1			
1	SUSAN Y. COLA (SBN 178360) Interim City Attorney		
2	susan.cola@santamonica.gov		
3	KIRSTEN R. GALLER (SBN 227171) Deputy City Attorney		
4	kirsten.galler@santamonica.gov BRANDON D. WARD (SBN 259375)		
5	Deputy City Attorney brandon.ward@santamonica.gov		
6	1685 Main Street, Room 310		
	Santa Monica, California 90401		
7	Telephone: (310) 458-8336 Facsimile: (310) 395-6727		
8	1 acsimile. (310) 373-0727		
9	CAROL M. SILBERBERG (SBN 217658) ROBERT P. BERRY (SBN 220271)		
10	BERRY SILBERBERG STOKES PC csilberberg@berrysilberberg.com		
11	155 North Lake Avenue, Suite 800 Pasadena, CA 91101		
12	Telephone: (213) 986-2688		
12	Facsimile: (213) 986-2677		
	Attorneys for Defendant		ling fee pursuant to
14	CITY OF SANTA MONICA	Government Co	ae § 6103
15	SUPERIOR COURT OF T	THE STATE OF	CALIFORNIA
16	FOR THE COUN		
17	FOR THE COUN	II OF LOS AIW	JELES
18	OSCAR DE LA TORRE and ELIAS SERNA,	CASE NO.: 21S	STCV08597
19	Plaintiffs,	Assigned to Hor	n. Richard L. Fruin
20	v.		CITY OF SANTA
21	CITY OF SANTA MONICA,		ESPONSES TO PLAINTIFFS' TO THE DECLARATION
	and DOES 1 through 10, inclusive		ERUNYAN FILED IN
22			DEFENDANT'S MOTION
23	Defendants.	FOR SUMMAI	RY JUDGMENT
24		Date:	May 6, 2022
25		Time: Dept.:	9:15 A.M. 15
		Dept	15
26 27		Action Filed: Trial Date:	March 4, 2021 June 13, 2022
27			
28			

Defendant City of Santa Monica ("City") hereby submits its responses to Plaintiffs' Objections to the Declaration of Frank Zerunyan Filed in Support of Defendant's Motion for Summary Judgment ("Objections").

BACKGROUND

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

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

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

THE OBJECTIONS ARE BASELESS

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

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

¹ In addition to lack of support for the Objections, Plaintiffs failed to comply with California Rules of 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.

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

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

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

(*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.)

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

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

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

Plaintiffs' specific objections are addressed below.

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
Zerunyan Declaration, p. 2 lines 6-10: "Based on my experience,	Irrelevant (Evid. Code §350). Mr. Zerunyan's opinions about	The testimony is relevant. Relevant evidence is evidence
research, and expertise, a	how city councilmembers	"having a tendency in reason to
councilmember is a nonpartisan elected office to serve the public	"should govern," in some idealized view of local	prove or disprove any fact that is of consequence to the
and should govern without the divisions imposed by political	government that ignores the realities of Santa Monica, has no	determination of the action." (<i>Coffey v. Shiomoto</i> (2015) 60
interest and even the media. Therefore, partisan ideology,	relevance to any issue in this case.	Cal.4th 1198, 1213, quotation omitted.) "The test of relevance
trying to represent only a particular group, or to win by all	Not a proper subject of expert	is whether the evidence tends, logically, naturally, and by
means necessary is antithetical to local governance. This is one	opinion (Evid. Code §§ 310, 800). As explained more fully	reasonable inference to establish material facts." (<i>Ibid</i> .
significant way local	above, Mr. Zerunyan's view of	quotation omitted.) The test of
government differs from federal government or state	what the law is, or ought to be, is not a proper subject of the	whether something is relevant and, therefore, admissible, "is
legislatures."	testimony of any witness, including experts.	not a strict one." (<i>Ibid.</i>) The cited testimony is part of a
	including experts.	larger passage addressing the
		proper functioning of municip government. As avoiding
		conflicts of interest are
		important to well-functioning government and democracy,
		such information is relevant here. (Consumers Union of th
		U.S., Inc. v. Cal. Milk
		<i>Producers Advisory Bd.</i> (1978) 82 Cal.App.3d 433, 444.
		["Erosion of confidence in public officials is detrimental"
		democracy" and to "maintain
		confidence and to avoid public skepticism, conflicts of interest
		must be shunned."])
		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

