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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

LA FORWARD INSTITUTE, a non-profit organization; SYLVIA AROTH, an individual; KATHLEEN L. COATES, an individual; and GARY WILLIAMS, an individual, Plaintiffs, vs. CITY OF LOS ANGELES; LOS ANGELES CITY COUNCIL; LOS ANGELES HOUSING DEPARTMENT; LOS ANGELES DEPARTMENT OF TRANSPORTATION; and DOES 1 through 100, inclusive, Defendants.	Case No: 24STCV17156 Assigned for all purposes to: Hon. Robert D. Broadbelt **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ANTI-SLAPP MOTION TO STRIKE** [Code Civ. Proc., § 425.16] Date: February 4, 2025 Time: 10:00 a.m. Dept.: 53 Date Action Filed: July 10, 2024

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I. INTRODUCTION

Defendant City of Los Angeles ("City"), on behalf of itself and its component parts erroneously named as Defendants Los Angeles City Council, Los Angeles Housing Department, and Los Angeles Department of Transportation, brings this special motion to strike the Complaint because the claims squarely arise from the exercise of Constitutional speech and petition rights. Indeed, the Complaint expressly relies on campaign speech to assert a conspiracy based on the alleged public comments of elected officials regarding a proposed development—a complicated project that requires still-ongoing review and approvals from the California Coastal Commission and the City itself, including separate approvals from the City Council, the Mayor, the City's Department of Transportation, and the City's Housing Department, among others. The Complaint reads more like an attack on the free speech rights of local officials than it does a legal complaint by a plaintiff with standing, that is ripe for judicial review, is justiciable by a court or seeks cognizable judicial relief.

Code of Civil Procedure section 425.16, California's anti-SLAPP statute, requires that a cause of action arising from any act "in furtherance of the person's right of petition or free speech" in connection with a public issue be stricken at the pleading stage unless plaintiff establishes that there is a probability that it will prevail on the claim. (Code Civ. Proc., § 425.16, subd. (b)(1)-(3).) The anti-SLAPP statute applies to lawsuits such as this, where Plaintiffs' claims are inherently based on protected free speech activity made in connection with a public issue and official proceedings of the City. Suits by disgruntled developers or their proxies that allege City conspiracies fall squarely within Section 425.16. (*Tuchscher Dev. Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1232-1235 ("*Tuchscher*").)

The anti-SLAPP legislation was enacted to ensure efficient, early dismissal of meritless attacks precisely like this one.

II. FACTUAL BACKGROUND

A. The Proposed Project Is Subject to Review by the Public, the City, and Third-Party Agencies—Including the California Coastal Commission

Property developers Venice Community Housing Corporation and Hollywood Community Housing Corporation (acting through their partnership, Venice Dell L.P.) propose to develop property

located between the beach and certain water canals in Venice, California 90291. On June 30, 2022, the City entered into a Disposition and Development Agreement ("DDA") with the developers for this proposed development project ("Proposed Project"). (Request for Judicial Notice ["RJN"], Ex. 1; Decl. of Joann M. Chen ["Chen Decl."], ¶2(1) & Ex. A.) None of the developers are a party to this lawsuit. (See generally Complaint.)

The Proposed Project is a complicated development involving multiple interdependent approvals from State and City decision-makers. The City's review of a proposed development of this nature requires multiple layers of review and approval by the City's decision-making bodies and internal departments to ensure the Proposed Project meets all applicable local requirements, including zoning restrictions, parking policies, building codes, environmental regulations, and development permits. In addition, because the Proposed Project would be sited within the dual permit area of the Coastal Zone, it must be separately reviewed and approved by a third-party agency, the California Coastal Commission. (Pub. Res. Code, § 30103, subd. (a).) Neither the Coastal Commission nor the City have completed their mandatory review processes.

Initially, the Coastal Commission (not a party in this action) has not yet completed its review of the Proposed Project, and has not issued the approvals or final conditions necessary for the Proposed Project to proceed. (RJN, Exs. 2-9; Chen Decl., ¶2(2) & Ex. B; Decl. of Cynthia ("Joey") Cruz ["Cruz Decl."], ¶2(a)-(g) & Exs. A-G.) To date, the Coastal Commission has issued five Notices of Incomplete Application requesting additional information in order to make its determination of whether or not to approve the developers' application for a required project coastal development permit. (RJN, Exs. 3-7.) The most recent Notice of Incomplete Application requires additional information on the Proposed Project so that the Coastal Commission may continue its examination as to whether the permit will be issued. (RJN, Ex. 7.)

