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D.C.M TRACK ASSIGNMENT
 UNLAWFUL DETAINER
 EXPEDITED
 ECONOMIC
 STANDARD
 UNINSURED MOTORIST
 TRACK COORD TO NOTIFY

VENTURA
 SUPERIOR COURT
FILED
 JAN 30 2003

READ THE VENTURA COUNTY
 LOCAL RULES THAT GOVERN
 COMPLIANCE WITH FAST TRACK
 ASSIGNED COURT WU

MICHAEL D. PLANET
 Executive Officer and Clerk
 BY: MARISELA SOTO

Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **IN AND FOR THE COUNTY OF VENTURA**

11 MARTIN JONES,

12 Plaintiff

13 vs.

14 CITY COUNCIL OF THE CITY OF
 15 OXNARD and THE COMMUNITY
 16 DEVELOPMENT COMMISSION FOR
 THE CITY OF OXNARD,

17 Defendants.

CASE NO: **CIV 217200**

COMPLAINT FOR DECLARATORY,
 INJUNCTIVE, AND MANDAMUS
 RELIEF

18
 19 COMES NOW the plaintiff MARTIN JONES, who based upon his information and
 20 belief alleges against the defendants and each of them as follows:

21 **PRELIMINARY STATEMENT**

22 1. This action is to enforce the open and public meeting and posted agenda
 23 requirements of Government Code §§ 54953, 54954.2, 54954.5 and 54956.8 known as the
 24 Ralph M. Brown Act (hereinafter "Brown Act") against the city council of the City of Oxnard
 25 when it holds closed sessions about the sale and/or development of assets owned by the City of
 26 Oxnard and particularly that real property located in downtown Oxnard within the boundaries
 27 of "A" Street, "B" Street and Fourth and Fifth Streets (hereinafter the "downtown city
 28 property"). The City Council violates the Brown Act in the following ways:

1 [A] For sessions closed under Government Code §54956.8, the City
2 Council's agenda do not contain the minimum information, as required by either Section
3 54954.2(a) or alternatively, Section 54954.5(b).

4 [B] For sessions closed under Government Code §54956.8, the City Council
5 fails to orally announce in an open meeting before the closed session the specific real properties
6 and names of the persons with whom its negotiators may negotiate, as required by Section
7 54956.8.

8 [C] The Council improperly closes sessions for discussing and receiving
9 information and deliberating on matters relating to the above described real property that are
10 not directly related to the sale of the real property, pursuant to Section 54956.8.

11 PARTIES

12 3. Plaintiff Martin Jones is a U.S. Citizen and resident of the City of Oxnard and is
13 a person interested in ensuring compliance with the Brown Act by legislative bodies of local
14 agencies under Government Code §54960 (a).

15 4. Defendant City Council of the City of Oxnard acts as the legislative body under
16 Government Code §54952, subdivision (a), of the City of Oxnard, which is a local agency
17 within the meaning of Government Code §54951. The individual members of the City Council
18 also constitute the individual members of the Oxnard Community Development Commission,
19 which acts in concert with the Council in all matters as hereinafter alleged and are, therefore,
20 jointly referred to in the singular herein as "the City Council" or "Council".

21 BROWN ACT

22 5. Section 54953, in pertinent part, of the Brown Act, requires that "all meetings of
23 the legislative body of a local agency shall be open and public, and all persons shall be
24 permitted to attend any meeting of the legislative body of a local agency."

25 6. The Brown Act provides an exception to the open and public meeting rule for
26 real property negotiations as follows in Government Code §54956.8:

27 "Notwithstanding any other provision of this chapter, a legislative
28 body of a local agency may hold a closed session with its negotiator prior

1 to the purchase, sale, exchange, or lease of real property by or for the local
2 agency to grant authority to its negotiator regarding the price and terms of
payment for the purchase, sale, exchange, or lease . . . "

3 7. To alert the public to items of business at any closed session for real property
4 negotiations, the Brown Act requires certain posted agenda procedures in Government Code
5 §54954.2(a):

6 "At least 72 hours before a regular meeting, the legislative body of a local
7 agency, or its designee, shall post an agenda containing a brief general
8 description for each item of business to be transacted or discussed at the
9 meeting, including items to be discussed in closed session. A brief general
10 description of an item generally need not exceed 20 words. The agenda
shall specify the time and location of the regular meeting and shall be
11 posted in a location that is freely accessible to members of the public."

12 8. To further alert the public about the issues to be considered at a closed session
13 for real property negotiations, the Brown Act, in Government Code §54956.8 requires that:

14 ". . . prior to the closed session, the legislative body of a local agency shall
15 hold an open and public session in which it identifies its negotiators, the
16 real property or real properties which the negotiations may concern and
the person or person with whom its negotiator may negotiate."

17 9. The Brown Act allows "any interested person" to sue a legislative body of a
18 local agency for declaratory, injunctive, and mandamus relief to determine the applicability of
19 its provisions to past, present or threatened violations and to stop or prevent such violations.

