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10 JOHN FATHEREE

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF PLUMAS**

13 JOHN FATHEREE,

14 Petitioner/Plaintiff,

15 v.

16 EASTERN PLUMAS RURAL FIRE  
17 PROTECTION DISTRICT, EASTERN  
18 PLUMAS RURAL FIRE PROTECTION  
19 DISTRICT BOARD OF DIRECTORS and  
DOES 1 through 20, inclusive,

20 Respondents/Defendants.

Case No.: CV20-00176

**FIRST AMENDED VERIFIED PETITION  
FOR WRIT OF MANDAMUS and  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF FOR  
VIOLATION OF THE RALPH M.  
BROWN ACT OPEN MEETING LAW  
AND THE CALIFORNIA PUBLIC  
RECORDS ACT**

[Ralph M. Brown Act, Gov. Code § 54950  
et seq.; Gov. Code § 6250 et seq.; Civ.  
Pro. Code §§ 1085, 1094.5]

[UNLIMITED JURISDICTION]

Complaint Filed: December 29, 2020

Trial Date: None set.

Judge: Hon. Douglas M. Prouty

Dept: 2

23 **INTRODUCTION**

24 1. The Brown Act, also known as the California Open Meeting Law, has a clear and  
25 forcefully stated purpose: "In enacting this chapter, the Legislature finds and declares that the  
26

1 public commissions, boards and councils and the other public agencies in this State exist to aid in  
2 the conduct of the people’s business. It is the intent of the law that their actions be taken openly  
3 and that their deliberations be conducted openly. [¶] The people of this State do not yield their  
4 sovereignty to the agencies which serve them. The people, in delegating authority, do not give  
5 their public servants the right to decide what is good for the people to know and what is not good  
6 for them to know. The people insist on remaining informed so that they may retain control over  
7 the instruments they have created.” Government Code section 54950. In this way, “[t]he [Brown]  
8 Act . . . serves to facilitate public participation in all phases of local government decision making  
9 and to curb misuse of the democratic process by secret legislation of public bodies.” *San Joaquin*  
10 *Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167, 1176 (citations omitted).

11 2. This action alleges violations of California’s Open Meeting Law known as the Ralph M.  
12 Brown Act (hereinafter “Brown Act” or “Act”), codified in Government Code section 54950, *et*  
13 *seq.*, by the EASTERN PLUMAS RURAL FIRE PROTECTION DISTRICT (“DISTRICT”) and  
14 its BOARD OF DIRECTORS (“BOARD”) regarding the BOARD’s September 14, September  
15 28, September 30, October 7, October 26, 2020, November 2, November 16, 2020, and December  
16 8, 2020, meetings, and seeks a determination of:

- 17 (i) the applicability of the Brown Act to closed sessions conducted by  
18 Respondent/Defendant DISTRICT on the aforementioned dates;
- 19 (ii) whether the DISTRICT noticed and conducted said closed sessions in  
20 conformance with the requirements of the Act, including Government Code  
21 sections 54956.9(a) and (e) and (e)(5);
- 22 (iii) whether the DISTRICT engaged in discussion or deliberation in said closed  
23 sessions on facts and circumstances, including personnel issues and the  
24 elimination of district positions, the nature and extent of which were either (a)  
25 beyond and outside the scope of closed session notices based on Government Code  
26 section 54956.9(e)(5), (b) were subject to the public statement and announcement  
27 provision of Government Code section 54956.9(e)(2), or (c) were required by the  
28 Brown Act to be conducted in public hearing;

- 1 (iv) whether the DISTRICT improperly held *emergency* meetings on September 28,  
2 September 30, October 7 and December 8, 2020;
- 3 (v) whether the DISTRICT failed to comply with Government Code section 54956.5  
4 that requires that the Board, as soon as possible after an emergency meeting, to  
5 post in a public place for 10 days, a copy of the minutes, a list of persons notified  
6 or attempted to be notified, a copy of the roll call vote, and any actions taken at an  
7 emergency meeting;
- 8 (vi) that the DISTRICT's December 20, 2020, letter in response to Petitioner's cease  
9 and desist demand was not an unconditional commitment to cease, desist from,  
10 and not repeat the past action that was alleged to violate the Act because it did not  
11 meet the requirements of Government Code section 54960.2(b)(1);
- 12 (vii) whether the DISTRICT acted inconsistently with the public's right to the  
13 protections afforded by our State's open government and reform laws, and  
14 California Constitution, Article 1, Section 3(a) and (b)(1); and
- 15 (viii) for injunctive and declaratory relief to prevent future or threatened violations of  
16 the Brown Act pursuant to Government Code section 54960.2.

17 3. Through this action Petitioner/Plaintiff JOHN FATHEREE seeks a writ of mandate,  
18 declaratory and injunctive relief under California Code of Civil Procedure sections 1085 and  
19 1060, and Government Code section 54960, to curb the DISTRICT's unlawful practices and their  
20 misuse of their democratic process by secret legislation. This action does not seek to overturn or  
21 invalidate past actions of the Board.

22 4. Through this action Petitioner/Plaintiff JOHN FATHEREE also seeks a writ of mandate  
23 compelling the DISTRICT to comply with California's Public Records Act codified in  
24 Government Code section 6250, *et seq.*, for the DISTRICT's (i) failure to provide a proper and  
25 timely response to a request for copies of audio recordings from its meetings, and (ii) the  
26 DISTRICT's failure to provide a proper and timely response a request that it produce emails  
27 regarding its October 7, 2020, meeting that was held outside the DISTRICT's jurisdictional  
28 boundaries.