Moreover, at this time the developers have not satisfied multiple conditions of the DDA, including providing evidence of financing, entering into an agreement with the City for a new public parking structure, or agreeing to a form of ground lease with the City. (RJN, Ex. 2.) For example, it remains uncertain how (or if) the developers will fund the Proposed Project or the beach access replacement parking it requires. The DDA requires the developers to "demonstrate evidence of financing

within 24 months of the date of execution of this Agreement." (RJN, Ex. 1 at Section 3.2(c).) But as of July 24, 2024, the developers have not done so and "[t]he Los Angeles Housing Department (LAHD) team has been meeting with the developers regularly to discuss a funding plan for the entire project and explore some options." (RJN, Ex. 2.) The developers continue to meet with City representatives in an effort to resolve the many remaining issues associated with the Proposed Project, including requested additional financing and the proposed public parking structure design. (*Ibid.*)

In addition to financing uncertainties, other significant unresolved issues include the tenants currently residing at the site, revision of the DDA's Schedule of Performance, and the drafting and negotiation of a separate ground lease for the Proposed Project (which must be subsequently submitted to the City Council and the Mayor for approval). (RJN, Ex. 2; RJN, Ex. 11 [City of Los Angeles Admin. Code ("Admin. Code"), § 7.27.3].) All of these unresolved issues require that the developers provide information about the Proposed Project in order to facilitate public comment, public decision-making, and thorough administrative review. (See, e.g., RJN, Ex. 13 [Admin. Code, § 22.484(g)(2)(A)(7)]; Pub. Res. Code, § 30210 *et seq.*) Put simply, Proposed Project modifications and discussions continue, certain Proposed Project information has not yet been submitted to the City, and neither the Coastal Commission nor the City has yet taken a final administrative action.

B. The Complaint Alleges Acts In Furtherance of Petition and Free Speech

The Complaint alleges that the City wronged Plaintiffs by listening to the Proposed Project's "opponents … [who] have made discriminatory statements on the public record, complaining about how the Project will change the 'character' of the neighborhood and endanger the community." (Complaint, 4:10-13.) Plaintiffs allege that the City "capitulat[ed] to the animus of this well-resourced opposition…." (*Id.*, 4:17.) In essence, Plaintiffs claim the City erred by allowing itself to be influenced by public speech concerning an issue of public interest—i.e., opposition to the Proposed Project. That is a quintessential SLAPP action.

But Plaintiffs go further, and specifically rely on Constitutionally-protected speech and petitioning activities as the predicate for their claims, including the following:

- A published op-ed by the President of the Venice Stakeholders Association opposing the Proposed Project. (Complaint, ¶ 57.)

- "[P]ublic comment" submitted by the Venice Stakeholders Association to the City Council stating, "[T]his project will place an unacceptable burden on residents and thus should be sited elsewhere." (*Ibid*.)
- "Public opposition to the Project" as set forth in numerous public comments submitted to the City by multiple opponents of the Proposed Project. (*Id.*, ¶¶ 58-61.)
- Public campaign statements by a then-candidate for City Council, which Plaintiffs allege "echoed the language used by neighborhood opponents" to the Proposed Project. (*Id.*, ¶¶ 62-63.)
- Public campaign statements by a then-candidate for City Attorney, specifically "public comment before the City Council's Homelessness and Poverty Committee". (*Id.*, ¶ 64.)
- Alleged City "deference to the opinions and desires" voiced in a public forum by opponents of the Proposed Project. (*Id.*, ¶ 69.)

Further, rather than identify any final administrative action, the Complaint purports to quote and/or characterize speech from public officials, including the Principal Transportation Engineer for LADOT's Bureau of Parking Management (Complaint, ¶ 77), the City Attorney ["told the Coastal Commission that she had significant concerns about … the Project's pending Coastal Development Permit and Land Use Plan amendment"] (*id.*, ¶ 79), individual City Council Members (*id.*, ¶ 91), the Mayor (*id.*, ¶ 92-93 ["there's an evaluation that's going on right now about that specific project"]) and other unidentified City officials. (*Id.*, ¶¶ 71, 83, 85, 96.)

