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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

GREGORY PLEASANTS,

Plaintiff/Petitioner,

v.

ORANGE UNIFIED SCHOOL DISTRICT; ORANGE UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION,
,

Defendants/Respondents.

Case No. 30-2023-01314950-CU-WM-CJC

Assigned for all Purposes to
– Judge Nico Dourbetas

(VERIFIED) COMPLAINT AND PETITION FOR
(1) WRIT OF MANDATE
(2) DECLARATORY RELIEF
(3) INJUNCTIVE RELIEF

Action filed: March 20, 2023

Based on information and belief, Plaintiff/Petitioner Gregory Pleasants alleges as follows:

I. INTRODUCTION

1. This is a complaint is made pursuant to the Ralph M. Brown Act ("Brown Act"), codified at California Government Code §§54950-54963, and against the Orange Unified School District ("OUSD") and the OUSD Board of Education (the "Board"). The Board's voting majority ("Board Majority"), for purposes of this complaint, is composed of Trustees Rick Ledesma, John Ortega, Angie Rumsey, and Madison Miner. This complaint addresses the Board Majority's actions in connection with the Board meeting of January 5, 2023, in which (among other actions) the Board Majority took adverse employment action against two key executives of the Orange Unified School District ("District"), Superintendent Dr. Gunn Marie Hansen and Assistant Superintendent Cathleen Corella.

2. On January 5th, 2023, the Board held a meeting, characterized as a "Special Board Meeting Closed Session," to consider, in closed session, these agenda items: "Public Employee Performance Evaluation," "Public Employee Discipline/Dismissal/Release," and "Public Employee Appointment." The latter agenda item listed "Interim Superintendent" and "Acting Assistant Superintendent, Educational Services."

3. During this meeting, the Board Majority, by 4-3 vote, took adverse employment action against two key District administrators: Dr. Gunn Marie Hansen, then the District Superintendent, and Mrs. Cathleen Corella, then the District Assistant Superintendent for Educational Services. The Board Majority – Trustees Ledesma, Ortega, Rumsey, and Miner voted for this action; Trustees Erickson, Yamasaki, and Page voted against it. As evident from the recording of the meeting and as noted in later media reporting, the Board Majority gave no reason for its actions.

4. This complaint alleges three separate violations of the Brown Act by OUSD.

5. The Board Majority violated the Brown Act because it failed to give sufficient notice for the January 5, 2023 meeting where the special meeting was called over winter break and under circumstances that amounted to a surprise meeting and thus violated due process.

6. The Board Majority violated the Brown Act because it failed to adequately describe the January 5th closed session agenda items where the meeting itself was not adequately noticed and where the board majority provided no explanation.

7. The Board Majority violated the Brown Act because, prior to January 5th, it engaged in serial meetings and developed a concurrence as to action to be taken on the agenda items of the January 5th meeting.

II. PARTIES

8. Plaintiff/Petitioner Gregory Pleasants is a resident of and homeowner in Orange, California, and lives within the Orange Unified School District ("OUSD"). Plaintiff and his wife have two young sons, one of whom currently attends Jordan Elementary ("Jordan"), an OUSD public school, and another who is slated to attend Jordan for the incoming school year. Plaintiff and his wife are committed to raising his sons with particular emphasis on the values of hard work, education, and helping others. Plaintiff closely examined the available public school options. He and his wife chose Jordan because of its dual-immersion Spanish-English program and its emphasis on computer science; the obvious skill, commitment, engagement of its faculty and staff; and its strong community of mutual parent support, including its active and effective Parent-Teacher Association ("PTA"). Although he brings the action as an individual, Plaintiff has been heavily involved in the Jordan PTA, having served as the Jordan PTA Secretary and Auditor and have helped raise funds to support Jordan.

9. Defendant/Respondent ORANGE UNIFIED SCHOOL DISTRICT ("OUSD") is, and at all relevant times mentioned in this petition has been, a school district organized and existing under and by virtue of the laws of the State of California, located within the County of Orange, California. OUSD is defined as a "local agency" by Section 54951 of the Government Code.

10. Respondent/Defendant ORANGE UNIFIED SCHOOL DISTRICT BOARD OF Education ("Board") is the elected seven-member governing body of the OUSD. The Board is a "legislative body" under Section 54952 of the Government Code.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction over Plaintiff/Petitioner's claims for declaratory and injunctive relief under Sections 526 and 1060 of the Code of Civil Procedure, over Plaintiff's request for a Writ of Mandate under Section 1085 Code of Civil Procedure Section 1085 and has jurisdiction of this action under Sections 54960 and 54960.1 of the Government Code.

12. Venue is proper under Section 394 of the Code of Civil Procedure Section because OUSD Is a local agency situated in the County of Orange.

IV. SUMMARY OF FACTS

13. On January 5, 2023, the Board convened a special meeting. The January 5th special meeting was convened during the OUSD's Winter Break, when OUSD schools are not in session and OUSD faculty, administrators, and families are frequently out of town or otherwise unavailable because of family or social obligations associated with the seasonal holidays. At the meeting, Superintendent Hansen and Assistant Superintendent Corella were terminated, and Edward Velasquez was named interim Superintendent and Craig Abercrombie was named interim Assistant Superintendent, all during the Board's closed session.

14. But, while the Board meeting appears to have technically been called at some time before it was convened on January 5, 2023, and while the decisions made by the Board Majority were formalized at the January 5, 2023 meeting, based on information and belief, the Board Majority actually orchestrated the events of the Board meeting privately, without public input, prior to January 5, 2023, in violation of the Brown Act.

15. Based on information and belief, at some point prior to January 5, 2023, members of the Board Majority decided to terminate Superintendent Hansen and Assistant Superintendent Corella and replace them with Mr. Velasquez and Mr. Abercrombie. Mr. Velasquez was an old friend and/or professional contact of Trustee Ortega's, while Mr. Abercrombie was the Principal at Canyon High School, one of the schools in OUSD.

16. Based on information and belief, Trustee Rick Ortega provided Mr. Velasquez's telephone number to Trustee Ledesma. Trustee Ledesma called Mr. Velasquez on January 4, 2023, and offered him the position as interim superintendent. It is unclear, although it appears

likely, that members of the Board Majority, including Trustee Ledesma and Trustee Ortega contacted Mr. Velasquez prior to January 4, 2023.

17. Based on information and belief, Trustee Ledesma contacted Mr. Abercrombie on Wednesday, January 4, 2023, and informed him that Mr. Abercrombie would be named the interim Assistant Superintendent.

18. Based on information and belief, Trustee Angie Rumsey met and had a discussion with Mr. Velasquez before he was named interim Superintendent.

19. Based on information and belief, Trustee Madison Miner had two interviews with Mr. Velasquez and Mr. Abercrombie before they were named as interim Superintendent and interim Assistant Superintendent, respectively.

20. Based on information and belief, no later than January 3, 2023, Trustee Ledesma contacted the other members of the Board Majority to orchestrate the details of the January 5, 2023 meeting. Trustee Ledesma informed the other Board members that, as President, he would begin the closed session portion of the meeting. Trustee Ledesma then arranged for Trustee John Ortega to make a motion and directed Trustee Angie Rumsey to second the motion, and in fact to second every motion that Trustee Ortega made. Trustee Ledesma explained that neither he nor Trustee Ortega would say much so as to not defend the Board Majority's decision so as to not get "dragged into the discussion" raised by "the other side"—namely Trustees Kristin Erickson, Andrea Yamasaki, and Ana Page. Trustee Ledesma then explained that, if "the other side" discussed the matter too long, Trustee Ortega would call the question, ending debate and bringing the matter to a vote.

21. Indeed, based on information and belief, the closed session portion of the January 5, 2023 meeting played out exactly as the Board Majority had planned. Trustees Erickson, Yamasaki, and Page had no advanced warning of the Board Majority's plan to terminate Superintendent Hansen and Assistant Superintendent Corella, nor were they aware of the names of the individuals whom the Board Majority selected to replace them until the night of the January 5, 2023 meeting.

FIRST CAUSE OF ACTION

Writ of Mandate (Code of Civil Procedure § 1085)

Violations of the Ralph M. Brown Act (Gov. Code, § 54950 et seq.)

22. Plaintiff/Petitioner realleges and incorporates by reference paragraphs 1 through 21 of this Complaint, as though fully set forth herein.

23. The purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies. (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.) To these ends, the Brown Act imposes an "open meeting" requirement on local legislative bodies. (*Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116).

24. On February 3, 2023, Plaintiff/Petitioner sent to the Defendants/Respondents, via United States Mail, a demand pursuant to Section 54960.1 of the Government Code to cure or correct the actions alleged herein. A true and correct copy of the demand is attached hereto as **Exhibit A**.

25. Defendants/Respondents took no action within the 30–day period following the service of the demand.

A. Defendants/Respondents Violated the Brown Act because, prior to January 5, 2023, the Board Majority engaged in serial meetings and developed a concurrence as to action to be taken on the agenda items of the January 5, 2023 Meeting.

26. The Brown Act prohibits serial meetings that are conducted through direct communications, personal intermediaries or technological devices for the purpose of developing a concurrence as to action to be taken." (Gov. Code, § 54952.2, subd. (b)(1) ["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."]; *Stockton Newspapers v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 103 ["a series of nonpublic contacts at which a quorum of a legislative body is lacking at any given time is proscribed by the Brown Act if the contacts are 'planned by or held with the collective

concurrence of a quorum of the body to privately discuss the public's business' either directly or indirectly."].)

