

1 Thomas B. Brown (State Bar No. 104254)
E-mail: tbrown@bwslaw.com
2 Mark. J. Austin (State Bar No. 2088880)
E-mail: maustin@bwslaw.com
3 BURKE, WILLIAMS & SORENSEN, LLP
1851 East First Street, Suite 1550
4 Santa Ana, California 92705
Tel: 949.863.3363 Fax: 949.863.3350

Filing Fee Exempt Pursuant to
Government Code § 6103

5 ANAHEIM CITY ATTORNEY'S OFFICE
6 ROBERT FABELA, CITY ATTORNEY
Gregg M. Audet (State Bar No. 158682)
7 gaudet@anaheim.net
200 S. Anaheim Boulevard, Suite 356
8 Anaheim, California 92805
Tel: 714.765.5169 Fax: 714.765.5123

9 Attorneys for Respondent/Defendant
10 CITY OF ANAHEIM

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE
14

15 PEOPLES HOMELESS TASK FORCE
16 ORANGE COUNTY,

17 Petitioner/Plaintiff,

18 v.

19 CITY OF ANAHEIM and DOES 1 through
20 10,

21 Respondent/Defendant,

22 SRB MANAGEMENT, LLC,

23 Real Party in Interest
24

Case No. 30-2020-01135406-CU-WM-CJC
(consolidated with Case No. 30-2020-
01174133-CU-WM-CJC)

Assigned for All Purposes to:
Hon. David A. Hoffer, Dept. C42

**RESPONDENT/DEFENDANT CITY OF
ANAHEIM'S OPPOSITION TO MOTION
FOR WRIT OF MANDATE AND
DECLARATORY RELIEF**

**[Filed Concurrently with Declarations of
Robert Fabela, Steve Norris, and Theresa Bass;
Evidentiary Objections; Objection to and
Motion to Strike Moreno and Zapata
Declarations; Notice of Lodging of Video
Evidence; and Deemed Admissions]**

Hearing:

Date: February 14, 2022
Time: 3:30 p.m.
Dept.: C42

Action Filed: February 28, 2020

28 OAK #4862-1516-9033 v7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
A. The Beginning of Negotiations Regarding the Stadium Site	2
B. The Alleged “Negotiating Team”	3
C. The Closed Session Meetings	4
D. The Approval of the Original Stadium Site Purchase Agreement	7
E. The Approval of the Amended Agreement in September of 2020	8
F. Procedural Background	9
III. LEGAL ARGUMENT	9
A. The City Did Not Violate Section 54956.8, Authorizing Closed Sessions for Real Property Negotiations.....	9
1. The evidence establishes that the City Council did not discuss the merits of a sale versus lease in closed session, or “decide” on a sale	11
2. Some discussion of a “sale” would have been entirely lawful under Section 54956.8 because the issue is inextricably bound up with the “price and terms of payment”	12
3. Section 54960.1 does not authorize nullification for violations of Section 54956.8.....	15
4. The evidence and law refute Petitioner’s argument that the decisions in December 2019 and September 2020 were “rubber stamps” of “decisions” previously made in closed session(s)	15
B. Petitioner’s “Negotiating Team” Arguments Must Be Rejected	16
1. The City Council did not form any “negotiating team” subject to the Brown Act; the City’s “team” of negotiators was an ever-changing group of City staff consulted as needed	16
2. Petitioner has presented no evidence that the alleged “Negotiating Team” ever met or took action.....	18
C. Petitioner’s “Serial Meetings” Argument Fails.....	19
1. The Zapata and Moreno declarations establish only that the City conducted individual briefings, which Section 54952.2 expressly authorizes	19
2. Section 54960.1 does not authorize nullification for violations of Section 54952.2.....	20
3. No “action” was taken at any alleged “serial meeting”	20
D. Petitioner’s Arguments Concerning the City’s Closed-Session Agendas Must Also Be Rejected.....	20
1. Section 54960.1 does not authorize nullification for violations of Sections 54954.3, 54957.7 or 54956.8.....	20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS
(continued)

	Page
2. Section 54954.5 immunizes the City from liability because it used the Legislature’s “safe harbor” agenda language.....	20
E. The City Complied With Section 54954.3, Executive Order 29-20, and Article I, Section 3 of the California Constitution, With Respect to the September 29 and October 6, 2020 Meetings	23
1. Section 54960.1 does not authorize nullification for these “violations”	23
2. The City accepted all public comments both before and during the hearings; Petitioner has no evidence to the contrary.....	23
F. Petitioner’s Nullification Claim Fails Because the Public Hearings in December 2019 and September of 2020 Cured Any Violations from Any Prior Closed Session, and Petitioner Suffered No Prejudice	24
G. The Court Should Dismiss or Deny the First Petition As Moot	26
IV. CONCLUSION	26

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Federal Cases

Immigrant Legal Resources Center v. City of McFarland
(9th Cir. 2020) 827 Fed.Appx. 74925

SPRAWLDEF v. City of Richmond
(N.D. Cal. 2020) Slip Copy, 2020 WL 473480724, 25

State Cases

Bell v. Vista Unified School Dist.
(2000) 82 Cal.App.4th 67210

BRV, Inc. v. Superior Court
(2006) 143 Cal.App.4th 74224

Californians Aware v. Joint Labor/Management Benefits Corn.
(2011) 200 Cal.App.4th 97217

Castaic Lake Water Agency v. Newhall County Water Dist.
(2015) 238 Cal.App.4th 119621, 22

Coalition of Labor, Agriculture & Business v. County of Santa Barbara Bd. of Supervisors
(2005) 129 Cal.App.4th 20515

Cohan v. City of Thousand Oaks
(1994) 30 Cal.App.4th 54725

Day v. City of Los Angeles
(1961) 189 Cal.App.2d 415.....9

Epstein v. Hollywood Entertainment Dist. II Business Improvement Dist.
(2001) 87 Cal.App.4th 86217

Fowler v. City of Lafayette
(2020) 46 Cal.App.5th 36018, 20, 25

Frazer v. Dixon Unified School Distr.
(1993) 18 Cal.App.4th 78117, 26

Galbiso v. Orosi Pub. Util. Dist.
(2008) 167 Cal.App.4th 106324

Galbiso v. Orosi Public Utility Dist.
(2010) 182 Cal.App.4th 65225

1	<i>Hunt v. Mayor and Council of City of Riverside</i>	
2	(1948) 31 Cal.2d 619	9
3	<i>Internat. Longshoremen’s Warehousemen’s Union v. Los Angeles Export</i>	
4	<i>Terminal, Inc.</i>	
	(1999) 69 Cal.App.4th 287	17
5	<i>Joiner v. City of Sebastopol</i>	
6	(1981) 25 Cal.App.3d 799.....	17
7	<i>Kleitman v. Superior Court</i>	
	(1999) 74 Cal.App.4th 324	14
8	<i>Lotus Car Limited v. Municipal Court</i>	
9	(1968) 263 Cal.App.2d 264.....	9
10	<i>Martis Camp Community Association v. County of Placer</i>	
11	(2020) 53 Cal.App.5th 569	25
12	<i>McKee v. Los Angeles IMPACT</i>	
	(2005) 134 Cal.App.4th 354	17
13	<i>Olson v. Hornbrook Community Services Dist.</i>	
14	(2019) 33 Cal.App.5th 502, 517	<i>passim</i>
15	<i>Pacific Shore Funding v. Lozo</i>	
16	(2006) 138 CA 4th 1342	25
17	<i>Roberts v. City of Palmdale</i>	
	(1993) 5 Cal.4th 363	14
18	<i>Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors</i>	
19	(1968) 263 Cal.App.2d 41.....	14
20	<i>San Diegans for Open Government v. City of Oceanside</i>	
21	(2016) 4 Cal.App.5th 637, 644-645	21, 22
22	<i>Shapiro v. Board of Directors</i>	
	(2005) 134 Cal.App.4th 170	24
23	<i>Shapiro v. San Diego City Council,</i>	
24	96 Cal.App.4th 904	13
25	<i>Sierra Watch v. Placer County</i>	
	(2021) 69 Cal.App.5th 1	15, 26
26	<i>Taxpayers for Livable Communities v. City of Malibu</i>	
27	(2005) 126 Cal.App.4th 1123	17
28		

1 *Townley v. BJ's Restaurants, Inc.*
2 (2019) 37 Cal.App.5th 17925

3 *Wilson & Wilson v. City of Redwood City*
4 (2011) 191 Cal.App.4th 155926

5 **State Statutes**

6 Brown Act *passim*

7 Civil Code § 322513

8 Code of Civil Procedure § 10919

9 Evidence Code § 66416, 24

10 Gov. Code

11 § 60667

12 § 522017

13 § 522017, 8

14 § 52201(a)7

15 § 54952 (b)17

16 § 54952.219, 20

17 § 54952.2(b)(2)19, 20

18 § 54952.618

19 § 5495311, 15

20 § 54954.220

21 § 54954.320, 23, 24

22 § 54954.54, 20, 21, 22

23 § 54954.5(b)21

24 § 54956.8 *passim*

25 § 54957.720

26 § 5496026

27 § 54960.1 *passim*

28 § 54960.1(e)24

§ 54960.226

§ 549635

Public Records Act9

23 **Regulations**

24 Governor Newsom’s Covid-related Executive Order N-29-208, 23

25 **Other Authorities**

26 73 Ops.Cal.Atty.Gen. 1 (1990) (Opening Brief).....22

27 93 Ops. Cal. Atty. Gen. 5113

28

1 94 Ops. Cal. Atty. Gen. 82.....13
2 California Constitution Article I, Section 323, 24
3 California Constitution Article I, Section 3(b).....23, 24
4 First Amendment.....2
5 Second Amendment2
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 By its “Motion for Writ of Mandate and Declaratory Relief,” Petitioner asks this Court to
3 nullify, pursuant to Government Code section 54960.1, the publicly-made decisions of the
4 Anaheim City Council—first made in December of 2019 and then again in September of 2020—
5 to sell Angel Stadium. After two years of litigation, in which Petitioner’s counsel made multiple
6 claims of “smoking gun” documents that have failed to materialize, Petitioner’s extreme request
7 is now based on only the following unsupported arguments:

- 8 (1) that the City Council allegedly discussed whether to sell the Stadium in closed sessions
9 between August and December 2019, and allegedly “made the decision” to sell the
10 Stadium in closed-session meetings in August and September of 2019;
11 (2) that the City Council allegedly “created” a “Negotiating Team” for the sale, which
12 purportedly met in violation of the Brown Act;
13 (3) that unspecified “staff briefings” of Council members in 2019 concerning the Stadium
14 negotiations allegedly constituted illegal “serial meetings”;
15 (4) that the agendas for four closed sessions between August and December of 2019 were
16 inadequate because (a) they did not expressly mention that the City was considering
17 selling the Stadium, and (b) they did not explicitly name either the ultimate purchaser,
18 SRB Management Co., LLC (“SRB”), or the City’s alleged “Negotiating Team”; and
19 (5) that the City allegedly failed to allow the public to “directly address” the Council at the
20 hearing on the amended agreement in September of 2020, during the Covid lockdown.

21 As set forth in this opposition brief, Petitioner’s arguments are entirely specious, relying
22 on speculation, misstatements of the evidence, deliberate omission of contrary evidence, and
23 unsupported legal theories. In fact, Petitioner’s lead argument—that a purported “decision” to sell
24 the property was made in closed-session meetings in August and September of 2019—is
25 ***contradicted by the public statements of Petitioner’s own declarant, Councilmember Jose***
26 ***Moreno*** (“Moreno”). Although Petitioner provided a declaration of Moreno stating that such a
27 “decision” to “sell” was made in August and September of 2019, ***Moreno said the exact opposite***
28 ***in his video-recorded statements at the City Council meeting of December 20, 2019, when the***

OAK #4862-1516-9033 v7

1 initial purchase agreement was first approved. There, he acknowledged (among other things
2 supporting the City’s case) that the December 20th meeting was the “*first time*” the Council had
3 discussed a “*sale*” of the property in any context, and that, in closed sessions, the City Attorney
4 “*was very good in making sure we focused on the price and terms of payment per the Brown*
5 *Act.*” (Exh. 32, pp. 1-2 [emphasis added]; Exh. 33 [video clip].) Put simply, Petitioner’s case relies
6 on demonstrably false testimony, among its other factual and legal shortcomings. For these and
7 other reasons forth herein, Petitioner’s request for relief should be denied in its entirety.

8 **II. STATEMENT OF FACTS**

9 **A. The Beginning of Negotiations Regarding the Stadium Site**

10 At the center of this case is the “Stadium Site” property, which is owned by the City and
11 has been leased to the Angels baseball club since 1996. (Declaration of City Attorney Robert
12 Fabela in Support of City’s Brief (“Fabela Decl.”), ¶¶ 3-4; Petition, ¶ 1.) The Stadium Site
13 consists of approximately 150 acres, containing Angel Stadium, the Grove of Anaheim, and their
14 surrounding parking areas and related properties. (Fabela Decl., ¶ 3; Petition, ¶¶ 3, 10.)

15 Under the current lease of the Stadium Site, the Angels had a right to terminate the lease
16 upon providing 12 months’ notice to the City, within certain parameters. (Exh 1, pp. 11-12, § 5
17 [Lease], and Exh. 2, p. 1, § 1 [First Amendment to Lease]; Fabela Decl., ¶ 4.) In October of 2018,
18 the Angels provided such a notice, electing to terminate a year later. (Exh. 3, p. 1, § 1 [Second
19 Amendment to Lease]; Fabela Decl., ¶ 4.) In January of 2019, the City and the Angels extended
20 the termination right to the end of 2020. (Exh. 3, p. 1, § 2; Fabela Decl., ¶ 4.)

21 Preparations regarding the next phase of the Angels’ use of the Stadium began shortly
22 after the notice of termination. However, discussions between the parties remained preliminary
23 until well into 2019, with the City waiting to receive a concrete proposal from the Angels. (Fabela
24 Decl., ¶¶ 5-6.) During that period, the chief individual who had discussions with the Angels on
25 behalf of the City was City Manager Chris Zapata (“Zapata”). (*Id.* at ¶ 7.) However, Zapata
26 would also consult with and involve a number of other City staff members as necessary according
27 to their expertise, including City Attorney Robert Fabela. (*Ibid.*) During this initial period, which
28 lasted through *November of 2019*, the Angels provided no specific proposal regarding the

1 Stadium Site, and it was unknown what form of transaction they would ultimately offer, whether
2 it be a sale, a lease, or something else. (*Id.* at ¶¶ 6-7.)

3 For its part, the City was preparing for the various options by conducting its due diligence
4 on, among other things, the value of the property. For instance, at a public meeting in February of
5 2019, the City Council authorized Zapata to obtain a fair market value appraisal of the Stadium
6 Site, for which the City hired Steve Norris of Norris Realty Advisors. (Exh. 4, pp. 14-16; Fabela
7 Decl., at ¶ 8: Declaration of Steve Norris in Support of City’s Brief (“Norris Decl.”), ¶¶ 3-4.)

8 **B. The Alleged “Negotiating Team”**

9 Petitioner alleges that, at the City Council meeting on June 4, 2019, Mayor Harry Sidhu
10 “called for formation of a Negotiating Team to handle lease negotiations with the Angels.”
11 (Opening Brief, p. 8:11-14.) In support of this position, Petitioner cites website links to the 9-
12 hour-long video of, and the minutes of, the meeting, with no specific page numbers or video
13 timestamps. (Opening Brief, p. 8:11-14.) In actuality, the Mayor’s comment was not specific to a
14 lease (or any type of transaction), but, as the Mayor put it, related to “the future of baseball in
15 Anaheim.” (Exh. 6, p. 2; Exh. 5, p. 18.) Moreover, as noted above, even before that meeting,
16 discussions with the Angels had already begun, led by Zapata for the City, along with other staff
17 as necessary. (Exh. 6, pp. 1-2; Exh. 5, p. 18; Fabela Decl., ¶¶ 5-7, 9-10.) Indeed, the Mayor’s
18 suggestion regarding a “lead negotiating team” was made in response to a report by Zapata on the
19 status of those discussions. (Exh. 6, pp. 1-2; Exh. 5, p. 18; Fabela Decl., ¶ 10.)

20 Nevertheless, neither the Mayor nor the City Council took any action regarding the
21 creation of an alleged “team” at the meeting of June 4, 2019. (Fabela Decl., ¶ 10.) Indeed, at a
22 later meeting of June 18, 2019, Councilmember Moreno requested that he and Councilmember
23 Barnes also be included on any alleged “team.” However, when Moreno failed to obtain the votes
24 to place that item on a future agenda, *he stated that he would simply self-appoint himself and*
25 *Ms. Barnes to the purported “team,”* stating that he had the right to do so if the Mayor did. (Exh.
26 8, pp. 1-2; Exh. 7, p. 38; Fabela Decl., ¶ 11.) As with the Mayor’s comments on June 4th,
27 however, this had no formal effect.

28 At the City Council meeting of July 16, 2021, the issue of potentially appointing a

1 Councilmember to participate in negotiations was scheduled for discussion. (Exh. 10, p. 7; Exh.
2 11; Fabela Decl., ¶ 12.) At that meeting, the ultimate motion and vote of the Council on the issue
3 of an alleged “negotiating team” were to accept the stated recommendation in the staff report on
4 the item, which was simply to appoint one of the City Council’s members to *“work in*
5 *conjunction with [unspecified] City staff as the exclusive Council representative for*
6 *negotiations,”* for which the Council chose Mayor Sidhu. (Exh. 11; Exh. 12, p. 16; Exh. 13, pp.
7 59:22 – 63:2; Fabela Decl., ¶¶ 12-13.) Indeed, the staff report stated that, in addition to a Council
8 representative, the “team” would consist of *unspecified* “members of the City’s executive team,
9 as well as other specialized consultants,” without limiting it to specific individuals. (Exh. 11.)

10 Thus, neither the staff report, the Council discussions, nor the actual Council motion and
11 vote said one word about *“creating”* a “negotiating team,” let alone a body of specific individuals
12 who would comprise that “team.” (Exh. 11; Exh. 12, p. 16; Exh. 13, pp. 59:22 – 63:2.) In fact, the
13 staff involved in the negotiations was never a formal, identified group. Rather, both prior to and
14 after July 16th, the “team” was simply City staff—Zapata, with various other staff members and
15 consultants getting involved as needed based on their expertise, including the City Attorney, with
16 the Mayor also occasionally involved on policy issues. (Fabela Decl., ¶¶ 9-13.)

17 **C. The Closed Session Meetings**

18 In 2019, the City Council met in closed session to discuss the negotiations regarding the
19 Stadium Site—on August 13, September 24, November 19, and December 3, 2019. (Fabela Decl.,
20 ¶ 14; Petition, ¶ 16.) Per Section 54954.5 of the Brown Act, the closed-session agendas read:

21 **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

22 (Section 54956.8 of California Government Code)

23 Property: 2000 E. Gene Autry Way and 2200 E. Katella Ave., Anaheim, CA 92806;

24 APN Nos. 232-011-02, -06, -35, -36, -37, -38, -39, -40, -41, -42, -43, -44, -47, -48, -50

Agency Negotiator: Chris Zapata, City Manager

Negotiating Parties: Angels Baseball, LP; City of Anaheim

Under Negotiation: Price and Terms of Payment

25 (Exhs. 14, 20, 22, and 25; Fabela Decl., ¶ 14; Petition, ¶ 16.)

