SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Superior Court of California, County of Ventura, Hall of Justice, Department 43

2023CUMC008352 October 3, 2023
DAVID BYRNE, et al. vs LESLIE RULE, et al. 11:14 AM

Judge: Honorable Ben Coats
Judicial Secretary: H. McIntyre
CSR: None

APPEARANCES:

NATURE OF PROCEEDINGS: Ruling on Submitted Matter - Special Motion to Strike

The Court, having taken Defendants Leslie Rule and Jon E. Drucker's Special Motion to Strike (Code Civ. Proc. § 425.16) under submission on 09/07/2023, now rules as follows:

Preliminary Matters

Plaintiffs' evidentiary objections to the declaration of Jon E. Drucker are overruled.

Defendants' evidentiary objections to Andrew Whitman's declaration are sustained except for objection no. 5a which is overruled. The Court also notes that objection no. 13 references "Govt. Code § 53954.3." The Court believes this to be a typographical error, and the correct statute to be Govt Code § 54954.3.

Defendants' evidentiary objections to the supplemental declaration of attorney Brian Acree are overruled.

Defendants' evidentiary objections to the declaration of attorney Brian Acree, are overruled.

Plaintiffs' evidentiary objection nos. 2 (as to Exhibit A only), 5, 8 and 9 to the declaration of defendant Rule submitted with the reply brief are sustained. The remaining evidentiary objections to Rule's declaration are overruled.

Defendants' request for judicial notice is granted regarding the case: Simply Ojai v. City of Ojai, Case No. 202200572740CUWM. Judicial notice is not taken of the truth of any factual assertions in the complaint.

Discussion

This matter arises from allegations that Defendants made written and oral public statements both during City Council meetings, and in connection with City Council meetings challenging the propriety of closed City Council sessions occurring on December 13, 2022, January 9 and January 10, 2023 (the "Closed Sessions.") Plaintiffs allege that Defendants disclosed confidential

material from the closed session meetings in violation of the Brown Act (Government Code § § 54950 et seq.) Defendants allege this is a Strategic Lawsuit Against Public Participation (SLAPP) and bring this motion to strike (anti-SLAPP) pursuant to California Code of Civil Procedure § 425.16.

Plaintiffs contend that this case is exempted from the anti-SLAPP statute based upon the public interest exemption. The exemption of § 425.17(b) provides:

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike . . ." Code Civ. Proc. § 425.16(b)(1). However, "*Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:*

(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter." Code Civ. Proc., § 425.17(b).

"Unlike the anti-SLAPP statute, which is 'construed broadly' (§ 425.16, subd. (a)), section 425.17, subdivision (b)'s exemptions are 'narrowly construed.' [Citation.] The plaintiff bears the burden of proof as to the applicability of the exemptions. Whether a lawsuit falls within the public interest exemption of section 425.17(b) is a threshold issue, and we address it prior to examining the applicability of section 425.16." *Exline v. Gillmor* (2021) 67 Cal.App.5th 129, 138 internal quotes and citations omitted.

Plaintiffs argue that they meet all three of the criteria listed in §425.17(b). While defendants argue that plaintiffs have not brought the action "solely in the public interest." Defendants claim that this is a "political effort to silence a political opponent." (Reply p.6:12-13.)

There are seven individual plaintiffs in this case and all claim to be bringing the suit "in the public interest." FAC ¶¶ 2-8. However, none of them have submitted a declaration in support of their claim that the public interest exemption of § 425.17(b) applies. Personal political agendas and motivations may make the public interest exemption inapplicable. See *Sandlin v. McLaughlin* (2020) 50 Cal.App.5th 805, 823 fn 5 ("Given the parties' history as political opponents and Petitioner's filing of not one, but two lawsuits against Pope, we question whether he met his burden of establishing his petition was an 'action brought solely in the public interest or on behalf of the general public.'") Given the nature of the case, the special interests of the parties, and the lack of supporting declarations submitted by plaintiffs, they have not met their burden of establishing that the narrowly construed exemption of § 425.17(b) applies and this case was brought "solely in the public interest.

Having determined plaintiffs failed to establish an exemption, the court must engage in a two-step process when ruling on a defendant's anti-SLAPP motion to strike a complaint: first, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity; if the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike . . ." Code Civ. Proc. § 425.16(b)(1). An act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue includes any written or oral statement or writing made before a legislative, executive, or judicial proceeding. Code Civ. Proc. § 425.16(e)(1). It also includes any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law. Code Civ. Proc. § 425.16(e)(2).

