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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF HUMBOLDT**
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13 JANELLE EGGER,

14 Petitioner/Plaintiff,

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16 v.

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18 HUMBOLDT COUNTY BOARD OF
19 SUPERVISORS,

20 Respondent/Defendant.
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Case No. CV140631

**PETITIONER'S OPPOSITION TO
DEMURRER TO VERIFIED
PETITION FOR WRIT OF MANDATE,
INJUNCTION, AND DECLARATORY
RELIEF**

DATE: February 10, 2015

TIME: 1:45 p.m.

DEPT: 8

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1 **I. INTRODUCTION**

2 Petitioner/Plaintiff Janelle Egger (“Petitioner”) hereby submits her Opposition to the
3 Demurrer to the Petition for Writ of Mandate, Injunction, and Declaratory Relief filed by
4 Respondent/Defendant Humboldt County Board of Supervisors (“Respondent” or “Board”).

5 **II. STATEMENT OF FACTS**

6 Petitioner filed this action to determine the applicability of the Brown Act (Gov Code 54950
7 et seq.¹) to meetings of committees involved in collective gathering of information, discussion and
8 deliberation in private meetings and to stop Respondent’s ongoing violations and prevent violations
9 or threatened violations of the Act. The facts are briefly summarized below.

10 The issue of whether the Brown Act (“Act”) allowed a committee to meet in private was first
11 raised verbally in October 2012. A December 2012 demand letter appeared to resolve the issue.
12 However the issue reappeared and, after many attempts at resolution, a July 1, 2014 letter described
13 three committees and demanded they begin providing notice and agenda as required in the Brown
14 Act. The letter also raised the issue of Respondent’s compliance with the Rules of the Board section,
15 “Committees of the Board.”

16 Respondent’s July 23, 2014 letter denied the violations related to two committees; claimed
17 they “were still gathering information” and so needed more time to respond regarding the third.
18 There was no further response from Respondent.

19 On September 5, 2014 Petitioner learned new facts indicating a group she had heard about
20 was a committee similar to the 2010 October 2012 committee that first raised concern.

21 **III. STATEMENT OF THE CASE**

22 Petitioner filed a Verified Petition seeking a writ of mandate, injunctive and declaratory relief
23 on September 22, 2014 for violations of the Brown Act; it was properly served on September 23rd.
24 After an October 9 letter from Respondent, a Summons with a copy of the filed Petition Proof of
25 Service was properly served October 14. After further communication, an Acknowledgement of
26

27 _____
28 ¹ Unless otherwise indicated, all further statutory references are to the Government Code.

1 Service was signed November 10, 2014. Petitioner and Respondent’s counsel met November 13th.
2 There was an agreement to a 15-day extension for Respondent’s answer, then a December 11
3 meeting. Respondent prepared a Joint Stipulation; and an Order setting a hearing and filing dates was
4 signed on December 19, 2014. Respondent’s Demurrer was received December 26, 2014 along with
5 a Request For Judicial Notice (“RJN”) for Exhibits 1 and 2.

6
7 **IV. ARGUMENT**

8 **A. Standard of Review on Demurrer**

9 A demurrer is designed to test the sufficiency of the pleadings. In *Ingram v. Flipppo* (1999) 74
10 Cal.App.4th 1280, 1283, the court addressed its Standard of Review:

11 Because this is an appeal from a judgment entered sustaining a demurrer, we accept the
12 properly pleaded allegations of the complaint as true and construe them liberally to
13 determine whether it appears that the plaintiff is entitled to any relief against the
14 defendants. [Citations.] *The function of a demurrer is to test the sufficiency of the
15 complaint alone and not the evidence or the other extrinsic matters.*²

16 All that is required of a plaintiff, as a matter of pleading, is that the complaint set forth the
17 essential facts of the case with reasonable precision and with sufficient particularity to acquaint the
18 defendant with the nature, source, and the extent of the cause of action. *Rannard v. Lockheed Aircraft
19 Corp.* (1945) 26 Cal.2nd 149, 156-57.