III. LEGAL ARGUMENT

A. Plaintiffs' SLAPP Suit Is Squarely Barred by Broad Statutory Protections

The anti-SLAPP statute provides for the early dismissal of meritless lawsuits that arise out of First Amendment rights. Our Legislature sought to curb "the potential chilling effect that abusive lawsuits may have on statements relating to a public issue or a matter of public interest … by public officials or employees acting in their official capacity", such as this one. (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 18–19.) "'SLAPPs filed against public officials, who often serve for little or no compensation, may likely have a similarly 'chilling' effect on their willingness to participate in governmental processes[.]'" (*Id.* at p. 19, fn. 9 [quoting Sills, *SLAPPS: How Can the Legal System Eliminate Their Appeal?* (1993) 25 Conn. L.Rev. 547, 550].)

Notably, "[a]pproximately 25 percent of SLAPP suits 'relate to development and zoning,' while 20 percent 'arise out of complaints against public officials and employees.'" (*FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 143 [quoting Assem. Com. on Judiciary, Analysis of Sen. Bill. No. 1296 (1997–1998 Reg. Sess.) as amended June 23, 1997, at p. 3].) The Complaint at issue here is a combination of both types of these typical SLAPP suits.

The anti-SLAPP statute's express and "unambiguous" mandate requires it be "construed broadly." (Code Civ. Proc., § 425.16, subd. (a); *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1119.) As recognized by the Supreme Court, courts "whenever possible, should interpret the First Amendment and section 425.16 in a manner 'favorable to the exercise of freedom of speech, not to its curtailment.'" (*Briggs*, *supra*, 19 Cal.4th at p. 1119 [quoting *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1114].)

A Court reviews an anti-SLAPP motion in two steps. "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one 'arising from' protected activity." (*Reed v. Gallagher* (2016) 248 Cal.App.4th 841, 853 [internal quotation omitted].) "A claim arises from protected activity when that activity underlies or forms the basis for the claim." (*Park v. Bd. of Tr. of Cal. State Univ.* (2017) 2 Cal.5th 1057, 1062.)

If the Court finds that a claim arises from protected activity, it then "must consider whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Reed*, *supra*, 248 Cal.App.4th at p. 853.) Specifically, the plaintiff must show the claim is "both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (*Rosenaur v. Scherer* (2001) 88 Cal.App.4th 260, 274 [quoting *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548].) "The plaintiff may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence." (*Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 672-73; see also *Tuchscher, supra,* 106 Cal.App.4th at p. 1237.)

Finally, a "plaintiff cannot frustrate the purposes of the [anti-]SLAPP statute through a pleading tactic of combining allegations of protected and nonprotected activity under the label of one 'cause of action.'" (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1287-88 [quoting *Fox Searchlight Pictures v. Paladino* (2001) 89 Cal.App.4th 294, 308].) A so-called "mixed cause of action" is subject to the anti-

SLAPP statute "if at least one of the underlying acts is protected conduct, unless the allegations of protected conduct are merely incidental to the unprotected activity." (*Salma*, *supra*, 161 Cal.App.4th at p. 1287; see also *Baral v. Schnitt* (2016) 1 Cal.5th 376, 393.) Further, the Court may parse out and strike those portions of the cause of action which meet the statutory requirements. (See *Taus v. Loftus* (2007) 40 Cal.4th 683, 742.)

B. The Complaint Attacks Protected Speech and Conduct and Should Therefore Be Stricken Under Section 425.16

While Plaintiffs allege six causes of action, the centerpiece of the Complaint is the allegation that the City was influenced by "discriminatory" public speech opposing the Proposed Project. All of Plaintiffs' claims rest on two essential allegations: (1) the City slowed or obstructed the City's and Coastal Commission's review processes, and (2) the City did so for discriminatory reasons. The threshold question is whether those claims are based on any "act ... in furtherance" of speech and/or petitioning rights. (Code Civ. Proc., § 425.16, subds. (b)(1) & (e).)

Plaintiffs' Complaint implicates all four categories of protected speech set forth in the statute: any written or oral statement (1) made before a legislative, executive, judicial, or other official proceeding, (2) made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or other official proceeding, (3) made in a place open to the public or a public forum in connection with an issue of public interest; or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue. (Code Civ. Proc., § 425.16, subd. (e).)

