

**REPORT TO THE LEGAL AD HOC COMMITTEE
OF THE BOARD OF DIRECTORS OF CALOPTIMA HEALTH
REGARDING FINDINGS RELATED TO CALOPTIMA'S EFFORTS TO
ACQUIRE 14851 YORBA STREET & 165 MYRTLE AVENUE**

**SEPTEMBER 2, 2025
FINAL REPORT OF INVESTIGATORY FINDINGS**

This report has been prepared for the Legal Ad Hoc Committee of the Board of Directors of CalOptima Health by Benjamin N. Gluck, Nicole R. Van Dyk, and Alexis A. Wiseley of Bird, Marella, Rhow, Lincenberg, Drooks & Nessim, LLP.

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I. Executive Summary

The Legal Ad Hoc Committee of the CalOptima Health (“CalOptima”) Board of Directors (the “Board”) asked Bird Marella to conduct an inquiry into CalOptima’s efforts to acquire 14851 Yorba Street & 165 Myrtle Avenue (the “Tustin Property”). Specifically, the Legal Ad Hoc Committee asked us to investigate reports that former CalOptima Board Chair Andrew Do was to receive a kickback from the purchase, and that CalOptima Chief Executive Officer Michael Hunn may have acquiesced in that alleged wrongdoing. CalOptima did not ultimately acquire the Tustin Property.

Our inquiry into these allegations prompted us to explore several broader questions related to the Tustin Property transaction, which are set forth in Section IV. These questions concerned, in pertinent part, the (i) origination of the deal, (ii) Board authorization for the non-binding Letter of Intent, (iii) negotiation and substantiation of the \$29,500,000 purchase price, (iv) Board authorization for the binding Purchase and Sale Agreement and payment of a \$750,000 refundable deposit pursuant thereto, and (v) release of \$460,000 for non-refundable due diligence extension payments related to CalOptima’s application to the City of Tustin for a Conditional Use Permit.

Ultimately, our inquiry into the kickback allegations did not reveal evidence supporting the reports. We did not identify evidence suggesting that Mr. Do initiated or particularly championed the transaction, or that the offered price was necessarily not justified. On the other hand, we did find evidence that Board and staff members believed the property was uniquely suitable for CalOptima’s mission and CalOptima employees believed the City of Tustin would approve CalOptima’s proposed use. As set forth in Section V, however, our findings as to the kickback allegations are limited due to the voluntary nature of our inquiry, meaning that we lacked the ability to subpoena documents or have witnesses testify under oath.

Although we did not identify evidence supporting the kickback allegations, our investigation revealed a lack of compliance with existing CalOptima policies and procedures, including with respect to the execution of legally binding agreements and acquiring Board authorization for the same. It further revealed certain deficiencies in CalOptima’s existing policies and procedures, including with respect to documentation required before an item can be paid and the time period within which legally-binding agreements must be ratified. While we did not find evidence that the lack of compliance and deficiencies materially changed the terms of the transaction or its progress, they did expose CalOptima to potential liability, and made it more difficult and time-consuming to investigate the transaction. Thus, we believe that CalOptima should consider making certain changes to its policies and procedures. Such changes are business questions for the Board to consider in the proper context.

II. Formation of the Legal Ad Hoc Committee

In response to a report that Mr. Do was possibly to receive a kickback from the Tustin Property purchase, and that Mr. Hunn may have acquiesced in that alleged wrongdoing, on September 5, 2024, the Board formed a Legal Ad Hoc Committee to liaise with Bird Marella, outside counsel retained to investigate the allegations.

The September 5, 2024, minutes state that “James Novello, Outside General Counsel, Kennaday Leavitt, reported that as a result of the Closed Session, Chair Becerra formed a new Board Legal Ad Hoc Committee and appointed Director García Guillén, Director Helleland, and Director Byron to serve on the committee. Director García Guillén will serve as the Chair of the Legal Ad Hoc Committee.” (CN0000000086.)

III. Investigatory Steps

A. Document Review

We collected and reviewed documents predominantly from three sources: (1) CalOptima, (2) the County of Orange, and (3) the public domain.

1. CalOptima Communications and Documents

Between October 2024 and June 2025, we collected more than 270,000 documents from CalOptima’s servers, including email communications involving percipient witnesses, documents, and Board materials (including meeting agendas, minutes, and Board Action Agenda Referrals (“COBARs”)) referencing the Tustin Property, and CalOptima’s policies and procedures.¹ We then ran multiple search terms, designed to target the emails and documents relevant to various aspects of our investigation. These documents shaped our understanding of the timeline of events and the individuals involved in the Tustin Property transaction, and also informed the steps in our inquiry.

2. County of Orange Communications and Documents

In the course of our inquiry, we learned that the County of Orange (the “County”) had also submitted a letter of intent to purchase the Tustin Property in March 2022. We reviewed the

¹ Our early document collections were facilitated by attorneys at Kennaday Leavitt, PC, CalOptima’s outside general counsel, who were assisting CalOptima with responding to Public Records Act requests (“PRAs”) relating to similar allegations. Because the PRAs concerned specific issues, Kennaday Leavitt’s collections were narrower in scope than our inquiry. We therefore conducted a comprehensive document collection independent of Kennaday Leavitt to ensure we had all potentially relevant documents. Moreover, as discussed herein, our document review revealed that Kennaday Leavitt attorneys had first-hand knowledge of certain matters relating to the Tustin Property deal, for example by attending relevant closed sessions. We therefore treated its attorneys as third-party witnesses (three of whom we formally interviewed in the course of our inquiry), and ceased communicating with them about our process and findings.

County's publicly available meeting materials for relevant information. Additionally, in April and May 2025, we submitted Public Records Act requests to the County's Custodian of Records, seeking documents relating to the County's bid, in order to gather more information about the timing, offer price, and individuals involved. The County produced documents in response to these requests.

3. Other Publicly Available Information

In addition to reviewing documents collected and requested through formal channels, we also reviewed relevant publicly available information. Such information includes articles concerning CalOptima and various witnesses, publicly-filed court documents, and campaign contribution information for former Supervisor Do.

B. Witness Interviews

Based on our document review, initial interviews, and discussions with the Legal Ad Hoc Committee, we identified a list of 48 potential witnesses with knowledge of various aspects of the Tustin Property deal. Our potential witness list included current and former CalOptima employees and executives who worked on the deal, current and former CalOptima Board members who had attended the meetings at which the deal was discussed, third-party advisors retained by CalOptima to work with staff on the deal, individuals affiliated with the Tustin Property sellers, individuals affiliated with the City of Tustin, and other individuals potentially having knowledge of the Tustin Property deal.