**THE PARTIES**

1  
2 5. Petitioner/Plaintiff JOHN FATHEREE (hereinafter “FATHEREE” or “Petitioner”) is an  
3 individual residing within the jurisdictional boundaries of Respondent/Defendant EASTERN  
4 PLUMAS RURAL FIRE PROTECTION DISTRICT, in the County of Plumas, State of  
5 California and is a former Assistant Fire Chief for the DISTRICT. Petitioner is entitled to seek  
6 relief for the BOARD’s violations of the Brown Act under Government Code section 54960 and  
7 Article I, Section 3(b)(1) of the California Constitution, and relief for the DISTRICT’s violations  
8 of the California Public Records Act under Government Code section 6250, *et seq.*

9 6. Respondent/Defendant EASTERN PLUMAS RURAL FIRE PROTECTION DISTRICT  
10 (“DISTRICT”) is a special district created and organized under the laws and regulations of the  
11 State of California and provides fire protection services for rural eastern Plumas County,  
12 California. The DISTRICT is defined as a “local agency” by Government Code section 54951  
13 and is thus subject to both the Brown Act and the Public Records Act.

14 7. Respondent/Defendant EASTERN PLUMAS RURAL FIRE PROTECTION  
15 DISTRICTBOARD OF DIRECTORS (“BOARD”) is the elected, four-member governing body  
16 of the DISTRICT. The Board’s executive offices are located at 141 Delleker Drive, Portola,  
17 California. The DISTRICT is a public agency under Public Resources Code section 21063. The  
18 BOARD is defined as a “local agency” by Government Code section 54951. The BOARD is the  
19 legislative body of the DISTRICT pursuant to Government Code section 54952 and is thus subject  
20 to the Brown Act and Public Records Act.

21 8. The true names and capacities, whether individual, corporate, associate, representative, or  
22 otherwise of respondents/defendants named herein as DOES 1 through 10 are unknown to  
23 Petitioner at this time and are therefore sued by such fictitious names. Petitioner will amend this  
24 complaint to allege the true names and capacities of DOES 1 through 10 when they become  
25 known to him. Each of DOES 1 through 10 is in some manner legally responsible for the  
26 violations of the law alleged herein.

27 / /

28 / /

1 **JURISDICTION AND VENUE**

2 9. This Court has jurisdiction over this matter pursuant to Code of Civil Procedure sections  
3 1085 and 1060, and Government Code sections 54960, 54960.2 and 6258.

4 10. Venue is proper in this court as the DISTRICT and its BOARD are located within the  
5 County of Plumas, and the acts and events giving rise to the claims occurred, at least in substantial  
6 part, in the County of Plumas.

7 **FACTUAL ALLEGATIONS**

8 11. Government Code section 54952.2(a), defines a “meeting” as:

9 . . . any congregation of a majority of the members of a legislative body at the same  
10 time and location . . . to hear, discuss, deliberate, or take action on any item that is  
11 within the subject matter jurisdiction of the legislative body.

12 12. Government Code section 54954(a) sets forth the agenda requirements for regular  
13 meetings:

14 At least 72 hours before a regular meeting, the legislative body of the local agency,  
15 or its designee, shall post an agenda containing a brief general description of each  
16 item of business to be transacted or discussed at the meeting, including items to be  
discussed in closed session . . .

17 No action or discussion shall be undertaken on any item not appearing on the posted  
18 agenda . . .

19 13. Government Code section 54953 mandates that “[a]ll meetings of the legislative body of  
20 a local agency shall be open and public, and all persons shall be permitted to attend any meeting  
21 of the legislative body, except as otherwise provided in this chapter.”

22 14. Government Code section 54954.2(a) requires that for each regular meeting, the BOARD,  
23 or its designee, “shall post an agenda containing a brief general description of each item of  
24 business to be transacted or discussed at the meeting, including items to be discussed in closed  
25 session” and precludes the BOARD from any discussion or taking any action “on any item not  
26 appearing on the posted agenda . . .”

27 15. Government Code section 54962 provides that “[e]xcept as expressly authorized by this  
28 Chapter . . . no closed session may be held by any legislative body of any local agency.”

1 16. Thus, the Brown Act prohibits the BOARD from conducting closed sessions, unless the  
2 closed sessions are specifically permitted.

3 17. Government Code section 54957(b)(1) and (2) provides authorization for closed sessions  
4 regarding personnel matters:

5 (1) Subject to paragraph (2), this chapter shall not be construed to prevent the  
6 legislative body of a local agency from holding closed sessions during a regular or  
7 special meeting to consider the appointment, employment, evaluation of  
8 performance, discipline, or dismissal of a public employee or to hear complaints or  
9 charges brought against the employee by another person or employee unless the  
10 employee requests a public session.

11 (2) As a condition to holding a closed session on specific complaints or charges  
12 brought against an employee by another person or employee, the employee shall be  
13 given written notice of his or her right to have the complaints or charges heard in  
14 an open session rather than a closed session, which notice shall be delivered to the  
15 employee personally or by mail at least 24 hours before the time for holding the  
16 session. If notice is not given, any disciplinary or other action taken by the  
17 legislative body against the employee based on the specific complaints or charges  
18 in the closed session shall be null and void.

