

1 Wilfredo Trivino-Perez (SBN 219345)
2 **TRIVINO-PEREZ & ASSOCIATES**
3 10940 Wilshire Blvd., 16th Floor
4 Los Angeles, CA 90024
5 Phone: (310) 443-4251
6 Fax: (310) 443-4252

7 Attorneys for Plaintiff Oscar De La Torre

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11 OSCAR DE LA TORRE)
12) Plaintiff,)
13) v.)
14) CITY OF SANTA MONICA and)
15) DOES 1 through 10, inclusive)
16) Defendants.)
17)
18)

Case No.:
**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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1 **I. INTRODUCTION**

2 1. By this Complaint, Plaintiff Oscar De La Torre (“Plaintiff” or “De La Torre”)
3 seeks an injunction prohibiting Defendant City of Santa Monica (“Defendant”) from
4 preventing him from participating in all city council decisions, deliberations and discussions,
5 unless and until a court determines he has a conflict of interest in connection with certain
6 matters before the Santa Monica City Council.

7 2. After years of advocating for district-based elections including through
8 litigation, Plaintiff was elected to the Santa Monica City Council on a campaign that
9 prominently featured Plaintiff’s view on district-based elections. Yet, just a month after
10 Plaintiff took his seat on the City Council, and without any advice from the Fair Political
11 Practices Commission (“FPPC”) or adjudication by any court, a majority of Defendant’s city
12 council voted to exclude Plaintiff from all discussions, deliberations and decisions concerning
13 *Pico Neighborhood Association, et al. v. City of Santa Monica* – a case currently pending
14 before the California Supreme Court that seeks the implementation of district-based elections.

15 3. Since Defendant’s exclusion of Plaintiff from the city council’s meetings, **the**
16 **FPPC has advised that Plaintiff does not have a conflict of interest**, yet Defendant persists
17 in excluding Plaintiff from performing his duties as a member of the Santa Monica City
18 Council.

19 4. Defendant simply lacks authority to unilaterally exclude a member of its city
20 council from the council’s meetings. Plaintiff therefore asks this Court for an injunction to
21 prohibit Defendant from excluding Plaintiff, or any other city council member, from city
22 council meetings, discussions, deliberations and decisions, absent a judicial determination that
23 his/her participation is unlawful.

24 **II. PARTIES**

25 5. Plaintiff Oscar De La Torre is a resident of Santa Monica, California. In or
26 around December 2020, having prevailed in the election a month earlier, Plaintiff was sworn
27 into office as one of seven members of the Santa Monica City Council.
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1 6. Defendant City of Santa Monica is a political subdivision of the State of
2 California, specifically, a city.

3 7. Does 1 through 100, inclusive, are Defendants that have caused Defendant City
4 of Santa Monica to unlawfully exclude Plaintiff from meetings, discussions, deliberations
5 and/or decisions of the Santa Monica City Council, or failed to prevent the exclusion of
6 Plaintiff, or are otherwise responsible for the acts and omissions alleged herein.

7 **III. JURISDICTION AND VENUE**

8 8. This Court has jurisdiction under one or more of the following: Code of Civil
9 Procedure §§ 1060, 1085 and 1094.5; and Article VI, section 10 of the California Constitution.

10 9. Venue is proper in this Court. Plaintiff and Defendant are both situated in Los
11 Angeles County, and the acts and omissions complained of herein occurred in Los Angeles
12 County.

13 **IV. FACTS**

14 **A. At-Large Voting and the California Voting Rights Act**

15 10. “At-large” voting – an election method that permits voters of an entire
16 jurisdiction to elect candidates to all of the seats of its governing board – is disfavored under
17 California law. (See *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667). If the
18 U.S. Congress, for example, were elected through a nationwide at-large election, rather than
19 through typical single-member districts, each voter could cast up to 435 votes and vote for
20 any candidate in the country, not just the candidates in the voter's district, and the 435
21 candidates receiving the most nationwide votes would be elected. Because at-large elections
22 allow each voter to vote for every seat on a governing board, they allow a bare majority of
23 voters to control *every* seat, not just the seats in a particular district or a proportional majority
24 of seats.

25 11. Voting rights advocates have targeted at-large election schemes for decades,
26 because they often result in “vote dilution,” or the impairment of minority groups’ ability to
27 elect their preferred candidates or influence the outcome of elections, which occurs when the
28 electorate votes in a racially polarized manner. (See *Thornburg v. Gingles* (1986) 478 U.S. 30,

1 46). The U.S. Supreme Court “has long recognized that multi-member districts and at-large
2 voting schemes may operate to minimize or cancel out the voting strength” of minorities. (*Id.*
3 at 47; see also *id.* at 48, fn. 14 [at-large elections may also cause elected officials to “ignore
4 [minority] interests without fear of political consequences”], citing *Rogers v. Lodge* (1982)
5 458 U.S. 613, 623; *White v. Regester* (1973) 412 U.S. 755, 769). “[T]he majority, by virtue of
6 its numerical superiority, will regularly defeat the choices of minority voters.” (*Gingles*, at 47).
7 When racially polarized voting occurs, dividing the political unit into single-member districts
8 may facilitate a minority group's ability to elect its preferred representatives. (*Rogers*, at 616).