20 A demurrer admits all material and issuable facts properly pleaded. *Shuffer v. Board of
21 Trustees* (1977) 67 Cal.App.3d 208, 218; *Cross v. Bonded Adjustment Bureau* (1996) 48 Cal.App.4th
22 266, 275.

23 A general demurrer to a cause of action for declaratory relief must be overruled as long as an
24 actual controversy is alleged; the pleader need not establish it is also entitled to a favorable judgment.
25 *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 CA4th 592, 606.

26 An “actual controversy” existed between the parties within the meaning of Code of Civil
27 Procedure section 1060 given their different interpretations of the Government Code. *Environmental
28 Defense Project of Sierra County v. County of Sierra* (2008) 158Cal.App.4th 877.

29 _____
30 ² Italics within quotes have been added, unless otherwise indicated

1 **B. Standard to Determine Whether a Committee is a “Legislative Body”**

2 Article 1, Section 3(b) (2) of our State Constitution requires that “A statute, court rule, or
3 other authority, including those in effect on the effective date of this subdivision, *shall be* broadly
4 construed if it furthers the people’s right of access, and narrowly construed if it limits the right of
5 access.”

6 In considering whether a committee is a legislative body under the Brown Act, “we *must*
7 *construe* the *exceptions* to the open meeting provisions of the Brown Act *narrowly* and the *provisions*
8 *calling for open meetings and public participation broadly* to effectuate the important purposes of the
9 Brown Act.” *Galbiso v. Orosi Publ. Utility Dist.* (2008) 167 Cal.App.4th1063, 1080.

10 The Brown Act “should be construed liberally in favor of openness so as to accomplish its
11 purpose and suppress the mischief at which it is directed.” *International Longshoremen’s and*
12 *Warehousemen’s Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287, 294.

13 The first paragraph of the Act, in section 95450, states that:

14 In enacting this chapter, the Legislature finds and declares that the public
15 commissions, boards and councils and the other public agencies in this State exist
16 to aid in the conduct of the people’s business. It is the intent of the law that their
actions be taken openly and that their deliberations be conducted openly.

17 Section 54953(a) of the Brown Act mandates that “*All meetings of the legislative body of a*
18 *local agency shall be open and public, and all persons shall be permitted to attend any meeting of the*
19 *legislative body of a local agency, except as otherwise provided in this chapter.*”

20 Whether or not a committee is a legislative body required to have open and public meetings is
21 addressed in Section 54952(b). It begins broadly, defining a “legislative body” as:

22 A commission, committee, board, or other body of a local agency, whether
23 permanent or temporary, decisionmaking or advisory, created by charter,
ordinance, resolution, *or formal action* of a legislative body.

24 It then provides a narrow exception for advisory, or non-decisionmaking, committees:

25 However, advisory committees, composed solely of the members of the
26 legislative body that are less than a quorum of the legislative body are not
legislative bodies,

27 The sentence continues, broadly defining all “standing” committees as legislative bodies:
28

1 *except that standing committees* of a legislative body, irrespective of their
2 composition, *which have a continuing subject matter jurisdiction*, or a meeting
3 schedule fixed by charter, ordinance, resolution, or formal action of a legislative
4 body *are legislative bodies* for purposes of this chapter.

5 A committee created by a legislative body is a legislative body, unless exempt. When
6 determining if a committee has been created, the term “formal action” should be broadly construed to
7 include the definition of “action taken” contained in section 54952.6 of the Brown Act. Prior to April
8 1994, section 54952.3 defined committees “created by charter, ordinance, resolution, or *by any*
9 *similar* formal action” as legislative bodies. In 1994, section 54952.3 and two other sections were
10 repealed consolidating the definition of legislative bodies into section 54952. The phrase became
11 part of the amended 54952, however the words “*by any similar*” were not included.³

