

DISTRICT COURT, SAGUACHE COUNTY, COLORADO
Court Address: 501 Christy Avenue, P.O. Box 197
Saguache, Colorado 81149

Plaintiffs:

VALLEY PUBLISHING, INC., doing business as *Center Post-Dispatch*, an Illinois corporation,
and
SYLVIA LOBATO, a citizen of the State of Colorado,
v.

Defendant:

BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF SAGUACHE, in its official capacity as a
formally constituted public body of a political subdivision of
the State of Colorado.

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Division : _____

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiffs Valley Publishing, Inc., doing business as *Center Post-Dispatch*, and Sylvia Lobato, through their undersigned attorneys at Levine Sullivan Koch & Schulz, L.L.P., for their Complaint in this action under the Colorado Open Meetings Law (“COML”), §§ 24-6-401, *et seq.*, C.R.S., against Defendant Board of County Commissioners of the County of Saguache (herein, “the Board”), state and allege as follows:

Introduction

1. This civil action seeks injunctive and declaratory relief to redress the failure of the Board to fulfill the guarantee of public access enshrined in the Colorado Open Meetings Law, in light of the Board's persistent pattern of conducting improper closed-door discussions of public business, violating both the procedural requirements for convening an executive session and the substantive limitations on what may be discussed in a closed meeting. *See* § 24-6-402(4), C.R.S. In particular, this case seeks to end the practice, as a violation of state law, of the Board going into closed-door discussions without identifying "the particular matter to be discussed in as much detail as possible." This case also seeks to prevent the Board from engaging in closed-door discussions of appointees to county boards, committees and other commissions, where those members are not employees of the Saguache County and who therefore may not be the topic of discussion during a "personnel matter" executive session.

2. In addition to such equitable relief, the plaintiffs also seek recovery of their reasonable attorney's fees and costs under the mandatory fee-shifting provisions of the COML, § 24-6-402(9), C.R.S.

Jurisdiction, Venue and Parties

3. This Court has jurisdiction over the claims asserted herein under Article VI, section 9(1) of the Colorado Constitution and under § 24-6-402(9), C.R.S., of the COML.

4. Venue for this civil action is proper in this Court under Rules 98(b)(2) and (c)(1) of the Colorado Rules of Civil Procedure.

5. Plaintiff Valley Publishing, Inc. is a corporation organized under the laws of the State of Illinois and is authorized to do business in Colorado under the trade name *Center Post-Dispatch*, conducting such business as a local newspaper covering matters of local concern to the residents of Saguache County from its principal place of business at 835 First Avenue, Monte Vista, Colorado, 81144.

6. Plaintiff Sylvia Lobato is a citizen of the State of Colorado. She brings this action in her capacity as editor of the *Center Post-Dispatch* newspaper.

7. Defendant Board of County Commissioners of the County of Saguache is a formally constituted public body under the laws of the State of Colorado, exercising political control over Saguache County, a political subdivision of the State. The Board is named here in its official capacity, pursuant to its obligations under the COML.

Legal Provisions Applicable to this Action

Colorado Open Meetings Law:

8. This case is controlled by provisions of the COML.

9. Under the COML, the Board is a “local public body,” as that term is defined in the statute, because the Board is the governing body of a political subdivision of the State of Colorado, and it is therefore subject to all requirements of the COML applicable to local public bodies. *See* §§ 24-6-402(1)(a), -402(2), -402(4), -402(7), -402(8), and -402(9), C.R.S.

10. The COML, which originally was enacted by initiative by the People of Colorado in 1973, declares that public business “may not be conducted in secret”:

It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.

§ 24-6-401, C.R.S.

11. The “underlying intent” of the COML is to ensure that the public is not “deprived of the discussions, the motivations, the policy arguments and other considerations which led to the discretion exercised by the [public body].” *Van Alstyne v. Housing Auth.*, 985 P.2d 97, 101 (Colo. App. 1998).

