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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

DEFENDANTS' REPLY TO SPECIAL  
MOTION TO STRIKE (Code Civ. Proc. §  
425.16);  
SUPPLEMENTAL DECL. OF LESLIE  
RULE;  
OBJECTIONS TO WHITMAN DECL.;  
OBJECTIONS TO ACREE DECL.;  
REQUEST FOR JUDICIAL NOTICE;  
OPPOSITION TO OBJECTIONS TO  
DRUCKER DECL.

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



1 **PRELIMINARY STATEMENT**

2 Plaintiffs’ opposition and request for \$28,622 in sanctions against Leslie Rule, her first  
3 lawyer, Jon Drucker, and now, both Rule and Drucker’s lawyer, Stephen Johnson, powerfully  
4 evidences the essential role CCP § 425.16 must play in barring cases exactly like this one.

5 Plaintiffs argue this action falls with the narrow public interest exception to the anti-  
6 SLAPP statute created by CCP § 425.17. Plaintiffs are not altruistic members of the public,  
7 desperate to enjoy the bliss of ignorance created by egregious violations of the Brown Act.  
8 Plaintiffs’ lawyer, Sabrina Venskus (“Venskus”), is currently suing the City of Ojai (the “City”)  
9 to overturn city approval of a real estate development she and all plaintiffs herein oppose. The  
10 three closed City council sessions Councilmember Rule (“Rule”) attacked as violative of the  
11 Brown Act each related to that very real estate development. CCP § 425.17 does not apply  
12 when a plaintiff has *any* direct interest in the acts of petition or free speech they seek to  
13 challenge.

14 Plaintiffs claim Defendants must prove their statements lawful to satisfy the “first-  
15 prong” of the anti-SLAPP statute. Defendants bear no such burden. Plaintiffs bear the burden  
16 of establishing the actionable nature of a defendants’ speech under the second prong of anti-  
17 SLAPP statute. Plaintiffs have not alleged *any* facts sufficient to meet that burden.

18 Plaintiffs insist Rule and her lawyer, defendant Jon Drucker (“Drucker”) disclosed  
19 “confidential information” but fail to identify *any* statement disclosing *any* confidential  
20 information. Plaintiffs simply report – over and over again – that Rule attended three closed  
21 sessions and spoke out against those improper closed sessions. There is no “blanket  
22 prohibition” forbidding Rule from describing improper statements or actions occurring in closed  
23 sessions she attended. Cal. Govt. Code § 54963(a)(2) and (3) expressly allows public disclosure  
24 of actions establishing the improper nature of the closed sessions and matters that exceed the  
25 narrow scope of issues to be discussed in closed session.

26 Worst of all, Plaintiffs and their declarants not only argue, but falsely swear under oath,  
27 that “the Ventura County District Attorney has issued a letter to Councilmember Rule advising  
28 her that the disclosures she made violated the confidentiality of closed session provisions of the

1 Brown Act.” (Decl. of Andrew Whitman [“Whitman”] at ¶ 12.) In truth, the District Attorney  
2 issued a “Demand to Cease and Desist Brown Act Violations” to “**Members of the Ojai City**  
3 **Council**” on May 15, 2023 (Ex. A to the Acree Declaration.) The District Attorney found each  
4 of the three closed sessions at issue in this lawsuit were held in violation of the Brown Act. The  
5 District Attorney **never** found Rule’s actions to be “illegal” as political opponent  
6 Councilmember Whitman (“Whitman”) perjurally claims. (*See* Whitman Decl at 4:19.)<sup>1</sup>  
7 Plaintiffs also falsely assert the City retained an expert on the Brown Act to conduct a workshop  
8 on “Brown Act confidentiality.” (Opposition at 9:4-6.) The City’s Administrative Report dated  
9 May 15, 2023 – the exact day the District Attorney ordered the City to cease and desist from the  
10 unlawful closed-sessions about which Rule complains – confirms the workshop was to address  
11 “transparency” and “transparency moving forward.” (Ex. B to Acree Decl. at 1; *see also* Ex. A  
12 to Ex. B to the Acree Decl. at 1 of 11 and 2 of 11.) This lawsuit is an attempt, by politically  
13 motivated parties, to use the Brown Act to facilitate back-room deals in illegal closed City  
14 Council sessions. There is no support for this Machiavellian lawsuit.

15 **PLAINTIFFS’ STATEMENT OF RELEVANT FACTS IS MISLEADING**

16 Plaintiffs’ Opposition acknowledges this lawsuit relates to a “Development Agreement  
17 for the benefit of an entity named the Becker Group.” (Opposition at 6:24-25.) Plaintiffs note  
18 “[a] local non-profit, Simply Ojai, subsequently filed a lawsuit against the city challenging the  
19 approval of that agreement.” (*Id.* at 6:26-27.) Plaintiffs fail to disclose the fact that Plaintiffs’  
20 counsel is counsel of record for Simply Ojai in that litigation. (*See* Defendants’ Request for  
21 Judicial Notice.) Each Plaintiff herein is on record in opposition to the development agreement.  
22 (*See* Supplemental Decl. of Leslie Rule at ¶¶ 2, 3, 4 & 5.)

23 The billing statements attached to Venskus and Mr. Acree’s (“Acree”) Declarations  
24 establish that Venskus’s office took the lead in drafting the opposition while Acree’s work  
25

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26  
27 <sup>1</sup> The District Attorney found Rule should have taken her valid concerns to the District Attorney, filed a  
28 lawsuit, or limited her complaints to the media to matters of opinion or information disclosed in closed session that  
is not confidential. But, as here, the District Attorney did not specify a single statement by Rule that “went too  
far.”

1 involved “reviewing” and “editing” the brief and declarations. (Compare Venskus Decl. Ex. A  
2 to Acree Decl. Ex. N.) The Court must consider that Venskus – a lawyer actively suing the City  
3 – sat down with declarant, Councilmember Whitman – to draft a declaration designed to  
4 maintain as confidential, improper statements involving Venskus’s own lawsuit *against* the  
5 City.

6 Plaintiffs describe the fact that Rule wrote a statement and attorney Jon Drucker wrote  
7 two letters to the City Attorney about improper closed sessions conducted on December 13,  
8 2022, January 9 and January 10, 2023. Plaintiffs attach a number of transcripts from City  
9 Council meetings. Each transcript confirms only that Rule attended closed sessions and spoke  
10 out against them. Plaintiffs never cite to any *specific* language in **any** of Rule’s or Drucker’s  
11 writings or statements that were improper or could support declaratory or Injunctive relief. The  
12 only “specific” claim plaintiffs raise relates to the fact that Drucker described the title of a  
13 memorandum improperly presented to the City in closed session. (Opp. at 8:6-8.) The Ventura  
14 District Attorney described the title and contents of that *very same* memo *as evidence* that **the**  
15 **City** violated the Brown Act: “The memorandum and related discussion exceeded the scope of  
16 the ‘existing litigation’ exception listed as the closed-session exception.” (Senior Ventura  
17 County District Attorney A. Wold’s letter to Members of the Ojai City Council, May 15, 2023  
18 [“District Attorney Letter”][Ex. A to Acree Decl.] at 2.)

19 The District Attorney determined the **City Council** had **violated the Brown Act** and  
20 exceeded the scope of the claimed Closed-Session Exception on December 13, 2022, January 9  
21 and 10, 2023. The District Attorney found every violation about which Rule and her attorney  
22 Drucker complained *was* a violation, and demanded the City Cease and Desist from further  
23 unlawful closed sessions. The District Attorney also determined Rule had many remedies. She  
24 could have: (1) gone to the District Attorney; (2) filed a civil suit; *or* (3) “limited any media  
25 statement to conform to the narrow parameters of [Govt. Code § 54963(a)(2) and (3)].” (*Id.*)

26 Plaintiffs claim “the City has made a number of attempts to rein in the conduct of the  
27 defendants.” (Opp. at 9:3-4.) This false assertion suggests there have been many additional  
28 closed sessions since January 2023 and Rule has gone public in regard to those sessions too. In

1 reality, there have only been three closed sessions since the District Attorney ordered **the City**  
2 to cease and desist from **unlawful closed sessions**. (Rule Supplemental Decl. at ¶ 9.) Plaintiffs  
3 fail to identify any statements Rule or Drucker have made about those sessions.

4 Councilmember (and attorney) Andrew Whitman, ignoring the rules of hearsay, declares  
5 without foundation: “In my discussions with City Staff since January 24, 2023 there is no  
6 question that the City’s use of closed session has been curtailed and reduced because of the  
7 threat that Councilmember Rule will disclose closed session discussions...” (Whitman Decl. ¶  
8 15.) Whitman has thus sworn that the City’s use of closed sessions has had nothing to do with  
9 the fact that the meetings violated the Brown Act and were subject to a cease and desist order  
10 and everything to do with the fact that Rule would report illegal meetings in the future just as  
11 she did in the past.

12 Plaintiffs ballyhoo the City Council’s retention of a “nationally renowned expert on the  
13 Brown Act to conduct a workshop for councilmembers and the public regarding Brown Act  
14 *confidentiality*.” (Opposition at 9:4-6 [italics added.]) In truth, “The City Council’s  
15 *transparency* workshop [was held] on May 22, 2023... regarding the recent Brown Act  
16 violations and conduct a workshop... on solutions the City can implement to increase  
17 *transparency*.” (Ex. B to the Acree Decl., Attachment A at 1 of 11 and 2 of 11 (Italics added.)  
18 The workshop was required to put an end to sham closed sessions and increase **transparency**,  
19 not to clamp down opposition through specious claims of **confidentiality**.

20 **THE PUBLIC INTEREST EXCEPTION DOES NOT APPLY**

21 Plaintiffs argue this case falls within an exemption to the anti-SLAPP statute because  
22 they have brought suit in the public interest. California courts insist the CCP § 425.17  
23 exemption must “be narrowly construed.” (*City and County of San Francisco v. Ballard* (2006)  
24 136 Cal.App.4th 381, 400. Plaintiffs fail to cite a single case suggesting this action falls within  
25 the public interest exemption to the anti-SLAPP statute. It does not.