12 Prior to this change, a committee was a legislative body if created by any formal action
13 *similar* to a charter, ordinance, or resolution. Each of the named actions required a vote of a
14 legislative body. With the change, a committee is now a legislative body under section 54952 if
15 created by one of those actions requiring a vote, *or a formal action*. In *The Brown Act: Open*
16 *Meetings for Local Legislative Bodies* the Attorney General concludes that “‘Formal action of a
17 legislative body’ is not limited to formal resolution or formal vote by the body.”⁴ Whether a
18 committee is created should be determined using the definition of an “action taken” in the Brown
19 Act’s section 54952.6:

20 As used in this chapter, “action taken” means a collective decision made by a majority
21 of the members of a legislative body, a collective commitment or promise by a
22 majority of the members of a legislative body to make a positive or a negative
23 decision, or an actual vote by a majority of the members of a legislative body when
24 sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

25 Once created, a less-than a quorum committee may be exempt. Language regarding less-than-
26 a-quorum committees also changed in April 1994. The court decided a less-than-a-quorum committee
27 case after the legislation was signed and before its effective date. The majority opinion noted that
28 they were expressing no opinion on whether that committee would be a legislative body under the

³ *Freedom Newspapers, Inc. v. Orange Co. Emp. Retirement Sys.*(1993) 6 Cal.4th 821, FN 2, FN 11

⁴ California Attorney General’s *The Brown Act: Open Meetings for Local Legislative Bodies* (2003), p. 5;
<http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/brownAct2003.pdf> (p. 19 of PDF file)

1 new law. *Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.
2 4th 821, Footnote 11. The Concurring and Dissenting opinion indicated that with the new law less-
3 than-a-quorum committees, “*unless they qualify as ‘standing committees’ therein defined,*” were
4 exempt. (*Id.*, at 834.) Petitioner found no case since *Freedom Newspapers* that discussed less-than-a-
5 quorum “standing” committees which have continuing subject matter jurisdiction.⁵

6 There is a 1996 Attorney General Opinion that addressed a question regarding whether a less-
7 than-a-quorum standing committee which had been in existence for several years and provided advice
8 on “administrative matters as needed” was subject to the Brown Act. (Petition, Ex. S, page 2; or 79
9 Ops.Cal.Atty.Gen. 69.)⁶ After looking at definitions for “standing committee,” “permanent,”
10 “continuing,” “subject matter,” and “jurisdiction,” the Opinion, at page 4, found that:

11 Applying these common definitions in carrying out the Act’s purposes, we believe
12 that the subcommittee in question *has the authority to hear and consider issues*
13 relating to budgets, audits, contracts, and personnel matters and that its authority
14 needs no renewal. As such, it is a “legislative body” under the terms of section
15 54952, subdivision (b) and its meetings are subject to the Act’s requirements...
16 Although under its local operating rule, the subcommittee “shall not exercise
17 continuing subject matter jurisdiction,” we do not find such rule provision to be
18 determinative. The language of the local rule appears inconsistent at best and may
19 not be used to thwart the purposes and requirements of the Act.

20 It then also found that, “In particular, this subcommittee does not have a limited term, and it is
21 not an ad hoc committee charged with accomplishing a specific task in a short period of time.” (*Ibid.*)
22 The first sentence in section 54952(b) broadly defines a legislative body as a committee “whether
23 permanent or temporary.” The less-than-a-quorum exemption does not reference time. “Ad hoc” is
24 not in the Brown Act.

25 The exception to the less-than-a-quorum exemption should be construed to broadly define
26 standing committees as those which have a continuing subject matter jurisdiction. It is the task given
27

28 ⁵ *Taxpayers for a Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, cited by Respondent,
considered whether two councilmembers “were a ‘legislative body’ in one of two ways: either as the council’s
Land Use and Planning Committee, or as an ‘other body.’” The court found that although they were a
decisionmaking standing committee their actions were not part of the work of that committee, and that they
were not an ‘other body.’

⁶ While the Attorney General’s views are not binding, they are entitled to “great weight.” *Joiner v. City of Sebastopol* (1981) 125 Cal. App. 3d 799, 805

1 to the committee rather than the length of service that is key to understanding the intent. The phrase
2 “subject matter jurisdiction” is not unique to this section. It appears several times in 54952.2 in
3 relation to meetings; once in 54953 (b) (2) in relation to open meeting requirement and
4 teleconferencing; once again in 54954.3 (a) in relation to providing for public comment on an
5 agendas.