9 12. In 2002, the Legislature passed, and the Governor signed into law, the California
10 Voting Rights Act (“CVRA,” Elec. Code §§ 14025 et seq.). The CVRA prohibits at-large
11 elections in political subdivisions that experience racially polarized voting. Since enacting the
12 CVRA, the Legislature has passed other legislation to facilitate political subdivisions, like
13 Defendant City of Santa Monica, scrapping at-large elections in favor of district-based
14 elections. For example, in 2015 and 2016 the Legislature amended section 34866 of the
15 Government Code to allow cities to promptly adopt district-based elections without presenting
16 the issue to the electorate. Much of this legislation has originated from civil rights groups, and
17 particularly Latino civil rights groups; for example, the CVRA was introduced by Senator
18 Richard Polanco, longtime Chair of the Latino Legislative Caucus, and was supported by
19 groups like the Mexican American Legal Defense and Education Fund, the National
20 Association of Latino Elected Officials and Southwest Voter Registration Education Project.

21 13. Because of their deleterious effect on minority representation, at-large elections
22 are uniformly despised among civil rights groups. In fact, this recognition has resulted in the
23 issue of district-based elections being inextricably intertwined with that of Latino civil rights
24 in California.

25 **B. Oscar De La Torre’s Advocacy for District Elections**

26 14. Plaintiff De La Torre has been involved in the Latino civil rights movement
27 since he was a high school student attending Santa Monica High School. In the early 1990s,
28 De La Torre was told he could not be elected student body president because he was “a

1 Mexican.” He used that slight as motivation and was elected the first Chicano student body
2 president of Santa Monica High School in at least the preceding three decades, and he used
3 that platform to call attention to the racism in the schools. After high school, De La Torre
4 attended Chico State University, where he likewise was elected student body president, and
5 used his platform to oppose the infamous (and unconstitutional) Proposition 187. Upon
6 returning to Santa Monica, after obtaining a graduate degree in public administration from the
7 University of Texas, De La Torre worked with at-risk youth, and established the Pico Youth
8 and Family Center to combat the gang violence that was ravaging the Latino-concentrated
9 Pico Neighborhood where he was raised. At the urging of a group committed to the education
10 of the most vulnerable students, Mothers for Justice, De La Torre sought election to the Santa
11 Monica Malibu Unified School District Board in 2002, and he was successful.

12 15. Plaintiff De La Torre spent the next several years, both in his role on the school
13 board and as executive director of the Pico Youth and Family Center, working and advocating
14 for the residents of the Pico Neighborhood, especially the Latino and African American
15 residents too often ignored by Defendant and its city council. To further that cause, in or
16 about 2005 De La Torre joined the board of the Pico Neighborhood Association (“PNA”), a
17 non-profit neighborhood organization dedicated to improving, and advocating for, the Pico
18 Neighborhood – a region of Santa Monica that is much less wealthy than other parts of the
19 city, and has been the dumping ground for all the city’s undesirable, and even toxic, elements.

20 16. Over the course of his work, De La Torre learned that Defendant, and
21 specifically its city council, was generally unresponsive to the Latino community and the Pico
22 Neighborhood where that community is concentrated. And, the reason for that
23 unresponsiveness was also laid bare – with at-large elections, the city council members did not
24 need the votes of Latinos or Pico Neighborhood residents to win re-election. In fact, in the 64
25 years of an at-large council, up until an appointment to a council vacancy in 2010, no Pico
26 Neighborhood resident had ever served on the Santa Monica City Council, and in that time
27 only one Latino had ever been elected to the Santa Monica City Council (and he lost his bid
28 for re-election four years later). Through his service on the Santa Monica Malibu Unified

1 School District Board, De La Torre witnessed his board colleagues, almost all of whom lived
2 in the wealthiest portion of Santa Monica – the North of Montana neighborhood – make
3 decisions that negatively impacted students of color from his neighborhood.

4 17. Recognizing this inequitable treatment would continue as long as the at-large
5 election system persists, De La Torre set out to change Defendant’s elections – from the at-
6 large system known to dilute minority votes, to the district-based system favored by the
7 CVRA. He raised the issue to his wife, Maria Loya, who had herself been a candidate for the
8 Santa Monica City Council in 2004, and, though she received the most votes in the Pico
9 Neighborhood (even besting Bobby Shriver), lost in the at-large election system. He also
10 raised the issue in discussions with the board of PNA. Having investigated the issue, both Ms.
11 Loya and PNA became firmly committed to eliminating Defendant’s at-large election system
12 and replacing it with district-based elections.

13 18. In 2015, PNA, including Plaintiff and Ms. Loya, held a series of informational
14 and advocacy events concerning Defendant’s unlawful at-large elections. With the Pico
15 Neighborhood community solidly in support of district-based elections for Defendant’s city
16 council, PNA held a rally at the Santa Monica City Hall in late 2015. At that rally, PNA
17 presented a formal written demand to Defendant’s city attorney and city council, alleging that
18 Defendant’s at-large election system violated both the CVRA and the Equal Protection Clause
19 of the California Constitution, as it was adopted and maintained for the purpose of excluding
20 minority residents from the city council.

