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ENDORSED
FILED
San Francisco County Superior Court

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CLERK OF THE COURT
BY: NEYL WEBB
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

NEW LIVABLE CALIFORNIA (d/b/a
Livable California), a California public benefit
corporation, and COMMUNITY VENTURE
PARTNERS, INC., a California public benefit
corporation,

Petitioners/Plaintiffs,

vs.

ASSOCIATION OF BAY AREA
GOVERNMENTS, a California joint powers
authority, and DOES 1-20,

Respondent/Defendant.

Case No.:

CPF-19-516690

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF FOR VIOLATIONS OF THE
RALPH M. BROWN ACT

[Ralph M. Brown Act, Government Code §§
54950, et seq., Code Civ. Proc. §§ 1060, 1085]

This action seeks relief from the failure of Respondent/Defendant, ASSOCIATION OF
BAY AREA GOVERNMENTS (hereinafter ABAG), to perform as required by California
Government Code §§ 54950, et seq. Petitioners/Plaintiffs NEW LIVABLE CALIFORNIA
(d/b/a Livable California) and COMMUNITY VENTURE PARTNERS, INC. seek a writ of
mandate, injunctive, declaratory relief, costs and attorneys' fees under California Code of Civil
Procedure §§ 1060 and 1085 and Government Code §§ 54960, 54960.1, 54960.2 and 54960.5.
In this Verified Petition, Petitioners/Plaintiffs allege as follows:

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INTRODUCTION

1. At its meeting of January 17-18, 2019, after several hours of testimony and discussion, the ABAG Executive Board rejected a substitute motion and adopted an amended main motion that was supportive of the CASA Compact, an extraordinarily controversial regional housing proposal. As the official video recording and adopted minutes of the meeting show, neither Board President David Rabbitt nor Clerk of the Board Fred Castro nor each member in attendance publicly reported the vote or abstention of each member present for the substitute motion action and for the motion to call the question on the main motion. These anonymous votes violated Government Code 54953(c)(2), a provision of the Ralph M. Brown Act that the Legislature enacted in 2013 in response to ABAG's own history of clandestine voting practices, and the people's "right of access to information concerning the conduct of the people's business" guaranteed by Article I, section 3(b) of the California Constitution. The secretive vote on the substitute motion in violation of the State Constitution and the Brown Act made possible the adoption of the main motion, which was dependent upon failure of the substitute motion. Petitioners argue that both the substitute motion and the main motion should be vacated and declared null and void due to this Brown Act violation.

THE PARTIES

2. Petitioner NEW LIVABLE CALIFORNIA ("LC"), d/b/a Livable California, at all times mentioned in this petition has been a non-profit public benefit corporation organized under the laws of California (#C4126310), governed by a board comprised of public-minded citizens. It is a statewide coalition of elected officials and community leaders who work together to educate, network and advocate for community interests around land use, zoning, transportation, and housing issues. Its mission is: (1) to empower communities to take action to support local community planning and decision making with the goal of an equitable and sustainable future for California; and (2) to grow and sustain communities that meet the needs of individuals and families, governed by locally-elected city councils and county boards of supervisors, in collaboration with regional agencies, and free from undue influence of big business and Sacramento. It holds regular public meetings about the CASA Compact and related state

1 legislation that are attended by elected officials and community leaders from across the Bay
2 Area. Livable California President Susan Kirsch addressed the ABAG Executive Board about
3 the CASA Compact at its November 15, 2018 and January 17, 2019 meetings, according to the
4 adopted minutes. Livable California is based in San Francisco. Petitioner NEW LIVABLE
5 CALIFORNIA is an “interested person” with standing to sue under Government Code §§ 54960,
6 54960.1 and 54960.2.

7 3. Petitioner COMMUNITY VENTURES PARTNERS, INC. (“CVP”) at all times
8 mentioned in this petition has been a 501(c)(3) non-profit public benefit corporation organized
9 under the laws of California (#C3586411), governed by a board comprised of public-minded,
10 local citizens whose mission includes the promotion and defense of the principles of open
11 government. Among its goals are “[t]o increase the access and dissemination of educational
12 information about sustainable planning and growth to better serve the needs of the general
13 public, community organizations, government agencies and nonprofit and philanthropic
14 organizations” and “[t]o increase community engagement in the local planning, development and
15 redevelopment decision making process through improved methods of outreach, communications
16 and feedback assessment.” CVP publishes the *Marin Post*, which reports on land use policies
17 and decision making across California, including ABAG’s and other public agencies’ actions
18 taken concerning the CASA Compact and proposed related legislation, along with related actions
19 by elected officials. Its offices are located at 73 Surrey Avenue, Mill Valley, CA 94941.
20 Petitioner COMMUNITY VENTURE PARTNERS, INC. is an “interested person” with standing
21 to sue under Government Code §§ 54960, 54960.1 and 54960.2.