12. The Colorado Court of Appeals has declared that “[t]he purpose of the OML, as declared in § 24-6-401, C.R.S. 2006, is to afford the public access to a broad range of meetings at which public business is considered; to give citizens an expanded opportunity to become fully informed on issues of public importance, and to allow citizens to participate in the *legislative* decision-making process that affects their personal interests.” *Walsenburg Sand & Gravel Co. v. City Council*, 160 P.3d 297, 299 (Colo. App. 2007) (citation omitted) (emphasis in original).

13. Under the COML, all exemptions from the default rule that a public body’s meetings must be open to the public must be narrowly construed, ensuring as much public access as possible. *See Gumina v. City of Sterling*, 119 P.3d 527, 530 (Colo. App. 2004) (“In our view, this rule [of a presumption in favor of public access] applies with equal force to the executive session exception carved out in the Open Meetings Law.”); *Zubeck v. El Paso County Ret. Plan*, 961 P.2d 597, 600 (Colo. App. 1998) (construing both the COML and the CORA in harmony and requiring narrow construction of any exemption limiting public access); *see also Cole v. State*, 673 P.2d 345, 349 (Colo. 1983) (“As a rule, [the Open Meetings Law] should be interpreted most favorably to protect the ultimate beneficiary, the public.”).

14. Under the COML, a public body may conduct an “executive session,” *i.e.*, a closed-door meeting from which the public may be excluded, *only* if the body “strictly complies” with the requirements for convening and conducting such closed meetings, which

include limiting its discussion during such meetings to the narrow topics permitted by the statute and taking no action or adoption of any position during the closed meeting. *See* § 24-6-402(4), C.R.S.; *see also Gumina v. City of Sterling*, 119 P.3d 527, 532 (Colo. App. 2004); *WorldWest LLC v. Steamboat Springs Sch. Dist. RE-2 Bd. of Educ.*, Case No. 07-CA-1104, 2009 WL 783330, 37 Media L. Rep. 1663, 1668 (Colo. App. Mar. 26, 2009) (copy attached hereto in Appendix of Additional Case Authority).

15. Under the COML, the procedural requirements for conducting a closed meeting include the following:

- The public body must announce the topic of any executive session discussion to the public in advance of the closed meeting;
- The public body’s announcement of the topic of the closed meeting must include a specific citation to the particular provision of the COML that permits that particular topic to be discussed in closed session;
- The public body’s announcement of the planned closed-door discussion must identify “the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized”; and,
- The public body must approve a motion to go into executive session to discuss the announced topics by a vote of two-thirds of the quorum present.

See § 24-6-402(4), C.R.S.

16. In particular, a local public body must do more than merely “parrot” the statutory category of a COML exemption; it must describe with particularity the specific matters to be discussed behind closed doors in as much detail as possible under the circumstances at the time of the closed meeting without undermining the purpose for which the meeting is being held behind closed doors. *See Gumina*, 119 P.3d at 531; *WorldWest*, 2009 WL 783330, 37 Media L. Rep. at 1668 (copy attached); *see also White v. Brush Sch. Dist. RE-2(j)*, Morgan County District Court, “Order re: Def.’s M. to Dismiss [etc.],” at 9 (slip op. Mar. 31, 2010) (“Announcing the topic of an executive sessions without providing any detail contravenes the legally protected right of the public to be notified of the particular matter to be discussed in an executive session in as much detail as possible.”) (copy attached hereto in Appendix of Additional Case Authority).

17. In addition to these procedural requirements, a public body may not adopt “any proposed policy, position, resolution, rule, regulation or formal action” during a closed meeting, other than the approval of minutes of a prior closed meeting. *See* § 24-6-402(3)(a), C.R.S.

18. The Colorado Supreme Court has held that the prohibition against the closed-door adoption of a proposed position includes a ban on informal decision-making, even when the informal closed-door decision is subsequently approved in a public vote. *See Hanover Sch. Dist.*

No. 28 v. Barbour, 171 P.3d 223, 228 (Colo. 2007); *see also Van Alstyne*, 985 P.2d at 101 (“[A] public body’s meeting is not in compliance with the Open Meetings Law if it is held merely to ‘rubber stamp’ previously decided issues.”); *cf. Bagby v. School Dist. No. 1*, 186 Colo. 428, 434, 528 P.2d 1299, 1302 (Colo. 1974) (same, under prior version of statute); *Walsenburg Sand & Gravel*, 160 P.3d at 300 (same, under COML).

