S285484

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHARLES COHEN, ET AL.,
Defendants and Petitioners,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent,

THOMAS SCHWARTZ, INDIVIDUALLY AND AS TRUSTEE OF THE THOMAS M. SCHWARTZ TRUST DATED MAY 27, 2010, ET AL.,
Plaintiffs and Real Parties In Interest.

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FOUR
CASE NO. B330202

ANSWERING BRIEF ON THE MERITS

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Introduction

Government Code section 36900, subdivision (a) ("Section 36900(a)"), states:

> Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action.

In a unanimous Opinion ("Opn.") granting a writ of mandate, Division Four of the Second Appellate District Court of Appeal held that Section 36900(a) provides only for civil actions by city authorities and does not give every private citizen the right to file a lawsuit over violations of city ordinances. It therefore held that Plaintiffs Thomas and Lisa Schwartz (collectively the "Schwartzes") could not bring a civil action against their neighbors, Defendants Charles and Katyna Cohen (collectively the "Cohens") over an alleged violation of a city ordinance governing hedge height.

The Court of Appeal's analysis of Section 36900(a) followed the framework for determining if the Legislature intended to provide private rights of action in a statute set out by this Court in *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 305 and reiterated in *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, 596-597. In so holding, the Court of Appeal disagreed with the cursory, single-paragraph analysis of Section 36900(a) in *Riley v. Hilton Hotels Corp*. (2002) 100 Cal.App.4th 599, 607, an opinion issued by the same division 22 years earlier. This Court has now granted review to resolve the conflict between the Opinion and *Riley*.

This Court should affirm. As *Moradi-Shalal* and *Lu* recognize, the test for whether a statute provides a private right of action is particularly exacting and requires clear indication of the Legislature's intent to authorize private enforcement. Applying the *Moradi-Shalal*/*Lu* framework to Section 36900(a) leads inexorably to the conclusion that the Legislature never intended to enact a private attorney general statute permitting anyone to enforce any violation of any city ordinance.[1] Neither its language nor its legislative history supports such an outcome. To the contrary, the history of the statute reveals that the Legislature has always intended that only the city authorities mentioned earlier in the statute can bring civil actions to enforce ordinances.

The first part of the *Moradi-Shalal*/*Lu* test examines the statutory language, considering its ordinary meaning in the context of the statute as a whole, to decide if it contains "clear, understandable, unmistakable terms, which strongly and directly indicate that the Legislature intended to create a private cause of action." (*Lu*, *supra*, 50 Cal.4th at pp. 597-598, internal

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[1] Although not directly implicated in this appeal, Section 36900(a) has a near-verbatim counterpart that applies to county ordinances. (Gov. Code, § 25132, subd. (a) ["Violation of a county ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a county ordinance may be prosecuted by county authorities in the name of the people of the State of California, or redressed by civil action."].) Similar language also appears in Water Code section 31029.1, subdivision (a), which provides that violations of certain water conservation ordinances "may be prosecuted in the name of the people of the State of California, or redressed by civil action."

quotations omitted.) Section 36900(a) does not. To the contrary, it is susceptible to the interpretations that the "civil action" it describes may be brought by anyone without limitation, as the Schwartzes urge, or may only be brought by "city authorities," as the Cohens maintain. In short, the language is ambiguous.

Because the language does not contain the requisite clear and unmistakable statement of legislative intent to create a private right of action, the second step in the *Moradi-Shalal/Lu* test requires courts to examine the legislative history for clear indication of such intent. Far from providing support for a private right of action under Section 36900(a), the legislative history establishes the exact opposite. In its original form, the Legislature expressly gave city authorities the sole right to bring civil actions to redress violations of city ordinances. Although that express language was removed when Section 36900 was enacted in the 1949 codification of the Government Code, the drafters of the bill that contained Section 36900(a), the Legislative Counsel, and other analysts repeatedly stated that the law made no substantive changes to existing law.

Meanwhile, the same legislative history makes no mention of any change to authorize private rights of action to enforce city ordinances. That silence is telling. If the Legislature intended for Section 36900(a) to operate as a private attorney general statute, it would have said so.

In their Opening Brief on the Merits ("Opening Brief" or "OBOM"), the Schwartzes never even mention those statements in the legislative history that the bill made no substantive

changes to existing law. The legislative history, however, is conclusive. Under *Moradi-Shalal* and *Lu*, it rejects an interpretation of Section 36900(a) to authorize private actions to enforce ordinances.

Accordingly, this Court should affirm the decision of the Court of Appeal and hold that Section 36900(a) does not confer a private right of action to enforce city ordinances.

Statement of the Case[2]

The Cohens and Schwartzes are neighbors in the Brentwood neighborhood of Los Angeles. Their homes are across the street from each other and sit on a hillside. (1 Petn. Exh. 30.) The Cohens' house sits at a lower elevation than the Schwartzes' house. (1 Petn. Exh. 6-7.)

The Schwartzes sued the Cohens claiming that their "fencing, trees, hedges, and other vegetation on the [Cohen] property" are "unreasonably interfering with [the Schwartzes] use and enjoyment" of their property, "are negatively impacting the value of [their] property," and are causing the Schwartzes "to

[2] The Opening Brief's Statement of the Facts contains no citations and include assertions that are not supported by the record. They also include facts that are not in the Court of Appeal's Opinion, which should be disregarded by this Court. (Cal. Rules of Court, rule 8.500(c)(2) ["as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing"].) In any event, these facts are essentially irrelevant, so the Cohens will not be addressing them here.

suffer severe annoyance, discomfort, and distress." (1 Petn. Exh. 7.) The complaint did not identify the nature of the interference or the harm it supposedly had caused.

The complaint alleged four causes of action: (1) nuisance; (2) violation of Los Angeles Municipal Code ("LAMC") section 12.22.C.20; (3) violation of LAMC section 62.169; and (4) declaratory relief. (1 Petn. Exh. 5.)

The Cohens demurred to each cause of action. (1 Petn. Exh. 22.) They argued the First Cause of Action failed to state a claim for nuisance because, among other reasons, the complaint failed to allege the required unreasonable and substantial interference with the Schwartzes' use and enjoyment of their property. (1 Petn. Exh. 30-32.)

Demurring to the Second and Third Causes of Action, the Cohens argued that there is no private right of action for violation of LAMC sections 12.22.C.20 and 62.169. (1 Petn. Exh. 32-36.)

