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Councilmembers:
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Rachel Lang, Rachel.Lang@Ojai.CA.gov
Andrew Whitman, Andrew.Whitman@Ojai.CA.gov
Leslie Rule, Leslie.Rule@Ojai.CA.gov
Mayor Elizabeth Betsy Stix, Betsy.Stix@Ojai.CA.gov
Matthew Summers, Ojai City Attorney, Matthew.Summers@Ojai.CA.gov
James Vega, City Manager, James.Vega@Ojai.CA.gov
Ojai City Hall
401 S Ventura St.
Ojai, CA 93023

Re: City Council Closed Sessions and the Duty of Disclosure

Dear City Councilmembers, et al:

As you know, Councilmember Leslie Rule has retained this firm to address concerns regarding the City Council's closed sessions on December 13, 2022 and January 9 and 10, 2023.

I hope by now you have read and digested my letter of Tuesday, which I shared with you in open session.[1] In that letter I pointed out the strict limits of confidentiality applying to closed sessions, which renders all communications outside those limits NOT confidential.

Indeed, "The fact that material may be sensitive, embarrassing or controversial does not justify application of a closed session unless it is authorized by some specific exception." (*Rowen v. Santa Clara Unified School District* (1981) 121 Cal.App.3d 231, 235.) "Rather, in many circumstances these characteristics may be further evidence of the need for public scrutiny and participation in discussing such matters. (See Civ. Code, § 47(b) [regarding privileged publication of defamatory

[1] I want to point out a correction to my previous letter. I said in a footnote that Simply Ojai paid the filing fee for the Petition for Referendum. It did not. Mindful Citizen paid $438 in "publication fees" for the Petition for the Initiative.

remarks in a legislative proceeding].)" *The Brown Act, Open Meeting for Local Legislative Bodies*, Office of the Attorney General, 2007.

My fear is that you, well-intentioned and thoughtful members of the City Council, based on bad advice from a conflicted City Attorney, will double down on the erroneous and harmful position that EVERYTHING said in these closed meetings is confidential. If you continue down the path Mr. Summers recommended Tuesday, it will compound the improprieties already committed: The Mayor recommending the hiring of a lawyer ***for*** the City who was handpicked by the lawyer who is litigating ***against*** the City; hiding the source of that recommendation; and, on Tuesday, attempting to prevent its public disclosure. If you continue this trend, you will undermine public trust and appear to be participating in a concerted coverup of improprieties at best and criminal activity at worst.

Therefore, I would like to give you another chance to do the right thing.

As I was limited in my ability to speak (to two minutes), I will make some observations that I could not express Tuesday night.

First, Mr. Summers is a contractor to the City. He should ***not*** be allowed to speak as he did at future Council sessions. He is certainly not allowed to shout down Ms. Rule or implore the Council to shut her down when she wishes to speak—regardless of whether he thinks she is violating the law on confidential disclosures—or not.

Next, the Brown Act, Government Code section 54963, provides three remedies against a person willfully disclosing a confidential communication:

1) Injunctive relief to prevent the disclosure of confidential information.
2) Disciplinary action.
3) Referral to the grand jury.

Ms. Rule already disclosed the communications in a written public statement, so injunctive relief is inapplicable. This leaves only disciplinary action and a grand jury referral.

If you wish to pursue either of these latter two options, Ms. Rule thinks you will be sadly mistaken. You will achieve nothing and embarrass the Council and the City in the process. Nonetheless, if you choose to go that route, Ms. Rule will raise no objection, subject to only a *proviso* that her written statement and my letters be included in any such Council deliberations, records, and actions, and that these

deliberations and actions are decided in ***open*** session. There is no justification for conducting such a meeting in closed session.

Further, there is no legal authority allowing Mr. Summers to interrupt members of the public, like Robin Gerber, violating the exercise of her First Amendment Rights.

Next, on Tuesday evening, Mr. Summers made a number of factual misrepresentations to buttress his erroneous opinion that ***all*** communications in these closed sessions are confidential. Not being lawyers versed in the Brown Act, these factual misrepresentations undoubtedly influenced your thinking, so let me correct them:

1. Mr. Summers *emphatically* stated that Leslie Rule should be excluded from a closed session about her disclosures, "because she is threatening to sue the City." This is a *complete* fabrication. Ms. Rule has ***not*** threatened to sue the City. Neither is she *planning* to sue the City—or anyone else. From where Mr. Summers got that notion we have ***no*** idea.

2. Also contrary to Mr. Summers' asserted opinion, which he stated as fact, Ms. Rule is ***not*** doing anything "adverse" to the City. Nor would that even justify a closed counsel session without her presence. She is disclosing improprieties by ***two*** members of the City Council. Mr. Summers is confusing the personal interests of individuals with the interests of the City. This a common problem in the legal profession; it is sometimes difficult for attorneys to distinguish their representation of an organization from their representing the head of the organization. Here, however, I think we can all agree, it is not for Mr. Summers to decide what is "adverse to" or in the "interest of" the City Ms. Rule thinks her disclosures are good for the City; others are free to disagree. But that is a matter for the public and its elected officials to discuss in ***open*** session.

