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

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12  
13 **FOR THE COUNTY OF LOS ANGELES**

14 OSCAR DE LA TORRE and ELIAS SERNA,

CASE NO.: 21STCV08597

15 Plaintiffs,

Assigned to Hon. Richard L. Fruin

16 v.

**DEFENDANT CITY OF SANTA  
MONICA'S REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF DEMURRER  
TO SECOND AMENDED COMPLAINT**

17 CITY OF SANTA MONICA,  
18 and DOES 1 through 10, inclusive

19 Defendant.

*[Notice of Demurrer and Demurrer to  
Plaintiff's Second Amended Complaint;  
Memorandum of Points and Authorities in  
Support Thereof and Declaration of Brandon  
D. Ward filed concurrently herewith]*

Hearing Date: September 30, 2021

Hearing Time: 9:15 a.m.

Reservation No.: 905283036604

Filing Date: March 4, 2020

Dept.: 15

1 Pursuant to Section 430.30, subdivision (a) of the Code of Civil Procedure, Evidence Code  
2 sections 415, 452, and 453, and Rules 3.1113, subdivision (l), and 3.1306, subdivision (c) of the  
3 California Rules of Court, Defendant City of Santa Monica (“City”) respectfully requests that the  
4 Court take judicial notice of the following documents in support of the City’s Demurrer to Plaintiff’s  
5 Second Amended Complaint:

6 A. Complaint in *Pico Neighborhood Association and Maria Loya v. City of Santa Monica*, Case  
7 No. BC616804 (L.A. Super. Ct. Apr. 12, 2016). The complaint is a record of the Superior  
8 Court of California, and a true and correct copy is attached hereto as Exhibit A;

9 B. First Amended Complaint in *Pico Neighborhood Association and Maria Loya v. City of*  
10 *Santa Monica*, Case No. BC616804 (L.A. Super. Ct. Feb. 23, 2017). The First Amended  
11 Complaint is a record of the Superior Court of California, and a true and correct copy is  
12 attached hereto as Exhibit B;

13 C. Relevant excerpts of the deposition of Oscar de la Torre as the Person Most Qualified for  
14 Pico Neighborhood Association in the matter of *Pico Neighborhood Association and Maria*  
15 *Loya v. City of Santa Monica*, Case No. BC616804, a true and correct copy of which is  
16 attached hereto as Exhibit C;

17 D. Relevant excerpts of the Reporter’s Trial Transcript of Oscar de la Torre’s Testimony in the  
18 matter of *Pico Neighborhood Association and Maria Loya v. City of Santa Monica*, Case No.  
19 BC616804, a true and correct copy of which is attached hereto as Exhibit D;

20 E. Relevant excerpts of the Declaration of Kevin Shenkman in Support of Plaintiffs’ Motion for  
21 Award of Attorney’s Fees and Expenses, and relevant excerpts of selected exhibits (the  
22 “Shenkman Declaration”), filed by Plaintiffs in *Pico Neighborhood Association and Maria*  
23 *Loya v. City of Santa Monica*, Case No. BC616804. The Shenkman Declaration is a record  
24 of the Superior Court of California, and a true and correct copy is attached hereto as Ex. E;

25 F. Relevant excerpts of the deposition of Oscar de la Torre in the matter of *Pico Neighborhood*  
26 *Association and Maria Loya v. City of Santa Monica*, Case No. BC616804, a true and correct  
27 copy of which is attached hereto as Exhibit F;

28 G. Relevant excerpts of the Reporter’s Trial Transcript of Maria Loya’s Testimony in the matter

- 1 of *Pico Neighborhood Association and Maria Loya v. City of Santa Monica*, Case No.  
2 BC616804, a true and correct copy of which is attached hereto as Exhibit G;
- 3 H. January 26, 2021 City Council Special and Regular Meeting Agendas, a true and correct  
4 copy of which is attached hereto as Exhibit H. The documents are also publicly available at  
5 <https://www.smgov.net/departments/clerk/agendas.aspx>;
- 6 I. January 26, 2021 City Council Special Meeting Item 8A Agenda Packet (including the Staff  
7 Report), a true and correct copy of which is attached hereto as Exhibit I. The document is  
8 also publicly available at  
9 [http://santamonicacityca.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1251&Inline=True](http://santamonicacityca.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1251&Inline=True;);
- 10 J. January 26, 2021 City Council Special Meeting Minutes, a true and correct copy of which is  
11 attached hereto as Exhibit J. The document is also publicly available at <http://santamonicacityca.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=1274&Inline=True>.
- 12
- 13 K. Santa Monica City Council Member Oscar de la Torre’s Application (In His Individual  
14 Capacity) For Leave to File Amicus Curiae Brief; [Proposed] Amicus Curiae Brief, a true  
15 and correct copy of which is attached hereto as Exhibit K;
- 16 L. Santa Monica City Charter Section 605, a true and correct copy of which is attached hereto  
17 as Exhibit L. The document is also publicly available at  
18 [https://qcode.us/codes/santamonica/?view=desktop&topic=the\\_charter\\_of\\_the\\_city\\_of\\_santa](https://qcode.us/codes/santamonica/?view=desktop&topic=the_charter_of_the_city_of_santa_monica-vi-605)  
19 [monica-vi-605](https://qcode.us/codes/santamonica/?view=desktop&topic=the_charter_of_the_city_of_santa_monica-vi-605);
- 20 M. Santa Monica City Council Rules, a true and correct copy of which is attached hereto as  
21 Exhibit M; and
- 22 N. Transcript of the public hearing on January 26, 2021 of City Council Special Meeting Item  
23 8A, a true and correct copy of which is attached hereto as Exhibit N.

24 Where a court is ruling on a demurrer, it may consider not only the complaint itself, but also  
25 “any matter of which the court ... may take judicial notice.” (Code Civ. Proc., § 430.30, subd. (a);  
26 see also *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604 [a  
27 “pleading valid on its face may nevertheless be subject to demurrer when matters judicially noticed  
28 by the court render the complaint meritless”].) Pursuant to Evidence Code section 453, a “trial court

1 shall take judicial notice of any matter specified in Section 452 if a party requests it and: (a) [g]ives  
2 each adverse party sufficient notice ... and (b) [f]urnishes the court with sufficient information to  
3 enable it to take judicial notice of the matter.” (Evid. Code, § 453.) Section 452, subdivision (d),  
4 authorizes the Court to take judicial notice of “[r]ecords” of “any court of this state.” (Evid. Code,  
5 § 452, subd. (d).) Applying this standard, courts have routinely taken judicial notice of pleadings,  
6 other filings, transcripts of prior proceedings, and deposition testimony. (See, e.g., *Gilman v.*  
7 *Dalby* (2021) 61 Cal.App.5th 923, 929 [taking judicial notice of “several filings from [plaintiff’s’]  
8 related suit against Appellants”]; *Brown v. TGS Management Company, LLC* (2020) 57 Cal.App.5th  
9 303, 308 [taking judicial notice of transcripts from arbitration proceeding]; *Hart v. Darwish* (2017)  
10 12 Cal.App.5th 218, 224 [“minute orders and transcripts are ‘[r]ecords’ of a ‘court of this state’”];  
11 *Tucker v. Pacific Bell Mobile Services* (2012) 208 Cal.App.4th 201, 219 [“The pleadings and  
12 declarations are records of a court of this state and therefore qualified for permissive judicial notice  
13 under Evidence Code section 452, subdivision (d).”]; *Joslin v. H.A.S. Ins. Brokerage* (1986) 184  
14 Cal.App.3d 369, 375 [taking judicial notice of deposition testimony].) As pleadings and filings in,  
15 transcripts of, and deposition testimony taken in other proceedings, this Court may take judicial  
16 notice of Exhibits A to G and K.

17 In addition, Section 452, subdivision (b), authorizes the Court to take judicial notice of a  
18 public entity’s “[r]egulations and legislative enactments.” (Evid. Code, § 452, subd. (b); see also  
19 Evid. Code, § 200 [defining “public entity” to include a local city governments and other public  
20 agencies].) Courts thus “may take notice of local ordinances and the official resolutions, reports, and  
21 other official acts of a city.” (*Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014,  
22 1027, *overruled on others grounds*, *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193;  
23 see also *Save Lafayette v. City of Lafayette* (2018) 20 Cal.App.5th 657, 662 fn.1 [granting request for  
24 judicial notice of city’s public records, including local ordinances, legislative enactments, and staff  
25 reports].) Courts may also take judicial notice of the “city attorney’s opinion” as part of the  
26 legislative history of a council’s actions. (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 were offered for the purpose  
28 of showing that the “that the city attorney concluded continuing free berths would violate the city’s



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# **EXHIBIT A**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES BC 6 1 6 8 0 4**

19 PICO NEIGHBORHOOD  
20 ASSOCIATION, MARIA LOYA and  
21 ADVOCATES FOR MALIBU PUBLIC  
22 SCHOOLS

Plaintiff,

v.

23 CITY OF SANTA MONICA,  
24 CALIFORNIA; and DOES 1-100,  
25 inclusive,

Defendants.

Case No.:

COMPLAINT FOR VIOLATION OF:

- 1) CALIFORNIA VOTING RIGHTS ACT OF 2001; and
- 2) EQUAL PROTECTION CLAUSE OF CALIFORNIA CONSTITUTION

RECEIPT #: CCH539179031  
 DATE PAID: 04/12/16 11:04 AM  
 PAYMENT: \$435.00 310  
 RECEIVED:  
 CHECK: \$0.00  
 CASH: \$0.00  
 CHANGE: \$0.00  
 CARD: \$435.00

CIT/CASE: BC616804  
 LEA/DEF#:

04/12/2016



1 COMES NOW Plaintiffs Pico Neighborhood Association (hereinafter "PNA"), Maria Loya  
2 (hereinafter "Loya") and Advocates for Malibu Public Schools (hereinafter "AMPS")  
3 (collectively "Plaintiffs"), and allege as follows:

4 **NATURE OF THE ACTION**

5 1. This action is brought by Plaintiffs for injunctive relief against the City of Santa  
6 Monica, California, for its violation of the California Voting Rights Act of 2001 (hereinafter  
7 the "CVRA"), Cal. Elec. Code §§ 14025, et seq., and for declaratory relief that the provision  
8 of the Santa Monica City Charter requiring the at-large election of its city council as well as  
9 the governing board of the Santa Monica Malibu Unified School District ("SMMUSD") is  
10 unconstitutional. The previous system of district-based elections was abandoned and at-large  
11 elections were adopted in 1946, purposefully to prevent non-Anglo Santa Monicans residing  
12 primarily around and south of what is now Interstate 10 from achieving representation in their  
13 local governments. Since that time, at-large elections have been very successful in achieving  
14 that purpose -- the imposition of the City of Santa Monica's at-large method of election has  
15 accomplished its nefarious purpose -- dilution of Latino voting power and denial of effective  
16 political participation in elections to the Santa Monica City Council. The City of Santa  
17 Monica's at-large method of election for electing members to its City Council prevents Latino  
18 residents from electing candidates of their choice or influencing the outcome of Santa  
19 Monica's City Council elections.

20 2. The effects of the City of Santa Monica's at-large method of election are  
21 apparent and compelling. Since the adoption of at-large elections in the City of Santa Monica  
22 sixty years ago, only one Latino has been elected to the City Council, and not a single Latino  
23 resident of the Pico Neighborhood, where Latinos are concentrated, has been elected to the  
24 Santa Monica city council. Latino residents of the Pico Neighborhood, including Ms. Loya,  
25 have run in several recent elections for the Santa Monica city council, and though they have  
26 been preferred by both voters in the Pico Neighborhood and by Latino voters generally, they  
27 have all lost due to the costly and discriminatory at-large system by which Santa Monica  
28

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1 elects its city council. Rather, those Latino candidates preferred by the Latino electorate were  
2 all defeated by the bloc voting of the non-Latino electorate.

3         3. Santa Monica's at-large method of election violates the CVRA. Plaintiffs bring  
4 this action to enjoin the City of Santa Monica's continued abridgment of Latino voting rights.  
5 Plaintiffs seek a declaration from this Court that the at-large method of election currently  
6 used by the City of Santa Monica violates the CVRA. Plaintiffs seek injunctive relief  
7 enjoining the City of Santa Monica from further imposing or applying its current at-large  
8 method of election. Further, Plaintiffs seek injunctive relief requiring the City of Santa  
9 Monica to implement district based elections or other alternative relief tailored to remedy  
10 Santa Monica's violation of the CVRA.

11         4. District elections were abandoned and at-large elections were adopted by Santa  
12 Monica with the purpose of discriminating against Santa Monica's ethnic minority population  
13 residing in the southern portion of the city. That fact alone – that the rejection of district  
14 elections and adoption of at-large elections were generally motivated by a desire to  
15 disenfranchise ethnic minorities – makes the at-large election system unconstitutional today.  
16 *See, e.g., Hunter v. Underwood*, 471 US 222 (1985) (invalidating a suffrage provision of the  
17 1901 Alabama Constitution Convention even though it was adopted 84 years earlier).  
18 Specifically, the provision in the Santa Monica City Charter requiring at-large elections for  
19 the city council and the SMMUSD governing board, not only runs afoul of the CVRA, it also  
20 runs afoul of the Equal Protection Clause (Article I, Section 7) of the California Constitution,  
21 among other controlling laws.

22         5. Plaintiffs attempted to avoid the need for litigation by engaging in a dialogue  
23 with the City of Santa Monica, through their counsel. Specifically, Plaintiffs, through their  
24 counsel, brought this CVRA violation to the attention of the City of Santa Monica through  
25 correspondence sent nearly four months prior to the filing of this Complaint. Despite that  
26 correspondence, the Santa Monica City Council has taken no action to end its violation of the  
27 CVRA, content to continue violating the CVRA and their constituents' voting rights by  
28 clinging to a relic of its racist past. In fact, other than an email from Santa Monica's city

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1 attorney on December 28, 2015 noting that the matter would be considered by the city council  
2 in closed session on January 12, 2016, and promising a substantive response thereafter,  
3 Defendant City of Santa Monica has not responded at all.

4 **PARTIES**

5 6. Established in 1979, PNA is a non-profit organization dedicated to improving  
6 the living conditions of residents of the Pico Neighborhood of Santa Monica, where Latino  
7 residents of Santa Monica are concentrated, and advocating for the interests of Pico  
8 Neighborhood residents to the Santa Monica City Council. PNA has dozens of members,  
9 including Latino registered voters residing in the City of Santa Monica.

10 7. AMPS, founded in 2010, is a non-profit organization dedicated to improving  
11 the public schools within the boundaries of the City of Malibu that are part of the SMMUSD.  
12 As part of those efforts, AMPS has advocated for district-based elections for SMMUSD,  
13 among other political subdivisions, so that every neighborhood has a voice in their local  
14 governing boards. But SMMUSD is not able to adopt district-based elections by petitioning  
15 the County Committee on School District Organization, like nearly 200 California school  
16 districts have done in just the last eight years, because the Santa Monica City Charter  
17 prescribes at-large elections for SMMUSD's governing board. AMPS has hundreds of  
18 members, including Latino registered voters residing in the City of Santa Monica.

19 8. The Latino residents of Santa Monica whose voting rights are immediately  
20 harmed by the City of Santa Monica's adherence to an unlawful at-large system of electing its  
21 city council are hindered from protecting their own interests. Many of the Latino citizens of  
22 Santa Monica do not recognize that their voting rights are being violated by the City of Santa  
23 Monica's adherence to an unlawful at-large system of electing its city council, and still others  
24 fear reprisal by the City of Santa Monica if they were to seek redress for the City of Santa  
25 Monica imposing its unlawful election system.

26 9. Despite that fear of reprisal, Maria Loya feels compelled to seek redress for the  
27 City of Santa Monica's violation of the CVRA and dilution of the Latino vote in Santa  
28

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1 Monica. Loya is a member of a "protected class" as that term is defined in the CVRA – she  
2 is Latina – and she is registered to vote and resides in the City of Santa Monica.

3 10. At all times herein mentioned, Defendant City of Santa Monica, California  
4 (hereinafter "Santa Monica") is and has been a political subdivision subject to the provisions  
5 of the CVRA.

6 11. Plaintiffs are unaware of the true names and capacities, whether individual,  
7 corporate, associate, or otherwise, of defendants sued herein as Does 1 through 100,  
8 inclusive, and therefore, sues said defendants by such fictitious names and will ask leave of  
9 court to amend this complaint to show their true names and capacities when the same have  
10 been ascertained. Plaintiffs are informed and believe and thereon allege that defendants Does  
11 1 through 100, inclusive, are responsible on the facts and theories herein alleged.

12 12. Does 1 through 100, inclusive, are Defendants that have caused Santa Monica  
13 to violate the CVRA, failed to prevent Santa Monica's violation of the CVRA, or are  
14 otherwise responsible for the acts and omissions alleged herein.

15 13. Plaintiffs are informed and believe and thereon allege that Defendants and each  
16 of them are in some manner legally responsible for the acts and omissions alleged herein, and  
17 actually and proximately caused and contributed to the various injuries and damages referred  
18 to herein.

19 14. Plaintiffs are informed and believe and thereon allege that at all times herein  
20 mentioned each of the Defendants was the agent, partner, predecessor in interest, successor in  
21 interest, and/or employee of one or more of the other Defendants, and were at all times herein  
22 mentioned acting within the course and scope of such agency and/or employment.

23  
24 **JURIDICTION AND VENUE**

25 15. All parties hereto are within the unlimited jurisdiction of this Court. The  
26 unlawful acts complained of occurred in Los Angeles County. Venue in this Court is proper.

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1 **FACTS**

2 16. The City of Santa Monica contains approximately 89,736 persons, of which  
3 approximately 13.1% are Hispanic or Latino, based upon the 2010 United States Census.

4 17. The City of Santa Monica is governed by a city council. The Santa Monica  
5 City Council serves as the governmental body responsible for the operations of the City of  
6 Santa Monica. The City Council is comprised of seven members, including a Mayor elected  
7 by and from the members of the City Council.

8 18. The Santa Monica City Council members are elected pursuant to an at-large  
9 method of election. Under this method of election, all of the eligible voters of the entire City  
10 of Santa Monica elect the members of the City Council.

11 19. Vacancies to the City Council are elected on a staggered basis; as a result, every  
12 two years the city electorate elects either three or four City Council members.

13 20. Upon information and belief, since adopting at-large elections in 1946, only one  
14 of Santa Monica's city council members has been Latino, and he was not a resident of the  
15 Latino-concentrated Pico Neighborhood.

16 21. Elections conducted within the City of Santa Monica are characterized by  
17 racially polarized voting. Racially polarized voting occurs when members of a protected  
18 class as defined by the CVRA, Cal. Elec. Code § 14025(d), vote for candidates and electoral  
19 choices that are different from the rest of the electorate. Racially polarized voting exists  
20 within the City of Santa Monica because there is a difference between the choice of  
21 candidates or other electoral choices that are preferred by Latino voters, and the choice of  
22 candidates or other electoral choices that are preferred by voters in the rest of the electorate,  
23 with the result being that Latino-preferred candidates usually lose.

24 22. Racially polarized voting is legally significant in Santa Monica's City Council  
25 elections because it dilutes the opportunity of Latino voters to elect candidates of their choice.

26 23. Patterns of racially polarized voting have the effect of impeding opportunities  
27 for Latino voters to elect candidates of their choice to the at-large city council positions in the  
28

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1 City of Santa Monica, where the non-Latino populace dominates elections. For several years,  
2 Latino voters have been harmed by racially polarized voting.

3 24. The at-large method of election and repeated racially polarized voting has  
4 caused Latino vote dilution within the City of Santa Monica. Where Latinos and the rest of  
5 the electorate express different preferences on candidates and other electoral choices, non-  
6 Latinos by virtue of their overall numerical majority among voters, defeat the preferences of  
7 Latino voters.

8 25. The obstacles posed by the City of Santa Monica's at-large method of election,  
9 together with racially polarized voting, impair the ability of people of certain races, color or  
10 language minority groups, such as Latino voters, to elect candidates of their choice or to  
11 influence the outcome of elections conducted in the City of Santa Monica.

12 26. An alternative method of election, such as, but not limited to, district-based  
13 elections, exists that will provide an opportunity for the members of the CVRA-protected  
14 classes to elect candidates of their choice or to influence the outcome of the Santa Monica  
15 City Council elections.

16 27. It is no accident that at-large elections have diluted the vote of ethnic minorities  
17 in elections for Santa Monica's city council – that was a significant motivation and purpose  
18 of adopting at-large elections, instead of the district-based elections previously employed in  
19 Santa Monica. At-large elections have long been well known to dilute minority vote. The  
20 electorate of Santa Monica understood well that minority vote dilution would be the result of  
21 at-large elections when it adopted at-large elections in 1946, a time of significant interracial  
22 tension in Santa Monica. In one advertisement, calling for the rejection of at-large elections  
23 in 1946, the "Anti-Charter Committee" decried:

24 **MINORITY GROUPS AND THE PROPOSED CHARTER**

25 The lot of a member of a minority group, whether it be in a location of  
26 not-so-fine homes, or one of race, creed or color, is never too happy  
27 under the best of conditions.  
28

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1 But consider what life would be like under a dictatorship type of  
2 government as proposed under the charter.

3 With seven councilmen elected AT LARGE (and history shows they  
4 will mostly originate from NORTH OF MONTANA), and a city  
5 manager responsible to the seven councilmen plus a dictatorship that  
6 has so long ruled Santa Monica (without regard to minorities) where  
7 will these people be?

8 The proposed ruling groups control the chief of police – and through  
9 him the police force – and the city attorney, the personnel director, the  
10 health officer, etc.

11 Where will the laboring man go? Where will the Jewish, colored or  
12 Mexican go for aid in his special problems?

13 Where will the resident of Ocean Park, Douglas district, the Lincoln-  
14 Pico and other districts go when he needs help?

15 The proposed charter is not fair – it is not democratic.

16 It is a power grab – and we plead with all citizens of Santa Monica to  
17 protect their interests (vote no) and convince your neighbors to vote NO  
18 ON THE PROPOSED CHARTER.

19 28. At-large elections have accomplished exactly what proponents hoped for – and  
20 opponents feared – in 1946: the dilution of the vote of racial and ethnic minorities, as well as  
21 the residents of less privileged neighborhoods in the southern portion of Santa Monica. That  
22 unlawful election system must not be allowed to stand, both because it was intended to  
23 disenfranchise minority voters when it was enacted, and because it has done exactly that and  
24 therefore violates the CVRA.

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Voting Rights Act of 2001)**

3 **(Against All Defendants)**

4 29. Plaintiff incorporates by this reference paragraphs 1 through 28 as though fully  
5 set forth herein.

6 30. Defendant City of Santa Monica is a political subdivision within the State of  
7 California. Defendant is a charter city.

8 31. Defendant City of Santa Monica employs an at-large method of election, where  
9 voters of its entire jurisdiction elect members to its City Council.

10 32. Racially polarized voting has occurred, and continues to occur, in elections for  
11 members of the City Council for the City of Santa Monica and in elections incorporating  
12 other electoral choices by voters of the City of Santa Monica, California. As a result, the City  
13 of Santa Monica's at-large method of election is imposed in a manner that impairs the ability  
14 of protected classes as defined by the CVRA to elect candidates of their choice or influence  
15 the outcome of elections.

16 33. An alternative method of election, such as, but not limited to, district-based  
17 elections, exists that will provide an opportunity for Latinos to elect candidates of their choice  
18 or to influence the outcome of the Santa Monica City Council elections.

19 34. An actual controversy has arisen and now exists between the parties relating to  
20 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a  
21 declaration of rights.

22 35. Defendants' wrongful conduct has caused and, unless enjoined by this Court,  
23 will continue to cause, immediate and irreparable injury to Plaintiffs, and all residents of the  
24 City of Santa Monica.

25 36. Plaintiffs, and the residents of the City of Santa Monica, have no adequate  
26 remedy at law for the injuries they currently suffer and will otherwise continue to suffer.

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1 **SECOND CAUSE OF ACTION**

2 **(Violation of California Equal Protection Clause)**

3 **(Against All Defendants)**

4 37. Plaintiff incorporates by this reference paragraphs 1 through 37 as though fully  
5 set forth herein.

6 38. Defendant City of Santa Monica's rejection of district-based elections and  
7 adoption of at-large elections were motivated by the desire to deny local government  
8 representation to racial and ethnic minorities.

9 39. As a direct consequence of the decades-old racially-motivated decisions to  
10 reject district-based elections and adopt at-large elections, Defendant City of Santa Monica  
11 still employs an at-large method of election, where voters of its entire jurisdiction elect  
12 members to its City Council.

13 40. Those intentionally discriminatory decisions are enshrined in what is now  
14 sections 600 and 900 of the Santa Monica City Charter.

15 41. Because the rejection of district-based elections and the adoption of at-large  
16 elections were motivated by a desire to discriminate against the non-Anglo residents of Santa  
17 Monica, those enactments - sections 600 and 900 of the Santa Monica City Charter - are  
18 invalid as they violate, among other laws, the Equal Protection Clause of the California  
19 Constitution (Article I Section 7).

20 42. An actual controversy has arisen and now exists between the parties relating to  
21 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a  
22 declaration of rights.

23 43. A declaration by this Court regarding the invalidity of Defendant's at-large  
24 election system, and specifically sections 600 and 900 of the Santa Monica City Charter, is  
25 necessary to prevent Defendant from continuing to employ that intentionally-discriminatory  
26 election system, and to permit the elections of the Santa Monica Malibu Unified School  
27 District to be converted to district-based elections through a petition to the Los Angeles  
28 County Committee on School District Organization and the California Board of Education.

04/12/2016

**PRAYER FOR RELIEF**

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

1. For a decree that the City of Santa Monica's current at-large method of election for the City Council violates the California Voting Rights Act of 2001;

2. For a decree that the City of Santa Monica's current at-large method of election for the City Council, and specifically sections 600 and 900 of the Santa Monica City Charter, was adopted with the purpose of discriminating against, and denying effective representation to, non-Anglo residents of Santa Monica, and therefore those provisions are invalid.

3. For preliminary and permanent injunctive relief enjoining the City of Santa Monica from imposing or applying its current at-large method of election;

4. For injunctive relief mandating the City of Santa Monica to implement district-based elections, as defined by the California Voting Rights Act of 2001, or other alternative relief tailored to remedy the City of Santa Monica's violation of the California Voting Rights Act of 2001;

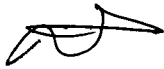
5. For an award of Plaintiffs' attorneys' fees, costs, litigation expenses and prejudgment interest pursuant to the CVRA, Cal. Elec. Code § 14030 and other applicable law; and

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

Respectfully submitted:

DATED: April 11, 2016

**SHENKMAN & HUGHES,  
R. REX PARRIS LAW FIRM, and  
LAW OFFICES OF MILTON C. GRIMES  
LAW OFFICE OF ROBERT RUBIN**



By: Kevin Shenkman  
Attorneys for Plaintiff

04/12/2016

# **EXHIBIT B**

FEB 23 2017

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26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
27 **COUNTY OF LOS ANGELES**

28 PICO NEIGHBORHOOD  
ASSOCIATION and MARIA LOYA

Plaintiff,

v.

CITY OF SANTA MONICA,  
CALIFORNIA; and DOES 1-100,  
inclusive,

Defendants.

Case No.: BC616804

FIRST AMENDED COMPLAINT FOR  
VIOLATION OF:

- 1) CALIFORNIA VOTING RIGHTS ACT  
OF 2001; and
- 2) EQUAL PROTECTION CLAUSE OF  
CALIFORNIA CONSTITUTION

Dept. 28 – Hon. Yvette Palazuelos

1 COMES NOW Plaintiffs Pico Neighborhood Association (hereinafter "PNA") and Maria  
2 Loya (hereinafter "Loya") (collectively "Plaintiffs"), and allege as follows:

3  
4 **NATURE OF THE ACTION**

5 1. This action is brought by Plaintiffs for injunctive relief against the City of Santa  
6 Monica, California, for its violation of the California Voting Rights Act of 2001 (hereinafter  
7 the "CVRA"), Cal. Elec. Code §§ 14025, et seq., and for declaratory relief that the provision  
8 of the Santa Monica City Charter requiring the at-large election of its city council is  
9 unconstitutional. The current system of at-large council elections was adopted in 1946,  
10 purposefully to prevent non-Anglo Santa Monicans residing primarily around and south of  
11 what is now Interstate 10 from achieving representation in their local governments. Since  
12 that time, at-large elections have been very successful in achieving that purpose -- the  
13 imposition of the City of Santa Monica's at-large method of election has accomplished its  
14 nefarious purpose – dilution of Latino voting power and denial of effective political  
15 participation in elections to the Santa Monica City Council. The City of Santa Monica's at-  
16 large method of election for electing members to its City Council prevents Latino residents  
17 from electing candidates of their choice or influencing the outcome of Santa Monica's City  
18 Council elections.

19 2. The effects of the City of Santa Monica's at-large method of election are  
20 apparent and compelling. Since the adoption of at-large elections in the City of Santa Monica  
21 more than sixty years ago, only one Latino has been elected to the City Council, and not a  
22 single Latino resident of the Pico Neighborhood, where Latinos are concentrated, has been  
23 elected to the Santa Monica City Council. Latino residents of the Pico Neighborhood,  
24 including Ms. Loya, have run in several recent elections for the Santa Monica City Council,  
25 and though they have often drawn significant support from both voters in the Pico  
26 Neighborhood and by Latino voters generally, they have all lost due to the costly and  
27 discriminatory at-large system by which Santa Monica elects its city council. Rather, all of  
28 the Latino candidates preferred by the Latino electorate were defeated by the bloc voting of  
the non-Latino electorate against them.

1           3.     Santa Monica's at-large method of election violates the CVRA. Plaintiffs bring  
2 this action to enjoin the City of Santa Monica's continued abridgment of Latino voting rights.  
3 Plaintiffs seek a declaration from this Court that the at-large method of election currently  
4 used by the City of Santa Monica violates the CVRA. Plaintiffs seek injunctive relief  
5 enjoining the City of Santa Monica from further imposing or applying its current at-large  
6 method of election. Further, Plaintiffs seek injunctive relief requiring the City of Santa  
7 Monica to implement district based elections or other alternative relief tailored to remedy  
8 Santa Monica's violation of the CVRA.

9           4.     At-large elections were adopted by Santa Monica with the purpose of  
10 discriminating against Santa Monica's ethnic minority population residing in the southern  
11 portion of the city. That fact alone – that the adoption of at-large elections was generally  
12 motivated by a desire to disenfranchise ethnic minorities – makes the at-large election system  
13 unconstitutional today, and requires that this Court remedy the harm caused by the imposition  
14 of that discriminatory election system. Specifically, the provision in the Santa Monica City  
15 Charter requiring at-large elections for the city council, not only runs afoul of the CVRA, it  
16 also runs afoul of the Equal Protection Clause (Article I, Section 7) of the California  
17 Constitution, among other controlling laws.

18           5.     Plaintiffs, through their counsel, attempted to avoid the need for litigation by  
19 engaging in a dialogue with the City of Santa Monica. Specifically, Plaintiffs, through their  
20 counsel, brought this CVRA violation to the attention of the City of Santa Monica through  
21 correspondence sent nearly four months prior to the filing of the original Complaint in this  
22 case. Despite that correspondence, the Santa Monica City Council has taken no action to end  
23 its violation of the CVRA, content to continue violating the CVRA and their constituents'  
24 voting rights by clinging to a relic of its racist past. In fact, other than an email from Santa  
25 Monica's city attorney on December 28, 2015 noting that the matter would be considered by  
26 the city council in closed session on January 12, 2016, and promising a substantive response  
27 thereafter, Defendant City of Santa Monica has not responded at all.

28

1 **PARTIES**

2 6. Established in 1979, PNA is a non-profit organization dedicated to improving  
3 the living conditions and advancing the interests, including those related to the political  
4 process, of residents of the Pico Neighborhood of Santa Monica, where Latino residents of  
5 Santa Monica are concentrated, and advocating for the interests of Pico Neighborhood  
6 residents before the Santa Monica City Council. PNA has dozens of members, including  
7 Latino registered voters residing in the City of Santa Monica.

8 7. The Latino residents of Santa Monica whose voting rights are immediately  
9 harmed by the City of Santa Monica's adherence to an unlawful at-large system of electing its  
10 city council are hindered from protecting their own interests. Many of the Latino citizens of  
11 Santa Monica do not recognize that their voting rights are being violated by the City of Santa  
12 Monica's adherence to an unlawful at-large system of electing its city council, and still others  
13 fear reprisal by the City of Santa Monica if they were to seek redress for the City of Santa  
14 Monica imposing its unlawful election system.

15 8. Despite that fear of reprisal, Maria Loya feels compelled to seek redress for the  
16 City of Santa Monica's violation of the CVRA and dilution of the Latino vote in Santa  
17 Monica. Loya is a member of a "protected class" as that term is defined in the CVRA – she  
18 is Latina – and she is registered to vote and resides in the City of Santa Monica.

19 9. At all times herein mentioned, Defendant City of Santa Monica, California  
20 (hereinafter "Santa Monica," or "Defendant") is and has been a political subdivision subject  
21 to the provisions of the CVRA.

22 10. Plaintiffs are unaware of the true names and capacities, whether individual,  
23 corporate, associate, or otherwise, of defendants sued herein as Does 1 through 100,  
24 inclusive, and therefore, sues said defendants by such fictitious names and will ask leave of  
25 court to amend this complaint to show their true names and capacities when the same have  
26 been ascertained. Plaintiffs are informed and believe and thereon allege that defendants Does  
27 1 through 100, inclusive, are responsible on the facts and theories herein alleged.

1 11. Does 1 through 100, inclusive, are Defendants that have caused Santa Monica  
2 to violate the CVRA, failed to prevent Santa Monica's violation of the CVRA, or are  
3 otherwise responsible for the acts and omissions alleged herein.

4 12. Plaintiffs are informed and believe and thereon allege that Defendants and each  
5 of them are in some manner legally responsible for the acts and omissions alleged herein, and  
6 actually and proximately caused and contributed to the various injuries and damages referred  
7 to herein.

8 13. Plaintiffs are informed and believe and thereon allege that at all times herein  
9 mentioned each of the Defendants was the agent, partner, predecessor in interest, successor in  
10 interest, and/or employee of one or more of the other Defendants, and were at all times herein  
11 mentioned acting within the course and scope of such agency and/or employment.

#### 12 13 **JURISDICTION AND VENUE**

14 14. All parties hereto are within the unlimited jurisdiction of this Court. The  
15 unlawful acts complained of occurred in Los Angeles County. Venue in this Court is proper.

#### 16 17 **FACTS**

18 15. The City of Santa Monica contains approximately 89,736 persons, of whom  
19 approximately 13.1% are Hispanic or Latino, based upon the 2010 United States Census.

20 16. The City of Santa Monica is governed by a city council. The Santa Monica  
21 City Council serves as the governmental body responsible for the operations of the City of  
22 Santa Monica. The City Council is comprised of seven members, including a Mayor elected  
23 by and from the members of the City Council.

24 17. The Santa Monica City Council members are elected pursuant to an at-large  
25 method of election. Under this method of election, all of the eligible voters of the entire City  
26 of Santa Monica elect the members of the City Council.

27 18. Seats on the City Council are filled on a staggered basis; as a result, every two  
28 years the city electorate elects either three or four City Council members.



1           19. Upon information and belief, since its adoption of its current system of at-large  
2 elections in 1946, only one of Santa Monica's city council members has been Latino, and he  
3 was not a resident of the Latino-concentrated Pico Neighborhood.

4           20. Elections conducted within the City of Santa Monica are characterized by  
5 racially polarized voting. Racially polarized voting occurs when members of a protected  
6 class as defined by the CVRA, Cal. Elec. Code § 14025(d), vote for candidates and electoral  
7 choices that are different from the rest of the electorate. Racially polarized voting exists  
8 within the City of Santa Monica because there is a difference between the choice of  
9 candidates or other electoral choices that are preferred by Latino voters, and the choice of  
10 candidates or other electoral choices that are preferred by voters in the rest of the electorate,  
11 with the result being that Latino-preferred candidates usually lose.

12           21. For example, in the city council election of 1994, Latino voters cohesively  
13 preferred Tony Vazquez – himself a Latino. But, the non-Hispanic white majority of the  
14 electorate voted as a bloc against Mr. Vazquez, and thus due to the at-large election system  
15 Mr. Vazquez lost. That election was filled with racial hostility in Santa Monica – mainly  
16 directed at Mr. Vazquez, the sole Latino candidate. A cartoon was published in the local  
17 newspaper, “the Outlook,” depicting Mr. Vazquez as a member of a Latino street gang, and a  
18 mailer was distributed attacking Mr. Vazquez for purportedly seeking to allow “illegal”  
19 Latino immigrants to vote. After his loss, the ordinarily calm and collected Mr. Vazquez  
20 explained the reason for his loss – “the racism that still exists in our city. ... The racism that  
21 came out in this campaign was just unbelievable.” In the end, while the candidate preferred  
22 by the Latino voters – Mr. Vazquez – was not elected, the first, second and third preferences  
23 of the non-Latino electorate (Bob Holbrook, Pam O’Connor and Ruth Ebner) were all  
24 elected.