26 With its brief, Petitioner has provided two declarations— one of former (and disgruntled)
27 City Manager Zapata, and one of current City Councilmember Jose Moreno—that purport to state
28 what happened in certain of those closed sessions. In its accompanying objection, the City

1 explains why these declarations are not only inadmissible, **but also highly improper and should**
2 **be stricken**, in that they violate the sacrosanct rule against the disclosure of closed-session
3 discussions without approval from the legislative body. (Gov. Code § 54963; Fabela Decl., ¶ 15.)

4 Regardless, the declarations are also factually **wrong**. Zapata states that, in the closed-
5 session meeting of “August 23, 2019,” “[t]he City Councilmembers discussed whether to sell or
6 continue the lease during the closed session and made the decision to sell the property to Angels
7 Baseball during that closed session.” (Zapata Decl., ¶ 6.) In a contradictory statement, Moreno
8 states that, in that same meeting (of “August 23”), the “Councilmembers discussed whether to sell
9 or continue the lease during the closed session and, in expressing strong interest in selling the
10 property to Angels Baseball, discussed the value of the then current appraisal to determine the
11 value of the property in a for sale transaction.” (Moreno Decl., ¶ 6.) Zapata and Moreno then
12 state: “At the conclusion of the closed session, City Council asked City staff to obtain an updated
13 appraisal reflecting a sale instead of a lease” (Zapata Decl., ¶ 6; Moreno Decl., ¶ 6.)

14 With respect to the September 24th meeting, Zapata and Moreno claim that the “City
15 Council discussed and deliberated on the information provided in the updated appraisal, **provided**
16 **approval to sell** the property to Angels Baseball, and authorized the City’s Negotiating Team to
17 **conduct further negotiations** consistent with City Council’s decision to sell the property.”
18 (Zapata Decl., ¶ 9 [emphasis added]; Moreno Decl., ¶ 9 [same].)

19 These improper statements of Zapata and Moreno, in addition to being so unspecific as to
20 lack foundation, are also false. To begin with, there was no closed-session meeting—or any City
21 Council meeting—on “August 23, 2019.” (Fabela Decl., ¶ 19.) The closest meeting at which the
22 Stadium Site was on the closed-session agenda was August 13, 2019. (*Ibid.*; Exh. 14, p. 2.) At
23 that meeting, and at every other closed-session meeting on the transaction (including the meeting
24 of September 24, 2019), there was **no discussion** of the **merits** between a sale or a lease, or any
25 discussion of whether a sale or lease would be the ultimate form of the transaction, or any
26 “decision” or vote on what the form of the transaction would be. (Fabela Decl., ¶ 20.)¹ On the

27 _____
28 ¹ Mr. Fabela properly obtained City Council approval before submitting this declaration regarding
the discussions in closed session. (Fabela Decl., ¶ 16.)

1 contrary, both before and after those meetings, both a sale and a lease were still potential options,
2 with the ultimate form of the transaction still unknown. (*Ibid.*)

3 Indeed, the declarations make no sense regarding an alleged “approval,” for there was no
4 proposal from the Angels that could be “approved”—on the contrary, it was still in negotiations,
5 as both declarants acknowledge. (Fabela Decl., ¶ 20; Zapata Decl., ¶ 9; Moreno Decl., ¶ 9.)
6 Ultimately, the City did not receive a specific proposal from the Angels until a meeting between
7 the Angels and the City’s negotiators on **November 15, 2019**, where the Angels first presented a
8 proposal to purchase the Stadium Site to City staff. (Fabela Decl., ¶¶ 5-6.) Until that date, it was
9 unknown which specific type of transaction the Angels would propose. (*Ibid.*)

10 Most likely, Zapata and Moreno are intentionally conflating the issue of obtaining a fair
11 market value appraisal of the property with “deciding” on a sale. At both the August 13 and
12 September 24, 2019 closed-session meetings, the City Council discussed the appraisal of the
13 property with its appraiser (Steve Norris), including the need to obtain the best possible price,
14 regardless of the form of transaction. (Fabela Decl., ¶ 21.) However, at no point was Mr. Norris
15 ever directed to “change” his appraisal from a “lease” appraisal to a “sale” appraisal. (Norris
16 Decl., ¶ 6.) On the contrary, Mr. Norris’s assignment was always to assess the fair market value
17 of the property in *fee*, which is typical for transactions of this nature, whether a sale or a lease is
18 contemplated. (Norris Decl., ¶¶ 4-6.)

19 Regardless, the Court need not simply take the City’s word on these points, for Council-
20 member Moreno himself—one of Petitioner’s own declarants—**said the exact opposite of his**
21 **declaration at the City Council meeting of December 20, 2019**, where the initial Agreement was
22 approved. At that meeting, in direct contravention of his current testimony that the City Council
23 allegedly met in closed session and “decided” to sell the property rather than lease it, he stated:

24 This is the first public discussion—the first discussion I should say—that the City
25 Council has actually had on the actual deal points. ***Because in closed session the***
26 ***City Attorney was very good in making sure we focused on the price and terms***
27 ***of payment per the Brown Act.*** So this is the first time we’ve had a chance to
28 discuss, deliberate, understand fully together in public—actually just with each
other—the major deal points here. And that’s why my, my thinking right now is,
okay, what are we binding ourselves to today? Because it’s our first discussion
and that’s why I think for me, I support the idea of postponing for that reason
because this is the first time we’ve talked about these major, major deal points

1 and I don't see a need to rush this discussion. And it is unfortunate that we did
2 not receive a proposal until just about Thanksgiving time. . . .

3 ***So my understanding of what we're voting on truly today from staff is we're***
4 ***agreeing to sell the land first and foremost and we've not had that discussion,***
5 ***colleagues. Do we want to sell the land? Do we want to lease the land? I don't***
6 ***think we were expecting the Angels to offer a purchase of the land.*** And I did
7 say—somebody commented—I did say in some of my forums that I'm open to
8 selling the land. But I was, we didn't have the appraisals so I'm basing it on past
9 appraisals, what...consulting with realtors and what not—what it might be worth.

10 ***So for me, it seems today is that we first and foremost have to agree, if we do***
11 ***decide to move today, whether we want to sell the land or lease the land.***

12 (Exh. 32, pp. 1-2 [emphasis added]; Exh. 33 [video].)²

13 **D. The Approval of the Original Stadium Site Purchase Agreement**

14 On December 6, 2019, the City published notice of the City's upcoming meeting of
15 December 20, 2019, at which the City would consider staff's recommendation to *sell* the Stadium
16 Site to Real Party in Interest SRB Management Co., LLC ("SRB")—an entity formed by the
17 Angels.³ (Exh. 26; Declaration of Theresa Bass in Support of City's Brief ("Bass Decl."), ¶ 3.)
18 Further, as required by Government Code sections 52201 and 6066, on that same date (December
19 6, 2019), ***the City made available for public inspection the draft Agreement***, as well as a Section
20 52201 "economic opportunity" summary report describing the proposed transaction. (Exh. 27;
21 Bass Decl., ¶ 4.)⁴ On December 13, 2019, the City again published notice of the December 20th
22 meeting and the proposed sale that would be considered. (Exh. 26; Bass Decl., ¶ 3.)

23 On December 20, 2019, the City conducted the long-advertised public hearing on the
24 proposed sale, the specifics of which had been public since at least December 6th. (Fabela Decl., ¶
25 25; Exhs. 28 and 29; Bass Decl., ¶ 5; Exhs. 26 and 27.) At that hearing, all interested persons
26 could—and over 70 people did—express their views for and against the sale, and the process

27 ² August 27, 2019, the City Council held an open meeting on the negotiations (Exh. 16 [agenda].)
28 At that meeting, Mayor Sidhu explicitly stated ***that the City would consider both a sale and a***
lease of the property. (Exhs. 18, p. 19; Exh. 19, pp. 3:15-17.) ***Councilmember Moreno himself***
then echoed this sentiment. (Exh. 18, p. 19; Exh. 19, pp. 5:6-9, 6:23-25.)

³ Notably, SRB as the purchasing entity was not formed ***until November 22, 2019***, and thus did
not exist prior to that date, during any of the prior negotiations or closed-session meetings (Exhs.
23 and 24; Fabela Decl., ¶ 28.) On the contrary, the City's negotiations prior to the December 20,
2019 approval of the initial sale agreement were with the President and General Counsel of the
Angels, and there was no practical distinction made between the Angels and SRB. (*Ibid.*)

⁴ Government Code section 52201 requires cities to issue a report, prior to approval of certain
real-property transactions, describing various details of the transaction. (Gov. Code § 52201(a.)

1 leading to its proposal. (Exh. 30, pp. 4-10; Fabela Decl., ¶ 26; Bass Decl., ¶ 5.) In fact,
2 Petitioner’s own Chief Executive Officer (Michael Robbins), and its Secretary and agent for
3 service of process (David Duran), appeared and testified against the sale. (Exh. 31, pp. 18-26;
4 Exh. 30, pp. 7, 8; Exh. 9, p. 2 [Petitioner’s formation documents]; Fabela Decl., ¶ 26; Bass Decl.,
5 ¶ 5; Deemed Admissions, Sect. A.) Ultimately, after hearing over four hours of public input, and
6 spending several more hours deliberating, the Council voted to approve the sale. (Exh. 30, p. 20;
7 Exhs. 34 and 35; Bass Decl., ¶ 5; Fabela Decl., ¶ 27; Deemed Admissions, Sect. A.)

8 **E. The Approval of the Amended Agreement in September of 2020**

9 Petitioner filed this lawsuit—challenging the original Agreement—on February 28, 2020.
10 Thereafter, however, the City Council approved a new, Amended and Restated Purchase and Sale
11 Agreement (the “Amended Agreement”) at its open and public meeting of September 29-30,
12 2020. (Exh. 40, pp. 5-6; Exh. 41, pp. 10-34; Exhs. 42 and 43.) The approval of this Amended
13 Agreement *superseded the approval of the original Agreement, as stated in the agreement itself*,
14 and necessarily cured whatever alleged violations of the Brown Act Petitioner claims led to the
15 original approval (although the City vehemently disagrees that any such violations occurred).
16 (Fabela Decl., ¶ 29; Exh. 43, p. 4 [Section 1].)

17 The City published notice of the September 29, 2020 meeting, and made the Amended
18 Agreement available to the public in advance, along with a Section 52201 “economic
19 opportunity” report. (Bass Decl., ¶ 6; Exhs. 38 and 39.) The notice of the meeting was explicit
20 that the City was considering the *sale* of the Stadium. (Exh. 39.) Notably, no closed-session
21 meetings regarding the Amended Agreement were ever held. (Fabela Decl., ¶ 29.)

22 In compliance with Governor Newsom’s Covid-related Executive Order N-29-20, the City
23 held the September 29, 2020 public meeting via teleconferencing. (Exh. 40, p. 2; Bass Decl., ¶ 7
24 Fabela Decl., ¶ 30.) The City made the meetings accessible electronically to all members of the
25 public—live, online, and on local Cable Channel 3. (Bass Decl., ¶ 7; Fabela Decl., ¶ 30.)
26 Although the agenda “encouraged” the public to submit comments by 2:30 p.m., it also stated that
27 comments received after 2:30 p.m. would be distributed to the Council (Exh. 40, p. 2), which is
28 exactly what the City did, accepting *all* public comments (274 total) submitted both before and

1 during the meeting, and forwarding them the full City Council by e-mail, *including comments by*
2 *Petitioner’s own representative*. (Bass Decl., ¶¶ 7-8; Fabela Decl., ¶ 30; Exh. 41, pp. 23, 37-481).

3 The September 29th meeting on the item lasted approximately six hours, into the morning of
4 September 30th. (Bass Decl., ¶ 9; Fabela Decl., ¶ 30; Exh. 41, pp. 11-34.) Following the hearing,
5 the Council deliberated extensively and ultimately approved the sale. (Exh. 41, pp. 11-34.)

6 **F. Procedural Background**

7 On January 19, 2020, a month after the City approved the initial Agreement, Petitioner’s
8 counsel sent the City a “cure and correct” letter claiming that the City violated the Brown Act, per
9 Government Code section 54960.1. (Exh. 36; Bass Decl., ¶ 12.) The City responded in writing
10 that it had not violated the Act. (Exh. 37; Bass Decl., ¶ 12.) Petitioner then filed its initial Petition
11 on February 28, 2020.⁵ Petitioner served the City with its second “cure and correct” letter on
12 October 29, 2020, regarding the Amended Agreement. (Exh. 46; Bass Decl., ¶ 12.) The City
13 again responded, denying any violation, on November 25, 2020. (Exh. 47; Bass Decl., ¶ 12.) On
14 December 10, 2020, Petitioner filed its second Petition for Writ of Mandate, which seeks to
15 nullify the September 2020 decision to approve the Amended Agreement.⁶

16 **III. LEGAL ARGUMENT**

17 **A. The City Did Not Violate Section 54956.8, Authorizing Closed Sessions for**
18 **Real Property Negotiations**

19 Petitioner seeks to nullify the City Council’s approvals of the sale of the Stadium Site
20 under Government Code section 54960.1, which is the section of the Brown Act allowing for the
21 nullification remedy under certain circumstances.⁷ Petitioner’s first argument for this drastic

22 _____
23 ⁵ The Petition also seeks relief under the Public Records Act, which is not at issue here.

24 ⁶ Both the City’s answers include factual allegations that directly refute or establish defenses to
25 the allegations of the Petitions. Petitioner has not countervailed those allegations either by
26 submitting proof (evidence) or by filing a Replication. Under that circumstance, the allegations of
27 the Respondent’s Answer are deemed admitted, and are accepted by the Court as evidence and as
28 true. (See Code of Civil Procedure 1091; *Hunt v. Mayor and Council of City of Riverside* (1948)
31 Cal.2d 619, 623; *Lotus Car Limited v. Municipal Court* (1968) 263 Cal.App.2d 264, 268; *Day*
v. City of Los Angeles (1961) 189 Cal.App.2d 415, 418-419.) The City has filed an accompanying
“Facts Deemed Admitted By Petitioner” which lists the deemed admitted allegations

⁷ A petitioner seeking the nullification remedy under Section 54960.1 must prove (1) that a
legislative body violated one or more provisions of the Brown Act; (2) that there was an “action
taken” by the legislative body in connection with the violation (and thus something to nullify);

1 remedy is that the City Council allegedly discussed the merits of a sale versus a lease of the
2 Stadium Site in two closed sessions in August and September of 2019, in alleged violation of
3 Section 54956.8 (which authorize closed sessions for real-property negotiations). (Opening Brief,
4 pp. 9-11.) In support, Petitioner cites the above-referenced declarations of Zapata and Moreno,
5 which state that, at a closed-session meeting on “August 23, 2019” (a date on which *no* meeting
6 actually occurred), the City Council either “made the decision to sell” the property (Zapata Decl.,
7 ¶ 6), or merely “express[ed] strong interest in selling the property” (Moreno Decl., ¶ 6). The
8 declarations further state that, at the closed-session meeting of September 24, 2019, the “City
9 Council . . . provided approval to sell the property to Angels Baseball, and authorized the City’s
10 Negotiating Team to conduct further negotiations consistent with City Council’s decision to sell
11 the property.” (Zapata Decl., ¶ 9; Moreno Decl., ¶ 9.)

12 Although these improper declarations focus on the false allegation that an actual
13 “decision” to sell the property was made in closed session, Petitioner’s brief makes the broader
14 argument that the mere *discussion* of a sale violated the Act. Nevertheless, it is clear from the
15 undisputed evidence that no “decision” was reached in those closed sessions, for there was no
16 offer or agreement in front of the City Council to “approve.” (Fabela Decl., ¶¶ 20, 5-6.) Indeed,
17 Petitioner’s own declarations acknowledge that the whole transaction was still being negotiated
18 and the property was still being appraised (Zapata Decl., ¶ 9; Moreno Decl., ¶ 9), and Moreno
19 himself acknowledged at the December 20, 2019 meeting that that was the first time the Council
20 had considered a sale of the property. (Exh. 32, pp. 1-2; Exh. 33 [video].) Thus, the record clearly
21 shows that the City Council did not “decide” on or “approve” anything until December of 2019.

22 Regardless, Petitioner’s apparent theory is that the Brown Act’s authorization of closed
23 sessions for real property negotiations (Section 54956.8)⁸ did not allow the City Council to even

24 _____
25 and (3) that before commencing the action, plaintiff made a timely demand to cure or correct that
26 action, which the legislative body denied. (*Olson v. Hornbrook Community Services Dist.* (2019)
27 33 Cal.App.5th 502, 517; *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 684.)

28 ⁸ Section 54956.8 reads in relevant part:

Notwithstanding any other provision of this chapter, a legislative body . . . may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or

1 *discuss* a sale in closed session, without first deciding on a sale or a lease in open session.

2 (Opening Brief, pp. 9-11.) This argument fails for several reasons.

3 **1. The evidence establishes that the City Council did *not* discuss the**
4 **merits of a sale versus lease in closed session, nor “decide” on a sale**

5 First, Petitioner’s argument is based on evidence that is both improper and, more
6 importantly, false. As noted in the City’s separate evidentiary objections, the declarations of
7 Zapata and Moreno violate the rule that closed-session discussions are confidential and cannot be
8 disclosed absent approval from the legislative body. (Gov. Code § 54953.) Because that approval
9 was not given here (Fabela Decl., ¶ 15), the declarations are unlawful and must be stricken. In
10 any event, the declarations also (a) contain contradictory and clearly inaccurate facts, (b) are
11 based on inadmissible *hearsay*, and (b) are so unclear as to lack foundation.

12 Based on these fatal problems, Petitioner’s argument fails without even considering the
13 City’s evidence, for the declarations of Zapata and Moreno are simply inadmissible and non-
14 probative. Nevertheless, the City has submitted admissible contrary evidence, including a
15 declaration of City Attorney Robert Fabela, who (unlike Moreno and Zapata) obtained Council
16 approval to submit information regarding the closed-session meetings, as well as a declaration of
17 its appraiser, Steve Norris. To be clear, the City would prefer not to have to submit such evidence,
18 for it believes in the confidentiality of closed sessions. However, it was forced to do so by
19 Petitioner’s improper and unlawful declarations from Zapata and Moreno in this case.

20 The City’s evidence makes clear: At the closed-session meetings of both August 13 and
21 September 24, 2019, there was *no discussion* of the merits between a sale or a lease of the
22 Stadium Site, or any discussion whatsoever of whether a sale or lease would be the ultimate form
23 of the transaction, and certainly no “decision” or vote limiting the available options. (Fabela
24 Decl., ¶¶ 20.) On the contrary, the purpose of those closed sessions was to discuss the *appraisal*

25
26 lease.

