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OF APPELLANTS RICHARD P. McKEE, VISALIA NEWSPAPERS,  
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**I. WHY PETITIONERS' APPEAL SHOULD BE GRANTED.**

The Brown Act begins with the Legislature's express declaration: "it is the intent of the law that the[] actions [of governing body members] be taken openly and that their deliberations be conducted openly." Gov't Code § 54950. In violation of this plain precept, Respondent Tulare County Board of Supervisors ("Tulare Board") held not one or a few, but 30 meetings of a majority of Tulare Board members beyond the public gaze, 11 of which occurred the day before noticed meetings. (CT, Vol. 1 at 65, 76.)

To redress this extraordinary secrecy, Petitioners Richard McKee, Visalia Newspapers, Inc. and California Newspaper Publishers Association ("Petitioners") filed a Brown Act writ petition against the Tulare Board. Before the case could get beyond the pleading stage, however, the trial court granted a demurrer on a number of grounds that are legally erroneous. If left to stand uncorrected, these legal errors threaten to severely weaken the public's ability to access meetings of public governing bodies.

*First*, the trial court injected into the Brown Act nonstatutory requirements that a congregation of a majority of board members is not a "meeting" within the purview of the Brown Act unless "items of importance" are discussed and the meeting involves "collective decision making." 8/23/10 Order at 2. Neither the express terms of the statute nor the case law allow for such limitations on the public's right of access to

local government meetings, especially considering the mischief that will result if public agencies and/or courts can decide what is and what is not “important” subject matter before the local government. *See* Section 2(A), *infra*.

*Second*, the trial court’s decision relies on language from *Wolfe v. City of Fremont*, 144 Cal. App. 4th 533, 545 n.6 (2006), but the *Wolfe* decision was expressly overruled by the California Legislature through the adoption of SB 1732 in 2008. Within that legislation, the Legislature made clear that the public was entitled to see not just meetings where a “collective concurrence” occurred, but also meetings reflecting the process leading up to collective decisions, including preliminary discussions and the acquisition of preliminary facts concerning subject matters before the local governing body in question. *See* Gov’t Code § 54952.2(b); Section 2(b), *infra*.

*Third*, the Brown Act exception for “purely social” gatherings does not apply here, since the receipts of the Tulare Board members seeking reimbursement state that the lunch meetings were “for work related meals” and “for official business only.” (CT, Vol. 1, at 81-82, 85-86, 90, 92-93.) The Tulare Board’s attempt to get the court to imply an exception for team building is also unavailing, as the Brown Act does not allow for implied exceptions, and such “team-building” events pertain to local government business and are euphemisms intended to evade public scrutiny.

Finally, the trial court's refusal to allow Petitioners to verify some of the facts in the writ petition also was a legal error, as the longstanding rule in California is that writ petitions may be verified on information and belief where the information in question is uniquely in the hands of the resisting party. In this case, as in many other Brown Act cases, the information in question is uniquely within the knowledge of the Respondent Tulare Board members, as the information concerns secret meetings engaged in by them. If the Court were to uphold the trial court's ruling on verification, many Brown Act cases could not proceed since the petitioning members of the public would not have the knowledge necessary to verify allegations about meetings from which they were excluded. To avoid this absurd result, the Court of Appeal should reaffirm the prior case law and clarify that Brown Act writ petitions may be verified on information and belief.

For all these reasons, Amici Curiae Press Organizations ("Press Organizations") respectfully request that this Court reverse the trial court's decision granting the demurrer and decide this important Brown Act matter in favor of public access to open meetings.

## II. LEGAL ANALYSIS

### A. The Trial Court's Engrafting "Collective Decision Making" And "Importance" Requirements Into The Brown Act Was Clear Legal Error, As The "Meetings" Covered By The Brown Act Contain No Such Limitations.

