ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 9/28/2023 10:16 PM
By: Rosa Lopez, Deputy

CHRISTINE DAVI, SBN 178389, in pro per
c/o Law Office of Anthony D. Davi
215 W. Franklin Street, Suite 205
Monterey, CA 93940
(831) 373-3192
Email: davifamily831@gmail.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

CHRISTINE DAVI, Plaintiff, vs. CARMEL UNIFIED SCHOOL DISTRICT and DOES 1-10, inclusive Defendants.	Case No. 23CV003167 VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action seeks to invalidate the action taken by Carmel Unified School District (CUSD) on August 11, 2023 during a special closed session meeting in violation of the Ralph M. Brown Act, the outcome of which culminated in the illegal approval of a separation agreement with its former superintendent and the illegal disbursement of funds pursuant to that agreement.

This action also seeks to void the settlement agreement with CUSD's former superintendent under Civil Code section 1667 because it exceeded the amount allowed under Government Code sections 53260 and 53261, and the amount allowed under the former superintendent's employment agreement, resulting in an illegal expenditure of public funds/waste. Petitioner seeks a writ of mandate requiring CUSD to seek disgorgement of the illegally paid funds.

In addition, this action seeks injunctive relief requiring CUSD to comply in the future with the Ralph M. Brown Act by properly agendizing closed session titles for existing litigation by stating the case name on the face of the agenda, for potential litigation by stating the number of cases to be discussed, and, if applicable, stating the facts and circumstances on the agenda for threatened litigation and attaching relevant documentation to an open session report.

THE PARTIES

2. Petitioner is an individual and is now and at all times mentioned in this Petition was, a resident and taxpayer of Monterey County residing within the boundaries of the Carmel Unified School District. Petitioner is concerned about the lack of transparency by CUSD and its failure to follow applicable laws as evidenced by its refusal to comply with the Brown Act and the resulting unlawful expenditure of public funds made to its former superintendent.

3. Respondent, Carmel Unified School District (CUSD) is a public entity duly incorporated and operating under California law as a school district and is subject to the Brown Act. (Government Code sections 54951 and 54953; <u>Kolter v. Commission on Professional Competence of Los Angeles Unified School District</u> (2009) 170 Cal.App.4th 1346.)

4. Petitioner is informed and believes, and thereon alleges that the true names and capacities of defendants named as Does 1 through 10 are unknown to Petitioner, who therefore sues these defendants by such fictitious names. Petitioner will amend the Petition to show their true names and capacities when they have been ascertained. Petitioner is informed and believes, and thereon allege, that the defendants named herein as Does 1 through 10 are, in some manner the nature and extent of which have

not yet been ascertained by petitioner, responsible for or interested in the matters alleged in this Petition.

5. Pursuant to California Code of Civil Procedure sections 526, 527, 1085 (alternatively section 1094) and 1087, Government Code section 54960 and 54960.2, this Court has the jurisdiction to declare that the CUSD violated the Brown Act by failing to properly title closed session items, unlawfully approving employee compensation in a closed session special meeting and issue a writ of mandate and injunctive relief directing CUSD to comply with the Brown Act.

6. Venue is proper in this Court because the cause of action alleged in this Petition arose in Monterey County.

7. Petitioner has complied with the requirements of Government Code sections 54960.1 and 54960.2 by delivering CUSD letters on August 14, 2023 and September 13, 2023 demanding that CUSD provide an unconditional commitment to comply with the Brown Act. A copy of the letters is attached hereto and incorporated by reference as **Exhibits A1-A-2.**

8. On September 14, 2023, CUSD responded through its legal counsel, verbally, that there had been no violation of the Brown Act as the separation agreement was a proper resolution of pending litigation.

9. CUSD responded in writing on September 22, 2023, claiming that it had not violated the Brown Act. CUSD failed to provide an unconditional commitment to comply with the Brown Act going forward. A copy of the letter is attached hereto as **Exhibit B**.

10. Petitioner has performed all conditions precedent to filing this action and has exhausted all available administrative remedies to the extent required by law.

STATEMENT OF FACTS

11. CUSD and Edward Theodore Knight ("Superintendent") entered into an Employment Agreement that was approved by the CUSD Board on May 21, 2021. The Employment Agreement is for a three-year term, beginning on July 1, 2021 and

terminating on June 30, 2024, unless terminated earlier or extended as provided by the terms of the agreement or as required by law. **(Exhibit C)**

12. Section 2(a) of the employment agreement provides for a salary to be paid to Superintendent in the amount of $270,000 annually.

13. Section 8(e) of the employment agreement provides that if the employment agreement is terminated without cause, a severance pay in an amount equal to the remainder of the term, or 12 months, whichever is less, plus health benefits for the same period, shall be paid ("Severance Payment"). The employment agreement specifies that any Severance Payment will be treated as compensation.

14. Section 8(e) of the Employment Agreement specifies that the Severance Payment constitutes "…reasonable liquidated damages for the Superintendent, fully compensates the Superintendent for all tort, contract, and other damages of any nature whatsoever, whether in law or equity, and does not result in a penalty. CUSD and Superintendent agreed that CUSD's "completion of its obligations under this provision constitutes the Superintendent's sole remedy to the fullest extent provided by law. Finally, the parties agree that this provision meets the requirements governing maximum cash settlements as set forth in Government Code sections 53260, et. seq."

13. Section 15 of the Employment Agreement requires CUSD and Superintendent to participate in mediation and binding arbitration to resolve disputes.

14. CUSD's special closed session meeting agenda for August 11, 2023 listed the follow items for discussion in closed session:

II. Closed Session

A. Public Employee Discipline/Dismissal/Release Pursuant to Government Code section 54957, subd. (b)(1)

B. Conference with Legal Counsel – Anticipated Litigation Significant exposure to litigation pursuant to Gov. Code section 54956.9, subd. (d)(2)

C. Conference with Legal Counsel – Existing Litigation (Gov. Code section

54956.9, subd. (d)(1))

The meeting minutes from August 11, 2023 reflect the same agenda titles.

15. On August 11, 2023, the CUSD Board met in closed session for approximately 73 minutes. The CUSD Board reconvened in open session at 10:21 a.m. and made one announcement from closed session as follows:

> The Board President Sara Hinds reported out that in closed session the Board voted 3-2, with Board Members Nachbar and Rosen voting no, to approve an agreement with Superintendent Knight under which he will resign in exchange for a separation payment. The Board will provide further information about the agreement later today.

16. At 3:46 p.m. CUSD emailed parents and staff that CUSD "received the resignation" of the Superintendent. "As part of the agreement the Superintendent agrees to dismiss a lawsuit he recently filed against the District. The Superintendent will also withdraw the multiple complaints he lodged against the District. He also foregoes any additional payment or benefits under this current contract or payment for attorneys' fees. In exchange, the district will provide him a payment derived from the value of two years of his contractual compensation including benefits and retirement, $770,000."

17. CUSD and Superintendent entered into a Settlement Agreement and Release of All Claims ("Separation Agreement"), attached hereto and incorporated by reference as **Exhibit D.**

18. On August 14, 2023, Petitioner sent a demand to CUSD to cure and correct the actions taken on August 11, 2023 in violation of the Brown Act, and to declare the actions null and void pursuant to Government Code section 54960.1**.** The only action taken by the CUSD Board on this date was the approval of the Separation Agreement with Superintendent in the special closed session meeting.

19. Petitioner spoke during public comments at the CUSD Board meeting of August 16, 2023, requesting that CUSD cure the Brown Act violations and declare null and void the action taken to approve the Separation Agreement with Superintendent.

20. On August 17, 2023, CUSD paid Superintendent $770,000 from Fund-Object 01-5809 by Check Number 12781816 even though this payment did not need to be made until September 25, 2023 pursuant to the Separation Agreement.

21. On September 6, 2023, counsel for CUSD sent an email to Petitioner in response to Petitioner's voicemail, indicating that Petitioner's letter would be discussed with the Board at the next meeting.

22. CUSD's meeting agenda for September 13, 2023 listed the following closed session agenda titles:

> IV. CLOSED SESSION
>
> A. Conference with Legal Counsel - Anticipated Litigation Pursuant to Government Code 54956.9(d)(2): Three (3) Cases
>
> B. Conference with Legal Counsel - Initiation of Litigation Pursuant to Government Code 54956.9(d)(4): Consider Social Media Adolescent Addiction/Personal Products Liability Class Action Litigation
>
> C. Conference With Legal Counsel – Existing Litigation Pursuant to Government Code §54956.9, subd. (d)(1)
>
> D. Public Employee Discipline/Dismissal/Release Pursuant to Government Code §54957, subd. (b)(1)
>
> E. Conference With Real Property Negotiations Pursuant to Government Code §54956.8
>
> F. Public Employee Performance Evaluation Pursuant to Government Code §54957: Interim Superintendent
>
> G. Conference With Labor Negotiators (Gov. Code, § 54957.6, subd. (a))

23. In response to the ongoing deficiencies in the agenda titles for closed session, Petitioner sent a second demand letter on September 12, 2023 reiterating the request to cure Brown Act violations and declare the actions of August 11, 2023 null and void pursuant to Government Code section 54960.1, and to cease and desist the use of deficient and improper titles on closed session agendas in the future.

FIRST CAUSE OF ACTION

Violations of the Brown Act – Invalidation of Action Taken on August 11, 2023

(Government Code section 54960.1)

24. Petitioner realleges paragraphs 1 through 23 and incorporates those paragraphs by reference.

25. The purpose of the Brown Act is to further transparency and allow the public to provide input before final action is taken.

26. In furtherance of public participation and transparency, the Brown Act prohibits:

a. Final action on severance pay in a closed session. (Government Code section 54957.)

b. Final action on compensation of unrepresented employees, such as Superintendent, in a closed session. (Government Code section 54957.6(a).)

c. Final action on an executive's compensation in a closed session. (Government Code section 54953(c)(3).)

d. In furtherance of public participation and transparency, the Brown Act prohibits taking final action on an executive's compensation at a special meeting. (Government Code section 54956.)

27. At a special closed session meeting on August 11, 2023, CUSD reported taking one action, resulting in the Separation Agreement and an exorbitant payout contrary to the above referenced statutes. The title under which the action was taken was not disclosed. The reported action out of the closed session was that an agreement with

Superintendent was approved "…under which he will resign in exchange for a separation payment…" The reporting out of closed session does not comply with the requirements of Government Code section 54957.1.

28. Petitioner and the public were deprived of the opportunity to provide comment on the Separation Agreement before it was finalized because there was no notice that this would take place in the special meeting closed session. Had Petitioner been aware of this action in advance, Petitioner would have made the following comments: (1) Superintendent's Employment Agreement dictates the maximum amount of severance payment he is to receive; (2) the amount of severance is limited by Superintendent's Employment Contract and Government Code section 53260(a)(2); the termination clause in Superintendent's Employment Contract provides that the severance and health benefits described in the agreement "…fully compensates the Superintendent for all tort, contract, and other damages of any nature whatsoever, whether in law or equity…"; (3) that the severance payment is "…the Superintendent's sole remedy to the fullest extent provided by law;" (4) that CUSD and Superintendent agreed that "…this provision meets the requirements governing maximum cash settlements" as set forth in Government Code section 53260; (5) that based on Superintendent's Employment Contract a payout of $770,000 results in an overpayment of approximately $524,480; and (6) Superintendent's Employment Agreement specifies that any severance payment is compensation, therefore, closed session on a severance and final approval in a special meeting closed session violates the Brown Act. In other words, CUSD's assertion in the Separation Agreement recitals that payment was made to Superintendent to resolve a California Public Records Act case and other employment related complaints is untenable given the terms of Superintendent's Employment Agreement.

