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3 **FILED**
Superior Court of California
County of Los Angeles

4 **JUL 25 2017**

5 Sherri R. Carter, Executive Officer/Clerk
6 By N. M. Raya Deputy
Neil M. Raya

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10

11
12 VENICE COALITION TO PRESERVE) Case No.: BC611549
13 UNIQUE COMMUNITY CHARACTER, et)
al.,)
14 Plaintiffs,) ~~TENTATIVE~~
15 vs.)
16 CITY OF LOS ANGELES, et al.,) RULINGS/ORDERS
17 Defendants.)
18)
19)

20 Defendants' Motion for Summary Judgment is GRANTED.

21 Judgment is entered in favor of Defendants and against
22 Plaintiffs.

23 Plaintiffs shall take nothing by their Complaint.

24 Defendants' Requests for Judicial Notice are GRANTED.

25 Plaintiffs' Requests for Judicial Notice are GRANTED.

1 Plaintiffs' Evidentiary Objections to the Declaration of
2 Charles Posner Nos. 1-2, 8-11, 17-20 are SUSTAINED, but Nos.
3 Nos. 3-7, 12-16 are OVERRULED.

4 Plaintiffs' Evidentiary Objections to the Declaration of
5 Juliet Oh Nos. 28, 48-49 are SUSTAINED, but Nos. 21-27, 29-47,
6 50-52 are OVERRULED.

7 Defendants' Evidentiary Objections Nos. 1-3 are OVERRULED.

8 I.

9
10 INTRODUCTION

11 Plaintiffs Venice Coalition to Preserve Unique Community
12 Character ("Venice Coalition") and Celia R. Williams ("Williams")
13 filed the Complaint against Defendants City of Los Angeles
14 ("City"), Department of City Planning for the City of Los
15 Angeles ("Planning Department"), alleging causes of action for
16 "declaratory and injunctive relief for violation of Plaintiffs'
17 constitutional right to due process under the California
18 Constitution, the California Coastal Act, the Venice Land Use
19 Plan, and CCP § 526a." Plaintiffs assert causes of action for
20 (1) violation of Article 1, Section 7 of the California
21 Constitution; (2) violation of the Venice Land Use Plan; (3)
22 violation of Section 30000 et seq. of the California Coastal
23 Act; (4) violation of Sections 30003 and 30610 of the California
24 Coastal Act; and (5) injunction to prevent illegal expenditure
25 of funds under CCP § 526a. Plaintiffs allege Defendants are

1 attempting to use loopholes in local laws to obtain approval for
2 development without the input of Venice community members. In
3 particular, Plaintiffs claim that Defendants use a practice of
4 approving development projects via an administrative approval
5 procedure called a Venice Sign Off ("VSO") in which local
6 residents are not notified about or able to oppose the new
7 development projects. Plaintiffs allege that Defendants fail to
8 ensure projects seeking VSOs comply with the California Coastal
9 Act or the Venice Land Use Plan. Plaintiffs also allege that
10 Defendants use a practice of approving development projects via
11 an administrative approval procedure called a Coastal Exemption
12 ("CEX Approval") which allows developments to proceed without a
13 coastal development permit as required by the California Coastal
14 Act. Plaintiffs allege that VSO and CEX Approval has been
15 consolidated in lower-income neighborhoods and resulted in
16 residents of such neighborhoods being pushed out and that the
17 character of such neighborhoods are being irreparably altered.
18 Plaintiffs allege that Defendants do not provide an
19 administrative hearing or appellate procedure regarding the VSOs
20 or CEX Approvals, so Plaintiffs have no administrative remedy
21 and the actions are too numerous to challenge in individual
22 actions. Therefore, Plaintiffs challenge the unlawful pattern
23 and practice under CCP §§ 1060 and 526a and seek to enforce the
24 public's interest in lawful and transparent land use procedures
25

1 pursuant to CCP § 1021.5. Plaintiffs seek declaratory relief,
2 preliminary injunctions, and permanent injunctions that will:
3 (1) prohibit Defendants from issuing VSOs until Defendants
4 modify the VSO procedure to provide notice and hearing to
5 Plaintiffs and aggrieved landowners prior to the issuance of a
6 VSO and require Defendants to ensure that all projects respect
7 the scale, massing, and landscape of existing residential
8 neighborhoods; (2) prohibit Defendants from issuing CEX
9 Approvals; and (3) prohibit Defendants from expending funds for
10 VSOs and CEX Approvals.
11

12 City and Planning Department ("City") move for summary
13 judgment in their favor and against Plaintiffs, or
14 alternatively, summary adjudication as to the First, Second,
15 Third, and Fourth Causes of Action.¹

16 In opposition, Plaintiffs argue that there are disputes of
17 material fact which preclude entry of summary adjudication or
18 summary judgment because the City is impermissibly issuing
19 Venice Sign Offs ("VSOs") and Coastal Exemptions ("CEXs") that
20 do not comport with the California Coastal Act. Plaintiffs
21 argue that (1) to issue VSOs, City must provide notice and
22 opportunity to be heard; and (2) to issue CEXs, City must obtain
23 a fully certified Local Coastal Program and has failed to do so
24

25 ¹ On April 5, 2017, the Court granted Defendants' Ex Parte Application and
found good cause to hold the hearing for Defendants' motion for summary
judgment within 30 days of the July 3, 2017 trial date.

1 or must implement a comprehensive land use framework that
2 complies with the Coastal Act.

3 In reply, Defendants argue that the case only presents
4 issues of law as to VSOs and CEXs and that while Plaintiffs may
5 argue Defendants should employ a different method of issuing
6 VSOs and CEXs, Plaintiffs do not demonstrate the legal
7 inadequacy of Defendants' pattern and practice.
8

9 II.

10 DISCUSSION

11 A. Applicable Law

12 1. Summary Judgment

13 The function of a motion for summary judgment or
14 adjudication is to allow a determination as to whether an
15 opposing party cannot show evidentiary support for a pleading or
16 claim and to enable an order of summary dismissal without the
17 need for trial. Aguilar v. Atlantic Richfield Co. (2001) 25
18 Cal.4th 826, 843. In analyzing motions for summary judgment,
19 courts must apply a three-step analysis: "(1) identify the
20 issues framed by the pleadings; (2) determine whether the moving
21 party has negated the opponent's claims; and (3) determine
22 whether the opposition has demonstrated the existence of a
23 triable, material factual issue." Hinesley v. Oakshade Town
24 Center (2005) 135 Cal.App.4th 289, 294. Thus, summary judgment
25 is granted when, after the Court's consideration of the evidence

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1 set forth in the papers and all reasonable inferences
2 accordingly, no triable issues of fact exist and the moving
3 party is entitled to judgment as a matter of law. CCP §
4 437c(c); Villa v. McFarren (1995) 35 Cal.App.4th 733, 741.

