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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**

***VERIFIED SECOND AMENDED  
COMPLAINT***

Dept. 15 – Hon. Richard Fruin

1 **I. INTRODUCTION**

2 1. By this Complaint, Plaintiffs Oscar de la Torre (“De La Torre”) and Elias Serna  
3 (collectively “Plaintiffs”) seek an injunction prohibiting Defendant City of Santa Monica  
4 (“Defendant”) from excluding De La Torre from participating in any city council decisions,  
5 deliberations and discussions, unless and until a court determines he has a disqualifying  
6 conflict of interest in connection with certain matters before the Santa Monica City Council.

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

17 3. Since Defendant’s exclusion of De La Torre from the city council’s meetings,  
18 **the FPPC has advised that De La Torre does not have a conflict of interest**, yet Defendant  
19 persists in excluding De La Torre from performing his duties as a member of the Santa Monica  
20 City Council – the duties Elias Serna and thousands of other Santa Monica voters elected him  
21 to perform.

22 4. Defendant simply lacks authority to unilaterally exclude a member of its city  
23 council from the council’s meetings. Plaintiffs therefore ask this Court for a declaration of  
24 that fact, and an injunction to prohibit Defendant from excluding De La Torre, or any other  
25 city council member, from city council meetings, discussions, deliberations and decisions,  
26 absent a judicial determination that his/her participation is unlawful.

1 **II. PARTIES**

2 5. Plaintiff Oscar De La Torre is a resident of Santa Monica, California. In or  
3 around December 2020, having prevailed in the election a month earlier, Plaintiff was sworn  
4 into office as one of seven members of the Santa Monica City Council. Plaintiff Elias Serna is  
5 a resident of Santa Monica, California. In the 2020 election, Plaintiff Elias Serna (“Serna”)  
6 supported De La Torre, in part because of De La Torre’s strong advocacy for district-based  
7 elections.

8 6. Defendant City of Santa Monica is a political subdivision of the State of  
9 California, specifically, a city.

10 7. Does 1 through 100, inclusive, are Defendants that threaten to cause Defendant  
11 City of Santa Monica to unlawfully exclude De La Torre from meetings, discussions,  
12 deliberations and/or decisions of the Santa Monica City Council, or fail to prevent the  
13 exclusion of De La Torre, or are otherwise responsible for the acts and omissions alleged  
14 herein.

15 **III. JURISDICTION AND VENUE**

16 8. This Court has jurisdiction under Code of Civil Procedure §§ 526 and 1060 and  
17 Article VI, section 10 of the California Constitution, among other provisions.

18 9. Venue is proper in this Court. Plaintiffs and Defendant are all situated in Los  
19 Angeles County, and the acts and omissions complained of herein occurred in Los Angeles  
20 County.

21 **IV. FACTS**

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

23 10. “At-large” voting – an election method that permits voters of an entire  
24 jurisdiction to elect candidates to all of the seats of its governing board – is disfavored under  
25 California law. (See *Sanchez v. City of Modesto* (2006) 145 Cal.App.4<sup>th</sup> 660, 667). If the  
26 U.S. Congress, for example, were elected through a nationwide at-large election, rather than  
27 through typical single-member districts, each voter could cast up to 435 votes and vote for  
28 any candidate in the country, not just the candidates in the voter's district, and the 435

1 candidates receiving the most nationwide votes would be elected. Because at-large elections  
2 allow each voter to vote for every seat on a governing board, they allow a bare majority of  
3 voters to control *every* seat, not just the seats in a particular district or a proportional majority  
4 of seats.

5 11. Voting rights advocates have targeted at-large election schemes for decades,  
6 because they often result in “vote dilution,” or the impairment of minority groups’ ability to  
7 elect their preferred candidates or influence the outcome of elections, which occurs when the  
8 electorate votes in a racially polarized manner. (See *Thornburg v. Gingles* (1986) 478 U.S. 30,  
9 46). The U.S. Supreme Court “has long recognized that multi-member districts and at-large  
10 voting schemes may operate to minimize or cancel out the voting strength” of minorities. (*Id.*  
11 at 47; see also *id.* at 48, fn. 14 [at-large elections may also cause elected officials to “ignore  
12 [minority] interests without fear of political consequences”], citing *Rogers v. Lodge* (1982)  
13 458 U.S. 613, 623; *White v. Regester* (1973) 412 U.S. 755, 769). “[T]he majority, by virtue of  
14 its numerical superiority, will regularly defeat the choices of minority voters.” (*Gingles*, at 47).  
15 When racially polarized voting occurs, dividing the political unit into single-member districts  
16 may facilitate a minority group's ability to elect its preferred representatives. (*Rogers*, at 616).