The trial court held that no Brown Act violation occurred because the lunch meetings of Tulare Board members – some 30 in this case in 2009 alone – did not address “items of importance concerning collective decision making related to the public’s business.” (8/23/10 Order at 2.) Neither the statute nor the case law has so limited the scope of “meetings” covered by the Brown Act, and it was legal error for the trial court to do so.

Government Code Section 54952.2(a) defines a Brown Act “meeting” as “any congregation of a majority of a legislative body’s members at the same time and location ... to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.” Thus, the plain language of the statute says nothing about “importance” or “collective decision making” limitations on what constitutes a “meeting” subject to the Brown Act. Nor does the Act state anywhere that the “subject matter jurisdiction” referred to in the Brown Act pertains only to “items of importance concerning collective decision making.”<sup>1</sup> If the Legislature had intended to impose these restrictions on

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<sup>1</sup> As the Appellants explained in their briefs, the subject matter jurisdiction of the Tulare Board is quite broad, pertaining to virtually any

public access to legislative body meetings, “we would expect to see specific language to that effect in the statute.” *Calif. Comm’n on Peace Officer Standards and Training v. Superior Court (“POST”)*, 42 Cal. 4th 278, 343 (2007) (where no specific language in statute exempted names and amounts of salaries earned by public employees, such information had to be disclosed under Brown Act’s sister statute, the Public Records Act). Moreover, the Tulare Board and the trial court cannot read into the Brown Act “importance” and “collective decision making” limitations because such restrictions appear nowhere in the Brown Act, and the Act does not allow for implied exceptions. Gov’t Code § 54962; *Rowen v. Santa Clara Unified School Dist.*, 121 Cal. App. 3d 231, 237 (1981) (refusing to read into the Brown Act a “nonstatutory exception” because it “is, in effect, a plea by respondents that we amend the Brown Act by judicial fiat, in order to effectuate our own judgment as to what we consider would be ‘good’ policy for the state’s agencies); California Attorney General, *The Brown Act: Open Meetings For Legislative Bodies* (2003) at 1 (recognizing that “if a specific statutory exception authorizing a closed session cannot be found, the matter must be conducted in public regardless of its sensitivity”).<sup>2</sup>

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executive, legislative, or quasi-judicial matter in Tulare County, regardless of “importance.” Appellants’ Opening Brief at 10-12; Reply at 7-12.

<sup>2</sup> *The Brown Act* guide put out by the Attorney General may be accessed at [http://caag.state.ca.us/publications/2003\\_Main\\_BrownAct.pdf](http://caag.state.ca.us/publications/2003_Main_BrownAct.pdf).

The case law reinforces that the term “meetings” in the Brown Act context is not so delimited by “importance” and “collective decision making” requirements. In the grandfather of Brown Act decisions, *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal. App. 2d 41 (1968), the Court of Appeal began by quoting from the preamble of the Brown Act, which states, among other things, “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.” *Id.* at 46 (quoting Gov’t Code § 54950).<sup>3</sup> This preamble language made it plain error for the trial court to read into the Brown Act an “items of importance” requirement, thus dictating precisely what is good for the people to know and what is not. And to reinforce the point, the Court of Appeal later stated in the opinion that “[t]he Brown Act ... broadly encompasses ‘all meetings.’” *Id.* at 52. No limitation is made in the statute for meetings of “importance,” as advocated by the Tulare Board and endorsed by the trial court.

*Sacramento Newspaper Guild* also makes clear that the scope of “meetings” subject to the Brown Act is broader than meetings at which

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<sup>3</sup> The Brown Act preamble also states, “The people of this State do not yield their sovereignty to the agencies which serve them. ... The people insist on remaining informed so that they may retain control over the instruments they have created.” Gov’t Code § 54950.

“collective decision making” has happened. The Court of Appeal there found that the Sacramento Board of Supervisors violated the Brown Act by holding luncheon meetings at the Elks Club during which a social workers’ union strike was discussed, even though the Sacramento Board made no decisions at the luncheon. *Id.* at 45-46, 51. The Court of Appeal held that the scope of “meetings” within the Brown Act included the information gathering, discussion and the deliberative process as well collective action.

