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14 CITY OF SANTA MONICA

*Exempt from filing fee pursuant to
Government Code § 6103*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

17 OSCAR DE LA TORRE and ELIAS SERNA,

CASE NO.: 21STCV08597

18 Plaintiffs,

Assigned to Hon. Richard L. Fruin

19 v.

**DEFENDANT CITY OF SANTA
MONICA'S RESPONSES TO PLAINTIFFS'
OBJECTIONS TO THE DECLARATION
OF FRANK ZERUNYAN FILED IN
SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

20 CITY OF SANTA MONICA,
21 and DOES 1 through 10, inclusive

22 Defendants.
23

Date: May 6, 2022
Time: 9:15 A.M.
24 Dept.: 15
25

Action Filed: March 4, 2021
26 Trial Date: June 13, 2022
27

1 Defendant City of Santa Monica (“City”) hereby submits its responses to Plaintiffs’
2 Objections to the Declaration of Frank Zerunyan Filed in Support of Defendant’s Motion for
3 Summary Judgment (“Objections”).
4

5 **BACKGROUND**

6 As part of its summary judgment filings submitted to the Court on February 12, 2022 (and
7 filed February 14, 2022), the City submitted the Declaration of Frank V. Zerunyan in Support of
8 Defendant City of Santa Monica’s Motion for Summary Judgment or, in the Alternative, Summary
9 Adjudication (“Zerunyan Declaration”). In response, Plaintiffs filed “Plaintiffs Objections to the
10 Declaration of Frank Zerunyan Filed in Support of Defendant’s Motion for Summary Judgment.”

11 Plaintiffs do not dispute Professor Zerunyan’s qualifications – because they cannot. He is a
12 Professor of the Practice of Governance at the USC Price Bedrosian Center on Governance.
13 (Zerunyan Decl. ¶ 2.) He has designed curricula and taught in various countries around the world as
14 part of being an expert for the United Nations in public administration, which includes governance
15 and ethics. (*Ibid.*) He has multiple advanced degrees and has also served for decades in various
16 municipal government roles, including serving on a city planning commission, as a city
17 councilmember, and as mayor. (*Id.* at ¶¶ 3-5.)

18 Rather, and without deposing him, they interpose baseless objections on relevance grounds
19 and claims of improper legal arguments. However, Professors Zerunyan’s declaration is well within
20 the bounds of admissible expert testimony. Thus, their objections should be overruled.¹

21 **THE OBJECTIONS ARE BASELESS**

22 The primary argument in the Objections appears to be that the Zerunyan Declaration
23 improperly provides legal arguments without support. (Objections at p. 1.) But this overly simplistic
24 argument is doubly wrong.

25 First, it overstates the limitation on expert witnesses – the only applicable limitation is that an

26
27 ¹ In addition to lack of support for the Objections, Plaintiffs failed to comply with California Rules of
28 Court, Rule 3.1354. Instead of addressing the specific material objected, the Objections begin with
an entire page of general argument that appears to be directed at the entirety of the Zerunyan
Declaration – even his general background.

1 expert cannot opine on ultimate issues of law that invade the province of the Court. Every case cited
2 in the Objections on this issue (with one exception²) involved an expert opining upon an ultimate
3 conclusion of law, meaning the application of fact to law on an issue critical to the resolution of the
4 case. (*Property California SCJLW One Corp. v. Leamy* (2018) 25 Cal.App.5th 1155, 1165 [expert
5 opining that certain facts “constituted malpractice”]; *In re Marriage of Heggie* (2002) 99 Cal.App.4th
6 28, 30 n.3 [counsel for both parties submitting legal argument as declarations such as “the Court may
7 set aside this Judgment . . . under the provisions of Code of Civil Procedure Section 473 et. seq.”];
8 *Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1184 [expert opining that a non-delegable
9 duty existed]; *Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 266 [expert opining that police
10 caused a suicide by violating standard of care]; *Williams v. Coombs* (1986) 179 Cal.App.3d 626, 638
11 [expert opining that probable cause existed].)

