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11 PEOPLES HOMELESS TASK FORCE ORANGE COUNTY

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF ORANGE**

14 PEOPLES HOMELESS TASK FORCE) Case No. 30-2020-01135406-CU-WM-CJC
15 ORANGE COUNTY,) Consolidated with Case No. 30-2020-01174133-
16) CU-WM-CJC)

17)
18) *Assigned for all purposes to the Hon. David*
19) *A. Hoffer, C42*

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29 v.) **PETITIONER'S NOTICE OF MOTION**
30) **AND MOTION FOR WRIT OF MANDATE**
31) **AND DECLARATORY RELIEF FOR**
32) **VIOLATIONS OF THE RALPH M.**
33) **BROWN ACT; MEMORANDUM OF**
34) **POINTS AND AUTHORITIES;**
35) **DECLARATION OF KELLY AVILES;**

36 CITY OF ANAHEIM,

37 Respondent/Defendant.

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1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

3 PLEASE TAKE NOTICE that on February 14, 2022, at 3:30 p.m., or as soon
4 thereafter as counsel may be heard, in Department C42 of the above-entitled court located
5 at 700 West Civic Center Drive, Santa Ana, California, 92701, Petitioner/Plaintiff
6 PEOPLES HOMELESS TASK FORCE ORANGE COUNTY (“Petitioner”) will and hereby
7 does move the court to issue a Declaration that the Respondent/Defendant CITY OF
8 ANAHEIM (“City”) has violated the Ralph M. Brown Act, Government Code, section
9 54950, *et seq.* (“Brown Act”)¹ and the California Constitution, Art. I, Sect. 3(b), and for a
10 Writ of Mandate that all actions taken in violation thereof are null and void pursuant to
11 Government Code § 54960.1, including the decision to sell Angels Stadium, the resulting
12 Purchase and Sale Agreement, Amended and Restated Purchase and Sale Agreement,
13 Development Agreement, and Angels Commitment Agreement.

14 This Motion will be made pursuant to Code of Civil Procedure, Sections 1060 and
15 1085, Government Code, section 54950, *et seq.*, and Article I, Section (3)(b) of the
16 California Constitution on the grounds that the Anaheim City Council violated the Brown
17 Act by:

- 18 1. Discussing and/or taking action on business related to the sale of Angels
19 Stadium outside of a noticed, public meeting in violation of Government
20 Code §§ 54952.2(b)(1), 54953, and/or 54954.2(a);
21 2. Discussing and taking action to approve a sale, rather than a lease, of the
22 Stadium to Angels Baseball and/or SRB Management Company, LLC during
23 the August 23, 2019 and September 24, 2019 closed sessions in violation of
24 Government Code §§ 54953, 54962, 54956.8, and/or 54954.2(a);
25 3. Failing to adequately describe the Closed Sessions to notify the public that
26 the sale of the Stadium Site was being discussed, identify the Negotiating
27

28 ¹ Unless otherwise indicated, all statutory references are to the Cal. Gov. Code and all
emphasis is added. All further references herein to “Angel Stadium,” “Stadium Site,” or
“Stadium” are to Angel Stadium and the surrounding property encompassed within the
Purchase and Sale Agreement.

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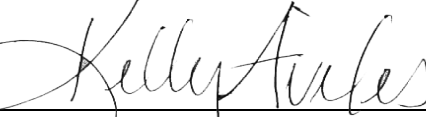
Team as the Agency Negotiator, or identify SRB Management Company, LLC, the ultimate purchaser of the property, as a negotiating party in violation of Government Code §§ 54954.2(a) and/or 54956.8;

- 4. Holding multiple meetings of the Negotiating Team without complying with the Brown Act in violation of Government Code §§ 54953 and/or 54954.2(a);
- 5. Improperly limiting public participation in meetings of the City Council, including its September 29, 2020 and October 6, 2020 meetings, in violation of Government Code § 54954.3(a).

This Motion will be based on this Notice, the Verified Complaint for Peremptory Writ of Mandate and Declaratory Relief with Exhibits A through S, filed on or about February 28, 2020, the Verified Complaint for Peremptory Writ of Mandate and Declaratory Relief with Exhibits A through K, filed on or about December 10, 2020. Petitioner’s Memorandum of Points and Authorities filed herewith, other documents in the court’s files, and upon such evidence and argument, oral or documentary, as may be introduced at or before the hearing on this Motion.

DATED: January 12, 2022

LAW OFFICES OF KELLY AVILES
KELLY A. AVILES

By: 

Kelly Aviles
Attorneys for Petitioner/Plaintiff
PEOPLES HOMELESS TASK FORCE
ORANGE COUNTY

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1 **I. Introduction and Summary of Facts.**²

2 In enacting the Brown Act, the Legislature declared a policy of openness “to ensure
3 the public’s right to attend the meetings of public agencies.” (*Freedom Newspapers v.*
4 *Orange County Employees Ret. Sys.* (1993) 6 Cal.4th 821, 825.) The Brown Act is
5 designed “to facilitate public participation in **all phases** of local government
6 decisionmaking, and to curb misuse of the democratic process by secret legislation by
7 public bodies.” (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.) “It is
8 the intent of the law that [the] actions [of local public agencies] be taken openly and that
9 their deliberations be conducted openly.” (§ 54950.) The California Constitution expands
10 this right by declaring that “[t]he people have the right of access to information concerning
11 the conduct of the people’s business, and, therefore, the meetings of public bodies and the
12 writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const. Art.
13 1, § 3(b)(2).) This constitutional provision was added to “make clear that the public has **a**
14 **right to witness government deliberations....**” (See Ex. 3 to RJN filed by Petitioner
15 on 8/31/2020, at p. 4.) It was aimed at “improv[ing] public access” and making it easier
16 for citizens “to reverse decisions made during illegal meetings....” (*Id.* at pp. 4-5.)

