



Administrative Report

DISCUSSION ITEM

TO: HONORABLE CITY COUNCIL

FROM: James Vega, City Manager

DATE REPORT PREPARED: May 3, 2023

MEETING DATE: May 9, 2023

SUBJECT: Request for Indemnification of Councilmember Rule

Recommendation

That the City Council consider the request from Councilmember Rule to vote on whether to defend and indemnify Councilmember Leslie Rule under Government Code Section 825 in the Byrne V. Rule lawsuit.

This item was scheduled immediately due to pending legal deadlines in the matter.

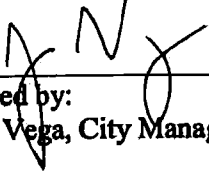
Discussion

On Monday, May 1, 2023, the City of Ojai received information indicating that a lawsuit had been filed against Leslie Rule by David Byrne, Vickie Carlton-Byrne, Thomas Drew Mashburn, Gerald Schwanke, Debby Russell- Swetek, Douglas La Barre, and Leslie Ferraro (hereinafter Byrne V. Rule – Attachment A). On Wednesday, May 3, 2023, the City received a written request from Leslie Rule for statutory indemnification under Government Code section 825 from the City on this matter (letter included as Attachment B). City employees, including Council Members, have a statutory right to seek defense and indemnity for any lawsuit raising claims that allegedly arise from “an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity.” (Government Code section 825, subd. (a).) The Council will consider whether to approve, approve with a reservation of rights, disapprove, or take no action.

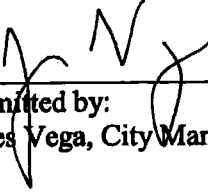
The City is not named in this lawsuit. The City is not a party to this lawsuit.

Fiscal Impact

Fiscal impact will depend on the option selected by City Council.



Prepared by:
James Vega, City Manager



Submitted by:
James Vega, City Manager

Attachment(s):

A – Bryne v. Rule Complaint

B – Request for Indemnification from Leslie Rule

RECEIVED

VENTURA SUPERIOR COURT

04/28/23

Brian Acree (SBN 202505)
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Attorneys for Plaintiffs,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

DAVID BYRNE, VICKIE CARLTON-
BYRNE; THOMAS DREW MASHBURN;
GERALD SCHWANKE; DEBBY RUSSELL-
SWETEK; DOUGLAS LA BARRE; LESLIE
FERRARO, individuals

Plaintiffs,

v.

LESLIE RULE; JON E DRUCKER,
individuals; and DOES 1-10

Defendants

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

California Ralph M. Brown Act §54963;
California Code of Civil Procedure §§ 526;
1060

Plaintiffs allege as follows:

1. This action challenges the disclosure of confidential and privileged information acquired during closed sessions of the Ojai City Council ("City Council") in violation of the California Ralph M Brown Act, §54950 et seq., by newly-elected Ojai City Councilmember,

1 Leslie Rule, (hereinafter "Defendant Rule") and her agent, attorney Jon Drucker (hereinafter
2 "Defendant Drucker"). Plaintiffs seek declaratory and injunctive relief to prevent additional
3 illegal disclosures.

4 THE PARTIES

5 2. Plaintiff David Byrne is an individual who has resided in the City of Ojai for 31 years,
6 and at all times relevant to this Complaint has resided in the City of Ojai. Plaintiff also brings
7 this action in the public interest.
8

9 3. Plaintiff Vickie Carlton-Byrne is an individual who has resided in the City of Ojai for
10 31 years, and at all times relevant to this Complaint has resided in the City of Ojai. Plaintiff also
11 brings this action in the public interest. Plaintiff Gerald Schwanke is an individual who has
12 resided in the Ojai Valley for 43 years, some of which were spent within the City-limits. At all
13 times relevant to this Complaint Plaintiff has resided just outside of the City-limits, and frequents
14 many businesses within the City of Ojai, participates in Ojai City Council meetings, and supports
15 local Ojai City organizations, including the Ojai Valley Shelter homeless shelter where he
16 volunteers. Plaintiff also brings this action in the public interest.
17

18 4. Plaintiff Thomas Drew Mashburn is an individual who has resided in the Ojai Valley
19 for 72 years, 20 years of which were spent within the City-limits. At all times relevant to this
20 Complaint Plaintiff has resided just outside of the City-limits, and frequents many businesses
21 within the City of Ojai, participates in Ojai City Council meetings, and supports local Ojai City
22 organizations. Plaintiff also brings this action in the public interest.
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24 5. Plaintiff Doug La Barre is an individual who has resided in the City of Ojai for 43
25 years, and at all times relevant to this Complaint has resided in the City of Ojai. Plaintiff also
26 brings this action in the public interest.
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1 6. Plaintiff Leslie Ferraro is an individual who has resided in the City of Ojai for 16
2 years, and at most times relevant to this Complaint has resided in the City of Ojai. Plaintiff also
3 brings this action in the public interest.