27. The California Attorney General explains:

> Typically, a serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body's members. For example, a chain of communications involving contact from member A to member B who then communicates with member C would constitute a serial meeting in the case of a five-person body. Similarly, when a person acts as the hub of a wheel (member A) and communicates individually with the various spokes (members B and C), a serial meeting has occurred. In addition, a serial meeting occurs when intermediaries for board members have a meeting to discuss issues. For example, when a representative of member A meets with representatives of members B and C to discuss an agenda item, the members have conducted a serial meeting through their representatives as intermediaries.

(California Attorney General's Office, *The Brown Act, Open Meetings for Local Legislative Bodies*, 2003.)

28. Based on information and belief, the Board Majority (Trustees Ledesma, Ortega, Rumsey, Miner) held serial meetings and developed concurrence, all prior to January 5th, in connection with the agenda items of the January 5, 2023 meeting. Specifically, the Board Majority, with President and Trustee Ledesma as the "hub," held serial meetings and developed a concurrence prior to January 5, 2023 regarding, at minimum: (a) the decision to take adverse employment action against then- Superintendent Hansen and Assistant Superintendent Corella; and (b) to hire Mr. Velasquez and Mr. Abercrombie as interim replacements.

29. In doing so, the Board Majority violated the Brown Action's prohibition against serial meetings and undermined the democratic, participatory values that animate the Brown Act.

B. <u>The Board violated the Brown Act because it failed to give sufficient notice for the January 5, 2023, meeting where the special meeting was called over winter break and under circumstances that amounted to a surprise meeting and thus violated due process.</u>

30. A special meeting may be called by the Board President. 24-hour notice "shall be delivered…. ***<u>and shall be received</u>***" at least 24 hours before the time of the special meeting. Notice must be provided to each member of the Board. Notice must be provided to each local newspaper of general circulation and radio or television station requesting notice in writing and

posted on the Board's website. Notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

31. Under the Brown Act:

> A special meeting may be called at any time by the presiding officer of the [Board] . . . by delivering written notice to each member of the [Board] and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site [ ]. The notice shall be delivered personally or by any other means and shall be ***received*** at least 24 hours before the time of the meeting as specified in the notice. . . . The call and notice shall be posted at ***least 24 hours prior to the special meeting in a location that is freely accessible to members of the public***.

(Gov. Code, § 54956, subd. (a) [emphasis added].)

32. Based on information and belief, notice of the meeting was not given and/or was not received at least 24 hours before the time of the special meeting as required under the Brown Act.

33. Furthermore, even if notice had technically been given 24 hours prior to the meeting, such notice was still insufficient because it was given over Winter Break and thus during a time period and "location" that was not "freely accessible" to members of the public.

34. The January 5, 2023, special meeting was called by Trustee Ledesma over the OUSD Winter Break. Because it was Winter Break, many members of the public (including parents of OUSD students, OUSD administrators, and OUSD teachers) were out of town or otherwise unable, because of the date, to meaningfully access or receive notice of the meeting.

35. As one public commentator noted, the Board "scheduled a last-minute meeting during a school break when many of our parents and staff are gone." In doing so, a retired federal judge observed during public comments: "President Ledesma, during the District's Winter Break, knowing your targeted people – both women, I happen to note – are out of the country, you called a special meeting with just 24 hours' notice and thereby intentionally deprived the women targeted by your wrath and the public too of fair notice and left us with no time to meaningfully reply."

36. The requirement that notice be posted in a location that is freely accessible prohibits the Board from deliberately calling a special meeting during a Winter Break—a period of time in which the Board knows significant numbers of public and interested parties will be out

of town, unavailable, or otherwise unable to access or receive any notice—and then call such limited posting "notice."

37. Under the Brown Act:

> Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

(Gov. Code, § 54956, subd. (b).)

38. The discussion of whether to continue to employ Superintendent Hansen and Assistant Superintendent Corella, as well as to hire Mr. Velasquez and appoint Mr. Abercrombie as interim replacements necessarily involves the salaries and fringe benefits of a local agency executive, as salary and fringe benefits are inherently part of their employment.

39. More broadly, the overarching circumstances surrounding the Board Majority's ostensible notice render it insufficient as a matter of Due Process. Notice is an essential element of required by Due Process.

C. <u>The Board violated the Brown Act because it failed to adequately describe the January 5, 2023, closed session agenda items where the meeting itself was not adequately noticed and where the board majority provided no explanation.</u>

40. According to the California Attorney General's guide to the Brown Act, "the purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body." Agenda descriptions must not be misleading. Closed-session agenda items must be described with enough particularity to provide interested persons with an understanding of the subject matter which will be considered.

41. Based on information and belief, the Board's closed session agenda did not comply with the requirements that the Brown Act.

D. <u>The Board's Actions Caused Prejudice.</u>

42. The Board's actions caused prejudice, including but not limited to:

43. Prejudice to the public's rights under the Brown Act, including the right to adequate notice and to be meaningfully heard on matters of public business.

44. Prejudice to the fiscal health of OUSD and that of individual OUSD public schools.

45. Prejudice to administrative and faculty staffing levels and retention of the same at OUSD schools.

46. Prejudice to the level and quality of OUSD administration and teaching at both a District-wide and school-specific level.

47. Prejudice to the educational and ancillary supportive services offered to students, including low-income students, students with accommodations, and / or other students who depend on OUSD public schools as resources of last resort.

48. Prejudice to OUSD real estate values as the quality of OUSD public schools is perceived by the public to drop.

SECOND CAUSE OF ACTION

Declaratory Relief (Code of Civil Procedure § 1060 and Government Code §§ 54960 and 54960.1)

49. Plaintiff/Petitioner realleges and incorporates by reference paragraphs 1 through 48 of this Complaint, as though fully set forth herein.

50. Plaintiff seeks a judicial declaration per Code of Civil Procedure Section 1060 and Government Code Section 54960 that Defendants have violated and/or continue to violate the statutory provisions of the Brown Act and a declaration determining the respective rights and duties of the parties, and addressing Defendants' violations of law.

THIRD CAUSE OF ACTION

Injunctive Relief (Code of Civil Procedure § 526 and Government Code § 54960)

51. Plaintiff/Petitioner realleges and incorporates by reference paragraphs 1 through 50 of this Complaint, as though fully set forth herein.

52. Unless Defendants' violations described herein are enjoined, Plaintiff/Petitioner's statutory rights will be violated.

Wherefore, Plaintiff/Petitioner respectfully request that the Court:

1. Issue a declaration that Defendants/Respondents violated the Brown Act;
2. Issue a writ of mandate ordering Defendants/Respondents to perform as required by the California Constitution and preventing Defendants/Respondents from violating the Brown Act;
3. Enjoin Defendants/Respondents from committing Brown Act violations detailed in this complaint;
4. Declare that Defendants/Respondents' actions taken during the January 5, 2023 meeting are null and void;
5. Find that all actions Defendants/Respondents took in violation of the Brown Act are null and void, and all actions predicated on those unlawful actions are also null and void, including but
6. not limited to ordering Defendants/Respondents to treat as null and void, and abstain from
7. effectuating or giving any legal effect to, the actions taken at the January 5, 2023 meeting;
8. subject of the April 23 meeting;
9. Order Respondents to pay Plaintiff/Petitioner's attorneys' fees and costs incurred in this action, pursuant to Section 1021.5 of the Code of Civil Procedure, Section 54960.5 of the Government Code, and any other applicable law or rule of court.
10. Grant Plaintiff/Petitioner such other and further relief as the Court deems just and proper.

Dated: March 20, 2023

THE LAW OFFICES OF BRETT MURDOCK

By: /s/ Brett M. Murdock
Brett M. Murdock

Attorneys for Plaintiff/Petitioner

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Facsimile: (714) 582-2227

VERIFICATION

Pleasants v. Orange Unified School District

I, Gregory Pleasants, declare:

I am a party to this action, and I have read the foregoing **(VERIFIED) COMPLAINT AND PETITION FOR: (1) WRIT OF MANDATE, (2) DECLARATORY RELIEF, (3) INJUNCTIVE RELIEF** and know its contents. The matters stated therein are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters, 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 on March 20, 2023.

/s/ Gregory L. Pleasants
Gregory L. Pleasants
Plaintiff/Petitioner

EXHIBIT A

EXHIBIT A

Friday, February 3, 2023

From:

Gregory Pleasants
Orange, CA

2/3/2023

To:

Via mail:

Orange Unified School District
Orange Unified School District Board of Education
1401 North Handy St.
Orange, CA

Via email:

Board of Education inbox	board@orangeusd.org
Rick Ledesma	rledesma@orangeusd.org
John Ortega	jortegajr@orangeusd.org
Angie Rumsey	arumsey@orangeusd.org
Andrea Yamasaki	ayamasaki@orangeusd.org
Ana Page	apage@orangeusd.org
Madison Miner	mminer@orangeusd.org
Kris Erickson	kristin.erickson@orangeusd.org

Re: BROWN ACT COMPLAINT – *CEASE AND DESIST* AND *CURE AND CORRECT* LETTER (GOV'T. CODE §§54960, 54960.1, 54960.2)

I. Preliminary Matters and Summary of Complaint

A. Preliminary Matters

1. This is a Brown Act Complaint

This is a complaint made pursuant to the Ralph M. Brown Act ("Brown Act"), codified at California Government Code §§54950-54963, and against the voting majority of the Orange Unified School District Board of Education ("Board"). The Board's voting majority ("Board Majority"), for purposes of this complaint, is composed of Trustees Rick Ledesma, John Ortega, Angie Rumsey, and Madison Miner. This complaint addresses the Board Majority's actions in connection with the Board meeting of January 5th, 2023, in which (among other actions) the Board Majority took adverse employment action against two key executives of the Orange Unified School District ("District"), Dr. Gunn Marie Hansen and Mrs. Cathleen Corella. Because this complaint alleges Brown Act violations by the Board Majority during some time period before January 5th, this complaint necessarily extends to the time period(s) and to all facts connected to the Board Majority's violations.