As our investigation progressed, we narrowed the list of witnesses to include the following individuals, each one of whom we interviewed or attempted to interview:

1. CalOptima Staff Who Worked On The Deal

- (a) Veronica Carpenter
- (b) Michael Hunn
- (c) Nancy Huang
- (d) Yunkyung Kim
- (e) Kelly Bruno-Nelson
- (f) Gary Thomas (former employee) (attempted)

2. CalOptima Board Members Who Attended Closed Sessions In Which The Deal Was Discussed

- (a) Blair Contratto
- (b) Isabel Becerra

- (c) Jose Mayorga
- (d) Supervisor Vicente Sarmiento
- (e) Supervisor Doug Chaffee
- (f) Clayton Corwin (former Board member)
- (g) Dr. Clayton Chau (former Board member)
- (h) Andrew Do (former Board member) (attempted)

3. Third-Party Advisors Who Assisted CalOptima With The Deal

- (a) David Kluth (Newmark)
- (b) Jim Novello (Kennaday Leavitt)
- (c) Troy Szabo (Kennaday Leavitt)
- (d) Russell James Cooper (Kennaday Leavitt)

4. Other Witnesses With Potentially Relevant Knowledge

- (a) Roger Faubel (Faubel Public Affairs)

C. Third-Party Advisory Opinions

1. Brown Act Advice from Liebert Cassidy Whitmore

In the course of our investigation, we sought guidance from Liebert Cassidy Whitmore (“LCW”), legal counsel with Brown Act expertise. As an initial matter, LWC advised us as to whether and under what circumstances the contents of the June 2, 2022 and April 6, 2023 Closed Sessions may be disclosed to the Committee members (none of whom attended those closed sessions) and to Bird Marella. On April 28, 2025, LCW provided a formal legal opinion concluding that the contents of the Closed Sessions may be disclosed to the Committee and to Bird Marella without requiring further Board action, and without affecting the closed-session protections afforded to the information by the Brown Act.

We also sought guidance from LCW on additional Brown Act questions, including whether the Board may vote on real estate transactions by “consensus,” whether closed session discussions may remain confidential or must be disclosed, the proper procedure for curing or correcting Brown Act violations, and best practices for closed sessions. We have incorporated LCW’s advice into the findings set forth below.

2. Corporate Policy & Procedure Advice from Ankura

Parallel to our investigation, the Legal Ad Hoc Committee asked Ankura to review certain of CalOptima's recent real estate transactions, including the unconsummated Tustin Property transaction, to assess whether CalOptima adhered to its own policies and procedures governing those transactions. We have incorporated Ankura's advice into the findings set forth below.

IV. Factual Background And Findings

A. The Tustin Property

1. The Sellers

During the relevant period, the Tustin Property was owned by real estate firm Yorba Myrtle LLC, which was formed in October 2021. In turn, Yorba Myrtle LLC was owned and operated by David Tang, Gary Nguyen and potentially his brother, Larry Nguyen (together, the "Sellers"). A witness informed us that Gary Nguyen was a minority owner of the Tustin Property and did not want the fact of his ownership to be public. The Nguyen brothers are rumored to have prior ties to Mr. Do.

While the exact nature and extent of those ties remains unclear, our inquiry has revealed that the Nguyen brothers also own and operate a health care company called 360 Health Plan. 360 Health Plan has several subsidiaries, including 360 Clinic and 360 PACE. During the Covid-19 pandemic, then-Supervisor Do's office approved a County contract with 360 Clinic to run rapid testing clinics. And, in December 2021/January 2022, the Nguyen brothers approached CalOptima to discuss their proposal for a new PACE center, which would be run by 360 PACE and aim to serve the Vietnamese elderly community. To facilitate their discussions, the Nguyen brothers hired a consultant, who noted in an email that "Chairman Do is favorable to the concept of a Vietnamese PACE program."²

A witness informed us that the Nguyen brothers are "politically active" and had made contributions to then-Supervisor Do's campaign(s). However, the witness had no reason to believe there was anything illegal about the Nguyen brothers' contributions. We were ultimately unable to substantiate the claim that the Nguyen brothers had made such contributions.

² CalOptima initially provided a letter of support for the 360 PACE program, which it withdrew in May 2025 (after a whistleblower lawsuit accused 360 PACE of violating self-referral and anti-kickback laws, among other things), despite attempts by Hang Nguyen (a CDPH employee who appears to be related to the Nguyen brothers) to improperly influence CalOptima's decision. Bird Marella gathered the relevant information related to Hang Nguyen's actions and gave the information to law enforcement. We are unaware of any further activity in this regard.

2. The Sales Process

On November 5, 2021, the Sellers purchased the Tustin Property for \$18,000,000. (CN0000005322.0001, at p. 12.) The Sellers apparently purchased the Tustin Property in a “duress transaction,” as the prior owner had the property in escrow several times (each time it fell out), was frustrated in its marketing efforts by the Covid-19 pandemic, and offered the Seller a “discounted quick close.” (*Id.*)

In/around December 2021, the Sellers put the Tustin Property back on the market for sale or lease. (CN0000025600.) Between March 2022 and January 2024, the Sellers changed the asking price multiple times. In March 2022, the Sellers asked \$26,000,000 for the Tustin Property. (CN0000025595.0001.) In May 2022, the Sellers raised the asking price to \$29,500,000. (CN0000058563.) As discussed in more detail below, CalOptima signed an LOI and entered escrow to purchase the property for \$29,500,000 beginning in June 2022 but withdrew from escrow in the summer of 2023. By January 2024, the Sellers had lowered the asking price back down to \$26,500,000. (CN0000015359.) Ultimately, in 2025, the Tustin Property sold for \$19,000,000.

At various times while the Tustin Property was on the market, the broker representing the Sellers informed prospective buyers that there were multiple offers and interested parties. Further, an appraisal prepared by CBRE during CalOptima’s escrow notes that there were “two major local buyers interested in the property that were effectively competing against each other.” The appraisal describes the competitors as “generally similar entities.” (CN0000005322.0001, at p. 13.)

While we have been unable to verify the accuracy of these statements, we are aware of at least one other potential buyer for the Tustin Property in 2022, just before CalOptima negotiated its letter of intent. Between March 17, 2022 and approximately May 3, 2022, the County of Orange considered acquiring the Tustin Property. On March 24, 2022, the County submitted a letter of intent to purchase the Tustin Property for \$22.5M. (CN0000025624.) And, on or around May 3, 2022, the County appears to have withdrawn its bid due to its inability to secure funding. (CN0000025614.)

B. Origination of CalOptima’s Interest in the Transaction

On March 2, 2022, Mr. Hunn, Ms. Carpenter, and CalOptima’s Chief Operating Officer Yunkyung Kim had a call with Carol Gleeson of Gleeson Strategies, during which they discussed a “Recuperative Care Project.” (CN0000039059.) Around the same time, Mr. Hunn asked various brokers to start looking for suitable properties for the project. On March 29, 2022, Ms. Gleeson emailed Mr. Hunn a link to a listing for the Tustin Property, and the note: “Just in case you hadn’t seen these buildings.” (CN0000027742.) On April 14, 2022, Ms. Carpenter asked Mai Hu and David Kluth of Newmark to schedule a building tour. (CN0000070217.) CalOptima staff and Board members toured the property several times.

