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*Exempt from filing fee pursuant to
Government Code § 6103*

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

12 OSCAR DE LA TORRE and
13 ELIAS SERNA,
14 ,
15 Plaintiffs,
16 v.
17 CITY OF SANTA MONICA,
and DOES 1 through 10, inclusive
18 Defendant.

CASE NO.: 21STCV08597
Assigned to Hon. Richard L. Fruin
**DEFENDANT CITY OF SANTA
MONICA’S REPLY IN SUPPORT OF ITS
REQUEST FOR JUDICIAL NOTICE**
*[Reply in Support of Demurrer to Plaintiff’s
Complaint filed concurrently herewith]*
Hearing Date: July 22, 2021
Hearing Time: 9:15 a.m.
Reservation No.: 515396310994
Filing Date: March 4, 2021
Dept.: 15

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1 Plaintiff Oscar de la Torre (“Plaintiff”) generally objects to this Court taking judicial notice
2 of each and every one of the exhibits Defendant City of Santa Monica (“City”) submitted on the
3 ground that the Court may only judicially notice the “existence” of the documents and nothing else.
4 Plaintiff is wrong on the law and mischaracterizes the City’s use of the exhibits at issue.

5 It is well established that a “pleading valid on its face may nevertheless be subject to
6 demurrer when matters judicially noticed by the court render the complaint meritless.” (*Del E. Webb*
7 *Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; see also Code Civ. Proc.,
8 § 430.30, subd. (a).) Plaintiff’s contention, however, that a court may not consider the documents’
9 contents and is instead limited to consideration of only the existence of documents when granting
10 judicial notice is simply inaccurate. On the contrary, “the general rule [is] that judicial notice of a
11 document does not extend to the truthfulness of its contents or the interpretation of statements
12 contained therein, *if those matters are reasonably disputable.*” (*Apple Inc. v. Super. Ct.* (2017) 18
13 Cal.App.5th 222, 241 [affirming trial court properly took judicial notice of existence and contents of
14 SEC filings], italics added.) Accordingly, “whether the fact to be judicially noticed is the document
15 or record itself ..., the legal effect of the document ..., a fact asserted within the document ..., or an
16 act by a government agency, the essential question is whether the fact to be judicially noticed is not
17 reasonably subject to dispute.” (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743,
18 758.) Plaintiff’s repeated reference to judicial notice being inappropriate because the document is not
19 “beyond dispute” is contrary to the standard that governs. (E.g., RJN Opp. at pp. 1-2.)

20 Moreover, “a court may take judicial notice of a party’s admissions or concessions in cases
21 where the admission ‘cannot reasonably be controverted,’ such as in answers to interrogatories or
22 requests for admission, or in affidavits and declarations filed on the party’s behalf.” (*Tucker v. P.*
23 *Bell Mobile Services* (2012) 208 Cal.App.4th 201, 219 [(Cal. App. 1st Dist. 2012) [trial court
24 properly took judicial notice of deposition testimony and declarations].) In such circumstances, a
25 court ruling on a demurrer may “accept the truth of the facts stated in the [] deposition [or other
26 sworn testimony] only to the extent they were not or could not be disputed.” (*Joslin v. H.A.S. Ins.*
27 *Brokerage* (1986) 184 Cal.App.3d 369, 375; see also *Del E. Webb, supra*, 123 Cal.App.3d at 604–05
28 [“The court will take judicial notice of records such as admissions, answers to interrogatories,

1 affidavits, and the like, when considering a demurrer, only where they contain statements of the
2 plaintiff or his agent which are inconsistent with the allegations of the pleading before the court.”.)

3 Here, Plaintiff’s objections do not specify how the contents of each of the documents at
4 issue—prior testimony, court filings, a staff report, meeting minutes, or adopted regulations—are
5 reasonably subject to dispute. Indeed, it would be curious if Plaintiff were now to contend that
6 complaints filed on behalf of the organization he led or sworn testimony he or his wife provided are
7 subject to reasonable dispute. Nor has Plaintiff established that the exhibits the City has proffered
8 “are fraudulent” or are otherwise altered. (*Chacon v. Union Pacific Railroad* (2020) 56 Cal.App.5th
9 565, 573.) “Thus, [Plaintiff’s] actual dispute is not with the contents of the documents that [the City]
10 offered in support of its motion, but rather with the legal effect and proper interpretation of those
11 documents.” (*Ibid.* [holding that district court properly took judicial notice of agreement and could
12 consider the agreement when ruling on motion for judgment on the pleadings].)