RESPONSES TO SPECIFIC OBJECTIONS

1

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
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."	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. 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. Improper legal conclusion.	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. 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
	(See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639	official are directly at issue in this case.
	["affidavits must cite evidentiary facts, not legal	Sections 310 and 800 are
	conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i>	inapplicable. Neither Evidence Code section 310, which deal
	(2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for	with the Court decidin questions of law, nor sectio

1 2	Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
		argument is in points and	opinions, is grounds for an
3 4		authorities, not declarations."].)	objection here. This testimony falls squarely within Evidence
			Code section 801 governing
5			expert witnesses and opinion testimony. As discussed in
6			more detail above, Professor Zerunyan testifies based upon
7			his own experience and training
8			regarding ethics, the standard of care owed by public officials,
9			and the operation of municipal
10			government.
11			There is no improper legal conclusion. As discussed
12			above, the cited testimony does
13			not improperly opine as to ultimate legal conclusions.
	Zerunyan Decl. p. 2, lines 14-	Irrelevant (Evid. Code §350).	The testimony is relevant.
14	22: "City councils, as local	Mr. Zerunyan's opinions about	Relevant evidence is evidence
15	democratic institutions, act by	how city councils should	"having a tendency in reason to
10	majority (or sometimes a super	function, or what is	prove or disprove any fact that
16	majority), and the entity is	"democracy in action," in some	is of consequence to the
17	larger than any individual	idealized view of local	determination of the action."
17	councilmember. The city	government that ignores the	(Coffey v. Shiomoto (2015) 60
18	council is the final arbiter of the issues before it. If people do	realities of Santa Monica, has no relevance to any issue in this	Cal.4th 1198, 1213, quotation omitted.) "The test of relevance
19	not like the actions taken by the	case.	is whether the evidence tends,
20	city council, then people have the power to vote	Not a proper subject of	logically, naturally, and by reasonable inference to
20	councilmembers out of office	expert opinion (Evid. Code §§	establish material facts." (<i>Ibid.</i> ,
21	or petition for a recall. That is	310, 800). As explained more	quotation omitted.) The test of
22	democracy in action. Alternatively, and where	fully above, Mr. Zerunyan's view of what the law is, or	whether something is relevant and, therefore, admissible, "is
23	appropriate, a person can also	ought to be, concerning, for	not a strict one." (Ibid.) The
24	file a writ of mandamus to challenge council action. But in	example, the propriety of courts reviewing the decisions of a	cited testimony is part of a larger passage addressing the
	my nearly twenty years as a	city council, is not a proper	proper functioning of municipal
25	Rolling Hills Estates city	subject of the testimony of any	government and how the
26	councilmember, such writs are	witness, including experts.	separation of powers impacts
	few and far between and the	.	that process. Moreover, as
27	courts cannot and must not	Improper legal conclusion.	Plaintiffs have argued about
28	second guess the city council's	(See Hayman v. Block (1986)	democracy in their opposition,
20	decision. I view this to be a	176 Cal.App.3d 629, 638-639	Professor Zerunyan's testimony
	constitutional separation of	["affidavits must cite 6	

