

Fourth Civil Number D079215

**In the Court of Appeal  
of the State of California**  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

UL CHULA TWO LLC,

*Plaintiff and Appellant,*

v.

CITY OF CHULA VISTA,

*Defendant and Respondent.*

---

---

Appeal from the Superior Court of the State of California  
For the County of San Diego  
Case No. 37-2020-00041554-CU-WM-CTL  
The Honorable Richard E. L. Strauss, Dept. 75

---

---

**OPPOSITION TO RESPONDENT'S  
MOTION TO STRIKE PORTIONS  
OF APPELLANT'S OPENING BRIEF**

---

---

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

Lann G. McIntyre, SBN 106067  
lann.mcintyre@lewisbrisbois.com  
Gary K. Brucker, Jr., SBN 238644  
gary.brucker@lewisbrisbois.com  
Anastasiya Menshikova, SBN 312392  
anastasiya.menshikova@lewisbrisbois.com  
550 West C Street, Suite 1700  
San Diego, California 92101  
Telephone: 619.233.1006  
Facsimile: 619.233.8627

*Attorneys for Plaintiff and Appellant*  
**UL CHULA TWO LLC**

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF AUTHORITIES .....	3
MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO RESPONDENT’S MOTION TO STRIKE PORTIONS OF APPELLANT’S OPENING BRIEF .....	4
INTRODUCTION AND FACTUAL BACKGROUND .....	4
LEGAL ARGUMENT .....	4
The Court Should Deny the City’s Motion to Strike Because the Controversy the Motion Seeks to Resolve Is Not Ripe for Adjudication. ....	4
CONCLUSION.....	6
CERTIFICATE OF COMPLIANCE WITH RULE 8.204.....	7

## TABLE OF AUTHORITIES

### Page(s)

#### Cases

<i>California Water &amp; Telephone Co. v. County of Los Angeles</i> (1967) 253 Cal.App.2d 16 .....	4, 5
<i>Pacific Legal Foundation v. California Coastal Com.</i> (1982) 33 Cal.3d 158 .....	5
<i>Wilson &amp; Wilson v. City Council of Redwood City</i> (2011) 191 Cal.App.4th 1559 .....	4, 5, 6

**MEMORANDUM OF POINTS AND AUTHORITIES IN  
OPPOSITION TO RESPONDENT’S MOTION TO STRIKE  
PORTIONS OF APPELLANT’S OPENING BRIEF**

**INTRODUCTION AND FACTUAL BACKGROUND**

Defendant and respondent the City of Chula Vista (“the City”) filed a motion to strike portions of plaintiff and appellant UL Chula Two LLC’s (“UL Chula”) opening brief claiming UL Chula’s brief cited to impermissible record evidence. [Motion, p. 4.] The City argues UL Chula did not request judicial notice of certain documents within the appendix that the trial court declined to judicially notice, and therefore could not cite to them. [Motion, p. 6.] However, UL Chula has filed a motion for judicial notice that moots this motion to strike. [UL Chula’s Motion for Judicial Notice.]

Because UL Chula filed its judicial notice motion, the City’s motion to strike is mooted and is not ripe for adjudication. The court’s ruling on UL Chula’s motion for judicial notice will dispose of the motion to strike.

**LEGAL ARGUMENT**

**The Court Should Deny the City’s Motion to Strike  
Because the Controversy the Motion Seeks to Resolve  
Is Not Ripe for Adjudication.**

“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.” (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573 (*Wilson*), citing *California Water & Telephone Co. v.*

*County of Los Angeles* (1967) 253 Cal.App.2d 16, 22 (*California Water*).) “The ripeness element of the doctrine of justiciability is intended to prevent courts from issuing purely advisory opinions.” (*Wilson, supra*, 191 Cal.App.4th at p. 1573, citing *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.) “[Ripeness] is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy.” (*Ibid.*)