22 4. Respondent/Defendant, ASSOCIATION OF BAY AREA GOVERNMENTS
23 (“Respondent” or “ABAG”), a joint powers authority of the cities and counties of the nine-
24 county San Francisco Bay Area, is a “local agency” under Government Code § 54951 and is
25 therefore subject to the Ralph M. Brown Act. *McKee v. Los Angeles Interagency Metropolitan*
26 *Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354, 36 Cal.Rptr.3d 47.
27 ABAG’s main offices are located at 375 Beale Street in San Francisco.

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1 5. The ABAG Executive Board is a legislative body as defined by Government Code §
2 54952, as it is a governing body of ABAG, a local agency, and thus subject to the Ralph M.
3 Brown Act.

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5 **JURISDICTION AND VENUE**

6 6. This Court has jurisdiction over this matter pursuant to Code of Civil Procedure §§ 1060
7 and 1085.

8 7. Venue is proper as Respondent local agency is based within the City and County of San
9 Francisco.

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11 **FACTS SUPPORTING THE CAUSE OF ACTION**

12 8. County supervisors, mayors and city councilmembers from across the nine-county Bay
13 Area comprise the membership of the ABAG Executive Board. All are presumably acquainted
14 with the requirements of the Ralph M. Brown Act through their service on county boards of
15 supervisors and city councils.

16 9. On May 17, 2012, the ABAG Executive Board held a special joint meeting concerning
17 regional housing policy. The meeting lasted several hours and included non-unanimous votes.

18 10. On April 25, 2013, the California Senate Governance and Finance Committee Bill
19 analysis of Senate Bill 751 (SB 751) stated:

20 Critics have raised concern that for local agencies with large legislative bodies,
21 the absence of either a roll call vote or a specific tally and report of the votes of
22 each member of a board, it can be difficult to determine who voted for or against
23 a measure when actions are taken. For example, the minutes of a May 17, 2012
meeting of the Association of Bay Area Governments report that a motion
received 27 ayes and 5 nays, without listing the votes of individual members.

24 11. On June 25, 2013, the California Assembly Local Government Committee analysis of SB
25 751 stated:

26 The California Newspaper Publishers Association, in support, writes, "Although
27 the Brown Act prohibits members of a legislative body from using secret ballots
28 when taking action, it does not require members to publicly report the votes cast
in an open and public meeting. The need for SB 751 arose when the Association
of Bay Area Governments (ABAG), a large government agency governed by the

1 Brown Act, failed to conduct either a roll call vote or a specific tally and report
2 the votes of each member of the board. Consequently, constituents found it
3 difficult, if not impossible, to determine who voted for or against a measure when
4 ABAG took action. SB 751 would prevent anonymous voting by large agencies
5 and would improve the ability of the public and others who monitor legislative
6 meetings of local agencies to be certain of how members vote on an issue.”

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14 12. On July 1, 2013, the Assembly Appropriations Committee analysis of SB 751 stated:

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The California Newspaper Publishers Association supports SB 751 because even
though the Brown Act prohibits members of a legislative body from using secret
ballots when taking action, it does not require members to publicly report the
votes cast in an open and public meeting. Supporters argue the need for SB 751
arose when the Association of Bay Area Governments (ABAG) failed to conduct
either a roll call vote or a specific tally and report the votes of each member of the
board. Supporters conclude SB 751 would prevent anonymous voting by large
agencies and would improve the ability of the public and others who monitor
legislative meetings of local agencies to be certain of how members vote on an
issue.

13
14 13. On September 6, 2013, Governor “Jerry” Brown signed SB 751 into law, codified at
15 Government Code § 54953(c)(2), effective January 1, 2014 (Chapter 257, Statutes of 2013).

16 14. The following events occurred at the January 17-18, 2019 ABAG Board meeting,
17 according to the adopted minutes. The meeting convened at 7:05 p.m. on January 17th and
18 adjourned more than five and a half hours later. The body considered Agenda Item No. 12,
19 “CASA Compact Authorization to Sign” (beginning at around 7:30 p.m., according to the
20 official video recording). More than sixty individuals gave public comment, including Susan
21 Kirsch, president of Petitioner LIVABLE CALIFORNIA. Member Santa Clara County
22 Supervisor Cindy Chavez moved to authorize President Rabbitt to sign the CASA Compact with
23 the same qualifiers as the Metropolitan Transportation Commission's December 2018 action and
24 with additional qualifiers. Member Councilmember Liz Gibbons of Campbell made a substitute
25 motion to postpone authorizing the President to sign the CASA Compact until the next Board
26 meeting and to conduct a financial analysis of the impact of the CASA Compact on cities and
27 counties. The substitute motion failed by “voice vote.” Member Supervisor Chavez amended
28 the main motion, which the body adopted on a roll call vote. President Rabbitt adjourned the
meeting at about 12:45 a.m. on January 18th.

1 15. Citations to time in the paragraphs *infra* are to ABAG's official video recording of the
2 January 17-18, 2019 meeting, accessible on the internet through:

3 http://baha.granicus.com/MediaPlayer.php?view_id=1&clip_id=5056

4 16. At 25:00, discussion on Agenda Item No. 12, "CASA Compact Authorization to Sign,"
5 began. Staff presentation, public comment from more than sixty speakers, board discussion and
6 votes on the substitute motion, on the motion to call the question on the amended main motion
7 and on the amended main motion followed over the next five hours.

