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VENTURA COUNTY SUPERIOR COURT

STATE OF CALIFORNIA

DAVID BYRNE, VICKI CARLTON-BYRNE, THOMAS DREW MASHBURN, GERALD SCHWANKE, JOEL MAHARRY, DOUGLAS LA BARRE, LESLIE FERRARO, individuals,

Plaintiffs,

v.

LESLIE RULE AND JON E. DRUCKER,
Defendants.

Case No.: 2023CUMC008352

NOTICE OF SPECIAL MOTION AND SPECIAL MOTION TO STRIKE (Code Civ. Proc. § 425.16); MEMORANDUM IN SUPPORT; DECLARATIONS OF JON DRUCKER AND LESLIE RULE

DATE: August 21, 2023
TIME: 8:30 a.m.
DEPT: 43
JUDGE: Hon. Benjamin F. Coats

FILING DATE: 4/28/2023
DISCOVERY CUT-OFF: None Set
MOTION CUT-OFF: None Set
TRIAL DATE: None Set

TO PLAINTIFFS AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that on August 21, 2023, at 8:30 a.m. in Department 43 of the above-captioned Court, located at 800 South Victoria Avenue, Ventura, California 93009, Defendants Leslie Rule and Jon E. Drucker, will and hereby do move this Court, pursuant to Code of Civil Procedure § 425.16, for an order striking Plaintiffs David Byrne, Vicki Carlton-Byrne, Joel Maharry, Thomas Drew Mashburn, Gerald Schwanke, Douglas Labarre, and Leslie Ferraro's First Amended Complaint (the "Complaint").

This Motion is made on the grounds that the Complaint falls squarely within the scope of Code Civ. Proc. § 425.16 (e)(1), (e)(2), (e)(3) and (e)(4). Plaintiffs' lawsuit challenges the propriety of oral statements made by an elected City Council Member and her attorney during City Council meetings and oral and written statements made in connection with those City Council meetings. Defendants' statements involve issues of public concern that transcend the particular issues before the Council. Consequently, plaintiffs are required to present admissible evidence establishing a probability of success on the merits pursuant to the anti-SLAAP statute, Code Civ. Proc. § 425.16, subd. (b)(1). Plaintiffs cannot establish a probability of success.

Plaintiffs lack standing even to attempt to present admissible evidence. Plaintiffs are not the real party in interest. They have also failed to join an indispensable party. Plaintiffs have failed to comply with Cal. Code of Civ. Proc. § 1714.10. Plaintiffs seek to unlawfully violate Cal. Code of Civ. Proc. § 526(b)(6). Plaintiffs lone cause of action involves past statements that cannot support a cause of action for declaratory relief.

The statements plaintiffs' ask this Court to declare to be privileged and confidential were not legally protected statements made in closed session pursuant to the Brown Act in accordance with Cal. Government Code §§ 54957.7, 54963(b) and 54963(e)(2) and (3). No plaintiffs or their counsel attended any closed sessions, and none are competent to testify about whether any statements made by defendants are privileged. The statements plaintiffs attack set forth a misuse of the Brown Act, glaring conflicts of interest, and an unlawful effort to apply the limited and narrow closed meeting provisions within the Brown Act to enter into and conceal secret back room deals on matters of great public concern.

For each of these reasons, plaintiffs cannot meet their burden under Cal. Code of Civ. Proc. § 425.16, their Complaint should be stricken.

Pursuant to Section 425.16, subdivision (c), defendants are entitled to recover their attorney's fees and costs incurred in this action.

This motion is based on this Notice; the attached Memorandum of Points and Authorities; the Declarations of Councilmember Leslie Rule and her attorney Jon Drucker; all matters of which this Court may take judicial notice; all pleadings, files, and records in this action; and such other argument as may be received by this Court at the hearing on this motion.

Respectfully Submitted,
S.C. JOHNSON & ASSOCIATES, P.C.

DATED: July 27, 2023

By: Stephen Johnson
Stephen C. Johnson, Esq.
Attorneys for Defendants Leslie Rule and Jon E. Drucker

LAW OFFICES OF JON E. DRUCKER

By: Jon E. Drucker
Jon E. Drucker
Attorney for Defendant Leslie Rule

DATED: July 27, 2023

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PRELIMINARY STATEMENT

This lawsuit is a strategic attempt to prevent Leslie Rule ("Rule"), a duly-elected member of the Ojai City Counsel, from participating in matters of public concern and from discharging the duties of her office. Plaintiffs have also improperly named Rule's attorney, Jon E. Drucker ("Drucker"), without making any attempt to comply with California Civil Code § 1714.10.

Plaintiffs' First Amended Complaint (the "Complaint"[1]) arises from the fact that defendants Rule and Drucker 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"). The Complaint falls squarely within California's anti-SLAPP statute. Cal. Code of Civ. Proc. § 425.16 *et seq.* Plaintiffs therefore bear the burden of establishing both that they have pleaded and presented a legally sufficient claim **and** that the claim is supported by admissible evidence sufficient to establish a probability of success. Plaintiffs cannot begin to plead valid claims, let alone competently support them.

Plaintiffs' lawsuit is remarkable for what it is not. Plaintiffs allege that defendants revealed "privileged" information discussed in Closed Sessions, but plaintiffs do not hold the privilege they purport to enforce. Neither the City of Ojai nor anyone in attendance at the Closed Sessions is party to this action. Plaintiffs seek declaratory relief as to oral statements made by defendants during City Council meetings and written statements made in connection therewith, but plaintiffs fail to identify **any** statement actually made by defendants that this Court could consider in connection with a request for declaratory relief.

What Plaintiffs really want is to muzzle Rule and her attorney with a blanket declaration that, if the City Council notices a closed session, legally or not, Mayor Stix and her ally, council

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[1] The initial complaint in this matter was filed on 4/28/2023 but not served. Plaintiffs filed a First Amended Complaint on 5/3/2023. The Amended Complaint is the first complaint served on either defendant. Accordingly, the Amended Complaint is identified herein as the "Complaint."

member Andrew Whitman, are free to say and do anything they want behind closed doors and Rule cannot do or say anything about it. Under California law, however, the matters discussed in Closed Sessions must fall within the narrow scope of the notice of the closed session. In this case, all Closed Sessions were to have been limited to discussions about *existing* litigation. None of the concerns Rule or her attorney have publicly spoken out against involve any privileged or confidential matters at all.

STATEMENT OF RELEVANT FACTS[2]

Plaintiffs seek to prevent a duly elected City Council member and her attorney from disclosing information during public hearings.

> This action challenges the disclosure of … information … by newly-elected Ojai City Councilmember, Leslie Rule … and her agent, attorney Jon Drucker (hereinafter "Defendant Drucker"). Plaintiffs seek declaratory and injunctive relief to prevent additional … disclosures.

Complaint at ¶ 1.[3]

On October 25, 2022, the Ojai City Council formally approved an affordable housing development agreement with "an entity named the Becker Group (the Development Agreement)." (*Id.* at ¶ 19.) The Development Agreement was approved by a 4-1 vote. Ojai Mayor Stix cast the lone no vote. (Drucker Decl. at ¶ 1.) The Plaintiffs herein and their attorney Sabrina Venskus all oppose the Development Agreement. (Drucker Decl. at ¶ 1.) In fact, Plaintiffs' attorney, Venskus, filed a lawsuit on December 1, 2022 to stop the development. (Drucker Decl. at ¶ 2.)

"On December 1, 2022, a local non-profit, Simply Ojai, filed a lawsuit against the City of Ojai to challenge the City's approval of Development Agreement." (Complaint at ¶ 20.)

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[2] A plaintiff opposing a special motion to strike pursuant to CCP § 425.16 bears the burden of establishing a "probability of success" through the presentation of admissible evidence. Accordingly, admissible evidence may be considered. However, a plaintiff bears the burden of pleading **and** supporting meritorious claims. Plaintiffs can neither plead valid claims nor provide competent evidence. Accordingly, this Statement of Relevant facts includes both citations to plaintiffs' Complaint and facts set forth in the Drucker Declaration and Rule Declarations.

[3] For purposes of clarity, accusatory, conclusionary language has been omitted from this quotation.