Here, the City filed a motion to strike portions of UL Chula’s opening brief requesting that the court strike sections of UL Chula’s opening brief that cited to allegedly “impermissible extra-record evidence.” [Motion, p. 4.] The justification for the City’s motion was the trial court denied UL Chula’s request for judicial notice in the underlying proceeding and that UL Chula did not seek judicial notice of those same documents in the appellate proceeding. [Motion, p. 6.] The City contended UL Chula could not base its appeal on evidence not officially in the appellate record. [*Ibid.*]

The City’s motion to strike is not ripe for consideration by the court and is mooted by UL Chula’s motion for judicial notice filed on April 7, 2022. [UL Chula’s Motion for Judicial Notice.] Since the court has not yet ruled on UL Chula’s motion for judicial notice, it would be premature for it to rule on the City’s motion to strike. (*Wilson, supra*, 191 Cal.App.4th at p. 1573, citing *California Water, supra*, 253 Cal.App.2d at p. 22.) If the court grants UL

Chula's motion for judicial notice, the City's motion becomes moot and should be denied by this court. (*Wilson, supra*, 191 Cal.App.4th at p. 1573 [defining moot cases as those where the controversy ceases to exist].) UL Chula thus respectfully submits the City's motion to strike should be denied.

### CONCLUSION

For the forgoing reasons, UL Chula respectfully requests that the court deny the City's motion to strike.

DATED: April 8, 2022

LEWIS BRISBOIS BISGAARD &  
SMITH LLP

By:           /s/ Lann G. McIntyre            
Lann G. McIntyre  
Gary K. Brucker  
Anastasiya V. Menshikova  
Attorneys for Plaintiff and  
Appellant  
UL CHULA TWO LLC

## **CERTIFICATE OF COMPLIANCE WITH RULE 8.204**

I, the undersigned, Lann G. McIntyre, declare that:

1. I am a partner in the firm of Lewis, Brisbois, Bisgaard & Smith LLP, counsel of record for plaintiff and appellant UL Chula Two LLC.

2. This certificate of compliance is submitted in accordance with rule 8.204 of the California Rules of Court.

3. This opposition to motion to strike portions of appellant's opening brief was produced with a computer. It is proportionately spaced in 13-point Century Schoolbook typeface. The brief contains 570 words, including footnotes.

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

Executed at San Diego, California, on April 8, 2022.

/s/ Lann G. McIntyre

Lann G. McIntyre

**PROOF OF SERVICE**

*UL Chula Two LLC v. City of Chula Vista*  
Fourth Civil Number D079215

I, Janis Kent, state:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 550 West C Street, Suite 1700, San Diego, California 92101.

On April 8, 2022, I served the following document described as **OPPOSITION TO RESPONDENTS' MOTION TO STRIKE PORTIONS OF APPELLANT'S OPENING BRIEF** on all interested parties in this action through TrueFiling, addressed to all parties appearing on the attached service list for the above-titled case. The service transmission was reported as complete and a copy of the TrueFiling Receipt/Confirmation will be filed, deposited or maintained with the original document in this office.

On April 8, 2022, I served the following document described as **OPPOSITION TO RESPONDENTS' MOTION TO STRIKE PORTIONS OF APPELLANT'S OPENING BRIEF** by placing a true copy enclosed in a sealed envelope addressed as stated on the attached service list. I am readily familiar with the firm's practice for collection and processing correspondence for regular and overnight mailing. Under that practice, this document will be deposited with the Overnight Mail provider and/or U.S. Postal Service on this date with postage thereon fully prepaid at San



Diego, California to addresses listed on the attached service list in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 8, 2022, at San Diego, California.