26 Plaintiffs insist they seek no relief different than the relief sought by the general public.  
27 The assertion is false. Plaintiffs’ attorney in this action is counsel of record for “Simply Ojai.”  
28 Simply Ojai has sued the City to stop a real estate development the City Council approved in its

1 last term. Every plaintiff in this case is on record in opposition to that real estate development.  
2 That real estate development was the subject of all three unlawful closed sessions at issue in this  
3 case. Rule has disclosed facts establishing illegalities, conflicts of interests, and secret  
4 backroom deals. Rule has demanded that any effort to rescind approval of the real estate  
5 development be put to the public by referendum for an honest vote. Rule demands that all of  
6 these issues be addressed in public hearings as demanded by the Brown Act. These plaintiff-  
7 opponents of the real estate development want to shut Rule up.

8 Where, as here, a plaintiff purportedly acting in the public interest has *any* interest in the  
9 litigation, the plaintiff *cannot* assert the public interest exception established by CCP § 425.17:

10 Section 425.17(b)'s exception applies only to actions brought “solely in the public  
11 interest or on behalf of the general public.” Use of the term “solely” expressly  
12 conveys the Legislative intent that section 425.17(b) not apply to an action that  
13 seeks a more narrow advantage for a particular plaintiff. Such an action would not  
14 be brought “solely” in the public's interest. The statutory language of 425.17(b) is  
15 unambiguous and bars a litigant seeking “any” personal relief from relying on the  
16 section 425.17(b) exception.”

17 *Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 316–317.

18 Even the slightest personal stake in “public interest” litigation precludes use of the  
19 public interest exemption. In *Holbrook v. City of Santa Monica* (2006) 144 Cal.App.4th 1242,  
20 two members of the Santa Monica City council filed suit under the Brown Act claiming public  
21 hearings lasting beyond 11:00 pm were not appropriate “public” hearings because many people  
22 were asleep by 11:00 pm. The city filed an anti-SLAPP motion and plaintiffs asserted the CCP §  
23 425.17 exception. In granting the anti-SLAPP motion, the court found the exemption did not  
24 apply because the relief sought would uniquely benefit plaintiffs by allowing them to go home  
25 at 11:00 pm.

26 In *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239, proponents of parking  
27 restrictions on their residential street brought an action under the Brown Act after the city  
28 council agreed to set a hearing regarding the restrictions. Again, plaintiffs claimed to be exempt

1 from the anti-SLAPP statute pursuant to CCP § 425.17. Dismissal pursuant to the anti-SLAPP  
2 statute was affirmed. The court found the public interest exemption did not apply because the  
3 plaintiffs had an interest in the parking restrictions at issue.

4 The political nature of this case is powerfully evidenced by Whitman’s declaration.  
5 Whitman holds himself out as a lawyer, disregards the rules of evidence and declares: “It is  
6 possible that Councilmember Rule’s disclosure of confidential information was an effort to  
7 curry favor with the Developer. This type of leak is a breach of Councilmember Rule’s legal  
8 and ethical responsibilities to her constituents.” (Whitman Decl at ¶ 19.) Whitman also claims  
9 Rule’s complaints could lead to litigation with the “City’s potential adversaries.” (Id. at ¶ 15.)  
10 Of course, Whitman makes this claim without foundation in support of a lawsuit brought by an  
11 attorney who is an *actual* “adversary” against the City in the *Simply Ojai* lawsuit! Make no  
12 mistake: this lawsuit is not in the “public interest.” It is a quintessentially political effort to  
13 silence a political opponent. This action is does not fall outside of CCP § 425.16; it exemplifies  
14 what the anti-SLAPP statute is all about.

15 Plaintiffs are also unable to show the public must bring this action because the City of  
16 Ojai cannot. If Whitman and his allies on the City Council had the votes to bring legal action  
17 against Rule or Drucker, the City could file a meritless SLAPP action of its own. The City, the  
18 “**real party in interest**” has not.

#### 19 **DEFENDANTS SATISFY THE FIRST PRONG OF THE ANTI-SLAPP STATUTE**

20 Plaintiffs shamelessly cite *Paul for Council v. Hanyecz* (2001) 85 Cal. App.4<sup>th</sup>  
21 1356, *Flatley v. Mauro* (2006) 39 Cal.4<sup>th</sup> 299, and *Governor Gray Davis Comm. v.*  
22 *American Taxpayer Alliance* (2002) 102 Cal.App. 4<sup>th</sup> 449 for the proposition that a  
23 defendant must show its actions were legal to meet its first-prong burden under CCP §  
24 425.16. The **exact** same sentence appears in *Paul* and *Flatley*: “the defendant does not  
25 have to “*establish* its actions are constitutionally protected under the First Amendment as  
26 a matter of law.” *Flatley*, 39 Cal.4<sup>th</sup> *supra* at 314 (*emphasis in original*); *Paul*, 102  
27 Cal.App.4<sup>th</sup> *supra* at 1365 (*emphasis in original*). Both courts emphasized that the failure  
28 to apply an anti-SLAPP analysis in those two particular cases arose from extraordinary

1 situations comparable to claiming that “burning down [a political opponents office is] a  
2 political protest.” *Flately*, at 315; *Paul* at 1367.

3 In *Flately*, a defendant sought to label a criminal \$100 million extortion demand  
4 as a “settlement communication.” In *Paul*, the defendant **admittedly** engaged in money  
5 laundering to fund a political campaign. The exception applied in *Paul* is so narrow that  
6 the court remarked that if defendant had disputed money laundering **at all**, the court  
7 “could not so easily have disposed of defendants' motion.” *Id.* at 1367. In the *Governor*  
8 *Davis* case, a trial court was somehow persuaded to impose on a defendant the burden  
9 Plaintiffs urge this Court to impose. Of course, the trial court was reversed, and directed  
10 to grant defendant’s anti-SLAPP motion.

11 Plaintiffs brazenly attempt to suggest Rule and Drucker’s conduct was as plainly  
12 illegal as burning down the building of a rival. They suggest any statement at all about a  
13 closed-session is conclusively illegal. Nothing can be further from the truth. Govt. Code §  
14 54963(a)(2) expressly **permits** disclosure not only of “statements of opinion” but of  
15 “disclosure of the nature and extent of the illegal or [even] *potentially* illegal action,” *e.g.*,  
16 a Brown Act violation. Govt. Code § 54963(a)(3) permits a person “present in a closed  
17 session” to disclose anything “that is not confidential information.” In light of the fact  
18 that the District Attorney found each of the three meetings about which Rule complained  
19 to have violated the Brown Act and to have exceeded the scope of issues appropriately  
20 discussed in closed session, this Court must acknowledge Rule had wide-latitude to speak  
21 out against the three unlawful meetings.

22 **PLAINTIFFS HAVE NOT PROVIDED FACTS OR LAW SUFFICIENT TO MEET**  
23 **THEIR BURDEN UNDER THE ANTI-SLAPP STATUTE**

24 Plaintiffs second prong burden includes both factual and legal components. Plaintiffs  
25 needed to present evidence sufficient to establish that Rule and/or Drucker made statements in  
26 violation of the Brown Act. Plaintiffs also needed to prove, as a matter of law, that the actions  
27 they can establish will support the cause of action and relief Plaintiffs seek. As noted above,  
28 plaintiffs have ignored their evidentiary burden entirely. Plaintiffs rely on declarations and



1 allegations sufficient to prove only that Rule and Drucker made statements during legislative  
2 sessions and to the public about three closed sessions Rule attended. That fact alone proves  
3 nothing. Again, as noted above, Govt. Code § 54963(a)(2) and (3) expressly identifies a range  
4 of statements and disclosures a person attending a closed-session can make about statements  
5 and actions occurring within closed session. A generic attack on Rule and Drucker's complaints  
6 is particularly unpersuasive here given the fact that the District Attorney found each closed  
7 session unlawful and having involved issues not appropriately disclosed in closed session.

8 Plaintiffs shamelessly argue "Defendants ... claim in conclusory fashion... that 'Rule's  
9 statement did not disclose any confidential or privileged material.'" (Opp. at 13-14:25-1.) It is  
10 Plaintiffs who bear the burden of establishing the disclosure of confidential information. The  
11 Plaintiffs have failed to identify **any** statement Defendants need to justify or defend.

12 Devoid of facts, evidence or intelligible allegations, Plaintiffs focus on a hodgepodge of  
13 legal issues that might be relevant if Plaintiffs identified any facts capable of supporting any  
14 conceivable claims.

15 Plaintiffs sued Rule's lawyer in blatant disregard Civil Code section 1714.10.  
16 Plaintiffs argue "Defendant Drucker's conduct was not 'consistent with the normal services of  
17 an attorney.'" (Opp. at 17:9-10.) The City Attorney falsely asserted, in open session, that the  
18 closed sessions of December 13, January 9 and 10 were appropriate and Rule could not say  
19 **anything** about them to anyone other than the District Attorney. The statements Plaintiffs  
20 generically complain about were contained in letters written to the City Attorney. (See Ex. A  
21 and B to the Drucker Decl.) It is impossible to imagine anything more normal than a lawyer's  
22 responsive letters to a City Attorney who publicly and wrongfully endorsed illegal meetings and  
23 who attacked his client.

24 Plaintiffs go on to cite a variety of general legal propositions associated with requests for  
25 injunctive relief. At the most basic level, however, a party seeking declaratory relief must  
26 identify an actual controversy between the parties. There *were* controversies between Rule and  
27 her adversaries on the City Council (Mayor Stix and Whitman). The City held illegal meetings  
28 in violation of the Brown Act. Rule brought the violations to light. A cabal within the City

1 associated with Simply Ojai and Venskus now sue her for doing so. But the issue is moot. The  
2 District Attorney issued a cease and desist letter finding the closed-sessions unlawful. The City  
3 held a workshop on transparency and (according to Whitman) there has only been one closed  
4 session since. The City Council, including Rule, have committed to abide by the Brown Act.  
5 Rule and Drucker were proven right. Plaintiffs have nothing left to complain about.

6 The closest Plaintiffs come to identifying an issue moving forward is stated at page 18 of  
7 the opposition: "Plaintiffs contend that it is impermissible for Defendants to publicly disclose  
8 closed session information without the consent of the City Council or a court order permitting  
9 the disclosure." (Opp. at 18:25-27.) But that statement is patently false, inconsistent with Govt.  
10 Code § 54963(a)(2) and (3).