5 As to each claim as framed by the Complaint, the defendant
6 moving for summary judgment must satisfy the initial burden of
7 proof by presenting facts to negate an essential element, or to
8 establish a defense. Scalf v. D. B. Log Homes, Inc. (2005) 128
9 Cal.App.4th 1510, 1520. Courts "liberally construe the evidence
10 in support of the party opposing summary judgment and resolve
11 doubts concerning the evidence in favor of that party." Dore v.
12 Arnold Worldwide, Inc. (2006) 39 Cal.4th 384, 389. A motion for
13 summary judgment must be denied where the moving party's
14 evidence does not prove all material facts, even in the absence
15 of any opposition Leyva v. Sup. Ct. (1985) 164 Cal.App.3d 462,
16 475) or where the opposition is weak. Salesguevara v. Wyeth
17 Labs., Inc. (1990) 222 Cal.App.3d 379, 384, 387.

18
19 A defendant has met its burden of showing that a cause of
20 action has no merit if it demonstrates the absence of any single
21 essential element of plaintiff's case or a complete defense to
22 plaintiff's action. CCP § 437c(o)(2); Bacon v. Southern Cal.
23 Edison Co. (1997) 53 Cal.App.4th 854, 858. Once the defendant
24 moving party has met the burden, the burden shifts to the
25 plaintiff to show via specific facts that a triable issue of

1 material facts exists as to a cause of action or a defense
2 thereto. CCP § 437c(o)(2).

3 Where a plaintiff cannot establish an essential element of
4 a cause of action, or where a complete defense is shown, a court
5 must grant a motion for summary adjudication. CCP § 437c(o)(1)-
6 (2). A defendant meets its burden by showing that "one or more
7 elements of a cause of action . . . cannot be established."
8 Id.; Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826,
9 853. Parol evidence cannot be used to supply unwritten details
10 of an arrangement between the parties. Friedman v. Bergin
11 (1943) 22 Cal.2d 535, 539.

12
13 2. Declaratory Relief

14 To plead a cause of action for declaratory relief,
15 Plaintiff must plead the following elements: (1) person
16 interested under a written instrument or a contract; or (2) a
17 declaration of his or her rights or duties (a) with respect to
18 another or (b) in respect to, in, over or upon property; and (3)
19 an actual controversy. CCP §1060; Ludgate Ins. Co. v. Lockheed
20 Martin Corp. (2000) 82 Cal. App. 4th 592, 605-06; Bennett v.
21 Hibernia Bank (1956) 47 Cal. 2d 540, 549; Stonehouse Homes v.
22 City of Sierra Madre (2008) 167 Cal.App.4th 531, 542 ("For
23 declaratory relief, the party must show it has either suffered
24 or is about to suffer an injury of 'sufficient magnitude
25 reasonably to assure that all of the relevant facts and issues

1 will be adequately presented."); Cal. Ins. Guar. Ass'n v. Sup.
2 Ct. (1991) 231 Cal. App. 3d 1617, 1624 ("availability of another
3 form of relief that is adequate will usually justify refusal to
4 grant declaratory relief" but "[t]he refusal to exercise the
5 power is within the court's legal discretion");
6 Pellegrini v. Weiss (2008) 165 Cal.App.4th 515, 529 ("The
7 question whether declaratory relief is appropriate in a given
8 case is addressed to the trial court's discretion.")

9
10 An action for declaratory relief lies when there is an
11 actual bona fide dispute between parties as to a legal
12 obligation arising under the circumstances specified in CCP
13 §1060 and, in addition, the controversy must be justiciable -
14 i.e., presents a question as to which there is more than one
15 answer. Western Motors Servicing Corp. v. Land Development &
16 Inv. Co. (1957) 152 Cal.App.2d 509. "Actual controversy" is a
17 controversy which admits of definitive and conclusive relief by
18 judgment within the field of judicial administration, as
19 distinguished from an advisory opinion on a particular or
20 hypothetical state of facts. The judgment must decree, not
21 suggest, what the parties may or may not do. Selby Realty Co.
22 v. San Buenaventura (1973) 10 Cal.3d 110. A mere difference of
23 opinion is not an "actual controversy" within § 1060. The
24 "actual controversy" language in CCP §1060 encompasses present
25 or probable future controversies relating to the legal rights

1 and duties of the parties. Declaratory relief generally
2 operates prospectively to declare future rights, rather than to
3 redress past wrongs; it is used to declare rights rather than
4 execute them. County of San Diego v. State (2008) 164
5 Cal.App.4th 580, 606-608; Gafcon, Inc. v. Ponsor & Assocs.
6 (2002) 98 Cal. App. 4th 1388, 1404 ("declaratory relief operates
7 prospectively only, rather than to redress past wrongs....")

8 A complaint seeking declaratory relief must merely allege
9 facts which justify the declaration of rights or obligations in
10 respect of a matter of actual controversy, within the purview of
11 § 1060, and involving justiciable rights. Foster v. Masters
12 Pontiac Co. (1958) 158 Cal.App.2d 481.) The rule that a
13 complaint is to be liberally construed is particularly
14 applicable to one for declaratory relief. Id.