27 However, prior to the closed session, the legislative body of the local agency shall
28 hold an open and public session in which it identifies its negotiators, the real
property or real properties which the negotiations may concern, and the person or
persons with whom its negotiators may negotiate.

1 of the property by Mr. Norris, including updating that appraisal with the development potential of
2 the property in various respects, and to provide direction to the negotiators on price and terms of
3 payment. (Fabela Decl., ¶ 21.)

4 Moreover, contrary to the declarations of Zapata and Moreno, who state that the City
5 Council directed Mr. Norris to “change” his assignment from a “lease” appraisal to a “sale”
6 appraisal during the closed sessions, that never occurred. (Fabela Decl., ¶ 21; Norris Decl., ¶¶ 4,
7 6.) Mr. Norris’s assignment was always to assess the fair market value of the property in *fee*. (*Id.*
8 at ¶ 4.) Although Mr. Norris’s assignment was occasionally “modified,” the modifications related
9 solely to the assumptions regarding the ability to develop the property. (*Id.* at ¶ 6.)

10 Furthermore, for the reasons discussed above, it is also false to state that the City Council
11 “*decided*” on a sale in those closed sessions—a claim that is not only contradicted by the City’s
12 evidence (Fabela Decl., ¶¶ 20, 23), but flies in the face of the undisputed facts, such as (a) that the
13 City had no agreement or proposal in front of it, (b) that the City was still assessing the property’s
14 value, and (c) that the City would not hold its public meeting on the sale until several months
15 later. Moreover, *it is also contradicted by the statements of Moreno himself at the City Council*
16 *meeting of December 20, 2019*, where he stated that “the City Attorney was very good in making
17 sure we focused on the price and terms of payment per the Brown Act” in the closed sessions, and
18 that the December 20th meeting was the “*first time*” the City Council had discussed or considered
19 a sale of the property, and that the Council “first and foremost have to agree, if we do decide to
20 move today, *whether we want to sell the land or lease the land.*” (Exh. 32, pp. 1-2 [emphasis
21 added]; Exh. 33 [video].)

22 Put simply, both before and after the closed sessions in August and September of 2019,
23 both a sale and a lease were still potential options, with neither foreclosed. (Fabela Decl., ¶ 20.)
24 For these evidentiary reasons, Petitioner’s argument under Section 54956.8 must be rejected.

25 **2. Some discussion of a “sale” would have been entirely lawful under**
26 **Section 54956.8 because the issue is inextricably bound up with the**
“price and terms of payment”

27 Even if Petitioner somehow overcomes its inadmissible, false, and improper evidence
28 regarding the City’s closed sessions, its argument for nullification under Section 54956.8 based

1 on the City’s alleged discussion of a “sale” in closed session must fail for multiple reasons.

2 First, Petitioner’s argument is premised on the fact that Section 54956.8 only authorizes
3 discussion “regarding the price and terms of payment,” which Petitioner inaccurately asserts does
4 not allow a discussion of whether to sell or lease the property, or even to discuss the *concept* of a
5 “sale” at all. In support of this argument, Petitioner cites *Shapiro v. San Diego City Council*, 96
6 Cal.App.4th 904, and two Attorney General opinions 94 Ops. Cal. Atty. Gen. 82 and 93 Ops. Cal.
7 Atty. Gen. 51. (Pet. Op. Br., p. 10.)

8 These authorities do not assist Petitioner. *Shapiro* came to the uncontroversial conclusion
9 that “price and terms of payment” did not allow discussions of clearly ancillary matters such as
10 design work, infrastructure, traffic, parking, EIR, and naming rights—not the very fundamental
11 issue of whether a “sale” or a “lease” is involved in the transaction. (*Shapiro, supra*, 96
12 Cal.App.4th at pp. 923-924.) Indeed, one of the very Attorney General opinions cited by
13 Petitioner contains flexible language establishing that the phrase “price and terms of payment”
14 “*must allow a public agency to consider the range of possibilities*,” including “[i]nformation
15 designed to assist the agency in determining the value of the property in question, *such as the*
16 *sales or rental figures for comparable properties*, ... because that information is often essential
17 to the process of arriving at a negotiating price.” (See 94 Ops. Cal. Atty. Gen. 82, at pp. *5-6
18 [emphasis added].) Even in the portion of this opinion quoted by Petitioner, it states that the term
19 “price” “must be understood as the amount of consideration given or sought *in exchange for the*
20 *real property rights that are at stake*.” (Id. at p. *3 [emphasis added].)⁹

21 Under this law, Petitioner’s argument that the term “price and terms of payment” is so
22 limited as to prevent a discussion of whether a sale is involved is absurd. Its argument would
23 present a logical impossibility, for how is one to discuss the “price” that is to be paid for “the real
24 property rights that are at stake” (94 Ops. Cal. Atty. Gen. 82, at p. *3) *without knowing what real*
25 *property rights are at stake?* A “sale” involves one set of real property rights and general

26 _____
27 ⁹ Petitioner also falsely asserts that other statutes also have “narrowly interpreted” the phrase
28 “terms of payment.” (Opening Brief, p. 10, fn. 5 [citing Cal Civ. Code §§ 1695.3, 1803.2,
2981.9, and 3225; Gov. Code § 27754].) None of the statutes cited by Petitioner does any such
thing; each one simply uses the phrase, period. Moreover, “Civil Code § 3225” does not exist.

1 payment term (transfer of property in fee in exchange for a total payment), whereas a “lease”
2 involves another set of real property rights and general payment term (transfer of the right to use
3 property in exchange for periodic payments). It is simply not possible for an agency to discuss the
4 “price” and the “terms of payment” without knowing which, or any, of these are on the table for
5 discussion. Indeed, once someone discusses a “transfer of property in exchange for a single
6 payment,” a “**sale**” is *automatically being discussed*, whether it is expressly identified as such or
7 not. Thus, Petitioner’s overly-fine distinction between a discussion of “price and terms of
8 payment,” on the one hand, and the discussion of a “sale” or a “lease,” on the other, simply is not
9 supported by the law or the plain language of Section 54956.8.

10 Granted, as stated in the City’s evidence, there was no discussion of the merits of a sale
11 versus a lease in any of the City’s closed-session meetings, at all, and certainly no decision was
12 made on that issue. (Fabela Decl., ¶¶ 20, 23.) However, under the above law, even if some
13 discussion did occur in that regard, it would have been perfectly lawful. Indeed, all parties
14 acknowledge that a “fair market value” appraisal was the subject of the closed-session meetings
15 at issue. By definition, such an appraisal involves assessing the value of property in a *sale*
16 transaction. Thus, the concept of a sale was at least inextricably bound up with the discussion of
17 an appraisal, and discussion of a sale was thus fully lawful under the Brown Act.

18 This conclusion is further supported by the case law governing real-property closed
19 sessions generally. The case of *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324 described
20 the general need to discuss real-property negotiations privately in closed session as follows: “The
21 need for [closed] sessions ... is obvious. No purchase would ever be made for less than the
22 maximum amount the public body would pay if the public (including the seller) could attend the
23 session at which that maximum was set, and the same is true for minimum sale prices and lease
24 terms and the like.” (*Id.* at p. 331; *see also Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 380;
25 *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors* (1968) 263 Cal.App.2d
26 41, 56.) Consistent with that concept, the Legislature granted the authority for such discussions
27 under Section 54956.8, which broadly allows cities to conduct closed sessions for real property
28 negotiations of a variety of transactions, *including both sales and leases*.

1 Petitioner seems to argue that the City had to decide in open session which form of
2 transaction would be at issue before going into closed session. However, the Legislature knew
3 how to impose such requirements—such as Section 54956.8’s requirement that agencies first
4 identify the property and negotiating parties in open session—but did not similarly require
5 agencies also to first publicly state which transaction it prefers. Of course, courts may not impose
6 restrictions under the Brown Act that the Legislature did not. (*Coalition of Labor, Agriculture &*
7 *Business v. County of Santa Barbara Bd. of Supervisors* (2005) 129 Cal.App.4th 205, 209-210.)

8 Petitioner’s claim that the City violated Section 54956.8 must be rejected.

9 **3. Section 54960.1 does not authorize nullification for violations of**
10 **Section 54956.8**

11 Another reason Petitioner’s request for the nullification remedy fails is that Government
12 Code section 54960.1 only allows that drastic remedy for violations of the sections it specifically
13 enumerates therein—namely, Sections 54953 (requiring open meetings), 54954.2 (relating to
14 special meetings), 54954.5 (establishing “safe harbor” language for closed-session agendas),
15 54954.6 (discussing notice requirements for taxes), 54956 (relating to special meetings), and
16 54956.5 (relating to emergency meetings). (*Olson v. Hornbrook Community Serv. Dist.* (2019) 33
17 Cal.App.5th 502, 517; *see also Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1, 10.)
18 Because Section 54960.1 **does not include** Section 54956.8—the section Petitioner claims the
19 City violated in its closed sessions—Petitioner’s nullification claim must be rejected.

20 **4. The evidence and law refute Petitioner’s argument that the decisions**
21 **in December 2019 and September 2020 were “rubber stamps” of**
22 **“decisions” previously made in closed session(s)**

23 To escape the above law, Petitioner makes the speculative argument that, after having
24 directed its staff to negotiate a possible sale (as claimed in the Zapata and Moreno declarations),
25 the deal was effectively and irreversibly “done,” and the City Council’s subsequent approval of
26 the Agreement and Amended Agreement in multiple open-session meetings was therefore a
27 “rubber stamp.” (Opening Brief, p. 9: 4.) This cynical claim has no factual or legal support

28 First, no actual binding decision was made in closed session that could later be “rubber
stamped.” This is obviously true under the City’s evidence, which indicates that the issue of a sale

1 versus lease was not even discussed in closed session, and that certainly no decision or vote was
2 made on that issue. (Fabela Decl., ¶¶ 20, 23.) However, it is also true under Petitioner’s
3 declarations of Zapata and Moreno, which identify no specific transaction that was proposed at
4 the time (there was none), or any terms of a purportedly approved “sale” (such as price), and
5 which fully acknowledge that the City Council “authorized the City’s Negotiating Team to
6 *conduct further negotiations* consistent with City Council’s decision to sell the property.”
7 (Zapata Decl., ¶ 9 [emphasis added]; Moreno Decl., ¶ 9 [same].) How can Zapata and Moreno
8 claim that the City approved some iron-clad “sale” *while simultaneously acknowledging that it*
9 *was still under negotiation?*

10 In any event, no actual approval occurred until a complete deal was proposed in writing
11 and presented to the City Council in open and public meetings. To that end, the City Council
12 conducted two lengthy public hearings on the proposed sale, in December of 2019 for the initial
13 Agreement, and then again in September of 2020 for the Amended Agreement. These hearings,
14 and the proposal to sell the Stadium, were widely noticed well in advance of the public hearings,
15 and the notice far exceeded the requirements of the Brown Act. (*See supra*, pp. 7-8, and evidence
16 cited [discussing notices provided for initial hearing].) The hearings consisted of several hours of
17 public testimony, from dozens of members of the public (both for and against the sale), including
18 Petitioner’s representatives, and hundreds of written comments, followed by thoughtful Council
19 deliberation on the issue. (*See supra*, pp. 7-8, and evidence cited; Deemed Admissions, Sect. A.)

20 Based on this evidence, the Court must reject Petitioner’s speculative and cynical claim
21 that those public hearings were a sham, and should instead presume that the City Council treated
22 these proceedings appropriately. (Evidence Code § 664 [presumption that official duty is
23 regularly performed].) Neither evidence nor law supports Petitioner’s wild “rubber stamp” theory.

24 **B. Petitioner’s “Negotiating Team” Arguments Must Be Rejected**

25 **1. The City Council did not form any “negotiating team” subject to the**
26 **Brown Act; the City’s “team” of negotiators was an ever-changing**
27 **group of City staff consulted as needed**

28 The Brown Act applies to a “legislative body,” which includes (in addition to governing
bodies such as the City Council) “[a] commission, committee, board, or other body of a local

1 agency, whether permanent or temporary, decisionmaking or advisory, ***created by charter,***
2 ***ordinance, resolution, or formal action of a legislative body.***” (Gov. Code § 54952 (b) [emphasis
3 added].) The term “create” means “to bring into existence,” or “to produce or bring about by a
4 course of action or behavior.” (*Californians Aware v. Joint Labor/Management Benefits Corn.*
5 (2011) 200 Cal.App.4th 972, 980 [labor negotiating team was not legislative body “created”
6 under Section 54952(b)]; *Internat. Longshoremen’s Warehousemen’s Union v. Los Angeles*
7 *Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300, fn. 5 [preexisting entity not created by
8 elected body].) A city thus does ***not*** “create” a legislative body, or an “other body,” as that term is
9 used in Section 54952 (b), simply by designating one of its members to work with staff
10 (especially unidentified staff) in an advisory capacity. (*Taxpayers for Livable Communities v.*
11 *City of Malibu* (2005) 126 Cal.App.4th 1123, 1128-1129.) In *Malibu*, for instance, designating a
12 mayor to work in conjunction with the city manager to negotiate with a third party, subject to city
13 council approval, was deemed to create nothing. (*Malibu, supra*, 126 Cal.App.4th at p. 1126.)¹⁰

14 The City here actually did less than what was done in *Malibu*. At the July 16, 2019
15 meeting, the sole action taken was to accept the stated recommendation in the staff report on the
16 item, which was to appoint one of the City Council’s members to ***“work in conjunction with***
17 ***[unspecified] City staff as the exclusive Council representative for negotiations,***” for which the
18 Council chose Mayor Sidhu. (Exh. 11; Exh. 12, p. 16; Exh. 13, pp. 59:22 – 63:2; Fabela Decl., ¶¶
19 12-13.) Indeed, the report stated that, in addition to the Council representative, the City’s “team”
20 would consist of ***unspecified*** “members of the City’s executive team as well as other specialized
21 consultants,” without limiting it to particular persons. (Exh. 11.)

22 Thus, neither the staff report, the Council discussions, nor the actual Council motion and
23 vote said one word about ***“creating”*** a “negotiating team,” let alone a body of specific individuals

24 _____
25 ¹⁰ The facts and holdings in the cases cited by Petitioner (Opening Brief, pp. 12-13)—*Internat.*
26 *Longshoremen’s, supra*, 69 Cal.App.4th 287; *Epstein v. Hollywood Entertainment Dist. II*
27 *Business Improvement Dist.* (2001) 87 Cal.App.4th 862; *McKee v. Los Angeles IMPACT* (2005)
28 134 Cal.App.4th 354; *Joiner v. City of Sebastopol* (1981) 25 Cal.App.3d 799; *Frazer v. Dixon*
Unified School Distr. (1993) 18 Cal.App.4th 781—do not match the facts here. Moreover, a
subsequent case litigated by Petitioner’s counsel explained that *International Longshoremen’s*
and *Epstein* were limited to their unique facts. (*Californians Aware, supra*, 200 Cal.App.4th 972,
981.)

1 who would comprise that “team.” (Exh. 11; Exh. 12, pp. 13-16; Exh. 13, pp. 59:22 – 63:2; Fabela
2 Decl., ¶¶ 12-13.) In fact, the staff involved in the negotiations was never a formal, identified
3 group. Rather, both prior to and after July 16th, the “team” was simply City staff—Zapata, and
4 various other staff members and consultants who would get involved as needed based on their
5 expertise, and the City Attorney, with Mayor Sidhu as a Council representative. (*Id.* at ¶¶ 9-13.)

6 Ignoring the reality that the City’s negotiating “team” was never a defined body of
7 specific individuals, Petitioner tries to shoehorn itself into the (inapplicable) cases it cites by
8 falsely arguing, without evidence, that a specific group of persons was somehow identified and
9 formed by the City Council’s action on July 16, 2019. The record of public meetings establishes
10 otherwise, as does the Fabela declaration. Indeed, minutes from the June 4 and June 18, 2019 City
11 Council meetings memorialize reports by the City Manager that he was *already* in negotiations
12 with the Angels prior to July 16th, *along with various other City staff as necessary*, and the
13 accompanying Fabela declaration establishes the same. (Fabela Decl., ¶¶ 7, 9-10, 13; Exh. 5, p.
14 18; Exh. 6, p. 2; Exh. 7, pp. 37-38.)

15 Petitioner’s argument that the City “created” the team is thus refuted by the official
16 record, which establishes—as indisputable fact—that the Council did no such thing. What the
17 Council actually did do, in designating the Mayor to work with unidentified (and ever-changing)
18 City staff, did not subject the team to the Brown Act.

19 **2. Petitioner has presented no evidence that the alleged “Negotiating**
20 **Team” ever met or took action**

21 Even if the Court accepts Petitioner’s claim that the City Council created a definitive
22 “Negotiating Team,” allegedly consisting of just three individuals, the analysis would not end
23 there. The Brown Act does not prohibit the creation of an “other body” whose members never
24 actually meet. Thus, even if Petitioner proves the creation of a “team,” Petitioner must *also* prove
25 that a majority of the members of this alleged team actually met together, *and* that this team “took
26 action” that Petitioner seeks to nullify.¹¹ (*Fowler v. City of Lafayette* (2020) 46 Cal.App.5th 360,

27 _____
28 ¹¹ Section 54952.6 defines “action taken” as “a collective decision made by a majority of the
members of a legislative body, a collective commitment or promise by a majority of the members
OAK #4862-1516-9033 v7

1 371-372.) Petitioner has utterly failed on these points, presenting no evidence that the alleged
2 “Negotiating Team” ever met, or that it took any action that Petitioner can seek to nullify.

3 **C. Petitioner’s “Serial Meetings” Argument Fails**

4 Petitioner next argues, without any evidence, that “a majority of the City Council engaged
5 in serial communications regarding the stadium negotiations,” in alleged violation of the Brown
6 Act. (Opening Brief, p. 15.) For multiple reasons, this contention fails on its face.

7 **1. The Zapata and Moreno declarations establish only that the City
8 conducted individual briefings, which Section 54952.2 expressly
authorizes**

9 Petitioner premises its entire serial-meeting argument on the inadmissible, unreliable
10 declarations of Zapata and Moreno, which, even if taken at face value, establish nothing unlawful.
11 Moreno states that some unnamed city staff member briefed him on an undefined matter
12 concerning the Stadium at some unspecified point in 2019, and nothing more. (Moreno Decl., ¶
13 10.) Meanwhile, Zapata states that (a) he conducted “briefings” with only *three* Councilmembers
14 regarding Stadium negotiations (a completely unremarkable claim given that (i) he does not state
15 whether these briefings were given collectively or individually, and (ii) regardless, three is not a
16 majority of the seven-member council), and (b) that he also had another conversation with one
17 other Councilmember about a decision to use a consultant during negotiations, but not about the
18 negotiations themselves. (Zapata Decl., ¶¶ 10-11.) In offering these non-probative declarations to
19 try to prove its conjured serial-meeting argument under Section 54952.2, Petitioner ignores that
20 Section 54952.2(b)(2) expressly authorizes the *individual briefings* the declarations describe:

21 Paragraph (1) [prohibiting serial meetings] shall not be construed as preventing an
22 employee or official of a local agency, from engaging in separate conversations or
23 communications outside of a meeting ... with members of a legislative body in
24 order to answer questions or provide information regarding a matter ... if that
person does not communicate to members of the legislative body the comments or
position of any other member or members of the legislative body.

