supervisors voted to terminate the PACE program in unincorporated Kern County. 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 Board of Supervisors and the County 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



KARL OLSON

KO:hs

cc: Evlondo Cooper, Checks and Balances Project
Scott Peterson, Checks and Balances Project

EXHIBIT B

MARK L. NATIONS
INTERIM COUNTY COUNSEL

CHIEF DEPUTIES

MARGO A. RAISON
CHARLES F. COLLINS
GURUJODHA S.KHALSA

OFFICE OF THE
COUNTY COUNSEL
COUNTY OF KERN

Administrative Center
1115 Truxtun Avenue, Fourth Floor
Bakersfield, California 93301
Voice: (661) 868-3800
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KENDRA L. GRAHAM
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*Certified Workers' Compensation Law Specialist,
The State Bar of California
Board of Legal Specialization

July 18, 2017

Karl Olson
kolson@cofalaw.com
Cannata, O'Toole, Fickes, Almazan
100 Pine Street, Suite 350
San Francisco, CA 94111

via email only

Re: Property Assessed Clean Energy program vote

Dear Mr. Olson:

Your letter directed to Chairman Zack Scrivner of the Kern County Board of Supervisors dated July 17, 2017 has been referred to me for consideration and response. Please specify which of the sections articulated in Government Code 54960.1(b) you contend the Board has violated. I will then be in a position to respond to your demand that the Board cure or correct the action taken.

Very truly yours,

/s/ MNations

Mark L. Nations
Interim County Counsel

#23C0002.DOC

EXHIBIT C



Karl Olson
kolson@cofalaw.com

July 19, 2017

Via Email and U.S. Mail

Mark L. Nations
Interim County Counsel
Office of the County Counsel
County of Kern
Administrative Center
1115 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301
mnations@co.kern.ca.us

Re: Brown Act Violations re Property Assessed Clean Energy program vote

Dear Mr. Nations:

This responds to your July 18, 2017 letter.

While it will require full disclosure of the records my client has requested in its Public Records Act requests, and potentially full discovery, to enable my client to fully articulate the scope of any Brown Act violations, our preliminary indications, based upon the Bakersfield Association of Realtors grant Application referred to in my July 17, 2017 letter, are that each of the sections set forth in Government Code section 54960.1(b) have been violated. For example, section 54953 requires that all meetings of the legislative body of a local agency shall be open and public, and the law has been clear for decades that “deliberations as well as action [must] occur openly and publicly.” *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263 Cal. App. 2d 41, 47; see also *Stockton Newspapers Inc. v. Redevelopment Agency* (1985) 171 Cal. App. 3d 95. One-on-one contacts aimed at “arriving at a collective commitment” violate the Brown Act. (Id. At 103.)

As the Court of Appeal observed in *Wolfe v. City of Fremont* (2006) 144 Cal. App. 4th 533, 543, “Subsequent decisions have accepted that so-called ‘serial meetings’ may constitute a violation of the Brown Act...’ a concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next would violate the open meeting requirement.” (We note that the *Wolfe* case was to some extent overturned by Government Code section 54952.2. Section 54952.2(b)(1) provides, “A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”

Mr. Nations
July 19, 2017
Page | 2

We trust that this responds to your request. In this regard, my client wishes to voice concern that your office, even before investigating our claim, has seemingly already reached a conclusion that it will not investigate our claim and will reject it without even seeing what the disclosure of public records will reveal. You are quoted in the *Bakersfield Californian*, in an article posted on its website yesterday, as saying, "There's been no violation of the Brown Act," which seems a rather hasty conclusion to reach before an investigation has even begun.

Please feel free to call or write me if you have any questions.

Very truly yours,

CANNATA, O'TOOLE, FICKES & ALMAZAN LLP



KARL OLSON

KO:hs

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

EXHIBIT D

Karl Olson

From: Evlondo Cooper [evlondo@checksandbalancesproject.org]
Sent: Monday, July 17, 2017 8:05 AM
To: clerkofboard@co.kern.ca.us
Cc: board@co.kern.ca.us; Karl Olson
Subject: California Public Records Request (Phone Logs)
Attachments: Kern County Supervisors CA Public Records Request (Phone Logs) 7.17.17.pdf

To whom it may concern,

I hope this email finds you well.