Venskus represents Simply Ojai and Mayor Stix has significant ties to both Simply Ojai and Venskus. (Drucker Decl ¶¶ 5, 6.)

On December 12, 2022, a referendum petition was presented to the City seeking to overturn the Development Agreement. (Complaint at ¶ 22.) The Council scheduled a Closed Session for the very next day. The City Council announced that the Closed Session would relate only to "Existing Litigation" specifically, *Simply Ojai v. City of Ojai,* **not** the referendum or any other matter. (Drucker Decl. ¶ 7; *see also* Jon Drucker's letter to Ojai City Attorney Matthew Summers, Jan. 24, 2023 at 2) [Ex. A to Drucker Decl.]

On December 13, 2022, a new City Council was seated. (Mayor Stix was re-elected) (Complaint at ¶ 21). The Council also met in closed session.

Thereafter, the City gave identical notices of further closed sessions. The published statements for those sessions also identified only "Existing Litigation" as justification for the Closed Sessions. (Drucker Decl. ¶ 7, 8; Ex. A to Drucker Decl. at 8-9.) Closed Sessions were conducted on January 9 and 10, 2023. (Complaint at ¶ 26.)

As the designation implies, the Closed Sessions were closed to the public. None of the plaintiffs attended any of the Closed Sessions. (Rule Decl. at ¶ 5.)

On January 24, 2023, the City Council held a regularly scheduled public meeting. At that meeting, in the open session, which was attended by the public, Defendant Leslie Rule issued a written public statement and disseminated the written statement to the Council and the assembled public at the meeting. Defendant Rule's written statement was entitled, "Leslie Rule's Remarks at Ojai's City Council Open Session, Tuesday, 1/24/2023." (*See* Complaint at ¶ 30; Statement of Leslie Rule dated January 24, 2023 (attached as Ex. A to the Rule Decl.)

Plaintiffs failed to attach Rule's written public statement or to quote any language from that statement in their Complaint. (*See, id.*) Rule's statement did not disclose any confidential or privileged material. (*See* Ex. A to Rule Decl.) Rule's statement is subtitled "*Sunlight is the best disinfectant.*" Rule's primary point was that none of the issues discussed in Closed Session addressed "existing litigation" or were confidential as that term is defined by the Brown Act.

Rule retained attorney Jon Drucker. (Complaint at ¶ 32.) On January 24, 2023 "attorney Jon Drucker handed out to members of the public [a letter] prepared by Drucker, written on behalf Defendant Rule." (*Id.*) A true and correct copy of that letter is attached as Ex. A to the Drucker Decl.) Drucker's 12-page letter to the Ojai City Attorney laid out in copious detail the facts and law establishing that "virtually ***none*** of the communications in its closed sessions – is by definition – confidential." (Ex. A to Drucker Decl. at p.8.) Drucker wrote a second letter dated January 27, 2023 (*Id* at ¶ 35.) A true and correct copy of that letter is attached as Ex. B to the Drucker Decl. Plaintiffs admit that defendants' three writings "have made it clear that [defendants] do not believe that the" matters they have brought to the public's attention are confidential. (Complaint at Paragraph 41.)

ARGUMENT

I. The Complaint Arises From Defendants' Constitutional Rights of Free Speech and Petition

> California's anti-SLAPP statute provides that '[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 ... shall be subject to a special motion to strike, unless the court determines ... there is a probability that the plaintiff will prevail on the claim.' (Code Civ. Proc., § 425.16, subd. (b)(1).)

Baral v. Schnitt (2016) 1 Cal.5th 376, 381.

> "Resolution of an anti-SLAPP Motion requires a court to engage in a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal. 4th 728, 733. "A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)"

Navellier v. Sletten (2002) 29 Cal.4th 82, 88 (*citing Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1043.

> California Code of Civ. Proc. § 425.16(e)(1) and (2) define 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' [to] include:

> (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...."

"In effectively deeming statements and writings made before or connected with issues being considered by any official proceeding to have public significance *per se*, the Legislature afforded trial courts a reasonable, bright-line test applicable to a large class of potential section 425.16 motions." *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1122.

Here, the application of the anti-SLAPP statute cannot be clearer. Plaintiffs' lone cause of action seeks declaratory relief based upon statements made by a City Councilmember and her attorney at an open meeting of the city council. The California Supreme Court has consistently held that statements made during official proceedings fall within the "reasonable, bright line-test applicable" to "section 425.16 motions." *Id.*

II. Plaintiffs Cannot Allege Any Legal Sufficient Claim or any Probability of Success

Once the anti-SLAPP statute is found to apply, the burden shifts to the plaintiff to prove that he or she has a legally sufficient claim *and* to prove with "admissible evidence" a "probability" that the plaintiff will prevail on the claim. *Navellier v. Sletten*, (2002) 29 Cal. 4th 82, 88. Thus, the second prong of the anti-SLAPP statute requires a plaintiff establish **"**that the complaint is **both** legally sufficient **and** supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' " *Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821. Plaintiff cannot make either showing.

A. Plaintiffs' Claims are Fatally Defective

1. Plaintiffs' Claims Against Drucker Are Barred By Cal Civil Code § 1714.10

Plaintiffs' Complaint specifically alleges that all of the actions by Defendant Drucker were undertaken as Rule's attorney. (*See* Complaint at ¶ 32.) As a statutory matter:

> (a) No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included

> in a complaint or other pleading unless the court enters an order allowing the pleading that includes the claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action.

Civ. Code, § 1714.10

Plaintiffs have made no effort to secure a Court order seeking leave to sue Drucker. California Courts consistently hold that an anti-SLAPP motion cannot be overcome by an amendment to the complaint. *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1280 ("we consider whether a plaintiff … may avoid a pleadings challenge pursuant to Code of Civil Procedure section 425.16 by amending the challenged complaint … before the motion to strike is heard. We conclude he may not.") Plaintiffs' failure to comply with Cal. Civil Code § 1714.10 is alone sufficient to support Drucker's CCP § 425.16 special motion to strike.[4]

2. Plaintiffs Are Not the Real Party in Interest.

Code of Civil Procedure § 367 states that, "[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute"; see also *Cloud v. Northrop Grumman Corp.*, (1998) 67 Cal.App.4th 995, 1004:

> A real party in interest ordinarily is defined as the person possessing the right sued upon by reason of the substantive law. [Citation.] A complaint filed by someone other than the real party in interest is subject to general demurrer on the ground that it fails to state a cause of action. [Citation.]

The issue is thus: Who is "the person possessing the right sued upon by reason of the substantive law"? Plaintiffs' own Complaint provides the answer. Plaintiffs allege no fewer than 14 times that defendants violated the City Council's attorney-client "privilege," *e.g.*, Complaint at ¶ "1. "This action challenges the disclosure of confidential and privileged information acquired during closed sessions of the Ojai City Council…."

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[4] Furthermore, 144 years ago, the US Supreme Court confirmed the basic rule that lawyers are liable only to their clients and not to third persons. *Nat'l Sav. Bank of District of Columbia v. Ward*, (1879) 100 U.S. 195, 200 ("Beyond all doubt, the general rule is that the obligation of the attorney is to his client and not to a third-party"). Nor has that rule changed in the time since. *See Moore v. Anderson Zeigler Disharoon Gallagher & Gray,* (2003) 109 Cal.App.4th 1287, 1294 (general rule that attorney owes no duty to nonclients); *Meighan v. Shore*, (1995)34 Cal.App.4th 1025, 1033); *Radovich v. Locke-Paddon*, (1995)35 Cal.App.4th 946, 957.

Plaintiffs cannot purport to possess any privilege here. There is a reason it is called the "attorney-CLIENT" privilege. As Evidence Code § 953 plainly provides: "'Holder of the privilege' means: (a) The client...."[5] Here, the "client" is the Ojai City Council. It is the ***sole*** holder of that privilege. These Plaintiffs are only seven citizens recruited by Plaintiffs' counsel to purport to speak on behalf of the City of Ojai. They have no standing to assert claims of "privilege" on its behalf.

As *Cloud, supra*, 67 Cal.App.4th at 1004, and *Doe v. Lincoln Unified School Dist.*, (2010) 188 Cal.App.4th 758, 765, further provide, the point of requiring the presence of the real party in interest: "is to save a defendant, against whom a judgment may be obtained, from further harassment or vexation at the hands of some other claimant to the same demand." Citing *Giselman v. Starr* (1895) 106 Cal. 651, 657. The sole intent of these plaintiffs and their counsel, as well as the entire purpose of this action, is to harass and vex Rule and Drucker.