Friday, February 3, 2023

From:

Gregory Pleasants
Orange, CA

To:

Via mail:

Orange Unified School District
Orange Unified School District Board of Education
1401 North Handy St.
Orange, CA

Via email:

Board of Education inbox	board@orangeusd.org
Rick Ledesma	rledesma@orangeusd.org
John Ortega	jortegajr@orangeusd.org
Angie Rumsey	arumsey@orangeusd.org
Andrea Yamasaki	ayamasaki@orangeusd.org
Ana Page	apage@orangeusd.org
Madison Miner	mminer@orangeusd.org
Kris Erickson	kristin.erickson@orangeusd.org

Re: BROWN ACT COMPLAINT – *CEASE AND DESIST* AND *CURE AND CORRECT* LETTER (GOV'T. CODE §§54960, 54960.1, 54960.2)

I. Preliminary Matters and Summary of Complaint

A. Preliminary Matters

1. This is a Brown Act Complaint

This is a complaint made pursuant to the Ralph M. Brown Act ("Brown Act"), codified at California Government Code §§54950-54963, and against the voting majority of the Orange Unified School District Board of Education ("Board"). The Board's voting majority ("Board Majority"), for purposes of this complaint, is composed of Trustees Rick Ledesma, John Ortega, Angie Rumsey, and Madison Miner. This complaint addresses the Board Majority's actions in connection with the Board meeting of January 5th, 2023, in which (among other actions) the Board Majority took adverse employment action against two key executives of the Orange Unified School District ("District"), Dr. Gunn Marie Hansen and Mrs. Cathleen Corella. Because this complaint alleges Brown Act violations by the Board Majority during some time period before January 5th, this complaint necessarily extends to the time period(s) and to all facts connected to the Board Majority's violations.

2. This Complaint Constitutes Both a "Cure and Correct" and "Cease and Desist" Demand Letter

This complaint constitutes both a "cure and correct" demand letter seeking correction of the Board Majority's recent past violations of the Brown Act in connection with the January 5th meeting and a "cease and desist" demand letter seeking to prevent additional prospective violations of the Brown Act by the Board Majority, all as described in more detail below.

3. I Make This Complaint in my Private Capacity as a Parent of a Child in a District Public School

I make this Brown Act complaint in my private capacity as a resident of the District, as a voter and constituent of the Board, and as a parent of a child currently attending a District public school. I do not act or speak for any employer.

4. No Failure on Technical Grounds and Preservation of Right to Amend Fact Record and Legal Arguments

A Brown Act complaint need only "be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation." §54960.1(b); *see also* §54960.2. The complaint must "make a demand of the legislative body to cure or correct the action alleged to have been taken in violation" of the Brown Act.[1] These requirements are intended to ensure adequate notice to and clear request for action by the agency – here the Board Majority – and not to serve as technical barriers. The purpose of a cure and correct letter Brown Act complaint "is to give the local agency notice of an alleged violation of the Brown Act so that it can avoid litigation by curing the violation. Its purpose is not to allow a local agency to avoid the consequences of Brown Act violations by launching nitpicking technical attacks on the language used in the cure and correct letter."[2]

In line with this authority – which rejects overly technical or demanding barriers to Brown Act complaints and encourages responsive and corrective agency action prior to litigation – I preserve my right to amend or add to the factual record at a later time, should additional facts related to this complaint become available, and to make additional legal arguments that may be required by those new facts. For at least three reasons, it is reasonable to expect additional material facts to become available.

First, the nature of the Board Majority's Brown Act violations – holding non-public serial meetings prior to January 5th to develop concurrence, make substantive pre-decisions, and then convene surprise public meetings, without adequate notice to the public, to ostensibly ratify those pre-decisions – is calculated to hide and obscure material facts from the public. The public, under the Brown Act, has a right to notice of and to be heard on such facts.

The purpose of the Brown Act would be undermined if those who violate the Brown Act could hide their violations, and the matters of public interest addressed during those violations, behind the cloak of the very acts (e.g., non-public serial pre-meetings) that the Brown Act prohibits. Thus, the intent of the Brown Act and sound public policy favor flexibility in adding to the factual and legal record when matters once hidden by Brown Act violations are made to come to light through the Brown Act complaint process, public records requests, press inquiries, and similar sunshine policies and laws.

[1] §54960.1(b).

[2] *G.I. Indus. v. City of Thousand Oaks*, 84 Cal. App. 5th 814, 826 (2022).

Second, on information and belief, at least six requests under the California Public Records Act seeking records related to the Board Majority's January 5th meeting and actions and the Brown Act violations alleged in this complaint have been filed roughly contemporaneously with this complaint, but none have yet received complete responses. Once those requests have received responses, partial or complete, it is reasonable to assume that the responses will contain records or evidence material to, and in support of, this complaint.

Third, as set forth below, there has been and is sustained media attention to the matters described in this complaint, and it is anticipated that continued media attention will uncover additional facts, some of which will likely be material to this complaint.

For these reasons – the purpose and integrity of the Brown Act, sound public policy, and a reasonable expectation of additional material facts becoming available – I expressly reserve the right to amend or add to the factual and legal record at a later time.

5. Demand to Preserve Evidence / Anti-Spoilage Demand

I request and demand that all evidence material to this complaint, in whatever form (including, non-exhaustively, text messages, voicemails, phone call logs, emails, written notes or letters) be preserved, whether such evidence is on District-owned / issue / administered devices / accounts or on personal devices / accounts (to the extent used for Board business). Not only does this evidence constitute information that would (absent the Board Majority's Brown Act violations) be public record, but this evidence must also be preserved because future litigation from this Brown Act complaint is reasonably foreseeable.[3]

6. Referral to District Attorney and / or Comparable Public Entities

I intend to provide copies of this complaint to the District Attorney and / or comparable public entities with authority to address Brown Act violations and request that it / they review these facts for potential violations (civil and / or criminal) of the Brown Act and take any further actions that it / they may independently deem warranted.

7. Demand for Timely and Responsive Board Action

Should the Board Majority fail to respond to this complaint on the merits and / or by the statutorily required timeline, I intend to pursue all lawful and available next courses of action, including litigation.

[3] A California appellate court recently addressed the issue of preserving evidence and specifically as applied to electronic information. As the court said, "One serious form of discovery abuse is the spoliation of evidence, which is defined as the destruction or alteration of relevant evidence or the failure to preserve evidence for another party's use in pending or future litigation." Evidence must be preserved when litigation is "reasonably foreseeable," that is "probable" or "likely." *Victor Valley Union High School District* v. *The Superior Court of San Bernardino County,* No. E078673 (Cal. Ct. App. Dec. 22, 2022).

B. Summary of Complaint: Based on Facts of Public Record and Reasonable Inferences From Those Facts, The Board Majority Violated the Brown Act in at Least Three Ways in Connection with the January 5th, 2023, Board Meeting

1. The Board Majority Violated the Brown Act because it Failed to Give Sufficient Notice for the January 5th Meeting Where the Special Meeting Was Called over Winter Break and Under Circumstances that Amounted to a Surprise Meeting and Thus Violated Due Process

2. The Board Majority Violated the Brown Act because it Failed to Adequately Describe the January 5th Closed Session Agenda Items Where the Meeting Itself Was Not Adequately Noticed and Where the Board Majority Provided no Explanation

3. The Board Majority Violated the Brown Act because, Prior to January 5th, it Engaged in Serial Meetings and Developed a Concurrence as to Action to be Taken on the Agenda Items of the January 5th Meeting

II. Statement of Facts

A. Background

1. The following statement of facts is made on the basis of facts of public record (with supporting citations where available), reasonable inferences from those facts of public record, and / or otherwise on information and belief.

2. My name is Gregory Pleasants. I am a resident of and homeowner in Orange, California. I am an attorney licensed by and admitted to the State Bar of California (license #252436).

3. I make this Brown Act complaint in my private capacity as a resident of the District, as a voter and constituent of the Board, and as a parent of a child currently attending a District public school. I do not act or speak for any employer.

4. I am married and have two young sons, one of whom currently attends Jordan Elementary ("Jordan"), a District public school, and another who is slated to attend Jordan for the incoming school year.

5. My wife and I are committed to raising our sons with particular emphasis on the values of hard work, education, and helping others. We care deeply about our sons' education and are resolved to do all we can to support it.

6. When our oldest son first enrolled in Transitional Kindergarten, my wife and I closely examined our available public school options. We chose Jordan because of its dual-immersion Spanish-English program and its emphasis on computer science; the obvious skill, commitment, engagement of its

faculty and staff; and its strong community of mutual parent support, including its active and effective Parent-Teacher Association ("PTA"). Our oldest son has thrived at Jordan.

