

1 **I. INTRODUCTION**

2 Respondent/Defendant Humboldt County Board of Supervisors (“Respondent” or “Board”)
3 continues to assert that Petitioner/Plaintiff Janelle Egger (“Petitioner”) has failed to state a cause of
4 action. The following information is provided to address issues raised in Respondent’s Reply in
5 support of its Demurrer.

6 **II. ARGUMENT**

7 **A. Respondent Misunderstands or Mischaracterizes the Inclusion of a “Standard to**
8 **Determine Whether a Committee is a ‘Legislative Body’” in Petitioner’s Opposition¹**

9 Petitioner brought this action under Gov Code section 54960² because there is a controversy
10 over the application of the Brown Act to four committees and over whether Respondent should
11 follow its own Rules of the Board when creating committees. This was pleaded in the Petition at p. 1
12 (line 23) and ¶¶ 31, 32, 34, and 39.

13 Respondent’s Reply errs in claiming Petitioner made an attempt to “Assert Improper
14 Contentions, Deductions, And Conclusions Of Law As ‘Facts’ To Defeat The Demurrer.” (Reply,
15 item A. at p. 1.) Petitioner attempted to demonstrate the fact that there is a legal controversy
16 regarding the interpretation and application of the Brown Act by presenting a reasonable, broader
17 interpretation of the law. Respondent’s Reply confirms that a controversy exists over the
18 interpretation of Brown Act section 54952.

19 **B. Plaintiff Alleged Sufficient Facts Showing a Cause of Action for Violations of the**
20 **Brown Act as it relates to the Four Named Committees in the Petition.**

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23 ¹ Page 1, item A. of Reply

24 ² Gov Code section 54960(a) The district attorney or any interested person may commence an action by
25 mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened
26 violations of this chapter by members of the legislative body of a local agency *or to determine the applicability*
27 *of this chapter to ongoing actions or threatened future actions of the legislative body*, or to determine the
28 applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine
whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or
more of its members is valid or invalid under the laws of this state or of the United States, or to compel the
legislative body to audio record its closed sessions as hereinafter provided. [Emphasis added.]

1 **1. A committee is “a group of people who are chosen to do a particular job.”³**

2 Summarizing the Petition and Opposition:

3 The CHIP committee includes a Board Committee, two members of the Eureka City Council,
4 and other selected staff, agency representatives and members of the public. Its job: to develop
5 recommendations regarding the issue of homelessness and assist with implementation.

6 The Agenda Review committee includes members of County Staff and the Board Chair and
7 Vice-Chair. Its job: to set the Boards Agenda.

8 The April 1, 2014 Board Order committee includes and two members of staff. Its job: “to
9 consider the proposed Policy Statement and other recommendations presented by the Human Rights
10 Commission and bring it back to the Board.”

11 The Human Rights Commission (“HRC”) Homeless committee was composed solely of
12 Commissioners that are less than a quorum of the Commission. Its job: to look at “ideas and plans
13 and formulate recommendations for the Board of Supervisors in addition to possibly setting up a
14 public forum.” A few months later the issue of a “Shelter Crisis” was added and then an intern was
15 assigned to assist with research.

16 **2. There exists a Controversy Regarding the Brown Act’s Statutory Definition of When a
17 Committee is a “Legislative Body” Under Gov Code 54952(b).⁴**

18 Based on *its* interpretation of “formal action” and “continuing subject matter jurisdiction” in
19 Gov Code section 54952(b), Respondent alleges Petitioner has failed to allege sufficient facts to show
20 the three Board created committees are legislative bodies. However, whether “formal action” to
21 create a committee should be broadly or narrowly construed and whether legislative intent of a
22 changed statute should be determined by the words actually deleted or the words that *might have*
23 *been* substituted, and what “continuing subject matter jurisdiction” means within the context of the
24 Brown Act are all questions of law.

25 The Petition adequately, if awkwardly, states a cause of action under Gov Code section 54960
26 for declaratory relief to determine the applicability of Gov Code section 54952 to determine whether

27 ³ Opp., p. 6

28 ⁴*Ibid.*,

1 these ongoing committees are legislative bodies and to prevent future violations of the Brown’s open
2 meeting provisions based on the Board’s narrow interpretation of committees subject to the Brown
3 Act.