The court explained that the above-cited Brown Act preamble

is a deliberate and palpable expression of the act’s intended impact. It declares the law’s intent that deliberation as well as action occur openly and publicly. Recognition of deliberation and action as dual components of the collective decision making process brings awareness that the meeting concept cannot be split off and confined to one component only, but rather comprehends both and either.

*Id.* at 47. Regarding the “deliberation” component of the meeting concept, the Court of Appeal further explained that deliberation “connotes not only collective discussion, but the *collective acquisition and exchange of facts preliminary to the ultimate decision.*” *Id.* at 47-48 (emphasis added).

The Court of Appeal also held that the Brown Act can and should sweep broadly to counter the “evasive techniques” of government agencies to avoid public scrutiny. Hence, informal congregations of a majority of board members were included within the ambit of the Brown Act as were formal meetings. As the Court of Appeal concluded:

An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. *There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors.* Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in light of the Brown Act's objections, the term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business. The Elks Club luncheon, attended by the Sacramento County Board of Supervisors, was such a meeting.

*Id.* at 50-51.

Following *Sacramento Newspaper Guild*, a succession of cases explored the scope of "meetings" covered by the Brown Act, and those courts have uniformly held that the various maneuvers employed by public agencies could not circumvent the open meetings requirements. For example, in *Rowen*, 121 Cal. App. 3d at 235-237, the Court of Appeal found that a closed session with a prospective independent contractor was a "meeting" despite the lack of a commitment. The court narrowly construed the Brown Act exception for discussion of appointment of employees, finding that an independent contractor was not an "employee" within the exception. *Id.* at 237. *See also Stockton Newspapers v. Redevelopment*

*Agency of the City of Stockton*, 171 Cal. App. 3d 95, 100-103 (1985)

(finding that petitioner stated a cause of action because the series of one-on-one nonpublic and unnoticed telephone conversations between defendant redevelopment agency members and their attorney constituted a meeting within the Brown Act).

Similarly, in *Frazer v. Dixon Unified School Dist.*, 18 Cal. App. 4th 781, 787 (1993), a meeting held in private by three school board members to view the video “Holy Wars in Education” was found to be a “meeting” subject to the Brown Act. Even if the three board members had not discussed a controversial language arts program called “Impressions” that was being reviewed, and even if “no discussion [took place] after the videotape was shown, the viewing of the ‘censorship film’ by the three Board members was itself an act of collective acquisition of information relating to the pending dispute,” the Court of Appeal held. *Id.* at 797. Moreover, as in this case, the Dixon board members attempted to invoke the Brown Act exception for “purely social” gatherings (Gov’t Code § 54952.2(c)(5)), but the Court of Appeal found the exception inapplicable, stating:

Respondents’ analogy to a situation in which Board members attend a District football game or school play is not apt. There is no evidence that the purpose of the February 28 gathering was purely social, or that the Board members attended as mere spectators to the event. Indeed, there is uncontradicted evidence that, at

a minimum, the Board members actively participated in discussion of 'district goals and objectives.'

*Id.*

The leading treatises are in accord that Brown Act "meetings" include informal gatherings such as the Tulare Board luncheon meetings at issue in this case. The Attorney General's publication, *The Brown Act*, states, "Informal gatherings such as lunches or social gatherings also would constitute meetings if issues under the subject matter jurisdiction of the body are discussed or decided by the member of the body." *Id.* at 8. Similarly, the League of California Cities handbook, *Open and Public IV: A Guide To The Ralph M. Brown Act*, which includes the views of many public entities subject to the Act, states, "A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to hear or participate in the deliberations of members." *Open and Public IV: A Guide To The Ralph M. Brown Act*, at 17.<sup>4</sup>