25 (Gov. Code § 54952.2)

26 Neither the Moreno nor the Zapata declaration establishes that any Councilmember either

27 _____
28 of a legislative body to make a positive or a negative decision, or an actual vote by a majority of
the members of a legislative body when sitting as a body or entity,”

1 (a) did more than have an *individual* briefing, or (b) violated Section 54952.2(b)(2) by
2 communicating the views or positions of any Councilmember to any other Councilmember.

3 **2. Section 54960.1 does not authorize nullification for violations of**
4 **Section 54952.2**

5 Even if the Court accepts Petitioner’s “serial meeting” claim (of which there is no
6 evidence), again, Section 54960.1 authorizes nullification only for violations of the specific
7 sections it lists. (*Olson, supra*, 33 Cal.App.5th 502, 517.) Section 54960.1 does *not* list Section
8 54952.2, which Petitioner invokes for its “serial meeting” claim. That claim thus also fails.

9 **3. No “action” was taken at any alleged “serial meeting”**

10 Finally, Section 54960.1 does not authorize nullification for Petitioner’s “serial meeting”
11 argument because Petitioner cannot meet its burden of showing that, in addition to the alleged
12 “serial meetings” themselves, “action” was taken at those “meetings” (*Fowler, supra*, 46
13 Cal.App.5th 360, 371-372.) Petitioner has presented no evidence on this issue.

14 **D. Petitioner’s Arguments Concerning the City’s Closed-Session Agendas Must**
15 **Also Be Rejected**

16 **1. Section 54960.1 does not authorize nullification for violations of**
17 **Sections 54954.3, 54957.7 or 54956.8**

18 Petitioner also argues that the City’s closed-session agendas violated the requirements of
19 Sections 54954.3, 54957.7, and 54956.8. (Opening Brief, p. 16:1-12.) Again, however, Section
20 54960.1 (governing the nullification remedy) does not include Sections 54954.3, 54957.7, or
21 54956.8, and only allows nullification for violations of the sections it specifically enumerates.
22 (*Olson, supra*, 33 Cal.App.5th 502, 517.) Thus, Section 54960.1 does not authorize nullification
23 based on Petitioner’s claim that the closed session agendas were allegedly flawed.

24 **2. Section 54954.5 immunizes the City from liability because it used the**
25 **Legislature’s “safe harbor” agenda language**

26 Section 54954.5 of the Brown Act provides “safe harbor” agenda language for the various
27 closed sessions that the Act allows. Under that section, “[n]o legislative body or elected official
28 shall be in violation of Section 54954.2 or 54956 if the closed session items were described in
substantial compliance with this section.” The safe harbor language for “real property

1 negotiations” (which is what the City relied upon) reads:

2 (b) With respect to every item of business to be discussed in closed session
3 pursuant to Section 54956.8:

4 **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

5 Property: (Specify street address, or if no street address, the parcel number or
6 other unique reference, of the real property under negotiation)

7 Agency negotiator: (Specify names of negotiators attending the closed session) (If
8 circumstances necessitate the absence of a specified negotiator, an agent or
9 designee may participate in place of the absent negotiator so long as the name of
the agent or designee is announced at an open session held prior to the closed
session.)

10 Negotiating parties: (Specify name of party (not agent))

11 Under negotiation: (Specify whether instruction to negotiator will concern price,
12 terms of payment, or both)

13 (§ 54954.5(b).)

14 The City’s agenda description complied exactly with this “safe harbor” language. Notably,
15 that section does *not* require an agency’s closed-session agendas to specify whether the
16 negotiations involve a sale or a lease. The City’s use of Section 54954.5’s safe-harbor template
17 not only immunizes the City from Petitioner’s claim here, but also plainly apprised the public of
18 the “essential nature” of the closed-session subject, and thus satisfied the applicable “substantial
19 compliance” standard. (*See Olson, supra*, 33 Cal.App.5th 502, 517; *San Diegans for Open*
20 *Government v. City of Oceanside* (2016) 4 Cal.App.5th 637, 644-645 [agenda need only describe
21 “essential nature” of matter; “technical errors or immaterial omissions” do not invalidate action];
22 *Castaic Lake Water Agency v. Newhall County Water Dist.* (2015) 238 Cal.App.4th 1196, 1206-
23 1207 [rejecting “hypertechnical” arguments that “elevate form over substance”].)

24 Ignoring that standard, Petitioner complains that the closed-session agendas were deficient
25 under Section 54954.5 because they identified only (1) the City Manager, not the entire alleged
26 “Negotiating Team,” as the City’s negotiator (even though that “team” did not exist as Petitioner
27 claims), and (2) Angels Baseball, not SRB, as the party with whom the City was negotiating.

28 That argument fails for several reasons. First, Petitioner only asserted in its pre-litigation
“cure and correct” letter that the closed-session agendas were defective because the City did not
disclose whether it was considering a sale or a lease. (Exh. 36, pp. 3-4.) The letter did *not* assert
Petitioner’s separate claim that the agendas are also defective because they did not specify the

1 alleged “Negotiating Team” or SRB. (*Ibid.*) The arguments that Petitioner failed to assert in its
2 letter are now time-barred. (Gov. Code § 54960.1 [requiring the “cure and correct” letter to
3 “clearly describe” the alleged violation, and setting a 90-day period to assert such claims].)

4 Second, the agenda language the City used was *literally correct*. The agenda accurately
5 specified the City Manager (the City’s lead negotiator) by name and title, and nothing in Section
6 54954.5 required the agenda to *also* mention the amorphous “team” of multiple City staff
7 members who were also assisting Mr. Zapata in the negotiations. Also, the agenda accurately
8 specified Angels Baseball and the City as the two negotiating parties. A reference to “SRB,” a
9 name unfamiliar to most, would have been less informative than “Angels Baseball,” which is
10 owned by the same people who own SRB. (Exh. 29, p. 2; Exhs. 23 and 24.) Moreover, for the
11 first three of the closed sessions, *SRB did not even exist*, so it could not have been a “negotiating
12 party.” (Exhs. 23 and 24.) Rather, the City was negotiating with the President and General
13 Counsel of the Angels. (Fabela Decl., ¶ 28.)

14 Petitioner’s citation to the Attorney General’s opinion in 73 Ops.Cal.Atty.Gen. 1 (1990)
15 (Opening Brief, p. 17) is inappropriate and unhelpful, for two reasons. First, the opinion
16 considered the narrow question (completely different from the facts here) of whether a real-
17 property closed-session agenda description would satisfy Section 54956.8 by simply appending
18 an exhibit listing over 700 properties. Second, even if it were factually analogous, the 1990
19 opinion is of little value because it predated the Legislature’s 1993 enactment of the safe-harbor
20 provision, Section 54954.5, whereby the Legislature specified exactly how to describe a real-
21 property closed session (and which the City specifically complied with here).

22 In sum, the City’s agendas substantially complied with Section 54954.5 in correctly
23 specifying both the City’s negotiator and the parties, and in setting out the “essential nature” of
24 what the Council would discuss, and with whom. Petitioner’s “hyper-technical” arguments
25 regarding the notices “elevate[] form over substance.” (*San Diegans*, 4 Cal.App.5th 637, 645;
26 *Castaic*, 238 Cal.App.4th 1196, 1206-1207.)

27 \\\

28 \\\

1 **E. The City Complied With Section 54954.3, Executive Order 29-20, and Article**
2 **I, Section 3 of the California Constitution, With Respect to the September 29**
3 **and October 6, 2020 Meetings**

4 Petitioner argues that the City violated Section 54954.3, the Governor’s Executive Order
5 29-20 (waiving certain Brown Act meeting requirements due to Covid), and Article I, Section
6 3(b) of the California Constitution, at the September 2020 and/or October 2020 meetings on the
7 Amended Agreement and related agreements, by supposedly restricting public comments to those
8 received two hours prior to the meetings, and thereby failing to allow the public to “directly
9 address” the Council. (Opening Brief, pp. 18-19.) This argument fails for several reasons.

10 **1. Section 54960.1 does not authorize nullification for these “violations”**

11 As noted above, Section 54960.1 authorizes nullification only for violations of the specific
12 Brown Act sections it enumerates. (*Olson, supra*, 33 Cal.App.5th 502, 517.) Section 54960.1
13 does not enumerate Section 54954.3, Executive Order 29-20, or Article I, Section 3, which
14 Petitioner invokes as the basis for its “directly address” claim. The “nullification” claim thus fails.

15 **2. The City accepted all public comments both before and during the**
16 **hearings; Petitioner has no evidence to the contrary**

17 Regardless, the City easily satisfied both Section 54954.3, which requires an agency to
18 allow the public to “directly address” it “before or during ...consideration of the item,” as well as
19 Executive Order 29-20. Contrary to Petitioner’s false and unsupported accusation, the City
20 satisfied Section 54954.3 by allowing public comment both before and during the meetings,
21 including while the item was being discussed. It also satisfied Executive Order No. N-29-20,
22 which explicitly authorizes the City to conduct its meetings such that the public may observe and
23 participate in meetings “telephonically or otherwise electronically.” (Exh. 48.)

24 Petitioner seems to focus on the City’s agendas for the September 29 and October 6, 2020
25 meetings, which encouraged the public to submit comments by 2:30 p.m. (Exhs. 40 and 44.) In so
26 doing, Petitioner hides that the agenda also explicitly stated that those comments received after
27 2:30 p.m. would be distributed to the Council. (Exhs. 40 and 44.) The City did exactly that, and
28 accepted *all* public comments, including *all* that were submitted after 2:30 p.m., and including

1 Petitioner’s own comment, and e-mailed them all to the City Council. (Bass Decl., ¶¶ 7-11.)¹²
2 Nothing in Section 54954.3 requires that members of the public be permitted—especially during
3 a pandemic emergency—to present their comments in real time, or “assures” that Council
4 members actually read written comments. Nevertheless, the Court must decline Petitioner’s
5 invitation to simply assume that Council members ignored the comments. Rather, the Court
6 should presume the City Council did read and consider the public’s comments. (Evid. Code 664;
7 *see also* Deemed Admissions, Sect. A.) Petitioner has produced no evidence to the contrary.

8 Finally, Petitioner argues that the virtual hearings (held in that manner because of Covid)
9 violated Article I, Section 3(b) of the California Constitution. Petitioner makes no effort,
10 however, to explain how the City violated Article I, Section 3(b). It also ignores that Article I,
11 Section 3 (adopted by Proposition 59) created no independent rights or remedies, and is merely
12 “duplicative” of the requirements already imposed in the Brown Act. (*Shapiro v. Board of*
13 *Directors* (2005) 134 Cal.App.4th 170, 181, fn. 14 [“Proposition 59 [is] merely duplicative. . .” of
14 the Brown Act]; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 750-51 [Proposition
15 59’s requirement to broadly construe right of access “was the law prior to the amendment’s
16 enactment”].) Petitioner itself cites no case law in which Article I, Section 3(b), was cited as a
17 basis for a cause of action, or in which a party was granted relief under it.

18 **F. Petitioner’s Nullification Claim Fails Because the Public Hearings in**
19 **December 2019 and September of 2020 Cured Any Violations from Any Prior**
20 **Closed Session, and Petitioner Suffered No Prejudice**

21 Finally, a Brown Act violation alone does not of itself allow the extreme nullification
22 remedy. Rather, Section 54960.1(e) *prohibits* nullification, and requires dismissal with prejudice,
23 where the agency has *cured or corrected* any previous violation. (*SPRAWLDEF v. City of*
24 *Richmond* (N.D. Cal. 2020) Slip Copy, 2020 WL 4734807 [Section 54960.1 nullification
25 prohibited because an allegedly illegal closed session vote was cured by subsequent approval in
26

27 ¹² In *Galbiso*, cited by Petitioner (Opening Brief, p. 18), the agency allowed *no* public comment
28 on an item. (*Galbiso v. Orosi Pub. Util. Dist.* (2008) 167 Cal.App.4th 1063, 1079-1080.) Here, by
contrast, the City solicited and accepted hundreds public comments, including Petitioner’s, at the
September and October meetings. (Bass Decl., ¶¶ 8, 11.)

1 open session]; *Fowler, supra*, 46 Cal.App.5th 360, 371-373.)¹³

2 Similarly, Section 54960.1 also prohibits nullification unless Petitioner also shows that it
3 suffered ***prejudice***. There is no prejudice as a matter of law where the petitioner has had a full and
4 fair opportunity to present its views and arguments at a subsequent public hearing. (*Fowler,*
5 *supra*, 46 Cal.App.5th 360, 371-373; *Olson, supra*, 33 Cal.App.5th 502, 517; *Galbiso v. Orosi*
6 *Public Utility Dist.* (2010) 182 Cal.App.4th 652, 671; *Cohan v. City of Thousand Oaks* (1994) 30
7 Cal.App.4th 547, 556; *SPRAWLDEF, supra*, Slip Copy, 2020 WL 4734807; *Martis Camp*
8 *Community Association v. County of Placer* (2020) 53 Cal.App.5th 569, 592 fn. 17; *Immigrant*
9 *Legal Resources Center v. City of McFarland* (9th Cir. 2020) 827 Fed.Appx. 749, 751 [no
10 prejudice even where petitioner claimed “technical limitations and difficulties,” and “minor
11 barriers” due to the fact the meeting was conducted virtually due to Covid].)

12 After the four closed sessions Petitioner attacks, the City widely publicized the proposed
13 sale, and conducted an open and well-attended (including by Petitioner) public hearing on
14 December 20, 2019. After the initial approval of the sale in December 2019, the City Council
15 conducted no additional closed sessions prior to its approval of the Amended Agreement after
16 another lengthy public hearing in September of 2020, at which Petitioners again participated
17 along with hundreds of its fellow citizens. From early December 2019 to September 2020, the
18 public was fully aware that the City was in the process of selling the Stadium to the Angels
19 organization. As a matter of law, ***the City fully cured or corrected, and Petitioner was not***
20 ***prejudiced by, any possible violation in connection with the four closed sessions that occurred***
21 ***before the December 2019 decision, and it has offered neither evidence nor authority***
22 ***suggesting otherwise***. Nullification is thus unequivocally not available under Section 54960.1.

23 Invoking the unremarkable principle that the Brown Act addresses deliberations and
24 actions alike (Opening Brief, pp. 19-21), Petitioner claims that the City’s position is that “as long
25 as the final vote on a particular act is done in public, City can disregard the Brown Act’s open
26

27 ¹³ Unpublished federal district court decisions may be cited as “persuasive” authority in
28 California state court. (*Townley v. BJ's Restaurants, Inc.* (2019) 37 Cal.App.5th 179, 184, fn. 7;
Pacific Shore Funding v. Lozo (2006) 138 CA4th 1342, 1352, fn. 6.)

1 meeting requirements with respect to its deliberations.” (*Id.* at pp. 19-20.) That is, of course, not
2 the City’s position. The City agrees that Sections 54960 and 54960.2—which unlike Section
3 54960.1, are not limited to specific, enumerated violations, and do not require dismissal where
4 there has been a cure and where prejudice is absent—create *non*-nullification remedies to address
5 various violations of the Act, including those involving deliberations, discussions, and serial
6 meetings.¹⁴ However, nullification under Section 54960.1, *the only remedy sought here*, is
7 prohibited where, because of a subsequent public hearing (1) the agency cured any earlier
8 violations, and (2) Petitioner suffered no prejudice.¹⁵ Those are the facts here.

9 **G. The Court Should Dismiss or Deny the First Petition As Moot.**

10 Finally, the first Petition seeks solely to nullify the 2019 Agreement. It should be
11 dismissed as moot since the 2020 Amended Agreement completely superseded it. (*Wilson &*
12 *Wilson v. City of Redwood City* (2011) 191 Cal.App.4th 1559, 1574.)

13 **IV. CONCLUSION**

14 For the reasons set forth herein, Respondent City of Anaheim respectfully requests that
15 the Court deny each of the Petitions in this case in their entirety.

16
17 Dated: January 27, 2021

BURKE, WILLIAMS & SORENSEN, LLP

18 By: _____ /s/
19 Mark J. Austin

20
21
22
23
24
25
26 ¹⁴ See *Sierra Watch*, 69 Cal.App.5th 1, 10 [declaratory relief available under § 54960 even where
27 nullification not available under § 54960.1].) As noted above, Petitioner here makes no argument
for relief under §§ 54960 and 54960.2, which impose different requirements than 54960.1.

28 ¹⁵ Petitioner distorts *Frazer, supra*, 18 Cal.App.4th 781. (Opening Brief., p. 20.) *Frazer* actually
confirms that Section 54960.1 prohibits nullification absent prejudice and after cure.

1 **PROOF OF SERVICE**

2 I, Bernadette A. Antle, declare:

3 I am a citizen of the United States and employed in Alameda County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address is
5 1901 Harrison Street, Suite 900, Oakland, California 94612. On **January 27, 2022**, I served a
6 copy of the within document(s):

7 **RESPONDENT/DEFENDANT CITY OF ANAHEIM’S MEMORANDUM
8 OF POINTS AND AUTHORITIES IN OPPOSITION TO
9 PETITIONER/PLAINTIFF’S MOTION FOR WRIT OF MANDATE AND
10 DECLARATORY RELIEF**

- 11 by transmitting via facsimile the document(s) listed above to the fax number(s) set
12 forth below on this date before 5:00 p.m.
- 13 by placing the document(s) listed above in a sealed envelope with postage thereon
14 fully prepaid, the United States mail at Santa Ana, California addressed as set forth
15 below.
- 16 by placing the document(s) listed above in a sealed _envelope and affixing a pre-
17 paid air bill, and causing the envelope to be delivered to a Delivery Service agent
18 for delivery.
- 19 by personally delivering the document(s) listed above to the person(s) at the
20 address(es) set forth below.
- 21 by transmitting via electronic service the document(s) listed above to the person(s)
22 at the e-mail address(es) set forth below.

23 Please see attached service list.

24 I am readily familiar with the firm's practice of collection and processing correspondence
25 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
26 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
27 motion of the party served, service is presumed invalid if postal cancellation date or postage
28 meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on **January 27, 2022**, at Santa Ana, California

BERNADETTE A. ANTLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Service List

***Peoples Homeless Task Force Orange County v. City of Anaheim, et al.
Orange County Superior Court Case No. 30-2020-01174133-CU-WM-CJC***

Law Offices of Kelly A. Aviles	Attorneys for Plaintiff
Kelly Aviles	<i>Peoples Homeless Task Force Orange</i>
1502 Foothill Blvd., #103-140	<i>County</i>
La Verne, CA 91750	
Email: <i>kaviles@opengovlaw.com</i>	

1 Thomas B. Brown (State Bar No. 104254)
E-mail: tbrown@bwslaw.com
2 Mark. J. Austin (State Bar No. 2088880)
E-mail: maustin@bwslaw.com
3 Tamar M. Burke (State Bar No. 328724)
E-mail: tburke@bwslaw.com
4 BURKE, WILLIAMS & SORESENSEN, LLP
1851 East First Street, Suite 1550
5 Santa Ana, California 92705
Tel: 949.863.3363 Fax: 949.863.3350

Filing Fee Exempt Pursuant to
Government Code § 6103

6 ANAHEIM CITY ATTORNEY'S OFFICE
7 ROBERT FABELA, CITY ATTORNEY
Gregg M. Audet (State Bar No. 158682)
8 gaudet@anaheim.net
200 S. Anaheim Boulevard, Suite 356
9 Anaheim, California 92805
Tel: 714.765.5169 Fax: 714.765.5123

10 Attorneys for Respondent/Defendant
11 CITY OF ANAHEIM

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ORANGE
15

16 PEOPLES HOMELESS TASK FORCE
17 ORANGE COUNTY,

18 Petitioner/Plaintiff,

19 v.