21 19. Despite the promise to respond to that 2015 formal demand, Defendant did not
22 respond at all for several months. Unable to achieve any change through their political
23 advocacy efforts, PNA and Ms. Loya proceeded to litigation advocacy and filed a lawsuit
24 against Defendant, captioned *Pico Neighborhood Association, et al. v. City of Santa Monica*,
25 Los Angeles Superior Court Case No. BC616804 (“the Voting Rights Case”) in or around
26 April 2016. In civil rights struggles, litigation often serves an important advocacy role. For
27 example, the long struggle against racial segregation has included not just marches, boycotts
28 and lobbying lawmakers, but also litigation such as *Brown v. Board of Education of Topeka*

1 (1954) 347 U.S. 483 (holding racial segregation in schools is unconstitutional) and *Reitman v.*
2 *Mulkey* (1967) 387 U.S. 369 (finding California's Proposition 14, which was passed in 1964 to
3 again authorize racial discrimination in housing, was unconstitutional).

4 20. In August 2018, the Voting Rights Case was tried over the course of six weeks
5 in this Court before Hon. Yvette Palazuelos. Following that trial, and post-trial briefing and
6 hearings, this Court entered judgment in favor of the plaintiffs – PNA and Ms. Loya – and
7 against Defendant City of Santa Monica, finding that Defendant's at-large election system
8 violated both the CVRA and the Equal Protection Clause of the California Constitution.

9 21. Defendant appealed the judgment in the Voting Rights Case, and in July 2020
10 the intermediate appellate court reversed. The plaintiffs in the Voting Rights Case petitioned
11 the California Supreme Court to review that decision, and the California Supreme Court
12 granted their petition in October 2020. On its own motion, the California Supreme Court also
13 depublished the intermediate appellate court's decision. The Voting Rights Case is now
14 pending in the California Supreme Court – the plaintiffs filed their opening brief on December
15 21, 2020 and Defendant is expected to file its brief by March 22, 2021.

16 22. Throughout the five years the Voting Rights Case has been pending, the case,
17 and more generally the method of electing Defendant's city council, has been a matter of great
18 public concern, garnering attention from media in Santa Monica, the rest of California, and
19 even national media. Voice of America even filmed a story concerning the case to be aired in
20 Russia. In Santa Monica in particular, residents have expressed their grave disappointment in
21 incumbent councilmembers spending an undisclosed amount of money (widely believed to be
22 tens of millions of dollars) on expensive attorneys to fight against the voting rights of
23 minorities throughout California, all to protect their own re-election. In fact, a 2018 survey of
24 400 Santa Monica voters revealed that Santa Monican's overwhelmingly supported adopting
25 district-based elections, yet until just a few months ago Defendant's council members
26 apparently were uniformly opposed to district-based elections.

27 23. Since at least 2015, De La Torre has publicly advocated for district-based
28 elections, with any means he has had at his disposal, arguing that Defendant should stop

1 wasting tens of millions of taxpayer dollars on its ill-conceived fight against the CVRA.
2 Plaintiff has believed, and continues to believe, that money could be better spent on
3 fundamental city services, particularly in light of budget constraints resulting from the Covid-
4 19 economic downturn. Through all of his advocacy, the Santa Monica electorate has long
5 been aware of De La Torre's view on this issue.

6 **C. Oscar De La Torre's 2020 Run for Santa Monica City Council**

7 24. Disturbed by the mismanagement of the City, and the continued harm inflicted
8 upon the Pico Neighborhood, De La Torre decided to enter the 2020 election for four city
9 council seats. Because of the at-large election system, and the extraordinary cost of at-large
10 campaigns for Santa Monica City Council, De La Torre and three other like-minded
11 candidates formed a "slate" to pool some of their campaign resources and support one
12 another's candidacies. Along with Phil Brock, Christine Parra and Mario Fonda Bonardi, De
13 La Torre branded the group the "Change Slate."

14 25. As it was a significant issue in Santa Monica and elsewhere, the method of
15 electing the city council was a significant issue in the 2020 campaign. All of the Change Slate
16 candidates, including De La Torre, expressed their support for adopting district elections and,
17 relatedly, ending the expensive and misguided fight against the CVRA in the Voting Rights
18 Case. All of the incumbent council members seeking re-election expressed their opposition to
19 district elections.

20 26. On May 31, 2020 the ineptitude of Defendant's upper management was on full
21 display to the world. George Floyd had been killed by police in Minneapolis, and that set off
22 protests in cities across the United States, and even overseas. Looters exploited some of those
23 protests to facilitate their theft, vandalism and arson perpetrated mostly against retail
24 establishments. In the days leading up to May 31, a protest was publicly organized to occur in
25 Santa Monica, specifically in the downtown area. Defendant's upper management did little to
26 prepare for the protests; rather Defendant's police chief, for example, continued her vacation
27 in Northern California instead of returning to Santa Monica. Soon after the protest began,
28 Defendant's police force fired tear gas and rubber bullets at peaceful protestors in and around

1 the Third Street Promenade area. The mayhem that erupted provided a perfect diversion for
2 looters to strike local businesses just a short distance from the Third Street Promenade.
3 Defendant's police force took essentially no action to stop or otherwise prevent that looting.
4 As reported by Los Angeles magazine, an after-action report of the police response was
5 prepared by an outside firm but was then suppressed by Defendant's upper management
6 because they did not like what it said. Much of the Santa Monica electorate were already
7 dissatisfied with Defendant's incumbent councilmembers and upper management, and the
8 handling of the May 31, 2020 protests confirmed their views. Some Santa Monica residents
9 even contend that one or more incumbent councilmembers directed the police to brutalize
10 peaceful protesters in one area while allowing looting in another area. Regardless, the events
11 of May 31, 2020 demonstrated to the electorate what De La Torre already knew – change was
12 needed.