As these authorities establish, the "importance" and "collective decision making" limitations adopted by the trial court and advanced by the Tulare Board are inimical to the Brown Act's requirements of public access to meetings. The Tulare Board's 30 luncheon meetings, 11 of which

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<sup>4</sup> *Open and Public IV* is available at <http://www.ci.claremont.ca.us/download.cfm?ID=21498>.

occurred the *day before* a noticed meeting, plainly included not only “collective discussion, but the collective acquisition and exchange of facts” concerning matters within the jurisdiction of the Tulare Board. *Sacramento Newspaper Guild*, 263 Cal. App. 2d at 47-48; *Frazer*, 18 Cal. App. 4th at 797. As the *Open and Public IV* handbook states, “[t]he public is unlikely to believe the board members could meet regularly without discussing public business.” *Open and Public*, at 17. See also *Sacramento Newspaper Guild*, 263 Cal. App. 2d at 50 (“There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors”). Because the Tulare Board repeatedly and routinely held luncheons including a majority of Board members that qualify as “meetings,” the trial court’s decision should be reversed.

**B. The Trial Court Erroneously Relied On *Wolfe v. City Of Fremont*, Which The Legislature Overruled.**

The trial court erroneously relied on *Wolfe v. City of Fremont*, 144 Cal. App. 4th at 545 n.6, a decision overturned by the California Legislature three years ago, in finding that the series of lunch meetings held by a majority of the Tulare Board of Supervisors did not violate the Brown Act.

The trial court’s decision is premised on the claim that the Tulare Board luncheon meetings did not address “items of importance concerning collective decision making related to the public’s business.” (8/23/10

Order at 2.) The “collective decision making” language used by the trial court is imported from *Wolfe*, but the California Legislature amended the Brown Act to specifically overrule *Wolfe*’s holding that a “collective concurrence” among a majority of the legislative body is necessary for a Brown Act violation and that the public had no right to see the *process* for developing decisions. *See Wolfe*, 144 Cal. App. 4th at 545 n.6. As the Legislature expressly declared in passing Senate Bill 1732 (2008):

The Legislature hereby declares that it disapproves the court’s holding in *Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533, 545 fn. 6*, to the extent that it construes the prohibition against serial meetings by a legislative body of a local agency, as contained in the Ralph M. Brown Act (Chapter 9 of Title 5 of the Government Code), to require that a series of individual meetings by members of a body actually result in a collective concurrence to violate the prohibition rather than also including the *process* of developing a collective concurrence as a violation of the prohibition.

(CT, Vol. 2 at 424-425 (emphasis added).)

Consistent with this mandate, the Legislature amended the statute to provide that a majority of a body’s members shall not, outside of a meeting authorized under the Brown Act, “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.” Gov’t Code 54952.2(b).

The language of the current statute thus is “significantly broader” and includes “a series of communications of any kind (serial meetings or communication exchanges), 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,” as the Legislative History makes clear. *See* Third Reading, Senate Local Government Committee and Senate Judiciary Committee, Analysis at 6.<sup>5</sup> The Legislative History also makes clear the Legislature’s intent to overrule *Wolfe*. *See id.* at 5 (“To clarify the confusion that has resulted from the court’s dicta in *Wolfe*, this bill contains legislative declarations expressly disapproving the *Wolfe* decision and *the Legislature’s intent to supersede that decision*”).