13 As established below, there is no reasonable dispute as to any of the proffered exhibits.
14 Because each of the documents is eligible for judicial notice, the Court may consider the contents of
15 those exhibits—as well as their existence—when ruling on the City’s demurrer:

- 16 • Exhibits A and B are the Complaint and First Amended Complaints filed in *Pico*
17 *Neighborhood Association (“PNA”) and Maria Loya v. City of Santa Monica*, Case No.
18 BC616804 (“*PNA v. City*”) and are offered to show who were the parties to the dispute,
19 when they were filed, and the claims asserted. (Mem. at p. 2.) The Court may consider
20 the contents of these document to demonstrate these points, particularly given that
21 Plaintiff has failed to demonstrate how the contents of these filings are reasonably subject
22 to dispute and Plaintiff refers to the filing of the litigation in the First Amended
23 Complaint (FAC ¶ 19). (See *Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1285 & fn.3
24 [where the contents of a document not otherwise attached to the complaint “form the
25 basis of the allegations in the complaint, it is essential that [the court] evaluate the
26 complaint by reference to [those] documents”].)
- 27 • Exhibits C, D, and F are relevant excerpts of the trial and deposition testimony Plaintiff
28 offered as an individual and Person Most Qualified in *PNA v. City*. Notably, Plaintiff

1 does not and cannot establish that the sworn testimony the City excerpted—establishing
2 that Plaintiff was deposed and offered trial testimony on behalf of PNA, his position as
3 co-chair of PNA, that his parents founded PNA, and that he was represented by PNA’s
4 counsel, Mr. Shenkman (Mem. at pp. 2-3)—is subject to reasonable dispute. The Court
5 may therefore properly take judicial notice of the contents of Plaintiff’s sworn testimony.

- 6 • Exhibit E contains relevant excerpts of the Declaration of Kevin Shenkman in Support of
7 Plaintiffs’ Motion for Award of Attorney’s Fees and Expenses, and selected exhibits,
8 filed in *PNA v. City*, and is offered to show Plaintiff’s extensive involvement in *PNA v.*
9 *City* from its inception and continuing through day-to-day litigation strategy. (Mem. at
10 p. 3.) Plaintiff argues that judicial notice is improper because the City is relying on the
11 “accuracy of those billing entries to imply what involvement Mr. del la Torre had in the
12 Voting Rights Case” and “Defendant will presumably not want the Court to accept those
13 attorneys’ billing records as beyond dispute” in the *PNA v. City* matter. (RJN Opp. at pp.
14 1-2.) But Plaintiff is misstating the relevant standard here. As a sworn declaration
15 submitted in another matter, the Court may take judicial notice of the contents so long as
16 the document is not *reasonably* subject to dispute. Like the other documents, Plaintiff has
17 failed to demonstrate that the billing records of the attorney who he testified represented
18 him in the *PNA v. City* are subject to reasonable dispute. Surely, since Plaintiff is
19 described as having discussed *PNA v. City* with Mr. Shenkman on the numerous
20 occasions the City identified in the billing records, Plaintiff would have been able to
21 explain in his Opposition to the City’s request for judicial notice why the billing records
22 are erroneous. He has not done so, and so this Court may take judicial notice of the
23 contents of the billing records.

- 24 • Exhibit G contains relevant excerpts of the trial testimony of Plaintiff’s wife, Maria Loya,
25 in *PNA v. City*, and is offered to show that Plaintiff was the representative for PNA in this
26 case. (Mem. at p. 4.) Plaintiff objects that the City “relies on the truth of Ms. Loya’s
27 testimony,” but Plaintiff (again) fails to show how that sworn testimony is subject to
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1 reasonable dispute. (RJN Opp. at p. 1.) The Court may take judicial notice of the contents
2 of this testimony too.