3. Plaintiffs Knowingly Failed to Join An Indispensable Party

Even if Plaintiffs did have a cognizable interest in the privilege they assert – and they don't -- the City Council would still be an ***indispensable*** party whom plaintiffs have knowingly failed to join.

"Indispensable parties" are those persons "whose interests, rights, or duties will inevitably be affected by any decree which can be rendered in the action." *Bank of California v. Superior Court,* (1940) 16 Cal. 2d 516, 521; Cal. Code Civ. Proc. § 389(a). "If [indispensable] persons are not before the court, the court is without jurisdiction to adjudicate their rights because the failure to join an indispensable party constitutes a jurisdictional defect." *Fraser-Yamor Agency, Inc. v. County of Del Norte*, (1977) 68 Cal. App. 3d 201, 214; *Bank of California*, 16 Cal. 2d *supra* at 522-523.

Plaintiffs have conspicuously failed to join the City Council into this action. But all essential parties are indispensable to the action. *See Holder v. Home Sav. & Loan Ass'n of Los*

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[5] Evidence Code sec. 954 extends the definition of the word "client" to include "partnerships, corporations, limited liability companies, associations and other groups and entities" – such as a city council.

Angeles, (1968) 267 Cal.App.2d 91, 107 ("The absence of an indispensable party is a jurisdictional defect." *See also*, *Bianka M. v. Superior Court,* (2018) 5 Cal.5th 1004, 1019 ("[I]f the person is found to be essential, or 'indispensable,' to the action, then the action must be dismissed."); see also *Beresford Neighborhood Assn. v. City of San Mateo* (1989) 207 Cal.App.3d 1180, 1191 (proper to deny leave to amend to belatedly name indispensable party known to plaintiffs.)

These plaintiffs and their counsel certainly know of the Ojai City Council; they purport to speak for it. But their failure to join it as a party is now fatal to their claims.

4. Plaintiffs Cannot State a Claim for Declaratory Relief

Plaintiffs' request for declaratory relief essentially asks this Court to declare that statements made by Rule and Drucker *in the past* violated the Brown Act. Plaintiffs' prayer for relief provides:

> WHEREFORE, Plaintiffs pray for relief as follows:
> (i) A declaration that Defendant Leslie Rule violate***d*** Section 54963 of the Brown Act by disclosing confidential communications obtained from closed sessions of the Ojai City Council;
> (ii) A declaration that Defendant Jon Drucker violate***d*** Section 54963 of the Brown Act by disclosing confidential communications obtained from closed sessions of the Ojai City Council;
> (***Emphasis*** added.)[6]

It is black letter law that declaratory relief is available only for a court's declaration of ***prospective*** rights for those seeking "preventive justice," to set controversies at rest ***before*** they lead to commissions of wrongs. As the California Supreme Court held in *Babb v. Sup. Ct.*,

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[6] The term "confidential information" in the context of closed sessions of legislative bodies under the Brown Act has a very specific definition. It is not, as Plaintiffs seem to believe, "whatever is said behind closed doors." Rather, "In the closed session, the legislative body may consider ***only*** those matters covered in the Statement establishing the basis for the Closed Session. Govt. Code § 54957.7. And "confidential information" must be "specifically related" to "the basis" for the closed session. Govt. Code § 54963(b). Additionally, "For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter." Govt. Code § 54956.9(b). Moreover, one does not violate the Brown Act when "expressing an opinion concerning the propriety or legality of actions [taken]…in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action"; or when "disclosing information… that is not 'confidential' information." Govt. Code § 54963(e)(2) and (3).

(1971) 3 Cal.3d 841, 848: "Declaratory relief operates prospectively and is not designed to address past wrongs." *Citing Kessloff v. Pearson,* (1951) 37 Cal. 2d 609, 613 ("The code sections provide for declaratory relief in ***advance*** of breach. This relief is procurable so that parties may know their rights and obligations where a controversy arises ***before*** a breach or violation occurs.") *See also Travers v. Louden*, (1967) 254 Cal. App.2d 926, 931:

> There is unanimity of authority to the effect that the declaratory procedure operates ***prospectively***, and not merely for the redress of ***past wrongs***. It serves to set controversies at rest ***before*** they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of ***preventive*** justice, to declare rights rather than execute them. (Citations omitted) (***Emphasis*** added).

5. CCP § 526(b)(6) Bars A Request to Enjoin a City Council Member from Discharging the Duties of Her Office.

Plaintiffs' true "prayer" here is for this Court to effectively enjoin Leslie Rule from serving as an elected city council member of Ojai's city government. Code of Civil Procedure § 526(b)(6) expressly forbids such injunctive relief by a court: "(b) An injunction cannot be granted in the following cases: * * * (6) To prevent the exercise of a public…office, in a lawful manner, by the person in possession."

6. Plaintiff's Request for Declaratory Relief is Hopelessly Vague

Although Plaintiffs seek a judicial declaration condemning past statements made by Rule and Drucker, Plaintiffs fail to identify **any** statement Rule or Drucker actually made. A Court cannot issue any declaration in regard to statements it has not considered. Plaintiffs insist, in conclusory fashion, that Defendants violated the Brown Act by publicly raising concerns about the City Council's use of closed sessions. Plaintiffs seem to suggest that the Brown Act bars council members from ever discussing ***anything*** that was mentioned in closed session – whether that matter had been publicly discussed already, did not involve any confidential or privileged matter, or evidenced illegal conduct. This suggestion is inconsistent with the Brown Act itself. The Brown Act specifies situations in which issues addressed in Closed Sessions may lawfully be disclosed. *See* Government Code § 54963(e)(2) and (3).

Similarly, actions undertaken and announced in closed session that evidence glaring conflicts of interest are not automatically privileged and confidential. Government Code § 54963(e)(2).

Plaintiffs vaguely pray for a declaration requiring Rule and Drucker "to comply with the Brown Act in the future." The Brown Act is a legally binding statute. A Court need not and cannot enjoin a party from actions it cannot engage in anyway. The great irony here of course, it that the Brown Act is designed to provide transparency. The "Closed Session" provisions create narrow exceptions to the presumption of transparency. Plaintiffs here are arguing for the right to ensure the public can be kept in the dark.

B. Plaintiffs Cannot Present Competent Evidence Sufficient to Establish A Probability of Success

Where, as here, a claim for relief seeks to restrict a defendant's right of petition or free speech, CCP § 425.16 *et* seq imposes upon plaintiff the burden of presenting competent evidence sufficient to establish a probability of success. *Wilson,* supra, 28 Cal.4th at 821.

The same burden applies doubly in regard to plaintiffs' effort to sue Rule's attorney by virtue of Cal. Civil Code §1714.10.

The main difference of course, is that the evidentiary burden imposed by CCP § 425.16 arises *after* a defendant has brought an anti-SLAPP motion and demonstrated the complaint implicates defendants' rights of petition and free-speech. Under Civil Code § 1714.10, the plaintiff's evidentiary must be satisfied *before* plaintiff may file any lawsuit at all. "Before an attorney can be sued for civil conspiracy with his or her client, the plaintiff must seek leave of court to allege such a cause of action." *GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th 141, 147 n.8.

The point here is that when a plaintiff must establish a probability of success, a plaintiff must meet that burden *before* a defendant is required to respond. Defendants Rule and Drucker are not obliged to conjure and preempt any claims plaintiffs *might* make. Here, plaintiffs' claim is so vague defendants have no way of knowing what plaintiffs are actually complaining about. Plaintiffs have generally referred to Rule's written statement of January 24, 2023, and Drucker's letters to the City Attorney dated January 24 and January 27, 2023. Those writings consist of 5

single-spaced pages, 12 single-spaced pages and 5 single-spaced pages respectively. Rule's statement articulates her opinions on issues of grave concern. Both of Drucker's letters specifically address the reasons the Brown Act requires rather than prevents full disclosure of certain issues improperly addressed in closed session. Plaintiffs have not identified a single page, paragraph, sentence or word they deem to be a confidential disclosure.