This lawsuit is based upon defendants' oral and written comments related to matters before the Ojai City Council. In addition, at least some of their oral and written comments are alleged to have been published at an open meeting of the City Council. (FAC ¶¶ 30-35.) Defendants contend the action arises from an act protected under § 425.16. Plaintiffs argue that defendants' activity is not protected under § 425.16 as it is illegal as a matter of law.

"[A] defendant whose assertedly protected speech or petitioning activity was illegal as a matter of law, and therefore unprotected by constitutional guarantees of free speech and petition, cannot use the anti-SLAPP statute to strike the plaintiff's complaint." *Flatley v. Mauro* (2006) 39 Cal.4th 299, 305. However, "California courts consistently hold that defendants may satisfy their burden to show they were engaged in conduct in furtherance of their right of free speech under the anti-SLAPP statute, even when their conduct was allegedly unlawful." (Anti-SLAPP Litigation (The Rutter Group, Civil Litigation Series) § 3:6.) Citing Lieberman v. KCOP Television, Inc., 110 Cal.App.4th 156, 165–166, 1 Cal.Rptr.3d 536 (2d Dist. 2003) (anti-SLAPP statute applied to defendants' newsgathering, including the use of surreptitious video recordings that were allegedly illegally obtained); Taus v. Loftus, 40 Cal.4th 683, 706–707, 713, 727–729, 54 Cal.Rptr.3d 775, 151 P.3d 1185 (2007) (anti-SLAPP statute applied to alleged intentional misrepresentation to learn private information about plaintiff); Hall v. Time Warner, Inc., 153 Cal. App. 4th 1337, 1343, 63 Cal.Rptr.3d 798 (2d Dist. 2007) (anti-SLAPP statute applied to alleged trespass, intimidation and illegal audio and video recording of 82 year-old plaintiff suffering from dementia and Alzheimer's disease)." (Anti-SLAPP Litigation (The Rutter Group, Civil Litigation Series) § 3:6.)

"We understand Flatley to stand for this proposition: when a defendant's assertedly protected activity may or may not be criminal activity, the defendant may invoke the anti-SLAPP statute unless the activity is criminal as a matter of law. In coming to this result, the Supreme Court observed that an activity could be deemed criminal as a matter of law when a defendant concedes criminality, or the evidence conclusively shows criminality." *Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435, 446.

Plaintiffs point to the following to demonstrate that defendant's conduct was illegal: "Rule Decl., Exh. A; Drucker Decl., Exhs.. A, B;; Acree Decl. ¶¶ 5, 11, 13 and Exhs.. D, J, L." Opp. p. 13:13-14. Contrary to plaintiffs' suggestion, defendants do not concede their acts were criminal.

Importantly, "case authorities after Flatley have found the Flatley rule applies only to criminal conduct, not to conduct that is illegal because in violation of statute or common law." *Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 806. (See also *Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4th 1153, 1169 [Flatley rule "is limited to criminal conduct"]

As stated in no uncertain terms in *Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1654:

"*The Supreme Court affirmed the Court of Appeal's decision, and the following is the relevant rule articulated in Flatley for purposes of Mendoza's current case: "[W]here a defendant brings a motion to strike under [the anti-SLAPP statute] based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech ... , but either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech ... was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action. In reaching this conclusion, we emphasize that the question of whether the defendant's underlying conduct was illegal as a matter of law is preliminary, and unrelated to the second prong question of whether the plaintiff has demonstrated a probability of prevailing, and [that] the showing required to establish conduct illegal as a matter of law—either through [the] defendant's concession or by uncontroverted and conclusive evidence—is not the same showing as the plaintiff's second prong showing of probability of prevailing." (Flatley, supra, 39 Cal.4th at p. 320, italics added.)*

Our reading of Flatley leads us to conclude that the Supreme Court's use of the phrase "illegal" was intended to mean criminal, and not merely violative of a statute. First, the court in Flatley discussed the attorney's underlying conduct in the context of the Penal Code's criminalization of extortion. Second, a reading of Flatley to push any statutory violation outside the reach of the anti-SLAPP statute would greatly weaken the constitutional interests which the statute is designed to protect. As SASS correctly observes, a plaintiff's complaint always alleges a defendant engaged in illegal conduct in that it violated some common law standard of conduct or statutory prohibition, giving rise to liability, and we decline to give plaintiffs a tool for avoiding the application of the anti-SLAPP statute merely by showing any statutory violation."

Thus, it is abundantly clear that the statements that form the subject of plaintiffs action fall squarely within the protections of CCP § 425.16(e): "*As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a*

place open to the public or a public forum in connection with an issue of public interest…"

Defendants have met their burden under the first prong and the burden shifts to plaintiffs to establish a probability of prevailing on their claim.