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

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

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

6           14.     Plaintiff De La Torre has been involved in the Latino civil rights movement  
7 since he was a high school student attending Santa Monica High School. In the early 1990s,  
8 De La Torre was told he could not be elected student body president because he was “a  
9 Mexican.” He used that slight as motivation, and was elected the first Chicano student body  
10 president of Santa Monica High School in at least the preceding three decades, and he used  
11 that platform to call attention to the racism in the schools. After high school, De La Torre  
12 attended Chico State University, where he likewise was elected student body president, and  
13 used his platform to oppose the infamous (and later declared unconstitutional) Proposition  
14 187. Upon returning to Santa Monica, after obtaining a graduate degree in public  
15 administration from the University of Texas, De La Torre worked with at-risk youth, and  
16 established the Pico Youth and Family Center to combat the gang violence that was ravaging  
17 the Latino-concentrated Pico Neighborhood where he was raised. At the urging of a group  
18 committed to the education of the most vulnerable students, Mothers for Justice, De La Torre  
19 sought election to the Santa Monica Malibu Unified School District Board in 2002, and he was  
20 successful.

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

1           16. Over the course of his work, De La Torre learned that Defendant, and  
2 specifically its city council, was generally unresponsive to the Latino community and the Pico  
3 Neighborhood where that community is concentrated. And, the reason for that  
4 unresponsiveness was also laid bare – with at-large elections, the city council members did not  
5 need the votes of Latinos or Pico Neighborhood residents to win re-election. In fact, in the 64  
6 years of an at-large council, up until an appointment to a council vacancy in 2010, no Pico  
7 Neighborhood resident had ever served on the Santa Monica City Council, and in that time  
8 only one Latino had ever been elected to the Santa Monica City Council (and he lost his bid  
9 for re-election four years later). Through his service on the Santa Monica Malibu Unified  
10 School District Board, De La Torre witnessed his board colleagues, almost all of whom lived  
11 in the wealthiest portion of Santa Monica – the North of Montana neighborhood – make  
12 decisions that negatively impacted students of color from his neighborhood.

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

22           18. In 2015, PNA, including Plaintiffs De La Torre and Serna and Ms. Loya, held a  
23 series of informational and advocacy events concerning Defendant’s unlawful at-large  
24 elections. With the Pico Neighborhood community solidly in support of district-based  
25 elections for Defendant’s city council, PNA held a rally at the Santa Monica City Hall in late  
26 2015. At that rally, PNA presented a formal written demand to Defendant’s city attorney and  
27 city council, alleging that Defendant’s at-large election system violated both the CVRA and  
28

1 the Equal Protection Clause of the California Constitution, as it was adopted and maintained  
2 for the purpose of excluding minority residents from the city council.

3 19. Despite the promise to respond to that 2015 formal demand, Defendant did not  
4 respond at all for several months. Unable to achieve any change through their political  
5 advocacy efforts, PNA and Ms. Loya proceeded to litigation advocacy and filed a lawsuit  
6 against Defendant, captioned *Pico Neighborhood Association, et al. v. City of Santa Monica*,  
7 Los Angeles Superior Court Case No. BC616804 (“the Voting Rights Case”) in or around  
8 April 2016. In civil rights struggles, litigation often serves an important advocacy role. For  
9 example, the long struggle against racial segregation has included not just marches, boycotts  
10 and lobbying lawmakers, but also litigation such as *Brown v. Board of Education of Topeka*  
11 (1954) 347 U.S. 483 (holding racial segregation in schools is unconstitutional) and *Reitman v.*  
12 *Mulkey* (1967) 387 U.S. 369 (finding California’s Proposition 14, which was passed in 1964 to  
13 again authorize racial discrimination in housing, was unconstitutional).