On May 23, 2022, Mr. Hunn, Ms. Carpenter, CalOptima’s Executive Director of Medi-Cal/CalAIM Kelly Bruno-Nelson, CalOptima Director Clay Corwin, and others toured the Tustin

Property for the first time. (CN0000089464.) Mr. Hunn, Ms. Carpenter, Ms. Bruno-Nelson, and Mr. Corwin each described the property as being ideal for CalOptima's desired use. In their interviews, they recalled the number of private rooms, handrails, nursing stations, emergency generators, outdoor space, underground parking garage, and the large entrance in the back for medical vans. These features of the building were compelling to the group, as their alternatives were to either find another space that would need to be outfitted for a medical facility, or to construct an entirely new building. After seeing the space, Ms. Bruno-Nelson suggested expanding their vision for the property: in addition to a recuperative care center, they could use the building to operate a PACE center. Mr. Hunn agreed, and described feeling that the property was an "ideal fit" and "the most quintessentially perfect building" for what CalOptima was planning. Mr. Corwin added that the building was "ready made" for CalOptima's "mission."

On May 25, 2022, Newmark scheduled another tour with then-Board Chairman Do. (CN0000092233.) In her interview, Ms. Bruno-Nelson recalled that staff had to get Mr. Do "on board" with the project. To do that, Ms. Bruno-Nelson said they explained what the project would entail, the programming that CalOptima would offer at the property, what needs the program would address for CalOptima members, and why the building was a good fit for the project. Ms. Bruno-Nelson said that Mr. Do responded positively to their pitch. Mr. Corwin also recalled that Mr. Do did not "think up" the Tustin Property acquisition but was generally supportive of the project.

Later the same day, Ms. Carpenter asked the CalOptima Board clerk to add a "closed session under real estate" to the agenda for the June 2, 2022 Board meeting. (CN0000076340.)

C. The Letter of Intent

1. Draft Letter of Intent

On May 27, 2022, David Kluth of Newmark emailed CalOptima staff a draft LOI reflecting an offer price of \$28,000,000 and a refundable deposit amount of \$750,000. In his cover email, Mr. Kluth urged CalOptima to "increase this offering amount to match the \$29.5M asking price" in light of "negotiations that are ongoing with other potential buyers." (CN0000058563.) On June 1, 2022, Mai Hu of Newmark sent CalOptima staff materials for the June 2, 2022 Closed Session, including a draft LOI reflecting an increased offer price of \$29,500,000, and Newmark's Broker Opinion of Value presentation, which was then distributed by the Board clerk to Board members. (CN0000066090.)

2. June 2, 2022 Closed Session

On June 2, 2022, the Board discussed the Tustin Property in Closed Session. (CN0000000073.) Individuals present included Board members Andrew Do (Chair), Clayton Corwin (Vice Chair), Blair Contratto, Isabel Becerra, Jose Mayorga, Supervisor Doug Chaffee, and Clayton Chau; CalOptima employees Michael Hunn and Yunkyung Kim; Kennaday Leavitt attorneys Troy Szabo and RJ Cooper; and Newmark employee David Kluth. The following sections describe what occurred during the Closed Session. These facts were developed through witness interviews as CalOptima does not keep records of closed session discussions.

(a) *Newmark presented its Broker Opinion of Value.*

Mr. Kluth discussed Newmark's Broker Opinion of Value presentation, which valued the property at \$24M to \$31.8M based on a per-bed analysis, and \$27.9M to \$43.7M based on a price per square foot analysis. Multiple Board members recalled that Mr. Corwin questioned Newmark (though they are unable to recall what questions Mr. Corwin asked), and said they relied on Mr. Corwin's expertise in real estate transactions to assess the deal. After reviewing the presentation and answering questions, Mr. Kluth left the room so that the Board could deliberate privately.

(b) *The Board discussed the County's bid.*

Multiple witnesses said they learned about the County's bid in the June 2, 2022 Closed Session, though their recollections of specific details varied. For example, some Board members could not recall how they learned about the County's bid, while others specifically recalled learning about it from Dr. Chau, who was then CalOptima's Orange County Health Care Agency Director. Board members who recalled learning about the County's bid in the June 2, 2022 Closed Session said it was clear that the County had withdrawn its bid before the meeting. Counsel Troy Szabo said that Dr. Chau commented during the Closed Session in a "chuckling manner" that the County had previously considered the Tustin Property but was no longer pursuing it. Mr. Corwin recalled having the impression that the County's interest in the Tustin Property was "fleeting" and that it had done a "quick pass." Ms. Contratto recalled learning in the Closed Session that the County was no longer competing for the property.

(c) *The Board discussed "other potential buyers."*

Witnesses have varied recollections as to whether there were bidders other than the County. Mr. Kluth recalled that the Seller's broker had informed him that there were a "couple" of other buyers looking at the property, but he did not know who they were. Consistent with this notion, Ms. Becerra and Ms. Bruno-Nelson said they had the impression that there were other potentially interested buyers, and specifically named Families Together of OC and Horizons Healthcare, though they are unsure whether either organization actually submitted a bid for the property.³ Conversely, Mr. Corwin said he had heard about but "seriously doubted the veracity of truly bona fide competing offers." And Ms. Contratto said that she felt the Board was led to believe that there would be very few potential buyers after the County had withdrawn its bid, and that CalOptima was the preferred buyer because the existing zoning limitations appeared to be consistent with CalOptima's intended use.

³ Attendance records do not reflect which staff members were present in the June 2, 2022 Closed Session. Ms. Bruno-Nelson did not recall with certainty whether she attended the June 2, 2022 Closed Session, though she did recall being in at least one closed session during which the Tustin Property was discussed, and recalled a discussion of the topics that were discussed in the June 2, 2022 Closed Session, so we assume that she was in attendance.

(d) *The Board discussed the \$29.5M purchase price.*

Dr. Chau recalls commenting in Closed Session that the Seller was “asking for more than what they wanted from the County.” Beyond that, Board members did not recall discussing the specific price that CalOptima would offer in its LOI to purchase the Tustin Property in the June 2, 2022 Closed Session. However, multiple witnesses (Messrs. Szabo, Corwin, Chau, and Hunn) recalled feeling relatively unconcerned with the price because the LOI was non-binding – in other words, CalOptima was not actually committing to buy the property and could adjust the price downward during the negotiation period if they felt the property was overpriced.

(e) *The Board voted by consensus to authorize staff to submit a non-binding letter of intent.*

Mr. Szabo said that the Board voted by consensus (not roll call) to authorize staff to submit a letter of intent to purchase the Tustin Property, though he could not recall whether the Board approved a specific price or price range. The June 2, 2022 meeting minutes state that “[t]he Board adjourned to Closed Session . . . to discuss property located at 14851 Yorba Street & 165 N. Myrtle Avenue,” that “[u]nder negotiation were price and terms of payments,” and that “the Board reconvened to Open Session . . . with no reportable actions taken in Closed Session.” (CN0000000073.)