The Tulare Board takes the position that the Legislature’s disapproval of *Wolfe* applies only to “serial meetings, which are not at issue in this case.” Respondent’s Brief at 13. Respondent provides no explanation supporting this claim, but apparently Respondent is attempting to narrowly construe “serial meetings” to mean a series of communications between less than a majority of Board members that taken together equals a quorum, which was the factual situation in *Wolfe*. The language of the

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<sup>5</sup> The Legislative History is available at [http://www.leginfo.ca.gov/cgi-bin/postquery?bill\\_number=sb\\_1732&sess=0708&house=B&author=romero](http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1732&sess=0708&house=B&author=romero). *See also* Exhibit A to Amici Curiae’s Request for Judicial Notice.

statute, however, is not so cabined. A “serial meeting” is defined in the Brown Act as “a series of communications of any kind,” including communications “directly” between members, “on any item of business that is within the subject matter jurisdiction of the legislative body.” Gov’t Code § 54952.2(b). Thus, by the plain terms of the statute, which must be broadly construed (Cal. Const. Art. 1, § 3(b)), the series of lunch meetings held in private by a majority of the Tulare Board at which communications occurred “directly” between members on business within the subject matter of the Tulare Board qualify as serial meetings within Section 54942.2.

The *Open and Public IV* treatise reaffirms that “serial meetings” within the scope of the Brown Act include more than the “daisy chain” meetings apparently envisioned by the Tulare Board. The treatise includes the following among the scenarios that would qualify as a Brown Act “meetings” violation if held in private: “[A] chief executive officer briefing a majority of redevelopment agency members prior to a formal meeting, and in the process, information about the members’ respective views is revealed.” *Id.* at 15. Similarly here, the Tulare Board’s luncheon meetings in private, many of which occurred the day before the noticed formal meeting, qualifies as a “serial meeting” subject to the Brown Act’s meeting requirements.

Finally, the Tulare Board’s claim that the Legislature’s amendments requiring public access to the preliminary process as well as to meetings at

which a “collective concurrence” is reached do not apply to this case is unpersuasive, as the Tulare Board obviously cannot do directly in private that which it is prohibited from doing indirectly in private. In other words, if the Tulare Board is proscribed from engaging in a series of conversations that together equals a quorum on subjects within the Board’s jurisdiction, then obviously the majority of the Tulare Board cannot engage in direct conversations together on topics within the Board’s jurisdiction.

Because the trial court erroneously relied on *Wolfe* in narrowing the scope of what qualified as a meeting under the Brown Act, the trial court’s decision was erroneous, and should be reversed.

**C. No Exceptions To The Brown Act Apply In This Case.**

Neither the claimed statutory exemption to the Brown Act for “purely social” occasions nor the implied “team-building” exception are persuasive.

*First*, the Tulare Board claims that the exemption for “the attendance of a majority of the members of a legislative body at a *purely social or ceremonial occasion*, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of a legislative body of the local agency” applies in this case. Gov’t Code § 54952.2(c)(5) (emphasis added).

In construing a statute, the court’s primary task is to determine the Legislature’s intent to effectuate the statute’s purpose (*Allen v. Sully-Miller*

*Contracting Co.*, 28 Cal. 4th 222, 227 (2002)), keeping in mind that statutory exceptions that do not further the people's right of access must be construed narrowly. Cal. Const. Art. 1, § 3(b). To achieve this task, the court examines the statute's actual language, and whenever possible, gives the words of the statute their "plain meaning." *Id.* If the meaning is without ambiguity, then the language controls. *Id.*

Plain meaning is commonsense meaning. *Garcia v. McCutchen*, 16 Cal. 4th 469, 476 (1997). To ascertain what is plain meaning, courts typically refer to dictionaries. *In re Marriage of Bonds*, 24 Cal. 4th 1 (2000), 16. Merriam-Webster's online dictionary defines "purely" as "to a full extent: totally" and "wholly, exclusively." See <http://www.merriam-webster.com/dictionary/purely>. Thus, the 30 luncheons in question would have to be totally, wholly, exclusively – purely – social or ceremonial occasions for this exemption to apply. See *Pepper v. Board of Directors*, 162 Cal. App. 2d 1, 4-5 (1958) (rules of statutory construction require the courts "to assume that the Legislature knew what it was saying and meant what it said"). The Tulare Board cannot reasonably make this claim, however, because the Board members submitted meal receipts signed by Tulare Board members, attesting that they were "work related meals" and "for official business only." (CT, Vol. 1 at 82, 85-86, 90, 92-93.)