25           22. By way of further example, in the city council election of 2002, Latino voters  
26 cohesively preferred Josefina Aranda – herself a Latina. But, the non-Hispanic white  
27 majority of the electorate voted as a bloc against Ms. Aranda, and thus due to the at-large  
28 election system Ms. Aranda lost. During the campaign, Ms. Aranda lamented the lack of

1 representation of Latinos and the Pico Neighborhood on the City Council: “[T]here is such a  
2 huge need for more representation from groups that are currently disenfranchised. I am from  
3 the Pico Neighborhood. I am a woman, I am a Latina. I believe I could bring a voice to a lot  
4 of people who currently are not heard. ... Currently, the City Council does not represent the  
5 diversity of the City of Santa Monica. The Pico neighborhood is underrepresented.” While  
6 the candidate preferred by the Latino voters – Ms. Aranda – was not elected, the first, second  
7 and third preferences of the non-Latino electorate (Bob Holbrook, Pam O’Connor and Kevin  
8 McKeown) were all elected, continuing the exact problem that Ms. Aranda had identified.

9       23. A still further example of racially polarized voting in the City of Santa  
10 Monica’s at-large elections, is the 2004 election for Defendant’s city council. In that  
11 election, Latino voters cohesively preferred Maria Loya – herself a Latina. But, the non-  
12 Hispanic white majority of the electorate voted as a bloc against Ms. Loya, and thus due to  
13 the at-large election system Ms. Loya lost. The demonstration of racially polarized voting  
14 and the dilutive effect of Santa Monica’s system of at-large elections is particularly striking in  
15 the 2004 election. Bobby Shriver, a member of the Kennedy family, came in first place  
16 among several candidates by a wide margin in the citywide vote count. In fact, except for the  
17 Pico Neighborhood, where Santa Monica’s Latino community is concentrated, Mr. Shriver  
18 came in first place in every one of the seven recognized neighborhoods that make up the City  
19 of Santa Monica, beating the other candidates in their own neighborhoods. In the Pico  
20 Neighborhood, where Ms. Loya resided (and still resides), Ms. Loya came in first, garnering  
21 significantly more votes than any other candidate, even Bobby Shriver. But, because  
22 Defendant utilized an at-large method of election, rather than a district-based election, the  
23 fact that Ms. Loya was strongly preferred by voters in the region where she resided, and  
24 Latinos more generally throughout the city, made no difference to the outcome of the  
25 election. In the end, while the candidate preferred by the Latino voters – Ms. Loya – was not  
26 elected, the first, second and third preferences of the non-Latino electorate (Bobby Shriver,  
27 Richard Bloom and Herb Katz) were all elected.

1           24. This pattern of racially polarized voting has not ended. For example, in even  
2 the most recent election – in November 2016 – the election for the City of Santa Monica’s  
3 council again exhibited the same sort of racially polarized voting. In that election, Latino  
4 voters cohesively preferred Oscar de la Torre – himself a Latino. But, the non-Hispanic  
5 white majority of the electorate voted as a bloc against Mr. de la Torre, and thus due to the at-  
6 large election system Mr. de la Torre lost. There were two candidates residing in the Pico  
7 Neighborhood in the 2016 election – Terry O’Day and Oscar de la Torre (the candidate  
8 preferred by Latino voters). In the four precincts that lie entirely within the Pico  
9 Neighborhood, Mr. O’Day received 1238 votes and Mr. de la Torre received 1317 votes. So,  
10 if Defendant utilized a district-based election system Mr. de la Torre would likely have  
11 prevailed: but, in Defendant’s plurality at-large system, Mr. O’Day won a seat on the council  
12 and Mr. de la Torre did not. In fact, taking those four precincts, Mr. de la Torre received  
13 more votes than any other candidate. Still, despite his strong support in the Pico  
14 Neighborhood, and being the preferred candidate of Latino voters, Mr. de la Torre lost in  
15 Defendant’s at-large election. In the end, while the candidate preferred by the Latino voters –  
16 Mr. de la Torre – was not elected, the first, second and third preferences of the non-Latino  
17 electorate (Ted Winterer, Glean Davis and Terry O’Day) were all elected.

18           25. Racially polarized voting in Santa Monica has not been limited to the elections  
19 discussed in the preceding paragraphs; rather those elections are intended only to be  
20 exemplary, and the discussion of each is not exhaustive.

21           26. Historical, economic and social factors also contribute to Latino voters’  
22 inability to elect candidates of their choice or influence the outcome of elections for the Santa  
23 Monica City Council in the current at-large election system. Santa Monica has a long history  
24 of racial discrimination against Latinos and other racial minorities. For example, the city’s  
25 population was segregated by race in housing, public accommodations and schools – Latinos  
26 and African Americans were prohibited from purchasing homes in the more desirable  
27 northern portion of the City by deed restrictions; public beaches were reserved for only non-  
28 Hispanic whites, with one small beach area designated by Defendant for “colored use”

1 according to its Shoreline Plan Map; and Latinos and African Americans were relegated to  
2 the lower-funded lower-performing public schools in the southern portion of the city. That  
3 historical discrimination, some of which continues to the present, has resulted in Latinos  
4 having less wealth, less education, a lower literacy rate, worse health, a higher unemployment  
5 rate, and a lower median household income than non-Hispanic white residents of Santa  
6 Monica.

7 27. Latinos are concentrated in the Pico Neighborhood of Santa Monica, an area the  
8 residents have coined the “toxic triangle” for the environmental hazards Defendant has  
9 dumped in that neighborhood. According to a June 2016 report by Defendant’s Planning  
10 Commission, the proportions of Latinos and African Americans are three times as high in the  
11 Pico Neighborhood as they are in the City of Santa Monica as a whole – 39% Latino and 12%  
12 African American in the Pico Neighborhood compared to 13% Latino and 4% African  
13 American in the City as a whole. That report confirms that:

- 14 • among the neighborhoods of Santa Monica, Pico Neighborhood residents have  
15 the highest unemployment rate, lowest median household income, and highest  
16 rate of economic worry;
- 17 • Pico Neighborhood residents have the lowest health score of any neighborhood  
18 in Santa Monica;
- 19 • Pico Neighborhood residents have the lowest early literacy rates and lowest  
20 performance in mathematics in Santa Monica; and
- 21 • Pico Neighborhood residents have the lowest rates in the City of: life  
22 satisfaction, flourishing, having time to do things they enjoy, time and effort put  
23 into the community, trust in neighbors, sense of belonging in their community,  
24 pride in Santa Monica, feeling Santa Monica is beautiful, sense that they have  
25 access to all that is needed in Santa Monica, use of outdoor space, time spent at  
26 community places, and satisfaction with their housing.

27 28. The at-large elections for Defendant’s city council are extraordinarily  
28 expensive. While a successful campaign in an at-large election for a city council seat in a

1 California city the size of Santa Monica would typically require less than \$50,000, several  
2 hundreds of thousands of dollars are routinely spent on each city council election in Santa  
3 Monica. Of course, district election campaigns are much less expensive, as there are fewer  
4 voters a candidate must reach and they all live in a smaller geographic area, making less  
5 expensive campaign tactics, such as walking door to door, more effective. Even the relatively  
6 expensive campaigning method of distributing campaign literature by mail, which has  
7 become a primary means of campaigning for many city council candidates in Santa Monica,  
8 is much less costly in a district-based election system, and thus more feasible for candidates  
9 with limited funds. Latino and African American candidates typically do not have  
10 comparable access to the large sums of money that non-Hispanic white residents of Santa  
11 Monica spend on local political campaigns, and the Latino and African American  
12 communities do not have even close to the same sort of disposable money and resources that  
13 the non-Hispanic white community has to spend on getting its preferred candidates elected in  
14 Santa Monica's at-large elections for its city council.

15 29. The slating of candidates that is common in Santa Monica's at-large city  
16 council elections further exacerbates the dilutive effect of those at-large elections. Municipal  
17 law limits contributions to the campaign of a city council candidate to just a little more than  
18 \$300, yet hundreds of thousands of dollars are spent advocating for/against city council  
19 candidates. Those hundreds of thousands of dollars are, therefore, necessarily pooled and  
20 spent by political action committees that support a slate of candidates; it is not reasonably  
21 possible for a single candidate's campaign to raise that amount of money. Latino-preferred  
22 candidates are frequently excluded from those slates, making it even more difficult for those  
23 candidates to succeed in the ridiculously expensive at-large elections for the Santa Monica  
24 City Council.

25 30. Racially polarized voting is legally significant in Santa Monica's City Council  
26 elections because it dilutes the opportunity of Latino voters to elect candidates of their choice.

27 31. Patterns of racially polarized voting have the effect of impeding opportunities  
28 for Latino voters to elect candidates of their choice to the at-large city council positions in the

1 City of Santa Monica, where the non-Latino populace dominates elections. For several years,  
2 Latino voters have been harmed by racially polarized voting.

3 32. The at-large method of election and repeated racially polarized voting has  
4 caused Latino vote dilution within the City of Santa Monica. Where Latinos and the rest of  
5 the electorate express different preferences on candidates and other electoral choices, non-  
6 Latinos by virtue of their overall numerical majority among voters, defeat the preferences of  
7 Latino voters.

8 33. The obstacles posed by the City of Santa Monica's at-large method of election,  
9 together with racially polarized voting, impair the ability of people of certain races, color or  
10 language minority groups, such as Latino voters, to elect candidates of their choice or to  
11 influence the outcome of elections conducted in the City of Santa Monica.

12 34. An alternative method of election, such as, but not limited to, district-based  
13 elections, exists that will provide an opportunity for the members of the CVRA-protected  
14 classes to elect candidates of their choice or to influence the outcome of the Santa Monica  
15 City Council elections.

16 35. It is no accident that at-large elections have diluted the vote of ethnic minorities  
17 in elections for Santa Monica's city council – that was a significant motivation and purpose  
18 of adopting at-large elections, instead of the district-based elections previously employed in  
19 Santa Monica for electing members to the city council. The charter provision establishing at-  
20 large elections for selection of Defendant's city council, which is still in effect today, was  
21 adopted in 1946. A Board of Freeholders was established with fifteen members, all Anglo,  
22 and all of whom resided in the northern area of Santa Monica subject to restrictive deed  
23 covenants, referred to as "Caucasian Clauses," preventing African Americans and Latinos  
24 from residing in the area. Throughout the deliberations of the Board of Freeholders, the  
25 method of electing a city council – at-large or through district elections – was the most  
26 controversial issue. At first, the Board of Freeholders, noting that public opinion was divided  
27 on this issue, passed a measure to allow voters to choose between a council with seven  
28 members all elected at-large, and a council with three members elected at-large and four

1 members elected by districts. But then the Board of Freeholders reversed course and  
2 rescinded their previous measure, opting instead to place on the ballot only the option to have  
3 a council all elected at-large. That ballot measure passed.

4 36. It is rare that proponents of a law proclaim their intent to discriminate against  
5 any racial group. Even policies and laws that are today regarded as constituting blatant racial  
6 discrimination, have been defended by their proponents as having more legitimate goals, and  
7 the proponents of such laws are often careful to avoid disclosing their racially discriminatory  
8 motives. But in this case, proponents of at-large elections *did* proclaim their intent to exclude  
9 racial minorities. The Santa Monica Outlook – the principal local newspaper at the time –  
10 addressing the city’s growing racial diversity and the desire of racial minorities to have  
11 district elections to provide them an opportunity to have representation in the city  
12 government, argued in 1946 that Santa Monica should adopt at-large elections, not district  
13 elections, in order that Santa Monica “can and should develop into a remarkably  
14 homogeneous community,” and belittled the “cry [of proponents of district elections] that  
15 ‘minorities must be represented’.”

16 37. Even without such a blunt statement of the proponents’ intent as exists in this  
17 case, the purposes of a law or policy can be revealed by the circumstances contemporaneous  
18 to the enactment of the law or policy, contemporaneous knowledge of the likely disparate  
19 impact of the law or policy on a racial minority group, the racially disparate impact that  
20 results from the law or policy, and the background and other decisions of those enacting the  
21 law or policy.

22 38. In the 1940s, when the current at-large system of electing Defendant’s city  
23 council was adopted, the racial demographics of Santa Monica were rapidly changing.  
24 During the Second World War, the nonwhite population of Santa Monica rose by 69%. This  
25 pronounced growth in the nonwhite population of Santa Monica in the years leading up to  
26 Defendant’s adoption of at-large elections in 1946, combined with the other indicators  
27 discussed herein, demonstrates a racially discriminatory purpose. This demographic change  
28

1 also explains the unease of the Outlook when it advocated for at-large elections because Santa  
2 Monica “can and should develop into a remarkably homogeneous community.”

3 39. Racial tensions were high in Santa Monica in 1946, and racial stereotypes and  
4 openly biased attitudes were widespread among the electorate and the leaders who  
5 spearheaded the adoption of at-large elections. The local newspaper unashamedly published  
6 derogatory and racially stereotypical images of people of color, including a recurring cartoon  
7 character known as “The Little Savage” with exaggeratedly thick lips, and even depicting  
8 African Americans as monkeys in cartoons that glorified the “necktie party” – a disturbing  
9 euphemism for the lynchings that were still commonplace. Racial tensions were so high in  
10 Santa Monica in the mid-1940s that the establishment of the Interracial Progress Committee  
11 was deemed necessary to address topics such as “The Roots of Intergroup Tensions in This  
12 Community.”

13 40. At-large elections have long been well known to dilute minority vote. The  
14 Board of Freeholders and the electorate of Santa Monica understood well that minority vote  
15 dilution would be the result of at-large elections when they adopted at-large elections in 1946.  
16 In one advertisement, calling for the rejection of at-large elections in 1946, the “Anti-Charter  
17 Committee” decried:

#### 18 MINORITY GROUPS AND THE PROPOSED CHARTER

19 The lot of a member of a minority group, whether it be in a location of  
20 not-so-fine homes, or one of race, creed or color, is never too happy  
21 under the best of conditions.

22 But consider what life would be like under a dictatorship type of  
23 government as proposed under the charter.

24 With seven councilmen elected AT LARGE (and history shows they  
25 will mostly originate from NORTH OF MONTANA), and a city  
26 manager responsible to the seven councilmen plus a dictatorship that  
27 has so long ruled Santa Monica (without regard to minorities) where  
28 will these people be?



1 The proposed ruling groups control the chief of police – and through  
2 him the police force – and the city attorney, the personnel director, the  
3 health officer, etc.

4 Where will the laboring man go? Where will the Jewish, colored or  
5 Mexican go for aid in his special problems?

6 Where will the resident of Ocean Park, Douglas district, the Lincoln-  
7 Pico and other districts go when he needs help?

8 The proposed charter is not fair – it is not democratic.

9 It is a power grab – and we plead with all citizens of Santa Monica to  
10 protect their interests (vote no) and convince your neighbors to vote NO

11 ON THE PROPOSED CHARTER.

12 Opponents of at-large elections warned that “the largest population centers south of Santa  
13 Monica Blvd. [where racial minorities reside] will not be represented” unless the Council was  
14 elected by districts. Another Anti-Charter advertisement published in the Outlook on  
15 November 4, 1946, just one day prior to the election, argued that the proposed at-large  
16 elections would “starve out minority groups.” It was not just opponents of the charter  
17 measure that recognized that at-large elections would prevent racial minorities from achieving  
18 representation on the Santa Monica City Council, proponents acknowledged it too. For  
19 example, the secretary of the Board of Freeholders acknowledged in a meeting of the local  
20 chapter of the NAACP, that at-large elections provided less opportunity than the alternative  
21 district elections for racial minorities to achieve representation on the city council.

22 41. At-large elections have accomplished exactly what proponents hoped for – and  
23 opponents feared – in 1946: the dilution of the vote of racial and ethnic minorities, as well as  
24 the residents of less privileged neighborhoods in the southern portion of Santa Monica. In the  
25 more than seventy years since the adoption of at-large elections for Defendant’s city council,  
26 there have been 71 individuals elected to the city council. The vast majority have resided in  
27 the northern portion of the city, which was subject to restrictive deed covenants preventing  
28 Latinos and African Americans from purchasing homes in that area. Of those 71 individuals

1 elected to the city council, only one has been Latino. Certainly, there is no reason that a non-  
2 Latino cannot be preferred by Latino voters. But, as the elections discussed above indicate,  
3 when a Latino candidate is perceived as having even a remote chance of winning a city  
4 council election in Santa Monica, the Latino electorate votes cohesively for that Latino  
5 candidate. So, the disproportionate historical absence of Latinos being elected to Defendant's  
6 city council is telling.

7 42. The racially-tinged contemporaneous actions of proponents of at-large elections  
8 in 1946 are also indicative of a racially discriminatory motive. At the same time as the  
9 charter provision adopting at-large elections for Defendant's city council was on the ballot, so  
10 too was Proposition 11, which sought to create a state Fair Employment Practices  
11 Commission (FEPC) and officially ban discrimination based on race, religion, color, or  
12 national origin in the workplace. Proposition 11 was championed by Augustus Hawkins (the  
13 only African American in the California Assembly at the time), the NAACP, the Urban  
14 League, the American Council on Race Relations, the California Federation for Civic Unity,  
15 as well as union organizations like the CIO. Proposition 11 therefore presented a clean issue  
16 – should racial discrimination in employment be prohibited? Proposition 11 was defeated by  
17 a large margin among the electorate in Santa Monica. More importantly, accepted statistical  
18 methods utilized by courts in voting rights cases estimate a stunningly high correlation  
19 between voters' choices on Proposition 11 and the at-large election system charter measure.  
20 Specifically, focusing on the 102 precincts (out of 109 total) that opposed Proposition 11, in  
21 order to gauge the attitudes of non-Hispanic white residents of Santa Monica, 93% of voters  
22 who opposed Proposition 11 also favored the at-large election charter measure, while  
23 virtually 100% of voters who favored Proposition 11 also opposed the at-large election  
24 charter measure. While this correlation does not, in itself, prove that whites supported the at-  
25 large election charter measure *because* of their racial attitudes, the extent of the correlation is  
26 one more piece of evidence in an overall pattern that, taken together, shows that the at-large  
27 election system was chosen over a district election system or hybrid system, at least in part,  
28

1 because of a desire to deny racial minorities a fair opportunity to elect candidates of their  
2 choice to the Santa Monica City Council.

3 43. Taken together, the proclamation by proponents of at-large elections of their  
4 racially discriminatory motive, the circumstances contemporaneous to the enactment of the  
5 at-large election charter provision, contemporaneous knowledge (by both proponents and  
6 opponents) of the likely disparate impact of at-large elections on a racial minority group, the  
7 racially disparate impact that has resulted from at-large elections, and the background and  
8 other decisions of those supporting at-large elections, all demonstrate that the adoption of the  
9 current at-large election system was intended, at least in part, to discriminate against racial  
10 minorities. The evidence of intent enumerated above in the preceding paragraphs is only  
11 exemplary, and the discussion herein is not exhaustive.

12 44. Defendant's unlawful election system must not be allowed to stand, both  
13 because it was intended to disenfranchise minority voters when it was enacted, and because it  
14 has done exactly that and therefore violates the CVRA.

15 45. Indeed, in or around 1992 Defendant was made aware of the fact that its at-  
16 large method of electing its city council diluted the vote of the city's racial minorities, and  
17 that the at-large method of election was intended to do exactly that. Specifically, in 1990,  
18 Defendant established a Charter Review Commission, and in 1991 fifteen members were  
19 appointed to the Charter Review Commission. The Charter Review Commission was asked  
20 to consider, among other things, whether the at-large method of electing the Santa Monica  
21 City Council should be changed. As part of that charge, the Charter Review Commission  
22 sought a study of whether the at-large method of election was adopted with the purpose of  
23 discriminating against racial minorities. According to the Charter Review Commission's  
24 report to Defendant's city council, that report "offers substantial evidence that the current  
25 Charter was, from a voting discrimination point of view, suspect. Though Defendant's City  
26 Attorney's Office gave the Charter Review Commission erroneous legal advice to soften the  
27 impact of the "substantial evidence" in that report, ultimately the Charter Review  
28 Commission recommended that the method of electing Defendant's city council be changed.

1 In fact, according to the Charter Review Commission's July 1992 Report, "[the] Commission  
2 almost unanimously (14 to 1) recommended [a change from the plurality at-large election  
3 system]." The Charter Review Commission explained its rationale as follows:

4 In our near-consensus for recommending a shift from the at-large  
5 plurality system currently in use, we were guided in large part by a  
6 desire to distribute empowerment more broadly in Santa Monica,  
7 particularly to ethnic groups but to neighborhoods and issue groups as  
8 well. A move away from the current system, we believe, should  
9 enhance the responsiveness of representatives and make the electoral  
10 process more open to new ideas and new participants.

11 The Charter Review Commission recognized that "the at-large system is generally considered  
12 an obstacle to ethnic empowerment" that "tend[s] toward homogeneity of views, rather than  
13 diversity," and noted the at-large system had done exactly that in Santa Monica, specifically  
14 citing the "over-representation from the North of Montana area...[and] some areas – notably  
15 the Pico neighborhood – [that] have never been represented on City Council." The Charter  
16 Review Commission went on to report that was the principal reason for its near-unanimous  
17 recommendation that the discriminatory at-large system be scrapped:

18 The central issue, in the Commission's view, is not one of having  
19 Council members who are ethnic, but of empowering ethnic  
20 communities to choose Council members, and on this criterion, the at-  
21 large system is felt to be inadequate

22 46. Even the report of the Charter Review Commission impaneled by Defendant's  
23 City Council was not sufficient to convince the majority of that city council to correct its  
24 racially discriminatory election system. After reviewing the Charter Review Commission's  
25 report, in July 1992, four self-interested council members (out of seven) rejected any change  
26 to the plurality at-large election system. But self-interested council members are not entitled  
27 to maintain a discriminatory election system simply because it is the method that elected  
28 them. With Defendant's city council (then and now) apparently unwilling to respect the

1 voting rights of their minority constituents, it falls on this Court to correct the racially  
2 discriminatory and unlawful election system for the Santa Monica City Council.

3  
4 **FIRST CAUSE OF ACTION**

5 **(Violation of California Voting Rights Act of 2001)**

6 **(Against All Defendants)**

7 47. Plaintiff incorporates by this reference paragraphs 1 through 46 as though fully  
8 set forth herein.

9 48. Defendant City of Santa Monica is a political subdivision within the State of  
10 California. Defendant is a charter city.

11 49. Defendant City of Santa Monica employs an at-large method of election, where  
12 voters of its entire jurisdiction elect members to its City Council.

13 50. Racially polarized voting has occurred, and continues to occur, in elections for  
14 members of the City Council for the City of Santa Monica and in elections incorporating  
15 other electoral choices by voters of the City of Santa Monica, California. As a result, the City  
16 of Santa Monica's at-large method of election is imposed in a manner that impairs the ability  
17 of protected classes as defined by the CVRA to elect candidates of their choice or influence  
18 the outcome of elections.

19 51. An alternative method of election, such as, but not limited to, district-based  
20 elections, exists that will provide an opportunity for Latinos to elect candidates of their choice  
21 or to influence the outcome of the Santa Monica City Council elections.

22 52. An actual controversy has arisen and now exists between the parties relating to  
23 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a  
24 declaration of rights.

25 53. Defendants' wrongful conduct has caused and, unless enjoined by this Court,  
26 will continue to cause, immediate and irreparable injury to Plaintiffs, and all residents of the  
27 City of Santa Monica.

28

1           54. Plaintiffs, and the residents of the City of Santa Monica, have no adequate  
2 remedy at law for the injuries they currently suffer and will otherwise continue to suffer.

3  
4                           **SECOND CAUSE OF ACTION**

5                           **(Violation of California Equal Protection Clause)**

6                           **(Against All Defendants)**

7           55. Plaintiff incorporates by this reference paragraphs 1 through 54 as though fully  
8 set forth herein.

9           56. Defendant City of Santa Monica's rejection of district-based elections and  
10 adoption of at-large elections were motivated by the desire to deny local government  
11 representation to racial and ethnic minorities.

12           57. As a direct consequence of the decades-old racially-motivated decisions to  
13 reject district-based elections and adopt at-large elections, Defendant City of Santa Monica  
14 still employs an at-large method of election, where voters of its entire jurisdiction elect  
15 members to its City Council.

16           58. Those intentionally discriminatory decisions are enshrined in what is now  
17 sections 600 and 900 of the Santa Monica City Charter.

18           59. Because the rejection of district-based elections and the adoption of at-large  
19 elections were motivated by a desire to discriminate against the non-Anglo residents of Santa  
20 Monica, those enactments - sections 600 and 900 of the Santa Monica City Charter - are  
21 invalid as they violate, among other laws, the Equal Protection Clause of the California  
22 Constitution (Article I Section 7).

23           60. An actual controversy has arisen and now exists between the parties relating to  
24 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a  
25 declaration of rights.

26           61. A declaration by this Court regarding the invalidity of Defendant's at-large  
27 election system, and specifically sections 600 and 900 of the Santa Monica City Charter, is  
28

1 necessary to prevent Defendant from continuing to employ that intentionally-discriminatory  
2 election system.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as  
5 follows:

6 1. For a decree that the City of Santa Monica's current at-large method of election  
7 for the City Council violates the California Voting Rights Act of 2001;

8 2. For a decree that the City of Santa Monica's current at-large method of election  
9 for the City Council, and specifically sections 600 and/or 900 of the Santa Monica City  
10 Charter, was adopted with the purpose of discriminating against, and denying effective  
11 representation to, non-Anglo residents of Santa Monica, and therefore those provisions are  
12 invalid.

13 3. For preliminary and permanent injunctive relief enjoining the City of Santa  
14 Monica from imposing or applying its current at-large method of election;

15 4. For injunctive relief mandating the City of Santa Monica to implement district-  
16 based elections, as defined by the California Voting Rights Act of 2001, or other alternative  
17 relief tailored to remedy the City of Santa Monica's violation of the California Voting Rights  
18 Act of 2001;

19 5. For injunctive relief mandating the prompt election of council members through  
20 district-based elections, or another election method tailored to remedy Defendant's violation  
21 of the California Voting Rights Act of 2001;

22 6. Other relief tailored to remedy the City of Santa Monica's violation of the  
23 California Voting Rights Act of 2001;

24 7. Other relief tailored to remedy the City of Santa Monica's violation of the  
25 Equal Protection Clause of the California Constitution;

26 8. For an award of Plaintiffs' attorneys' fees, costs, litigation expenses and  
27 prejudgment interest pursuant to the CVRA, Cal. Elec. Code § 14030 and other applicable  
28 law; and

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

DATED: February 22, 2017

Respectfully submitted:

**SHENKMAN & HUGHES,  
R. REX PARRIS LAW FIRM, and  
LAW OFFICES OF MILTON C. GRIMES  
LAW OFFICE OF ROBERT RUBIN**



By: \_\_\_\_\_  
Kevin Shenkman  
Attorneys for Plaintiff



# **EXHIBIT C**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

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 )  
 PICO NEIGHBORHOOD )  
 ASSOCIATION and MARIA LOYA, )  
 )  
 Plaintiffs, )  
 )  
 vs. )No. BC 616804  
 )  
 CITY OF SANTA MONICA and )  
 DOES 1-100, )  
 )  
 Defendants. )  
 -----

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 VIDEO-RECORDED DEPOSITION OF OSCAR DE LA TORRE  
 AS THE PERSON MOST QUALIFIED FOR  
 PICO NEIGHBORHOOD ASSOCIATION  
 Los Angeles, California  
 Friday, May 11, 2018  
 Volume I

Reported by:  
 LORI SCINTA, RPR  
 CSR No. 4811  
 Job No. 2907646  
 PAGES 1 - 272

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

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)  
PICO NEIGHBORHOOD )  
ASSOCIATION and MARIA LOYA, )  
) )  
Plaintiffs, )  
) ) No. BC 616804  
vs. )  
) )  
CITY OF SANTA MONICA and )  
DOES 1-100, )  
) )  
Defendants. )  


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Video-recorded deposition of OSCAR DE LA TORRE, as the Person Most Qualified for Pico Neighborhood Association, Volume I, taken on behalf of Defendants, at 333 South Grand Avenue, 54th Floor, Los Angeles, California, beginning at 10:07 A.M. and ending at 3:56 P.M. on Friday, May 11, 2018, before LORI SCINTA, RPR, Certified Shorthand Reporter No. 4811.

1 documents. You didn't have any.

2 THE WITNESS: I have none.

3 MR. McRAE: But, yes, let's set up a time  
4 to talk about the documents that are requested there  
5 to see. 10:15:39

6 As I've said, we can identify which ones  
7 you're saying -- well, to the extent that those even  
8 exist, we're not compartmentalizing possession,  
9 custody and control amidst PNA, Mr. de la Torre and  
10 Ms. Loya. You have those records such that they 10:15:55  
11 exist.

12 "These are the ones where we have records  
13 where we're not producing them for whatever  
14 reason" --

15 MR. SHENKMAN: Sure. 10:16:01

16 MR. McRAE: -- so that we can telescope  
17 that issue and then figure out what we're going to  
18 do with respect to it.

19 Q All right. Sir, you stated your full name  
20 for the record? 10:16:08

21 A Oscar de la Torre.

22 Q Okay. And you've not gone by any names  
23 other than Oscar de la Torre?

24 A No.

25 Q And you're represented by counsel again 10:16:16

Page 20

1 here today?

2 A Yes.

3 Q That would be Mr. Shenkman?

4 A Yes.

5 Q Same counsel at your deposition on 10:16:21  
6 Wednesday?

7 A Yes.

8 Q You understand you're under oath?

9 A Yes.

10 Q And I know that it's only been two days, 10:16:27  
11 but I'm going to give you the admonitions that I  
12 gave you before.

13 We're in a conference room. You're under  
14 oath. Your testimony has the solemnity as if you  
15 took an oath in front of the court and were in a 10:16:37  
16 courtroom.

17 You have to answer the questions,  
18 obviously, unless there is an instruction not to  
19 answer, even if there is an objection.

20 If you don't hear or understand a question 10:16:46  
21 that I pose, please let me know. Obviously, I'll do  
22 my best to try to clarify it. Otherwise, I'm going  
23 to assume that you understand the question.

24 Do you understand that, sir?

25 A Yes. 10:16:56

Page 21

1 anything, to prepare to testify as the person most  
2 qualified for PNA on all of the topics identified in  
3 Exhibit 234?

4 A I reviewed the bylaws. I reviewed our  
5 membership lists. I reviewed the California Voting 10:20:04  
6 Rights Act and talked with board members of the Pico  
7 Neighborhood Association.

8 Q Did you do anything else?

9 A That was mostly what I did.

10 Q Okay. You say "mostly." Is there anything 10:20:25  
11 else that you did to prepare to testify as the  
12 person most qualified for PNA today?

13 A No.

14 Q And, sir, what is your role, if any, with  
15 the Pico Neighborhood Association? 10:20:37

16 A I'm the current co-chair of the Pico  
17 Neighborhood Association.

18 Q By "co-chair," meaning there's another  
19 chair?

20 A Yes. 10:20:44

21 Q Is there only two chairs in total that  
22 share the title "co-chair"?

23 A Yes.

24 Q Who is the other co-chair?

25 A Cris McLeod. 10:20:50

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I, OSCAR DE LA TORRE, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

\_\_\_\_\_  
OSCAR DE LA TORRE  
Volume I

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were duly sworn; that a record  
8 of the proceedings was made by me using machine  
9 shorthand which was thereafter transcribed under my  
10 direction; that the foregoing transcript is a true  
11 record of the testimony given.

12 Further, that if the foregoing pertains to  
13 the original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings, review  
15 of the transcript [ ] was [ ] was not requested.

16 I further certify I am neither financially  
17 interested in the action nor a relative or employee  
18 of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21 Dated: May 15, 2018

22   
23

LORI SCINTA, RPR

24 CSR No. 4811

25



# **EXHIBIT D**

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE  
4

5 PICO NEIGHBORHOOD ASSOCIATION, )  
6 ET AL., )  
7 )  
8 ) PLAINTIFFS, )  
9 )  
10 ) VS. ) CASE NO. BC616804  
11 )  
12 ) CITY OF SANTA MONICA, ET AL., )  
13 )  
14 ) DEFENDANTS. )  
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10 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
11 TRIAL P.M. SESSION  
12 WEDNESDAY, AUGUST 22, 2018  
13  
14

15 APPEARANCES:

16 FOR PLAINTIFFS:

17 SHENKMAN & HUGHES, PC  
18 BY: KEVIN SHENKMAN, ESQ.  
19 ANDREA A. ALARCON, ESQ.  
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23 PARRIS LAW  
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25 ELLERY S. GORDON, ESQ.  
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27 LANCASTER, CALIFORNIA 93534

28 LAW OFFICES OF MILTON C. GRIMES  
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miltgrim@aol.com

26 (CONTINUED)  
27 PAGES 2424 TO 2543

28 REPORTED BY: RHONA S. REDDIX, CSR RPR CRR RMR NO. 10807  
OFFICIAL REPORTER

1 APPEARANCES:  
2 (CONTINUED)

3  
4 FOR PLAINTIFFS: LAW OFFICE OF ROBERT RUBIN  
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6 131 STEUART STREET, SUITE 300  
7 SAN FRANCISCO, CALIFORNIA 94105  
8 robertrubinsf@gmail.com

9  
10 FOR DEFENDANT CITY OF GIBSON DUNN  
11 SANTA MONICA: BY: MARCELLUS MC RAE, ESQ.  
12 TIAUNIA HENRY, ESQ.  
13 KAHN A. SCOLNICK, ESQ.  
14 MICHELE L. MARYOTT, ESQ.  
15 DANIEL R. ADLER, ESQ.  
16 MARISSA MOSHELL, ESQ.  
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18 SEAN S. TWOMEY, ESQ.  
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21 thenry@gibsondunn.com

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23 CITY OF SANTA MONICA  
24 CITY ATTORNEY'S OFFICE  
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28 george.cardona@smgov.net

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I N D E X

8/22/18, P.M. SESSION

PLAINTIFFS' WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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OSCAR DE LA TORRE	2425	2472		
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(CONT)

E X H I B I T S

NUMBER	FOR IDENTIFICATION	IN EVIDENCE
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3		2470
3-125	2426	
146	2428	2471
226-1		2471
226-4	2440	2471
226-11	2438	
229-34, -73, -263, -269		2471
1202	2511	2513
1202-13	2511	
1202-22	2512	
1203	2501	2501
1204	2515	2522
1243	2492	
1706	2481	2483
1711	2495	2496
1819-3388 TO -3392	2529	

1 even though the need was great. I think the fact that  
2 Ken Genser was pushing hard, and that the city manager  
3 was really committed to this, and that the Pico  
4 Neighborhood Association was pushing hard, that it was  
5 pretty secure.

6 We were concerned that once the State took  
7 all the R.D.A. money, that the City was not going to  
8 keep that commitment. But the city manager said that  
9 even though the State was taking that money, that he  
10 would ensure that the City would put the money forward  
11 for the Pico Branch Library, and he kept his word.

12 Q Let's talk a little bit about the Pico  
13 Neighborhood Association.

14 A Uh-huh.

15 Q Do you currently have a position in the  
16 Pico Neighborhood Association?

17 A Yes, I'm the co-chair.

18 Q Okay. Is the co-chair on the board of  
19 directors?

20 A Yes, it is.

21 Q All right. What are your responsibilities  
22 as co-chair?

23 A Work with the chair on setting the agenda  
24 for the meetings, informing members that we're having  
25 meetings, assisting with planning of events mainly.  
26 It's a small volunteer organization; so we wear multiple  
27 hats in the organization.

28 Q Okay. And who else other than you is on

1 the Pico Neighborhood Association board?

2 A We have my wife, Maria Loya, Chris McLeod,  
3 Berenice Onofre, Christild Anderson, Katherine Eldridge,  
4 Jeff Blake. I'm trying to remember. Mary Cornejo, and  
5 I'm sure there's others.

6 Q Is Gina de Baca --

7 A Gina de Baca, she's another one, yes.

8 Q It's a pretty diverse group?

9 A It is, it's pretty diverse.

10 Q Some of those board members are Latino,  
11 others are not?

12 A Correct.

13 Q Do you know when the Pico Neighborhood  
14 Association was founded?

15 A I believe it was founded in 1979.

16 Q Okay.

17 MR. SHENKMAN: And let's pull up Exhibit 226,  
18 page 11, please.

19 BY MR. SHENKMAN:

20 Q And Mr. de la Torre, this is a printout  
21 from the California Secretary of State website for the  
22 Pico Neighborhood Association entity information. And  
23 it has listed here, "Agent for service of process,  
24 Griselda Garces de la Torre." Do you see that?

25 A Yes, I do.

26

27

28

1 (Exhibit 226-11, identified:  
2 Printout from CA Secretary of State  
3 website, Pico Neighborhood Assn.  
4 entity information.)  
5

6 BY MR. SHENKMAN:

7 Q And do you know Griselda Garces  
8 de la Torre?

9 A Yes.

10 Q How -- is she related to you?

11 A She is.

12 Q How so?

13 A She's my niece.

14 Q When the Pico Neighborhood Association was  
15 founded in 1979, was your family involved?

16 A Yes. My mom and dad, they would attend  
17 meetings. So we have a long history of family  
18 involvement in the Pico Neighborhood Association.

19 Q So if I'm doing the math right, you were  
20 about eight years old at the time?

21 A Approximately.

22 Q Did you ever go to Pico Neighborhood  
23 Association meetings when you were a kid?

24 A I don't remember too many of them, but as a  
25 teenager I do remember receiving an award from the Pico  
26 Neighborhood Association, and so I do remember that.