12
13 However, this is a narrow limitation that still permits expert witnesses to opine on many
14 issues that are not or are adjacent to ultimate conclusions of law. For example, in the context of
15 attorney malpractice, expert testimony can establish both the duty and the breach elements “where the
16 attorney conduct is a matter beyond common knowledge.” (*Stanley v. Richmond* (1995) 35
17 Cal.App.4th 1070, 1087.) As the Court of Appeal explained:

18 Professor Zitrin’s testimony about the Rules of Professional Conduct and the common law of
19 attorney fiduciary duty, and his opinions that Richmond violated her duties under each, were
20 plainly sufficient to establish the first two elements of a cause of action for breach of fiduciary
21 duty. Indeed, when taken together with Richmond’s own expert testimony and her denials,
22 Zitrin’s testimony was more than sufficient to raise questions of fact whether Richmond had
23 an actual conflict of interest by virtue of her agreement to go into practice with Chamberlin,
24 whether she obtained an informed consent to her continued employment as appellant’s
25 counsel of record after that conflict arose, whether her representation of appellant was
26 compromised by her relationship with Chamberlin, and whether she breached her fiduciary
27 duties with respect to withdrawal from the action.

28 (*Ibid.*) Even beyond the malpractice context, courts have held that “[e]xperts may give evidence
concerning the recognized and accepted operating standards and practices in their profession, trade or
business on the issue of whether such standards have been met or violated.” (*Rosenberg v. Goldstein*
(1966) 247 Cal.App.2d 25, 29; see *Smith v. Lockheed Propulsion Co.* (1967) 247 Cal.App.2d 774,

² The only exception did not deal with an expert at all but non-expert declarations. (*Hayman v. Block*
(1986) 176 Cal.App.3d 629, 638-39.)

1 783.) Similarly, “[e]xpert testimony is admissible to prove custom and usage in an industry.”
2 (*Howard Entertainment, Inc. v. Kudrow* (2012) 208 Cal.App.4th 1102, 1114; see *PM Group, Inc. v.*
3 *Stewart* (2007) 154 Cal.App.4th 55, 63; *Texas Commerce Bank v. Garamendi* (1992) 11 Cal.App.4th
4 460, 485-86 [accepting expert opinion on whether a financial instrument qualified as an “annuity”
5 under industry custom, even though this was also a legal issue]; *Eng v. Brown* (2018) 21 Cal.App.5th
6 675, 709 [allowing expert testimony as to the reasonableness and “certain corporate formalities and
7 regulations.”]; *In re Marriage of Minkin* (2017) 11 Cal.App.5th 939, 952 [holding that “expert
8 testimony may be considered in interpreting an ambiguous contract.”].) And such evidence is
9 permissible because, under Evidence Code section 805, an expert may give opinion testimony that
10 “embraces the ultimate issue to be decided by the trier of fact.”

11
12 Second, Plaintiffs’ argument overstates the actual contents of the Zerunyan Declaration,
13 which draws upon Professor Zerunyan’s unassailable qualifications, experience, training, and
14 teaching to opine on issues that are beyond the realm of common experience. As explained in more
15 detail below, Professor Zerunyan does not offer ultimate conclusions of law but speaks from his
16 experience and expertise in the fields of ethics and municipal governance – fields in which he both
17 teaches and works – to set forth the standard of care. This testimony is squarely within the
18 boundaries of section 801 of the Evidence Code, which permits expert testimony regarding “a subject
19 that is sufficiently beyond common experience that the opinion of an expert would assist the trier of
20 fact,” as Professor Zerunyan brings years of training and experience in the areas of ethics and
21 municipal governance, which is outside the common experience. And there is little doubt that this
22 same training and experience gives Professor Zerunyan the personal knowledge and experience
23 reasonably relied upon by experts on this subject. (Evid. Code § 801(b).)

24 Ultimately, Professor Zerunyan has presented expert opinion evidence that would assist the
25 trier of fact. That Plaintiffs do not like his opinion is no basis to exclude it.

26 Plaintiffs’ specific objections are addressed below.

RESPONSES TO SPECIFIC OBJECTIONS

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
<p>Zerunyan Declaration, p. 2 lines 6-10: "Based on my experience, research, and expertise, a councilmember is a nonpartisan elected office to serve the public and should govern without the divisions imposed by political interest and even the media. Therefore, partisan ideology, trying to represent only a particular group, or to win by all means necessary is antithetical to local governance. This is one significant way local government differs from federal government or state legislatures."</p>	<p>Irrelevant (Evid. Code §350). Mr. Zerunyan's opinions about how city councilmembers "should govern," in some idealized view of local government that ignores the realities of Santa Monica, has no relevance to any issue in this case.</p> <p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, is not a proper subject of the testimony of any witness, including experts.</p>	<p>The testimony is relevant. Relevant evidence is evidence "having a tendency in reason to prove or disprove any fact that is of consequence to the determination of the action." (<i>Coffey v. Shiomoto</i> (2015) 60 Cal.4th 1198, 1213, quotation omitted.) "The test of relevance is whether the evidence tends, logically, naturally, and by reasonable inference to establish material facts." (<i>Ibid.</i>, quotation omitted.) The test of whether something is relevant and, therefore, admissible, "is not a strict one." (<i>Ibid.</i>) The cited testimony is part of a larger passage addressing the proper functioning of municipal government. As avoiding conflicts of interest are important to well-functioning government and democracy, such information is relevant here. (<i>Consumers Union of the U.S., Inc. v. Cal. Milk Producers Advisory Bd.</i> (1978) 82 Cal.App.3d 433, 444. ["Erosion of confidence in public officials is detrimental to democracy" and to "maintain confidence and to avoid public skepticism, conflicts of interest must be shunned."])</p> <p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay</p>