19. Under the COML, the burden is on the public body that conducted an executive session to demonstrate that the closed meeting was proper. *Cf. Zubeck v. El Paso County Retirement Plan*, 961 P.2d 597, 600 (Colo. App. 1998).

20. The COML permits a local public body to close a meeting through the use of an “executive session” **only** with respect to the specifically enumerated exemptions listed in the statute. *See* § 24-6-402(4), C.R.S.

21. The COML’s exemption for “personnel matters” discussions by a local public body allows for a closed-door discussion of an “employee” *See* § 24-6-402(4)(f)(I), C.R.S. By necessary implication, this exemption does **not** apply to discussions of persons who are not “employees” of the political subdivision controlled by the local public body. *See, e.g., Freedom Newspapers, Inc. v. Bd. of County Comm’rs*, El Paso County District Court, Case No. 97-cv-3082, “Temporary Restraining Order,” at 1-2, ¶ 5 (slip op., Oct. 28, 1997) (copy attached hereto in Appendix of Additional Case Authority).

22. Although not relevant to the plaintiffs’ claims here (because the plaintiffs presumably were not the subject of any “personnel matters” executive sessions by the Board), the COML also requires that the Board provide an opportunity to any employee who is the subject of a closed-door executive session to require that the discussion be conducted in public. *See* § 24-6-402(4)(f)(I), C.R.S.

23. Separately, the COML’s narrow exemption for “attorney conferences” by a local public body allows for a closed-door discussion “for purposes of receiving legal advice on specific legal questions.” *See* § 24-6-402(4)(b), C.R.S. This provision, however, may not be invoked to bar public access to deliberations by members of a local public body on matters that do not narrowly constitute the receipt of legal advice on a specific legal question. *See id.* Moreover, a local public body may not use the “[m]ere presence or participation” of the body’s attorney at a closed-door meeting as the basis for excluding the public from observing the discussion. *See id.*

24. Under the COML, a public body may not deny public access to a record of a meeting that failed to comply with the requirements of the executive session provisions; such records or audio recordings are necessarily public records subject to public access. *See Gumina*, 119 P.3d at 532; *WorldWest*, slip op. at 18 and 20 (attached in accompanying Appendix).

25. Under the COML, actions that are taken improperly in an executive session are void and of no legal effect. *See* § 24-6-402(8), C.R.S.; *see also Van Alstyne*, 985 P.2d at 101

("[A]ny such actions taken at any meeting that is held in contravention of the Open Meetings Law cease to exist or to have any effect").

26. Finally, in any suit in which the Court finds a violation of the COML, the Court *must* – without discretion – award the reasonable attorney’s fees of the citizen who sought the finding of a violation of the statute. *See* § 24-6-402(9), C.R.S.; *see also Van Alstyne*, 985 P.2d at 99-100 (finding reversible error in the failure to award attorney’s fees to a citizen who prevailed in establishing a violation of the COML because “the trial court overlooked the General Assembly’s establishment of mandatory consequences for a violation of the statute”).

Factual Background **on Board’s Closures of Executive Session Discussions**

A. Pattern of Inadequate Announcement of Matters to be Discussed in Executive Session

27. The Board has regularly invoked its power to retire to an “executive session” discussion behind closed doors, having conducted such closed-door discussions at least once, and often twice, during almost every single one of its semi-monthly meetings in the first half of 2010.

28. The minutes of the Board’s meetings reveal the following identifications of the matters that were discussed behind closed doors during the first half of 2010:

- a) **January 5, 2010** – “Executive Session at 9:45 A. M. for legal purposes under CRS 24-6-402(4)(f)(i).”¹ The minutes reflect that the Board returned to open session at 10:12 a.m.
- b) **January 19, 2010** – “Executive Session at 11:20 A.M. for legal purposes under CRS 24-6-402(4)(f)(i).”² The minutes reflect that the Board returned to open session at 11:32 a.m.
- c) **February 9, 2010** – “Executive Session at 1:01 A. M. for legal purposes under CRS 24-6-402(4)(f)(i).”³ The minutes reflect that the Board went behind closed doors at the start of this day’s afternoon session, at 1 p.m., and that the Board returned to open session at 1:20 p.m.