The Cohens demurred to the Fourth Cause of Action on the grounds that it merely duplicated the other claims in the complaint. (1 Petn. Exh. 37-38.)

The trial court sustained the demurrers to the First and Fourth Causes of Action with leave to amend and overruled the demurrers to the Second and Third Causes of Action. (2 Petn. Exh. 507.) On the Second and Third Causes of Action, the trial court held that Government Code section 36900 provides a private right of action to enforce violations of municipal codes. (2 Petn. Exh. 510-511, citing *Riley*, *supra*, 100 Cal.App.4th at p.

607.) It rejected the First Cause of Action for nuisance because the Schwartzes "simply refer to provisions of the [LAMC] and state that they suffer harm in the use and enjoyment of their property . . . but fail to allege specific facts describing how [the Cohens'] conduct has compromised [the Schwartzes'] ability to use and enjoy their property." (2 Petn. Exh. 510.) It sustained the demurrer to the Fourth Cause of Action because it duplicated the other claims. (2 Petn. Exh. 511.)

The Schwartzes served a first amended complaint that reasserted only the LAMC violations, i.e., what they had previously pled as the Second and Third Causes of Action. (2 Petn. Exh. 515-522, 525.)

The Cohens then sought a writ of mandate, arguing that *Riley* was wrongly decided and should be rejected by the Court of Appeal.

In a unanimous opinion issued on June 5, Division Four of the Second Appellate District agreed. As the same division that had decided *Riley*, the Court of Appeal first declined to apply stare decisis to its holding that Section 36900 provided a private right of action to enforce violations of city ordinances. As the Court of Appeal recognized, *Riley*'s "recognition of a private right of action under the statute is untethered to reasoned analysis applying principles of statutory construction." (Opn. 13-24.)

Turning to the text of Section 36900, the Court of Appeal considered the meaning of Section 36900(a)'s sentence: "The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed

by civil action." It found the statute did not contain " 'clear, understandable, unmistakable terms' which strongly and directly indicate that the Legislature intended to create a private cause of action.' " (Opn. 16-20, quoting *Lu*, *supra*, 50 Cal.4th at p. 597, additional internal quotations omitted.) Instead, the Court of Appeal found the language ambiguous because it was reasonably susceptible to both parties' interpretation. (Opn. 19-20.)

The Court of Appeal next turned to the legislative history of Section 36900. It detailed how the statute's historical antecedents had expressly limited "civil action[s]" to those brought by the same city authorities identified in the first part of the sentence. (Opn. 21.) It then analyzed the legislative history of SB 750, enacted in 1949, which codified the Government Code and removed the express language stating that city authorities could seek redress by civil actions. The legislative history contained repeated statements that SB 750 merely codified existing law and made no "substantive changes" to existing law. (Opn. 22-25.) Those statements, coupled with the absence of any mention that the newly enacted Section 36900 provided a private right of action, led the Court of Appeal to conclude that only city officials can bring the civil actions authorized by Section 36900(a). (Opn. 26.)

The Schwartzes sought review in this Court, which granted review limited to the question: "Does Government Code section 36900, subdivision (a) confer upon private citizens a right to redress violations of municipal ordinances?"

Argument

I. Section 36900(a) Is Not a Private Attorney General Statute and Does Not Authorize Private Citizens to Enforce Municipal Ordinances.

A. To Determine if the Legislature Conferred a Private Right of Action in a Statute, Courts Apply the Test This Court Set Out in *Moradi-Shalal v. Fireman's Fund Ins. Companies* and *Lu v. Hawaiian Gardens Casino, Inc.*

As in any case involving the interpretation of a statute, the "fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose." (*Segal v. ASICS America Corp.* (2022) 12 Cal.5th 651, 662, internal quotation marks omitted.) However, this Court has long recognized that courts must apply a stringent standard to decide if the Legislature intended for its legislation to provide ordinary citizens with the ability to bring private actions to enforce the law. Beginning with *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, which this Court later reiterated in *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, "whether a party has a right to sue depends on whether the Legislature has 'manifested an intent to create such a private cause of action' under the statute." (*Lu*, *supra*, 50 Cal.4th at p. 596, quoting *Moradi-Shalal*, *supra*, 46 Cal.3d at p. 305.)

To find such an intent, courts look first to the language of the statute to see whether it "contain[s] clear, understandable, unmistakable terms, which strongly and directly indicate that the Legislature intended to create a private cause of action." (*Lu*, *supra*, 50 Cal.4th at pp. 597-598 [holding statutory language did

not "unmistakabl[y] reveal a legislative intent to provide . . . a private right to sue"], quoting *Moradi-Shalal*, *supra*, 46 Cal.3d at p. 295, internal quotation marks omitted; see also *Vikco Ins. Services, Inc. v. Ohio Indemnity Co.* (1999) 70 Cal.App.4th 55, 63 [courts first determine if the statutory language is sufficiently "direct, precise, unmistakable and unambiguous to create a private right of action"], citing *Moradi-Shalal*, at pp. 294-295, 304-305.)

Even if a statute may be read to suggest there is a right to bring a private action, a court will not find such a right in the absence of unmistakable intent. That was precisely what this Court held in *Lu*. There, it considered the language of Labor Code section 351, which stated:

> No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.

Highlighting the final sentence, this Court acknowledged that it "suggests that employees may bring an action to recover any misappropriated tips to which they are entitled, just as with other property rights." (*Lu*, *supra*, 50 Cal.4th at p. 598.) But a suggestion is not enough to establish the Legislature's intent.

The *Lu* Court found "the statutory language does not " ' "unmistakabl[y]" ' reveal a legislative intent to provide wronged employees a private right to sue." (*Ibid.*, quoting

Moradi-Shalal, *supra*, 46 Cal.3d at p. 295.) It noted that the statute "does not expressly state that there is a cause of action for any violation" and does not "refer to an employee's right to bring an action to recover any misappropriated gratuities." (*Ibid.*) Moreover, under other provisions of the Labor Code, violations of section 351 were subject to enforcement through criminal proceedings or civil enforcement actions by the authorized Department of Industrial Relations. (*Ibid.*) Because section 351 did not "include explicit language regarding a private cause of action, and related provisions create some ambiguity," this Court could not find the statute unmistakably conferred a private right of action. (*Ibid.*)

If the language does not establish an unmistakable intent to create a private right of action, courts then engage in the second step of the *Moradi-Shalal/Lu* test. They examine the legislative history to ascertain the Legislature's intent. (*Lu*, *supra*, 50 Cal.4th at p. 597 ["If, however, a statute does not contain such obvious language [authorizing private rights of action], resort to its legislative history is next in order."], citing *Moradi-Shalal*, *supra*, 46 Cal.3d at pp. 300-301.)