27 Q So was it your parents giving you an award?

28 A No, they weren't giving me the award, but

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE  
4  
5

6 PICO NEIGHBORHOOD ASSOCIATION, )  
ET AL., )  
7 )  
PLAINTIFFS, ) CASE NO. BC616804  
8 )  
VS. ) REPORTER'S  
9 ) CERTIFICATE  
CITY OF SANTA MONICA, ET AL., )  
10 )  
DEFENDANTS. )  
11 \_\_\_\_\_ )  
12

13 I, RHONA S. REDDIX, OFFICIAL REPORTER OF  
14 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE  
15 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
16 FOREGOING PAGES, 2424 THROUGH 2543, COMPRISE A FULL,  
17 TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN IN  
18 THE ABOVE ENTITLED CAUSE ON AUGUST 22, 2018.  
19

20 DATED THIS 23RD OF AUGUST, 2018.  
21  
22  
23

24 

25 \_\_\_\_\_  
26 RHONA S. REDDIX  
27 CSR, RPR, CRR, RMR #10807  
28 OFFICIAL REPORTER



# **EXHIBIT E**

1 Kevin I. Shenkman (SBN 223315)  
Mary R. Hughes (SBN 222662)  
2 Andrea A. Alarcon (SBN 319536)  
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Mill Valley, CA 94941  
13 Telephone: (415) 298-4857

14 Attorneys for Plaintiffs

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF SAN BERNARDINO**

17 PICO NEIGHBORHOOD  
ASSOCIATION and MARIA LOYA, )

18 Plaintiffs, )

19 v. )

20 CITY OF SANTA MONICA, and  
DOES 1 through 100, inclusive, )

21 Defendants. )

Case No.: BC616804

**DECLARATION OF KEVIN SHENKMAN  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR AWARD OF ATTORNEYS' FEES  
AND EXPENSES**

Date: August 28, 2019

Time: 8:30 a.m.

Dept.: SSC-9

1 I, Kevin I. Shenkman, declare as follows:

2 1. I am an attorney duly licensed to practice law before all courts of the State of  
3 California and I am a principal of Shenkman & Hughes PC, attorneys of record for Plaintiffs  
4 in the above-captioned case. The facts set forth in this declaration are within my personal  
5 knowledge and, if called as a witness, I could and would competently testify as follows:

6  
7 **Shenkman & Hughes Attorneys**

8 2. I have been primarily responsible for the handling of the above-captioned case  
9 since its inception, and I have been involved in all aspects of this case. My partner, Mary R.  
10 Hughes, has also worked on this matter, as have John L. Jones II and Andrea Alarcon, as  
11 well as attorneys and professionals with the Parris Law Firm, Law Offices of Milton C.  
12 Grimes and Law Office of Robert Rubin.

13 3. I graduated from Rice University in 1999 and completed my J.D. at Columbia  
14 University School of Law in 2002. I was admitted to the California Bar in 2002, and began  
15 working at Hennigan, Bennett & Dorman LLP (now McKool Smith Hennigan), where I  
16 worked on a wide variety of complex litigation until 2008. In 2011, I founded the law firm  
17 of Shenkman & Hughes along with Mary R. Hughes, whom I had known from my time at  
18 Gibson Dunn & Crutcher LLP.

19 4. Mary R. Hughes graduated from California State University Northridge in  
20 1999 and completed her J.D. at the University of Southern California Gould Law School.  
21 She was admitted to the California Bar in 2002, and began working at Gibson, Dunn &  
22 Crutcher LLP, where she worked until 2010. In 2011, Ms. Hughes co-founded the law firm  
23 of Shenkman & Hughes.

24 5. John L. Jones II graduated from Creighton University in 1996 and completed  
25 his J.D. at Yale Law School in 2001. Following a short career in investment banking, he  
26 began working at Hennigan, Bennett & Dorman LLP (now McKool Smith Hennigan) in  
27 2002, where he remained until 2008. While at Hennigan Bennett & Dorman LLP, and since  
28

1 billing rate would be approximately \$900 per hour. A true and correct copy of relevant  
2 pages of the court filing showing the blended rates charged by Gibson Dunn & Crutcher in  
3 2018 as well as the specific rates of various Gibson Dunn & Crutcher attorneys and  
4 paralegals in 2018 and 2019 is attached hereto as **Exhibit K**.

5 **Billing Records**

6 24. The attorneys with Shenkman & Hughes PC maintain contemporaneous time  
7 records. Attached hereto as **Exhibit L** is a true and correct copy of the contemporaneous  
8 records of time reasonably spent by Shenkman & Hughes PC's attorneys in this case. I  
9 personally reviewed the time records of each Shenkman & Hughes PC attorney, and  
10 exercised my billing judgment in deleting approximately 240 hours of time that did not  
11 appear reasonably necessary or reflected small amounts of time for minor tasks. In total, after  
12 those reductions, Shenkman & Hughes PC attorneys spent 7786.3 hours pursuing this case.

13 25. To assist the evaluation of our billings, particularly due to the volume of billing  
14 entries, I have also categorized the time by task. Attached hereto as **Exhibit M** is a true and  
15 correct copy of the summary "time-and-task" chart that I prepared from the contemporaneous  
16 time records.

17 26. Particularly in light of the anticipated complexity of this case and my  
18 recognition that Defendant would put up a significant fight, I invited several firms to join  
19 Shenkman & Hughes in pursuit of this case. I asked Milton Grimes to join us as co-counsel  
20 due to his exceptional trial experience and understanding of racial issues and how to present  
21 sensitive racial issues at trial. I asked Rex Parris and his firm to join us as co-counsel  
22 similarly due to their exceptional trial experience. Finally, I asked Robert Rubin to join us as  
23 co-counsel due to his experience and knowledge in the field of voting rights. Each of these  
24 firms has been involved in this case since April 2016 when the original Complaint was filed.  
25 Though my colleagues at Shenkman & Hughes and I did the majority of the work on this  
26 case, the contributions of these three other firms proved to be invaluable at various points in  
27 this case; without them it would have been nearly impossible to compete with the resources  
28

1 excluding expert witness fees, incurred in connection with the above-captioned case.  
2 Attached hereto, collectively, as **Exhibit P** is a true and correct copy of that summary,  
3 organized by expense type (e.g. travel, filing and messenger fees, and meals).

4 35. The majority of the expenses incurred in this case were for expert witnesses /  
5 consultants. Specifically, expert demographer David Ely with Compass Demographics, Inc.,  
6 Caltech Professor J. Morgan Kousser, an expert on racially polarized voting, history and  
7 elections, survey expert Jonathan Brown and Loyola Law School professor Justin Levitt were  
8 invaluable in the development and trial of this case. Their invoices totaled \$97,482.76;  
9 \$394,712.50; \$30,250.00 and \$90,155.00, respectively, for work through the entry of  
10 judgment on February 13, 2019. True and correct copies of their invoices for the work they  
11 performed on this case are attached collectively as **Exhibit Q**. Note that while Professor  
12 Levitt's invoice is for \$91,430, a small portion of that invoice is for work after entry of  
13 judgment, and so Plaintiffs seek reimbursement of only \$90,155 for Professor Levitt's work  
14 at this time.

15 36. In total, other than small items for which Shenkman & Hughes does not track  
16 and therefore does not seek to recover, Shenkman & Hughes incurred a total of \$633,221.04  
17 in expenses in pursuit of this case.

18  
19 I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct.

21 Executed this 3rd day of June 2019, at Malibu, California.

22 

23 \_\_\_\_\_  
24 Kevin I. Shenkman  
25  
26  
27  
28

EXHIBIT L

Client ID: Pico Neighborhood Assn, et al.

Matter ID: City of Santa Monica

01-01-2015 – 02-13-2019

Attorney Time Detail

Date	Attorney	Task	Hours
6/25/15	KIS	Discussion with C. Foster re: O. de la Torre, Pico Youth Center, and desire to bring district elections to Santa Monica; quick research regarding CVRA applicability.	3.4
6/26/15	KIS	Telephone conversation with O. de la Torre; further research issues raised by O. de la Torre.	4.9
6/30/15	KIS	Travel to/from and meet with O. de la Torre and M. Loya regarding potential case against City of Santa Monica under the California Voting Rights Act of 2001.	5.9
7/1/15	KIS	Discuss potential case against Santa Monica with M. Kousser, particularly M. Kousser's previous work for Santa Monica; review M. Kousser's report from 1992.	3.5
7/2/15	MRH	Review both current and historic demographics of Santa Monica; pull key data from US Census	5.7
7/3/15	MRH	Review election history of Santa Monica; gather historical election data from Los Angeles County Registrar	7.4
7/5/15	MRH	Prepare memorandum comparing Santa Monica demographics and voting patterns to benchmark political subdivisions, including summary spreadsheet of historical elections and demographics of Santa Monica.	10.8
7/6/15	MRH	Continue work on memorandum comparing Santa Monica demographics and voting patterns to benchmark political subdivisions, including summary spreadsheet of historical elections and demographics of Santa Monica.	6.3
7/7/15	MRH	Travel to/from Caltech and meet with M. Kousser regarding past work on Santa Monica and potential case against Santa Monica.	8.1
7/8/15	KIS	Review summary memorandum on potential Santa Monica case and meet with M. Hughes to discuss.	4.0
7/8/15	MRH	Meeting with K. Shenkman regarding potential Santa Monica case.	2.0
7/9/15	KIS	Discuss intentional discrimination law and demographic concentration with M. Hughes.	2.5
7/9/15	MRH	Research regarding intentional discrimination and neighborhood level demographics of Santa Monica, discuss same with K. Shenkman.	9.1
7/10/15	MRH	Travel to/from Compass Demographics and meet with D. Ely regarding potential case against Santa Monica.	7.5
7/13/15	MRH	Travel to/from Caltech and meet with M. Kousser regarding intentional discrimination and potential case against Santa Monica.	9.3

7/14/15	MRH	Travel to/from Caltech and meet with M. Kousser regarding potential Equal Protection case against Santa Monica, and interplay between CVRA and intentional discrimination case	6.8
7/20/15	MRH	Research regarding intentional discrimination and issue of federal question and potential for California Constitution claim.	7.3
7/21/15	MRH	Research regarding intentional discrimination and available legal avenues to address same.	5.9
7/22/15	MRH	Research equal protection claims and drafting firm memorandum.	9.0
7/23/15	MRH	Research avenues of addressing intentional discrimination, elements of applicable claims, and drafting firm memorandum.	7.5
7/24/15	MRH	Draft firm memorandum regarding issues in potential CVRA and Equal Protection case against Santa Monica; discuss same with K. Shenkman	10.2
7/24/15	KIS	Review firm memorandum and discuss with M. Hughes	4.4
7/25/15	MRH	Gather data and information regarding elections of Santa Monica and statewide propositions; discuss with experts.	7.7
7/27/15	MRH	Travel to/from and meet with D. Ely at Compass Demographics to work on Santa Monica potential case and potential impact thereof.	7.5
7/27/15	JLJ	Research regarding financial and health disparities in Santa Monica, city council decisions, racial appeals in Santa Monica campaigns, discuss with K. Shenkman.	8.2
7/28/15	MRH	Gather data and information on exogenous elections of Santa Monica.	7.0
7/28/15	JLJ	Research regarding comparative literacy rates and educational outcomes in Santa Monica and historical decisions of Santa Monica city council relating to education, focusing on north-south divide and racial segregation in schools and effect of intradistrict and interdistrict transfers; discuss same with K. Shenkman	9.4
7/28/15	KIS	Discuss education issues in Santa Monica with J. Jones.	1.5
7/29/15	MRH	Travel to/from Caltech and meet with M. Kousser regarding potential case against Santa Monica; compile initial ecological regression and ecological inference results	7.9
7/30/15	KIS	Call with O. de la Torre and M. Loya regarding progress and potential case.	0.7
8/3/15	MRH	Travel to/from Caltech and meet with M. Kousser regarding potential case against Santa Monica	6.5
8/5/15	MRH	Travel to/from Caltech and meet with M. Kousser regarding potential case against Santa Monica	7.1
8/13/15	MRH	Travel to/from Compass Demographics and work with D. Ely to develop election data sets for RPV analyses.	8.3
8/17/15	MRH	Work with Compass Demographics to prepare HPA analysis, and creation of maps of elections by precinct.	6.9



8/20/15	MRH	Work with Compass Demographics to prepare HPA analysis, and creation of maps of endogenous and exogenous elections by precinct.	7.4
8/21/15	MRH	Run rough regression analyses on key elections; discuss same with K. Shenkman.	7.5
8/25/15	MRH	Discuss potential additional exogenous elections for further analysis with K. Shenkman, M. Kousser and D. Ely; gather information regarding exogenous elections; discuss with experts and K. Shenkman.	7.9
8/26/15	MRH	Compile research and findings and prepare summary firm memorandum and recommendations.	5.8
8/27/15	MRH	Compile research and findings, further legal research concerning potential case against Santa Monica, and prepare summary firm memorandum and recommendations.	6.0
8/28/15	MRH	Revise, finalize firm memorandum re potential Santa Monica case; discuss same with K. Shenkman	3.6
8/28/15	KIS	Review summary firm memorandum regarding Santa Monica and discuss with M. Hughes.	4.5
8/30/15	KIS	Review firm memorandum and Kousser 1992 report; draft and circulate demand letter and respond to comments.	5.2
9/4/15	KIS	Travel to/from and meet with Pico Neighborhood activists regarding potential case and district election outreach campaign.	5.5
9/7/15	JLJ	Research campaign spending, sources of funds financing campaigns, endorsements tied to electoral success in Santa Monica	7.5
9/8/15	JLJ	Investigate history of discrimination in Santa Monica, representation in local government, boards and commissions, and historical and recent decisions of Santa Monica city council.	8.6
9/9/15	JLJ	Investigate history of discrimination in Santa Monica and compile theses on the subject.	5.3
9/9/15	KIS	Travel to/from and meet with O. de la Torre and M. Loya regarding district election public campaign and organizing effort	4.0
9/10/15	JLJ	Research racial appeals in Santa Monica elections (endogenous and exogenous), racial issues in local politics both recent and historic	6.4
9/11/15	JLJ	Continue research on 14028(e) factors; compile research materials and prepare summary firm memorandum on 14028(e) factors	8.9
9/14/15	JLJ	Draft summary firm memorandum on 14028e factors	4.0
9/29/15	KIS	Travel to/from and meet with O. de la Torre re: Santa Monica campaign and potential case and outreach to Latino leaders.	3.6
10/2/15	KIS	Discuss potential case and tour Santa Monica's Pico Neighborhood with M. Grimes	5.0

10/15/15	KIS	Review firm memoranda in preparation for meeting with Santa Monica activists; meet with O. de la Torre and Pico Youth Center staff.	6.3
10/16/15	KIS	Meet with M. Loya and O. de la Torre about Santa Monica case and public campaign	3.8
10/16/15	MRH	Travel to/from and meet with O. de la Torre and M. Loya to discuss initial findings and potential case.	3.8
10/19/15	MRH	Work on materials for Santa Monica outreach campaign for district elections	5.1
10/20/15	MRH	Work on powerpoint and FAQs for outreach campaign for district elections	5.5
10/26/15	MRH	Revise powerpoint and FAQs for outreach campaign for district elections, discuss with O. de la Torre	4.6
10/30/15	KIS	Travel to/from and meet with O. de la Torre and M. Loya to prepare materials for community activist workshop.	4.9
10/30/15	MRH	Work with M. Loya and O. de la Torre in advance of rollout meeting.	4.9
11/3/15	KIS	Travel to/from and participate in community activist workshop on district elections and history in Santa Monica to discuss CVRA and process.	4.5
11/3/15	MRH	Santa Monica district election campaign rollout meeting	4.5
11/9/15	JLJ	Research regarding procedural path of Santa Monica to change its election system voluntarily through political process and/or through court intervention in light of city charter, review applicable Government Code and Elections Code sections; discuss with K. Shenkman.	6.8
11/10/15	JLJ	Research federal voting rights cases outside California to develop potential paths for voluntary changes to election system of Santa Monica despite city charter	8.0
11/11/15	JLJ	Research FVRA preclearance and effect cases for election changes in context of settlements not effected through consent decrees or judgments, to develop potential paths for voluntary election change in Santa Monica.	7.7
11/12/15	JLJ	Research charter status and contents of jurisdictions making electoral changes in response to allegations of voting rights and election law violations in and outside of California and discuss with K. Shenkman for applicability to Santa Monica.	8.1
11/13/15	JLJ	Research availability of voluntary election change in Santa Monica in light of charter and Jauregui decision; draft summary firm memorandum regarding same.	9.8
11/17/15	KIS	Travel to/from and meet with T. Vazquez and O. de la Torre, and then meet with O. de la Torre and Pico Center staff thereafter	5.0
11/25/15	KIS	Review report re police misconduct of SMPD against O. de la Torre; discuss same with O. de la Torre	2.0
12/13/15	KIS	Draft press release for Santa Monica rollout	1.0

7/12/16	KIS	Discussions with AMPS leadership, and separately with Pico Neighborhood plaintiffs, regarding plan to remove AMPS from case.	1.2
7/13/16	KIS	Draft meet and confer letter regarding document production.	1.5
7/14/16	MRH	Investigate T. Vazquez history	3.8
7/15/16	KIS	Review documents produced and responses to document requests and revise meet and confer letter accordingly.	2.7
7/15/16	MRH	Investigate T. Vazquez and M. Leon-Vazquez	5.5
7/18/16	MRH	Investigate council members and actions in late 1980s and early 1990s	6.9
7/19/16	MRH	Investigate council members and actions in late 1980s and early 1990s	6.6
7/20/16	KIS	Draft request for dismissal and discuss with AMPS leadership and M. Delrahim.	1.0
7/21/16	KIS	Evaluate correspondence from Defendant's counsel along with draft CMS and supplemental discovery responses and supplemental document production.	3.2
7/22/16	MRH	Review supplemental documents produced by Defendant and work on historical election spreadsheets.	7.0
7/25/16	KIS	Review Defendant's draft CMS, draft correspondence regarding same, and draft Plaintiffs' CMS	1.2
7/28/16	KIS	Attempt to review supplemental document production, and correspondence with Defendant's counsel re same.	0.3
7/29/16	KIS	Evaluate Defendant's CMS and draft correspondence regarding impropriety of same (purporting to be a joint CMS)	1.0
7/30/16	KIS	Review supplemental discovery responses and begin drafting correspondence regarding continued deficiencies in responses.	5.6
7/31/16	KIS	Evaluate RFA responses and research regarding standard and procedure for denying a previously admitted RFA.	4.1
8/1/16	KIS	Review supplemental document production, and drafting correspondence regarding continued deficiencies in supplemental discovery responses and need for deposition dates.	3.0
8/2/16	KIS	Review correspondence from Defendant's counsel, revised Defendant's CMS, and further supplemental interrogatory responses	1.4
8/3/16	KIS	Travel to/from and meet with M. Grimes, J. Karton and I. Jackson to develop case story.	3.4
8/5/16	MRH	Review correspondence regarding deposition availability and investigation in preparation for depositions of council members	4.8
8/5/16	KIS	Evaluate correspondence regarding depositions and discuss same and deposition preparation with M. Hughes.	0.6
8/6/16	MRH	Investigation for upcoming depositions of council members	7.3
8/8/16	KIS	Travel to/from and meet with O. de la Torre and R. Rubin	3.5

8/9/16	KIS	Travel to/from and attend meeting with M. Hughes, O. de la Torre and M. Grimes re case generally and council member depositions	5.4
8/9/16	KIS	Call with R. Rubin regarding CMC and Defendant's counsel	0.5
8/9/16	MRH	Meet with K. Shenkman, Oscar De La Torre and Milton Grimes regarding deposition investigation and preparation and general story / theme.	5.4
8/10/16	KIS	Travel to/from and attend CMC and debrief co-counsel and clients thereafter.	5.0
8/11/16	KIS	Travel to/from and attend meeting with O. de la Torre regarding case and upcoming depositions	3.8
8/12/16	KIS	Evaluate Defendant's discovery requests and discuss with J. Douglass	1.8
8/16/16	KIS	Drafting responses to Defendant's discovery requests.	3.5
8/19/16	KIS	Drafting responses to Defendant's discovery requests.	5.1
8/22/16	MRH	Investigation and preparing deposition outlines for Santa Monica council members.	7.5
8/24/16	MRH	Investigation and preparing deposition outlines for Santa Monica council members.	6.9
8/25/16	MRH	Investigation and preparing deposition outlines for Santa Monica council members.	7.3
8/29/16	MRH	Investigation and preparing deposition outlines for Santa Monica council members.	7.4
9/2/16	KIS	Travel to/from and meet with Pico Neighborhood Association Board re case update and outlook.	4.2
9/6/16	KIS	Correspondence with Defendant's counsel regarding deposition scheduling and location; research regarding location of depositions.	3.8
9/7/16	KIS	Research regarding location of depositions and "good cause" for ordering location be different than the default of the CCP; discuss with R. Parris; call with Defendant's counsel regarding location and scheduling of T. Vazquez deposition and depositions going forward.	6.9
9/9/16	KIS	Draft and revise responses to Defendant's first set of discovery requests.	3.1
9/11/16	KIS	Revise and finalize responses to Defendant's discovery requests.	2.6
9/12/16	KIS	Review materials for T. Vazquez deposition prepared by M. Hughes and discuss same with M. Hughes	3.4
9/12/16	MRH	Investigation for T. Vazquez and T. O'Day depositions and discuss with K. Shenkman	8.3
9/13/16	KIS	Investigate further for T. Vazquez deposition and prepare for same	7.2
9/15/16	KIS	Investigation and prepare for deposition of T. Vazquez	4.7
9/16/16	KIS	Investigation and preparation for T. Vazquez deposition; review, deal with and draft response to correspondence from Defendant's counsel regarding the same	6.5

9/19/16	KIS	Prepare for deposition of T. Vazquez	7.8
9/20/16	KIS	Prepare for, travel to/from and take deposition of T. Vazquez.	11.3
9/20/16	MRH	Investigation for T. O'Day deposition.	4.9
9/21/16	KIS	Discuss findings on T. O'Day with M. Hughes and continue preparation for T. O'Day deposition; deal with Defendant's counsel's continued nonsense regarding the scheduling and location of depositions of council members	5.3
9/22/16	KIS	Continue investigation of T. O'Day actions and issues; prepare notes outline of T. O'Day findings and discuss same with R. Parris	7.4
9/23/16	KIS	Debriefing re T. O'Day deposition and continue to deal with Defendant's counsel's nonsense regarding deposition scheduling and location.	2.0
9/26/16	KIS	Evaluate Defendant's further supplemental responses to form interrogatories; discuss further action regarding same.	1.2
9/27/16	KIS	Research regarding potential actions to compel deposition attendance and location and potential for sanctions for Defendant's cancellation of deposition.	5.0
9/28/16	KIS	Correspondence back and forth with Defendant's counsel regarding their continued insistence on ignoring the CCP command about deposition location and their refusal to schedule depositions; further research regarding same and begin drafting motion to compel completion of T. Vazquez deposition.	8.5
9/29/16	KIS	More correspondence back and forth with Defendant's counsel regarding their continued insistence on ignoring the CCP command about deposition location and their refusal to schedule depositions; drafting motion to compel completion of T. Vazquez deposition, call with R. Rubin re: same.	7.9
9/30/16	KIS	Evaluate correspondence from Defendant's counsel purporting to be meet and confer regarding Plaintiffs' discovery responses; research regarding sufficiency of meet and confer; review discovery responses to respond to Defendant's letter	4.8
10/1/16	KIS	Review investigation findings re G. Davis from M. Hughes and discuss same with M. Hughes; further investigate for G. Davis deposition; research regarding voter perception of ethnicity to guide G. Davis deposition questioning.	9.2
10/2/16	KIS	Further investigate for G. Davis deposition and prepare deposition outline; further research regarding voter perception of ethnicity in identifying minority candidates; discuss with M. Grimes.	8.6
10/3/16	KIS	Review discovery responses referenced in Defendant's letter; research sufficiency of same; drafting responsive letter	4.5
10/4/16	KIS	Further research regarding sufficiency of discovery responses and impropriety of certain of Defendant's discovery requests, and draft letter responding to Defendant's purported meet and confer letter	7.0

10/5/16	KIS	Further investigation for G. Davis deposition; discuss same with M. Grimes to prepare for deposition.	5.6
10/6/16	KIS	Travel to/from and attend deposition of G. Davis.	9.7
10/7/16	KIS	Continue to deal with T. Vazquez deposition scheduling and continued dispute regarding deposition location and draft correspondence re same.	2.9
10/10/16	KIS	Travel to/from and meet with Parris firm team regarding depositions and case generally, and conference call with Defendant's counsel regarding scheduling of T. Vazquez deposition and location.	6.8
10/10/16	MRH	Meeting with Parris attorneys and staff to coordinate tasks and strategy for case.	6.5
10/11/16	KIS	Evaluate correspondence from Defendant's counsel regarding Plaintiffs' discovery responses and review referenced discovery responses.	3.0
10/12/16	MRH	Review and summarize deposition transcript of T. Vazquez, and discuss deposition with K. Shenkman	5.6
10/12/16	KIS	Discuss first day of deposition of T. Vazquez with M. Hughes and further investigate and prepare for second day of T. Vazquez deposition.	4.7
10/13/16	MRH	Investigation for McKeown deposition	5.8
10/14/16	MRH	Continue investigation for McKeown deposition, discuss with K. Shenkman and O. de la Torre (separately), and drafting deposition outline	7.9
10/16/16	KIS	Review correspondence from Defendant's counsel regarding discovery responses, research regarding sufficiency of meet and confer and draft correspondence re same.	2.6
10/17/16	KIS	Draft supplemental responses to Defendant's discovery requests where appropriate	4.3
10/20/16	KIS	Draft supplemental responses to Defendant's discovery requests where appropriate, call with R. Rubin regarding timing and disclosure of expert opinions	4.9
10/23/16	KIS	Draft supplemental responses to Defendant's discovery requests where appropriate	2.2
10/24/16	KIS	Read and summarize transcript of O'Day deposition and discuss with R. Parris.	4.8
10/25/16	KIS	Research and drafting opposition papers to Defendant's ex parte application to advance hearings on 8 motions to compel further responses.	9.4
10/26/16	KIS	Finalize ex parte opposition papers, travel to/from and attend ex parte hearing, debrief co-counsel thereafter, and review motion to compel at issue in ex parte.	8.8
10/27/16	KIS	Research regarding discovery referee appointment and costs allocation, discuss potential discovery referees with R. Parris, correspondence with Defendant's counsel re same, evaluate 8 motions to compel purportedly necessitating discovery referee appointment	6.0

10/28/16	KIS	Further research regarding appointment of discovery referee and costs therefor and lengthy discussion with Defendant's counsel regarding discovery referee and discovery disputes; draft correspondence memorializing conversation with Defendant's counsel	8.3
10/31/16	KIS	Correspondence and further lengthy conversation with Defendant's counsel regarding discovery referee and discovery disputes, and research in advance of conversation.	7.4
11/1/16	KIS	Prepare for, travel to/from and attend continued ex parte hearing regarding discovery referee, discuss same with R. Parris, and correspondence thereafter regarding same.	4.9
11/2/16	KIS	Travel to/from and meet with M. Grimes, M. Hughes, F. Juarez and O. de la Torre, call with R. Rubin thereafter regarding discrimination expert	7.1
11/2/16	MRH	Meeting at Grimes office with potential local discrimination expert.	6.0
11/3/16	KIS	Prepare for and participate in lengthy conference with Defendant's counsel regarding discovery disputes etc., and begin drafting memorializing correspondence on same.	3.8
11/4/16	KIS	Drafting supplemental responses to discovery requests consistent with conversations with Defendant's counsel.	4.3
11/7/16	KIS	Investigation in preparation of T. Vazquez continuing deposition.	4.2
11/8/16	KIS	Research and drafting supplemental responses to discovery requests, and draft correspondence memorializing November 3 conference with Defendant's counsel.	5.3
11/10/16	KIS	Preparation for T. Vazquez deposition, investigate 2016 campaign and precinct totals for same.	5.9
11/11/16	KIS	Evaluate correspondence from Defendant's counsel regarding discovery disputes, research and working on supplemental responses consistent with discussions and letter.	4.0
11/14/16	KIS	Further investigation and preparation for T. Vazquez continuing deposition, including review of previous deposition transcript and available videos of T. Vazquez	7.3
11/15/16	KIS	Prepare for, travel to/from and take deposition of T. Vazquez; meet with Parris team thereafter	9.5
11/16/16	KIS	Call with R. Rubin regarding discovery	0.3
11/23/16	KIS	Correspondence with Defendant's counsel regarding discovery referee etc.	1.0
11/27/16	KIS	Drafting supplemental discovery responses (RFAs and form interrogatories) in light of discussions with Defendant's counsel and research concerning expert discovery timing and impact on RFAs	5.5
11/28/16	KIS	Research and drafting opposition papers for Defendant's ex parte application regarding discovery referee.	7.1
11/29/16	KIS	Prepare for, travel to/from and attend ex parte hearing regarding discovery referee and Defendant's continuing	6.7

		gripes; work with Defendant's counsel on discovery referee stipulation and correspondence regarding the same thereafter.	
11/30/16	KIS	Travel to/from and meet with O. de la Torre and Centinela Valley USD constituents regarding T. Vazquez and M. Leon-Vazquez transgressions; further deal with discovery referee stipulation and confer with R. Parris re same.	5.2
12/1/16	KIS	Drafting supplemental discovery responses (RFAs and form interrogatories) in light of discussions with Defendant's counsel and research concerning expert discovery timing and impact on RFAs	6.3
12/2/16	KIS	Drafting supplemental responses to document requests in light of discussions with Defendant's counsel and research concerning expert discovery timing and good cause requirement for motions to compel responses to RFPs	5.4
12/3/16	MRH	Read and summarize transcript of second deposition of T. Vazquez, discuss with K. Shenkman.	4.9
12/4/16	KIS	Coordinate with R. Parris regarding list of potential discovery referees and address stipulation regarding same.	1.1
12/4/16	MRH	Investigate potential discovery referees and pull available decisions of each to compile proclivities on discovery issues and voting rights where available.	5.8
12/5/16	KIS	Discuss document request responses and production and implications thereof with O. de la Torre and M. Loya; drafting supplemental responses to document requests in light of discussions with Defendant's counsel and research concerning expert discovery timing and good cause requirement for motions to compel responses to RFPs	3.5
12/5/16	MRH	Further investigate potential discovery referees and complete chart comparing discovery referee candidates.	2.9
12/8/16	KIS	Call with R. Rubin regarding experts	0.5
12/9/16	MRH	Document review and preparation for production and work with clients to gather documents.	6.2
12/10/16	MRH	Gathering documents, review and preparation for production	5.7
12/11/16	KIS	Coordinate preparation of discovery referee info for list to court, and review drafts of same.	0.8
12/13/16	KIS	Travel to/from and meet with O. de la Torre regarding case generally, document production, etc.	4.3
12/14/16	KIS	Travel to/from and meet with Pico Neighborhood Assn board	4.0
12/15/16	KIS	Investigation for McKeown deposition, discuss with R. Parris	4.9
12/15/16	MRH	Prepare deposition outline with K. Shenkman for McKeown deposition and discuss McKeown actions with Santa Monica residents.	6.0
12/16/16	KIS	Travel to/from and attend deposition of K. McKeown and debriefing and discussion with R. Parris and M. Cussimonio thereafter regarding case preparation.	10.9



12/18/16	KIS	Review discovery requests and responses and correspondence regarding same to identify scope of continued disputes, and discuss with R. Rubin	2.8
12/19/16	KIS	Travel to/from and meet with O. de la Torre and M. Loya regarding case generally, discovery and logistics and gathering of documents for production, call with M. Hughes, R. Parris and R. Rubin, and draft correspondence regarding remaining discovery disputes and path forward for resolution of same.	7.8
12/19/16	MRH	Meeting with PNA clients and conference with K. Shenkman, R. Parris and R. Rubin.	5.2
12/20/16	MRH	Document review and preparation for production, discuss same with K. Shenkman	5.3
12/21/16	KIS	Prepare for and further discussion with Defendant's counsel regarding discovery responses, production etc., and drafting supplemental discovery responses in light of continuing discussions.	4.6
12/24/16	KIS	Call with R. Rubin and R. Parris regarding experts	0.4
12/27/16	MRH	Draft and revise supplemental responses to document requests in light of discussion with K. Shenkman regarding conversations with Defendant's counsel and review of documents available to produce.	5.3
12/29/16	KIS	Evaluate motion for judgment on the pleadings and discuss same with M. Hughes.	3.6
12/29/16	MRH	Read Defendant's motion for judgment on the pleadings, quick research raised by motion, discuss with K. Shenkman.	4.8
12/30/16	KIS	Research for opposition to motion for judgment on the pleadings, call with R. Rubin re: same	5.9
12/31/16	KIS	Research for opposition to motion for judgment on the pleadings and develop outline for opposition	5.5
1/1/17	KIS	Further research for opposition to motion for judgment on the pleadings	4.9
1/2/17	KIS	Research and drafting opposition to motion for judgment on the pleadings	7.0
1/3/17	KIS	Research and drafting opposition to motion for judgment on the pleadings, call with R. Rubin re: same	8.5
1/4/17	KIS	Research and drafting opposition to motion for judgment on the pleadings	9.3
1/5/17	KIS	Research and drafting opposition to motion for judgment on the pleadings	9.6
1/6/17	KIS	Research and drafting opposition to motion for judgment on the pleadings	7.5
1/7/17	MRH	Discuss motion for judgment on the pleadings with K. Shenkman; revise opposition	3.2
1/7/17	KIS	Revise opposition to motion for judgment on the pleadings and draft ancillary documents; further research for final points.	7.7

12/20/17	KIS	Research regarding effect of prior order on 45-day deadline, direct co-counsel on approach in light of research and Defendant's tact.	4.2
12/20/17	KIS	Research regarding Fifth Amendment and further investigation regarding T. Vazquez and Santa Monica government corruption; draft correspondence requesting subsequent deposition of T. Vazquez and explaining basis therefor.	5.7
12/22/17	KIS	Evaluate correspondence from K. Scolnick; research Rule 5-100 issue raised in K. Scolnick's letter.	4.3
12/23/17	KIS	Research and drafting motion for subsequent deposition of T. Vazquez	5.6
12/25/17	KIS	Research and drafting motion for subsequent deposition of T. Vazquez	1.2
12/26/17	KIS	Research and drafting motion for subsequent deposition of T. Vazquez	3.9
12/27/17	KIS	Research and drafting motion for subsequent deposition of T. Vazquez	4.7
12/28/17	KIS	Research, drafting and revising motion to compel further responses to special interrogatories	6.0
12/28/17	AAA	Research at SM Library for M. Kousser	5.7
12/29/17	AAA	Research at SM Library for M. Kousser	5.4
12/29/17	KIS	Research, drafting and revising motion to compel further responses to special interrogatories and associated papers	6.4
1/2/18	KIS	Travel to/from and meet with O. de la Torre and M. Loya regarding case generally, settlement idea, and how to pursue resolution.	4.0
1/2/18	KIS	Research and drafting motion for subsequent deposition of T. Vazquez	5.2
1/3/18	MRH	Revise and finalize MTC subsequent deposition of T. Vazquez.	3.7
1/4/18	KIS	Revise and finalize motion to compel further responses to special interrogatories and associated papers	5.6
1/5/18	KIS	Research regarding inclusion of multi-member districts and differing election structures within a jurisdiction as remedy for voting rights violation.	6.5
1/6/18	KIS	Travel to/from and meet with J. Newman regarding effort to legislate away Santa Monica CVRA case.	4.4
1/8/18	KIS	Research regarding RPV in individual elections for reply to anticipated opposition to motion to compel special interrogatory responses.	4.8
1/9/18	KIS	Evaluate Defendant's opposition to motion for subsequent depositions of G. Davis and T. O'Day and formulate reply; correspondence regarding discovery motion briefing and scheduling.	2.1
1/10/18	KIS	Research and drafting reply in support of subsequent depositions of O'Day and Davis.	6.0
1/11/18	KIS	Research and drafting reply in support of subsequent depositions of O'Day and Davis.	7.7

# **EXHIBIT F**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

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)  
PICO NEIGHBORHOOD ASSOCIATION)  
and MARIA LOYA, )  
)  
Plaintiffs, )  
) Case No. BC616804  
vs. )  
)  
CITY OF SANTA MONICA, )  
CALIFORNIA; and DOES 1-100, )  
inclusive, )  
)  
Defendants. )  
-----)

VIDEOTAPED DEPOSITION OF OSCAR DE LA TORRE  
Los Angeles, California  
Wednesday, May 9, 2018  
Volume I

Reported by:  
KATHLEEN E. BARNEY  
CSR No. 5698  
Job No. 2907635  
PAGES 1 - 413

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

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 PICO NEIGHBORHOOD ASSOCIATION)  
 and MARIA LOYA, )  
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 Plaintiffs, )  
 ) No. BC616804  
 vs. )  
 )  
 CITY OF SANTA MONICA, )  
 CALIFORNIA; and DOES 1-100, )  
 inclusive, )  
 )  
 Defendants. )  
 -----)

Videotaped deposition of OSCAR DE LA TORRE,  
Volume I, taken on behalf of Defendants, at 333  
South Grand Avenue, Los Angeles, California,  
beginning at 9:43 a.m. and ending at 6:48 p.m. on  
Wednesday, May 9, 2018, before KATHLEEN E. BARNEY,  
Certified Shorthand Reporter No. 5698.