17 Yet, between the end of 2018 and the end of 2020, the City engaged in a pattern of
18 secrecy surrounding the sale of Angels Stadium and violated the Brown Act and the
19 California Constitution by circumventing the laws mandating public discussions and
20 disclosures regarding decisions to sell real property.

21 The City owns Angels Stadium. For decades, dating back to the 1960s, the City has
22 leased the Stadium to Angels Baseball. The most recent lease, entered into in 1996, set to
23 expire in December 31, 2029, allowed the Angels to terminate the lease with twelve
24 months’ notice during a certain timeframe.³ In October 2018, just before the City’s

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26 ² All references to the 2/20 Petition (“Pet.”) are to the Verified Petition for Writ of
27 Mandate, Declaratory, and Injunctive Relief filed by Petitioner on or about February 28,
28 2020. All references to the 12/20 Petition are to the Verified Petition for Writ of Mandate,
Declaratory, and Injunctive Relief filed by Petitioner on or about December 10, 2020 in
now consolidated case no. 30-2020-01174133-CU-WM-CJC. Additional relevant factual
information is set out in the 2/20 and 12/20 Petitions and is incorporated herein by
reference, as if set forth in full.

³ A copy of the lease agreement can be viewed at <https://www.anaheim.net/DocumentCenter/View/38434/1996-Angel-Stadium-lease-with-exhibits->.

1 election, the Angels, who had previously assured the public of its intent to stay in
2 Anaheim, exercised its option to terminate the lease. (2/20 Pet., ¶ 1.) To facilitate further
3 lease negotiations, on January 15, 2019, the City Council voted to execute an amendment
4 to the lease to extend the termination deadline by fourteen months. (2/20 Pet., ¶ 1; Aviles
5 Decl., ¶ 3.) At its February 19, 2019 meeting, City Council voted to authorize the City
6 Manager to enter into an Appraisal Service Agreement with Norris Realty Advisors to
7 assist in negotiations with Angels Baseball by conducting an appraisal of the Fee Simple
8 Interest in the Stadium Site and the Leasehold Interest in the Stadium Site, considering a
9 proposed long-term ground lease which would include development rights for the
10 property. (Aviles Decl., ¶ 4.)⁴

11 Mayor Harry Sidhu called for formation of a Negotiating Team to handle lease
12 negotiations with the Angels at the June 4, 2019 City Council meeting, consisting of
13 himself as a representative of City Council, City Manager Chris Zapata, and City Attorney
14 Robert Fabela. (Aviles Decl., ¶¶ 6, 7.)

15 The City then held a number of closed sessions regarding the property, including
16 closed sessions on August 13, September 24, November 19, and December 3, 2019 (the
17 “Closed Sessions”). (2/20 Pet., ¶ 16; Ex. E, F, G, H.) Each closed session item is similarly
18 described on the City’s agendas:

19 **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
20 **(Section 54956.8 of the California Government Code)**

21 **Property:** 2000 E. Gene Autry Way, Anaheim, CA 92806 (APN Nos. 232-011-
22 02, -06, -35, -36, -37, -38, -39, -40, -41, -42, -43, -44, -47, -48, -50)

23 **Agency Negotiator:** Chris Zapata, City Manager

24 **Negotiating Parties:** Angels Baseball, LP, City of Anaheim

25 **Under Negotiation:** Price and Terms of Payment

26 Despite the fact that there had been no publicly noticed discussion of the possibility
27 of the sale of Angel Stadium and prior public discussions at the City’s meetings throughout
28 2019 focused on renegotiation of the Angels’ long-standing lease, on December 4, 2019,
the day after the December 3rd closed session, the City unveiled its plan to sell Angel
Stadium. (2/20 Pet. ¶ 1.) (See www.anaheim.net/5207/The-Big-A.) The City also

⁴ <http://records.anaheim.net/CityClerk/PDF10/6202bca6-d437-45e6-b4fb-1d00b1607725/2099162>, p. 14-15.

1 produced a final draft of the proposed purchase and sale agreement with all the deal points
2 having been negotiated in secret. (2/20 Pet. ¶¶ 10-11; Ex. C.)

3 With the holidays just around the corner, at 2 p.m. on Friday, December 20, 2019,
4 the City Council rubber stamped the deal during a special meeting, agreeing to sell Angel
5 Stadium and the surrounding property to SRB Management Company, LLC, for \$325
6 million, a figure many people in the community have claimed is far less than fair market
7 value. (2/20 Pet. ¶¶ 10-11; Exs. A-C.)

8 The non-public negotiations continued, ultimately resulting in an Amended and
9 Restated Purchase and Sale Agreement and a Development Agreement, rubber stamped at
10 meetings on September 29, 2020 and October 6, 2020. (12/20 Pet., ¶ 22, Exs. E- I.)

11 The City Council's actions at its December 20, 2019, September 29, 2020 and
12 October 6, 2020 meetings regarding the Stadium Site, including the approval of the
13 Amended and Restated Purchase and Sale Agreement, the Disposition and Development
14 Agreement, the Angels Commitment Agreement, and related resolutions, were the direct
15 result and reflective of the illegal discussions, negotiations, and actions taken by a
16 majority of the members of the City Council and the Negotiating Team, as described
17 above.

18 Petitioner complied with all applicable demand requirements. (See 2/20 Pet., ¶ 17,
19 Ex. I; 12/20 Pet., ¶ 26; Ex. J.) However, the City denied any wrongdoing and refused to
20 void any of the previous actions taken. (See 2/20 Pet., ¶ 18; Ex. J; 12/20 Pet., ¶ 27; Ex. K.)