Plaintiffs purport to be defending the Brown Act and to be protecting the citizens of Ojai against violations of the Brown Act. In truth, the Brown Act exists to ensure transparency and to prevent municipalities from making back-room deals out of the public eye. Plaintiffs are hoping to exploit an **exception** to the Brown Act. Cal. Government Code § 54956.9(a). Plaintiffs are literally fighting to be kept in the dark. The position is untenable. To meet its burden, plaintiffs would need to present competent evidence that Rule or Drucker disclosed confidential information identified as such during meetings they did not attend. The only way plaintiffs or their Counsel could present competent evidence of what happened at the Closed Sessions is if they obtain testimony from the indispensable parties they have tactically failed to name in this action, or if plaintiffs are conspiring with members of the Ojai City Council. In either case, Rule and Drucker have a right and duty to speak out against such outrages.

CONCLUSION

For all of the foregoing reasons, defendants Special Motion to Strike should be granted and Plaintiffs must be ordered to reimburse defendants for all attorney's fees and costs associated with this motion as per Code.

Respectfully Submitted,
S.C. JOHNSON & ASSOCIATES, P.C.

DATED: July 27, 2023

By: Stephen Johnson
Stephen C. Johnson, Esq.
Attorneys for Defendants Leslie Rule and Jon E. Drucker

LAW OFFICES OF JON E. DRUCKER

By: Jon E. Drucker
Jon E. Drucker
Attorney for Defendant Leslie Rule

DATED: July 27, 2023

DECLARATION OF JON E. DRUCKER

I, Jon E. Drucker, hereby declare the following based on my personal knowledge:

1. As an interested member of the public, in early December 2022, I learned that on December 1, a non-profit organization called "Simply Ojai" filed a lawsuit against the City (VCSC Case No. 202200572740CUWM) (the "Litigation"), with Sabrina Venskus as plaintiff's counsel (same as Plaintiff's counsel here). The Litigation seeks to void an ordinance adopting an affordable housing Development Agreement, which the City had passed in a 4-1 vote on October 25, 2022 ("the Ordinance"). Mayor Betsy Stix was the sole opposing vote.

2. Having previously seen Sabrina Venskus gathering signatures for a ballot referendum to void the Ordinance, I next noticed that a volunteer for Simply Ojai had filed such a ballot referendum with the City on December 12, 2022.

3. Then, on December 13, 2022, I read the Ojai City Council meeting agenda and saw the presence of an item Statement setting a closed session to deal with the Litigation, Simply Ojai v. City of Ojai.

4. As a lawyer, I am sensitive to ethical issues in general and conflicts of interest in particular. Accordingly, I spoke during the public comments portion of the city council's open session. I raised the existence of at least an appearance of conflict between the mayor, Betsy Stix, and her ability to engage effectively in the City's defense of the Litigation.

5. More specifically, I noted that Mayor Stix was the lone vote *against* the Ordinance underlying Simply Ojai's lawsuit and is thus seen as sympathetic to the plaintiff in the Litigation. I further noted that the Mayor's election campaign manager and closest advisor was also a founder and manager of Simply Ojai; the treasurer of the Mayor's election campaign was also the treasurer of Simply Ojai; and that this treasurer had contributed $3,000 to the Mayor's election campaign.

6. Based on these points, I called on the Mayor to recuse herself on all matters concerning Simply Ojai, including the Litigation that was agendized to be discussed in closed session just an hour or so later. The Mayor ignored my comments and my request to recuse.

7. On December 13, 2022 and January 9 and 10, 2023, the City Council then met in closed session. On each of those occasions, the sole item the Council was allowed to discuss with its attorney was the **existing Litigation**, Simply Ojai v. City of Ojai, citing Government Code § 54956.9(d)**(1)** (specifying only litigation that "**has been initiated formally**.")

8. In mid-January 2023, City Council member Leslie Rule contacted and retained me as her lawyer in connection with her desire to disclose what she perceived to be improprieties in the three closed sessions on December 13, 2022, and January 9 and 10, 2023.

9. I reviewed her allegations and, after much legal research, deemed them to be valid exceptions to the general prohibition on disclosing communications from closed sessions. My legal analysis went as follow:

> The Brown Act, aka the "Sunshine Law," Government Code § 54950, et seq., was enacted to promote transparency, and defines the term *"confidential information"* very narrowly; it is not "whatever is said behind closed doors." Rather, as its § 54957.7 provides: *"In the closed session, the legislative body may consider **only** those matters covered in the **statement** establishing the **basis** for the closed session."* And § 54963(b) requires that *"confidential information"* **must be *"specifically related"*** *to "the **basis**"* for the closed session. Last, the more recently enacted § 54956.9(b) ***sharply*** limits claims of privilege and confidentiality: *"For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter."*
>
> It was my understanding that the City Council, in the closed sessions, discussed "exposure to litigation" as well as the "initiation of litigation." (See also Complaint ¶¶ 25, 27, 41, 44 and 49.) But, as provided above, if the Council wished to discuss such issues, it should have cited ***different*** code subsections as the bases for its closed sessions. Specifically, § 54956.9(d)**(2)** is the only proper code section

for a closed session to discuss "***significant exposure to litigation***"; and § 54956.9(d)**(4)** must be cited for a closed session on whether to "**initiate**" litigation.

The Ojai City Council (more specifically, the City Attorney), however, cited neither of those two statutory authorities in its Statements for any of the three closed sessions. Accordingly, the Council's discussions of ***those*** matters were neither "confidential" nor "privileged."

Further, the Brown Act, at § 54963(e)**(3),** provides that it is not a violation when *"disclosing information... that is "not confidential."* Neither is it a violation, under § 54963(e)**(2)** when *"expressing an opinion concerning the propriety or legality of actions [taken]...in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action."*

Leslie Rule desired to disclose nothing but information that was "not confidential"; and to express her "opinion concerning the propriety and legality of actions taken in closed session, including the nature and extent" of the "improprieties" and "potentially illegal action."

10. Accordingly, about a half-hour before the next City Council session began on January 24, 2023, I handed a letter legal brief to the City Attorney outlining Leslie Rule's legal position. A copy of that letter brief is attached hereto as Exhibit A.

11. About an hour later, Leslie Rule began to recite a written statement on the Council's Brown Act violations. The Mayor immediately moved to find her "out of order" and the City Attorney shouted Rule down, yelling that because this information was revealed in closed session it could not be disclosed under any circumstances. Given the City Attorney's support for her position, the Mayor engineered a successful motion to cut-off Ms. Rule.

12. Not accepting this suppression of her First Amendment rights, Rule distributed her written statement to the other council members and people assembled in the gallery.

13. A few days later, on January 27, 2023, in response to wild unfounded allegations against Ms. Rule by the City Attorney, I followed-up with another letter, a copy of which is attached hereto as Exhibit B.

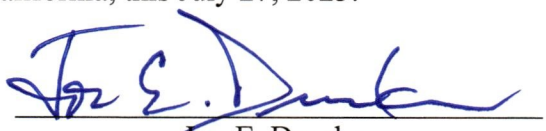
14. The Ojai Valley News ("OVN") published Leslie Rule's written statement and my two letters as matters of great public interest to Ojai. Contrary to allegations of the Complaint, however, the OVN never removed the letters from its website.

15. Also contrary to allegations of the Complaint, I have never said that I disclosed "confidential" communications from the closed sessions.

16. As counsel to Defendant Leslie Rule in this action, on Thursday, July 6, at 2 pm, I met and conferred by telephone with opposing counsel, Brian Acree. I told him about our plan to file an anti-SLAPP motion based on our first amendment rights, and that such motion carries with it a mandatory award of attorney fees. We also discussed Defendants' then-plan to file a demurrer and the legal bases for why the complaint did not state any cause of action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Ojai, California, this July 27, 2023.



Jon E. Drucker

EXHIBIT A

LAW OFFICES OF JON E. DRUCKER
111 W. Topa Topa Street
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JDrucker@lawyers.com
323-977-0200

January 24, 2023

Matthew Summers, Ojai City Attorney
Ojai City Hall
401 S Ventura St.
Ojai, CA 93023

Re: City Council Closed Sessions and the Duty of Disclosure

Dear Mr. Summers:

Councilmember Leslie Rule has retained this firm to address your representation to the council and to her personally that she may not disclose any contents of the City Council's closed sessions on December 13, 2022 and January 9 and 10, 2023.