13 27. Defendant's handling of the Voting Rights Case likewise demonstrated these
14 same systemic problems. Contrary to the will of Santa Monica voters (evidenced by the
15 survey discussed above), Defendant's incumbent city council members depleted the city's
16 coffers by tens of millions of dollars to fight for their own city council seats.

17 28. On November 3, 2020, Santa Monica voters made their voices heard. They
18 voted three members of the Change Slate – Phil Brock, Christine Parra and Oscar De La Torre
19 – into office to replace three incumbent city council members. That was an extraordinary
20 result. In the three decades preceding the November 2020 election, only three incumbents
21 were defeated in Santa Monica City Council elections; that same number were defeated in just
22 one election cycle in 2020. Through the November 2020 election, Santa Monica voters clearly
23 expressed their desire for district elections, and, relatedly, that Defendant end its expensive
24 and futile fight against the CVRA.

25 29. In anticipation of being sworn in as a member of the Santa Monica City Council,
26 De La Torre informed the PNA board that he would be resigning his position with PNA upon
27 taking his seat on the Santa Monica City Council in December 2020. Though De La Torre
28 was not required to resign his position with PNA, he did so simply to follow the example of

1 some of his previous colleagues on the Santa Monica Malibu Unified School District Board
2 who resigned their positions with other groups that advocated to that governing board upon
3 being seated on that board. With the results of the November 3, 2020 election having been
4 certified, on or about December 8, 2020, De La Torre was sworn in as a member of the Santa
5 Monica City Council.

6 **D. Defendant Seeks Advice from the FPPC, and the FPPC Concludes Oscar De**
7 **La Torre Does Not Have a Conflict of Interest**

8 30. On or about November 25, 2020, even prior to De La Torre taking his place on
9 the Santa Monica City Council, Defendant's interim city attorney, George Cardona, wrote to
10 the FPPC seeking an opinion on whether Plaintiff had a conflict of interest that would prevent
11 Plaintiff from participating in city council meetings, discussions and votes concerning the
12 Voting Rights Case.

13 31. On or about February 4, 2021, the FPPC responded to Mr. Cardona's letter. The
14 FPPC laid out the relevant facts and law and concluded that Plaintiff Oscar De La Torre does
15 **not** have a conflict of interest that would preclude him from participating in meetings,
16 discussions or votes concerning the Voting Rights Case. A true and correct copy of the
17 FPPC's opinion letter is attached hereto as **Exhibit A**.

18 **E. Before the FPPC Could Respond, Defendant Excludes Oscar De La Torre**
19 **From Its City Council Meetings**

20 32. But Defendant did not wait for the FPPC opinion. Instead, on January 26, 2021,
21 four out of seven members of Defendant's divided city council voted to exclude Plaintiff from
22 all discussions, meetings and votes relating to the Voting Rights Case. Immediately after that
23 vote, Defendant's city council went into closed session where they electronically removed
24 Plaintiff from the meeting.

25 33. On Friday, January 22, 2021, without even giving Plaintiff the courtesy of any
26 advance notice, Defendant placed an item on the January 26, 2021 city council agenda,
27 whereby Defendant's interim city attorney asked Defendant's city council to exclude Plaintiff
28 from participating in any city council meetings or decisions relating to the Voting Rights Case.

1 Defendant's interim city attorney even suggested that Plaintiff should not be allowed to vote,
2 as a member of the city council, on whether he would be excluded from future meetings.
3 Defendant's interim city attorney did not identify any authority suggesting that Defendant's
4 city council had the power to exclude one of its members from city council meetings. Though
5 more than a month earlier he was sent an opinion letter from attorney Daniel Ambrose that
6 concluded De La Torre did not have a conflict of interest, Defendant's interim city attorney
7 did not include that opinion letter (or any mention of it) in his staff report to Defendant's city
8 council.

9 34. On Tuesday January 26, 2021, the issue came before Defendant's city council.
10 The discourse began with remarks by the interim city attorney, Mr. Cardona. Mr. Cardona
11 insisted that Plaintiff had a conflict of interest, and that he should not be permitted to
12 participate in the city council's discussions, deliberations and decisions concerning the Voting
13 Rights Case. Mr. Cardona purported to rebut some, but not all, of the analysis of Mr.
14 Ambrose's opinion letter, though he did not provide a copy of that opinion letter sufficiently in
15 advance of the meeting to allow the city council members to fully evaluate that opinion letter.

16 35. Plaintiff then sought to ask questions of the interim city attorney, as is his right
17 as a member of the city council. However, Plaintiff was repeatedly interrupted by other
18 council members who "objected" to Plaintiff's questioning of the interim city attorney and
19 directed the city attorney not to answer Plaintiff's questions. The interim city attorney largely
20 refused to answer Plaintiff's questions. Notably, however, the interim city attorney could not
21 conjure up a reason to refuse to answer one important question from Plaintiff:

22 Are you aware of any authority that allows a city council to exclude a duly
23 elected council member from council discussions, deliberations and decisions,
24 based on an unadjudicated allegation of a conflict of interest, and if so, what is
25 that authority?

26 In response, the interim city attorney identified only section 605 of the Santa Monica City
27 Charter. But Section 605 does not speak to the issue at all; it simply says: "All powers of the
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1 City shall be vested in the City Council, subject to the provisions of this Charter and to the
2 Constitution of the State of California.”