19 18. The “personnel exception” is construed narrowly to the general requirement that meetings  
20 of the legislative body of a local agency be open and public and must construe the “sunshine law”  
21 liberally in favor of openness. *Bollinger v. San Diego Civil Service Com.* (1999) 71 Cal.App.4th  
22 568, 573.

23 19. Government Code section 54956.9(a) provides:

24 Nothing in this chapter shall be construed to prevent a legislative body of a local  
25 agency, based on advice of its legal counsel, from holding a closed session to confer  
26 with, or receive advice from, its legal counsel regarding pending litigation when  
27 discussion in open session concerning those matters would prejudice the position  
28 of the local agency in the litigation.

29 20. Government Code section 54956.9(c) defines “litigation.” “Litigation” includes any  
30 adjudicatory proceeding, including eminent domain, before a court, administrative body  
31 exercising its adjudicatory authority, hearing officer, or arbitrator.

32 21. Government Code section 54956.9(d) defines “pending litigation” as follows:

33 . . . litigation shall be considered pending when any of the following circumstances

1 exist:

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

3  
4 (2) A point has been reached where, in the opinion of the legislative body of the  
5 local agency on the advice of its legal counsel, based on existing facts and  
6 circumstances, there is a significant exposure to litigation against the local agency.

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

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

12 22. Government Code section 54956.5(b)(1) authorizes, in the case of an emergency situation  
13 involving matters upon which prompt action is necessary due to the disruption or threatened  
14 disruption of public facilities, a legislative body to hold an emergency meeting without complying  
15 with either the 24-hour notice requirement or the 24-hour posting requirement of Government  
16 Code section 54956, or both the notice and posting requirements.

17 23. Government Code section 54956.5(a)(1) and (2) provides that an “emergency situation”  
18 means both of the following:

19 (1) An emergency, which shall be defined as a work stoppage, crippling activity, or  
20 other activity that severely impairs public health, safety, or both, as determined by  
21 a majority of the members of the legislative body, or (2) a dire emergency, which  
22 shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened  
23 terrorist activity that poses peril so immediate and significant that requiring a  
24 legislative body to provide one-hour notice before holding an emergency meeting  
25 under this section may endanger the public health, safety, or both, as determined by  
26 a majority of the members of the legislative body.

27 24. Government Code section 54956.5(e) provides:

28 The minutes of a meeting called pursuant to this section, a list of persons who the  
presiding officer of the legislative body, or designee of the legislative body, notified  
or attempted to notify, a copy of the rollcall vote, and any actions taken at the  
meeting shall be posted for a minimum of 10 days in a public place as soon after  
the meeting as possible.

1 25. Over the past year, the BOARD has repeatedly violated the Brown Act by holding closed  
2 sessions during various board meetings which were not expressly authorized by the Brown Act  
3 and which were not accessible to members of the public, to discuss matters related to the  
4 DISTRICT's personnel, including the elimination of the assistant fire chief position, which the  
5 Brown Act requires to be discussed in open and public meetings. Furthermore, the BOARD held  
6 unlawful emergency meetings that were not authorized under the Brown Act, which the BOARD  
7 failed to provide proper notice or public posting of the meetings or the meeting minutes in  
8 violation of Government Code section 54956.5(e).

9 26. The unlawful closed sessions occurred in, but are not limited to, both regular and  
10 emergency board meetings held on September 14, September 28, September 30, October 7,  
11 October 26, November 16, and December 8, 2020.

12 **The Board's Brown Act Violations**

13 *A. September 14, 2020 Regular Meeting*

14 27. The BOARD's September 14, 2020, regular meeting agenda agendized "Personnel" under  
15 its closed session item. **Exhibit A.**

16 28. The BOARD's meeting minutes from its September 14, 2020 meeting, state the  
17 Chairperson reported out: "Ongoing personnel matters were discussed and will continue to be  
18 monitored." **Exhibit B.**

19 *B. September 28, 2020 Emergency Meeting*

20 29. On September 28, 2020, the BOARD held an *emergency* meeting. The BOARD's  
21 September 28, 2020, meeting agenda agendized "District Matter – Disclosure to the Public  
22 expected at the October 2020 Regular Meeting." **Exhibit C.**

23 30. The BOARD's meeting minutes from its September 28, 2020, emergency meeting state  
24 that the Chairperson reported out the following from the BOARD's closed session: "Ongoing  
25 personnel matters were discussed and will continue to be monitored. Stay of execution on  
26 disciplinary action. Skelly hearing to be convened as soon as possible. Teresa Whitfield to be  
27 asked to be hearing officer. This topic to be reviewed at October board meeting." **Exhibit D.**

28 31. The Board did not report that an emergency or dire emergency existed that authorized the



1 BOARD under the Act to hold an emergency meeting, and based upon Petitioner's own  
2 knowledge, there was no emergency or dire emergency that authorized this emergency meeting.

3 *C. September 30, 2020 Emergency Meeting*

4 32. On September 30, 2020, the BOARD held an *emergency* meeting. The BOARD's  
5 September 30, 2020, emergency meeting agenda agendized "Personnel Discipline." **Exhibit E.**

6 33. The BOARD's meeting minutes from its September 30, 2020 emergency meeting state  
7 the Chairperson reported out the following from the BOARD's closed session "Ongoing  
8 personnel matters were discussed and will continue to be monitored." **Exhibit F.**

9 34. The Board did not report that an emergency or dire emergency existed that authorized the  
10 BOARD under the Act to hold an emergency meeting, and based upon Petitioner's own  
11 knowledge, there was no emergency or dire emergency that authorized this emergency meeting.