You are incorrect.

There are numerous circumstances under which a city councilmember may disclose information obtained in a closed session of a city council, and Councilmember Rule's disclosures fulfill all of them.

STATEMENT OF FACTS

On December 1, 2022, a local 501(c)(3) charity called "Simply Ojai"[1] filed a lawsuit against the City of Ojai (the "City"), with Sabrina Venskus ("Venskus") as the attorney for plaintiff Simply Ojai in the Litigation. Venskus is also the former life partner of Thomas Francis, a founder, principal, project manager and key employee at Simply Ojai. Venskus also has a child with Francis.

The Litigation seeks to invalidate legislation the City Council (the "Council") passed in a 4-1 vote in 2022. The legislation approved an affordable housing development agreement ("DA"), allowing it to proceed. Mayor Betsy Stix ("Mayor Stix") was the lone vote against the DA.

[1] It is legally registered as "Mindful Citizen" and dba "Simply Ojai," "Fuel Reduction Works" and "Start at Home"

Simply Ojai principals Tom Francis and Leslie Hess have each served Stix as her campaign manager and campaign treasurer, respectively. Both Simply Ojai and Venskus strongly advocated against the DA.

An individual associated with Simply Ojai filed a petition to conduct a referendum to repeal City legislation approving the DA. Although an individual filed the petition with the City, Simply Ojai paid the filing fee.[2]

Leslie Hess is also the plaintiff in a lawsuit, and the named petitioner on a petition, to conduct a citywide referendum to repeal legislation allowing valet parking.

On December 13, 2022, the Council held two sessions – one public and another closed – after publishing an agenda stating:

CLOSED SESSION

1. **Conference with Legal Counsel; Existing Litigation (Gov. Code § 54956.9(d)(1))**
   The City Council finds, based on 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

I assume "legal counsel" refers to you. You utilized the exact same statement to justify the closed sessions on **January 9 and 10**, 2023. "Govt. Code § 54956.9(d)**(1).**" That only covers *already* existing litigation that "has been ***initiated formally***." (All code references hereafter are to the Government Code.) You never purported to conduct any closed session pursuant to § 54956.9(d)**(2)**, which applies when "there is a ***significant exposure to*** litigation against the [City]."

During the December 13 open session, a member of the public called on Mayor Stix to recuse herself on matters concerning Simply Ojai due to concerns over conflicts of interest with that organization and its principals. Mayor Stix ignored the call.

Then, in closed session, Mayor Stix started by suggesting the Council get "a new set of eyes to review" the DA by hiring an outside law firm – "Shute, Mihaly and

---

[2] Given that the almost exclusive activity of Mindful Citizen aka Simply Ojai is action to ***affect legislation***, it is an illegitimate "charity" and should lose its nonprofit charter and ability to operate.
See

Weinberg" ("Shute, et al."). You stated you could contact the firm and try to keep its fees as low as possible, not to exceed $25,000.

Councilmember Suza Francina stated she did not see the need for the City to pay for "another set of eyes," and asked Mayor Stix to explain her relationship with Simply Ojai. Mayor Stix replied that her relationship with Simply Ojai was ***"just like"*** her relationship with ***"any other nonprofit—like the Humane Society."***[3] Francina followed-up, asking Mayor Stix if she knew about Simply Ojai's lawsuit and petition for referendum ***prior*** to their filing and if so, did she try and stop them?

Councilmember Andrew Whitman interrupted, shouting, "***Suza, you're talking through your ass!***" Councilmember Leslie Rule then said that there were many dotted lines from Simply Ojai to Mayor Stix that needed to be explained. Whitman bellowed at Rule, "***You're talking horseshit!***"

Whitman's attack stunned and dumbfounded the two women. And thus Whitman's profanity-laced verbal abuse prematurely ended the Council discussion of Mayor Stix's conflicts of interest.

Six days later, **December 19**, City Manager Vega informed the Council that it had retained the firm recommended by Mayor Stix and agreed to pay it $23,000—or more, and that it would start work immediately and report back in early January.[4]

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[3] Mayor Stix's comparison of her relationship with Simply Ojai to that with Humane Society is farcical. In 2020, Tom Francis—founder, representative and key employee of Simply Ojai, served as Stix's campaign manager. A few months later, now Mayor Stix, without any Council vote, directed City Manager James Vega to award a grant to Simply Ojai to "Stop the Spread" of Covid. Mayor Stix also played a role in Mindful Citizen, aka Fuel Reduction Works--with Francis as project manager, obtaining a **$493,000** grant from CalFire, a state agency. Stix solicited the City Council to endorse Mindful Citizen's grant proposal—even though it had previously voted to endorse a different organization. All this-- despite Francis having NO experience in fire safety work. Additionally, as steward of this grant, Francis is in financial distress, with over $250,000 in IRS and other tax liens, and civil judgments; he has been arrested numerous times—including for domestic abuse, and has at least one criminal conviction. After the $493,000 grant was awarded, Mayor Stix then sponsored a City Council measure to exempt "nonprofits" from an Ojai municipal requirement to use only (more expensive) electric-powered chain saws within the City, thereby saving Mindful Citizen ~$40,000. She was defeated 4-1. In 2022, Francis served as Mayor Stix's (unofficial) campaign **manager**; Hess, another co-founder of Simply Ojai, was campaign **treasurer**, and donated $2,000 to her campaign. Hess is also the named petitioner seeking to conduct a referendum to prohibit valet parking, another measure Mayor Stix lost 4-1 . Simply Ojai also paid the filing fee for the petition for the referendum to invalidate the DA. A reasonable person could conclude that Mayor Stix's actions favoring Simply Ojai are *quid pro quos*.

[4] A number of questions arise: Why was the firm's retention not publicly ***reported***? What is the legal authority—and justification–for spending such a sum of money ***without*** a majority vote of the Council? Why did you not tell Minner that the only subject covered by the closed session was the ***formally initiated"*** litigation under § 54956(d)**(1)**, instead giving her a legal assignment ***not*** within the bounds thereof?

On Monday, January 9, 2023, the Council held its second closed session to discuss the Litigation with you and new outside counsel, Heather Minner of Shute, *et al.* Minner presented a memo, which was provided to Councilmember Rule only a couple of hours before the session began. The memo was entitled, "*Pending Litigation Challenging the Becker Development Agreement: Consequences and Opportunities Presented by Rescinding the Development Agreement in Response to a Referendum Petition.*" Its inscrutable title aside, the memo *presumed* that the Council would rescind its approval of the DA and proceeded to offer a view of a *potential* lawsuit by the Becker Group ("Becker"), and continued by discussing the Council taking a number of actions to stop Becker from any development, including buying Becker's properties, exercising eminent domain, changing the zoning, subjecting Becker buildings to historical protection, and imposing rent controls.

Minner's memo, however, provided ***no*** analysis of the **existing** Litigation, which was the only **legal basis** you and the Council established for its closed sessions.

The Council later unanimously agreed (without a vote) to approve ***only*** the referendum on the next day's Council meeting agenda for the open session.

On Tuesday, January 10, there was an open session–and a closed session. At the open session, many citizens spoke on the apparent conflict between Mayor Stix and Simply Ojai. You gave your opinion—based on the information you had—that Mayor Stix did not violate any laws—but that ***ethical*** issues were for the Council to decide. Stix disregarded the public comments and moved to *continue for two weeks* the vote to rescind the DA ***or*** put it to a referendum; her motion passed, 3-2.

The Council continued the discussion in **closed** session. Councilpersons Francina and Rule expressed disbelief at the Council's continuance of a motion to rescind the DA, as they had, just the night before, agreed to send the matter ***only*** to referendum. Rule begged the Council to only put the referendum on the ballot—as unanimously agreed. The Mayor begged them not to. Rule exclaimed, "This is insanity!"

Councilmember Whitman stated he changed his mind because there was no way to know if people would vote the right way. Mayor Stix said she no longer wanted the issue to go to a vote, either, because the developers could put more money into the campaign than could its opponents.[6]

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[6] Considering that Mayor Stix counts among her supporters Anna Getty, who, along with her husband, contributed $9,800 to Mayor Stix's re-election campaign, this statement seems disingenuous.