8 17. At 4:02:40, Director Liz Gibbons of Campbell made the substitute motion (beginning at
9 4:05:45) to postpone authorizing President Rabbitt to sign the CASA Compact until the next
10 Board meeting and to conduct a financial analysis of the impact of the CASA Compact on cities
11 and counties, among other provisions. At 4:05:55, Director Gibbons said, "I would like us to
12 take no vote tonight. I would like us to postpone our vote to our next regularly scheduled
13 meeting, which gives us time for MTC/ABAG staff to establish a clearinghouse of all the
14 successful housing practices that all of us have heard and experienced ... Next the MTC/ABAG
15 would collect and correlate the responses from cities on the financial impact of CASA and
16 recommendations. We know there are two cities that say they would go bankrupt. We cannot
17 ignore that." At 4:07:48, Director Barbara Halliday of Hayward seconded the substitute motion.

18 18. An hour later at 5:07:55, President Rabbitt said, "So, if there's no further comment, the –
19 what we have on the table is a substitute motion to deal with first, that was moved and seconded.
20 And I'll paraphrase unless the maker wants to correct it, which is to postpone or have no vote
21 tonight, direct staff to collect and correlate financial impact data. Is that safe? And, uh, I will –
22 Fred, do you want – shall we just do a raise of hands on the, uh – you're good with that or do we
23 need a roll call?"

24 19. At 5:09:02, President Rabbitt said, "What we have on the floor, are just two motions to
25 be clear, the substitute motion which we're dealing with first and then the motion that was made
26 by Director Chavez. If anyone needs to do anything after that, we'll deal with it then."

27 20. At 5:09:12, President Rabbitt turned to Clerk of the Board Fred Castro and asked, "Fred,
28 do you want to do a roll call?" Mr. Castro replied, "It's your call, Mr. President. It's your call."

1 21. At 5:09:22, President Rabbitt said, "On the substitute motion, then, I'll ask all those in
2 favor of the substitute motion to raise your, raise your right hand so Fred can see you and count
3 the votes. Ha ha, you gotta pledge." The meeting video captures within the camera view some,
4 but not all, of the legislative body, during the vote, making it impossible to determine all
5 members who voted in favor of the substitute motion.

6 22. At 5:09:45, President Rabbitt said, "All those in – all those opposed to the substitute
7 motion." The meeting video again depicts some, but not all, of the legislative body, during the
8 vote, making it impossible to determine all members who voted against the substitute motion. At
9 5:09:47, President Rabbitt is shown raising an arm to vote in opposition to the substitute motion.

10 23. At 5:10:01, Clerk of the Board Fred Castro stated, "Eighteen no, yes nine." A voice asks,
11 "What was it?" Mr. Castro replied, "Nine yes, eighteen no." President Rabbitt announced, "So
12 the substitute motion fails. And now we'll come back to the motion that's on the floor."

13 24. At no point during video recording of the substitute motion vote did President Rabbitt or
14 Clerk of the Board Castro or any other person call for abstentions or note absences.

15 25. After the failure of the substitute motion, Member Supervisor Cindy Chavez of Santa
16 Clara County amended the main motion.

17 26. At 5:14:58, President Rabbitt announced that he had a motion and a second to call the
18 question on the amended main motion. At 5:14:26, President Rabbitt directed the body to vote
19 by a show of hands, saying, "All of those in favor of calling the question, please raise your
20 hand." At 5:15:30, as the show of hands vote was underway, Clerk of the Board Fred Castro
21 appeared to consult with ABAG/MTC Executive Director Steve Heminger and ABAG/MTC
22 Senior Deputy General Counsel Cynthia Segal. At 5:15:32, Mr. Castro said, "Mr. President, if
23 we could take a roll call vote, please." At 5:15:36, President Rabbitt said, "Please take a roll call
24 then." Mr. Castro again appeared to consult with Executive Director Heminger and Counsel
25 Segal. At 5:15:48, Mr. Castro said, "On the motion to call the question, we don't need a roll call.
26 I'll appreciate a roll call for the actual motion." Another show of hands was made, but no vote
27 count taken or announced. At 5:16:01, President Rabbitt announced, "Fred, I think we're good."
28 Neither President Rabbitt nor Board Clerk Castro at any point called for "nays" or abstentions.

1 This motion to call the question, including the vote, is entirely missing from the January 17,
2 2019 meeting minutes adopted by the ABAG Executive Board in March 2019.

3 27. At 5:21:10 to 5:23:00, the body adopted the amended main motion in a roll call vote, with
4 twenty-one ayes, nine nays, no abstentions and three absent.