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
		opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding ethics and operation of municipal government.
<p>Zerunyan Decl. p. 2, lines 11-13: "Where city councilmembers are elected at large, such as in Rolling Hills Estates or Santa Monica, a councilmember is elected to represent everyone. As such, a councilmember must listen to all views and owes a duty of loyalty to the public, which is like a fiduciary duty."</p>	<p>Irrelevant (Evid. Code §350). Mr. Zerunyan's opinions about the desirability of at-large elections, has no relevance to any issue in this case. The Legislature, by enacting several bills over the past twenty years (e.g. Sen. Bill 976 (2002), Sen. Bill 493 (2015), Assem. Bill 277 (2015), Assem. Bill 2220 (2016), and Sen. Bill 442 (2021)), has indicated it views at-large elections with disfavor.</p> <p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, concerning the duties of a city council member is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for</p>	<p>The testimony is relevant. Relevant evidence is evidence "having a tendency in reason to prove or disprove any fact that is of consequence to the determination of the action." (<i>Coffey v. Shiomoto</i> (2015) 60 Cal.4th 1198, 1213, quotation omitted.) "The test of relevance is whether the evidence tends, logically, naturally, and by reasonable inference to establish material facts." (<i>Ibid.</i>, quotation omitted.) The test of whether something is relevant and, therefore, admissible, "is not a strict one." (<i>Ibid.</i>) The cited testimony is part of a larger passage addressing the proper functioning of municipal government. It has nothing to do with the "desirability of at-large elections," which is irrelevant to the issues in this case. And the standard of care and duties owed by a public official are directly at issue in this case.</p> <p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay</p>

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
	argument is in points and authorities, not declarations.”].)	<p>opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding ethics, the standard of care owed by public officials, and the operation of municipal government.</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>
<p>Zerunyan Decl. p. 2, lines 14-22: “City councils, as local democratic institutions, act by majority (or sometimes a super majority), and the entity is larger than any individual councilmember. The city council is the final arbiter of the issues before it. If people do not like the actions taken by the city council, then people have the power to vote councilmembers out of office or petition for a recall. That is democracy in action. Alternatively, and where appropriate, a person can also file a writ of mandamus to challenge council action. But in my nearly twenty years as a Rolling Hills Estates city councilmember, such writs are few and far between and the courts cannot and must not second guess the city council’s decision. I view this to be a constitutional separation of</p>	<p>Irrelevant (Evid. Code §350). Mr. Zerunyan’s opinions about how city councils should function, or what is “democracy in action,” in some idealized view of local government that ignores the realities of Santa Monica, has no relevance to any issue in this case.</p> <p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan’s view of what the law is, or ought to be, concerning, for example, the propriety of courts reviewing the decisions of a city council, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 [“affidavits must cite</p>	<p>The testimony is relevant. Relevant evidence is evidence “having a tendency in reason to prove or disprove any fact that is of consequence to the determination of the action.” (<i>Coffey v. Shiomoto</i> (2015) 60 Cal.4th 1198, 1213, quotation omitted.) “The test of relevance is whether the evidence tends, logically, naturally, and by reasonable inference to establish material facts.” (<i>Ibid.</i>, quotation omitted.) The test of whether something is relevant and, therefore, admissible, “is not a strict one.” (<i>Ibid.</i>) The cited testimony is part of a larger passage addressing the proper functioning of municipal government and how the separation of powers impacts that process. Moreover, as Plaintiffs have argued about democracy in their opposition, Professor Zerunyan’s testimony</p>