In assessing the probability of prevailing, a court looks to the evidence that would be presented at trial, similar to reviewing a motion for summary judgment; a plaintiff cannot simply rely on its pleadings, even if verified, but must adduce competent, admissible evidence. *Roberts v Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 613–614.

The "burden of establishing a probability of prevailing is not high: We do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law. [Citation.]" (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699-700.) The plaintiff need only show a "minimum level of legal sufficiency and triability" (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 438, fn. 5), or a case of "'minimal merit.'" (*Navellier v. Sletten* (2002) 29 Cal.4th 84. 95, fn. 11; *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 824-825, disapproved on another ground as stated in *Equilon Enterprises, LLC. v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5.)

Plaintiffs have not met their burden. There is no competent, admissible evidence here to establish a probability of prevailing. The evidence before the court does not demonstrate a violation of the Brown Act.

California Government Code § 54963 (in pertinent part) provides:

"(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

. . .

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

. . .

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information." (Emphasis added.)

Contrary to plaintiffs' apparent belief, Government Code § 54963 does not provide that any disclosure of closed session communications is prohibited. It merely defines the type of information that must not be disclosed outside of closed sessions.

The complaint does not identify any specific statements attributable to defendants Rule or Drucker. It alleges certain statements were contained in "Leslie Rule's Remarks at Ojai's City Council Open Session, Tuesday, 1/24/2023" and the Drucker letter titled "City Council Closed Sessions and the Duty of Disclosure," but again, does not identify the statements alleged to be in violation. And as stated by defendants in their reply brief: "Plaintiffs never cite to any specific language in any of Rule's or Drucker's writings or statements that were improper or could support declaratory or Injunctive relief."

Multiple exhibits to the Acree declaration are purported to be transcripts of Ojai City Council Public Sessions. These transcripts contain typographical errors but appear to be relatively accurate transcriptions of the audio from the recordings. Plaintiffs do not direct the Court to any particular language in the transcripts that they contend violates the Brown Act disclosure prohibition. Nonetheless the Court has reviewed them along with the video excerpts and other evidence in an attempt to discern the language at issue in order to determine plaintiffs' probability of prevailing.

From the totality of the evidence presented, the Court has pieced together the following brief summary of the salient facts:

Plaintiffs' claims concern alleged disclosure by defendants Leslie Rule and John Drucker of confidential information derived from the closed session City Council meetings of December 13, 2022, January 9, 2023, and January 10, 2023. The agenda for each of these closed session meetings stated that there would be a discussion regarding the "existing litigation" titled Simply Ojai v. City of Ojai, et al. (the case was eventually assigned case no. 56-2022-00572740-CU-WM-VTA by the court).

On October 25, 2022, The Ojai City Council approved a development agreement for a low-income housing project with Mayor Betsy Stix casting the only dissenting vote.

In November of 2022 there was an election for City Council of Ojai. Four of the five seats were up for election. The following members were elected: Betsy Stix was re-elected as Mayor; Andrew Whitman was elected as District 3 representative; Rachel Lang was elected as District 2 representative, and Leslie Rule (defendant) was elected as District 1 representative. District 4 was not up for election; the seat continued to be held by Councilmember Suza Francina. (It is worth noting here that Councilmember Whitman submitted a declaration for plaintiffs in opposition to this Anti-SLAPP motion.)

A lawsuit was filed on December 1, 2022, by a group named "Simply Ojai" opposing the development agreement. "Simply Ojai" is represented in the lawsuit by Sabrina Venskus, one of the attorneys representing plaintiffs in the present matter.

On December 12, 2022, a referendum petition was presented to the City, challenging the Development Agreement. The City Council scheduled a Closed Session for the next day,

December 13, 2022, the same day the new city council was seated. The agenda for the closed session meeting stated:

"*Conference with Legal Counsel; Existing Litigation (Gov. Code § 54956.9(d)(1)*.

The City Council finds, based on the advice from legal counsel that discussion in open session will prejudice the position of the City in the litigation.

Case Name: Simply Ojai v City of Ojai, et al.; Ventura County Superior Court Case No. Pending Assignment."

In the public meeting of the City Council, defendant Mr. Drucker spoke, and requested that Mayor Stix recuse herself with respect to the "Simply Ojai" litigation, based on his opinion that Mayor Stix had a conflict of interest. Mr. Drucker's request was denied.