4 **C. Other Issues in Respondent’s Reply**

5 **1. Respondent again claims Petitioner did not satisfy pre-litigation requirements⁵**

6 Petitioner’s Opposition shows the cease and desist letter requirement in Gov Code section
7 54960.2 is not applicable to ongoing actions or threatened future actions of the legislative body; the
8 cease and desist letter is only required to address past actions of the legislative body.⁶

9 Respondent’s Reply points to the “past actions” detailed in ¶ 22 of the Petition to claim a
10 cease and desist letter was required. This paragraph lists the videos and records that provided
11 information on the creation, composition, and task of the *ongoing* CHIP committee that indicate it is
12 a legislative body.

13 Respondent then points to ¶31(2)(c) of the Petition, noting the use of the past tense, and
14 alleges Respondent “violated” the Brown Act by “allowing ...ongoing private meetings,” and notes
15 the decision to allow the private meetings is a past action. Of course if Petitioner desired to have the
16 decision creating the committee declared null and void there is another section of the Brown Act,
17 with its own procedure, that could be used.⁷ This Petition focusses on the use of private meetings,
18 alleging in ¶32 that the “numerous ongoing violations of the Brown Act, as set forth above, evidence
19 a pattern and practice of interpreting the state’s open meeting law in a manner that has deprived
20 Petitioner and members of the public their rights...”

21 In Footnote 4 of its Reply Respondent notes that Petitioner is well aware of the applicability
22 of Section 54960.2, but Respondent errs in claiming the July 1, 2014 demand letter was required
23 under this section. The letter was *not* required; it clearly states it was to “bring attention to and
24 resolve what I believe to be a substantial and *ongoing* violation of open meeting provisions...” The
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26 ⁵ Reply, Page 4, item B.2. “Petitioner Admits...”

27 ⁶ Opp., page 9, item D.1.

28 ⁷ Gov. Code section 54960.1

1 letter named three committees “that are *meeting*, *engaging* in discussion, and possibly *taking* action,
2 in private meetings...” (Petition, Ex. G, first ¶, emphasis added.)

3 Finally, in Footnote 5 of its Reply Respondent accuses Petitioner of attempting “to create a
4 misleading narrative that adequate notice was provided regarding the ‘CHIP Committee’, even if the
5 required letter was not sent.” The Petitioner had no obligation to send a letter regarding the CHIP
6 committee. Respondent has misinterpreted the narrative that was provided, which illustrates
7 Petitioner’s numerous prior attempts to resolve the general question of the applicability of section
8 54952(b) to determine whether committees are legislative bodies.

9 **2. Respondent’s claim that “Setting Of The Board’s Agenda Is Not Subject
10 to The Act”⁸**

11 Respondent reiterates its reliance on *Coalition of Labor*. The opinion of the court: “*Here* we
12 hold that the Brown Act does not require a county board of supervisors to allow members of the
13 public to address it concerning whether an item should be placed on the agenda.”⁹ [Emphasis added]
14 “*Here*” was at an open Board meeting where the addition to the agenda was proposed, discussed and
15 voted on in public. The right to attend a meeting but not participate is not unheard of; consider Gov.
16 Code 54952.2(c)(6) (Emphasis added):

17 The attendance of a majority of the members of a legislative body at an open and
18 noticed meeting of a standing committee of that body, provided that the members of
19 the legislative body who are not members of the standing committee *attend only as*
20 *observers*.

21 The Court found, “Nothing in section 54954.2 requires public comment prior to the Board’s
22 determination whether to add an item to the agenda.” (*Coalition*, 129 Cal.App.4th 205 at 109) Even if
23 the public can be barred from providing comment, the question remains whether private meetings to
24 set the entire agenda deprive the public of any right.

25 **3. Respondent’s claim that no Brown Act meeting was held¹⁰**

26 Again, whether or not the *Board* had a meeting is irrelevant as we are discussing meetings of

27 ⁸ Page 7, item C.3. of Reply, “Setting Of The Board’s Agenda...”

28 ⁹ *Coalition of Labor v. County of Santa Barbara Bd. Of Supervisors* (2005) 129 Cal.App.4th 205 at 107

¹⁰ Reply, page 6, item C.2. “Agenda Review Meetings Are Not ‘Meetings’ As Defined by the Act.”