First, the complaints about the City's official public meetings and discussions of the Proposed Project and alleged "discriminatory" opposition to it (see, e.g., Complaint, ¶¶57-61, 69, 79, 85, 91) clearly fall within the protection for "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" and for statements "in a place open to the public or a public forum in connection with an issue of public interest." (Code Civ. Proc., § 425.16, subds. (e)(1) and (e)(3); see also Civ. Code § 47(a)-(b) (statements made in the proper discharge of an official duty or in official proceedings are privileged).) The campaign speech Plaintiffs rely upon to establish alleged "discrimination" is also plainly protected. (See, e.g., Complaint,

¶¶62-64.) "It is well settled that section 425.16 applies to actions arising from statements made in political campaigns by politicians and their supporters, including statements made in campaign literature." (*Rosenaur v. Scherer* (2001) 88 Cal.App.4th 260, 273–74 [collecting authorities]; see also *Reed v. Gallagher* (2016) 248 Cal.App.4th 841, 853.) Here, the aim of the Complaint is to compel the City's elected officials to speak and act in favor of the Proposed Project without regard to its impact on the community or regulatory compliance issues (including under the Coastal Act), and to discourage City officials from critiquing the Proposed Project—i.e., the very chilling effect the anti-SLAPP statute was designed to prevent. Seeking to compel City officials to vote in favor of—or refrain from criticizing—the Proposed Project also violates speech protections. (*Beeman v. Anthem Prescription Mgmt., LLC* (2013) 58 Cal.4th 329, 342; *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 491.)

Second, ***almost every City act complained of involves pure speech*** directed at compliance with the applicable City and State laws. (See, e.g., Complaint, ¶¶ 62, 64, 79, 85 & 96.) These statements all fall within the second category of protection for "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." (Code Civ. Proc., § 425.16, subd. (e)(2).) As the Supreme Court held in *Briggs*, actions and statements by staff to investigate and enforce public laws (including equal housing laws, as in *Briggs*) may be protected by section 425.16 and subject to an anti-SLAPP motion. (*Briggs*, *supra*, 19 Cal.4th at p. 1123; see also *Area 51 Prods., Inc. v. City of Alameda* (2018) 20 Cal.App.5th 581, 600-601 [holding communications pursuant to the City Manager's executive authority qualified as "under consideration" by an "executive body," and noting that "any form of deliberative executive decisionmaking will suffice."].)

Third, the City's alleged wrongful acts—i.e., conducting a thorough inquiry into the Proposed Project's details, including communicating requests for additional information, and discussing City concerns about the Proposed Project with the California Coastal Commission—is itself "other conduct in furtherance" of the City's speech and petition rights "in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e)(4).) This "catchall" protected category is "both broader in scope than the other subdivisions, and less firmly anchored to any particular context." (*FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 144–45.) The viability of the Proposed

Project is unquestionably an issue of public interest in the City of Los Angeles. (See generally Complaint.) And as the Complaint itself concedes, the City's speech and conduct were in furtherance of the City's scrutiny of the legality, feasibility, and processes of the Proposed Project. (See, e.g., Complaint at ¶¶ 79, 96.)

The Court of Appeal confirms that the City's statements and writings about the Proposed Project are protected. In *Tuchscher, supra,* 106 Cal.App.4th 1219, a plaintiff developer also claimed a "conspiracy" by a city to delay a development. Specifically, the developer alleged the City of San Diego had entered into an exclusive negotiating agreement for a waterfront development, and had "conspired … to deprive [the developer] of the benefits of the negotiating agreement by disrupting the City's staff from negotiating the development agreement and inducing the City to cease negotiations." (*Id.* at p. 1228.) ***The Court held that statements and writings regarding the proposed development were protected under Section 425.16(e)(4)***, noting that "residential development of a substantial parcel of bayfront property, with its potential environmental impacts, is plainly a matter of public interest." (*Id.* at p. 1234; *see also City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 423 [holding that Councilmembers' "votes were cast in furtherance of their rights of advocacy and communication with their constituents"].)

Here, as recognized in *Tuchscher* and similar cases, the City not only has the right, but a duty to receive and review comments from the community regarding the Proposed Project and to thoroughly review project details before granting approvals. As a result, the City's related conduct and speech is protected under Section 425.16(e)(4), as well as the other three subsections. This motion must be granted and the Complaint stricken in whole or in part because the conduct alleged to be wrongful arises from the exercise of two bedrock First Amendment rights: (1) the right of the public to petition their City government on issues of public concern—namely, the viability of the Proposed Project; and (2) the right of government officials to form independent conclusions based on that public input, make discretionary decisions on what to say and what not to say, and to decide for themselves whether or not to support the Proposed Project. Accordingly, unless Plaintiffs can demonstrate that they are likely to prevail on their legal claims (which they cannot), this Court must strike them.

