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Attorneys for Plaintiffs,

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

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

Plaintiffs,

v.

LESLIE RULE; JON E DRUCKER; DOES 1-
10

Defendants

Case No. 2023CUMC008352

DECLARATION OF ANDREW WHITMAN
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO ANTI-SLAPP MOTION

[Filed Concurrently With:

1. Plaintiffs Opposition to Anti-SLAPP Motion;
2. Declaration of Sabrina Venskus ISO Plaintiffs' Opposition to Anti-SLAPP Motion
3. Declaration of Brian Acree ISO Plaintiffs' Opposition to Anti-SLAPP Motion
4. Plaintiffs' Objection to Declaration of Jon Drucker]

Date: August 21, 2023
Time: 8:30 am
Judge: Hon. Benjamin F. Coats
Dept: 43

Action Filed: April 28, 2023
Trial Date: Not Yet Set



DECLARATION OF ANDREW WHITMAN

I, Andrew Whitman, declare as follows:

1. I am an Ojai City Councilmember. I am also an attorney duly licensed to practice before all courts of the State of California.

2. I was asked by attorney Brian Acree whether I believe that the conduct of Defendant Leslie Rule had damaged the ability of the City of Ojai to utilize closed session to receive confidential advice from legal counsel. I answered in the affirmative. I was then asked if I would proffer a declaration with respect to this belief and the reasons therefore, in support of Plaintiffs' Opposition to Defendants' Anti-SLAPP Motion in the subject litigation. I agreed to prepare this declaration.

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.

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.

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.

1 6. I will submit to an in camera confidential discussion with the Court concerning advice
2 given by the City Attorney in closed session should the Court deem that necessary on condition that (1)
3 the Ojai City Attorney is given the opportunity to assess and present his legal position concerning the
4 propriety of such an in camera examination, and (2) there are assurances that there will be no
5 disclosures to the general public and no disclosures to City of Ojai adversaries in potential litigation.

6 7. To understand the damage done by Defendant Rule's conduct in concert with attorney Jon
7 Drucker it is important to understand some of the details of the dispute that are generally known to the
8 public. These details include:

- 9
- 10 a. The Becker Development agreement was adopted via ordinance by the prior City Council in fall
11 of 2022 (hereafter THE ORDINANCE). A lawsuit was filed by a non-profit organization
12 challenging THE ORDINANCE. The general election in November of 2022 resulted in
13 replacement of 3 of the 4 City Council members who had voted to approve THE ORDINANCE.
- 14
- 15 b. The City Attorney placed the lawsuit by the non-profit organization on a closed session agenda
16 for the first meeting of the newly elected City Council (in December of 2022).
- 17
- 18 c. Prior to the first of three closed session meetings concerning THE ORDINANCE, the City of
19 Ojai was notified that a referendum challenging THE ORDINANCE had gathered the required
20 number of signatures.
- 21
- 22 d. California Election Code section 9237 provides that if the required number of signatures is
23 obtained ... "the effective date of the ordinance shall be suspended and the legislative body
24 shall reconsider the ordinance." Therefore, the City Attorney notified the City Council, that, as
25 a matter of law, the Council had a mandatory duty to reconsider THE ORDINANCE. The City
26 Council had the option to vote to rescind THE ORDINANCE or if it did not vote to rescind,
27 THE ORDINANCE would be presented to the voters for approval or rejection on a future ballot.
- 28

- 1 e. The assertion that any City Councilmember introduced discussion of THE ORDINANCE
2 (including the risks associated with the developers threat of litigation) at any of the three closed
3 sessions is false. The topic (the pros and cons of rescinding the ordinance) was introduced by
4 City Staff and specifically the City Attorney pursuant to Election Code section 9237.
5
6 f. During the prior City Council's deliberations of THE ORDINANCE, the Developer (through its
7 attorney) repeatedly threatened to sue the City of Ojai if the City denied the project. Therefore,
8 the Developer's threat of litigation needed to be assessed as part of the mandatory obligation to
9 reconsider the Ordinance under Election Code section 9237 because a vote to rescind THE
10 ORDINANCE could trigger the Developer's threat to sue the City of Ojai.
11
12 g. The City Attorney made all decisions concerning how the closed session discussion was
13 described on the agenda and what should be reported out from closed session. I provided no
14 input concerning the agenda for any of the three closed sessions meetings or input on what
15 should be reported out.
16

17 8. Based upon public comments and social media posts Councilmember Rule disclosed
18 confidential information discussed in closed session to several members of the Ojai Valley Democratic
19 Club prior to the January 24, 2023 City Council meeting (the Ojai Valley Democratic Club is a private
20 club with no connection with or authority from, the Democratic Party), including attorney Jon Drucker.
21