12 *D. October 7, 2020 Emergency Meeting*

13 35. On October 7, 2020, the BOARD held an *emergency* meeting. The BOARD's October 7,  
14 2020, emergency meeting agenda agendized "Fact Finding Meeting with Beckwourth Fire  
15 Department Personnel." **Exhibit G.**

16 36. The BOARD's meeting minutes from its October 7, 2020, emergency meeting state the  
17 Chairperson reported out the following from the BOARD's closed session: "Ongoing personnel  
18 matters were discussed and will continue to be monitored." **Exhibit H.**

19 37. There were no agenda items relating or referencing personnel on the BOARD's October  
20 7, 2020, emergency meeting agenda. The BOARD did not report out in its minutes anything  
21 related to its factfinding meeting with the Beckwourth Fire Department.

22 38. The Board did not report that an emergency or dire emergency existed that authorized the  
23 BOARD under the Act to hold an emergency meeting, and based upon Petitioner's own  
24 knowledge, there was no emergency or dire emergency that authorized this emergency meeting.

25 *E. October 26, 2020 Special Meeting*

26 39. On October 26, 2020, the BOARD held a *special* meeting. The BOARD's October 26,  
27 2020, meeting agenda agendized "Personnel" and Possible Litigation" under its closed session  
28 items. **Exhibit I.**

1 40. The BOARD's meeting minutes from its October 26, 2020, special meeting state the  
2 Chairperson reported out the following from the BOARD's closed session: "[T]here would be no  
3 possible litigation and ongoing personnel matters were discussed and will continue to be  
4 monitored." **Exhibit J.**

5 41. Based upon Petitioner's own knowledge that that is derived in part from the BOARD's  
6 response to cure this violation in response to Petitioner's cease and desist letter, the BOARD did  
7 not meet in closed session to confer with, or receive advice from, its legal counsel regarding  
8 pending litigation.

9 *F. November 2, 2020 Regular Meeting*

10 42. On November 2, 2020, the BOARD held a regular meeting. The BOARD's November 2,  
11 2020, meeting agenda agendized "Personnel" under its closed session items. The elimination of  
12 the assistant fire chief position was not on the BOARD's agenda. **Exhibit K.**

13 43. The BOARD's meeting minutes from its November 2, 2020, regular meeting state the  
14 Chairperson reported out the following from the BOARD's closed session: "[T]he assistant chief  
15 position will be eliminated as of the end of November 2020 and ongoing personnel issues will  
16 continue to be monitored." **Exhibit L.**

17 39. Based upon Petitioner's own knowledge and based upon the minutes and oral report of  
18 the Board at its meeting, the BOARD deliberated, voted, and ratified its decision to eliminate the  
19 assistant fire chief position at its unlawful closed session on November 2, 2020.

20 40. On November 20, 2020, Petitioner's lawyer, on behalf of Petitioner, caused to be delivered  
21 by electronic mail, a cease-and-desist letter demanding, inter alia, that the BOARD discontinue  
22 its violations of the Act, including its holding of closed sessions to discuss "Personnel." **Exhibit**  
23 **M.**

24 *G. November 16, 2020 Regular Meeting*

25 41. On November 16, 2020, the BOARD held a regular meeting. The BOARD's November  
26 6, 2020, meeting agenda and agendized "Personnel" under its closed session item. **Exhibit N.**

27 *H. December 4, 2020 Regular Meeting*

28 42. On December 4, 2020, the BOARD published its agenda and agendized "Personnel" on

1 its closed session agenda for its December 7, 2020, regular meeting. **Exhibit O.**

2 *I. December 8, 2020 Emergency Board Meeting*

3 43. On December 7, 2020, the BOARD held a regular meeting at which it voted to hold an  
4 *emergency* meeting on December 8, 2020, for the purpose of “Consult with Counsel regarding  
5 Brown Act Demand Letter” in closed session.

6 44. The BOARD caused to be published an agenda for its *emergency* meeting by posting it  
7 on the DISTRICT’s website less than 19 hours before the scheduled emergency meeting. **Exhibit**  
8 **P.**

9 45. The BOARD’s draft meeting minutes from its December 8, 2020, *emergency* meeting  
10 state the Chairperson reported out the following from the BOARD’s closed session: “[B]oard is  
11 awaiting response from counsel for direction.” **Exhibit Q.**

12 46. The Board did not report that an emergency or dire emergency existed that authorized the  
13 BOARD under the Act to hold an emergency meeting, and based upon Petitioner’s own  
14 knowledge, there was no emergency or dire emergency that authorized this emergency meeting.

15 47. The BOARD did not publish the minutes of the December 8, 2020, emergency meeting  
16 or a list of persons who the presiding officer of the legislative body, or designee of the legislative  
17 body, notified or attempted to notify or a copy of the rollcall vote as required by Government  
18 Code section 54956.5(e).