20 CITY OF ANAHEIM and DOES 1 through
10,

21 Respondent/Defendant,

22 SRB MANAGEMENT, LLC,

23 Real Party in Interest
24

Case No. 30-2020-01135406-CU-WM-CJC
(consolidated with Case No. 30-2020-
01174133-CU-WM-CJC)

Assigned for All Purposes to:
Hon. David A. Hoffer, Dept. C42

**CITY OF ANAHEIM'S STATEMENT OF
FACTUAL ALLEGATIONS DEEMED
ADMITTED BY PETITIONER**

**[Filed Concurrently with Opposition;
Declarations of Robert Fabela, Theresa Bass,
and Steve Norris; and Notice of Lodging of
Videos]**

Hearing:

Date: February 14, 2021

Time: 3:30 p.m.

Dept.: C42

Action Filed: February 28, 2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respondent/Defendant City of Anaheim (“City”) hereby submits this Statement of Factual Allegations deemed admitted by Petitioner. The City alleged each of the factual allegations listed below in its Answers in this case. Because Petitioner did not contravert any of these allegations by either by Replication or proof, they are deemed admitted by Petitioner, and are to be accepted as true and as evidence by the Court. (Code of Civil Procedure § 1091; *Hunt v. Mayor and Council of City of Riverside* (1948) 31 Cal.2d 619, 623; *Lotus Car Limited v. Municipal Court* (1968) 263 Cal.App.2d 264, 268; *Day v. City of Los Angeles* (1961) 189 Cal.App.2d 415, 418-419.)

A. ALLEGATIONS CONCERNING THE DECEMBER 20, 2019 CITY COUNCIL MEETING

Alleged in Answer, p. 2: 16-28:

1. All actions taken by the City Council on December 20, 2019 were fully and properly described on the published agenda for the meeting in accordance with the requirements of the Brown Act.
2. The agenda for the December 20, 2019 meeting was properly and timely posted in accordance with all requirements of the Brown Act.
3. On or before December 4, 2019, the City issued a press release to publicize its recommended plan to sell the Stadium Site to SRB Management Company, Inc..
4. The plan was reported in the OC Register on or about December 4, 2019.
5. Well prior to December 4, 2019, the City Council publicized; and conducted open and public meetings at which Council members directed the City’s staff that negotiations with the Angels should include, among other issues, the possibility of either a sale or a lease of the Stadium Property.

Alleged in Answer, p. 3: 7- p. 4: 4:

6. As required by Government Code sections 52201 and 6066, on December 6, 2020, the City published notice of the upcoming December 20th meeting and made available for public inspection the draft Purchase and Sale Agreement, as well as a Section 52201

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

“economic opportunity” Summary Report.

- 7. The public, as well as Petitioner and its officials, knew and understood well prior to the City Council meeting on December 20, 2019 at which the City Council approved the Agreement that the City was considering a sale and not a lease of the Stadium Property.
- 8. The City Council conducted a full, transparent and participatory public hearing that exceeded four hours on December 20, 2019, during which the public was invited to, and 70 individuals did, express their views both for and against the proposed disposition of the Stadium Site.
- 9. Petitioner and its officials attended and spoke at the December 20, 2019 meeting at which the City Council approved the Purchase and Sale Agreement with SRB Management Company, LLS for a purchase price of \$325,000,000 and a Resolution approving the same.
- 10. Neither in their public comments at the December 20, 2019 meeting at which the City Council approved the Agreement, nor at any other time prior to the approval of the Agreement, did Petitioner or any of its officials mention or object to a sale (as opposed to a lease) of the Stadium Property, or any defect, failure or Brown Act violation during or in connection with the City's negotiations for the disposition of the Stadium Site or approval of the Agreement.
- 11. Following the public hearing and testimony, the City Council extensively deliberated and debated about the relative merits, pros and cons of the proposed sale of the Stadium Site.

B. ALLEGATIONS CONCERNING JULY 16, 2019 CITY COUNCIL MEETING AND “CREATION” OF “NEGOTIATING TEAM”:

Alleged in Answer, p. 4: 12- p. 5: 22:

- 1. Neither on July 16, 2019, nor at any other time, did the City Council vote to create any Negotiating Team or other board, commission or body of any kind subject to the Brown Act.
- 2. On July 16, 2019, the City Council voted to designate the Mayor to work in

1 conjunction with the City Manager in negotiations with the Angels baseball
2 organization about the disposition of the Stadium property.

3 Alleged in Answer, p. 7: 19- p. 8: 12:

- 4 3. On July 16, 2019, the City Council did not vote to create any Negotiating Team or
5 other board, commission or body of any kind subject to the Brown Act.
6 4. On July 16, 2019, the City Council voted to designate the Mayor to work in
7 conjunction with the City Manager in negotiations with the Angels baseball
8 organization about the disposition of the Stadium property;
9 5. Prior to July 16, 2019 the City Manager, along with City staff and consultants, had
10 been engaged in negotiations with the Angels baseball organization about the
11 disposition of the Stadium property.

12 Alleged in Answer, p. 22: 17- p. 23: 17:

- 13 6. On July 16, 2019, the City Council voted only to designate the Mayor to work in
14 conjunction with the City Manager in negotiations with the Angels baseball
15 organization about the disposition of the Stadium property;
16 7. Prior to July 16, 2019 the City Manager, along with City staff and consultants, had
17 been engaged in negotiations with the Angels baseball organization about the
18 disposition of the Stadium property.
19 8. Subsequent to the City Council's first action on December 20, 2019, the City Manager
20 oversaw a large group of city staff who took part in the negotiations.
21 9. The Mayor participated on occasion and provided some policy guidance in his role as
22 the Council-approved exclusive representative of the Council in the negotiations.

23 **C. ALLEGATIONS CONCERNING THE NEGOTIATING TEAM AND CLOSED**
24 **SESSIONS:**

25 Alleged in Answer, p. 4: 12- p. 5: 22:

- 26 1. The City Manager oversaw a large group of city staff who took part in the
27 negotiations. The Mayor participated on occasion and provided some policy guidance
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

in his role as the Council-approved exclusive representative of the Council in the negotiations.

- 2. There were no closed sessions related to the Angels scheduled or conducted after the original Purchase and Sale Agreement was approved on December 20, 2019.
- 3. The City Council took no “action” (as the Brown Act defines that term) in closed session or otherwise prior to the September 29, 2020, or October 6, 2020 meetings, except in its public decision on December 20, 2019.
- 4. The only “actions” (as the Brown Act defines that term) the City Council took with respect to the disposition of the Stadium Site were (1) its public action approving the Agreement at the December 20, 2019 meeting, and (2) its public action approving the Amended and Restated Purchase and Sale Agreement, a Disposition and Development Agreement, and a Commitment Agreement with the Angels at its September 29, 2020 and October 6, 2020 noticed and public hearings.

Alleged in Answer, p. 14: 28- p. 16: 17:

- 5. Prior to its properly agendized, open and public meeting on December 20, 2019, but never thereafter, the City Council provided direction to its real property negotiators with respect to the disposition of the Stadium Site in closed sessions in full compliance with the Brown Act;
- 6. After December 20, 2019, the City Council never met in closed session with respect to the Angels or the disposition of the Stadium Site.

D. ALLEGATIONS CONCERNING “SERIAL MEETINGS”:

Alleged in Answer, p. 4: 12- p. 5: 22:

- 1. A majority of Council members never met, deliberated or acted in secret, serially or outside of a properly noticed meeting with respect to the disposition of the Stadium Site.
- 2. The only “actions” (as the Brown Act defines that term) the City Council took with respect to the disposition of the Stadium Site were (1) its public action approving the Agreement at the December 20, 2019 meeting, and (2) its public action approving the

1 Amended and Restated Purchase and Sale Agreement, a Disposition and Development
2 Agreement, and a Commitment Agreement with the Angels at its September 29, 2020 and
3 October 6, 2020 noticed and public hearings.

- 4 3. The only “actions” (as the Brown Act defines that term) taken by the City Council with
5 respect to the disposition of the Stadium Site were fully and properly described on the
6 published agenda for the meeting in accordance with all requirements of the Brown Act.

7 **E. ALLEGATIONS CONCERNING THE SEPTEMBER 29, 2020 AND OCOBER 6,**
8 **2020 CITY COUNCIL MEETINGS:**

9 Alleged in Answer, p. 5: 24- p. 7: 11:

- 10 1. The City published notice of the September 29, 2020 and October 6, 2020 meetings
11 and made available for public inspection the Amended and Restated Purchase and Sale
12 Agreement, the Disposition and Development Agreement, the Angels Commitment
13 Agreement, and a Section 52201 “economic opportunity” Summary Report in
14 accordance with all requirements of the Brown Act and Government Code sections
15 52201 and 6066.
- 16 2. The public, as well as Petitioner and its officials, knew and understood well prior to
17 the City Council meetings on September 29, 2020 and October 6, 2020 at which the
18 City Council approved the Amended and Restated Purchase and Sale Agreement, the
19 Disposition and Development Agreement, and the Angels Commitment Agreement
20 that the City was in the midst of the sale and had negotiated the terms of the sale with
21 the Angels.
- 22 3. On September 29 and October 2, 2020, the City’s meetings were public meetings that
23 the City conducted via teleconferencing and by making public meetings accessible
24 telephonically or otherwise electronically to all members of the public seeking to
25 observe and to address the City Council.
- 26 4. The City’s agendas for the September 29, 2020 and October 6, 2020 meetings state
27 that the public had access to the meeting live, online and on Cable Channel 3. Further,
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

members of the public were able to submit comments electronically for City Council consideration through 2:30 p.m. on the day of the meeting. The agenda makes clear that even those comments received after the 2:30 p.m. deadline would be distributed to the Council.

- 5. The City Council conducted a full, transparent and participatory public hearing that exceeded nine hours on September 29, 2020 and four hours on October 6, 2020, during which the public was invited to express their views both for and against the proposed disposition of the Stadium Site.
- 6. In total, the City received 644 public comments in response to the agenda items related to the Angels Stadium disposition at the September 29, 2020 and October 6, 2020 City Council Meetings, including from Petitioner.
- 7. Petitioner and its officials electronically “attended” and “spoke” at the September 29, 2020 meeting at which the City Council approved the Amended and Restated Purchase and Sale Agreement and the Angels Commitment Agreement.
- 8. Following the public hearing and testimony, the City Council extensively deliberated and debated about the relative merits, pros and cons of the proposed sale of the Stadium Site.

Alleged in Answer, p. 20: 15- p. 21:12:

- 9. The Amended and Restated Purchase and Sale Agreement approved at the September 29, 2020 meeting superseded the Purchase and Sale Agreement approved on December 20, 2019.

Alleged in Answer, p. 23: 20- p. 25: 8:

- 10. The City’s agenda for the September 29, 2020 and October 6, 2020 meetings state that the public had access to the meeting live, online and on Cable Channel 3.
- 11. Members of the public were able to submit comments electronically for City Council consideration through 2:30 p.m. on the day of the meeting.
- 12. The agenda makes clear that even those comments received after the 2:30 p.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

deadline would be distributed to the Council.

13. The City Council conducted a full, transparent and participatory public hearing that exceeded nine hours on September 29, 2020 and four hours on October 6,2020, during which the public was invited to express their views both for and against the proposed disposition of the Stadium Site.

F. ALLEGATIONS CONCERNING REAL PARTY IN INTEREST SRB MANAGEMENT COMPANY, LLC:

Alleged in Answer, p. 8:13- p. 9: 1:

- 1. SRB did not legally exist prior to November 20, 2019;
- 2. In its “cure and correct” letter dated January 19, 2020, Petitioner did not mention an asserted failure to name SRB on the City’s closed session agendas related to the potential disposition of the Stadium Site.
- 3. Both with respect to December 2019 and September and October 2020, SRB entered into the Agreement in good faith and without notice of a challenge to the validity of Respondent’s action to approve the Agreement.

G. ALLEGATIONS CONCERNING CITY COUNCIL DIRECTION AT AUGUST 27, 2019 CITY COUNCIL MEETING:

Alleged in Answer, p. 9: 4- p. 10: 10:

- 1. On August 27, 2019, the City properly agendized and held a City Council discussion of “potential negotiating considerations that could be a part of a future agreement with Angels Baseball regarding the Angel Stadium.”
- 2. At that meeting, City Council members explicitly acknowledged and directed that in its negotiations with the Angels the City should consider both a sale and a lease of the Stadium Site.

\\

\\

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 27, 2021

BURKE, WILLIAMS & SORENSEN, LLP

BY: _____
Mark J. Austin

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, Bernadette A. Antle declare:

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1901 Harrison Street, Suite 900, Oakland, California 94612. On **October 25, 2021**, I served a copy of the within document(s):

**CITY OF ANAHEIM’S STATEMENT OF FACTUAL ALLEGATIONS
DEEMED ADMITTED BY PETITIONER**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Santa Ana, California addressed as set forth below.
- by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery Service agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via electronic service the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Please see attached service list.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on **January 27, 2022**, at Santa Ana, California

BERNADETTE A. ANTLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Service List

***Peoples Homeless Task Force Orange County v. City of Anaheim, et al.
Orange County Superior Court Case No. 30-2020-01174133-CU-WM-CJC***

Law Offices of Kelly A. Aviles	Attorneys for Plaintiff
Kelly Aviles	<i>Peoples Homeless Task Force Orange</i>
1502 Foothill Blvd., #103-140	<i>County</i>
La Verne, CA 91750	
Email: <i>kaviles@opengovlaw.com</i>	

1 Thomas B. Brown (State Bar No. 104254)
E-mail: tbrown@bwslaw.com
2 Mark. J. Austin (State Bar No. 2088880)
E-mail: maustin@bwslaw.com
3 BURKE, WILLIAMS & SORENSEN, LLP
1851 East First Street, Suite 1550
4 Santa Ana, California 92705
Tel: 949.863.3363 Fax: 949.863.3350

Filing Fee Exempt Pursuant to
Government Code § 6103

5 ANAHEIM CITY ATTORNEY'S OFFICE
6 ROBERT FABELA, CITY ATTORNEY
Gregg M. Audet (State Bar No. 158682)
7 gaudet@anaheim.net
200 S. Anaheim Boulevard, Suite 356
8 Anaheim, California 92805
Tel: 714.765.5169 Fax: 714.765.5123

9 Attorneys for Respondent/Defendant
10 CITY OF ANAHEIM

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE
14

15 PEOPLES HOMELESS TASK FORCE
16 ORANGE COUNTY,

17 Petitioner/Plaintiff,

18 v.

19 CITY OF ANAHEIM and DOES 1 through
10,

20 Respondent/Defendant,

21 SRB MANAGEMENT, LLC,

22 Real Party in Interest
23
24

Case No. 30-2020-01135406-CU-WM-CJC
(consolidated with Case No. 30-2020-
01174133-CU-WM-CJC)

Assigned for All Purposes to:
Hon. David A. Hoffer, Dept. C42

**NOTICE OF LODGING OF VIDEO
EVIDENCE (EXHIBIT 33) IN SUPPORT OF
CITY'S OPPOSITION TO MOTION FOR
WRIT OF MANDATE AND
DECLARATORY RELIEF**

**[Filed Concurrently with Opposition;
Declarations of Robert Fabela, Steve Norris
and Theresa Bass; Evidentiary Objections;
Objection to and Motion to Strike Moreno and
Zapata Declarations; and Deemed Admissions]**

Hearing:

Date: February 14, 2022
Time: 3:30 p.m.
Dept.: C42

Action Filed: February 28, 2020

25
26
27
28 IRV #4875-7366-4779 v1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendant City of Anaheim hereby lodges a thumb drive containing an excerpt of the videotaped City Council meeting held on December 20, 2019 (audio/video recording of the comments of Council Member Jose Moreno). The video excerpts contained on the accompanying drive constitute the City's **Exhibit 33**.

Dated: January 27, 2021

BURKE, WILLIAMS & SORENSEN, LLP

BY: _____
Mark J. Austin

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, Bernadette A. Antle, declare:

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1901 Harrison Street, Suite 900, Oakland, California 94612. On **January 27, 2022**, I served a copy of the within document(s):

NOTICE OF LODGING OF VIDEO EVIDENCE (EXHIBIT 33) IN SUPPORT OF CITY’S OPPOSITION TO MOTION FOR WRIT OF MANDATE AND DECLARATORY RELIEF

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Santa Ana, California addressed as set forth below.
- by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery Service agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via electronic service the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Please see attached service list.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on **January 27, 2022**, at Santa Ana, California

BERNADETTE A. ANTLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Service List

***Peoples Homeless Task Force Orange County v. City of Anaheim, et al.
Orange County Superior Court Case No. 30-2020-01174133-CU-WM-CJC***

Law Offices of Kelly A. Aviles	Attorneys for Plaintiff
Kelly Aviles	<i>Peoples Homeless Task Force Orange</i>
1502 Foothill Blvd., #103-140	<i>County</i>
La Verne, CA 91750	
Email: <i>kaviles@opengovlaw.com</i>	

1 Thomas B. Brown (State Bar No. 104254)
E-mail: tbrown@bwslaw.com
2 Mark. J. Austin (State Bar No. 2088880)
E-mail: maustin@bwslaw.com
3 BURKE, WILLIAMS & SORENSEN, LLP
1851 East First Street, Suite 1550
4 Santa Ana, California 92705
Tel: 949.863.3363 Fax: 949.863.3350

Filing Fee Exempt Pursuant to
Government Code § 6103

5 ANAHEIM CITY ATTORNEY'S OFFICE
6 ROBERT FABELA, CITY ATTORNEY
Gregg M. Audet (State Bar No. 158682)
7 gaudet@anaheim.net
200 S. Anaheim Boulevard, Suite 356
8 Anaheim, California 92805
Tel: 714.765.5169 Fax: 714.765.5123

9 Attorneys for Respondent/Defendant
10 CITY OF ANAHEIM

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE
14

15 PEOPLES HOMELESS TASK FORCE
16 ORANGE COUNTY,

17 Petitioner/Plaintiff,

18 v.

