

1 GEORGE S. CARDONA (SBN 135439)
Interim City Attorney
2 BRANDON D. WARD (SBN 259375)
Deputy City Attorney
3 george.cardona@smgov.net
4 brandon.ward@smgov.net
1685 Main Street, Room 310
5 Santa Monica, California 90401
Telephone: (310) 458-8336
6 Facsimile: (310) 395-6727

7 Attorneys for Defendant
8 CITY OF SANTA MONICA

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

11 OSCAR DE LA TORRE,
12
13 Plaintiff,

14 v.

15 CITY OF SANTA MONICA,
and DOES 1 through 10, inclusive
16
17 Defendant.

CASE NO.: 21STCV08597

Assigned to Hon. Richard L. Fruin

DECLARATION OF BRANDON D. WARD IN SUPPORT OF DEMURRER TO FIRST AMENDED COMPLAINT

[Notice of Demurrer and Demurrer to Plaintiff's Complaint; Memorandum of Points and Authorities in Support Thereof and Request for Judicial Notice filed concurrently herewith]

Hearing Date: July 22, 2021
Hearing Time: 9:15 a.m.
Reservation No.: 515396310994

Filing Date: June 24, 2021
Dept.: 15

1 **DECLARATION OF BRANDON D. WARD IN SUPPORT OF**
2 **CITY’S DEMURRER TO FIRST AMENDED COMPLAINT**
3

4 I, Brandon D. Ward, hereby declare as follows:

5 1. I am a Deputy City Attorney for the City of Santa Monica (“City”) and I am counsel
6 of record for Defendant City in this matter. I am submitting this declaration in accordance with
7 California Code of Civil Procedure section 430.41. I have personal knowledge of the matters stated
8 herein, and if called upon to do so, I could and would testify competently thereto.

9 2. On or about March 3, 2021, Plaintiff Oscar de la Torre (“Plaintiff”) filed the
10 “Verified Complaint for Declaratory and Injunctive Relief” (“Complaint”) against Defendant City of
11 Santa Monica Santa Monica (“City”). On or about March 5, 2021, City was served with the
12 Complaint by Plaintiff.

13 3. Pursuant to Code of Civil Procedure section 430.40, City’s demurrer to the Complaint
14 was due on or before April 5, 2021, 30 days after service. Under Code of Civil Procedure section
15 430.41, the parties were required to meet and confer on the demurrer at least five days before the
16 demurrer was due. Here, the deadline for the parties to meet and confer on the Complaint was
17 March 31, 2021.

18 4. On March 22, 2021, Legal Coordinator Bradley Michaud emailed counsel for
19 Plaintiff a letter that I wrote and signed regarding a request to counsel for Plaintiff to meet and
20 confer prior to City filing a demurrer and motion to strike to the Complaint (March 22 Letter). The
21 March 22 Letter described several legal defects, misrepresentations, and incorrect statements found
22 in the Complaint that would serve as the basis to demur or strike. In my March 22 Letter, I also
23 requested that counsel for Plaintiff respond to the letter with his availability to meet and confer
24 between Tuesday, March 23, 2021 and Monday, March 29, 2021. Both I and the City Attorney were
25 copied on Legal Coordinator Michaud’s email. Neither I, the City Attorney, nor Legal Coordinator
26 Michaud received a response to my request to meet and confer.

27 5. On March 26, 2021, I emailed counsel for Plaintiff and reiterated my request to meet
28 and confer prior to City filing its demurrer and motion to strike. I also reattached a copy of the

1 March 22 Letter. Both the City Attorney and Legal Coordinator Michaud were copied on my email.
2 Neither I, the City Attorney, nor Legal Coordinator Michaud received a response to my reiterated
3 March 26 request to meet and confer.

4 6. On March 30, 2021 I attempted a third time to set up a meet and confer with counsel
5 for Plaintiff. At 3:05 p.m. Pacific Standard Time, I called the office of counsel for Plaintiff. The
6 person who answered the phone identified the location as counsel for the Plaintiff's law office. I
7 identified myself and the case on which I requested to meet and confer. The person who answered
8 the phone responded that counsel for Plaintiff was unavailable. I requested to leave a voicemail, and
9 I was transferred to counsel for Plaintiff's voicemail. I left a message requesting that counsel for
10 Plaintiff respond to my request to meet and confer. As of April 1, 2021, neither I, the City Attorney,
11 nor Legal Coordinator Michaud received a response from counsel for Plaintiff to my request to meet
12 and confer.

