

1 Paul Nicholas Boylan (SBN 140098)
Paul Nicholas Boylan, Esq.
2 PO Box 719
Davis, CA 95617
3 Telephone: (530) 400-1653
4 Facsimile: (877) 400-1693
Email: pnboylan@gmail.com

5 Peter Eliasberg (SBN 189110)
6 Julia A. Gomez (SBN 316270)
7 Jordan Wells (SBN 326491)
ACLU Foundation of Southern California
8 1313 West Eighth Street
Los Angeles, CA 90017
9 Telephone: (661) 426-7867
Facsimile: (661) 404-4023
10 Email: peliasberg@aclusocal.org
11 jgomez@aclusocal.org
jwells@aclusocal.org

12 Attorneys for Plaintiffs/Petitioners
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF KERN

16 JANE DOE, JANE ROE, and STEPHANIE
PADILLA,

17 Plaintiffs/Petitioners,
18

19 vs.

20 CITY OF MCFARLAND and CITY OF
MCFARLAND CITY COUNCIL,

21 Defendants/Respondents.
22

Case No. BCV-20-101980 JEB

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF RE: VIOLATIONS OF THE
RALPH M. BROWN ACT AND THE
CALIFORNIA CONSTITUTION**

1 In this verified petition and complaint, Petitioners allege as follows:

2 **INTRODUCTION**

3 1. Petitioners Jane Doe, Jane Roe, and Stephanie Padilla bring this action to challenge
4 the City of McFarland and the McFarland City Council’s (the “Council”) (collectively, the “City”
5 or “Respondents”)’s failure to permit adequate public access to its meetings on April 9 and 23,
6 2020, in violation of California’s open meetings law, the Ralph M. Brown Act (the “Act” or the
7 “Brown Act”) and of the public’s constitutional and statutory rights to petition government and
8 observe and/or participate in the conduct of the people’s business on matters of great public
9 interest and importance. At the April 9 meeting, the Council voted to fill a Council vacancy with a
10 former employee of the GEO Group (“GEO”), a private prison company. At the April 23 meeting,
11 the Council voted to modify conditional use permits (“CUPs” or “permits”) to allow GEO to
12 convert two prisons into massive immigration detention centers.

13 2. If upheld, these actions would cause a 1,400-bed expansion of immigration
14 detention in the Central Valley, significantly adding to the existing 400 beds at GEO’s Bakersfield
16 facility. While GEO stands to profit, many Central Valley residents have voiced concerns that this
17 expansion will lead to family separation, racial profiling, and other abuses by U.S. Immigration
18 and Customs Enforcement (“ICE”). The stakes are higher now, as ICE’s failures to respond
19 appropriately to the COVID-19 pandemic nationally, and ICE and GEO’s failure to respond
20 appropriately at the Bakersfield facility, increase concerns about the health risks for persons who
21 would be detained in McFarland and any resulting COVID-19 spread to the greater population.

22 3. Respondents were aware that their April meetings would be of extraordinary
24 consequence and interest to the public. During the preceding months, hundreds of people attended
25 McFarland Planning Commission meetings where GEO’s applications to modify their CUPs were
26 first considered, resulting in the Planning Commission’s decision not to approve the applications.

27 4. Nonetheless, the Council did not provide access to its April 9 meeting to all
28 interested persons, permit verbal public comment, provide Spanish-language interpretation, or

1 provide video access. Councilmembers did not discuss or question any candidate for the City
2 Council vacancy other than former GEO employee Eric Rodriguez, whom they voted to appoint
3 to fill the vacancy. Prior to the meeting, City staff met privately with GEO representatives and
4 Mr. Rodriguez and discussed GEO’s pending CUP applications. In short, the City made sure to
5 hear from GEO on the Council vacancy but was less keen on hearing from the public.

6 5. The Council conducted its next meeting on April 23 by video but unnecessarily
7 limited attendance to 100 participants, thereby excluding Petitioners Roe and Padilla, as well as
8 other interested persons. Its failure to use low-cost, readily available technology that would have
9 allowed broader public participation is inexplicable. Many individuals were not able to provide
10 comment during the meeting, and some Spanish-speaking individuals were not allotted the amount
11 of additional public comment time the Brown Act requires. Notwithstanding these easily
12 avoidable errors, the Council voted on and granted the permit modifications GEO requested.

13 6. Respondents ignored Petitioners’ July 8, 2020, request that it cure or correct/cease
14 and desist these unlawful practices and, instead, continued to commit violations and continued to
16 act on and make decisions based on their prior unlawful acts, rendering these subsequent acts void.
17 Petitioners therefore bring this suit for mandamus, injunctive, and declaratory relief under
18 Government Code §§ 54960, 54960.1, and 54960.2 and Code of Civil Procedure §§ 1060 and
19 1085. Petitioners respectfully ask the Court to issue an order, *inter alia*, declaring null and void the
20 actions taken by the Council on April 9 and 23, declaring null and void all actions the Council
21 took that were predicated on the unlawful actions taken on April 9 and 23, enjoining Respondents
22 from committing Brown Act violations detailed in this complaint, and enjoining Respondents from
24 effectuating modifications to the permits the Council invalidly approved on April 23.

25 **JURISDICTION AND VENUE**

26 7. This Court has jurisdiction under Article VI, section 10, of the California
27 Constitution and Code of Civil Procedure §§ 410.10, 1060, and 1085(a) and Government Code §§
28 54960, 54960.1, and 54960.2.

1 8. Venue in this Court is proper because the action arose in this County and
2 Respondents are situated in this County. Civ. Proc. §§ 393, 394.