6 A committee is “a group of people who are chosen to do a particular job or to make decisions
7 about something.”⁷ There is no exemption for decisionmaking committees, only advisory. The
8 question of whether an advisory committee is a legislative body or an exempt committee can be
9 determined by these questions:

- 10 i. *Was the committee created by charter, ordinance, resolution, or formal action*
11 *as defined in section 54952.6? If so, committee is a legislative body, unless*
12 *exempt.*
- 13 ii. *Is it a decisionmaking or advisory committee? If decisionmaking, it is a*
14 *legislative body. If advisory, may be exempt*
- 15 iii. *Is the committee comprised solely of the members of the legislative body that*
16 *are less than a quorum of the legislative body? If not, it is a legislative body;*
17 *if so, may be exempt.*
- 18 iv. *Did the task involve discussion of an issue of public concern? If so, it is a*
19 *“standing” committee, which is a legislative body.*⁸

20 **C. Plaintiff Alleged Sufficient Facts Showing Violations of the Brown Act**

21 **1. CHIP Committee is a legislative body, its private meetings violate the Act**

22 The Petition alleges that a majority of the Board knew (was informed) of the CHIP meetings
23 taking place in the County Courthouse with assistance from County staff (Petition, ¶22. a.), which

24
25 ⁷ “Committee.” *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 13 Jan. 2015. <<http://www.merriam-webster.com/dictionary/committee>>.

26 ⁸ “Deliberation connotes not only collective discussion, but the collective acquisition and exchange of facts
27 preliminary to the ultimate decision. ¶... In section 54950 the notion of action-taking is juxtaposed to that of
28 deliberation, indicating that deliberation and action, however they may coalesce, are functionally discernible
steps, both of which must be taken in public view.” *Sacramento Newspaper Guild v. Sacramento County Bd.*
of Supervisors (1968) 263 Cal. App. 2d 41, at 48-49

1 indicates there was a “collective decision or commitment” to this committee meeting. At the point
2 that collective decision or commitment was made, a committee was created. A Board committee, the
3 “Homeless Task Force,” was a less-than-quorum committee, but this joint committee of the County
4 and City of Eureka that investigated, deliberated and formulated recommendations on the issue of
5 homelessness was not solely comprised of members of the Board, as so is not exempt. (Petition,
6 ¶22.b. Ex. X.) Attendance is restricted. (Petition, ¶22.d.)

7 Respondent errs in relying on *Farron v. City and County of San Francisco* (1989) 216 Cal.
8 App.3d 107 as it applied a previous version of section 54952.⁹ In *Farron* it was determined the board
9 members were not serving in their “official capacity” and so the Task Force was not a legislative
10 body. The term “official capacity” is not currently in section 54952.

11 That a joint committee of committees may be a legislative body was the issue Respondent
12 considered in December 2012. Information was provided that discussed *Joiner v. City of Sebastopol*
13 (1981) 125 Cal.App.3d 799 and the joint committee met in open, noticed meetings. (Petition ¶21.1,
14 Ex. K, page 2.) *Joiner*, though even earlier than *Farron*, addressed the issues of the exemption for
15 less-than-a-quorum committees and whether the committee was created by formal action of a
16 governing body. These are current, relevant issues.

17 **2. Agenda Review Committee is a legislative body, its private meetings**
18 **violate the Act**

19 Petitioner alleges this committee is created, or at least reaffirmed, each year when the Board
20 selects its Chair and Vice-chair knowing they will be part of this committee. By referring to it as a
21 “long standing” meeting the Petition implicitly alleges the decision to transfer agenda setting
22 authority occurred long ago. Petition also alleges it both includes non-members of the Board and is a
23 decisionmaking committee, or alternatively the committee has subject matter jurisdiction to discuss
24 and recommend a draft. (Petition, ¶¶ 7, 9, 15, 31.c, Ex. G.) Respondent’s July 23, 2014 letter states

25
26 ⁹ *Farron* at page 1075: “The term “legislative body” is defined in section 54952 as “the governing board,
27 commission, directors or body of a local agency, or any board or commission thereof, and shall include any
28 board, commission, committee, or other body on which officers of a local agency serve in their official
capacity as members and which is supported in whole or in part by funds provided by such agency, whether
such board, commission, committee or other body is organized and operated by such local agency or by a
private corporation.””

