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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

OSCAR DE LA TORRE and ELIAS)
SERNA)

Plaintiffs,)

v.)

CITY OF SANTA MONICA and)
DOES 1 through 10, inclusive)

Defendants.)

Case No.: 21STCV08597

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S REQUEST FOR
JUDICIAL NOTICE**

Date: July 22, 2021
Time: 9:15 a.m.
Dept. 15

[Hon. Richard Fruin]

1 As demonstrated by its Demurrer, Defendant seeks judicial notice of not just the
2 existence of several documents, but also the truth of various matters asserted in those
3 documents. While the existence of those documents may be properly subject to judicial
4 notice, the truth of the matters asserted in those documents is not.

5 The California Supreme Court summarized the relevant principle in *Mangini v. R.J.*
6 *Reynolds Tobacco* (1994) 7 Cal.4th 1057:

7 While courts may notice official acts and public records, “we do not take
8 judicial notice of the truth of all matters stated therein.” [Citations.] “[T]he
9 taking of judicial notice of the official acts of a governmental entity does not in
10 and of itself require acceptance of the truth of factual matters which might be
11 deduced therefrom, since in many instances what is being noticed, and thereby
12 established, is no more than the existence of such acts and not, without
13 supporting evidence, what might factually be associated with or flow
14 therefrom” [quoting and citing cases].

15 (*Mangini, supra*, 7 Cal.4th at 1063-1064, overruled on other grounds in *In re Tobacco Cases*
16 *II* (2007) 41 Cal.4th 1257, 1276; see also *Searles Valley Minerals Operations, Inc. v. State Bd.*
17 *of Equalization* (2008) 160 Cal.App.4th 514, 519.)

18 A few examples are illustrative. Defendant seeks judicial notice for certain testimony
19 of non-party Maria Loya (RJN Ex. G) and attorney billing records attached to a declaration
20 (Exhibit E) in *Pico Neighborhood Association, et al. v. City of Santa Monica* (“Voting Rights
21 Case”). That testimony occurred in this Court and those billing records were filed in this
22 Court, so their existence cannot reasonably be disputed. But that does not mean the truth of
23 that testimony, or the accuracy of those billing records are beyond dispute. As Defendant’s
24 Demurrer demonstrates, Defendant is not seeking to rely on merely the existence of that
25 testimony and document, or just that the testimony occurred and the document was filed in this
26 Court. Rather, Defendant’s Demurrer relies on the truth of Ms. Loya’s testimony (see
27 Demurrer, pp. 2-4) and the accuracy of those billing entries to imply what involvement Mr. de
28 la Torre had in the Voting Rights Case (see Demurrer, p. 3). In opposing the motion for

1 attorneys' fees in the Voting Rights Case, Defendant will presumably not want the Court to
2 accept those attorneys' billing records as beyond dispute; they likewise are not subject to
3 judicial notice here.

4 Defendant also seeks judicial notice of its own meeting minutes (RJN Ex. J), and then
5 attempts to use those meeting minutes as an accurate reflection of everything that occurred in
6 the council meeting (see Demurrer, p. 5). For instance, Defendant's Demurrer claims "the
7 City Council reviewed the staff report" and relies on the meeting minutes to support that
8 assertion (Demurrer, p. 5). Nothing in the meeting minutes states that any of the
9 councilmembers reviewed a staff report. And, even if the minutes did state that
10 councilmembers reviewed a staff report, that would not make it true. The existence of the
11 meeting minutes might be subject to judicial notice, but the facts and characterizations recited
12 in the meeting minutes are not.

13 Finally, Defendant seeks judicial notice of the staff report prepared by its interim city
14 attorney (RJN Ex. I), and then relies in its Demurrer on the facts and characterizations recited
15 therein (see Demurrer, p. 4). Again, the existence of the staff report may be subject to judicial
16 notice, but the facts and characterizations recited in that staff report are far from being beyond
17 dispute. In fact, many statements in that staff report are demonstrably false. Though not
18 mentioned in the council meeting minutes (RJN Ex. J), Councilmember de la Torre provided
19 an opinion letter prior to the council meeting from another attorney, Dan Ambrose, who
20 explained that Councilmember de la Torre did not have a conflict of interest. Presumably,
21 Defendant would object to this Court taking judicial notice of the veracity and correctness of
22 everything in that opinion letter; its staff report is no different – it is just the opinions and
23 characterizations of an attorney.

24 Plaintiffs do not dispute the *existence* of the documents and testimony referenced in
25 Defendant's request for judicial notice. But, Defendant requests much more than just
26 acknowledging their existence. Defendant seeks to have this Court take judicial notice of the
27 truth of the matters stated in those documents, and that is not appropriate.

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DATED: July 9, 2021

Respectfully submitted:

TRIVINO-PEREZ & ASSOCIATES

By: /s/ Wilifred Trivino Perez
Wilifred Trivino-Perez
Attorneys for Plaintiffs

PROOF OF SERVICE

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 10940 Wilshire Blvd., 16th Floor, Los Angeles, CA 90024.

On July 9, 2021, I served true copies of the following document(s) described as

OPPOSITION TO REQUEST FOR JUDICIAL NOTICE

on the interested parties in this action as follows:

George Cardona
Interim Santa Monica City Attorney
1685 Main Street, Room 310
Santa Monica, CA 90401

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with our practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on July 9, 2021 at Los Angeles, California.

/s/ Wilifred Trivino-Perez

Wilifred Trivino-Perez