11 Finally, injunctive relief is a form of *equitable relief*. Plaintiffs have unclean hands.  
12 Plaintiffs lionize the City Attorney and his attacks against Rule and Drucker. The City Attorney  
13 gave the green light to illegal closed sessions the District Attorney found violative of the Brown  
14 Act. Plaintiffs celebrate the declaration of Councilmember Whitman. Whitman vulgarly  
15 harassed two councilwomen in closed session. Plaintiffs have misrepresented the District  
16 Attorneys' findings and concealed the cease and desist order issued by the District Attorney  
17 because of the meritorious complaints made by Rule and Drucker.

18 Plaintiffs objective is clear: they hope to resume illegal, closed city council sessions in  
19 violation of the Brown Act. That relief would be criminal, not equitable.

20  
21 Respectfully Submitted,  
22 S.C. JOHNSON & ASSOCIATES, P.C.

23 DATED: August 14, 2023

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

28 LAW OFFICES OF JON E. DRUCKER

By: -----/s/-----  
Jon E. Drucker  
Attorney for Defendant Leslie Rule

DATED: August 14, 2023

**SUPPLEMENT DECLARATION OF LESLIE RULE**

I, Leslie Rule, declare the following:

1. In my capacity as a resident of Ojai, a candidate and, since December 13, 2022, an Ojai City Councilmember, I have come in contact with many many residents of Ojai and surrounding area.

2. The plaintiffs in the case against Jon Drucker and me, with the exception of Joel MaHarry and Douglas La Barre, are well-known to me. I have seen and heard them opposing the “Development Agreement,” the subject of the litigation brought by Sabrina Venskus on behalf of “Simply Ojai.”

3. To refresh my recollection and confirm my memory, I have reread comments by plaintiff Gerald Schwanke on the Ojai Community Forum; I have reread Thomas Drew Mashburn’s Letters to the Editor of the *Ojai Valley News*, and watched him speak to the Ojai City Council (on YouTube); I have watched Leslie Ferraro speak in front of the City Council (on YouTube); and I have reread Vickie Carlton-Byrne’s comments on Ojai Community Forum against the City Ordinance. My review confirmed my recollections. Copies of the documents I used to refresh my recollection are attached hereto as Exhibit A.

4. I also infer that it is through their political advocacy that all the plaintiffs became clients of Venskus, who is counsel to Simply Ojai in the lawsuit and who spearheaded the Referendum—both designed to invalidate the Ordinance.

5. The plaintiffs I know and Venskus all belong to a small group of people devoted to opposing development in Ojai. The notion that, by suing Jon Drucker and me, they are enforcing an important right affecting the public interest, and by prevailing in litigation, would confer a “significant benefit” on the general public – or even a large class of persons, is ludicrous. Even viewing their actions in the most favorable light, they are controversial and political.

6. Next, my previous experience in government includes serving my community in elected municipal positions in Massachusetts: For eight years, I was

1 elected to and sat on my local City Council and my regional School Board. The  
2 "Brown Act" is similar to the Massachusetts statute mandating transparency, and  
3 is known as the "Sunshine Act."

4 7. Until I was elected to the Ojai City Council, I had never attended a  
5 closed session I thought was unlawful. And I never previously felt any need to  
6 make public statements demanding transparency in regard to sessions I attended.

7 8. The closed session meetings of the Ojai City Council on December  
8 13, 2022 and January 9 and 10, 2023, however, were unlike anything I had ever  
9 experienced. Two things leapt out: (1) Mr. Whitman's vulgar outbursts at a  
10 council colleague and me ("Suza, you're talking out of your ass!" and, to me,  
11 "You're talking horseshit!"), and (2) the Mayor misleading the Council into hiring  
12 a lawyer to advise the defendant City in litigation, whom, I learned on January 10,  
13 was secretly chosen by the mayor's friend, "Sabrina," plaintiff's counsel in the  
14 same litigation. These were gross improprieties I felt the public needed to know  
15 about.

16 9. In my capacity as an Ojai City Council member, since January 24,  
17 the Ojai City Council has conducted—and Mr. Whitman and I have attended,  
18 **three** closed sessions -- on March 28, 2023, June 29, 2023 and August 8, 2023.

19 10. Since the District Attorney sent his Cease & Desist letter to the  
20 **entire** City Council (the "Letter"), I have repeatedly stated my intention that, if I  
21 ever witness another closed session violation, I will initially take my grievance in  
22 confidence to the District Attorney, and heed all requirements of Government  
23 Code § 654963(e)(2) and (3).

24 11. Andrew Whitman, by contrast, has shown a mixed response to the  
25 "Letter." First, he voted to accept the demands of the Letter to "cease and desist"  
26 from further Brown Act violations. Shortly thereafter, however, in an open session  
27 of the City Council, Mayor Stix expressed the desire to **rescind** the Council's  
28 acceptance of the Letter—and Whitman expressed his support for join her in

1 rescinding the Council's acceptance of the Letter. Stix and Whitman maintain that  
2 since they had done nothing wrong, they have nothing to "cease and desist" from  
3 doing in the future.

4 I declare the foregoing under penalty of perjury at Ojai, California.

5  
6 

7 Dated: August 14, 2023

8 Leslie Rule

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# EXHIBIT A

**EXHIBIT A**



Drew Mashburn

May 7 · 🌐



Excerpt from this article. Does it make you think?

Such events make clear the fact that all the desirable and safe homesites in the Ojai Valley are already filled. The only way we can cram more people in is to put them in precarious perches or destroy the few remaining undeveloped green belts and natural water channels." I'm NOT for cramming more people into the Ojai Valley. When is enough, enough? What's your opinion(s)?



OJAIHISTORY.COM

## Technology vs. nature's wisdom – Ojai History

Posted on September 15, 2020October 1, 2020 by Drew MashburnTechnology vs. natur...



**Drew Mashburn**

**Ojai Valley News**

**July 8, 2022**

**What a shame to lose cottages**

Re: the July 1 Ojai Valley News article, "Where will all the Cottages Among the Flowers residents go? — City Council to vote July 12 on 65-unit development."

Besides the "Cottages Among the Flowers," the "Mallory Way cottages" (formerly the "Valley Outpost Lodge) were mentioned. A "TROY LODGE" sign is all that is posted at the entrance to that facility.

In my opinion, the proposed remodeling could easily destroy the historical significance of these old homes. This could drive up the rents to such levels that most, if not all, the current residents will no longer be able to return to their homes because they will no longer be affordable.

The Ojai Valley is sorely lacking in truly affordable housing. So, we could be losing more truly historical structures, as well as, affordable housing. What a shame!

This article got me to thinking about the historical aspect of the cottages at both communities.

So, I pulled out my trusty copy of "THE OJAI VALLEY — AN ILLUSTRATED HISTORY" to see if it addresses them. It does, but not much. I posted what was printed in the book about the "Cottages Among the Flowers." Here's what's printed about the "Valley Outpost Lodge" (now, "Mallory Way Cottages or something similar): This facility was built as an "Auto Court," of which there are few left. For that reason alone, the facility should be restored to its former glory.

**— Drew Mashburn — Ojai**



# City of Ojai - government's Post



City of Ojai - government

October 7, 2022 · 🌐



City of Ojai - government

October 7, 2022 · 🌐

Here's the latest on the development agreement that includes the Cottages Among the Flowers. Visit <https://ojai.ca.gov/cottages/>

OJAI.CA.GOV



**The latest on the Development Agreement that includes Cottages Among the Flowers | City of Ojai**



John Brooks, Suza Francina and 6 others

36 comments



Like



Comment



Send



All comments ▼



**Gerry Schwanke**

This is bullshit. Affordable housing promises were made on the Montgomery Street development and not kept. This has the same stench about it. One year of affordable housing or a lowball cash payout is bullshit, and an insult as well as an injury to the current tenants of the properties in question.

Like Reply 44w Edited



14



**Carolyn Vondrisk**

**Gerry**, so after looking weak as a City by giving another 30 days, this is all we get? Ugh. Betsy and **Suza** were RIGHT.

Like Reply 44w Edited



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**Gerry Schwanke**

**Carolyn Vondrisk** Two dozen business people have more votes, apparently, than the other 8,000 Ojai residents. The Ojai City Council members who approved this should be ashamed of themselves, but won't be. They have no conscience among them.



I'm really tired of the BS that John Brooks et al. are spewing toward Mayor Stix and others. So here's my response to the latest Brooks diatribe:

John Brooks, your assessments and assertions are wrong, and continuing to spread the lies concocted by the (lack of) transparency group to smear Mayor Stix will not make them true. Since your fact-finding has not revealed anything resembling facts, let me enlighten you.

The legal referral that has caused so much ridiculous pearl-clutching was a list of THREE DIFFERENT FIRMS, not a lawyer hand-picked by Sabrina Venskus. Further, she (Sabrina) spoke to other councilmembers, as well as a candidate that did not win election, before the election was even finalized, saying that another set of eyes on the matter would be a good thing. What matter? The probable Becker lawsuit, NOT the Simply Ojai lawsuit. Why would the city need to get a second legal opinion when Matt Summers already represents the city? Because it is the FISCALLY RESPONSIBLE and BUSINESS SAVVY thing to do. The firm chosen, Shute, Mihaly & Weinberger, is well-known throughout California as a specialist in both land use law and referendum/initiative law. If you needed heart surgery, would you use your primary care physician? Of course not. You would, at the very least, get a second opinion to see if you need surgery, and what procedures are the best for you if you indeed do. This is what Betsy Stix did: showing fiscal responsibility to the taxpayers of the City by getting an opinion from the most competent law firm in the relevant areas of law, in the State of California.

I have to wonder how much real-world law experience "esteemed" lawyer Drucker has, to make the absurd fox-guarding-the-henhouse analogy. Referrals are given by lawyers ALL THE TIME. Ask a real lawyer, they'll tell you.

I don't defend the forwarding of confidential emails (yet I didn't see any language that says "confidential" on the complained-of emails), but let's talk about opponents of the city and who they really are. The Simply Ojai lawsuit seeks to help the residents of Cottages among the Flowers and Mallory Way, who are city residents, and to protect our existing truly affordable housing stock from the Becker Group's bulldozers. Further, contrary to your falsehoods, the City does not have to pay for its defense of the Simply Ojai lawsuit; because of an indemnity agreement in the Becker Development Agreement, BECKER GROUP has to pay 100% of the City's defense of any lawsuit brought challenging the Becker Development Agreement, which is what the Simply Ojai lawsuit is. So there is ZERO money coming out of the taxpayers' pockets to defend the Simply Ojai lawsuit against the Becker Development Agreement that the FORMER City Council majority approved last year. In contrast, any lawsuit coming from the Becker group against the City seeks to enrich itself at the taxpayers' expense. Leslie Rule and Jon Drucker have put themselves in an adverse position to our beloved city by disclosing closed session information that they had no right to disclose. There is no bravery or courage in that, only stupidity, arrogance and a complete misunderstanding (purposeful or mistaken) of closed session rules and the California Ralph M. Brown Act.