1	Material Plaintiffs	Grounds for Plaintiffs'	City's Response:
2	Objected to:	Objection:	
3 4	powers issue to allow the local governance to be the closest to the people who are governed."	evidentiary facts, not legal conclusions or 'ultimate' facts']; <i>Marriage of Heggie</i>	is directly relevant to those issues.
	the people who are governed.	(2002) 99 Cal.App.4th 28, 30 n.	Sections 310 and 800 are
5		3 ["The proper place for	inapplicable. Neither Evidence
6		argument is in points and authorities, not declarations."].)	Code section 310, which deals with the Court deciding
7			questions of law, nor section 800, which deals with lay
8			opinions, is grounds for an objection here. This testimony
9			falls squarely within Evidence
10			Code section 801 governing expert witnesses and opinion
11			testimony. As discussed in more detail above, Professor
12			Zerunyan testifies based upon
13			his own experience and training regarding the municipal
14			government.
15			There is no improper legal
16			conclusion. As discussed above, the cited testimony does
17			not improperly opine as to ultimate legal conclusions.
18	Zerunyan Decl. p. 2, line 23 –	Not a proper subject of expert opinion (Evid. Code §§	Sections 310 and 800 are inapplicable. Neither Evidence
19	p. 3, line 2: "At the local level, the public trust is paramount.	310, 800). As explained more	Code section 310, which deals
20	Thus, California, like many	fully above, Mr. Zerunyan's	with the Court deciding
	other states, has created a framework of ethics laws,	view of what the law is, or ought to be, concerning, for	questions of law, nor section 800, which deals with lay
21	which are designed to preserve the public trust in public	example, California's ethics laws and the reason for their	opinions, is grounds for an objection here. This testimony
22	servants and public institutions.	enactment, is not a proper	falls squarely within Evidence
23	Under California law, that ethical framework is expressed	subject of the testimony of any witness, including experts.	Code section 801 governing expert witnesses and opinion
24	through the common law		testimony. As discussed in
25	conflicts doctrine (also sometimes referred to as the	Improper legal conclusion . (See <i>Hayman v. Block</i> (1986)	more detail above, Professor Zerunyan testifies based upon
26	common law bias doctrine), the	176 Cal.App.3d 629, 638-639	his own experience and training
27	Political Reform Act, and Government Code Section	["affidavits must cite evidentiary facts, not legal	regarding ethics, the standard of care owed by public
	1090. Adhering to the ethical	conclusions or 'ultimate'	officials, and the operation of
28	framework in these laws is akin to the minimum standard of	facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n.	municipal government. Furthermore, Professor
		1	

1	Material Plaintiffs	Grounds for Plaintiffs'	City's Response:
2	Objected to:	Objection:	
3	care for public officials. The rules and principles that arise from these laws and doctrines	3 ["The proper place for argument is in points and authorities not dealerations"])	Zerunyan is explaining the derivation of the standard of
4 5	are based on the ethical	authorities, not declarations."].)	care that public officials owe and the principles underlying
6	principles of autonomy, veracity, undivided loyalty,		the creation of ethical framework governing the
7	disinterested zeal, and the public interest."		standard of care, which are outside the common experience and helpful to the trier of fact.
8			There is no improper legal
9 10			conclusion. As discussed above, the cited testimony does
11			not improperly opine as to ultimate legal conclusions.
	Zerunyan Decl. p. 3, lines 3-9:	Not a proper subject of	Sections 310 and 800 are
12	"AB1234, enacting Government Code Sections	expert opinion (Evid. Code §§ 310, 800). As explained more	inapplicable. Neither Evidence Code section 310, which deals
13	53234 et seq., requires that	fully above, Mr. Zerunyan's	with the Court deciding
14	elected and appointed officials take two hours of ethics	view of what the law requires is not a proper subject of the	questions of law, nor section 800, which deals with lay
15	training every two years. The	testimony of any witness,	opinions, is grounds for an
16	ethics training includes training on '[1]aws relating to personal	including experts.	objection here. This testimony falls squarely within Evidence
17	financial gain by public servants, including, but not	Improper legal conclusion . (See <i>Hayman v. Block</i> (1986)	Code section 801 governing expert witnesses and opinion
18	limited to, laws prohibiting bribery and conflict-of-interest	176 Cal.App.3d 629, 638-639 ["affidavits must cite	testimony. As discussed in more detail above, Professor
19	laws,' as well as '[l]aws relating to fair processes,	evidentiary facts, not legal conclusions or 'ultimate'	Zerunyan testifies based upon his own experience and training
20	including, but not limited to,	facts"]; Marriage of Heggie	regarding ethics and the
21	common law bias prohibitions, due process requirements,	(2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for	standard of care owed by public officials. He is addressing the
22	incompatible offices, competitive bidding	argument is in points and authorities, not declarations."].)	legal training required by public officials, which directly
23	requirements for public contracts, and disqualification		relates to a public official's duties and is outside the
24	from participating in decisions		common experience.
25	affecting family members.' (Gov. Code, § 53234.)"		There is no improper legal
26			conclusion. As discussed above, the cited testimony does
27			not improperly opine as to ultimate legal conclusions.
28			