14 20. De La Torre, Serna, PNA and Ms. Loya were not alone in their support for  
15 district-based elections for Santa Monica’s city council. Not long after the Voting Rights Case  
16 was filed, five of the six other neighborhood organizations joined PNA in a letter to the Santa  
17 Monica city council urging the council to adopt district-based elections rather than spending  
18 millions of dollars in defense of an outdated and discriminatory at-large system. A poll  
19 conducted by Sextant Research in 2018 (which was later admitted at trial in the Voting Rights  
20 Case) revealed that Santa Monica voters favored a switch to district-based elections by a  
21 significant margin – 54% to 30%, before information was provided concerning the arguments  
22 made by proponents of each, and 60% to 28% after that information was provided. Like De  
23 La Torre, Serna, PNA and Ms. Loya, Santa Monica voters support for a switch to district-  
24 based elections, and an end to costly litigation, was based largely on their desire that every  
25 neighborhood have representation on Defendant’s city council. Historically, the least wealthy  
26 neighborhoods of Santa Monica (the Pico Neighborhood and Mid-City) have been severely  
27 underrepresented on Defendant’s city council. As a result of that underrepresentation, those  
28 neighborhoods have been forced to bear nearly all of the city’s burdens – e.g. a landfill,

1 hazardous waste storage facility, the 10 freeway, a trash sorting facility and Defendant's  
2 vehicle maintenance yard.

3         21.     Though their constituents strongly preferred district-based elections, the seven  
4 members of Defendant's city council did not. Rather, those council members, who had all  
5 been elected through the at-large system, recognized that district-based elections would likely  
6 unseat several of them. For example, several of Defendant's councilmembers resided in the  
7 wealthiest Santa Monica neighborhood, "North of Montana", and thus with district-based  
8 elections only one of them could be elected to the Santa Monica city council because each  
9 district has one representative. They also recognized that district-based elections would be a  
10 threat to the political machine that had enabled their ascent to elective office, and could  
11 facilitate their election to higher office. Based on their own self-interest, and contrary to the  
12 will of their constituents, Defendant's city councilmembers chose to spend millions of dollars  
13 from the city's coffers to fight the Voting Rights Case.

14         22.     In August 2018, the Voting Rights Case was tried over the course of six weeks  
15 in this Court before Hon. Yvette Palazuelos. Several Santa Monica political figures, including  
16 elected officials, testified at that trial. Plaintiffs called, among others: Craig Foster, a member  
17 of the Santa Monica Malibu Unified School District Board; Steve Duron, a member of the  
18 Santa Monica Rent Control Board; and De La Torre, then a member of the Santa Monica  
19 Malibu Unified School District Board and now a member of the Santa Monica City Council.  
20 Plaintiffs also played video deposition testimony of Tony Vazquez, then a member of the  
21 Santa Monica City Council. Defendant called, among others: Gleam Davis, a current member  
22 of the Santa Monica City Council; Terry O'Day, then a member of the Santa Monica City  
23 Council; and Ana Jara, who was later appointed to the Santa Monica City Council.

24         23.     Following that trial, and post-trial briefing and hearings, this Court entered  
25 judgment in favor of the plaintiffs – PNA and Ms. Loya – and against Defendant City of Santa  
26 Monica, finding that Defendant's at-large election system violated both the CVRA and the  
27 Equal Protection Clause of the California Constitution.

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1           24. Defendant appealed the judgment in the Voting Rights Case, and in July 2020  
2 the intermediate appellate court reversed. The plaintiffs in the Voting Rights Case petitioned  
3 the California Supreme Court to review that decision, and the California Supreme Court  
4 granted their petition in October 2020. On its own motion, the California Supreme Court also  
5 depublished the intermediate appellate court’s decision. The Voting Rights Case is now  
6 pending in the California Supreme Court. All briefing to the California Supreme Court is now  
7 complete, with responses to amicus briefs having been filed on August 11, 2021. The  
8 California Supreme Court has not yet set the case for oral argument.

9           25. Throughout the 5+ years the Voting Rights Case has been pending, the case, and  
10 more generally the method of electing Defendant’s city council, has been a matter of great  
11 public concern, garnering attention from media in Santa Monica, the rest of California, and  
12 even national media. Voice of America even filmed a story concerning the case to be aired in  
13 Russia. In Santa Monica in particular, residents have expressed their grave disappointment in  
14 incumbent councilmembers spending an undisclosed amount of money (widely believed to be  
15 tens of millions of dollars) on expensive attorneys to fight against the voting rights of  
16 minorities throughout California, all to protect their own political positions.