15
16 B. First and Second Causes of Action

17 Local government agencies in general take three types of
18 actions for land use matters: (1) legislative actions which
19 involve the enactment of general laws, standards, or policies,
20 such as general plans or zoning ordinances; (2) adjudicative
21 actions which involve discretionary decision in which
22 legislative laws are applied to specific development projects,
23 such as approvals for zoning permits or tentative subdivision
24 maps; and (3) ministerial actions which are non-discretionary
25 actions based only on fixed or objective standards and not

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1 subjective judgment, such as a small-scale building permit.
2 Calvert v. County of Yuba (2006) 145 Cal.App.4th 613, 622.
3 "[O]nly those governmental decisions which are adjudicative in
4 nature are subject to procedural due process principles." Horn
5 v. County of Ventura (1979) 24 Cal.3d 605, 612-13 (adjudicatory
6 actions are those in which the government's action in affecting
7 an individual is determined by the facts peculiar to the
8 individual case as opposed to the adoption of broad or generally
9 applicable rules of conduct). Ministerial action does not fall
10 within the realm of constitutional due process "because
11 ministerial decisions are essentially automatic based on whether
12 certain fixed standards and objective measurements have been
13 met." Calvert 145 Cal.App.4th at 622-23.

15 The "General Plan" is the fundamental policy document in
16 the City of Los Angeles which defines the framework by which the
17 City's physical and economic resources are managed over time and
18 guides the City's use of its land, design and character of
19 buildings and open space, and consists of 35 community or
20 district plans, each for a separate geographic area and there
21 are approximately 50 specific plans. Defendants' Request for
22 Judicial Notice ("DRJN") Exh. A ("Venice Community Plan") (p.
23 84.) The Community Plans are meant to promote an arrangement of
24 land uses and guide development by informing the public of the
25 City's goals, policies, and development standards for particular

1 community areas in the City and the Plans are intended to
2 coordinate development among the various parts of the City and
3 adjacent municipalities. DRJN Exh. A (pp. 13-14). The Venice
4 Community Plan was enacted in 2000 and sets forth goals,
5 objective, polices, and programs pertaining to the Venice
6 Community. DRJN Exh. A (p. 13). The Venice Land Use Plan
7 ("Venice LUP") was adopted in 2001 via a plan amendment to the
8 Venice Community Plan, which is part of the City's General Plan
9 Land Use Element and thus the Venice LUP is part of the Venice
10 Community Plan and the City's General Plan. Oh Decl., Exh. B
11 ("Venice Land Use Plan") (p. 79). The City's Municipal Code
12 defines a specific plan as "a regulatory land use ordinance
13 specifically designated in the ordinance as a specific plan" and
14 that a specific plan "shall provide by ordinance regulatory
15 controls or incentives for the systematic exclusion of the
16 General Plan." DRJN Exh. B (LAMC Section 11.5.7.A). A primary
17 objective of the City's Specific Plan is to establish uniform
18 citywide procedures to review applications for projects within
19 specific plan areas according to the applicable specific plan
20 requirements and the City Charter. DRJN Exh. B (LAMC Section
21 11.5.7.A.1).
22
23

24 The general procedure for determining whether a particular
25 project complies with a specific plan is called the "Project
Permit Compliance" in which the City issues/approves a Project

1 Permit Compliance if the Director determines the project is:
2 (1) in substantial compliance with the provisions of the
3 Specific Plan and (2) incorporates mitigation and monitoring
4 measures when necessary or alternatives identified in the
5 environmental reviews which would mitigate the negative
6 environmental effects of the project to the extent feasible.
7 DRJN Exh. B (LAMC Section 15.7.C.2). No part of the Project
8 Permit Compliance findings involve any analysis of whether a
9 project is generally consistent with General Plan or Community
10 Plan policies and the standard Project Permit Compliance
11 procedures require notice and allow for an appeal hearing. DRJN
12 Exh. B (LAMC Section 15.7.C.2). However, the Los Angeles
13 Municipal Code acknowledges that some projects are exempt from
14 the general procedure when language in a specific plan exempts
15 them. DRJN Exh. B (LAMC Section 11.5.7.C.1).

17 Plaintiffs argue that the City's contention that it is not
18 bound by a statutory requirement to ensure that projects that
19 obtain VSOs comply with the Land Use Plan ("LUP") is erroneous.
20 The first page of the Venice Coastal Specific Plan refers to the
21 certified Venice Coastal Land Use Plan for other development
22 standards, which demonstrates that the City must consider the
23 LUP when issuing VSOs under the Specific Plan. Oh Decl. Exh. A
24 (p. 1). Plaintiffs argue that even if not required by the
25 Specific Plan to consult the LUP, the Coastal Act requires the

1 City to do because the City must comply with the Coastal Act
2 when permitting development in the Venice Coastal Zone. A local
3 jurisdiction with a certified Land Use Plan, but no certified
4 Local Coastal Program ("LCP") or Local Implementation Plan
5 ("LIP"), may only issue a development permit if the local
6 government finds the proposed development is in conformity with
7 the certified land use plan. Pub. Res. Code §§ 30003,
8 30600.5(b)-(c); Douda v. California Coastal Com. (2008) 159
9 Cal.App.4th 1181, 1194-95 (the issuing agency should consider
10 the contents of a certified land use plan in making a land use
11 decision and if a local agency ignores the certified land use
12 plan, then the decision can be subject to reversal if a
13 reviewing court finds the decision to be arbitrary and
14 capricious). Plaintiffs argue that to rely solely on the
15 Specific Plan would improperly elevate the policies of the
16 uncertified Specific Plan over the requirements of the Coastal
17 Act and the certified LUP. According to Plaintiffs, this
18 elevation thwarts a fundamental purpose of the Coastal Act to
19 ensure state policies prevail over the concerns of a local
20 government. Pacific Palisades Bowl Mobile Estates, LLC v. City
21 of Los Angeles (2012) 55 Cal.4th 783, 794. Plaintiffs argue
22 that permitting the City to ignore the Venice Land Use Plan
23 would circumvent the Coastal Act's goals of protecting coastal
24 communities through developmental regulations and would
25

1 undermine the Act's mandate that development be visually
2 compatible with the character of the surrounding areas and
3 thwart the legislative intent. The LUP mandates that new
4 development should respect the scale and character of community
5 development, massing and landscaping of existing residential
6 neighborhoods, and identify, protect, and restore historical,
7 architectural, and cultural character of structures and
8 landmarks. However, the Specific Plan does not explicitly
9 require such findings and refers to the LUP.
10