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
<p>powers issue to allow the local governance to be the closest to the people who are governed.”</p>	<p>evidentiary facts, not legal conclusions or ‘ultimate’ facts”]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 [“The proper place for argument is in points and authorities, not declarations.”].)</p>	<p>is directly relevant to those issues.</p> <p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding the municipal government.</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>
<p>Zerunyan Decl. p. 2, line 23 – p. 3, line 2: “At the local level, the public trust is paramount. Thus, California, like many other states, has created a framework of ethics laws, which are designed to preserve the public trust in public servants and public institutions. Under California law, that ethical framework is expressed through the common law conflicts doctrine (also sometimes referred to as the common law bias doctrine), the Political Reform Act, and Government Code Section 1090. Adhering to the ethical framework in these laws is akin to the minimum standard of</p>	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan’s view of what the law is, or ought to be, concerning, for example, California’s ethics laws and the reason for their enactment, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n.</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding ethics, the standard of care owed by public officials, and the operation of municipal government. Furthermore, Professor</p>

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
<p>care for public officials. The rules and principles that arise from these laws and doctrines are based on the ethical principles of autonomy, veracity, undivided loyalty, disinterested zeal, and the public interest.”</p>	<p>3 [“The proper place for argument is in points and authorities, not declarations.”].)</p>	<p>Zerunyan is explaining the derivation of the standard of care that public officials owe and the principles underlying the creation of ethical framework governing the standard of care, which are outside the common experience and helpful to the trier of fact.</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>
<p>Zerunyan Decl. p. 3, lines 3-9: “AB1234, enacting Government Code Sections 53234 et seq., requires that elected and appointed officials take two hours of ethics training every two years. The ethics training includes training on ‘[l]aws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws,’ as well as ‘[l]aws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.’ (Gov. Code, § 53234.)”</p>	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan’s view of what the law requires is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 [“The proper place for argument is in points and authorities, not declarations.”].)</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding ethics and the standard of care owed by public officials. He is addressing the legal training required by public officials, which directly relates to a public official’s duties and is outside the common experience.</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
<p>Zerunyan Decl. p. 3, lines 9-13 and Ex. B: "I have taken such trainings numerous times during my time as a public official and they generally cover all three parts of this framework – common law conflicts (or bias), the Political Reform Act, and Government Code Section 1090. An example of such training materials similar to ones I have received is attached at Exhibit B"</p>	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, concerning, for example, conflicts of interest, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for argument is in points and authorities, not declarations."].)</p> <p>Inadmissible Hearsay. (Evid. Code § 1200). The "training materials," attached as Exhibit B, are out-of-court statements of others which Mr. Zerunyan seeks to have this Court accept as an accurate description of the law. That is no substitute for the law and actual legal authority.</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding the training required for an elected official in municipal government and the standard of care owed by a public official. Moreover, it demonstrates his further qualifications and understanding on the issues he is opinion about in his declaration.</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p> <p>Exhibit B is not hearsay. Exhibit B is not offered for the truth of its contents but is merely offered as an example of something Professor Zerunyan received and is a source of the basis of his opinion on the standard of care. Moreover, Evidence Code section 801 specifically permits an expert's opinion to be based on evidence "whether or not admissible." (See also <i>People v. Veamatahau</i> (2020) 9 Cal.5th</p>

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		16, 29 ["an expert may consult specific sources in a case — a textbook, a treatise, or an academic paper — and supply the information found therein to the jury as background information without running afoul of the hearsay rules."].)
<p>Zerunyan Decl. p. 3, lines 14-18: "In light of this framework and responsibility as a locally elected official, public officials must want to practice these ethics, not just learn them. Therefore, in my experience, councilmembers disqualify themselves for various reasons, including ethical conflicts that inevitably arise.</p> <p>Disqualification, whether by city council vote or by self-recusal, is not undemocratic at all – it is ethical. And democracy has to be ethical."</p>	<p>Irrelevant (Evid. Code §350). Mr. Zerunyan's opinions about how city councilmembers "must want to practice [] ethics," what some unidentified councilmembers have done for unidentified "various reasons," and whether "democracy has to be ethical," has no relevance to any issue in this case.</p> <p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, is not a proper subject of the testimony of any witness, including experts. Nor is Mr. Zerunyan's view of democracy and what is "undemocratic."</p>	<p>The testimony is relevant. Relevant evidence is evidence "having a tendency in reason to prove or disprove any fact that is of consequence to the determination of the action." (<i>Coffey v. Shiomoto</i> (2015) 60 Cal.4th 1198, 1213, quotation omitted.) "The test of relevance is whether the evidence tends, logically, naturally, and by reasonable inference to establish material facts." (<i>Ibid.</i>, quotation omitted.) The test of whether something is relevant and, therefore, admissible, "is not a strict one." (<i>Ibid.</i>) The cited testimony is part of a larger passage addressing the proper functioning of municipal government and the standard of care owed by public officials. Furthermore, whether disqualification of a councilmember on conflict grounds is democratic has been put at issue by Plaintiffs.</p> <p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an</p>