17           26. Since at least 2015, De La Torre has publicly advocated for district-based  
18 elections, with any means he has had at his disposal, arguing that Defendant should stop  
19 wasting tens of millions of taxpayer dollars on its ill-conceived fight against the CVRA.  
20 Plaintiffs believed, and continue to believe, that money could be better spent on fundamental  
21 city services, particularly in light of budget constraints resulting from the Covid-19 economic  
22 downturn. Through all of his advocacy, the Santa Monica electorate has long been aware of  
23 De La Torre’s view on this issue.

24           **C. Oscar De La Torre’s 2020 Run for Santa Monica City Council**

25           27. Disturbed by the mismanagement of the City, and the continued harm inflicted  
26 upon the Pico Neighborhood, De La Torre decided to enter the 2020 election for four city  
27 council seats. Because of the at-large election system, and the extraordinary cost of at-large  
28 campaigns for Santa Monica City Council, De La Torre and three other like-minded

1 candidates formed a “slate” to pool some of their campaign resources and support one  
2 another’s candidacies. Along with Phil Brock, Christine Parra and Mario Fonda Bonardi, De  
3 La Torre branded the group the “Change Slate.”

4         28. As it was a significant issue in Santa Monica and elsewhere, the method of  
5 electing the city council was a significant issue in the 2020 campaign. All of the Change Slate  
6 candidates, including De La Torre, expressed their support for adopting district elections – the  
7 relief sought by the Voting Rights Case – and, relatedly, ending the expensive and misguided  
8 fight against the CVRA in the Voting Rights Case. All of the incumbent council members  
9 seeking re-election expressed their opposition to district elections. Because of De La Torre’s  
10 advocacy and position on district-based elections and the Voting Rights Lawsuit, among other  
11 things, Plaintiff Elias Serna supported De La Torre in the 2020 election.

12         29. On May 31, 2020 the ineptitude of Defendant’s upper management was on full  
13 display to the world. George Floyd had been killed by police in Minneapolis, and that set off  
14 protests in cities across the United States, and even overseas. Looters exploited some of those  
15 protests to facilitate their theft, vandalism and arson perpetrated mostly against retail  
16 establishments. In the days leading up to May 31, a protest was publicly organized to occur in  
17 Santa Monica, specifically in the downtown area. Defendant’s upper management did little to  
18 prepare for the protests; rather Defendant’s police chief, for example, continued her vacation  
19 in Northern California instead of returning to Santa Monica. Soon after the protest began,  
20 Defendant’s police force fired tear gas and rubber bullets at protestors in and around the Third  
21 Street Promenade area. The mayhem that erupted provided a perfect diversion for looters to  
22 strike local businesses just a short distance from the Third Street Promenade. Defendant’s  
23 police force took essentially no action to stop or otherwise prevent that looting. As reported  
24 by Los Angeles magazine, an after-action report of the police response was prepared by an  
25 outside firm, but was then suppressed by Defendant’s upper management because they did not  
26 like what it said. Much of the Santa Monica electorate were already dissatisfied with  
27 Defendant’s incumbent councilmembers and upper management, and the handling of the May  
28 31, 2020 protests confirmed their views. Some Santa Monica residents even contend that one

1 or more incumbent councilmembers directed the police to allow looting to go unabated in one  
2 area so they could concentrate their protection in another area, where one of the then-  
3 councilmembers owned a business. An after-action investigative report commissioned by  
4 Defendant confirmed the ineptitude of Defendant and its leaders in handling the events of May  
5 31, 2020. Defendant and its councilmembers blamed the police chief and her staff.  
6 Regardless of who was to blame, the events of May 31, 2020 demonstrated to the electorate  
7 what De La Torre and Serna already knew – change was needed.

8 30. Defendant’s handling of the Voting Rights Case likewise demonstrated these  
9 same systemic problems. Contrary to the will of Santa Monica voters (evidenced by the  
10 survey discussed above), Defendant’s incumbent city council members depleted the city’s  
11 coffers by tens of millions of dollars to fight for their own city council seats.