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

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
		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 t the jury as background information without running afoul of the hearsay rules."].)
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. Disqualification, whether by city council vote or by self- recusal, is not undemocratic at all – it is ethical. And democracy has to be ethical."	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. 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."	The testimony is relevant. Relevant evidence is evidence "having a tendency in reason t 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 municipa government and the standard of care owed by pubic officials. Furthermore, whether disqualification of a councilmember on conflict grounds is democratic has been put at issue by Plaintiffs. Sections 310 and 800 an inapplicable. Neither Evidence Code section 310, which deal with the Court deciding questions of law, nor sections 800, which deals with lat

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

1	Material Plaintiffs	Grounds for Plaintiffs'	City's Response:
2	Objected to:	Objection:	
3	whether an actual conflict	view of what the law is, or	questions of law, nor section
4	exists, but also includes whether there is a perception of	ought to be, concerning, for example, conflicts of interest, is	800, which deals with lay opinions, is grounds for an
	such common law conflict."	not a proper subject of the	objection here. This testimony
5		testimony of any witness, including experts.	falls squarely within Evidence Code section 801 governing
6			expert witnesses and opinion
7		Improper legal conclusion . (See <i>Hayman v. Block</i> (1986)	testimony. As discussed in more detail above, Professor
8		176 Cal.App.3d 629, 638-639	Zerunyan testifies based upon
9		["affidavits must cite evidentiary facts, not legal	his own experience and training regarding the functioning of
10		conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i>	ethical duties and the standard of care in municipal
11		(2002) 99 Cal.App.4th 28, 30 n.	government. (See Rosenberg v.
12		3 ["The proper place for argument is in points and	<i>Goldstein</i> (1966) 247 Cal.App.2d 25, 29 ["Experts
13		authorities, not declarations."].)	may give evidence concerning the recognized and accepted
14			operating standards and
			practices in their profession, trade or business on the issue of
15			whether such standards have
16			been met or violated."].)
17			
18			There is no improper legal conclusion. As discussed
19			above, the cited testimony does
20			not improperly opine as to ultimate legal conclusions.
	Zerunyan Decl. p. 4, lines 3-6:	Irrelevant (Evid. Code §350).	The testimony is relevant.
21	"That is why, in my experience,	What other (unidentified)	Relevant evidence is evidence
22	most councilmembers when presented with any type of	councilmembers did in different (unexplained)	"having a tendency in reason to prove or disprove any fact that
23	potential conflict issue, whether	circumstances different than	is of consequence to the
24	common law or otherwise, will recuse themselves out of an	those presented in this case, has	determination of the action." (<i>Coffey v. Shiomoto</i> (2015) 60
	abundance of caution and to	no relevance to any issue in this case.	Cal.4th 1198, 1213, quotation
25	preserve public integrity and		omitted.) "The test of relevance
26	safeguard the institution of the respective city council."	Speculation . (Evid. Code § 803) Mr. Zerunyan has no way	is whether the evidence tends, logically, naturally, and by
27	1	to know why the unnamed	reasonable inference to
28		councilmembers recused themselves. (<i>Trujillo v. First</i>	establish material facts." (<i>Ibid.</i> , quotation omitted.) The test of
-		Am. Registry, Inc. (2008) 157	whether something is relevant
		12	

Ν	Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
		Cal. App. 4th 628, 635	and, therefore, admissible, "is
		["opposition to summary	not a strict one." (Ibid.) The
		judgment will be deemed insufficient when it is	cited testimony addresses the
		essentially conclusionary,	standard of care of a public official and the concerns that
		argumentative or based on	underlie the conflicts laws. (See
		conjecture and speculation"].)	Rosenberg v. Goldstein (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,
7			including his writings.
	an Decl. p. 4, lines 7-11: non law conflicts can	Not a proper subject of expert opinion (Evid. Code §§	Sections 310 and 800 are inapplicable. Neither Evidence
	here there are decisions	310, 800). As explained more	Code section 310, which deals
	ng close familial	fully above, Mr. Zerunyan's	with the Court deciding
relation	ns, whether that person	view of what the law is, or	questions of law, nor section
	s compensation or not or	ought to be, concerning, for	800, which deals with lay
	r that spouse received	example, conflicts of interest, is	opinions, is grounds for an objection here. This testimony
	elief or not. In my nce, it is presumed that	not a proper subject of the testimony of any witness,	objection here. This testimony falls squarely within Evidence
	familial relationship can	including experts.	Code section 801 governing
	ely impacts one's		expert witnesses and opinion
		13	