¹ The minutes reflect that the Board cited the statutory provision of § 24-6-402(4)(f)(I), C.R.S., *see* Ex. 1-A, attached here, which is the provision for “personnel matters” discussions, rather than the applicable citation for “conferences with an attorney for the local public body” at § 24-6-402(4)(b), C.R.S.

² *See* Ex. 1-B and footnote 1, *supra*, with respect to the Board’s incorrect statutory citation.

³ *See* Ex. 1-C and footnote 1, *supra*, with respect to the Board’s incorrect statutory citation.

- d) **February 16, 2010** (first closed meeting) – “Executive Session at 10:44 A. M. for legal purposes under CRS 24-6-402(4)(f)(i).”⁴ The minutes reflect that the Board returned to open session at 11:38 a.m.
- e) **February 16, 2010** (second closed meeting) – “Executive Session at 12:58 P. M. for legal purposes under CRS 24-6-402(4)(f)(i).”⁵ The minutes reflect that the Board returned to open session at 1:24 p.m.
- f) **March 9, 2010** – “Executive Session at 9:33 A.M. for personnel purposes under CRS 24-6-402(4)(f)(i) and for legal purposes under CRS 24-6-402(4)(f)(i).”⁶ The minutes reflect that the Board returned to open session at 10:00 a.m.
- g) **March 16, 2010** (first closed meeting) – “Executive Session at 1:30 P.M. for personnel purposes under CRS 24-6-402(4)(f)(i).” The minutes reflect that the Board returned to open session at 1:49 p.m.
- h) **March 16, 2010** (second closed meeting) – “Executive Session at 2:10 P.M. for security purposes under CRS 24-6-402(4)(f)(i).”⁷ The minutes reflect that the Board returned to open session at 2:27 p.m.
- i) **April 6, 2010** – “Executive Session at 11:23 A. M. for legal purposes under CRS 24-6-402 (4)(b).” The minutes reflect that the Board returned to open session at 11:43 a.m.
- j) **April 20, 2010** – “Executive Session at 3:30 P. M. for personnel purposes under CRS 24-6-402(4)(f)(i).” The minutes reflect that the Board returned to open session at 3:45 p.m.
- k) **May 4, 2010** – “Executive Session at 9:02 A. M. for personnel purposes under CRS 24-6-402(4)(f)(i) and for legal purposes under CRS 24-6-402(4)(f)(i).”⁸ The minutes reflect that the Board returned to open session at 9:30 a.m.

⁴ See Ex. 1-D and footnote 1, *supra*, with respect to the Board’s incorrect statutory citation.

⁵ See Ex. 1-D and footnote 1, *supra*, with respect to the Board’s incorrect statutory citation.

⁶ The statutory citation for the “personnel matters” discussion is correct; the statutory citation for the attorney conference is not.

⁷ The minutes reflect that the Board cited the statutory provision of § 24-6-402(4)(f)(I), C.R.S., see Ex. 1-F, even though the correct citation for closed-door discussions of “specialized details of security arrangements or investigations” is § 24-6-402(4)(d), C.R.S.

⁸ See footnote 6, *supra*.

- l) **May 11, 2010** (first closed meeting) – “Executive Session at 10:15 A. M. for personnel purposes under CRS 24-6-402(4)(f)(i) and for legal purposes under CRS 24-6-402(4)(f)(i).”⁹ The minutes reflect that the Board returned to open session at 10:45 a.m.
- m) **May 16, 2010** (second closed meeting) – “Executive Session at 11:25 A. M. for personnel purposes under CRS 24-6-402(4)(f)(i) and for legal purposes under CRS 24-6-402(4)(f)(i).”¹⁰ The minutes reflect that the Board returned to open session at 11:42 a.m.
- n) **June 8, 2010** (first closed meeting) – “Executive Session at 9:00 A. M. for personnel purposes under CRS 24-6-402(4)(f)(i).” The minutes do not reflect a vote for the Board to return to open session or a time when the open session resumed.
- o) **June 8, 2010** (second closed meeting) – “Executive Session at 10:38 A. M. for legal purposes under CRS 24-6-402(4)(b).” The minutes do not reflect a vote for the Board to return to open session or a time when the open session resumed.