3. Executed Letter of Intent

On June 10, 2022, CalOptima executed a letter of intent to purchase the Tustin Property for \$29.5M (the “LOI”). The LOI was signed on behalf of CalOptima by then-Chairman Do, and signed on behalf of the Seller by Mr. Tang. Before signing the LOI, Kennaday Leavitt informed Ms. Carpenter that no additional Board approval was required. (CN0000091827.)⁴

The nonbinding LOI contained the following relevant terms:

Purchase Price: The purchase price shall be an all cash offer of twenty-nine million and five hundred thousand dollars (\$29,500,000). Buyer shall make an initial refundable deposit of Seven Hundred and Fifty Thousand dollars (\$750,000) upon execution of the Purchase and Sale Agreement (the "Deposit"), and upon waiver of contingencies, the deposit shall become non-refundable to Buyer except for Sellers default under the Purchase and Sale Agreement or the failure of any of Buyers conditions to close (as set forth in the Purchase and Sale Agreement).

Due Diligence: Buyer shall have one hundred and twenty (120) days to perform its due diligence of the Property commencing on the execution of the

⁴ Consistent with CalOptima’s Purchasing policy (GA.5002) and Signature Authority policy (GA.3202), staff received “prior approval of the Board” before “enter[ing] into negotiations” and the LOI was “executed by the Chair of the Board of Directors.”

Purchase and Sale Agreement (the "Due Diligence Period"). During said one hundred and twenty (120) day Due Diligence Period, Buyer shall have absolute discretion whether it wishes to purchase the Property and determine if its contemplated use is permitted at the Property (the "Use Contingency") ... At the end of the Due Diligence Period, Buyer at its option by prior written notice and release of fifty-thousand dollars (\$50,000) from the Deposit as non-refundable, shall have the right to extend the Due Diligence Period for an additional thirty (30) days in the event the Use Contingency remains undetermined (the "First Use Contingency Extension Period") and another thirty (30) days by prior written notice and release of an additional fifty thousand dollars (\$50,000) from the Deposit as non-refundable, in the event the Use Contingency remains undetermined (the "Second Use Contingency Extension Period").

Buyer Approval: This non-binding LOI should not be considered a legally binding document in any way. Any agreement between Seller and Buyer shall be subject to approval and execution of a Purchase and Sale Agreement by Buyer and its Board of Directors.

On June 15, 2022, Ms. Kim emailed the Board to inform them that, among other things, CalOptima “successfully executed the nonbinding LOI at a listing price of \$29.5M.” (CN0000022720.) Ms. Kim further explained that “[t]he due diligence period will be over 120 days with two 30-day extension options. The extension will require \$50,000 each if needed. The extended due diligence will allow CalOptima staff time to work with the City of Tustin on any changes to the Condition Use Permit.” (*Id.*)

4. Findings Regarding The June 2, 2022 Closed Session & CalOptima’s LOI

Our inquiry into the LOI and June 2, 2022 Closed Session explored several potential issues:

\$29.5M purchase price. Though there were multiple drafts of the LOI reflecting prices between \$27M and \$29.5M, CalOptima ultimately offered to pay the Seller’s full asking price of \$29.5M. To understand how CalOptima reached this number, we considered multiple factors:

Property value. Multiple witnesses told us that the property was unique, meaning that CalOptima could not have expected to find anything similar if it lost out on the purchase. Further, CalOptima staff relied on Newmark’s expertise and advice as to the property value and its offer price. Newmark recommended that CalOptima increase its bid to the full asking price to better compete with “other potential buyers” (addressed below). Newmark also valued the property at up to \$43.7M based on “comparable” properties, many of which Newmark deemed “comparable” because it believed them to be similar to the Tustin Property in terms of “operations.” In other words, Newmark’s valuation

assumed that CalOptima would actually be able to operate a PACE/recuperative care center, which it could only do if it obtained the necessary permits from the City of Tustin. If the necessary permits were never going to be issued, the property's use would be limited, justifying a lower price. However, at the time the Board considered the LOI, CalOptima did not know that the City of Tustin would find that its proposed use exceeded the scope of the existing Conditional Use Permit, or that the City would ultimately refuse to approve CalOptima's application for a new CUP. Our inquiry did not reveal affirmative evidence of bad faith or wrongdoing related to the initial property valuation.

Other potential buyers. If there were other bidders competing for the Tustin Property, this would have supported CalOptima's decision to offer a higher offer price. At the time of the June 2, 2022 Closed Session, CalOptima had no reason to question the veracity of Newmark's representation that there were other potential buyers (which information it received from the Seller's broker). Moreover, our inquiry revealed that some Board members knew or believed that there were other interested buyers. On the other hand, at least Mr. Corwin said that he believed the references to other buyers were typical sellers' puffery. In the end, in light of the property's uniqueness and its appraisal, it is unclear whether the supposed other buyers materially affected CalOptima's offer. It is also true that sellers' "puffery" about interest by other parties should be and typically are taken with some justifiable level of suspicion, making it less likely that this materially affected CalOptima's offer.

Timing of the County's bid. If the County was an active bidder for the Tustin Property at the time of the June 2, 2022 Closed Session, this would raise concerns that the County's bid might have been used to inflate CalOptima's offer price. Our inquiry suggests that this is not what happened. The County began considering the Tustin Property in mid-March, 2022. Dr. Chau recalled that the County's consideration of the Tustin Property lasted no more than 30-60 days. Based on Dr. Chau's estimate, the County likely withdrew its bid by mid-May at the latest. Moreover, documents suggest that the County withdrew its bid even earlier, on/around May 3, 2022.⁵ Finally, in a June 3, 2022 email regarding the Closed Session, Mr. Szabo noted that "[t]he other purchaser was the County and Dr. Chai [sic] withdrew their bid, so it puts CalOptima in the driver seat." Mr. Szabo confirmed that he had no conversations about the County's bid outside of the Closed Session, which means that this statement by Dr. Chau was made during the closed session. This timeline suggests that the County's bid could not have been used to drive up CalOptima's offer price.

Potential conflicts of interest. During this period, Dr. Chau, Supervisor Do, and Supervisor Chaffee served simultaneously as directors for the County and as CalOptima Board members. We found no evidence that Supervisors Do and Chaffee were involved in the County's pursuit of the Tustin Property. However, in his role as an Agency Director for the

⁵ Dr. Chau could not recall the specific date on which the County communicated its withdrawal to the Seller's broker, and we were unable to ascertain it from documents produced by the County.

County, Dr. Chau toured the Tustin Property, was involved in discussions about whether the County would pursue the Tustin Property, and discussions about withdrawing the County's bid for the Tustin Property. As noted above, because evidence shows that the County had withdrawn its bid beforehand, neither Dr. Chau nor Supervisors Do and Chaffee had an active conflict of interest at the time of the June 2, 2022 Closed Session.⁶

Approval of the LOI by consensus. Voting by "consensus" is improper. Gov. Code Section 54957.1(a) requires that after an action is taken, the agency must report out "the vote or abstention of every member present" for that closed session. "Consensus" voting fails to satisfy Section 54957.1(a) because a consensus lacks an individual vote tally and thus the Board could not provide the statutorily required report in open session.