19 48. The BOARD did not post, for a minimum of 10 days in a public place as soon after the  
20 meeting as possible, a list of persons who the presiding officer of the legislative body, or designee  
21 of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions  
22 taken at the emergency meetings held on September 28, 2020, September 30, 2020, October 7,  
23 2020, and December 8, 2020, as required by Government Code section 54956.5(e).

24 49. On December 13, 2020, Petitioner’s lawyer requested that the BOARD comply with its  
25 obligations to publish its meeting minutes as soon as possible after the meeting as required by  
26 Government Code section 54956.5(e), and that it provide a copy of the minutes pursuant to  
27 California’s Public Records Act. **Exhibit R.**

28 / /

1 *J. December 19, 2020 Special Meeting*

2 50. The BOARD noticed a *special* board meeting for December 19, 2020. Item 4 of the  
3 agenda read “Board Chair message regarding the intent to cure alleged Brown Act issued raised  
4 by Aaron E. Doyle from letters dated November 20, 2020 and December 13, 2020.” **Exhibit S.**

5 51. Following the BOARD’s special meeting on December 20, 2020, the BOARD issued a  
6 letter to Petitioner’s attorney regarding “Demands for the Eastern Plumas Rural Fire Protection  
7 District’s Compliance with the Ralph M. Brown Act [Gov’t Code § 54950 et seq.]” **Exhibit T.**

8 **The Board’s California Public Records Act Violations**

9 52. California Government Code section 6253(b) provides:

10 Except with respect to public records exempt from disclosure by express provisions  
11 of law, each state or local agency, upon a request for a copy of records that  
12 reasonably describes an identifiable record or records, shall make the records  
13 promptly available to any person upon payment of fees covering direct costs of  
duplication, or a statutory fee if applicable. *Upon request, an exact copy shall be  
provided unless impracticable to do so. (Emphasis added.)*

14 53. On November 20, 2020, Petitioner’s attorney submitted to the DISTRICT a request for  
15 public records pursuant to California’s Public Records Act. **Exhibit U.**

16 54. Among other items, the request for public records requested that DISTRICT provide  
17 copies of its audio recordings from its October 26, 2020, November 2, 2020, November 16, 2020,  
18 and its December 7, 2020 meetings.

19 55. On December 10, 2020, the DISTRICT provided a letter response to the request for public  
20 records. With respect to the request for copies of the audio recordings from its meetings, the  
21 DISTRICT wrote:

22  
23 These recordings are contained on a hand-held recording device and are available  
24 to be played over the telephone or in person at the District’s Fire Station located at  
25 141 Delleker Rd., Portola, CA 96122. A mutually agreeable time can be arranged  
26 for the District secretary to be available to allow access to these recordings either  
27 via telephone or in person at the fire station with proper COVID safety protocols.

28 **Exhibit V.**

56. On November 20, 2020, Petitioner’s attorney, on behalf of Petitioner, also requested from

1 the DISTRICT the following public records:

2 All electronic emails, text messages or other electronic or written communications  
3 sent or received by any Board member that pertains, relates or references any board  
4 meeting, regular, special or emergency, held outside of the District's boundaries  
from January 1, 2020 through the date of response to this request.

5 57. The DISTRICT did not produce emails in its response to the Public Records Act request.

6 58. Responsive to this request were emails dated October 6 and October 7, 2020, between the  
7 Board Chair Jeanne Graham, Director Kevin Sankey, Director Acosta and Beckwourth Fire Chief  
8 Brett Russell that discussed a meeting at the Beckwourth Fire Station.

9 **FIRST CAUSE OF ACTION**

10 Writ of Mandamus for Brown Act Violations  
11 (RELIEF PURSUANT TO GOVERNMENT CODE SECTION 54960 and CALIFORNIA  
12 CODE OF CIVIL PROCEDURE SECTIONS 1060 and 1085)

13 59. Petitioner hereby realleges and incorporates herein by reference Paragraphs 1 through 58  
14 of this Petition as though set forth in full.

15 60. Government Code section 54960(a) provides that any interested person, such as the  
16 Petitioner:

17 ... may commence an action by mandamus, injunction, or declaratory relief for the  
18 purpose of stopping or preventing violations or threatened violations of this chapter  
19 by members of the legislative body of a local agency or to determine the  
20 applicability of this chapter to actions or threatened future action of the legislative  
21 body, or to determine whether any rule or action by the legislative body to penalize  
or otherwise discourage the expression of one or more of its members is valid or  
invalid under the laws of this state or of the United States, or to compel the  
legislative body to audio record its closed sessions as hereinafter provided.

22 61. By holding *emergency* meetings on September 28, 2020, September 30, 2020, October 7,  
23 2020, and December 8, 2020, when no emergency or dire emergency existed, the BOARD held  
24 said meetings in violation of the Brown Act.

25 62. By failing to provide public with proper notice of its *emergency* meetings and by thereafter  
26 failing to post its meeting minutes as soon thereafter its *emergency* meeting, the BOARD violated  
27 the Brown Act.

28 63. By holding unauthorized closed sessions at its regular, special, and emergency meetings

1 the BOARD violated the Brown Act.