20 OXNARD CITY COUNCIL'S CLOSE SESSION PRACTICES

21 10. The City of Oxnard owns certain unimproved real property consisting of a
22 portion of a city block located in downtown Oxnard within the boundaries of "A" Street, "B"
23 Street and Fourth and Fifth Streets. For approximately the past three years, the city has
24 attempted to locate a developer to build a movie theatre on this property. Hence, this property
25 is generally known in the City and will be referred to herein as the "theatre project."

26 11. Plaintiff is informed and believes and thereon alleges that Defendant City
27 Council has engaged and continues to engage in the following pattern and practice of not
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1 providing the minimum information in posted agenda for sessions closed under Section
2 54956.8 concerning the downtown theatre project that is necessary to alert members of the
3 public about the items of business to be considered.

4 12. Several previous attempts to cause the theatre project to be built have failed.
5 Commencing on or about June 2003, defendant Council began including in its meeting agenda
6 a notice to the public that the council would meet in closed session to discuss a proposed sale of
7 the city owned real property. From that time forward, each and every notice concerning this
8 property has stated that the city was meeting in closed session with its negotiator, Curtis
9 Cannon, for the sole purpose of discussing a proposed sale of the downtown city property. As
10 required by the Brown Act, the notice stated that Curtis Cannon was the sole negotiator acting
11 on behalf of the city.

12 13. Commencing in or about May, 2003, the City Council, on some of its agendas,
13 stated that the city council would be meeting in closed session concerning the sale of the city
14 owned real property to a party who would purchase and develop the property for the purposes
15 of a downtown theatre. Every agenda reference to the theatre project in such city agendas state
16 that the proposed transaction, to be discussed in close session, involves:

17 "CDC instructions to negotiator Curtis Cannon, regarding the price, and
18 terms for payment for the potential *sale* (emphasis added) by the
19 Community Development Commission of property bounded by A Street,
20 B Street, Fourth Street, and Fifth Street . . ."

21 Attached hereto as Exhibit "A" is a true and correct copy of a typical city agenda stating
22 the foregoing, namely that the city was solely negotiating a possible sale of the downtown city
23 property.

24 14. Despite the foregoing language advising taxpayers that the Council was only
25 negotiating a potential sale of the city owned land, the Council, on November 26, 2002, entered
26 into the Development and Disposition Agreement ["DDA"] with various entities (hereinafter
27 "the developer") which is attached hereto as Exhibit "B" and the contents of which are
28 incorporated by this reference. Contrary to being a sale of the said property that complicated
development agreement, among other things, commits the city to the following, none of which

1 can possibly fall within the definition of "a sale" of real property as stated in the agenda
2 notices:

3 A. Construct, at taxpayer expense, a \$6,500,000.00 parking lot at no
4 cost to the developer. That proposed parking lot would be built on land other than that
5 described in the agenda notices.

6 B. The DDA provides that the developer will construct theatre
7 buildings, which will be leased to a movie theatre operator by the developer. The DDA states
8 that if the movie operator does not pay rent to the developer, the city will guarantee to the
9 developer lease payments of over 1.3 million dollars of taxpayer money each year.

10 C. Provide assistance for the development of retail buildings for
11 which the developers puts up no more than \$10,000.00 of his own cash (and even this is
12 refundable) and completely insulates the individual owners of the development entity from any
13 personal liability and instead guarantees the project's success with taxpayer dollars.

14 D. Gives the city no ownership interest in the profits or ownership of
15 the project.

16 E. Purchases, for the developer, a nearby privately owned building.

17 F. Provides virtually free financing which is repaid in 25 years at a
18 below market interest rate of 5%, but the loan does not have to be repaid if the theatres are not
19 profitable.

20 G. Pays the real property taxes assessed against the subject real
21 property.

22 15. The agenda item descriptions for the project, prior to November 26, 2002, also
23 violate the Brown Act in that they state that only Curtis Cannon is the negotiator acting on
24 behalf of the city. The city, in promotional documents since published by the council, states
25 that the negotiators were not only Mr. Cannon but also Edward Sotelo, Brian Pendelton,
26 Suzanne Quitariano, Alan Holmberg, Stanley Kleinman, Murray O. Kane, and Susan Young,
27 the latter of whom were private attorneys hired by the city without notice to the public.
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1 16. The agenda item for the project also violates the Brown Act because none of the
2 agenda notices stated that the party with whom the city was negotiating was Plaza
3 Development Partners, LLC. Other entities or persons were identified as the potential purchaser
4 of the property but not this LLC, which was ultimately the party with whom the city entered
5 into the DDA.

6 17. The agenda item for the project also violates the Brown Act because the DDA
7 executed by the City Council also agrees to construct, for the benefit of the developer, a
8 parking lot structure on land which is not in the downtown city property described in the
9 agenda notices. The property involving the parking structure is on entirely a different city
10 block than that described in the agenda notices. Furthermore, such action certainly does not fall
11 within the definition of "a sale" of real property.