29. Petitioner is prejudiced by CUSD's action due to the deficient closed session agenda titles, her reasonable reliance on existing procedural and substantive law, and

the severance terms of the Superintendent's Employment Contract. CUSD denied Petitioner the opportunity to discourage CUSD from taking unlawful action. Petitioner, as a resident in the district and the parent of a student in the district, is prejudiced by the unlawful approval and payment to Superintendent.

SECOND CAUSE OF ACTION

Illegal Expenditure of Public Funds/Waste

(Government Code section 53260(a)(2) and 53261; Civil Code section 1667)

30. Petitioner realleges paragraphs 1 through 29 and incorporates those paragraphs by reference.

31. The expiration date of Superintendent's Employment Agreement was June 30, 2024. Superintendent had 10 months and 19 days left on his contract at the time of his resignation/termination of the Employment Agreement. Therefore, the maximum amount payable under Government Code section 53260(a)(2), and under Superintendent's Employment Agreement, was $245,520. CUSD's overpayment to Superintendent in the amount of $524,480 constitutes an illegal expenditure of public funds, and renders the agreement void pursuant to Civil Code section 1667. (Page v. Mira Costa Community College District (2009) 180. Cal.App.4th 471.)

THIRD CAUSE OF ACTION

Violations of the Brown Act – Deficient Closed Session Agenda Titles

(Government Code section 54960.2)

32. Petitioner realleges paragraphs 1 through 3 and incorporates those paragraphs by reference.

33. On August 11, 2023, August 16, 2023, and September 13, 2023, CUSD's closed session agenda titles reference anticipated litigation, significant exposure to litigation, pursuant to Government Code section 54956.9(d)(2). On August 11, 2023 the number of cases not identified, and, for all dates referenced above, Petitioner is informed and

believes that more information should be stated on the agenda pursuant to Government Code section 54956.9 (e)(2)-(5).

34. On September 6, 2023, counsel for CUSD advised that Petitioner's August 14, 2023 letter was going to be discussed in closed session on September 13, 2023. There was no indication on the September 1,3 2023 agenda that Petitioner's letter was going to be discussed. Government Code section 54956.9(e)(2) would have required the facts and circumstances of Petitioner's letter be stated on the agenda or announced, or that the letter be attached to an open session agenda report pursuant to the decision in Fowler v. City of Lafayette (2020) 46 Cal.App. 5th 360. CUSD does not properly agendize closed session discussions in violation of the Brown Act and its own policies for closed sessions.

35. CUSD refuses to make an unconditional commitment to cease and desist from, and not repeat such violations of the Brown Act. Accordingly, a controversy exists regarding CUSD's past compliance with the Brown Act and CUSD is likely to continue such violations of the law.

36. The challenged actions will cause great and irreparable injury to Petitioner and the public.

37. Petitioner has no other plain, speedy or adequate remedy in the ordinary course of law for the injuries caused by CUSD's failure to comply with the Brown Act.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

1. Invalidation of the action taken by CUSD on August 11, 2023 to approve the Separation Agreement and a declaration that the action was in violation of the Brown Act and is null and void. Petitioner is entitled to a writ of mandate commanding CUSD to vacate and rescind the challenged actions.
2. For a Declaration that the payment by CUSD under the Separation Agreement

that was more than the amount authorized under Government Code sections 53260(a)(2) and 53261, and the Employment Agreement, and was an illegal expenditure of public funds/waste, and therefore the Separation Agreement is illegal and void under Civil Code section 1667. Petitioner is entitled to a writ of mandate commanding CUSD to seek disgorgement of the funds paid on an illegal contract.

3. A preliminary and permanent injunction requiring CUSD to comply with Brown Act closed session agenda titles.
4. A preliminary and permanent injunction requiring CUSD to tape record their closed sessions as provided in Government Code section 54960.
5. For Petitioner's reasonable attorney's fees; and
6. For such other and further relief as the court deems just and proper.

Dated: 09/27/23

By: Christine Davi

VERIFICATION

I, Christine Davi, am a party to this action and make this verification on my own behalf. The verified petition for writ of mandate and complaint for injunctive and declaratory relief are true of my own knowledge except to those matters which are stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 9/17/23

Christine Davi

Christine Davi

M. Christine Davi, Esq.
Davifamily831@gmail.com
(831) 626-4514

August 14, 2023

Via Email

Carmel Unified School District
Sara Hinds, Board President
Karl Pallastrini, Board Clerk
Seaberry Nachbar, Board Member
Anne Marie Rosen, Board Member
Jason Remynse, Board Member

William Tunick, Esq.
Dannis, Woliver, Kelley
200 California Street, Suite 400
San Francisco, CA 94111
wtunick@dwkesq.com

Kathleen Darmagnac, Esq.
Leone Alberts & Duus
1390 Willow Pass Rd, Suite 700
Concord, CA 94520-7913

Re: Request to Cure Brown Act Violations
Actions Taken on August 11, 2023 are Null and Void
Government Code section 54960.1

Dear CUSD Board, Mr. Tunick, and Ms. Darmagnac:

On August 11, 2023, the Carmel Unified School District (CUSD) issued a press release indicating that Mr. Ted Knight had resigned from the district, agreed to dismiss a lawsuit, and withdraw other unspecified complaints against the District and in exchange "... the District will provide him a payment derived from the value of two years of his contractual compensation including benefits and retirement, $770,000." This agreement to settle a lawsuit and offer severance pay was apparently reached and finalized in a special meeting closed session that did not substantially comply with statutory requirements of the Brown Act. CUSD is skirting around public employee compensation disclosure requirements and severance pay limitations by marrying the separation agreement with a litigation settlement. As explained below, this is expressly disallowed by statute and case law.

Brown Act Severance Pay and Final Action Violations

As you know, school districts are subject to the Brown Act, requiring compliance with open meeting and closed session laws. (Government Code sections 54951 and 54953; Kolter v. Commission on Professional Competence of Los Angeles Unified School District (2009) 170 Cal.App.4th 1346.)

Government Code section 54957 does not authorize final action on severance pay in a closed session. Indeed, Government Code section 54957.6(a) prohibits final action on compensation of unrepresented employees, such as Mr. Knight, in a closed session. Moreover, Government Code section 54953(c)(3) prohibits taking final action on an executive's salary in a closed session as done by the CUSO Board on August 11th. In addition, executive compensation may not be discussed at a special meeting. (Government Code section 54956.) The purpose of these laws is to further transparency and allow the public to provide input before final action is taken. Here, the public was deprived of this opportunity.

Government Code section 53260(a)(2) limits a cash settlement upon termination of a contract to an amount equal to Mr. Knight's monthly salary multipliec;i by 12. Mr. Knight's employment contract contains this limitation. Moreover, Government Code section 53261 specifies that a cash settlement shall not include any other noncash items, except health benefits that may continue to be paid for the same duration as the settlement.

Mr. Knight's base salary in 2022 was $270,000 per year. According to CUSO's press release, the payment of $770,000 was the equivalent of Mr. Knight's salary and benefits for two years. As demonstrated in Page v. Mira Costa Community College Dist. (2009) 180 Cal.App.4th 471, the agreement with Mr. Knight is improper. In the Page case, a community college district reached an agreement with a controversial president for payment of her monthly salary, some other benefits, and $650,000 for damages in exchange for a release and an agreement to "step down."(at p. 481-482.) The court determined that the president could pursue a settlement of disputes within the limitations of Section 53260 and 53261 or pursue claims for money or damages independent of any settlement. (Id. at 493.) The court noted sections of the Legislative history highlighting the policy behind these rules:

> ... some local governments buy-out their executives' contracts when they fire them. Even when school districts renew superintendents' contracts early, they sometimes turn around and let them go. These practices produce cash settlement that disturb public watchdogs. One hospital

> district terminated its chief executive 32 months before the contract expired, paying $2-06, -42 in settlement. A community college district paid its superintendent $126,000 to settle the seven remaining months of an unexpired contract. While no-cut contracts may be fine for professional sports figures, local government should not pay their former executives not to work. SB 1972 imposes statewide standards on local contracts to limit excessive cash settlements. (19.: at 491 [citation omitted].)

Mr. Knight's excessive payout is not supported by the facts disclosed to the public, or the law.

Closed Session Agenda Title Deficiencies

CUSD's August 11, 2023 closed session agenda title (attached) listed: (1) Public Employee Discipline/Dismissal/Release Pursuant to Government Code section 54957(b)(1); (2) Conference with Legal Counsel -Anticipated Litigation - Significant Exposure to Litigation Pursuant to Government Code section 54956.9(d)(2); and (3) Conference with Legal Counsel - Existing Litigation (Government Code section 54956.9(d)(1).

I do not dispute that accepting Mr. Knight's resignation was properly agendized and appropriately held in closed session. However, the agenda title for the existing litigation matter did not reference the case name as required by Government Code section 54954.5. Was this Mr. Knight's Public Records Act case? His California Civil Rights Department case? Some other entirely unrelated litigation matter? Ostensibly, these litigation matters pertained to Mr. Knight, but the public had no way of knowing that from the face of the agenda. Due to the deficient agenda titles and the improper merging of an employment agreement with litigation, the public is unable to evaluate this exorbitant payout. Reference to a resolution of a Public Records Act (PRA) case does not add up either. A victory in a PRA lawsuit for Mr. Knight would not entitle Mr. Knight to monetary damages; only attorney's fees could be awarded if he had prevailed.

The anticipated litigation title did not identify the number of cases and it is not clear whether more information should have been stated on the agenda pursuant to Government Code 54956.9 subsection (e)(2)-(5). Certainly, the facts and circumstances of the potential litigation were known to Mr. Knight if this closed session pertained to him. More detail should have been included in the agenda title.

The CUSD Board's decision pay $770,000 was contrary to established laws, was procedurally unfair to the public, and against public policy. It is hereby demanded that CUSD cure and correct the actions taken on August 11, 2023 in violation of the Brown Act prior to November 9, 2023.

Thank you for your anticipated cooperation.

Sincerely,

Christine Davi

Christine Davi

cc: Interim Superintendent Sharon Ofek

Carmel Unified School District

Special Closed Session Board Meeting
08/11/2023 09:00 AM
District Office - Large Conference Room
4380 Carmel Valley Road, Carmel, CA 93923

Printed : 8/14/2023 5:35 PM PT

Carmel Unified School District Mission Statement: The Carmel Unified School District community produces lifelong learners who are prepared for the challenges of higher education, the workplace, and their role as citizens of an ever-changing global community.