Analyzing Section 36900(a) under this test leaves no doubt about the Legislature's intent. It never intended for Section 36900 to enable any person to bring a private civil action to enforce city ordinances.

B. The Language of Section 36900 Does Not Establish an Unmistakable Intent to Create a Private Right of Action.

1. Section 36900(a) is ambiguous.

Section 36900(a) does not unmistakably manifest the Legislature's intent to provide a private right of action. Its full text reads:

> Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action.

(Gov. Code, § 36900, subd. (a).) Nowhere in the statute does it squarely identify who may seek redress "by civil action."

To the contrary, the language is ambiguous. As the Court of Appeal recognized, the statute is susceptible to the meaning urged by the Schwartzes – that the absence of a reference to "city authorities" in the final phrase means such actions can be brought by anyone without limitation. However, as the Court of Appeal also recognized, "redress by civil action" could reasonably be understood to refer back to the "city authorities" mentioned earlier in the sentence. (Opn. 18-20.)

In support of that conclusion, the Court of Appeal cited *Coso Energy Developers v. County of Inyo* (2004) 122 Cal.App.4th 1512. There, the Court of Appeal had to interpret a statute stating: "The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States. . . ." (*Id*. at p. 1523.) The land at issue in

Coso Energy had passed from Mexico to the United States pursuant to the Treaty of Guadalupe Hidalgo. (*Id.* at p. 1522.) Thus, in deciding if the statute gave the federal government exclusive jurisdiction over the land, the court had to decide if it applied only to land ceded by the State or to land ceded by anyone.

The court acknowledged that the use of the passive voice without indicating the actor "can render the statute ambiguous" by requiring the court "to infer or imply the intended actor." (*Coso Energy*, *supra*, 122 Cal.App.4th at p. 1524.) It nonetheless concluded that the passive phrase "as may have been or may be hereafter ceded or conveyed to the United States" meant lands ceded by the State. Because the first part of the sentence expressly referenced the State, "[i]t is reasonable to infer that the undisclosed actor in the second clause is the same actor specified in the first; the lack of disclosure in the second instance can be attributed to the desire to avoid redundancy." (*Id.* at p. 1525 [adding: "Having just specified the State of California as the actor ceding jurisdiction at the beginning of the sentence, the drafters would likely have viewed restating the name of the actor as to the transfer of land in the next clause of that sentence as unnecessarily repetitive."].) Had the Legislature intended for the statute to apply to land ceded or conveyed by another actor, "we would reasonably expect the Legislature to have made that clear by identifying the different actor." (*Ibid.*) At the very least, the statute did not make the identity of the actor "so obvious or clear from the statute" that it resolved the Legislature's intent. (*Ibid.*)

In other words, the statute was ambiguous and, applying other rules of statutory construction, the court concluded that it applied only to land ceded or conveyed by the state. (*Id.* at pp. 1525-1538.)

That reasoning applies here. As in *Coso Energy*, Section 36900(a)'s provision "or redressed by civil action" is written in the passive voice without squarely identifying who can seek redress by civil action. It is reasonable to conclude that the Legislature saw no need to do so in the second phrase because it had identified the actor – "city authorities" – earlier in the sentence. At minimum, Section 36900(a) is reasonably susceptible to such an interpretation. That makes it ambiguous. (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1184 [statute is ambiguous "when the words of the statute are susceptible to more than one reasonable meaning, given their usual and ordinary meaning and considered in the context of the statute as a whole"]; *People v. Dieck* (2009) 46 Cal.4th 934, 940 ["A statutory provision is ambiguous if it is susceptible of two reasonable interpretations."].)

When interpreting statutory language, this Court also has recognized the importance of construing the words "in context" and "harmoniz[ing] the various parts of the enactments by considering them in the context of the statutory [framework] as a whole." (*Skidgel v. California Unemployment Ins. Appeals Bd.* (2021) 12 Cal.5th 1, 14.) This takes on added importance when considering if a statute provides a private right of action because the statutory framework may reveal the Legislature's intent.

Specifically, "[w]hen legislation provides a comprehensive regulatory scheme for its enforcement, courts generally conclude the Legislature intended that remedy to be exclusive, unless the statutory language or legislative history 'clearly indicates an intent to create a private right of action.' " (*Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 381, quoting *Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 337.)

In *Julian*, the Court of Appeal held that the plaintiff had no private right of action under the Lanterman-Petris-Short Act. None of her claims fell within the type of private actions the Act expressly authorized. (*Id.* at pp. 379-380.) And contrary to the plaintiff's argument that a private right of action was necessary to enforce the Act's provisions, it provided a "comprehensive scheme for its enforcement by the local director of mental health, the Director of Health Care Services, or the Director of State Hospitals," who "may issue notices of violation to offending facilities, revoke a facility's designation and authorization to evaluate and treat persons detained involuntarily, and refer legal violations to a local district attorney or the Attorney General for prosecution." (*Id.* at p. 381.) That regulatory scheme, absent contrary proof of legislative intent, indicated that the Legislature did not intend to provide private rights of action to enforce provisions that did not expressly authorize them. (*Ibid.*; see also *Lagrisola v. North American Financial Corp.* (2023) 96 Cal.App.5th 1178, 1196 [plaintiff had no private right of action to enforce Finance Code sections 22100 and 22751 because statutes authorized enforcement actions by the Commissioner of Financial

Protection and Innovation or the Attorney General, which could levy civil penalties or seek restitution, disgorgement, or damages].)

The Government Code sets out a similar scheme for local authorities to redress violations of ordinances. Subdivisions (b) through (d) of Section 36900 detail fines that may be imposed for violations of certain types of ordinances. Subdivision (e) then provides: "A city levying a fine pursuant to paragraphs (2) and (3) of subdivisions (b) and (c), and paragraph (1) of subdivision (d), shall establish a process for granting a hardship waiver . . . ." (Gov. Code, § 36900, subd. (e).) The statute immediately following Section 36900 then states: "The city legislative body may impose fines, penalties, and forfeitures for violations of ordinances. It may fix the penalty by fine or imprisonment, or both. A fine shall not exceed one thousand dollars ($1,000). Imprisonment shall not exceed six months." (Gov. Code, § 36901.) The next statute provides: "Imprisonment for violation of an ordinance shall be in the city jail, unless by ordinance the legislative body prescribes imprisonment in the county jail. If city prisoners are imprisoned in the county jail the expense is a charge against the city." (Gov. Code, § 36903.) This is precisely the type of statutory scheme that *Julian* found weighs against interpreting a statute like Section 36900(a) to provide a private right of action.