Failure to report out the Board action. While the LOI itself did not constitute a "final agreement" required to be reported out under Gov. Code Sec. 54957.1(a)(1)(A), the Board's approval of the LOI likely qualified as an "action taken" that required immediate reporting because the LOI outlined a set of next steps to purchase real property. Gov. Code Sec. 54957.1(a). Further, while the ultimate price and payment terms might remain confidential until the real-estate transaction is completed, the other aspects of the LOI were not covered by such confidentiality, and do constitute a collective decision to take action that should have been reported out.

D. Negotiation and Execution of the Purchase and Sale Agreement

Between June 10, 2022 and August 2, 2022, CalOptima and the Seller negotiated the terms of the Purchase and Sale Agreement (the "PSA").

1. The Decision to Delay Consideration by the Board

While real estate counsel negotiated the PSA, CalOptima staff worked with various consultants to begin designing the programming CalOptima planned to offer at the property and to engage the City of Tustin regarding the Conditional Use Permit (discussed more fully in Section IV.E below).

In mid-July 2022, Mr. Hunn sent Messrs. Do and Corwin (then Chair and Vice Chair of the Board) a draft presentation to the City of Tustin, setting forth a proposal for CalOptima's Community Living Recuperative Care & PACE Center. (CN0000002928.) Mr. Corwin asked Mr. Hunn whether the Tustin Property would be an agenda item for the upcoming Board meeting on August 4, 2022. Mr. Hunn replied, "[n]o, not an agenda item ... We want to complete things with the City, do the building inspections, finalize the PSA, and then bring it forward to the Board for consideration." (CN00000021497.) We asked Mr. Hunn about his intent in saying that

⁶ Relatedly, because Dr. Chau is a nonvoting Board member, we sought advice from LCW as to whether it was proper for him to even attend the closed session. LCW provided a formal legal opinion concluding that, because Dr. Chau is a statutory Board member (whose appointment is authorized by Welfare and Institutions Code 14087.59(a)(1)), he properly attended the closed session.

he wanted to “finalize the PSA” before bringing it to the Board. Mr. Hunn explained that in general he believed there was no need to bring the PSA back to the Board for approval (regardless of whether it had been signed) until the transaction was ready to close – which would not have occurred unless and until the City of Tustin approved CalOptima’s Conditional Use Permit application.

2. August 2, 2022 Purchase and Sale Agreement

On August 2, 2022, the parties executed a legally binding PSA, signed by Mr. Do (then Board Chairman) on behalf of CalOptima and by Mr. Tang on behalf of the Seller.

Before the parties signed the PSA, CalOptima’s real estate counsel circulated a near-final draft to various individuals at CalOptima, Kennaday Leavitt, and Newmark, noting the pages that required Mr. Do’s signature. Mr. Szabo replied, “[f]ine to proceed as outlined.” (CN0000002383.) We asked Mr. Szabo about his intent in advising that it was “fine to proceed.” Mr. Szabo believes he was referring to the revised terms of the PSA, not to the question of whether the PSA should be signed without prior Board approval, though he does not recall sending this specific email and acknowledges its ambiguity.

Nevertheless, Ms. Carpenter then sent the draft PSA to Messrs. Do and Corwin, copying Mr. Hunn and Ms. Kim, asking that they both review the PSA and that Mr. Do provide his signature. (CN0000021984.) Ms. Carpenter noted in her email that “the \$750,000 deposit is due to Ticor Title within three (3) business days of the execution of the PSA” and that “we also added two additional 30-day extensions ... at a higher cost than the first two.” (*Id.*) Once Messrs. Do and Corwin approved, Ms. Carpenter asked Mr. Do’s secretary to provide his signature, and returned the signed pages to real estate counsel to execute the PSA. (CN0000003225; CN0000091544.) Ms. Carpenter then sent the “fully-executed” copy of the PSA to Mr. Hunn. (CN0000003221.) In her interview, Ms. Carpenter said that she knew (likely from a conversation with Mr. Novello) that the transaction would ultimately need to be taken back to the Board for approval, but she did not recall discussing this with anyone before the PSA was signed.

The fully-executed PSA contained the following provisions:

- | | |
|--------------|---|
| Section 2(a) | <u>Purchase Price.</u> The purchase price (“Purchase Price”) for the Property shall be Twenty-Nine Million Five Hundred Thousand and No/100 Dollars (\$29,500,000.00). |
| Section 3(a) | <u>Deposit.</u> Within three (3) business days after the execution of this Agreement, Buyer shall deposit with Escrow Agent the sum of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) in immediately available funds (the “Deposit”). ... Upon removal of the Buyer contingency and delivery of the Property Approval as set forth in Section 7(c) below and the entire Deposit shall be non-refundable to Buyer under all circumstances except in the event that this Agreement is terminated pursuant to Section 16(b) (Seller default), Section 15B(h) (Seller untrue representation), Section |

17(a) (Casualty) and Section 17(b) (Condemnation), in which event the Deposit (including any released portions) shall be refunded to Buyer pursuant to such provisions.

- Section 3(b) First Due Diligence Extension Option Deposit Release.
Notwithstanding anything to the contrary contained in this Agreement, if Buyer exercises the First Due Diligence Extension Option as provided in Section 7(d) below, then Escrow Agent shall immediately release to Seller a portion of the Deposit equal to \$50,000 ...
- Section 3(c) Second Due Diligence Extension Option Deposit Release.
Notwithstanding anything to the contrary contained in this Agreement, if Buyer exercises the Second Due Diligence Extension Option as provided in Section 7(e) below, then Escrow Agent shall immediately release to Seller an additional portion of the Deposit equal to \$50,000 ...
- Section 3(d) Third Due Diligence Extension Option Deposit Release.
Notwithstanding anything to the contrary contained in this Agreement, if Buyer exercises the Third Due Diligence Extension Option as provided in Section 7(f) below, then Escrow Agent shall immediately release to Seller a portion of the Deposit equal to \$150,000 ...
- Section 3(e) Fourth Due Diligence Extension Option Deposit Release.
Notwithstanding anything to the contrary contained in this Agreement, if Buyer exercises the Fourth Due Diligence Extension Option as provided in Section 7(g) below, then Escrow Agent shall immediately release to Seller an additional portion of the Deposit equal to \$150,000 ...
- Section 7(c) Due Diligence Period. ... If Buyer disapproves the Property, Buyer may terminate this Agreement by providing written notice to Seller (“Termination Notice”) prior to the expiration of the Due Diligence Period. If Buyer timely delivers the Termination Notice, then this Agreement and the Escrow shall automatically terminate, and Escrow Agent shall within two (2) business days, return the Deposit (less the \$100 Independent Contract Consideration and any Deposit amounts previously released to Seller per Sections 3(b), 3(c), 3(d) and 3(e).