AGENDA AND ORDER OF BUSINESS

I. OPENING BUSINESS

A. CALL TO ORDER/ESTABLISH QUORUM

8. ADOPT AGENDA

C. PLEDGE OF ALLEGIANCE

D. PUBLIC COMMENT CLOSED SESSION ITEMS ONLY

II. CLOSED SESSION

A. Public Employee Discipline/Dismissal/Release Pursuant to Government Code §54957, subd. (b)(1)

8. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant exposure to litigation pursuant to Gov. Code,§ 54956.9, subd. (d)(2)

C. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION (Gov. Code,§ 54956.9, subd. (d)(1))

111. RECONVENE TO OPEN SESSION

A. REPORT ACTION TAKEN CLOSED SESSION, IF ANY

IV. ADJOURNMENT

M. Christine Davi, Esq.
Davifamily831@gmail.comm
(831) 626-4514

September 12, 2023

Via Email

Carmel Unified School District
Sara Hinds, Board President
Karl Pallastrini, Board Clerk
Seaberry Nachbar, Board Member
Anne Marie Rosen, Board Member
Jason Remynse, Board Member

William Tunick, Esq.
Dannis, Woliver, Kelley
200 California Street, Suite 400
San Francisco, CA 94111
wtunick@dwkesq.com

Re: Request to Cure Brown Act Violations
Actions Taken on August 11, 2023 are Null and Void
Government Code section 54960.1

Dear CUSD Board and Mr. Tunick:

This letter reiterates the points made in my letter dated August 11, 2023, my public comments made on August 16, 2023, and it alleges additional areas where the District must change its practices to come into compliance with the law.

1. Illegal Expenditure of Public Funds/Uniust Enrichment

Approval of the $770,000 payment in the August 11, 2023 se111ement agreement and release is an illegal expenditure of public funds resulting in the unjust enrichment of Mr. Knight.

It cannot be disputed that the agreed upon payment to Mr. Knight exceeds the maximum cash se111ement allowed under Government Code section 53260(a)(2). The expiration date of Mr. Knight's employment contract was June 30, 2024. Mr. Knight had

10 months and 19 days left on his contract at the time of his resignation. Therefore, the maximum amount payable under both state law and his employment contract was $245,520. The overpayment to Mr. Knight of $524,480 constitutes an illegal expenditure of public funds, and renders the agreement void under Civil Code section 1667.

In addition, Government Code section 53261 provides that any settlement under Section 53260 shall not include any other noncash items except health benefits. The District's August 11, 2023 press release indicates that the value of the payment to Mr. Knight was "... derived from the value of two years of his contractual compensation including benefits and retirement ... " Indeed, the District's settlement agreement disregards decades of legal precedent first decided in the case of Page v. Mira Costa Community College District (2009) 180 Cal.App.4th 471, which is squarely on point. Under substantially similar facts, the court in the Page case concluded that". .. cash and noncash settlement limitations apply 'if the contract is terminated' regardless of the underlying reasons for termination or the employee's legal claims he or she may possess at the lime of termination." (Id. at 489.) The court stated that ii is:

> ... compelled to conclude the Legislature's purpose was to set strict limits on cash and 'noncash items' payable in settlements upon termination of a local agency administrator's contract, without regard for the circumstances existing at the time of termination, the reasons, if any, for termination, or the nature of the disputes between the parties.

Here, too, the District's agreement to pay Mr. Knight more than he was entitled to under the law by couching the terms of the settlement as paymen!Jor other claims is not lawful.

2. Illegal Gift of Public Funds

Based on the facts available to the public and the recitals contained in the settlement agreement and release, the District had not taken any adverse employment action against Mr. Knight, he had not quit his job, and the District denied any wrongdoing. As a result, Mr. Knight's agreement to waive potential claims against the District did not constitute consideration sufficient to justify the excess payment of $524,480 in monetary damages, and therefore that payment constitutes an illegal gift of public funds in violation of the California Constitution.

The consideration recited in the settlement agreement and release is pretexted to justify the overpayment. Had Mr. Knight prevailed in a California Public Records Act lawsuit, he would have only been entitled to request the payment of his attorney's fees and costs, not monetary damages. There is insufficient information available to the public to determine whether the California Civil Rights Department (CCRD) investigated Mr. Knight's June 1, 2023 claim against the District and/or if the CCRD issued him a right to sue letter. Similarly, there is insufficient information disclosed to the public regarding Mr. Knight's June 28, 2023 Equal Employment Opportunity Commission complaint. However, as described by the court in Page, "... it is of no consequence that an employee under contract asserts legal claims against the local agency employer prior to contract termination. If that employee and employer nevertheless elect to terminate employment in the face of those claims (or the employer unilaterally terminates the contract), the employee's cash settlement, if any, is capped ... " (kl at p. 492.) Here, as in the Page case, "the undisputed facts reveal that any potential legal claims [Knight] may have possessed against the District...led up to and were connected with the decision to end [his] contract and negotiate a settlement." (.[g. at 494.)

The agreement to pay Mr. Knight a settlement that exceeded the maximum cash and noncash limitations set out by law on termination of his contract results in the District's payment more than its maximum legal exposure, and thus such a payment is a violation of the California Constitution. (Id.; *See also* Koenig v. Warner Unified School District (2019) 41 Cal.App.5th 43.)

3. Multiple Brown Act Violations on August 11, 2023

a. Procedural issues

The agreementto settle a lawsuit and offer severance pay was apparently reached and finalized in a special meeting closed session on August 11, 2023 that did not substantially comply with statutory requirements of the Brown Act.

First, Government Code section 54957.6(a) prohibits the District from taking final action on compensation of unrepresented employees, such as Mr. Knight, in a closed session. Second, Government Code section 54953(c)(3) requires an oral report on the final action of compensation during the open meeting in which the action is to be taken. In other words, it prohibits the District from taking final action on executive compensation during a closed session. Third, Government Code section 54956(b) prohibits the District from taking final action on executive compensation during a special meeting. Here, the District finalized Mr. Knight's exorbitant payout during a special meeting, in a closed session, contrary to the above three statutes.

b. Agenda Description Deficiencies

There were three closed session items listed on the August 11, 2023 closed session agenda: (1) Public Employee Discipline/Dismissal/Release Pursuant to Government Code section 54957(b)(1); (2) Conference with Legal Counsel Anticipated Litigation Significant Exposure to Litigation Pursuant to Government Code section 54956.9{d)(2); and (3) Conference with Legal Counsel, Existing Litigation (Government Code section 54956.9(d)(1).) Due to the deficient agenda titles and the improper merging of Mr. Knight's separation agreement with litigation, the public was unable to evaluate what was being discussed in closed session.

The anticipated litigation title did not identify the number of cases, and it was not clear whether more information should have been stated on the agenda pursuant to Government Code 54956.9 subsection (e)(2)-(5). Certainly, the facts and circumstances of the potential litigation were known to Mr. Knight if this closed session pertained to him. More detail should have been included in the agenda title. Please see Fowler *v.* City of Lafayette (2020) 46 Cal.App.5th 360, regarding details that are required to be included with closed session agenda titles using the Section 54956.9(d)(2) public meeting exception.

c. Reporting out of Closed Session.

Although there were three distinct closed session items on the August 11, 2023 agenda, there was only a single public report made of the action taken:

> The Board President Sara Hinds reported out that in closed session the Board voted 3-2, with Board Members Nachbar and Rosen voting no, to approve an agreement with Superintendent Knight under which he will resign in exchange for a separation payment. The Board will provide further information about the agreement later today.

Government Code section 54957.1 requires that a public report be made for any action taken on each agenda item. The *above* reporting out of closed session does not identify under which closed agenda title this action was taken.

4. Brown Act Violations on August 16, 2023

The anticipated litigation title identified *five* cases, and ii is not clear whether more information should have been stated on the agenda pursuant to Government Code 54956.9 subsection (e)(2)-(5). Please see Fowler *v.* City of Lafayette (2020) 46

Cal.App.5th 360, regarding details that are required to be included with closed session agenda titles using the Section 54956.9(d)(2) public meeting exception.

5. <u>Issues with Agenda for September 13, 2023</u>

There are three anticipated litigation cases listed on the agenda. It is not clear whether more information should have been stated on the agenda pursuant to Government Code 54956.9 subsection (e)(2)-(5). Please see <u>Fowler v. City of Lafayette</u> (2020) 46 Cal.App.5th 360, regarding details that are required to be included with closed session agenda titles using the Section 54956.9(d)(2) public meeting exception.

6. <u>Conclusion and Request</u>

It is clear from the District's August 11, 2023 press release on this topic, and its announcement from closed session, that the intent of the District was to "approve an agreement under which Mr. Knight will resign in exchange for a separation payment." The agreement to pay an amount beyond what the law allows is a disservice to CUSD students, teachers, employees, and programs. The purpose of the laws described above is to avoid excessive payouts and protect the public's interest, further transparency, and to allow the public to provide input before final action is taken on District business. Here, the public was deprived of this opportunity and Mr. Knight's excessive payout is not supported by the facts disclosed to the public or the law.

It is hereby demanded that CUSD cure and correct the actions taken on August 11, 2023 and August 16, 2023 in violation of the Brown Act. It is also demanded that the district immediately take steps, such as filing a declaratory relief action and/or seeking cancellation or reformation of the termination agreement to sever the illegal provisions, and seek the return of the excess payment from Mr. Knight.

Thank you for your anticipated cooperation

Sincerely

Christine Davi

Christine Davi

cc: Interim Superintendent Sharon Ofek

DWK
DANNIS WOLIVER KELLEY
Attorneys at Law

SAN FRANCISCO
200 California Street
Suite 400
San Francisco, CA 94111
TEL 415.543.4111
FAX 415.543.4384

LONG BEACH
444 W. Ocean Blvd.
Suite 1750
Long Beach, CA 90802
TEL 562.366.8500
FAX 562.366.8505

SAN DIEGO
750 B Street
Suite 2600
San Diego, CA 92101
TEL 619.595.0202
FAX 619.702.6202

CHICO
2485 Notre Dame Blvd.
Suite 370-A
Chico, CA 95928
TEL 530.343.3334
FAX 530.924.4784

SACRAMENTO
555 Capitol Mall
Suite 645
Sacramento, CA 95814
TEL 916.978.4040
FAX 916.978.4039

EAST BAY
2087 Addison Street
2nd Floor
Berkeley, CA 94704
TEL 510.345.6000
FAX 510.345.6100

FRESNO
7170 N Financial Drive
Suite 135
Fresno, CA 93720
TEL 559.388.5802
FAX 559.388.5803

www.DWKesq.com

WILLIAM B. TUNICK
Attorney at Law
wtunick@DWKesq.com

San Francisco

September 22, 2023

VIA EMAIL

M. Christine Davi, Esq.
Davifamily831@gmail.com

Re: Carmel Unified School District,
Request to Cure Brown Act Violations,
Our file 1885.230012

Dear Ms. Davi:

I write on behalf of the Carmel Unified School District regarding your August 14 and September 12, 2023 letters. The letters allege that actions taken by the District's Board of Education on August 11, August 16, and September 13 violated the Brown Act and request that it "cure and correct" those actions.

The August 14 letter asked that the Board take such action "prior to November 9, 2023." However, when I spoke with you recently, you said you believed the deadline to file a lawsuit regarding the alleged Brown Act violations was the end of September. While your letters also alleged that the Board's approval of an agreement with the District's former superintendent violated Government Code section 53260, I did not understand the same deadline to apply that claim. Accordingly, I wanted to first provide you with the Board's response regarding your Brown Act concerns in advance of the more-pressing deadline with the goal of avoiding unnecessary litigation and will follow up regarding the other matter.