2 64. The BOARD's December 20, 2020, letter did not substantially conform to the  
3 requirements of Government Code section 54960.2(c)(1) because the letter (1) did not  
4 unconditionally commit that it will cease, desist from, and not repeat the challenged past action  
5 as described in the cease and desist letter from Petitioner's attorney dated November 20, 2020  
6 and (2) because the letter did not inform Petitioner or Petitioner's attorney that the BOARD "may  
7 rescind its commitment only by a majority vote of its membership taken in open session at a  
8 regular meeting and noticed on its posted agenda as 'Recission of Brown Act Commitment'."  
9 The letter further failed to inform Petitioner or Petitioner's attorney that the BOARD would  
10 provide written notice of any intention to consider rescinding its commitment at least 30 days  
11 before any such regular meeting.

12 65. It is likely the BOARD will continue to violate the Brown Act in the future.

13 66. Petitioner has complied with all notice and demand requirements set forth in Government  
14 Code section 54960.2, as it applies to actions brought to challenge past actions of the Board.

15 67. The BOARD has ignored the public's rights to be informed and involved and should  
16 therefore be ordered by this court to tape record future closed sessions.

17 68. The BOARD has a ministerial duty to perform according to the laws of the State of  
18 California, including the Brown Act.

19 69. The BOARD has failed and refused to perform its ministerial duties as required by the  
20 Brown Act.

21 70. Petitioner has a clear, present, and legal right to the BOARD's performance of its  
22 ministerial duties, as required by the Brown Act.

23 71. The BOARD has a present legal duty and present ability to perform its ministerial duties  
24 set forth in the Brown Act.

25 72. Petitioner has an interest in having the laws executed and public duties enforced and,  
26 therefore, has a beneficial interest in the outcome of the proceedings.

27 73. Through this action, Petitioner seeks no greater relief that would be afforded to any other  
28 member of the public.

1 74. The only plain, speedy, and adequate remedy left to Petitioner is the relief provided by  
2 Government Code sections 54960 and 54960.2.

3 **SECOND CAUSE OF ACTION**

4 Declaratory Relief

5 (RELIEF PURSUANT TO GOVERNMENT CODE SECTION 54960 and CALIFORNIA  
6 CODE OF CIVIL PROCEDURE SECTIONS 1060 and 1085 for Holding Emergency Meeting  
7 in Violation of Open Meeting Law and Failure to Post Meeting Minutes for 10 Days)

8 75. Petitioner hereby realleges and incorporates herein by reference Paragraphs 1 through 58,  
9 and 59 through 74, of this Petition as though set forth in full.

10 76. Government Code section 54960(a) provides that any interested person, such as the  
11 Petitioner:

12 ... may commence an action by mandamus, injunction, or declaratory relief for the  
13 purpose of stopping or preventing violations or threatened violations of this chapter  
14 by members of the legislative body of a local agency or to determine the  
15 applicability of this chapter to actions or threatened future action of the legislative  
16 body, or to determine whether any rule or action by the legislative body to penalize  
17 or otherwise discourage the expression of one or more of its members is valid or  
18 invalid under the laws of this state or of the United States, or to compel the  
19 legislative body to audio record its closed sessions as hereinafter provided.

20 77. Code of Civil Procedure section 1060 provides:

21 Any person interested . . . who desires a declaration of his or her rights or duties  
22 with respect to another . . . may, in cases of actual controversy relating to the legal  
23 rights and duties of the respective parties, bring an original action or cross-  
24 complaint in the superior court for a declaration of his or her rights and duties in  
25 the premises, including a determination of any question of construction or validity  
26 arising under the instrument or contract. He or she may ask for a declaration of  
27 rights or duties, either alone or with other relief; and the court may make a binding  
28 declaration of these rights or duties, whether or not further relief is or could be  
29 claimed at the time . . .

30 78. Pursuant to both the Brown Act and Article I, Section 3(b) of the California Constitution,  
31 the specific exceptions to the Brown Act's open-meetings requirements must be construed  
32 narrowly.

33 79. The People of California have elevated the right to open government to one protected by  
34 their state Constitution. The California Constitution, Article 1, Section 3, Subdivisions (a) and (b)

1 state:

2 The people have the right to instruct their representatives, petition government for  
3 redress of grievances, and assemble freely to consult for the common good. The  
4 people have the right of access to information concerning the conduct of the  
5 people's business, and, therefore, the meetings of public bodies and the writings of  
6 public officials and agencies shall be open to public scrutiny. A statute, court rule,  
7 or other authority, including those in effect on the effective date of this subdivision,  
8 shall be broadly construed if it furthers the people's right of access, and narrowly  
9 construed if it limits the right of access.

10 80. There presently exists, between the Petitioner and the DISTRICT and its BOARD, an  
11 actual controversy relating to: (1) the legal rights of Petitioner and other members of the public  
12 under the Brown Act, and (2) the ministerial duties imposed upon the DISRICT and its BOARD  
13 by the Brown Act.

14 81. Petitioner requests a judicial determination that the BOARD (i) has violated and is likely  
15 to continue to violate the Brown Act; (ii) that the BOARD has not unconditionally committed to  
16 cease and desist from its violations of the Brown Act; (iii) and, that the BOARD's December 20,  
17 2020, letter does not substantially comply with the requirements of Government Code section  
18 54960.2(b) or 54960.2(c)(1).

19 82. This determination is necessary and proper because the BOARD refuses to conform to  
20 the requirements of the Brown Act.

21 **THIRD CAUSE OF ACTION**

22 Violations of California Constitution, Article 1, Section 3(b)  
23 (RELIEF PURSUANT TO CODE OF CIVIL PROCEDURES SECTIONS 1060, 1085)

24 83. Petitioner hereby realleges and incorporates herein by reference Paragraphs 1 through 58,  
25 59 through 74, and 75 through 82 of this Petition as though set forth in full.