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.

Please find attached a request to obtain records under the California Public Records Act.

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

Regards,

Evlondo Cooper

Evlondo Cooper
Senior Fellow
Checks and Balances Project
504.521.7440

<https://twitter.com/CandBP>



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

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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 E

Evlando Cooper

From: Mark Nations <MNATIONS@co.kern.ca.us>
Sent: Tuesday, August 1, 2017 3:36 PM
To: Evlando Cooper
Subject: Re: California Public Records Request (Emails)
Attachments: 3567_001.pdf

Mr. Cooper, on July 17, 2017 you sent to the County of Kern two Public Record Act requests - one seeking text message and phone logs for four of the supervisors pertaining to the PACE program. I have responded to that Public Records Act request by letter. I overlooked the fact that you sent a second very similar request seeking emails pertaining to the PACE program. Please consider this a response to that July 17 request.

In your request, you are seeking emails from the public and personal accounts of Supervisors Couch, Scrivner, Maggard and Perez with Jimmy Yee, Yankee Communications, Kim Schaefer, any representative of Bakersfield Association of Realtors and any representative of the Kern County Taxpayers Association.

I have attached emails responsive to the request. Please note that my name appears at the top of some of them. That is because the emails were forwarded to me electronically and I am now providing them to you. Please note that the attached does not include emails and attachments that were sent to the Clerk of the Board and made available to the Supervisors as part of the public record in the PACE matter. In some cases, the identical email was sent to all of the Supervisors - e.g. an email from Kern County Taxpayers Association. I have provided one copy of the email and attachment rather than five.

Mark L. Nations
Interim County Counsel
(661)868-3818 (tel.)
(661)868-3643 (fax)
e-mail: mnations@co.kern.ca.us

>>> Evlando Cooper <evlando@checksandbalancesproject.org> 7/17/2017 8:00 AM >>>
To whom it may concern,

I hope this email finds you well.

My name is Evlando Cooper, Senior Fellow at Checks and Balances Project, a watchdog blog focused on bringing greater accountability to lobbyists, politicians, corporate managers.

Please find attached a request to obtain records under the California Public Records Act.

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

Regards,

Evlando Cooper

Evlando Cooper
Senior Fellow

[Checks and Balances Project](#)

504.521.7440

<https://twitter.com/CandBP>

NOTICE: This e-mail message is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.
To contact our e-mail administrator directly, send to cocohelpdesk@co.kern.ca.us

EXHIBIT F



August 4, 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.

Under the California Public Records Act, Govt. Code section 6250 et seq., and article I, section 3(b) of the California Constitution, I requested on July 17, 2017, 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:

In our previous request, submitted July 17, 2017, we intended our records request to encompass all communications regarding PACE. But to the extent there is any doubt we are also requesting 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:

- Tammy Engel, Mortgage Advisor;
- Any representative, employee or affiliate of Tehachapi Area Association of REALTORS;
- Any representative, employee or affiliate of the California Association of REALTORS (C.A.R.);
- Any representative, employee or affiliate of National Association of Mortgage Professionals;
- Any representative, employee or affiliate of CA Association of Mortgage Professionals;
- Any representative, employee or affiliate of Agape Mortgage;
- Any representative, employee or affiliate of Affiliated Appraisers;
- Any representative, employee or affiliate of Coldwell Banker Preferred Realtors;

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, whether it be government electronic devices or accounts or "personal" electronic devices or accounts..

August 4, 2017

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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 days, but since this request is merely a clarification of my July 17, 2017 request, the records should be produced forthwith. If you assert that 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,

A handwritten signature in black ink, appearing to read 'Evlondo Cooper', with a stylized, flowing script.

Evlondo Cooper
Senior Fellow

CC Karl Olson