19 CITY OF ANAHEIM and DOES 1 through
10,

20 Respondent/Defendant,

21 SRB MANAGEMENT, LLC,

22 Real Party in Interest
23
24
25
26
27

Case No. 30-2020-01135406-CU-WM-CJC
(consolidated with Case No. 30-2020-
01174133-CU-WM-CJC)

Assigned for All Purposes to:
Hon. David A. Hoffer, Dept. C42

**DECLARATION OF STEVEN R. NORRIS IN
SUPPORT OF CITY'S OPPOSITION TO
MOTION FOR WRIT OF MANDATE AND
DECLARATORY RELIEF**

**[Filed Concurrently with Opposition;
Declarations of Robert Fabela and Theresa
Bass; Objection to and Request to Exclude
Moreno and Zapata Declarations; Notice of
Lodging of Videos; and Deemed Admissions]**

Hearing:

Date: February 14, 2022
Time: 3:30 p.m.
Dept.: C42

Action Filed: February 28, 2020

28 IRV #4865-5311-9499 v2

1 **DECLARATION OF STEVEN R. NORRIS**

2 I, Steven R. Norris, declare as follows:

3 1. I have personal knowledge of the facts set forth in this declaration, and, if called as
4 a witness in this matter, I could and would testify competently thereto, under oath. I make this
5 declaration in support of the City of Anaheim’s accompanying “Opposition to Motion for Writ of
6 Mandate and Declaratory Relief.”

7 2. I am a professional real estate appraiser, working under a company that I own and
8 run, known as Norris Realty Advisors, with its office in Pasadena. I am a Member of the
9 Appraisal Institute (MAI), and also a Counselor of Real Estate (CRE). I am certified as a general
10 commercial real estate appraiser by the State of California. I have been working as a real estate
11 appraiser since 1980. I specialize in a variety of complex commercial real estate valuation and
12 consulting matters.

13 3. In early 2019, I was retained by the City of Anaheim (“City”) to provide appraisal
14 services relating to Angel Stadium and certain surrounding properties, such as the Grove of
15 Anaheim, which I understand is collectively referred to as the “Stadium Site.” My initial contract
16 for those services was signed in April of 2019. I have conducted appraisals for similar properties
17 in the past throughout California and other states in the western United States.

18 4. With respect to the Stadium Site, my assignment from the City was always to
19 provide a fair market value appraisal of the property in leased fee¹, subject to the existing ground
20 lease. At no time was I asked to appraise the “lease value” of the property—*i.e.*, the value of the
21 property only if the City were to lease it. I was not told that a sale or lease would actually occur,
22 but that a sale was being potentially contemplated among other potential options. I was simply
23 asked to appraise the fair market value of the property.

24 5. It would be typical and expected to obtain a fair market value appraisal of the
25 subject property in a transaction of this nature, regardless of the ultimate form of the transaction

26 _____
27 ¹ According to the Appraisal Institute, Dictionary of Real Estate Appraisal, 7th Edition, 2022, the
28 term “Leased Fee Interest,” is defined as “[t]he ownership interest held by the lessor, which
includes the right to receive the contracted rent specified in the lease plus the reversionary right
when the lease expires.”

1 (e.g., a sale, a lease, or something else), for such an appraisal is useful in any such transaction. In
2 addition, in my understanding, the City did not clearly know what form the ultimate transaction
3 would take when I was retained. In that circumstance, it would be particularly relevant and
4 pragmatic to have an understanding of the fair market value of the entire property.

5 6. I understand that a contention has been made in this case that, at some point in
6 August or September of 2019, the City “changed” my assignment from a “lease” appraisal to a
7 “sale” appraisal. This never occurred. The core nature of my assignment never changed from the
8 initial request that I appraise the fair market value of the property. Although I was asked for
9 certain updates from time to time, and my assignment was “modified” in relation thereto, those
10 updates and modifications related solely to the assumptions related to future development of the
11 site that I was to make in my appraisal.

12 I declare under penalty of perjury under the laws of California that the foregoing is true
13 and correct.

14 Executed on January 26, 2022, at Pasadena, California.

15
16 

17
18 _____
Steven R. Norris

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, Bernadette A. Antle, declare:

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1901 Harrison Street, Suite 900, Oakland, California 94612. On **January 27, 2022**, I served a copy of the within document(s):

**DECLARATION OF STEVEN R. NORRIS IN SUPPORT OF CITY'S
OPPOSITION TO MOTION FOR WRIT OF MANDATE AND
DECLARATORY RELIEF**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Santa Ana, California addressed as set forth below.
- by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery Service agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via electronic service the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Please see attached service list.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on **January 27, 2022**, at Santa Ana, California

BERNADETTE A. ANTLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Service List

***Peoples Homeless Task Force Orange County v. City of Anaheim, et al.
Orange County Superior Court Case No. 30-2020-01174133-CU-WM-CJC***

Law Offices of Kelly A. Aviles	Attorneys for Plaintiff
Kelly Aviles	<i>Peoples Homeless Task Force Orange</i>
1502 Foothill Blvd., #103-140	<i>County</i>
La Verne, CA 91750	
Email: <i>kaviles@opengovlaw.com</i>	

1 Thomas B. Brown (State Bar No. 104254)
E-mail: tbrown@bwslaw.com
2 Mark. J. Austin (State Bar No. 2088880)
E-mail: maustin@bwslaw.com
3 BURKE, WILLIAMS & SORENSEN, LLP
1851 East First Street, Suite 1550
4 Santa Ana, California 92705
Tel: 949.863.3363 Fax: 949.863.3350

Filing Fee Exempt Pursuant to
Government Code § 6103

5 ANAHEIM CITY ATTORNEY'S OFFICE
6 ROBERT FABELA, CITY ATTORNEY
Gregg M. Audet (State Bar No. 158682)
7 gaudet@anaheim.net
200 S. Anaheim Boulevard, Suite 356
8 Anaheim, California 92805
Tel: 714.765.5169 Fax: 714.765.5123

9 Attorneys for Respondent/Defendant
10 CITY OF ANAHEIM

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE
14

15 PEOPLES HOMELESS TASK FORCE
16 ORANGE COUNTY,

17 Petitioner/Plaintiff,

18 v.

19 CITY OF ANAHEIM and DOES 1 through
10,

20 Respondent/Defendant,

21 SRB MANAGEMENT, LLC,

22 Real Party in Interest
23
24
25
26
27
28

Case No. 30-2020-01135406-CU-WM-CJC
(consolidated with Case No. 30-2020-
01174133-CU-WM-CJC)

Assigned for All Purposes to:
Hon. David A. Hoffer, Dept. C42

**DECLARATION OF CITY ATTORNEY
ROBERT FABELA IN SUPPORT OF CITY'S
OPPOSITION TO MOTION FOR WRIT OF
MANDATE AND DECLARATORY RELIEF**

**[Filed Concurrently with Opposition;
Declarations of Theresa Bass and Steve Norris;
Objection to and Request to Exclude Moreno
and Zapata Declarations; Notice of Lodging of
Videos; and Deemed Admissions]**

Hearing:

Date: February 14, 2022
Time: 3:30 p.m.
Dept.: C42

Action Filed: February 28, 2020

IRV #4860-0032-1803 v3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF CITY ATTORNEY ROBERT FABELA

I, Robert Fabela, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness in this matter, I could and would testify competently thereto, under oath. I make this declaration in support of the City of Anaheim’s accompanying “Opposition to Motion for Writ of Mandate and Declaratory Relief.”

2. I am the City Attorney of the City of Anaheim (“City”). I have held that position since April of 2018. Based on that position, I have direct knowledge of many important issues impacting the City, including the City’s decision to sell Angel Stadium and certain surrounding properties (the “Stadium Site”) to Angels Baseball LP (“Angels Baseball”), through its special purpose entity, SRB Management, LLC (“SRB”), and the discussions and negotiations between the parties leading to that sale.

3. As City Attorney, I have direct knowledge of the present case, which I understand involves, among other things, a challenge to the City’s sale of the Stadium Site to SRB. Based on my review of the documents, including the Purchase and Sale Agreement (“Agreement”) that is under challenge, and my involvement in the sale, I understand that the Stadium Site consists of approximately 150 acres, containing Angel Stadium, the Grove of Anaheim, and their surrounding parking areas and related properties.

Background Re Negotiations with the Angels

4. The City currently leases the Stadium Site to Angels Baseball, successor to The California Angels LP, which originally entered into the lease in 1996. A true and correct copy of that lease is submitted herewith as **Exhibit 1**, and a true and correct copy of the first amendment to that lease is submitted herewith as **Exhibit 2**. Under Section 5 of the lease, as amended, the Angels had a right to terminate it upon providing 12 months’ notice to the City, within certain parameters. In October of 2018, the Angels provided such a notice, electing to terminate a year later. In January of 2019, however, the City and the Angels extended the Angels’ termination right to the end of 2020. A true and correct copy of the agreement by which that termination right was extended (the second amendment to the lease) is submitted herewith as **Exhibit 3**.

IRV #4860-0032-1803 v3

1 5. Preparations regarding the next phase of the Angels’ use of the Stadium, and what
2 the structure of any new deal might be, began shortly after the Angels provided notice of the
3 termination. However, discussions between the parties remained preliminary until well into 2019,
4 with the City waiting during that period to receive a concrete proposal from the Angels.

5 6. In fact, it was not until November of 2019 (specifically, at a meeting between the
6 Angels and certain City staff on November 15, 2019) that the Angels conveyed a proposal to
7 purchase the property from the City. Until that date, it was unknown to me—and, to my
8 knowledge, other City staff—that the Angels would propose a purchase as opposed to any other
9 type of transaction, such as a lease. In fact, I distinctly recall that, as a result of that meeting, I
10 determined it important to hire outside counsel specializing in these types of transactions, as I
11 previously did not know what form the ultimate transaction would take. I retained such counsel,
12 on behalf of the City, the week following our November 15, 2019 meeting with the Angels.

13 7. During the discussions and negotiations between the City and the Angels in 2019,
14 both before and after the Angels made their proposal on November 15, 2019, the primary City
15 staff member who interfaced with the Angels on behalf of the City was City Manager Chris
16 Zapata (“Zapata”). However, Zapata would also consult with and involve a number of other City
17 staff members and outside consultants as necessary according to their expertise, including myself
18 and several others, such as Deputy City Manager David Belmer, Conventions and Entertainment
19 Director Tom Morton, outside financial consultants Dan Barrett and Larry Kosmont, and
20 Planning Director Ted White, among others.

21 8. Long before the Angels made their proposal in November of 2019, the City was
22 already preparing for the various potential options by conducting its due diligence, including, as
23 noted, through consultation between the City Manager and various City staff and outside
24 consultants. In addition, at a public meeting on February 19, 2019, the City Council authorized
25 Zapata to obtain a fair market value appraisal of the Stadium Site, for which the City hired Steve
26 Norris of Norris Realty Advisors. A true and correct copy of the minutes of the City’s February
27 19, 2019 meeting, reflecting that authorization, are attached hereto as **Exhibit 4**.

28 \ \ \

IRV #4860-0032-1803 v3

- 2 -

The Alleged Negotiating “Team”

1
2 9. I understand that Petitioner Peoples Homeless Task Force Orange County
3 (“Petitioner”) is asserting that, at some point, the City Council formed a group of specific
4 individuals—namely, myself, Zapata, and Mayor Harry Sidhu—as an alleged “Negotiating
5 Team,” and that this defined group purportedly handled negotiations on behalf of the City. That is
6 not true, although I do realize that the term “team” was loosely used in various contexts
7 throughout this time. The City did not have a defined “team” of individuals who handled the
8 discussions and negotiations with the Angels, either before or after the series of meetings on the
9 subject of a “team” in June and July of 2019, or before or after the Angels’ proposal in November
10 2019. On the contrary, as noted above, the “team” at any given time was a group of City officials
11 and/or consultants, who would be involved as needed during the process, chiefly as determined
12 by City Manager Zapata.

13 10. I further understand that, according to Petitioner, Mayor Sidhu allegedly formed
14 this “Negotiating Team” at a public meeting of June 4, 2019. I attended that meeting, and that is
15 not what occurred. Although Mayor Sidhu referenced the early stages of talks with the Angels
16 and his desire to form a “lead negotiating team,” no official action or vote was taken in that
17 regard at the meeting, and no “team” or other body was formed or could have been formed by the
18 Council without a proper vote by the entire body. Moreover, I understood the Mayor’s statement
19 as just that—a statement. It did not result in the formation of a specific team, but an
20 announcement that he would also be involved in the negotiations as a representative of the City
21 Council. Submitted herewith as **Exhibit 5** is a true and correct copy of the minutes from the June
22 4, 2019 meeting. Submitted herewith as **Exhibit 6** is a true and correct copy of a transcript of the
23 portion of the meeting referenced by Petitioner. In fact, the Mayor’s statement regarding a team
24 was in response to a report by Zapata on the status of the parties’ discussions, as shown in the
25 accompanying transcript and minutes of the meeting.

26 11. The Council held another meeting on June 18, 2019, which I attended. Near the
27 end of the meeting, during the “Council Communications” portion of the agenda, Councilmember
28 Moreno took issue with the Mayor’s announcement from the prior meeting in which the Mayor

1 stated that he would be the Council representative during negotiations. As such, Councilmember
2 Moreno requested that he and Councilmember Denise Barnes also be included on any alleged
3 “negotiating team.” However, when he failed to obtain the votes to place that item on a future
4 agenda, he stated that he would simply self-appoint himself and Councilmember Barnes to the
5 purported “team,” stating that he had the right to do so if the Mayor did. However, as with the
6 Mayor’s comment on June 4th, nothing official occurred as a result of Mr. Moreno’s comment,
7 and no “team” was actually formed. A true and correct copy a transcript of the relevant portion of
8 this June 18th meeting is submitted herewith as **Exhibit 8**. A true and correct copy of the minutes
9 from the June 18th meeting is submitted herewith as **Exhibit 7**. Although those minutes reflect, on
10 page 38, that Councilmember Trevor O’Neil requested that an item be added to a future agenda to
11 appoint myself, the City Manager, and the Mayor to a negotiating team for the Stadium deal, that
12 request was also never agendized for any future meeting.

13 12. Ultimately, at the July 16, 2019 meeting, the Council considered an item
14 agendized by the Mayor under his agenda-setting authority to appoint one of the City Council’s
15 members to “work in conjunction with [unspecified] City staff as the exclusive Council
16 representative for negotiations.” This was the only official action taken by the Council with
17 regard how negotiations would be handled, but it was *not* to create a “negotiating team.” Under
18 this item, the ultimate motion and vote of the Council on the issue of an alleged “negotiating
19 team” were simply to accept the stated recommendation in the staff report on that item for that
20 meeting. I attended that meeting. A true and correct copy of the agenda for that meeting is
21 submitted herewith as **Exhibit 10**. A true and correct copy of the staff report for that meeting is
22 submitted herewith as **Exhibit 11**. A true and correct copy of the minutes of that meeting are
23 submitted herewith as **Exhibit 12**. A true and correct copy of a transcript of the portion of the
24 meeting discussing that item is submitted herewith as **Exhibit 13**.

25 13. The staff report for that item stated that, in addition to this Council representative,
26 the City’s “team” would consist of unspecified “members of the City’s executive team as well as
27 other specialized consultants,” without limiting it to a group of specific individuals. (Exh. 11.)
28 The report was worded in this way because there was no defined body of specific individuals who

1 were handling negotiations. On the contrary, both prior to and after July 16th, the “team” was
2 simply City staff—namely, Zapata, with various other staff members and consultants getting
3 involved as needed based on their expertise, including myself. The only thing that changed after
4 July 16th was that the Mayor became the exclusive representative of the Council during
5 negotiations.

6 **Closed Session Meetings**

7 14. On certain dates in 2019 (August 13, September 24, November 19, and December
8 3), the City Council met in closed session to discuss the negotiations—specifically, price and
9 terms of payment—regarding the Stadium Site. I attended all of those closed-session meetings.
10 True and correct copies of the posted agendas for those meetings are submitted herewith,
11 respectively, as **Exhibits 14, 20, 22, and 25**. As required by Government Code section 54954.5,
12 the agendas for those closed-session meetings read as follows:

13 **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

14 (Section 54956.8 of California Government Code)

15 Property: 2000 E. Gene Autry Way and 2200 E. Katella Ave., Anaheim, CA 92806;
16 APN Nos. 232-011-02, -06, -35, -36, -37, -38, -39, -40, -41, -42, -43, -44, -47, -48, -50
17 Agency Negotiator: Chris Zapata, City Manager
18 Negotiating Parties: Angels Baseball, LP; City of Anaheim
19 Under Negotiation: Price and Terms of Payment

20 (Exhs. 14, 20, 22, and 25.)

21 15. With its brief, Petitioner has provided two declarations—one of former City
22 Manager Zapata, and one of current City Councilmember Jose Moreno—that purport to state
23 what happened in certain of those closed sessions—namely, the closed sessions of “August 23,
24 2019” (even though there was no meeting of that date) and September 24, 2019. Notably,
25 Councilmember Moreno consistently voted against the Angels’ transaction, and has been a strong
26 opponent of the deal ever since. Zapata suddenly resigned from his position with the City on
27 April 21, 2020 after the status of his employment was considered by the Council in closed session
28 earlier that evening. I consider the declarations of Moreno and Zapata to be highly improper and
possibly illegal, in that they violate the cardinal rule against the disclosure of closed-session
discussions without approval from the legislative body, as reflected in Government Code section
54963, a provision of the Brown Act. I have attended virtually every closed-session of the City

1 Council since the Angel Stadium deal, and I am certain that Moreno and Zapata never obtained
2 approval of the City Council to discuss what happened in any closed-session meeting. That never
3 occurred in any meeting I attended, and if it happened at a meeting I did not attend, I would have
4 been informed of it.

5 16. In contrast, prior to submitting this declaration, I did obtain permission from the
6 City Council, on January 25, 2022, to testify regarding what occurred in the City Council’s
7 relevant closed-session meetings, to the extent necessary to defend this lawsuit and correct the
8 record.

9 17. The Zapata and Moreno declarations are also factually incorrect. Zapata states that,
10 in the closed-session meeting of “August 23, 2019,” “[t]he City Councilmembers discussed
11 whether to sell or continue the lease during the closed session and made the decision to sell the
12 property to Angels Baseball during that closed session.” (Zapata Decl., ¶ 6.) In a contradictory
13 statement, Moreno states that, in that same meeting (of “August 23”), the “Councilmembers
14 discussed whether to sell or continue the lease during the closed session and, in expressing strong
15 interest in selling the property to Angels Baseball, discussed the value of the then current
16 appraisal to determine the value of the property in a for sale transaction.” (Moreno Decl., ¶ 6.)
17 Zapata and Moreno then state: “At the conclusion of the closed session, City Council asked City
18 staff to obtain an updated appraisal reflecting a sale instead of a lease” (Zapata Decl., ¶ 6;
19 Moreno Decl., ¶ 6.)

20 18. With respect to the September 24th meeting, Zapata and Moreno claim that the
21 “City Council discussed and deliberated on the information provided in the updated appraisal,
22 provided approval to sell the property to Angels Baseball, and authorized the City’s Negotiating
23 Team to conduct further negotiations consistent with City Council’s decision to sell the property.”
24 (Zapata Decl., ¶ 9; Moreno Decl., ¶ 9.)