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

20 32. In anticipation of being sworn in as a member of the Santa Monica City Council,  
21 De La Torre informed the PNA board that he would be resigning his position with PNA upon  
22 taking his seat on the Santa Monica City Council in December 2020. Though De La Torre  
23 was not required to resign his position with PNA, he did so simply to follow the example of  
24 some of his previous colleagues on the Santa Monica Malibu Unified School District Board  
25 who resigned their positions with other groups that advocated to that governing board upon  
26 being seated on that board. With the results of the November 3, 2020 election having been  
27 certified, on or about December 8, 2020, De La Torre was sworn in as a member of the Santa  
28 Monica City Council.

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

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

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

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

15           35. But Defendant did not wait for the FPPC opinion. Instead, on January 26, 2021,  
16 four out of seven members of Defendant's divided city council voted to exclude De La Torre  
17 from all discussions, meetings and votes relating to the Voting Rights Case. Immediately after  
18 that vote, Defendant's city council went into closed session where they electronically removed  
19 Plaintiff from the meeting (the meeting was held remotely due to the Covid-19 pandemic).

20           36. On Friday, January 22, 2021, without even giving De La Torre the courtesy of  
21 any advance notice, Defendant placed an item on the January 26, 2021 city council agenda,  
22 whereby Defendant's interim city attorney asked Defendant's city council to exclude De La  
23 Torre from participating in any city council meetings or decisions relating to the Voting Rights  
24 Case. Defendant's interim city attorney even suggested that De La Torre should not be  
25 allowed to vote, as a member of the city council, on whether he would be excluded from future  
26 meetings. Defendant's interim city attorney did not identify any authority suggesting that  
27 Defendant's city council had the power to exclude one of its members from city council  
28 meetings. Though more than a month earlier he was sent an opinion letter from attorney

1 Daniel Ambrose that concluded De La Torre did not have a conflict of interest, Defendant's  
2 interim city attorney did not include that opinion letter (or any mention of it) in his staff report  
3 to Defendant's city council.

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

11 38. De La Torre then sought to ask questions of the interim city attorney, as is his  
12 right as a member of the city council. However, De La Torre was repeatedly interrupted by  
13 other council members who "objected" to De La Torre's questioning of the interim city  
14 attorney and directed the city attorney not to answer De La Torre's questions. The interim city  
15 attorney largely refused to answer De La Torre's questions. Notably, however, the interim  
16 city attorney could not conjure up a reason to refuse to answer one important question from De  
17 La Torre:

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

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

26 39. The public comments unanimously supported De La Torre, and criticized  
27 Defendant's city council and interim city attorney for their biased and unfounded accusation of  
28 a conflict of interest. The commenters emphasized that De La Torre had no more of a conflict

1 than any other member of the city council; if anything, De La Torre has less of a conflict of  
2 interest than other members of the city council who would almost certainly lose their council  
3 seats in the district-based election system ordered by the Los Angeles Superior Court in the  
4 Voting Rights Case.

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

12 41. Unmoved by the public sentiment, Defendant's city council voted 4 to 2 (with  
13 one abstention) to exclude De La Torre from all council meetings, discussions and decisions  
14 concerning the Voting Rights Case. Immediately following the vote of its city council to  
15 exclude De La Torre, Defendant did in fact exclude Plaintiff from its closed session meeting  
16 that same day.

17 42. In so doing, none of Defendant's city council members reconciled their own  
18 conflicts of interest – both in connection with the Voting Rights Case and the decision to  
19 exclude De La Torre. As discussed above, those council members' personal interest in  
20 connection with the Voting Rights Case – to maintain their political power and seats on  
21 Defendant's city council – is contrary to the interests of the City and people they are supposed  
22 to represent – to have a lawfully elected city council and protect the public coffers (their tax  
23 dollars) from waste. Further, those council members have a personal interest in excluding De  
24 La Torre from certain council decisions: by excluding De La Torre, they increase the  
25 significance of their own votes on those matters – instead of having a one-seventh voice in the  
26 City's decisions they each have a one-sixth voice in those decisions by eliminating De La  
27 Torre.

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1           43.     Despite expressing its opinion that De La Torre has a conflict of interest, neither  
2 Defendant nor anyone else has sought an injunction from any court to prevent De La Torre  
3 from participating in any meetings, votes or discussions.

4           44.     Upon receiving the FPPC opinion letter (**Exhibit A**), Plaintiffs requested that  
5 Defendant reverse its exclusion of De La Torre from city council meetings, but Defendant  
6 refused.

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

8           45.     As the FPPC concluded, De La Torre does not have a conflict of interest that  
9 prevents him from participating in city council meetings, discussions and decisions concerning  
10 the Voting Rights Case.