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

1	Material Plaintiffs	Grounds for Plaintiffs'	City's Response:
2	Objected to:	Objection:	
3			are different (and therefore irrelevant).
4	Zerunyan Decl. p. 4, lines 13-	Not a proper subject of	Sections 310 and 800 are
5	16: "Beyond close familial	expert opinion (Evid. Code §§	inapplicable. Neither Evidence
6	relationships, other close relationships and connections	310, 800). As explained more fully above, Mr. Zerunyan's	Code section 310, which deals with the Court deciding
7	to other people may raise similar ethical concerns.	view of what the law is, or ought to be, concerning, for	questions of law, nor section 800, which deals with lay
8	Participation in decisions involving close friends,	example, conflicts of interest, is not a proper subject of the	opinions, is grounds for an objection here. This testimony
9	business partners and/or professional relationships can	testimony of any witness, including experts.	falls squarely within Evidence Code section 801 governing
10	lead to the appearance of		expert witnesses and opinion
11	preferential treatment, divided loyalties and/or compromise	Improper legal conclusion . (See <i>Hayman v. Block</i> (1986)	testimony. As discussed in more detail above, Professor
12	the appearance of fairness, all of which undermine public	176 Cal.App.3d 629, 638-639 ["affidavits must cite	Zerunyan testifies based upon his own experience and training
13	confidence."	evidentiary facts, not legal conclusions or 'ultimate'	regarding conflict of interests in municipal government and the
14 15		facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n.	standard of care owed by public officials. (See <i>Rosenberg v</i> . <i>Goldstein</i> (1966) 247
16		3 ["The proper place for argument is in points and outhorities not dealerations"])	Cal.App.2d 25, 29 ["Experts
17		authorities, not declarations."].)	may give evidence concerning the recognized and accepted
18			operating standards and practices in their profession,
19			trade or business on the issue of whether such standards have
20			been met or violated."].)
21			There is no improper legal
22			conclusion. As discussed above, the cited testimony does
23			not improperly opine as to ultimate legal conclusions.
24	Zerunyan Decl. p. 4, lines 17-	Not a proper subject of	Sections 310 and 800 are
25	19: "Common law conflicts can also arise when a public official	expert opinion (Evid. Code §§ 310,	inapplicable. Neither Evidence Code section 310, which deals
26	crosses the line to being	800). As explained more fully	with the Court deciding
	partisan, closed minded, and becoming embroiled in the	above, Mr. Zerunyan's view of what the law is, or ought to be,	questions of law, nor section 800, which deals with lay
27	underlying decision before the	concerning, for example,	opinions, is grounds for an
28	public official."	conflicts of interest, is not a	objection here. This testimony
		proper subject of the testimony 15	falls squarely within Evidence

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

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

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
	relevance to any issue in this case.	standards have been met or violated."].)
		There is no improper legal
		conclusion. As discussed above, the cited testimony does
		not improperly opine as to ultimate legal conclusions.
		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." (Coffey v. Shiomoto (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 sited
		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.
Zerunyan Decl. p. 5, lines 4-9:	Not a proper subject of	Sections 310 and 800 are
"A reasonable councilmember in Mr. De la Torre's position	expert opinion (Evid. Code §§ 310, 800). As explained more	inapplicable. Neither Evidence Code section 310, which deals
would have recused themselves from the closed session	fully above, Mr. Zerunyan's view of what the law is, or	with the Court deciding
discussions of the CVRA	ought to be, concerning, for	questions of law, nor section 800, which deals with lay
	18	
DEFENDANT'S RESPONSES TO PLA	AINTIFFS' OBJECTIONS TO THE DECI Case No.: 21STCV08597	ARATION OF FRANK ZERUNYAN