Accordingly, there is no unmistakable legislative intent expressed in the statutory language that private parties are authorized to enforce Section 36900(a).

2. The Schwartzes' plain language arguments are unsupported by law or reason.

The Schwartzes make four arguments why the plain language of Section 36900(a) must be understood to refer to actions by private litigants. None have merit.

First, they argue that Section 36900(a) is written in the disjunctive, so the Legislature's use of "or" meant it intended for the second, disjunctive clause to refer to a different actor (ordinary citizens) than the first clause's "city authorities." (OBOM 18-20.) That argument ignores the obvious: The statute uses the disjunctive to separate the criminal proceedings – "violations may be prosecuted" – in the first part of the sentence from the "civil action" described in the second clause. By using the disjunctive, the Legislature recognized that city authorities may choose between criminal or civil enforcement.

Second, the Schwartzes argue that " 'redressed by civil action' is not qualified by any subject" so it should be read as evidence the Legislature intentionally omitted "city authorities" from that clause. (OBOM 20-22.) The cited authorities do not support their argument.

The first case they cite is *California Capital Ins. Co. v. Hoehn* (2024) 17 Cal.5th 207, in which this Court decided if Code of Civil Procedure section 473, subdivision (d) motions to set aside void judgments or orders are subject to the same one-year deadline that Code of Civil Procedure section 473.5 imposes on motions to set aside when constructive service was given but the defendant did not receive actual notice. This Court noted that the fact section 473(d) contains no express time limit could

provide an "inference" that the Legislature rejected such a limit. (*Id*. at p. 221.) But that was only one possible inference. This Court also noted that the omission could imply acquiescence to court opinions that had applied the one-year time limit. (*Id.* at pp. 221-222.) It also noted yet another possible inference – "that the Legislature took no position on the rule's validity." (*Id*. at p. 222.) This Court found the latter inference "most plausible." (*Ibid*.) In short, *California Capital* did not adopt the rule of construction the Schwartzes attribute to the case.

The other case the Schwartzes cite, *People ex rel. Internat. Assn. of Firefighters, etc. v. City of Palo Alto* (2024) 102 Cal.App.5th 602 ("*Internat. Assn. of Firefighters*"), also does not adopt this rule of construction. In fact, the majority opinion is silent on the issue; it says nothing about limiting language or omitted words. The Schwartzes' brief provides no page number for the cited proposition "that courts should not interpret statutes as if they contained language the Legislature chose to omit" (OBOM 21), but the only similar language is in the dissenting opinion. (*Internat. Assn. of Firefighters*, at pp. 630-632, Wilson, J., dissenting.) The majority expressly did not "embrace the novel statutory analysis advanced by the dissent." (*Id*. at p. 621, fn. 7.)

In any event, the dissent, like *California Capital*, was comparing the language in different statutes. In deciding if Government Code section 809 authorized the remedy ordered by the trial court, the dissent looked at the language of the statute. It mandates the remedy when a defendant is adjudged guilty of

"usurping or intruding into, or unlawfully holding any office, franchise, or privilege." (*Internat. Assn. of Firefighters*, *supra*, 102 Cal.App.5th at p. 629.) Section 803 authorized quo warranto actions by the Attorney General "against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise[.]" (*Id.* at pp. 628-629.) The dissent pointed out that section 809 omits "exercises any franchise," concluding that the mandatory remedy was not intended to apply to a defendant guilty only of exercising any franchise. (*Ibid.*) Applying the rules of construction that courts must give effect to every word in a statute and the expression of one thing in a statute ordinarily implies the exclusion of other things, the dissent reasoned that "unlawfully exercises" must have a distinct meaning and the Legislature intentionally excluded it from the conduct triggering the mandatory remedy.

The Schwartzes cite nothing to suggest the dissent's approach to comparing the wording of two parallel statutes is applicable when parsing the words of a single sentence. To the contrary, as *Coso Energy* recognized, the choice not to use the same words twice in the sentence could be due to an intent to avoid redundancy. (*Supra*, 122 Cal.App.4th at p. 1525.)

Third, the Schwartzes argue that the ordinary meaning of "redressed" refers to civil litigation involving an "injured party[,]" i.e., a person, not a government authority. (OBOM 22.) They cite no law for that assertion. Nor can they. California has several

statutes that provide for government authorities to seek "redress" for violations of statutes or ordinances. (See, e.g., Bus. & Prof. Code, § 26152.2, subd. (a) ["The Attorney General, on behalf of the people, a city attorney, or a county counsel may bring and maintain an action to *redress* a violation of [specific sections] of the Health and Safety Code."], italics added; Lab. Code, § 181, subd. (a) ["In addition to any other remedies available, a public prosecutor may prosecute an action, either civil or criminal, for a violation of [sections of the Labor Code]. An action of a public prosecutor under this chapter shall be limited to *redressing* violations occurring within the public prosecutor's geographic jurisdiction. . . ."], italics added; Lab. Code, §§ 1160-1160.9 [statutory scheme governing actions by the Agricultural Labor Relations Board against persons committing unfair labor practices "shall be the exclusive method of *redressing* unfair labor practices"], italics added; Wat. Code, § 31142.50, subd. (c) [powers of the Sierra Lakes County Water District include enacting ordinance which may provide "[t]he district may seek *redress* for violations of the ordinance by bringing a civil action against the violator"], italics added.)

In fact, as discussed below, the original language of the statutes in the Municipal Incorporation Act of 1883 that later evolved into Section 36900(a) expressly stated that violations of city ordinances "may be redressed by civil action, *at the option of said authorities*," i.e., the "city authorities" mentioned earlier in the section. (July 14, 2023 Request for Judicial Notice ("2023 RJN"), Exh. 1, p. 11 [Stats. 1883, ch. 49, § 769, p. 256], Exh. 2, p.

14 [Stats. 1883, ch. 49, § 867, p. 272], italics added.) These statutes demonstrate that the claim that the use of the word "redress" in a statute is intended to refer to actions by private litigants, not government officials, is meritless.