3. Conflicting again with reality, contrary to Mr. Summers' representations, Ms. Rule also did not disclose the content of any attorney-client communication about the *potential* litigation. This despite the fact that threatened or potential litigation was not even a *designated* topic for confidential communications in closed session. Nonetheless, without waiving her rights, Ms. Rule is willing to stipulate to not disclose Ms. Minner's legal memo—if that will relieve your concerns regarding "prejudice" to the City in potential future litigation.

4. Mr. Summers stated emphatically that the City has not paid the outside law firm "***anything***." While perhaps *literally* true, Mr. Summers' statement was

deceptive, at best. As you all know, Shute et al, agreed to undertake legal work based on the promise by the City to pay it the sum of at least $23,000. An ***honest*** factual assertion from Mr. Summers would have been, "We have AGREED to pay an outside firm at least $23,000."

5. In response to Ms. Gerber's question, Where are the required public reports from these three closed council sessions, Mr. Summers huffily replied, "The reports will come in due course." The first closed session was December 13; Shute et al was hired shortly thereafter; and that law firm now expects $23,000+ for its work.

   Does Mr. Summers ***honestly*** think that "due course" can be more than five weeks (and counting) after the council decides, appropriates, and commits $23,000+ in closed session?

Mr. Summers' ***five frantic falsehoods*** have a reasonable explanation. As I mentioned Tuesday night, a great deal of the upset around this disclosure issue was created by Mr. Summers himself. He negligently designated ***only*** Government Code Section 54956.9(d)(1) pertaining to litigation that "***has been initiated formally***," i.e. "**Simply Ojai v. City of Ojai, et al."**–as the ***sole*** legal basis for the closed sessions.

If Mr. Summers had wished to have the Council confidentially discuss ***threatened*** or ***potential*** litigation with the Becker Group, eminent domain, purchasing the properties, council members' conflict of interest, historic designation, or any other matter, he should have specified Govt. Code subsection 54956.9(d)**(2)** or other appropriate code subsection, and ***specified*** the nature of the matter in the statement for the public agenda. He did not.

He should also probably have read: The League of California Cities, *The City Attorney's Role in Closed Sessions, Running the Closed Session* (2014), which instructs:

> The City Attorney needs to monitor the discussion to make sure that it stays within legal parameters for the type of closed session that has been noticed. This often requires a careful judgment call as to when the discussion has strayed off track and outside the legal boundaries of the closed session.

Mr. Summers did not do that either.

In short, he ***improperly noticed*** the closed sessions' discussions that actually ensued, and he did not monitor the discussion to ***make sure it stayed within the legal parameters for the closed session***. Hence, if any council member now wishes to complain about the lack of confidentiality for the matters Ms. Rule is disclosing, the fault lies with Mr. Summers, not Ms. Rule.

Sensing that fault lies with himself, it is no surprise that Mr. Summers lashed out at others who point-up his failures. He is thus too personally invested in the argument, too conflicted and compromised, to render unbiased advice on the issue of the scope of your closed sessions. His advice is as ***self-serving*** as it is groundless. He should thus recuse himself from any further involvement in this matter.

Finally, my client and I have a couple of questions:

1. It is our understanding that the Council last amended the current fiscal year's budget on October 25, 2022 in public deliberations. It included the specific funding of certain special counsel to handle the Ventura River Watershed Adjudication. Were these specified funds the funds used for funding Shute, et al.? If so, why was that change made without public disclosure or public Council deliberations? And even if there was legal authority, what was the common sense rationale for not bringing it before the public in open session so the Council could vote on it? $25,000+ is a significant sum of money for the City.

2. What is the legal authority for the Council meeting in closed session to discuss Ms. Rule's alleged violation of confidentiality? Although there is an exception for personnel, "The purpose of the personnel exception is to avoid undue publicity or embarrassment for public ***employees*** and to allow full and candid discussion of such *employees* by the body in question." (*Fischer v. Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87, 96; *San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 955; 61 Ops. Cal. Atty. Gen. 283, 291 (1978).)

   Putting aside the issue of whether Ms. Rule is even considered an "employee," we hope that any desire to have a closed session to discuss Ms. Rule's disclosures -- without her present – was motivated by your genuine concern over exposing her to undue publicity or embarrassment. But, as Ms. Rule made so clear on Tuesday night, she fears neither "undue publicity" nor "embarrassment." To the contrary, she welcomes "full and candid discussion" of her disclosures by "the body in question," the City Council in open session.

> Invocation of the exception—to send the matter to closed session – will only serve to pervert the purpose of the Brown Act, which insists on transparency in the operations and deliberations of government. It would be tragic to see the Brown Act so egregiously hijacked for exactly the opposite outcome: protecting wrongdoing and becoming parties to a coverup.

Last, although I should not need to say this, I would remind everyone that they are required to preserve all documents, including but not limited to text messages, phone records, emails, and other writings of any kind.

In sum, no action is justified against Ms. Rule. If there is any action, however, it should be taken in City Council open session, with Ms. Rule and her counsel given fair and ample opportunity to defend her against any accusations of wrongdoing.

We look forward to your thoughtful replies and answers to our questions.

Sincerely,
/s/
Jon E. Drucker
Attorney for Councilmember Leslie Rule