5 28. On April 17, 2019, pursuant to Government Code §§ 54960.1 and 54960.2, Petitioners
6 presented a demand letter to ABAG requesting that it cure or correct the Brown Act,
7 Government Code § 54953(c)(2) violations at its January 17-18, 2019 meeting and cease and
8 desist from further such violations in the future. The written demand was made within 90 days
9 from the date the action was taken. That demand letter is attached to this petition as Exhibit A.

10 29. On May 15, 2019, Petitioners sent a second letter to ABAG noting that no Brown Act
11 remedial action item appeared on the May 16, 2019 ABAG Executive Board meeting agenda and
12 again requested remedial action relating to the alleged violations at the January 17-18, 2019
13 ABAG meeting. That letter is attached to this petition as Exhibit B.

14 30. On May 16, 2019, ABAG's counsel informed Petitioners by letter that ABAG would not
15 cure or correct the alleged Brown Act violation at its January 17-18, 2019 meeting and did not
16 provide an unconditional commitment to cease and desist from further violations. ABAG
17 Deputy General Counsel Cynthia Segal wrote, "[W]e have determined that no remedial action
18 regarding the Board's actions is required." The ABAG Executive Board itself apparently took no
19 action whatsoever in reply to either of Petitioners' letters at its May 16, 2019 meeting or
20 otherwise. ABAG counsel's letter is attached to this petition as Exhibit C.

21
22 **CAUSE OF ACTION**
23 **FOR VIOLATION OF THE CALIFORNIA RALPH M. BROWN ACT**
24 **(RELIEF PURSUANT TO GOV. CODE §§ 54960, 54960.1, 54960.2; C.C.P. §§ 1060, 1085)**

25 31. Petitioners hereby re-allege and incorporate herein by reference Paragraphs 1 through 30
26 of this petition as though set forth herein in full.

27 32. The Ralph M. Brown Act preamble says, "In enacting this chapter, the Legislature finds
28 and declares that the public commissions, boards and councils and the other public agencies in
this State exist to aid in the conduct of the people's business. It is the intent of the law that their

actions be taken openly and that their deliberations be conducted openly.” Government Code § 54950.

33. The Brown Act requires every member of a legislative body present for an action to vote or abstain openly, publicly, and on the record. Government Code § 54953(c)(2) says, “The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.”

34. As demonstrated by ABAG’s meeting video recording and in its adopted meeting minutes, the ABAG Executive Board violated Government Code § 54953(c)(2) by failing to publicly report the vote or abstention on that action of each member present for the action at the January 17-18, 2019 ABAG meeting on at least two CASA Compact motions, especially the substitute motion. No roll call was taken on the substitute motion vote. No specific tally was made. No electronic voting system was used to record votes. No ballots were distributed. The official video recording does not provide a view of all of the members of the legislative body during the vote. In sum, no public record is known to exist that records or reports the vote or abstention on the substitute motion of each member present for the action.

35. ABAG failed to publicly report the vote or abstention of each member present for the action on the substitute motion concerning the CASA Compact at its January 17-18, 2019 meeting. ABAG violated Government Code § 54953(c)(2) by conducting the substitute vote with a show of hands instead of a roll call, as the video recording of the meeting tends to demonstrate.

36. The adopted minutes of ABAG’s January 17-18, 2019 meeting constitute an admission of violation of Government Code § 54953(c)(2) as they do not publicly report or otherwise indicate the votes or abstentions of individual members on the CASA Compact substitute motion. The names of individual members are not listed next to their vote positions. Petitioners contend that under Government Code § 54953(c)(2) they and the public had a right to know the names of the voting members who voted “Aye,” “Nay” or “Abstain” and thus petitioners were prejudiced by this Brown Act violation. Petitioner LIVABLE CALIFORNIA experienced prejudice in that it was unable to identify the specific ABAG members who voted aye, nay or abstained on the substitute motion in order to follow up with them to ascertain why they took the vote positions

1 that they did and to hold specific ABAG members accountable for their votes. Petitioner
2 COMMUNITY VENTURE PARTNERS experienced prejudice in that it was unable to report
3 the vote positions of specific ABAG members in the *Marin Post* and in other fora.

4 37. At no point during the substitute motion vote captured in the video recording did the
5 presiding officer or clerk call for those abstaining, yet the adopted minutes show that four
6 members abstained. At least three of the unknown voting members who abstained on the
7 substitute motion took positions on the main motion vote a few minutes later. Director Dave
8 Hudson of Contra Costa County possibly voted or abstained on the substitute motion and then
9 exited the building in the minutes before the main motion vote, but it is also possible that he
10 actually was absent for the substitute motion vote and that abstain vote total is one too high. The
11 only abstention votes recorded in the January 17, 2019 ABAG meeting minutes occurred in the
12 CASA Compact substitute motion vote, which was the only off-the-record vote in the minutes.
13 Petitioners contend that under Government Code § 54953(c)(2) they and the public had a right to
14 know the names of the voting members who abstained on the substitute motion vote, and thus
15 were prejudiced by this Brown Act violation.