The Board is cognizant of its duty to abide by the Brown Act and has worked with legal counsel to ensure compliance. As you are aware, there are certain topics, personnel and litigation as are relevant here, where boards must discuss and take action in closed session to protect individuals' privacy and the liability interests of the District. Even if limited by these concerns, the Board has, and will continue to look for opportunities to provide information to the public where possible. The Board has recently modified its closed session agenda items and reporting out from closed session beyond what is required to provide the public with more information. Also, while you did not offer any specific suggestions during our call, as I mentioned, the Board would consider any constructive feedback as to additional means by which it can provide more information to the public going forward.

That said, the letters do not provide sufficient information to explain why the allegations warrant litigation. They do not appear to provide authority to support the assertion that the Board violated the Brown Act and there are several procedural requirements which would appear to prevent such litigation as to many of your allegations.

First, the Brown Act only allows a lawsuit to invalidate an "action taken," as defined by the Brown Act, in violation of specific sections of the Brown Act. (Gov. Code, § 54952.6; §54960.1., subd. (a).[1]) However, your letters do not appear to identify any "action taken" at the August 16 or September 13 meetings to be cured or corrected. Thus, it is not clear what actions from the August 16 or September 13 meetings you are asking the Board to "cure and correct." (§ 54960.1, subd. (b) [demand in advance of litigation to invalidate action should "clearly describe the challenged action of the legislative body"].)

Second, among the other statutes that the letters allege the Board violated are sections 54956.9, 54957.1, and 54957.6. However, none of these statutes are included in section 54960.1, subdivision (a)'s list of potential violations which may be grounds to invalidate an action taken. Thus, it is not clear how they could serve as grounds to seek invalidation of any action under the Brown Act.

While these procedural concerns are sufficient reasons to avoid litigation, more importantly, as explained below, the letters do not provide support for the suggestion that the Board violated the Brown Act at the August 11, August 16, or September 13 meetings.

August 11 Board Meeting

On August 11, the Board held a special meeting including a closed session. The meeting agenda contained three closed session items and an item reporting the actions taken during the closed session. The three closed session items included the following:

> A. Public Employee Discipline/Dismissal/Release Pursuant to Government Code §54957, subd. (b)(1)
>
> B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Significant exposure to litigation pursuant to Gov. Code, § 54956.9, subd. (d)(2) (one case)
>
> C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Gov. Code, § 54956.9, subd. (d)(1)) (Knight v. Carmel Unified School District)

Following the closed session, the Board reported out the following:

> The Board President Sara Hinds reported out that in closed session the Board voted 3-2, with Board Members Nachbar and Rosen voting no, to approve an agreement with Superintendent Knight under which he will resign in exchange for a separation payment. The Board will provide further information about the agreement later today.

Within a few hours of the meeting, the District emailed a statement regarding the Resolution Agreement to its community and posted the Resolution Agreement on its website. On August 14, the District received your letter, outlining several alleged violations of the Brown Act.

---

[1] Unless otherwise noted, all statutory references are to the Government Code.

Closed Session Action

The letters claim the Board's action in closed session on August 11, specifically approval of the Resolution Agreement, violated Brown Act. However, the Brown Act allows discussion and action on a settlement agreement in closed session under section 54956.9. The letters instead focus on Brown Act provisions which impose requirements on discussion and action regarding "salaries, salary schedules, or compensation paid in the form of fringe benefits." Specifically, the letters cite sections 54953(c)(3), 54956, and 54957.6(a). In combination, these code sections require that discussion and action regarding "salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive" take place at regular meetings and action take place in open session following an oral summary of a recommendation for final action.

In asserting these provisions applied to approval of the Resolution Agreement, the letters suggest that "salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive," must be read to include "settlement agreements." The letters do not appear to contend the Resolution Agreement involved "salary schedules, or compensation paid in the form of fringe benefits of a local agency executive," so it appears the argument is that the Resolution Agreement is "salary."

The letters do not explain how the Resolution Agreement falls under "salary" and the statutory language itself does not reference resolution agreements, settlement agreements, or payments made pursuant thereto. This is despite the fact that, in several other provisions, the Brown Act specifically references "settlement agreements." (See §§ 54956.9 & 54957.1.) The fact that the Legislature did not include a reference to settlement agreements or payments in the code sections at issue, especially where it otherwise felt the need to list three different types of payments, strongly suggests that the Legislature did not intend to include such matters within the scope of these requirements. (*People v. Conley* (2004) 116 Cal.App.4th 566, 574 ["a maxim of statutory construction states that the expression of certain items in a statute necessarily involves exclusion of other things not expressed"].)

This is further highlighted by the fact that the legislative action which added the prohibition on discussion of "salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive" at a special meeting also included statutory amendments which specifically referenced settlement agreements. (Assem. Bill No. 1344 [2011-2012 Reg.Sess.].) The decision by the Legislature not to include similar language in the Brown Act provisions at issue indicates that discussions and action on settlement agreements, even involving personnel, are not subject to the Brown Act requirements which otherwise apply to "salary." (*People v. Montoya* (2021) 68 Cal.App.5th 980, 999 ["when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded."]

Finally, the assertion in the letters – that settlement or resolution agreements with employees cannot be discussion or acted on in closed session – does not cite to any provision of the Brown Act referencing settlement agreements and appears contrary to the California Supreme Court's holding that a legislative body may meet in closed session to discuss and act on a settlement agreement. (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 799.)

The letters do not address these points. They also do not otherwise cite authority suggesting that the Resolution Agreement falls within the Brown Act's definition of "salaries, salary schedules, or compensation paid in the form of fringe benefits." Absent such authority, the letter does not establish the Board's discussion and action on the Resolution Agreement violated sections 54953(c)(3), 54956, and 54957.6(a).

Closed Session Item Descriptions

The letters also allege violations of the Brown Act regarding the description of two closed session items on the August 11 agenda. It appears these allegations stem from the formatting of the Board agenda which has since been improved to avoid this confusion in the future.

The letters suggest the description for the existing litigation matter on the closed session agenda "did not reference the case name as required by Government Code section 54954.5." The District agrees that the description of a closed session item regarding existing litigation, generally, must include the name and/or case number. (§ 54956.9, subd. (g).) The agenda met this requirement as the name and case number were included as part of the agenda description, although some online formats of the agenda required an additional "click" to reveal this information. If viewed online, this information was included in the "agenda detail." If a member of the public clicked on the agenda item and/or printed the entire agenda, or reviewed a hardcopy at the District office, the information at issue could be found on the agenda.

The letters also note that "[t]he anticipated litigation title did not identify the number of cases and it is not clear whether more information should have been stated on the agenda pursuant to Government Code 54956.9 subsection (e)(2)-(5)." The agenda, again under agenda detail, indicated "One case," in accordance with the Brown Act's safe harbor closed session description. (§ 54954.5, subd. (c).)

Additionally, the letter does not establish that invalidation is the proper remedy as the agenda, at a minimum, "substantially complied" with the requirements of the Brown Act. (*Olson v. Hornbook Community Services District* (2019) 33 Cal.App.4th 502, 519.)

District staff has already developed a method to allow the online platform it uses for the Board agenda to display additional information. This improvement has been implemented as shown on the September 13 Board agenda.

Disclosure In Advance Of Closed Session

While not raised in the August 14 letter, the September 12 letter also suggests that "it was not clear whether more information should have been stated on the agenda pursuant to Government Code 54956.9 subsection (e)(2)-(5)." It cited *Fowler v. City of Lafayette* (2020) 46 Cal.App.5th 360 regarding "details that are required to be included with closed session agenda titles…" however it did not explain how *Fowler* was relevant to this allegation.

Fowler does not appear to address the "details that are required to be included with closed session agenda titles…." Instead, it involved the public inspection requirement of section 54956.9, subdivision (e)(5) and when writings regarding threats of litigation must be included within agenda materials available for public inspection upon request under section 54957.5 (*Fowler,* 46 Cal.App.5th at 369 ["Where litigation has been threatened outside a public meeting, it may be discussed in closed session … *only* if a record of the threat is made before the meeting, which record must be available for public inspection *pursuant* to *section 54957.5*.

[Citation.] The clear import of section 54957.5 is that agendas and other writings … should be available to the public upon request.”].) Pursuant to the holding of *Fowler*, to the extent the Board discusses anticipated litigation in closed session based on written threats of litigation or threats of litigation reduced to writing, the Board agenda website explains those records, along with others required to be subject to inspection under section 54957.5, can be inspected at the District office. The letter does not explain how *Fowler* requires any additional disclosure on the agenda itself.

To the extent the Board was discussing anticipated litigation from Knight, the written threat of such litigation (subsequently disclosed in response to a California Public Records Act request) provided grounds for the Board to meet in closed session and while *Fowler* may have clarified that such threats must be made available for public inspection under section 54957.5, the letter does not explain what additional information was required to be disclosed on the agenda or the basis for that requirement.

<u>Reporting Out Of Closed Session</u>

The September 12 letter also takes issues with the fact that “there were three distinct closed session items on the August 11, 2023 agenda, there was only a single public report made of the action taken.” The letter continues “Government Code section 54957.1 requires that a public report be made for any action taken on each agenda item. The … reporting out does not identify under which closed session agenda item this action was taken.” The letter does not provide authority for the three assumptions upon which this statement is based: (1) that the Board took more than one action in closed session on August 11; (2) section 54957.1 requires that a public report be made for *any* action taken in closed session; and, (3) that a report out must identify the agenda item under which an action was taken.

First, the Board did not take more than one action in closed session on August 11. Second, the letter provides no authority to suggest section 54957.1 requires that a board report out from “any action” taken in closed session. (C.f., *The Brown Act* (2003) California Attorney General’s Office [“When final action is taken in closed session, the legislative body *may* be required to report on such action. (§ 54957.1.)”].) The letter also does not address opinions of the Attorney General concluding that the Brown Act requires only that “any action” listed in section 54957.1 must be reported out as described in that section. (See 89 Ops.Cal.Atty.Gen. 110 (2006); 63 Ops.Cal.Atty.Gen. 215 (1980) [Brown Act reporting out requirement limited to actions listed in plain language of section 54957.1].) Third, the letter does not identify any language in section 54957.1 which indicates that a report must identify the specific agenda item under which an action was taken.

As noted above, the Board has already modified the way it reports out from closed session. It now exceeds what is required by the Brown Act by reporting out on each agenda item whether or not it has taken any action triggering a report under section 54957.1.

<u>August 16 and September 13 Board Meetings</u>

The September 12 letter raised two similar claims regarding the August 16 and September 13 meetings. Specifically: “[i]t is not clear whether more information should have been stated on the agenda pursuant to Government Code 54956.9 subsection (e)(2)-(5).” However, the letter does not identify specific items or actions which you believe to be in violation of the Brown Act, or at a minimum, did not substantially comply with the Brown Act.

In sum, your August 14 and September 12 letters do not appear to support a request to cure and correct or provide sufficient grounds for a lawsuit. As I noted in our call, if you have additional suggestions on how the Board could modify its meetings going forward to provide more information to the community, the Board welcomes that input.