3. August 4, 2022 Board Meeting

At the August 4, 2022 Board meeting, the Board considered several items related to the Tustin Property, including (1) ratification of an amendment to Newmark’s contract allowing

Newmark to assist with due diligence for the Tustin Property, (2) ratification of a contract with Whittingham Public Affairs Advisors for “consulting and government affairs services to secure necessary approvals from the City of Tustin,” and (3) authorization of a contract with Totum Corporation “for conceptual design services.” While it was clear that the property purchase was moving forward, the Board did not ratify the August 2, 2022 PSA at this meeting. Further, none of the CalOptima staff and Board members we interviewed recall discussing the fact that the PSA had been fully executed at this meeting. Nor did anyone email the Board to inform them that the PSA had been signed after the fact, as Ms. Kim had done for the LOI.

4. August 5, 2022 Deposit

Pursuant to Section 3(a) of the PSA, CalOptima was required to make a refundable deposit of \$750,000 into escrow within three days of signing. On August 3, 2022, shortly after receiving a copy of the fully-executed PSA from CalOptima’s real estate counsel, employees in CalOptima’s Finance Department received a copy of the signed PSA and Ticor Title’s wiring instructions, and were asked to “make some internal arrangement to fund the wire before the [August 5, 2022] due date.” (CN0000002977.) On August 5, 2022, CalOptima wired \$750,000 to Ticor Title. The \$750,000 escrow payment for the Tustin property was funded from CalOptima’s “undesignated reserves.”

In interviews, CalOptima staff said that they assumed the Board had approved the PSA and payment of the deposit because they received a copy of the fully-executed PSA. According to staff, a signed agreement usually becomes the authority for staff to initiate a transfer. Mr. Hunn believed that the Board’s approval of the nonbinding LOI, which also provided for payment of a \$750,000 deposit into escrow, served as the requisite authority for CalOptima’s August 5, 2022 deposit. However, Mr. Hunn said that he ultimately defers to the Finance Department’s guidance as to whether there is proper authority for payments.

5. Findings Regarding The PSA and Deposit

Our inquiry into the execution of the PSA and the \$750,000 deposit issued pursuant thereto explored several potential issues:

Prior Board approval for the PSA. CalOptima employees facilitated the execution of the PSA on August 2, 2022, without obtaining “prior approval of the Board,” as required by CalOptima’s Purchasing policy and procedure for any real-estate transaction.⁷ While Ms. Carpenter and Mr. Hunn intentionally took steps to procure then-Chairman Do’s signature, we did not find evidence that they (or any other CalOptima employee, Board member, or advisor) thought about and intended to disobey CalOptima’s policy. While this finding is subject to

⁷ The Purchasing policy provides that “CalOptima Health may not enter into any transaction for the purchase ... of any real property, or enter into negotiations related to such transactions, without the prior approval of the Board, pursuant to a Board action addressed solely to the transaction or set of related transactions that sets forth the parameters under which the negotiations may proceed. Such negotiations and transactions on behalf of CalOptima Health are to be carried out exclusively by the person or persons designated by the Board.” (GA.5002.)

certain limitations (such as our inability to have witnesses testify under oath), surrounding facts may be deemed to support it. Specifically, in June 2022, the Board had approved the LOI at the \$29,500,000 purchase price and, in August 2022, the Board approved further expenditures on vendors in support of the ongoing transaction. Thus, the Board was not kept in the dark about the price or progress of the purchase. This means that the failure to obtain the required Board approval before the PSA was signed, would not seem to have materially changed the terms of the transaction or the Board’s actual knowledge of its progress.

Omission of the PSA from the August 4, 2022 Board meeting agenda. Relatedly, it is not clear that ratification of the fully-executed PSA was intentionally omitted from the agenda for the August 4, 2022 Board meeting.⁸ *First*, when Mr. Hunn sent the July 21, 2022, email informing Mr. Corwin that the Tustin Property would not be an agenda item for the upcoming Board meeting because it had not been finalized, CalOptima was still actively negotiating the terms of the PSA with the Seller, and there is no indication from that correspondence that the parties believed the PSA would be finalized by CalOptima’s next Board meeting. *Second*, staff prepared the materials for the August 4, 2022 Board meeting two weeks in advance, well before the PSA was finalized. *Third*, CalOptima staff may have proceeded based on the assumption that their general counsel advised that it was “fine to proceed” before the PSA was signed (though, as discussed above, the intended meaning of this email is unclear). Considering these circumstances, we did not find evidence that the failure to adhere to CalOptima’s Purchasing policy was more than a procedural failure.

Issuance of the \$750,000 deposit. CalOptima’s policies and procedures do not explicitly address what documentation is sufficient to provide authority to release funds. As a result, there was confusion among staff as to whether (and when) the Board had approved wiring the deposit money. For example, staff in CalOptima’s Finance Department simply received a copy of the fully-executed PSA, signed by the Chairman of the Board (which is consistent with CalOptima’s Signature Authority policy), and assumed that the Board had approved the PSA. Alternatively, Mr. Hunn believed that the Board’s approval of the nonbinding LOI, which also provided for payment of a \$750,000 deposit into escrow, served as the requisite authority for CalOptima’s deposit.⁹ Thus, we believe that CalOptima’s policies are deficient in this regard.

E. The CUP Application and Due Diligence Extensions

Between August 2022 and June 2023, the primary concern about the Tustin Property among CalOptima staff and Board members was whether CalOptima’s proposed Community Living Recuperative Care & PACE Center would fit within the City of Tustin’s existing Conditional Use Permit (“CUP”) and, if not, whether the City would approve a new CUP. In fact, shortly before the PSA was signed on August 2, 2022, Mr. Corwin told Ms. Carpenter that “the most critical point ... is getting to a bankable assurance that a new CUP will be approved ...

⁸ While the relevant policy required Board authorization before Mr. Do signed the PSA, the Board could still have been asked to ratify it at the August 4 meeting, two days after it was signed.

⁹ Because the LOI is non-binding, while the PSA is binding (even though it admittedly has contingencies), it appears that this analysis is inconsistent with CalOptima’s policy.

Without such assurance, I'm not sure it makes any sense to even use the DD extension options.” (CN0000021986.)

The duration of the City's application process prompted CalOptima to exercise the four due diligence extensions set forth in PSA Sections 3(b)-3(e), and to negotiate two additional extensions in PSA amendments, for which CalOptima released a nonrefundable amount of \$460,000 to the Seller.¹⁰

1. The CUP Application Process.

Before signing the PSA, CalOptima staff met with the Tustin Community Development Director (“CDD”) and City Planner, who reviewed CalOptima's proposal, and the existing CUP and zoning. (See CN0000003212; CN0000003244.) In mid-July 2022, CDD determined that existing CUP could not be utilized (CN0000010498; CN0000008865.0002), and advised CalOptima that it would need to apply for a new CUP. (CN0000001451.)