16 **Unsuccessful Vote on Substitute Motion Was “Action Taken” Under Brown Act**

17 38. The Brown Act broadly defines “action taken” to include: (1) negative decisions and (2)
18 votes taken on motions. “As used in this chapter, “action taken” means a collective decision
19 made by a majority of the members of a legislative body, a collective commitment or promise by
20 a majority of the members of a legislative body to make a positive or a negative decision, or an
21 actual vote by a majority of the members of a legislative body when sitting as a body or entity,
22 upon a motion, proposal, resolution, order or ordinance.” Government Code § 54952.6
23 (emphasis added). This means that the substitute motion vote concerning the CASA Compact at
24 the January 17-18, 2019 ABAG meeting was an “action taken” subject to the Brown Act. Even
25 though the body cast more “nays” than “ayes” during the illegally-conducted, substitute motion
26 show-of-hands vote, a “negative decision” is still defined as an “action taken.”

27 39. The Court should declare the main motion vote on the CASA Compact at the January 17-
28 18, 2019 ABAG Executive Board meeting null and void because its consideration depended
upon the substitute motion vote, as Robert’s Rules of Order and Rosenberg’s Rules of Order tend

1 to demonstrate. “[T]he Brown Act is a remedial statute that must be construed liberally so as to
2 accomplish its purpose.” *Epstein v. Hollywood Entertainment Dist. II Business Improvement*
3 *Dist.* (2001) 87 Cal.App.4th 862, 869.

4 40. According to *Robert’s Rules of Order, Newly Revised* (11th edition, 2011), a “substitute”
5 is a form of the motion to amend, one which seeks to replace an entire paragraph, section, article,
6 or the entire motion with new language. Such a motion takes precedence over the main motion.
7 The motion to substitute is considered first. After the motion to substitute is considered, the main
8 motion (either as originally made or as now amended, depending on whether the substitute is
9 adopted) is then considered (see pp. 153-62).

10 41. “The motion to substitute often provides a convenient and timesaving method for
11 handling a poorly framed resolution, or for introducing a different or better approach to the real
12 question raised by a main motion ... An amendment in the form of a substitute can also be used
13 to defeat or work against the purpose of the measure originally introduced ... It should be noted
14 that **a vote in favor of substituting an entire resolution or main motion is ordinarily a vote**
15 **to kill any provisions of the original version** that are not included in the substitute.” [*Robert’s*
16 *Rules of Order, Newly Revised*, (11th edition, 2011), p. 157, lines 3-6, 14-16 and 19-22](emphasis
17 added).

18 42. Many California public entities use *Rosenberg’s Rules of Order* to govern their meeting
19 procedures. Under Rosenberg’s Rules of Order, had the substitute motion vote on the CASA
20 Compact item prevailed at the January 17-18, 2019 ABAG meeting, then no vote would have
21 been held on the main motion. Page 3 of Rosenberg’s Rules of Order says, “If the substitute
22 motion *passed*, it would be a substitute for the basic motion and would eliminate it.”

23 43. President Rabbitt conducted the substitute motion vote in violation of Government Code
24 § 54953(c)(2) perhaps to undermine its success and to boost the probability of passage of the
25 main motion, which depended upon the substitute motion’s failure. The meeting video shows at
26 5:09:47 that President Rabbitt raised an arm to vote “nay” from the outset of the CASA Compact
27 substitute motion vote. A few minutes later, President Rabbitt voted in support of the amended
28 main motion, as the adopted minutes show. “[T]he chair protects his impartial position by
exercising his voting right only when his vote would affect the outcome.” [*Robert’s Rules of*

1 *Order, Newly Revised* (11th edition, 2011), p. 53, lines 20-21]. President Rabbitt's partisanship
2 on the CASA Compact votes likely affected his ability to serve as a neutral and objective
3 presiding officer. Hostility toward the substitute motion possibly motivated President Rabbitt to
4 conduct the substitute and main motion votes unequally, through differing voting methods.

5 **Action Taken Was Not in Substantial Compliance With Government Code § 54953(c)(2)**

6 44. ABAG's action taken on the substitute motion concerning the CASA Compact at its
7 January 17-18, 2019 meeting was not in substantial compliance with Government Code §
8 54953(c)(2). The adopted minutes of the ABAG January 17 meeting did not include any report
9 of the vote or abstention of each member present for the action taken on the substitute motion.
10 The minutes characterize that vote as a "voice vote." ABAG's video recording of the January 17
11 meeting did not include any public report of the vote or abstention of each member present for
12 the action taken on the substitute motion. There was no roll call made to determine the vote or
13 abstention of each member present for the action taken on the substitute motion. There was no
14 electronic voting to determine the vote or abstention of each member present for the action taken
15 on the substitute motion. There was no paper ballot distributed to determine the vote or
16 abstention of each member present for the action taken on the substitute motion. Eyewitnesses at
17 the ABAG January 17-18 meeting did not see or hear any public report of the vote or abstention
18 of each member present for the action on the substitute motion.