4 7. Plaintiff Debby Russell-Swetek is an individual who has resided in the City of Ojai for
5 66 years, and at all times relevant to this Complaint has resided in the City of Ojai. Plaintiff also
6 brings this action in the public interest.

7 8. Defendant Leslie Rule is an individual residing in the City of Ojai, California.
8 Defendant Rule is a newly-elected City Councilmember. Ms. Rule won her District One council
9 seat in November, 2022 by 17 votes. Defendant Rule was and is a member of the Ojai City
10 Council during all times relevant to this Complaint.

11 9. Defendant Jon E. Drucker is an individual residing and doing business in Ventura
12 County, California. Defendant Drucker is licensed to practice law in California and maintains the
13 "Law Offices of Jon E Drucker" in the City of Ojai, California.

14 10. At all times mentioned herein, Defendant Drucker was the agent, servant, employee,
15 representative of, and/or joint venturer with Defendant Rule. At all times alleged hereinafter,
16 Defendant Drucker was acting within the purpose and scope of the agency, employment,
17 representation, and joint venture, and each Defendant has ratified and approved the acts of the
18 other Defendant.

19 11. Plaintiffs are ignorant of the true names or capacities of the defendants sued herein
20 under the fictitious names DOES 1 through 10, and will seek leave to amend this Complaint to
21 identify them in their true names and capacities when and if identified.

22 12. Plaintiffs are informed and believe and therefore allege that each of the Defendants
23 designated herein as a DOE is legally responsible in some manner for the events and
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1 happenings herein referred to, and legally caused injury and damages proximately thereby to
2 each Plaintiff, and each of them as herein alleged.

3 13. Plaintiffs are informed and believe and thereon allege that all of the acts set forth in
4 this Complaint alleged to have been done by each Defendant were authorized, approved, or
5 ratified by each of the other Defendants. Plaintiffs are further informed and believe and thereon
6 allege that each of the Defendants did the acts set forth in this Complaint, in whole or in part,
7 for their own individual advantage.
8

9 JURISDICTION AND VENUE

10 14. Jurisdiction over each Defendant exists because they reside and/or operate within the
11 jurisdictional limits of the county of Ventura, California or do business within the county of
12 Ventura.

13 15. Jurisdiction over the subject-matter of this lawsuit exists because Plaintiffs' claims
14 arise under California state law, and the matter is not a limited civil case pursuant to Code of
15 Civil Procedure Section 85 or 86.

16 16. This Court has jurisdiction over Plaintiffs' claim for declaratory relief under Code of
17 Civil Procedure Section 1060.
18

19 17. Venue is proper in this Court under Code of Civil Procedure Section 392 because the
20 Defendants reside and do business in Ventura County.

21 BACKGROUND AND FACTUAL ALLEGATIONS

22 18. On October 25, 2022, the then-majority Ojai City Council approved a Development
23 Agreement for the benefit of an entity named the Becker Group. The Development Agreement
24 granted entitlements to the developer for four different development projects that would result
25 in a **substantial net loss of low-income housing units** within the City of Ojai. In the public
26 hearings prior to the City Council's approval of the Development Agreement, the attorney for
27
28

1 the Becker Group publicly threatened to sue the City for millions of dollars if the City did not
2 approve the Development Agreement.

3 19. On December 1, 2022, a local non-profit, Simply Ojai, filed a lawsuit against the City
4 of Ojai to challenge the City's approval of Development Agreement (hereinafter "Development
5 Agreement Litigation"). The Development Agreement Litigation (*Simply Ojai v. City of Ojai*)
6 named the following parties as Real Parties In Interest: Ojai Bungalows, L.P., Green Hawk,
7 LLC, and The Becker Group, Inc, as they had a financial interest in the Development
8 Agreement at issue in the case.
9

10 20. In November, 2022 there was an election for City Council of Ojai. Four of the five
11 seats were up for election. The following members were elected: Betsy Stix was re-elected as
12 Mayor; Andrew Whitman was elected as District 3 representative; Rachel Lang was elected as
13 District 2 representative, and Leslie Rule was elected as District 1 representative. District 4 was
14 not up for election, a seat which is currently occupied by Councilmember Suza Francina. In
15 December, 2022 the new city council was seated.
16