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VENTURA COUNTY SUPERIOR COURT

STATE OF CALIFORNIA

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

Plaintiffs,  
v.

LESLIE RULE AND JON E. DRUCKER,  
Defendants.

Case No.: 2023CUMC008352

DEFENDANTS' EVIDENTIARY  
OBJECTIONS TO DECLARATON OF  
ANDREW WHITMAN OFFERED IN  
SUPPORT OF PLAINTIFFS'  
OPPOSITION TO DEFENDANTS'  
MOTION TO STRIKE

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

Pursuant to California Code of Civil Procedure 437(c), Defendants Leslie Rule and Jon E. Drucker hereby object to portions of ANDREW WHITMAN's declaration filed in support of Plaintiffs' Opposition to Defendants' Special Motion to Strike. Defendants' respectfully request that the Court strike the objectionable portions of the offered evidence as set forth below:

DEFENDANTS' EVIDENTIARY OBJECTIONS TO DECLARATON OF  
ANDREW WHITMAN OFFERED IN SUPPORT OF PLAINTIFFS' OPPOSITION  
TO DEFENDANTS' SPECIAL MOTION TO STRIKE



**OBJECTIONS TO DECLARATION OF ANDREW WHITMAN IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO STRIKE**

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTIONS
<p>3. In my experience as an attorney, prior to becoming a City Councilmember, I regularly represented public entities. I have provided assessment of litigation risks to my public entity clients in a closed session meetings. I also regularly give advice to my public entity clients about the pros, cons, and alternatives to litigation.</p>	<p><b>Objection 1:</b></p> <p><b>Irrelevant and Prejudicial</b> (Evid. §§ 210, 350, 352) (probative value is substantially outweighed by “undue consumption of [court] time” and undue prejudice,” “confusing the issues, or misleading” the court. Whitman here seeks to substitute his alleged “expert” opinion for findings of the Court.</p> <p><b>Improper Expert Opinion</b> (<i>Hayman v. Block</i>, 176 Cal.Ap.3d 629, 638 (1986) (“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”); <i>Marriage of Heggie</i>, 99 Cal.Ap.4<sup>th</sup> 28, 30 n.3 (2002) (“The proper place for argument is in points authorities, not declarations”).</p> <p>Ruling: Sustained _____ Overruled _____</p>
<p>4. It is critically important that the advice given to a client concerning strengths, weaknesses and alternatives to litigation are given with complete confidentiality. Once the advice is provided to the client, leaks of confidential advice to a litigation adversary can cause significant damage and disadvantage to the client with respect to the litigation.</p>	<p><b>Objection 2:</b></p> <p><b>Irrelevant and misleading</b> (Evid. §§ 210, 350, 352) See Objection 1, above. Defendants do not dispute the importance of the attorney-client privilege or the sanctity of <u>properly agendized and conducted</u> closed session meetings.</p> <p>Ruling: Sustained _____ Overruled _____</p>

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1 2 3 4 5 6 7 8 9 10	5. This declaration deliberately attempts to avoid disclosing advice given to Ojai City Councilmembers in closed session that would only be available from having attended the closed session. However, there are aspects of advice given by the City Attorney in closed session that overlap with facts that are generally known to the public, and that were disclosed to the public by Defendant Leslie Rule and her attorney, Jon Drucker, as a result of Ms. Rule’s involvement in closed session discussions of the City Council.	<b>Objection 3:</b>  <b>Irrelevant and misleading</b> (Evid. §§ 210, 350, 352) Defendants disclosed everything they sought to disclose on January 24. Mr. Whitman’s current allusion to new “confidential” information –not disclosed by Defendants -- is <b>Irrelevant, Prejudicial</b> , and a waste of time (Evid. §§ 210, 350, 352) (probative value is substantially outweighed by “undue consumption of [court] time.”  Ruling: Sustained _____ Overruled _____
11 12 13 14 15 16 17 18 19 20 21	6. I will submit to an in camera confidential discussion with the Court concerning advice given by the City Attorney in closed session should the Court deem that necessary on condition that (1) the Ojai City Attorney is given the opportunity to assess and present his legal position concerning the propriety of such an in camera examination, and (2) there are assurances that there will be no disclosures to the general public and no disclosures to City of Ojai adversaries in potential litigation.	<b>Objection 4:</b>  <b>Irrelevant, prejudicial and misleading</b> (Evid. §§ 210, 350, 352) In fact, Mr. Whitman’s offer of an <i>in camera</i> confidential discussion with the Court actually fortifies Defendants’ position. They already disclosed everything they wanted to disclose; it’s been public since January 24, 2023. But Whitman now wants to discuss “confidential” – not already disclosed information– with the judge. It is: <b>Irrelevant, Prejudicial</b> , and a waste of time (Evid. §§ 210, 350, 352) (probative value is substantially outweighed by “undue consumption of [court] time.”  Ruling: Sustained _____ Overruled _____

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<p>7. To understand the damage done by Defendant Rule’s conduct in concert with attorney Jon Drucker it is important to understand some of the details of the dispute that are generally known to the public. These details include:</p> <p>a. The Becker Development agreement was adopted via ordinance by the prior City Council in fall of 2022 (hereafter THE ORDINANCE). A lawsuit was filed by a non-profit organization challenging THE ORDINANCE. The general election in November of 2022 resulted in replacement of 3 of the 4 City Council members who had voted to approve THE ORDINANCE.</p>	<p><b>Objection 5:</b></p> <p>Lacks foundation: Having been elected after the adoption of the Ordinance adopting the Becker Development Agreement, he has not established any foundation to testify about what preceded his election.</p> <p>“To understand the ‘damage done’,” <b>assumes facts not in evidence</b>, as though Whitman alone can explain his <b>assumed legal conclusion</b> of “damages.”</p> <p>It is also <b>Irrelevant, prejudicial and misleading</b> (Evid. §§ 210, 350, 352)</p> <p><b>Improper Expert Opinion</b> (<i>Hayman v. Block</i>, 176 Cal.Ap.3d 629, 638 (1986) Whitman’s pompous offer to “explain” the damages done by Defendants purports to provide an improper expert opinion on the law (“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”); <i>Marriage of Heggie</i>, 99 Cal.Ap.4<sup>th</sup> 28, 30 n.3 (2002) (“The proper place for argument is in points authorities, not declarations”).</p> <p>a. <b>Incomplete. Evid.</b> Evid. § 356: A lawsuit filed – by <i>Simply Ojai</i>, represented by the same counsel of record here, <i>Sabrina Venskus</i>.</p> <p><b>Irrelevant:</b> Regardless of the composition of the City Council, unless and until the Ordinance was no longer in force, the Ordinance was “THE LAW.” It was thus the fiduciary duty of the City Council, including Mr. Whitman, to uphold that law, not subvert it behind closed doors in closed sessions.</p> <p>Ruling: Sustained _____ Overrruled _____</p>
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<p>d. California Election Code section 9237 provides that if the required number of signatures is obtained ... “the effective date of the ordinance shall be suspended and the legislative body shall reconsider the ordinance.” Therefore, the City Attorney notified the City Council, that, as a matter of law, the Council had a mandatory duty to reconsider THE ORDINANCE. The City Council had the option to vote to rescind THE ORDINANCE or if it did not vote to rescind, THE ORDINANCE would be presented to the voters approval or rejection on a future ballot.</p>	<p><b>Objection 7:</b></p> <p><b>Irrelevant (Evid. § 352):</b></p> <p>Defendants do not dispute the duty of the Council to reconsider the Ordinance in light of a pending referendum. The only potential legal issue here, however, is whether that reconsideration was properly conducted in the CLOSED sessions of Dec. 13, 2022, and Jan. 9 and 10, 2023, which were designated to discuss ONLY the LITIGATION. For information to be “confidential,” it must be <b>“a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session....”</b> That “basis” was “the Litigation” – not a referendum or any threats of litigation – not agendized – but discussed in those closed sessions.</p> <p>Ruling: Sustained _____ Overruled _____</p>
<p>e. The assertion that any City Councilmember introduced discussion of THE ORDINANCE (including the risks associated with the developers threat of litigation) at any of the three closed sessions is false. The topic (the pros and cons of rescinding the ordinance) was introduced by City Staff and specifically the City Attorney pursuant to Election Code section 9237.</p>	<p><b>Objection 8:</b></p> <p><b>Irrelevant (Evid. § 352):</b></p> <p>Is is wholly irrelevant here <i>who introduced</i> topics unrelated to the stated legal basis for the closed sessions. The only conceivably relevant issue is whether the Council <i>discussed unrelated – and thus “not confidential”</i> issues.</p> <p>Ruling: Sustained _____ Overruled _____</p>