21 Therefore, given the extent and pattern of secrecy utilized by the City, in violation
22 of a number of provisions of the Brown Act and in violation of the California Constitution,
23 Art. I, Sect. 3(b), this Court should void all actions, as it is authorized to do under the
24 Brown Act. (See § 54960.1.)

25 **II. Discussing Whether To Sell The Stadium in Closed Session Violated the**
26 **Brown Act.**

27 All discussions must take place in open and public meetings which comply with the
28 Brown Act's requirements, unless there is a specific exception that permits an agency to
hold a closed session. (§ 54953 [“[a]ll meetings of the legislative body of a local agency
shall be open and public, and all persons shall be permitted to attend any meeting of the

1 legislative body of a local agency, except as otherwise provided in this chapter”]; *see also*
2 *Los Angeles Times Communications LLC v. Los Angeles County Board of Supervisors*
3 (2003) 112 Cal.App.4th 1313, 1317 [“[w]ith few exceptions, the Ralph M. Brown Act
4 obligates government agencies to meet and act in public”].) One of those exceptions
5 permits the agency to hold a closed session “with its negotiator prior to the purchase,
6 sale, exchange, **or** lease of real property by or for the local agency” but that discussion is
7 strictly limited to discussion of the “price and terms of payment.” (§ 54956.8.)

8 Here, the City Council improperly evoked this narrow exception in its August 23
9 and September 24, 2019 meetings to discuss and deliberate on whether to sell the Stadium
10 in response to a proposal the City had received. (Moreno Decl., ¶¶ 5-6, 8-9; Zapata Decl.,
11 ¶¶ 5-6, 8-9.) The City Council authorized the City Manager to obtain an updated appraisal
12 and ultimately made the decision to sell the Stadium in closed session. (*Id.*) As the
13 language of the statute suggests, and as the courts and the Attorney General repeatedly
14 have made clear, this is “narrowly-crafted exception.” (*See Shapiro v. San Diego City*
15 *Council* (2002) 96 Cal.App.4th 904, 924 (“*Shapiro*”); 94 Ops.Cal.Atty.Gen. 82, at *3
16 (2011); 93 Ops.Cal.Atty.Gen. 51, 55 (2010).) Indeed, the Attorney General has found that
17 the statute only covers “price,” which “in this context must be understood as the amount of
18 consideration given or sought in exchange for the real property rights that are at stake,”
19 and “terms of payment,” which “is best understood as the form, manner, and timing upon
20 which the agreed upon price is to be paid” (94 Ops.Cal.Atty.Gen. 82, at *3.)⁵ As the
21 Attorney General explained, “[i]t is significant that the word ‘terms’ is immediately
22 modified by the words ‘of payment.’ In our view, this modification rules out any possibility
23 that the statute is meant to authorize closed-session discussions of any and all terms of the
24 transaction as a whole.” (*Id.*) The Attorney General specifically rejected an “expansive
25 reading” of the exemption that would allow closed-session discussions of issues that might
26 affect the economic value of the transaction, noting the “purpose of the exception is to

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28 ⁵ Statutes other than the Brown Act that employ the phrase “terms of payment” have
similarly interpreted it in the narrow sense of how and when payment is to be made,
rather than encompassing the substantive terms or undertakings of an agreement. (*See Cal*
Civ. Code §§ 1695.3, 1803.2, 2981.9, and 3225; *Gov. Code* § 27754.)

1 protect a local agency's bargaining position, not to keep confidential its deliberations as to
2 the wisdom of a proposed transaction.” (*Id.* at *4, *6.)⁶

3 The leading appellate decision in this area also rejected the overbroad
4 interpretation of the statute asserted by the Commission. In *Shapiro*, the Fourth District
5 Court of Appeal held that the San Diego City Council could not import a “rule of reason”
6 that would allow consideration of items “reasonably related to the purpose of giving
7 direction to a legislative body's negotiator.” (96 Cal.App.4th at 922.) The city council,
8 claiming the complexity of the proposed transaction (a stadium for the San Diego Padres),
9 wanted proceedings of matters “reasonably related” to the ballpark deal to be secret.
10 These included issues such as stadium naming rights, environmental impact reports,
11 infrastructure and parking, land acquisition matters, design work of architects and
12 engineers, expert consultants and staffing, real estate belonging to parties other than the
13 city, and the impact of the project on the homeless. (*Id.* at 909, 923-24.) The Court of
14 Appeal was highly critical of the city’s secrecy and held that it would not let the San Diego
15 City Council use the Brown Act exemption “as a shield against public disclosure of
16 important public policy issues, of the type that are inevitably raised whenever such a large
17 public redevelopment real estate based transaction is contemplated.” (*Id.* at 923-24.) As
18 the Court concluded, “[i]f we were to accept the City's interpretation of the Brown Act in
19 this respect, we would be turning the Brown Act on its head, by narrowly construing the
20 open meeting requirements and broadly construing the statutory exceptions to it.” (*Id.*)

21 Similarly, this Court should not permit the City to use this limited exception to act
22 secretly to make decisions about the disposition of public assets. Pursuant to the Brown
23 Act, the pros and cons of the decision to sell versus lease public property and the ultimate
24 decision to sell the property must be agendized as an open session item for discussion.

25 **III. The City’s Negotiating Team Was Subject To The Brown Act.**

26 The City created a negotiating team to handle negotiations regarding the Stadium.
27 During the City Manager’s update at the June 4, 2019 City Council meeting, the Mayor

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⁶ Attorney General opinions are entitled to "great weight. In the absence of controlling authority, these opinions are persuasive." (*Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal.App.4th 471, 478.)