11 City is required to determine whether projects seeking VSO
12 approval comport with the requirements of the certified LUP, but
13 City admits that it does not consult the LUP when evaluating
14 VSOs and that City has long considered VSO projects consistent
15 with the Specific Plan development standards as necessarily
16 consistent with general LUP policies. Plaintiffs argue that
17 this is an admission that the City's use of the uncertified
18 Specific Plan in lieu of analyzing consistency with the
19 certified LUP is contrary to law. Plaintiff argue that City
20 admits that it has never interpreted the LUP's policies to be
21 directly applicable to projects in Venice absent language in the
22 Specific Plan to make those general policies applicable.
23 According to Plaintiffs, City admitted that it does not review
24 projects for consistency with the LUP and that this violates the
25 Coastal Act's requirement that a jurisdiction without a

1 certified LCP only issue a development permit if the local
2 government finds the proposed development is in conformity with
3 the certified land use plan. Pub. Res. Code § 30600.5(b)-(c).
4 Plaintiffs argue that City's reliance on Sections 9 through 11
5 and 13 of the Specific Plan to determine whether the project
6 qualifies for a VSO is insufficient because such sections do not
7 require the project respect the scale and character of community
8 development, the landscape of existing residential
9 neighborhoods, or the historical, architectural, and cultural
10 character of structures and landmarks in Venice as required by
11 the LUP. Because City merely checks boxes and does not take the
12 analytical route required under the LUP, Plaintiffs posit that
13 the findings by City are insufficient to approve VSOs.

15 Plaintiffs state that the City Charter neither empowers
16 City to ignore the Coastal Act nor exempt development projects
17 from compliance with the LUP. The Coastal Act requires all
18 public agencies comply with the Act when processing developments
19 in the coastal zone and requires the City to ensure VSO projects
20 comply with the LUP. Pub. Res. Code §§ 30003, 30000 et seq.
21 Plaintiffs argue that City is not exempt from the consistency
22 doctrine which requires that City ensure that projects that
23 receive a VSO comply with the LUP. Citing *Endangered Habitats*
24 *League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777,
25 782.

1 Plaintiffs argue that City cannot demonstrate VSO approval
2 is ministerial or that Plaintiffs are not entitled to due
3 process protections before VSOs are issued because the City's
4 internal procedures, forms, and Specific Plan are not
5 dispositive on the legal question and no deference is owed to
6 interpretations that are clearly erroneous. Plaintiffs urge
7 that City's position that the VSO process complies with the
8 uncertified Specific Plan is not entitled to deference and
9 reliance on the Specific Plan only is clearly erroneous.
10 Plaintiffs further argue that even if the Specific Plan were
11 certified as carrying out Coastal Act Policies, any conflict
12 must be resolved in favor of broader policies that are more
13 protective of coastal resources and thus the City cannot simply
14 follow discrete requirements of the Specific Plan and ignore the
15 LUP. Pub. Res. Code § 30007.5. Plaintiffs argue that the
16 Specific Plan does not establish VSOs as ministerial or that the
17 Project Compliance procedure is discretionary because no
18 definition of either is provided by the Specific Plan and the
19 existence of two different procedures does not per se indicate
20 that one is ministerial and the other is discretionary.

22 Plaintiffs also argue that the Coastal Act mandates that
23 local agencies provide community members with notice and the
24 opportunity to be heard prior to issuing VSOs. Hearing and
25 notice are required because, according to Plaintiffs, even

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1 administrative clearances require notice and hearing for Coastal
2 Development Permits ("CDPs"). 14 Cal. Code Regs. §§ 13302,
3 13328.4, and 13565. The fact that the Act provides stringent
4 notice and hearing requirements for the issuance of
5 administrative permits in cities with certified LCPs
6 demonstrates that the Act does not intend to permit cities
7 without certified LCPs to issue administrative development
8 approvals without notice and hearing. Pub. Res. Code §§ 30624.9
9 and 30624.9(b). If local jurisdictions with certified LCPs are
10 given more authority than jurisdictions without certified LCPs
11 to issue development permits with less oversight from the
12 Coastal Commission, it does not follow that a jurisdiction
13 without a certified LCP could issue development approvals
14 without notice and hearing when jurisdictions with certified
15 LCPs are required to do so for minor administrative permits.
16 Pub. Res. Code §§ 30500-30522. Plaintiffs state that the VSO
17 approval process calls for the exercise of discretion as the
18 Planning Director must consider the LUP when issuing VSOs
19 because every project that receives a VSO must comply with the
20 LUP. (The LUP requires the development to conform to the mass,
21 scale, and landscaping of existing Venice coastal
22 neighborhoods). Horn v. County of Ventura (1979) 24 Cal.3d 605,
23 614. Thus, the Planning Director must use judgment to ascertain
24 1) the salient features of mass, scale, character, and

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1 landscaping of a particular neighborhood, 2) if the proposed
2 project is consistent with the surrounding neighborhood, and 3)
3 if the project is consistent with the surrounding neighborhood.

4 The court finds that Defendants are entitled to summary
5 adjudication as to the First Cause of Action because the VSO
6 process is ministerial, not discretionary, and thus does not
7 trigger due process rights. The amended Venice Specific Plan,
8 enacted in 2003, implements the goals, policies, and objectives
9 of the General Plan, the Venice Community Plan, and the Venice
10 Land Use Plan. The amended Specific Plan reflects the City
11 Council's action from March 28, 2001 which directed planning
12 staff to update the Venice Specific Plan consistent with the
13 existing LUP. The two primary purposes of the amended Specific
14 Plan are: (1) "prepare specific provisions tailored to the
15 particular conditions and circumstances of Venice Coastal Zone,
16 consistent with the general polices of the adopted Los Angeles
17 General Plan;" and (2) "regulate all development, including use,
18 height, density, setback, buffer zone and other factors in order
19 that it be compatible in character with the existing community."
20
21 Oh Decl. Exh. A (Section 3.F, p. 3). The proposed amended
22 Specific Plan was intended to make all Specific Plan development
23 standards consistent with the development standards in the LUP,
24 including those development standards involving lot
25 consolidation, roof structures, maximum height, yard setback,

1 and parking. Defendants' Undisputed Material Facts ("DUMF") No.
2 1. The Specific Plan sets forth two processes to obtain
3 compliance with the Venice Specific Plan, depending upon the
4 size and location of the project: (1) the Venice Sign-Off (VSO)
5 process in Section 8A, a ministerial action by the Director of
6 Planning; and (2) the Project Permit Compliance Review in
7 Section 8B.