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<p>f. During the prior City Council’s deliberations of THE ORDINANCE, the Developer (through its attorney) repeatedly threatened to sue the City of Ojai if the City denied the project.</p> <p>Therefore, the Developer’s threat of litigation needed to be assessed as part of the mandatory obligation to reconsider the Ordinance under Election Code section 9237 because a vote to rescind THE ORDINANCE could trigger the Developer’s threat to sue the City of Ojai.</p>	<p><b>Objection 9:</b> <b>Lacks personal knowledge</b> (Evid. § 702) <b>Lacks foundation</b> (Evid. § 352, 403) <b>Irrelevant</b> (Evid. § 352) <b>Hearsay</b> (Evid. § 800) <b>Incomplete. Evid.</b> (Evid. § 356)</p> <p>Mr. Whitman declares he was elected in November of 2022, AFTER the prior City Council deliberated on the Ordinance in numerous OPEN sessions. His statements regarding events <b>before</b> he took office thus lack any foundation.</p> <p>Moreover, Whitman’s declaration that “the Developer’s threat of litigation needed to be assessed as part of the mandatory obligation to reconsider the Ordinance ... because a vote to rescind THE ORDINANCE could trigger the Developer’s threat to sue to the City of Ojai” is irrelevant, misleading – and actually makes the case <i>for</i> Defendants.</p> <p>Defendants do not dispute that reconsidering the ordinance or considering the Developer’s threat of litigation are suitable topics for Council consideration; only that these issues were <i>unsuitable</i> for CLOSED SESSIONS that were specifically limited to discussing ONLY the LITIGATION against Simply Ojai.</p> <p>As the California Attorney General’s Office states in its authoritative guide, “<b>The Brown Act, Open Meetings for Local Legislative Bodies (2003)</b>,” in a section entitled “<b>Permissible Closed Sessions – Introduction, A. Narrow Construction</b>”: “Since closed sessions are an exception to open meeting requirements, the authority for such sessions has been <i>narrowly construed</i>. The law evinces a strong bias in favor of <i>open</i> meetings, and court decisions and opinions of this office have buttressed that legislative intent. (§ 54950.)” Whitman, however, erroneously takes the OPPOSITE approach – that the Brown Act’s closed session provisions have an infinitely BROAD construction.</p> <p>Ruling: Sustained _____ Overruled _____</p>
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<p>g. The City Attorney made all decisions concerning how the closed session discussion was described on the agenda and what should be reported out from closed session. I provided no input concerning the agenda for any of the three closed sessions meetings or input on what should be reported out.</p>	<p><b>Objection 10:</b></p> <p><b>Irrelevant</b> (Evid. § 352): Again, it is irrelevant WHO made the decisions about the closed session agenda, who had input, etc. The only conceivable issue is whether “confidential” information – as that term is understood by the Brown Act – was wrongfully disclosed.</p> <p>Whitman’s effort to shift blame to the City Attorney, while perhaps somewhat valid, is irrelevant.</p> <p>Ruling: Sustained _____ Overruled _____</p>
<p>8. Based upon public comments and social media posts Councilmember Rule disclosed confidential information discussed in closed session to several members of the Ojai Valley Democratic Club prior to the January 24, 2023 City Council meeting (the Ojai Valley Democratic Club is a private club with no connection with or authority from, the Democratic Party), including attorney Jon Drucker.</p>	<p><b>Objection 11:</b></p> <p><b>Best Evidence</b> – (Evid. § 1521) re unquoted “social media posts.”</p> <p><b>Improper Expert Opinion</b> re “disclosed <i>confidential</i> information.” (<i>Hayman v. Block</i>, 176 Cal.Ap.3d 629, 638 (1986) (“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”),</p> <p><b>Lacks personal knowledge</b> (Evid. § 702) regarding the Ojai Valley Democratic Club or any alleged (non-existent) relationship of Jon Drucker therewith.</p> <p><b>Lacks foundation</b> (Evid. § 352, 403);</p> <p><b>Hearsay</b> (Evid. § 800) – what Whitman heard about what was said to “several members” of the Club is inadmissible hearsay.</p> <p><b>Irrelevant</b> (Evid. § 352): Especially given Whitman’s erroneous expansive conception of “confidentiality,” his legal opinion – based on what he might or might not have heard, is irrelevant.</p> <p>Ruling: Sustained _____ Overruled _____</p>

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<p>9. On January 24, 2023, the City of Ojai held a regular public meeting. Attached as Exhibit F is a true and correct copy of a transcript prepared by this office for the portion of the meeting approximately 2 hours and 28 minutes in where Councilmember Rule again attempts to disclose closed session information, makes a motion to waive confidentiality for those sessions, and the motion fails. The full video of this meeting can be viewed on the Ojai City Council youtube channel at :</p> <p><a href="http://www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s">www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s</a></p> <p>A true and correct copy of the clip from which the transcript was made can be viewed at:</p> <p><a href="http://bit.ly/ExhF12423">bit.ly/ExhF12423</a></p>	<p><b>Objection 12:</b></p> <p><b>Irrelevant</b> (Evid. § 352). The only issue even conceivably relevant here is whether the information Defendants disclosed was “confidential” under the terms of the Brown Act.</p> <p><b>Vague:</b> (Evid. § 765(a)) and <b>Lacks Authenticity</b> – It unclear who prepared what “this office,” but it is clear that Whitman did not do it and cannot authenticate the content of his declaration.</p> <p>Ruling: Sustained _____ Overrruled _____</p>
<p>10. During public comment portion of the Ojai City Council meeting on January 24, 2023, a resident of the City Ojai, Robin Gerber, disclosed information that she had learned about topics discussed in closed session, despite the fact that she was not present at the closed session meetings and had no legal basis to have learned the information discussed in closed session. The City Attorney instructed Ms. Gerber that the disclosure of matters discussed in closed session was a violation of the Brown Act. Ms. Gerber made the disclosure despite the warning of the City Attorney.</p>	<p><b>Objection 13:</b></p> <p><b>Irrelevant Hearsay (Evid. §§ 352, 800):</b> Robin Gerber is not a party here (and Whitman’s mischaracterizes what she said). In any event, the Sunshine Act, at Govt. Code § 53954.3, protects such speech: “The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.”</p> <p>Ruling: Sustained _____ Overrruled _____</p>

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1 11. Councilmember Rule thereafter ignored the  
2 advice of the City Attorney (an expert in public  
3 meeting law) and followed the advice of her own  
4 attorney, Jon Drucker (who has no experience with  
5 public meeting law). Councilmember Rule and Jon  
6 Drucker published details of closed session through  
7 the newspaper and social media via a letter written  
8 by Jon Drucker. The letter included disclosure of  
9 confidential legal discussion with the City Council  
10 concerning THE ORDINANCE.  
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**Objection 14:**

**Irrelevant, Prejudicial** (Evid. §§ 210, 350, 352) (probative value is substantially outweighed by “undue consumption of [court] time” and undue prejudice,” “confusing the issues, or misleading” the court. Whitman here seeks to substitute his and the City Attorney’s alleged “expert” opinion for potential findings of this Court. (The Ventura DA’s Public Integrity Unit meanwhile, agreed with Drucker that the City Attorney and City Council (with Whitman’s support) VIOLATED the Brown Act in all three meetings). These statements also **lack any foundation** whatsoever. Whitman does not know how the newspaper obtained Drucker’s letter, nor does he have any basis to impugn Mr. Drucker’s knowledge of the Brown Act.

**Improper Expert Opinion** (*Hayman v. Block*, 176 Cal.Ap.3d 629, 638 (1986) regarding “confidential.” (“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”); *Marriage of Heggie*, 99 Cal.Ap.4<sup>th</sup> 28, 30 n.3 (2002) (“The proper place for argument is in points authorities, not declarations”).

**Lacks foundation** (Evid. § 352, 403).

Ruling:  
Sustained \_\_\_\_\_  
Overruled \_\_\_\_\_

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1 12. Since the January 24, 2023 City Council meeting  
2 and the public publishing of the Drucker letter, the  
3 Ventura County District Attorney has issued a letter  
4 to Councilmember Rule advising her that the  
5 disclosures she made violated the confidentiality of  
6 closed session provisions of the Brown Act and that  
7 her conduct in disclosing closed session discussions  
8 did not meet any exceptions to Brown Act  
9 confidentiality requirements and were therefore  
10 illegal.

**Objection 15:**

**Irrelevant, Incomplete and  
Mischaracterizes the Evidence**

(Evid. § 352, 210, 403)

**Best Evidence** (Evid. § 1521) re VCDA  
cease and desist “letter.”

Whitman **mischaracterizes** the  
evidence. Contrary to his declaration,  
the DA sent the letter **to the entire City  
Council**. In the DA’s letter, he stated  
that **the Council** had violated the Brown  
Act by “exceeding the scope” of its  
closed session Statements – in all three  
meetings.

The only criticism of Leslie Rule was  
that 1) she didn’t take her complaint to  
the DA first, and 2) her disclosures  
exceeded the expression of an ”opinion”  
regarding the improprieties she  
witnessed.

Neither of these findings of the DA have  
any support in the law, however. See  
Govt. Code § 54963(e)(1) (the DA is  
one of several options) and (2) (an  
opinion may also include the “nature  
and extent” of the violation.

Nonetheless, Leslie Rule has stated her  
intention that, in the future, if she  
witnesses any violations of the Brown  
Act, she will initially and confidentially  
take her grievance to the DA and  
otherwise adhere to § 54963(e)(2) and  
(3). See the accompanying Declaration  
of Leslie Rule.

Ruling:

Sustained \_\_\_\_\_

Overruled \_\_\_\_\_

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13. General disclosure of the confidential closed session communications to the public resulted in the Developer (the City’s potential adversary in a future litigation) receiving otherwise confidential information to the great damage and detriment of the City’s legal position should the Developer eventually engage in litigation or should the City attempt to negotiate a new and different development agreement.	<b>Objection 16:</b>  <b>Lack of Foundation, Inadmissible Speculation and Conclusions</b> (Evid. §§ 400, 403, 410) Again, Whitman’s <b>legal conclusions</b> of violation of “confidentiality” and damages therefrom, <b>without foundation, and lacking any specificity</b> , are inadmissible.  Ruling: Sustained _____ Overruled _____
14. ... This position is contrary to fact and law and is in direct contradiction to the District Attorney’s assertion that Councilmember Rule’s disclosure was not permitted and did not fall within exceptions to Brown Act confidentiality rules.	<b>Objection 17:</b>  <b>Calls for Legal Conclusion</b> – re “confidentiality” <b>Mischaracterizes the Evidence</b> re the DA’s letter. <b>Irrelevant</b> what Whitman thinks the law is. Also, although the DA’s opinion does not have any force of law, Ms. Rule has stated that if she ever again witnesses a Brown Act violation, she will initially and confidentially go to the DA and otherwise adhere to Govt. Code § 54963(e )(2)&(3).  Ruling: Sustained _____ Overruled _____
15. In my discussions with City Staff since January 24, 2023 there is no question that the City’s use of closed session has been curtailed and reduced because of the threat that Councilmember Rule will disclose closed session discussions to members of the Ojai Valley Democratic Club, members of the public, or the City’s potential adversaries concerning issues that could lead to litigation and/or negotiations.	<b>Objection 18:</b>  <b>Hearsay</b> re “discussions with City Staff.”  <b>Irrelevant</b> what staff might or might not have said.  <b>Speculative and Prejudicial (and malicious)</b> as to Rule’s future behavior.  Moreover, Whitman demonstrates his perverse thinking on transparency the law is designed to encourage by saying that the curtailment of closed sessions is a BAD thing. It is a GOOD thing; it is what the Brown (“Sunshine”) Act was made for.  Ruling: Sustained _____ Overruled _____