Sincerely,

DANNIS WOLIVER KELLEY

William B. Tunick

cc: Sharon Ofek, Interim Superintendent (sofek@carmelunified.org)
Sara Hinds, Board President (shinds@carmelunified.org)

CARMEL UNIFIED SCHOOL DISTRICT
SUPERINTENDENT EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into by the Governing Board of the Carmel Unified School District ("District" or "Board") and Edward Theodore ("Ted") Knight ("Superintendent").

1. **Term.** District hereby employs Superintendent for a period of three (3) years beginning on July 1, 2021 and terminating on June 30, 2024, unless terminated earlier or extended as provided by the terms of this Agreement or as required by law. Each year, if Superintendent receives an overall satisfactory evaluation from the Board pursuant to Section 6 below, Board and Superintendent agree to extend this Agreement for one (1) additional year, with the intent that the term of the Agreement remain at three (3) years beginning on the July 1 following such satisfactory evaluation. Following such satisfactory evaluation, an amendment for a one-year extension of the term of this Agreement shall be placed on the agenda of the next regularly scheduled Board Meeting with a recommendation for approval. In the event that Superintendent fails to receive an overall satisfactory evaluation from the Board in any year, no additional one (1) year extension will occur or be approved under the provisions of this Section 1, and the Agreement will expire at the end of the remaining term unless subsequently extended or renewed by the Board.

2. Salary

a. Base Salary. For the 2021-2022 school year, the Superintendent shall be paid an annual salary of two hundred and seventy thousand dollars ($270,000).

b. Salary Payment Process. The Superintendent's salary shall be payable in twelve (12) approximately equal monthly payments, less all applicable deductions and withholdings required by law or authorized by the Superintendent. A change in salary shall not constitute the creation of a new agreement nor extend the termination date of this Agreement.

c. Salary Increases. Commencing with the 2022-2023 school year, the Board will review the Superintendent's salary each year and, in its discretion, may increase his salary based on performance, increases in the CPI, or other relevant factors considered reasonable and appropriate by the Board. Any salary increases must be approved by the Board in open session at a regularly called Board meeting.

d. Effective Date. Salary increases shall be effective on any date ordered by the Board in accordance with Education Code section 35032.

3. Benefits/Work Year

a. Health, Dental, and Vision Insurance. Superintendent shall be eligible to participate in health, dental, and vision benefits from the District's health benefits providers on the same terms and conditions as offered to other cabinet level employees of the District.

b. Work Days. The Superintendent shall render full time service as a twelve (12) month employee. He is required to work two-hundred and twenty-five (225) regular work days each school year, provided, however, that he shall be compensated for regular work days worked in excess of two-hundred and twenty-five (225) days up to a maximum of five (5) additional regular work days in a school year without prior Board approval and up to a maximum of an additional five (5) regular work days in a school year with prior Board approval (for a total maximum number of compensable additional regular work days of ten (10)). Each additional regular work day shall be compensated on a per diem basis as calculated pursuant to the terms of Section 9 below. A "regular work day" specifically excludes weekend days or holidays recognized by the District, even if Superintendent works on such days. Additionally, Superintendent acknowledges and agrees that upon his departure from the District he shall not be entitled to payment for any work days in excess of two-hundred and twenty-five (225) days per year nor for any accrued vacation, holiday, or other time off, except he shall be paid up to a maximum of ten (10) additional work days in his year of departure if entitled to such payment pursuant to the terms of this Section 3.b.

c. Sick Leave. The Superintendent shall earn and accrue twelve (12) days of sick leave with pay for each full year of service rendered during the term of this Agreement. The Superintendent may accumulate unused sick leave without limitation. In no event, however, shall the District make a cash payment to the Superintendent for accumulated and unused sick leave.

d. Disability Insurance. The Superintendent shall receive disability insurance on the same basis as received by other District administrators.

4. <u>Medical Examination</u>

a. As a condition of employment, the Superintendent shall have a comprehensive medical examination by a physician of his choice within sixty (60) days of signing the contract (or shall provide a report of such an examination performed within the last 60 days), and shall have a comprehensive medical examination at least annually thereafter. The report of the physical examination shall be given directly to the Superintendent; however, the examining physician shall advise the Board in writing of the Superintendent's continued physical and/or mental fitness to perform the duties of Superintendent.

b. If at any time the Superintendent is diagnosed with a medical condition that affects the Superintendent's ability to perform the essential functions of the position, the Superintendent shall notify the Board of such, and, if appropriate, engage in the interactive process with the Board or its representative.

c. Nothing herein shall be deemed to waive the physician/patient privilege which the Superintendent shall have with any physician with whom the Superintendent consults for purpose of this paragraph.

5. <u>Superintendent's Duties</u>.

a. <u>General Duties</u>. The Superintendent is employed as District Superintendent and shall perform the duties of District Superintendent as prescribed by this Agreement, the laws of the State of California, Board Policy, and the Superintendent's job description. The Superintendent shall be chief executive officer and secretary of the Board. The Superintendent shall have primary responsibility for execution of Board policy, responsibility for the duties prescribed by Education Code section 35035, and responsibility for any duties authorized by the Board pursuant to Education Code section 17604. As appropriate, the Superintendent may use the resources of other staff to carry out these duties.

b. <u>Personnel Matters</u>. The Superintendent shall have primary responsibility for all personnel matters including selection, assignment, discipline, and dismissal of employees, subject to the approval of the Board. The Board shall refer all complaints and concerns made to individual members of the Board, or the Board as a body, for review and action by the Superintendent.

c. <u>Administrative Functions</u>. The Superintendent, as the chief executive officer, shall (1) review all policies adopted by the Board and make appropriate recommendations to the Board; (2) periodically evaluate or cause to be evaluated all District employees as provided by California law and Board policy; (3) advise the Board of all possible sources of funds that might be available to implement present or contemplated District programs; (4) assume responsibility for those duties specified in Education Code section 35250; (5) endeavor to maintain and improve his professional competence by all available means, including, but not limited to, subscription to and reading of appropriate periodicals; attendance at State and regional professional conferences and meetings; and membership in appropriate professional associations; (6) establish and maintain positive community, staff, and Board relations; (7) serve as the Board's representative with respect to all employer-employee matters and make recommendations to the Board concerning those matters; (8) recommend District goals and objectives for the ensuing school year to the Board; and (9) unless unavoidably detained, or with prior Board approval to be absent, attend all meetings of the Board with the exception of those closed sessions in which the Board discusses matters related to the Superintendent's employment.

d. Board-Superintendent Roles. The Board has primary responsibility for formulating District policies and setting District goals. The Superintendent has primary responsibility for implementing District policies and goals. The Board and the Superintendent agree to collaboratively support and assist one another to fulfill these roles and responsibilities.

e. Board-Superintendent Relations. The parties acknowledge the importance of creating and projecting to students, staff, parents, and the community a positive and professional image of the Board, the Superintendent, and the District. Thus, to avoid damage to the Board's and the Superintendent's image and credibility, and as not to lessen each other's ability to perform effectively, the parties agree to conduct the business of the District by communicating and interacting in a manner that is professional and respectful. Board concerns, criticisms, and dissatisfaction with the Superintendent's performance shall therefore be addressed through closed session discussions or via the evaluation process. Superintendent concerns, criticisms, and dissatisfaction with the Board shall likewise be addressed with professionalism and respect.

6. Business Expenses.

a. Expense Reimbursement. The District shall reimburse the Superintendent for actual, necessary, and reasonable expenses incurred by the Superintendent within the course and scope of his employment, so long as such expenses (i) are consistent with the budget for such expenses approved annually by the Board, and (ii) are not otherwise excluded under the terms of this Agreement. For reimbursement, the Superintendent shall complete and submit expense reimbursement claims in writing in accordance with the District's policies, rules, and regulations. The Superintendent's expense claims shall be supported by appropriate documentation prior to reimbursement. Any individual expense reimbursement in excess of one thousand ($1,000) shall require approval of the Board prior to being incurred.

b. Travel Expenses/Mileage Reimbursement. The Superintendent shall receive five hundred dollars ($500) per month for travel expenses/mileage reimbursement to facilitate regular visits to school sites.

c. Professional Fees and Dues. The District agrees to pay the Superintendent's dues for the Association of California School Administrators ("ACSA"), AASA ("School Superintendents Association"), the local Rotary organization or Chamber of Commerce service organization, if membership is expected, and any other professional dues or subscriptions reasonably requested by the Superintendent and approved by the Board as part of its annual budget.

d. Professional Meetings. The Superintendent is expected to attend appropriate professional meetings and conferences at local, state, and national levels. Prior approval of the Board shall be obtained when the Superintendent attends a meeting or conference outside of the state.

e. Cell Phone/Home Internet. The Superintendent is responsible, at his cost, for his cell phone, cell phone service, and home internet coverage, both for professional and personal use.

7. Evaluation.

a. Yearly Evaluation. The Board shall devote a portion of at least one meeting annually to discuss and evaluate the performance and working relationship between the Superintendent and the Board. This evaluation shall be based on the duties of the position, the job description (if any), and any mutually agreed upon District goals and objectives jointly developed by the Superintendent and the Board. The Board may conduct more than one formal written evaluation each school year.

b. Self-Evaluation. To assist the Board in the evaluation process, the Superintendent shall complete a written self-evaluation which shall include but not be limited to a review of his goals and achievements, a review of any improvement plans presented to his at previous evaluations, and the number of sick leave days used and days worked. The self-evaluation shall include as an attachment a separate report to the Board regarding the "State of the District." The Board shall give the Superintendent at least thirty (30) days' notice of the date by which it wants the self-evaluation and "State of the District" report, in order to allow the Superintendent sufficient time to complete both.

c. Board Evaluation. Upon receipt of the self-evaluation and the "State of the District" report, the Board shall evaluate the Superintendent. To initiate the evaluation process, the Superintendent shall inform each member of the Board in writing of the need for an evaluation by February 1 each year. Upon completion, the Board shall meet with and provide a copy of the evaluation report to the Superintendent in a closed session Board meeting no later than June 30 each year; however, the Board's failure to evaluate the Superintendent or its failure to timely evaluate the Superintendent shall have no impact upon the term of this Agreement or upon the Superintendent's salary.

d. Improvement Plan. Based upon findings specified in the evaluation report, the Superintendent, in collaboration with the Board, will prepare an improvement plan, if necessary, which will address areas identified as needing clarification, emphasis, or improvement. The improvement plan will be included as an addendum to the evaluation report. If a jointly prepared improvement plan cannot be agreed upon, the Board, in its sole discretion, shall issue the improvement plan. The Superintendent and the Board shall sign the evaluation report and the improvement plan. However, failure of the Superintendent to sign the evaluation or improvement plan shall have no legal effect upon the Superintendent's duty to implement the evaluation and improvement plan.

e. Contract Review. At the conclusion of each annual evaluation, the parties shall review this Agreement and consider proposed modifications and additions. Any contract extension or salary increases must be approved by the Board in open session at a regular meeting so that the public remains informed about the Superintendent's current salary and contract term.

f. Outside Facilitator. Whenever it is deemed desirable by the Governing Board, an outside advisor may be mutually selected by the Board and the Superintendent to facilitate discussion of the relationship of the Board and Superintendent. The outside advisor shall be paid for by District.