1 APPEARANCES:

2

3 For Plaintiffs:

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Page 3

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11 hgalloway@gibsondunn.com

12

13 Videographer:

14

15 TIMOTHY LANEY

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Page 4

1 THE VIDEOGRAPHER: Thank you. You may  
2 proceed.

3

4 EXAMINATION

5 BY MR. MCRAE:

6 Q Sir, can you state your full name for the  
7 record.

8 A Oscar De La Torre.

9 Q Have you ever been known by any names other  
10 than Oscar De La Torre? 09:46:19

11 A No.

12 Q What is your address, sir, your residence  
13 address?

14 A 2039 1/2 Stewart Street, Santa Monica  
15 California 90404. 09:46:29

16 Q Are you represented by counsel here today?

17 A Yes, I am.

18 Q Who is that?

19 A Kevin Shenkman.

20 Q Is that in your individual capacity that 09:46:36  
21 you're represented by counsel?

22 Do you understand the question?

23 A Yes. Well, I'm --

24 MR. SHENKMAN: We represent Mr. De La Torre.

25 THE WITNESS: Correct. I'm a member of the 09:46:45

Page 11



1 Pico Neighborhood Association.

2 BY MR. MCRAE:

3 Q That's what I'm trying to parse as a  
4 distinction.

5 Is he representing you in a representative 09:46:49  
6 capacity because of your affiliation with the Pico  
7 Neighborhood Association or is he individually your  
8 attorney in your individual capacity?

9 MR. SHENKMAN: We represent Mr. De La Torre  
10 individually as well. 09:47:01

11 MR. MCRAE: I'm asking the witness whether  
12 he's represented --

13 THE WITNESS: Yes.

14 MR. MCRAE: -- as an individual --

15 THE WITNESS: For both. For personal and --

16 BY MR. MCRAE:

17 Q Do you have any other counsel in this action  
18 other than Mr. Shenkman?

19 A Not present here.

20 Q And other than the people whose names appear 09:47:09  
21 on the pleadings in this matter representing the  
22 plaintiffs, do you have any other counsel in this  
23 matter?

24 A No one beyond the pleadings.

25 Q Okay. Have you ever been deposed before? 09:47:21

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I, OSCAR DE LA TORRE, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

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OSCAR DE LA TORRE

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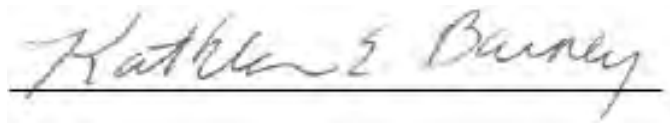
I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 5/16/2018



KATHLEEN E. BARNEY  
CSR No. 5698

# **EXHIBIT G**

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES

3  
4 DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE  
5 PICO NEIGHBORHOOD ASSOCIATION, )  
6 ET AL, )  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, AUGUST 2, 2018

A.M. SESSION

APPEARANCES:

FOR PLAINTIFFS:

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(APPEARANCES CONTINUED)

PAGES 123 TO 221, INCL.

REPORTED BY: LORA J. JOHNSON, CSR 10119  
RPR, CRR, RMR, CCRR #202  
OFFICIAL REPORTER PRO TEMPORE

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APPEARANCES: (CONTINUED)  
FOR DEFENDANT CITY OF SANTA MONICA:  
GIBSON DUNN  
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MARCELLUS McRAE, ESQ.  
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I N D E X  
THURSDAY, AUGUST 2, 2018; A.M. SESSION

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1733	220	

1 know?

2 A I don't know, but that sounds about right. I  
3 mean...

4 Q How many commissioners? My mistake.

5 A Oh, how many commissioners?

6 Q Yes.

7 A I don't know the number of commissioners, but  
8 I -- I know it's a good number of commissioners, yeah.

9 Q Do you know how many are Latinos?

10 MS. MARYOTT: Calls for speculation, your  
11 Honor. She hasn't established she knows --

12 THE COURT: Sustained. Sustained.

13 And also the time frame. Are you talking  
14 about now or some other time? It's unclear.

15 MR. GRIMES: No further questions, your Honor.

16 THE COURT: Thank you.

17 Cross-examination.

18 MS. MARYOTT: Thank you, your Honor.

19

20 CROSS-EXAMINATION

21 BY MS. MARYOTT:

22 Q Good morning, Ms. Loya.

23 A Good morning.

24 Q You mentioned that you're married to Oscar  
25 de la Torre, yes?

26 A Yes.

27 Q And he is the representative for the Pico  
28 Neighborhood Association in this case, right?



1 A Yes.

2 Q You mentioned that you moved to Santa Monica  
3 in 2000 from Texas?

4 A That's correct.

5 Q And that's where you grew up, in Texas?

6 A Yes.

7 Q And you moved to the Pico neighborhood area;  
8 that's where Mr. de la Torre lived at the time?

9 A That's correct.

10 Q And you still live there today?

11 A Yes.

12 Q Do you have any plans to move?

13 A Not anytime soon. My kids are still in the  
14 schools, and we really like the schools in the area,  
15 and the kids really like it. So I don't have any plans  
16 of moving anytime soon.

17 Q You talked a bit about your run for city  
18 council in 2004.

19 A Yes.

20 Q There was a large field of candidates that  
21 year; is that right?

22 A Yes. I believe 16 or 17.

23 Q And that was unusual?

24 A You know, not really because there is always a  
25 good number of people running. I mean -- but it was 17  
26 candidates. It was a --

27 Q It was a lot?

28 A It was a lot, yes.

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES

3  
4 DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE  
5 PICO NEIGHBORHOOD ASSOCIATION, )  
ET AL., )  
6 )  
PLAINTIFFS, )  
7 )  
vs. )NO. BC616804  
8 )  
CITY OF SANTA MONICA, ET AL., )REPORTER'S  
9 )CERTIFICATE  
DEFENDANTS. )  
10 \_\_\_\_\_)  
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12

13 I, LORA J. JOHNSON, CSR NO. 10119, Official  
14 Reporter Pro Tempore of the Superior Court of the State  
15 of California, for the County of Los Angeles, do hereby  
16 certify that the foregoing pages comprise a full, true,  
17 and correct transcript of the proceedings held in the  
18 matter of the above-entitled cause on Thursday,  
19 August 4, 2018, a.m. session.

20  
21  
22 <%signature%>

23 Lora J. Johnson, CSR 10119  
RPR, CRR, RMR, CCRR #202  
24 Official Reporter Pro Tempore  
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28

# **EXHIBIT H**



# City of Santa Monica

## City Council Meeting

### AGENDA

SUE HIMMELRICH  
MAYOR

KEVIN MCKEOWN  
COUNCILMEMBER

KRISTIN MCCOWAN  
MAYOR PRO TEM

GLEAM DAVIS  
COUNCILMEMBER

PHIL BROCK  
COUNCILMEMBER

CHRISTINE PARRA  
COUNCILMEMBER

OSCAR DE LA TORRE  
COUNCILMEMBER

LANE DILG  
INTERIM CITY MANAGER

GEORGE CARDONA  
INTERIM CITY ATTORNEY

DENISE ANDERSON-WARREN  
CITY CLERK

### STANDARDS OF BEHAVIOR THAT PROMOTE CIVILITY AT ALL PUBLIC MEETINGS:

- Treat everyone courteously;
- Listen to others respectfully
- Exercise self-control
- Give open-minded consideration to all viewpoints;
- Focus on the issues and avoid personalizing debate;
- Embrace respectful disagreement and dissent as democratic rights, inherent components of an inclusive public process, and tools for forging sound decisions

Meetings are broadcast live on CityTV cable channel 16, on the internet at [www.smgov.net](http://www.smgov.net), and can be live streamed at <https://primetime.bluejeans.com/a2m/live-event/tzszchr>. Cable television re-broadcasts air on Thursday and Saturday at 11:30 AM. The agenda will air on CityTV on Saturday and Sunday at 11:00 AM and 6:00 PM, and on Monday and Tuesday at 12:30 PM and 6:00 PM. To listen to the Council meeting through your telephone the Attendee Dial-In number is: 1 (415) 466-7000 - PIN 1048139 #.

## **RULES OF ORDER FOR THE CONDUCT OF CITY COUNCIL MEETINGS**

(Resolution No.11172 (CCS))

### **WAYS TO PROVIDE PUBLIC COMMENT**

If you are interested in providing public comment at a City Council meeting, there are several ways to participate:

(1) Written public comment. In lieu of oral public comment, the public is strongly encouraged to submit written public comment on agenda items via email to [councilmtgitems@smgov.net](mailto:councilmtgitems@smgov.net). Written public comment submitted before 2:00 pm on the day of the meeting will be available for online viewing. Please note the agenda item number in the subject line of your written comments.

(2) Oral public comment. Additionally, effective January 26, 2021, and until COVID-19 restrictions are lifted, oral public comment on agenda items can be provided remotely in one of two ways:

(a) Video/Audio public comment via BlueJeans requires Pre-registration.

Remote video/audio public comment via BlueJeans requires pre-registration no later than one hour before the start of the meeting at [santamonica.gov/public-comment](http://santamonica.gov/public-comment). Pre-registrants must provide the following information: (1) their names as they will be displayed on the BlueJeans system; (2) the agenda item(s) on which they wish to comment; (3) how many minutes they want to speak on an item; and, (4) a valid e-mail address. Pre-registrants will receive a link via e-mail to access the remote meeting through BlueJeans as attendees, and should log in before the agenda item on which they want to speak is called. When the time for public comment on a particular agenda is reached, pre-registrants who are present as attendees will be called on and temporarily promoted to presenters to provide oral public comment. Pre-registrants providing oral comment in this way may appear on video. Donation of time and electronic presentation materials will not be permitted while meetings are conducted via teleconference.

(b) Telephone public comment requires no pre-registration. If you miss the pre-registration deadline but decide during the meeting that you want to provide public comment on a particular agenda item, or if you do not have access to internet service, you can call by phone at (310) 458-8423 when the caller queue opens for the agenda item on which you wish to comment. The caller queue for an agenda item will not open until just before the item is called and will then remain open until the first five public comments (from pre-registrants and/or other callers) are heard.

Oral public comment from any one individual is limited to a total of 6 minutes per City Council meeting, with a maximum of 2 minutes per agenda item; under some circumstances, Council may change the maximum to 1 minute per agenda item.

### **ORDER OF BUSINESS** (may not be changed except by majority vote of the City Council.)

1. Closed Session.
2. Special Agenda Items (City Manager's Report Commendations, Presentations, etc.).
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## AGENDAS

CITY OF SANTA MONICA

SPECIAL MEETING

VIA TELECONFERENCE PURSUANT TO

EXECUTIVE ORDER N-29-20 ISSUED BY,  
GOVERNOR GAVIN NEWSOM

TUESDAY, JANUARY 26, 2021

**MEETING BEGINS AT 4:00 PM**

Meeting can be viewed at: Streaming at <https://www.smgov.net/content.aspx?id=4292>  
LIVE STREAM (Chrome Browser Recommended):

<https://primetime.bluejeans.com/a2m/live-event/tzszchdr>

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### AND DIAL-IN NUMBER

1 (415) 466-7000 (US), PIN 1048139 #

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CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
ROLL CALL

(This is a special City Council meeting. Public comment is restricted to only items listed on the agenda.)

1. CLOSED SESSIONS

**No items**

(Please note that Agenda Items may be reordered during the Council meeting at the discretion of the City Council.)

2. SPECIAL AGENDA ITEMS

**No items**

3. CONSENT CALENDAR

(All items will be considered and approved in one motion unless removed by a Councilmember for discussion.)

**No items**

4. STUDY SESSION

**No items**

5. CONTINUED ITEMS

**No items**

6. ADMINISTRATIVE PROCEEDINGS

**No items**

7. ORDINANCES

(Public comment is permitted on ordinances for introduction and first reading. No public discussion is permitted on ordinances for second reading and adoption.)

**No items**

8. STAFF ADMINISTRATIVE ITEMS

**8.A. Pico Neighborhood Association and Maria Loya v. City of Santa Monica – Determination Regarding Common Law Conflict of Interest of Councilmember de la Torre**

**Recommended Action**

With respect to the pending litigation in *Pico Neighborhood Association and Maria Loya v. City of Santa Monica*, Los Angeles Superior Court, Case No. BC 616804, Second District Court of Appeal, Case No. B295935, California Supreme Court, Case No. S263972, in which one plaintiff is an association for which Councilmember de la Torre was, until November 2020, a board member, and the other plaintiff is Councilmember de la Torre's wife, staff recommends that Council determine that, in accordance with the principles set out in AG Opinion 07-807 (Jan. 14, 2009), Councilmember de la Torre has a common law conflict of interest and is therefore disqualified from participating in or attempting to influence discussions or decisions relating to this litigation.

**ADJOURNMENT**

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# City of Santa Monica

## City Council Meeting

### AGENDA

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MAYOR

KEVIN MCKEOWN  
COUNCILMEMBER

KRISTIN MCCOWAN  
MAYOR PRO TEM

GLEAM DAVIS  
COUNCILMEMBER

PHIL BROCK  
COUNCILMEMBER

CHRISTINE PARRA  
COUNCILMEMBER

OSCAR DE LA TORRE  
COUNCILMEMBER

LANE DILG  
INTERIM CITY MANAGER

GEORGE CARDONA  
INTERIM CITY ATTORNEY

DENISE ANDERSON-WARREN  
CITY CLERK

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(Resolution No.11172 (CCS))

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## AGENDAS

CITY OF SANTA MONICA

REGULAR AND SPECIAL JOINT MEETING

VIA TELECONFERENCE PURSUANT TO

EXECUTIVE ORDER N-29-20 ISSUED BY,  
GOVERNOR GAVIN NEWSOM

TUESDAY, JANUARY 26, 2021

**MEETING BEGINS AT 5:30 PM**

Meeting can be viewed at: Streaming at <https://www.smgov.net/content.aspx?id=4292>  
LIVE STREAM (Chrome Browser Recommended):

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CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

**(Please note that Agenda Items may be reordered during the Council meeting at the discretion of the City Council.)**

1. CLOSED SESSIONS

- 1.A. Conference with Legal Counsel – Existing Litigation – Litigation has been Initiated Formally Pursuant to Gov. Code Section 54956.9 (d) (1): Judith Aluce v. City of Santa Monica, Los Angeles Superior Court, Case No. 19STCV00183, consolidated with Lead Case No. 18STCV00130**
- 1.B. Conference with Legal Counsel – Existing Litigation – Litigation has been Initiated Formally Pursuant to Gov. Code Section 54956.9 (d) (1): EJA Associates, L.P., a California limited partnership v. City of Santa Monica, et al., Los Angeles Superior Court, Case Nos. 20SMCV01103, 20SMCV01550.**
- 1.C. Conference with Legal Counsel – Existing Litigation – Litigation has been initiated formally pursuant to Government Code Section 54956.9(d)(1): Pico Neighborhood Association and Maria Loya v. City of Santa Monica, Los Angeles Superior Court, Case No. BC 616804, Second District Court of Appeal, Case No. B295935, California Supreme Court, Case No. S263972.**

The following is the order of business for items to be heard no earlier than 6:30 p.m.

2. SPECIAL AGENDA ITEMS

- 2.A. Proclamation: Black History Month**

3. CONSENT CALENDAR

(All items will be considered and approved in one motion unless removed by a Councilmember for discussion.)

- 3.A. Approval of First Modification to Master Equity Lease Agreement with Enterprise Fleet Management, Inc.**

**Recommended Action**

Staff recommends that the City Council authorize the City Manager to negotiate and execute a first modification to Master Equity Lease agreement #4631 in the amount of \$857,500 with Enterprise Fleet Management, Inc. to provide vehicle leasing services for the Public Works, Police, and Fire Departments. This will result in a

seven-year amended agreement with a new total amount not to exceed \$1,038,120, including a 10% contingency, with future year funding contingent on Council budget approval.

**3.B. Award Request for Proposal to Three Four Three, LLC, to provide Bioterrorism Training Projects to assist Los Angeles Area Fire Chief's Association Regional Training Group hosted by Santa Monica Fire**

**Recommended Action**

Staff recommends that the City Council:

1. Award RFP#274 for professional services to Three Four Three, LLC, to assist Los Angeles Area Fire Chief's Association Regional Training Group hosted by Santa Monica Fire Department; and
2. Authorize the City Manager to negotiate and execute a professional services agreement with Three Four Three, in an amount not to exceed \$302,000 for a twenty-four-month period, with future year funding contingent on Council budget approval and additional grant funding.

**3.C. Recommendation to Join in Amicus Brief In Support of the State of California in Cedar Point Nursery, et al. v. Hassid, et al., United States Supreme Court, No. 20-107.**

**Recommended Action**

Staff recommends that City Council authorize the City to sign on to an amicus brief to be filed by the Public Rights Project, the City of Seattle, Cook County, and Santa Clara County in support of the State of California's position in *Cedar Point Nursery, et al. v. Hassid, et al.*, United States Supreme Court, No. 20-107.

**3.D. Adoption of Resolution Ratifying COVID-19 Emergency Proclamation and Supplements**

**Recommended Action**

Staff recommends that Council adopt the proposed resolution ratifying the Executive Order issued by the Director of Emergency Services declaring the existence of a local emergency in the city of Santa Monica and the Supplements to that Order.

**3.E. City Council - Regular Meeting - Aug 25, 2020 5:30 PM**

**3.F. City Council - Regular and Special Meeting - Oct 13, 2020 5:30 PM**

**3.G. City Council - Regular and Special Meeting - Jan 12, 2021 5:30 PM**

4. STUDY SESSION

No items

5. CONTINUED ITEMS

No items

6. ADMINISTRATIVE PROCEEDINGS

**No items**

7. ORDINANCES

(Public comment is permitted on ordinances for introduction and first reading. No public discussion is permitted on ordinances for second reading and adoption.)

**7.A. Second Reading And Adoption Of An Ordinance Of The City Council Of The City Of Santa Monica Amending Santa Monica Municipal Code Section 9.10.040 To Prohibit Certain Fast Food Restaurants In Establishments With Frontage On The Third Street Promenade**

**Recommended Action**

Staff recommends that City Council adopt the attached Ordinance.

**7.B. Second Reading And Adoption Of An Ordinance Of The City Council Of The City Of Santa Monica Adding Santa Monica Municipal Code Chapter 2.50 To Establish A Public Safety Reform And Oversight Commission**

**Recommended Action**

Staff recommends that City Council adopt the attached Ordinance.

8. STAFF ADMINISTRATIVE ITEMS

**. SPECIAL JOINT MEETING OF THE CITY COUNCIL, HOUSING AUTHORITY AND PARKING AUTHORITY**

**. ROLL CALL**

**8.A. Approval of minutes for Housing and Parking Authority meetings**

**Recommended Action**

Staff recommends that the:

1. Housing Authority approve the minutes of the February 25, 2020, October 13, 2020 and October 27, 2020 meetings; and
2. Parking Authority approve the minutes of the February 25, 2020 and October 27, 2020 meetings.

**8.B. Financial Status Update and FY 2020-21 Midyear Budget**

## **Recommended Action**

Staff recommends that the City Council, Housing Authority, and Parking Authority:

1. Appropriate Fiscal Year (FY) 2020-21 midyear revenue and expenditure budget adjustments (Attachment A).

Staff also recommends that the City Council:

1. Receive the FY 2021-22 through FY 2025-26 Five-Year Financial Forecast;
2. Adopt a Resolution of the City of Santa Monica establishing new classifications and adopting salary rates for various listed positions (Attachment B);
3. Approve position and classification changes (Attachment C);
4. Adopt a Resolution regarding Travel by Council Members and City-Issued Technology (Attachment D);
5. Adopt a Resolution Setting the Fire Basic Life Support (BLS) Paramedic Assessment Fee and the Disposable Medical Supplies Fee (Attachment E);
6. Extend the current Human Services Grant Program (HSGP) grant cycle for two years through FY 2022-23, to ensure staff and grantees can continue the critical work they are doing to address the pandemic, and postpone the next grant cycle to begin FY 2023-24;
7. Extend the current Organizational Support Program (OSP) grant cycle for two years through FY 2022-23, to ensure staff and grantees can continue the critical work they are doing to address the pandemic and postpone the next grant cycle to begin FY 2023-24;
8. Authorize the City Manager to accept a grant award in the amount of \$42,430 from the U.S. Department of Justice (DOJ) Edward Byrne Memorial Justice Assistance Grant (JAG) for implementation of the JAG 2020 Project "Overtime Operations to Keep Neighborhoods Safe" and execute all necessary documents to accept the grant and all grant renewals;
9. Authorize the City Manager to accept a grant award in the amount of \$2,681 from the California Department of Justice for the Sexual Assault Evidence Grant Program, to accept all grant renewals, and to execute all necessary documents to accept the grant and all grant renewals;
10. Authorize the City Manager to accept a grant award in the amount of \$24,276 from the United States Department of Justice (DOJ) for the 2020 Bulletproof Vest Partnership (BVP) Grant for the purchase of bulletproof vests by the Police Department, to accept all grant renewals, and to execute all necessary documents to accept the grant and all grant renewals;
11. Provide direction to the Interim City Manager to publicly announce and designate a 30-day application timeline for seats on the We Are Santa Monica Fund Advisory Board to be appointed by the Interim City Manager to provide community engagement and advice to the Interim City Manager with respect to the We Are Santa Monica Fund;
12. Provide direction to staff on whether to proceed with developing a digital Out-of-Home (OOH) advertising and wayfinding program by (1) issuing a request for proposals (RFP) for a digital OOH advertising vendor for the construction, installation and management of advertising space for an initial phase of 25 digital OOH kiosks, and a possible subsequent second phase of 25 additional kiosks in highly trafficked areas of the City; and (2) returning to Council with proposed kiosk locations and recommendations for new policies and/or changes to existing City policies and municipal codes to guide the successful

- implementation and operation of this program consistent with the goals of maintaining community aesthetics and enhancing overall engagement with and value for the community; and
13. Provide direction to staff on whether to return with additional information regarding public-private partnership opportunities to support programs.

## **ADJOURNMENT OF SPECIAL JOINT MEETING**

### 9. PUBLIC HEARINGS

**No items**

### 10. REPORTS OF BOARDS AND COMMISSIONS

**No items**

### 11. RESOLUTIONS

**No items**

### 12. WRITTEN COMMUNICATIONS OTHER THAN REPORTS OF COMMISSION AND OFFICERS

**No items**

### 13. COUNCILMEMBER DISCUSSION ITEMS

- 13.A. **Request of Councilmembers Brock and Parra that the City adopt as part of its annual legislative program opposition to Senate Bill 10 (Wiener), introduced on December 7, 2020 as a successor to a prior bill, SB 50, which would require that cities allow midrise, medium-density housing on sites that are either within one-half mile of high-quality public transportation or within a jobs-rich, high-opportunity neighborhood close to key job centers, without affordability requirements or sensitivity to the character of existing neighborhoods. - *This item is being removed by the requestors.***

### 14. PUBLIC INPUT

(Public comment is permitted only on items not on the agenda that are within the subject matter jurisdiction of the City. State law prohibits the City Council from taking any action on items not listed on the agenda, including issues raised under this agenda item.)

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# **EXHIBIT I**



# City of Santa Monica

## City Council Meeting

### AGENDA

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MAYOR

KEVIN MCKEOWN  
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KRISTIN MCCOWAN  
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9. Public Hearings.
10. Reports of Boards and Commissions.
11. Resolutions.
12. Written Communications (other than Reports of Commission and Officers).
13. Councilmember Discussion Items.
14. Public Input (members of the public may address the City Council **only** on items not on the agenda, but within the subject matter jurisdiction of the City)

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*Si desea comunicarse con alguien en español, llame a nuestra oficina al (310) 458-8211 y pida hablar con Esterlina Lugo.*



## AGENDAS

CITY OF SANTA MONICA

SPECIAL MEETING

VIA TELECONFERENCE PURSUANT TO

EXECUTIVE ORDER N-29-20 ISSUED BY,  
GOVERNOR GAVIN NEWSOM

TUESDAY, JANUARY 26, 2021

**MEETING BEGINS AT 4:00 PM**

Meeting can be viewed at: Streaming at <https://www.smgov.net/content.aspx?id=4292>  
LIVE STREAM (Chrome Browser Recommended):

<https://primetime.bluejeans.com/a2m/live-event/tzszchdr>

### LIVE STREAM

<https://primetime.bluejeans.com/a2m/live-event/tzszchdr>

### AND DIAL-IN NUMBER

1 (415) 466-7000 (US), PIN 1048139 #

### WAYS TO PROVIDE REMOTE PUBLIC COMMENT:

Written public comment can be submitted via email to [councilmtgitems@smgov.net](mailto:councilmtgitems@smgov.net). Written comments received prior to 2:00 pm on the day of the meeting will be available online. Please note the agenda item number in the subject line of your written comments.

You can pre-register to speak no later than one hour before the start of the meeting at [santamonica.gov/public-comment](http://santamonica.gov/public-comment). You will need to provide: (1) your name as it will appear on the BlueJeans system (2) the agenda item(s) on which you wish to comment, and (3) how many minutes you want to speak on an item. Sign-in to the meeting as an Attendee, before the item on which you wish to speak is called. When the time comes for public comment on the agenda item(s) for which you have pre-registered, you will be called on and temporarily promoted to be a Presenter to provide oral public comment via video and/or audio. For video instructions on how to provide Video Public Comment, visit **YouTube** at: <https://youtu.be/NDinc-RLjC8>

If you have not pre-registered but decide you want to speak on a particular agenda item, please call (310) 458-8423 once the caller queue for the agenda item opens. Please note that the caller queue for each agenda item will not open until just before the item is called and will close after the first five public comments (from pre-registrants and/or other callers) are heard.

In an effort to reduce the risk of spreading Coronavirus (COVID-19), members of the City Council and City Staff will participate via teleconference. The meeting will be broadcast on CityTV Channel 16 and streaming on the City's website and YouTube channel as normal, but individuals may also join the teleconference via other methods listed above.

CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
ROLL CALL

(This is a special City Council meeting. Public comment is restricted to only items listed on the agenda.)

1. CLOSED SESSIONS

**No items**

(Please note that Agenda Items may be reordered during the Council meeting at the discretion of the City Council.)

2. SPECIAL AGENDA ITEMS

**No items**

3. CONSENT CALENDAR

(All items will be considered and approved in one motion unless removed by a Councilmember for discussion.)

**No items**

4. STUDY SESSION

**No items**

5. CONTINUED ITEMS

**No items**

6. ADMINISTRATIVE PROCEEDINGS

**No items**

7. ORDINANCES

(Public comment is permitted on ordinances for introduction and first reading. No public discussion is permitted on ordinances for second reading and adoption.)

**No items**

8. STAFF ADMINISTRATIVE ITEMS

**8.A. Pico Neighborhood Association and Maria Loya v. City of Santa Monica – Determination Regarding Common Law Conflict of Interest of Councilmember de la Torre**

**Recommended Action**

With respect to the pending litigation in *Pico Neighborhood Association and Maria Loya v. City of Santa Monica*, Los Angeles Superior Court, Case No. BC 616804, Second District Court of Appeal, Case No. B295935, California Supreme Court, Case No. S263972, in which one plaintiff is an association for which Councilmember de la Torre was, until November 2020, a board member, and the other plaintiff is Councilmember de la Torre's wife, staff recommends that Council determine that, in accordance with the principles set out in AG Opinion 07-807 (Jan. 14, 2009), Councilmember de la Torre has a common law conflict of interest and is therefore disqualified from participating in or attempting to influence discussions or decisions relating to this litigation.

**ADJOURNMENT**

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Members of the public unable to attend a meeting but wishing to comment on an item(s) listed on the agenda may submit written comments prior to the meeting by meeting by mailing them to: City Clerk, 1685 Main Street, Santa Monica, CA 90401 or to [councilmtgitems@smgov.net](mailto:councilmtgitems@smgov.net). Written comments received from the public by 2 PM on the day of the City Council meeting will be distributed to the City Council prior to the meeting and **posted online**.

City Hall and the Council Chamber are wheelchair accessible. If you require any special disability related accommodations (i.e. sign language interpreting, access to an amplified sound system, etc.), please contact the City Clerk's Office at (310) 458-8211 or TDD: (310) 917-6626 at least 3 days prior to the scheduled meeting.

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To: Mayor and City Council  
 From: George Cardona, Interim City Attorney, City Attorney's Office  
 Subject: Pico Neighborhood Association and Maria Loya v. City of Santa Monica –  
 Determination Regarding Common Law Conflict of Interest of Councilmember  
 de la Torre

### **Recommended Action**

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### **Discussion**

#### **A. The Litigation**

In the election conducted on November 3, 2020, Oscar de la Torre was elected to serve as a member of the Santa Monica City Council. He took his oath and assumed his duties as a Councilmember on December 8, 2020. Prior to being elected to the City Council, Mr. 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 alleging that the City's use of an at-large election system to elect its City Council members violates the California Voting Rights Act.



The original complaint in the litigation was filed on April 12, 2016 by three plaintiffs: the Pico Neighborhood Association (“PNA”), Maria Loya (Councilmember de la Torre’s wife), and Advocates for Malibu Public Schools. The original complaint alleged that “the provision in the Santa Monica City Charter requiring at-large elections for the city council and the SMMUSD governing board, not only runs afoul of the CVRA [California Voting Rights Act], it also runs afoul of the Equal Protection Clause (Article I, Section 7) of the California Constitution, among other controlling laws.” The original complaint did not seek damages, but did seek an award of plaintiffs’ attorneys’ fees, costs, and litigation expenses.

A First Amended Complaint (“FAC”) was filed on February 23, 2017. The FAC was filed by two plaintiffs, PNA and Ms. Loya (collectively “Plaintiffs”). The FAC dropped the allegations regarding at-large elections for the SMMUSD governing board, and alleged only that “the provision in the Santa Monica City Charter requiring at-large elections for the city council, not only runs afoul of the CVRA, it also runs afoul of the Equal Protection Clause (Article I, Section 7) of the California Constitution, among other controlling laws.” The FAC did not seek damages, but did seek an award of Plaintiffs’ attorneys’ fees, costs, and litigation expenses. The litigation proceeded to trial, judgment, and appeal based on the allegations in the FAC.

During the litigation, Ms. Loya was deposed on May 15, 2018. She testified that she became involved with the PNA and became a board member in either 2002 or 2003, that she left PNA in 2010 for family and work reasons, and that she came back in 2013 and was elected again to be a board member. She testified that at the time of her deposition she was serving as PNA’s treasurer. Ms. Loya was called by Plaintiffs as a witness at trial and testified on August 2, 2018. She testified that Mr. de la Torre was the representative for the PNA in this case. As of January 22, 2020, PNA’s website lists Ms. Loya as a board member who serves as PNA’s communications officer.

(Attachment A)

During the litigation, Mr. de la Torre was deposed on May 9, 2018 in his individual capacity. Mr. de la Torre was deposed on May 10, 2018, as the person identified by PNA as most qualified to testify on behalf of PNA on specified topics,. At both

depositions, Mr. de la Torre was represented by Kevin Shenkman, one of the attorneys for Plaintiffs in the litigation. At the time of the depositions, Mr. de la Torre was the co-chair of PNA. He testified that he had been elected to that position in an election held the prior year and that he had previously held the position of chair of the PNA three to four years ago. Mr. de la Torre was also called by Plaintiffs as a witness at trial and testified on August 22 and 23, 2018. Mr. de la Torre testified that his mother and father were involved in the founding of PNA in 1979, and “we have a long history of family involvement in the [PNA].” He also testified that he remained the co-chair of PNA, that his wife, Ms. Loya, was a member of the PNA board, and that his niece, Griselda Garces de la Torre, was the agent for service of process of the PNA. During his recent City Council campaign and as of November 2020, Mr. de la Torre served as chair of the PNA board. Councilmember de la Torre has advised that following his election to the City Council, he resigned from his position as chair of the PNA board at a PNA board meeting conducted on or about November 19, 2020. As of January 22, 2020, PNA’s website identifies Councilmember de la Torre as “Santa Monica City Councilor since December 2020: previously a board member.”

Trial on the allegations in the FAC began August 1, 2018, and the presentation of evidence concluded on September 11, 2018. After extensive post-trial briefing, on February 13, 2019, the trial court issued judgment in favor of Plaintiffs on both of their causes of action.

Following issuance of the trial court’s judgment, Plaintiffs’ attorneys filed motions seeking approximately \$23 million in attorneys’ fees and costs. 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.

The City filed a notice of appeal from the judgment on February 22, 2019. After briefing, the Court of Appeal held oral argument on June 30, 2020.

On July 9, 2020, the Court of Appeal issued an opinion holding that the City did not violate either the CVRA or the Equal Protection Clause of the California Constitution. The Court of Appeal reversed the trial court's judgment, ordered the Plaintiffs to pay costs to the City, and directed the trial court to enter judgment for the City. Plaintiffs filed for rehearing, which the Court of Appeal denied on August 5, 2020.

On August 18, 2020, Plaintiffs filed a petition seeking review by the California Supreme Court. On October 21, 2020, the California Supreme Court granted review only on a limited question relating to Plaintiffs' claim under the CVRA: "What must a plaintiff prove in order to establish vote dilution under the California Voting Rights Act?" The California Supreme Court left intact the Court of Appeal's ruling in the City's favor on the Equal Protection claim.

Briefing in the California Supreme Court is ongoing. Plaintiffs' filed their opening brief on December 21, 2020. The City's answering brief is due March 22, 2021. No date has yet been set for oral argument before the California Supreme Court.

Were the California Supreme Court to affirm the holding of the Court of Appeal, the litigation would conclude; the City would not be required to make any change to the Charter-established at-large election system, and the City would not be required to pay any fees to the Plaintiffs' attorneys. Were the California Supreme Court to reverse the holding of the Court of Appeal, the City would anticipate a remand to the Court of Appeal for further review and to resolve the remaining issues relevant to Plaintiffs' CVRA claim that the Court of Appeal found unnecessary to reach because of the basis for its ruling. Were Plaintiffs ultimately to prevail in the litigation, the City would anticipate returning to the trial court for resolution of the pending motions in which the Plaintiffs seek payment by the City of the Plaintiffs' attorneys' fees and costs.

## **B. The Common Law Conflict of Interest**

The City has sought formal advice from the California Fair Political Practices Commission ("FPPC") as to whether Councilmember de la Torre has a financial conflict of interest under Government Code Section 1090 (which would preclude the City from

entering into any contract relating to the litigation) or the Political Reform Act (which would require that Councilmember de la Torre recuse from participating in any decisions relating to the litigation). The City has not yet received advice on these issues from the FPPC. Should the FPPC determine that there is a financial conflict of interest, that would serve as a separate, independent basis for disqualifying Councilmember de la Torre.

Separate and apart from disqualifying financial interests within the meaning of Section 1090 or the Political Reform Act, the common law doctrine against conflicts of interest “prohibits officials from placing themselves in a position where their private, personal interests may conflict with their official duties.” *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1171 (1996), *quoting* 64 Ops. Cal. Atty Gen. 795, 797 (1981)

The FPPC does not provide advice on common law conflicts of interest. The City sought guidance from the California Attorney General on whether Councilmember de la Torre’s prior position as a board member and representative of PNA during the litigation or his wife’s continuing status as a plaintiff in the litigation poses a common law conflict of interest. The California Attorney General has declined to provide advice, indicating that their authority to issue legal opinions is controlled by Government Code Section 12519, which states that opinions shall be provided to “a city prosecuting attorney when requested, upon any question of law relating to criminal matters,” and that, as a result, because the current situation involves a matter of civil law, rather than criminal law, they are unable to provide the City with a legal opinion under the authority of their governing statute. Nevertheless, as a matter of general guidance and reference, the California Attorney General provided the City with a copy of a California Attorney General Opinion -- official citation 92 Ops. Cal. Atty. Gen. 19 (2009) (Cal. AG No. 07-807) -- that discusses the common law doctrine and its application in a particular case where the California Attorney General found that the prohibitions of Government Code Section 1090 and the Political Reform Act did not apply. A copy of this opinion is attached. (Attachment B)

The 2009 Attorney General Opinion found that a city redevelopment agency board member had a common law conflict of interest with respect to the agency's decision whether to enter into a loan agreement for commercial property improvement where the proposed recipient of the loan was a corporation solely owned by the adult son of the agency board member. The 2009 Attorney General Opinion determined that the agency board member had no disqualifying financial interests within the meaning of Section 1090 or the Political Reform Act. But, it noted, this did not preclude a finding of a common law conflict of interest because "the common law prohibition extends to noneconomic interests as well." Indeed, the common law doctrine has long been held to apply beyond financial interests, requiring more generally that a public officer "exercise the powers conferred on him with disinterested skill, zeal and diligence and primarily for the benefit of the public." *Noble v. City of Palo Alto*, 89 Cal. App. 47, 51 (1928); see also *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1170-71 (1996). As the 2009 Attorney General Opinion explained: "even if the agency board member cannot be said to have a statutory financial interest in her son's contract with the agency within the meaning of section 1090 or the Political Reform Act, it is difficult to imagine that the agency member has no private or personal interest in whether her son's business transactions are successful or not." Thus, it concluded, "In our view, the agency board member's status as the private contracting party's parent and co-tenant places her in a position where there may be at least a temptation to act for personal or private reasons rather than with 'disinterested skill, zeal, and diligence' in the public interest, thereby presenting a potential conflict." As a result, the Opinion held, "to avoid a conflict between her official and personal interests, the board member should abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement."

Just as it was "difficult to imagine that the agency member has no private or personal interest in whether her son's business transactions are successful or not," it seems difficult to imagine that Councilmember de la Torre has no private or personal interest in the outcome of the pending litigation where his wife remains a plaintiff in the litigation, his wife remains a board member of the other plaintiff in the litigation, and, until shortly before being sworn in as a councilmember, he was the chair of the board of the other

plaintiff in the litigation and served as that plaintiff's representative at deposition and trial. As a result, in accordance with the principles set out in the 2009 Attorney General Opinion, staff recommends that Council determine that Councilmember de la Torre has a common law conflict of interest and should therefore be disqualified from participating in or attempting to influence discussions or decisions relating to this litigation.