17 21. On December 12, 2023, a referendum petition was presented to the City seeking to
18 overturn the Development Agreement approved by the former City Council; the petition
19 obtained well over 10% of registered voters' signatures as required by law.
20

21 22. Thereafter, the City Council held two closed session meetings closed to the public to
22 discuss legal issues related to the approval of the Development Agreement and the resulting
23 litigation and referendum, and the City's options for action regarding those matters. Based on
24 existing facts and circumstances, there was exposure to litigation against the City depending
25 upon how the City responded to both the existing litigation and the options presented to the City
26 by the referendum.
27

28 **Closed Sessions of the City Council**

1 23. On December 7, 2022, the City Council issued a notice and agenda for a closed
2 session to occur on December 13, 2022. The notice/agenda for the closed session included one
3 item, entitled, "Conference with Legal Counsel; Existing Litigation" which identified the
4 Development Agreement Litigation by name and stated, "The City Council finds, based on
5 advice from legal counsel, that discussion in open session will prejudice the position of the City
6 in the litigation."

8 24. On December 13, 2022, the City Council held the closed session pursuant to the public
9 notice and on the advice of counsel. Ojai City Attorney Matthew Summers attended the closed
10 session. Each of the five Council members attended the closed session including
11 Councilmember Rule. The information discussed during this closed session included risks
12 associated with both existing litigation and exposure to litigation and therefore the discussions
13 were privileged and confidential.

15 25. On January 5, 2023, the City Council issued notices and agendas for a closed session
16 to occur on January 9, 2023 and January 10, 2023. The notices and agendas for the closed
17 sessions included three items. One agenda item was entitled, "Conference with Legal Counsel;
18 Existing Litigation" which identified the Development Agreement Litigation by name and
19 stated, "The City Council finds, based on advice from legal counsel, that discussion in open
20 session will prejudice the position of the City in the litigation." Another agenda item was
21 entitled "Conference with Legal Counsel; Initiating Litigation" and listed the number of
22 potential cases (1).

25 26. Legal counsel for the City attended these closed sessions. Each of the five Council
26 members attended the closed sessions including Councilmember Rule. The information
27 discussed during these closed sessions included risks associated with both existing litigation and
28

1 exposure to litigation depending on the referendum options selected by the Council and
2 therefore the discussions were privileged and confidential.

3 27. The aforementioned closed sessions of the City Council (December 13, 2022, January
4 9, 2023 and January 10, 2023) shall be collectively referred to hereinafter as the "Closed
5 Sessions."
6

7 28. All notices for the Closed Sessions were in substantial compliance with the Brown t.

8 **Public Disclosure Of Confidential And Privileged Information From Closed Sessions**

9 29. On January 24, 2023, the City Council held a regularly scheduled public meeting. At
10 that meeting, in open session which was attended by the public, Defendant Leslie Rule issued a
11 written public statement and disseminated the written statement to the public at the meeting.
12 Defendant Rule's written statement was entitled, "Leslie Rule's Remarks At Ojai's City
13 Council Open Session, Tuesday, 1/24/2023." Rule's written public statement included an
14 extensive and detailed discussion of confidential and privileged information she obtained from
15 the Closed Sessions that had occurred earlier.
16

17 30. At that same January 24, 2023 open session of the City Council meeting, Defendant
18 Rule began verbally disclosing confidential closed session information. The City Attorney, Mr.
19 Summers, immediately directed Ms. Rule to cease disclosing the closed session information.
20 Defendant Rule refused to cease and desist and instead continued to disclose confidential
21 information said in closed session. Defendant Rule made a motion to allow public disclosure of
22 confidential information discussed at the closed session. The motion did not receive a second
23 and no vote was taken (ie. Council Member Rule's request for permission to disclose
24 confidential information from closed session was rejected by the City Council.) A motion was
25 then passed by the majority council to defer discussion of Defendant Rule's accusations in
26 closed session, and to exclude Defendant Rule from the closed session due to the potential
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1 conflict raised by the adverse legal position she had adopted toward the City Council. The
2 matter was agendized for the next Council meeting.