Finally, the Schwartzes contend that "[i]f the Legislature had intended to restrict civil enforcement to municipalities, it would have done so explicitly." (OBOM 22.) That directly contradicts *Lu* and *Moradi-Shalal*. For statutory language alone to confer the right to bring a private right of action, it must "contain clear, understandable, unmistakable terms," or other "obvious language" that "strongly and directly indicate" that the Legislature intended to provide a private cause of action. (*Lu*, *supra*, 50 Cal.4th at pp. 597-598, quoting *Moradi-Shalal*, *supra*, 46 Cal.3d at p. 295, internal quotation marks omitted.) The absence of "obvious" language weighs against, not in favor, of finding a private right of action. (*Schaefer v. Williams* (1993) 15 Cal.App.4th 1243, 1248 [if the Legislature had intended to create a private right to sue, it surely would have done so by "clear and direct language"], citing *Moradi-Shalal*, at pp. 294-295.)

Thus, none of the Schwartzes' arguments provides any reason to conclude that the plain language of Section 36900(a) enables any private litigant to bring actions to enforce violations of city ordinances.

3. As the Court of Appeal recognized, Riley v. Hilton Hotels Corp is poorly reasoned and should be repudiated.

The Schwartzes rely on *Riley v. Hilton Hotels Corp* (2002) 100 Cal.App.4th 599, to support their argument that Section

36900(a) permits private enforcement actions. (See, e.g., OBOM 6, 15-16.) As the Court of Appeal recognized, *Riley*'s "recognition of a private right of action under the statute is untethered to reasoned analysis applying principles of statutory construction." (Opn. 13-14.)

Riley relies entirely on the final phrase in Section 36900(a) – "redressed by civil action" – to reach an ipse dixit conclusion that it must authorize any person to bring a civil action to enforce city ordinances. *Riley*'s entire analysis of the issue reads:

> Government Code section 36900, subdivision (a), expressly permits violations of city ordinances to be "redressed by civil action." Both our constitution and the Government Code prohibit giving effect to city ordinances in conflict with state law. (Cal. Const., art. XI, § 7; Gov. Code, § 37100.) Defendants refer us to no state law that allows a city to abrogate the right of redress created in the Government Code. We decline to read into the Municipal Code an intent to create an impermissible conflict with state law by abrogating the right to a civil action created by the Government Code.

(*Riley*, *supra*, 100 Cal.App.4th at p. 607.) In sum, Riley looks at the phrase "redressed by civil action" in a vacuum and converts Section 36900(a) into a private attorney general statute.

That is wrong. The Court of Appeal engaged in none of the steps it should have taken to perform a proper interpretation of the statute. It does not mention the first part of Section 36900(a), does not look at the statute in the context of the surrounding scheme, and, most importantly, does not subject the

statutory language to the *Moradi-Shalal* test for whether a statute provides a private right of action.

Riley's failure to apply that test is perplexing. By that time, *Moradi-Shalal* had been the controlling law for more than a decade. Yet *Riley* gives no heed to this Court's more exacting standards for analyzing a claim that a statute creates a private right of action. For that reason alone, its holding deserves no credence.

The cases that followed *Riley*'s holding are equally devoid of any analysis, let alone the careful review of statutory language and legislative history required by *Moradi-Shalal* and *Lu*. Instead, those cases have parroted *Riley* or simply cited Section 36900(a) without analysis. (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1181, fn. 10 [stating only that "[e]nforcement measures for [ordinance] include a private right of action for aggrieved employees and penalties under Government Code section 36900"]; *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1263-1264 [citing *Riley* to reject argument that plaintiff had no private right of action because "Government Code section 36900, subdivision (a), however, expressly provides that a violation of a city ordinance may be redressed by civil action."]; see also *Cuviello v. Feld Entertainment, Inc.* (N.D. Cal., Apr. 7, 2014, No. 13-CV-03135-LHK) 2014 WL 1379849, at *6-7 [federal district court case citing *Riley*, *Amaral*, and *Huntingdon Life Sciences* in holding plaintiff had private right of action to enforce

city ordinances without further analysis].) These cases, too, should be repudiated.

The Schwartzes' Opening Brief does make a brief stab at distinguishing *Moradi-Shalal* and *Lu*. They argue these cases merely held "the existence of a statutory duty does not automatically imply a corresponding private remedy" and argue they are inapplicable here because they did not consider Section 36900(a). (OBOM 35.) That ignores the fact that *Moradi-Shalal* and *Lu* establish a test applicable whenever a court is asked to decide if a statute confers a private right of action. And courts have long applied that test to statues other than the Insurance Code section 790.03 (*Moradi-Shalal*) and Labor Code section 351 (*Lu*). (See, e.g., *City of Lancaster v. Netflix, Inc.* (2024) 99 Cal.App.5th 1093, 1105-1113 [Digital Infrastructure and Video Competition Act of 2006 (Pub. Util. Code, § 5810 et seq.)]; *Vasquez v. Solo 1 Kustoms, Inc.* (2018) 27 Cal.App.5th 84, 92-96 [Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.)]; *Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136, 141-144 [Pen. Code, § 597t]; *Farmers Ins. Exchange v. Superior Court* (2006) 137 Cal.App.4th 842, 849-859 [Ins. Code, § 1861.02]; *Rosales v. City of Los Angeles* (2000) 82 Cal.App.4th 419, 427-428 [Penal Code statutes limiting the release of police officer personnel records]; *Vikco*, *supra*, 70 Cal.App.4th at pp. 60-66 [Ins. Code, § 769].) As these cases demonstrate, *Moradi-Shalal* and *Lu* set out a test of broad applicability.

Indeed, even more than the statutes discussed above, the *Moradi-Shalal/Lu* test should apply here. *Moradi-Shalal*, *Lu*, and the cases set forth above all analyzed statutes creating discrete statutory rights or prohibitions to determine if, concomitant with creating those rights, the Legislature created a private enforcement mechanism for that particular statute. Here, the Schwartzes ask this Court to make Section 36900(a) a private attorney general statute. It does not just affect a narrow class of rights. It does not just authorize injured parties to bring private actions. Section 36900(a) applies to any city ordinance. The Schwartzes are asking this Court to find the Legislature intended Section 36900(a) to deputize every resident of California to enforce any city ordinance. If any claim a statute confers a private right of action should be subject to scrutiny under *Moradi-Shalal* and *Lu*, it is the Schwartzes' argument about Section 36900(a).