8 Section 8A provides that approvals of the VSO projects are
9 exempt from the quasi adjudicatory Project Permit Compliance
10 procedures for reviewing projects for compliance with specific
11 plans. Section 8A lists seven criteria for the Venice Coastal
12 Development Projects that are exempt from the Project Permit
13 Compliance procedures in LAMC Section 11.5.7. Oh Decl. Exh. A
14 (p. 7). Section 8A applies to smaller Venice Coastal
15 Development Projects such as construction and demolition of
16 four-unit or smaller residential projects as long as they are
17 not located on Walk Streets. The Planning Department has
18 interpreted its authority to review projects mentioned in
19 Section 8A as "ministerial" such that if a project meets the
20 objective criteria of the Specific Plan, the Planning Department
21 is obligated to issue a VSO approval. DUMF No. 2; Oh Decl. Exh.
22 A (pp. 7-8). At the first step, the Director of Planning
23 reviews a proposed project in the Specific Plan area and
24 confirms it will be analyzed under the VSO procedure in Section
25

1 8A. The section in the middle of any VSO form contains six yes-
2 or-no questions, one of which must be answered in the
3 affirmative in order to determine the project is appropriate for
4 a VSO review. If the project falls within one of the six
5 criteria described in Section 8A, the Director uses the 8A
6 procedure. DUMF Nos. 3-5.

7
8 After confirming a project is governed by Section 8A, the
9 Planning Director proceeds to step two and uses the Specific
10 Plan's criteria to determine whether the VSO project meets the
11 Specific Plan Development Regulations. DUMF No. 6. Sections 9
12 through 11 and 13 of the Specific Plan set out fixed design and
13 construction specifications for small residential development,
14 such as maximum height, minimum and maximum setback, etc. DUMF
15 No. 7. Planning Department staff uses one of eight different
16 forms to analyze whether a project complies with each of the
17 applicable fixed Development Requirements in any of the subareas
18 and that (1) Section 9, titled "General Land Use and Development
19 Regulations," contains regulations applicable to all properties
20 in the Specific Plan; (2) Section 10, titled "Land Use and
21 Development Regulations for Subareas," provides regulations for
22 eight specified geographic subareas on maximum height, minimum
23 set back, and maximum density. DUMF No. 8. The section on the
24 bottom of each form, under Development Regulations, serves as a
25 checklist for the yes-or-no questions as to whether the project

1 complies with particular Specific Plan development regulations
2 applicable to the site as set forth in Sections 9 through 11 and
3 13. DUMF No. 9. The Planning Department has interpreted its
4 authority to review VSO projects as described in Section 8A of
5 the Specific Plan as "ministerial" such that it is obligated to
6 issue a VSO approval if a project meets the development
7 standards of the Specific Plan. DUMF No. 2.

8
9 In contrast, the process set forth in Section 8B of the
10 Specific Plan, titled "Project Permit Compliance Review"
11 requires the City to adhere to the procedures for Project Permit
12 Compliance in LAMC section 11.5.7. That section provides that
13 "all other applications for the Venice Coastal Development
14 Projects that are not described in Section 8A shall be processed
15 in accordance with LAMC section 11.5.7 and thus the first two
16 findings are the Project Permit Compliance review findings in
17 LAMC section 11.5.7 and (1) whether the project is in
18 substantial compliance with the provisions of the Specific Plan;
19 and (2) whether the project incorporates mitigation measures or
20 mitigates any negative environmental effects of the project.
21 Additionally Section 8C applies to any project subject to the
22 Project Permit Compliance review of Section 8B and requires
23 additional findings of whether the project is compatible in
24 scale and character with the existing neighborhood and that the
25 project would not be materially detrimental to adjoining lots or

1 the immediate neighborhood. Oh Decl. Exh. A (Section 8C.1,
2 p.8).

3 Plaintiffs claim that the VSO process is "discretionary"
4 and that because the Review Procedures of Section 8 of the
5 Venice Specific Plan do not specify "ministerial" or
6 "discretionary," that the VSOs are discretionary approvals.
7 Compl. ¶¶ 13-16. However, whether the Planning Director's
8 authority to issue permit applications is "ministerial" or
9 "discretionary" is a matter of statutory interpretation. Courts
10 look to the local codes to make such determination. Rodriguez
11 v. Solis (1991) 1 Cal.App.4th 495, 502; The People v. Department
12 of Housing and Community Development ("Ramey") (1975) 45
13 Cal.App.3d 185, 192. City's process is a ministerial checklist
14 in which the Planning Department staff uses one of eight
15 different forms to analyze whether a project complies with each
16 of the applicable fixed requirements in any of the subareas.
17 DUMF No. 8; Health First v. March Joint Powers Authority (2009)
18 174 Cal.App.4th 1135, 1143-44. Whether a project meets the
19 Specific Plan development regulations applicable to the site is
20 essentially a series of yes-or-no questions and the forms
21 themselves provide a checklist for the Planning Department staff
22 to answer such questions. DUMF No. 9. Discretionary review
23 does not involve only fixed design standards and construction
24 specifications because discretionary review looks to conformity
25

1 with general standards such as whether a water supply is
2 "adequate" or sewage disposal is "satisfactory" or lighting is
3 "sufficient." Ramey 45 Cal.App.3d at 193; Rodriguez 1
4 Cal.App.4th at 504-05 (discretionary review when a permit would
5 not be approved unless it was found to be "compatible" with the
6 surroundings). But the Project Permit Compliance Review process
7 set forth in Section 8B of the Venice Specific Plan involves the
8 application of general standards such as "whether the project is
9 compatible in scale and character with the existing
10 neighborhood" and that the project "would not be materially
11 detrimental to adjoining lots or the immediate neighborhood" and
12 these additional findings are similar to processes determined to
13 be discretionary. This reflects the City Council's desire to
14 have two separate processes for approving projects in the Venice
15 Specific Plan are: a ministerial one for smaller projects and a
16 discretionary one for larger projects. Specific Plan Section 8A
17 states VSO reviews are exempt from the quasi-adjudicatory
18 Project Permit Compliance review process or findings in LAMC
19 section 11.5.7 and no part of Section 8A requires or permits the
20 City to decide whether VSO projects "respect" the scale and
21 character of the surrounding community. Sections 8B and 8C
22 require the City to make findings that the project is compatible
23 in scale and character with the existing neighborhood, which is
24 a clearly discretionary determination. But no portion of

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1 Section 8A requires or allows a hearing or notice or appeal in
2 connection with a VSO approval and no language of the Specific
3 Plan requires the City to make Project Permit Compliance finding
4 when granting a VSO.