1	Material Plaintiffs	Grounds for Plaintiffs'	City's Response:
2	Objected to:	Objection:	City's Response.
3	litigation due to the conflict of	example, conflicts of interest, is	opinions, is grounds for an
4	interest posed by relationships and his advocacy before and	not a proper subject of the testimony of any witness,	objection here. This testimony falls squarely within Evidence
	after he became a	including experts.	Code section 801 governing
5	councilmember. Even though the CVRA litigation only seeks	Improper legal conclusion.	expert witnesses and opinion testimony. As discussed in
6	equitable relief, that does not	(See Hayman v. Block (1986)	more detail above, Professor
7	change that the named plaintiff is Mr. De la Torre's wife. His	176 Cal.App.3d 629, 638-639 ["affidavits must cite	Zerunyan testifies based upon
8	direct advocacy on her behalf	evidentiary facts, not legal	his own experience and training regarding the ethical principles
9	demonstrates divided loyalties,	conclusions or 'ultimate'	and conflicts of interest in
	a lack of disinterested skill, and bias."	facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n.	municipal government and standards of care. (See
10		3 ["The proper place for	Rosenberg v. Goldstein (1966)
11		argument is in points and authorities, not declarations."].)	247 Cal.App.2d 25, 29 ["Experts may give evidence
12			concerning the recognized and
13		Irrelevant (Evid. Code §350). Mr. Zerunyan's opinions about	accepted operating standards and practices in their
14		what "a reasonable	profession, trade or business on
		councilmember would [do]," has no relevance to any issue in	the issue of whether such standards have been met or
15		this case. The question in this	violated."].)
16		case is what the law requires Councilmember de la Torre to	There is no improper legal
17		do, not what Mr. Zerunyan	conclusion. As discussed
18		thinks he should do.	above, the cited testimony does not improperly opine as to
19			ultimate legal conclusions.
20			Moreover Section 805 permits
			an expert to give testimony that "embraces the ultimate issue to
21			be decided by the trier of fact."
22			The testimony is relevant.
23			Relevant evidence is evidence
24			"having a tendency in reason to prove or disprove any fact that is
25			of consequence to the
			determination of the action." (<i>Coffey v. Shiomoto</i> (2015) 60
26			Cal.4th 1198, 1213, quotation
27			omitted.) "The test of relevance is whether the evidence tends,
28			logically, naturally, and by
		19	reasonable inference to establish

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

1	Material Plaintiffs	Grounds for Plaintiffs'	City's Response:
2	Objected to:	Objection:	
3		la Torre to do, not what Mr.	There is no improper legal
		Zerunyan would do.	conclusion. As discussed
4			above, the cited testimony does
5			not improperly opine as to ultimate legal conclusions.
			ultimate legal conclusions.
6			The testimony is relevant.
7			Relevant evidence is evidence
			"having a tendency in reason to
8			prove or disprove any fact that is
9			of consequence to the determination of the action."
10			(Coffey v. Shiomoto (2015) 60
10			Cal.4th 1198, 1213, quotation
11			omitted.) "The test of relevance is whether the evidence tends,
12			logically, naturally, and by
12			reasonable inference to establish
13			material facts." (Ibid., quotation
14			omitted.) The test of whether
1			something is relevant and,
15			therefore, admissible, "is not a
16			strict one." (<i>Ibid.</i>) The cited testimony again addresses the
10			standard of care and public
17			integrity and public confidence
18			concerns that arise with such
10			conflicts of interests. This is
19			directly relevant to De la Torre's
20	Zerunyan Decl. p. 5, lines 16-	Not a proper subject of	claims here. Sections 310 and 800 are
20	19: "Additionally, Mr. De la	expert opinion (Evid. Code §§	inapplicable. Neither Evidence
21	Torre asserts that the city	310, 800). As explained more	Code section 310, which deals
22	council lacks authority to	fully above, Mr. Zerunyan's	with the Court deciding
	disqualify a city council	view of what the law is, or	questions of law, nor section
23	member. In my experience, and	ought to be, concerning, for	800, which deals with lay
24	based on the doctrine of home rule that applies to charter	example, the Brown Act, is not a proper subject of the	opinions, is grounds for an objection here. This testimony
	cities, the city council decides	testimony of any witness,	falls squarely within Evidence
25	its organizational and	including experts.	Code section 801 governing
26	democratic structure. The city		expert witnesses and opinion
	council can and must be able to	Improper legal conclusion.	testimony. As discussed in
27	act to preserve itself and ensure	(See Hayman v. Block (1986)	more detail above, Professor
28	that it acts in compliance with the law."	176 Cal.App.3d 629, 638-639 ["affidavits must cite	Zerunyan testifies based upon his own experience and training
		evidentiary facts, not legal	regarding municipal
	L	21	- 000