Councilperson Rule then asked Mayor Stix, ***"Where did you receive the recommendation for this outside firm?"*** Mayor Stix answered, ***"Sabrina."***

Rule expressed shock that Mayor Stix had never disclosed this connection, and disbelief that she would take a recommendation from *opposing* counsel, exclaiming, ***"This is beyond the pale."***

Another Councilmember then told Mayor Stix that, if this gets out, she will be dragged through the mud; that she can potentially lose everything -- political position, forced to resign, and more. The Councilmember also stated that, given this new information, the referendum ***must*** go on the ballot for a vote, and this Councilmember ***"will not vote to rescind the DA."***

It was thus revealed that Mayor Stix fraudulent induced the City to retain an attorney ***for*** the City—from the lawyer who was litigating ***against*** the City. She and Venskus also colluded to keep that secret. At the end of the closed session, you cautioned the Council that everything said in the closed session was confidential.

Friday, January 13, Councilmember Rule met with you and City Manager Vega. Rule expressed how taking a recommendation to hire a lawyer from opposing counsel in that litigation–and concealing the source of that recommendation, were serious breaches of the Mayor's ethical and fiduciary duties. Because of how deep a transgression it was, Rule felt it crucial this information be shared with the public.

You reiterated that everything said in the Council's closed meetings was confidential. Councilmember Rule said, "That doesn't seem right." You added you would do more research. You then assured Rule that if she were to go public with this information, nothing would "really" happen to her: The Council could take away her (non-existent) office, strip her of committee assignments, and censure her.

On **Friday, January 20**, Councilmember Rule learned that Venskus spoke with Minner at least once; Councilmember Whitman spoke separately with Minner at least once; and Mayor Stix spoke separately with Minner at least three times.

STATUTORY AUTHORITIES

The situation here is governed by the Brown Act, specifically, California Government Code § 54963, which provides in relevant part:

> (a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section …54956.9…to a person not entitled to receive it….
>
> (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…to meet lawfully in closed session under this chapter.
>
> (c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including but not limited to:
>
> > (3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury.
> >
> > * * *
>
> (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:
>
> > (1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body….
> >
> > (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.

The statute alluded to in Government Code § 54963(a) that is relevant here is § 54956.9, which deals with closed sessions regarding ***litigation***:

(a) Nothing in this chapter shall be construed to prevent a legislative body…, based on advice of its legal counsel, from holding 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.*

(b) For purposes of this chapter, *all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the* ***exclusive*** *expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.*

* * *

(d) For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(1) Litigation, to which the local agency is a party, has been initiated formally.

(2) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

Section 54957.7(a) amplifies the importance of stating which subsection of 54956.9(d) the Council is relying on: "*In the closed session, the legislative body may consider* ***only*** *those matters covered* ***in its statement.***"

Further, if a councilmember intentionally takes action in violation of this rule, § 54959 provides that the member can be found guilty of a ***crime***:

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

DISCUSSION

You represented on December 13 and January 13 that all information obtained in its closed sessions was confidential. Contrary to your representations, however, there are numerous circumstances and exceptions that permit disclosures.

1. The Only Stated Basis for Closed Session Confidentiality was § 54956.9(d)(1) – the *Existing* Litigation, Which Was Never Discussed.

As a preliminary matter, § 54963(b) narrowly defines the basis for a confidentiality in a closed session, providing: *"confidential information" means a communication made in a closed session that is* ***specifically related to the basis*** *for the legislative body...to meet lawfully in closed session under this chapter."*

"Prior to conducting a closed session under the pending litigation exception, the body must state on the agenda or publicly announce the ***subdivision*** *of section 54956.9 which authorizes the session."* *The Brown Act, Open Meetings for Local Legislative Bodies*, Office of the Attorney General, p. 38.

Section 54957.7(a) continues: "In the closed session, *the legislative body may consider* ***only*** *those matters covered in its statement."*

Here, the ***statement*** you created for the Council to meet confidentially was exactly the same for all three closed sessions: § 54956.9(d)**(1)** – the litigation already ***initated formally***, i.e., *Simply Ojai v. City of Ojai, et al.*

Your specified published and stated basis for the closed sessions thus did ***not*** extend to other issues, including but not limited to: *potential* litigation, the Mayor's conflicts of interest in dealing with matters involving Simply Ojai, Councilmember Whitman's profanity-laced verbal attacks on Francina and Rule to foreclose an airing of the Mayor's conflicts, Mayor Stix's collusion with Venskus to induce the City to hire counsel of opposing counsel's choosing, the hiring of that counsel, or even Minner's memo analyzing ***potential*** litigation that might be brought by the Becker Group *when* the City rescinds the agreement between them, and much more.

In sum, because of the Council's statement citing § 54956.9(d)**(1)**, virtually ***none*** of the communications in its closed sessions is —by definition—"confidential." The disclosure of such communications is thus legitimate.

2. Because Disclosure of Information from the Closed Session Also Would Not Prejudice the City's Position in the Litigation, It is Allowed.

A justification for closed session also exists only, *"when discussion in open session concerning those matters would* ***prejudice*** *the position of the local agency [or legislative body] in the litigation."* § 54956.9(a).

Here, the Council's discussion of the ***process*** by which an outside attorney was recommended and hired would not "prejudice the position" of the City in the Litigation. To the contrary, such a Council discussion–in open session–would have ***enhanced*** the City's position in the Litigation.

An open session discussion could have revealed how Mayor Stix colluded with ***opposing counsel*** to hire an attorney of ***opposing counsel's*** choosing. It could have uncovered Mayor Stix's concealment of such facts a month earlier than it did. And an open session would have prevented Mayor Stix's deceit from obligating the City to pay a law firm recommended by opposing counsel $23,000 or more. Mayor Stix subverted these interests by the Council operating in closed session.

No prejudice to the City existing, no violation can be attributed to Councilmember Rule's disclosure of such improprieties.

3. All Three Exceptions of § 54963(e)(1-3) Apply Here to Permit Disclosure.

Even if, *for the sake of argument only*, the process by which the Council ostensibly selected Minner as counsel *were* an appropriate issue for a ***closed*** session, the facts here indicate that disclosure of such information satisfies each of the three enumerated exceptions provided in § 54963(e):

(1) ***The disclosure is made in confidence to "a district attorney" or grand jury regarding a "perceived violation of law."***

Here, one violation of law that a councilmember may disclose to the Ventura District Attorney or grand jury is Mayor Stix's and Councilmember Whitman's violations of the Brown Act, *i.e.*, exploiting closed sessions to conceal information that should be public. The Brown Act, at § *54950,* provides that transparency in government requires that all government business be conducted in the public eye:

> *... public ... councils ... in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken*

> *openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.*

Ojai hiring a firm for $23,000+ is an issue for public consideration. A mayor's conflicts of interest with an organization suing the City is also a matter for public consideration. Mayor Stix's and Councilman Whitman's violation of the law—precluding "the people's business" being conducted in public, must not stand.

(2) ***Councilmember Rule's Disclosure is an Expression of Her Opinion About the "Impropriety" and "Legality" of Decisions in Closed Sessions, Including Disclosure of the Nature and Extent Thereof.***

This exception covers improprieties and illegalities, including: (a) the admission by Mayor Stix that she was recommending an attorney to work ***for*** the City who was chosen by her friend—who is working ***against*** the City, (b) Mayor Stix's concealment of her perfidy; and (c) Councilmember Whitman's profanity-laced verbal abuse of two Council women to shut down discussion of Mayor Stix's conflicts of interest. Hence, Councilmember Rule's disclosures are not prohibited.

(3) ***The Disclosure is of Information Not Regarding the Existing Litigation and Thus Not "Confidential," i.e., Subject to Attorney-Client Privilege.***

Mayor Stix's admission was not related to any communication covered by the specified published authorization to address the ***existing*** litigation. The topic of hiring outside counsel could have and should have been made in open session. Whitman's profane outbursts were also eminently shareable at an open meeting—but for the damage to his reputation from publicly bullying two women on Council.

Moreover, as discussed above, the only legal, i.e., stated basis for the closed sessions was § 54956.9(d)(1), pertaining to the *existing litigation brought by Simply Ojai.* Pursuant to § 54956(b), above, any ***other*** communications, including even Minner's work product, are not confidential—or attorney-client privileged.