19 45. The show of hands vote on the CASA Compact substitute motion at the January 17-18
20 ABAG meeting was not in substantial compliance with Government Code § 54953(c)(2) because
21 there was no verbal or written announcement of the vote or abstention of each member present
22 for the action. The show of hands vote also did not substantially comply with Government Code
23 § 54953(c)(2) because there was no "public" report at that time (as evidenced by the absence of
24 such a report in the video recording) or in the adopted minutes of the vote or abstention of each
25 member present for the action taken on the substitute motion. The show of hands vote also did
26 not substantially comply with Government Code § 54953(c)(2) because ABAG apparently has
27 no record whatsoever of the vote or abstention of each member present for the action taken on
28 the substitute motion.

46. The legislative history of Government Code § 54953(c)(2), enacted through Senate Bill 751 in 2013, demonstrates that a show of hands vote or voice vote does not comply with the legislative intent of this Brown Act amendment. As cited *supra*, the California Assembly Local Government Committee analysis of SB 751 dated June 25, 2013 quotes a letter of support from the California Newspaper Publishers Association, “The need for SB 751 arose when the Association of Bay Area Governments (ABAG), a large government agency governed by the Brown Act, failed to conduct either a roll call vote or a specific tally and report the votes of each member of the board.” A show of hands vote or voice vote is neither a “roll call vote” nor a “specific tally and report [of] the votes of each member of the board.” If no specific tally and report of the votes of each member of the board is made, then a show of hands vote or voice vote is effectively ephemeral and anonymous. The legislative body cannot fulfill its legal duty to “publicly report ... the vote or abstention on that action of each member present for the action.”

47. The action taken on the CASA Compact substitute motion at the January 17-18 ABAG meeting was not in substantial compliance with Government Code § 54953(c)(2) because President David Rabbitt intentionally and knowingly decided not to have a roll call vote. As stated *supra*, at 5:09:12 of ABAG’s video recording of the meeting, President Rabbitt turned to Clerk of the Board Fred Castro and asked, “Fred, do you want to do a roll call?” Mr. Castro replied, “It’s your call, Mr. President. It’s your call.” At 5:09:22, President Rabbitt said, “On the substitute motion, then, I’ll ask all those in favor of the substitute motion to raise your, raise your right hand so Fred can see you and count the votes. Ha ha, you gotta pledge.”

No ‘Condition’ In Government Code § 54960.1(d)(2) Through (d)(4) Protects Action Taken

48. ABAG’s actions taken on the CASA Compact items at the January 17-18, 2019 meeting were not in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

49. ABAG’s action taken on the amended main motion concerning the CASA Compact at its January 17-18, 2019 meeting did not give rise to a contractual obligation. The adopted minutes of the January 17, 2019 ABAG meeting state concerning the amended main motion, “Upon the motion by Chavez and second by Arreguin: [To] authorize the ABAG President to sign the CASA Compact, subject to the following understandings: (1) This authorization does not

1 constitute an approval of the Compact itself.” Therefore, the action taken by the ABAG
2 Executive Board did not give rise to a contractual obligation stemming directly from the CASA
3 Compact.

4 50. ABAG’s actions taken on the CASA Compact items at the January 17-18, 2019 meeting
5 were not in connection with the collection of any tax.

6 **Other Factors Supporting This Brown Act Petition and Complaint**

7 51. ABAG also failed to publicly report the vote or abstention of each member present for
8 the action on the motion to call the question on the CASA Compact main motion at the January
9 17-18, 2019 meeting. This occurred around 5:15:00 in the meeting video. ABAG violated
10 Government Code § 54953(c)(2) by conducting this vote with a show of hands instead of a roll
11 call. Clerk of the Board Fred Castro at 5:15:32 said, “Mr. President, if we could take a roll call
12 vote, please.” Then at 5:15:48, Mr. Castro said, “On the motion to call the question, we don’t
13 need a roll call. I’ll appreciate a roll call for the actual motion.” A show of hands was made, but
14 no vote count taken or announced. At 5:16:01, President Rabbitt announced, “Fred, I think
15 we’re good.” This motion, including the vote, is entirely missing from the January 17, 2019
16 meeting minutes adopted by the ABAG Executive Board in March 2019.

17 52. An aggravating factor of these Brown Act violations is how the body handled the main
18 motion after the illegal consideration of the substitute motion. Just after the substitute motion
19 vote, Director Chavez presented a revised main motion. She referred to “the sheet that’s in front
20 of all of you that we typed up” (video at 5:10:50). ABAG had contended and still contends that
21 ABAG never endorsed the CASA Compact. Presumably ABAG staff were not and are not
22 empowered to advocate for or against the CASA Compact (before, during and after the January
23 17, 2019 ABAG vote). Petitioners do not understand how Director Chavez’s revised main
24 motion, especially the sheet of paper that Director Chavez referred to, was typed up, printed and
25 distributed, absent assistance from ABAG staff. Just about every public photocopy shop would
26 have been closed at that late hour. Petitioners assert that if ABAG staff generated, printed and
27 distributed the Chavez revised main motion, then this is additional evidence of staff and
28 institutional bias against the substitute motion and for the main motion that was most overtly
manifested in the unequal treatment in their differing voting procedures.