3 **THE PARTIES**

4 9. Petitioner realleges Paragraphs 1 through 8 as though fully incorporated herein.

5 10. Petitioner/Plaintiff Jane Doe is, and at all times mentioned in this petition has been,
6 a resident of Kern County and, as such, has an interest in participating in the conduct of the
7 public's business and a beneficial interest as a resident in Respondents' performance of its legal
8 duties and its exercise of discretion so as to fulfill the purposes of the California Constitution and
9 the Brown Act. Petitioner Doe is over the age eighteen and a twenty-eight-year resident of
10 McFarland. Petitioner Doe sues under a fictitious name. Petitioner Doe reasonably fears that if her
11 identity were to become public, she and/or her family members would be subject to retaliation by
12 City, County, and/or federal government officials and law enforcement, particularly in the form of
13 unwarranted scrutiny, interrogation, or detention and/or adverse immigration consequences.

14 11. Petitioner/Plaintiff Jane Roe is, and at all times mentioned in this petition has been,
16 a resident of Kern County and, as such, has an interest in participating in the conduct of the
17 public's business and a beneficial interest as a citizen and resident in Respondents' performance of
18 its legal duties and its exercise of discretion so as to fulfill the purposes of the California
19 Constitution and Brown Act. Petitioner Roe is over the age of eighteen and a twelve-year resident
20 of McFarland. Petitioner Roe sues under a fictitious name. Petitioner Roe reasonably fears that if
21 her identity were to become public, she and/or her family members would be subject to retaliation
22 by City, County, and/or federal government officials and law enforcement, particularly in the form
24 of unwarranted scrutiny, interrogation, or detention and/or adverse immigration consequences.

25 12. Petitioner/Plaintiff Stephanie Padilla is, and at all times mentioned in this petition
26 has been, a resident of Kern County and, as such, has an interest in participating in the conduct of
27 the public's business and a beneficial interest as a citizen and resident in Respondents'
28 performance of its legal duties and its exercise of discretion so as to fulfill the purposes of the

1 California Constitution and Brown Act. Petitioner Padilla is over the age of eighteen and a
2 resident of Bakersfield, California.

3 13. Respondent/Defendant City of McFarland is a local agency, Gov't Code § 54951,
4 and is thus subject to the Brown Act. The City is governed by a publicly elected, five-member
5 council, Respondent/Defendant City Council. The City Council is a legislative body, *id.* § 54952,
6 and is thus subject to the Brown Act.

7 **LEGAL BACKGROUND**

8 14. Petitioners reallege Paragraphs 1 through 13 as though fully incorporated herein.

9 15. The People of California have a robust right to transparent, accountable
10 government, guaranteed by the Brown Act and Article I of the California Constitution. The rights
11 of the people to instruct their representatives and petition government for redress of grievances are
12 dependent on opportunities to attend public meetings, observe and speak, and access information
13 pertaining to how local government conducts the public's business. Without such opportunities,
14 these rights are meaningless.

15 16. The Brown Act provides that city councils exists to "aid in the conduct of the
16 people's business," Gov't Code § 549050, and requires that city councils permit the public to
17 attend, observe, and address the council during meetings, *id.* §§ 54953(a), 54953(b), 54954.3(a).

18 17. The California Constitution, Article 1, Section 3(b)(1) guarantees the public a
19 "right of access to information concerning the conduct of the people's business" and to that end,
20 requires that "meetings of public bodies and the writings of public officials and agencies shall be
21 open to public scrutiny." Section 3(b)(2) further requires that any "authority . . . that limits the
22 right of access shall be adopted with findings demonstrating the interest protected by the limitation
23 and the need for protecting that interest."
24

25 18. On March 17, 2020, Governor Newsom issued Executive Order N-29-20, which
26 states: "All requirements in . . . the Brown Act expressly or impliedly requiring the physical
27 presence of members, the clerk or other personnel of the body, or of the public as a condition of
28

1 participation in . . . a public meeting are hereby waived.” EO-N-29-20 ¶ 3. The Executive Order’s
2 basis for this action was that in-person gatherings “would prevent, hinder, or delay appropriate
3 actions to prevent and mitigate the effects of the COVID-19 pandemic.” *Id.* As relevant here, the
4 Executive Order did not cite any other interest it sought to protect and did not authorize any
5 limitations on access to public meetings other than physical ones. Governor Newsom left in place
6 all other provisions of the Brown Act and urged public agencies to adhere as closely as possible to
7 the Brown Act “to maximize transparency and provide the public access to their meetings.” *Id.*

8 **FACTUAL ALLEGATIONS**

9 ***Background and Planning Commission Proceedings***

10 19. Petitioners reallege Paragraphs 1 through 18 as though fully incorporated herein.

11 20. Government use of private prisons is a highly controversial practice, and California
12 is a leading state in the movement toward ending this practice. Beginning January 1, 2020,
13 California law generally prohibits the operation of private prison facilities. Pursuant to an
14 exception for contracts formed prior to the January 1 effective date, GEO holds a contract for
16 immigration detention. To begin performing under that contract, in January of this year GEO
17 sought modifications to conditional use permits from the McFarland Planning Commission (the
18 “Commission”) to convert two of its facilities in McFarland to immigration detention centers.

19 21. The Commission held meetings on January 21 and February 18 to consider the
20 modifications. Scores of people attended, many to express their opposition to the modifications.

21 22. On January 28, 2020, the ACLU of Southern California delivered a letter to the
22 Commission, raising public access concerns about the Commission’s review of GEO’s
24 applications to modify the CUPs.