7. I have been heavily involved in the Jordan PTA since my oldest son first began attending Jordan. I have served as the Jordan PTA Secretary and Auditor and have helped raise funds to support Jordan. During my time on the Jordan PTA, for example, we – with the support of many hard-working Jordan parents – have supported and raised funds for student field trips, school facilities repair, the purchase of high-quality audio-visual equipment, and family-centered activities, including activities that reflect Jordan's commitment to fostering a multi-lingual, supportive, and welcoming atmosphere for all students and families. In many cases, these are items that Jordan itself could not have financially afforded absent support from the PTA and the broader Jordan parent community.

8. I note the foregoing facts to illustrate and emphasize that I – and many District public school parents – have a strong stake and interest in a stable and well-administered District, in the continuity of the successful public education exemplified by Jordan, and, by extension, in our right to be heard by and to participate in the actions and decisions of the Board.

B. January 5th, 2023 Meeting

9. On January 5th, 2023, the Board held a meeting, characterized as a "Special Board Meeting Closed Session," to consider, in closed session, these agenda items: "Public Employee Performance Evaluation," "Public Employee Discipline/Dismissal/Release," and "Public Employee Appointment." The latter agenda item listed "Interim Superintendent" and "Acting Assistant Superintendent, Educational Services."[4]

10. The circumstances and events of this January 5th meeting have been reported on in public media.[5] During this meeting, the Board Majority, by 4-3 vote, took adverse employment action against two key District administrators: Dr. Gunn Marie Hansen, then the District Superintendent, and Mrs. Cathleen Corella, then the District Assistant Superintendent for Educational Services. The Board Majority – Trustees Ledesma, Ortega, Rumsey, and Miner voted for this action; Trustees Erickson, Yamasaki, and Page voted against it.[6] As evident from the recording of the meeting and as noted in later media reporting, the Board Majority gave no reason for its actions.[7]

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[4] Orange Unified School District, Board of Education, Special Board Meeting Closed Session Agenda, Thursday, January 5, 2023, available at https://www.orangeusd.org/departments/board-of-education/agendas (on file with author).

[5] See, e.g., Voice of OC, *Did Orange Unified School Officials Improperly Replace Their Superintendent*?, January 10, 2023, at https://voiceofoc.org/2023/01/did-orange-unified-school-officials-improperly-replace-their-superintendent/.

[6] OUSD Board Meeting – January 5, 2023, YouTube video, available at https://www.youtube.com/watch?v=AplBcthNK5k, at approximately 3:11:00 (all citations herein to timestamps in the Jan 5th meeting recording are approximate).

[7] Orange County Register, January 5, 2023, *Orange Unified fires its superintendent despite community outcry*, available at https://www.ocregister.com/2023/01/05/orange-unified-fires-its-superintendent-assistant-superintendent/ (noting same).

11. The January 5th special meeting was convened during the District's Winter Break, when District schools are not in session and District faculty, administrators, and families are frequently out of town or otherwise unavailable because of family or social obligations associated with the seasonal holidays.[8]

12. With respect to the nature of the meeting, Trustee Erickson, at the beginning of the meeting, says to Trustee Ledesma, "Mr. President, can I ask a few clarifying questions, procedural questions about this meeting?" She continues, "I want to clarify for the public that this is actually a special meeting that was called by you, the President, and it's not an emergency meeting, correct?" Trustee Ledesma replies, " correct."[9]

13. In follow-up, Trustee Erickson observes that the District administrators against whom the Board Majority later takes action are out of the country and not present, and that Trustee Ledesma was aware of this fact before the January 5th meeting. Trustee Erickson notes, addressing Trustee Ledesma, "you are aware from our Friday packets that both of the subjects, Cathleen Corella and Dr. Hansen, are both out of the country as of 2:15 yesterday when we received notice. Are you aware of that?" to which Trustee Ledesma replies, "yes."[10]

14. Remarks made both by Board Trustees and many participants in the public comment period of the meeting reflected widespread, pointed concern that the Board Majority had not, under the circumstances, given adequate notice for the meeting, and that lack of sufficient notice had inhibited public access to and participation in the meeting.

15. Even before the meeting, in speaking to the Orange County Register, Trustee Ledesma is noted to have "called for the special session" but "would not say what his goal is." He added, according to the Orange County Register, "The goal is to have a successful meeting," but "would not specify what a successful meeting would look like or whether he wants to see the two administrators fired."[11]

16. Trustee Erickson, at the beginning of the meeting and speaking to Trustee Ledesma, "You're aware it's Winter Break, correct?" After an argumentative non-response from Trustee Ledesma, Trustee Erickson continues: "So for the Orange Unified School District they are on Winter Break, the teachers are on vacation….and I've seen some letters that came in from the public from people that were actually on vacation and couldn't make it."[12]

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[8] Orange Unified School District Calendars, Student Calendar 2022-2023, available at https://www.orangeusd.org/about-us/calendars (on file with author).
[9] OUSD Board Meeting – January 5, 2023, YouTube video, available at https://www.youtube.com/watch?v=AplBcthNK5k, beginning at approximately 3:10 (all citations herein to timestamps in the meeting recording are approximate).
[10] *Id.* beginning at 3:50.
[11] Orange County Register, January 4, 2023, *Orange Unified School Board looks to possibly fire superintendents*," available at https://www.ocregister.com/2023/01/04/orange-unified-school-board-looks-to-possibly-fire-superintendents/.
[12] OUSD Board Meeting – January 5, 2023, YouTube video beginning at 4:50.

17. Trustee Erikson continues, characterizing the meeting as a "surprise" meeting and observing how the high stakes of the meeting have sharpened the negative impact of the surprise nature of the meeting.

> *I think, just as a matter of comment, at our last meeting I asked specifically that we honor our no surprises policy, which has been a long-held policy in Orange Unified School District…this is the ultimate surprise, because you're ultimately, potentially, getting rid of the CEO and the Assistant Vice President of Educational Services for a 27,000-student District and 3500 employees, multiple families…this is a huge, huge decision, and it's highly unusual to have it held like this.*[13]

18. Following her comments in the meeting, Trustee Erickson later described the January 5th meeting as "a full blown ambush attack."[14]

19. Trustee Yamasaki also raises concerns about the surprise nature of the meeting and its compliance with the Brown Act, asking, "Is this meeting properly noticed and scheduled?" Trustee Yamasaki expresses concerns about the legality of the meeting, with Trustee Ledesma responding at one point, and without explanation, "I already took care of all of that."[15]

20. Trustee Yamasaki continues by noting that, "I am still concerned about the transparency and having community – lack of transparency, thank you – and not having good community input being that this is held on Winter Break, and given only 24-hour notice."[16]

21. Although a person who appeared to be an attorney representing the Board opines on the public record that the meeting complies with the Brown Act, including notice requirements,[17] he does not offer explanation or factual or legal basis for this opinion.

22. Members of the public[18] also express, during the public comment period, sharp concern and outrage around the timing and minimal notice provided for the January 5th meeting, especially given the stakes of the meeting.

23. For example, a member of the public, noting her three young children at a District public school, states, "I am deeply saddened and dismayed that a few members of this Board felt that bringing this

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[13] *Id.* at 6:20.
[14] Orange County Register, January 7, 2023, *Why did Orange Unified fire its superintendent?* available at https://www.ocregister.com/2023/01/07/why-did-orange-unified-fire-its-superintendent/
[15] OUSD Board Meeting – January 5, 2023, YouTube video beginning at 9:10 and following; again at 12:35 and following.
[16] *Id.* beginning at 19:20.
[17] In doing so on the public record, this person also may have waived attorney-client privilege and related privilege with respect to his legal opinion(s) or advice, an apparent waiver which may be relevant to future potential litigation connected to this complaint. *See also* 12:10-12:30. I flag and preserve for later potential argument this potential waiver issue.
[18] The public comments cited here are cited for illustrative, not exhaustive, purposes – that is, there are additional public comments in record that could reasonably be read to support this complaint, but for purposes of brevity, only some are cited. I reserve the right to include additional material public comments at a later time.

issue up in this manner was an appropriate way to do this. I wonder what cause, if any, could have come about in the last 22 days since your last meeting being that 20 of those days, school as not been in session?"[19]

24. Another member of the public, also a parent with children in District public schools, notes the cost to her as a self-employed person imposed by surprise meetings that are, by their nature, difficult to plan around, noting that she is at the last-minute meeting "despite the cost to me."[20]

25. Another member of the public decries the late notice of the meeting, noting that, "The way that you are choosing to use your new-found power is nauseating…you have been put here with the trust of not just the people in the room but the entire community, many of whom could not get off of work to be here to discuss this with you."[21]

26. Another member of the public, a District parent, comments, "Dear school Board members, I usually start with a greeting for both you and the Superintendent, but our Superintendent is not here, by design, I imagine. You scheduled a last-minute meeting during a school break when many of our parents and staff are gone. What about this agenda item could not wait another four days?"[22]

27. Another member of the public, a former District student and parent, notes the calculated effect of the last-minute meeting called by the Board Majority has on public participation, incisively observing, "You're not attempting to disguise what you're doing. Less people showed up tonight than would have shown up if you had scheduled a regular meeting to do this with the people involved in attendance. So you succeeded in that regard.[23]

28. Another member of the public, who identifies herself as a former federal judge, observes, "President Ledesma, during the District's Winter Break, knowing your targeted people – both women, I happen to note – are out of the country, you called a special meeting with just 24-hours' notice and thereby intentionally deprived the women targeted by your wrath and the public too of fair notice and left us with no time to meaningfully reply."[24]

29. Remarks made both by Board Trustees and many participants in the public comment period of the meeting reflected widespread, pointed concern that the Board Majority had not, under the circumstances, given adequate description of, information about, or context for the January 5th closed session agenda items.