True and correct copies of the minutes of these meetings, as are made available by the Board at its website, are attached here as **Exhibit 1**.

29. For each of the foregoing closed meetings, the only identification of the particular matters to be discussed was either “personnel purposes,” “legal purposes,” or “security purposes.”

30. At no time during any of the meetings listed above did the Board ever identify the “particular matter” that it intended to discuss beyond merely mentioning the category of the topic.

31. On information and belief, the plaintiffs allege that for every closed-door meeting conducted by the Board in the first half of 2010, it was possible for the Board to identify more particularly the specific matters that it would be discussing behind closed doors in the ensuing executive session without compromising the purpose for which the executive session was being called.

32. On information and belief, the plaintiffs allege that whenever the Board conducted a closed meeting during the first half of 2010 to discuss “personnel purposes,” it was possible for the Board to identify the job category of the county employee under discussion and

⁹ See footnote 6, *supra*.

¹⁰ See footnote 6, *supra*.

the nature of the discussion without compromising the purpose of conducting the discussion behind closed doors.

33. On information and belief, the plaintiffs allege that whenever the Board conducted a closed meeting during the first half of 2010 to discuss “legal purposes,” it was possible for the Board to identify the specific lawsuit, claim or legal issue that was under discussion without compromising the purpose of conducting the discussion behind closed doors.

B. Use of “Personnel Matter” Exemption for Closed Discussion of Non-Employees

34. On information and belief, the plaintiffs allege that the Board’s closed-door discussions on May 4 and 11, 2010 regarding “personnel purposes” were actually for the purpose of discussing the performance and tenure of various members of the Saguache County Planning Commission, as well as certain incidents and conduct that had occurred at prior meetings of the Planning Commission and proposed new policies intended to prevent such incidents in the future.

35. No member of the Saguache County Planning Commission who was discussed by the Board during the closed meetings on May 4, and 11, 2010 was at that time an employee of Saguache County.

36. On information and belief, during the May 11, 2010 closed meetings, the Board adopted proposed positions that were subsequently rubber-stamped during the public session of the Board’s meeting, pertaining to revoking the appointment of Ken Williams as an alternate to the Saguache County Planning Commission and to approving the new policies for the planning commission with respect to absences and conduct during meetings.

37. In so conducting these executive sessions, the Board denied the public and plaintiffs the opportunity to observe “the discussions, the motivations, the policy arguments and other considerations which led to the discretion exercised by the [Board].” *See Van Alstyne*, 985 P.2d at 101.

38. The rubber-stamp vote to revoke the appointment of Mr. Williams occurred immediately after a thirty-minute closed meeting, with no debate from the Board and with a unanimous formal vote.

39. The lack of any public discussion of the removal of Mr. Williams and the unanimity of the Board’s vote demonstrate that the Board came to a consensus and adopted the position of removing Mr. Williams from office while meeting behind closed doors.

40. The rubber-stamp vote to approve the new planning commission policies occurred immediately after a second closed meeting on May 11, 2010, this one for a further 17 minutes, and again, with the ensuing formal vote being unanimous and without any public discussion.

41. The lack of any public and the unanimity of the Board's vote demonstrate that the Board came to a consensus and adopted the position of approving the new planning commission policies while meeting behind closed doors.

D. Plaintiffs' Request for Access to Records of May 2010 Closed Meetings

42. On May 25, 2010, the *Center Post-Dispatch's* reporter Teresa Benns, acting under the supervision of Plaintiff Lobato, submitted a formal public records request to Saguache County Attorney Benjamin F. Gibbons seeking access to the audio recordings and any other notes of the three closed meetings on May 4 and 11, 2010.