53. Petitioners allege that ABAG's violation of the Brown Act, as set forth above, ignored the State's open meeting laws, and have deprived Petitioners and members of the public of their right to know how their elected officials voted on an important, controversial regional housing policy.

54. Without a writ of mandate and declaratory and injunctive relief provided for by the Brown Act, Petitioners are informed and believe, and on that basis allege, that they and other interested persons, citizens, and taxpayers will be irreparably harmed because they will be denied the ability to monitor how their elected officials voted on motions and other legislative actions taken during ABAG meetings, a right guaranteed by law.

55. Government Code § 54960(a) provides that any interested person, such as the Petitioners, may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more 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.

56. Because the ABAG Board has failed to acknowledge its violations of the Brown Act in spite of its history of disregarding the public's right to know how each member has voted on issues of significant public concern and in spite of the passage of SB 751 [codified at Government Code § 54953(c)(2)], it is likely to continue to violate the Brown Act in the future.

57. Because legal counsel for the ABAG Board has stated that the Board's actions did not constitute violations of the Brown Act, it is likely that the Board will continue to violate the Brown Act in the future. See ABAG counsel's letter dated May 16, 2019 (Exhibit C).

58. Petitioners have complied with all notice and demand requirements set forth in Government Code § 54960.1.

59. The ABAG Board has also failed to make an unconditional commitment to refrain from similar behavior in the future, as required by Petitioners' demand and Government Code § 54960.2.

60. Therefore, Government Code § 54960.2 specifically authorizes Petitioners to file a lawsuit to determine the applicability of this chapter to any past action if the legislative body fails or refuses to make the unconditional commitment as described in Petitioners' Demand and Government Code § 54960.2.

61. The people of California have elevated the right to open government to one protected by their State Constitution. The California Constitution, Article 1, Section 3, paragraphs (a) – (b), states:

The people have the right to instruct their representatives, petition government for redress of grievances, and assembly freely to consult for the common good.

The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.

62. Code of Civil Procedure § 1060 provides:

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

63. There presently exists, between the Petitioners and the ABAG Board, an actual controversy relating to: (1) the legal rights of Petitioners and other members of the public under the Brown Act; and (2) the ministerial duties imposed upon the ABAG Board by the Brown Act.

64. Petitioners request a judicial determination that Respondent has violated and is likely to continue to violate the Brown Act, Government Code § 54953(c)(2).

65. This determination is necessary and proper because Respondent refuses to conform to the requirements of the Brown Act.

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66. Respondent has a ministerial duty to perform according to the laws of the State of California, including the Brown Act.

67. Respondent has failed and refused to perform its ministerial duties as required by the Brown Act.

68. Petitioners have a clear, present, and legal right to Respondent's performance of its ministerial duties, as required by the Brown Act.

69. Respondent has a present legal duty and present ability to perform its ministerial duties set forth in the Brown Act.

70. Petitioners have an interest in having the laws executed and public duties enforced and, therefore, have a beneficial interest in the outcome of the proceedings.

71. Through this action, Petitioners seek no greater relief than that which would be afforded to any other member of the public.

72. Petitioners have exhausted all of their administrative remedies.

73. By letter dated April 17, 2019, Petitioners have sent a Brown Act demand to cease and desist pursuant to Government Code § 54960.2 to the ABAG Board (Exhibit A).

74. The ABAG Board, through its legal counsel, has failed to make an unconditional commitment to cease and desist, by letter dated May 16, 2019 (Exhibit C).

75. The only plain, speedy, and adequate remedy left to Petitioner is the relief provided by Government Code §§ 54960, 54960.1 and 54960.2.

Petitioners Experienced Prejudice From ABAG's Brown Act Violation

76. Petitioners experienced prejudice from ABAG's failure to publicly report the votes or abstentions of each member present for the substitute motion action and ABAG's subsequent adoption of the amended main motion that was supportive of the CASA Compact. Petitioners are opposed to the CASA Compact. Petitioners were prejudiced by the anonymous voting by the ABAG Executive Board during the January 17-18, 2019 meeting. ABAG's secretive voting on a CASA Compact matter at its January 17-18, 2019 meeting undermined petitioners' and the public's ability to monitor a legislative meeting of a local agency to be certain of how members voted on an important, controversial issue concerning regional housing policy, and to be able to report that to their members and members of the San Francisco Bay Area community at large.

1 CASA Compact issues, especially the actions taken by ABAG on the CASA Compact, affect
2 Petitioners' core missions as nonprofit organizations. Petitioners were injured by the Brown Act
3 violations that resulted in the actions taken concerning the CASA Compact at the January 17-18
4 ABAG meeting.