Pursuant to Council Rule 18, this determination should be made by Council vote of the councilmembers other than Councilmember de la Torre, who also has a personal conflict of interest in the determination whether he has a conflict of interest with respect to the litigation. Staff recommends, however, that Councilmember de la Torre be allowed to participate in the discussion as to whether he has a conflict of interest with respect to the litigation so that the Council can hear his explanation as to why he believes he does not have a conflict of interest. If Council determines that a common law conflict of interest exists and Councilmember de la Torre is, therefore, disqualified, then all subsequent discussions and actions relating to the litigation should be treated in the same way as if Councilmember de la Torre recused himself, that is, Councilmember de la Torre may not be present during any discussions or decisions related to the litigation.

**Prepared By:** Denise Anderson-Warren, City Clerk

**Approved**

**Forwarded to Council**

*George Cardona*  
George Cardona, Interim City Attorney 1/23/2021

*[Signature]*  
Lane Dilg, Interim City Manager 1/23/2021

**Attachments:**

- A. Attachment A--20210122.Board Members – PNA
- B. Attachment B--AG Opn. 07-807
- C. Responses from Oscar De la Torre Part 1
- D. Responses from Oscar De la Torre Part 2

# PNA

## Pico Neighborhood Association – Santa Monica, California

### Board Members

#### PNA Board

**Oscar De la Torre, Santa Monica City Councilor since December 2020: previously a board member.**

**Cris McLeod, Chair** . Cris is a resident of the Pico Neighborhood, 16 years long. Cris is the Secretary and Treasurer for the GSMOL Chapter here in Santa Monica and he is also the Secretary for the Home Owners association at Mountain View Mobile Home Park on Stewart St. He has been involved with the PNA as a member for 12 Years. He regularly speaks at City Council and is a strong advocate for low income residents, Cris is also a member of SMMR.

**Brian Oneal, Co-Chair and Secretary.** Brian is History Professor and community leader from the newly formed Gandara Park Neighborhood Association, more to come.

**Marco Marin, Director @ Large.** Is A long time Santa Monica Resident and board member. We will update his bio asap.

**Maria Loya, Communications Officer.** Maria has lived in the Pico Neighborhood for 18 years. She brings her experience as a community organizer and activist on issues related to the environment, development and education. Maria was recently re-elected as member of the Santa Monicans for Renter's Rights (SMRR) Steering Committee. She and her husband, Oscar de la Torre are raising two wonderful boys in the Pico Neighborhood.

**Berenice Onofre, Director @ Large,** A longtime resident of the Pico neighborhood, Berenice is proud to serve as a PNA Board member, Berenice also just earned her Doctorate in Education from CAL State La.

**Andrew Kalinowski, Director @ Large,** is a Santa Monica resident and our most recent board member. Is a Certified Public Accountant (CPA), is also a Certified Management Accountant (CMA), Andrew is also a Board Member of the Ferris Foundation which is a nonprofit fund for higher education and was the Former President and Board Member of the GRYP which is a young professional organization based in Michigan prior to his move to Santa Monica. Andrew is actively involved in Junior Achievement of SoCal and has volunteered with multiple nonprofit organizations where he assisted minority owned businesses in finance, operational improvements, business planning, legal, and tax planning.

**Gina de Baca, Director @ Large.** Gina has been a PNA Boardmember for more than 16 years. Gina is a life long resident of Santa Monica and has lived in the Pico Neighborhood for more than 24 years. She has been a long time advocate for youth and Pico Neighborhood families. She serves on the Santa Monica Early Childhood education task force, Edison PTA Board, member of Kuruvungna Spring Board of Directors and Founder of Cabeza de Vaca cultural school in Santa Monica.

**Mary Cornejo, Director @ Large.** Mary is a native to Santa Monica. She has lived her entire life in the Pico Neighborhood. Mary is a member of the Women of the Moose. She is also a member of St. Anne’s Church Guadalupana group. She has been married for 32 plus years and raised 5 great kids in Santa Monica. Mary wants to work to engage Pico Neighborhood families in issues affecting our community.

**Jeff Blake, Director @ Large.** Jeff has been a Santa Monica resident since 2008 and a Pico Neighborhood resident since 2011 and a PNA Board member since 2017. Jeff hopes to use his background in Healthcare and community relations to support PNA’s ongoing advocacy on behalf of the City’s most vibrant community.

**Christhild Anderson, Director @ Large.** After getting married to her late husband (an American) in 1980, Christel lived permanently in Santa Monica and applied for her Green Card. Both her two children went to Edison Elementary School’s Bilingual Program, where she and her husband and were very active board members of the PTA. After teaching Preschool as well as Kindergarten, and Elementary Special Ed. both in Germany and the USA, she continued with Graduate Social Work Training in both Countries and is registered with the California Board of Behavioral Sciences. She enjoys applying her Community Work Skills for the benefit of the PNA to help in preserving and creating a livable Santa Monica for all Generations.

**Catherine Eldridge, Parliamentarian.** Catherine, a PNA Boardmember for more than 8 years has lived in Santa Monica and the Pico Neighborhood for over 25 years. She is a tireless advocate for Village Trailer Park mobile home residents which is within the Pico Neighborhood. Catherine has been a long time advocate for affordable housing in Santa Monica through her participation in the Santa Monica for Renters’ Rights (SMRR). She will continue to be a voice for Pico Neighborhood residents in City Hall.

[Blog at WordPress.com.](https://pnasantamonica.wordpress.com/board-members/)



TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

EDMUND G. BROWN JR.  
Attorney General

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OPINION	:	No. 07-807
	:	
of	:	January 14, 2009
	:	
EDMUND G. BROWN JR.	:	
Attorney General	:	
	:	
MARC J. NOLAN	:	
Deputy Attorney General	:	
	:	

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THE HONORABLE NORMA J. TORRES, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

May a city redevelopment agency enter into a loan agreement for commercial property improvement where the recipient of the proposed loan is a corporation solely owned by the adult, non-dependent son of an agency board member who also resides with the board member in the same rented apartment?

Attachment: Attachment B--AG Opn. 07-807 (4427 : PNA CVRA lawsuit Conflict of Interest)

## CONCLUSION

The circumstance that the recipient of a proposed commercial property improvement loan from a city redevelopment agency would be a corporation solely owned by the adult, non-dependent son of an agency board member who also resides with the board member in the same rented apartment does not, by itself, preclude the agency from entering into an agreement to make that loan. However, to avoid a conflict between her official and personal interests, the board member should abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement.

## ANALYSIS

We are informed that a city redevelopment agency is considering whether to enter into a loan agreement for commercial property improvement and that the recipient of the proposed loan is to be a corporation solely owned by the adult son of an agency board member. We are also told that, while the son resides with the board member in the same rented apartment, we may assume for purposes of this analysis that he is not dependent on the board member for support.<sup>1</sup> Given this context, we are asked whether the agency may enter into the proposed loan agreement without violating any conflict-of-interest laws. As relevant here, those laws consist of two statutory schemes, Government Code section 1090 and its related provisions and the Political Reform Act of 1974, as well as the common law doctrine against conflicts of interest. For the reasons that follow, we conclude that the given circumstances, by themselves, would not preclude the agency from entering into the proposed loan agreement, but that, to avoid a conflict between her official and personal interests, the board member should completely abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement.

Government Code section 1090

Our consideration of the question presented first requires that we undertake an analysis under Government Code section 1090,<sup>2</sup> which generally forbids the board of a public agency from entering into a contract in which one of its members has a personal

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<sup>1</sup> In support of this assumption, we have been informed that the agency board member does not claim her son as a dependent for tax purposes.

<sup>2</sup> All further references to the Government Code are by section number only.

financial interest.<sup>3</sup> In the words of the statute, “Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members . . . .”<sup>4</sup>

A city redevelopment agency is a public body,<sup>5</sup> and members of its governing board are thus public officials within the meaning of section 1090, which applies to virtually all members, officers, and employees of such agencies.<sup>6</sup> An agreement by a public agency to loan money is treated as a contract for purposes of section 1090.<sup>7</sup>

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 public agencies.<sup>8</sup> Under section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.”<sup>9</sup> Such an interest may be direct or indirect, but the “evil to be thwarted by section 1090 is easily identified: If a public official is pulled in one direction by his financial interest and in another direction by his official duties, his judgment cannot and should not be trusted, even if he attempts impartiality.”<sup>10</sup> A contract that violates section 1090 is void.<sup>11</sup>

With these principles in mind, we consider whether the familial relationship between the redevelopment agency board member and the member’s adult son will, by itself, render the proposed loan agreement between the agency and the member’s son’s corporation invalid under section 1090. We considered a similar question in 88 Ops.Cal.Atty.Gen. 222 (2005). At issue in that opinion was whether the adult son of a

<sup>3</sup> 89 Ops.Cal.Atty.Gen. 217, 218 (2006).

<sup>4</sup> Govt. Code § 1090.

<sup>5</sup> Health & Safety Code § 33100; *see* 88 Ops.Cal.Atty.Gen. 222 (2005).

<sup>6</sup> *See* 61 Ops.Cal.Atty.Gen. 243, 248-250 (1978) (applying § 1090 to members of a local redevelopment agency).

<sup>7</sup> *E.g.*, *Carson Redevelopment Agency v. Padilla*, 140 Cal. App. 4th 1323, 1329-1330 (2006).

<sup>8</sup> *Stigall v. Taft*, 58 Cal. 2d 565, 569 (1962).

<sup>9</sup> *People v. Honig*, 48 Cal. App. 4th 289, 333 (1996).

<sup>10</sup> *Carson Redevelopment Agency*, 140 Cal. App. 4th at 1330.

<sup>11</sup> *Thomson v. Call*, 38 Cal. 3d 633, 646 (1985).

redevelopment agency board member could acquire real property within the redevelopment zone without causing the member to violate Health and Safety Code section 33130(a), which prohibits agency officers and employees from acquiring “any interest in any property included within the project area within the community,” including “any indirect financial interest” in such property.<sup>12</sup> Because the statute under analysis did not further specify what constituted a prohibited “indirect financial interest,” we found it appropriate to consult other conflict-of-interest statutes, including section 1090, to determine whether the parent-adult child relationship between the agency member and his son would give rise to the member having a cognizable financial interest in the property his son sought to purchase.<sup>13</sup> Our review of analogous statutory schemes led us to conclude that no such prohibited interest would arise solely on account of the parent-adult child relationship.<sup>14</sup>

Here, where we are called upon to analyze section 1090 and its related provisions directly, rather than by comparison, the result is the same. For purposes of this analysis, we note that the Legislature has expressly defined certain “remote interests”<sup>15</sup> and “noninterests”<sup>16</sup> that do not come within section 1090’s general prohibition. If a “remote interest” is present, as defined in section 1090, the proposed contract may be made, but only if (1) the public official or board member in question discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the entity’s official records, and (3) the individual with the remote interest abstains from any participation in the making of the contract.<sup>17</sup> If a “noninterest” is present, as defined in section 1091.5, the contract may be made without the official’s abstention, and generally a noninterest does not require disclosure.<sup>18</sup> We have found that an examination of these statutory exceptions is useful in determining what would otherwise be viewed by the Legislature as constituting a proscribed “financial interest.”<sup>19</sup>

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<sup>12</sup> 88 Ops.Cal.Atty.Gen. at 224.

<sup>13</sup> *Id.* at 224-225.

<sup>14</sup> *Id.*

<sup>15</sup> § 1091.

<sup>16</sup> § 1091.5.

<sup>17</sup> *See* 88 Ops.Cal.Atty.Gen. 106, 108 (2005); 83 Ops.Cal.Atty.Gen. 246, 248 (2000); *see also People v. Honig*, 48 Cal. App. 4th at 318-319.

<sup>18</sup> *City of Vernon v. Central Basin Mun. Water Dist.*, 69 Cal. App. 4th 508, 514-515 (1999); 84 Ops.Cal.Atty.Gen. 158, 159-160 (2001).

<sup>19</sup> 85 Ops.Cal.Atty.Gen. 34, 36-37 (2002); *see Honig*, 48 Cal. App. 4th at 289, 317.

In our 2005 opinion, we observed that, although the Legislature deems a parent to have a remote financial interest for purposes of section 1090 “in the earnings of his or her minor child for personal services,”<sup>20</sup> there is no similar determination that a parent has either a direct or indirect financial interest in the property or earnings of an adult child.<sup>21</sup> And we have previously found that the familial relationship between a county supervisor and his adult brother, in that instance an automobile dealer, would not result in a violation of section 1090 if the brother sold automobiles to the county. “Neither brother has any proprietary ‘interest’ in the financial attainments of the other; neither is entitled to any contribution or support from the other.”<sup>22</sup>

The situation here is analogous. A parent is not legally compelled to support an adult child absent special circumstances not present here, such as the child’s incapacity.<sup>23</sup> Conversely, an adult child has no legal duty to support a parent, unless the parent is “in need and unable to support himself or herself by work,”<sup>24</sup> a circumstance also not present here.

We are informed that the board member’s son’s corporation will receive the proceeds of the agency’s loan. There is no indication that the member will personally profit from this transaction. While the Legislature could have characterized the inherent “interest” that a self-supporting parent may be said to have in the financial attainments of an adult child as one that, by itself, amounts to a prohibited financial interest, it has not done so. Nor have we located any judicial determination that the parent-adult child relationship, in itself, creates a financial conflict of interest in situations of the sort considered here.<sup>25</sup> Thus, we conclude that the familial relationship between the board

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<sup>20</sup> § 1091(b)(4).

<sup>21</sup> 88 Ops.Cal.Atty.Gen. at 225.

<sup>22</sup> 28 Ops.Cal.Atty.Gen. 168, 169 (1956).

<sup>23</sup> *In re Marriage of Chandler*, 60 Cal. App. 4th 124, 130 (1997); *In re Marriage of Lambe & Meehan*, 37 Cal. App. 4th 388, 391-392 (1995); see Fam. Code § 58.

<sup>24</sup> Fam. Code § 4400; see also *Chavez v. Carpenter*, 91 Cal. App. 4th 1433, 1445 & fn. 8 (2001) (noting statutory standard).

<sup>25</sup> An example of an indirect financial interest stemming from a parent-adult child transaction is found in *Moody v. Shuffleton*, 203 Cal. 100 (1928). There, a county supervisor sold his printing business to his son and took back a promissory note secured by a chattel mortgage on the business. Because the business helped to secure the value of the official’s mortgage, it was held that a conflict existed when printing contracts were awarded to the son. *Id.* at 103-104; see also *Thomson*, 38 Cal. 3d at 645. In that case, the public official had a financial interest in the transaction (that of a mortgage holder in a

member and her adult son does not invalidate the proposed loan agreement under section 1090.

For similar reasons, we believe that a housing arrangement in which a public official and his or her adult child live together in the same rented apartment does not necessarily give the parent a prohibited financial interest in the contractual dealings of the child for purposes of section 1090. Although by statute a landlord has a “remote interest” in his or her tenant’s official contracts and vice versa,<sup>26</sup> the same is not the case for individuals who share a rented apartment, and whose legal obligations to one another are different in kind from those owed between landlord and tenant. Thus, we conclude that section 1090 does not preclude the redevelopment agency from entering into the contract at issue due solely to the circumstance that an agency board member and her adult son share living space in a rented apartment.

Having so concluded, however, we caution that if there were other circumstances suggesting that the member had a financial interest in the proposed contract, those circumstances would need to be analyzed separately to determine whether an impermissible conflict existed.<sup>27</sup>

#### The Political Reform Act

We next consider what effect, if any, the Political Reform Act of 1974<sup>28</sup> has on this question. The Political Reform Act generally prohibits public officials from participating in “governmental decisions” in which they have a financial interest.<sup>29</sup> Of potential relevance here, the Political Reform Act requires officials to abstain from participating in such a decision when it will have a material financial effect on a member of his or her “immediate family.”<sup>30</sup> The term “immediate family” includes only the official’s “spouse and dependent children.”<sup>31</sup> As stated earlier, we are assuming here that the board member’s adult son is not her dependent.

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printing business seeking to contract with the county) that was separable from and not dependent on the parent-child relationship.

<sup>26</sup> § 1091(b)(5).

<sup>27</sup> *See, e.g.*, 88 Ops.Cal.Atty.Gen. at 225.

<sup>28</sup> §§ 87100 et seq.

<sup>29</sup> *See* § 87100; 88 Ops.Cal.Atty.Gen. 32, 33-34 (2005).

<sup>30</sup> § 87103.

<sup>31</sup> § 82029.

No other provision of the Political Reform Act purports to link a public official's personal financial interests to those of an individual (other than the official's spouse and/or dependent children) with whom he or she shares a rented residence. Therefore, we find that the Political Reform Act's prohibitions are not triggered by the circumstance that the board member shares a rented residence with her adult son, whose corporation seeks to contract with the agency.

### Common Law Doctrine against Conflicts of Interest

Having found no disqualifying financial interests within the meaning of section 1090 or the Political Reform Act, we now analyze the circumstances under the common law doctrine against conflicts of interest. The common law doctrine "prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties."<sup>32</sup> While the focus of the statutes analyzed above is on actual or potential financial conflicts, the common law prohibition extends to noneconomic interests as well.<sup>33</sup> Thus, we have previously cautioned that, even where no conflict is found according to statutory prohibitions, special situations could still constitute a conflict under the common law doctrine.<sup>34</sup> While the common law may be abrogated by express statutory provisions,<sup>35</sup> the statutes we have considered thus far do not address the circumstances we have been asked to evaluate, nor are we aware of any other statutes that address those circumstances.

Here, even if the agency board member cannot be said to have a statutory financial interest in her son's contract with the agency within the meaning of section 1090 or the Political Reform Act, it is difficult to imagine that the agency member has *no* private or personal interest in whether her son's business transactions are successful or not. At the least, an appearance of impropriety or conflict would arise by the member's participation in the negotiations and voting upon an agreement that, if executed, would presumably redound to her son's financial benefit. As one court has said with regard to the common law doctrine and the need to strictly enforce it:

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<sup>32</sup> *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1171 (1996), quoting 64 Ops.Cal.Atty.Gen. 795, 797 (1981); see also *Kunec v. Brea Redevelopment Agency*, 55 Cal. App. 4th 511, 519 (1997).

<sup>33</sup> *Clark*, 48 Cal. App. 4th at 1171 & fn. 18; 70 Ops.Cal.Atty.Gen. 45, 47 (1987); 64 Ops.Cal.Atty.Gen. at 797.

<sup>34</sup> See 53 Ops.Cal.Atty.Gen. 163, 165-167 (1970).

<sup>35</sup> 70 Ops.Cal.Atty.Gen. at 47; 67 Ops.Cal.Atty.Gen. 369, 381 (1984).

A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public. . . . [¶] . . . . [¶] Actual injury is not the principle the law proceeds on. Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal. This doctrine is generally applicable to private agents and trustees, but to public officers it applies with greater force, and sound policy requires that there be no relaxation of its stringency in any case that comes within its reason. . . . <sup>36</sup>

In our view, the agency board member's status as the private contracting party's parent and co-tenant places her in a position where there may be at least a temptation to act for personal or private reasons rather than with "disinterested skill, zeal, and diligence" in the public interest, thereby presenting a potential conflict. In an earlier opinion, we advised that a common law conflict of interest may "usually be avoided by [the official's] complete abstention from any official action" with respect to the transaction or any attempt to influence it.<sup>37</sup> Under these circumstances, we believe that the only way to be sure of avoiding the common law prohibition is for the board member to abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement.

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<sup>36</sup> *Noble v. City of Palo Alto* 89 Cal. App. 47, 51 (1928) (citations omitted); see also *Clark*, 48 Cal. App. 4th at 1170-1171.

<sup>37</sup> See 70 Ops.Cal.Atty.Gen. at 47; 64 Ops.Cal.Atty.Gen. at 797; see *Clark*, 48 Cal. App. 4th at 1171 (conflicted official is disqualified from taking any part in the discussion and vote regarding the particular matter); Eugene McQuillin, *The Law of Municipal Corporations* vol. 4, § 13.35, 840-841 (3d ed. rev. 1992); 26 Ops.Cal.Atty.Gen. 5, 7 (1955).



Accordingly, we conclude that the circumstance that the recipient of a proposed commercial property improvement loan from a city redevelopment agency would be a corporation solely owned by the adult, non-dependent son of an agency board member who also resides with the board member in the same rented apartment does not, by itself, preclude the agency from entering into an agreement to make that loan. However, to avoid a conflict between her official and personal interests, the board member should abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement.

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Attachment: Attachment B--AG Opn. 07-807 (4427 : PNA CVRA lawsuit Conflict of Interest)

**LAW OFFICE OF DANIEL AMBROSE**

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**EXECUTIVE SUMMARY**

Oscar de la Torre seeks an opinion as to "conflict of interest" allegations recently made against him, and the suggestion of a member of the Santa Monica City Council that he "recuse himself" as a result. The following analysis leads to the conclusion that the allegations do not constitute a legally prohibited conflict of interest, and thus no recusal is necessary or appropriate.

Moreover, Mr. de la Torre's campaign activity, advocacy for district elections in Santa Monica and more generally throughout California, testimony in court, and petitioning the courts in his former role as a board member of Pico Neighborhood Association, is all protected by the First Amendment and cannot itself create a conflict of interest.

**BACKGROUND****I. Factual Background**

Oscar de la Torre appears to have received enough votes in the November 2020 election to become a member of the Santa Monica City Council. Mr. de la Torre sought the same office in November 2016, but was defeated. In the course of his campaigns, Mr. de la Torre espoused his view that the City of Santa Monica should adopt district-based elections, in response to, for example, questions posed by a local newspaper. Like the other council candidates endorsed by Santa Monicans for Change – two of whom appear to have also been elected in 2020 – Mr. de la Torre has expressed his view that the City's expenditure of millions of dollars to fight against adopting district-based elections, and against minority voting rights, is foolish and destructive to the City.

Until recently, Mr. de la Torre served as a board member of the Pico Neighborhood Association. In April 2016, the Pico Neighborhood Association filed a lawsuit against the City of Santa Monica ("Voting Rights Lawsuit"), alleging that the City's at-large elections violate the California Voting Rights Act of 2001 and the Equal Protection Clause of the California Constitution. Mr. de la Torre's wife, Maria Loya, is also a named plaintiff in that case. That case went to trial in 2018, and the plaintiffs prevailed on both of their causes of action; in 2020 the Court of Appeals reversed; and in October 2020 the California Supreme Court granted the plaintiffs' petition for review, while also de-publishing the Court of Appeal's opinion. The case

is now pending before the California Supreme Court, with the plaintiffs' opening brief due in December.

The Voting Rights Lawsuit seeks only non-monetary relief – an injunction and declaration from the Court. Consistent with the requested relief, the Judgment entered by the Los Angeles Superior Court awards the plaintiffs injunctive and declaratory relief, but no monetary relief. While the plaintiffs' lawyers are likely entitled to recover their fees and costs, and they have already filed a motion to recover some of their fees and a memorandum of costs, the plaintiffs cannot share in those fees. Therefore, neither Mr. de la Torre nor his wife have any financial interest in the outcome of the Voting Rights Lawsuit.

Mr. de la Torre has advocated for district-based elections for several years, and has been involved with various civil rights and education groups that have similarly advocated for district-based elections. He could rightfully be described as a longtime activist, dating back even to his time as a student at Santa Monica High School.

## **II. Legal Background**

Public officials, including city council members, are prohibited from involvement in official decisions in which they have a conflict of interest. This prohibition is found in several places, including the Political Reform Act (PRA), section 1090 of the Government Code (Section 1090), and (arguably) the common law prohibition on conflicts of interest.

### **A. Political Reform Act**

The PRA's conflict of interest rules prohibit public officials from making, participating in making, or in any way attempting to use their official positions to influence governmental decisions in which they have economic interests. (Govt. Code, § 87100; Fair Political Practices Commission ["FPPC"] Regs., § 18700(b).) If a public official or employee has a prohibited conflict of interest in a decision, they must disqualify themselves from any involvement in the decision.

### **B. Government Code Section 1090**

Like the PRA, Section 1090 prohibits public officials and employees, acting in their official capacities, from making contracts in which they are financially interested. (88 Ops.Cal.Atty.Gen. 32 (2005).) As with the application of the PRA, an individual must have a financial interest in the contract in order to trigger Section 1090.

A contract made in violation of Section 1090 is void; however, Section 1090 does not require a public official to remove themselves from office where there may be a prohibited conflict of interest. (Govt. Code, §§ 1092-97 [remedies for violation of the prohibition].)

### **C. Common Law Prohibition on Conflicts of Interest**

In addition to the PRA and Section 1090, there is also a common law doctrine prohibiting conflicts of interest which "prohibits public officials from placing themselves in a position where

their private, personal interests may conflict with their official duties." (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1171.)

It is debatable whether this common law doctrine is still viable in California; it may have been subsumed by the legislative enactments of the PRA and Section 1090. (See *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1233 [declining to construe allegations of a public servant's bias in a decision to constitute a conflict of interest at common law when the statutory laws already had been construed not to create a conflict of interest in that situation – “We continue to be cautious in finding common law conflicts of interest ... We reject the application of the doctrine in this case, assuming, arguendo, it exists.”].) The breadth of the PRA and Section 1090 suggest that the Legislature intended those statutes to occupy the entire field of conflicts of interest. Nonetheless, this Opinion assumes that the common law doctrine is still viable, and may be broader than the PRA and Section 1090. It should be noted though, that California courts have cautioned that the common law prohibition on conflicts of interest should be narrowly construed as the majority of the prohibitions it previously included have been incorporated and abrogated by the provisions of the PRA and Section 1090. (See *id.*; *All Towing Services LLC v. City of Orange* (2013) 220 Cal.App.4th 946, 958 [“Except where the law clearly provides rules for identification and rectification of what might be termed conflicts of interest, that is a legislative not a judicial function.”], citing *BreakZone Billiards*.)

### ANALYSIS

As discussed below, Mr. de la Torre has no conflict of interest by serving on the Santa Monica City Council and taking part in the City Council's decisions concerning the method of electing members to the city council and/or the Voting Rights Lawsuit.

#### I. PRA and Section 1090

The application of the PRA and Section 1090 here is quite simple, and should be disposed of quickly.

Both the PRA and Section 1090 prohibit only situations in which an elected official has a financial interest in the outcome of a government decision. Here, neither Mr. de la Torre nor his wife have any financial interest in the Voting Rights Lawsuit or any potential change to the City's method of electing its City Council. Therefore, Mr. de la Torre has no conflict of interest under the PRA or Section 1090.

While it could be argued that Mr. de la Torre has an interest in the City adopting district elections because he may seek re-election and district-election campaigns are less expensive than at-large campaigns, that is not the sort of financial interest that is cognizable under the PRA and Section 1090. If that were considered a financial interest, no member of the Santa Monica City Council – indeed, no member of any governing board for any political subdivision – could take part in the decision on the method of electing members of that governing board. In enacting Government Code section 34886, the Legislature expressed its desire that city councils be permitted to efficiently adopt district elections without a vote of the electorate. Prohibiting city

council members from participating in the decision of whether to adopt district elections, would be inconsistent with the Legislature's intent.

## **II. Common Law Rule Against Conflicts of Interest**

Even if the common law rule against conflicts of interest is still viable in California, that rule would also not prohibit Mr. de la Torre from participating in the City Council's decisions concerning the Voting Rights Lawsuit or any potential change to the City's method of electing its City Council.

A conflict of interest under the common law rule exists where the personal interest of an elected official contradicts the interest of the political subdivision that official was elected to represent. However, that begs the question – what is the interest of the political subdivision? Mr. de la Torre and the other newly-elected councilmembers would say that it is in the best interests of the City for the City to adopt district-based elections and stop spending the City's resources on fighting the Voting Rights Lawsuit. That interest is perfectly consistent with Mr. de la Torre's stated non-financial interest, as he has expressed in his campaigns and over the past several years before he was elected to the Santa Monica City Council. While some of Mr. de la Torre's colleagues on the City Council may disagree with him about this issue, and many others, that is what representative democracy is all about – no individual elected official or group of elected officials have a monopoly on deciding what is in the City's interest, nor does the City's staff.

If anyone has a personal interest conflicting with the interest of the City, it is the council members who have opposed district-based elections. For example, we understand that in at least one of the councilmanic districts ordered by the Los Angeles Superior Court, is the residences of more than one incumbent councilmember, and thus at least one of those incumbents could not be re-elected in a district-based election. The notion that is in the City's interest to spend millions of dollars on a legal fight to protect incumbent council members' re-election, seems dubious at best.

Applying the common law rule against conflicts of interest to Mr. de la Torre's advocacy for district-based elections generally, and more specifically to his support for the Voting Rights Lawsuit, would also pose grave concerns of violating Mr. de la Torre's rights under the First Amendment to the United States Constitution. Among the rights impacted, Mr. de la Torre has the absolute right to freedom of speech and freedom to petition the courts. As a matter of law, campaign activity and political advocacy cannot create a conflict of interest. (See *Woodland Hills Residents Assn., Inc. v. City Council* (1980) 26 Cal.3d 938.) Mr. de la Torre, like two other new councilmembers, expressed his view that the City should adopt district-based elections. At least one other councilmember, in addition to three recently-defeated outgoing councilmembers, similarly expressed the opposite view in response to a newspaper's questions of all the candidates and in an op-ed published in the Los Angeles Times in 2018. All elected officials are free to discuss their views on issues that come before them in their capacity as elected officials, and even petition the courts when they believe it is appropriate do so; their decision to exercise their First Amendment rights does not disqualify them from participating in subsequent government decisions concerning those issues.

The courts' reluctance to applying the common law doctrine against conflicts of interest is well-illustrated by a case similar in certain respects to the situation here - *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205. In *BreakZone*, a business obtained an amendment to its conditional use permit from the City of Torrance's planning commission over the objections of several residents and the police chief. A Torrance City Councilmember, Dan Walker, filed an appeal of the planning commission's decision. Councilmember Walker adjudicated the appeal, along with his council colleagues, ultimately granting the appeal and denying the business the conditional use permit amendment. The business challenged that decision in court, claiming, among other things, that Mr. Walker had a conflict of interest because: 1) he himself filed the appeal; and 2) he had received campaign contributions totaling over \$8,000 from businesses that stood to gain financially by the denial of the conditional use permit amendment. The *BreakZone* court found those allegations, even if true, did not amount to a legally cognizable conflict of interest, under the common law doctrine or any statutory prohibition. Here, any campaign contributions to Mr. de la Torre were much smaller than those at issue in *BreakZone* because Santa Monica limits such contributions to \$340. And, as in *BreakZone* where Councilmember Walker's role as the appellant did not require his recusal, Mr. de la Torre's wife's role as one of the plaintiffs in the Voting Rights Lawsuit likewise does not require Mr. de la Torre to be recused.

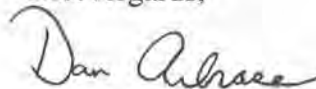
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Though we were not requested to do so, we feel it is also appropriate to weigh in on the question of whether Mr. de la Torre *should* recuse himself from decisions concerning the Voting Rights Lawsuit and any potential changes to the method of electing city council members, even though he is not *required* by law to recuse himself. In our opinion, not only is Mr. de la Torre not required to recuse himself from those decisions, he **should not** recuse himself.

It seems quite clear that the electorate desires significant change in Santa Monica, having unseated three out of four incumbents in the most recent election. Among the issues debated during the campaign was how the City should react to the Voting Rights Lawsuit, and the electorate signaled its desire that the City no longer fight the Voting Rights Lawsuit, by electing three challengers who promised they would end the City's expensive fight against that suit. It would be a disservice to the residents of Santa Monica for Mr. de la Torre to recuse himself and thus weaken the voice of the electorate in its desire to resolve the Voting Rights Lawsuit with the adoption of district-based elections.

Therefore, we strongly advise Mr. de la Torre to resist any calls for his recusal.

Best Regards,

  
Daniel Ambrose

VIA EMAIL and U.S. MAIL

November 30, 2020

Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811  
advice@fppc.ca.gov

*Re: Request for Formal Advice from Oscar de la Torre, Santa Monica*

I am writing to follow-up on, and correct, the letter sent to the FPPC by Santa Monica's interim city attorney, George Cardona, on November 25, 2020, seeking advice concerning my obligations as an incoming elected member of the Santa Monica City Council.

Though Mr. Cardona and I agreed on November 24, 2020 to cooperate in jointly presenting the relevant facts and questions to the FPPC, Mr. Cardona then hastily and unilaterally wrote to the FPPC without affording me the opportunity to review his letter. Mr. Cardona's letter, unsurprisingly, does not accurately and fairly convey the relevant facts to the FPPC, presents a question that seems designed only to obscure the dispositive fact that I have absolutely no financial interest in the outcome of *Pico Neighborhood Association v. City of Santa Monica*, and presumes to know how the California Supreme Court might decide that case. In contrast, Mr. Cardona himself has a vested financial interest in the City of Santa Monica continuing to resist the implementation of district-based elections in compliance with the California Voting Rights Act, because a district-elected council is almost certain to terminate Mr. Cardona, who he himself acknowledged to me that he does not believe the CVRA applies to Santa Monica and has advised the City to waste tens of millions of dollars on a futile effort to maintain the City's racially discriminatory at-large elections.

I, therefore, write to the FPPC to provide a fair and complete summary of the relevant facts and point out the errors in Mr. Cardona's letter, so that the FPPC can provide a fully-informed opinion. I have also sought an opinion from private legal counsel, and have also attached that opinion in this request for advice (please see Ambrose letter attached).

## FACTS

### A. My Background and Advocacy Work

I have been an activist and politician for my entire adult life. In 1990, I was elected Student Body President of Santa Monica High School, after a group of white students discouraged me from running because, according to them, no Mexican could be elected. In 1994, I was elected AS. President of Chico State University, spurred on by the need to organize opposition to Proposition 187. In 2002, I was elected to the governing board of the Santa Monica-Malibu Unified School District. In each of those roles, and in all other aspects of my life, I have worked for racial and social justice.

For decades, I have also advocated to the Santa Monica City Council for racial and social justice. I was raised, and now live, in the racially segregated and minority-concentrated Pico Neighborhood of Santa Monica. The inequities thrust upon the Pico Neighborhood are both historically troubling, and continually damaging to the residents of the Pico Neighborhood. All of the environmental hazards of the City, for example, have been placed in the Pico Neighborhood – e.g. a hazardous waste storage facility, the 10 freeway, the City’s vehicle maintenance yard and an unabated landfill that emits methane into a Gandara Park. Furthermore, the concentrated poverty, marginalization and social neglect prompted me to create the Pico Youth & Family Center, a youth center founded in 1998 to address more than 62 gang-related homicides that had occurred in the Pico Neighborhood since 1982.

Recognizing that these inequities stemmed, in part, from the lack of political representation, and the underrepresentation of minorities throughout all decision-making bodies, particularly from the Pico Neighborhood, on the Santa Monica City Council, I have advocated for district elections for nearly a decade. The lone Latino elected to the Santa Monica City Council before 2020 in the City’s 74 years of at-large elections similarly advocated for district elections, and voted to adopt district elections in 1992 – an effort that fell short by one vote on the seven-member city council. As the former President of the California Latino School Board Association, I have also advocated for district elections throughout California because the at-large elections in many California cities tend to dilute minority votes. Replacing racially discriminatory at-large elections with fair district-based elections is an issue about which I care deeply.

None of my advocacy work for district elections or for the Pico Neighborhood has been for financial compensation.



## B. My Role in the Pico Neighborhood Association

Consistent with my lifelong advocacy for the Pico Neighborhood, I have held various roles with the Pico Neighborhood Association (“PNA”). Most recently, I served as “co-chair” of the PNA. I have resigned my position with the PNA to focus my efforts on my upcoming role on the city council.

PNA is a small non-profit neighborhood group that has, for over 40 years, given the Pico Neighborhood residents some voice, when the City’s at-large elections have denied them any voice in their local government. PNA was founded by Black and Mexican American leaders in 1979 to fight against the social neglect of the City Council that up to now was constituted by a majority of elected leaders who resided in the wealthier and almost exclusively white north side of the City. 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. The PNA has no real property in Santa Monica, or anywhere else.

Neither I, nor any of my family members, have ever been paid by PNA. My parents were involved with the PNA when it advocated for a more equitable distribution of Community Development Block Grants more than 40 years ago, and they were not paid any compensation for their work or role in the PNA. More recently, my wife and I have served as board members of PNA, and we likewise have never been paid, nor have we ever sought compensation, for any of our work. Rather, we have all volunteered with the PNA for no financial compensation at all.

Contrary to Mr. Cardona’s letter, I did not, at the trial of *Pico Neighborhood Association v. City of Santa Monica*, testify on behalf of PNA. Nor did my wife testify that I would do so. Rather, I testified in that trial to share my own experiences, particularly in campaigning for elected office on the school board and struggling in the very different city council elections. I was deposed in that case, as were all of the other PNA board members – though, frankly, it seemed those depositions were taken solely for the purpose of providing a training exercise for some of the more junior attorneys working on the case. Again, contrary to Mr. Cardona’s letter, I was not represented by Mr. Shenkman in my individual capacity at that deposition; Mr. Shenkman represented PNA and appeared at my deposition in that role.

In order to focus on my upcoming role as a member of the Santa Monica City Council, I resigned my position on the PNA board. I have no intention of resuming any role with the PNA, though I am certainly sympathetic to its mission to advocate for the historically-unrepresented Pico Neighborhood.