3 36. The public comments unanimously supported De La Torre and criticized
4 Defendant’s city council and interim city attorney for their biased and unfounded accusation of
5 a conflict of interest. The commenters emphasized that De La Torre had no more of a conflict
6 than any other member of the city council; if anything, De La Torre has less of a conflict of
7 interest than other members of the city council who would almost certainly lose their council
8 seats in the district-based election system ordered by the Los Angeles Superior Court in the
9 Voting Rights Case.

10 37. Prior to hearing from De La Torre, some of Defendant’s council members
11 indicated they believed De La Torre had a conflict of interest and that they would vote to
12 exclude De La Torre from council meetings. Some council members also expressed unease
13 with making that determination, particularly before the FPPC responded to the interim city
14 attorney’s request for an opinion. Finally, De La Torre explained that he does not have a
15 conflict of interest, and that he should be permitted to participate in all city council meetings –
16 exactly what he was elected to do.

17 38. Unmoved by the public sentiment, Defendant’s city council voted 4 to 2 (with
18 one abstention) to exclude Plaintiff from all council meetings, discussions and decisions
19 concerning the Voting Rights Case. Immediately following the vote of its city council to
20 exclude Plaintiff, Defendant did in fact exclude Plaintiff from its closed session meeting that
21 same day.

22 39. Despite expressing its opinion that Plaintiff has a conflict of interest, neither
23 Defendant nor anyone else has sought an injunction from any court.

24 40. Upon receiving the FPPC opinion letter (**Exhibit A**), Plaintiff requested that
25 Defendant reverse its exclusion of Plaintiff from city council meetings, but Defendant refused.

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1 **E. Councilmember Oscar De La Torre Does Not Have a Conflict of Interest**

2 41. As the FPPC concluded, Plaintiff does not have a conflict of interest that
3 prevents him from participating in city council meetings, discussions and decisions concerning
4 the Voting Rights Case.

5 42. The Voting Rights Case seeks only non-monetary relief – an injunction and
6 declaration from the Court. Consistent with the requested relief, the Judgment entered by the
7 Los Angeles Superior Court awards the plaintiffs injunctive and declaratory relief, but no
8 monetary relief.

9 43. While the plaintiffs’ attorneys in the Voting Rights Case are likely entitled to
10 recover their fees and costs, and they have already filed a motion to recover some of their fees
11 and a memorandum of costs, the plaintiffs cannot share in those fees.

12 44. Neither Plaintiff nor his wife have any financial interest in the outcome of the
13 Voting Rights Case.

14 45. Plaintiff’s interest in the outcome of the Voting Rights Case is no different than
15 any other Santa Monica voter. Plaintiff wants Defendant’s city council elections to be brought
16 into compliance with the CVRA, as requested by the plaintiffs in the Voting Rights Case,
17 because the current at-large elections are racially discriminatory and have resulted in the
18 neglect of the Pico Neighborhood. And, Plaintiff wants Defendant to stop wasting huge sums
19 of money on a divisive case to fight against the CVRA and minority voting rights.

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FIRST CAUSE OF ACTION

Declaratory Relief

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23 46. Plaintiff realleges and incorporates by reference the allegations in the preceding
24 paragraphs as if fully set forth herein.

25 47. An actual controversy has arisen and now exists between Plaintiff and Defendants.
26 As described above, Plaintiff contends that: 1) Defendant does not have authority, under the
27 law, to exclude Plaintiff from city council meetings, deliberations or votes without either
28 Plaintiff’s consent or a judicial determination that Plaintiff has a conflict of interest; and 2)

1 Plaintiff does not have a conflict of interest that prevents him from participating in city council
2 meetings, deliberations or votes concerning the Voting Rights Case. Defendant contends that
3 it may unilaterally determine that Plaintiff (or any other council member(s)) has a conflict of
4 interest and exclude Plaintiff (or any other council member(s)) from participating in city
5 council meetings, deliberations or votes, even without a judicial determination that any
6 conflict of interest exists.

7 48. A judicial determination of these issues, or at least some portion thereof, and of
8 the respective duties of Plaintiff and Defendant is necessary and appropriate at this time under
9 the circumstances because Defendant has already excluded Plaintiff from a city council
10 meeting concerning the Voting Rights Case and has indicated it will continue to exclude
11 Plaintiff from future council meetings and votes concerning the Voting Rights Case. A judicial
12 declaration is necessary to prevent Defendant from excluding Plaintiff and preventing Plaintiff
13 from executing his duties as a member of the Santa Monica City Council.

14 15 **SECOND CAUSE OF ACTION**

16 **Injunctive Relief**

17 49. Plaintiff realleges and incorporates by reference the allegations in the preceding
18 paragraphs as if fully set forth herein.

19 50. Defendant is not lawfully permitted to exclude Plaintiff (or any other
20 councilmember(s)) from any city council meetings, deliberations or votes without first
21 obtaining a judicial determination that Plaintiff (or any other councilmember(s)) has a conflict
22 of interest that precludes his participation.

23 51. Nonetheless, Defendant has excluded and, absent equitable relief from this
24 Court, will continue to exclude Plaintiff from city council meetings, and prevent Plaintiff from
25 fulfilling his duties as a member of the Santa Monica City Council, despite having obtained no
26 judicial determination that Plaintiff has a conflict of interest.