3 31. At the same January 24, 2023 open meeting of the City Council, Defendant Rule's
4 agent and attorney, Jon Drucker, handed out to members of the public in attendance a written
5 letter prepared by Defendant Drucker on behalf of Defendant Rule (hereinafter referred to as
6 "the First Drucker Letter"). The letter's subject line was, "City Council Closed Sessions and the
7 Duty of Disclosure." In the 12-page Drucker Letter, an extensive and detailed discussion of
8 confidential and privileged information obtained by Defendant Rule during the Closed Sessions
9 was disseminated to the public.
10

11 32. A number of citizens that had received Defendant Rule's and/or Defendant Drucker's
12 letter in the public session, began discussing the confidential contents of the letters during
13 public comment, which was disruptive to the council meeting, and which undermined the
14 majority city council's decision to discuss Defendants Rule's and Drucker's allegations in
15 closed session.
16

17 33. The public statements at issue in this lawsuit made by Defendants Rule and Drucker
18 were confidential and privileged because they related to the attorney-work product, potential
19 liability and legal strategy of the City of Ojai and the Ojai City Council as a legislative body.
20

21 34. On January 27, 2023, Mr. Drucker issued another letter which again disclosed
22 confidential closed session communications and attorney-work product and legal strategy
23 (hereinafter "Second Drucker Letter").
24

25 35. Both the First and Second Drucker Letters were posted thereafter to a public website,
26 called "Transparent Ojai" further compounding the damage to the City resulting from
27 Defendant's disclosures.
28

1 36. Both the First and Second Drucker Letters were published in the local newspaper, the
2 Ojai Valley News. The paper has since taken down the letters from their online news website.
3 Members of the public have subsequently republished, through social media and editorial
4 opinion letters, confidential information from the closed sessions that were disclosed by
5 Defendants Rule and Drucker.
6

7 37. At the April 25, 2023 public meeting of the City Council, Defendant Rule's agent Jon
8 Drucker admitted in public comment that he had disclosed confidential closed session
9 communications.
10

11 38. At that same April 25, 2023 public meeting of the City Council, Defendant Rule made
12 a motion to waive closed session confidentiality. The motion failed by not receiving a majority
13 of the City Council member votes.

14 39. The offending conduct of Defendant Rule and her agent Defendant Jon Drucker has
15 made it impossible for members of the City Council to effectively discharge their official duties
16 because closed session meetings are effectively no longer confidential.
17

18 40. Defendant Rule and her agent Jon Drucker have made it clear that they do not believe
19 that the communications and information obtained in closed session are confidential or
20 privileged, including advice of legal counsel concerning existing, pending, initiation of, or
21 exposure to, litigation. They will continue to disclose confidential information from closed
22 session unless and until the Court declares them, jointly and individually, to have violated the
23 Brown Act and enjoins them from doing so again.
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1 **FIRST CAUSE OF ACTION**

2 **(Violation of Section 54963 of the Brown Act - Disclosure of Confidential Communications)**

3
4 41. All of the above paragraphs are incorporated by reference as though set out at length
5 herein.

6 42. Plaintiff brings this action against Defendants for violation of Section 54963 of the
7 Brown Act, which prohibits the disclosure of confidential communications that are made in
8 closed sessions.

9 43. Under Section 54963 of the Brown Act, certain communications that are made in
10 closed sessions are confidential and may not be disclosed by members of a legislative body or
11 any other person, except as authorized by law. Section 54956.9 of the Brown Act provides a
12 legislative body the right to conduct a closed session to confer with, or receive advice from, its
13 legal counsel regarding pending litigation, initiation of litigation and/or exposure of risk to
14 litigation.
15

16 44. Section 54963 of the Brown Act prohibits the disclosure of confidential
17 communications that were made in closed sessions pursuant to Section 54956.9 of the Brown
18 Act.

19 45. The ability of the City Council to confer confidentially with its legal counsel is
20 essential to its ability to properly function, and protect the interests of its citizens. "Protecting
21 the confidentiality of communications between attorney and client is fundamental to our legal
22 system. The attorney-client privilege is a hallmark of our jurisprudence that furthers the public
23 policy of ensuring "the right of every person to freely and fully confer and confide in one
24 having knowledge of the law, and skilled in its practice, in order that the former may have
25 adequate advice and a proper defense." *People ex rel. Dept. of Corporations v. Speedee Oil*
26 *Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145.
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1 46. Further, an attorney who receives information from a client that the lawyer knows or
2 should know contains or consists of privileged or confidential matter has an ethical and
3 professional obligation not to disclose or make use of such information. *Clark v. Superior Court*
4 (2011) 196 Cal.App.4th 37.
5

6 47. On December 13, 2022, January 9, 2023, and January 10, 2023 Defendant Leslie Rule
7 participated in closed sessions of the City Council. All of these closed sessions were properly
8 noticed and were in substantial compliance with the Brown Act. (*Castaic Lake Water Agency v.*
9 *Newhall County Water Dist.* (2015), 238 Cal. App. 4th 1196.)
10