25 23. The Commission held a vote on the permits during the February 18 meeting. The
26 modifications were not approved because only two of four voting members of the Commission
27 voted to approve them.

28 24. On February 19, then-Mayor Manuel Cantu resigned from his position, leaving a

1 vacancy on the City Council.

2 25. On February 26, GEO appealed the Commission's decision to the City Council.

3 26. The Commission vote not to approve GEO's applications to modify their CUPs and
4 prior to the Council's April 9 meeting, City of McFarland staff met privately with GEO
5 representatives and Eric Rodriguez, a former GEO employee, to vet him for the Council vacancy.

6 ***April 9, 2020 City Council Meeting***

7 27. Petitioners reallege Paragraphs 1 through 26 as though fully incorporated herein.

8 28. On April 9, 2020, the ACLU of Southern California delivered a letter warning
9 Respondents of pending violations of the Brown Act.

10 29. On April 9, 2020, Respondents held a meeting during which they ignored the
11 ACLU of Southern California's warning of Brown Act and other violations.

12 30. The agenda for the meeting required the public to submit comment via email before
13 the April 9 meeting, indicated that there would be time for the public to address the Council, and
14 listed the possible appointment of a new councilmember as an agenda item. The City did not
16 ultimately permit comment during the meeting and, although not publicly posted, did not allow
17 written comments unless submitted at least one hour before the meeting.

18 31. Respondents did not make any findings demonstrating an interest that would be
19 served, or how any such putative interest would be served, by preventing verbal public comments
20 at the April 9 meeting.

21 32. The April 9 meeting was conducted remotely due to the COVID-19 pandemic.
22 Although Respondents could have and should have anticipated strong public interest in the April 9
24 meeting, and could have and should have provided access to the April 9 meeting via a Zoom link
25 or other video platform, Respondents only provided the public with a telephone conference line to
26 access the meeting. The meeting was plagued with technical difficulties, preventing many persons,
27 including Petitioners, from accessing and participating in the April 9 meeting.

28 33. Respondents did not make any findings demonstrating an interest that would be

1 served, or how any such putative interest would be served, by limiting the public only to telephone
2 access to the April 9 meeting, rather than providing video access via Zoom or any other readily
3 available video platform.

4 34. Petitioner Roe had an interest in participating in the April 9 meeting to oppose the
5 appointment of Eric Rodriguez to the City Council. Petitioner Roe unsuccessfully attempted to
6 join the April 9 meeting multiple times at around 6 p.m. Petitioner Roe's calls were dropped after
7 she entered the participant code. Petitioner Roe intended to provide public comment but was
8 unable to do so, both because she was unable to connect to the meeting conference line, and, as
9 alleged below, because the City prohibited public comment during the meeting.

10 35. Petitioner Doe had an interest in participating in the April 9 meeting to request that
11 Respondents postpone the appointment of a councilmember and to oppose the appointment of Eric
12 Rodriguez to the City Council. Petitioner Doe unsuccessfully attempted to join the April 9 meeting
13 multiple times before the meeting was scheduled to begin at 6 p.m. When she was finally able to
14 join telephonically, she was not able to understand much of what was being said and done during
16 the meeting for reasons including the City's failure to provide interpretation and video access to
17 the meeting.

18 36. Portions of the April 9 meeting were inaudible because the City did not mute
19 participants, leading to muddled sound. For this reason, individuals such as Petitioner Doe had
20 trouble listening to and following the proceedings.

21 37. The City did not provide a Spanish interpreter. Spanish speakers such as Petitioner
22 Doe were thus not able to understand and follow the meeting.

24 38. The City did not allow the public to comment during the meeting. Petitioner Doe
25 was thus unable to directly address the Council prior to the appointment of Councilmember
26 Rodriguez to express opposition to his appointment and ask questions of the Council. Instead, the
27 City Clerk read previously submitted written comments or questions in the language in which they
28 were submitted, despite pleas from participants that the comments be translated. Spanish

1 comments were read in Spanish only, preventing non-Spanish-speaking members of the public and
2 City Councilmembers and staff from understanding the comments.

3 39. Despite the foregoing issues that inhibited public participation, and notice of likely
4 Brown Act/constitutional violations, the Council moved forward with appointing Eric Rodriguez
5 as a councilmember during the meeting.

6 40. On April 22, 2020, the ACLU of Southern California delivered another letter to the
7 McFarland City Council. In the letter, the ACLU of Southern California warned the City about
8 Brown Act and other violations that occurred during the April 9 meeting, and urged the City not to
9 repeat these violations.

10 ***April 23, 2020 City Council Meeting***

11 41. Petitioners reallege Paragraphs 1 through 40 as though fully incorporated herein.

12 42. On April 23, 2020, Respondents held a meeting during which they ignored the
13 ACLU of Southern California's prior warnings of violations of the Brown Act.

14 43. The agenda for the meeting included times for the public to address the Council,
16 and listed modifications to GEO's CUPs as an agenda item. Speakers were limited to two minutes
17 to provide comment.

18 44. The City received hundreds of written comments in connection with the GEO
19 CUPs agenda item, many in opposition to the modification.

20 45. The April 23 meeting was conducted remotely due to the COVID-19 pandemic.
21 Respondents provided the public with a Zoom link and a corresponding telephone conference line
22 to access the meeting either by video or telephone. Although the City should have expected a
24 strong interest in the April 23 meeting due to prior attendance at meetings involving GEO, the
25 Zoom meeting had a limit of 100 participants. Any members of the public who exceeded the 100-
26 participant limit saw a message on their computer or phone screens informing them that they
27 would not be allowed to participate because the meeting was limited to 100 participants.