[19] *Id.* at 28:30.
[20] *Id*. at 40:44.
[21] *Id.* at 57:25.
[22] *Id.* at 1:48:30.
[23] *Id.* at 1:08:35.
[24] *Id.* at 1:59:00.

30. For example, at the beginning of the meeting, Trustee Erickson notes that she and other Board members "have been given absolutely zero information and we're being asked to appoint a superintendent and assistant superintendent with zero information."[25]

31. Trustee Yamasaki's preliminary comments also convey the same sentiment.[26] In light of these concerns, Trustee Yamasaki goes on, a short while later, to make a motion to "postpone this meeting to a regularly-scheduled time." Trustee Erickson seconds that motion.[27] Trustee Yamasaki roots her motion for a postpone meeting in concerns about "lack of transparency and not having good community input."[28] The Board Majority – Trustees Ledesma, Rumsey, Miner, Ortega – vote to reject that motion and the meeting continues.[29]

32. Members of the public also repeatedly express concern, during the public comment period, over a lack of information about, explanation of, or context for the meeting agenda items regarding personnel action against the affected District administrators.

33. Many public commentators[30] note that Dr. Hansen has excelled at her work and wonder aloud about what the basis for personnel action against her could be. For example, one parent of current and former District students notes Dr. Hansen's skill at avoiding political pitfalls and keeping focus on District students, Dr. Hansen's skill at navigating the disruption and barriers of the pandemic, and Dr. Hansen's sound financial management of the District. The parent asks the Board, "One of the strengths that Dr. Hansen has shown time and time again is her ability to not wade into these political waters; why are you trying to drown her in them?"[31]

34. Another member of the public continues in that vein, noting the outstanding performance of Dr. Hansen and Mrs. Corella and asking, "Under what grounds should [Dr. Hansen and Mrs. Corella] be facing discipline, dismissal, or release?"[32]

35. Another member of the public notes the external accolades that Dr. Hansen has received for the quality of her work and wonders how her removal could possibly be warranted, noting that, "Fourth District PTA, the parent group representing every PTA in Orange County, and the largest parent group in the state of California, selected Dr. Hansen as administrator of the year only last Spring. I do not know who you are considering but anyone without such accolades would be a step down."[33]

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[25] *Id.* at 6:50.
[26] *Id.* beginning at 8:35.
[27] *Id.* at beginning at 11:20.
[28] *Id.* at 19:20.
[29] *Id.* at 20:25.
[30] Indeed, the public praise for Dr. Hansen and Mrs. Corella is so lopsided against any criticism that one speaker, at 1:42:25, notes a "30 to 1" ratio of comments supportive for the administrators.
[31] *Id.* beginning at 1:30:40.
[32] *Id.* beginning at 1:32:00.
[33] *Id.* at 1:51:30.

36. As reported in local media, another member of the public expressed similar confusion, asking "Why would you want to cause the disruption?" of the Board Majority's proposed action.[34]

37. Another member of the public and parent of District students decries both the Board Majority's failure to provide notice of the January 5th meeting and its lack of transparency around the closed session agenda items. "Holding this special meeting while our Superintendent and Assistant Superintendent are not present, parents and community members are working, and teachers and staff are on Winter Break is a disappointing dereliction of duty. Both Ortega and Ledesma spoke at the December school board meeting about the importance of transparency, yet the agenda for this meeting in closed session topics are not transparent. If you want transparency then this meeting should have been given with more notice and held when all educational partners could be present, including Dr. Hansen, Cathleen Corella, and the rest of District leadership who are also not here."[35]

38. An Orange County Register story published shortly after the January 5th meeting captured this lack of transparency regarding for the January 5th closed session agenda items, noting "A day after the Orange Unified School Board fired its superintendent during a surprise special session, the biggest question was "'why?'"[36]

39. Concerns that the Board Majority had, before the January 5th meeting, met and, without notice or access to the public, pre-decided the matters on agenda for the January 5th meeting began to emerge in some public comments.

40. For example, one member of the public, a former District student and parent of current District students, notes,

> *What I will say is this. There is a difference between legal and ethical…what you have done is betray the trust of the people who put you in those chairs. There is zero question about the cowardice, underhandedness, and, frankly, crappiness of what you have done here. You are doing this because you came to this position with a pre-disposed outcome that you already had in mind. So, my legal opinion would be don't delete the emails that I'm sure exist where you corroborated on this ahead of time. Because that, I'm sure you will verify, is very illegal.* [37]

C. After the January 5th, 2023 Meeting

41. More concern that the Board Majority had pre-decided the matters on agenda for the January 5th meeting was raised by Orange County media in the immediate days following the January 5th meeting and, later, more extensively in public comment during the January 19th, 2023, meeting.

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[34] *Orange Unified fires its superintendent despite community outcry.*
[35] OUSD Board Meeting – January 5, 2023, YouTube video beginning at 2:07:05.
[36] *Why did Orange Unified fire its superintendent?*
[37] OUSD Board Meeting – January 5, 2023, YouTube video beginning at 26:00.

42. For example, Voice of OC, in an article reporting on the January 5th meeting, observes, "…parents in the Orange Unified School District are asking how four of their elected school board members agreed to oust two top district bosses without any prior discussion with their other colleagues. In just 24 hours. It's leading to questions about whether or not the move violated transparency laws." The article goes on to note, "There are also questions about how the four board members had their interim replacements lined up that same night, and why school board president Rick Ledesma tapped one of the incoming replacements about the position the night before Corella's paid leave was decided."[38]

43. The same article reports on an email From Craig Abercrombie, whom the Board Majority chose to replace Assistant Superintendent Corella, in which Mr. Abercrombie states, in relevant part, "I was contacted late Wednesday evening by the board president regarding this."[39]

44. Trustee Ledesma's knowledge of who would replace Mrs. Corella stands in contrast to Trustee Erickson's, who noted to the Voice of OC that she did not learn the names of the replacement personnel until the night of the meeting.[40]

45. Reporting by the Orange County Register establishes that Dr. Hansen's replacement, Edward Velasquez, and as Mr. Abercrombie, was also contacted by Trustee Ledesma before January 5th. The article notes that, "School Board President Rick Ledesma called Mr. Velasquez on Wednesday, Jan. 4, according to both men. Trustee Ledesma asked Mr. Velasquez if he would be able to fill in as interim should the board "release" Hansen from her contract."[41]

46. Notably, in the same article, Mr. Velasquez is quoted as responding, "I was shocked. They didn't tell me they would release her…They just asked, 'would you be available if we needed somebody?"[42][43]

47. Returning to the issue of when the replacement personnel were contacted, the article notes that, "Both Velasquez and Craig Abercrombie, principal of Canyon High School and Corella's replacement, knew they could be asked to fill those spots a day before the full board learned they'd be voting on them to assume those roles. Ledesma called for a special meeting on Wednesday for Thursday."

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[38] Voice of OC, January 10, 2023, *Did Orange Unified School Officials Improperly Replace Their Superintendent,* available at https://voiceofoc.org/2023/01/did-orange-unified-school-officials-improperly-replace-their-superintendent/.

[39] *Id.*

[40] *Id.*

[41] Orange County Register, *New Orange Unified Superintendent Looks to 'Be of Service' – but for the Short Term Only*, January 12, at https://www.ocregister.com/2023/01/12/new-orange-unified-superintendent-looks-to-be-of-service-but-for-the-short-term-only/.

[42] *Id.*

[43] During the later Board January 19th meeting, Trustee Erickson pointedly asks of the Board Majority who the "they" is that Mr. Velasquez has referred to in his statement to the Orange County Register, a question that goes unanswered by the Board Majority or Mr. Velasquez. *See* OUSD Board Meeting – January 19, 2023 at 2:37:10.