1 there is a weekly “gathering of county staff and two members of the Board” and the purpose is to
2 “review and set the agenda,” but denies it is subject to the Brown Act. (Petition, ¶ 16, Ex. H)

3 **3. April 1, 2014 Board Order Committee is a legislative body, its private**
4 **meetings violate the Act**

5 Petitioner alleges the April 1, 2014 Board order created a committee that is not solely
6 comprised of the members of the parent legislative body. (Petition, ¶¶ 6, 15, Exs. B, G.) Petition
7 alleges the task was in essence to continue the discussion of the proposed policy and other
8 recommendations; this the committee authority, or ongoing/continuing subject matter jurisdiction, to
9 meet, discuss, deliberate and formulate recommendations on an item within the subject matter of the
10 parent legislative body. (Petition, Exs. B, C; Respondent’s RJN, Ex. 1.)

11 Respondent appears to be saying that without the word “committee” in the Board Order it is
12 not a committee; or, if a committee was created, it was comprised solely of two of the four
13 individuals identified in the order. By the simple definition of “committee” the April 1, 2014 Board
14 Order created a four person committee.

15 As noted above, neither *Freedom Newspapers, Inc. v. Orange Cnty. Employees Retirement*
16 *System (1993) 6 Cal. 4th 82* nor *Taxpayers for a Livable Communities v. City of Malibu (2005) 126*
17 *Cal.App.4th 1123* are not relevant. (Above at p. 4-5, lines 22-1; and footnote 5.)

18 **4. HRC Homeless committee is a legislative body , its private meetings**
19 **violate the Act**

20 Petitioner alleges this committee was created on June 6, 2013 by a collective decision, as
21 reflected in the Meeting Minutes. (Petition, ¶ 11, Ex. E) Petitioner alleges various Minutes also
22 reflect that the HRC delegated its ongoing/continuing subject matter jurisdiction of the issue of
23 homelessness to this committee. (Petition, ¶ 12, Exs. D, F, G). In addition to a February letter
24 recommending declaration of a Shelter Crisis, the committee prepared a report of data and formulated
25 several recommendations which were presented and forwarded to the Board at the HRC October 2,
26 2014 meeting. (Respondent’s RJN, Ex. 2, item VI. a. and c.) The Petitioner alleges that from June
27 2013 to October 2014 the committee used private unnoticed meetings to discuss, investigate,
28 deliberate and make recommendations to the Commission. (Petition, ¶13.)

1 **D. Other Issues in Respondent’s Demurrer**

2 **1. Respondent’s claim that Petitioner did not satisfy pre-litigation**
3 **requirements**

4 Section 54960 allows an action “for the purpose of *stopping or preventing* violations or
5 threatened violations of this chapter by members of the legislative body of a local agency or to
6 determine the applicability of this chapter to *ongoing* actions or threatened future actions of the
7 legislative body or to determine the applicability of this chapter to *past* actions of the legislative
8 body, subject to Section 54960.2.”

9 Section 54960.2(c) (3)¹⁰ clearly states: “Nothing in this subdivision shall be construed to
10 modify or limit the existing ability of the district attorney or any interested person to commence an
11 action to determine the applicability of this chapter to ongoing actions or threatened future actions of
12 the legislative body.” The cease and desist letter is only required to address past actions of the
13 legislative body.