1 the *Agenda Review committee*. The alleged fact is that there is a committee that is a legislative body
2 meeting weekly in private, thus violating the Brown Act open meeting requirements. Again,
3 Respondent’s July 23, 2014 letter states there is a “gathering of county staff and two members of the
4 Board,” and that it is a “meeting to review and set the agenda.” (Petition Ex. H, page 2, 2nd ¶.) The
5 purpose of the Petition is to have this legislative body comply with the Brown Act, including the
6 Gov. Code sections detailed in the Replay.

7 **4. Respondent’s claim that a violation of the Rules of the Board related to**
8 **committees is not a violation of the Brown Act**

9 *Glendale City Employees’ Assn., Inc. v. City Of Glendale* (1975) 15 Cal.3d 328 provides clear
10 guidance. Again, the Court ruled that a decision to act in a manner authorized, but not required, by a
11 State statute “necessarily implies that an agreement, once approved by the agency, will be binding.”
12 (Ibid. at 336.)¹¹

13 **5. Respondent’s claim that “Claims Regarding the Human Rights Commission Must Be**
14 **Dismissed for Failure to Include the Proper Defendant/Respondent In the Litigation.”**

15 Respondent now claims that “Petitioner provided no reasonable explanation for her blanket
16 refusal to name the HRC as a defendant/respondent in the case.”¹² Respondent might have missed
17 ¶10 of the Petition, which states (Emphasis added):

18 The Commission is a ‘Legislative Body’ under Government Code §54952(b). The
19 *unpaid* Commissioners are *appointed by the Board*. Based on statements made at
20 Commission meetings Petitioner alleges that the Commission has *acted under the*
21 *advice or direction* of Respondent, or *by and through advice/direction* of
22 Respondent’s officers and employees.

23 This paragraph was repeated in Petitioner’s Opposition to support the statement that
24 “Respondent is a public agency responsible for the Brown Act compliance of the advisory
25 commissions and committees it creates.”¹³ The Opposition referred to but did not quote three
26 additional Petition paragraphs, ¶¶ 14, 18, 19, to demonstrate the relationship. At ¶14 of the Petition it
27 states (Emphasis added):

28 ¹¹ Opposition, beginning at line 25 of page 10, describes the similarity of this case to that one.

¹² Reply, page 10

¹³ Opposition at page 12, line 1, heading statement for item D.5.

1 At Commission meetings Petitioner twice raised the question of the status of the
2 Homeless Committee. On June 6, 2013, when the committee was formed, the Chair’s
response was, “*We have our own counsel.*”

3 The Petition’s ¶17 was not cited in the Opposition, but is provided here (Emphasis added):

4 Petitioner attended the August 7, 2014 Commission meeting. Petitioner’s July 1, 2014
5 letter was on, and attached to, the Commission’s Agenda. The Commission Chair
6 stated he had “just now” received the *County’s response*; there was one copy available
7 at the meeting. The Chair noted “*they are still looking into*” the Commission
committee.

8 At ¶18 of the Petition it states (Emphasis added):

9 Petitioner remained at the August 7, 2014 Commission meeting. Later, at the
10 beginning of the Bylaws agenda item, Commissioners were asked to confirm they had
11 received *another letter from County Counsel’s office*. A Commissioner stated she had
changes based on the letter and several changes were verbally presented. Two new
sections were proposed for the article on committees:

12 ...

13 A Commissioner asked if these were in *County Counsel’s letter*; response was that
“*there was stuff about the Brown Act, but not specifically this.*”

14 At ¶19 of the Petition it states (Emphasis added):

15 Petitioner attended the September 4, 2014 Commission meeting and was present
16 during the discussion of the Bylaws where “additional changes *after contacting*
17 *County Counsel*” were provided in writing. A true and correct copy with one change
is attached as Exhibit I. With the correction, this Bylaw wording *regarding*
18 *committees* was approved...

19 Petitioner agrees, there is no “dispute that the Human Rights Commission (“HRC”) is a
20 distinct legislative body under section 54952 for which the Brown Act applies.”¹⁴ However,
21 Petitioner has *not* “repeatedly alleged that the HRC violated the Brown Act.”¹⁵ The Petition alleges
22 that *Respondent failed* to properly construe its own April 1, 2014 Board Order, the Brown Act terms
23 “formal action” and “continuing subject matter jurisdiction”, *and failed* to provide the HRC a clear
24 definition of which committees subject to the Brown Act. The Petition listed committees that
25 *Respondent was allowing* to engage in ongoing private meetings, with *its failure* to adhere to the
26 Rules of the Board requirements regarding the creation of committees. (Petition ¶ 31.) The Petition

27 ¹⁴ Reply, page 9.

