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February 11, 2020

**By Email and U.S. Mail**

Chair Candace Andersen  
Contra Costa County Board of Supervisors  
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Martinez, CA 94553  
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Dear Chair Andersen,

This letter is to call to your attention to what I believe was a significant violation of a central provision of the Ralph M. Brown Act, Government Code sections 54960 *et seq.* (the “Brown Act”) by the Contra Costa County Board of Supervisors (“Board”) against my client, Gus Kramer. The nature of the violation is as follows: in its meeting of January 21, 2020, the Contra Costa County Board of Supervisors improperly met in closed session regarding Mr. Kramer’s case before a Contra Costa County grand jury, entitled *People of the State of California v. Gus S. Kramer, Assessor*, Contra Costa County Superior Court Case No. 05-191106-4.

Specifically, the Board’s actions violated Government Code section 54956.9, in that discussion of Mr. Kramer’s case did not fall under any permissible category of closed session discussion. *See* Gov. Code § 54956.9. Government Code section 54956.9(a) states that “[n]othing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.” Gov. Code § 54956.9(a). Litigation is considered “pending” under this section only if any of the following circumstances exist:

“(1) Litigation, to which the local agency is a party, has been initiated

formally.

(2) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(3) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2).

(4) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.”

Gov. Code § 54956.9(d)(emphasis added).

In its posted agenda for the January 21, 2020 Board meeting, the Board listed discussion of Mr. Kramer’s litigation in “Closed Session” under Agenda Item # B.2., with the following description:

“B. CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION (Gov. Code § 54956.9(d)(1))

...

2. *People of the State of California v. Gus S. Kramer, Assessor, Contra Costa County Superior Court Case No. 05-191106-4*”

The agenda item thus specifically cites as justification for the “closed session” discussion Government Code section 54956(d)(1), which, as referenced above, states that the following is “pending” litigation: “Litigation, *to which the local agency is a party*, has been initiated formally.” Gov. Code § 54956.9(d)(1) (emphasis added). Here, though, the “local agency” (*i.e.*, the County of Contra Costa) is not actually a formal party in Mr. Kramer’s litigation pending before the Contra Costa Superior Court (even though the litigation against Mr. Kramer is based on his alleged conduct while he served as the elected Assessor for Contra Costa County). Therefore, because Contra Costa County is not actually a party to the pending litigation, it falls outside of Government Code section 54956(d)(1)’s closed session exception in the Brown Act and is not permitted to be discussed in closed session. The

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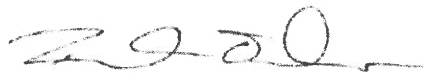
Board thus violated the Brown Act on January 21, 2020 when it had its discussion of Mr. Kramer's case.

Based on the foregoing, the Board's actions constitute a violation of the Brown Act and must be remedied. Mr. Kramer hereby demands, in accordance with Government Code section 54960.1, that the Board immediately "cure or correct" its unlawful action taken on or about January 21, 2020 as follows: make public the contents of its closed session discussion of Mr. Kramer's case, discussed on January 21, 2020; record and videotape and audiotape all closed sessions pursuant to Government Code section 54960; and require certified attendance of 50 hours of training in compliance with the Brown Act by each Board member. If the Board fails to take the proper remedial actions necessary in this case, Mr. Kramer will have no choice but to commence a legal action (or amend his existing civil action) against the Board in order to enforce his rights and to obtain a judicial determination that the Board committed a violation of the Brown Act. We hope that the Board will find its way to correcting course and to avoiding any such litigation.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction will leave us no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case we would also ask the court to order the County to pay court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,

CANNATA, O'TOOLE, FICKES & OLSON LLP



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KARL OLSON

CC: See attached service list.