12 18. The agenda item for the project also violates the Brown Act because the DDA
13 executed by the city also provides that the city will purchase additional property for the benefit
14 of the developer other than the city owned land. Such action by the city cannot be possibly
15 construed to fall within the definition of "a sale" of real property as stated in all of the agenda
16 notices.

17 19. On December 19, 2002, pursuant to Government Code §54960.1, plaintiff
18 delivered to the City Council the letter attached hereto as Exhibit "C" notifying the city of the
19 foregoing violations and requesting that the city rescind the action taken at its November 26,
20 2002 meeting. The council failed to respond to that letter within the required 30 day time
21 period.

22 20. Plaintiff has no plain, speedy, or adequate remedy at law for the claims raised
23 herein and has an actual controversy with Defendants over its violations of the Brown Act and
24 other matters that are not about negotiating price and terms for any real property which the city
25 is or has any concrete prospect of purchasing, selling, leasing, or exchanging by or for itself.

26 Defendant City Council has therefore engaged and continues to engage in a
27 pattern and practice of not making any of the disclosures in an open session before the closed
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1 session as required by Section 54956.8, these violations include not identifying the real
2 property or properties which the negotiations may concern and the persons with whom its
3 negotiators may negotiate for each identified real property.

4 21. The defendants have engaged and continue to engage in a pattern and practice of
5 improperly holding closed sessions under Section 54956.8 to discuss and receive information
6 and deliberate on matters about the city owned property that, in whole or part, are not directly
7 related to selling real property owned by the city. Instead, the defendant City Council
8 discusses, receives information, and deliberates on matters such as financing issues, the
9 purchase of other real property, the construction of parking lots, the approval of City Council
10 giveaways of taxpayer money and city property to developers, and other matters that are not
11 reasonably related to negotiating price and terms for the sale of any real property, as stated in
12 the agenda notices.

13 22. As a result of the practices alleged herein, defendants have violated and will
14 continue to violate:

15 [A] The general posted agenda requirements in Section 54954.2 by failing to
16 adequately describe each specific real property transaction under consideration and for what
17 purpose (purchase, sale, exchange, gift, etc.) and the names of the negotiators for the other
18 party as a separate item of business;

19 [B] Violate Section 54954.5(b) by failing to substantially comply with any of
20 its mandatory contents including the identification of property under negotiation by street
21 address, parcel number or other unique reference, the names of the agency negotiators, the
22 names of negotiating parties, and the true nature of the negotiating instructions. In fact these
23 matters have not concerned a sale but instead involve, among other things, purchasing real
24 property, developing real property not described in the notice, and providing taxpayer backed
25 financing and other benefits to developers.

26 23. As further result of the practices alleged herein, defendants have violated,
27 violate, and will continue to violate Government Code §54956.8 as they secretly discuss.
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1 receive information on and deliberate about a broad range of financing and other issues that do
2 not directly relate to negotiations over price or terms of the "sale" of real property.

3 24. As a further result of defendants' actions, the public has been and will be:

4 a. Excluded from its discussions, deliberations, and information gathering
5 and prevented from testifying, all on a timely basis, regarding matters such as financing issues,
6 the purchase of other real property, the construction of parking lots, the approval of City
7 Council giveaways of taxpayer money and city property to developers, and other matters that
8 are not reasonably related to negotiating price and terms for the sale of any real property, as
9 stated in the agenda notices.

10 b. Prevented from monitoring and taking other action on a timely basis
11 insofar as the City Council posts improper and highly inaccurate agenda descriptions before
12 any properly closed session for real property negotiations.

13 WHEREFORE, plaintiff prays that this court grant the following relief:

14 A. Declare that the defendant's City Council's actions violate the Brown Act
15 as herein alleged;

16 B. Issue temporary, preliminary, and permanent injunctive relief or
17 mandamus relief to stop and prevent defendant City Council from continuing to violate the
18 Brown Act now and in the future as alleged herein;

19 C. Order defendant City Council to tape record all of its closed sessions
20 relating to the proposed downtown theatre project and preserve such recording pursuant to
21 Government Code §54960(b);

22 D. Order the rescission of the actions taken by the City Council in violation
23 of the Brown Act, namely the execution of the Development and Disposition Agreement for the
24 theatre project. And

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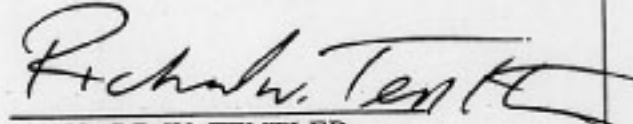
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E. Grant plaintiff his reasonable attorney fees and costs as provided by statute, and any other and further relief which the court deems just and proper.

Dated: January 30, 2003

RICHARD W. TENTLER
A LAW CORPORATION

By: 
RICHARD W. TENTLER
Attorney for Plaintiff,
Martin Jones