*Second*, the Tulare Board claims that the luncheons were "team-building" exercises that do not fit within the Brown Act. Respondent's

Brief at 18-20. However, team building is not a recognized exemption to the Brown Act, which lists specific “meetings” not subject to the Act in Section 54952.2(c), such as where a Board member attends a standing committee meeting only as an observer making no comments. As the *Open and Public IV* treatise states in one of its hypotheticals:

Q: The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

A: No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. *Council relations are a matter of public business.*

*Id.* at 15 (emphasis added). Notably, in 2003, the California School Board Association attempted to amend the Brown Act to include an exception for team building to mend or improve relationships among its members. But the Legislature did not pass AB 1636 with those provisions.<sup>6</sup> It is a well-accepted principle of statutory construction that “[t]he failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of

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<sup>6</sup> The text of AB 1636, which was introduced February 21, 2003, can be accessed at [http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab\\_1601-1650/ab\\_1636\\_bill\\_20030221\\_introduced.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_1601-1650/ab_1636_bill_20030221_introduced.pdf). See also Exhibit B to Amici Curiae Request for Judicial Notice. Before it was ever heard in a policy committee, AB 1636 was amended for another purpose with the proposed Brown Act exception language no longer within it. See [http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab\\_1601-1650/ab\\_1636\\_bill\\_20030424\\_amended\\_asm.html](http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_1601-1650/ab_1636_bill_20030424_amended_asm.html). See also Exhibit C to Amici Curiae Request for Judicial Notice.

an intent to leave the law as it stands in the aspects not amended.” *Cole v. Rush*, 45 Cal. 2d 345, 355 (1955), overruled on another point in *Vesely v. Sager*, 5 Cal. 3d 153, 167 (1971); see also *Bailey v. Superior Court*, 19 Cal. 3d 970, 977 n.10 (1977); *Estate of McDitt*, 14 Cal. 3d 831, 837-838 (1975). Applying these rules, the Legislature’s failure to amend the Brown Act to include an exemption for team building type meetings even though the Legislature made other changes (such as the 2008 amendments regarding serial meetings), means that no statutory exception exists for team building, and team building thus cannot provide a basis justifying the 30 secret luncheon meetings.

**D. The Trial Court’s Interpretation Of The Verification Requirement Would Render Ineffective The Brown Act Enforcement Mechanism.**

The Tulare Board argues, and the trial court ruled, that the Petition for Writ of Mandate filed by Petitioners must be verified by them within their personal knowledge and not on information and belief. Respondent’s Brief at 29.

It has long been the rule, however, that a petitioner may make allegations in a writ petition “upon information and belief” where the matters alleged “are peculiarly within the knowledge of the other party or which he can learn only from statements made to him by others” (as opposed to where the facts are “known to him or ascertainable from public records”). *Swars v. Council of Vallejo*, 64 Cal. App. 2d 858, 864-865

(1944) (reversing denial of writ petition, and stating that petitioner could rely on allegations made upon information and belief concerning civil service commission hearings that took place behind closed doors).

Most recently, in 2007, the California Supreme Court ruled that the Court of Appeal erred by requiring the plaintiffs in a case “to plead evidentiary, as opposed to ultimate facts,” and by stating that the pleadings “may not include allegations based on information and belief.” *Doe v. City of Los Angeles*, 42 Cal. 4th 531, 550 (2007). As the Court found, “[p]laintiff may allege on information and belief any matters that are not within his personal knowledge, if he has information leading him to believe that the allegations are true.” *Id.* (quoting *Pridonoff v. Balokovich*, 36 Cal. 2d 788, 792 (1951)). In the *Pridonoff* case, the Court held that a plaintiff who seeks special damages in a libel action for loss of employment may allege on information and belief the amount of his financial loss, since such facts are not necessarily within plaintiff’s personal knowledge and may be ascertainable only from the declarations of others. 36 Cal. 2d at 792.