1 announced that “So I’m establishing a lead negotiating team for the City. It’ll be including
2 myself as a council representative. I’m pleased to have our city manager Chris Zapata and
3 city attorney Robert Fabela join me on behalf of the city administration.” (Aviles Decl., ¶¶
4 6-7.) But at the June 18, 2019 City Council meeting, various Councilmembers objected as
5 to the Mayor’s unilateral action without formal council approval. (Aviles Decl., ¶ 8.)
6 Because the item was not on the agenda, Councilmember O’Neil ultimately requested that
7 a future item be included on the upcoming agenda: “that the official negotiating team
8 between the City and the Angels be composed of the City Manager, the City Attorney, and
9 the Mayor.” (*Id.*)

10 As requested, the next meeting, on July 16, 2019, the agenda included an item listed
11 as “Select a member of the City Council to work in conjunction with City staff as the
12 exclusive council representative for negotiations with Angels Baseball.” (Aviles Decl., ¶ 9.)
13 However, as confirmed in both previous meetings, no such negotiating team existed.
14 Ultimately, the City sanctioned the negotiating team, placing the Mayor as the “exclusive
15 council designee on the negotiating team.” (Aviles Decl., ¶¶ 10-11.)

16 The City is permitted to create a body like the negotiating team, but it cannot use
17 that body to avoid its public meeting obligations. Any “body of a local agency, whether
18 permanent or temporary, decisionmaking or advisory, created by charter, ordinance,
19 resolution, or formal action of a legislative body” is subject to the Brown Act. (§ 54952(b).)

20 The City argues that it did not create a body. However, case law confirms that “a
21 commission, committee, board, or other body of a local agency is ‘created by’ charter,
22 ordinance, resolution or other formal action of a legislative body if the legislative body
23 ‘played a role’ in bringing ... ‘into existence.’” (*Epstein v. Hollywood Entertainment*
24 *District II Bus. Improvement Dist.* (2001) 87 Cal.App.4th 862, 864 (“*Epstein*”), quoting
25 *International Longshoremen’s and Warehousemen’s Union v. Los Angeles Export*
26 *Terminal* (1999) 69 Cal.App.4th 287, 295 (“*International Longshoremen’s*”); *see also*
27 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force*
28 (2005) 134 Cal.App.4th 354, 358–363.) Examples from case law demonstrate how little
action by a legislative body is required to fall squarely within this mandate.

1 In *Joiner v. City of Sebastapol* (1981) 125 Cal.App.3d 799, 805, the court found
2 that despite the lack of a formal resolution, the City nevertheless took “formal action”
3 when it when it designated two of its members to meet with two planning commission
4 members. (*Id.*) “The city council also took ‘formal action’ when it adopted the proposed
5 agenda for the meeting, i.e., that the group which was to meet would interview applicants
6 and report back to the city council with recommendations” for purposes “of fulfilling its
7 responsibility to fill a vacancy on the planning commission.” (*Id.*) Consequently, the
8 court found that “the ‘creation’ of the committee must be attributed to the council’s
9 action.” (*Id.*)

10 *Frazer v. Dixon Unified Sch. Dist.* (1993) 18 Cal.App.4th 781, 785-786, involved the
11 formation of hearing and review committees to advise the school superintendent. On
12 appeal, the court held that the committees were “legislative bodies” subject to the Brown
13 Act because the school board adopted a policy calling for the committees to advise the
14 superintendent and, in turn, the board and such action was sufficiently similar to the types
15 of “formal action” listed in 54952.3 to require that meetings be open to the public. (*Id.* at
16 793.) It held that a commission comprised of councilmembers, the city manager, and
17 interested citizens is a “committee [] covered by the Act because there is no exemption for
18 it regardless of whether it is decisionmaking or advisory in nature.” (*Id.* at 792-793.)

19 Similarly, the California Attorney General has stated that a Commission comprised
20 of councilmembers, the city manager and interested citizens is a “legislative body.” (The
21 Brown Act, Open Meetings For Local Legislative Bodies, Office of the Attorney General,
22 2003, p. 5-6.)

23 In *International Longshoremen's* (1999) 69 Cal.App.4th 287, the court found that
24 the board of directors of a private, for profit corporation that would design, construct, and
25 operate a facility for the export of coal, was “legislative body” subject to the Brown Act’s
26 open meeting requirement in part because the corporation was created following approval
27 of an agreement by the Los Angeles City Council. The court of appeal took an extremely
28 broad view of what “creation” means. Because “an elected legislative body with ultimate
accountability to the voters, retains plenary decisionmaking authority over the
[commission’s] affairs and has jurisdiction to overturn any decision of the [commission]”

1 and “acquiesce[ed] in the [commission’s] activity in establishing [private corporation], the
2 City Council was involved in bringing [the private corporation] into existence.” (*Id.* at
3 292.)

4 *Epstein*, (2001) 87 Cal.App.4th 862, 864, dealt with the City of Los Angeles’s
5 formation of a nonprofit corporation to administer funds that the city raised through
6 assessments on businesses in a special assessment district within the city—that is, to take
7 over administrative functions that the city normally would handle. There, even the
8 previous existence of the entity was not enough to undermine the public’s rights: “[T]he
9 fact that the [property owners association] was already in existence ... cannot change the
10 result we would have reached ... ¶... Under these circumstances, we would improperly
11 elevate form over substance if we were to treat the POA as a “pre-existing” private entity
12 with which City just “happened” to decide to do business when it turned governance of
13 BID II over to the POA. To turn a blind eye to such a subterfuge would allow City (and,
14 potentially, other elected legislative bodies in the future) to circumvent the requirements
15 of the Brown Act, a statutory scheme designed to protect the public's interest in open
16 government. This we will not do.” (*Id.* at 871-872.)