Thus, on October 17, 2022, CalOptima submitted its CUP application. (CN0000004792.) At that point, CalOptima anticipated that “CUP is a minor entitlement process (one planning commission meeting).” (CN0000004398.) However, after submitting its application, the process was extended due, in large part, to various delays and follow-up questions from the City, to which CalOptima responded on December 6, 2022, January 3, 11, 13, and 18, 2023, February 10, 2023, and March 28, 2023. (CN0000008865.0002.) These delays prompted CalOptima to exercise the four due diligence extensions set forth in the PSA at a total cost of \$400,000.

Around March 30, 2023, Mr. Hunn and Mr. Tang agreed to negotiate an amendment to the PSA, allowing CalOptima more time to complete its due diligence. At that point, CalOptima felt that it had “picked up some momentum with the city.” (CN0000008360.) The following day, CalOptima and the Sellers executed the First Amendment to the PSA (a 10-day extension at no cost) and, on April 10, 2023, CalOptima and the Sellers executed the Second Amendment to the PSA (allowing two additional 30-day extensions for \$30,000 each).¹¹

¹⁰ In addition to paying for the due diligence extensions, in August 2023, CalOptima was also required by City ordinance to reimburse the City for the \$78,076 it incurred during the CUP application process. CalOptima paid the money out of an \$18M “undesignated reserve” fund that the Board had previously authorized setting aside for property-related expenses at the February 2, 2023 Board meeting.

¹¹ Around the same time, Mr. Hunn asked Ms. Carpenter to speak with Hang Nguyen (a CDPH District Manager). Mr. Tang introduced Hang Nguyen to Ms. Carpenter as “his contact” at CDPH, who offered to advise Ms. Carpenter on CalOptima's responses to the City's questions. After submitting CalOptima's responses, Ms. Carpenter shared them with Hang Nguyen, but did not otherwise request or accept her assistance. In April 2023, Hang Nguyen wrote a letter of support for CalOptima's project to the City. Ms. Carpenter does not believe anyone at CalOptima asked Hang Nguyen to write the CHPD letter of support to the City. Public records suggest that Hang Nguyen is somehow related to Gary and Larry Nguyen, as they have been associated with some of the same residential addresses in the past.

On April 19, 2023, the City determined that CalOptima’s proposed use was not permitted. CalOptima appealed the City’s determination. On May 24, 2023, while the appeal was pending, CalOptima exercised its remaining extension option under the Second Amendment to the PSA for \$30,000. On June 27, 2023, the City denied CalOptima’s appeal.

Around the same time, Ms. Carpenter learned that “the City is supportive of the project but wants to move forward with [a] zone change” instead of a new CUP, and that the process “could be 6-9 months.” CalOptima attempted to negotiate another Amendment to the PSA to further extend the due diligence period, but negotiations stalled because the parties could not agree on the length of the extension—CalOptima wanted a 6-month extension to pursue the zoning change, while the Sellers only wanted a 90-day extension. Thus, on July 7, 2023, CalOptima notified the Sellers that it was terminating the PSA.

2. CalOptima’s Extension Notices & PSA Amendments.

CalOptima’s four due diligence extension notices under the PSA, the two PSA amendments, and the non-refundable payments released to the Sellers pursuant thereto, occurred on the following dates:

Date	Description	Extension	Payment	Refund
8/2/22	Purchase Agreement		\$750k	Refundable
11/21/22	Notice of First Due Diligence Extension Option	30 days	(\$50k)	Non-Refundable
12/14/22	Notice of Second Due Diligence Extension Option	30 days	(\$50k)	Non-Refundable
1/20/23	Notice of Third Due Diligence Extension Option	30 days	(\$150k)	Non-Refundable
2/22/23	Notice of Fourth Due Diligence Extension Option	30 days	(\$150k)	Non-Refundable
3/31/23	First Amendment to the Purchase Agreement	10 days	None	
4/10/23	Second Amendment to the Purchase Agreement; First Additional Extension Option	52 days	(\$30k)	Non-Refundable
5/24/23	Notice of Second Additional Extension Option	31 days	(\$30k)	Non-Refundable
6/30/23	Third Amendment to the Purchase Agreement.	1 week	None	
7/7/23	CalOptima Termination Notice			
7/7/23-7/14/24	Reinstatement of and Fourth Amendment to the PSA negotiated	1 week	None	
7/14/23	Sellers’ Termination Notice			

Total Amount Paid for Due Diligence Extensions: **\$460,000**

Mr. Hunn was the signatory on each of CalOptima’s four due diligence extension notices under the PSA, and on each of the two PSA amendments. Each one of these documents required

CalOptima to release a nonrefundable portion of its \$750,000 deposit from escrow to the Sellers. In her interview, Ms. Kim could not recall how CalOptima staff determined that Mr. Hunn was an appropriate signatory. Documents show that Finance Department employees assumed Mr. Hunn could sign the documents and release the deposit money “[s]ince the board approved the original agreement.” (CN0000007944.)

Extension payments pursuant to the PSA. Although CalOptima had exercised the extension rights, the money was not immediately released from escrow to the Sellers. Instead, it was not until about March 30, 2023, that the title company released \$400,000 from escrow to the Sellers to account for the four extensions pursuant to the PSA. Before releasing this money, the title company requested, and CalOptima provided, deposit instructions signed by Mr. Corwin (then Chairman of the Board). (CN0000008149.)

Extension payments pursuant to the amendments to the PSA. Between April 10 and May 24, 2023, the title company released an additional \$60,000 from escrow to the Sellers pursuant to the Second Amendment to the PSA. The title company did not request deposit instructions signed by the Chairman of the Board before releasing this money.

3. Findings Regarding The Due Diligence Extensions

In connection with our inquiry into the CUP process, due diligence extensions, PSA amendments, and CalOptima’s payments pursuant thereto, we explored several potential issues. As set forth below, our inquiry revealed both policy violations and policy deficiencies.

CUP application process. Though the CUP process was prolonged and costly, each of the witnesses with whom we spoke felt that CalOptima staff pursued the CUP amendment (and later considered a zoning change) in good faith. The documents we reviewed largely corroborate this notion.

Authority to sign extension notices and PSA amendments. The due diligence extension notices and PSA amendments violated CalOptima’s Signature Authority policy, which states that “real property transaction documents ... shall be executed by the Chair of the Board of Directors.”¹² Each of the four due diligence extension notices and the two PSA amendments were signed by the CEO, instead of the Board Chair, as is required by the policy. While the policy does permit the Board to “delegate[] its power to [an] officer or employee,” such

¹² The Signature Authority policy (GA.3202) contains the following provisions:

- “A CalOptima Health officer or employee may not expend any funds or take any other action on behalf of CalOptima Health, unless the [Board] has approved such expenditure or action, or delegated its power to that officer or employee, subject to an articulated standard.”
- “Amendments or other changes to any document binding CalOptima Health must be approved and executed in the same manner as the original document, except for minor price deviations, as provided within [GA.3202].”
- “[R]eal property transaction documents ... shall be executed by the Chair of the Board of Directors.”

delegation must be made pursuant to “an articulated standard.” There is no such articulated standard permitting the CEO to bind CalOptima with respect to real estate transactions.