**C. I Have Absolutely No Financial Interest, Direct or Indirect, in the Outcome of *Pico Neighborhood Association v. City of Santa Monica*.**

In April 2016, following unsuccessful efforts to convince the city council to voluntarily adopt district-based elections, the PNA filed a lawsuit against the City of Santa Monica (“Voting Rights Lawsuit”), alleging that the City’s at-large elections violate the California Voting Rights Act of 2001 and the Equal Protection Clause of the California Constitution. My wife, Maria Loya, is also a named plaintiff in that case. The Voting Rights Lawsuit went to trial in 2018, and the plaintiffs prevailed on both of their causes of action; in 2020 the Court of Appeals reversed; and in October 2020 the California Supreme Court granted the plaintiffs’ petition for review, while also de-publishing the Court of Appeal’s opinion. The case is now pending before the California Supreme Court, with the plaintiffs’ opening brief due in December.

Though I doubt it makes a difference to the FPPC’s analysis, Mr. Cardona’s characterization of the California Supreme Court’s actions thus far in the Voting Rights Lawsuit is incomplete and inaccurate, and his predictions about how the California Supreme Court might decide the case are unfounded. If anything can be predicted from the California Supreme Court’s actions, it is that a reversal is likely, based on the Court’s depublication of the Court of Appeal’s faulty decision in its entirety and on the Supreme Court’s own motion.

The Voting Rights Lawsuit seeks only non-monetary relief – an injunction and declaration from the Court. Consistent with the requested relief, the Judgment entered by the Los Angeles Superior Court awards the plaintiffs injunctive and declaratory relief, but no monetary relief. While the plaintiffs’ lawyers are likely entitled to recover their fees and costs, and they have already filed a motion to recover some of their fees and a memorandum of costs, I understand the plaintiffs cannot share in those fees. In fact, at the outset of the case my wife and PNA both agreed that they have no right to any attorneys’ fees or costs recovered in that case. Likewise, the attorneys representing my wife and PNA agreed that they would handle the Voting Rights Lawsuit *pro bono* and pay all associated costs. In other words, the attorneys, not PNA or my wife, bear all of the financial risk and are entitled to the entirety of any financial reward. Therefore, neither I nor my wife have any financial interest, direct or indirect, in the outcome of the Voting Rights Lawsuit – our interest is merely the implementation of district elections and justice.

Nor does Mr. Cardona's underhanded suggestion, through his final question posed, that somehow PNA might be offered something of value in settlement negotiations change the simple fact that I have no financial interest in the Voting Rights Lawsuit. There have been dozens of CVRA cases settled or otherwise adjudicated in the nearly 18 years since the CVRA was enacted. In each and every one of those settlements and judgments, the relief consisted of a change to the defendant's elections and an award of attorneys' fees and costs; never has any CVRA plaintiff received any monetary compensation. The City of Santa Monica has never offered any monetary compensation to the PNA or my wife to settle the Voting Rights Lawsuit, and I know that my wife would never entertain such an offer if it were made. Rather, my wife, PNA and their attorneys have consistently told the City any settlement negotiations must first address changes to the method of electing city councilmembers and second address the amount of attorneys' fees and costs to be paid to the plaintiffs' attorneys, and the discussion of attorneys' fees and costs will not begin until the election changes are resolved. Indeed, it would be inappropriate to conflate those two distinct issues.

#### **D. The 2020 Campaign and Election.**

I first ran for the Santa Monica City Council in 2016. Though I did very well with voters in the Latino-concentrated Pico Neighborhood, I received much less support from the other parts of the city, and I lost. The 2016 election outcome, and what I experienced in that campaign, underscored the need for district-based elections in Santa Monica – as the Los Angeles Superior Court found.

Despite my experience in 2016, I ran again in the November 2020 election. A series of events demonstrated the mismanagement of the City by the incumbent council members and the City's upper management staff. For example, on May 31, 2020 the city's police tear-gassed and brutalized peaceful protestors while allowing looters to steal from and destroy the City's businesses, apparently at the direction of the city council and upper management staff. A tremendous anti-incumbent sentiment developed, and I felt 2020 would be an unusual opportunity to win a seat on the Santa Monica City Council. Ultimately, my sense was proven correct; three of the four incumbents seeking re-election were defeated (as many as had been defeated in the previous 26 years), and I came in fourth in a race for four seats.

Throughout my campaigns, both in 2016 and 2020, I stressed the need for the City to adopt district-based elections. In the 2020 campaign, the major candidates were all asked by a local newspaper whether they supported adopting district-based elections. All of the incumbents answered "no," while all of the challengers endorsed by Santa Monicans for Change (including me) answered "yes."

Ultimately, three of the challengers (including me), and only one of the incumbents, was elected. I believe our support for district elections reflects the will of the voters; in fact, a survey of 400 voters in 2018 showed that Santa Monica voters support the adoption of district-based elections by a margin of more than 2 to 1. The adoption of district-based elections makes even more sense in light of the fact that the City has spent untold millions of dollars to fight against adopting district-based elections. As the voters elected me to the city council to advocate for district elections, among other things, I intend to do exactly that.

While the incumbent council members who oppose district elections have accused me of having some unidentified conflict of interest with respect to the issue of district elections, and the Voting Rights Lawsuit seeking the implementation of district elections, it is those incumbent council members who have had the conflict of interest for the past five years as they have used the City's financial resources to fight against district elections so that they may retain their council seats and the stipends, car and phone allowance, insurance etc that comes with their positions. For example, with the district map chosen by the Los Angeles Superior Court, at least two of those incumbent council members reside in the same district – meaning that only one of them could be elected in a district-based election. Frankly, I find the accusation that I am the one who has a conflict of interest to be biased and racist – just like the incumbent council members insistence on clinging to the at-large election system that the Los Angeles Superior Court found was adopted and maintained for the express purpose of denying Latinos and African Americans representation in their municipal government.

\*\*\*\*\*

Please feel free to contact me if you have any questions regarding this matter.

Very truly yours,

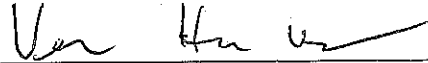
Oscar de la Torre

# **EXHIBIT J**

State of California  
County of Los Angeles  
City of Santa Monica

I, Vernice Hankins, Staff Assistant to the City Clerk of the City of Santa Monica, do hereby certify that to the best of my knowledge and belief the foregoing is a full, true and correct copy of the minutes of the January 26, 2021 Special Meeting minutes, which is on file in the City Clerk's Department, and that I have carefully compared the same with the original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Santa Monica, this 4<sup>th</sup> day of May, 2021.



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Vernice Hankins  
Staff Assistant III, City Clerk's Office  
City of Santa Monica

**CITY OF SANTA MONICA**

**CITY COUNCIL MINUTES**

**JANUARY 26, 2021**

A special meeting of the Santa Monica City Council was called to order by Mayor Himmelrich at 4:00 p.m., on Tuesday, January 26, 2021, via teleconference pursuant to the Governor's Executive Order N-29-20 at <https://primetime.bluejeans.com/a2m/live-event/tzszchdr>.

Roll Call: Present: Mayor Sue Himmelrich  
Mayor Pro Tem Kristin McCowan  
Councilmember Phil Brock  
Councilmember Gleam Davis  
Councilmember Oscar de la Torre (*arrived at 4:04 p.m.*)  
Councilmember Kevin McKeown  
Councilmember Christine Parra

Also Present: Interim City Manager Lane Dilg  
Interim City Attorney George Cardona  
City Clerk Denise Anderson-Warren

**CONVENE**

On order of the Mayor, the City Council convened at 4:00 p.m., with all members present except Councilmember De la Torre.

**STAFF**  
**ADMINISTRATIVE**  
**ITEMS:**

**8.A. Pico Neighborhood Association and Maria Loya v. City of Santa Monica – Determination Regarding Common Law Conflict of Interest of Councilmember de la Torre**, was presented.

*Councilmember De la Torre arrived at 4:04 p.m.*

**Recommended Action**

With respect to the pending litigation in Pico Neighborhood Association and Maria Loya v. City of Santa Monica, Los Angeles Superior Court, Case No. BC 616804, Second District Court of Appeal, Case No. B295935, California Supreme Court, Case No. S263972, in which one plaintiff is an association for which Councilmember de la Torre was, until November 2020, a board member, and the other plaintiff is Councilmember de la Torre's wife, staff recommends that Council determine that, in accordance with the principles set out in AG Opinion 07-807 (Jan. 14, 2009), Councilmember de la Torre has a common law conflict of interest and is therefore disqualified from participating in or attempting to influence discussions or decisions relating to this litigation.

Questions asked and answered of staff included, was there any preliminary opinion from the FPPC; is there a timeframe that we can expect a final

determination; could Council temporarily disqualify Councilmember De la Torre pending a decision from an outside agency; even if the FPPC rules on the financial conflict issues, there still won't be a decision on the common law issue; is it accurate, any decision from the FPPC won't address the common law issue that is being raised tonight; is it correct that this decision is being determined by the City Council, not the City Attorney; if this were a financial conflict, then the FPPC would be the higher power for resolution, but because this is not a financial issue, who is the higher power on this type of matter; what are the penalties if a Councilmember is found to have a conflict; what determines when Attorney-Client privilege is broken, and who decides when it's broken; what is the penalty of privilege being broken; is that correct that the FPPC has not given a determination; who advised the Interim City Attorney to seek a decision from the State Attorney General; has anyone on the dais had conversations about the recusal issues with Attorney Shenkman, who is the legal representative for the CVRA lawsuit; how long would it take to receive a court action from this; and, is there a way to proceed with the prior direction, without addressing issues that would cause Councilmember De la Torre to have to recuse.

Members of the public Stan Epstein, Ann Thanawalla, Denise Barton, Tricia Crane, Bob Selden, and, Olga Zurawska spoke to the recommended action.

Councilmember De la Torre responded to a comment made by a member of the public that he was advocating for the Pico Neighborhood Association to drop the CVRA case, and that is not true. He said, he would prefer that the city drop its appeal.

Considerable discussion ensued on topics including, but not limited to: reasons this is viewed as a conflict of interest because this is about litigation, not a discussion about public policy; it was obvious that Councilmember De la Torre was involved from the beginning of this litigation as the opposition; this is not about the merits of whether or not the city should have district elections, this is about allowing a spouse of a litigant be allowed in the room for a private discussion; Council needs to air on the side of caution and integrity; closed session is a sacred space, so it's better to air on the side of caution and consider this a conflict of interest; and, everybody brings their own bias or opinion, but that is not a conflict of interest, because Councilmember De la Torre is married to the person who brought about the lawsuit against the city, therefore he should not be allowed to sit in on the closed session discussion.

Councilmember De la Torre shared why he should be able to participate, and provided statements to support his opinion, and why he is not planning to recuse.



Motion by Councilmember McKeown, seconded by Councilmember Davis, that the City Council respectfully request Councilmember De la Torre to recuse himself on all matters involving Pico Neighborhood Association and Maria Loya versus the City of Santa Monica, and that should he decline that respectful request, that Council determine that a conflict of interest exists, and he is therefore disqualified from participating in any discussion related to the litigation.

After considerable discussion, as part of the original motion, Councilmember McKeown respectfully requested that Councilmember De la Torre voluntarily recuse himself.

Councilmember De la Torre stated that he would not recuse himself.

Since Councilmember De la Torre refused to recuse himself. The Mayor restated the new motion for clarification that the City Council will determine that Councilmember De la Torre is disqualified because he has a common law conflict of interest, and therefore would be disqualified from participating in, voting, or attempting to influence discussion or decisions relating to this litigation Pico Neighborhood Association and Maria Loya v. City of Santa Monica. The motion was approved by the following vote:

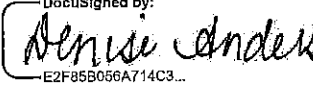
AYES: Councilmembers Davis, McKeown,  
Mayor Pro Tem McCowan, Mayor Himmelrich  
NOES: Councilmembers Parra, De la Torre  
ABSTAIN: Councilmember Brock

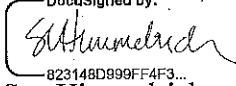
**ADJOURNMENT**

On order of the Mayor, the City Council meeting adjourned at 5:44 p.m.

ATTEST:

APPROVED:

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Denise Anderson-Warren  
City Clerk

DocuSigned by:  
  
823148D899FF4F3...  
Sue Himmelrich  
Mayor

# **EXHIBIT K**

No. S263972

*In the*

**Supreme Court**

*of the*

**State of California**

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City of Santa Monica,  
*Defendant and Appellant,*

v.

Pico Neighborhood Association, *et al.*,  
*Plaintiffs and Respondents.*

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**SANTA MONICA CITY COUNCIL MEMBER OSCAR DE LA  
TORRE’S APPLICATION (IN HIS INDIVIDUAL CAPACITY) FOR  
LEAVE TO FILE AMICUS CURIAE BRIEF; [PROPOSED]  
AMICUS CURIAE BRIEF**

After a Published Decision of the Court of Appeal  
Second Appellate District, Division Eight  
Case No. BC295935  
(Subsequently Depublished by this Court)

Appeal from the Superior Court of Los Angeles  
Case No. BC616804  
Honorable Yvette M. Palazuelos

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Todd W. Bonder (SBN 116482)  
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Phone: 310-858-7700  
tbonder@rmslaw.com

*Attorney for Amicus Curiae Santa Monica City Council Member Oscar de la Torre*

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## APPLICATION TO FILE AMICUS BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, Santa Monica City Council Member Oscar de la Torre, in his individual capacity and not as a council member, respectfully requests leave to file the attached Amicus Curiae brief. Though he is a member of the governing board of Defendant, he, like two of his city council colleagues who would have joined this brief but for the threats of Defendant's interim city attorney incorrectly asserting they cannot join an amicus brief, supports *Plaintiffs'* position in this case.

Amicus finds the positions taken by his self-interested colleagues on the Santa Monica City Council to be wrong, and is disturbed by the misrepresentations found in Defendant's brief to this Court about the City of Santa Monica, its elections and its history. Amicus therefore submits this brief to address some of those misrepresentations and make clear that he, unlike some of his colleagues, supports the California Voting Rights Act and the minority voting rights it protects.

As a member of the Santa Monica City Council, charged with the task of representing the residents of Santa Monica, Amicus has a special interest in protecting those residents' voting rights. As set forth in more detail below, the residents of Santa Monica support the *Plaintiffs*; it is only certain self-interested members of the city council that support the deeply offensive positions expressed in Defendant's Answer Brief. Yet, if only the

position of those councilmembers is presented, this Court might get the false impression that the City of Santa Monica is opposed to district-based elections, the California Voting Rights Act, and minority voting rights more generally.

Amicus has read the parties' briefs, as well as the briefing concerning Defendant's motion for judicial notice. While Plaintiffs address the arguments of Defendant generally, and do so thoroughly and convincingly, Amicus focuses on two issues: 1) why it would be improper for this Court to consider the 2020 election; and 2) how the obstinate and expensive refusal of Defendant's city council majority to adopt district-based elections, contrary to the will of the Santa Monica residents, demonstrates that democracy is broken in Santa Monica.

As discussed in further detail in the accompanying brief, Amicus' experiences with Defendant's elections and knowledge of Defendant's history, contradict Defendant's factual misrepresentations in its Answer Brief to this Court. The attached brief will assist the Court in understanding the electoral and political reality of Santa Monica, its history, and the ways Defendant's Answer Brief distorts that reality.

Amicus does not take lightly that the attached brief criticizes Defendant's "official position." But, the gravity of this case, and the dysfunctionality of Santa Monica's city government which allows a majority of the city council to take positions that are so contrary to the will

of the people, require that Amicus ensures that the voices of the Santa Monica residents he represents, are heard.

### **INTEREST OF AMICI CURIAE**

Amicus Curiae Oscar de la Torre is a member of the Santa Monica City Council, but submits this brief in his individual capacity. As discussed more fully below, he was elected in November 2020 in an extraordinarily unusual election. In the campaign leading up to that election, Amicus, along with two of his council colleagues, each expressed their support for district-based elections because they recognized that the at-large election system employed by Defendant violates the California Voting Rights Act, denies a large swath of Santa Monica residents their due voice in local government, and was adopted and maintained for the purpose of depriving Latinos in the Pico Neighborhood of their due representation.

Amicus has long roots in Santa Monica dating back to the 1970s. Having lived in Santa Monica all of his life, and having also been involved in local Santa Monica politics for several decades, Amicus is uniquely positioned to inform this Court of the history and political reality of Santa Monica and its election system. Defendant distorts that history and political reality in its Answer Brief, and Amicus has an interest in correcting those distortions.

Amicus is now tasked, as a member of the Santa Monica City Council, to represent the interests of Santa Monica residents a task at



which some of his colleagues on the city council have failed. With other members of the Santa Monica City Council taking positions in this case that are contrary to the will of Santa Monica residents, Amicus, as a representative of Santa Monicans, has a unique interest in ensuring that Santa Monica residents' voices are heard by this Court. Ultimately, it is their voting rights that will be decided in this case – voting rights that some of Amicus' self-interested colleagues on the city council are fighting *against* because those voting rights are incompatible with their political ambitions.

For these reasons, Santa Monica City Council Member Oscar de la Torre, in his individual capacity, respectfully requests that the Court accept the attached Amicus Curiae Brief in Support of Plaintiffs-Respondents Pico Neighborhood Association and Maria Loya.<sup>1</sup>

Dated: June 11, 2021

Respectfully submitted,

By: /s/ Todd W. Bonder  
Todd W. Bonder

Attorney for Amici Curiae

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<sup>1</sup> Defendant-Appellant will no doubt point out that Amicus Oscar de la Torre is the husband of Maria Loya. That is true, but, as set forth herein, Amicus has advocated for district elections in Santa Monica long before Maria Loya was included as a plaintiff in this case.

## AMICI CURIAE BRIEF

### I. INTRODUCTION

Though he is a member of *Defendant's* city council, Amicus Curiae Oscar de la Torre ("Amicus") submit this brief in his individual capacity in support of *Plaintiffs*. Amicus, like two other members of Defendant's city council who would have joined this brief but for the threats of Defendant's interim city attorney, find the positions and arguments expressed in Defendant's Answer Brief to be both wrong and offensive. Indeed, Defendant's own behavior in this case belies its primary argument that the implementation of a remedial election system would make no difference. If replacing the existing at-large election system would make no difference, surely Defendant would not have spent millions of dollars on attorneys to obstinately insist on keeping its at-large system. But Plaintiffs amply address, in their briefs, the fallacy of Defendant's positions, so Amicus refrains from addressing those same issues here.

Rather, Amicus writes separately to specifically address two issues:

1) Defendant's reliance on, and mischaracterization of, the 2020 election; and 2) the Court of Appeal's erroneous suggestion that democracy is working in Santa Monica. The 2020 election should not even be considered by this Court because it is a post-judgment event not in the record. But even if the 2020 election were considered, it would not support Defendant's position. Rather, the 2020 election further demonstrates what

was already demonstrated at trial a significant majority of the Santa Monica electorate favors a switch to district-based elections. The refusal of Defendant’s city council to do the will of the people by adopting district-based elections just demonstrates that democracy is not working in Santa Monica.

## II. THE 2020 ELECTION

Amicus and his colleagues Phil Brock and Christine Parra have long been critical of Defendant’s unresponsiveness to the needs of its residents, particularly those of the historically marginalized Pico Neighborhood, and its general incompetence in providing the basic services entrusted to municipal government. Failings of municipal government often go unnoticed by most residents, but they were glaringly obvious in Santa Monica on May 31, 2020. An unprepared Santa Monica Police Department responded to peaceful protests of the killing of George Floyd by brutalizing protestors with tear gas, batons and rubber bullets, while at the same time allowing looters to destroy and burn dozens of local businesses.<sup>2</sup> Residents justifiably coined May 31, 2020 the “worst day in Santa Monica’s history,” and, as later reported by the local press, this “perfect storm” resulted in a

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<sup>2</sup> This was recently confirmed by an after-action investigative report commissioned by Defendant. (See Casuso, J. “*Report Harshly Criticizes Police Response to May 31 Riots, Chronicles Department in ‘Disarray’*” (Santa Monica Lookout, May 6, 2021), available at: [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2021/May2021/05\\_06\\_2021\\_Report\\_Harshly\\_Criticizes\\_Police\\_Response\\_to\\_May\\_31\\_Riots.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2021/May2021/05_06_2021_Report_Harshly_Criticizes_Police_Response_to_May_31_Riots.html))

formidable anti-incumbent sentiment. (See Casuso, J. “*A Perfect Storm Swept Incumbents Out of Office*” (Santa Monica Lookout, Nov. 23, 2020)<sup>3</sup>.)

Amicus, along with Phil Brock and Christine Parra, formed the “Change Slate” and campaigned on a platform that much was wrong with Santa Monica city government and the incumbent councilmembers who had allowed, and in many cases caused, it to rot. Amicus and his Change Slate colleagues also recognized that the at-large election system was largely to blame. Rather than being connected to the residents of each of the seven neighborhoods that make up Santa Monica, the incumbent councilmembers were beholden to wealthy business interests that spend unlimited sums through political action committees on the extraordinarily expensive at-large city council campaigns. Therefore, the Change Slate prominently included their support for a switch to district-based elections in their campaigning, while all of the incumbents opposed any change to the unlawful and discriminatory at-large system. (See, e.g., “City Council Candidate Pop Quiz” (Santa Monica Lookout, Oct. 2020)<sup>4</sup>)

Largely because of the extraordinary anti-incumbent sentiment, and corresponding desire to change the election system that had benefited those

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<sup>3</sup> Available at [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2020/November-2020/11\\_23\\_2020\\_NEWS\\_ANALYSIS\\_A\\_Perfect\\_Storm\\_Swept\\_Incumbents\\_Out\\_of\\_Office.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2020/November-2020/11_23_2020_NEWS_ANALYSIS_A_Perfect_Storm_Swept_Incumbents_Out_of_Office.html)

<sup>4</sup> Available at [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2020/October-2020/City\\_Council\\_Candidates\\_Pop\\_Quiz.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2020/October-2020/City_Council_Candidates_Pop_Quiz.html)

incumbents, the Change Slate were all elected to the Santa Monica City Council in 2020, unseating three incumbents. That result is nothing short of remarkable. In the previous 25 years, only two incumbents had lost re-election Michael Feinstein in 2004 and Pam O'Connor in 2018.

Unseating three incumbents could not have occurred except in the unusual circumstances of a global pandemic and a fierce anti-incumbent sentiment prompted by an extraordinary display of the city government's ineptitude. Though Amicus and his Change Slate colleagues would like to believe the 2020 election indicates a lasting shift in Santa Monica politics, the results of several more typical elections over decades suggest that the 2020 election was an aberration. The sort of "perfect storm" that occurred in 2020 is unlikely to repeat itself.

In its Answer Brief, Defendant attempts to use the Change Slate's 2020 election victory, particularly that of Christine Parra and Amicus Oscar de la Torre, to thwart one of the very policies on which they campaigned the reform of Defendant's illegal and racially discriminatory at-large election system. According to Defendant, the 2020 election without any analysis of that election or any context whatsoever demonstrates that its at-large election system is just fine, or that it's okay to delay the relief ordered by the Superior Court. Defendant's superficial view belies the reality of that election, and illustrates the wisdom of the rule that post-judgment evidence is not considered by appellate courts.

**A. The 2020 Election Occurred After the Judgment, and  
Should Therefore Not Be Considered By This Court**

As Plaintiffs amply explain in their opposition to Defendant’s motion for judicial notice, the 2020 election occurred after the judgment in this case, and therefore should not be considered by this Court. (See also, *In re Zeth S.* (2003) 31 Cal.4th 396, 405-414 [post-judgment events are not properly considered by appellate courts absent “exceptional circumstances”]; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 793 [refusing to consider November 2013 election in California Voting Rights Act case because it occurred after the trial court’s issuance of the injunction challenged on appeal].)

If post-judgment elections were considered by appellate courts in voting rights cases, there would never be finality. Most political subdivisions, including Defendant here, hold elections every two years. A typical appeal of a judgment takes well over a year, and can take several years as this case has. The judgment in this case occurred more than two years ago, and the appeal is still pending. It’s almost certain then, that at least one intervening election will occur in any case between the trial court’s judgment and the final resolution of an appeal of that judgment. Appellate courts are ill-suited to evaluate those intervening elections anew; rather, that is the role of the trial courts, where both sides can proffer testimony and documentary evidence. And if trial courts were called upon

by the appellate courts to evaluate new elections after entry of judgment, there would be a never-ending cycle of amended judgments and remands. As the court recognized in *Jauregui*, this reality necessitates a firm rule that post-judgment elections may not be considered by appellate courts. (*Jauregui*, 226 Cal.App.4<sup>th</sup> at 793.)

Even where an election occurs after trial, but prior to entry of judgment, courts have declined to consider those elections in voting rights cases. The court in *Missouri State Conference of the NAACP v. Ferguson-Florissant School District* (E.D. Mo. 2016) 219 F.Supp.3d 949 summed it up, with an analysis that is equally applicable to this case:

[Defendant's] argument seems to be that I should forgo the detailed analysis I conducted of all of the evidence and expert analysis presented over the course of a six-day trial, accept their expert's analysis of the 2016 election results without giving the Plaintiffs a chance to respond and without considering any context, and simply conclude that because there are currently three African Americans (who, they argue, are all Black-preferred candidates) on the Ferguson-Florissant School Board, the current system results in proportionality and is thus legally acceptable and superior to any of the systems Plaintiff propose.

I decline to do so. It would be neither fair nor helpful to consider the School District's expert analysis on the 2016 election results at this stage. A finding of proportional representation at this moment would not, standing alone, negate my liability finding.

See *Harvell v. Blytheville Sch. Dist. No. 5*, 71 F.3d 1382, 1388 (8th Cir. 1995) (en banc) (“Just as proportional representation is not mandated under Section 2, it also does not preclude finding a violation, because racial reference points do not necessarily reflect political realities.”). Plaintiffs have not had the opportunity to respond or offer their own expert analysis. Cf. *Cottier v. City of Martin*, 604 F.3d 553, 561 n.4 (8th Cir. 2010) (en banc) (rejecting suggestion to consider election data appended to plaintiffs brief, as the court would not “allow one party to augment its evidentiary presentation in a case involving extensive statistics that were the subject of complex analysis by experts for both parties”). If I were to reopen the case again and give them the chance to do so, we would necessarily extend the case, perhaps past the next election, and then there would seem to be no reason not to reopen the case again to include those results, and so on.

(*Id.* at 954.)

**B. The Circumstances of the 2020 Election Illustrate Why Post-Judgment Elections Should Not Be Considered.**

In evaluating elections in voting rights cases, courts are required to engage in a “searching practical evaluation.” (*Thornburg v. Gingles* (1986) 478 U.S. 30, 76; see also *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5<sup>th</sup> 385, 470 [“California’s statute demands an equally fact-intensive expedition through the factors for ascertaining racially polarized voting.”]) Where an election is an outlier, or is the product of unusual circumstances, courts are justified in disregarding that election, or at least



giving that election less weight. (*Thornburg v. Gingles*, 478 U.S. at 76 [Where an at-large election system “generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters.”]; *Yumori-Kaku*, 59 Cal.App.5<sup>th</sup> at 462-465 [approving of trial court giving less weight to certain elections “the court may need to extend its inquiry to consider factors likely to have influenced the electoral outcomes.”].)

The 2020 election was very much an outlier. But, because it occurred after the judgment, the parties have no opportunity to present testimony and documentary evidence to demonstrate just how much of an outlier it was. As discussed above, the election occurred shortly after “the worst day in Santa Monica’s history,” in the midst of a global pandemic and unprecedented anti-incumbent sentiment, where Amicus and his Change Slate colleagues could present themselves as the only alternative to the inept incumbents. Of course, appellate courts do not take testimony, so considering post-judgment elections for the first time in an appeal necessarily deprives the litigants of the opportunity to fully address those elections, and would result in appellate courts relying on a superficial view of the elections rather than the “searching practical evaluation” that is required.

Moreover, the issue of district-based elections the subject of this case was a central issue in the 2020 campaign. Amicus and his Change

Slate colleagues recognized the electorate’s desire for a switch to district-based elections, and used that issue to garner support. That is likewise reason enough to disregard the 2020 election. (Compare *United States v. Village of Port Chester* (S.D.N.Y. 2010) 704 F. Supp. 2d 411, 442 [where the subject of a voting rights lawsuit becomes a central campaign issue in a post-lawsuit election, that election is rightly disregarded as an outlier fueled by that “special circumstance”].) It would be tragically ironic and undemocratic to allow Defendant to use the electorate’s support for district-based elections to thwart the implementation of district-based elections.

This case exemplifies the reason post-judgment evidence is not considered by appellate courts.

**C. Even if Considered, the 2020 Election Should Not Change the Outcome of This Case.**

Unlike Defendant, Amicus and his Change Slate colleagues recognize that the present composition of the Santa Monica City Council reflects a sliver in time, compared to the long history of exclusion of Latinos. And, if the at-large election system remains, the composition of the Santa Monica City Council is likely to return to where it has been for 65 of its 75 years – the *complete* exclusion of the Latino minority.

When Defendant’s Charter Review Commission considered whether Defendant’s at-large election system should be replaced in 1992, it could have reasoned that the election of the first Latino councilmember in 1990

demonstrated there was no need for change. The Charter Review Commission nonetheless concluded “a shift from the at-large plurality system currently in use” was necessary “to distribute empowerment more broadly in Santa Monica, particularly to ethnic groups.” (24AA10716 [Trial Court Statement of Decision, p. 48].) Two years later, the Charter Review Commission was proved correct when the only Latino ever elected to Defendant’s city council lost his bid for re-election following a campaign riddled with racist appeals. (24AA10704, 24AA10725 [Trial Court Statement of Decision, pp. 36, 57].) Defendant’s city council would be devoid of Latinos for another 18 years. (24AA10687-10688 [Trial Court Statement of Decision, pp. 19-20].) Amicus and his Change Slate colleagues understand that history; they understand their success may be fleeting; and they understand that only a permanent change to Defendant’s discriminatory at-large election system can ensure consistent fair representation in the future.

Courts have long recognized what Amicus and his Change Slate colleagues understand, and Defendant’s 1992 Charter Review Commission understood, about Santa Monica that one election is not nearly as predictive as decades of elections, and therefore does not negate a consistent pattern of racially polarized voting. (*Gingles*, 478 U.S. at 57 [“[W]here elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not

necessarily negate the conclusion that the district experiences legally significant bloc voting.”]; *Missouri State Conference of the NAACP*, 219 F. Supp. 3d at 974.) That is particularly true where, as here, that single election is held during the pendency of a voting rights lawsuit. (*Gingles*, 478 U.S. at 76).

### **III. DEMOCRACY IS NOT WORKING IN SANTA MONICA.**

In its opinion, the Court of Appeal described the situation where minority voters consistently lose elections, and thus lack representation in their local government, as “democracy working.” (Opinion p. 30.) Since Latino voters’ preferred candidates have consistently lost in elections for the Santa Monica City Council (see 24AA10680-10681, 24AA10684-10690 [Trial Court Statement of Decision, pp. 12-13, 16-22]), the Court of Appeal would presumably say that democracy is working in Santa Monica. The Court of Appeal is tragically wrong. Self-interested incumbents clinging to a discriminatory election system because it keeps them in power, despite popular opposition to that election system, is not “democracy working”; it is a dysfunctional government at odds with its constituents and in need of correction.

Though a majority of Defendant’s city council favor at-large elections, the residents overwhelmingly support replacing that antiquated system with district-based elections. As Plaintiffs point out in their Reply Brief, and Amicus and his Change Slate colleagues recognized in their

campaigns, when Santa Monica residents are asked to simply choose between the current at-large system and district-based elections, they prefer district-based elections by a wide margin. (Petitioners’ Reply Brief, p. 47). Unsurprisingly, Latino residents support a switch to district-based elections by a margin even greater than their non-Latino neighbors. (Id.). Across every ethnic group, and partisan affiliation, Santa Monica residents support adopting district-based elections. (RT2865:23-2868:20). The residents’ support for district elections was one reason, though not the dominant reason, that Amicus and his Change Slate colleagues each proclaimed their support for district elections in their campaigns. (See “City Council Candidate Pop Quiz” (Santa Monica Lookout, Oct. 2020))<sup>5</sup>

Defendant attempts to give this Court the opposite impression, claiming, on page 13 of its Answer Brief, that “in 1975 and 2002, voters overwhelmingly rejected returning to districts” and “in 2002 ... 82 of Latino voters rejected districts.” None of what Defendant says about voter sentiment in 1975 or 2002 is true. The 1975 ballot measure to which Defendant refers would have “reduced the percentage of names required on a recall petition,” “required another election ... within six months,” and brought “immediate and long-range upheaval in the city’s politics.” (RT4719:16-4720:2.) It was “these additional provisions, rather than the

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<sup>5</sup> Available at [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2020/October-2020/City\\_Council\\_Candidates\\_Pop\\_Quiz.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2020/October-2020/City_Council_Candidates_Pop_Quiz.html)

proposed adoption of districts, [that] were the focus of opponents of [the 1975 ballot measure].” (RT4720:4-4720:8.) Likewise, the 2002 ballot measure was far from a simple choice between adopting district-based elections or maintaining the at-large system; it consisted of six separate provisions. (RT5416:5-5416:6.) The 2002 ballot measure sought to establish a strong mayor with veto power over the city council in the words of the League of Women Voters: ““Measure HH would [] radically shift power by concentrating control into a single individual, a new dominant, boss-style mayor.” (RT5412:12-5413:14). And, the 2002 ballot measure further sought to bifurcate elections into primary elections followed by city-wide runoff elections for all councilmembers, making them all ultimately elected at-large, and the elections more expensive. (RT5413:15-5413:18.) It was these features of the 2002 ballot measure that were (rightly) criticized by opponents. (RT5412:12-5416:24.) Unlike the move to district-based elections ordered by the Superior Court, placing the bulk of the city’s government power in a single *at-large-elected* mayor, and subjecting every councilmember to *at-large* runoff elections, would have done nothing to empower the Latino community.

Not only does the expert polling of the Santa Monica electorate discussed above bely any notion that Santa Monicans favor maintaining at-large elections, so too does the report of Defendant’s 1992 Charter Review Commission. (25AA10913-10914; 25AA10930.) The Commission was

composed of a balanced cross-section of Santa Monica residents, and concluded “that Defendant’s at-large election system [should] be eliminated [because] the at-large system prevents minorities and the minority-concentrated Pico Neighborhood from having a seat at the table.” (24AA10722 [Trial Court Statement of Decision, p. 54].) Indeed, the Charter Review Commission was nearly unanimous in its recommendation to scrap the at-large election system like so many other racist relics of the past. (Id.). But, just like Defendant’s city council of 2018, its city council of 1992 rejected the Charter Review Commission’s recommendation and maintained the at-large election system that elected them. Though the Court of Appeal reversed, the Superior Court (correctly) found that decision by the 1992 city council was intended to deprive Latinos of voting power. (24AA10716-17, 24AA10721-27 [Trial Court Statement of Decision, pp. 48-49, 53-59])

So why would a majority of Amicus’ council colleagues insist on at-large elections when their constituents overwhelmingly favor district-based elections? The answer is simple – retaining political power.

Amicus understands the temptation of council members to cling to at-large elections once they have secured council seats under that election system. A move to district-based elections might mean those councilmembers must compete against one another in an electoral contest, and some are not re-elected. It also might mean that one or more of

Amicus and his Change Slate colleagues lose their seats on the city council. But Amicus and his Change Slate colleagues also recognize that losing one's elective office is a small price to pay for addressing systemic racism a price they are willing to pay to ensure that the votes of Latino residents of Santa Monica are no longer diluted by the at-large system.

#### IV. CONCLUSION

Amicus' constituents deserve an election system that complies with the CVRA and does not dilute the vote of the historically unrepresented Latino community, as the Superior Court ordered. Therefore, Amicus asks this Court to reverse the Court of Appeal's decision, with direction to affirm the Superior Court's judgment.

Dated: June 11, 2021

Respectfully submitted,

By: /s/ Todd W. Bonder  
Todd W. Bonder

Attorney for Amici Curiae

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**CERTIFICATE OF WORD COUNT**

(Cal. Rules of Court, rules 8.2024(c)(1).)

I, the undersigned counsel, certify that this brief consists of 3,264 words exclusive of those portions of the brief specified in California Rules of Court, rule 8.204(c)(3), relying on the word count of the Microsoft Word computer program used to prepare the brief.

Dated: June 11, 2021

Respectfully submitted,

By: /s/ Todd W. Bonder  
Todd Bonder

Attorney for Amici Curiae

Document received by the CA Supreme Court.

**RULE 8.520(f)(4) CERTIFICATION**

No party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, rule 8.520(f)(4)(A).) Nor do there exist any persons or entities whose identities must be disclosed under Rule 8.520(f)(4)(B) of the California Rules of Court.

Dated: June 11, 2021

Respectfully submitted,

By: /s/ Todd W. Bonder  
Todd W. Bonder

Attorney for Amici Curiae

Document received by the CA Supreme Court.