14 Nevertheless, Petitioner was diligent in her attempts to resolve the question of the
15 applicability of the exemption for less-than-a-quorum committees in section 54952(b). The Petition
16 details two demand letters, three other written communications, and five verbal objections or
17 comments at open meetings. (Petition, ¶¶ 14, 15, 21.1-21.5, Exs. K, J, M, N, Q, R, S, T.)

18 It was September 5, 2014 when Petitioner learned facts indicating that the CHIP group was a
19 committee of committees, as was the committee in Petitioner’s Dec 11, 2012 demand letter. (Petition,
20 ¶ 22 a-d.) As the CHIP was an ongoing committee, no demand letter under section 54960.2 was
21 required to include it in the Petition, which was properly served September 23, 2014.

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

24 Respondent errs in asserting that *Coalition of Labor v. County of Santa Barbara Bd. Of*
25 *Supervisors* (2005) 129 Cal.App.4th 205 is dispositive. (Demurrer MP&A, page 8, ¶¶ 1-3.) It is not.
26 The issue in *Coalition* was whether at a Board meeting public comment was required when
27

28 ¹⁰Section 54960.2 was added to the Brown Act in 2012 and became effective January 1, 2013.
http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=54960.2.

1 discussing adding an agenda item to that meeting’s posted agenda under section 54954.2 (b). The
2 question here is whether under a different section, 54952(b), the committee that meets to set the
3 agenda is a legislative body.

4 **3. Respondent’s claim that no Brown Act meeting was held**

5 In the Demurrer discussion of the Agenda Committee, Respondent states Petitioner cannot
6 show a meeting was held “because the presence of two members of the Board is not a congregation
7 of a majority of the legislative body.” (Demurrer MP&A, page 9, 2nd ¶.) Whether or not the Board
8 had a meeting is irrelevant. The alleged fact is that there is a weekly gathering of a committee that is
9 a legislative body. Again, Respondent’s July 23, 2014 letter states there is a “gathering of county staff
10 and two members of the Board,” and that it is a “meeting to review and set the agenda.” (Petition Ex.
11 H, page 2, 2nd ¶.)

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

14 The Rules of the Board (“Rules”) were adopted by Board Order. (Petition, Ex. A, last page.)
15 They “shall apply to the Board of Supervisors.” (*Id.*, page 1, Rules.) The “Committees of the Board”
16 section provides, inter alia, that the Board may appoint committees, what orders creating committees
17 shall specify, that committees shall include no more than two Supervisors but may include any
18 number of County officials or public members. (*Id.*, pages 3-4 of Rules.)

19 Petitioner provided a copy of the Rules’ “Committees of the Board” section at the April 2014
20 HRC meeting, suggesting it be incorporated into the Commission Bylaws then being revised.
21 Petitioner’s July 1, 2014 letter included a simple demand that Respondent review the section to insure
22 future Board Orders contain the specified information. (Petition, ¶ 21.5, Ex G, page 2.) Failure to
23 adhere to the Board Order requirements denies “access to information regarding all committees
24 engaged in the conduct of the people’s business.” (Petition, ¶ 32.e.)

25 The court wrote, “Here, as in the *Glendale* case, we are concerned with a ministerial duty.
26 Caltrans' own rules obligate it...”¹¹ This case involved the rules of a State agency. *Glendale City*

27 _____
28 ¹¹ *Pozar v. Dept. of Transportation* 145 Cal.App.3d 269, at 271

1 *Employees' Assn., Inc. v. City Of Glendale* (1975) 15 Cal.3d 328 involved the actions of the
2 governing body of a local agency and state law.

3 The state law in the *Glendale* case was the 1968 Meyers-Milias-Brown Act (“Meyers Act”).
4 The Act’s intent is “to strengthen employer-employee communication.” (*Id.*, at 336) The intent of
5 the Brown Act is that “actions be taken openly” and “deliberations be conducted openly.” (Section
6 54950, in Petition, ¶ 24.)

7 *Glendale* states the Meyers Act extended earlier legislation and “authorized labor and
8 management representatives not only to confer but to enter into written agreements for presentation
9 to the governing body.” (*Id.*, at 331) The Brown Act provides that Respondent “may impose
10 requirements upon themselves which allow greater access to their meetings than prescribed by the
11 minimal standards” in the Act. (Section 54953.7, in Petition ¶ 28.)