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
		objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding ethics, the standard of care owed by public officials, and the operation of municipal government.
<p>Zerunyan Decl. p. 3, lines 19-27: "The doctrine of common law conflicts, which are sometimes referred to as common law bias, requires public officials to act without personal interest and for the benefit of the public, regardless of whether specific financial interests are at stake. These are the same ethical considerations of undivided loyalty, disinterested skill, and fairness that also apply where financial interests are also at stake. In my experience, common law conflicts still arise and the absence of a financial conflict does not mean that a common law conflict does not exist. Instead, when assessing whether a conflict of interest exists, a public official should look collectively at the three main sources of law – common law conflicts, the Political Reform Act, and Government Code Section 1090 – and always have in mind the public interest."</p>	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, concerning, for example, conflicts of interest, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for argument is in points and authorities, not declarations."].)</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding the ethical underpinnings of the conflicts of interest standards and the standard of care owed by public officials. Such testimony is outside of the common experience.</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>
<p>Zerunyan Decl. p. 4, lines 1-3: "Furthermore, much like financial conflicts, these ethical considerations not only include</p>	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding</p>

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
<p>whether an actual conflict exists, but also includes whether there is a perception of such common law conflict.”</p>	<p>view of what the law is, or ought to be, concerning, for example, conflicts of interest, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 [“The proper place for argument is in points and authorities, not declarations.”].)</p>	<p>questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding the functioning of ethical duties and the standard of care in municipal government. (See <i>Rosenberg v. Goldstein</i> (1966) 247 Cal.App.2d 25, 29 [“Experts may give evidence concerning the recognized and accepted operating standards and practices in their profession, trade or business on the issue of whether such standards have been met or violated.”].)</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>
<p>Zerunyan Decl. p. 4, lines 3-6: “That is why, in my experience, most councilmembers when presented with any type of potential conflict issue, whether common law or otherwise, will recuse themselves out of an abundance of caution and to preserve public integrity and safeguard the institution of the respective city council.”</p>	<p>Irrelevant (Evid. Code §350). What other (unidentified) councilmembers did in different (unexplained) circumstances different than those presented in this case, has no relevance to any issue in this case.</p> <p>Speculation. (Evid. Code § 803) Mr. Zerunyan has no way to know why the unnamed councilmembers recused themselves. (<i>Trujillo v. First Am. Registry, Inc.</i> (2008) 157</p>	<p>The testimony is relevant. Relevant evidence is evidence “having a tendency in reason to prove or disprove any fact that is of consequence to the determination of the action.” (<i>Coffey v. Shiimoto</i> (2015) 60 Cal.4th 1198, 1213, quotation omitted.) “The test of relevance is whether the evidence tends, logically, naturally, and by reasonable inference to establish material facts.” (<i>Ibid.</i>, quotation omitted.) The test of whether something is relevant</p>

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	Cal. App. 4th 628, 635 ["opposition to summary judgment will be deemed insufficient when it is essentially conclusionary, argumentative or based on conjecture and speculation"].)	and, therefore, admissible, "is not a strict one." (<i>Ibid.</i>) The cited testimony addresses the standard of care of a public official and the concerns that underlie the conflicts laws. (See <i>Rosenberg v. Goldstein</i> (1966) 247 Cal.App.2d 25, 29 ["Experts may give evidence concerning the recognized and accepted operating standards and practices in their profession, trade or business on the issue of whether such standards have been met or violated."].) Professor Zerunyan experience on recusal informs his opinions. Moreover, the integrity and safeguarding of the City and City Council are relevant to issues in this case, including Council's disqualification of De la Torre. This testimony is based upon experience. Paragraph 1 of the Zerunyan Declaration explicitly states that all testimony is based upon Professor Zerunyan's personal knowledge, and the cited testimony itself says it is based upon his experience, which is set forth in his CV, including his writings.
Zerunyan Decl. p. 4, lines 7-11: "Common law conflicts can arise where there are decisions involving close familial relations, whether that person receives compensation or not or whether that spouse received direct relief or not. In my experience, it is presumed that a close familial relationship can and likely impacts one's	Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, concerning, for example, conflicts of interest, is not a proper subject of the testimony of any witness, including experts.	Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
<p>judgment, raises such ethical issues such as autonomy, undivided loyalties, fairness and disinterested skill, and gives rise to a common law conflict of interest.”</p>	<p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 [“The proper place for argument is in points and authorities, not declarations.”]).</p>	<p>testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding the ethics and conflicts within municipal government. (See <i>Rosenberg v. Goldstein</i> (1966) 247 Cal.App.2d 25, 29 [“Experts may give evidence concerning the recognized and accepted operating standards and practices in their profession, trade or business on the issue of whether such standards have been met or violated.”].)</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>
<p>Zerunyan Decl. p. 4, lines 11-12: “There are similar conflict rules that other professions employ, such as the legal and medical professions.”</p>	<p>Irrelevant (Evid. Code §350). Conflict rules applicable to the legal and medical profession do not apply to city council members, and therefore have no relevance to any issue in this case.</p>	<p>The testimony is relevant. Relevant evidence is evidence “having a tendency in reason to prove or disprove any fact that is of consequence to the determination of the action.” (<i>Coffey v. Shiomoto</i> (2015) 60 Cal.4th 1198, 1213, quotation omitted.) “The test of relevance is whether the evidence tends, logically, naturally, and by reasonable inference to establish material facts.” (<i>Ibid.</i>, quotation omitted.) The test of whether something is relevant and, therefore, admissible, “is not a strict one.” (<i>Ibid.</i>) The cited testimony is part of a discussion concerning conflict rules and putting them in a greater context. Moreover, Plaintiffs have not shown how underlying ethical principles</p>