16. I believe that the Ojai City Council has been materially and substantially injured by Councilmember Rule’s and her attorney Jon Drucker’s disclosure of confidential information and Ms. Rule’s continuing threat of breaches of confidentiality.	<p><b>Objection 19:</b></p> <p><b>Irrelevant</b> what Whitman “believes.” <b>Legal Conclusion</b> re “disclosure of confidential information.” <b>Lack of foundation</b> re “continuing threat of breaches of confidentiality.”</p> <p>To the contrary, Rule has repeatedly stated her intent, if she ever witnesses another Brown Act violation, to heed §54963(e)(2)&amp;(3) and initially go to the DA confidentially.</p> <p>Meanwhile, Whitman support (and evidently still supports) <i>rescinding</i> the City Council’s commitment to the DA to “Cease and Desist” from violating the Brown Act – because he remains hellbent on insisting that he and the Council did nothing wrong (and thus there is nothing to “cease and desist” from doing). See Decl. of Leslie Rule in Support of her Reply.</p>
17. Maintaining strict confidentiality of closed session discussions promotes responsible oversight of taxpayer dollars on such things as the City of Ojai’s negotiating positions with property owners, and litigants. Securing the best deal for Ojai residents in negotiations is much more difficult if the City’s negotiating position and strategy (including perceived strengths and weaknesses) are known by the potential adversary. Making these decisions in closed session helps decision-makers serve their communities by being careful stewards of public resources.	<p><b>Objection 20:</b></p> <p><b>Irrelevant and Prejudicial</b> in the sense that Whitman implies that only he, and not Defendants, believe in these principles.</p> <p>Ruling: Sustained _____ Overruled _____</p>
18. Whenever litigation is at issue the City of Ojai should at least consider an effort to avoid the expense of litigation through negotiation. The threat that Councilmember Rule will leak negotiating strategies and positions concerning litigation strengths and weaknesses weighs against holding closed session and damages the prospect for negotiation as an option to litigation — something that the City of Ojai and Ojai tax payers cannot afford, especially in these difficult economic times.	<p><b>Objection 21:</b></p> <p><b>Lack of Foundation</b> and <b>Lack of Personal Knowledge</b> as to Defendants’ intentions, and <b>Improper Legal Conclusion</b> that is <b>Irrelevant</b> and <b>Prejudicial</b>.</p> <p>Ruling: Sustained _____</p>

	Overruled _____
<p>19. It is also possible that Councilmember Rule's disclosure of confidential information was an effort to curry favor with the Developer. This type of leak is a breach of Councilmember Rule's legal and ethical responsibilities to her constituents. The potential to torpedo policy objectives of the majority maintain confidentiality of closed session and the continued threat that she and her attorney Jon Drucker of the City Council on matters where Councilmember Rule disagrees is another reason the City of Ojai needs to consider avoiding closed session. Again, this damages the City and its residents by reducing the usefulness and effectiveness of closed sessions, an important tool of government.</p>	<p><b>Objection 22:</b></p> <p><b>Speculation</b> (Evid. § 403) <b>Lack of Foundation</b> and <b>Lack of Personal Knowledge</b> as to Defendants' thoughts and intentions, <b>Improper Legal Conclusions</b> that are <b>Irrelevant</b> and <b>Prejudicial</b>.</p> <p>Note: if Whitman's insinuations of Rule's and Drucker's corruption were made outside this judicial proceeding, they could conceivably constitute a cause of action for defamation.</p> <p>Ruling: Sustained _____ Overruled _____</p>
<p>20. All of these disadvantages and injuries are triggered by Councilmember Rule's failure to maintain confidentiality of closed sessions and the continued threat that she and her attorney Jon Drucker will disclose confidences should another situation arise in which Councilmember Rule disagrees with the policy or course of action taken by the City Council majority.</p>	<p><b>Objection 23:</b></p> <p><b>Lack of Foundation</b> and <b>Lack of Personal Knowledge</b> as to Defendants' thoughts and intentions.</p> <p><b>Improper Legal Conclusion</b> that are <b>Irrelevant</b> and <b>Prejudicial</b>.</p> <p>Ruling: Sustained _____ Overruled _____</p>

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1 For each of the above reasons, the Court should sustain Defendants' evidentiary  
2 objections to the Declaration of Andrew Whitman.

3 Respectfully Submitted,

4 LAW OFFICES OF JON E. DRUCKER

5 DATED: August 14, 2023

By: Jon E. Drucker

6 Jon E. Drucker

Attorney for Defendant Leslie Rule

7 DATED: August 14, 2023

8 S.C. JOHNSON & ASSOCIATES, LLC

9 By: Stephen Johnson

10 Stephen Johnson

Attorney for Defendants Leslie Rule and Jon E. Drucker

11  
12  
13 **IT IS SO ORDERED:**

14 DATED: \_\_\_\_\_, 2023

15 \_\_\_\_\_  
16 THE HONORABLE BENJAMIN F. COATS  
17 VENTURA COUNTY SUPERIOR COURT JUDGE

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**DEFENDANTS' EVIDENTIARY OBJECTIONS TO DECLARATON OF  
ANDREW WHITMAN OFFERED IN SUPPORT OF PLAINTIFFS' OPPOSITION  
TO DEFENDANTS' SPECIAL MOTION TO STRIKE**



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Attorney for Defendant Leslie Rule

VENTURA COUNTY SUPERIOR COURT

STATE OF CALIFORNIA

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

Plaintiffs,  
v.

LESLIE RULE AND JON E. DRUCKER,  
Defendants.

Case No.: 2023CUMC008352

DEFENDANTS' EVIDENTIARY  
OBJECTIONS TO DECLARATON OF  
BRIAN ACREE OFFERED IN SUPPORT  
OF PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO STRIKE

DATE: August 21, 2023

TIME: 8:30 a.m.

DEPT: 43

JUDGE: Hon. Benjamin F. Coats

Pursuant to California Code of Civil Procedure 437(c), Defendants Leslie Rule and Jon  
Drucker hereby object to portions of Brian Acree's declaration filed in support of Plaintiffs'

DEFENDANTS' EVIDENTIARY OBJECTIONS TO DECLARATON OF BRIAN ACREE  
OFFERED IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEF'S MOTION TO STRIKE

Opposition to Defendants' Special Motion to Strike. Defendants' respectfully request that the Court strike the objectionable portions of the offered evidence as specifically set forth below:

**OBJECTIONS TO DECLARATION OF BRIAN ACREE IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO STRIKE**

MATERIAL OBJECTED TO	GROUND FOR OBJECTIONS
2. Attached as Exhibit A is a true and correct copy of a letter entitled "Demand to Cease and Desist Brown Act Violations" sent from the Office of the District Attorney for the County of Ventura to Members of the Ojai City Council on May 15, 2023.	<b>Objection 1:</b> <ul style="list-style-type: none"><li>• Lacks personal knowledge (Evid. § 702)</li><li>• Lacks foundation (Evid. § 352, 403)</li><li>• Lacks authentication (Evid. § 1400)</li></ul> Declarant Acree has NO personal knowledge, has established no factual basis for any such personal knowledge, not established any ability to authenticate any documents he alludes to, all relating to documents allegedly sent by the VCDA and received by the Ojai City Council. These points also apply to all the Objections below.  Ruling: Sustained _____ Overruled _____
3. Attached as Exhibit B is a true and correct copy of an "Public Memorandum" prepared by the Ojai City Attorney that was attached to the Administrative Report for the May 22, 2023 Brown Act and Transparency Workshop conducted by the city where an expert on the Brown Act, Anne Ravel, discussed the requirement of the Brown Act and answered councilmembers questions.	<b>Objection 2:</b> <ul style="list-style-type: none"><li>• Lacks personal knowledge (Evid. § 702)</li><li>• Lacks foundation (Evid. § 352, 403)</li><li>• Lacks authentication (Evid. § 1400)</li><li>• Irrelevant (Evid. § 352)</li></ul> Ruling: Sustained _____ Overruled _____

DEFENDANTS' EVIDENTIARY OBJECTIONS TO DECLARATION OF BRIAN ACREE  
OFFERED IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEF'S MOTION TO STRIKE

1 2 3 4 5 6 7 8 9	<p>4. On January 24, 2023, the City of Ojai held a regular public meeting. Attached as Exhibit C is a true and correct copy of a transcript prepared by this office of the first 14 minutes of that meeting, where Councilmember Rule first begins disclosing closed session information. The full video of this meeting can be viewed on the Ojai City Council youtube channel at : <a href="http://www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s">www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s</a> A true and correct copy of the clip from which the transcript was made can be viewed at:  <a href="http://bit.ly/ExhC12423">bit.ly/ExhC12423</a></p>	<p><b>Objection 3:</b></p> <ul style="list-style-type: none"><li>• Lacks personal knowledge (Evid. § 702)</li><li>• Lacks foundation (Evid. § 352, 403)</li><li>• Lacks authentication (Evid. § 1400)</li><li>• Irrelevant (Evid. § 352)</li></ul> <p>Ruling: Sustained _____ Overruled _____</p>
10 11 12 13 14 15 16 17 18 19 20 21 22	<p>5. On January 24, 2023, the City of Ojai held a regular public meeting. Attached as Exhibit D is a true and correct copy of a transcript prepared by this office of the public comments portion of the meeting approximately 1 hour and 5 minutes in where Jon Drucker makes an initial public comment, notes the objection to disclosing closed session information made by the City Attorney, and says “councilmember Rule is willing to take the risk of defying Mr. Summer and make her oral statement available in writing to anyone who wants to read it because she believes in transparency.” The full video of this meeting can be viewed on the Ojai City Council youtube channel at :  <a href="http://www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s">www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s</a> A true and correct copy of the clip from which the transcript was made can be viewed at:  <a href="http://bit.ly/ExhD12423">bit.ly/ExhD12423</a></p>	<p><b>Objection 4:</b></p> <ul style="list-style-type: none"><li>• Lacks personal knowledge (Evid. § 702)</li><li>• Lacks foundation (Evid. § 352, 403)</li><li>• Lacks authentication (Evid. § 1400)</li><li>• Irrelevant (Evid. § 352)</li><li>• Irrelevant (City Attorney’s views)</li></ul> <p>Ruling: Sustained _____ Overruled _____</p>

