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January 24, 2023

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

Re: City Council Closed Sessions and the Duty of Disclosure

Dear Mr. Summers:

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

You are incorrect.

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

STATEMENT OF FACTS

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

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

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

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

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

Ojai Valley News note: According to the Public Information Office of the City of Ojai, no filing fees were charged or collected related to the referendum petition.

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

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

CLOSED SESSION

1. **Conference with Legal Counsel; Existing Litigation (Gov. Code § 54956.9(d)(1))**
   The City Council finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation.
   Case Name: Simply Ojai v. City of Ojai, et al.; Ventura County Superior Court Case No. Pending Assignment

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

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

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

[2] Given that the almost exclusive activity of Mindful Citizen aka Simply Ojai is action to ***affect legislation***, it is an illegitimate "charity" and should lose its nonprofit charter and ability to operate.
See https://www.irs.gov/charities-non-profits/measuring-lobbying-substantial-part-test

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUTORY AUTHORITIES

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

> (a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section …54956.9…to a person not entitled to receive it….
>
> (b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body…to meet lawfully in closed session under this chapter.
>
> (c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including but not limited to:
>
> > (3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury.
> >
> > * * *
>
> (e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:
>
> > (1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body….
> >
> > (2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.
> >
> > (3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

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

(a) Nothing in this chapter shall be construed to prevent a legislative body..., based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation *when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.*

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

* * *

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

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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