27 52. Plaintiff is without a plain, speedy and adequate remedy in the ordinary course
28 of law to compel Defendant to comply with the legal requirements described herein, namely to

1 refrain from excluding Plaintiff (or any other councilmember(s)) from city council meetings,
2 deliberations or votes absent a judicial determination that Plaintiff (or any other
3 councilmember(s)) has a conflict of interest.

4 53. Plaintiff, along with the residents of Santa Monica he was elected to represent,
5 have suffered and will continue to suffer irreparable injury unless and until this Court enjoins
6 Defendant from continuing its illegal conduct.

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8 **THIRD CAUSE OF ACTION**

9 **Violation of the Ralph M. Brown Act (Government Code § 54950)**

10 54. Plaintiff realleges and incorporates by reference the allegations in the preceding
11 paragraphs as if fully set forth herein.

12 55. Government Code § 54953 requires, with only specified exceptions, that “all
13 persons shall be permitted to attend” meetings of all or a majority of any city council. The
14 only specified exception that could be applicable to meetings concerning the Voting Rights
15 Case is found in Government Code § 54956.9, which provides “a legislative body of a local
16 agency” may “hold[] a closed session to confer [regarding] pending litigation.” Government
17 Code § 54956.9 does not permit a closed session accessible to just a majority of the members
18 of a legislative body rather than all the members. Where the Legislature wanted to refer to “a
19 majority ... of the members of a legislative body” rather than the entire legislative body, in the
20 Ralph M. Brown Act, the Legislature did exactly that explicitly. (See, e.g., Government Code
21 § 54957.5.)

22 56. Defendant’s closed session meeting on January 26, 2021 was neither accessible
23 such that “all persons [were] permitted to attend,” nor was it a closed session accessible to the
24 whole “legislative body of a local agency.” Nor do any of the other specified exceptions of the
25 Ralph M. Brown Act apply to that closed session meeting. Therefore, Defendant’s closed
26 session meeting of a majority of its city council violated the Ralph M. Brown Act.

1 57. Government Code § 54960 authorizes any interested person to commence an
2 action by mandamus, injunction or declaratory relief to secure compliance with the Ralph M.
3 Brown Act or prevent further violation of the Ralph M. Brown Act.

4 58. Absent relief from this Court, Defendant will continue to violate the Ralph M.
5 Brown Act by, among other things, holding closed session meetings accessible to a majority,
6 but not all, of the members of its city council.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
10 follows:

11 1. For a decree that Defendants may not exclude Plaintiff from meetings,
12 discussions or decisions of the Santa Monica City Council unless and until a court of
13 competent jurisdiction determines that Plaintiff has a conflict of interest that prevents him
14 from participating in the corresponding meetings, discussions or decisions;

15 2. For a decree that Plaintiff is entitled to participate in all meetings, discussions
16 and decisions of the Santa Monica City Council, like all other members of the Santa Monica
17 City Council, unless and until a court of competent jurisdiction determines that Plaintiff has a
18 conflict of interest that prevents him from participating in the corresponding meetings,
19 discussions or decisions;

20 3. For preliminary and permanent injunctive relief enjoining Defendants from
21 excluding Plaintiff from meetings, discussions or decisions of the Santa Monica City Council
22 unless and until a court of competent jurisdiction determines that Plaintiff has a conflict of
23 interest that prevents him from participating in the corresponding meetings, discussions or
24 decisions;

25 4. For injunctive relief prohibiting Defendants from excluding any member of the
26 Santa Monica City Council from meetings, discussions or decisions of the Santa Monica City
27 Council absent a determination by a court of competent jurisdiction that such member of the
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1 Santa Monica City Council has a conflict of interest that prevents him/her from participating
2 in the corresponding meetings, discussions or decisions;

3 5. For injunctive relief prohibiting Defendants from holding closed session
4 meetings of a majority of the Santa Monica City Council while excluding Plaintiff or any
5 other member of the Santa Monica City Council from those closed session meetings, unless
6 and until a court of competent jurisdiction has determined that such member of the Santa
7 Monica City Council has a conflict of interest that prevents him/her from participating in the
8 closed session meetings.

9 6. For injunctive relief requiring Defendant to permit Plaintiff to view the
10 recording of the January 26, 2021 closed session council meeting from which he was
11 excluded.

12 7. For an award of Plaintiff attorneys' fees, costs, litigation expenses and
13 prejudgment interest pursuant to the Ralph M. Brown Act, section 1021.5 of the Code of
14 Civil Procedure, and other applicable law; and

15 8. For such further relief as the Court deems just and proper.
16
17

18 Respectfully submitted:

19 DATED: March 3, 2021

TRIVINO-PEREZ & ASSOCIATES

20 By: 
21 Wilfredo Trivino-Perez
22 Attorneys for Plaintiff Oscar de la Torre
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EXHIBIT 1



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

January 4, 2021

George S. Cardona
Interim City Attorney
City of Santa Monica
City Attorney's Office
1685 Main Street, Room 310
Santa Monica, California 90401

Re: Your Request for Advice
Our File No. A-20-149

Dear Mr. Cardona:

This letter responds to your request for advice regarding the Political Reform Act (the "Act") and Government Code section 1090, et seq.¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the Los Angeles County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTIONS

1. Do the conflict of interest provisions of the Act or Section 1090 prohibit Santa Monica Councilmember Oscar de la Torre from participating in governmental decisions relating to pending litigation against the City, including a potential settlement agreement, where his spouse is a named plaintiff in the lawsuit?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. Do the conflict of interest provisions of the Act or Section 1090 prohibit Councilmember de la Torre from participating in governmental decisions relating to pending litigation against the City, including a potential settlement agreement, where his spouse is the Communications Officer for a nonprofit organization that is also a named plaintiff in the lawsuit?