C. Plaintiffs Cannot Disguise Allegations Based on Protected Activity as a Violation of Housing Laws

In an effort to avoid the anti-SLAPP statute, Plaintiffs may attempt to argue the Complaint is based not on protected First Amendment rights but on "discriminatory housing practices." (Complaint, ¶ 7.) The case law is clear, however, that application of the anti-SLAPP statute does not turn on the legal theory upon which the complaint is framed; it turns on whether the plaintiff's claims arise from one or more of the four protected categories set out in Section 425.16(e). (*Vasquez, supra,* 1 Cal.5th at p. 423 [anything defendant city council members said or wrote in negotiating a contract qualifies as protected speech made in connection with an issue under consideration or review by a legislative body].) Any claim may be subject to anti-SLAPP review, including claims of housing discrimination. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92 ["Nothing in the statute itself categorically excludes any particular type of action from its operation…."]; *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 890 ["[A] meritless discrimination claim, like other meritless claims, is capable of 'chill[ing] the valid exercise of the constitutional rights…'"].)

D. Plaintiffs Cannot Establish a Probability of Prevailing on the Merits

1. Plaintiffs Cannot Establish the Required Elements of Their Claims

To satisfy their burden of showing a probability of prevailing, Plaintiffs must submit evidence sufficient to make a prima facie showing on every element of their claims. They cannot do so. Plaintiffs cannot establish a prima facie case of housing discrimination under the laws they rely on, as they cannot establish a discriminatory intent, practice, or effect.[1]

[1] FEHA requires Plaintiffs to prove the City "discriminate[d] through public or private land use practices, decisions, [or] authorizations because of race, … disability, … [or] source of income…." (Gov't Code, § 12955(l).) For their claim under the Cal. Constitution Art. I, § 7(a), Plaintiffs must prove they were treated differently than other similarly-situated people on the basis of a suspect classification—i.e., a discriminatory purpose. (*City of Cleburne, Tex. v. Cleburne Living Ctr.* (1985) 473 U.S. 432, 439–40; *Walgreen Co. v. City & Cnty. of San Francisco* (2010) 185 Cal.App.4th 424, 434 & fn. 7.) Government Code section 65008, subsections (b)(1) and (d)(1) requires Plaintiffs to prove that in its enactment or administration of ordinances the City discriminated against the Proposed Project on the basis of protected characteristics, or imposed "different requirements" on the Proposed Project than it imposed on residential developments that are not assisted by the federal or state government or by a local public entity. Finally, Plaintiffs' claim under Gov't Code section 8899.50 and Los Angeles City Charter, § 244/Cal. Constitution Art. XI, § 7/Los Angeles Administrative Code, § 2.1/"Principles of Non-Delegation of Police and Municipal Powers" is predicated on their allegation that the City has violated these laws by allowing City officials to "delay and obstruct" the development for discriminatory reasons—which they likewise cannot prove. (See Complaint, ¶¶ 127, 134, 139 & 151-157.)

Nor can Plaintiffs support taxpayer claims for "waste" under Code of Civil Procedure section 526a, which would require them to prove that the City's actions provide "no public benefit." (*Sundance v. Mun. Ct.* (1986) 42 Cal.3d 1101, 1139 [noting Courts "should not interfere with … legislative judgment on the ground that the [entity]'s funds could be spent more efficiently."].)

2. Plaintiffs Lack the Requisite Standing

The Complaint seeks to enforce the Disposition and Development Agreement ("DDA"), asking the Court to "order the City to take all affirmative steps to allow [the Proposed Project] to be constructed, operated and maintained … ***as set forth in the DDA***" (Complaint, 42:22-24)—but Plaintiffs are not parties to that contract and thus lack standing. (*Hatchwell v. Blue Shield of Cal.* (1988) 198 Cal.App.3d 1027, 1034 ["Someone who is not a party to the contract has no standing to enforce the contract…."].) Standing is necessary to maintain any cause of action, and Plaintiffs bear the burden to prove standing for each claim. (*Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 813-814.) Plaintiffs thus cannot show a probability of success on the merits unless they establish proper standing to sue on each one of their respective claims. (*Holbrook v. City of Santa Monica* (2006) 144 Cal.App.4th 1242, 1251-52.)