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		are different (and therefore irrelevant).
<p>Zerunyan Decl. p. 4, lines 13-16: "Beyond close familial relationships, other close relationships and connections to other people may raise similar ethical concerns. Participation in decisions involving close friends, business partners and/or professional relationships can lead to the appearance of preferential treatment, divided loyalties and/or compromise the appearance of fairness, all of which undermine public confidence."</p>	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, concerning, for example, conflicts of interest, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for argument is in points and authorities, not declarations."].)</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding conflict of interests in municipal government and the standard of care owed by public officials. (See <i>Rosenberg v. Goldstein</i> (1966) 247 Cal.App.2d 25, 29 ["Experts may give evidence concerning the recognized and accepted operating standards and practices in their profession, trade or business on the issue of whether such standards have been met or violated."].)</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>
<p>Zerunyan Decl. p. 4, lines 17-19: "Common law conflicts can also arise when a public official crosses the line to being partisan, closed minded, and becoming embroiled in the underlying decision before the public official."</p>	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, concerning, for example, conflicts of interest, is not a proper subject of the testimony</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence</p>

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	<p>of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 [“The proper place for argument is in points and authorities, not declarations.”].)</p>	<p>Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding the ethical principles and conflicts of interests in municipal government and the standard of care owed by public officials. (See <i>Rosenberg v. Goldstein</i> (1966) 247 Cal.App.2d 25, 29 [“Experts may give evidence concerning the recognized and accepted operating standards and practices in their profession, trade or business on the issue of whether such standards have been met or violated.”].)</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>
<p>Zerunyan Decl. p. 4, lines 20-26: “While it is my opinion based on my experience and expertise that Mr. De la Torre is entitled to advocate for his position to effectuate the policy change with regard to district-based elections, such as during public comment or 13 items – and I defend his right to do so – but based on the facts I have seen, he improperly seeks to participate in closed sessions regarding the litigation on the California Voting Rights Act (“CVRA”) despite his admitted bias, despite his lack of autonomy, and despite his relationship with his wife, the plaintiff in that litigation, and</p>	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan’s view of what the law is, or ought to be, concerning, for example, conflicts of interest, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 [“The proper place for</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding ethical principles and conflicts of interest in municipal government and the standard of care owed by public officials. (See <i>Rosenberg v.</i></p>

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his ongoing relationship with Kevin Shenkman, one of the attorneys for the plaintiffs in the CVRA litigation."	argument is in points and authorities, not declarations."].)	<p><i>Goldstein</i> (1966) 247 Cal.App.2d 25, 29 ["Experts may give evidence concerning the recognized and accepted operating standards and practices in their profession, trade or business on the issue of whether such standards have been met or violated."]; Evid. Code § 805.)</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>
<p>Zerunyan Decl. p. 4, line 26 – p. 5, line 3: "As one example, Mr. De la Torre creating an adversarial setting in the city council meeting on January 26, 2021 when his disqualification was before the council demonstrates that he is not disinterested and that he has divided loyalties. Furthermore, a significant distinction exists between using the democratic process to collaboratively govern and win sufficient votes and trying to utilize the judicial system to subvert and overrule that democratic process."</p>	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, concerning, for example, conflicts of interest, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for argument is in points and authorities, not declarations."].)</p> <p>Irrelevant (Evid. Code §350). Mr. Zerunyan's opinions about Councilmember de la Torre's political style, and his resort to this Court to require Defendant to abide by the law, has no</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding the ethical principles and conflicts of interest in municipal government. Moreover, his statement goes to a public official's standard of care owed to the public. (See <i>Rosenberg v. Goldstein</i> (1966) 247 Cal.App.2d 25, 29 ["Experts may give evidence concerning the recognized and accepted operating standards and practices in their profession, trade or business on the issue of whether such</p>