Even so, the article notes, the public agenda [for January 5th] did not include specific names of potential replacements.[44]

48. The Board Majority's contact with interim replacement personnel prior to January 5th continued to raise concerns about Board Majority transparency and compliance with the Brown Act. As the Orange County Register's January 12 articles notes, for example, "The timing and who knew what and when have raised concerns with some community members about potential violations of California's Brown Act law."[45]

49. For example, Trustee Erickson notes, of the Board Majority, "They knew these people would accept those positions before they were nominated. I'm a little skeptical about that timeline. They're operating without a contract so they must feel very confident that on the 19th the jobs will be theirs…[i]t's obviously something they're negotiating without the rest of the board."[46]

50. Trustee Ledesma, in the same article, openly admitted to contacting both Mr. Abercrombie and Mr. Velasquez before January 5th, noting also that he spoke with Trustee Ortega regarding Mr. Velasquez before January 5th, characterizing his pre-January 5th contact with Mr. Abercrombie and Mr. Velaquez as "good planning."[47]

51. Senator Dave Min, State Senator for California's Thirty-Seventh Senate District, in a January 11th letter to Trustee Ledesma, also raised direct concerns about Brown Act violations in the context of Board Majority non-public actions before January 5th. Senator Min writes, summarizing the Brown Act concern:

> *I am also deeply troubled by reports that the Board Majority who voted for these actions may have communicated with each other and decided this course of action prior to the January 6th special meeting. California law prohibits a majority of a local legislative body, such as OUSD, from meeting or deciding on agenda items in private, unless it is a properly noticed closed session meeting that is appropriately reported out to the public. It has come to my attention that you may have contacted Mr. Abercrombie prior to the January 6th special meeting and informed him that he would be named Acting Assistant Superintendent for OUSD, suggesting that you knew at that point that you had the votes to suspend or terminate the Assistant Superintendent Corella and replace her with Mr. Abercrombie. This communication, along with the manner in which the January 6th special meeting was called and conducted, has raised concerns that the Board Majority violated California's Brown Act by communicating with each other and deciding its action in private, prior to the public January 6th special meeting.*[48]

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[44] *Id.*; *see also* Orange Unified School District, Board of Education, Special Board Meeting Closed Session Agenda, Thursday, January 5, 2023 (agenda does not include specific names of replacement personnel).
[45] *New Orange Unified Superintendent Looks to 'Be of Service' – but for the Short Term Only.*
[46] *Id.*
[47] *Id.*
[48] State Senator Dave Min, *Letter to Rick Ledesma*, January 11, 2023, available at 1.11.23. Letter to OUSD Board Members 0.pdf (ca.gov). The letter's reference to a January 6th meeting is an apparent and inadvertent typo; given the context, it is clear that Senator Min's letter refers to the January 5th meeting.

52. To address these concerns, Senator Min's letter asks several questions meant to clarify Board Majority communications prior to January 5th. On information and belief, the Board Majority has not answered any of these questions in any publicly accessible way (or at all).

53. On January 19th, the Board held a regularly-scheduled meeting. During that meeting, there were multiple comments by Board Trustees and by members of the public reflecting mounting concern that the Board Majority had violated the Brown Act by engaging in non-public serial pre-meetings and pre-decisions before January 5th on the matters on agenda for the January 5th meeting.

54. For example, a member of the public and parent of District students notes that Trustee Ortega and interim superintendent Velasquez have had prior business relationships and further notes that these relationships, once displayed on a public website, were removed from that website "well before the special meeting."[49]

55. Several members of the public detail at length the prior and / or current business relationships between interim superintendent Velasquez and Trustee Ortega, including the apparent previous employment by Trustee Ortega of Mr. Velasquez as a consultant. The same member of the public notes, "So, in summary, this Board fired two great admins, replaced them with John Ortega's business partner, and so, is this just a business deal for you?"[50]

56. After the initial public comment period, the January 19th meeting features an on-the-record discussion among Trustees regarding the circumstances of Mr. Velasquez's hiring, including regarding Board Majority coordination, meetings, and decisions on the same topic prior to January 5th.

57. For example, Trustee Erickson asks several questions regarding the circumstances of interim superintendent Velasquez's hiring and elicits admissions establishing that: Trustee Ledesma knew Mr. Velasquez before January 5th and that Trustee Ledesma had "followed his career"[51]; that Trustee Ledesma had Mr. Velasquez's cell phone number because it had been "forwarded by Mr. Ortega";[52] that Trustee Ledesma "called these folks…I called them and I asked them," a course of commentary in which Trustee Ledesma repeatedly uses the plural subject "these folks" to describe whom he had contact with before January 5,[53] after which Trustee Ledesma says "I am going to no longer answer your questions."[54]

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[49] OUSD Board Meeting – January 19, 2023, YouTube video, available at https://www.youtube.com/watch?v=wmZPayuzwiE, at approximately 18:40 (all citations herein to timestamps in the Jan 19th meeting recording are approximate).
[50] *Id.* beginning at 2:33:00.
[51] *Id.* beginning at 2:34:48.
[52] *Id.* at 2:35:25.
[53] *Id.* beginning at 2:36.
[54] *Id.* at 2:36:47.

58. Trustee Erickson goes on to enumerate some of the questions she would ask interim superintendent Velasquez were she permitted to do so by the Board Majority, including who the "they" is that Mr. Velasquez referred to in his previous statements to the Orange County Register[55] and about whether the Board Majority members interviewed Mr. Velasquez before January 5. The Board Majority does not respond to these questions.

59. Trustee Yamasaki raises concerns about compliance with the Brown Act, noting that when the January 19th agenda was initially released to the public, it did not have time set aside for a public comment section regarding the retention of Mr. Velasquez as interim superintendent, and that such time was not provided until Trustee Yamasaki affirmatively invoked the Brown Act. [56]

60. Trustee Rumsey, during this portion of the meeting, notes, without adding more, that "I had met and had a very nice and comfortable conversation with Mr. Velasquez."[57]

61. Trustee Miner, during this portion of the meeting, notes, without adding more, that "I did have two interviews with Mr. Velasquez as well as Mr. Abercrombie."[58]

62. Trustee Ortega, during this part of the Board discussion, adds little to the discussion of the issues, and instead spends a portion of his time threatening members of the public, saying that he will have people ejected, and at another point, "What I'm saying is, it's these slanderous comments, that you need to be very careful of, because you could be liable for these slanderous comments, so you need be very careful of that, so I'm warning you about that."[5960]

III. Analysis of The Board Majority's Brown Act Violations

In light of the facts outlined immediately above and the requirements of the Brown Act, the Board[61] majority violated the Brown Act in at least three ways in connection with the January 5th meeting as set forth below.[62]

[55] *Id.* at 2:37:10.
[56] *Id*. at 2:57:00.
[57] *Id.* at 3:19:00.
[58] *Id*. at 3:30:18.
[59] *Id.* beginning at 3:13:00.
[60] Trustee Ortega later received a letter from the First Amendment Coalition explaining to Trustee Ortega that his actions in this regard violate the First Amendment and CA Civil Code section 47 and calling on him to disavow his comments. *See* https://firstamendmentcoalition.org/2023/01/fac-urges-orange-school-board-member-to-retract-statement-threatening-speech-rights/?fbclid=IwAR1FCIMvjXYILS3gIxlumEwtIo7eo5WTaYCn4aB3oi5oEEZMHnbgUqmQGYE. To date, Mr. Ortega has not done so.
[61] As a threshold matter, the Board is an entity subject to the Brown Act. §5492(a).
[62] As noted, I reserve the right to amend this complaint to edit and / or add additional allegations of Brown Act violations in light of facts or evidence that may become available at a later date.

A. The Board Majority Violated the Brown Act because it Failed to Give Sufficient Notice for the January 5th Meeting Where the Special Meeting Was Called over Winter Break and Under Circumstances that Amounted to a Surprise Meeting and Thus Violated Due Process

A special meeting may be called by the Board President. 24-hour notice "shall be delivered…. and shall be received" at least 24 hours before the time of the special meeting. Notice must be provided to each member of the Board. Notice must be provided to each local newspaper of general circulation and radio or television station requesting notice in writing and posted on the Board's website. Notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.[63]

Assuming without conceding that the Board Majority met the 24-hour notice and media publication / agency website notice requirements of the Brown Act[64], such notice was still insufficient because it was given over Winter Break and thus during a time period and "location" that was not "freely accessible" to members of the public.

Here, there is no question that the January 5th special meeting was called by President Ledesma over the District Winter Break and that Ledesma knew or should have known it was the District Winter Break when he called the meeting. II.B. Because it was Winter Break, many members of the public – parents of District students, District administrators, District teachers – were out of town or otherwise unable, because of the date, to meaningfully access or receive notice of the meeting. As one public commentator noted, the Board Majority "scheduled a last-minute meeting during a school break when many of our parents and staff are gone." II.B. In doing so, as a public commentator who identified herself as a former federal judge sharply observed, "President Ledesma, during the District's Winter Break, knowing your targeted people – both women, I happen to note – are out of the country, you called a special meeting with just 24 hours' notice and thereby intentionally deprived the women targeted by your wrath and the public too of fair notice and left us with no time to meaningfully reply."

It might be replied that the "in a location that is freely accessible" language of §54956(a) is conventionally understood to require, say, placing a written notice in a building location where members of the public can easily see it – and that is so. But, by analogy, the requirement applies to these circumstances to render insufficient the Board Majority's ostensible notice. In the same way that the Board could not put the time and date of a meeting on a piece of paper, lock that piece of paper in a dusty closet drawer, and then call that "notice," the Board Majority cannot deliberately call a special meeting during a Winter Break – a period of time in which the Board knows significant numbers of

[63] §54956(a).

[64] 24 hours of notice is not conceded because there is no readily available fact of public record that establishes precisely when the Board Majority made the requisite media and website notice, only that notice was given sometime in the afternoon of Wednesday January 4. Because the Board Majority cut so close to the 24 hour statutory requirement by giving notice the afternoon of Wednesday January 4th, mere minutes may matter regarding the sufficiency of such notice, and so 24 hours' notice is not conceded here absent additional facts. While the facts do show that the non-majority Board members received at least 24 hours of notice, that is distinct from, and does not necessarily satisfy, notice to the public requirements.

public and interested parties will be out of town, unavailable, or otherwise unable to access or receive any notice – and then call such sleight of hand "notice."