4. Mayor Stix and Councilman Whitman are Guilty of Crimes Relating to the Closed Sessions, Which Should be Disclosed.

As noted above, § 54959 considers certain violations of the Brown Act crimes. Specifically, a member of a body attending a meeting where action is taken in violation of the Act, and where the member "*intends to deprive the public of information to which the member knows or has reason to know the public is entitled, is guilty of a misdemeanor.*"

Section 54952.6 defines the term "action taken," to include a collective decision, commitment or promise by a majority of the members of a body." 61 Ops.Cal.Atty.Gen. 283, 292- 293 (1978).

Here, the Council took at least three "actions": 1) hiring an attorney; 2) giving a legal assignment to that attorney; as well as 3) deciding, committing and promising to pay that attorney's law firm $23,000 or more.

Mayor Stix intended those actions by exploiting the closed nature of the sessions to conceal from the public the source of her recommendation. She then engineered the hiring of that outside attorney behind closed doors. And she manipulated the process by which that attorney was assigned and drafted a memo suited to Mayor Stix's personal interests—*not* the ***impartial*** interests of the City Council and the people of Ojai, whom she purports to represent. Mayor Stix's clear intention was to "deprive the public of information to which she knew the public is entitled."

Likewise, Councilmember Whitman intended to and did exploit the secret nature of a closed session to harass and bully two council women with profanity-laced insults—to end the Council's discussion of the Mayor's conflict of interests, i.e., information the public is entitled to know.

Accordingly, as per § 54959, the close sessions do not shield Whitman and Stix from criminal liability.

CONCLUSION

As a fundamental issue, the only legal basis offered for the closed sessions—Section 54956(d)**(1)**, pertaining to already ***existing*** Litigation, does not cover communications regarding ***potential*** litigation, the disclosure of either Mayor Stix's role in the City hiring an attorney to work ***for*** the City that was chosen by her "friend" who is working ***against*** the City, or Mayor Stix's concealment of that fact. Neither does it cover Councilmember Whitman's profanity-laced outbursts.

Disclosure of these facts is also allowed because it does not prejudice the City.

But even if, *arguendo*, such information in closed session *were* deemed confidential, the three relevant statutory exceptions permit their disclosure. 1) Confidentially reporting information of perceived violations of the law to the District Attorney is protected; 2) the disclosure expresses an opinion regarding improprieties or illegalities in closed session, and 3) disclosure is justified on the basis that this information was not confidential. Last, just as the attorney-client privilege may not be generally used to further a crime, neither can closed sessions.

In sum, Councilmember Leslie Rule's disclosures are not only permissible; they fulfill a public policy interest in exposing and punishing elected officials who engage in improprieties and criminal activity.

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

EXHIBIT B

LAW OFFICES OF JON E. DRUCKER
111 W. Topa Topa Street
Ojai, California 93023
JDrucker@lawyers.com
323-977-0200

January 26, 2023

Councilmembers:
Suza Francina,
Rachel Lang,
Andrew Whitman,
Leslie Rule,
Mayor Elizabeth Betsy Stix,
Matthew Summers, Ojai City Attorney,
James Vega, City Manager,
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. In that letter I pointed out the strict limits of confidentiality applying to closed sessions, which renders all communications outside those limits NOT confidential. Also see the attached article on the topic by leading scholar on the topic, Frayda Bluestein.

"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

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 undermine public trust and appear as 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 is ***not*** allowed to speak as he did at the Council session. 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.

The Brown Act, Government Code section 54963, provides only 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 are mistaken. Nonetheless, she will raise no objection. She has 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, Mr. Summers is ***absolutely*** not permitted 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. 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 even that justify a closed counsel session. 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 hard 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 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. Without waiving her rights, however, 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, Summers' statement was deceptive, at best. As you all know, Shute et al, agreed to undertake dozens of hours of legal work based on the promise by the City to pay it the sum of at least $23,000. An honest 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 replied huffily, "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 makes, implements, and commits monies in close 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 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* – as the ***sole*** legal basis for the closed sessions.

If Mr. Summers had wished to have the Council talk confidentially about ***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 subsection 54956.9(d)(2) or other appropriate code section, and specified the nature of the matter, as the case may be, in the statement for the public agenda.

But Mr. Summers did not do that. Hence, if one wishes to complain about the lack of confidentiality for the matters Ms. Rule is disclosing, the fault lies with Mr. Summers, not Ms. Rule.

Realizing that fault lies with him, Mr. Summers is thus too conflicted and compromised to render unbiased advice on the issue of the scope of your closed sessions. His stance that everything is always confidential is as self-serving as it is groundless. He should recuse himself from any further involvement in the issue.

My client and I have other questions to raise:

1. It is our understanding that the City Council had, by majority vote, previously appropriated $30,000 for a specific law firm to handle the big multi-county water litigation case. Was the $23,000 for Shute et al. lawfully transferred from the voted-upon water litigation appropriation? If so, what was the legal authority for doing that without a council vote? 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?

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).)

   Here, however, as Ms. Rule made so clear on Tuesday night, she does not fear "undue publicity" or "embarrassment" over her behavior. To the contrary, she welcomes "full and candid discussion" of her behavior by "the body in question," the City Council. Invocation of the exception can only benefit those accused of impropriety. Don't be a partner in that coverup.

In sum, no action should be taken 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 respond to any accusations of wrongdoing.

We look forward to your thoughtful reply.

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

DECLARATION OF LESLIE RULE

I, Leslie Rule, declare the following based on my personal knowledge:

1. I am an elected city council member of the City of Ojai, having been elected in November 2022 and inaugurated on December 13, 2022.

2. In the evenings of December 13, 2022, as well as January 9 and 10, 2023, I attended closed session meetings of the City Council. The sole issue noticed in the Closed Session Statement – to obtain legal advice from counsel – in each of those closed sessions was "the Litigation," i.e., Simply Ojai v. City of Ojai, under Government Code § 54956.9(d)(1), relating only to "already initiated" litigation.

3. In one of those closed sessions, there was another item on the agenda pertaining to the "initiation of litigation" (FAC ¶ 26). But that agenda item concerned a completely unrelated matter that had nothing remotely to do with the Litigation. At any rate, we ran out of time and were never able to discuss the other matter in any of those closed sessions.

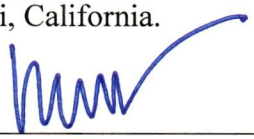
4. The only people attending the three closed sessions were the five sitting council members, the City Manager, and the City Attorney. Additionally, another outside lawyer attended the closed session on January 9.

5. Although needless to say, none of the seven plaintiffs nor either of their attorneys was present in any of the closed sessions.

6. On January 24, 2023, I began to read from a written statement I had prepared, but was cutoff when the mayor immediately moved to call rule me "out of order," and the City Attorney shouted me down. I then distributed my full written statement to the Council and those assembled in the gallery. A copy of that Statement is attached hereto as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this July 26, 2023 at Ojai, California.



Leslie Rule

EXHIBIT A

LESLIE RULE REMARKS FOR OJAI CITY COUNSEL OPEN SESSION
Tuesday, 1/24/2023

"Sunlight is the best disinfectant"

In the previous council session, you heard me talk about the ethics and the duty of care this council has to you, the public. Your city council, my colleagues and I, have failed you in this regard.

I need to start by talking about the reasons behind "Closed Sessions"
A closed session is where a city council can discuss an item that if done in public would be bad for the city. For instance, to confidentially discuss existing litigation in a closed session might be a good idea: it allows a city to discuss lawsuits without tipping off the other side to your legal strategy.

But closed sessions are very limited in scope for a very important reason—because you, the public, have a right to know any and all actions your representatives take in your name, you have a right to know the reasons why any decision is made, to approve any associated costs, and, a chance to offer your opinions and perhaps better solutions through public comments.

Keep the concept of Closed Sessions in mind as I continue. We have had 3 of them since I was first seated on council on Dec 13. The stated reason for all three closed sessions was limited, to discuss the EXISTING LITIGATION, that is, Simply Ojai v. City of Ojai, et al.