Plaintiffs cannot establish standing for their speculative and premature housing discrimination claims. Among other things, the Proposed Project has not been approved by the Coastal Commission. Nor have Plaintiffs alleged that the DDA requires the City to by-pass discretionary approvals, provide additional funding, or agree to parking proposals that fail to preserve coastal access. Plaintiffs must prove that "absent the [City's alleged discriminatory] practices, there is a substantial probability that they would have been able to [obtain the desired housing] and that, if the court affords the relief requested, the asserted inability of petitioners will be removed." *Warth v. Seldin* (1975) 422 U.S. 490, 504; *see also Jaimes v. Toledo Metro. Hous. Auth*. (6th Cir. 1985) 758 F.2d 1086, 1096 [no standing where "it is still a matter of speculation and conjecture as to whether these third party, non-defendant [entities] would grant approval for construction of units that plaintiffs could afford, qualify for, or be eligible to obtain."]; *Auburn Woods I Homeowners Assn. v. Fair Emp. & Hous. Com.* (2004) 121 Cal.App.4th 1578, 1591 [California courts often look to federal authority in FEHA cases].)

Plaintiffs Coates, Aroth, and Williams also lack standing for their taxpayer claims under Code of

Civil Procedure section 526a. (See *Chiatello v. City & Cnty. of San Francisco* (2010) 189 Cal.App.4th 472, 495 ["[P]laintiff must prove a direct injury that goes beyond 'a generalized grievance' and 'general interest common to all members of the public'…, or one 'shared in substantially equal measure by all or a large class of citizens.'"]; *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 872 [payment of sales tax insufficient to establish taxpayer standing].)

3. This Action Is Not Ripe, and the Requested Relief Violates the Separation of Powers Doctrine

Additionally, Plaintiffs do not challenge any final City action, such as the denial of a permit—they merely allege that the City has *not yet* approved all preliminary items needed for the proposed development: "[T]o date, the City has not approved applications or contracts necessary to move the Project forward." (Complaint, 23:16-17.). Plaintiffs' claims are unripe and seek an impermissible advisory opinion.

Ripeness is analyzed under a two-pronged test. The first prong considers the issue's fitness for judicial decision—and an issue is fit if the controversy is "definite and concrete" so that "specific relief" may be conclusively granted. (*Pac. Legal Found. v. California Coastal Com.* (1982) 33 Cal.3d 158, 171 [internal quotation omitted].) In essence, "[a] controversy is 'ripe' when it has reached, but has not passed, the point that the facts have ***sufficiently congealed*** to permit an intelligent and useful decision to be made." (*Ibid.* [internal quotation omitted, emphasis added].) The second prong requires consideration of "the hardship to the parties of withholding court consideration." (*Ibid.* [internal quotation omitted].)

Here, Plaintiffs' Complaint demonstrates they cannot satisfy even the first prong of "fitness." The land use review and approval process by the Coastal Commission and City is ongoing and the dispute has not "sufficiently congealed"—Plaintiffs therefore cannot request a specific and concrete judicial declaration. Instead, Plaintiffs vaguely ask this Court to "enjoin the City from any further delays and to order the City to take all affirmative steps to allow Venice Dell to be constructed, operated, and maintained…." (Complaint at 5:23-24 & 42:22-23.) That is an impossible judicial task. It asks this Court to predict the future and issue advisory rulings on all potential "further delays" as well as "all affirmative steps" that may arise—and not just during the City's review of the development and construction processes, but for the entire lifetime in which the Proposed Project is "operated and

maintained."

Plaintiffs do not and cannot define what "further delays" or "all affirmative steps" may occur. Would an injunction order require the City to "rubber-stamp" all required (and yet-to-be drafted) contracts presented by the developers (e.g., the "project labor agreement" described in the Complaint at ¶ 76) without negotiation of contract terms? If the developers fail to secure the requisite approvals from the Coastal Commission, would the City nonetheless be forced to approve the Proposed Project in violation of California law? For items that require a vote of approval by the City Council, will the Court instruct the City Council how to vote? If financing for the Proposed Project falls short, would the Court substitute its judgment for the City's policymakers in difficult budgetary times and order the City to budget for and supply the necessary funds to "construct, operate, and maintain" the Proposed Project? These are just some the problems created by Plaintiffs' pursuit of unripe claims for declaratory and injunctive relief, as the Proposed Project is still under review and there has not yet been any final administrative action. A judgment "must decree, not suggest, what the parties may or may not do." (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117.) This Court cannot rule in a vacuum, nor provide advisory opinions about hypothetical future events.