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Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
	relevance to any issue in this case.	<p>standards have been met or violated.”].)</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p> <p>The testimony is relevant. Relevant evidence is evidence “having a tendency in reason to prove or disprove any fact that is of consequence to the determination of the action.” (<i>Coffey v. Shiimoto</i> (2015) 60 Cal.4th 1198, 1213, quotation omitted.) “The test of relevance is whether the evidence tends, logically, naturally, and by reasonable inference to establish material facts.” (<i>Ibid.</i>, quotation omitted.) The test of whether something is relevant and, therefore, admissible, “is not a strict one.” (<i>Ibid.</i>) The cited testimony is part of a larger passage addressing the proper functioning of municipal government. Moreover, Mr. De la Torre’s actions, his divided loyalties, and his lack of disinterestedness are central to the claims in this case, and Plaintiffs have asserted that disqualification of De la Torre is undemocratic. Professor Zerunyan’s opinion is therefore relevant.</p>
Zerunyan Decl. p. 5, lines 4-9: “A reasonable councilmember in Mr. De la Torre’s position would have recused themselves from the closed session discussions of the CVRA	Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan’s view of what the law is, or ought to be, concerning, for	Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay

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<p>litigation due to the conflict of interest posed by relationships and his advocacy before and after he became a councilmember. Even though the CVRA litigation only seeks equitable relief, that does not change that the named plaintiff is Mr. De la Torre's wife. His direct advocacy on her behalf demonstrates divided loyalties, a lack of disinterested skill, and bias."</p>	<p>example, conflicts of interest, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for argument is in points and authorities, not declarations."].)</p> <p>Irrelevant (Evid. Code §350). Mr. Zerunyan's opinions about what "a reasonable councilmember ... would [do]," has no relevance to any issue in this case. The question in this case is what the law requires Councilmember de la Torre to do, not what Mr. Zerunyan thinks he should do.</p>	<p>opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding the ethical principles and conflicts of interest in municipal government and standards of care. (See <i>Rosenberg v. Goldstein</i> (1966) 247 Cal.App.2d 25, 29 ["Experts may give evidence concerning the recognized and accepted operating standards and practices in their profession, trade or business on the issue of whether such standards have been met or violated."].)</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions. Moreover Section 805 permits an expert to give testimony that "embraces the ultimate issue to be decided by the trier of fact."</p> <p>The testimony is relevant. Relevant evidence is evidence "having a tendency in reason to prove or disprove any fact that is of consequence to the determination of the action." (<i>Coffey v. Shiimoto</i> (2015) 60 Cal.4th 1198, 1213, quotation omitted.) "The test of relevance is whether the evidence tends, logically, naturally, and by reasonable inference to establish</p>

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		material facts.” (<i>Ibid.</i> , quotation omitted.) The test of whether something is relevant and, therefore, admissible, “is not a strict one.” (<i>Ibid.</i>) The cited testimony directly addresses the standard of care any public official must meet, which is relevant in this case. That De la Torre does not like the testimony is no reason to exclude it.
<p>Zerunyan Decl. p. 5, lines 10-15: “In fact, neither I, nor would I expect my colleagues, would insist on participating in such closed sessions where such conflicts existed. It actually surprises me that Councilmember De la Torre has taken such positions here because his actions undermine public confidence and trust. If it were me in these circumstances, I would have taken affirmative actions to ensure that I had no connection to discussions concerning the underlying CVRA litigation to ensure that public confidence and trust remained.”</p>	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan’s view of what the law is, or ought to be, concerning, for example, conflicts of interest, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 [“The proper place for argument is in points and authorities, not declarations.”].)</p> <p>Irrelevant (Evid. Code §350). What Mr. Zerunyan’s would or wouldn’t do under certain circumstances has no relevance to any issue in this case. The question in this case is what the law requires Councilmember de</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding ethical principles and conflicts of interest in municipal government and the standard of care owed by public officials. (See <i>Rosenberg v. Goldstein</i> (1966) 247 Cal.App.2d 25, 29 [“Experts may give evidence concerning the recognized and accepted operating standards and practices in their profession, trade or business on the issue of whether such standards have been met or violated.”].)</p>