5 77. Petitioner LIVABLE CALIFORNIA, its President Susan Kirsch, and other allies that
6 Livable California organized, participated in the January 17-18, 2019 ABAG meeting to oppose
7 the CASA Compact through verbal and written comments, in furtherance of Livable California's
8 core mission to empower communities to take action to support local community planning and
9 decision making. Livable California was prejudiced by ABAG's Brown Act violation because
10 Livable California's leaders preferred the substitute motion and opposed the main motion.
11 Livable California's representatives were unable to object immediately to the vote taken in
12 violation of the Brown Act on the substitute motion because the public comment period had
13 ended. If the substitute motion had passed, then Livable California would have used the
14 additional two months to organize more opposition to the CASA Compact.

15 78. Petitioner COMMUNITY VENTURE PARTNERS, INC. promotes and defends the
16 principles of open government and was prejudiced by ABAG's blatant violation of the very
17 Brown Act provision that was enacted in 2013 specifically to curb anonymous voting at ABAG.
18 Community Venture Partners' *Marin Post*, like other news outlets, monitors legislative meetings
19 of local agencies to be certain of how members vote on an issue. The Brown Act violation also
20 is detrimental to Petitioner's goals to increase the access of information about sustainable
21 planning and growth and to increase community engagement in the local planning, development
22 and redevelopment decision making process as ABAG has concealed information about regional
23 planning and growth and thereby reduced community engagement in local planning and
24 development decision making process, and their ability to hold their elected officials accountable
25 for their actions.

26 27 **CONCLUSION**

28 In 2013, in response to ABAG's anonymous voting practices, the Legislature and
Governor Brown enacted the very Brown Act provision that ABAG has violated in this case.

1 Having a roll call or other form of recorded vote is not a high burden of compliance for a
2 legislative body. If the Court were to let ABAG's violation of Government Code § 54953(c)(2)
3 stand, it would undermine the fundamental purpose of California's open meeting law and set a
4 bad precedent to allow ABAG and other public agencies to continue to violate the Brown Act
5 even further in the future. Legislative bodies, especially their presiding officers and recording
6 clerks, need to conduct business and votes on substitute and main motions on equal terms, in
7 accordance with the law.

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9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioners pray for judgment as follows:

11 1. For peremptory writ of mandate directing ABAG to vacate and set aside the Executive
12 Board's January 17-18, 2019 actions taken in violation of the Brown Act, including but not
13 limited to the votes on the substitute motion and main motion concerning the CASA Compact;

14 2. For peremptory writ of mandate directing ABAG to comply with the Brown Act's
15 requirement that the ABAG Executive Board publicly report action taken and the vote or
16 abstention on that action of each member present for the action;

17 3. For a declaration that the ABAG Executive Board's actions of January 17-18, 2019
18 concerning the CASA Compact, including the votes on the substitute motion and the main
19 motion, are null and void due to the Board's violations of the Brown Act;

20 4. For a declaration that ABAG violated the Brown Act by failing to publicly report
21 action taken and the vote or abstention on that action of each member present for the action;

22 5. For a stay, and preliminary and permanent injunctions, restraining ABAG and its
23 agents, employees, officers, and representatives from conducting votes on actions taken in a
24 manner that is inconsistent with Government Code § 54953(c)(2) and/or restraining ABAG and
25 its agents, employees, officers, and representatives from undertaking any activity to implement
26 the actions taken concerning the CASA Compact at the Executive Board's January 17-18, 2019
27 meeting in any way pending the ABAG's full compliance with the requirements of the Brown
28 Act;

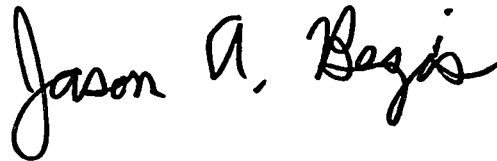
6. For an award of costs incurred in this action; and

1 7. For Petitioners' attorneys' fees as authorized by Government Code § 54960.5 and
2 Code of Civil Procedure § 1021.5; and

3 8. For such other and further relief as the Court deems just and proper.
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5 Dated this May 31st, 2019

6 Respectfully submitted,

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10 JASON A. BEZIS

11 California State Bar No. 225641

12 Attorney for Petitioners/Plaintiffs

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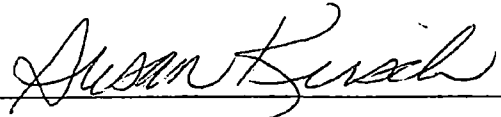
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VERIFICATION

I, Susan Kirsch, am President of New Livable California (dba Livable California), a petitioner in this action. I am authorized to execute this verification on behalf of petitioner Livable California. All facts alleged in the above petition, not otherwise supported by citations to the record, exhibits or other documents, are true of my own personal knowledge, unless otherwise so stated.

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

Executed this 30th day of May in Marin County, California.



SUSAN KIRSCH


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VERIFICATION

I, Bob Silvestri, am President of Community Venture Partners, Inc., petitioner in this action. I am authorized to execute this verification on behalf of petitioner. All facts alleged in the above petition, not otherwise supported by citations to the record, exhibits or other documents, are true of my own personal knowledge, unless otherwise so stated.

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

Executed this 30th day of May in Marin County, California.


BOB SILVESTRI