1 2 3 4 5 6 7 8	6. On January 24, 2023, the City of Ojai held a regular public meeting. Attached as Exhibit E is a true and correct copy of a transcript prepared by this office of the public comments portion of the meeting approximately 1 hour and 40 minutes in where Jon Drucker distributes a written memo he prepared to the Council. The full video of this meeting can be viewed on the Ojai City Council youtube channel at: <a href="http://www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s">www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s</a> A true and correct copy of the clip from which the transcript was made can be viewed at: <a href="http://bit.ly/ExhE12423">bit.ly/ExhE12423</a>	<b>Objection 5:</b> <ul style="list-style-type: none"><li>• Lacks personal knowledge (Evid. § 702)</li><li>• Lacks foundation (Evid. § 352, 403)</li><li>• Lacks authentication (Evid. § 1400)</li><li>• Irrelevant (Evid. § 352)</li></ul> Ruling: Sustained _____ Overruled _____
9 10 11 12 13 14 15 16 17	7. On January 24, 2023, the City of Ojai held a regular public meeting. Attached as Exhibit F is a true and correct copy of a transcript prepared by this office for the portion of the meeting approximately 2 hours and 28 minutes in where Councilmember Rule again attempts to disclose closed session information, makes a motion to waive confidentiality for those sessions, and the motion fails. The full video of this meeting can be viewed on the Ojai City Council youtube channel at : <a href="http://www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s">www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s</a> A true and correct copy of the clip from which the transcript was made can be viewed at: <a href="http://bit.ly/ExhF12423">bit.ly/ExhF12423</a>	<b>Objection 6:</b> <ul style="list-style-type: none"><li>• Lacks personal knowledge (Evid. § 702)</li><li>• Lacks foundation (Evid. § 352, 403)</li><li>• Lacks authentication (Evid. § 1400)</li><li>• Irrelevant (Evid. § 352)</li></ul> Ruling: Sustained _____ Overruled _____
18 19 20 21 22 23 24 25 26	8. On January 24, 2023, the City of Ojai held a regular public meeting. Attached as Exhibit G is a true and correct copy of a transcript prepared by this office for the portion of the meeting approximately 2 hours and 9 minutes in where a citizen named Robin Gerber speaks at public comment and indicates that she has been provided with closed session information. The full video of this meeting can be viewed on the Ojai City Council youtube channel at: <a href="http://www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s">www.youtube.com/watch?v=0yJhgkMI4tg&amp;t=7935s</a> A true and correct copy of the clip from which the transcript was made can be viewed at: <a href="http://bit.ly/ExhG12423">bit.ly/ExhG12423</a>	<b>Objection 7:</b> <ul style="list-style-type: none"><li>• Lacks personal knowledge (Evid. § 702)</li><li>• Lacks foundation (Evid. § 352, 403)</li><li>• Lacks authentication (Evid. § 1400)</li><li>• Irrelevant (Evid. § 352)</li></ul> Ruling: Sustained _____ Overruled _____

<p>1 9. On February 14, 2023, the City of Ojai held a</p> <p>2 regular public meeting. Attached as Exhibit H is a</p> <p>3 true and correct copy of a transcript prepared by this</p> <p>4 office for the portion of the meeting approximately 4</p> <p>5 hours and 54 minutes in where Jon Drucker makes</p> <p>6 public comments on his own behalf about the</p> <p>7 disclosure of closed session information. The full</p> <p>8 video of this meeting can be viewed on the Ojai City</p> <p>9 Council youtube channel at :</p> <p>10 <a href="http://www.youtube.com/watch?v=BGcte7AUeO4">www.youtube.com/watch?v=BGcte7AUeO4</a></p> <p>11 A true and correct copy of the clip from which the</p> <p>12 transcript was made can be viewed at:</p> <p>13 <a href="http://bit.ly/ExhH21423">bit.ly/ExhH21423</a></p>	<p><b>Objection 8:</b></p> <ul style="list-style-type: none"><li>• <b>Lacks personal knowledge (Evid. § 702)</b></li><li>• <b>Lacks foundation (Evid. § 352, 403)</b></li><li>• <b>Lacks authentication (Evid. § 1400)</b></li><li>• <b>Irrelevant (Evid. § 352)</b></li></ul> <p>Ruling:</p> <p>Sustained _____</p> <p>Overruled _____</p>
<p>14 10. On April 25, 2023, the City of Ojai held a</p> <p>15 regular public meeting. Attached as Exhibit I is a</p> <p>16 true and correct copy of a transcript prepared by this</p> <p>17 office for the portion of the meeting approximately 1</p> <p>18 hour and 41 minutes into the meeting where Jon</p> <p>19 Drucker makes comments on his own behalf about</p> <p>20 the disclosure of closed session information. The</p> <p>21 full video of this meeting can be viewed on the Ojai</p> <p>22 City Council youtube channel at :</p> <p>23 <a href="http://www.youtube.com/watch?v=BGcte7AUeO4">www.youtube.com/watch?v=BGcte7AUeO4</a></p> <p>24 A true and correct copy of the clip from which the</p> <p>25 transcript was made can be viewed at:</p> <p>26 <a href="http://bit.ly/ExhI42523">bit.ly/ExhI42523</a></p>	<p><b>Objection 9:</b></p> <ul style="list-style-type: none"><li>• <b>Lacks personal knowledge (Evid. § 702)</b></li><li>• <b>Lacks foundation (Evid. § 352, 403)</b></li><li>• <b>Lacks authentication (Evid. § 1400)</b></li><li>• <b>Irrelevant (Evid. § 352)</b></li></ul> <p>Ruling:</p> <p>Sustained _____</p> <p>Overruled _____</p>

<p>11. On April 25, 2023, the City of Ojai held a regular public meeting. Attached as Exhibit J is a true and correct copy of a transcript prepared by this office for the portion of the meeting approximately 2 hours 26 minutes in where Jon Drucker makes comments on his own behalf about the disclosure of closed session information, and says “How much longer are you going to hide behind this charade that you can’t talk about what happened in closed session. Guess what? Like it or not, Ms. Rule disclosed what happened in closed session to the general public about what was it three months ago.” The full video of this meeting can be viewed on the Ojai City Council youtube channel at :</p> <p><a href="http://www.youtube.com/watch?v=BGcte7AUeO4">www.youtube.com/watch?v=BGcte7AUeO4</a></p> <p>A true and correct copy of the clip from which the transcript was made can be viewed at: <a href="http://bit.ly/ExhJ42523">bit.ly/ExhJ42523</a></p>	<p><b>Objection 10:</b></p> <ul style="list-style-type: none"><li>• <b>Lacks personal knowledge (Evid. § 702)</b></li><li>• <b>Lacks foundation (Evid. § 352, 403)</b></li><li>• <b>Lacks authentication (Evid. § 1400)</b></li><li>• <b>Irrelevant (Evid. § 352)</b></li></ul> <p>Ruling: Sustained _____ Overruled _____</p>
<p>12. On May 22, 2023, the City of Ojai held a special public meeting for a Brown Act and Transparency Workshop. Attached as Exhibit K is a true and correct copy of a transcript prepared by this office for the portion of the meeting approximately 10 minutes in where Jon Drucker makes comments regarding the disclosure of closed session information. The full video of this meeting can be viewed on the Ojai City Council youtube channel at: <a href="http://www.youtube.com/watch?v=m65aIqKZ4JQ">www.youtube.com/watch?v=m65aIqKZ4JQ</a></p> <p>A true and correct copy of the clip from which the transcript was made can be viewed at: <a href="http://bit.ly/ExhK52223">bit.ly/ExhK52223</a></p>	<p><b>Objection 11:</b></p> <ul style="list-style-type: none"><li>• <b>Lacks personal knowledge (Evid. § 702)</b></li><li>• <b>Lacks foundation (Evid. § 352, 403)</b></li><li>• <b>Lacks authentication (Evid. § 1400)</b></li><li>• <b>Hearsay (Evid. § 800)</b></li><li>• <b>Irrelevant (Evid. § 352)</b></li></ul> <p>Ruling: Sustained _____ Overruled _____</p>

<p>13. On May 22, 2023, the City of Ojai held a special public meeting for a Brown Act and Transparency Workshop. Attached as Exhibit L is a true and correct copy of a transcript prepared by this office for the portion of the meeting approximately 1 hour and 43 minutes in where Jon Drucker discusses the legal memo that was discussed in closed session and concedes “that the title of the memo was disclosed back in January and the title reveals itself that it presumed the city rescinded the development agreement and proceeded from there.”</p> <p>The full video of this meeting can be viewed on the Ojai City Council youtube channel at:</p> <p><a href="http://www.youtube.com/watch?v=m65aIqKZ4JQ">www.youtube.com/watch?v=m65aIqKZ4JQ</a></p> <p>A true and correct copy of the clip from which the transcript was made can be viewed at:</p> <p><a href="http://bit.ly/ExhL52223">bit.ly/ExhL52223</a></p>	<p><b>Objection 12:</b></p> <ul style="list-style-type: none"><li>• Lacks personal knowledge (Evid. § 702)</li><li>• Lacks foundation (Evid. § 352, 403)</li><li>• Lacks authentication (Evid. § 1400)</li><li>• Hearsay (Evid. § 800)</li><li>• Irrelevant (Evid. § 352)</li></ul> <p>Ruling: Sustained _____ Overruled _____</p>
<p>14. On June 13, 2023, the City of Ojai held a regular public meeting. Attached as Exhibit M is a true and correct copy of a transcript prepared by this office for the portion of the meeting approximately 4 hours and 21 minutes in where Jon Drucker speaks on his own behalf about closed session discussions. The full video of this meeting can be viewed on the Ojai City Council youtube channel at:</p> <p><a href="http://www.youtube.com/watch?v=vZVKAWhFBKg">www.youtube.com/watch?v=vZVKAWhFBKg</a></p> <p>A true and correct copy of the clip from which the transcript was made can be viewed at:</p> <p><a href="http://bit.ly/ExhM61323">bit.ly/ExhM61323</a></p>	<p><b>Objection 13:</b></p> <ul style="list-style-type: none"><li>• Lacks personal knowledge (Evid. § 702)</li><li>• Lacks foundation (Evid. § 352, 403)</li><li>• Lacks authentication (Evid. § 1400)</li><li>• Hearsay (Evid. § 800)</li></ul> <p>Ruling: Sustained _____ Overruled _____</p>

1 15. I graduated with highest honors from Golden  
2 Gate University School of Law in San Francisco and  
3 have been a member of the California State Bar for  
4 over twenty-two years. \* \* \* My current hourly rate  
5 is \$750, which has been found reasonable by courts  
6 in prior fee motion practice. My rate for this case,  
7 given the rates for Ventura County and taking into  
8 account the novelty of the Brown Act as an area of  
9 practice, is \$450 per hour. I believe from my  
10 consultation with other attorneys who practice under  
11 the Brown Act and attorneys who practice in  
12 Ventura County that this rate is reasonable for this  
13 matter.