17 Here, just as in these cases, the Negotiating Team was created by city council.
18 Confusion amongst the councilmembers about appointment to the negotiating team and
19 Councilmember O’Neil’s request to agendize the creation of the negotiating team and
20 appointment of its members at the June 4th meeting demonstrate that no such body yet
21 existed. While the City makes much ado about the lack of a formal vote to “create” the
22 committee, the Council’s actions of agendizing the item and then voting to designate the
23 Mayor as the representative is sufficient involvement to confirm that the Negotiating
24 Team is subject to the Brown Act.

25 It is undisputed that the Negotiating Team met without complying with the Brown
26 Act when it negotiated the terms of the deal, which ultimately included the Purchase and
27 Sale Agreement, the Amended Purchase and Sale Agreement, and the Development
28 Agreement. Thus, all of those agreements were negotiated in violation of the Brown Act
and are subject to nullification.

1 **IV. A Majority of The City Council Engaged in Serial Communications**
2 **Regarding the Stadium Negotiations.**

3 The City took many steps to avoid public dissemination of information related to
4 the Stadium negotiations. For example, in November 2018, after the Angels opted out of
5 their lease, the City Council ordered an appraisal of the Stadium Site and directed staff to
6 make the appraisal “available to both the public and the Council.” However, after the
7 appraisal was completed, the City refused to release it.⁷ The City Manager had been giving
8 monthly updates to the City Council regarding the status of lease negotiations, at public
9 meetings. On March 19, 2019, the City Council ordered the City Manager to stop those
10 updates, after Councilmember O’Neil proposed doing so, explaining that “[w]e are
11 embarking down a road of a very sensitive negotiation and this is not something that I
12 believe should played out in the public eye.”⁸

13 When concerns were raised in the July 16, 2019 meeting about how
14 Councilmembers would provide input regarding the negotiations only Mayor Sidhu was on
15 the Negotiating Team, then-City Manager Chris Zapata explained that, “We’ll do the best
16 we can to be transparent but some things will have to be done in private” ...¶... “So we
17 obviously won't do this in a vacuum. We will have to have conversations with counsel
18 people.” ...¶... “What will happen is, after tonight’s vote, whichever way that goes, we’ll
19 know essentially what the negotiation team is and then we’ll figure out with the city
20 attorney...the ways to communicate.” (Aviles Decl., ¶ 11.)

21 This was ultimately accomplished by individual meetings with the councilmembers
22 where they gave direction to the Negotiating Team for items they wanted to see included
23 in any ultimate deal. (Zapata Decl., ¶¶ 10-11; Moreno Decl., ¶ 10.) However, these
24 individual discussions amount to improper serial meetings, in violation of Section
25 54952.2(b)(1), which prohibits a majority of the members of a legislative from using “a
26 series of communications of any kind, directly or through intermediaries, to discuss,
27 deliberate, or take action on any item of business....” This ultimately left the public in the
28 dark and violated the Brown Act.

⁷ See https://anaheim.granicus.com/player/clip/2121?view_id=2&redirect=true.

⁸ See https://anaheim.granicus.com/MediaPlayer.php?view_id=2&clip_id=2118&meta_id=172826, starting at approximately 4:12:45.

1 **V. Agenda Description For Closed Sessions Violates The Brown Act.**

2 The Brown Act mandates that members of the public must be able to address the
3 body before or during the consideration of any item discussed by the body, including
4 before or during closed sessions. (§ 54954.3.) But this provision means little without
5 giving the public information about the items to be discussed. Therefore, the Brown Act
6 also requires that, prior to holding any closed session, the legislative body is required to
7 disclose the item or items to be discussed. (§ 54957.7(a).) The body must first “post an
8 agenda containing a brief general description of each item of business to be transacted or
9 discussed at the meeting, including items to be discussed in closed session.” (§
10 54954.2(a)(1).) “No action of discussion shall be undertaken on any item not appearing on
11 the posted agenda,” and the body “may only consider those matters” that were included in
12 its statement of items to be discussed in closed session. (§ 54957.7(a), 54954.2(a)(2).)

13 The City failed here, as well. The City held a number of closed sessions regarding
14 the property over the past year, including the Closed Sessions. Each closed session item is
15 similarly described on the City’s agendas:

16 **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
17 **(Section 54956.8 of the California Government Code)**

18 **Property:** 2000 E. Gene Autry Way, Anaheim, CA 92806 (APN Nos. 232-011-
19 02, -06, -35, -36, -37, -38, -39, -40, -41, -42, -43, -44, -47, -48, -50)

20 **Agency Negotiator:** Chris Zapata, City Manager

21 **Negotiating Parties:** Angels Baseball, LP, City of Anaheim

22 **Under Negotiation:** Price and Terms of Payment

23 Yet, the ultimate agreement was with SRB Management Company, LLC, not Angels
24 Baseball. Additionally, as discussed above, the Agency Negotiator was not Chris Zapata,
25 but the Negotiating Team created by the City. The Agency Negotiator could not have been
26 Mr. Zapata as he confirmed during the City Council meeting on June 18, 2019.⁹ In fact,
27 had Mr. Zapata been the Agency Negotiator, the Closed Sessions were also improper
28 because the City Council is required to hold an open session to appoint a negotiator prior

⁹ See Aviles Decl., ¶ 8 [Councilmember O’NEIL: “Mr city manager, you were designated as the lead negotiator on the angels and then you added the City attorney and the mayor, correct?” City Manager ZAPATA: “Let me stop that. I was never the lead negotiator as directed by anybody. it was presumed because during the Ducks negotiation, city manager was the one that was in charge of that however I don't believe there was an official action of the council to make that designation, it just was assumed.”]