43. On May 27, 2010, Mr. Gibbons denied the newspaper's request for access, on the basis of the COML's privilege for recordings of executive session discussions, at § 24-6-402(2)(d.5)(II)(D), C.R.S. (A true and correct copy of Mr. Gibbons' letter is attached here as **Exhibit 2.**)

44. In his denial letter, Mr. Gibbons takes the position that the closed-door discussions on May 4 and 11, 2010 were properly convened as "executive sessions" despite the inadequacy of the Board's identification of the particular matters to be discussed and despite the apparent fact that the Board's discussion of planning commission members and policies are not exempt topics under the COML.

45. On information and belief, the plaintiffs allege that the Board has endorsed Mr. Gibbons' position in his denial letter of May 27, 2010, and that the Board does not intend to alter its practice of inadequate identification of the particular matters to be discussed in executive session meetings nor its practice of discussing non-employees or general policy matters during "personnel matters" executive sessions.

FIRST CLAIM FOR RELIEF

**Violation of the COML through Inadequate Announcement of Closed Meetings
(§§ 24-6-402(4) & -402(9), C.R.S.)**

46. Plaintiffs incorporate the allegations of previous paragraphs of this Complaint as though fully set forth herein.

47. Plaintiff Lobato is a "citizen of this State" under the COML, § 24-6-402(9), C.R.S., and as such, has standing to bring a claim for declaratory and injunctive relief under the COML. Plaintiff Valley Publishing, Inc. also has standing to bring this claim by virtue of its activities in publishing a newspaper that reports on the activities of the Board.

48. Plaintiffs have suffered an injury in fact through the acts and omissions of the Board with respect to the Board's pattern of failing to make a public announcement, prior to

closing its public meetings, of the particular matter to be discussed behind closed doors in as much detail as is possible at the time.

49. The Board has established a pattern of inadequate announcements of the matters to be discussed during the Board's executive session meetings, as occurred at the Board's meetings on January 5, 2010, January 19, 2010, February 9, 2010, February 16, 2010, March 9, 2010, March 16, 2010, April 6, 2010, April 20, 2010, May 4, 2010, May 11, 2010, and June 8, 2010.

50. Saguache County Attorney Benjamin F. Gibbons has opined that the Board's practice with respect to the identification of the matters to be discussed prior to convening closed meetings is not a violation of the COML.

51. On information and belief, the plaintiffs allege that the Board intends to continue to fail to announce, in advance of its closed meetings, the particular matters to be discussed in as much detail as is possible at the time.

52. In light of the foregoing, there is an actual case or controversy concerning the legality under the COML of the Board's past and anticipated future practice of convening executive session meetings.

53. Under the COML, the Board's practice of failing to announce, in advance, the particular matter to be discussed behind closed doors in as much detail as is possible at the time of the executive session is illegal under Section 402(4) of the COML.

54. The plaintiffs have suffered irreparable harm as a result of the Board's practice described herein because they cannot intelligently exercise their rights to freedom of speech, petition, or association, or Ms. Lobato's electoral franchise, without the information concerning the particular matters being discussed by the Board behind closed doors, as is otherwise guaranteed to them by the COML and which was deprived by the Board's practice.

SECOND CLAIM FOR RELIEF

Violation of the COML by Improper "Personnel Matter" Sessions (§§ 24-6-402(4)(f)(I) & -402(9), C.R.S.)

55. Plaintiffs incorporate the allegations of preceding paragraphs 1 through 45 of this Complaint as though fully set forth herein.

56. Plaintiff Lobato is a "citizen of this State" under the COML, § 24-6-402(9), C.R.S., and as such, has standing to bring a claim for declaratory and injunctive relief under the COML. Plaintiff Valley Publishing, Inc. also has standing to bring this claim by virtue of its activities in publishing a newspaper that reports on the activities of the Board.

57. Plaintiffs have suffered an injury in fact through the acts and omissions of the Board with respect to the Board's closed-door meetings on May 4, 2010 and May 11, 2010, in which the Board discussed the performance and tenure of various members of the Saguache County Planning Commission, none of whom were employees of Saguache County at the time of the discussions.