28 46. Respondents did not make any findings demonstrating an interest that would be

1 served, or how any such putative interest would be served, by limiting the number of meeting
2 participants to 100 rather than permitting all interested persons to observe the meeting.

3 47. The Zoom video link for the April 23 meeting included a means by which City
4 Council members could conference secretly during the meeting via text messages, with these
5 communications hidden from the public and visible during the public meeting only by members of
6 the City Council.

7 48. Petitioner Roe had an interest in participating in the April 23 meeting to oppose the
8 modification of the GEO permits and to emphasize to the Council that they had to consider the
9 opinions of the community in making their decision. Petitioner Roe was unable to connect to the
10 meeting because of the limit on the number of participants. Petitioner Roe attempted to join the
11 videoconference of the meeting through her phone, to no avail. Petitioner Roe then asked her
12 daughter to attempt to connect to the videoconference of the meeting using a computer. Petitioner
13 Roe was able to connect to the Zoom videoconference meeting for about ten seconds before she
14 was kicked off the meeting. She again attempted to join the Zoom videoconference meeting, but
16 she could not reconnect and instead received a notice denying her entry to the meeting because it
17 had reached a maximum of 100 participants.

18 49. Petitioner Padilla had an interest in participating in the April 23 meeting to observe
19 the public hearing on the GEO permits. Petitioner Padilla was unable to connect to the meeting
20 because of the limit on the number of participants. Petitioner Padilla attempted to join the
21 videoconference of the meeting but received a notice denying her entry to the meeting because it
22 had reached a maximum of 100 participants. She also attempted to join the meeting using the
24 telephone conference line but received the message: "This meeting is full. Goodbye."

25 50. Petitioner Doe had an interest in participating in the April 23 meeting to oppose the
26 modification of the GEO permits. Petitioner Doe was initially unable to connect to the
27 videoconference of the meeting through her phone. She then received a call from a community
28 member, Alejandra Figueroa, informing Petitioner Doe that she was in a parking lot streaming the

1 meeting through Zoom. Petitioner Doe drove to Ms. Figueroa’s location and observed the meeting
2 through the small screen on Ms. Figueroa’s phone. Petitioner Doe had trouble following the
3 meeting because, among other things, she viewed the meeting largely through Ms. Figueroa’s
4 phone. At some point, Petitioner Doe was able to connect to the April 23 meeting using her own
5 phone and was able to provide comment on the agenda item on modifications to the GEO permits.

6 51. When members of the public flagged the issue of the meeting cap, Mayor Sally
7 Gonzalez responded that this was not a reason to stop the meeting because, for in-person meetings,
8 the City Council room is too small to hold more than 100 people. This cap, however, was artificial
9 and unnecessary—Zoom offers meetings with caps of 1,000 participants, as do other widely used
10 technology platforms. Additionally, the City has accommodated “overflow” participation in the
11 past, prior to the COVID-19 pandemic, by setting up video and audio outside of City meetings.

12 52. The City provided a Spanish interpreter for the April 23 meeting, but the
13 interpretation was inadequate and incomplete. This was yet another issue that made it difficult for
14 Petitioner Doe to follow the meeting.

16 53. The two-minute limit was generally imposed on both English speakers and Spanish
17 speakers. Spanish speakers, however, should have been allotted four minutes of public comment
18 time because the City did not provide simultaneous interpretation.

19 54. Petitioner Doe provided comment during the public hearing. She opposed the
20 modification of the GEO permits. Petitioner Doe spoke for a few sentences at a time before being
21 interrupted by the interpreter. Notwithstanding the interruptions, Mayor Gonzalez cut off
22 Petitioner Doe before her statutorily required four minutes were up.

24 55. During a lengthy presentation at the April 23 meeting, GEO promised to have a
25 GEO-associated foundation award \$1,000 scholarships to all graduating McFarland seniors on the
26 condition that the Council vote unanimously in favor of the modifications.

27 56. The City Council voted 4-0 to approve the modifications to GEO’s permits,
28 inviting untold expansion of immigration enforcement in McFarland and the Central Valley while

1 shutting out many who will be most affected from the ability to be heard during, or even observe,
2 the meeting.

3 57. On May 14, 2020, the City Council voted 5-0 to remove Ricardo Cano from the
4 McFarland Planning Commission. Mr. Cano was one of the Commissioners who voted against
5 modifications to GEO's permits in February. On June 25, 2020, Mayor Gonzalez selected
6 Councilmembers Rodriguez and McFarland, respectively past and current GEO employees, to
7 serve on the committee to interview candidates for the Commission vacancy.

8 58. On July 8, 2020, Petitioners delivered a cure or correct/cease and desist demand
9 pursuant to Government Code §§ 54960, 54960.1 and 54960.2, a true copy of which is attached
10 hereto as Exhibit A and is incorporated into this Petition as if reproduced word for word. The City
11 has not substantively responded to any of the correspondence detailed above and attached hereto.
12 The City failed to cure and correct violations of the Brown Act within 30 days of receipt of the
13 July 8 demand letter as required by Section 54960.1 of the Government Code and failed to provide
14 assurances under Section 54960.2 of the Government Code. Plaintiffs/Petitioners have thus
16 exhausted all available remedies.

17 **MANDAMUS, INJUNCTIVE, AND DECLARATORY RELIEF**

18 59. Petitioners reallege Paragraphs 1 through 58 as though fully incorporated herein.