CONCLUSIONS

1. No. As explained below, neither the Act nor Section 1090 prohibits Councilmember de la Torre from participating in governmental decisions relating to the City's pending litigation, including a potential settlement agreement, where his spouse is a named plaintiff.

2. No. As explained below, neither the Act nor Section 1090 prohibits Councilmember de la Torre from participating in governmental decisions relating to pending litigation against the City, including a potential settlement agreement, where his spouse is the Communications Officer for a nonprofit organization that is also a named plaintiff.

FACTS AS PRESENTED BY REQUESTER

You are the Interim City Attorney for the City of Santa Monica. In November of 2020, Oscar de la Torre was elected to serve as a member of the Santa Monica City Council and assumed his duties as a Councilmember on December 8, 2020. Prior to being elected to the City Council, Councilmember de la Torre served as an elected member of the governing board of the Santa Monica-Malibu Unified School District ("SMMUSD") for approximately 18 years.

The City of Santa Monica ("City") is currently the defendant in pending litigation challenging the City's use of an at-large election system to elect its City Council members. The original complaint in the litigation was filed on April 12, 2016 by three plaintiffs: Pico Neighborhood Association ("PNA"), Maria Loya (the spouse of Councilmember de la Torre), and Advocates for Malibu Public School.

The original complaint alleging violations of California Voting Rights Act ("CVRA") and California Equal Protection Clause did not seek damages, but did seek an award of attorneys' fees, costs, and litigation expenses. A First Amended Complaint ("FAC"), which again included alleged violations of the CVRA and California Equal Protection Clause, was filed in 2017 by PNA and Ms. Loya. The FAC did not seek damages, but did seek an award of attorneys' fees, costs, and litigation expenses.

The litigation proceeded to trial, judgment, and appeal based on the allegations in the FAC. After the trial, the court issued judgment in favor of plaintiffs on both of their causes of action in 2019. Plaintiffs' attorneys then filed a motion seeking approximately \$902,000 in costs and the City filed a motion to strike/tax those costs to significantly reduce them. Plaintiffs' attorneys also filed a motion seeking an award of more than \$22 million in attorneys' fees pursuant to a provision of the CVRA. Pursuant to an agreement between the parties, the City's response to the fee motion, and the

hearings regarding costs and fees have been continued to follow the resolution of proceedings in the Court of Appeal and the California Supreme Court.²

Councilmember de la Torre has advised that there is no obligation on the part of him, his spouse, or PNA to pay any attorneys' fees or costs in connection with the litigation, and that his understanding is that the plaintiffs' attorneys would seek to recover fees and costs only from the City. Councilmember de la Torre has further advised that if plaintiffs' attorneys do not recover any fees or costs from the City, they have no ability to collect costs or fees from him, his spouse, or PNA. Finally, Councilmember de la Torre has orally advised that there is no arrangement under which any portion of any recovery from the City of attorneys' fees or costs would flow to him, PNA, or his spouse; any entity controlled, directly or indirectly, by him, PNA, or spouse; or any entity that employs or would otherwise provide any financial benefit to him or his spouse.³

PNA raises a small amount of money through modest membership dues, and its annual budget is consistently less than \$5,000. PNA has no employees and engages in no commercial transactions. Rather, PNA's board – usually consisting of about 12 residents who are unpaid volunteers – meets approximately once a month to discuss issues pertinent to the Pico Neighborhood, and advocates for the interests of the Pico Neighborhood residents. According to the PNA website, it was “[e]stablished in 1979, the PNA is a non-profit organization that has been involved in a wide variety of issues – crime & safety, housing, neighborhood conditions, commercial development, City Hall watch, youth activities, parks, and traffic control.”⁴

During his recent City Council campaign and as of November 2020, Mr. de la Torre was serving as chair of the PNA board. However, Mr. de la Torre has advised that following his election to the City Council, he resigned from his position as chair of the PNA board. You stated by email dated January 22, 2021, that the list of Board Members from the PNA website identifies his spouse as the “Communications Officer” for PNA. As Councilmember de la Torre and his spouse have always volunteered, they have never received any compensation from PNA.

ANALYSIS

The Act

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the

² The City appealed and the Court of Appeal reversed the judgment. Plaintiffs filed a Petition seeking review by the California Supreme Court, which granted review in October 2020 only on a limited question relating to the CVRA claim. Should plaintiffs ultimately prevail, the City anticipates returning to the trial court for resolution of the pending fee and cost motions.

³ By letter dated November 30, 2020, Councilmember de la Torre confirmed that he has no financial interest in the outcome of the instant lawsuit. At the outset of the case, his spouse and PNA both agreed that they have no right to any attorneys' fees or costs recovered in that case. Moreover, the attorneys representing his spouse and PNA agreed that they would handle the lawsuit pro bono and pay all associated costs.

⁴ See <https://pnasantamonica.wordpress.com/board-members>

official has a financial interest. Pertinent to your facts, the Act's conflict of interest provisions apply to financial interests based on the following:

- An interest in a business entity⁵ in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- The official's interest in his or her personal finances and those of immediate family members. (Section 87103.)