Authority to release non-refundable payments from escrow. CalOptima’s Signature Authority policy prohibits CalOptima officers or employees from “expend[ing] any funds ... unless the [Board] has approved such expenditure or action.” Because the Board had not approved the PSA at the time the first four due diligence extension payments were made, CalOptima’s CEO could not have had authority to expend funds pursuant to the PSA. Moreover, the Board’s approval of the LOI could not have provided the requisite authority for the due diligence payments pursuant to the PSA because the due diligence terms in the PSA were materially different from those in the LOI and the LOI was non-binding. Additionally, as noted above, CalOptima’s policies and procedures do not explicitly address what documentation is sufficient to provide authority to release funds. Because CalOptima’s Finance Department relied on the fully-executed PSA as the basis for authorization to issue payments, staff was unaware that the payments were unauthorized.

F. Ratification of the PSA

1. Events Leading Up To The April 6, 2023 Board Meeting

In his interview, counsel Jim Novello reported learning that CalOptima had exercised due diligence extensions, requiring payment of nonrefundable funds to the Sellers, in the Spring of 2023. Mr. Szabo recalls that he and Mr. Novello had a discussion about the Tustin Property deal, in which they determined that if CalOptima staff were going to continue to pursue the deal, the Board would need to vote on the PSA.¹³

2. April 6, 2023 Closed Session

On April 6, 2023, the Board discussed the Tustin Property in Closed Session. (CN0000000081.) Individuals present included Board members Clayton Corwin (Chair), Blair Contratto (Vice Chair), Supervisor Chaffee, Clayton Chau, and Supervisor Sarmiento; CalOptima employees Michael Hunn and Yunkyung Kim; and Kennaday Leavitt attorneys Jim Novello and Troy Szabo. This section describes what occurred during the April 6, 2023 Closed Session. These facts were developed through witness interviews as CalOptima does not keep records of closed session discussions.

In Closed Session, Mr. Novello briefly introduced the Tustin Property deal. He explained that the Board previously approved the nonbinding LOI, and that the Board now needed to ratify the PSA in order for CalOptima’s due diligence extension payments to be made. Board members asked questions, but Mr. Novello does not recall what they were. The Board then ratified the

¹³ Several other events occurred in the Spring of 2023 that likely renewed Kennaday Leavitt’s focus on the Tustin Property deal. For example, in February, Mr. Do resigned from the CalOptima Board, reportedly due to a state investigation into hiring and pay practices during his time as Chair of the Board. In March, LAist reporter Nick Gerda requested information from CalOptima about the Tustin Property deal.

PSA in closed session. Mr. Novello has informed us that the remainder of his discussion with the Board regarding the Tustin Property deal is subject to the attorney-client privilege.

Supervisor Sarmiento recalls the Tustin Property deal being “glossed over” in the Closed Session. According to Mr. Sarmiento, the deal was presented as a permitting issue, and Messrs. Sarmiento and Chaffee, and Dr. Chau, recall that the Board briefly discussed whether the CUP process would require additional due diligence extensions. Neither Mr. Sarmiento nor any of the other witnesses with whom we spoke about the April 6, 2023 Closed Session (Mr. Corwin, Ms. Contratto, Mr. Hunn, Mr. Chaffee, Dr. Chau, and Ms. Kim) remember being asked to ratify the PSA.

The minutes from the April 6, 2023 Board meeting reflect a Closed Session discussion about the “price and terms of payments” for the Tustin Property, and state that “there were no reportable actions taken in Closed Session.” (CN0000000081.)

3. Findings As To The April 6, 2023 Closed Session.

Failure to report out the Board action. Gov. Code Sec. 54957.1(a)(1)(A) requires the immediate reporting of the Board’s approval of “an agreement concluding real estate negotiations.” Although the Board ratified the PSA on April 6, 2023, the ratification suffers from the same Brown Act failures identified in connection with the June 2, 2022 closed session: the failure to take a proper vote, report the vote, and report the decision to approve the PSA.¹⁴

Delayed ratification. While the PSA was fully executed as of August 2, 2022, ratification did not occur until eight months later. CalOptima’s policies and procedures do not provide a time limit within which transactions must be ratified. Instead, the policies related to real estate transactions require “prior approval of the Board.” Several Board members felt that the delay in bringing the PSA back to the Board for ratification was highly unusual.

G. Termination of the PSA

As noted, in late June/early July of 2023, CalOptima attempted to negotiate another amendment to the PSA to further extend the due diligence period and permit CalOptima to apply for a zoning change – a process that CalOptima employees understood would take a least six more months to complete. Negotiations between CalOptima and the Sellers stalled because the parties could not agree on the length of the extension. The Sellers were only willing to provide a 90-day extension, while CalOptima needed at least six more months to pursue the zoning change. Thus, the parties terminated the PSA.

Shortly after the PSA was terminated, CalOptima was refunded \$289,900. This was the amount remaining in escrow after \$460,000 had been released to the Sellers for the due diligence extensions, less an additional \$100 due to the Sellers pursuant to Section 7(c) of the PSA.

¹⁴ We are unable to determine whether the April 6, 2023 vote itself was proper, as witnesses could not recall whether the vote to ratify the PSA was done by consensus or by roll call (or even failed to recall it at all), and CalOptima does not maintain closed session minutes.

H. Seller's Attempt to Revive the Deal

As noted earlier, CalOptima formally withdrew from escrow on July 7, 2023. In January 2024, however, Mr. Tang emailed Mr. Hunn “to discuss the possibility of re-engaging on the Tustin hospital project.” Mr. Hunn, Ms. Carpenter, and the Sellers had at least two meetings before Ms. Carpenter “cut [it] off” because they did not have board authority to pursue the deal.

V. Limitations

Our inquiry was limited by several factors.

First, because of the voluntary nature of our investigation, we lacked subpoena power to compel witnesses to testify to the facts under oath, and to compel production of documents such as personal financial records and/or communications that would definitively disprove (or possibly prove) the allegation that Mr. Do intended to or did receive a kickback in connection with the Tustin Property. Had we been able to compel additional testimony and evidence, our conclusions (which are based, in part, on the lack of certain evidence) may have been different.

Second, because CalOptima currently maintains no records of closed session discussions, our inquiry required us to determine the relevant facts by reviewing a substantial number of documents and questioning witnesses who were present in June 2, 2022 and April 6, 2023 closed sessions.

Third, witnesses’ memories of these closed sessions and related events have faded due to the passage of time, as CalOptima’s efforts to acquire the Tustin Property occurred between approximately May 2022 and July 2023.

Finally, our investigation began as an effort to determine whether there was evidence supporting an allegation of illegal kickbacks. Albeit keeping in mind the previously noted limitations, we did not discover evidence sufficient to prove that anyone acted with criminal intent. This is a very different inquiry, however, from the question of whether CalOptima should improve its policies and compliance with those policies. Those are business questions for the Board to consider in the proper context.