19 60. Petitioners have no plain, speedy, and adequate remedy at law other than this
20 action. Petitioners are suffering immediate injury that will continue absent relief from this Court.

21 61. As members of the public and holders of the aforementioned constitutional and
22 statutory right to participate in and comment at meetings of the City Council, Petitioners have a
24 present beneficial interest in the outcome of these proceedings and have a clear, present, and
25 substantial right to the relief sought herein.

26 62. The parties disagree whether Respondent properly provided the public with
27 adequate access to and participation in its April 9 and 23 meetings, thereby violating their
28 statutory and constitutional rights to speech, petition, and participate in the City's operations,

1 including but not limited to the right to observe, obtain and provide information, and evaluate the
2 performance of public officials, officers and employees.

3 63. Petitioner seek to enforce and protect the public's and their constitutional, statutory
4 and common law rights as described herein, the violation of which automatically establishes
5 irreparable harm that cannot be remedied through an action at law. (*Smith v. Novato Unified*
6 *School Dist.* (2007) 150 Cal.App.4th 1439, 1465 (quoting *Elrod v. Burns* (1976) 427 U.S. 347,
7 373).)

8 **FIRST CAUSE OF ACTION**

9 **(Declaratory Relief)**

10 (Code of Civil Procedure § 1060 and Government Code § 54960)

11 64. Petitioners reallege Paragraphs 1 through 63 as though fully incorporated herein.

12 65. Petitioners seek a judicial declaration per Code of Civil Procedure § 1060 and
13 Government Code § 54960 that Respondent has violated and/or continues to violate these
14 constitutional, statutory, and administrative provisions and a declaration determining the
16 respective rights and duties of the parties, as well as an injunction to ensure effective relief
17 addressing Respondents' violations of law.

18 66. Petitioner has no plain, speedy, and adequate remedy at law other than this action.

19 **SECOND CAUSE OF ACTION**

20 **(Injunctive Relief)**

21 (Code of Civil Procedure § 526 and Government Code § 54960)

22 67. Petitioners reallege Paragraphs 1 through 66 as though fully incorporated herein.

24 68. Unless the violations of law describe herein are enjoined, Petitioner's
25 constitutional, statutory and common law rights to attend, observe and participate in the meetings
26 of public agencies will be violated.

1 **THIRD CAUSE OF ACTION**

2 **(Violations of the Ralph. M Brown Act)**

3 **(Relief under Gov't Code §§ 54960, 54960.1, 54960.2; Code of Civ. Proc. §§1060, 1085)**

4 69. Petitioners hereby reallege and incorporate herein by this reference Paragraphs 1
5 thorough 68 of this Petition as though set forth herein in full.

6 70. Respondents' failure and refusal to perform duties required by the Brown Act
7 violated Petitioners' rights to observe and address the McFarland City Council meetings held on
8 April 9 and 23, 2020.

9 71. Petitioners demanded Respondents cure or correct/cease and desist those violations.
10 Respondents failed to cure or correct the violations and failed to provide cease and desist
11 assurances. Consequently, Petitioners seek relief from this Court.

12 72. Respondents' decision to prohibit the public from directly addressing the City
13 Council on any item of interest during the April 9 City Council meeting violated § 54954.3(a) and
14 was not a reasonable restriction to public comment under § 54954.3(b).

15 73. The following decisions by Respondents regarding the April 9 meeting violated §
16 54953(a)'s mandate that meetings be open and public to all who wish to attend and § 54953(b)(3)
17 mandate that the Council "conduct teleconference meetings in a manner that protects the statutory
18 and constitutional rights of the parties or the public appearing before the legislative body": 1)
19 limiting the number of public participants who could join the meeting; 2) failing to mute public
20 participants, resulting in portions of the meeting being inaudible to the public; 3) effectively
21 excluding non-English speaking participants from the meeting by failing to provide an interpreter
22 during the meeting, as required by Government Code §§ 7291 and 7293; and 4) unnecessarily
23 limiting public access to the April 9 meeting to a telephone conference, while allowing the
24 Council and Council applicants to join the meeting via videoconference.

25 74. Respondents' decision to limit the number of public participants who could join the
26 April 23 meeting 100 participants violated § 54953(a).
27
28

1 75. Respondents’ decision not to provide some Spanish-speaking members of the
2 public with at least four minutes of public comment time during the April 23 meeting, while
3 failing to provide a simultaneous interpretation service and providing English-speaking members
4 of the public two minutes of public comment time, violated § 54954.3(b)(2).

5 **FOURTH CAUSE OF ACTION**

6 **(Violations of California Constitution, Art. 1, Sec. 3(b)(1) and (2))**

7 76. Petitioners hereby reallege and incorporate herein by this reference Paragraphs 1
8 thorough 75 of this Petition as though set forth herein in full.

9 77. Respondents’ failure to provide adequate public access to observe and participate in
10 the McFarland City Council’s April 9 and 23, 2020, public meetings violated Petitioners’ right of
11 access under the California Constitution, Article 1, Section 3(b)(1), to information about the
12 conduct of the people’s business and violated the requirement that the meetings of public bodies
13 be open to public scrutiny.

14 78. Respondents’ failure to make findings demonstrating an interest in limiting public
16 access to the McFarland City Council’s April 9 and 23, 2020, meetings—or findings
17 demonstrating the need for protecting any such putative interest—violates the California
18 Constitution, Article 1, Section 3(b)(2).