28 ¹⁵ Reply, page 10.

1 then alleged “that Respondent’s numerous ongoing violations evidence a pattern and practice of
2 interpreting the state’s open meeting law in a manner that has deprived Petitioner and members of the
3 public their rights to proper notice and to present at and address meetings of County legislative
4 bodies.” (Petition ¶32.)

5 Respondent claims it cannot be held liable for the actions of the HRC and challenges
6 Petitioner to cite “legal authority that would permit imputation of Brown Act violations committed by
7 one separate legislative body to another.”(Reply, page 10.) It was the HRC Homeless committee that
8 met in private. However, the Board is also the governing body which created the HRC and the
9 Brown Act views them as mother and daughter; both females, but one was born of the other and acts
10 of a child may be imputed to the parent.¹⁶ However, the parent is permitted to exercise control over
11 the actions of the child; the Brown Act allows an elective body to impose requirements which allow
12 greater access “on those appointed legislative bodies of the local agency of which all or a majority of
13 the members are appointed by or under the authority of the elected legislative body.” (Gov. Code
14 section 54953.7)

15 In *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167 a
16 Commission violated a Brown Act requirement and the Board of Supervisors directed the
17 Commission to vacate its approval of the project and to hold a new meeting. (*Ibid.* at 1171.)
18 “Although the trial court eventually dismissed the Brown Act cause of action under the ‘cure and
19 correct’ provisions of that statute (see § 54960.1, subd. (e)), it found that a violation had occurred and
20 that petitioners were entitled to an award of costs and attorney fees under section 54960.5.” (*Ibid.* at
21 1170) The appeals court held that, “In light of our holding that the Brown Act was violated, we reject
22 the County’s argument that it was the true prevailing party under section 54960.5.” (*Ibid.* at 1179.)

23 Gov. Code section 54960.5 states, “A court may award court costs and reasonable attorney
24 fees to the plaintiff in an action brought pursuant to Section 54960, 54960.1, or 54960.2 where it is
25 found that *a legislative body* of the local agency has violated this chapter.” And the “costs and fees
26 shall be paid by *the local agency* and shall not become a personal liability of any public officer or

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28 ¹⁶ "impute." Burton’s Legal Thesaurus, 4E. 2007. William C. Burton 10 Feb. 2015 <http://legal-dictionary.thefreedictionary.com/impute>

1 employee of the local agency.” Section 54951 defines “local agency” as a county, city, town, school
2 district, municipal corporation, district, political subdivision, or any board, commission or agency
3 thereof.

4 The compulsory joinder fails because Respondent has failed to demonstrate that complete
5 relief cannot be accorded among those already parties, or even that HRC claims an interest and, if it
6 does, how the disposition of the action in HRC’s absence may impair or impede its ability to protect
7 that interest. In addition Respondent fails also to show that nonjoinder of HRC will subject
8 Respondent to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations
9 by reason of HRC’s claimed interest. Petitioner believes that joining HRC will increase costs, and
10 therefore liability, for all parties, including the court. (CCP 389)

11 It appears that any legislative body may be sued *and* held liable for litigation costs. Petitioner
12 believes that the Commission was acting under the advice and direction of the Board or its staff.
13 Petitioner believes Respondent is a public agency responsible for the Brown Act compliance of the
14 advisory commissions and committees is creates. The court should overrule the Demurrer based on
15 nonjoinder of a party respondent because the nonjoined party is jointly and severally liable and
16 therefore merely a permissive party. (CCP 379.)

17 Should the court rule otherwise, Petitioner requests leave to accomplish joinder instead of
18 dismissal for nonjoinder.

19 **III. CONCLUSION**

20 For the forgoing reasons, the Demurrer should be overruled. In the event that any part of the
21 Demurrer is sustained, the opportunity to amend should be granted. “A demurrer should not be
22 sustained without leave to amend if the complaint, liberally construed, can state a cause of action
23 under any theory or if there is a reasonable possibility the defect can be cured by amendment.” *Young*
24 *v. Gannon* (2002) 97 Cal.App.4th 209, 220.

25 **DATED:**

Respectfully submitted,

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27
28 _____
Janelle Egger
Pro Per Petitioner