25 19. These statements contain numerous factual inaccuracies. To begin with, there was
26 no closed-session meeting—or any City Council meeting—on “August 23, 2019.” The closest
27 meeting at which the Stadium Site was on the closed-session agenda was August 13, 2019.

28 20. In addition, at the August 13 and September 24, 2019 meetings, there was no

1 discussion of the merits between a sale or a lease transaction, or any “decision” or vote on what
2 the ultimate form of the transaction would be. Indeed, the value of the property was still being
3 evaluated, there was no proposal on the table from the Angels at that time, and the City would not
4 receive any such proposal until November of 2019. Both before and after the meetings of August
5 13 and September 24, 2019, both a sale and a lease (or something else) were still potential
6 options, with the ultimate form of the transaction still unknown.

7 21. The purpose of the August 13 and September 24, 2019 closed sessions was to
8 discuss the appraisal of the property with the City’s appraiser (Steve Norris), and to receive any
9 direction regarding price and terms of payment. As part of that discussion, the Council discussed
10 the need to obtain the best possible value from the ultimate transaction, and provided direction to
11 the negotiators accordingly. However, this is not tantamount to “approving” a “sale.”

12 22. Moreover, contrary to the implications of Moreno and Zapata declaration, I was
13 very vigilant in all closed-session meetings on this transaction to limit any discussion to issues
14 involving the “price and terms of payment,” to ensure the Council stayed within the parameters of
15 the Brown Act. I even recall providing a summary at the beginning of closed sessions about the
16 limits of what the Councilmembers were allowed to discuss in closed session—namely, what
17 “price and terms of payment” means under the Brown Act and relevant legal authority.

18 23. In fact, Councilmember Moreno himself confirmed this fact in his public
19 comments on December 20, 2019, where he also made other statements in direct contradiction of
20 his current declaration. I attended that meeting of December 20, 2019. True and correct copies of
21 transcripts of certain portions of the meeting are submitted herewith as **Exhibits 31 and 32**. A
22 true and correct copy of a video clip of that meeting showing certain comments of
23 Councilmember Moreno is lodged herewith as **Exhibit 33**. At that meeting, in direct opposition to
24 his current testimony that the City Council allegedly met in closed session and discussed and
25 “decided” to sell the property rather than lease it, he stated:

26 This is the first public discussion—the first discussion I should say—that the City
27 Council has actually had on the actual deal points. **Because in closed session the**
28 **City Attorney was very good in making sure we focused on the price and**
terms of payment per the Brown Act. So this is the first time we’ve had a
chance to discuss, deliberate, understand fully together in public—actually just

1 with each other—the major deal points here. And that’s why my, my thinking
2 right now is, okay, what are we binding ourselves to today? Because it’s our first
3 discussion and that’s why I think for me, I support the idea of postponing for that
4 reason because this is the first time we’ve talked about these major, major deal
5 points and I don’t see a need to rush this discussion. And it is unfortunate that we
6 did not receive a proposal until just about Thanksgiving time. . . .

7 **So my understanding of what we’re voting on truly today from staff is we’re**
8 **agreeing to sell the land first and foremost and we’ve not had that discussion,**
9 **colleagues. Do we want to sell the land? Do we want to lease the land? I**
10 **don’t think we were expecting the Angels to offer a purchase of the land.**
11 And I did say—somebody commented—I did say in some of my forums that I’m
12 open to selling the land. But I was, we didn’t have the appraisals so I’m basing it
13 on past appraisals, what...consulting with realtors and what not—what it might be
14 worth.

15 **So for me, it seems today is that we first and foremost have to agree, if we do**
16 **decide to move today, whether we want to sell the land or lease the land.**

17 (Exh. 32, pp. 1-2; Exh. 33 [video] [emphasis added].)

18 24. In addition to those referenced above, submitted herewith are additional
19 agendas, staff reports, minutes, and transcripts of other relevant City Council meetings on
20 the original Agreement, including the following:

21 a. Submitted herewith as **Exhibits 16, 17, and 18**, respectively, are a
22 true and correct copy of the agenda, the staff report on the Stadium deal, and the minutes,
23 for the City Council meeting of August 27, 2019. I attended that meeting. In addition,
24 submitted herewith as **Exhibit 19** is a true and correct copy of a transcript of certain
25 portions of that meeting.

26 b. Submitted herewith as **Exhibit 21** is a true and correct copy of the
27 minutes of the City Council meeting of November 5, 2019.

28 **The City’s Approval of the Initial Agreement in December of 2019**

29 25. The initial Agreement was considered and approved by the City Council at its
30 meeting of December 20, 2019, when the City held a public hearing on the matter. As noted
31 above, I attended that meeting. A true and correct copy of the agenda for that meeting and the
32 staff report regarding the Agreement are submitted herewith as **Exhibits 28 and 29**, respectively.
33 A true and correct copy of the minutes of that meeting is submitted herewith as **Exhibit 30**. A
34 true and correct copy of the City Council’s signed resolution approving the Agreement is

1 submitted herewith as **Exhibit 34**, and a true and correct copy of the approved Agreement is
2 submitted herewith as **Exhibit 35**.

3 26. At the December 20th hearing, all interested persons could—and dozens upon
4 dozens of people did—express their views for and against the sale, and the process leading to its
5 proposal. In my understanding, Petitioner’s Chief Executive Officer (Michael Robbins), and its
6 Secretary and agent for service of process (David Duran), appeared and testified against the sale. I
7 obtained these names from the formation documents of Petitioner Peoples Homeless Task Force
8 Orange County, which my office obtained from the California Secretary of State website. Those
9 documents, true and correct copies of which are submitted herewith as **Exhibit 9**, list both Mr.
10 Robbins and Mr. Duran as officers of Petitioner.

11 27. Ultimately, after hearing over four hours of public input, and spending several
12 more hours deliberating, the Council voted to approve the sale on December 20, 2019. In my time
13 as City Attorney, there may not have been an issue that generated more public participation at a
14 City Council meeting than this one.

15 28. Under the Agreement, the ultimate sale of the property was to SRB, technically not
16 the Angels. However, I understand, based on discussions with Angels representatives, and from
17 documents filed with the California Secretary of State, that SRB was formed by Angels owner,
18 Arte Moreno, in late November of 2019, for the purpose of purchasing the Stadium Site.
19 Submitted herewith as **Exhibits 23 and 24** are the formation documents for SRB that my office
20 obtained from the California Secretary of State’s website, showing that the entity was formed on
21 or about November 20, 2019. Prior to that date, SRB did not exist, so it could not be said that the
22 City was “negotiating” with SRB. On the contrary, all negotiations were with the same Angels
23 principals, including its President and General Counsel, among others. Moreover, the same
24 individuals from the Angels were involved with negotiations both before and after the formation
25 of SRB, showing that the two are related entities.

26 **The City’s Approval of the Amended Agreement in September of 2020**

27 29. At its meeting of September 29, 2020, the City Council held a noticed, open, and
28 public hearing on a new, Amended and Restated Purchase and Sale Agreement (the “Amended

1 Agreement”). I attended that meeting. True and correct copies of the posted agenda and the
2 minutes from that meeting are submitted herewith as **Exhibits 40 and 41**, respectively. A true and
3 correct copy of the City Council resolution approving the Amended Agreement is submitted
4 herewith as **Exhibit 42**, and a true and correct copy of the Amended Agreement is submitted
5 herewith as **Exhibit 43**. The approval of this Amended Agreement superseded the approval of the
6 original Agreement. The Amended Agreement itself states, in Section 1 (page 4) that it “amends
7 and restates in its entirety” the original Agreement approved in December of 2019. Notably, no
8 closed-session meetings regarding the Amended Agreement were ever held.

9 30. In compliance with Governor Newsom’s Covid-related Executive Order N-29-20,
10 the City held the September 29, 2020 public meeting via teleconferencing. A true and correct
11 copy of Executive Order N-29-20, obtained from the California Governor’s website, is submitted
12 herewith as **Exhibit 48**. I understand that the City made the meetings accessible electronically to
13 all members of the public—live, online, and on local Cable Channel 3. Although the agenda
14 “encouraged” the public to submit comments by 2:30 p.m. (Exh. 40), it also stated that comments
15 received after 2:30 p.m. would be distributed to the Council (*ibid.*), which is what the City did,
16 accepting all public comments submitted both before and during the meeting, and forwarding
17 them all to the full City Council by e-mail, including comments by Petitioner’s own
18 representative. The City Clerk shared this process with the public during the Council meetings,
19 and I would confirm with the Clerk during the Council meetings that the contemporaneous public
20 comment sharing was occurring. The meeting on the Amended Agreement lasted approximately
21 six. Following the public hearing and lengthy deliberation, in the early morning hours of
22 September 30, 2020, the Council approved the Amended Agreement.

23 31. In addition to the Amended Agreement, the City Council also considered and
24 approved an additional agreement with SRB at its meeting of September 29, 2020—namely, a
25 disposition and development agreement for the Stadium Site (“DDA”). Because the DDA was
26 approved by ordinance, state law required that it be considered again, for a “second reading,”
27 which the City Council did at its meeting of October 6, 2020. Thus, the October 6, 2020 meeting
28 presented yet another opportunity for the public to appear and argue against the overall

1 transaction, which would not proceed without the DDA. True and correct copies of the posted
2 agenda and the minutes from the October 6, 2020 meeting are submitted herewith as **Exhibits 44**
3 **and 45**, respectively.

4 I declare under penalty of perjury under the laws of California that the foregoing is true
5 and correct.

6 Executed on January 27, 2022, at Anaheim, California.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Robert Fabela

1 **PROOF OF SERVICE**

2 I, Bernadette A. Antle, declare:

3 I am a citizen of the United States and employed in Alameda County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address is
5 1901 Harrison Street, Suite 900, Oakland, California 94612. On **January 27, 2022**, I served a
6 copy of the within document(s):

7 **DECLARATION OF CITY ATTORNEY ROBERT FABELA IN**
8 **SUPPORT OF CITY’S OPPOSITION TO MOTION FOR WRIT OF**
9 **MANDATE AND DECLARATORY RELIEF**

- 10 by transmitting via facsimile the document(s) listed above to the fax number(s) set
11 forth below on this date before 5:00 p.m.
- 12 by placing the document(s) listed above in a sealed envelope with postage thereon
13 fully prepaid, the United States mail at Santa Ana, California addressed as set forth
14 below.
- 15 by placing the document(s) listed above in a sealed envelope and affixing a pre-
16 paid air bill, and causing the envelope to be delivered to a Delivery Service agent
17 for delivery.
- 18 by personally delivering the document(s) listed above to the person(s) at the
19 address(es) set forth below.
- 20 by transmitting via electronic service the document(s) listed above to the person(s)
21 at the e-mail address(es) set forth below.

22 *Please see attached service list.*

23 I am readily familiar with the firm's practice of collection and processing correspondence
24 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
25 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
26 motion of the party served, service is presumed invalid if postal cancellation date or postage
27 meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on **January 27, 2022**, at Santa Ana, California

BERNADETTE A. ANTLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Service List

***Peoples Homeless Task Force Orange County v. City of Anaheim, et al.
Orange County Superior Court Case No. 30-2020-01174133-CU-WM-CJC***

Law Offices of Kelly A. Aviles	Attorneys for Plaintiff
Kelly Aviles	<i>Peoples Homeless Task Force Orange</i>
1502 Foothill Blvd., #103-140	<i>County</i>
La Verne, CA 91750	
Email: <i>kaviles@opengovlaw.com</i>	

1 Thomas B. Brown (State Bar No. 104254)
E-mail: tbrown@bwslaw.com
2 Mark. J. Austin (State Bar No. 2088880)
E-mail: maustin@bwslaw.com
3 BURKE, WILLIAMS & SORENSEN, LLP
1851 East First Street, Suite 1550
4 Santa Ana, California 92705
Tel: 949.863.3363 Fax: 949.863.3350

Filing Fee Exempt Pursuant to
Government Code § 6103

5 ANAHEIM CITY ATTORNEY'S OFFICE
6 ROBERT FABELA, CITY ATTORNEY
Gregg M. Audet (State Bar No. 158682)
7 gaudet@anaheim.net
200 S. Anaheim Boulevard, Suite 356
8 Anaheim, California 92805
Tel: 714.765.5169 Fax: 714.765.5123

9 Attorneys for Respondent/Defendant
10 CITY OF ANAHEIM

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE
14

15 PEOPLES HOMELESS TASK FORCE
16 ORANGE COUNTY,

17 Petitioner/Plaintiff,

18 v.

19 CITY OF ANAHEIM and DOES 1 through
10,

20 Respondent/Defendant,

21 SRB MANAGEMENT, LLC,

22 Real Party in Interest
23
24
25
26
27

Case No. 30-2020-01135406-CU-WM-CJC
(consolidated with Case No. 30-2020-
01174133-CU-WM-CJC)

Assigned for All Purposes to:
Hon. David A. Hoffer, Dept. C42

DECLARATION OF CITY CLERK
THERESA BASS IN SUPPORT OF CITY'S
OPPOSITION TO MOTION FOR WRIT OF
MANDATE AND DECLARATORY RELIEF

**[Filed Concurrently with Opposition;
Declarations of Robert Fabela and Steve
Norris; Objection to and Request to Exclude
Moreno and Zapata Declarations; Notice of
Lodging of Videos; and Deemed Admissions]**

Hearing:

Date: February 14, 2022
Time: 3:30 p.m.
Dept.: C42

Action Filed: February 28, 2020

28 IRV #4872-3248-2827 v2

DECLARATION OF CITY CLERK THERESA BASS

I, Theresa Bass, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness in this matter, I could and would testify competently thereto, under oath. I make this declaration in support of the City of Anaheim’s accompanying “Opposition to Motion for Writ of Mandate and Declaratory Relief.”

2. I am the City Clerk of the City of Anaheim (“City”). I have held that position since March 5, 2019. Based on that position, I have direct knowledge of many issues impacting the City, including issues relating to the City’s public meetings, and the notices and disclosures made in conjunction therewith.

3. On December 6, 2019, the City published notice of the City’s upcoming meeting of December 20, 2019, at which the City would consider staff’s recommendation to sell Angel Stadium and certain surrounding properties (the “Stadium Site”) to SRB Management Co., LLC (“SRB”). This notice was also published on December 13, 2019. A true and correct copy of the proof of publication of that notice is submitted herewith as **Exhibit 26**, showing that the notice was published in the Orange County Register on both December 6, 2019, and December 13, 2019.

4. In addition, also on December 6, 2019, the City made the draft Purchase and Sale Agreement (“Agreement”) with SRB, as well as a Section 52201 “economic opportunity” summary report describing the proposed transaction, available for public inspection in the Office of the City Clerk. These documents were also posted on the City’s website. A true and correct copy of the “economic opportunity” report is submitted herewith as **Exhibit 27**. A true and correct copy of the Agreement is submitted herewith as **Exhibit 35**. Before these documents were posted on the City’s website, the City also had posted on its website a “Fiscal Impact Report” on the development of the Stadium Site, prepared by RCL Co., and dated August 30, 2019. A true and correct copy of that report is submitted herewith as **Exhibit 15**.

5. On December 20, 2019, the City conducted the advertised public hearing on the proposed sale of the Stadium Site. I attended that hearing. At the hearing, all interested persons

1 could express their views for and against the sale, and the process leading to its proposal, and
2 over 70 speakers addressed the City Council. In fact, the Chief Executive Officer (Michael
3 Robbins) and Secretary and agent for service of process (David Duran) of Petitioner Peoples
4 Homeless Task Force Orange County, appeared and testified in opposition of the sale. I
5 understand that these individuals are officers of Petitioner based on their formation documents
6 from the California Secretary of State’s website, which are submitted herewith as **Exhibit 9**. The
7 public hearing lasted several hours, including approximately four hours of public comment and
8 input, at the conclusion of which, the City Council voted to approve the sale.

9 6. At its meeting of September 29, 2020, the City Council held a noticed public
10 hearing on an Amended and Restated Purchase and Sale Agreement (the “Amended Agreement”).
11 I attended that hearing. The City published notice of the September 29, 2020 public hearing in
12 the Anaheim Bulletin on September 10, 2020 and September 17, 2020. True and correct copies of
13 the proofs of publication to that effect are submitted herewith as **Exhibit 39**. On September 10,
14 2020, the City made available to the public an additional Section 52201 “economic opportunity”
15 report on the transaction at the Office of the City Clerk, and on the City’s website. A true and
16 correct copy of that report is submitted herewith as **Exhibit 38**. True and correct copies of the
17 posted agenda and the minutes from the September 29, 2020 meeting are submitted herewith as
18 **Exhibits 40 and 41**, respectively.

19 7. In compliance with Governor Newsom’s Covid-related Executive Order N-29-20,
20 the City held the September 29, 2020 public meeting via teleconferencing. A true and correct
21 copy of Executive Order N-29-20, obtained from the California Governor’s website, is submitted
22 herewith as **Exhibit 48**. The City made the meeting accessible electronically to members of the
23 public—live, online, and on local Cable Channel 3. Although the agenda “encouraged” the public
24 to submit comments by 2:30 p.m. (Exh. 40), it also stated that comments received after 2:30 p.m.
25 would be distributed to the Council (*ibid.*).

26 8. All public comments submitted both before and during the September 29, 2020
27 meeting, were forwarded to the City Council by e-mail, including comments by Petitioner’s own
28 representatives. As the City Clerk, I am directly involved in that process and know that the City

1 Council members were sent all written comments submitted both before and during the meeting,
2 regardless of the time they were submitted. A total of 274 written comments were received via
3 email from the public on the item and submitted to the City Council.

4 9. The September 29, 2020 public hearing on the Amended and Restated Purchase
5 and Sale Agreement was approximately six hours. Following the public hearing, the Council
6 approved the Amended and Restated Purchase and Sale Agreement.

7 10. In addition to the Amended Agreement, the City Council also considered and
8 approved an additional agreement with SRB at its meeting of September 29, 2020—a disposition
9 and development agreement for the Stadium Site (“DDA”). Because the DDA was approved by
10 ordinance, state law required that it be considered again, for a “second reading,” which the City
11 Council did at its meeting of October 6, 2020. True and correct copies of the posted agenda and
12 the minutes from the October 6, 2020 meeting are submitted herewith as **Exhibits 44 and 45**,
13 respectively.

14 11. With respect to the October 6, 2020 meeting, the City followed the same protocols
15 as with the September 29, 2020 meeting. The City made the meeting accessible electronically to
16 members of the public—live, online, and on local Cable Channel 3. Although the agenda
17 “encouraged” the public to submit comments by 2:30 p.m. (Exh. 44), again, it also stated that
18 comments received after 2:30 p.m. would be distributed to the Council (*ibid.*). As with the
19 meeting of September 29th, all public comments submitted both before and during the October 6,
20 2020 meeting (369 total) were forwarded to the City Council by e-mail, including any comments
21 submitted by Petitioner’s representatives, regardless of whether the comments were submitted
22 before or after 2:30 p.m. that day.