19 **PRAYER FOR RELIEF**

20 Wherefore, Petitioners respectfully request that the Court:

- 21 A. Issue a declaration that Respondents violated the Brown Act by denying members of the
22 public access to, and the opportunity to participate in, Respondents’ public meetings;
- 24 B. Issue a writ of mandate ordering Respondents to perform as required by the California
25 Constitution and preventing Respondents from violating the Brown Act;
- 26 C. Enjoin Respondents from committing Brown Act violations detailed in this complaint;
- 27 D. Declare that Respondents’ actions taken during Respondents’ April 9 and 23 meetings
28 are null and void;

- 1 E. Order Respondents to provide an unconditional assurance per Government Code §
2 54960.2 that Respondents will comply with the Brown Act;
3 F. Find that all actions Respondents took in violation of the Brown Act are null and void,
4 and all actions predicated on those unlawful actions are also null and void, including but
5 not limited to ordering Respondents to treat as null and void, and abstain from
6 effectuating or giving any legal effect to, the conditional use permits that were the
7 subject of the April 23 meeting;
8 G. Order Respondents to pay Petitioners attorneys' fees and costs incurred in this action
9 under to Government Code § 54960.5; and
10 H. Grant Petitioners such other and further relief as the Court deems just and proper.

11 DATED: August 24, 2020

PAUL NICHOLAS BOYLAN, ESQ.

12 By: 

13 Paul Nicholas Boylan
14 PO Box 719
15 Davis, CA 95617

16 Peter Eliasberg (SBN 189110)
17 Julia A. Gomez (SBN 316270)
18 Jordan Wells (SBN 326491)
19 ACLU FOUNDATION OF
20 SOUTHERN CALIFORNIA
21 1313 West Eighth Street
22 Los Angeles, CA 90017-4022
peliasberg@aclusocal.org
jgomez@aclusocal.org
jwells@aclusocal.org

24 **VERIFICATION**

25 I, Jane Doe, declare:

26 I am a petitioner in this action and am a resident of Kern County. I have read the foregoing
27 Verified Petition for a Writ of Mandate and Complaint for Injunctive and Declaratory Relief Re:
28 Violations of the Ralph M. Brown Act and the California Constitution. The factual allegations

1 stated in paragraphs 10, 21, 23, 35-39, 45, 50, and 52-56 are true based on my own knowledge.
2 All other factual allegations are stated on information and belief and as to those matters, I believe
3 them to be true.

4 I declare under penalty of perjury under the laws of California that the foregoing is true
5 and that this verification was executed in McFarland, California, on August 24, 2020.

6
7 Jane Doe

8 **VERIFICATION**

9 I, Jane Roe, declare:

10 I am a petitioner in this action and am a resident of Kern County. I have read the foregoing
11 Verified Petition for a Writ of Mandate and Complaint for Injunctive and Declaratory Relief Re:
12 Violations of the Ralph M. Brown Act and the California Constitution. The factual allegations
13 stated in paragraphs 11, 21, 23, 34, 39, 45 and 48 are true based on my own knowledge. All other
14 factual allegations are stated on information and belief and as to those matters, I believe them to be
15 true.

16
17 I declare under penalty of perjury under the laws of California that the foregoing is true
18 and that this verification was executed in McFarland, California, on August 24, 2020.

19
20 Jane Roe

21 **VERIFICATION**

22 I, Stephanie Padilla, declare:

23
24 I am a petitioner in this action and am a resident of Kern County. I have read the foregoing
25 Verified Petition for a Writ of Mandate and Complaint for Injunctive and Declaratory Relief Re:
26 Violations of the Ralph M. Brown Act and the California Constitution. The factual allegations
27 stated in paragraphs 21-25, 28-29, 42-43, 45, 49, and 58 are true based on my own knowledge.
28 All other factual allegations are stated on information and belief and as to those matters, I believe

1 them to be true.

2 I declare under penalty of perjury under the laws of California that the foregoing is true
3 and that this verification was executed in Fresno, California, on August 24, 2020.

4 

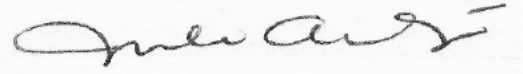
5 **CERTIFICATE OF INTERPRETATION**

6 1. My name is Julia A. Gomez and I am fluent in Spanish and English.

7 2. I interpreted the foregoing Verified Petition for a Writ of Mandate and Complaint
8 for Injunctive and Declaratory Relief Re: Violations of the Ralph M. Brown and the California
9 Constitution Act (“Verified Petition”) and Verification of Jane Doe from English to Spanish and
10 read the documents to Petitioner Jane Doe in Spanish.

11 3. Petitioner Doe verified under penalty of perjury that the factual allegations stated in
12 paragraphs 10, 21, 23, 35-39, 45, 50, and 52-56 of the Verified Petition are true based on her own
13 knowledge, and that all other factual allegations in the Verified Petition are stated on information
14 and belief and as to those matters, she believes them to be true.

15 I declare under penalty of perjury under the laws of California that the foregoing is true
16 and that this certificate was executed in Los Angeles, California, on August 24, 2020.

17 

18 **CERTIFICATE OF INTERPRETATION**

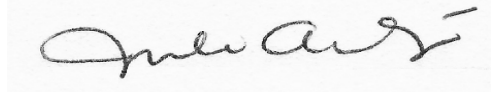
19 1. My name is Julia A. Gomez and I am fluent in Spanish and English.

20 2. I interpreted the foregoing Verified Petition for a Writ of Mandate and Complaint
21 for Injunctive and Declaratory Relief Re: Violations of the Ralph M. Brown and the California
22 Constitution Act (“Verified Petition”) and Verification of Jane Roe from English to Spanish and
24 read the documents to Petitioner Jane Roe in Spanish.