According to the facts, neither Councilmember de la Torre nor his spouse has ever received, nor have they been promised, any compensation from PNA, and there are no other facts to suggest PNA is a source of income to them. Additionally, Councilmember de la Torre does not have a business interest in PNA because, as a nonprofit organization, PNA is not a "business entity" as defined by the Act. (Section 82005.) Finally, there are no facts suggesting decisions related to the pending lawsuit will have any financial effect on his or his immediate family's personal finances. Therefore, based on the facts provided, Councilmember de la Torre does not have a disqualifying conflict of interest under the Act in future City Council decisions related to the instant lawsuit.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended not only to strike at actual impropriety, but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103Cal.App.3d 191, 197.)

Under Section 1090, the prohibited act is the making of a contract in which the official has a financial interest. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.) Finally, when Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is precluded from entering into the contract. (*Thomson, supra*, at pp. 647-649; *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

You have asked whether Councilmember de la Torre may participate in governmental decisions concerning a potential settlement agreement⁶ between plaintiffs and the City. The

⁵ Section 82005 defines a "business entity" as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

determinative question here is whether he has a financial interest in a potential settlement agreement.

The term “financially interested” contained in Section 1090 has been defined as follows:

The phrase ‘financially interested’ as used in Government Code section 1090 means any financial interest which might interfere with a city officer’s unqualified devotion to his public duty. The interest may be direct or indirect. It includes any monetary or proprietary benefit, or gain of any sort, or the contingent possibility of monetary or proprietary benefits. The interest is direct when the city officer, in his official capacity, does business with himself in his private capacity. The interest is indirect when the city officer, or the board of which he is a member, enters into a contract in his or its official capacity with an individual or business firm, which individual or business firm, by reason of the city officer's relationship to the individual or business firm at the time the contract is entered into, is in a position to render actual or potential pecuniary benefits directly or indirectly to the city officer based on the contract the individual or business firm has received.

(88 Ops.Cal.Atty.Gen. 32, 36.)

Councilmember de la Torre’s spouse

Initially, we note that under Section 1090, an official always has an interest in the community and separate property income of the official’s spouse. (*Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655; 89 Ops.Cal.Atty.Gen. 69 (2006)). Councilmember de la Torre would therefore have a prohibitive financial interest in any potential settlement agreement resulting in a monetary benefit or liability of his spouse based on her status as a plaintiff in the instant lawsuit. According to the facts, however, neither he nor his spouse has any financial interest, direct or indirect, in the outcome of the lawsuit, including any future settlement agreement. There is no obligation on the part of him or his spouse to pay any attorneys’ fees or costs in connection with the litigation, and no arrangement under which any portion of any recovery from the City of attorneys’ fees or costs would flow to him or his spouse.

Accordingly, Councilmember does not have a financial interest in any potential settlement agreement related to the lawsuit based on his spouse’s status as a plaintiff therein.

PNA

⁶ The litigation against the City may be resolved under a settlement agreement. “A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts.” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810-811, citing *Gorman v. Holte* (1985) 164 Cal.App.3d 984, 988; see also 91 Ops.Cal.Atty.Gen. 1 (2008); 86 Ops.Cal.Atty.Gen. 142 (2003) [Section 1090 would prohibit a public official from participating in a settlement agreement in which the official is financially interested, and the body in which the official is a member could not enter the contract].)

In addition to being a plaintiff in the lawsuit, Councilmember de la Torre's spouse is the Communications Officer for the other plaintiff, PNA. You have therefore asked whether Councilmember de la Torre would have a financial interest in any settlement agreement resulting in a monetary payment that would benefit PNA. Importantly, the Legislature has created various statutory exceptions to Section 1090's prohibition where the interest involved is deemed a "remote interest," as defined in Section 1091 or a "noninterest," as defined in Section 1091.5. If a noninterest is present, the public official's abstention is generally not required, and the contract may be made by the agency.

Section 1091.5(a)(8) establishes that an officer is not interested in a contract if his or her interest is:

That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

According to the facts, Councilmember de la Torre's spouse volunteers as the Communications Officer for PNA, a nonprofit organization. In addition, based upon the description of issues it addresses, the primary purpose of dealing with crime & safety, housing, youth activities, parks, and traffic control supports important functions of the City. Therefore, even if a settlement agreement would result in a monetary payment that would benefit PNA, Councilmember de la Torre would have a noninterest in the agreement. However, should Councilmember de la Torre participate in such an agreement, he must disclose his interest in the City Council's official records.

Accordingly, for purposes of the Act, Councilmember does not have a disqualifying conflict of interest in City Council decisions concerning the instant lawsuit against the City. For purposes of Section 1090, he is not financially interested in any future settlement agreement based on his spouse's status as a plaintiff, and he has a noninterest in any future settlement agreement resulting in a monetary payment that would benefit PNA.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

JW:aja

VERIFICATION

Verification of Pleading (Code Civ. Proc., § 446)

Declaration under Penalty of Perjury Form (Code Civ. Proc., §§ 446, 2015.5)

De La Torre v. City of Santa Monica

I, Oscar de la Torre, declare:

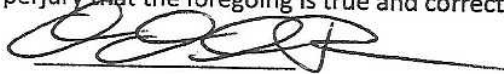
I am the Plaintiff in the above-entitled matter.

I have read the foregoing Complaint and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on February 17, 2021, at Santa Monica, California.

I declare (or certify) under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Oscar de la Torre', written over a horizontal line.

Oscar de la Torre