In the closed session, the City Council discussed retaining an attorney to review the development agreement that had previously been approved by the City Council. This discussion did not pertain to the existing litigation and did not include counsel for the City in that litigation. It concerned retaining a different law firm to review the previously approved development agreement. Mayor Stix recommended a certain law firm for this task. Mayor Stix was asked by councilmember Francina about her connections with the "Simply Ojai" Group, and a colorful discussion of that subject occurred between Councilmembers Whitman, Rule and Francina. None of this discussion concerned the agenda item or involved counsel for the City in the pending Simply Ojai litigation.

The following Monday, Councilmember Rule was informed that the City had retained the attorney recommended by Mayor Stix to review the development agreement.

The City noticed additional closed sessions which were held on January 9 and 10, 2023. Both agendas for these closed session meetings stated:

"*Conference with Legal Counsel; Existing Litigation (Gov. Code § 54956.9(d)(1)*.

The City Council finds, based on the advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation.

Name of Case: Simply Ojai v City of Ojai, Ojai City Council

Names of Parties or Claimants: Simply Ojai, City of Ojai, Ojai Bungalows, L.P., Green Hawk LLC, The Becker Group, Inc.

Case No. or Claim No. 56-2022-00572740-CU-WM-VTA"

In the January 9, 2023, closed session, the City Council met with the new attorney who was retained at the request of Mayor Stix. The discussion was not limited to existing litigation as identified on the agenda. Instead, there was a discussion of the referendum and possible responses including rescinding the development agreement. The discussion did not pertain to the existing litigation or include the attorney representing the City in that litigation.

In the January 10, 2023, closed session, the City Council again discussed the referendum and development agreement rather than limiting the discussion to the existing litigation as identified on the agenda. The discussion did not pertain to the existing litigation or include the attorney representing the City in that litigation.

The City Council held an open meeting on January 24, 2023. At the January 24, 2023, regularly scheduled public meeting of the City Council, Ms. Rule presented a written statement to the Council and the public in attendance at the meeting entitled, "Leslie Rule Remarks at Ojai City Council Open Session - Tuesday, 1/24/2023." The statement included some of the foregoing discussions about the development agreement and referendum from the above referenced closed sessions. She did not disclose any confidential information about the existing litigation or discussions with the attorney representing the City in that litigation.

On January 24, 2023, Mr. Drucker wrote a letter to the Ojai City Attorney, Matthew Summers. The letter reiterated the content of Ms. Rule's statement regarding closed session discussions of the development agreement and referendum from the above referenced closed sessions. He included a statement regarding his concerns over conflicts of interest. He did not include any confidential information about the existing litigation or discussions with the attorney representing the City in that litigation. Mr. Drucker verbally addressed the contents of this letter in open session on January 24, 2023.

On January 26, 2023, Mr. Drucker wrote a letter to the Ojai City Council that, in general, addressed the response of the City Attorney and City Council to Councilmember Rule's alleged disclosures. Again, he did not include any confidential information about the existing litigation or discussions with the attorney representing the City in that litigation.

Ms. Rule's statement and Mr. Drucker's letters were subsequently provided to, and published by, the Ojai Valley News.

The Court notes that Mr. Whitman, in his declaration under penalty of perjury, misrepresents the letter from the District Attorney by stating that it was "issued to Councilmember Rule" and that it advised her "that the disclosures she made violated the confidentiality of closed session provisions of the Brown Act." In truth, the letter was issued to the entire City Council as a "Cease and Desist Demand" instructing the Council to refrain from discussing matters in closed session which exceeded the Brown Act exception for existing litigation. The letter states that Councilmember Rule's disclosure to a media outlet was a violation of the Brown Act, not because the information was de facto confidential, but because Councilmember Rule is not the appropriate person to make that determination. (Govt. Code § 54963(a).

"The general rule under the Brown Act (the Act) is that all meetings of the legislative body of a local agency shall be open and public. (§ 54953; Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813, 824 [176 Cal.Rptr. 342].) The purpose of the open meeting rule is to permit the people to remain informed so that they may retain control over those to whom they have delegated authority. (§ 54950.) The Act permits closed sessions in certain circumstances, however. In particular, the legislative body of a local agency can hold a closed session to confer with its attorney concerning pending litigation, when such a discussion would prejudice the local agency if the discussion were held in open session. (§ 54956.9.)"

Hamilton v. Town of Los Gatos (1989) 213 Cal. App. 3d 1050, 1055.