11 48. During all of the above-referenced closed sessions, confidential communications were
12 made. The nature and substance of these communications were privileged and not authorized for
13 disclosure to the public or any other person particularly when the communications are with legal
14 counsel and concern existing litigation, initiation of litigation and/or the exposure to litigation
15 that may arise from action contemplated by the City Counsel.
16

17 49. Despite the confidentiality of these communications and the verbal warnings by the
18 City's legal counsel (City Attorney Mr. Summers) that the communications were privileged and
19 could not be disclosed, Defendant Rule nevertheless went ahead and disclosed the substance of
20 the confidential Closed Sessions' communications to a substantial number of members of the
21 public, and did so thereafter on a number of occasions. These disclosures were not authorized by
22 law and constitute a violation of Section 54963 of the Brown Act.
23

24 50. Despite the confidentiality of these communications, Defendant Rule and her agent
25 Defendant Jon Drucker disclosed the substance of the confidential Closed Sessions
26 communications to a substantial number of members of the public, and on a number of
27 occasions. These disclosures were not authorized by law and constitute a violation of Section
28 54963 of the Brown Act.

1 51. As a result of Defendants' violations of the Brown Act, Plaintiffs have suffered harm,
2 including loss of confidence in the integrity of the local legislative process.

3 52. Plaintiffs have also suffered harm or will likely suffer harm because Defendants'
4 conduct has created liability exposure to the City by their disclosure of confidential information
5 and attorney-client communications.
6

7 53. Plaintiffs have also suffered harm or will likely suffer harm because members of the
8 duly elected city council cannot now confidently and freely discuss issues in closed session that
9 require confidentiality, nor can they rely on their legal counsel's legal analysis, opinions and
10 strategy to remain confidential attorney-client privileged communications without risking
11 exposure to litigation adversaries or potential litigation adversaries. For this same reason, there
12 is now effectively a lack of attorney-client privilege which creates an exposure to liability which
13 is injurious to Plaintiffs as taxpayers, business operators, and participants in the democratic
14 process.
15

16 54. Plaintiffs seek declaratory and injunctive relief pursuant to section 54963, subd. (c) of
17 the Brown Act.
18

19 55. Plaintiffs have an interest in ensuring, on behalf of the public, that City Councilmember
20 Leslie Rule carries out her duties responsibly under law and does not subject the City to
21 additional legal peril or expense. There are no plain, speedy and adequate remedies at law.
22

23 56. Plaintiffs request declaratory relief under CCP §1060 declaring that Defendants
24 violated the Brown Act.
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for relief as follows:

- 3 (i) A declaration that Defendant Leslie Rule violated Section 54963 of the Brown Act by
4 disclosing confidential communications obtained from closed sessions of the Ojai
5 City Council;
- 6 (ii) A declaration that Defendant Jon Drucker violated Section 54963 of the Brown Act
7 by disclosing confidential communications obtained from closed sessions of the Ojai
8 City Council;
- 9 (iii) An injunction prohibiting Defendants from disclosing any confidential
10 communications obtained from closed sessions of the Ojai City Council;
- 11 (iv) An order that Council Member Rule identify each person with whom she shared
12 confidential communications obtained from closed sessions of the Ojai City Council;
- 13 (v) An order that Defendant John Drucker identify each person with whom she shared
14 confidential communications obtained from closed sessions of the Ojai City Council;
- 15 (vi) An order that persons identified by Council Member Rule and/or John Drucker cease
16 and desist from future communication of confidential communications obtained from
17 closed sessions of the Ojai City Council;
- 18 (vii) Costs of suit and reasonable attorney's fees;
- 19 (viii) Such other and further relief as is just and proper.
- 20

21 Dated: April 28, 2023

Respectfully submitted,

22 VENSUS & ASSOCIATES, APC
23 LAW OFFICE OF BRIAN ACREE

24
25 By: 
26 Brian Acree
27 Attorney for Plaintiffs
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May 3, 2023

JAMES VEGA, CITY MANAGER
401 S VENTURA AVE, OJAI, CA 93023

Please accept this letter as a formal request to ask the City of Ojai to indemnify me under government code 825 against the lawsuit filed by Sabrina Venskus and Brian Acree, Bryne v Rule.

Please note I would like this request considered in an open session as I see no legitimate reason for it to be held from the public.

Please let me know if you require any additional information.

WITH WARM REGRDS,

A handwritten signature in black ink, appearing to read 'Leslie Rule', with a stylized, wavy line for the first part and a curved line for the last part.

LESLIE RULE
COUNCILMEMBER, OJAI, DISTRICT 1

Attachment B
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