These issues overlap with a related failure: Plaintiffs' requested relief violates the separation of powers doctrine. Article III, section 3 of the California Constitution provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." "The separation of powers doctrine limits the authority of one of the three branches of government to arrogate to itself the core functions of another branch." (*Carmel Valley Fire Prot. Dist. v. State* (2001) 25 Cal.4th 287, 297.) "The core functions of the legislative branch include passing laws, levying taxes, and making appropriations. [It further includes] the determination and formulation of legislative policy." (*Id.* at p. 299 [cleaned up].)

In particular, Courts may not compel a legislative body, or an administrative body like the Board of Transportation Commissioners, to act or not to act. (See, e.g., *Serrano v. Priest* (1976) 18 Cal.3d 728, 751; *Sklar v. Franchise Tax Bd.* (1986) 185 Cal.App.3d 616, 618 [board]; *City Council v. Superior Court* (1960) 179 Cal.App.2d 389, 394–95 ["The commanding of specific legislative action is beyond the power of the courts for it would violate the principle of division of powers of the three governmental

departments."].) Nor can the Courts provide declaratory relief to tell a legislative or administrative body how it should act. (*City of Santa Rosa v. Press Democrat* (1986) 187 Cal.App.3d 1315, 1322–24; Code Civ. Proc., § 1094.5, subd. (f).) Here, the relief Plaintiffs request is impermissibly prospective. When Courts intervene, their orders must be "directed toward the right to undo what the legislative or quasi legislative body has done, not toward directing it to perform an act which is prospective in operation." (*City Council*, *supra*, 179 Cal.App.2d at p. 394; see also Civ. Code, § 3423, subds. (f)-(g).)

As aptly put by the California Supreme Court, "[t]he wisdom of approving this or any other development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 576.)

4. Defendants' Speech Is Absolutely Privileged

Additionally, Plaintiffs cannot prevail on their claims because the speech at issue is privileged under Civil Code section 47, subdivisions (a) and (b).

Statements made "in the proper discharge of an official duty" are absolutely privileged. (Civ. Code, § 47(a).) The privilege under subdivision (a) bars Plaintiffs' claims arising out of alleged speech by the City Attorney's Office expressing concerns about the legality of the Proposed Project (Complaint, ¶ 79), alleged speech by a City Councilmember's office concerning potential reduction of the size of the Proposed Project (*id.*, ¶ 91), and other similar allegations in the Complaint based on speech by City officials. (See, e.g., *Copp v. Paxton* (1996) 45 Cal.App.4th 829, 844 [privilege under section 47(a) extends to a local official acting in his or her official, policy-making capacity].) Indeed, "[p]ublic officials … should be encouraged to engage in frank and open communication on important public issues in order to function effectively in the offices entrusted to them." (*Id.* at p. 843.)

Further, "[t]he privilege [under section 47, subd. (b)] is 'broad and comprehensive, including proceedings of all legislative bodies, whether state or municipal.' … Malice will not defeat the privilege as long as 'it is shown that the statement ... bears some connection to the work of the legislative body.'" (*People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921, 944 [citations omitted]; *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 283 [the privilege is "broadly applied and doubts are resolved in its favor."].) Here, as the Complaint concedes that the at-issue communications were made in connection

with official proceedings—the Coastal Commission's and the City's review of the Proposed Project—the official proceeding privilege also bars their claims.

5. Plaintiffs Fail to State a Valid Claim Due to Misjoinder / Nonjoinder

a. Misjoinder of Improper "Defendants"