58. The Board has established a pattern of improperly convening executive session discussions to discuss persons who are not employees of Saguache County, in violation of § 24-6-402(4)(f)(I), C.R.S., of the COML.

59. On information and belief, the plaintiffs allege that the Board intends to continue to engage in this pattern of violations of the COML by convening improper closed-door "personnel matters" meetings to discuss persons who are not employees of Saguache County.

60. In light of the foregoing, there is an actual case or controversy concerning the legality under the COML of the Board's past and anticipated future practice of convening "personnel matters" executive sessions.

61. The plaintiffs have suffered irreparable harm as a result of the Board's practice described herein because they cannot intelligently exercise their rights to freedom of speech, petition, or association, or Ms. Lobato's electoral franchise, without the information that would otherwise be publicly available regarding the Board's discussions of the performance and tenure of the Planning Commission members during the improperly closed discussions in May 2010, as well as generally with respect to any "personnel matter" discussion of a non-employee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Valley Publishing, Inc. and Sylvia Lobato respectfully pray for the following relief and judgment:

A. Declaratory relief

The Court should enter a declaratory judgment finding the following as a matter of fact and law:

- The Board of County Commissioners of Saguache County violated the COML by convening closed-door meetings on the following dates without adequately identifying the particular matters to be discussed in as much detail as was possible at the time:
 - January 5, 2010,
 - January 19, 2010,
 - February 9, 2010,

- February 16, 2010,
 - March 9, 2010,
 - March 16, 2010,
 - April 6, 2010,
 - April 20, 2010,
 - May 4, 2010
 - May 11, 2010, and
 - June 8, 2010.
- The Board of County Commissioners of Saguache County violated the COML on the following dates by invoking the executive session exemption for “personnel matters” under § 24-6-402(4)(f)(I), C.R.S., when it engaged in closed-door discussions of persons who were not employees of Saguache County, and for discussing general policy issues that were not particular to any individual county employee:
 - May 4, 2010
 - May 11, 2010.

B. Injunctive relief

The Court should enter injunctive relief against the Defendant, and all of its members, in their official capacities, and all of their officers, agents, representatives, attorneys, and employees, requiring that the Board of County Commissioners of Saguache County must henceforward:

- Ensure that prior to retiring for a closed-door executive session discussion, the Board must identify the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is being called. By way of example, and without limiting the full breadth of announcements that the Board is required to make prior to convening an executive session, the Board must identify at least the following aspects of the anticipated closed-door discussion:
 - For “personnel matter” conferences, the job category of the county employee under discussion and the nature of that discussion, such as “performance evaluation of the land use manager.”
 - For “attorney communication” conferences, the specific lawsuit or claim, if such has been filed, or if not, the specific legal issue being discussed, such as “potential liability issues arising from proposed regulation of medical marijuana dispensaries.”
- Direct that to the extent any person requests access to any of the records or recordings of the closed meetings found herein to have been in violation of the COML, that such records or recording must be made available for inspection

and/or copying without regard to the provisions of § 24-6-402(2)(d.5)(II)(D), C.R.S., of the COML.

C. Attorney's fees and costs: The Court should award the plaintiffs their reasonable attorney's fees and costs in bringing this civil action pursuant to § 24-6-402(9), C.R.S.

D. The Court should enter such other and further relief as the Court deems proper and just.

Respectfully submitted to the Court this 6th day of July, 2010

By s/ Christopher P. Beall
Christopher P. Beall, #28536
LEVINE SULLIVAN KOCH & SCHULZ, LLP

Attorneys for Plaintiffs
Valley Publishing Inc., d/b/a *Center Post-Dispatch*,
and **Sylvia Lobato**

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THIS COMPLAINT WAS FILED WITH THE CLERK OF THE COURT THROUGH
THE LEXISNEXIS FILE-AND-SERVE ELECTRONIC FILING SERVICE. UNDER
C.R.C.P. 121(C), § 1-26. THE ORIGINAL SIGNED COPY OF THIS DOCUMENT IS ON FILE WITH LEVINE SULLIVAN
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