1 to holding any closed session. (§ 54956.8 [“prior to the closed session, the legislative body
2 of the local agency shall hold an open and public session in which it identifies its
3 negotiators, the real property or real properties which the negotiations may concern, and
4 the person or persons with whom its negotiators may negotiate”].)

5 The purpose of requiring the agency to “identify[] the negotiating parties is to
6 provide the members of the public an opportunity to comment or to take pertinent action
7 in favor of or opposition to a particular acquisition, such as by communication with other
8 members of the public, one or more members of the board, its staff, or the owner of the
9 property or the agents of the owner. In order for any such comment or action to be
10 relevant and appropriately directed, however, the property to be considered at a particular
11 closed session of the board, as well as “the person or persons with whom its negotiator
12 may negotiate,” must be specifically identified. (73 Ops.Cal.Atty.Gen. 1 (1990).) In
13 analyzing this section, the Attorney General concluded that it required specificity of each
14 property to be considered, but the rationale would apply equally to requiring the
15 disclosure of each negotiating party or city negotiator. Failing to do so undermines the
16 entire purpose of the statute and therefore cannot be deemed substantial compliance.
17 Even the plain language of the statute, requiring the agency to identify its “negotiators”
18 and the “person or persons”—both plural—undermines the City’s claim that it only has to
19 name the lead negotiator. (§ 54956.8.)

20 Further, as discussed above, the City misled the public by saying that only the Price
21 and Terms of Payment were under discussion, when actually the closed session
22 discussions in August and September were regarding whether to sell the stadium, as
23 opposed to continue lease negotiations. This also violates Sections 54957.7(a) and
24 54954.2(a)(2). The lease of public property, especially where that property had been the
25 subject of a long-term lease, like Angels Stadium, is a fundamentally different item than
26 the sale of public property. The City’s fundamental change in direction from a lease, to the
27 sale and the permanent loss of the City’s largest public asset, should have been made
28 known to the public.

1 **VI. The City Improperly Limited Public Participation At Its September 29,**
2 **2020 and October 6, 2020 Meetings When Voting On The Amended and**
3 **Restated Purchase and Sale Agreement and Development Agreement.**

4 In violation of the Brown Act and Article I, Section 3(b) of the California
5 Constitution, the City Council improperly prevented the public from any real-time
6 comments or participation, by illegally limiting all public comment to written submissions
7 in advance of the meeting at its September 29, 2020 and October 6, 2020 meetings.

8 The Brown Act entitles members of the public attending a meeting to address City
9 Council. “Every agenda for regular meetings shall provide an opportunity for members of
10 the public to ***directly address*** the legislative body on any item of interest to the public,
11 before or during the legislative body’s consideration of the item, that is within the subject
12 matter jurisdiction of the legislative body, provided that no action shall be taken on any
13 item not appearing on the agenda.” (§ 54954.3(a); *see also Galbiso v. Orosi Pub. Util. Dist.*
14 (2008) 167 Cal. App. 4th 1063, 1080.)

15 In response to the COVID-19 pandemic, on March 17, 2020, Governor Gavin
16 Newsom signed Executive Order N-29-20 authorizing legislative bodies “to hold public
17 meetings via teleconferencing and to make public meetings accessible telephonically or
18 otherwise electronically to all members of the public seeking to observe and to address the
19 local legislative body.”¹ While Executive Order N-29-20 waived any requirements in the
20 Brown Act that “expressedly or impliedly [require] the physical presence of members, the
21 clerk or other personnel of the body, or of the public as a condition of participation in or
22 quorum for a public meeting” and set forth notice and accessibility requirements that
23 would satisfy any requirement that the body allow members of the public to attend the
24 meeting and offer public comment, it further ordered that all “bodies are urged to use
25 sound discretion and to make reasonable efforts to adhere as closely as reasonably
26 possible to the provisions of...the Brown Act...in order to maximize transparency and
27 provide public access to their meetings.”

28 In the agendas for both the September 29, 2020 and the October 6, 2020 City
Council meetings, members of the public were instructed to “[s]ubmit comments
electronically for City Council consideration by sending them to
publiccomment@anaheim.net. To ensure distribution to the City Council prior to

1 consideration **of the agenda, please submit comments prior to 2:30 P.M. the day**
2 **of the meeting.** Those comments, as well as any comments received after 2:30 P.M., will
3 be distributed to the City Council, posted on the City's website, and will be made part of
4 the official public record of the meeting.” (See Aviles Decl., ¶¶ 13-14.)² The September 29,
5 2020 and the October 6, 2020 meetings both began at 4:30 P.M. (See Aviles Decl., ¶¶ 13-
6 14.)

7 Notably, Executive Order N-29-20 did not change Section 54954.3(a)’s requirement
8 that members of the public be allowed to “directly address” a legislative body. In a typical,
9 Brown Act-compliant meeting held in-person or over teleconference, this requirement
10 manifests in periods of public comment where members of the public in attendance have
11 an opportunity to speak directly in real-time to City Council. Members of the public are
12 able to see the faces of City Councilmembers as they make their public comment, which
13 serves as a form of assurance that they are being heard (or, in some case, not).

14 Here, City Council limited all public comment to written submissions that must be
15 submitted two hours prior to the start of a meeting, without any guarantee that comments
16 received ahead of that deadline or after would be distributed to councilmembers. Such
17 comment does not meet the “directly address” threshold, as it is not a real-time
18 opportunity and affords members of the public no assurance that their written comment
19 was read by City Council before or during the consideration of an item.