The Schwartzes also cite *Zhang v. Superior Court* (2013) 57 Cal.4th 364, as support for their claim *Moradi-Shalal* and *Lu* do not control here. (OBOM 26.) But *Zhang* does not help them. It held that *Moradi-Shalal* does not preclude actions under the Unfair Competition Law ("UCL"), Bus. & Prof. Code, § 17200 et seq., "based on grounds independent from section 790.03, even when the insurer's conduct also violates section 790.03." (*Zhang*, at p. 369.) In *Zhang*, an insurer argued that the plaintiff's claim for UCL violations was based on alleged violations of the Unfair Insurance Practices Act ("UIPA"), which *Moradi-Shalal* had held did not provide a private right of action. This Court found the

plaintiff's UCL claims viable, because they were predicated on an insurer's false advertising, so it provided a basis for suit under the UCL independent of violations of the UIPA. (*Id*. at pp. 378-383.)

Citing *Zhang*, the Schwartzes claim it holds that "plaintiffs may pursue alternative statutory remedies—such as the UCL—when direct enforcement under a specific statute is barred." (OBOM 36.) That is not what *Zhang* holds at all.

But even more, it is readily distinguishable because the UCL unmistakably establishes a private right of action. The UCL states that "[a]ctions for relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by . . . a person who has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code, § 17204.)

Thus, the UCL contains the unmistakable manifestation of legislative intent to create a private right of action that *Moradi-Shala* and *Lu* require in analyzing the statutory language. Section 36900(a) contains nothing similar. As a result, this Court should proceed to the second step of the *Moradi-Shalal/Lu* test – examining the legislative history to determine the Legislature's intent.

C. The Legislative History Establishes that Section 36900(a) Does Not Create a Private Right of Action.

Because the statutory language does not evidence a clear intent to provide a private right of action, this Court should

examine the legislative history. (*Lu*, *supra*, 50 Cal.4th at pp. 597-598.)

1. The statutes from which Government Code section 36900 derived expressly stated civil actions could be brought only by city authorities.

The Schwartzes acknowledge that the historical antecedents to Section 36900(a) only authorized civil actions by city authorities. Sections 769 and 867 of the Municipal Incorporation Act of 1883 both provided that violations of ordinances could be "prosecuted by the authorities" of cities and towns or "or may be redressed by civil action, *at the option of said authorities*."[3] (2023 RJN Exh. 1, p. 11 [Stats. 1883, ch. 49, § 769, p. 256], Exh. 2, p. 14 [Stats. 1883, ch. 49, § 867, p. 272], italics added.) In an 1889 version of section 769, the statute removed all reference to a civil action, including the words "at the option of

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[3] In relevant part, section 769 stated:

> The violation of any ordinance of such city shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city in the name of the people of the State of California, or may be redressed by civil action, at the option of said authorities.

(2023 RJN Exh. 1, p. 11.) Mirroring section 769, in relevant part, section 867 stated:

> The violation of any ordinance of such city or town shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city or town in the name of the people of the State of California, or may be redressed by civil action, at the option of said authorities.

(2023 RJN Exh. 2, p. 14.)

said authorities." (2023 RJN Exh. 3, p. 17 [Stats. 1889, ch. 258, § 9, p. 393].)

But the language returned in a 1905 amendment (2023 RJN Exh. 4, p. 20 [Stats. 1905, ch. 74, § 1, p. 72]) and remained until Section 36900(a) was enacted. Section 867 was never changed; the phrase "at the option of said authorities" was still in the text when the statute was amended in 1933. (2023 RJN Exh. 5, p. 23 [Stats. 1933, ch. 516, § 20, p. 1332].) Thus, the phrase "at the option of said authorities" – a clear indication of the Legislature's intent to restrict civil actions to those brought by local governments – was clearly stated in these statutes until they were superseded in 1949.

2. When Government Code section 36900 was adopted, the Legislature intended to make no substantive revisions to existing law.

When Section 36900 was enacted in 1949, Section 36900(a) stated:

> Violation of a city ordinance is a misdemeanor. Such a violation may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action.

(2023 RJN Exh. 6, p. 26 [Stats. 1949, ch. 79, § 1, p. 151].) The words "at the option of said authorities" were removed. Despite that change, the legislative history is clear that the new statute made no substantive changes to existing law.

Section 36900 was enacted as part of Senate Bill 750, a comprehensive revision and consolidation of existing law that the Legislature tasked to the California Code Commission ("Commission"). Although the Commission had the authority to

make substantive changes, it elected not to: "[N]o comprehensive substantive revision has been attempted, due to the priority which the commission has given to the codification program." (2 Petn. Exh. 382; see also 2 Petn. Exh. 450 [letter from Commission dated Dec. 29, 1948 titled "Title 4 – Government Code, City Government" [enclosing draft including new Government Code section 39690 stating "[w]e have endeavored to make no substantive change in the law codified"]].) As this Court has recognized, the report and materials from the California Code Commission about a statute later enacted " 'is entitled to great weight in construing the statute and in determining the intent of the Legislature.' " (*People v. Mendoza* (2000) 23 Cal.4th 896, 909, quoting *People v. Wiley* (1976) 18 Cal.3d 162, 171.)

As S.B. 750 wended its way through the Legislature and to the Governor, drafters and analysts repeatedly emphasized that the revisions to the laws were not substantive.

In a report dated April 14, 1949, the Office of the Legislative Counsel noted SB 750 "[a]dds Title 4 and Sections 500041 to 500045, inclusive, to the Government Code, relating to the organization, operation, and maintenance of a system of city government." The report further analyzed SB 750:

> This bill, prepared by the California Code Commission, assembles, codifies, and consolidates the law relating to cities and, if approved, will constitute Title 4 of the Government Code. [¶] *It makes no substantive changes in existing law, but rearranges and restates in simplified language the substance of existing laws,* and repeals obsolete and superseded statutes.

(2 Petn. Exh. 366, italics added.)

That same day, the Deputy Attorney General sent a memo to the Governor, which explained:

> Senate Bill No. 750 adds Title 4 to the Government Code, codifying the law relating to the government of cities. We have not compared each provision of Senate Bill No. 750 with the repealed acts specified therein in detail, *but a careful sampling indicates that there are no substantive changes in the law. Senate Bill No. 750 was prepared by the California Code Commission, which has informed us that to the best of their knowledge no substantive changes were made*.

(2 Petn. Exh. 367, italics added.)