11          46.     The Voting Rights Case seeks only non-monetary relief – an injunction and  
12 declaration from the Court. Consistent with the requested relief, the Judgment entered by the  
13 Los Angeles Superior Court awards the plaintiffs injunctive and declaratory relief, but no  
14 monetary relief.

15          47.     While the plaintiffs’ attorneys in the Voting Rights Case are likely entitled to  
16 recover their fees and costs, and they have already filed a motion to recover some of their fees  
17 and a memorandum of costs, the plaintiffs in the Voting Rights Case cannot share in those  
18 fees.

19          48.     Neither De La Torre nor his wife have any financial interest in the outcome of  
20 the Voting Rights Case.

21          49.     De La Torre’s interest in the outcome of the Voting Rights Case is no different  
22 than any other Santa Monica voter. Plaintiffs want Defendant’s city council elections to be  
23 brought into compliance with the CVRA, as requested by the plaintiffs in the Voting Rights  
24 Case, because the current at-large elections are racially discriminatory and have resulted in the  
25 neglect of the Pico Neighborhood. And, Plaintiffs want Defendant to stop wasting huge sums  
26 of money on a divisive case to fight against the CVRA and minority voting rights.

27          50.     Councilmembers other than De La Torre have more of a personal interest in the  
28 outcome of the Voting Rights Case than does De La Torre. For example, Councilmembers

1 Sue Himmelrich and Phil Brock both currently reside in the “North of Montana”  
2 neighborhood. If this Court’s judgment in the Voting Rights Case is affirmed, those two  
3 councilmembers, residing in the same district, could not both be elected to the city council. In  
4 a head-to-head race between Mr. Brock and Ms. Himmelrich in the district in which they both  
5 reside, Mr. Brock would likely prevail, and Ms. Himmelrich would lose an office she spent in  
6 excess of \$100,000 of her personal finances to obtain.

7  
8 **FIRST CAUSE OF ACTION**

9 **Declaratory Relief**

10 51. Plaintiffs reallege and incorporate by reference the allegations in the preceding  
11 paragraphs as if fully set forth herein.

12 52. An actual controversy has arisen and now exists between Plaintiffs and Defendants.  
13 As described above, Plaintiffs contend that: 1) Defendant does not have authority, under the  
14 law, to exclude De La Torre from city council meetings, deliberations or votes without either  
15 De La Torre’s consent or a judicial determination that De La Torre has a conflict of interest;  
16 and 2) De La Torre does not have a conflict of interest that prevents him from participating in  
17 city council meetings, deliberations or votes concerning the Voting Rights Case. Defendant  
18 contends that it may unilaterally determine, that De La Torre (or any other council member(s))  
19 has a conflict of interest and exclude De La Torre (or any other council member(s)) from  
20 participating in city council meetings, deliberations or votes, even without a judicial  
21 determination that any conflict of interest exists.

22 53. A judicial determination of these issues, or at least some portion thereof, and of  
23 the respective duties of Plaintiffs and Defendant is necessary and appropriate at this time under  
24 the circumstances because Defendant has already excluded De La Torre from a city council  
25 meeting concerning the Voting Rights Case and has indicated it will continue to exclude De  
26 La Torre from future council meetings and votes concerning the Voting Rights Case absent a  
27 judicial declaration to the contrary. A judicial declaration is necessary to prevent Defendant  
28



1 from excluding De La Torre and preventing De La Torre from executing his duties as a  
2 member of the Santa Monica City Council.

3 54. Defendant is not lawfully permitted to exclude De La Torre (or any other  
4 councilmember(s)) from any city council meetings, deliberations or votes without first  
5 obtaining a judicial determination that De La Torre (or any other councilmember(s)) has a  
6 conflict of interest that precludes his participation.

7 55. Nonetheless, Defendant has excluded and, absent equitable relief from this  
8 Court, will continue to exclude De La Torre from city council meetings, and prevent De La  
9 Torre from fulfilling his duties as a member of the Santa Monica City Council – duties Serna  
10 and tens of thousands of other Santa Monicans elected him to fulfill – despite having obtained  
11 no judicial determination that De La Torre has a conflict of interest.