20 Furthermore, the City cannot claim that there is no means for providing
21 opportunity to “directly address.” Zoom, the widely used video conferencing service,
22 provides not only a “Q&A” feature, which allows attendees to type written comment, but
23 also a “raise hand” feature that allows attendees to notify City Council and City staff that
24 they would like to make public comment. Both features have been routinely used by other
25 cities in their administration of city council meetings over the course of the COVID-19
26 pandemic.

27 **VII. A Final Open Session Vote Does Nothing To Rectify The Significant**
28 **Violations That Resulted in Sale and Development Agreements**

The City argues that the culmination of all negotiations ended in open session votes,
so the public has no recourse for any alleged violation. Evidently, the City believes that as

1 long as the final vote on a particular act is done in public, it can disregard the Brown Act's
2 open meetings requirement with respect to its deliberations. That is not the law.¹⁰
3 Compliance with the Brown Act requires both public votes and public deliberations.
4 (*Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263
5 Cal.App.2d 41, 47 [“Section 54950...declares the law’s intent that deliberation as well as
6 action occur openly and publicly. Recognition of deliberation and action as dual
7 components of the collective decision-making process brings awareness that the meeting
8 concept cannot be split off and confined to one component only, but rather comprehends
9 both and either.”]; *Page v. Mira Costa Comm. College Dist.* (2009) 180 Cal.App.4th
10 471,502 [“we are cognizant that Brown Act open meeting requirements encompass not
11 only actions taken, but also factfinding meetings and deliberations leading up to those
12 actions”].)¹¹

13 For example, in *Frazer*, 18 Cal.App.4th 781, 798 the court held a school board
14 violated the Brown Act by holding a closed meeting to gather information and deliberate
15 about a pending curriculum decision. Subsequent to the closed meeting, the school board
16 held an open session that “was so well attended by members of the press and the public
17 that it had to be moved to a school gymnasium,” at which “the Board heard from both
18 supporters and opponents” before taking its final vote. (*Id.* at 788.) But despite the fact
19 that the board’s final action was taken in open session following public discussion, the
20 court held that the vote was subject to nullification under Section 54960.1 because of the
21 unlawful closed session leading up to the vote. (*Id.* at 798-99.) In remanding the matter to
22 the trial court for further proceedings, the court concluded the focus must be on whether
23 the board took adequate steps to cure the violation. (*Id.*)¹²

24 ¹⁰ By analogy, the City apparently would claim that court proceedings can be conducted
25 behind closed doors, so long as the final ruling is read from the bench in open court.

26 ¹¹ See also *216 Sutter Bay Associates v. County of Sutter* (1997) 58 Cal.App.4th 860, 876
27 [“the Brown Act ... is not limited to gatherings at which action is taken by the relevant
28 legislative body; 'deliberative gatherings' are included as well"]; 63 Ops.Cal.Atty.Gen. 820,
825 (1980) [“intent of the Act was that deliberations as well as actions be taken openly”]; §
54950 [“deliberations [must] be conducted openly”].

¹² *Accord Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533, 549, where the Court of
Appeal found that the plaintiff stated claim under Brown Act where “allegations lead
directly to the inference that the council members had reached their consensus although

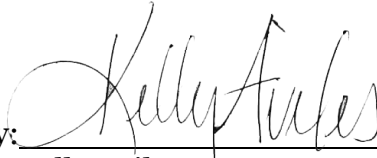
1 Other courts have held that, unless a specific statutory exemption applies, the
2 Brown Act mandates public access to a body's deliberations, meaning “not only collective
3 decisionmaking, but also ‘the collective acquisition and exchange of facts preliminary to
4 the ultimate decision.’” (*216 Sutter Bay*, 58 Cal.App.4th at 877 (quotation omitted).) The
5 reason for this requirement is simple: the public’s ability to scrutinize, evaluate, and even
6 influence the decision-making by its elected representatives would be effectively nullified
7 if the final result was determined in advance in secret meetings held behind closed doors,
8 with only the final result announced to the public as a *fait accompli*.¹³

9 **VIII. Conclusion.**

10 As explained below, the City repeatedly violated the Brown Act with respect to the
11 Stadium sale, which tainted all actions subsequently taken. The City has refused to
12 acknowledge the violations or to rescinded the actions taken, even after being put on
13 notice by Petitioners of the violations. Therefore, this Court should grant the Petition in its
14 entirety.

15
16 DATED: January 12, 2022

Respectfully submitted,
LAW OFFICES OF KELLY AVILES

17
18
19 By: 
20 Kelly Aviles
Attorneys for Petitioner/Plaintiff

21
22 the nonpublic discussions that occurred among them.” The Legislature later broadened
23 the law to confirm that serial discussions themselves violated the law; no collective
24 concurrence is necessary. The legislature then passed Cal. Senate Bill No. 1732, 2007-08
25 Regular Session, clarifying its intent and expressly superseding the holding in *Wolfe* to
26 ensure that even conduct which does not result in “action taken” could violate the Brown
27 Act.

28 ¹³ See *Frazer*, 18 Cal.App.4th at 795 [“[r]ecognition of deliberation and action as dual
components of the collective decision-making process brings awareness that the meeting
concept cannot be split off and confined to one component only, but rather comprehends
both and either”]; 63 Ops.Cal.Atty.Gen. at 624 [if agency “has already had the opportunity
to be informed and deliberate on the particular public business” in a series of closed-door
meetings, then “when the matter reaches the stage for public discussion (if in fact it ever
does) there may actually be no deliberation at all, or the deliberation may be perfunctory
because of the knowledge already obtained” in the previous secret meetings; consequently,
agency's attempt to use seriatim meetings to avoid Brown Act requirements was
improper].)