8. Termination of Agreement.

a. Mutual Consent. This Agreement may be terminated at any time by mutual consent of the Board and the Superintendent.

b. Resignation. The Superintendent may resign and terminate this Agreement only by providing the Board with at least ninety (90) days advance written notice, unless the parties agree otherwise.

c. Non-Renewal of Agreement by the District. The Board may elect not to renew this Agreement upon its expiration by providing written notice to the Superintendent in accordance with Education Code section 35031 (currently 45 days prior notice) or other applicable provisions of law.

d. Termination for Cause. The Board may terminate the Superintendent for: (1) breach of this Agreement; (2) unsatisfactory performance established by at least two (2) written evaluations conducted at least six (6) months apart; (3) refusal or failure to act in accordance with a specific provision of this Agreement or a directive of a majority of the Board; (4) misconduct or dishonest behavior with regard to the Superintendent's employment; or (5) conviction of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person.

The existence of such cause shall constitute a material breach of this Agreement and shall extinguish all rights and duties of the parties under this Agreement. If cause exists, the Board shall meet with the Superintendent and shall submit a written statement of the grounds for termination and copies of written documents the Board reasonably believes supports termination. If the Superintendent disputes the charges, the Superintendent shall then be entitled to a conference before the Board in closed session or open session by written request of the Superintendent. The Superintendent and the Board shall each have the right to be represented by counsel at their own expense. The Superintendent shall have a reasonable opportunity to respond to all matters raised in the charges and to submit any written documents the Superintendent's believes are relevant to the charges. The conference with the Board shall not be an evidentiary hearing and neither party shall have the opportunity to call witnesses. If the Board, after considering all evidence presented, decides to terminate this Agreement, it shall provide the

Superintendent with a written decision. The decision of the Board shall be final. The Superintendent's conference before the Board shall be deemed to satisfy the Superintendent's entitlement to due process of law and shall be the Superintendent's exclusive right to any conference or hearing otherwise required by law. The Superintendent waives any other rights that may be applicable to this termination for cause proceeding with the understanding that completion of this hearing exhausts the Superintendent's administrative remedies and then authorizes the Superintendent to contest the Board's determination through binding arbitration as provided in Section 15 below.

e. Termination without Cause. Notwithstanding any other provision of this Agreement, the Board, without cause, in its sole discretion, shall have the option to unilaterally terminate this Agreement upon the provision of written notice of such termination to the Superintendent. if the Board elects the option to terminate this Agreement without cause, then the Superintendent shall receive the Superintendent's regular Superintendent's salary for the remainder of the Term, or twelve (12) months, whichever is less, and shall additionally be entitled to the health insurance benefits that the Superintendent has elected for the same period of time. For purposes of this Agreement, the term "salary" shall include only the Superintendent's regular monthly base salary and shall not include the value of any other stipends, per diem payments, reimbursements, or benefits received under this Agreement. All payments made pursuant to this termination without cause provision shall be subject to applicable payroll deductions and shall be treated as compensation for state and federal tax purposes. No payments made pursuant to this early termination provision shall constitute creditable service or creditable compensation for retirement purposes. Payments made pursuant to this termination without cause provision shall be considered as final settlement pay and shall not count for any retirement purpose; accordingly, no deductions shall be made for retirement purposes.

The Superintendent shall also be entitled to District-paid health benefits, as those benefits may change from time-to-time, until expiration of this Agreement, a period of twelve (12) months, or until the Superintendent obtains other employment which provides health benefits, whichever occurs first.

The parties agree that any damages to the Superintendent that may result from the Board's early termination of this Agreement cannot be readily ascertained. Accordingly, the parties agree that the payments made pursuant to this termination without cause provision, along with the District's agreement to provide paid health benefits, constitutes reasonable liquidated damages for the Superintendent, fully compensates the Superintendent for all tort, contract, and other damages of any nature whatsoever, whether in law or equity, and does not result in a penalty. The parties agree that the District's completion of its obligations under this provision constitutes the Superintendent's sole remedy to the fullest extent provided by law. Finally, the parties agree that this provision meets the requirements governing maximum cash settlements as set forth in Government Code sections 53260, et seq.

f. Termination for Inappropriate Fiscal Practices. Notwithstanding any other provision of this Agreement to the contrary, if the Board believes, and subsequently confirms through an independent audit, that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, then the Board may terminate the Superintendent and the Superintendent shall not be entitled to any cash, salary payments, health benefits, or other non-cash settlement (e.g. health benefits) as set forth above. If the Superintendent elects to contest the Board's determination in this regard, the Superintendent may request a hearing before an administrative law judge who shall determine the amount of the cash settlement in accordance with the requirements of Government Code section 53260(b).

g. Termination for Disability/Fitness for Duty Examination. Upon request , the Superintendent shall undergo medical examination(s) by a District appointed physician. Prior to the examination(s), the Superintendent agrees to execute District-provided medical releases from all treating physicians authorizing the District appointed physician to review all medical records. The District appointed physician shall review this Agreement and the District's job description for the position, and be provided background information related to the duties of the position. The Superintendent shall submit all costs to the District's insurance carrier. All non-insured costs shall be borne by the District. The physician shall submit a confidential written report to the Board and the Superintendent addressing only the Superintendent's fitness to perform the job. The physician's report shall specifically indicate whether or not the Superintendent has any physical or mental impairment that substantially limits the Superintendent's ability to perform the essential functions of his position. No confidential medical information shall be submitted to the Board, the District, any third party, or any of the District's officers, agents, or employees unless it is determined that the Superintendent is unable to perform the essential functions of the position and such medical information is directly related to such determination. If the Superintendent is determined by the District to be a disabled employee under state or federal law, the physician's report shall indicate what reasonable accommodations, if any, may be available to allow the Superintendent to perform the essential functions of the position. If (i) the District determines through the interactive process it cannot provide reasonable accommodations to allow the Superintendent to perform the essential functions of the position or (ii) if the Superintendent fails to undergo the medical examination before his first day of service with the District, the parties agree that this Agreement may be immediately terminated by the Board upon written notice to the Superintendent. Termination of this Agreement due to the Superintendent's inability to perform the essential functions of the position shall terminate the obligations of both parties under this Agreement. Notwithstanding any other provision of this Agreement, this section shall be the exclusive means of terminating this Agreement based upon the Superintendent's inability to perform the essential functions of the position.

h. <u>Abuse of Office Provisions</u>. In accordance with Government Code section 53243 et seq., and as a separate contractual obligation, if the Superintendent receives a paid leave of absence or cash settlement and this Agreement is terminated for any reason, such paid leave or cash settlement shall be fully reimbursed to the District by the Superintendent if the Superintendent is convicted of a crime involving an abuse of office or the position of Superintendent. In addition, if the District funds the criminal defense of the Superintendent against charges involving abuse of office or position, and the Superintendent is then convicted of such charges, the Superintendent shall fully reimburse the District all funds expended for the Superintendent's criminal defense. Notwithstanding any other provision of this Agreement to the contrary, if the Board believes, and subsequently confirms through an independent audit, that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal practices, then the Board may terminate the Superintendent and the Superintendent shall not be entitled to the cash, salary payments, health benefits, or other non-cash settlement as set forth above. This provision is intended to fully implement the requirements of Government Code section 53260, subdivision (b). In addition, if this Agreement is terminated, any cash settlement related to the termination that Superintendent receives from the District shall be fully reimbursed to the District if the Superintendent is convicted of a crime involving an abuse of his office or position.

For purposes of this provision, "abuse of office or position" means either of the following: (a) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority and (b) a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

9. **Per Diem Rate.** Pursuant to Section 3(b), the Superintendent shall be required to work two-hundred and twenty-five (225) regular work days during each annual period covered by this Agreement. In the event that the Superintendent works less or more than 225 days, to determine the Superintendent's daily rate-of-pay for purposes of adjusting his salary pursuant to Section 3.b. above, the parties agree that the Superintendent's annual base salary shall be divided by 225.

10. **Notification of Absence.** The Superintendent shall keep the Board President informed about the Superintendent's time away from the District, including the Superintendent's plans to be absent from the District whenever the Superintendent will be absent from the District for three (3) or more school days, whether for business or personal reasons. For planned vacations, the Superintendent shall give the Board as much advance notice as possible.

11. **Outside Professional Activities.** The Superintendent may undertake for consideration outside professional activities, including consulting, speaking, and writing, subject to the terms of this Section 11.

a. The Superintendent may engage in outside professional activities for consideration, including honoraria, by informing the Board President.

b. If such outside professional activities occur during the Superintendent's regular contracted work days, any consideration received by Superintendent for such activities shall be paid to the District. If such outside professional activities are performed outside the Superintendent's regular contracted work days, any consideration received by the Superintendent for such activities may be retained by him.

c. The Superintendent agrees not to use District staff or property in performing any such outside professional activities without prior approval by the Board. In no case will the District be responsible for any expenses attendant to the performance of such outside professional activities unless prior Board approval of those expenses is obtained.

In no event shall the Superintendent engage in any activity that interferes with his ability to fully and satisfactorily perform or that conflicts with the duties of his position.

12. **Tax/Retirement Liability.** Notwithstanding any other provision of this Agreement, the District shall not be liable for any retirement or state/federal tax consequences to the Superintendent, or any designated beneficiaries, heirs, administrators, executors, successors, or assigns of the Superintendent. The Superintendent shall assume sole responsibility and liability for all state or federal tax consequences of this Agreement and all related payroll and retirement consequences, including, but not limited to, all tax and retirement consequences stemming from any payments made to the Superintendent as a result of the termination without cause provision of this Agreement, retirement payments, expense reimbursements, and other payments. The Superintendent agrees to defend, indemnify, and hold the District harmless from all such tax, retirement and similar consequences.

13. **Notification by Superintendent Prior to Seeking Other Employment.** The Superintendent shall immediately notify the Governing board in writing if the Superintendent becomes a finalist for employment outside the District.

14. **Credentials.** The District recognizes that Superintendent is in the process of completing necessary paperwork for a legal and valid administrative and teaching credential in California and holds a valid administrative and teaching credential in Colorado. The Superintendent will complete the necessary paperwork as soon as practicable (significant delays have been caused due to the pandemic) but no later than December 31, 2021. Effective January 1, 2022, the Superintendent shall maintain in effect throughout the life of this Agreement, a valid administrative and teaching credential in California and shall keep the credential on file in the Office of the Monterey County Superintendent of Schools, and that the Superintendent meets the qualifications of Education Code section 35028.