Closed session #1 (Remember I said there were 3)

On **December 13** of last year, **in the first session of the new council**, a citizen called on Mayor Stix to recuse herself on all matters concerning Simply Ojai due to concerns over conflicts of interest with that organization and its principals. Mayor Stix ignored the call.

We soon adjourned the open session and retreated behind closed doors for the closed session.

Almost immediately, the Mayor requested that council hire an outside law firm to get "a new set of eyes to review" the *development agreement* with the Becker Group. She said she knew the firm we should hire: "Shute, Mihaly and Weinberg" to provide those eyes. She had this firm's name on a stickie note, which she read to us.

Councilmember Suza Francina said she didn't see the need to spend city money on a new set of eyes, and then asked Mayor Stix to explain her relationship with Simply Ojai, noting that her constituents were asking, and that we had just heard a concerned citizen make the same point. Mayor Stix replied that her relationship with Simply Ojai was "*just like*" her relationship with *"any other nonprofit—like the Humane Society."* Councilmember Francina followed-up, asking the Mayor if she knew about Simply Ojai's lawsuit and petition for referendum ***prior*** to their filing and, if so, did she try to stop them? After all, they were her friends.

Councilmember Andrew Whitman then interrupted her, barking, "***Suza, you're talking through your ass!***" I then stated that there were many dotted lines from Simply Ojai to Mayor Stix that needed to be explained. Whitman snapped at me, "***You're talking horseshit!***"

I am embarrassed to confess, Councilmember Francina and I were dumbfounded. I have never had someone speak to me with such direct and aggressive profanity in a professional environment. I think I was more upset with his abuse of Councilmember Francina than me. Wow.

But as importantly, Councilmember Whitman's profanity-laced abuse was successful in blocking further Council discussion of Mayor Stix's conflicts of interest. Councilmember Whitman later justified his behavior by claiming that Councilmember Francina was attacking the mayor. I ask you, when was the last time (or even the first time) any one accused Suza Francina of attacking anyone?

The following Monday, we were informed that the law firm the Mayor had recommended was retained and would start work immediately and provide a report in January. It would cost $23,000, possibly more. The retainer agreement and the exact assignment was not shared with the rest of the Council.

At this point, we did not know that the Mayor spoke alone with outside counsel at least twice, that outside council *requested* to speak to the Mayor directly without including other Council members, and that Councilman Whitman also spoke to outside council. Neither myself nor Councilmember Francina were aware of these outside calls or what was discussed.

Now we have the final two dates to discuss.

The first: On Monday, January 9, 2023, the night of the big storm, the Council held its second ***closed session*** to discuss again "the [pending/existing] litigation." The outside attorney, Heather Minner had flown in from San Francisco (on our dime) to

present her memo. I was shocked, as she *started from the assumption that the* Council would rescind its approval of the development agreement—not that we were looking for an impartial "new set of eyes" on the existing litigation. She then gave her take on the ***defense*** of a ***potential*** lawsuit by the Becker Group. Her options included the City buying the properties or exercising eminent domain to acquire them, changing the zoning, subjecting the buildings to historical protection, and imposing rent stabilization controls, among other things.

After some discussion, the Council unanimously agreed—but without formal vote—to move the referendum to ballot.

The next day, **January 10**, there was an open session and a closed session. As expected, the open session agenda contained the decision item on whether the Council should vote to ***rescind*** the DA ***or*** let the citizens vote on the issue in a referendum. I expected we would do what we had agreed to do the previous night in closed session—put the referendum on the ballot.

Mayor Stix immediately moved to continue the issue for two weeks, citing a need to review both existing materials and the new materials that had been introduced the evening before in closed session. Councilmembers Whitman and Lang agreed. The vote was 3-2. And that's why we're here tonight.

In **closed** session, Councilmembers Francina and I both expressed our incomprehension about the Council's ***motion to continue***. After all, just the night before, we had decided to send the matter ***only*** to a referendum. There had been no mention of needing more time, no mention of confusion, no mention of anything. Keep in mind we had just spent close to 5 hours with outside counsel the evening before reviewing her memo. I begged the other Council members to put the referendum on the ballot—as we had unanimously agreed. The mayor said she was begging them not to. I rather heatedly exclaimed, "This is insanity."

Councilmember Whitman stated he was inclined to change his mind because there is no way to know if people are going to vote the right way. Mayor Stix said she also no longer wanted it to go to a vote – because the developers could put more money into the campaign than its opponents.

It has recently come to light that Mayor Stix and possibly Councilmember Whitman, but not the others on Council, received an additional memo and briefing from Heather Minner (outside counsel) earlier that day. The mayor seemed to be reading from handwritten notes she had taken during that call with outside counsel.

I then asked Mayor Stix, ***"Where did you receive the recommendation for this outside firm?"*** Mayor Stix paused, and answered, ***"Sabrina."***

"Sabrina" is, for those of you who don't know, Sabrina Venskus, and is ***the lawyer*** for **Simply Ojai** in the Litigation **against** the city on just this topic. Let me repeat that: Mayor Stix got the recommendation for an attorney to ***advise*** the City from opposing counsel who is ***suing*** the city. I expressed shock that Mayor Stix had never ***previously*** disclosed this fact, and disbelief that the Mayor would take a recommendation from *opposing* counsel in the Litigation. I exclaimed, ***"This is beyond the pale!"*** Mayor Stix replied, ***"Sabrina is my friend."***

One of my respected city council colleagues then told Mayor Stix that this was bad, that she could potentially lose everything—political position, personal reputation, forced to resign, and more. The councilmember also stated that, given this new information, the referendum ***must*** go forward, and this councilmember ***would vote to put the development agreement on the ballot***, and would not vote to rescind.

It was thus revealed that *opposing counsel* Venskus had colluded with Mayor Stix to have the City retain an attorney of Venskus's choosing to provide advice ***for*** the City (us) in the very matter that Venskus was litigating ***against*** the City. They further colluded to keep it secret.

There are so many questions to be asked and answered, to bring this matter out from behind closed doors, and to shed some light.

- Why didn't Mayor Stix tell the City Attorney or Council where she got the recommendation?
- And most importantly, why was this all done in closed session and not reported to you, the public?

In my estimation, Mayor Stix colluded with opposing council Sabrina Venskus to unlawfully subvert the law of the City of Ojai. She took advantage of a closed session to hide her collusion and subversion, and then doubled down by not being honest with her colleagues once the truth started to come out.

To the Mayor I say, the truth will set you free. Come clean.
To my colleagues and this town we love so much: Sunlight is the best disinfectant. Insist on it.

In light of these revelations, I propose the following City Council three motions: One regarding Councilmember Andrew Whitman, one regarding the lawyers involved in this sordid affair, and one regarding the Mayor's possible improper ties with Simply Ojai and other individuals.

1. Regarding Councilmember Whitman:
   The Council hereby censures Councilmember Andrew Whitman for his profanity-laced verbal attacks on Councilmembers Suza Francina and Leslie Rule in the council's closed session on December 13, 2022, and orders him to attend and complete a California state certified course on bullying and/or abusive behavior before he may attend or participate in any Council sessions.

2. Regarding the attorneys:
   The Council hereby directs the City Manager to file a formal complaint with the State Bar of California against Sabrina Venskus, attorney for Plaintiff in the case of *Simply Ojai v. City of Ojai*. It further directs the City Manager to not pay $23,000–or any sum of money–to Shute, Mihaly and Weinberg until we know what and when it knew about Venskus's role as plaintiff's counsel against the City, Venskus's collusion with Mayor Stix in hiring Shute, et al., and Minner's communications with Mayor Stix, Councilmember Whitman and Venskus.

3. Regarding the Mayor and Simply Ojai:
   The Council hereby directs the City Manager to initiate a formal investigation—with subpoena power and the ability to take testimony under oath—into Mayor Stix's ties with Simply Ojai, aka Mindful Citizen, aka Fuel Reduction Works; Sabrina Venskus; Heather Minner; and others in the selection and assignment of a lawyer of Venskus's choosing to represent and advise the City of Ojai, as well as Mayor Stix's concealment of that fact; along with an investigation into any and all ties between and among Mayor Stix, Sabrina Venskus, Mindful Citizen, Thomas C. Francis, Leslie Hess and others, regarding possible improprieties in the conduct of business in the City.

I now respectfully request a second to my motions.