25 3. Petitioner Roe verified under penalty of perjury that the factual allegations stated in
26 paragraphs 11, 21, 23, 34, 39, 45 and 48 of the Verified Petition are true based on her own
27 knowledge, and that all other factual allegations in the Verified Petition are stated on information
28

1 and belief and as to those matters, she believes them to be true.

2 I declare under penalty of perjury under the laws of California that the foregoing is true
3 and that this certificate was executed in Los Angeles, California, on August 24, 2020.

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5 A handwritten signature in cursive script, appearing to read 'Paul Boylan', is written on a light-colored rectangular background.

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EXHIBIT A



July 8, 2020

Via hand delivery, e-mail, facsimile, and mail

City of McFarland, City Council
c/o Claudia Ceja, City Clerk
401 West Kern Avenue
McFarland, CA 93250
claudia@mcfarlandcity.org
Fax: (661) 792-3093

Re: Cease and Desist/Cure or Correct Demands re Access to Public Meetings

Dear Members of the McFarland City Council:

I write on behalf of City of McFarland residents and other interested parties to demand that the City of McFarland (the “City”) cease and desist/cure or correct the City’s actions during the City’s April 9, 2020, and April 23, 2020, City Council meetings that violated the law, including but not limited to the Ralph M. Brown Act, Gov. Code §§ 54950 et seq. (the “Brown Act” or the “Act”), Article I, Section 3 of the California Constitution and the First Amendment of the United States Constitution. We further demand the City postpone future council meetings until it cures or corrects all unlawful actions taken during the City’s April 9 and 23 meetings. Should the City decline to provide a legally adequate cease and desist assurance and/or fail to cure or correct, we will seek a judicial remedy.

I. Legal Framework

The First Amendment to the Constitution of the United States and the California Constitution, Article 1, section 3, recognize and guarantee every California citizen’s freedom of speech, freedom of the press, and the right of the people to peaceably assemble and to petition their governments to redress grievances. The Brown Act enforces these rights by mandating that legislative bodies conduct the public’s business openly. Gov. Code. § 54950. To that end, the Act requires that all persons be permitted to participate in the conduct of the public’s business by attending, observing and addressing legislative bodies during public agency meetings. *Id.* §§ 54953, 54954.3(a).

The Act assures the public the opportunity for real-time public, in person, verbal comment or testimony. *See id.* §§ 54950, 54953.3; *see also Galbiso v. Orosi Pub. Util. Dist.*, 167 Cal. App. 4th 1063, 1079-80 (2008) (holding that a local agency violates the Brown Act by prohibiting a person from speaking during the public comment period). The public’s right to attend the meetings of legislative bodies includes the right to visually observe meetings and the conduct of public officials. *See, e.g.,* Gov. Code §§ 54953.5(a) (mandating the right of the public to photograph and

EXECUTIVE DIRECTOR Hector O. Villagra

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*deceased

videotape open meetings), § 54953(b)(3) (for teleconference meetings, mandating right of the public to access to each teleconference location).

The City also has a duty to translate documents and provide qualified interpreters for non-English-speaking persons who wish to attend, observe and comment at City Council meetings. *Id.* §§ 7291, 7293; *see also id.* §11135(a) (prohibiting programs and activities funded by the state from discriminating against a person on the basis of race and national origin). While the City may reasonably limit the time allocated for public testimony, it must provide at least twice the allotted time to persons who utilize an interpreter, unless the City uses simultaneous translation. *Id.* § 54953.3(b).

On March 17, 2020 Governor Gavin Newsom issued Executive Order N-29-20 (“Executive Order” or “EO N-29-20”), permitting legislative bodies “to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body.” EO N-29-20 ¶ 3. Governor Newsom left in place all other provisions of the Brown Act, including the aforementioned requirements. The Governor urged public agencies to adhere as closely as possible to the Brown Act “to maximize transparency and provide the public access to their meetings.” *Id.*

The California Constitution protects these public rights. Article I of the California Constitution mandates that, to protect and advance these rights, any authority that assures public participation shall be broadly construed, while any authority that limits public participation rights shall be narrowly construed. Cal. Const. Art. 1, § 3(b)(2); *see also Galbiso*, 167 Cal. App. 4th at 1080. Per this constitutional mandate, the Brown Act and the Order must “be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const. Art. 1, § 3(b)(2). To the extent the Brown Act or the Order are in any way ambiguous, they must be read to maximize public access and participation. *See Sierra Club v. Super. Ct.*, 57 Cal.4th 157, 166-67 (2013). Thus, taken together, the Order and the Brown Act require that meetings be open to the public, that the public be able to provide oral testimony during meetings, and that, if a meeting is held “remotely,” that the public have visual access to the meeting.

II. Past Brown Act and First Amendment Violations

a. April 9, 2020 City Council Meeting

On April 9, 2020, the City held a meeting during which it took a number of actions, including appointing a new councilmember. The City, however, failed to allow full public participation in that meeting through the following acts and omissions:

- The City could have, but did not, conduct the meeting via Zoom or another inexpensive and easily available videoconferencing platform, consistent with the public’s right to access and observe each location from which a councilmember participates in any teleconference meeting. During the April 9 meeting, the City provided the Councilmembers and City Council applicants with access to videoconferencing via Zoom, but chose not to extend this feature to the general public.
- The City could have, but did not, provide a video monitor outside of City offices to allow the public to visually observe the meeting. Instead, the City set up only a telephonic conference for the public.