26 84. The California Constitution, Article 1, Section 3(b)(1) guarantees the public a "right of  
27 access to information concerning the conduct of the people's business" and to that end, requires  
28 "meetings of public bodies and the writings of public officials and agencies shall be open to public  
scrutiny."

85. The BOARD has adopted policies, procedures, or practices for regularly excluding the  
public from meetings it is lawfully entitled to attend and for preventing the disclosure of records



1 the public is lawfully entitled to obtain, thus subverting, impairing, and impeding the public's  
2 right of access to the meetings of public bodies and the writings of public officials, guaranteed  
3 under Article 1, Section 3(b) of the California Constitution.

4 86. Petitioner is informed and believes, and on that basis alleges, that the DISTRICT and its  
5 BOARD has excluded, and will continue to exclude, the public from public meetings the public  
6 was and is lawfully entitled to attend and has failed to produce records the public is lawfully  
7 entitled to obtain, thus subverting, impairing, and impeding the public's right of access to the  
8 meetings of public bodies and the writings of public officials, guaranteed under Article 1, Section  
9 3(b) of the California Constitution.

10 **FOURTH CAUSE OF ACTION**

11 Violations of the California Public Records Act  
12 (RELIEF PURSUANT TO CODE OF CIVIL PROCEDURES SECTIONS 1060, 1085 and  
13 GOVERNMENT CODE SECTION 6253, et seq.)

14 87. Petitioner hereby realleges and incorporates herein by reference Paragraphs 1 through  
15 58, 59 through 74, 75 through 82 and 86 of this Petition as though set forth in full.

16 88. A member of the public who believes that public records are being improperly withheld  
17 may bring suit for mandate to enforce the Public Records Act. Government Code sections 6258,  
18 6259(a). If the Court finds that the public official's decision to refuse disclosure is not justified,  
19 the court shall order the public official to make the records public under Government Code section  
20 6259(b).

21 89. Respondent's failure to provide a proper and timely response to Petitioner's Public  
22 Records Act request for copies of its audio recordings from its October 26, 2020, November 2,  
23 2020, November 16, 2020 and December 7, 2020, meetings violated the Public Records Act,  
24 which provides:

25 Except with respect to public records exempt from disclosure by express provisions  
26 of law, each state or local agency, upon a request for a copy of records that  
27 reasonably describes an identifiable record or records, shall make the records  
28 promptly available to any person upon payment of fees covering direct costs of  
duplication, or a statutory fee if applicable. *Upon request, an exact copy shall be  
provided unless impracticable to do so. (Emphasis added.)*

1 Government Code section 6253(b).

2 90. On November 20, 2020, Petitioner's attorney, on behalf of Petitioner, also requested  
3 from the DISTRICT the following public records:

4 All electronic emails, text messages or other electronic or written communications  
5 sent or received by any Board member that pertains, relates or references any board  
6 meeting, regular, special or emergency, held outside of the District's boundaries  
7 from January 1, 2020 through the date of response to this request.

8 91. In response to this request, the DISTRICT provided one email from Board Chair Jeanne  
9 Graham dated October 6, 2020. The DISTRICT did not provide an electronic email thread with  
10 additional emails dated October 6 and October 7, 2020, between the Board Chair Jeanne Graham,  
11 Director Kevin Sankey, Director Acosta and Beckwourth Fire Chief Brett Russell. These emails  
12 pertained and related to a meeting involving members of the BOARD that occurred at the  
13 Beckwourth fire station. The Beckworth fire station is outside of the DISTRICT's boundaries.

14 92. Respondent's failure to provide a proper response to Petitioner's Public Records Act  
15 Request and make public documents available for inspection violates Article I, Section 3(b) of  
16 the Constitution of the State of California, providing to the people, inter alia, the right of access  
17 to information concerning the conduct of the DISTRICT's business; allowing the writings of  
18 public officials and agencies to be open to public scrutiny.

19 93. Petitioner is a member of the public and has a clear, present, and substantial right to the  
20 relief sought herein.

21 **PRAYER FOR RELIEF**

22 In each of the respects enumerated above, Respondent has violated its duty under the law,  
23 has failed to conduct its meetings in the manner required by the Brown Act and the California  
24 Constitution, and has violated the Public Records Act.

25 **WHEREFORE, PETITIONER PRAYS AS FOLLOWS:**

26 1. That after a trial of this action, to be held on notice, this Court issue a declaration that:

27 (a) The BOARD violated the Brown Act and Article I, Section 3(b) of the California  
28 Constitution by repeatedly discussing DISTRICT personnel matters,

1 organizational structure and operations, including the elimination of the  
2 DISTRICT's assistant fire chief position, without providing notice of such  
3 discussion to the public, in violation Government Code sections 54953,  
4 54954.2(a), and 54957.6; and, by discussing topics not permitted to be discussed  
5 in closed session, in violation of Government Code sections 54953 and 54954.2;  
6 and that there is a threat that the Board will continue to violate the Brown Act in  
7 the future; and,

8 (b) The BOARD violated the Brown Act by holding emergency meetings on  
9 September 28, 2020, September 30, 2020, October 7, 2020, and December 8, 2020,  
10 without proper notice to the public and when no emergency or dire emergency  
11 existed; and,