1 **Declaration of Kelly Aviles**

2 I, Kelly Aviles, declare and state as follows:

3 1. I am an attorney duly licensed to practice law before all of the courts of the
4 State of California, and I am the owner and principal of the Law Offices of Kelly Aviles,
5 counsel for Petitioner/Plaintiff PEOPLES HOMELESS TASK FORCE ORANGE COUNTY
6 in the above-entitled action. The facts stated in this Declaration are true and correct of my
7 own personal knowledge, except for those matters expressly stated on information and
8 belief, which matters I believe to be true. If called as a witness, I could and would
9 competently testify thereto.

10 2. The City of Anaheim maintains agenda, minutes, and video recordings of
11 each meeting. The City makes them available to the public on its website at
12 https://anaheim.granicus.com/ViewPublisher.php?view_id=2. I have reviewed the
13 relevant portions of the agendas, minutes, and video recordings described in the following
14 paragraphs.

15 3. The minutes of the January 15, 2019 City Council meeting can be viewed on
16 the City’s website at [http://records.anaheim.net/CityClerk/DocView.aspx?
17 dbid=0&id=2082399&page=1&cr=](http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id=2082399&page=1&cr=). Item 27 relates to the approval of the amendment to
18 Angels’ lease to the Stadium.

19 4. The minutes of the February 19, 2019 City Council meeting can be viewed on
20 the City’s website at [http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id
21 =2099162&page=1&cr=](http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id=2099162&page=1&cr=). Item 16 relates to the authorization of the City Manager to enter
22 into an Appraisal Service Agreement with Norris Realty Advisors.

23 5. The minutes of the March 19, 2019 City Council meeting can be viewed on
24 the City’s website at [http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id
25 =2123375&page=1&cr=1](http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id=2123375&page=1&cr=1). Item 24 relates to the City Manager’s updates on negotiations.

26 6. The minutes of the June 4, 2019 City Council meeting can be viewed on the
27 City’s website at: [http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id=
28 2161024&page=1&cr=1](http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id=2161024&page=1&cr=1). Mayor Sidhu’s discussion of the formation of the negotiating
team can be found in the City Manager’s Update starting on page 18.

1 7. The video recording of the June 4, 2019 City Council meeting can be viewed
2 on the City's website at [https://anaheim.granicus.com/player/clip/
3 2166?view_id=2&redirect=true](https://anaheim.granicus.com/player/clip/2166?view_id=2&redirect=true). Relevant portion of the meeting begins at 4:00:49.

4 8. The video recording of the June 18, 2019 City Council meeting can be viewed
5 on the City's website at [https://anaheim.granicus.com/player/clip/2174?
6 view_id=2&redirect=true](https://anaheim.granicus.com/player/clip/2174?view_id=2&redirect=true). Relevant portions of the meeting can be found between 9:41:01
and 10:00:00.

7 9. The agenda of the July 16, 2019 City Council meeting can be viewed on the
8 City's website at [http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id
9 =2179740&page=1&cr=1](http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id=2179740&page=1&cr=1).

10 10. The minutes of the July 16, 2019 City Council meeting can be found
11 <http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id=2179740&page=1&cr=1>.
12 The agenda item regarding formation of the negotiating team is item no. 16 and can be
found starting on page 13.

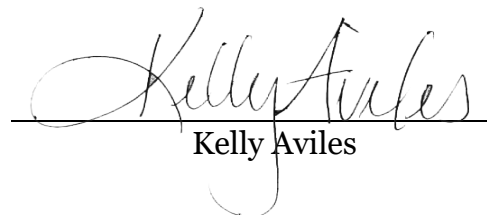
13 11. The video recording of the July 16, 2019 City Council meeting can be viewed
14 on the City's website at [https://anaheim.granicus.com/player/clip/2181?
15 view_id=2&redirect=true](https://anaheim.granicus.com/player/clip/2181?view_id=2&redirect=true). Relevant portion of the meeting begins at 3:01:50.

16 12. The minutes of the December 20, 2019 City Council meeting can be viewed
17 on the City's website at [http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&
18 id=2307022&page=1&cr=1](http://records.anaheim.net/CityClerk/DocView.aspx?dbid=0&id=2307022&page=1&cr=1).

19 13. The agenda of the September 29, 2020 City Council meeting can be viewed
20 on the City's website at [https://anaheim.granicus.com/GeneratedAgendaViewer.php?
21 view_id=2&clip_id=2477](https://anaheim.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=2477).

22 14. The agenda of the October 6, 2020 City Council meeting can be viewed on
23 the City's website at [https://anaheim.granicus.com/GeneratedAgendaViewer.php?
24 view_id=2&clip_id=2481](https://anaheim.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=2481).

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct and that this Declaration was executed on January 12, 2022,
at La Verne, California.

27
28 
Kelly Aviles

1 **PROOF OF SERVICE**

2 I reside or work within in the County of Los Angeles, State of California. I am over the
3 age of 18 and not a party to the within action. My business address is 1502 Foothill Blvd.,
4 Suite 103-140, La Verne, CA 91750.

5 On **January 12, 2022** I served the foregoing documents described as **PETITIONER'S**
6 **NOTICE OF MOTION AND MOTION FOR WRIT OF MANDATE AND**
7 **DECLARATORY RELIEF FOR VIOLATIONS OF THE RALPH M. BROWN ACT;**
8 **DECLARATION OF KELLY AVILES** on the parties in this action as listed in the attached
9 service list by the following means:

10 **Service List**

11 Thomas B. Brown
12 tbrown@bswlaw.com
13 Mark J. Austin
14 maustin@bwsllaw.com
15 BURKE, WILLIAMS & SORENSEN
16 1851 East First Street, Suite 1550
17 Santa Ana, California 92705

18 Robert Fabela
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