23 12. On January 19, 2020, Petitioner’s counsel sent the City a “cure and correct” letter
24 claiming that the City violated the Brown Act, per Government Code section 54960.1. A true and
25 correct copy of that letter is submitted herewith as **Exhibit 36**. A true and correct copy of the
26 City’s response, dated February 13, 2020, is submitted herewith as **Exhibit 37**. Petitioner served
27 the City with its second “cure and correct” letter on October 29, 2020, regarding the Amended
28 and Restated Purchase and Sale Agreement and the Development Agreement. A true and correct

1 copy of that letter is submitted herewith as **Exhibit 46**. The City responded, denying any
2 violation, on November 25, 2020. A true and correct copy of the City’s response is submitted
3 herewith as **Exhibit 47**.

4 I declare under penalty of perjury under the laws of California that the foregoing is true
5 and correct.

6 Executed on January 27, 2022, at Anaheim, California.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Theresa Bass

1 **PROOF OF SERVICE**

2 I, Bernadette C. Antle, declare:

3 I am a citizen of the United States and employed in Alameda County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address is
5 1901 Harrison Street, Suite 900, Oakland, California 94612. On **January 27, 2022**, I served a
6 copy of the within document(s):

7 **DECLARATION OF CITY CLERK THERESA BASS IN SUPPORT OF**
8 **CITY’S OPPOSITION TO MOTION FOR WRIT OF MANDATE AND**
9 **DECLARATORY RELIEF**

- 10 by transmitting via facsimile the document(s) listed above to the fax number(s) set
11 forth below on this date before 5:00 p.m.
- 12 by placing the document(s) listed above in a sealed envelope with postage thereon
13 fully prepaid, the United States mail at Santa Ana, California addressed as set forth
14 below.
- 15 by placing the document(s) listed above in a sealed envelope and affixing a pre-
16 paid air bill, and causing the envelope to be delivered to a Delivery Service agent
17 for delivery.
- 18 by personally delivering the document(s) listed above to the person(s) at the
19 address(es) set forth below.
- 20 by transmitting via electronic service the document(s) listed above to the person(s)
21 at the e-mail address(es) set forth below.

22 *Please see attached service list.*

23 I am readily familiar with the firm's practice of collection and processing correspondence
24 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
25 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
26 motion of the party served, service is presumed invalid if postal cancellation date or postage
27 meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on **January 27, 2022**, at Santa Ana, California

BERNADETTE C. ANTLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Service List

***Peoples Homeless Task Force Orange County v. City of Anaheim, et al.
Orange County Superior Court Case No. 30-2020-01174133-CU-WM-CJC***

Law Offices of Kelly A. Aviles	Attorneys for Plaintiff
Kelly Aviles	<i>Peoples Homeless Task Force Orange</i>
1502 Foothill Blvd., #103-140	<i>County</i>
La Verne, CA 91750	
Email: <i>kaviles@opengovlaw.com</i>	

1 Thomas B. Brown (State Bar No. 104254)
E-mail: tbrown@bwslaw.com
2 Mark. J. Austin (State Bar No. 2088880)
E-mail: maustin@bwslaw.com
3 BURKE, WILLIAMS & SORENSEN, LLP
1851 East First Street, Suite 1550
4 Santa Ana, California 92705
Tel: 949.863.3363 Fax: 949.863.3350

Filing Fee Exempt Pursuant to
Government Code § 6103

5 ANAHEIM CITY ATTORNEY'S OFFICE
6 ROBERT FABELA, CITY ATTORNEY
Gregg M. Audet (State Bar No. 158682)
7 gaudet@anaheim.net
200 S. Anaheim Boulevard, Suite 356
8 Anaheim, California 92805
Tel: 714.765.5169 Fax: 714.765.5123

9 Attorneys for Respondent/Defendant
10 CITY OF ANAHEIM

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE
14

15 PEOPLES HOMELESS TASK FORCE
16 ORANGE COUNTY,

17 Petitioner/Plaintiff,

18 v.

19 CITY OF ANAHEIM and DOES 1 through
10,

20 Respondent/Defendant,

21 SRB MANAGEMENT, LLC,

22 Real Party in Interest
23

Case No. 30-2020-01135406-CU-WM-CJC
(consolidated with Case No. 30-2020-
01174133-CU-WM-CJC)

Assigned for All Purposes to:
Hon. David A. Hoffer, Dept. C42

**CITY OF ANAHEIM'S OBJECTIONS TO
EVIDENCE AND REQUEST TO EXCLUDE
DECLARATIONS OF DR. JOSE MORENO
AND CHRIS ZAPATA; DECLARATION OF
MARK J. AUSTIN**

**[Filed Concurrently with Opposition;
Declarations of Robert Fabela, Theresa Bass,
and Steve Norris; Notice of Lodging of Videos;
and Deemed Admissions]**

Hearing:

Date: February 14, 2022

Time: 3:30 p.m.

Dept.: C42

Action Filed: February 28, 2020

24
25
26
27
28 OAK #4868-1192-1931 v1

1 **I. INTRODUCTION**

2 By its motion for writ of mandate and declaratory relief pursuant to Government Code §
3 54960.1, Petitioner asks this Court to nullify two decisions, first in December 2019 and then
4 again in September and October 2020, made by the Anaheim City Council to sell Angel Stadium.
5 In support of its motion for writ of mandate, among other documents, Petitioner filed the
6 Declarations of Dr. Jose F. Moreno and Chris Zapata (collectively referred to as “Declarations”)
7 (attached hereto as Exhibits “A” and “B”, respectively). Dr. Moreno is currently a member of the
8 Anaheim City Council;¹ Mr. Zapata is Anaheim’s former City Manager.²

9 Both Declarations illegally divulge confidential information that was shared in legal
10 closed sessions conducted by the Anaheim City Council. The Brown Act explicitly prohibits the
11 unauthorized disclosure of confidential information acquired in a closed session by any person
12 present and it is incumbent upon all those attending lawful closed sessions to protect the
13 confidentiality of these discussions.

14 The Legislature has expressed that there exists a strong public interest in protecting the
15 confidentiality closed sessions conducted under the Brown Act. As public officials, both
16 Declarants have flagrantly disregarded the law they were bound to protect, and that Petitioner
17 pretends to champion, by disclosing information and communications they know to be
18 confidential.

19 To compound the violation, Petitioner did not disclose its intention to rely on Declarants
20 as witnesses in their responses to the City’s discovery requests, as expressly ordered by this
21 Court. Moreover, in a meet and confer discussion the City initiated following Petitioner’s further
22 discovery responses ordered by this Court, counsel for Petitioner expressly told counsel for the
23 City that Petitioner would not adduce any evidence in support of its Petition that Petitioner had
24 not disclosed in its discovery responses. The Court should not reward Petitioner’s “hide the ball”
25 tactics.

26 Accordingly, Respondent/Defendant City of Anaheim (the “City”) objects to and moves

27 _____
28 ¹ Dr. Moreno has been a Councilmember in Anaheim since December 2016.

² Mr. Zapata served as City Manager from some time in 2018 to April 2020.

1 this Court to strike the confidential and previously undisclosed information contained in the
2 Declarations.

3 **I. LEGAL ARGUMENT**

4 **A. Government Code § 54963 and Evidence Code § 1040 Prohibit Declarants’
5 Disclosure of the Confidential Information They Acquired in Closed Session.**

6 The Brown Act (the “Act;” Government Code § 54950 et seq.)³ requires that meetings of
7 “legislative bodies” of local agencies be open and public. (§54953(a).) The Act provides
8 exceptions to this general rule, and authorizes certain discussions to be conducted in a closed
9 session, including real property negotiations under § 54956.8. The Act prohibits a person from
10 disclosing confidential information that has been acquired by being present in a closed session
11 authorized by the Act to a person not entitled to receive it, unless the legislative body authorizes
12 disclosure of that confidential information. (§54963 (a).) "Confidential information" means a
13 communication made in a closed session that is specifically related to the basis for the legislative
14 body of a local agency to meet lawfully in closed session under the Brown Act. (*Id.* (b).)⁴
15 Disclosure of confidential information acquired in a closed session is not a violation when
16 disclosure is for the purpose of making certain confidential inquiries or complaints to a district
17 attorney or grand jury or expressing an opinion concerning the propriety or legality of actions
18 taken in closed session. (Gov. Code §54963(e).)

19 In addition, pursuant to the “official information” privilege under Evidence Code § 1040,
20 “[a] public entity has a privilege to refuse to disclose official information, and to prevent another
21 from disclosing official information, if...[d]isclosure is forbidden by ... a statute of this state.”
22 “Official information” means “information acquired in confidence by a public employee in the
23 course of his or her duty and not open, or officially disclosed, to the public prior to the time the
24 claim of privilege is made.” (Evid. Code §1040 (a).)

25 In *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, the court held that members of
26

27 ³ All statutory references are to the Government Code except as expressly noted.

28 ⁴ The Act specifies out remedies available to a public agency for violation of this section. These remedies are not exclusive, and thus are not relevant to the specific discussion at hand because the purpose of this brief is not to request the Court grant a remedy outlined in the Act.

1 a legislative body cannot be compelled to divulge the content of closed session discussions
2 through the discovery process. The Court stated that Evidence Code § 1040, subdivision (b)(2),
3 necessarily includes the Act's prohibition of disclosure of closed session proceedings except as
4 provided by the Act. (74 Cal.App.4th at 327.)

5 Dr. Moreno's declaration states the following:

6 I attended the August 23, 2019 closed session. During the August 23, 2019 closed
7 session of the City Council, the City Councilmembers were advised that Angels
8 Baseball had proposed to buy the Stadium Site, instead of continuing on with the
9 current lease or lease negotiations. The City Councilmembers discussed whether
10 to sell or continue the lease during the closed session and, in expressing strong
11 interest in selling the property to Angels Baseball, discussed the value of the then
12 current appraisal to determine the value of the property in a for sale transaction.
13 At the conclusion of the closed session, City Council asked City staff to obtain an
14 updated appraisal reflecting a sale instead of a lease of the Stadium Site.

* * *

11 I attended the September 24, 2019 closed session. During the September 24, 2019
12 closed session, City Council discussed and deliberated on the information
13 provided in the updated appraisal, provided approval to sell the property to
14 Angels Baseball, and authorized the City's Negotiating Team to conduct further
15 negotiations consistent with City Council's decision to sell the property.”

14 Additionally, the declaration of Mr. Zapata outlines the following⁵:

15 I attended the August 23, 2019 closed session. During the August 23, 2019
16 closed session of the City Council, Mayor Harry Sidhu advised that Angels
17 Baseball had proposed to buy the Stadium Site, instead of continuing on with the
18 current lease or lease negotiations. The City Councilmembers discussed whether
19 to sell or continue the lease during the closed session and made the decision to
20 sell the property to Angels Baseball during that closed session. At the conclusion
21 of the closed session, City Council asked City staff to obtain an updated
22 appraisal reflecting a sale instead of a lease of the Stadium Site.

20 During the September 24, 2019, City Council meeting, City Council held a
21 closed session . . . I attended the September 24, 2019 closed session. During the
22 September 24, 2019 closed session, City Council discussed and deliberated on
23 the information provided in the updated appraisal, provided approval to sell the
24 property to Angels Baseball, and authorized the City's Negotiating Team to
25 conduct further negotiations consistent with City Council's decision to sell the
26 property.” See Exhibit B, at 2-3 (emphasis added).

24 Both Declarations brazenly violate the Act. Neither Declarant attempts to conceal that he
25 obtained the information and communications in closed sessions. The information and
26 communications are clearly confidential, and Declarants do not, and cannot, state that the City

27 _____
28 ⁵ Mr. Zapata's declaration includes identical agendas for each closed session as are outlined
above in Dr. Moreno's declaration.

1 Council authorized them to divulge the confidential information. As public officials, Declarants
2 know (or should know) better.

3 Nor do the Declarations qualify for protection under § 54963(e)(2), which exempts
4 information that is disclosed for the purpose of expressing an opinion concerning the
5 propriety or legality of actions taken in closed session. (§54963(e).) Nowhere do these
6 Declarations attempt to justify the disclosures by expressing and explaining that they are *opinions*
7 offered on the legality of the closed sessions. Dr. Moreno and Mr. Zapata do not opine on the
8 legality of the events surrounding the sale, rather, they (inaccurately) describe legal events
9 leading up to a legal and transparent process culminating in the City Council’s public approval of
10 the sale of the Stadium Site.

11 In fact, although he neglects to so apprise the Court in his Declaration, Dr. Moreno’s
12 public comments during the City Council’s deliberations at the meeting on December 20, 2019
13 contradict his Declaration’s statement that the City Council discussed and decided to proceed by
14 sale during closed sessions in August and September 2019. More importantly for purposes of
15 refuting any argument that 54963(e) authorizes his disclosure, Dr. Moreono explicitly stated that
16 no such discussion or decision ever took place, and that the City Attorney carefully advised the
17 Council on the limits of closed session—in other words that he did not believe there was any
18 problem with any closed session:

19 This is the first public discussion – the first discussion I should say – that the City
20 Council has actually had on the actual deal points **because in closed session the**
21 **City Attorney was very good at making sure we focused on the price and**
22 **terms of payment per the Brown Act.** So this is the first time we’ve had a
chance to discuss, deliberate, understand fully together in public – actually just
with each other – the major deal points here.

23 We are agreeing to sell the land, first and foremost. And we’ve not had that
24 discussion colleagues. Do we want to sell the land? Do we want to lease the land?
And I don’t think we were expecting the Angels to offer a purchase of the land.

25 (*See* Exh. 32 [emphasis added] and Exh. 33 [video].)

26 In short, neither Declarant has expressed any opinion that would justify their unauthorized
27 disclosures of confidential closed session communications and information.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. The Declarations Should Also Be Excluded for Discovery Abuses

As the Court may recall, the City served discovery requests on Petitioner seeking to discover the factual bases for Petitioner’s Brown Act claims against it. Petitioner responded with objections only, and after an effort to meet and confer the City was forced to file a motion to compel. By its Order dated November 1, 2021, this Court rejected Petitioner’s objections, and ordered Petitioner to provide responses. Petitioner’s responses, however, reiterated the objections this Court had already rejected, and then provided evasive, incomplete answers that, again, did not simply apprise the City of the factual bases for its Brown Act claims. In the ensuing second meet and confer, counsel for Petitioner attempted to persuade counsel not to file a second motion to compel by unequivocally representing that Petitioner would not adduce any evidence in support of its motion for writ of mandate that it had not previously provided to the City in its discovery responses. (See the accompanying Declaration of Mark J. Austin.)

The Court should exclude the Declarations for these additional reasons. Petitioner should not be rewarded for disobeying the Court’s order and for its bad faith in meeting and conferring to avoid facing a second motion to compel.

II. CONCLUSION

In addition to being demonstrably inaccurate, the Declarations of Dr. Moreno and Mr. Zapata illegally divulge confidential information obtained in a closed session without the City Council’s permission in direct violation of the Brown Act. No exception to the Act’s prohibition on sharing confidential information learned in closed sessions applies to these Declarations. Moreover, Petitioner has offered these declarations despite its failure to disclose them in its discovery responses, and despite Petitioner’s counsel’s representation during the parties’ discovery meet and confer that she would not do so. Respondent City of Anaheim respectfully requests this Court strike the confidential information contained in the Declarations, and objects to the use of these Declarations in these proceedings.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 27, 2021

BURKE, WILLIAMS & SORENSEN, LLP

BY: _____
Mark J. Austin

1 **DECLARATION OF MARK J. AUSTIN**

2 I, Mark Austin, declare:

3 1. I am an attorney at law, duly licensed to practice before all the courts in the State
4 of California. Along with my colleague, Thomas B. Brown, and the City Attorney’s Office, I am
5 counsel of record and represent Respondent/Defendant City of Anaheim in this case. I have
6 personal knowledge of all the facts set forth in this declaration, and if called as a witness to
7 testify, I could and would testify competently thereto.

8 2. On or about May 21, 2021, the City served discovery requests on Petitioner
9 seeking to discover the factual bases for Petitioner’s Brown Act claims against it. After the City
10 extended Petitioner’s time to respond, Petitioner responded on or about June 28, 2021 with
11 objections only, and provided no substantive information. After an effort to meet and confer, the
12 City filed a motion to compel.

13 3. By its Order dated November 1, 2021, this Court rejected Petitioner’s objections,
14 and ordered Petitioner to provide responses.

15 4. Petitioner’s “further” responses, however, reiterated the objections this Court had
16 already rejected, and then provided evasive, incomplete answers that, again, did not apprise the
17 City of the factual bases for its Brown Act claims. The responses did not identify either Dr.
18 Moreno or Mr. Zapata as witnesses, and did not disclose the substance of their testimony.

19 5. In the ensuing (second) meet and confer, counsel for Petitioner attempted to
20 persuade me not to file a second motion to compel by unequivocally and expressly representing to
21 me that Petitioner would not adduce any evidence in support of its motion for writ of mandate
22 that it had not previously provided to the City in its discovery responses.

23 I declare under penalty of perjury that the foregoing is true and correct, and that I executed
24 this declaration on January 27, 2022 at Irvine, California.

25
26
27 _____
Mark J. Austin

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 I, Bernadette A. Antle, declare:

3 I am a citizen of the United States and employed in Alameda County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address is
5 1901 Harrison Street, Suite 900, Oakland, California 94612. On **January 27, 2022**, I served a
6 copy of the within document(s):

7 **CITY OF ANAHEIM’S OBJECTIONS TO EVIDENCE AND REQUEST
8 TO EXCLUDE DECLARATIONS OF DR. JOSE MORENO AND CHRIS
9 ZAPATA; DECLARATION OF MARK J. AUSTIN**

- 10 by transmitting via facsimile the document(s) listed above to the fax number(s) set
11 forth below on this date before 5:00 p.m.
- 12 by placing the document(s) listed above in a sealed envelope with postage thereon
13 fully prepaid, the United States mail at Santa Ana, California addressed as set forth
14 below.
- 15 by placing the document(s) listed above in a sealed envelope and affixing a pre-
16 paid air bill, and causing the envelope to be delivered to a Delivery Service agent
17 for delivery.
- 18 by personally delivering the document(s) listed above to the person(s) at the
19 address(es) set forth below.
- 20 by transmitting via electronic service the document(s) listed above to the person(s)
21 at the e-mail address(es) set forth below.

22 *Please see attached service list.*

23 I am readily familiar with the firm's practice of collection and processing correspondence
24 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
25 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
26 motion of the party served, service is presumed invalid if postal cancellation date or postage
27 meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on **January 27, 2022**, at Santa Ana, California

BERNADETTE A. ANTLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Service List

***Peoples Homeless Task Force Orange County v. City of Anaheim, et al.
Orange County Superior Court Case No. 30-2020-01174133-CU-WM-CJC***

Law Offices of Kelly A. Aviles	Attorneys for Plaintiff
Kelly Aviles	<i>Peoples Homeless Task Force Orange</i>
1502 Foothill Blvd., #103-140	<i>County</i>
La Verne, CA 91750	
Email: <i>kaviles@opengovlaw.com</i>	