12 (c) The BOARD violated the Brown Act by not publishing, for a minimum of ten  
13 days, the minutes of its September 28, 2020, September 30, 2020, October 7, 2020,  
14 and December 8, 2020, emergency meetings, a list of persons who the presiding  
15 officer of the legislative body, or designee of the legislative body, notified or  
16 attempted to notify, a copy of the rollcall vote, and any actions taken at its  
17 September 28, 2020, September 30, 2020, October 7, 2020, and December 8, 2020,  
18 emergency meetings as required by Government Code section 54956.5(e); and,

19 (d) The BOARD violated the Brown Act by holding a closed session for "Possible  
20 Litigation" on October 26, 2020, when there was no pending litigation, and the  
21 closed session was not for the purpose of meeting with the BOARD's counsel; and

22 (e) the Court issue a judicial determination that the BOARD's December 19, 2020,  
23 letter was not an unconditional commitment to cease, desist from, and not repeat  
24 the past actions that was alleged to violate the Act, and that the BOARD did not  
25 comply with the requirements of Government Code section 54960.2(c)(1); and,

26 (f) the Court issue a judicial determination that the BOARD violated the Public  
27 Records Act; and,

28 2. For a preliminary and permanent injunction and a for a peremptory writ of mandate

1 commanding Respondent EASTERN PLUMAS RURAL FIRE PROTECTION DISTRICT and  
2 its BOARD OF DIRECTORS to:

- 3 (a) electronically record each and every one of its closed sessions pursuant to  
4 Government Code section 54960(b); and,  
5 (b) provide copies of its audio recordings from its October 26, 2020, November 2,  
6 2020, November 16, 2020, and its December 7, 2020 meetings as required by the  
7 Public Records Act; and,  
8 (c) the Court issue an order compelling the DISTRICT to comply with the mandatory  
9 provisions of the Brown Act, namely, that it holds open session meetings to allow  
10 the public the opportunity to hear the BOARD's deliberations and raise any  
11 questions or concerns to the BOARD, unless authorized to do so in closed session  
12 under the Brown Act; and,  
13 (d) the Court issue all necessary orders to prevent the BOARD from violating the  
14 Brown Act by holding emergency meetings when there is no emergency or dire  
15 emergency as authorized under the Brown Act; and,  
16 (e) the Court issue preliminary and permanent injunctive prohibiting the DISTRICT  
17 and its BOARD from committing any future violations of the Brown Act; and,

18 3. That Petitioner/Plaintiff JOHN FATHEREE recover attorneys' fees incurred in this action  
19 pursuant to Government Code sections 54960.5 and/or Code of Civil Procedure section 1021.5 or  
20 any other applicable statute; and,

21 4. For an award of costs incurred in this action; and,

22 5. For such other and further relief as the court deems just and proper.

23 DATED: March 17, 2021

THE DOYLE LAW FIRM  
A Professional Law Corporation

24  
25 

26 By: \_\_\_\_\_

AARON E. DOYLE  
Attorney for Petitioner

**DEMAND FOR JURY TRIAL**

Petitioner demands a jury trial on all issue so triable.

DATED: March 17, 2021

THE DOYLE LAW FIRM  
A Professional Law Corporation



By: \_\_\_\_\_  
AARON E. DOYLE  
Attorney for Petitioner

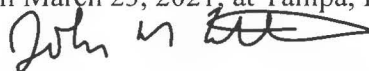
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**VERIFICATION**  
(C.C.P. §§ 446 and 2015.5)

I, JOHN FATHEREE, am the Petitioner/Plaintiff in the above-entitled action or proceeding. I have read the foregoing Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief for Violation of the Ralph M. Brown Act Open Meeting Law, and know the contents thereof, and I certify that the same is true and correct of my own knowledge, except as to those matters which are therein stated upon my information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on March 23, 2021, at Tampa, Florida.



---

John Fatherree

**PROOF OF SERVICE**

I am over the age of 18 years old and not a party to this action. My business address is 11310 Prospect Drive, Suite 10-179, Jackson, CA 95642.

On March 24, 2021, I served the following document(s) entitled:

- **FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS and COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF THE RALPH M. BROWN ACT OPEN MEETING LAW AND THE CALIFORNIA PUBLIC RECORDS ACT**

on all interested parties to this action in the manner described as follows:

**Attorney for Respondent/Defendant:**

Jenny L. Riggs, Esq.  
MEYERS NAVE  
555 Capital Mall, Suite 1200  
Sacramento, CA 95814  
email: jriggs@meyersnave.com

\_\_\_\_\_ (MAIL) By placing a true copy of the document(s) listed above in an envelope, with postage thereon fully prepared for first-class mail, addressed as set forth above and then sealing the envelope and depositing it in the United States mail at Martinez, California.

\_\_\_\_\_ (VIA EMAIL) By sending the document(s) listed above by email in a PDF format to the email addresses listed for each of the party(ies), pursuant to Emergency Court Rule 12(b).

  X   (VIA OVERNIGHT DELIVERY) By placing a true and correct copy of the document(s) in an overnight delivery envelope addressed as set forth above and then sealing the envelope, affixing a prepaid label, and causing the envelope to be delivered to the overnight delivery service for next day delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date set forth in Amador County, California.

DATED: March 24, 2021

\_\_\_\_\_  
AARON E. DOYLE