15. Dispute Resolution.

a. Mediation. The Superintendent and Board agree to make a good faith effort to settle any dispute or claim that arises under this Agreement through discussion and negotiations. In the event of a claim or dispute, the Superintendent or Board may request, in writing, to the other party to refer the dispute to mediation. This request must be made within thirty (30) days of the action giving rise to the dispute. Upon receipt of a request for mediation, both parties shall make a good faith effort to select a mediator and complete the mediation process within sixty (60) days. The mediator's fee shall be paid by the District. Each party shall bear its own attorney fees and costs. Any mediator selected shall have expertise in the area of the dispute and be knowledgeable in the mediation process. No person shall serve as mediator in any dispute in which that person has any financial or personal interest in the outcome of the mediation. The mediator's recommendation for settlement, if any, is non-binding on the parties. Mediation pursuant to this provision shall be private and confidential. Only the parties and their representatives may attend any mediation session. Other persons may attend only with the written permission of both parties. All persons who attend any mediation session shall be bound by the confidentiality requirements of California Evidence Code section 1115 et seq. and shall sign an agreement to that effect. Completion of mediation shall be a condition precedent to arbitration, unless the other party unreasonably refuses to cooperate in the setting of mediation.

b. Binding Arbitration. The Superintendent and Board agree to submit all disputes to final and binding arbitration, either following mediation which fails to resolve all disputes or in lieu of mediation as may be agreed by the parties. Either party may make a written request to the other for arbitration. If made in lieu of mediation, the request must be made within thirty (30) days of the action giving rise to the dispute. If the request for arbitration is made following an unsuccessful attempt to mediate the parties' disputes, the request must be made within five (5) days of termination of the mediation. The parties shall make a good faith attempt to select an arbitrator and complete the arbitration with ninety (90) days. The arbitrator's qualifications must meet the criteria set forth above for a mediator, except, in addition, the arbitrator shall be an attorney unless otherwise agreed by the parties. The arbitration shall take place in Monterey County, California, unless otherwise agreed by the parties. The arbitrator's fee shall be paid by the District. Each party shall bear its own attorney fees and other costs. The arbitrator shall render a written decision and provide it to both parties. The arbitrator may award any remedy or relief otherwise available in court and the decision shall set forth the reasons for the award. The arbitrator shall not have any authority to amend or modify this Agreement. Any arbitration conducted pursuant to this Section shall be governed by California Code of Civil Procedure sections 1281 et seq.

c. The Parties agree to use the Judicial Arbitration and Mediation Service (JAMS) in selecting both the Mediator as well as the Arbitrator.

16. General Provisions.

a. Governing Law/Venue. This Agreement, and the rights and obligations of the parties, shall be construed and enforced in accordance with the laws of the State of California. Venue shall be in Monterey County, California.

b. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties. There are no oral understandings, terms or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement.

c. No Assignment. The Superintendent may not assign or transfer any rights granted or obligations assumed under this Agreement.

d. Modification. This Agreement cannot be changed or supplemented orally. It may be modified or superseded only by a written instrument executed by both parties.

e. Exclusivity. To the extent permitted by law, the parties agree that the employment relationship between the District and the Superintendent shall be governed exclusively by the provisions of this Agreement and not by Board policies, administrative regulations, Management Handbooks, or similar documents.

f. Management Hours. The parties recognize that the demands of the position will require Superintendent to average more than eight (8) hours a day and/or more than 40 hours per week. The parties agree that Superintendent shall not be entitled to overtime compensation.

g. Construction. This Agreement shall not be construed more strongly in favor of or against either party regardless of which party is responsible for its preparation.

h. Board Approval. The effectiveness of this Agreement shall be contingent upon approval by District's Board as required by law.

i. Execution of Other Documents. The parties shall cooperate fully in the execution of any other documents and in the completion of any other acts that may be necessary or appropriate to give full force and effect to this Agreement.

j. Independent Review. The Superintendent has had the opportunity to obtain, and has obtained, independent legal or other professional advice with regard to this Agreement, and the consequences thereof, including tax and retirement consequences. The Superintendent acknowledges that the terms of this Agreement have been read and fully explained to his by his representative(s) and that those terms are fully understood and voluntarily accepted.

17. **Binding Effect.** This Agreement shall be for the benefit of and shall be binding upon all parties and their respective successors, heirs, and assigns.

18. **Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

19. **Indemnity.** In accordance with the provisions of Government Code sections 825 and 995, the District shall defend the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in Superintendent's individual capacity, or official capacity as an agent and employee of the District, provided that the incident giving rise to any such demand, claim, suit, action, or legal proceeding arose while the Superintendent was acting within the scope of employment.

20. **Savings Clause.** If any provision of this Agreement or its application is held invalid, the invalidity shall not affect the other provisions or applications of the Agreement that can be given effect without the invalid provisions or applications and the provisions of this Agreement are declared to be severable.

21. **Public Record.** The parties recognize that, once final, this Agreement is a public record and must be made available to the public upon request.

CARMEL UNIFIED SCHOOL DISTRICT:

Dated: ______________________ ____________________________________

President of the Board of Trustees

Dated: ______________________ ____________________________________

Clerk of the Board of Trustees

ACCEPTANCE OF OFFER

I accept the District's offer of employment subject to the terms and conditions of this Employment Agreement, and will report for duty as directed above.

I understand that the District is relying upon information provided by me during the application process in extending this offer of employment. By signing below, I represent that I have not provided the District with any false information or made any material misrepresentation or omission during the job application process. I agree that false, incomplete, or misleading statements or omissions made during the job application process constitute dishonesty and breach of this Agreement and are grounds for termination of this Agreement for cause.

I have not entered into a contract of employment with the governing board of another school district or any other employer that will in any way conflict with the terms of this Employment Agreement.

Dated: 5/18/2021

DocuSigned by:
Edward Theodore ("Ted") Knight
E6DB212AA0A24AA...

Edward Theodore ("Ted") Knight

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims **("AGREEMENT")** is made between **EDWARD KNIGHT ("KNIGHT") and CARMEL UNIFIED SCHOOL DISTRICT ("DISTRICT").**

RECITALS

A. **KNIGHT** is currently employed by the **DISTRICT** as the Superintendent of the **DISTRICT,** and he has held that position since July 1, 2021. **KNIGHT** is employed pursuant to an employment agreement which expires on June 30, 2024 **("EMPLOYMENT AGREEMENT").**

B. On or about March 31, 2023, the **DISTRICT** placed **KNIGHT** on administrative leave pending an external review of the Superintendent's actions in relation to then-recent personnel matters. On or about April 18, 2023, **KNIGHT's** attorney sent a letter to the **DISTRICT's** Board of Education alleging retaliation for engaging in protected activity. Subsequently on May 17, 2023, **KNIGHT** indicated he filed a complaint against the **DISTRICT** with the Office of Civil Rights, on June 1, 2023, **KNIGHT** indicated he filed a complaint against the **DISTRICT** with the California Civil Rights Department, Case No. 202306-20852102, and on June 28, 2023, **KNIGHT** indicated he filed a complaint against the **DISTRICT** with the Equal Employment Opportunity Commission **("COMPLAINTS"). The DISTRICT** denies and disputes all of **KNIGHT's** claims and allegations, including but not limited to those contained in the **COMPLAINTS;** (hereinafter all of the above shall collectively be referred to as the **"DISPUTE").**

C. On April 28, 2023, **KNIGHT's** attorney submitted three requests for public records under the California Public Records Act, Gov't Code §7920, et seq. to the **DISTRICT ("REQUESTS").** Following initial responses by the **DISTRICT,** on July 24, 2023, **KNIGHT** filed a petition for writ of mandate in Monterey County Superior Court, Case No. 23CV002390, alleging the **DISTRICT** failed to comply with the California Public Records Act. The **DISTRICT** denies all claims and allegations contained therein (hereinafter the **"ACTION").**

D. In order to avoid the substantial expense, inconvenience, and distraction of further disputes and litigation, the parties now desire to fully and finally settle all claims on the terms set forth in this **AGREEMENT.** This includes all claims asserted in the **DISPUTE** and the **ACTION,** all issues that were raised or could have been raised in the **DISPUTE** and the **ACTION** and any claims or potential claims arising from any transactions or occurrences to date between **KNIGHT,** on the one hand, and the

DISTRICT, on the other hand.

THEREFORE, IN CONSIDERATION OF THE PROMISES CONTAINED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:

TERMS AND CONDITIONS

1. Resignation. **KNIGHT** expressly agrees to submit his irrevocable resignation to the **DISTRICT's** Board of Education in writing in a letter attached hereto as Exhibit "A" effective immediately upon execution of this **AGREEMENT.**

2. General Release of All Claims. **KNIGHT** unconditionally, irrevocably and absolutely releases and discharges the **DISTRICT** as well as any other present or former employees, Board members, officers, agents, attorneys, affiliates, successors, assigns and all Qther representatives of the **DISTRICT** (collectively, **"RELEASED PARTIES"),** from any and all causes of action, judgments, liens, indebtedness, damages, losses, claims (including attorneys' fees and costs), liabilities and demands of whatsoever kind and character that **KNIGHT** may now or hereafter have against the **RELEASED PARTIES** arising from incidents or events occurring on or before the **EFFECTIVE DATE** of this **AGREEMENT,** and these claims shall collectively be referred to hereafter as **"RELEASED CLAIMS."** To the extent permitted by law, this release is intended to be interpreted broadly to apply to all transactions and occurrences between **KNIGHT** and any of the **RELEASED PARTIES,** including but not limited to any and all claims related to **KNIGHT'** employment with the **DISTRICT,** including the employment conditions, and all other losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the **DISPUTE** or the **ACTION** and/or these transactions or occurrences. **RELEASED CLAIMS** include, without limitation, any claims under the laws of contract or tort, the common law, the state or federal Constitution, any state or federal statutes (including, without limitation, the California Fair Employment and Housing Act, the California Civil Code, the California Government Code, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act), any policy of the **DISTRICT,** or any collective bargaining agreement. **RELEASED CLAIMS** include all claims for physical injuries, illness, past or future wages or benefits, damage or death, and all claims for attorneys' fees, costs, and expenses. Notwithstanding the foregoing, **RELEASED CLAIMS** shall not include any other claims that cannot lawfully be waived or released by private agreement.

3. Unknown or Different Facts or Law. **KNIGHT** acknowledges that **KNIGHT** may discover facts or law different from, or in addition to, the facts or law **KNIGHT** knows or believes to exist with respect to a **RELEASED CLAIM. KNIGHT**

agrees, nonetheless, that this **AGREEMENT** and the releases contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or law.

4. California Civil Code Section 1542 Waiver. **KNIGHT** expressly acknowledges and agrees that the releases contained in this **AGREEMENT** include a waiver of all rights under Section 1542 of the California Civil Code. This statute reads as follows:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

KNIGHT acknowledges that **KNIGHT** has read all of this **AGREEMENT,** including the above Civil Code section, and that **KNIGHT** fully understands both the **AGREEMENT** and the Civil Code section. **KNIGHT** waives any benefits and rights granted to **KNIGHT** pursuant to Civil Code section 1542.

5. Withdrawal of **REQUESTS.** **KNIGHT** agrees to withdraw, or direct his attorney to withdraw, the **REQUESTS** immediately.

5.a. Withdrawal of **COMPLAINTS.** **KNIGHT** agrees to contact each of the agencies with whom he has filed **COMPLAINTS,** indicate the **COMPLAINTS** have been resolved and that he is withdrawing the **COMPLAINTS** immediately, and take any other actions necessary to close out the **COMPLAINTS.**

5.b. Dismissal of the **ACTION.** **KNIGHT** agrees to take all actions necessary to dismiss the **ACTION,** with prejudice, as soon as possible after this **AGREEMENT** becomes effective and the Payment has been made in accordance with Paragraph 5.c., including, but not limited to, executing and filing a Request for Dismissal with Prejudice within 5 days from receipt of the settlement check. If the **DISTRICT** is required to respond to the **ACTION** on a date prior to dismissal, **KNIGHT** agrees to execute a stipulation extending the response date to October 29, 2023.