22 9. On January 24, 2023 at a public meeting of the City Council, Councilmember Rule
23 attempted to disclose confidential information she learned in closed session. The City Attorney
24 instructed that the disclosure Councilmember Rule proposed would violate the law (the Brown Act).
25 Councilmember Rule next made a motion to the members of the City Council to waive confidentiality
26 of the closed session meetings concerning THE ORDINANCE. There was no second to the motion and
27 it failed.
28

1 10. During public comment portion of the Ojai City Council meeting on January 24, 2023, a
2 resident of the City Ojai, Robin Gerber, disclosed information that she had learned about topics
3 discussed in closed session, despite the fact that she was not present at the closed session meetings and
4 had no legal basis to have learned the information discussed in closed session. The City Attorney
5 instructed Ms. Gerber that the disclosure of matters discussed in closed session was a violation of the
6 Brown Act. Ms. Gerber made the disclosure despite the warning of the City Attorney.

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

13
14 12. Since the January 24, 2023 City Council meeting and the public publishing of the Drucker
15 letter, the Ventura County District Attorney has issued a letter to Councilmember Rule advising her that
16 the disclosures she made violated the confidentiality of closed session provisions of the Brown Act and
17 that her conduct in disclosing closed session discussions did not meet any exceptions to Brown Act
18 confidentiality requirements and were therefore illegal.

19
20 13. General disclosure of the confidential closed session communications to the public
21 resulted in the Developer (the City's potential adversary in a future litigation) receiving otherwise
22 confidential information to the great damage and detriment of the City's legal position should the
23 Developer eventually engage in litigation or should the City attempt to negotiate a new and different
24 development agreement.

25
26 14. Councilmember Rule has repeatedly stated that her disclosure of information from closed
27 session was legal and justified (incorrectly asserting that the public had a right to know).
28 Councilmember Rule and Jon Drucker have repeatedly asserted that the information that they disclosed

1 from closed session is not confidential because it falls outside the agenda description for closed session.
2 This position is contrary to fact and law and is in direct contradiction to the District Attorney's assertion
3 that Councilmember Rule's disclosure was not permitted and did not fall within exceptions to Brown
4 Act confidentiality rules.

5 15. In my discussions with City Staff since January 24, 2023 there is no question that the
6 City's use of closed session has been curtailed and reduced because of the threat that Councilmember
7 Rule will disclose closed session discussions to members of the Ojai Valley Democratic Club, members
8 of the public, or the City's potential adversaries concerning issues that could lead to litigation and/or
9 negotiations.
10

11 16. I believe that the Ojai City Council has been materially and substantially injured by
12 Councilmember Rule's and her attorney Jon Drucker's disclosure of confidential information and Ms.
13 Rule's continuing threat of breaches of confidentiality.
14

15 17. Maintaining strict confidentiality of closed session discussions promotes responsible
16 oversight of taxpayer dollars on such things as the City of Ojai's negotiating positions with property
17 owners, and litigants. Securing the best deal for Ojai residents in negotiations is much more difficult if
18 the City's negotiating position and strategy (including perceived strengths and weaknesses) are known
19 by the potential adversary. Making these decisions in closed session helps decision-makers serve their
20 communities by being careful stewards of public resources.
21

22 18. Whenever litigation is at issue the City of Ojai should at least consider an effort to avoid
23 the expense of litigation through negotiation. The threat that Councilmember Rule will leak negotiating
24 strategies and positions concerning litigation strengths and weaknesses weighs against holding closed
25 session and damages the prospect for negotiation as an option to litigation — something that the City of
26 Ojai and Ojai tax payers cannot afford, especially in these difficult economic times.
27
28

1 19. It is also possible that Councilmember Rule's disclosure of confidential information was
2 an effort to curry favor with the Developer. This type of leak is a breach of Councilmember Rule's legal
3 and ethical responsibilities to her constituents. The potential to torpedo policy objectives of the majority
4 of the City Council on matters where Councilmember Rule disagrees is another reason the City of Ojai
5 needs to consider avoiding closed session. Again, this damages the City and its residents by reducing
6 the usefulness and effectiveness of closed sessions, an important tool of government.

7
8 20. All of these disadvantages and injuries are triggered by Councilmember Rule's failure to
9 maintain confidentiality of closed session and the continued threat that she and her attorney Jon Drucker
10 will disclose confidences should another situation arise in which Councilmember Rule disagrees with
11 the policy or course of action taken by the City Council majority.

12
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14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct. Executed this 8th day of August, 2023 in Oxnard California.

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18 _____
19 Andrew Whitman
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