The pending litigation exception "creates an exception to the Brown Act's open meeting requirements for meetings with legal counsel regarding pending litigation" and allows " 'a legislative body of a local agency' to hold 'a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.' " (Shapiro v. Board of Directors (2005) 134, 179.) The section has been interpreted by this state's high court to permit the legislative body to "confer with its attorney and then decide in private such matters as the upper and lower limits with respect to settlement, whether to accept a settlement or make a counter offer, or even whether to settle at all. …" (Southern California Edison Co. v. Peevey (2003) 31 Cal.4th 781, 799–800 [relying on and quoting 75 Ops.Cal.Atty.Gen. 14 (1992) to interpret similarly worded provision in the Bagley-Keene Open Meeting Act (§ 11120 et seq.)]; see Trancas Property Owners Assn. v. City of Malibu (2006) 138 Cal.App.4th 172, 187 [referencing to such action as an "implied exception for adoption of litigation settlements in closed session"].) " 'These are matters which will depend upon the strength and weakness of the individual case as developed from conferring with counsel. A local agency of necessity must be able to decide and instruct its counsel with respect to these matters in private.' " (Peevey, at p. 799, quoting 75 Ops. Cal. Atty. Gen., supra, at pp. 19–20.)" Page v. MiraCosta Community College Dist. (2009) 180 Cal.App.4th 471,

"[W]e are guided by the principle that " '[s]tatutory exceptions authorizing closed sessions of legislative bodies are construed narrowly and the Brown Act "sunshine law" is construed liberally in favor of openness in conducting public business.' " (Shapiro, supra, 134 Cal.App.4th at pp. 180–181, quoting Shapiro v. San Diego City Council (2002) 96 Cal.App.4th 904, 917 [117 Cal.Rptr.2d 631]; see also Roberts v. City of Palmdale (1993) 5 Cal.4th 363, 378 [20 Cal.Rptr.2d 330, 853 P.2d 496] (Roberts) [1987 amendment to Brown Act "was intended to make it clear that closed sessions with counsel could only occur as provided in the Brown Act" (italics added)]; Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533, 545 [50 Cal.Rptr.3d 524] [Brown Act is a remedial statute that must be construed liberally so as to accomplish its purpose]; 71 Ops. Cal. Atty. Gen. 96, 105 (1988) ["Litigation exceptions to the Ralph M. Brown Act's open meeting requirements … must be strictly construed."].) Further, we are cognizant that Brown Act open meeting requirements encompass not only actions taken, but also fact-finding meetings and deliberations leading up to those actions. (See § 54950 ["It is the intent of the [Brown Act] that [public agency] actions be taken openly and that their deliberations be conducted openly."]; Roberts, at p. 375; Frazer v. Dixon Unified School Dist. (1993) 18 Cal.App.4th 781, 794 [22 Cal.Rptr. d 641]; 216 Sutter Bay Assocs. v. County of Sutter, supra, 58 Cal.App.4th at pp. 876–877; 63 Ops. Cal. Atty. Gen. 820, 825 (1980) ["[T]he intent of the Act was that deliberations as well as actions be taken openly."].) " 'Deliberation in this context connotes not only collective decision making, but also "the collective acquisition and exchange of facts preliminary to the ultimate decision." ' " (216 Sutter Bay, at p. 877.)" Page v. MiraCosta Community College Dist., supra at 501-502.

It is ironic that the Brown Act which is intended to ensure openness and encourage participation by the general public in government business, is being used here in an attempt to withhold important information from the public. Public officials have a general duty to keep the public informed about public business. (*Maranatha Corrections, LLC v. Department of Corrections & Rehabilitation* (2008) 158 Cal.App.4th 1075, 1088-1089. The discussions that occurred in

closed session which are at issue here were not discussions with legal counsel regarding pending or existing litigation as stated on the agenda. These discussions are not subject to the exceptions permitting confidentiality of the Brown Act.

The Court finds that the plaintiffs cannot establish a probability of prevailing because when the "exceptions authorizing closed sessions of legislative bodies are construed narrowly and the Brown Act "sunshine law" is construed liberally in favor of openness in conducting public business" the disclosures at issue fall under the exceptions for conduct that does not violate the non-disclosure duties under Government Code § 54963(e)(2) (i.e., "Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.") and possibly § 54963(e)(3) (i.e., "Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.").

This Court makes the specific finding that the information disclosed by Ms. Rule and Mr. Drucker did not concern existing litigation as identified on the closed session agendas and this information was outside the limited scope of the closed session exceptions for meetings with legal counsel regarding pending litigation.

Based on the foregoing, plaintiffs have failed to demonstrate the probability of prevailing on the merits of their case. Therefore, the motion to strike is granted and the complaint is ordered stricken because it is a Strategic Lawsuit Against Public Participation (SLAPP).

Moving parties are entitled to recovery of their attorneys' fees and costs.

Clerk to give notice of the Court's ruling.

Certificate of Mailing is attached.