- The City did or should have expected strong public interest in attending the meeting and addressing the City Council given the turnout at prior meetings involving the GEO Group. Despite this notice, the City placed an unnecessary cap on the number of people who could join the telephonic meeting.
- Although the teleconference phone line that the City set up had the capability to allow for real-time public comment for those few members of the public allowed to attend the meeting, the City prohibited direct, real-time public comment during the meeting, both on general matters of public interest and on specific agenda items.
- Although real-time, direct comment during the meeting was possible telephonically, and members of the public attempted to speak during the meeting, the City restricted public comment to written statements provided only via email no less than one hour *prior* to the meeting.
- Some people submitted written comment, which were read out loud during the meeting. However, some of these comments were written in Spanish, reflecting the large population of interested members of the public who only speak Spanish. The City, however, refused to translate these comments from Spanish into English and instead read them out loud only in the language in which they were submitted, thereby preventing non-Spanish-speaking City Council members and interested citizens from understanding the comment.
- The April 9 meeting was conducted in English. The City knew or should have known that non-English-speaking members of the public would attend the meeting. Nevertheless, the City did not provide any interpretation services. Consequently, these non-English-speaking members of the public were unable to understand what the City Council said, did not understand the written comments made in English, and were unable to know what actions the City Council took during that meeting.
- Despite McFarland’s substantial Spanish-speaking population, the City failed to publish an agenda in Spanish, which inhibited public participation and also violated Section 7295 of the Government Code.

Instead of postponing the April 9 meeting to address these and other issues—many of which had been brought to the City’s attention prior to and during the meeting—the City chose to hold a meeting that effectively prevented public participation as described above. The public was not adequately allowed to attend, observe, or provide public comment during the meeting, participation necessary to further the goals of the Brown Act and the Executive Order. The City’s actions inhibited an informed discussion of the City’s conduct of the people’s business, including their evaluation of public officials, officers, employees, and applicants for the vacant spot on the City Council, and did not promote public confidence and a perception of fairness in the City’s operations. Consequently, all of the actions the City Council took during the April 9 meeting are void, including the appointment of Eric Rodriguez to the City Council, and, as a further consequence, all closed sessions conducted and actions taken with Mr. Rodriguez participation are unlawful and void.

b. April 23, 2020 City Council Meeting

On April 23, 2020, the City held another meeting during which it took a number of actions, including approving permits for the GEO Group. The City, however, again failed to allow full public participation in that meeting through the following acts and omissions:

- The City knew or should have known that public interest in this meeting was especially strong because one of the agendized matters for City Council action was the GEO Group private detention center permits. Nevertheless, the City limited the public's attendance to 100 people, even though Zoom allows as many as 1,000 people to participate in meetings conducted via videoconference.
- The City provided an interpreter for non-English-speaking persons who wished to address the City Council during the meeting. However, the interpretation services provided were inaccurate and incomplete, thereby denying non-English-speaking persons their statutory and constitutional rights to free speech, petition, and participate in the City's operations, including but not limited to the right to observe, obtain and provide information, and evaluate the performance of public officials, officers and employees. This violated not only the Brown Act, but also Sections 7291 and 7293 of the Government Code, which require that the City to provide qualified interpreters.
- The City Council set a time limit on public comment but did not provide either simultaneous interpretation services or twice the allotted time to individuals in need of translation services. *See* Gov. Code § 54954.3(b)(2).

III. Probability of Future Violations

The City's historical conduct as described in this letter—including but not limited to the fact that, although the City was warned about these issues before any rights were violated, the City did not take advantage of prior warnings and, instead, committed the violations described above—is a strong indication that the City will commit these violations again in the future.

IV. Demand that the City Cure or Correct and Cease and Desist

For the reasons discussed above we demand the City do the following:

- Cure or correct all of the violations the City took during the April 9 and 23 meetings. If not, we will seek an order voiding all actions taken on April 9 and 23 pursuant to Government Code § 54960.1. Because the City's action appointing a new City Council member will be void, all actions this unlawfully appointed City Council member takes will be void.
- This letter demonstrates that there is a dispute between the parties as to the applicability of the Brown Act, as described in this letter, to ongoing and threatened future actions of the City. Therefore, we demand, pursuant to Government Code § 54060.2, that the City cease and desist all of the violations described in this letter. If the City fails to provide a cease and desist assurance per Government Code § 54960.2, then we will seek a judicial remedy by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of the public rights described herein by the City.

Finally, to prevent the compounding of the errors the City has committed, resulting in additional void actions, we demand that the City postpone all future council meetings until the City has cured or corrected past violations and has provided sufficient assurances that it will not, in the future, violate the public's rights to fully participate in City Council meetings as described in this letter.

Thank you for your prompt attention to these matters.

Sincerely,



Julia A. Gomez, Staff Attorney
Jordan Wells, Staff Attorney
Stephanie Padilla, Staff Attorney
Peter Eliasberg, Chief Counsel
ACLU of Southern California

cc (via email only):

Tom Schroeter, McFarland City Attorney (tomschroeter@sbcglobal.net)
Larry F. Pennell, McFarland City Manager (lpennell@mcfarlandcity.org)
Sally Gonzalez, Mayor (sgonzalez@mcfarlandcity.org)
Stephen McFarland, Mayor Pro-Tem (smcfarland@mcfarlandcity.org)
Rafael Melendez, Councilmember (rmelendez@mcfarlandcity.org)
Maria T. Perez, Councilmember (mperez@mcfarlandcity.org)
Eric Rodriguez, Councilmember (erodriguez@mcfarlandcity.org)