More broadly, the overarching circumstances surrounding the Board Majority's ostensible notice render it insufficient as a matter of Due Process[65]. Notice is an essential element of the fair play embodied and required by Due Process. Fair play here – especially given the stakes, or the leadership of a District that serves tens of thousands of students – required more than minimal notice. As Trustee Erickson aptly put it:

> *I think, just as a matter of comment, at our last meeting I asked specifically that we honor our no surprises policy, which has been a long-held policy in Orange Unified School District…this is the ultimate surprise, because you're ultimately, potentially, getting rid of the CEO and the Assistant Vice President of Educational Services for a 27,000-student District and 3500 employees, multiple families…this is a huge, huge decision, and it's highly unusual to have it held like this.* II.B.

Instead, here, the Board Majority sought to achieve surprise, or as Trustee Erickson put it, a "full blown ambush attack," II.B., and in doing so, it subverted the fair play principles that undergird notice as an element of Due Process. A reasonable reading of the facts is that the Board Majority knew its January 5th agenda items would be deeply unpopular – an accurate belief later substantiated by the overwhelming public criticism of the Board Majority's actions – so it sought to have a meeting with minimal notice and at a time and manner calculated to diminish and minimize public turnout and opposition. Indeed, as one public commentator correctly noted to the Board Majority, "You're not attempting to disguise what you're doing. Less people showed up tonight than would have shown up if you had scheduled a regular meeting to do this with the people involved in attendance. So you succeeded in that regard." II.B.

This kind of bad-faith gamesmanship in which the Board Majority engaged around notice is anathema to Due Process. Notice as an element of Due Process is meant to inform the public, open government decision-making to transparency and public scrutiny, and to promote participation by the public – not, as here, to be gamed in a manner calculated to obfuscate. Indeed, here, the Board Majority attempted to use technical, de minimis compliance with the Brown Act notice requirements in order to *defeat* meaningful notice. This is particularly outrageous and harmful to notions of fair play because the Board Majority would not have suffered prejudice to its goals by waiting a mere two weeks until the regularly-scheduled (and duly-noticed) January 19th meeting. Accordingly, such notice-as-ambush is a nullity from a standpoint of Due Process, and the Board Majority failed to provide sufficient notice for the January 5th meeting for this reason as well.

B. The Board Majority Violated the Brown Act because it Failed to Adequately Describe the January 5th Closed Session Agenda Items Where the Meeting Itself Was Not Adequately Noticed and Where the Board Majority Provided no Explanation

[65] This and all arguments in this complaint that turn on Due Process are rooted in the Federal Constitution, Amends. 5 and 14; and the California Constitution, Article I, Section 7.

According to the California Attorney General's guide to the Brown Act, "the purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body."[66] Agenda descriptions must not be misleading.[67] Closed-session agenda items must be described with enough particularity to provide interested persons with an understanding of the subject matter which will be considered.[68] As a general matter, substantial compliance with the "safe harbor" provisions at §54954.5 will be sufficient.[69]

Assuming without conceding that the January 5th Closed Session Agenda meets the safe harbor requirements of §54954.5, such notice is still insufficient as a matter of Due Process under the particular circumstances of the January 5th meeting. Because the underlying meeting itself was not grounded in adequate notice (as set forth above) – in the context of the "full blow ambush attack" as aptly described by Trustee Erickson – even nominal compliance with §54954.5 is insufficient as a matter of Due Process. That is because, as applied to these specific facts and circumstances, the closed session agenda item descriptions were more obfuscating than illuminating. That result is anathema to Due Process even given nominal compliance with §54954.5.[70]

This obfuscation – this lack of information and transparency – is obvious from the parsimonious wording of the closed session agenda items themselves, notwithstanding apparent compliance with §54954.5, especially in the context of the stakes at hand.

> A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
> Title: Superintendent
> Title: Assistant Superintendent, Educational Services
> (Pursuant to Government Code § 54957 (b)(1))
>
> B. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
> Two Cases
> (Pursuant to Government Code § 54957 (b)(1))
>
> C. PUBLIC EMPLOYEE APPOINTMENT
> Title: Interim Superintendent
> Title: Acting Assistant Superintendent, Educational Services
> (Pursuant to Government Code § 54957 (b)(1))[71]

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[66] California Attorney General's Office, *The Brown Act, Open Meetings for Local Legislative Bodies*, 2003 (available at https://oag.ca.gov/system/files/media/the-brown-act.pdf, at p.16.
[67] *Id.* at p. 17 (citing *Carlson v. Paradise Unified School Dist.* (1971); 18 Cal.App.3d 196, 200.
[68] *Id.* at 21.
[69] *Id.* at 22.
[70] To the extent §54954.5 excludes consideration of the surrounding circumstances that go to whether meaningful notice was provided consistent with the requirements of Due Process, I make a good-faith argument that §54954.5 should be modified, changed, or construed to be consistent with the demands of Due Process. I make this argument mindful of California Rule of Professional Conduct 3.1(a)(2).
[71] Orange Unified School District, Board of Education, Special Board Meeting Closed Session Agenda, Thursday, January 5, 2023.

Among the questions these Closed Session Agenda items leave unanswered:

- Why are the named personnel being given performance evaluations now, over a Winter Break and with minimal notice to the public?
- Has something material changed from when they last received (positive) performance evaluations?
- Has something material changed from the last regularly-scheduled Board meeting on December 14, 2022?
- Are the named personnel being disciplined? Dismissed? Released?
- If so, why and on what grounds? If so, how will the ~27,000 students of the District – and their families – be affected? How much will these actions cost the District? Has there been a budget analysis? Will other District personnel – teachers, staff – be disciplined or fired in the same way? Will this disrupt the education of District students?
- Who are the interim personnel being appointed? What are their qualifications? Do they have knowledge of the District and its needs? Has any basic due diligence – background checks, litigation risks, conflicts of interests, performance-based interviews – been performed on these replacement personnel?

The list of material questions could continue on and on – the point is that the parsimonious closed session agenda item descriptions provide no answers. And this is just the Board Majority's intent, as shown by the Board Majority's repeated refusals to provide information, context, or answers to these or like questions. In the same way as the 24-hour notice provisions, in the hands of the Board Majority, the closed session agenda descriptions become cloaks that conceal instead of lights that illuminate. This is directly at odds with the fair play requirements of notice and Due Process and undermines the Brown Act's fundamental intent "to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies."[72]

The facts demonstrate the obfuscation caused by these vague closed session descriptions. For example, at the beginning of the January 5th meeting, Trustee Erickson notes that she and other Board members "have been given absolutely zero information and we're being asked to appoint a superintendent and assistant superintendent with zero information." II.B. Trustee Yamasaki, concerned about the overarching lack of notice, lack of transparency, and lack of public input, makes a motion to postpone the meeting to the regularly-scheduled and noticed January 19th session; that motion is denied by the Board Majority. II.B. The fact that Trustees Erickson and Yamasaki are as in the dark as the general public about the circumstances of the closed session agenda is telling and underscores how the vague descriptions hide more than they illuminate.

Members of the public also express surprise, confusion, and bewilderment about what the closed session agenda items are getting at. Many understand that the Board Majority is contemplating some kind of adverse employment action against District personnel, but the key question in the public's mind is "why?" and what the consequences will be for the District and District students. Public comment after public comment observes the superlative performance of Dr. Hansen, particularly during the challenging

[72] California Attorney General's Office, *The Brown Act, Open Meetings for Local Legislative Bodies*, 2003, p.1 (citing *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555).

circumstances of Covid. One notes Dr. Hansen's recent accolades by "the Fourth District PTA, the parent group representing every PTA in Orange County, and the largest parent group in the state of California," which "selected Dr. Hansen as administrator of the year only last Spring." In light of Dr. Hansen's exceptional performance, members of the public are stunned, demanding of the Board Majority:

- *Why would you want to cause the disruption?*
- *Under what grounds should [Dr. Hansen and Mrs. Corella] be facing discipline, dismissal, or release?*
- *One of the strengths that Dr. Hansen has shown time and time again is her ability to not wade into these political waters; why are you trying to drown her in them?*
- *Both Ortega and Ledesma spoke at the December school board meeting about the importance of transparency, yet the agenda for this meeting in closed session topics are not transparent. If you want transparency then this meeting should have been given with more notice and held when all educational partners could be present, including Dr. Hansen, Cathleen Corella, and the rest of District leadership who are also not here.*

These are the – reasonable, material, urgent – questions of a public that has been intentionally kept in the dark. They belie any notion that these parsimonious closed session descriptions – notwithstanding nominal compliance with §54954.5 – serve the ends of substantive, meaningful notice and Due Process.

C. The Board Majority Violated the Brown Act because, Prior to January 5th, it Engaged in Serial Meetings and Developed a Concurrence as to Action to be Taken on the Agenda Items of the January 5th Meeting

The "purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies."[73] This purpose is rooted in democratic, participatory values, including that "the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." §54950. To these ends, the Brown Act imposes an "open meeting" requirement on local legislative bodies.[74] That is, the Brown Act embodies the notion that the public's business must be conducted in view and with the participation of the public. It follows that "secret legislation" and decision-making outside of the open meeting setting is deeply inimical to the Brown Act and to democracy itself.

In line with these overarching values, the Brown Act "expressly prohibits serial meetings that are conducted through direct communications, personal intermediaries or technological devices for the purpose of developing a concurrence as to action to be taken."[75] §54952.2(b)(1) defines the prohibition against serial meetings: "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

[73] *Id.* at p.1 (citing *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555).
[74] *Id.* (citing (§54953 (a); *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116).
[75] *Id.* at p. 11.

intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."