5 Because City's interpretation is reasonable and does not
6 contradict any plan language in the code, the City's
7 interpretation that the VSO process is "ministerial" in
8 accordance with the language of the Venice Specific Plan must be
9 upheld. DUMF No. 2; Robinson v. City of Yucaipa (1994) 28
10 Cal.App.4th 1506, 1516. Since approval of VSOs is a ministerial
11 action Plaintiffs are not entitled to due process rights of
12 notice and hearing.
13

14 Defendants are also entitled to summary adjudication as to
15 the Second Cause of Action which contends City has an illegal
16 pattern and practice of violating the LUP by not applying LUP
17 policies when issuing VSOs. No state or local law requires City
18 to assess projects for consistency with the LUP policies when
19 issuing a VSO and there is no provision of the Coastal Act which
20 obliges the City to apply the policies of the LUP. There is no
21 requirement that City determine whether a VSO project is
22 consistent with any LUP policies or that City directly apply the
23 LUP policies to individual VSO projects. A Local and Reginal
24 Monitor (1993) 12 Cal.App.4th 1773, 1814. While Plaintiffs
25 argue that the only way to ensure VSO projects are consistent

1 with the goals and polices of the LUP's goals is to require City
2 to make a "consistency" finding for each VSO-eligible project to
3 determine it is consistent with the LUP's policies, no state or
4 local code requires it. Thus, Defendants are not behaving in an
5 inconsistent manner with a requirement that does not exist. The
6 City's statutory scheme does not require VSOs to be scrutinized
7 for General Plan or Venice Land Use Plan consistency. A Local
8 and Reginal Monitor (1993) 12 Cal.App.4th 1773, 1814; Markley v.
9 City Council of the City of Los Angeles (1982) 131 Cal.App.3d
10 656, 668.

11
12 City has considered VSO projects that are consistent with
13 the Specific Plan development standards as necessarily
14 consistent with general LUP policies. DUMF No. 10. If the
15 Planning Director determines the project is consistent with the
16 objective design and construction criteria in the Specific Plan
17 in accordance with Section 8A, there is no statutory requirement
18 to apply more "general and less site-relevant policies" in the
19 LUP. City has never interpreted the LUP's policies to be
20 directly applicable to projects in Venice absent language in the
21 Specific Plan making those general policies applicable and the
22 language of Section 8A concerning the VSO approval procedure
23 does not reference any LUP policy; only the language of Sections
24 8B and 8C does. DUMF Nos. 11-12. The purpose of the Specific
25 plan, which is the systematic implementation or execution of

1 general plan policies, including LUP policies, is consistent
2 with the City's interpretation.

3 C. Third Cause of Action

4 The Third Cause of Action alleges that because the City
5 does not have a Local Coastal Program, the City does not have
6 authority to issue exemptions from the Coastal Development
7 permit requirement and the Coastal Commission does not have the
8 power to delegate to the City authority to issue exemptions from
9 the coastal development permit requirement. Compl. ¶¶ 73, 76.
10 Defendants state that Plaintiffs position is that Pub. Res. Code
11 § 30600(b) only authorizes a local government to establish
12 procedures for the filing, processing, review, modification,
13 approval, or denial of a coastal development permit and does not
14 include the issuance of exemptions. Compl. ¶ 73. However,
15 Defendants state that neither the Coastal Act, its regulations,
16 nor the City's coastal development permit program prohibit the
17 City's issuance of exemptions, which have been issued for
18 decades. The Coastal Commission has acknowledged the City's
19 authority to issue such exemptions since 1979 and continuously
20 interpreted the City's coastal development permit program as
21 allowing the City's issuance of exemptions. The Coastal
22 Commission has been aware of these exemptions for decades
23 without taking a position that such exemptions are
24 impermissible. DUMF Nos. 17-21.

1 Plaintiffs argue that the City has no facts to show that
2 the Coastal Act authorizes local agencies to issue Coastal
3 Exemptions prior to the certification of a LCP. Plaintiffs
4 argue that the 1979 letter is not dispositive and fails to
5 consider that in 1978, the Executive Director of the Coastal
6 Commission stated that Pub. Res. Code § 30600(b) authorized
7 local governments to establish procedures for processing,
8 review, modification, approval, or denial of a coastal
9 development permit, but that there was no provision authorizing
10 local governments to decide whether a development would be
11 exempt from the permit requirements of the Act. Plaintiffs
12 argue that this raises a triable issue of material fact.
13 Plaintiffs argue that because the City does not have a certified
14 LCP, the City is not entitled to deference when it issues
15 coastal exemptions. Plaintiffs argue that City is still
16 implementing "interim authority" because it never presented a
17 certifiable LCP to the Coastal Commission and because Pub. Res.
18 Cod § 30600(b) is clearly an interim method for obtaining
19 authority to issue coastal development permits. According to
20 Plaintiffs, issuance of such permits without a LCP is only
21 allowed if the permitted development does not prejudice the
22 ability of the local government to prepare a conforming local
23 coastal program and nothing authorizes exemptions. Pub Res.
24 Code §§ 30600(b), 30604(a). Plaintiffs argue that Pub. Res.