Here, as in the above cases, the information concerning what was discussed is peculiarly within the knowledge of the Tulare Board members, who repeatedly met privately and without notice to the public during the 30 luncheon meetings. Petitioners certainly have sufficient information for declaring on information and belief some of the facts indicating that the Brown Act was violated, given that the Tulare Board admits a majority of

its members met privately 30 times and that Tulare Board members submitted receipts asking for reimbursement for “work related” meetings and dealing with “official business only.” (CT, Vol. 1 at 65, 76, 81-82, 85-86, 90, 92-92.)

On a public policy level, it would hollow out the Brown Act’s enforcement mechanism if a Brown Act writ petition could not be verified in part on information and belief. Brown Act litigations are often instigated because the public agency has acted in *secret*. To impose a requirement that the petitioner know in advance the subject of the secret meetings is absurd, since that information is contained within the knowledge of the governing agency members who have acted in secret (and often is the ultimate goal of the litigation – to find out what transpired behind the curtain). Given that statutes that do not further the people’s right of access must be narrowly construed (Cal. Const. Art. 1, § 3(b)) and that courts must take care to avoid absurd interpretations of statutes,<sup>7</sup> this Court should confirm that allegations in Brown Act petitions may be made on information and belief where the information in question pertains to secret meetings admittedly held by the governing agency members.

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<sup>7</sup> Younger v. Superior Court, 21 Cal. 3d 102, 107 (1978) (courts should not interpret statute in manner that yields absurd results).

### III. CONCLUSION

*Open and Public IV* cogently sets forth why even informal meetings of a majority of Tulare Board members are subject to the Brown Act's meeting requirements:

The techniques that serve well in business – *the working lunch*, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises – are often not possible under the Brown Act. As a matter of public policy, California (along with many other states) has concluded more is to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

*Id.* at 4. Because the working lunches of the Tulare Board constitute “meetings” within the Brown Act, and because none of the Act's exceptions apply to this case, this Court should reverse the demurrer granted by the trial court and, in the interests of justice, should resolve this matter in favor of public access to what should have been open meetings.

Dated: May 4, 2011

DAVIS WRIGHT TREMAINE LLP  
DUFFY CAROLAN  
JEFF GLASSER

By:

  
\_\_\_\_\_  
Duffy Carolan

Attorneys for Amici Curiae Press  
Organizations

## CERTIFICATE OF COMPLIANCE

I, Duffy Carolan, counsel for Amicus Curiae Press Organizations in the instant matter, RICHARD P. McKEE, VISALIA NEWSPAPERS, INC., AND CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION, Petitioners and Appellants, vs. TULARE COUNTY BOARD OF SUPERVISORS, Respondent, Case No. F061146, hereby certify that the foregoing document was prepared pursuant to and in compliance with California Rule of Court Section 8.204(c)(1). This brief contains a total of 4,930 words and was formatted in Times New Roman, 13-point typeface.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: May 4, 2010

  
Duffy Carolan

## Proof of Service

I, Janis Wooley, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111-6533.

I caused to be served the following document:


Brief of Amici Curiae Press Organizations in Support of Petitioners and Appellants Richard P. McKee, Visalia Newspapers Inc., and California Newspaper Publishers Association

I caused the above document to be served on each person on the attached list by the following means:

- I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on May 4, 2011, following the ordinary business practice.  
*(Indicated on the attached address list by an [M] next to the address.)*
- I enclosed a true and correct copy of said document in an envelope, and placed it for collection and mailing via Federal Express on \_\_\_\_\_, 2011, for guaranteed delivery on \_\_\_\_\_, 2011, following the ordinary business practice.  
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- A true and correct copy of said document was emailed on May 4, 2011.  
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I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business.

Executed on May 4, 2011, at San Francisco, California.

  
Janis Wooley

