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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

PEOPLES HOMELESS TASK FORCE ORANGE COUNTY,

Petitioner/Plaintiff,

v.

CITY OF ANAHEIM and DOES 1 through 10,

Respondent/Defendant,

SRB MANAGEMENT, LLC,

Real Party in Interest

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]

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I. INTRODUCTION

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

(1) that the City Council allegedly discussed whether to sell the Stadium in closed sessions between August and December 2019, and allegedly "made the decision" to sell the Stadium in closed-session meetings in August and September of 2019;

(2) that the City Council allegedly "created" a "Negotiating Team" for the sale, which purportedly met in violation of the Brown Act;

(3) that unspecified "staff briefings" of Council members in 2019 concerning the Stadium negotiations allegedly constituted illegal "serial meetings";

(4) that the agendas for four closed sessions between August and December of 2019 were inadequate because (a) they did not expressly mention that the City was considering selling the Stadium, and (b) they did not explicitly name either the ultimate purchaser, SRB Management Co., LLC ("SRB"), or the City's alleged "Negotiating Team"; and

(5) that the City allegedly failed to allow the public to "directly address" the Council at the hearing on the amended agreement in September of 2020, during the Covid lockdown.

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

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

II. STATEMENT OF FACTS

A. The Beginning of Negotiations Regarding the Stadium Site

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

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

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

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

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

B. <u>The Alleged "Negotiating Team"</u>

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

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

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

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

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

C. The Closed Session Meetings

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

> **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
> (Section 54956.8 of California Government Code)
> Property: 2000 E. Gene Autry Way and 2200 E. Katella Ave., Anaheim, CA 92806; 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

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

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

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

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

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

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

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

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

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

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

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

> This is the first public discussion—the first discussion I should say—that the City Council has actually had on the actual deal points. ***Because in closed session the 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 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

> and I don't see a need to rush this discussion. And it is unfortunate that we did not receive a proposal until just about Thanksgiving time. . . .
>
> ***So my understanding of what we're voting on truly today from staff is we're agreeing to sell the land first and foremost and we've not had that discussion, colleagues. Do we want to sell the land? Do we want to lease the land? I don't think we were expecting the Angels to offer a purchase of the land***. And I did say—somebody commented—I did say in some of my forums that I'm open to selling the land. But I was, we didn't have the appraisals so I'm basing it on past appraisals, what…consulting with realtors and what not—what it might be worth.
>
> ***So for me, it seems today is that we first and foremost have to agree, if we do decide to move today, whether we want to sell the land or lease the land.***

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

D. <u>The Approval of the Original Stadium Site Purchase Agreement</u>

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

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

---

[2] August 27, 2019, the City Council held an open meeting on the negotiations (Exh. 16 [agenda].) 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).)

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

E. <u>The Approval of the Amended Agreement in September of 2020</u>

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

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

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

during the meeting, and forwarding them the full City Council by e-mail, ***including comments by Petitioner's own representative***. (Bass Decl., ¶¶ 7-8; Fabela Decl., ¶ 30; Exh. 41, pp. 23, 37-481). The September 29th meeting on the item lasted approximately six hours, into the morning of September 30th. (Bass Decl., ¶ 9; Fabela Decl., ¶ 30; Exh. 41, pp. 11-34.) Following the hearing, the Council deliberated extensively and ultimately approved the sale. (Exh. 41, pp. 11-34.)

F. Procedural Background

On January 19, 2020, a month after the City approved the initial Agreement, Petitioner's counsel sent the City a "cure and correct" letter claiming that the City violated the Brown Act, per Government Code section 54960.1. (Exh. 36; Bass Decl., ¶ 12.) The City responded in writing that it had not violated the Act. (Exh. 37; Bass Decl., ¶ 12.) Petitioner then filed its initial Petition on February 28, 2020.[5] Petitioner served the City with its second "cure and correct" letter on October 29, 2020, regarding the Amended Agreement. (Exh. 46; Bass Decl., ¶ 12.) The City again responded, denying any violation, on November 25, 2020. (Exh. 47; Bass Decl., ¶ 12.) On December 10, 2020, Petitioner filed its second Petition for Writ of Mandate, which seeks to nullify the September 2020 decision to approve the Amended Agreement.[6]

III. LEGAL ARGUMENT

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

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

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[5] The Petition also seeks relief under the Public Records Act, which is not at issue here.

[6] Both the City's answers include factual allegations that directly refute or establish defenses to the allegations of the Petitions. Petitioner has not countervailed those allegations either by submitting proof (evidence) or by filing a Replication. Under that circumstance, the allegations of the Respondent's Answer are deemed admitted, and are accepted by the Court as evidence and as 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);

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

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

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

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

[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

discuss a sale in closed session, without first deciding on a sale or a lease in open session. (Opening Brief, pp. 9-11.) This argument fails for several reasons.

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

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

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

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

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lease.
However, prior to the closed session, the legislative body of the local agency shall 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.

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

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

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

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

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"

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

on the City's alleged discussion of a "sale" in closed session must fail for multiple reasons.

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

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

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

[9] Petitioner also falsely asserts that other statutes also have "narrowly interpreted" the phrase "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.

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

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

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

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

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

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

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

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)

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

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

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

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

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

B. <u>Petitioner's "Negotiating Team" Arguments Must Be Rejected</u>

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

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

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

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

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

[10] The facts and holdings in the cases cited by Petitioner (Opening Brief, pp. 12-13)—*Internat. Longshoremen's*, *supra,* 69 Cal.App.4th 287; *Epstein v. Hollywood Entertainment Dist. II Business Improvement Dist.* (2001) 87 Cal.App.4th 862; *McKee v. Los Angeles IMPACT* (2005) 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.)

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

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

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

2. Petitioner has presented no evidence that the alleged "Negotiating Team" ever met or took action

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

[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

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

C. Petitioner's "Serial Meetings" Argument Fails

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

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

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

> Paragraph (1) [prohibiting serial meetings] shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting … with members of a legislative body in 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.

(Gov. Code § 54952.2)

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

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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, ..."

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

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

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

3. No "action" was taken at any alleged "serial meeting"

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

D. <u>Petitioner's Arguments Concerning the City's Closed-Session Agendas Must Also Be Rejected</u>

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

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

2. Section 54954.5 immunizes the City from liability because it used the Legislature's "safe harbor" agenda language

Section 54954.5 of the Brown Act provides "safe harbor" agenda language for the various closed sessions that the Act allows. Under that section, "[n]o legislative body or elected official 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

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

> (b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:
>
> **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
> Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)
> Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or 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.)
> Negotiating parties: (Specify name of party (not agent))
> Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(§ 54954.5(b).)

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

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

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

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

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

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

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

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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

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

1. Section 54960.1 does not authorize nullification for these "violations"

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

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

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

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

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

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

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

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

[12] In *Galbiso*, cited by Petitioner (Opening Brief, p. 18), the agency allowed ***no*** public comment 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.)

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

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

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

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

[13] Unpublished federal district court decisions may be cited as "persuasive" authority in 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.)

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

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

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

IV. CONCLUSION

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

Dated: January 27, 2021

BURKE, WILLIAMS & SORENSEN, LLP

By: _____
Mark J. Austin

[14] See *Sierra Watch*, 69 Cal.App.5th 1, 10 [declaratory relief available under § 54960 even where 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.

[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.

PROOF OF SERVICE

I, Bernadette C. 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):

RESPONDENT/DEFENDANT CITY OF ANAHEIM'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER/PLAINTIFF'S 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

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