Plaintiffs' claims are barred as against the following improper "defendants": the City Council, City Housing Department, and City Department of Transportation—which are not separate legal entities from the City. Plaintiffs correctly state that the City "is a legal entity with the capacity to sue and be sued." (Complaint, ¶ 20.) Plaintiffs did not and cannot make any such allegations regarding the City Council (the "legislative body of the City") (*id.*, ¶ 21); the City Housing Department (a "department of the City") (*id.*, ¶ 22), or the City Department of Transportation (another "department of the City") (*id.*, ¶ 23). The City of Los Angeles is the ***only*** named defendant that is a legal entity subject to suit. (See RJN, Ex. 10 [Los Angeles City Charter, §§ 240-241 re City Council]; RJN, Ex. 14 [Admin. Code §§ 22.600-22.601 re Housing Department]; and RJN, Ex. 12 [Admin. Code §§ 22.480-22.481 re Department of Transportation]; *see also Servente v. Murray* (1935) 10 Cal.App.2d 355, 361 ["[A] political subdivision and the officers, boards, commissions, agents and representatives thereof form but a single entity."].) As a result, there is a defect or misjoinder of parties, and no claims can proceed against the three improperly-named "defendants." (See Code Civ. Proc., § 430.10, subd. (d).)

b. Failure to Join All Necessary / Indispensable Parties

A defect of parties exists where "some third person is a 'necessary' or 'indispensable' party to the action; and hence must be joined before the action may proceed." (Weil & Brown, *The Rutter Group: Cal. Prac. Guide Civ. Pro. Before Trial*, § 7:30.) Code of Civil Procedure section 389 governs the joinder of necessary and indispensable parties. Subdivision (a) provides that a necessary party shall be joined when needed to accord complete relief to the parties, or if his absence may impair his interest in the action or create a risk that any party could incur multiple or inconsistent obligations. If such a person "cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable." (Code Civ. Proc., § 389, subd. (b).)

Here, the Complaint explicitly seeks to enforce the DDA, asking the Court to "order the City to take all affirmative steps to allow [the Proposed Project] to be constructed, operated and maintained … as set forth in the DDA" (Complaint, 42:22-24)—but none of the Plaintiffs are a party to that agreement. However, the developers *are* parties to the DDA and are necessary parties to this action. Without the developers joined as parties, Defendants face a substantial risk of duplicative actions and inconsistent obligations if the developers bring a separate action against the City.

Additionally, Plaintiffs failed to join the California Coastal Commission as a party, though they concede that the Coastal Commission must separately review the Proposed Project and issue a permit to the developers before the Proposed Project can move forward. (Complaint, ¶ 78-80.) Without the Coastal Commission as a party, complete relief cannot be accorded in this case because the City does not have the power to compel the Coastal Commission to grant any permit.

IV. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court grant its special motion to strike the Complaint as a whole or, alternatively, strike those claims and portions of the Complaint that arise from protected activity.

Dated: September 10, 2024

NOSSAMAN LLP
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PAOLO A. HERMOSO

By: */s/ Patrick J. Richard*
Patrick J. Richard

Attorneys for Defendants CITY OF LOS ANGELES; LOS ANGELES CITY COUNCIL; LOS ANGELES HOUSING DEPARTMENT; and LOS ANGELES DEPARTMENT OF TRANSPORTATION

PROOF OF SERVICE

The undersigned declares:

I am employed in the County of San Francisco, State of California. I am over the age of 18 and am not a party to the within action; my business address is c/o Nossaman LLP, 50 California Street, 34th Floor, San Francisco, CA 94111.

On September 10, 2024, I served the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ANTI-SLAPP MOTION TO STRIKE on parties to the within action as follows:

☐ (By U.S. Mail) On the same date, at my said place of business, Copy enclosed in a sealed envelope, addressed as shown on the attached service list was placed for collection and mailing following the usual business practice of my said employer. I am readily familiar with my said employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service, and, pursuant to that practice, the correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, on the same date at San Francisco, California.

☐ (By Overnight Service) I served a true and correct copy by overnight delivery service for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.

☑ (By Electronic Service) Pursuant to California Rules of Court, rules 2.251, from service email address: alevintow@nossaman.com, by emailing true and correct copies to the persons at the electronic notification address(es) shown on the accompanying service list.

☐ (By Electronic Service) Pursuant to California Rules of Court, rules 2.251, by submitting an electronic version of the document(s) to a court-approved third-party e-filing vendor, I caused the document(s) to be e-served to the person(s) listed on the attached service list.

☑ (By Electronic Service) Pursuant to California Rules of Court, rules 2.251(a)(2) and 2.251(a)(3), by submitting an electronic version of the document(s) to One Legal, through the user interface at www.onelegal.com, I caused the document(s) to be sent to the person(s) listed on the attached service list.

Executed on September 10, 2024.

☑ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Anthony Levintow
Anthony Levintow

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