**Objection 14:**

- Irrelevant (Evid. § 352)
- Improper Opinion re “reasonability” (Evid. § 352)

14 16. Attached as Exhibit N is a true and correct copy  
15 of my billing sheet demonstrating the time and tasks  
16 involved in preparing the Opposition to Defendants’  
17 Anti-SLAPP Motion. I have spent a total of 27 hours  
18 preparing Plaintiffs’ Opposition to Defendants’  
19 Anti-SLAPP Motion, which I have discounted by  
20 10% to 24.5 hours. Accordingly, I have billed  
21 \$11,025.00 on this Opposition.

**Objection 15:**

- Irrelevant (Evid. § 352)

22 For each of the above reasons, the Court should sustain Defendants’ evidentiary  
23 objections to the Declaration of Brian Acree.

24 Respectfully Submitted,

25 LAW OFFICES OF JON E.DRUCKER

26 DATED: August 14, 2023

27 By: \_\_\_\_\_S\_\_\_\_\_

28 Jon E. Drucker

Attorney for Defendant Leslie Rule

DATED: August 14, 2023

S.C. JOHNSON & ASSOCIATES, LLC

By: Stephen Johnson

Stephen Johnson

Attorney for Defendants Leslie Rule and Jon Drucker

DEFENDANTS’ EVIDENTIARY OBJECTIONS TO DECLARATON OF BRIAN ACREE  
OFFERED IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO DEF’S MOTION TO STRIKE



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Attorney for Defendant Leslie Rule

VENTURA COUNTY SUPERIOR COURT  
STATE OF CALIFORNIA

DAVID BYRNE, VICKI CARLTON-  
BYRNE, THOMAS DREW  
MASHBURN, GERRY SCHWANKE,  
JOEL MAHARRY, DOUGLAS  
LABARRE, LESLIE FERRARO,  
individuals,

Plaintiffs,  
v.

LESLIE RULE AND JON E. DRUCKER,  
Defendants.

Case No.: 2023CUMC008352

REQUEST FOR JUDICIAL NOTICE

DATE: August 21, 2023  
TIME: 8:30 AM  
PLACE: DEPT. 43

Defendants Jon E. Drucker and Leslie Rule hereby request judicial notice of  
the pending Ventura County Superior Court case of Simply Ojai v. City of Ojai,  
Case No. 202200572740CUWM.

1 Evidence Code § 452 provides that judicial notice may be taken of  
2 “(d) Records of (1) any court of this state....”

3 The case file of Simply Ojai v. City of Ojai being a “court record,” judicial  
4 notice of Simply Ojai v. City of Ojai is warranted. The face page of the complaint  
5 is attached for the Court’s convenience. The Court should take note of the fact that  
6 Sabrina Venskus, plaintiffs’ counsel in the instant case (Byrne v. Rule), is also the  
7 plaintiff’s counsel in Simply Ojai v. City of Ojai.

8  
9 Respectfully Submitted,

10 LAW OFFICES OF JON E. DRUCKER

11  
12 DATED: August 12, 2023

By: 

Jon E. Drucker

Attorney for Defendant Leslie Rule

15 S.C. JOHNSON & ASSOCIATES, LLC

16 

Stephen C. Johnson

Attorney for Defendants

Jon E. Drucker and Leslie Rule

DEC 01 2022

Sabrina Venskus (SBN 219153)  
Jason Sanders (SBN 257362)  
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Attorneys for Petitioner, Simply Ojai

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

SIMPLY OJAI,	)	Case No.:
	)	
Petitioner and Plaintiff,	)	
	)	
vs.	)	VERIFIED PETITION FOR WRIT OF
	)	MANDATE AND COMPLAINT FOR
	)	DECLARATORY AND INJUNCTIVE
	)	RELIEF
CITY OF OJAI; OJAI CITY COUNCIL; and	)	
DOES 1 through 20, inclusive,	)	(CEQA Case)
	)	
Respondents and Defendants,	)	(Public Resources Code §§ 21168; 21168.5;
	)	and Cal. Code of Civ. Proc. §§ 1094.5;
	)	1085)
	)	
OJAI BUNGALOWS, L.P.; GREEN HAWK,	)	
LLC; THE BECKER GROUP, INC.; and	)	
ROES 1 through 20 inclusive,	)	
	)	
Real Parties in Interest.	)	
	)	
	)	

1 STEPHEN C. JOHNSON, ESQ. (State Bar No. 145210)  
2 S.C. JOHNSON & ASSOCIATES, LLC  
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13 jdrucker@lawyers.com

14 Attorney for Defendant Leslie Rule

15 VENTURA COUNTY SUPERIOR COURT

16 STATE OF CALIFORNIA

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

21 Plaintiffs,  
22 v.

23 LESLIE RULE AND JON E. DRUCKER,  
24 Defendants.

Case No.: 2023CUMC008352

DEFENDANT JON E. DRUCKERS'  
OPPOSITION TO EVIDENTIARY  
OBJECTIONS TO DRUCKER  
DECLARATION IN SUPPORT OF  
SPECIAL MOTION TO STRIKE

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

25 ///

26 ///

1 Plaintiffs' Evidentiary Objections ("Objections") to the Declaration of Jon E. Drucker in  
2 support of Defendants' Motion to Strike (the "Motion") are improper and should be overruled.

3 First, Plaintiffs filed their Objections LATE. The deadline for filing all opposition to the  
4 Motion was Tuesday, August 8. Plaintiffs, however, filed their Evidentiary Objections to the  
5 Declaration of Jon E. Drucker on Wednesday, August 9. Neither have they presented a showing  
6 of "good cause" for the late filing. Accordingly, the Court should overrule the Objections.

7 Second, contrary to the Proof of Service by email attached to their Objections, Plaintiffs  
8 did NOT serve the Objections on defense counsel Jon Drucker. See Declaration of Jon Drucker,  
9 attached hereto. For this reason as well, the Court should overrule the Objections.

10 Third, *arguendo*, even if the Court entertains Plaintiffs' Objections, it should overrule  
11 them. Plaintiffs' claim against Mr. Drucker is *based* on their argument that he is legally  
12 susceptible to being sued because he *exceeded* the normal role of an attorney in providing  
13 counsel to his client. Drucker's declaration – and the exhibits attached thereto – evidence that  
14 his activities were performed in the *classic* role as an attorney. The evidence in his declaration  
15 and exhibits is not offered as proof that his arguments were legally correct; they are offered to  
16 demonstrate that Drucker was engaging in the usual and traditional activities of a lawyer: legal  
17 research, legal analysis, drafting of legal documents, and pleading his client's case.

18 For any and all of the foregoing three reasons, the Court should *overrule* Plaintiffs'  
19 Evidentiary Objections to the Declaration of Jon E. Drucker in Support of the Motion.

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

22 DATED: August 14, 2023

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

27 LAW OFFICES OF JON E. DRUCKER

28 DATED: August 13, 2023

26 By: Jon E. Drucker  
27 Jon E. Drucker  
28 Attorney for Defendant Leslie Rule

**DECLARATION OF JON E. DRUCKER**

I, Jon E. Drucker, hereby declare:

1. I am counsel of record to Defendant Leslie Rule and a defendant in this case.

2. On August 8, the due date for Plaintiffs' Opposition to Defendants' Motion to Strike under CCP 425.16, I did not receive any copies of Plaintiffs' Opposition. Given that our reply was due the following Monday, I expected Plaintiffs to personally serve us with documents the same day – as we did for them when we personally served the Motion.

3. We did not receive any Opposition on Tuesday, August 8.

4. Accordingly, I prepared a Notice of Plaintiffs' Non-Opposition to the Motion.

5. On Wednesday morning, before filing the Notice of Non-Opposition, I called the Ventura Superior Court Clerk's office to confirm that Plaintiffs had not filed any opposition. After providing a court clerk with the case number, I was told by the court clerk – no documents have been filed since the filing of the Motion.

6. In the afternoon of Wednesday, August 9, I received a FedEx delivery of hard copies of Plaintiffs' Opposition to the Motion to Strike in the afternoon of August 9.

7. I only became aware of Plaintiffs' Objections to my Declaration several days later on Saturday, August 12, when I visited the Ventura Superior Court website to download an electronic copy of Andrew Whitman's declaration (to facilitate the copying of the text of his statements), and I saw that Plaintiffs had filed Objections to my declaration on August 9.

8. I did not receive any email from Plaintiffs' counsel on Wednesday, August 9.

9. My failure to receive an email with the Evidentiary Objections attached on August 9 is contrary to the Proof of Service attached to the Objections.

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

Executed this August 13, 2023, at Ojai, California.

  
Jon E. Drucker

**PROOF OF SERVICE – CCP § 1013a**  
**STATE OF CALIFORNIA, COUNTY OF VENTURA**

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and am not a party to the within action. My business Address is 703 Pier Ave., #703, Hermosa Beach, California 90254.

On **August 14, 2023**, I served the foregoing document(s) described as

DEFENDANTS' REPLY TO SPECIAL MOTION TO STRIKE (Code Civ. Proc. § 425.16); SUPPLEMENTAL DECL. OF LESLIE RULE; OBJECTIONS TO WHITMAN DECL.; OBJECTIONS TO ACREE DECL.; REQUEST FOR JUDICIAL NOTICE; OPPOSITION TO OBJECTIONS TO DRUCKER DECL.

on all interested parties as follows:

**Brian Acree**  
**Law Office of Brian Acree**  
**5042 Wilshire Blvd., Los Angeles, CA 90036**

**Sabrina Venskus**  
**Venskus & Asso.**  
**603 W. Ojai Ave. Ste F, Ojai, CA 93023**

**BY Federal Express:**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **August 14, 2023**, at Hermosa  
Beach, California.

Stephen C. Johnson  
\_\_\_\_\_  
Type or Print Name

*Stephen Johnson*  
\_\_\_\_\_  
Signature

Ventura Superior Court Accepted through eDelivery submitted 08-14-2023 at 01:17:09 PM