12 *Glendale* held that agreements entered into under the Meyers Act “*necessarily implies* that an
13 agreement, once approved by the agency, will be binding. The court’s reasoned, in pertinent, part
14 that:

15 Why submit the agreement to the governing body for determination, if its
16 approval were without significance? What integrity would be left in government
17 if government itself could attack the integrity of its own agreement? The
18 procedure established by the act would be meaningless if the end-product, a labor-
management agreement ratified by the governing body of the agency, were a
document that was itself meaningless.

19 (*Id.*, at 336.)

20 Petitioner asks why Respondent approved the rules re committees if the approval had no
21 significance? What integrity would be left in County government if Respondent attacks the integrity
22 of its own rules as “simple internal guidelines”?¹² Petitioner argues that the Brown Act section
23 54953.7 language that “local agencies may impose requirements on themselves” would be
24 meaningless if the requirements imposed are meaningless.

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27 ¹² Respondent’s MP&A in Support of Demurrer, page 11, lines 24-25. Petitioner also notes that there is
28 nothing in the Rules indicating they are intended to “assist the Clerk of the Board in tracking and identifying
Board-created committees,” as asserted by Respondent. *Id.*, at lines 25-26.

1 **5. Respondent is a public agency responsible for the Brown Act compliance of the advisory**
2 **commissions and committees it creates, including the HRC.**

3 “The Commission is a ‘Legislative Body’ under Government Code §54952(b). The unpaid
4 Commissioners are appointed by the Board. Based on statements made at Commission meetings
5 Petitioner alleges that the Commission has acted under the advice or direction of Respondent, or by
6 and through advice/direction of Respondent’s officers and employees.” (Petition, ¶ 10, also ¶¶ 14, 18,
7 19.)

8 When the Court found that a Commission violated a Brown Act requirement in a case against
9 a County it found petitioner was entitled to bring a motion for fees and costs. *San Joaquin Raptor*
10 *Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167, at 1176, 1179. This is more
11 instructive than the case cited by Respondent.¹³

12 Section 54953.7 of the Brown Act provides that legislative bodies may impose on themselves
13 greater requirements allowing access and that “an elected legislative body of a local agency may
14 impose such requirements on those appointed legislative bodies of the local agency of which all or a
15 majority of the members are appointed by or under the authority of the elected legislative body.”
16 Clearly the Brown Act considers the HRC as a subordinate rather than an independent body.

17 **6. There is no defect of parties; HRC is not an indispensable party**

18 Respondent relies on *Tracy Press Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, in
19 which the court found a city councilmember had unique interests in a case involving her personal
20 emails and so was an indispensable party. (*Id.* at 1300.)

21 More instructive is *Laidlaw Environmental Services, Inc. v. Local Assessment Committee*
22 (1996) 44 Cal.App.4th 346. There the question was whether a local assessment committee appointed
23 by the Board of Supervisors was a beneficially interested party with standing to sue. (*Id.* at 351) The
24 court looked at whether it was a “subordinate ministerial appendage” and found it exercised no
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26
27 ¹³ In claiming it was not liable for HRC actions Respondent cites *Ingram v. Flippo*, (1999) 74 Cal.App.4th
28 1280. Action filed by School Board member Ingram after District Attorney Flippo’s press release alleged
 minor violation by a school board. The Court found the case was “not a justiciable controversy under the
 Brown Act because the District Attorney is not the party alleged to have violated the Act” (*Ibid.* at 1290)

1 legislative authority and that its lack of independence from the County “is fatal to its contention that
2 it is a beneficially interested party.” (*Id.* at 351)

3
4 **V. CONCLUSION**

5 For the forgoing reasons, the Demurrer should be overruled. In the event that any part of the
6 Demurrer is sustained, leave to amend should be granted.

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8 **DATED:**

Respectfully submitted,

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12 Janelle Egger
13 Pro Per Petitioner
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