1 Code § 30610 only applies to jurisdictions that have obtained a
2 certified LCP and not City which is still implementing interim
3 authority under Pub. Res. Code § 30600(b) and there is no
4 language, such as that in Pub. Res. Code § 30604(a), that
5 indicates Pub. Res. Code § 30610 applies "prior to
6 certification." Plaintiffs argues that because the Coastal Act
7 has specific provisions that apply prior to certification of the
8 LCP, and Pub. Res. Code § 30610 is not one of those provisions,
9 it cannot be read as authorizing exemptions to be issued prior
10 to certification. Plaintiffs argue that it contravenes
11 legislative intent to read it as applicable and permitting
12 exemptions prior to certification.
13

14 Plaintiffs argue that the City structuring the LAMC to
15 contemplate exemptions after certification of the LCP shows
16 City's acknowledgment that exemptions are only permitted after
17 obtaining a certified LCP and that the pre-LCP procedures do not
18 contain a process for obtaining exemptions, but the regulations
19 for obtaining permits after LCP certification explicitly allow
20 for exemptions. LAMC §§ 12.20.2 and 12.20.2.1; Plaintiffs'
21 Request for Judicial Notice ("PRJN") Exhs. 1-2. Plaintiffs
22 argue that the post-LCP procedures were submitted to the Coastal
23 Commission as part of the City's attempted LCP certification
24 process, but the Coastal Commission has not certified the LCP.
25 Thus, the post-LCP procedures are still not into effect and the

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1 City's exemption authority does not yet apply. Plaintiffs argue
2 that the 1979 letter is not a Coastal Commission interpretation
3 of a certified LCP, that Pub. Res. Code § 30600(b) does not
4 authorize exemptions, and that the intent of the Coastal Act is
5 to be most protective of coastal resources. Pub. Res. Code §
6 30007.5. The Coastal Act contemplates permit authority under
7 Pub. Res. Code § 30600(b) as interim authority prior to
8 certification and because City is still acting under interim
9 authority, it lacks the broad authority to issue exemptions
10 under Pub. Res. Code § 30610.
11

12 The court finds that Defendants are entitled to summary
13 adjudication as to the Third Cause of Action. The Third Cause
14 of Action claims that City has an illegal pattern and practice
15 of issuing CEXs because the Coastal Act does not grant City
16 authority to issue them. The Coastal Commission has for over
17 thirty years interpreted City's practice of issuing CEXs as
18 *consistent* with the Coastal Act and the City's Coastal
19 Development Permit Program. The Coastal Commission acknowledged
20 the City's authority to issue exemptions in 1979 and Commission
21 staff has consistently interpreted the City's coastal
22 development permit programs as allowing the City's issuance of
23 exemptions. The court finds that the Coastal Commission's
24 interpretation of the City's coastal development permit program
25 is entitled to substantial deference. Ross v. California

1 Coastal Com. (2011) 199 Cal.App.4th 900, 929. The Coastal Act
2 was enacted as a comprehensive scheme to govern land use
3 planning for the entire coastal zone of California as the
4 legislature aimed to promote and protect the ecological balance
5 of the coastal zone. Pub. Res. Code §§ 30001; Yost v. Thomas
6 (1984) 36 Cal.3d 561, 565. Local governments would take on
7 authority for review of coastal development projects, as
8 delegated by the Coastal Commission. Pub. Res. Code §§
9 30600(b)-(d), 30600.5, 30620.5. Three methods exist, as set
10 forth in Pub. Res. Code §§ 30600(b)-(d), for a local government
11 to take on that authority. The method set forth in subsection
12 (b) is used solely by the City of Los Angeles. In 1978, the
13 City notified the Coastal Commission of its intent to adopt a
14 coastal development program pursuant to Pub. Res. Code §
15 30600(b) and in August 1978, the Coastal Commission reviewed the
16 City's proposed program for consistency with the Coastal Act and
17 its regulations. DUMF Nos. 13-14. Effective November 27, 1978,
18 City adopted ordinance 151,603 pursuant to Pub. Res. Code §
19 30620.5(b) to exercise the option provided by Pub. Res. Code §
20 30600(b). DUMF No. 15. City's coastal development permit
21 program is codified at LAMC section 12.20.2 and confirms the
22 City as the primary permit-issuing authority for most
23 development in the City's coastal zone. In December 1978, the
24 Coastal Commission issued a statewide notice to all interested

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1 parties that the City had assumed coastal development permit
2 issuing authority. DUMF No. 16; DRJN Exh. C.

3 The Coastal Act generally requires coastal development
4 permits for development in the coastal zone, and also authorized
5 exemptions from the general requirement for a coastal
6 development permit in the coastal zone. Pub. Res. Code § 30610
7 (no permit required for, among other things, improvements to
8 existing single family residences and improvements to any
9 structure other than a single family residence). But neither
10 the Coastal Act and its regulations, nor the City's coastal
11 development permit program prohibit the City's issuance of
12 exemptions. Indeed, the exemptions have been issued for
13 decades. The Coastal Commission has acknowledged the City's
14 authority to issue such exemptions since 1979, and the Coastal
15 Commission continuously interpreted the City's coastal
16 development permit program as allowing the City's issuance of
17 exemptions, without taking any position that such exemptions are
18 impermissible. DUMF Nos. 17-21. The Coastal Commission
19 considers appeals challenging City-issued exemption
20 determinations. Because City exerts its Coastal Act permitting
21 and exemption authority under Pub. Res. Code § 30600(b), all
22 City decisions on granting exemptions are appealable to the
23 Coastal Commission. DUMF Nos. 22-23. The Coastal Commissions
24 interpretation of the City's authority to issue exemptions in
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1 accordance with the Coastal Act is entitled to great weight and
2 should not be overturned unless it is clearly erroneous. Ross
3 v. California Coastal Com. (2011) 199 Cal.App.4th 900, 929;
4 Hines v. California Coastal Com. (2010) 186 Cal.App.4th 830,
5 849. The Coastal Commission's review and certification of the
6 City's coastal development program is similar to the review and
7 certification employed for a local coastal program so the
8 Commission's interpretation that the City may issue exemptions
9 is entitled to no less deference than its interpretations of
10 other cities' local coastal programs.

11
12 D. Fourth Cause of Action

13 Plaintiffs state that even if the City had authority to
14 issue exemptions, the City has gone beyond the authority of Pub.
15 Res. Code § 30610 by issuing exemptions for three categories of
16 development which should require a coastal development permit.
17 Compl. ¶¶ 81-83. Plaintiffs challenge City's practices of
18 issuing coastal exemptions for additions to existing buildings
19 as well as for demolitions ordered as part of a nuisance
20 abatement order. Plaintiffs claim that the exemptions allowed
21 do not meet the true and legal criteria set forth in the Coastal
22 Act for an exemption. Plaintiffs challenge: (1) additions to
23 single family residences; (2) additions to existing structures
24 that are not single family residences; and (3) demolitions

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1 required by the Department of Building and Safety to abate an
2 unsafe or substandard condition. Compl. ¶¶ 81-83.