- 3 • Exhibits H, I, and J are the agenda, agenda packet for item 8A, and the meeting minutes
4 for the January 26, 2021 meeting of the City Council. The City cites these documents to
5 establish that the City Council held a meeting on January 26, 2021 to consider whether
6 Plaintiff had a common-law conflict of interest and that the City Attorney provided
7 background on the *PNA v. City* litigation and recommended in the staff report that
8 Council determine that Plaintiff has such a common-law conflict and should be
9 disqualified, and that the City Council reviewed the staff report. (Mem. at pp. 2, 4-5.) In
10 objecting to judicial notice of these documents, Plaintiff argues that the City is
11 “attempt[ing] to use [the] meeting minutes as an accurate reflection of everything that
12 occurred in the council meeting” and that the “facts and characterization recited in the
13 staff report are far from being beyond dispute.” (RJN Opp. at p. 2.) Yet again, Plaintiff is
14 utilizing the wrong “beyond dispute” standard and nothing he has asserted demonstrates
15 that the City’s agenda, agenda packet, or minutes are subject to *reasonable* dispute. For
16 example, Plaintiff argues that minutes are inaccurate because they do not mention that
17 Plaintiff “provided an opinion letter to the council meeting from another attorney, Dan
18 Ambrose, who explained that Councilmember de la Torre did not have a conflict of
19 interest.” (RJN Opp. at p. 2.) But that does not establish that the minutes are subject to
20 reasonable dispute, particularly where the minutes identify the members of the public
21 who offered public comment at the meeting itself (Ex. J at 144), and the letter from
22 Plaintiff’s attorney was included as part of the agenda packet (Ex. I at 130-134). More
23 fundamentally, the City is not asking that the Court accept the truth of the matters
24 asserted in the documents—that Plaintiff has a common-law conflict of interest—but
25 rather is offering these documents to show what the City Council had before it and the
26 decision the Council made. (See *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 9 fn. 5
27 [taking judicial notice of minutes and “city attorney’s opinion,” which was offered for the
28 purpose of showing that the “that the city attorney concluded continuing free berths

1 would violate the city’s resolution and ordinance and conveyed that opinion to the city
2 manager and council”].) And given that Plaintiff’s own allegations repeatedly refer to the
3 January 26, 2021 meeting (e.g., FAC ¶¶ 33-38), but he does not attach the agenda packets
4 or minutes that “form the basis of the allegations in the complaint, it is essential that [the
5 court] evaluate the complaint by reference to [those] documents.” (*Ingram, supra*, 74
6 Cal.App.4th at p. 1285.)

- 7 • Exhibit K is the amicus brief submitted by Plaintiff to the California Supreme Court in
8 *PNA v. City*. The City does not offer this document for the truth of the matters asserted in
9 that brief—and, in fact, disputes the legal and factual arguments made—but has cited the
10 brief to show Plaintiff’s continued support of plaintiffs in *PNA v. City*. (E.g., Mem. at p.
11 7.) As Plaintiff concedes (RJN Opp. at 2), this Court may take judicial notice of the
12 “existence” of this document.
- 13 • Exhibits L and M consist of Section 605 of the City’s Charter and the City Council’s
14 Rules. Plaintiff’s blanket objection to judicial notice of all the exhibits offered by the City
15 presumably includes these exhibits, even though the FAC quotes Section 605 (¶ 19) and
16 Plaintiff has failed to explain why the contents of these official acts and public records
17 are subject to reasonable dispute. This Court may take judicial notice of these exhibits.

18 Accordingly, for all these reasons, and those stated in the City’s Request for Judicial Notice,
19 the Court should grant judicial notice to the City’s proffered exhibits.

20 Dated: July 15, 2021

21 Respectfully submitted,

22 GEORGE S. CARDONA
23 Interim City Attorney

24 By: /s/ Brandon D. Ward
25 Brandon D. Ward
26 Deputy City Attorney

27 Attorneys for Defendant
28 City of Santa Monica

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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 **July 15, 2021** described as:

**DEFENDANT CITY OF SANTA MONICA’S REPLY
IN SUPPORT OF ITS REQUEST FOR JUDICIAL NOTICE**

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:

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/s/ Bradley C. Michaud
BRADLEY C. MICHAUD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Branch Name: Stanley Mosk Courthouse
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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: 4496208_2021_07_15_20_53_14_249_7
Submission Number: 21LA03824080
Court Received Date: 07/15/2021
Court Received Time: 2:00 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: 07/15/2021
Notice Generated Time: 2:02 pm

Documents Electronically Filed/Received**Status**

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