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	la Torre to do, not what Mr. Zerunyan would do.	<p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p> <p>The testimony is relevant. Relevant evidence is evidence "having a tendency in reason to prove or disprove any fact that is of consequence to the determination of the action." (<i>Coffey v. Shiimoto</i> (2015) 60 Cal.4th 1198, 1213, quotation omitted.) "The test of relevance is whether the evidence tends, logically, naturally, and by reasonable inference to establish material facts." (<i>Ibid.</i>, quotation omitted.) The test of whether something is relevant and, therefore, admissible, "is not a strict one." (<i>Ibid.</i>) The cited testimony again addresses the standard of care and public integrity and public confidence concerns that arise with such conflicts of interests. This is directly relevant to De la Torre's claims here.</p>
Zerunyan Decl. p. 5, lines 16-19: "Additionally, Mr. De la Torre asserts that the city council lacks authority to disqualify a city council member. In my experience, and based on the doctrine of home rule that applies to charter cities, the city council decides its organizational and democratic structure. The city council can and must be able to act to preserve itself and ensure that it acts in compliance with the law."	<p>Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, concerning, for example, the Brown Act, is not a proper subject of the testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 ["affidavits must cite evidentiary facts, not legal</p>	<p>Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding municipal</p>

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	conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for argument is in points and authorities, not declarations."].)	government, including its operation and functioning, which are outside the common experience. There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.
Zerunyan Decl. p. 5, lines 20-26: "I understand that the Plaintiffs here have asserted that the Brown Act was somehow implicated by Mr. De la Torre's exclusion at a closed session regarding the CVRA litigation based upon his conflict of interest. However, the Brown Act was not enacted to ensure that all city council members are present at city council meetings. Rather, the Brown Act is a sunshine law. Its purpose is to ensure that, subject to certain specific statutory exceptions where there is a demonstrated need for confidentiality, local legislative bodies like city councils conduct their business in open and public meetings so that the local decision-making process is observable by the public."	Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, concerning, for example, the Brown Act, is not a proper subject of the testimony of any witness, including experts. Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for argument is in points and authorities, not declarations."].)	Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding municipal government. His testimony regarding the background and purpose of the Brown Act are also outside the common experience and helpful to the trier of fact. There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.
Zerunyan Decl. p. 5, line 27-p. 6, line 9: "Plaintiffs' interpretation of the Brown Act, as requiring all members to attend any closed session, is untenable. It would mean that city councils would be unable to conduct business or go into a	Not a proper subject of expert opinion (Evid. Code §§ 310, 800). As explained more fully above, Mr. Zerunyan's view of what the law is, or ought to be, concerning, for example, the Brown Act, is not a proper subject of the	Sections 310 and 800 are inapplicable. Neither Evidence Code section 310, which deals with the Court deciding questions of law, nor section 800, which deals with lay opinions, is grounds for an objection here. This testimony

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<p>closed session if not everyone is there. In fact, in my experience, it is common for closed sessions to have to proceed without all members of the city council and to proceed where only a quorum is present. This may happen due to a conflict of interest, an absence due to illness, or an absence due to other issues. But requiring all members to attend every meeting would grind the council's business to a halt. If all members of a legislative body had a right to attend closed sessions, it would also effectively mean that conflict of interest laws have no application when legislative bodies are meeting to discuss litigation or other proper closed session topics, which makes no sense. Of course, it is my desire that all my colleagues are present when discussing an important issue (so long as they do not have a disqualifying conflict), but only a quorum is required."</p>	<p>testimony of any witness, including experts.</p> <p>Improper legal conclusion. (See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 ["affidavits must cite evidentiary facts, not legal conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for argument is in points and authorities, not declarations."].)</p>	<p>falls squarely within Evidence Code section 801 governing expert witnesses and opinion testimony. As discussed in more detail above, Professor Zerunyan testifies based upon his own experience and training regarding municipal government, including the inability for a city council to function properly under Plaintiff's unsupported view of the Brown Act. (See <i>Rosenberg v. Goldstein</i> (1966) 247 Cal.App.2d 25, 29 ["Experts may give evidence concerning the recognized and accepted operating standards and practices in their profession, trade or business on the issue of whether such standards have been met or violated."].)</p> <p>There is no improper legal conclusion. As discussed above, the cited testimony does not improperly opine as to ultimate legal conclusions.</p>

Dated: April 28, 2022

BERRY SILBERBERG STOKES PC
CAROL M. SILBERBERG

By /s/ Carol M. Silberberg
Carol M. Silberberg

Attorneys for Defendant
CITY OF SANTA MONICA