/s/ *Janis Kent*

Janis Kent

**SERVICE LIST**

*UL Chula Two LLC v. City of Chula Vista*  
Fourth Civil Number D079215

Alena Shamos  
Matthew Christopher Slentz  
Colantuono, Highsmith & Whatley, PC  
440 Stevens Avenue, Suite 200  
Solana Beach, CA 92075  
*Attorneys for Defendants and Respondents*  
**City of Chula Vista and Chula Vista City Manager**  
*(Via TrueFiling)*

Heather S. Riley  
Rebecca Helene Williams  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
*Attorneys for Real Party in Interest and Respondent*  
**March and Ash Chula Vista, Inc.**  
*(Via TrueFiling)*

Philip Charles Tencer  
TencerSherman LLP  
12520 High Bluff Drive, Suite 240  
San Diego, CA 92130  
*Attorneys for Real Party in Interest and Respondent*  
**TD Enterprise LLC**  
*(Via TrueFiling)*

David Chad Kramer  
Vincente Sederberg LLP  
633 West 5th Street, 26th Floor  
Los Angeles, CA 90071  
*Attorneys for Real Party in Interest and Respondent*  
**TD Enterprise LLC**  
*(Via TrueFiling)*

San Diego County Superior Court  
The Honorable Richard E. L. Strauss (Dept. SD-75)  
330 W. Broadway  
San Diego, CA 92101  
*(Via Overnight Mail)*

California Supreme Court  
Attn: Clerk of Court  
350 McAllister Street, Room 1295  
San Francisco, CA 94102  
(*Via Electronic*)

<b>STATE OF CALIFORNIA</b> California Court of Appeal, Fourth Appellate District Division 1	<b>PROOF OF SERVICE</b>  <b>STATE OF CALIFORNIA</b> California Court of Appeal, Fourth Appellate District Division 1
Case Name: <b>UL Chula Two LLC v. City of Chula Vista et al.</b>	
Case Number: <b>D079215</b>	
Lower Court Case Number: <b>37-2020-00041554-CU-WM-CTL</b>	

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **lann.mcintyre@lewisbrisbois.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
RESPONSE - REPLY	UL Chula Two - Opposition to Respondents' Motion to Strike - FINAL 4.8.2022

Service Recipients:

Person Served	Email Address	Type	Date / Time
Rebecca Williams Allen Matkins Leck Gamble Mallory & Natsis	bwilliams@allenmatkins.com	e-Serve	4/8/2022 4:01:41 PM
Lourdes Hernandez Colantuono, Highsmith & Whatley, PC	lhernandez@chwlaw.us	e-Serve	4/8/2022 4:01:41 PM
David Kramer Vicente Sederberg LLP	d.kramer@vicentesederberg.com	e-Serve	4/8/2022 4:01:41 PM
Philip Tencer TencerSherman LLP 173818	phil@tencersherman.com	e-Serve	4/8/2022 4:01:41 PM
John Kaup Allen Matkins Leck Gamble Mallory & Natsis LLP	JKAUP@ALLENMATKINS.COM	e-Serve	4/8/2022 4:01:41 PM
Alena Shamos Colantuono, Highsmith & Whatley, PC 216548	ashamos@chwlaw.us	e-Serve	4/8/2022 4:01:41 PM

Lann McIntyre Lewis Brisbois Bisgaard & Smith, LLP 106067	lann.mcintyre@lewisbrisbois.com	e-Serve	4/8/2022 4:01:41 PM
Pam Lewis Allen Matkins Leck Gamble Mallory & Natsis LLP	plewis@allenmatkins.com	e-Serve	4/8/2022 4:01:41 PM
Matthew Slentz Colantuono Highsmith & Whatley, PC 285143	mslentz@chwlaw.us	e-Serve	4/8/2022 4:01:41 PM
Gary Brucker Lewis Brisbois Bisgaard & Smith LLP	gary.brucker@lewisbrisbois.com	e-Serve	4/8/2022 4:01:41 PM
Anastasiya Menshikova Lewis Brisbois Bisgaard & Smith LLP	anastasiya.menshikova@lewisbrisbois.com	e-Serve	4/8/2022 4:01:41 PM
Heather Riley Allen Matkins Leck Gamble Mallory & Natsis LLP 214482	hriley@allenmatkins.com	e-Serve	4/8/2022 4:01:41 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

4/8/2022

Date

/s/Janis Kent

Signature

McIntyre, Lann (106067)

Last Name, First Name (PNum)

Lewis Brisbois Bisgaard & Smith, LLP

Law Firm