The Attorney General of California helpfully elaborates on what constitutes a "serial meeting":

> *Typically, a serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body's members. For example, a chain of communications involving contact from member A to member B who then communicates with member C would constitute a serial meeting in the case of a five-person body. Similarly, when a person acts as the hub of a wheel (member A) and communicates individually with the various spokes (members B and C), a serial meeting has occurred. In addition, a serial meeting occurs when intermediaries for board members have a meeting to discuss issues. For example, when a representative of member A meets with representatives of members B and C to discuss an agenda item, the members have conducted a serial meeting through their representatives as intermediaries.*[76]

Where unlawful serial meetings have taken place, the next question is whether the coordinated majority did "discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body," or, in other words, whether the majority developed a "concurrence" as to action to be taken.[77]

In considering whether a concurrence has been developed, the California Attorney General advises:

> *In construing these terms, one should be mindful of the ultimate purposes of the Act – to provide the public with an opportunity to monitor and participate in the decision-making processes of boards and commissions. As such, substantive conversations among members concerning an agenda item prior to a public meeting probably would be viewed as contributing to the development of a concurrence as to the ultimate action to be taken*.[78]

Indeed, "with respect to items that have been placed on an agenda or that are likely to be placed upon an agenda, members of legislative bodies should avoid serial communications of a substantive nature concerning such items.[79]

Here, the available facts, and reasonable inferences from those facts, demonstrate that the Board Majority (Trustees Ledesma, Ortega, Rumsey, Miner) held serial meetings and developed concurrence, all prior to January 5th, in connection with the agenda items of the January 5th meeting. Specifically, the Board Majority, with President and majority Trustee Ledesma as the likely "hub," held serial meetings and developed a concurrence prior to January 5th regarding, at minimum: a) the decision to take adverse employment action against then- Superintendent Hansen and Assistant Superintendent Corella; and b)

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[76] *Id.*

[77] *Id.* at 12; *Stockton Newspapers, Inc.,* v. *Redevelopment Agency* (1985) 171 Cal.App.3d 95, 103) (describing "concurrence" framework).

[78] *Id.*

[79] *Id.*

to hire Mr. Velasquez and Mr. Abercrombie as interim replacements. In doing so, the Board Majority violated the Brown Action's prohibition against serial meetings and undermined the democratic, participatory values that animate the Brown Act.

Here are the facts and the reasonable inferences from those facts that make this violation plain:

- Fact: adverse employment action against then- Superintendent Hansen and Assistant Superintendent Corella and hiring of interim replacement personnel were closed session agenda items for the January 5th special meeting.[80]

- Fact: Trustee Ledesma spoke to the two replacement personnel, Mr. Velasquez and Mr. Abercrombie, prior to January 5th. All three have admitted this as a matter of public record. III.C.

- By reasonable inference, Trustee Ledesma would only have spoken to interim replacement personnel Mr. Velasquez and Mr. Abercrombie on the basis of already having decided to take adverse employment action against then- Superintendent Hansen and Assistant Superintendent Corella and to hire Mr. Velasquez and Mr. Abercrombie.

- Fact: Trustee Ledesma obtained Mr. Velasquez' cell phone number from Trustee Ortega – it was, according to Trustee Ledesma, "forwarded by Mr. Ortega." III.C.

- Fact: Trustee Ledesma spoke with Trustee Ortega regarding Mr. Velasquez before January 5th. III.C.

- Fact: both Trustees Ledesma and Ortega knew Mr. Velasquez before January 5th. Trustee Ledesma "followed [Velasquez's] career; Trustee Ortega knew Mr. Velasquez well enough to have Mr. Velasquez's cell phone number. III.C.

- Fact: as several public commentators note, Trustee Ortega appears to have maintained, over the course of years, business relationships with Mr. Velasquez, including, for example, a recent business relationship prominently displayed on a public website (before that affiliation was removed from the website earlier this year). II.B., III.C.

- By reasonable inference, given that Trustee Ledesma spoke to Trustee Ortega about Mr. Velasquez, given that Trustee Ortega gave Trustee Ledesma Mr. Velasquez's cell phone number, and given the previous and / or current business relationships between Trustee Ortega and Mr. Velasquez, it is reasonable to infer that Trustee Ortega likely communicated with Mr. Velasquez before January 5th.

- Fact: both Trustees Rumsey and Miner admitted to speaking with Mr. Velasquez and, in Miner's case, with Mr. Abercrombie, and in Miner's case, two times with Mr. Velasquez and Mr. Abercrombie each, though whether they did so before, on, or after January 5th is not sufficiently clear from presently available evidence. III.C.

[80] Orange Unified School District, Board of Education, Special Board Meeting Closed Session Agenda, Thursday, January 5, 2023.

Additional facts and reasonable inferences tend to support the existence of Board Majority serial communications and concurrence prior to the January 5th meeting:

- In his statements to the Orange County Register, Mr. Velasquez uses the pronouns "they," "they," and "we" to characterize his conversations with the people with whom he spoke before January 5th about being retained as interim superintendent. It is clear he spoke with Trustees Ledesma and Ortega, but the facts of Mr. Velasquez' plural pronoun usage are consistent with him having spoken prior to January 5th with Trustees Rumsey and / or Miner as well.

- When questioned by Trustee Erickson regarding his pre-January 5th communications around Mr. Velasquez's hiring, Trustee Ledesma admits to calling Mr. Velasquez (and Mr. Abercrombie) before January 5th but then becomes evasive and stonewalls, saying to Trustee Erickson, "I am no longer going to answer your questions." By reasonable inference, if there were an innocuous or exculpating explanation Trustee Ledesma could have given in response to Trustee Erickson's questions, he would have done so.

- Senator Dave Min, in his January 11th letter to Trustee Ledesma, posed a series of probing questions as to "concerns that the Board Majority violated California's Brown Act by communicating with each other and deciding its action in private" prior to the January 5th meeting. III.C. On information and belief, the Board Majority has not publicly answered these questions. Again, by reasonable inference, if there were innocuous or exculpating answers to these questions, even to some of the questions, the Board Majority would have given them. Instead, the Board Majority's public silence suggests awareness that its actions have violated the Brown Act and that it fears civil and / or criminal liability.

- Reasonable inferences from the foregoing facts strongly suggest concurrence among all four Trustees of the Board Majority. As reviewed, the facts establish that Trustee Ledesma contacted and offered interim positions to Mr. Velasquez and Mr. Abercrombie before January 5th. Because Trustee Ledesma knew that he would need votes from all four Trustees of the Board Majority to hire Mr. Velasquez and Mr. Abercrombie, and because Trustee Ledesma offers both the interim positions before January 5th, a reasonable inference can be drawn that Trustee Ledesma had affirmatively confirmed, as the "hub" initiator of serial communications, with Trustees Ortega, Rumsey, and Miner to ensure that he had the votes before making those employment offers. The remaining possibility – that Trustees Rumsey and Miner had not come to prior concurrence on January 5th closed session agenda items and instead voted blindly to and without any discussion or questions on the matters at hand – belies the political and personnel stakes of the matter, the outspoken and public political positions both have taken on their desire for change at the District level, and the fact that on all related matters, before and after January 5th, the Board Majority members have moved as a bloc. Such a possibility defies common sense and leaves only one likely possibility: Board Majority serial meetings and concurrence before January 5th – precisely the conduct prohibited by the Brown Act.

For these reasons, the Board Majority violated the Brown Act because it engaged in serial meetings and developed a concurrence as to action to be taken before the January 5th meeting.

D. The Board Majority's Brown Act Violations Caused Prejudice

At this stage in the Brown Act complaint process, no showing of prejudice is required. The Brown Act itself does not, by its text, require any showing of prejudice at any point. Nonetheless, some courts have read in a requirement to show prejudice.[81] Without conceding the legal existence of such a requirement, the below is a non-exhaustive proffer of evidence as to what prejudice could be shown as flowing from the Board Majority's Brown Action violations were such a showing required.[82]

- Prejudice to the public's rights under the Brown Act, including the right to adequate notice and to be meaningfully heard on matters of public business.
- Prejudice to the fiscal health of the District and that of individual District public schools.
- Prejudice to administrative and faculty staffing levels and retention of the same at District schools.
- Prejudice to the level and quality of District administration and teaching at both a District-wide and school-specific level.
- Prejudice to the educational and ancillary supportive services offered to students, including low-income students, students with accommodations, and / or other students who depend on District public schools as resources of last resort.
- Prejudice to District real estate values as the quality of District public schools is perceived by the public to drop.

IV. Demand / Relief Sought

A. Cure and Correct

In light of the above, and pursuant to §54960.1, I respectfully demand that the Board Majority cure and correct all actions taken with respect to closed session agenda items during the January 5th, 2023 Board meeting and that it take all predicate steps that may be required to accomplish the same.

B. Cease and Desist

In light of the above, and pursuant to §54960.2, I respectfully demand that the Board Majority cease and desist from prospective violations of the Brown Act and that it make an "unconditional commitment" to do so consistent with §54960.2(c).

// Final 2 3 2023 ~1:55pm

[81] *See Olson v. Hornbrook Community Services Dist.,* 33 Cal.App.5th 502, 518 (2019).

[82] As with all fact matters in this complaint, I reserve the right to edit and / or supplement the factual record and legal arguments, here on the issue of prejudice, as may be required.