5.c. Payment. In exchange for the promises and warranties of **KNIGHT,** as set forth below, the **DISTRICT** shall pay the total sum of seven hundred seventy thousand dollars ($770,000) to **KNIGHT** and his attorney, Gregory Rolen of Haight Brown & Bonesteel LLP. The check will issue within forty-five (45) days after execution of this **AGREEMENT** by all **PARTIES** and removal of all contingencies stated in Paragraph Nos. 11 herein, whichever occurs last.

6. <u>No Prior Assignments or Liens.</u> **KNIGHT** represents and warrants that **KNIGHT** has not assigned to any other person or entity any of the **RELEASED CLAIMS. KNIGHT** further represents and warrants that **KNIGHT** has not, directly, or indirectly, caused any liens or claims to be placed on any of the amounts being paid by the **DISTRICT** as provided in this **AGREEMENT** and further represents and warrants that **KNIGHT** is not aware of the existence of any such liens. **KNIGHT** agrees to defend, indemnify, and hold the **DISTRICT** harmless from any liability, losses, claims, damages, costs, or expenses, including reasonable attorneys' fees, arising out of a breach of the representations and warranties contained in this paragraph.

7. <u>No Admissions.</u> By entering into this **AGREEMENT,** neither the **DISTRICT** nor any of the other **RELEASED PARTIES** admit that they have engaged in, or are now engaging in, any unlawful conduct or employment practice. It is understood and agreed that this **AGREEMENT** is not an admission of liability, and that the **DISTRICT** and the other **RELEASED PARTIES** specifically deny liability in the **DISPUTE** and in the **ACTION** and intend merely to avoid further litigation and expense by entering into this **AGREEMENT.** The parties agree that it is their mutual intention that neither this **AGREEMENT** nor any terms hereof shall be admissible in any other or future proceedings against the **DISTRICT** or any of the other **RELEASED PARTIES,** except a proceeding to enforce this **AGREEMENT.**

8. <u>Covenant Not to Sue.</u> **KNIGHT** agrees, to the fullest extent permitted by law, that **KNIGHT** will not initiate or file a lawsuit to assert any **RELEASED CLAIMS.** If any such action is brought, this **AGREEMENT** will constitute an Affirmative Defense thereto, and the **DISTRICT** and any other **RELEASED PARTIES** named in such action shall be entitled to recover reasonable costs and attorneys' fees incurred in defending against any **RELEASED CLAIMS.**

Nothing in this **AGREEMENT** shall affect the rights and responsibilities of the U.S. Equal Employment Opportunity Commission ("EEOC") or the California Civil Rights Department ("CRD") to enforce Title VII of the Civil Rights Act of 1964, as amended, and the California Fair Employment and Housing Act, as amended, respectively, or any other applicable law. Nor shall anything in this **AGREEMENT** be construed as a basis for interfering with **KNIGHT's** protected right to file a charge with, or participate in an investigation or proceeding conducted by, the EEOC or any other state, federal or local government entity. Notwithstanding the foregoing, if the EEOC, OCR, or CRD or any other state, federal or local government entity commences a lawful investigation or issues a complaint on **KNIGHT's** behalf, **KNIGHT** specifically waives and releases **KNIGHT's** right, if any, to recover any monetary or other benefits of any sort whatsoever in connection with that investigation or administrative proceeding.

9. Acknowledgment of Payment of Compensation/Benefits: **KNIGHT** acknowledges and affirms that **KNIGHT** has been paid and/or has received any and all wages, benefits and compensation to which **KNIGHT** is entitled as a result of **KNIGHT's** employment with the **DISTRICT,** including but not limited to, accrued but unused vacation time.

10. Attorneys' Fees and Costs. **KNIGHT** and the **DISTRICT** and any other **RELEASED PARTIES** agree to bear their own attorneys' fees and expenses incurred in connection with the **DISPUTE** and the **ACTION** and/or any **RELEASED CLAIMS.**

11. Condition. This **AGREEMENT** is conditioned upon and subject to formal approval by the Board of Education of the **DISTRICT,** which approval will be communicated to counsel for **KNIGHT.**

12. Tax Consequences. The **DISTRICT** has made no representation about and takes no position on the tax consequences of this **AGREEMENT.** A dispute regarding the tax status of this **AGREEMENT** shall not affect the validity of this **AGREEMENT. KNIGHT** has had an opportunity to discuss the potential tax consequences of this **AGREEMENT with KNIGHT's** own counsel and agrees to indemnify and hold harmless the **DISTRICT** from any and all costs and assessments, including, but not limited to, delinquent taxes, penalties and/or assessments levied against the **DISTRICT** for the **KNIGHT's** portion of any such taxes as a result of actions taken by the **DISTRICT** pursuant to this **AGREEMENT.**

13. Older Workers Benefit Protection Act. It is the intention of the parties that the releases contained in this **AGREEMENT** comply with the provisions of the Older Workers Benefit Protection Act (29 U.S.C. § 626(f)) and thereby effectuate the release by **KNIGHT** of any potential claims under the federal Age Discrimination in Employment Act ("ADEA"). Accordingly, **KNIGHT** agrees as follows: (i) **KNIGHT** has carefully reviewed the this **AGREEMENT,** and understands the terms and conditions it contains; (ii) **KNIGHT** has been advised of the right to consult any attorney or representative of **KNIGHT's** choosing to review this **A.GREEMENT;** (iii) **KNIGHT** is receiving consideration that is above and beyond anything of value to which **KNIGHT** is already entitled; (iv) **KNIGHT** does not waive right or claims that may arise after the date on which **KNIGHT** executes this **AGREEMENT;** (v) **KNIGHT** has had twenty-one (21) days to consider whether to agree to the terms and conditions set forth in this **AGREEMENT. KNIGHT** may sign this **AGREEMENT** sooner, but in doing so, **KNIGHT** acknowledges that the decision to sign was **KNIGHT's** alone and, as a result, **KNIGHT** has voluntarily waived the balance of the 21-day review period.

14. Seven-Day Revocation Period and Effective Date. **KNIGHT** shall have seven (7) days after executing this **AGREEMENT** to reconsider and revoke the release

of ADEA claims under this **AGREEMENT.** Any such revocation must be in writing and delivered to Kathleen Darmagnac, Leone, Alberts & Duus, 1390 Willow Pass Road, Ste. 700, Concord, California 94520, no later than the seventh (7th) day following **KNIGHT's** execution of this **AGREEMENT.** This **AGREEMENT** shall not become effective or enforceable until the seven-day revocation period has expired, or until the date of the last signature on this **AGREEMENT,** whichever is later **("EFFECTIVE DATE"). If KNIGHT** revokes the release of ADEA claims under this **AGREEMENT,** the **DISTRICT** will have the option to: (a) continue to accept the **AGREEMENT,** accepting that there is no release of ADEA claims, or (b) revoke, cancel, nullify, or rescind the entire **AGREEMENT,** and in such case, the **AGREEMENT** shall not be effective or enforceable, **KNIGHT** will not receive the consideration described herein, and **KNIGHT** agrees that the statute of limitations has not been tolled or precluded under any theory (including, but not limited to, equitable tolling, equitable estoppel, equitable excuse, the continuing violations theory, the delayed discovery rule) for any reason, including the fact that the parties engaged in settlement negotiations.

15. California Law. This **AGREEMENT** is made and entered into in the State of California and shall in all respects be interpreted and enforced in accordance with California law, without regard to conflicts of law provisions. The parties agree that any action to enforce any term of this **AGREEMENT** shall be filed in the Superior Court of California, County of Monterey. Accordingly, the parties also agree to submit to the jurisdiction of the State of California for any action to enforce any term of this **AGREEMENT.**

16. Severability. Should it be determined by a court that any term of this **AGREEMENT** is unenforceable, that term shall be deemed to be deleted. However, the validity and enforceability of the remaining terms shall not be affected by the deletion of the unenforceable terms.

17. Modifications. This **AGREEMENT** may be amended only by a written instrument executed by all parties hereto.

18. Cooperation. The parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this **AGREEMENT.**

19. Interpretation; Construction. The headings set forth in this **AGREEMENT** are for convenience only and shall not be used in interpreting this **AGREEMENT.** This **AGREEMENT** has been drafted by legal counsel representing the **DISTRICT,** but **KNIGHT** and **KNIGHT's** counsel have fully participated in the negotiation of its terms. **KNIGHT** acknowledges that **KNIGHT** has had an opportunity to review and discuss each term of this **AGREEMENT** with legal counsel and, therefore, the normal rule of

construction, which is that any ambiguities in the document are resolved against the drafting party, shall not be employed in the interpretation of this **AGREEMENT.**

20. Entire Agreement. The parties to this **AGREEMENT** declare and represent that no promise, inducement, or agreement not herein discussed has been made between the parties and that this **AGREEMENT** contains the entire expression of agreement between the parties on the subjects addressed herein.

21. Binding Effect. This **AGREEMENT** shall bind the heirs, personal representatives, successors, and assigns of each party, and it shall inure to the benefit of each party and their respective heirs, successors, and assigns.

22. Counterparts. This **AGREEMENT** may be executed in counterparts. The execution of a signature page of this **AGREEMENT** shall constitute the execution of the **AGREEMENT,** and the **AGREEMENT** shall be binding on each party upon that party's signing of such a counterpart. The signing of a facsimile or .pdf copy shall have the same force and effect as the signing of an original, and a facsimile or .pdf signature shall be deemed an original and valid signature.

23. Advice of Counsel. The parties declare and represent that they are executing this **AGREEMENT** with full advice from their respective legal counsel, that they intend that this **AGREEMENT** shall be complete and shall not be subject to any claim of mistake, that the releases herein express a full and complete release and that, regardless of the adequacy or inadequacy of the consideration, each intends the releases herein to be final and complete. Each party executes this release with the full knowledge that this release covers all possible claims to the fullest extent permitted by law.

PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

WHEREFORE, THE PARTIES HAVE VOLUNTARILY EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

Dated: August 11, 2023 By: ______________

EDWARD KNIGHT

Dated: A I_, 2023 **CARMEL UNIFIED SCHOOL DISTRICT**

By: ______________

APPROVED AS TO FORM AND SUBSTANCE:

HAIGH STEELLLP

By: ____________________________ Dated: August 11, 2023

Attorneys for **EDWARD KNIGHT**

DANNIS, WOLIVER, KELLEY

By: ______________ William Tunick Dated: August 11, 2023

Attorneys **fort:ARMEL UNIFIED SCHOOL DISTRICT**

LEONE ALBERTS & DUUS

By: ______________ Kathleen Darmagnac Dated: August 11, 2023

Attorneys for **CARMEL UNIFIED SCHOOL DISTRICT**

EXHIBIT A

August 11, 2023

Board of Education
Carmel Unified School District
4380 Carmel Valley Road
Carmel, CA 93923

Re: Letter of Resignation

Dear Board of Education:

I hereby submit my resignation from employment with the Carmel Unified School District, effective immediately. I understand this resignation is irrevocable.

Very urs,

Edward Knight