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
	conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i> (2002) 99 Cal.App.4th 28, 30 n. 3 ["The proper place for	government, including its operation and functioning, which are outside the common experience.
	argument is in points and authorities, not declarations."].)	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	Not a proper subject of expert opinion (Evid. Code §§	Sections 310 and 800 are inapplicable. Neither Evidence
Plaintiffs here have asserted that the Brown Act was	310, 800). As explained more	Code section 310, which deals
somehow implicated by Mr. D		with the Court deciding questions of law, nor section
la Torre's exclusion at a closed session regarding the CVRA	l ought to be, concerning, for example, the Brown Act, is not	800, which deals with lay opinions, is grounds for an
litigation based upon his conflict of interest. However,	a proper subject of the testimony of any witness,	objection here. This testimony falls squarely within Evidence
the Brown Act was not enacted to ensure that all city council		Code section 801 governing expert witnesses and opinion
members are present at city	Improper legal conclusion .	testimony. As discussed in
council meetings. Rather, the Brown Act is a sunshine law.	(See <i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639	more detail above, Professor Zerunyan testifies based upon
Its purpose is to ensure that, subject to certain specific	["affidavits must cite evidentiary facts, not legal	his own experience and training regarding municipal
statutory exceptions where there is a demonstrated need for	conclusions or 'ultimate' facts"]; <i>Marriage of Heggie</i>	government. His testimony regarding the background and
confidentiality, local legislativ		purpose of the Brown Act are also outside the common
bodies like city councils conduct their business in open	argument is in points and	experience and helpful to the
and public meetings so that the local decision-making process	authorities, not declarations."].)	trier of fact.
is observable by the public."		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'	Not a proper subject of expert opinion (Evid. Code §§	Sections 310 and 800 are inapplicable. Neither Evidence
interpretation of the Brown	310, 800). As explained more	Code section 310, which deals
Act, as requiring all members to attend any closed session, is	fully above, Mr. Zerunyan's view of what the law is, or	with the Court deciding questions of law, nor section
untenable. It would mean that city councils would be unable	ought to be, concerning, for example, the Brown Act, is not	800, which deals with lay opinions, is grounds for an
to conduct business or go into	a a proper subject of the	objection here. This testimony

Material Plaintiffs Objected to:	Grounds for Plaintiffs' Objection:	City's Response:
closed session if not everyone	testimony of any witness,	falls squarely within Evidence
is there. In fact, in my	including experts.	Code section 801 governing
experience, it is common for		expert witnesses and opinion
closed sessions to have to	Improper legal conclusion.	testimony. As discussed in
proceed without all members of	(See <i>Hayman v. Block</i> (1986)	more detail above, Professor
the city council and to proceed	176 Cal.App.3d 629, 638-639	Zerunyan testifies based upon
where only a quorum is present. This may happen due to a	["affidavits must cite evidentiary facts, not legal	his own experience and training regarding municipal
conflict of interest, an absence	conclusions or 'ultimate'	government, including the
due to illness, or an absence	facts"]; <i>Marriage of Heggie</i>	inability for a city council to
due to other issues. But	(2002) 99 Cal.App.4th 28, 30 n.	function properly under
requiring all members to attend	3 ["The proper place for	Plaintiff's unsupported view of
every meeting would grind the	argument is in points and	the Brown Act. (See
council's business to a halt. If	authorities, not declarations."].)	Rosenberg v. Goldstein (1966
all members of a legislative		247 Cal.App.2d 25, 29
body had a right to attend		["Experts may give evidence
closed sessions, it would also		concerning the recognized and
effectively mean that conflict of		accepted operating standards
interest laws have no		and practices in their
application when legislative bodies are meeting to discuss		profession, trade or business the issue of whether such
litigation or other proper closed		standards have been met or
session topics, which makes no		violated."].)
sense. Of course, it is my desire]].
that all my colleagues are		There is no improper leg
present when discussing an		conclusion. As discuss
important issue (so long as they		above, the cited testimony de
do not have a disqualifying		not improperly opine as
conflict), but only a quorum is		ultimate legal conclusions.
required."		
Dated: April 28, 2022	BERRY SILBERBERG	S STOKES PC
Durou. April 20, 2022	CAROL M. SILBERBI	
	.	
	By <u>/s/ Carol M. Si</u> Carol M. Si	
		č
	Attorneys for Defendar	
	CITY OF SANTA MO	NICA
	23	