13 7. On April 1, 2021, and in accordance with Code of Civil Procedure section 430.41, I
14 filed and served my declaration in support of an automatic thirty (30-day) extension that "shall" be
15 granted to City. In my declaration, I cited the facts set forth above as demonstrating that City had
16 made a good faith attempt to meet and confer with Plaintiff and was unable to do so.

17 8. Between the time I filed and served my April 1, 2021 declaration and May 5, 2021,
18 Plaintiff's counsel never responded to my previous requests to meet and confer. On May 5, 2021, I
19 filed and served the City's demurrer to the Complaint.

20 9. On May 25, 2021, Plaintiff's counsel filed a First Amended Complaint ("FAC") that
21 deleted certain of the causes of action to which the City had demurred, but reasserted the two causes
22 of action that are the subject of the current demurrer.

23 10. On June 11, 2021, Legal Coordinator Bradley Michaud emailed counsel for Plaintiff a
24 letter that I wrote and signed regarding a request to counsel for Plaintiff to meet and confer prior to
25 City filing a demurrer to the FAC (June 11 Letter). The June 11 Letter described several legal
26 defects and fatal flaws in the FAC that would serve as the basis to demur. In my June 11 Letter, I
27 also requested that counsel for Plaintiff respond to the letter with his availability to meet and confer
28 between Monday, June 14, 2021 and Friday, June 18, 2021. Both I and the City Attorney were

1 copied on Legal Coordinator Michaud's email.

2 11. On June 15, 2021, I emailed counsel for Plaintiff and reiterated my request to meet
3 and confer prior to City filing its demurrer to the FAC. I also reattached a copy of my June 11
4 Letter. Both the City Attorney and Legal Coordinator Michaud were copied on my email.

5 12. On June 15, 2021, counsel for Plaintiff responded to my June 15 email and stated, "I
6 just got back from a short trip. I will review and get back to you this week." Since receiving his
7 June 15 response, I have not received any follow up correspondence from counsel for Plaintiff with
8 his availability to meet and confer on the City's demurrer to the FAC.

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

11 Executed this 24th day of June 2021, in Los Angeles, California.

12
13 /s/ Brandon D. Ward
14 BRANDON D. WARD
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF ELECTRONIC SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. My business address is 1685 Main Street, Santa Monica, California 90401.

I hereby state that I electronically filed the foregoing document with the Clerk of the Court for the Superior Court of California, County of Los Angeles through First Legal, our Electronic Filing Service Provider, on **June 24, 2021** described as:

**DECLARATION OF BRANDON D. WARD IN SUPPORT OF DEMURRER
TO FIRST AMENDED COMPLAINT**

The above document was sent from e-mail address **bradley.michaud@smgov.net**.

All participants in the case listed below are registered eFile users and service will be accomplished through our Electronic Filing Service Provider:

**Wilfredo Trivino-Perez
Trivino-Perez and Associates
10940 Wilshire Boulevard, 16th Floor
Los Angeles, California 90024
T: (310) 443-4251
F: (310) 443-4252
Email: wtp@tpalawyers.com; wtpesq@gmail.com**

/s/ Bradley C. Michaud
BRADLEY C. MICHAUD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**Branch Name:** Stanley Mosk Courthouse**Mailing Address:** 111 North Hill Street**City, State and Zip Code:** Los Angeles CA 90012**SHORT TITLE:** OSCAR DE LA TORRE vs CITY OF SANTA MONICA**CASE NUMBER:**

21STCV08597

NOTICE OF CONFIRMATION OF ELECTRONIC FILING

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect

Reference Number: 4422595_2021_06_24_22_20_52_756_0

Submission Number: 21LA03739359

Court Received Date: 06/24/2021

Court Received Time: 3:27 pm

Case Number: 21STCV08597

Case Title: OSCAR DE LA TORRE vs CITY OF SANTA MONICA

Location: Stanley Mosk Courthouse

Case Type: Civil Unlimited

Case Category: Other Complaint (non-tort/non-complex)

Jurisdictional Amount: Over \$25,000

Notice Generated Date: 06/24/2021

Notice Generated Time: 4:00 pm

Documents Electronically Filed/Received**Status**

Demurrer - without Motion to Strike

Accepted

Request for Judicial Notice

Accepted

Declaration (name extension)

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect

Contact: Legal Connect

Phone: (800) 909-6859