3 Plaintiffs argue that the Coastal Act and its regulations
4 do not contain the word "additions" and neither Pub. Res. Code §
5 30610 nor its regulations at 13250, 13252, and 13253 exempt
6 "additions" from the Coastal Development Permit requirement.

7 Plaintiffs argue that Defendants position is unsupported by the
8 text of the statute and reads into language that is not present.

9 Plaintiffs argue that deference to interpretation of the Coastal
10 Act is owed only when the local jurisdiction has a certified
11 LCP, which City does not have. On April 14, 2016, the
12 Commission held public hearings on the appeals of 13 separate
13 Coastal Exemptions that were incorrectly approved by the City
14 for the effective demolition and reconstruction of residential
15 structures in the coastal zone of Venice. According to
16 Plaintiffs, this shows that City's claim that the Coastal
17 Commission approves the City's issuance of exemptions is in
18 dispute, as well as the claim that the Commission has
19 consistently interpreted the Coastal Act to mean exemptions can
20 be appropriate for additions.²

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22 The court finds that Defendants are entitled to summary
23 adjudication as to the Fourth Cause of Action. The Fourth Cause
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² Plaintiffs provided no arguments as to demolitions required to abate an unsafe or substandard condition.

1 of Action claims that City failed to ensure projects given CEXs
2 qualify for an exemption under the Coastal Act and that CEXs may
3 not be issued for projects which involve additions because the
4 regulations anticipate exemptions will be granted to projects
5 that increase the height and floor area of existing buildings.
6 The court finds that City's practices are informed by the
7 Coastal Commission's longstanding practice and interpretation
8 with regard to exemptions. The Coastal Commission's practices
9 and interpretations are entitled to deference. The Coastal Act
10 requires coastal development permits for activities that
11 constitute "development" as defined by Pub. Res. Code § 30106 in
12 the coastal zone. One of the primary exceptions is for
13 additions that result in height or floor area increases to an
14 existing building, specifically, improvements to single family
15 residences and improvements to other structures than single
16 family residences. Pub. Res. Code § 30610. City issues
17 exemptions in accordance with its exemption application form for
18 (1) improvements and additions to existing single family
19 residence; (2) improvements and additions to non-residential
20 buildings; (3) repair or maintenance of existing buildings; and
21 (4) demolitions required by the Department of Building and
22 Safety to abate a nuisance. DUMF Nos. 24-25. City's practice
23 of issuing coastal exemptions for additions to existing
24 buildings is informed by the Coastal Commission's own practice
25

1 and interpretation of the Coastal Act provisions on coastal
2 exemptions. The Coastal Commission has consistently interpreted
3 Pub. Res. Code § 30610 and its regulations to mean exemptions
4 are appropriate for qualifying improvements, including
5 additions, even if they increase height and floor area. DUMF
6 Nos. 26-27. Such interpretation is based, in part, on
7 regulations at 13250(b)(4) and 13253(b)(4) that specifically
8 disallow exemptions for improvements to single family homes or
9 existing structures other than single family homes or public
10 work facilities if the structures are (1) located very close to
11 the sea or in a significant scenic resource area; and (2)
12 involve an increase of 10 percent or more of floor area or
13 height. DUMF No. 28. Coastal Commission staff interpreted this
14 to mean that there is no categorical rule forbidding exemptions
15 for projects, including additions that increase a structure's
16 height or floor area. Improvements not located in these
17 sensitive areas may still qualify for exemptions even if they
18 have increases in height or floor area greater than 10 percent.
19 DUMF No. 29. Coastal Commission staff continues to approve the
20 City's use and content of the application form for coastal
21 exemptions, as well as the City's issuance of exemptions that
22 meet one of four categories on the form. In fact, Coastal
23 Commission staff worked with the City to create previous
24 versions of the exemption application form that is substantively
25

1 the same. DUMF Nos. 30-31. City's issuance of coastal
2 exemptions for additions to buildings is proper given the plain
3 language of Pub. Res. Code § 30610 and the regulations at
4 sections 13250, 13252, and 13252, and because the Coastal
5 Commission's interpretation of the Coastal Act is given great
6 deference so long as it is not contrary to the language of the
7 statutes and corresponding regulations.

8
9 Additionally, City may exempt from the coastal permit
10 requirement demolitions ordered by the Department of Building
11 and Safety to abate a nuisance due to unsafe or substandard
12 conditions because no provision of the Coastal Act is a
13 limitation on the City's power to abate nuisances and order
14 demolition of unsafe or substandard conditions. Pub. Res. Code
15 § 30005(b) (providing no part of the Coastal Act is a limit on
16 the power of a city to declare, prohibit, and abate nuisances);
17 City of Dana Point v. Coastal Commission (2013) 217 Cal.App.4th
18 170, 191 citing Pub. Res. Code § 30005(c) (the Coastal Act is no
19 limitation on certain actions to enjoin any waste or pollution
20 of the resources of the coastal zone or any nuisance).

21 E. Fifth Cause of Action

22 As the Fifth Cause of Action is solely for injunctive
23 relief and is predicated upon the success of the other claims,
24 it too fails. Art Movers Inc. v. Ni West, Inc. (1992) 3
25 Cal.App.4th 640, 647.

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2 III.

3 CONCLUSION

4 Based upon the foregoing, the court orders that:

5 1) Defendants' Motion for Summary Judgment is GRANTED.

6 2) Judgment is entered in favor of Defendants and against
7 Plaintiffs.

8 3) Plaintiffs shall take nothing by their Complaint.

9 4) Defendants' Requests for Judicial Notice are GRANTED.
10

11 5) Plaintiffs' Requests for Judicial Notice are GRANTED.

12 6) Plaintiffs' Evidentiary Objections to the Declaration of
13 Charles Posner Nos. 1-2, 8-11, 17-20 are SUSTAINED, but Nos.
14 Nos. 3-7, 12-16 are OVERRULED.

15 7) Plaintiffs' Evidentiary Objections to the Declaration of
16 Juliet Oh Nos. 28, 48-49 are SUSTAINED, but Nos. 21-27, 29-47,
17 50-52 are OVERRULED.

18 8) Defendants' Evidentiary Objections Nos. 1-3 are
19 OVERRULED.

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CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: July 25, 2017



YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

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