On April 18, 1949, in a memorandum to Governor Warren, the Secretary of the Commission addressed the proposed revisions to the Government Code. Addressing SB 750, the Secretary wrote: "Senate Bill 750 is a codification and consolidation of the laws relating to the government of cities, placing the various provisions of law relating to these matters in Title 4 of the Government Code." Then, after briefly addressing other bills before the Governor, the Secretary stated:

> It is the belief of the California Code Commission that these codifications will render numerous acts more readily accessible than they now are in the various scattered acts. While Titles 4 and 5 are *mainly restatements of the laws relating to cities and local agencies*, many obsolete and superseded acts are repealed. *No substantive change in the existing law is made in any of these bills.*

(2 Petn. Exh. 368-369, italics added.)

An April 22, 1949 Legislative Memorandum from Beach Vasey to the Governor described how SB 750 "[a]dds a new title to the Government Code relating to the organization, operation,

and maintenance of city governments." (2 Petn. Exh. 371.) It explained that the "[c]odification bill" was "prepared by the California Code Commission" while "making no substantive changes in existing law." (2 Petn. Exh. 371.) The Legislative Memo also cited the reports from the Legislative Counsel and Attorney General for the proposition that the bill makes "no substantive changes[.]" (2 Petn. Exh. 371.)

Even after it enacted S.B. 750, the Legislature confirmed it did not make substantive changes to existing law. In the Legislature's Summary Digest of Statutes Enacted, etc., describing laws enacted in 1949, it summarized S.B. 750 as "[a]ssembles, codifies and consolidates existing law relating to city government, *without change in legal effect*." (2 Petn. Exh. 375, italics added.)

The reports, memorandum, and digest leave no doubt that the Legislature intended SB 750 to codify existing law without changing its substance. In *Moradi-Shalal*, this Court cited repeated statements in the legislative history of Insurance Code section 790.03 that called for "administrative enforcement" as proof it did not contemplate private enforcement. (*Supra*, 46 Cal.3d at p. 300.) "The fact that neither the Legislative Analyst nor the Legislative Counsel observed that the new act created a private right of action is a strong indication the Legislature never intended to create such a right of action." (*Ibid.*)

The legislative history is even clearer with respect to SB 750. Changing the law to allow private litigants to bring civil actions to enforce city ordinances – previously the province only

of government officials – would have been a major, substantive change in the law. Section 36900(a) would allow private litigants to bring actions to enforce thousands of city ordinances throughout the state – making it a private attorney general statute. (*Newman v. Piggie Park Enterprises, Inc.* (1968) 390 U.S. 400, 402 [describing concept of " 'private attorney general' " as a private litigant who brings an action "not for himself alone" but to vindicate public policy].) It is absurd to think the Legislature would have crafted a law with such far-reaching implications without once saying in the statute or legislative history that it intended to create a new enforcement mechanism for municipal code violations.

The absence of some statutory language or expression of intent to confer a private right of action is telling for another reason. The Legislature knew how to craft a private attorney general statute authorizing individuals to enjoin violations of numerous laws. In the decade before it enacted Section 36900(a), it authorized private actions in former Civil Code section 3699, the precursor to California's current UCL. Enacted in 1933, Civil Code section 3369, subdivision (5) stated:

> Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by *any person acting for the interests of itself, its members or the general public.*

(2023 RJN Exh. 7, p. 29 [Stats. 1933, ch. 953, § 1(5), p. 2482], italics added; *Kraus v. Trinity Management Services, Inc.* (2000)

23 Cal.4th 116, 130 [stating that authorization of private actions under section (5) of Civil Code section 3699 was added in 1933], superseded by statute on other grounds as stated in *Arias v. Superior Court* (2014) 46 Cal.4th 969, 977.)

Thus, when Section 36900(a) was enacted, the Legislature knew how to draft a clear and unmistakable authorization for private litigants to enforce a broad swath of statutes. Yet it provided no similar language in Section 36900(a) when it was enacted in 1949. The omission of such language strongly weighs against finding Section 36900(a) provides a private right of action. (See, e.g., *Vasquez*, *supra*, 27 Cal.App.5th at p. 93 [finding no private right of action to enforce section of Auto Repair Act in absence of language in the statute because other statutes, like the UCL, demonstrated that "the Legislature certainly knew how to" create a private right of action]; *Arriaga v. Loma Linda University* (1992) 10 Cal.App.4th 1556, 1563 [finding Legislature did not create an express private cause of action to enforce civil rights statute, because other civil rights statutes containing express rights of action evidenced that the Legislature knew how to create an express private right of action], superseded by statute as stated in *Donovan v. Poway Unified School Dist*. (2008) 167 Cal.App.4th 567, 594.)

Thus, the legislative history establishes conclusively that the Legislature intended for only city authorities to seek redress by civil action for violations of city ordinances.

3. The legislative history rebuts any inference that, when it enacted Government Code section 36900, the Legislature intended to create a private right of action by deleting the earlier statute's language authorizing city authorities to bring civil actions.

The Schwartzes' Opening Brief is inexplicably silent about the legislative history's repeated statements that SB 750 made no substantive changes to existing law. The Schwartzes' silence is particularly glaring given the Court of Appeal detailed these legislative materials at length in its Opinion (at 22-26).

Instead, the Schwartzes argue that the deletion of "at the option of said authorities" must be read as proof the Legislature intended to authorize private actions. (OBOM 25-29.) As support, they quote *Wood v. Roach* for the proposition that "the omitted parts cannot be revived by construction, but are to be considered as annulled." ((1932) 125 Cal.App. 631, 638, citing *Carter v. Stevens* (1930) 208 Cal. 649.) But they omit the first part of the sentence they quote. In full, it states: "And, where a statute is revised and some parts omitted, *and it was clearly the intention to cover the whole subject revised*, the omitted parts cannot be revived by construction, but are to be considered as annulled." (*Ibid.*, italics added.) Thus, even the Schwartzes' authorities recognize that the change in statutory language should still consider legislative intent.