12 56. If Defendant were lawfully permitted to, through its city council, pass on  
13 questions of whether individual councilmembers may participate in discussions and decisions  
14 of the city council, any majority of the city council could, using an amorphous concept such as  
15 the “common law doctrine of conflicts of interest,” exclude their political opponents on the  
16 city council from any discussions and decisions. For this reason, the Legislature wisely vested  
17 those decisions in institutions independent of city councils – namely, the FPPC and the courts.

18 57. Plaintiffs are without a plain, speedy and adequate remedy in the ordinary course  
19 of law to compel Defendant to comply with the legal requirements described herein, namely to  
20 refrain from excluding De La Torre (or any other councilmember(s)) from city council  
21 meetings, deliberations or votes absent a judicial determination that De La Torre (or any other  
22 councilmember(s)) has a conflict of interest.

23 58. De La Torre, along with the residents of Santa Monica he was elected to  
24 represent, such as Serna, have suffered and will continue to suffer irreparable injury unless and  
25 until this Court enjoins Defendant from continuing its illegal conduct.

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1 **SECOND CAUSE OF ACTION**

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

3 59. Plaintiffs reallege and incorporate by reference the allegations in the preceding  
4 paragraphs as if fully set forth herein.

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

15 61. As an indication of what Defendant plans to do with all meetings concerning the  
16 Voting Rights Case, Defendant’s closed session meeting on January 26, 2021 was neither  
17 accessible such that “all persons [were] permitted to attend,” nor was it a closed session  
18 accessible to the whole “legislative body of a local agency.” Plaintiffs, for instance, were not  
19 permitted to attend. Nor do any of the other specified exceptions of the Ralph M. Brown Act  
20 apply to that closed session meeting. Therefore, Defendant’s threatened closed session  
21 meetings of a majority of its city council will, like its January 26, 2021 closed session meeting,  
22 violate the Ralph M. Brown Act unless stopped by this Court.

23 62. Plaintiffs proceed here under Government Code § 54960 to prevent this  
24 threatened violation of the Ralph M. Brown Act. Government Code § 54960 authorizes any  
25 interested person to commence an action by mandamus, injunction or declaratory relief to  
26 secure compliance with the Ralph M. Brown Act or prevent further violation of the Ralph M.  
27 Brown Act.

28



1 other member of the Santa Monica City Council from those closed session meetings, unless  
2 and until a court of competent jurisdiction has determined that such member of the Santa  
3 Monica City Council has a conflict of interest that prevents him/her from participating in the  
4 closed session meetings.

5 6. For injunctive relief requiring Defendant to permit De La Torre to view the  
6 recording of the January 26, 2021 closed session council meeting from which he was  
7 excluded.

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

11 8. For such further relief as the Court deems just and proper.

12  
13  
14 Respectfully submitted:

15 DATED: August 10, 2021

**TRIVINO-PEREZ & ASSOCIATES**

16 By: /s/ Wilifred Trivino Perez

17 Wilifred Trivino-Perez  
18 Attorneys for Plaintiffs  
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# EXHIBIT A



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.<sup>1</sup> 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?

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<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.”<sup>4</sup>

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

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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 entity<sup>5</sup> 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 agreement<sup>6</sup> between plaintiffs and the City. The

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<sup>5</sup> 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

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<sup>6</sup> 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 et al. v. City of Santa Monica*

I, Oscar de la Torre, declare:


I am a plaintiff in the above-entitled matter.

I have read the foregoing Second Amended 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 August 10, 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

**VERIFICATION**

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

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

*De La Torre et al. v. City of Santa Monica*

I, Elias Serna, declare:

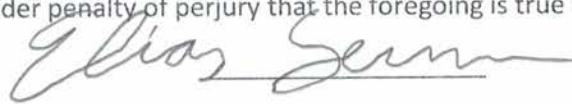
I am a plaintiff in the above-entitled matter.

I have read the foregoing Second Amended 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 August 10, 2021, at Santa Monica, California.

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

A handwritten signature in cursive script that reads "Elias Serna". The signature is written in black ink and is positioned above a horizontal line.

Elias Serna

**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 August 10, 2021, I served true copies of the following document(s) described as

SECOND AMENDED COMPLAINT

on the interested parties in this action as follows:

Brandon Ward  
Office of the 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 August 10, 2021 at Los Angeles, California.

/s/ Wilifred Trivino-Perez  
\_\_\_\_\_  
Wilifred Trivino-Perez