**PROOF OF SERVICE**

**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 232 N Canon Dr, Beverly Hills, CA 90210.

On June 11, 2021, I served true copies of the following document(s) described as  
**APPLICATION FOR LEAVE TO FILE AMICUS BRIEF AND PROPOSED AMICUS BRIEF**  
on the interested parties in this action as follows:

Kevin Shenkman Mary Hughes Andrea Alarcon SHENKMAN & HUGHES 28905 Wight Rd. Malibu, CA 90265	Milton Grimes LAW OFFICES OF MILTON C. GRIMES 3774 W. 54 <sup>th</sup> St. Los Angeles, CA 90043
Morris Baller Laura Ho Anne Bellows Ginger Grimes GOLDSTEIN BORGEN DARDARIAN & HO 155 Grand Avenue, Suite 900 Oakland, CA 94612	R. Rex Parris Ellery Gordon PARRIS LAW FIRM 43364 10 <sup>th</sup> Street West Lancaster, CA 93534
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Theodore Boutrous Marcellus McRae Kahn Scolnick Tiaunia Henry Daniel Adler GIBSON DUNN & CRUTCHER LLP 333 S. Grand Ave. Los Angeles, CA 90071	IRA FEINBERG HOGAN LOVELLS US LLP 390 Madison Ave. New York, NY 10017
John Haggerty P.O. Box 2118 Santa Clara, CA 95055	Kristin Liska OFFICE OF THE ATTORNEY GENERAL 455 Golden Gate Ave., Suite 11000 San Francisco, CA 94102
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Nathan Lowenstein Kenneth Weatherwax LOWENSTEIN & WEATHERWAX LLP 1880 Century Park East, Suite 815 Los Angeles, CA 90067	

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**BY ELECTRONIC SERVICE:** I caused the document(s) described above to be electronically served via TrueFiling.

And to:

Hon. Yvette M. Palazuelos  
Los Angeles Superior Court  
312 N. Spring Street  
Los Angeles, CA 90012

**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 my law firm's 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 June 11, 2021 at Beverly Hills, California.

/s/Todd Bonder  
Todd Bonder

Document received by the CA Supreme Court.

# **EXHIBIT L**

Santa Monica Municipal Code						
<a href="#">Up</a>	<a href="#">Previous</a>	<a href="#">Next</a>	<a href="#">Main</a>		<a href="#">Search</a>	<a href="#">Print</a>
<a href="#">THE CHARTER OF THE CITY OF SANTA MONICA</a> <a href="#">ARTICLE VI—THE CITY COUNCIL</a>						

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**605. Power vested in the City Council.**

All powers of the City shall be vested in the City Council, subject to the provisions of this Charter and to the Constitution of the State of California.

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View the [mobile version](#).

# **EXHIBIT M**

City Council Meeting: May 28, 2019

Santa Monica, California

RESOLUTION NO. 11172 (CCS)

A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF SANTA MONICA AMENDING THE RULES OF ORDER AND  
PROCEDURE FOR THE CONDUCT OF CITY COUNCIL MEETINGS AND  
REPEALING RESOLUTION NUMBER 11106 (CCS)

THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES RESOLVE AS  
FOLLOWS:

SECTION 1. The City Council Rules of Order and Procedure are hereby amended  
as follows:

RULES FOR CITY COUNCIL MEETINGS

**RULE 1. RULES OF ORDER.**

Except as otherwise provided by these rules, the City Charter, the Municipal Code,  
or applicable provisions of state law, the procedures of the City Council shall be governed  
by the latest revised edition of Roberts Rules of Order.

The City Council rules, or any one thereof, may be suspended by a vote of two-  
thirds (2/3) of the Councilmembers present.

**RULE 2. TIME AND PLACE FOR HOLDING REGULAR MEETINGS.**

Pursuant to the provisions of Section 611 of the Santa Monica City Charter, the  
City Council establishes the second and fourth Tuesdays of each month as the days for  
holding regular meetings of the City Council. The regular meeting shall commence at  
5:30 p.m., for the Closed Session. It is the intention of the City Council that all other



agenda items shall commence at 6:30 p.m., following the Closed Session. If any such Tuesday falls on any day designated by law by the City Council as a day for public feast, Thanksgiving or holiday, such regular meeting shall be held on the date of the regular meeting next following said Tuesday at the hour heretofore fixed or at such other day as may be fixed. The City Council Chamber in City Hall is established as the place for holding its regular meetings.

**RULE 3. QUORUM AND ACTION**

In accordance with Section 614 of the Santa Monica City Charter, four Councilmembers shall constitute a quorum for the transaction of business. Except as otherwise provided in the Charter, or other law or these rules action shall be taken by a majority vote of the entire membership of the City Council. However, in the case of a quasi-judicial hearing, if only four Councilmembers are participating, the applicant or appellant shall be entitled to request and receive a continuance of the hearing, until such time as five Councilmembers are participating.

Whenever any Councilmember questions the presence of a quorum, the presiding officer shall forthwith direct the City Clerk to call the roll, each Councilmember shall respond when his or her name is called and the Clerk shall announce the result. Such proceedings shall be without debate, but no Councilmember who is speaking may be interrupted by a question as to the presence of a quorum.

The City Council may also establish standing subcommittees of its members to address designated areas of City business on the Council's behalf and may establish ad hoc committees to formulate reports or recommendations on particular matters.

**RULE 4. MEETINGS TO BE PUBLIC - EXCEPTION FOR CLOSED SESSIONS.**

As required by the Ralph M. Brown Act (the "Brown Act"), California Government Code Sections 54950, et seq all regular, adjourned regular and special meetings of the City Council shall be public, provided, however, the City Council may meet in a Closed

Session from which the public is excluded, for those purposes authorized by the Brown Act.

No Councilmember, employee of the City, or any other person present during a Closed Session of the City Council shall disclose to any person the content or substance of any communication which took place during the Closed Session unless the City Council specifically authorizes the disclosure by majority vote or unless the disclosure is required by law.

**RULE 5. AGENDA.**

The City Clerk shall prepare the Agenda under the direction of the City Manager as follows:

(a) The City Manager shall consult with the Mayor and Mayor Pro Tempore in the preparation of the Agenda.

(b) The Agenda and all available supporting documents shall be delivered to Councilmembers on the Tuesday preceding the Tuesday City Council meeting to which it pertains or as soon thereafter as possible.

(c) Any Councilmember or the City Manager may direct that any matter within the City Council's jurisdiction be placed upon the Agenda. Councilmembers should endeavor to submit agenda items by 3:00 p.m. on Thursday in order to ensure that matters will be agendized for the following Tuesday. Subject to Brown Act requirements, items submitted after 3:00 p.m. Thursday will be agendized for the following Tuesday if possible.

Councilmember items may only be combined with other items on the agenda by a vote of the Council. A Councilmember who wishes to combine his or her item with another item on the agenda may direct that the following language be included with the agenda item: "This item may be considered with Item . ." The City Manager may combine staff items on the agenda in order to ensure that the public's business is handled efficiently and conveniently.

(d) The City Clerk shall post the Agenda as required by the Brown Act. Copies of the Agenda shall be posted in the lobby of City Hall and the Police Department. The City Clerk shall maintain on file in his or her office declarations establishing compliance with the posting requirements.

(e) No action shall be taken on any item not appearing on the posted Agenda unless the item is added to the Agenda in the manner required by the Brown Act.

(f) Matters directed to be placed on the Agenda at the direction of Councilmembers shall be listed on the Agenda in the order of receipt by the City Clerk.

(g) Written requests to the City Council shall be received and opened by the City Clerk and referred to the City Manager or his or her designee and either shall be transmitted to the appropriate board, commission or staff member or shall be placed on the Agenda if City Council consideration is deemed appropriate by the Mayor or City Manager. Written requests being agendized shall be scheduled for City Council consideration at the earliest convenient meeting, taking into consideration the length and content of meeting agendas. Members of the public submitting written requests shall be advised of how their request is being handled. Councilmembers shall receive copies of those written requests which are not agendized. Agendized communications shall be listed on the Agenda in order of receipt. No communication shall be placed on an Agenda if it contains material that:

- (1) Is profane.
- (2) Is potentially slanderous or libelous.
- (3) Advocates or opposes the candidacy of any person or party for any elective office.
- (4) Is primarily an advertisement or promotion or has as a substantial purpose, the advancement of any cause the major benefit of which is private and not public.

Members of the public submitting written requests to the City Council are encouraged to limit their submissions to one per meeting.

(h) All electronic presentation materials intended for use at a City Council meeting, including PowerPoint presentations, videos, audio, electronic images, and electronic portable document formats (PDFs), but excluding any hardcopy document projected by an overhead projector, must be received by the City Clerk no later than 12:00 PM on the day of a City Council meeting. For clarity, this rule shall not apply to a current member of a board or commission speaking on a matter within the purview of the board or commission on which the member sits.

**RULE 6. CATEGORIES AND ORDER OF BUSINESS.**

The business of the City Council shall be conducted in the order and manner specified below. The order may be changed by a majority vote of those present. The following is the order of business:

- (a) Call to Order.
- (b) Salute to the Flag.
- (c) Roll Call.
- (d) Closed Session.
- (e) Special Agenda Items. This item includes the City Manager's Report, proclamations, commendations, introductions of special guests, special meetings, appointments to the City Council and presentations and reports by other non-City public entities or legislative bodies.
- (f) Consent Calendar. The consent calendar shall consist of the approval of minutes of previous meetings and those other items such as contracts and routine resolutions which do not necessitate a separate public hearing and which are determined in the Agenda preparation process to be relatively non-controversial. Ordinances for second reading and adoption may be placed on the consent calendar if all members of

the City Council were present when the vote for first reading and introduction took place and this vote was unanimous. The consent calendar shall be considered as one item regardless of the number of matters appearing on it and may be approved by a single vote. The title to the individual consent items need not be read unless a request to do so is made by any Councilmember. Members of the public shall have no more than one opportunity to address the City Council concerning any and all items on the consent calendar. Members of the public shall be heard prior to City Council consideration of the consent calendar. Councilmembers may request to have individual matters removed from the consent calendar so that they may be heard on those matters. All matters remaining on the consent calendar may be approved by a single vote. Any items removed from the consent calendar shall be considered separately in the order of their appearance on the Agenda. Removed items may be heard immediately following the consent calendar or may be heard after the City Council concludes Closed Session or Study Session.

(g) Study Session. During Study Sessions staff will present information regarding a complex matter that will be subject to Council deliberation and decisions in the future. No City Council action will be recommended or taken as part of the Study Session.

(h) Continued Items. This item includes agendized items of a previous City Council meeting not considered at such meeting. The City Council may vote by a majority of its members to have a carry-over item placed on a subsequent agenda as a continued item.

(i) Administrative Proceedings. This item includes proceedings requiring the City Council to make a quasi-judicial decision concerning an individual application or appeal.

(j) Ordinances.

(1) Second Reading and Adoption. No public discussion is permitted on second readings.

(2) Introduction and First Reading.

(k) Staff Administrative Items. This category will include policy matters to be considered by the City Council or at joint meetings of the City Council, Parking Authority, Housing Authority, the Public Financing Authority and/or Redevelopment Successor Agency.

(l) Public Hearings. This item consists of public hearings required by specific provisions of law.

(m) Reports of Boards and Commissions. Boards and commissions who may present reports under this item include, but are not limited to, all City boards, commissions and task forces. Reports may also be provided by the Santa Monica Pier Corporation, Downtown Santa Monica, Inc., Santa Monica Convention and Visitors Bureau.

(n) Resolutions. A resolution will be considered under this item only if its substance makes extensive public input advisable, or if it should be considered after another item on the Agenda, otherwise the resolution will be considered on the Consent Calendar.

(o) Written Communication. This item allows the City Council to consider issues raised by written submissions from the public.

(p) Councilmember Discussion Items. Staff items as deemed necessary.

(q) Public Input. This item allows members of the public to address the City Council on matters that are within the City Council's subject matter jurisdiction. No formal action may be taken on any matter under this item unless the item is specifically agendized.

**RULE 7. PREPARATION OF MINUTES.**

The City Clerk shall have exclusive responsibility for preparation of the Minutes, and any directions for corrections in the Minutes shall be made only by majority vote of the City Council.

**RULE 8. APPROVAL OF MINUTES.**

Minutes of a City Council meeting may be approved without reading if the City Clerk has previously furnished each Councilmember with a copy and unless a reading is ordered by a majority vote of the City Council.

**RULE 9. PRESIDING OFFICER.**

The Mayor shall be the Presiding Officer at all meetings of the City Council. In the absence of the Mayor, the Mayor Pro Tempore shall preside. In the absence of both the Mayor and Mayor Pro Tempore, the City Clerk shall call the City Council to order and a temporary Presiding Officer shall be elected by the Councilmembers present to serve until the arrival of the Mayor or Mayor Pro Tempore or until adjournment.

**RULE 10. POWERS AND DUTIES OF PRESIDING OFFICER.**

(a) Participation. The Presiding Officer may move, second, and debate from the chair, subject only to such limitations of debate as are imposed upon Councilmembers by these rules, and shall not be deprived of any of the rights or privileges of a Councilmember by reason of his or her acting as the Presiding Officer.

(b) Duties. The Presiding Officer shall:

- (1) preserve order at all meetings of the City Council
- (2) state (or cause to be stated) each question coming before the City Council
- (3) announce the decisions of the City Council on all subjects
- (4) decide all questions of order subject to the right to appeal rulings on questions of order to the entire City Council and
- (5) encourage all persons present at the meeting to conform their conduct to the City's Civility Policy.

**RULE 11. SWORN TESTIMONY AND SUBPOENA POWER.**

Any Councilmember may request that anyone appearing before the City Council on any matter shall be sworn. On receipt of such a request, all proceedings shall be suspended and the City Council will immediately vote on whether the individual should be sworn. A majority vote of the Councilmembers present shall determine whether the speaker shall be placed under oath. All oaths will be administered by the City Clerk.

The City Council shall have the power to issue subpoenas as provided in City Charter Section 614.

**RULE 12. RULES OF DEBATE.**

(a) Getting the Floor. A Councilmember desiring to speak shall gain recognition by the Presiding Officer.

(b) Questions to Staff. Every Councilmember desiring to question City staff shall address his or her questions to the City Manager, the City Attorney, the City Clerk or designated staff. Members of the City staff, after recognition by the Presiding Officer shall hold the floor until completion of their remarks or until recognition is withdrawn by the Presiding Officer.

(c) Interruptions. A Councilmember who has the floor shall not be interrupted when speaking unless he or she is called to order by the Presiding Officer, a point of order or a personal privilege is raised by another Councilmember or the speaker chooses to yield to a question by another Councilmember. If a Councilmember is called to order, he or she shall cease speaking until the question of order is determined.

(d) Points of Order. The Presiding Officer shall determine all points of order subject to the right of any Councilmember to appeal to the City Council. If an appeal is taken, the question shall be: "Shall the decision of the Presiding Officer be sustained?" The Presiding Officer's decision may be overruled by a two-thirds vote of the Councilmembers then present.



(e) Point of Personal Privilege. The right of a Councilmember to address the City Council on a question of personal privilege shall be limited to cases in which the Councilmember's integrity, character, or motives are questioned or where the safety or welfare of the City Council is concerned.

(f) Privilege of Final Comment. The Councilmember moving the introduction or adoption of an ordinance, resolution, or motion, shall have the privilege of speaking last on the matter after all other Councilmembers have been given an opportunity to speak.

(g) Motion to Reconsider Legislative Actions. A motion to reconsider any legislative action taken by the City Council may be made only by one of the Councilmembers on the prevailing side and may be seconded by any Councilmember. Such motion may be made at any time and shall be debatable. A motion by a non-prevailing Councilmember or a request by a member of the public for reconsideration may be made only if one year has passed since the action was taken.

(h) Calling for the Question. A question may be called by majority vote of those present. However, neither the moving party nor the party seconding any motion may call for the question, each Councilmember shall be afforded one opportunity to speak on each item before the question is called, and a question may not be called to interrupt or cut off a particular speaker.

(i) Limitation of Debate. Councilmembers shall limit their remarks to the subject under debate. No Councilmember shall be allowed to speak more than once upon any particular subject until every other Councilmember desiring to do so has spoken. Prior to beginning deliberation, the Council may, by a two-thirds vote of those present, limit the amount of time that each Councilmember may spend stating his or her views on a particular agenda item.

### **RULE 13. PROTEST AGAINST CITY COUNCIL ACTION.**

Any Councilmember shall have the right to have the reasons for his or her opposition to any action of the City Council entered in the Minutes. Such opposition shall

be made in the following manner: “I would like the Minutes to reflect that I opposed this action for the following reasons...”

**RULE 14. DISCLOSURE FOR QUASI JUDICIAL MATTERS.**

On quasi-judicial matters, Councilmembers shall verbally disclose off the record contacts relating to the item, after the item is called and before City Council consideration of the matter. Disclosure shall include the identity of an individual(s) with whom the Councilmember had contact, and the nature of the contact.

**RULE 15. PUBLIC TESTIMONY.**

(a) Pursuant to the Brown Act, public testimony is permitted on all agenda items, except ordinances for second reading, and the public shall have an opportunity to comment on any matter which is not on the Agenda but is within the City Council’s jurisdiction. However, members of the public do not have the right to give testimony outside the scope of or unrelated to the agenda item under consideration. Additionally, members of the public should strive to avoid unduly reiterating their own or others’ testimony.

(b) Registration. Any member of the public wishing to address the City Council regarding any item on the Agenda for public discussion shall register with the City Clerk prior to the start of the meeting, if possible, but no later than prior to the public hearing on that item. Except when donating time to another speaker, a request received after the start of the hearing shall be considered late and may only be heard with Council approval.

(c) Manner of Addressing the City Council. After being recognized by the Presiding Officer, each member of the public addressing the City Council shall go to the podium, state his or her name and whom he or she is representing, if he or she represents an organization or other person. Each member of the public is encouraged, but not required, to also state his or her address, neighborhood, or city of residence. All remarks shall be addressed to the City Council as a whole and not to any individual member thereof. After a public hearing has been closed, no member of the public shall address

the City Council on the matter under consideration without first securing City Council approval.

(d) Time Limits. Except on Written Communication, members of the public shall limit their remarks to two minutes per agenda item unless the City Council grants additional time by majority vote. For purposes of these Rules, the consent calendar shall be considered one item. Members of the public using one minute to address the City Council may speak first during public comment, followed by K-12 students speaking on their own behalf, while members of the public using the full two minutes will speak afterwards. Persons speaking on another's written communication and persons submitting late chits, who receive permission to speak shall be limited to one minute. On Written Communication, those speaking on another's item may speak only if the person raising the matter appears and testifies. If the person who raises the item does not appear and testify, the matter shall be received and filed and persons wishing to speak on the matter may give their testimony during Public Input. A member of the public wishing to speak on more than one item shall limit his or her remarks to a total of six minutes per meeting unless the City Council grants additional time by majority vote. A member of the public may allocate time between items in one minute increments up to two minutes. Testimony given as an applicant or appellant does not count toward the six minute maximum. A Board or Commission member reporting to the City Council on behalf of a Board or Commission shall not be subject to these rules on time limits; however, City Council may limit the duration of such reports.

(e) Special Time Limits for Applicants and Appellants. Applicants and appellants on administrative items shall limit their remarks to ten minutes and may reserve some of their time for use for rebuttal at the conclusion of the public hearing. The appellant shall have the opportunity to address the City Council first and last.

(f) Special Time Limits for Special Agenda Items. Public testimony is permitted on the City Manager's Report and Appointments to the City Council. Proclamations, commendations and appearances by special guests are ceremonial items. In order to ensure adequate time for the Council's regular business, only honorees and guests may

address the Council on such items. Groups of honorees or guests, who wish to speak, should appoint one or two representatives to speak for them.

(g) Special Assistance for Those Who Cannot Wait to Speak. Members of the public, including those with special needs, who cannot wait to speak on an agenda item may request assistance from the City Clerk, and a member of the Clerk's office will provide assistance in preparing a written statement of testimony for distribution to the City Council.

(h) Extended Time Limits for Speakers Who Require Interpreter. A member of the public who utilizes an interpreter to provide English language translation shall receive twice the time otherwise allotted under these Rules.

(i) Donating Time to Another Speaker. Except on Public Input, a member of the public, speaking on their own behalf, may donate two minutes per agenda item to another speaker, speaking on their own behalf, and a speaker may accept one such donation from another per agenda item. The speaker and the person donating time shall turn in their chits together, notify the clerk of the donation, and go to the podium together. The speaker shall state both of their names and state that he or she is speaking for both. Donated time shall not increase an individual speaker's total time limit of six minutes per meeting. Any request received after the start of the hearing shall be considered late and the donator will not be permitted to donate his/her time.

(j) All electronic presentation materials intended for use at a City Council meeting, including PowerPoint presentations, videos, audio, electronic images, and electronic portable document formats (PDFs), but excluding any hardcopy document projected by the overhead projector, must be received by the City Clerk no later than 12:00 PM on the day of a City Council meeting. All such electronic presentation materials must be emailed to the City Clerk's Office and include the City Council meeting date, agenda item number, and name of the public speaker. For clarity, this rule shall not apply to a current member of a board or commission speaking on a matter within the purview of the board or commission on which the member sits.

**RULE 16. RULES OF CONDUCT AND SAFETY.**

When the City Council is in session, all persons present must preserve safety and order and should strive to conform their conduct to the City's Civility Policy. Members of the public should sit in the audience seating area, unless addressing the City Council or entering or leaving the Council Chambers, should not block the aisles with personal belongings and should not bring audible equipment into the Council Chambers including cellular telephones or pagers. Members of the public may not, except when testifying on or participating in an agenda item, enter the well area, which is the open area directly in front of the dais and extending outward from it to a line running between the points on the Clerk's desk and the podium nearest to the audience.

Any person who disrupts the meeting shall be called to order by the Presiding Officer. Disruption shall include but not be limited to, blocking the audience or camera view of the proceedings. If such conduct continues, the Presiding Officer may request the Sergeant at Arms to remove the person from Council Chambers.

The Chief of Police or such member or members of the Police Department as he or she may designate, shall be Sergeant At Arms of the City Council and shall carry out all orders given by the Presiding Officer through the City Manager for the purpose of maintaining order at City Council meetings. Any Councilmember may move to require the Presiding Officer to enforce the rules, and the affirmative vote of a majority of the City Council shall require him or her to do so.

**RULE 17. SEATING ORDER.**

After each municipal election, the City Clerk shall determine City Council member seating order by drawing lots.

**RULE 18. ENTITLEMENT TO VOTE AND FAILURE TO VOTE.**

Every Councilmember is entitled to vote unless disqualified by reason of a conflict of interest. A Councilmember who abstains from voting consents to the decision made by the voting Councilmembers.

**RULE 19. VOTING PROCEDURE.**

Any vote of the City Council, including a roll call vote, may be registered by the members answering "Yes" for an affirmative vote or "No" for a negative vote upon his or her name being called by the City Clerk. Voting order shall be based on seating order with each roll call vote beginning at alternating ends of the dais and the Mayor voting last.

**RULE 20. DISQUALIFICATION FOR CONFLICT OF INTEREST.**

Any Councilmember who is disqualified from voting on a particular matter by reason of a conflict of interest shall publicly state or have the Presiding Officer state the nature of such disqualification and shall leave the dais prior to Council consideration of the matter. A Councilmember stating such disqualification shall not be counted as part of a quorum and shall be considered absent for the purpose of determining the outcome of any vote on such matter.

**RULE 21. TIE VOTE.**

Tie votes shall be lost motions.

**RULE 22. CHANGING VOTE.**

The vote of a Councilmember may be changed only if he or she makes a timely request to do so immediately following the announcement of the vote by the City Clerk or the Presiding Officer and prior to the time that the next item in the order of business is taken up.

**RULE 23. PROCEDURE ON AGENDA ITEMS REQUIRING A MOTION.**

The following procedure shall be followed in connection with any Agenda item requiring a motion:

- (a) City Clerk reads the title.
- (b) Presiding Officer calls for a staff report.
- (c) Councilmembers question City staff.
- (d) City Council conducts Public hearing.
- (e) City Council deliberates.
- (f) A Councilmember makes a motion, another Councilmember seconds the motion, and the Council debates it, with the maker of the motion having the opportunity to speak last.
- (g) The Presiding Officer or City Clerk restates the motion.
- (h) The City Council votes on the motion.
- (i) The Presiding Officer or City Clerk announces result.

**RULE 24. PRESENCE OF CITY STAFF AT CITY COUNCIL MEETINGS.**

The City Manager, City Clerk, and City Attorney, or, in their absence, their authorized representatives, shall attend and be present during all City Council meetings and give necessary service and advice.

**RULE 25. RECORD OF MEETINGS.**

All public meetings of the City Council shall be recorded. The recording shall be made by the City Clerk and retained in accordance with the City's record retention schedule. The use of other recording or television equipment is permitted so long as it is not disruptive of the meeting.

**RULE 26. INTERPRETATION AND MODIFICATION OF THESE RULES.**

These rules shall be interpreted liberally in order to provide for the optimum in the free interchange of information and public debate without an unnecessary waste of time or duplication of effort. These rules may be amended by resolution.


**RULE 27. FAILURE TO OBSERVE RULES OF ORDER.**

These rules of order and procedures govern the conduct of City Council meetings. These rules are intended to expedite the transaction of the business of the City Council in an orderly fashion and are deemed to be procedural only. Failure to strictly observe these rules shall not affect the jurisdiction of the City Council or invalidate any action taken at a meeting that otherwise conforms to law.

SECTION 2. Resolution Number 10928 (CCS) and all other resolutions adopting, amending, or relating to City Council Rules of Order, are hereby repealed in their entirety.

SECTION 3. The City Clerk shall certify to the adoption of this Resolution, and thenceforth and thereafter the same shall be in full force and effect.

APPROVED AS TO FORM:

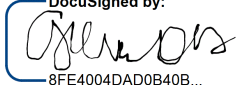
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LANE DILG  
City Attorney



Adopted and approved this 28th day of May, 2019.

DocuSigned by:  
  
8FE4004DAD0B40B...  
Glean Davis, Mayor


I, Denise Anderson-Warren, City Clerk of the City of Santa Monica, do hereby certify that Resolution No. 11172 (CCS) was duly adopted at a meeting of the Santa Monica City Council held on the 28<sup>th</sup> day of May, 2019, by the following vote:

AYES: Councilmembers Himmelrich, Jara, Morena, Winterer  
Mayor Pro Tem O'Day, Mayor Davis

NOES: None

ABSENT: Councilmember McKeown

ATTEST:

DocuSigned by:  
  
E2F85B056A714C3...  
Denise Anderson-Warren, City Clerk

# **EXHIBIT N**

1 NOTE: Due to the cadence of the speech (i.e., mumbling, slurring, being soft-spoken),  
2 some words of inaudible and will be marked as such. Words may also be marked  
3 as inaudible due to background noise, overlapping voices, or impurities of the  
4 recording.

5 BEGINS HERE:

6 ANDERSON-WARREN: So the first item is Item 8A, Pico Neighborhood Association and Maria  
7 Loya vs. City of Santa Monica - Determination Regarding Common Law Conflict  
8 of Interest of Councilmember de la Torre, and we currently have at least three  
9 members who are calling in to speak.

10 HIMMELRICH: So let me just say that before you give the staff report, and I know there  
11 will be a staff report, that we are launching our new system – would everyone  
12 mute please, other than me, because there’s feedback? Thank you. So, we are  
13 starting our new system of public comment where you can actually appear in our  
14 meetings and speak to us, and we can ask questions and this will be the first time  
15 this is happening, so I beg your indulgence. I’m not so great at pushing buttons  
16 and, you know, and to the extent that we’re really trying hard to make this a more  
17 interactive process, please give us credit for that and don’t hold us - hold it  
18 against us if it doesn’t work perfectly. I’m sure it will be my fault. And on that  
19 note, I think we can have a staff report.

20 ANDERSON-WARREN: Should we wait for Councilmember de la Torre before we do the  
21 staff report on this item? I don’t know if we can.

22 HIMMELRICH: Oscar just texted me. He’s having trouble logging in. I’ve just sent – I’ve  
23 just resent him the link. Then let’s wait a couple of minutes. Are there  
24 any announcements, since we have this time?

25 BROCK: I was wondering if the City Clerk happens to be a former actress or singer,  
26 if she could do like a Broadway tune right now. Denise?

27 ANDERSON-WARREN: Sorry. Phil.

28 HIMMELRICH: Your turn, Phil, you sing.

RE: PICO NEIGHBORHOOD ASSOCIATION  
CITY COUNCIL HEARING  
HEARING DATE: January 26, 2021  
ITEM 8A

1 BROCK: Yeah , that’s the one thing that I don’t do well. However. Councilmember  
2 de la Torre . . .

3 HIMMELRICH: Excuse me, Phil, I see Oscar, yes. So let’s go.

4 de la TORRE: Hi, everybody.

5 HIMMELRICH: Okay, Denise, do you have to say, “Councilmember de la Torre and he  
6 says yes?” So go for it.

7 ANDERSON-WARREN: Councilmember de la Torre, yes.

8 de la TORRE: Present.

9 HIMMELRICH: Thank you. And now we’re ready for staff report.

10 CARDONA: Thank you, Major. The written staff report sets out the relevant facts and  
11 legal analysis regarding the Common Law Conflict of Interest. I do have a  
12 lot to address a few issues that have been raised since the staff report was  
13 submitted, including an opinion from the Law Office of Daniel Ambrose  
14 that is attached to the Agenda and I received for the first time today. First,  
15 it has been suggested that the Council wait on guidance from the Fair  
16 Political Practices Commission for addressing the Common Law Conflict  
17 issue. [inaudible] the staff report, the City’s Attorney’s Office has sought  
18 guidance from the FPPC regarding whether there is a financial conflict of  
19 interest. The City is awaiting that guidance, but I do not know when we  
20 will receive it. Council retains the discretion to postpone discussion of the  
21 Common Law Conflict issue until the FPPC guidance is received. This  
22 would require postponement of a closed session discussion of the CDRA  
23 case that is scheduled for this evening. And the City’s brief on the Cali-  
24 fornia Supreme Court is due on March 22, 2021 date is approaching.  
25 Second, it has been suggested that the Common Law Conflict of Interest  
26 doctrine is no longer viable in California given the Legislature’s passage  
27 of statutes addressing financial conflicts. Both courts and the California  
28 Attorney General, however, have made clear that the Common Law

1 Doctrine remains in force. 1996 in *Clark vs. City of Hermosa Beach*, 48  
2 CA4th 1152, the court discussed, “the common law prohibition on con-  
3 flicts of interest” citing case law and California Attorney General opinions  
4 and concluding the Common Law Doctrine, “prohibits public officials  
5 from placing themselves in a position where their private personal  
6 interests may conflict with their official duties.” The court specifically  
7 addressed and rejected the argument that the Common Law Doctrine had  
8 been eliminated by statute. Again, citing California Attorney General  
9 opinions, the court explained, “That the Political Reform Act focuses on  
10 financial conflicts of interest, the common law extends to non-economic  
11 conflicts of interest. The common law may be abrogated by express  
12 statutory provisions, but that is not the situation here.” Similarly, in 2015,  
13 in *Davis vs. Fresno Unified School District*, 237 CA4th 251, the court,  
14 citing *Clark*, allowed a cause of action premised on an asserted common  
15 law conflict of interest to proceed, explaining that the Common Law  
16 Doctrines overlap with California statutes, including in particular,  
17 Government Code §1090. It’s not complete, “because the statutes are con-  
18 cerned with financial conflicts of interest and the common law rule  
19 encompassed both financial and non-financial interest that could result in  
20 divided loyalty.” California Attorney General has also consistently re-  
21 cognized the continuing viability of the Common Law Doctrine with  
22 respect to non-financial conflicts of interest. In 2009, in the opinion re-  
23 ferenced in the written staff report, the Hon. Norma J. Torres, 92 Ops. Cal.  
24 Attorney General 19, the Attorney General first, “found no disqualifying  
25 interests within the meaning of §1090 for the Political Reform Act.” It  
26 then turned to the “Common Law Doctrine against conflicts of interest”  
27 specifically recognizing that while “the focus of the statutes analyzed  
28 above is on actual or potential financial conflicts, the common law prohi-

1                   bition extends to non-economic interests as well.” Similarly, in 2018, in  
2                   the Hon. Mark Stone, 101 Ops. Cal. Attorney General 1, the Attorney  
3                   General affirmed the continuing viability of the Common Law Doctrine  
4                   with respect to non-economic interests, stating, “The Common Law  
5                   Doctrine against conflicts of interest prohibits public officials from placing  
6                   themselves in a position where their private personal interests may con-  
7                   flict with their official duties. Where a Common Law Conflict of Interest  
8                   exists, the official may not take part either in the discussion nor in a vote  
9                   on the relevant matter. Common law conflicts of interest extend not only  
10                  to financial interests, but also to non-economic interests, if there is some  
11                  personal advantage or disadvantage at stake for the public officer.  
12                  Common law conflicts are not limited to contracts may arise whenever an  
13                  official’s personal or pecuniary interests are at stake.” Third, it has been  
14                  suggested that Councilmember de la Torre is in no different a position  
15                  from other Councilmembers and that all the Councilmembers have  
16                  interests in the outcome of the CDRA litigation that pose a non-financial  
17                  conflict because the resolution of the litigation may affect how they are  
18                  elected. If this approach were correct, then Councilmembers would be  
19                  dissimilarly conflicted from voting to adopt an elections code or other  
20                  campaign finance rules, as incumbents, an ethics code, as required  
21                  adherence, or any municipal code provisions that might result in admini-  
22                  strative or criminal penalty as residents potentially subject to those penal-  
23                  ties. The Common Law Doctrine has not been extended this broadly. To  
24                  the best of my knowledge, no other Councilmember has a personal relat-  
25                  tionship of a type that might result in common law conflicts similar to that  
26                  of Councilmember de la Torre, who is married to one plaintiff in the  
27                  CDRA litigation and has longstanding ties to the other plaintiff. Along  
28                  these same lines, it has been suggested that determination of whether there

1 is a common law conflict of interest hinges on a determination of what the  
2 City's interest in the outcome of the CDRA litigation or should be. The  
3 purpose of the Common Law Conflict Doctrine, however, is to avoid  
4 putting a public official in a position where there is a risk that a personal  
5 relationship may influence that official's individual determination as to  
6 what the City's interest should be. The issue here is whether Council-  
7 member de la Torre's personal relationships with the plaintiffs in the  
8 CDRA litigation, one of whom is his spouse, pose such a risk. It has also  
9 been suggested that applying the Common Law Conflict of Interest  
10 Doctrine here would pose grave concerns of violating Councilmember de  
11 la Torre's First Amendment rights. Councilmember de la Torre's  
12 campaign activity and political advocacy, including his advocacy for  
13 district based litigations and in support of the CDRA lawsuit are not,  
14 however, the basis for the conflict of interest. The conflict is based on  
15 Councilmember de la Torre's personal relationships with the plaintiffs in  
16 the CDRA litigation and the issue is whether there is a risk to those re-  
17 lationships may influence Councilmember de la Torre's actions as a  
18 Councilmember, not a private citizen, with respect to that litigation.  
19 Moreover, even if Councilmember de la Torre is disqualified from partici-  
20 pating in Council decisions regarding the CBRA litigation, he would still  
21 be able to participate in Council decisions unrelated to the litigation  
22 regarding whether the City should adopt district based elections. Nor  
23 would it deprive him of the ability as an individual to continue his  
24 advocacy in support of the CDRA lawsuit. Fourth, it has been suggested  
25 that seeking to disqualify Councilmember de la Torre demonstrates an  
26 unwarranted distrust in his ability to comply with his obligations as a  
27 Councilmember, including his obligations to keep confidential material  
28 discussed in closed session wouldn't put aside his conflict in acting in the

1 best interests of the City. This misunderstands the Common Law Doctrine  
2 which does not require a determination that the conflict will come to  
3 fruition and actually result in improper action. Thus, in a 2010 case, *D. A.*  
4 *Exrail K.A. vs. St. Helena Unified School District*, (2010) West Law  
5 370333, a federal district court applied the California Common Law  
6 Doctrine to disqualify a district schoolboard member from serving as a  
7 guardian ad item for a child engaged in litigation against the district. As  
8 the court explained, “As a board member, the father must act to protect the  
9 district’s interest and his place as guardian ad litem, he is charged with re-  
10 presenting the interests of his minor daughter in litigation against the  
11 district. Although the father declares that this does not present a conflict  
12 of interest and represents that he will absent himself from the Board’s  
13 litigation strategy sessions, the court finds that the father’s dual role  
14 creates an impermissible conflict of interest.” And as explained in the  
15 California Attorney General Opinion referenced in the written staff report,  
16 the determining factor is whether there is a “temptation to act for personal  
17 or private reasons,” thereby presenting a “potential conflict.” The law,  
18 therefore, “will not permit” a public official “to place himself in a position  
19 in which he may be tempted by his own private interest to disregard those  
20 of his principle.” If this temptation exists, there is a conflict requiring  
21 “complete abstention” from the particular matter regardless of whether the  
22 public official actually would succumb to this temptation. Finally, it has  
23 been suggested that Council should disregard my legal analysis because it  
24 is biased as a result of my participation in defending the City in the CDRA  
25 litigation. Council, of course, remains free to disregard or differ with my  
26 legal analysis, but in defending the City, I have acted as counsel for the  
27 City at Council direction. This does not demonstrate any personal bias.  
28 Under §708 of the City’s Charter, the City Attorney’s Office provides



1 legal representation to the City. In accordance with the Charter and Cali-  
2 fonia Rule of Professional Responsibility 1.13 in representing the City,  
3 absent circumstances not present here, we are obligated to take direction  
4 from the City's duly authorized constituents overseeing the litigation. In  
5 this case, the City Council. Indeed, as the commentary to Rule 1.13  
6 makes clear in representing an organization, "a lawyer ordinarily must  
7 accept decisions and organization's constituents make on behalf of the  
8 organization even if the lawyer questions their utility or prudence. It is not  
9 within the lawyer's province to make decisions on behalf of the organiza-  
10 tion concerning policy and operations, including ones entailing serious  
11 risk." My actions in representing the City in the CDRA case and in pro-  
12 viding the legal analysis set out in the written staff report and in my  
13 comments today have been and remain in accordance with these rules and  
14 principles. With that, I am happy to try and answer any questions.