In fact, this Court has said "[i]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." (*People v. Valentine* (1946) 28 Cal.2d 121, 142.) But a presumption is not conclusive; it can be rebutted. *People v. Dillon* (1983) 34 Cal.3d

441, illustrates that point. In *Dillon*, a criminal defendant argued that California should not recognize felony murder. (*Id.* at p. 462.) In support, he argued that before the codification of the Penal Code, California had two murder statutes – one that set out the degrees of murder and the other that codified the felony-murder rule. (*Id.* at pp. 466-467.) However, when the Legislature adopted the Penal Code – which was drafted by the Commission like S.B. 750 – only the first murder statute found its way into the Code. (*Id.* at p. 467.) It did not include the felony-murder statue. (*Ibid.*)

This Court acknowledged that the decision not to reenact the existing felony-murder statute "implied an intent to abrogate the common law felony-murder rule[.]" (*Ibid.*) Other rules of statutory interpretation also supported that conclusion. (*Id.* at pp. 467-468.) But this Court nonetheless found that the legislative history rebutted that implication. (*Id.* at pp. 468-472.) It showed that the Commission mistakenly believed that a different statute codified the felony-murder rule. (*Id.* at p. 471.) By adopting the statute as written by the Commission, this Court concluded that the Legislature acted under the same belief. (*Ibid.*) Accordingly, "although the balance remains close, . . . the evidence of present legislative intent . . . is sufficient to outweigh the contrary implications of the language[.]" (*Id.* at p. 472.)

As in *Dillon*, the legislative history, including the statements of the Commission, rebut any presumption that the deletion of "at the option of said authorities" was intended to change existing law.

D. Affirming the Court of Appeal Opinion Protects the Interests of Local Government and Does Not Affect the Ability of Private Litigants to Sue for Nuisance or to Enforce Ordinances When a Violation Causes Them Injury.

The Schwartzes argue that interpreting Section 36900(a) as a private attorney general statute is necessary because private citizens "need a statutory mechanism to enforce local ordinances . . . when a local government fails to enforce the law." (OBOM 30.) They are wrong.

First, if a city government is unable to enforce its own ordinances, it can amend them to provide a private right of action. The City of Los Angeles (the "City") has chosen not to deputize the public to police hedge heights.

In its amicus brief filed in the Court of Appeal, the City emphasized its own sovereignty as a Charter City under the California Constitution. "There is nothing more fundamental to city home rule than the power to pass ordinances and control the manner and scope of their enforcement." (City Amicus Br. 29.) Under the Constitution, a chartered city "may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters . . . and with respect to municipal affairs shall supersede all laws inconsistent therewith."[4] (Cal. Const., art. XI, § 5, subd. (a), & § 7.) Interpreting Section 36900(a) as a private

[4] In its amicus brief in the Court of Appeal, the City argued that it is not subject to Section 36900. (City Amicus Br. 27-31.)

attorney general statute conflicts with this fundamental principle of state law.

The City also argued below that opening the floodgates to private enforcement by any private party would undermine it and other cities' "ability to monitor and influence courts' interpretation of their ordinances once enacted." (City Amicus Br. 24.) Instead, "[s]elf-interested private parties could seek to enforce ordinances in whatever fashion suited [to] their purposes in that litigation." (*Ibid.*) Or the law might suffer at the mercies of poor lawyering resulting in "legal precedent binding on the city in all cases involving that local law. . . . without input from the city that enacted them." (*Ibid.*)

Second, rejecting the Schwartzes' interpretation of Section 36900(a) will still allow people who have suffered actual injuries from violations of ordinances to seek redress. They can bring common law nuisance actions or, as this Court has held, "a private person *who suffers identifiable harm* by reason of a violation of a municipal zoning law may sue the violator for compensatory damages and may also seek injunctive relief when applicable." (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 939-940.) The Opinion below recognized this rule, but found it inapplicable to the Schwartzes, who had not alleged any injury despite having an opportunity to amend their nuisance claim.[5]

[5] As the Schwartzes admit in their Opening Brief, they are claiming that the Cohens' hedges "obstruct[ ] their ocean views." (OBOM 10.) California courts have recognized that there is "no natural right to air, light or an unobstructed view and the law is reluctant to imply such a right." (*Pacifica Homeowners' Assn. v.*

(Opn. 28-29.) Allowing claims by actually injured parties to bring actions enables enforcement of ordinances when necessary without opening the floodgates to bounty hunter lawsuits by any resident of the state.

The latter concern is legitimate. This Court need only look at the history of the UCL. Although the UCL once authorized any person to bring a private attorney general action, voters passed a proposition that permitted claims only by plaintiffs who suffered injury in fact or lost money or property as a result of unfair competition. (*Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 228.) As this Court recognized, the law was based on findings that the former law was misused by private attorneys who, inter alia, " '[f]ile frivolous lawsuits as a means of generating attorneys' fees without creating a corresponding public benefit,' '[f]ile lawsuits where no client has been injured in fact,' [and] '[f]ile lawsuits on behalf of the general public without any accountability to the public and without adequate court supervision.' " (*Ibid.*, quoting Prop. 64, § 1, subds. (b)(1)-(4).)

The Schwartzes would have this Court turn Section 36900(a) into a local version of the former UCL. This Court should decline their invitation.

Wesley Palms Retirement Community (1986) 178 Cal.App.3d 1147, 1152; *Taliaferro v. Salyer* (1958) 162 Cal.App.2d 685, 690.) And though the City could have enacted an ordinance that preserves views, the Los Angeles Municipal Code contains no such language.

Conclusion

Accordingly, for the reasons set forth above, this Court should affirm the opinion of the Court of Appeal and hold that Section 36900(a) does not confer a private right of action to enforce city ordinances.

Respectfully submitted,

July 10, 2025

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Certificate of Word Count

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The text of this Answer consists of 9,580 words as counted by the Microsoft Word program used to generate this Answer.

Dated: July 10, 2025

/s/ *Rex S. Heinke*
Rex S. Heinke

Proof of Service

I, Stacey Schiager, declare as follows:

I am over the age of eighteen years and am not a party to this action. My business address is 96 Jessie Street, San Francisco, CA 94105. On July 10, 2025, I mailed the following documents:

Answering Brief on the Merits

I enclosed a copy of the document identified above in an envelope and deposited the sealed envelope with the U.S. Postal Service, with the postage fully prepaid. The envelope was addressed as follows:

Clerk for Hon. Lisa Sepe-Wiesenfeld, Dept. N
Los Angeles Superior Court, West District
Santa Monica Courthouse
1725 Main Street
Santa Monica, CA 90401
Trial Judge

Additionally, on July 10, 2025, the above-identified document was electronically served on all parties, pursuant to the parties' agreement to electronic service, and the California Court of Appeal via TrueFiling, which will submit a separate proof of service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 10, 2025.

/s/ *Stacey Schiager*
Stacey Schiager