15 HIMMELRICH: Councilmember . . . I see. I see. Councilmember Davis, can you hear me?

16 DAVIS: Yes.

17 HIMMELRICH: Thank you.

18 DAVIS: So thank you, George for that. I just have a couple of questions. One, was  
19 there any preliminary opinion from the FPPC?

20 CARDONA: No. I have not received anything from the FPPC.

21 DAVIS: And do we have a timeframe in which the FPPC believes that they can get  
22 us a final determination?

23 CARDONA: I have had conversations with the FPPC, but they have not given me a  
24 timeframe in which we can expect a final determination.

25 DAVIS: And assuming, well, that's my questions based on your staff presentation;  
26 Thank you.

27 HIMMELRICH: Anyone else? So I have a question, George, and that is in . . .

28 CARDONA: Where I think . . .

1 HIMMELRICH: Oh, sorry.

2 CARDONA: Councilmember Brock had a question. I don't know if you want to go to  
3 him first.

4 HIMMELRICH: I actually am looking at – okay, go ahead, Phil.

5 BROCK: Okay, thank you, George. My question is could we temporarily disquali-  
6 fy Councilmember de la Torre for the closed session today pending the  
7 FPPC decision? Or Attorney General's decision? Could we do a tempo-  
8 rary recusal in order to proceed with the closed session today, which  
9 would not harm Councilmember de la Torre's interest and then hold the  
10 rest depending on the official decision from a body outside of our City  
11 Council?

12 CARDONA: So Councilmember de la Torre could recuse himself from proceedings  
13 today. If he did that, we could proceed with the discussions today and any  
14 actions that would come from those or guidance that would come from  
15 those decisions would be made without Councilmember de la Torre's  
16 participation. That would leave open the issues under both the Common  
17 Law Conflict and potentially the FPPC for a later date, but that is some-  
18 thing that the Council could choose to do and it could proceed with the  
19 CDRA discussion under those circumstances with a voluntary recusal by  
20 Councilmember de la Torre.

21 BROCK: And if I could follow up because the initial, at least my official perception,  
22 Councilmember Parra and I initiated the request for the closed session so  
23 that we could be brought up to date on what has happened so far in the  
24 status of that lawsuit. So I don't, unless I'm wrong, I don't see that we're  
25 going to make any decisions today.

26 CARDONA: Or there would also be a discussion of where we are and potential strategy  
27 questions relating to the case going forward, anticipation of the brief that's  
28 due in March.

1 BROCK: So we would still have a follow up?  
2 CARDONA: I wouldn't – we would still have a follow up session between now and the  
3 [inaudible] . . .  
4 BROCK: Thank you, George.  
5 HIMMELRICH: Anyone else? Okay, I have a question, George, and that is it's my under-  
6 standing, I looked a few FPPC decisions today that they disclaim any  
7 advice on common law conflicts. They say we're only ruling under the  
8 Political Reform Act.  
9 CARDONA: That is correct.  
10 HIMMELRICH: So does that mean . . .  
11 CARDONA: The FPPC writers with guidance on financial conflicts under the PRA  
12 and §1090. Depending on how that advice came out, the Council  
13 potentially still would have to reach the common law conflicts issue.  
14 HIMMELRICH: I do – yes, I understand that, and so even if the FPPC rules on financial  
15 1090, you know, Political Reform Act conflict issues, we still won't have  
16 a final determination on the common law issues unless they venture into  
17 that area of law. Is that right?  
18 CARDONA: Uh, the FPPC and their opinions typically disclaims providing guidance  
19 on common law conflicts. In other words, they typically say they will not  
20 provide guidance on them.  
21 HIMMELRICH: So is it accurate that any opinion we get from the FPPC will probably not  
22 analyze the area we really need to be looking at here?  
23 CARDONA: Um, unless the FPPC were to break from its common practice, guidance  
24 they provide will apply only the PRA and §1090. They will not provide  
25 guidance on common law conflicts. Again, unless they were to radically  
26 break from their past practices.  
27 HIMMELRICH: And so ultimately as I understand it, and this could be wrong, but we're  
28 making the decision, George, and not you. You're advising us and then

1 we decide if there's a conflict. Is that right?

2 CARDONA: Correct. I have provided you with my legal guidance and my opinion as  
3 to the legal analysis, but ultimately the determination as to whether there's  
4 a conflict that would require Councilmember de la Torre to recuse – to be  
5 disqualified would be one for the Council.

6 HIMMELRICH: Thank you. Um, are there any other – that's the end of my questions. Are  
7 there any other questions? Councilmember McKeown.

8 McKEOWN: Well, thank you. The answer we just got begs another question. If this  
9 were financial conflict, then the FPPC would be the higher power to  
10 whom we could turn for resolution. Given that it is an arguably not finan-  
11 cial, but a common law conflict, who, in this situation is the higher power?

12 CARDONA: The City – we sought guidance from the California Attorney General, who  
13 does provide advice on common law conflicts of interest, however. Their  
14 statutory authority recently was changed, such that they will only provide  
15 advice to City Attorneys if it relates to a criminal matter. So the  
16 California Attorney General's Office declined to provide advice with  
17 respect to a common law conflict of interest. The answer is that there  
18 essentially is no higher authority other than potentially a court would be  
19 the only other authority. And it is not clear at this time that the City could  
20 pursue an action in court. In other words, it's not clear that the situation is  
21 ripe for the City to pursue an action in court.

22 McKEOWN: Let me follow up then. If, indeed, the only way to get this to court would  
23 be for the conflict of interest to become ripe by a Councilmember  
24 engaging in a vote where there's a conflict of interest. What are the  
25 penalties then? Because I know that for 1090, the penalties are quite  
26 severe.

27 CARDONA: And under the common law, they can be severe as well. The action could  
28 be voided and depending on the timing, that could have fairly severe

1 effects, but those would be the consequences. The action could be voided  
2 and that's one of the things we're trying to avoid. In addition, we have  
3 seen today, as part of the written materials that were submitted, there's  
4 now a threat of litigation posed by a group of citizens. This just came in  
5 today and it's part of the comments, but there's a threat of litigation posed  
6 if we proceed with Councilmember de la Torre.

7 HIMMELRICH: We lost you, George, for a minute. There's a threat of litigation posed if?

8 CARDONA: There's a threat of litigation that states that they threaten to sue the City if,  
9 in fact, the City proceeds with sessions of decisions relating to the CRA  
10 case without disqualifying Councilmember de la Torre.

11 HIMMELRICH: Um, thank you. And Oscar, I saw your hand up. Do you – did you have a  
12 question?

13 de la TORRE: Yes, I have a series of questions for Mr. Cardona. Mr. Cardona, did we at  
14 some point meet to discuss the Pico Neighborhood Association vs. The  
15 City of Santa Monica lawsuit?

16 CARDONA: We did.

17 de la TORRE: Do you recall when, how long ago was that?

18 CARDONA: I recall that I met with you before you took your Council seat to discuss  
19 the potential conflict and to discuss some advice from the FPPC and the  
20 California Attorney General.

21 de la TORRE: Right. Prior to that discussion, did you advise me that I should or could be  
22 represented by legal counsel in that discussion?

23 CARDONA: I believe I told you that I represented the City and that attorney-client  
24 privilege was held by the City and not by you.

25 de la TORRE: Yes, correct. I recall that. Prior to that discussion, let me ask you this, do  
26 you remember if I had legal representation with me for that discussion?

27 CARDONA: You did not.

28 de la TORRE: You're correct in that. In that discussion, did you ask me questions about

1 the retainer agreement my wife entered into with her attorneys and any  
2 financial arrangements in that retainer agreement?

3 CARDONA: I asked you specific questions that would relate to seeking guidance as to  
4 whether and I will . . . yes, I'm going to ask counsel for some direction.

5 de la TORRE: Let me ask you the question though, because I recall . . . You wanted to  
6 know if my wife was . . .

7 HIMMELRICH: It's me, Oscar. Oscar, you need to let the City Attorney speak if he needs  
8 to speak.

9 de la TORRE: Okay, that's . . .

10 CARDONA: And Oscar, I'm only asking for guidance before I answer these questions,  
11 because my answers to these questions will get into conversations that I  
12 had with you and your position as a Councilmember elect. As such, I take  
13 the position that those conversations are subject to the attorney-client  
14 privilege that is held by Council, as I advised you during the conversation.  
15 So I don't believe that I can talk about the specifics of those conversations  
16 without getting direction from Council that I can answer regarding conver-  
17 sations that I believe are subject to the attorney-client privilege that is held  
18 by the City.

19 de la TORRE: You do recall that we talked about the financial conflicts of interest and  
20 you do recall that you asked me about the arrangement or a potential ar-  
21 rangement. You were asking if my wife was to make any money  
22 regarding the litigation, and do you recall that I said "no," that there was  
23 no fact that I'm aware of that I had a conflict of interest, my wife had a  
24 conflict of interest [much background noise].

25 HIMMELRICH: Everyone, excuse me. Excuse me. Will everyone except for Mr. de la  
26 Torre, Councilmember de la Torre and our Interim City Attorney, please  
27 mute because we're having interference on the line. And . . .

28 CARDONA: So, Mayor Himmelrich, I can answer this without getting into attorney-

1 client privilege, and if by answering it in a different way, which is  
2 Councilmember de la Torre, based on our conversation, I provided a  
3 request for guidance to the FPPC. That request for guidance set out your  
4 representations that, in fact, you had no arrangement by which you or your  
5 wife would receive any money in connection with the CDRA case.

6 de la TORRE: Okay. So I just want to remind you that we had that discussion and that it  
7 was very clear that I let you know that I don't make any money. You  
8 know, I don't have to pay any money.

9 HIMMELRICH: Oscar, not a question, not a question, Oscar. Are you done with your  
10 questions?

11 de la TORRE: Okay. And I provided information concerning the relationship between  
12 my wife and her attorneys. Do you recall that, Mr. Cardona?

13 CARDONA: Okay, I don't know if I can answer regarding the specific conversations.

14 HIMMELRICH: I am going to terminate these questions, Oscar.

15 de la TORRE: Wait a minute. I thought . . . we're having a dialogue in an open  
16 discussion. I mean, you can't terminate the questioning. I mean, that's  
17 what this was for. I was hoping . . .

18 HIMMELRICH: No, depending upon whether you're trying to put into a public meeting,  
19 which this is, impermissible attorney-client privileged issues. So I am  
20 concerned that the City Attorney is being . . .

21 CARDONA: I sounds like I can answer this a different way that will solve the problem,  
22 but Councilmember de la Torre, . . .

23 HIMMELRICH: Thank you.

24 CARDONA: . . . I represented to the FPPC as well that neither you nor your wife had  
25 any likelihood of receiving any money in connection and the represent-  
26 ation that there were arrangements such that neither you nor you're your  
27 wife would receive any of the attorney's fees that were to be paid and that  
28 potentially could be paid in the CDRA case or had any obligation to pay

1 anything to the attorneys, and that the attorneys working, as you believed,  
2 under an agreement under which they would bear all of those costs and  
3 they would receive all of it. Is that get at what you were getting at?

4 de la TORRE: Yes. In fact you did send a letter to the FPPC, did you not?

5 CARDONA: I did.

6 de la TORRE: And you did that without first working me to draft the appropriate letter.  
7 You did it on your own. I didn't get – you didn't send me a draft of the  
8 letter, correct?

9 CARDONA: I did not. I crafted the letter, I sent it to the FPPC, I advised the FPPC that  
10 it had been copied to you, and that you could provide additional informa-  
11 tion if you chose.

12 de la TORRE: Why didn't you work with me to craft an appropriate letter to the FPPC  
13 rather than just sending your own letter? I thought we had agreed that we  
14 would work on it together and sign off on it together.

15 CARDONA: I was acting as counsel for the City and felt it appropriate on the City'[s  
16 behalf to draft a letter, provide the information that I believed the City  
17 needed to provide in order to obtain an opinion on behalf of the City as a  
18 whole.

19 de la TORRE: Uh.

20 HIMMELRICH: Oscar, will you stop for one minute so Councilmember McCowan, do you  
21 have something that we need to . . .?

22 McCOWAN: I do. Much sooner related to this back and forth and it has to do with  
23 privilege and breaking privilege, and I'm just curious, so part of why this  
24 conversation is hard for the City Attorney to have is because there is an  
25 assumption of privilege between Councilmember de la Torre and the City  
26 Attorney based on the conversation that they had. And my question is,  
27 what determines whether or not privilege is broken and do both parties  
28 have to agree to that or can one party break privilege?



1 CARDONA: In this case, the privilege is held by the City, as I advised Councilmember  
2 de la Torre, not by Councilmember de la Torre. The ability to break  
3 privilege rests with the City, not with Councilmember de la Torre.

4 McCOWAN: Okay. So I feel that there is problem here because a lot of what's sort of  
5 being laid out right now in this Q and A is a conversation that I was in-  
6 formed about one afternoon, after picking up my children and arriving  
7 home and Councilmember de la Torre gave me this sort of play-by-play of  
8 this conversation. So there's clearly already a break in privilege here, and  
9 so I'm just . . .

10 CARDONA: No, that's not a break in privilege because he was speaking with another  
11 Councilmember or Councilmember elect.

12 McCOWAN: Okay. So I'm good. I just to make sure I'm up to know all of this. Got it.  
13 Thank you.

14 CARDONA: Yeah. So I tried to answer the question . . .

15 McCOWAN: So, George, you may want to – so George, you may want to explain how  
16 the privilege that we have as a Council and that protects our conversations  
17 in concerning legal matters operates with respect to individua Council-  
18 members versus the Council as a whole.

19 CARDONA: The privilege is held by the Council as a whole, which means that those  
20 conversations are privileged and that privilege can be waived only by the  
21 Council as a whole, not by the individual Councilmember.

22 McCOWAN: And conversations between Councilmembers remain under . . .

23 CARDONA: Conversations between Councilmembers in the context of Councilmember  
24 to Councilmember, if they are part of the Council, those do not waive  
25 privilege.

26 McCOWAN But a conversation between a Councilmember and a third party would not  
27 – would waive the privilege – or would breach the privilege basically.  
28 Would be a violation.

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1 CARDONA: Yes.

2 McCOWAN: And what are the consequences if we have a break in that? If we have a  
3 breach of the privilege or breach of the confidentiality of a closed session?

4 CARDONA: In conversations – well, this wasn't in closed session, so it wouldn't be a  
5 breach of closed session.

6 McCOWAN: I understand that.

7 CARDONA: But if the privilege is breached, then the privilege is often deemed waived  
8 and there can be an inquiry as to the full context of the conversations by  
9 third parties and there's no longer protection for it.

10 de la TORRE: May I continue with the questions, Mayor Himmelrich?

11 HIMMELRICH: Yes.

12 de la TORRE: Okay. Mr. Cardona, you say you haven't received – you just told us today  
13 that you haven't received an opinion from the FPPC and that the Attorney  
14 General's Office will also – we cannot – we won't expect an opinion also  
15 from the Attorney General's Office, is that correct?

16 CARDONA: Correct. I set out in the staff report I have not received guidance from the  
17 FPPC yet and the California Attorney General's Office has advised that it  
18 will not provide an opinion because they believe it falls outside their  
19 statutory mandate.

20 de la TORRE: Who instructed you to seek an opinion from the Attorney General?

21 CARDONA: I made a determination to seek an opinion from the California Attorney  
22 General because they are typically the body that provides advice on con-  
23 flicts of interest, and in the past, they have provided such advice.

24 de la TORRE: Okay. Let me ask you a question here. Did you appear as an attorney  
25 representing the City of Santa Monica in the trial of the Pico Neighbor-  
26 hood Association case versus the City of Santa Monica?

27 CARDONA: I sat through the trial and made occasional appearances. The primary  
28 appearances at trial were made by outside counsel who was retained by . .

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1 de la TORRE: So your answer is yes then, right?

2 CARDONA: I made occasional appearances, yes.

3 de la TORRE: Occasional appearances in your official capacity for the City of Santa  
4 Monica, right?

5 CARDONA: Correct.

6 de la TORRE: Okay. Did you advise the previous City counsel in the course of that case  
7 to not engage in any meaningful settlement discussions and instead pay  
8 tens of millions of dollars to your friends at Gibson, Dunne & Crutcher?

9 CARDONA: I cannot answer . . .

10 HIMMELRICH: I object. It's privileged information. Excuse me, I'm going to object.  
11 George, you shouldn't answer these questions. Oscar, what we have in-  
12 structed the City Attorney to do until it's determined that you don't have a  
13 conflict is not something that you're privy to. In fact, I'm offended that  
14 you're asking that question.

15 de la TORRE: Alright. Let me ask a further question.

16 HIMMELRICH: Oscar, we are in a public meeting. What we tell our attorneys to do about  
17 settlement is as private as what you tell your attorneys to do.

18 de la TORRE: I didn't decide to make this a public hearing, but anyway, have you ever  
19 advised me that I have a financial conflict of interest in addressing the  
20 issue of district or [inaudible] or the Pico Neighborhood Association case?

21 HIMMELRICH: Sorry, Councilmember de la Torre, just because you didn't decide to make  
22 something a public meeting, this is a public meeting. Because it is a  
23 public meeting, you cannot just start to engage in certain conversations  
24 that are otherwise privileged. That is your responsibility as the person  
25 asking the questions that are leading in an inappropriate direction.

26 de la TORRE: We're moving on. We've moved on from that, I understand. Mr.  
27 Cardona, do you now contend that I do have a financial interest in the  
28 case?

1 HIMMELRICH: I contend you have a financial interest. Forget what George contends. I  
2 contend that because you were ordered to pay costs and because you were  
3 sanctioned in the Superior Court for not producing discovery to the City,  
4 that you have a financial interest in not losing either of those expenses.

5 de la TORRE: Yeah, but I'm not . . .

6 CARDONA: If I could come back for a second. If I could come back for a second.  
7 The financial conflicts are not of interest today. All that the staff report  
8 addresses is the common law conflict of interest. The financial conflicts, I  
9 believe, the better course would be to waive for the FPPC guidance.  
10 However, the staff report addresses common law conflicts of interest and  
11 as set out in the staff report, I believe the legal analysis demonstrates that  
12 you have type of conflict, which is independent of any financial conflict.

13 de la TORRE: Mr. Cardona, who directed you to prepare the January 22 staff report?

14 HIMMELRICH: Objection. Privilege. I'm sorry. Oscar, this is privileged. You may not  
15 interfere in our directions to our attorneys in the same way that you, too,  
16 when you give them directions in our closed sessions, you, too, will be  
17 able to have that be confidential because that's what attorney-client  
18 privilege is all about.

19 de la TORRE: I'm just trying to understand how, as a City Councilmember, you know,  
20 we can direct our City Attorney to do work on our behalf as a City  
21 Council? Can one City Councilmember give direction to the City  
22 Attorney to do something or is it a collective decision?

23 HIMMELRICH: It is always collective direction. And I've been on the Council for six  
24 years. That is the way it works. There is – it has always been collective.

25 de la TORRE: So is it safe to say that the majority of the City Council directed Mr.  
26 Cardona to produce the staff report for January 22? Is that true then? It  
27 wasn't just one person. It wasn't one City Councilmember, right?

28 CARDONA: I can't answer that question. Again, because it's privileged information.

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1 de la TORRE: Okay. Well, you know, just so that I understand, it takes four members of  
2 the City Council to direct the City Attorney to produce a report or to do an  
3 investigation or to do anything, is that correct?

4 HIMMELRICH: Unless it's something that the City Attorney is empowered to do by the  
5 Charter and the City Attorney's other obligations, it's the City Attorney.  
6 Some things don't require any direction of anybody because it is what an  
7 attorney does.

8 de la TORRE: Okay.

9 HIMMELRICH: Or a city does.

10 de la TORRE: Thank you. Thanks, Mayor Himmelrich, for that. Mr. Cardona, did you  
11 discuss this agenda item with me at any time or otherwise even notify me  
12 that this item would be placed on the agenda?

13 CARDONA: Mayor, I'm not sure I can answer that, but I did not have discussions with  
14 you, Oscar.

15 de la TORRE: I mean, it was put on the agenda on Friday, right? Is that my  
16 understanding?

17 CARDONA: Correct.

18 de la TORRE: And you didn't pick up a phone, you didn't send me an email, you didn't  
19 give me a heads up that that's what was going to happen, right?

20 CARDONA: I did not have conversations with you prior to putting the staff report on,  
21 no.

22 de la TORRE: Okay. There are a number of points raised in the legal opinion in the letter  
23 that I had to get an independent legal opinion from lawyer, Daniel  
24 Ambrose. Have you read the entire letter, Mr. Cardona?

25 CARDONA: I have read the entire letter and attempted to address those arguments that  
26 I believe merited addressing and the comments I made at the start of this  
27 meeting.

28 de la TORRE: Okay. And in the Attorney General opinion that you provided in your

1 staff report, you referenced – you showed me that opinion. It’s from 2009  
2 and you told me that it was very similar to the facts in my case. Do you  
3 still believe that those facts hold and it’s similar to the facts in my situa-  
4 tion?

5 CARDONA: Again, without getting into conversations I had with you, I remain of the  
6 view that the principles set out in that case support a conclusion that you  
7 were suffering from a common law conflict of interest.

8 de la TORRE: So just to remind everybody, in that case, a business obtained an amend-  
9 ment to its conditional use permit from the City of Torrance, its Planning  
10 Commission, correct?

11 HIMMELRICH: Oscar, I’m going to call this not questions, but actually a discussion and I  
12 think we should move to public comments, hear what the public has to  
13 say, and then you can commence this line. Look, I’ve done it myself. I’m  
14 a lawyer. I know what you’re doing and I think it’s fine. You are allowed  
15 to air, right, you know, the contentions that you are bringing into this  
16 meeting about not having a conflict. Let’s hear from the public. You can  
17 continue this out.

18 de la TORRE: Can I have one more question, the last one. Are you aware, Mr. Cardona,  
19 of any authority that allows a City Council to exclude a duly elected  
20 councilmember from council discussions, deliberations and decisions  
21 based on an unadjudicated allegation of a conflict of interest? If so, what  
22 is that authority?

23 CARDONA: The City Charter, Section 605, vests in the City Council all powers of the  
24 City subject to the provisions of the Charter and the California Constitu-  
25 tion. When the necessary powers of the City vested in its City Council are  
26 to ensure the procedures by which it approves and takes actions comply  
27 with law. Part of the City Attorney’s role as recognized by the Charter is  
28 in providing legal advice on these procedures to make sure that they

1 comply with law. As part of that, the City Council has the authority to  
2 make determinations as to conflicts to ensure that when the subsequently  
3 consider those actions, they are not participating in decisions that violate  
4 the law because one of the Councilmembers present has a conflict. But  
5 the City Council does have the authority as part of its necessary power to  
6 ensure that it is not acting in violation of law to make determinations and  
7 ensure that a Councilmember who is sitting and participating in those  
8 decisions is not suffering from a conflict.

9 de la TORRE: Okay. Even though earlier you talked about . . .

10 HIMMELRICH: [laughter] . . . thought that was going . . .

11 de la TORRE: Okay, . . .

12 HIMMELRICH: But you're arguing that. You're arguing. So let's hear from the public  
13 and then we can go back to that.

14 de la TORRE: Yeah.

15 HIMMELRICH: Okay? Thank you. So I believe there are number of questions. So let's  
16 open the public hearing. Oh, Councilmember McCowan.

17 McCOWAN: Just one more before we go into public comment. Just a question to get  
18 answered. Um, we – sometimes in other issues we'll talk about like ex  
19 parte conversations and stuff like that and disclosure of those in advance,  
20 I'm just curious in this regard if anyone on the dias has had conversations  
21 about the recusal issue with attorney Schenkman?

22 HIMMELRICH: Councilmember de la Torres, you have? You're muted.

23 de la TORRE: That's privileged information, right?

24 HIMMELRICH: No. Look, you're saying you don't have a privilege with Mr. Schenkman,  
25 that you were not one of the parties to that case, right? That's not  
26 privileged.

27 CARDONA: Councilmember Himmelrich, if Councilmember de ala Torre is, in fact,  
28 represented by Mr. Schenkman, then he has the right to assert that privi-

1 lege.

2 HIMMERICH: Personally represented?

3 CARDONA: Yes, personally represented.

4 HIMMELRICH So is that what you're saying that he's your personal lawyer, Mr. de la  
5 Torre?

6 CARDONA: And Mayor Himmelrich, I should point out at one of the depositions Mr.  
7 Schenkman, in fact, represented that he was representing Mr. de la Torre  
8 individually, so I believe Mr. de la Torre may have the right to assert the  
9 privilege.

10 McCOWAN: Okay. I understand. Um, okay, so I was asking universally of all  
11 Councilmembers if they've had conversations with the attorney represent-  
12 ing the other party in this case on the issue of recusal of Councilmember  
13 de la Torre. So I think . . .

14 CARDONA: As you've heard before that I said no, I have not.

15 HIMMELRICH: And I have not. Has anyone else?

16 McCOWAN: And I have not. I think it's just important for the public to be aware of.  
17 Okay, thank you.

18 McKEOWN: Did we hear from Councilmember Brock on that question?

19 BROCK: I didn't say anything because it wasn't relevant to me, so I'm taking all  
20 this in and listening quietly, trying not to do what I usually do. I can tell  
21 you, in general, even though this is not your answer Kevin, I'm frustrated  
22 by the tone of this meeting and the fact that we are going so long in this  
23 disrupted issue. Whatever that means to anyone, I'm concerned about  
24 that. I'm concerned about how our Council [inaudible] from the  
25 downside.

26 HIMMELRICH: Okay.

27 BROCK: Thank you.

28 McKEOWN: Go ahead and answer Mayor Pro Tem McCowan's question.



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1 HIMMELRICH: Yeah, Phil, we're asking for an answer to the question, have you discussed  
2 with Kevin Schenkman the issue of recusal that we're discussing tonight?  
3 BROCK: No, I have not discussed issues with attorney Schenkman in the past.  
4 HIMMELRICH: And I assume Councilmember Parra that your answer is the same, you  
5 haven't discussed recusal with . . .?\

6 PARRA: Correct.  
7 HIMMELRICH: No, right? So that's the answer?  
8 PARRA: No.  
9 HIMMELRICH: So were fine. Yeah, the answer is no. Okay, so now we have the answers  
10 for everyone and now let's go to the public hearing and let's hear from the  
11 public. So how many . . .?

12 ANDERSON-WARREN: We have six callers, Mayor.  
13 HIMMELRICH: Great. And – oh this is, um. Oh, there we go. So we have – may we have  
14 – we have six callers and do we have people on video? Is that a general?  
15 I'm sorry. I'm dealing with my own special issues here.

16 ANDERSON-WARREN: We have six callers and the people who signed up for the video have  
17 not logged into the meeting, so they may be on the phone. We're not sure.  
18 HIMMELRICH: So, well, let's start with the callers and let's start with the first one.  
19 ANDERSON-WARREN: Okay, here we go.  
20 [transferring Stan Epstein]  
21 ANDERSON-WARREN: Stan Epstein, welcome to the meeting. Your time starts now. Mr.  
22 Epstein, you're in the meeting. Your time starts now.  
23 EPSTEIN: Thanks. This is Stan Epstein. I'm sorry, I can't be a guinea pig. I'm also  
24 on the phone tonight, but it sounds like . . . This is Stan Epstein.  
25 HIMMELRICH: Stan, turn off your whatever else is in the background. There's a time lag.  
26 ANDERSON-WARREN: Mr. Epstein, are you with us?  
27 EPSTEIN: Yes.  
28 ANDERSON-WARREN: Yeah, there's a delay for the other audio that you're listening to, so

1 turn down the meeting in the background.  
2 EPSTEIN: I just did. Thank you. We're talking about two different possible  
3 conflicts of interest: one is common law and the other is financial. With  
4 respect to financial, I'm very disturbed that the Council didn't waive the  
5 privilege about the conversations that Oscar had with George. Those  
6 should be very significant to deciding this and it also shows that the FPPC  
7 is not going to ever find that there was a financial interest that Oscar had.  
8 I've spoken to both Oscar and to the President of the Pico Neighborhood  
9 Association and convinced there isn't any. In fact, it would be illegal for  
10 any of the legal fee to be paid to Oscar's wife or to be paid to the PNA.  
11 There is no financial. With respect to the common law, the comparison to  
12 the other case is absolutely ridiculous here. In the case that the AG was  
13 talking about, there was the son of the government official was to receive  
14 a major loan from the government agency. In this case, Maria is only re-  
15 presenting all of the citizens of Santa Monica. She gets nothing special.  
16 It's not like she got hurt on a bus, She's – if she wins all 90,000 people in  
17 Santa Monica, win in the same way that she wins. That's her status. She  
18 has no special standing, so therefore Oscar has no personal interest.  
19 That's different from anybody else who cares about this issue. With re-  
20 spect to secrecy which George says is not the basis for this claim, I do  
21 know that Sue was extremely concerned about Oscar's possible failure to  
22 keep the secrecy, which is totally unwarranted. He has a legal duty to  
23 keep secret anything that is said in closed session and I'm absolutely sure  
24 he will do so, just as Kevin and Sue, who have spouses that have major  
25 interests in town and are very active in significant issues, don't have bed  
26 talk with their spouses.

27 ANDERSON-WARREN: Thank you. Your time is now up.

28 EPSTEIN: Thank you.

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1 HIMMELRICH: Thank you.

2 [transferring Ann Thanawalla]

3 ANDERSON-WARREN: Ann Thanawalla, welcome to the meeting. Your time starts now.

4 Ms. Thanawalla, you're in the meeting. Hi. Your time starts now.

5 THANAWALLA: Hello, City Council. Process is what has to happen here and we're not  
6 seeing that. There is no case law that can determine the outcome of this.  
7 As elected officials, my elected officials, all of you, I implore you to either  
8 seek a judge's opinion, go to court, or move on because Councilmember  
9 de la Torre has repeated his position. He has not waived from his posi-  
10 tion with regard to district elections nor have any of the other Council-  
11 members. So, if you think it's okay to decide that he should sit it out,  
12 while you all get to go in and continue the conversation with your own in-  
13 dividual positions, that's ridiculous. You either take it to court, follow a  
14 process with this common law conflict, as you're calling it, where no  
15 viable case law exists, or Oscar joins in the conversation about whether or  
16 not we should continue to pay outrageous legal fees that we are all on the  
17 hook for and you continue to not let us know how much those are or you  
18 don't. So I'm asking you to do not allow some fake organizations to push  
19 your buttons, to say, "Oh, my gosh, someone's going to take us to court."  
20 No, you go to court, okay, and you do it without being abrasive towards  
21 your City Councilmember and I believe Mr. Cardona made an inaccurate  
22 Mr. Cardona . . .

23 ANDERSON-WARREN: Thank you, your time is now up.

24 THANAWALLA: . . . said the conversations he had with Oscar were attorney-client  
25 privileged because he wasn't . . .

26 HIMMELRICH: Your time is up, Ann. Ann, your time is up.

27 THANAWALLA I'm finishing my – I'm . . .

28 ANDERSON-WARREN: Thank you.

1 [transferring Denise Barton]

2 ANDERSON-WARREN: Denise Barton welcome to the meeting;. Your time starts now.

3 BARTON: Good afternoon. Would this be another [inaudible] review with Santa  
4 Monica City Council, trying to defame Councilmember de la Torre's  
5 character and reputation? Just like you did to the Pico Youth Center  
6 before the election when Oscar de la Torre was previously running for a  
7 Councilmember seat? I ask only because at the bottom of page 5 you  
8 answer your question, where it currently states the Common Law Doctrine  
9 and its application. Then as can be seen on page 6, there would seem to  
10 need to be a financial benefit necessary to a direct family member, where  
11 in this situation there is nor. Neither his attorney Kevin Shenkman or the  
12 court system being a direct family member. And neither Oscar de la Torre  
13 or his wife, Maria Loya, financially benefit from the case. But the  
14 community at large will benefit from their actions, the actual conflict of  
15 interest situations on the City Council which have been allowed by you  
16 starting with Gleam Davis' conflict of interest voting and swaying of the  
17 discussion on the Miramar Development Agreement. Owned by Dell,  
18 which her husband works for, there is a Development Agreement petition  
19 was submitted. Then, there's Terry O'Day and the electric car chargers  
20 company he worked for, which the City had contracts with. He was also  
21 allowed to vote and swayed the discussion to financially benefit himself  
22 and his company. Then, after he left the company, he said he didn't have  
23 to recuse himself even though he still held stock in the company and  
24 continued to financially benefit from his actions. And finally we have  
25 Pamela Connor, who was on the Metro Board and the Exrail Line and  
26 anyone who thinks that Pamela Connor did not financially benefit from  
27 that is fooling themselves. For all these reasons, Councilmember Oscar de  
28 la Torre does not have a conflict of interest in the CRD case. Thank you.

RE: PICO NEIGHBORHOOD ASSOCIATION  
CITY COUNCIL HEARING  
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ITEM 8A

1 HIMMELRICH: Thank you.

2 [transferring Tricia Crane]

3 ANDERSON-WARREN: Tricia Crane, welcome to the meeting. Your time starts now.

4 CRANE: Good afternoon, Mayor Himmelrich and City Council. Interim City  
5 Attorney Cardona has not presented a persuasive argument as to why  
6 newly elected Councilmember Oscar de la Torre should be prevented from  
7 participating in the City Council discussion concerning the voting rights  
8 lawsuit in tonight's closed session. The Council should consider and re-  
9 spect the fact that the voters supported the election of Oscar de la Torre  
10 with Phil Brock and Christine Parra, precisely because the three shared a  
11 campaign platform that promised to seek an end to the City's long and  
12 costly fight against district elections. And then there's the fact that  
13 Councilmember de la Torre's attorney has advised him to not recuse him-  
14 self from engaging in tonight's discussions on the district in case.  
15 Notwithstanding Mr. Cardona's advice, the determination on this matter,  
16 whether or not there is a common law conflict of interest for Council-  
17 member de la Torre, is to be made by this Council. It is your decision.  
18 Those of us who seek transparency in our local government really do  
19 appreciate the fact that Mayor Himmelrich has called for this discussion to  
20 be held in public. Thank you very much.

21 HIMMELRICH: Thank you.

22 [transferring Bob Selden]

23 ANDERSON-WARREN: Bob Selden, welcome to the meeting. Your time starts now.

24 SELDEN: Thank you.

25 ANDERSON-WARREN: Go ahead, you're in the meeting. Turn down your background the  
26 background meeting. Good.

27 SELDEN: There's a delay, I guess. Thank you.

28 ANDERSON-WARREN: There is.

1 SELDEN Good evening, Councilmembers. This is Bob Selden. My understanding  
2 is that the issue of financial interest is not at state here and so I'm going to  
3 skip my comments with respect to that. If I'm wrong, feel free to question  
4 me, but my [inaudible] that there's non-financial or personal interest at  
5 state. There's no conflict of interest. One of the things that's troubled me  
6 here is we've heard a lot about case law and precedent, but we haven't  
7 heard anybody apply the facts here to that law, to explain why Oscar has a  
8 conflict. And that is a very serious defect. Now the thing here is that  
9 Oscar is actually operating against the PNA's interest in seeking to vote to  
10 terminate this litigation. Right now, the Court of Appeals has agreed that  
11 the City wins. The only chance for the plaintiffs to prevail is to have it  
12 overturned at the Supreme Court, a case from which Oscar wishes to vote  
13 to withdraw. It's against PNA's interest. It's against his wife's interest.  
14 In that sense, and therefore, there is no conflict of interest with respect to  
15 Oscars position and the City's position. He wants to withdraw it. There is  
16 no win for him and there's no financial win or loss, as I've seen in one of  
17 the letters that was submitted because Oscar stands to gain nothing, Maria  
18 stands to gain nothing. If they win and neither of them is on the hook to  
19 pay if they lose. And if you're unaware of the facts behind that, I'll be glad  
20 to explain it. So I would say that Oscar is entitled to vote. We know how  
21 he's going to vote. It's a public position. He's not – there's no privileged  
22 communications to be discussed here. It's not a question of litigation  
23 strategy. It's a simple up or down vote. And that's the extent of my  
24 comment. I really would appreciate it if you let him vote. We elected him  
25 to do this and I think the residents and the majority want to do it. Thank  
26 you.

27 HIMMELRICH: Thank you.

28 McCOWAN: Mr. Selden, hold on. Mr. Selden, is he gone?

RE: PICO NEIGHBORHOOD ASSOCIATION  
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1 ANDERSON-WARREN: I still have him on unless he hung up.  
2 SELDEN: I'm sorry.  
3 ANDERSON-WARREN Mr. Selden, hold on. The Council has questions for you.  
4 SELDEN: Should I turn my volume back up on the computer?  
5 ANDERSON-WARREN: No, you can listen on your phone. The Council has questions for  
6 you.  
7 SELDEN: Oh.  
8 ANDERSON-WARREN: Yeah.  
9 SELDEN: Thank you.  
10 HIMMELRICH: And I – yes, Mr. Selden, it's Sue Himmelrich and my question is this: Are  
11 you an attorney?  
12 SELDEN: I'm a retired attorney.  
13 HIMMELRICH: And so with respect to what Mr. de la Torre wants to do about the  
14 litigation, you just told us what he wants to do. How do you know that?  
15 SELDEN: It's his public position and I know from his campaigning and from the  
16 public statements he's made, he has been one of the leaders in supporting  
17 [tape skipped] litigation.  
18 HIMMEKRICH: Thank you.  
19 ANDERSON-WARREN: Thank you, Mr. Selden.  
20 SELDEN: Am I done?  
21 ANDERSON-WARREN: You're all done. Thanks so much.  
22 SELDEN: Thank you very much for your time. Bye-bye.  
23 [transferring Olga Zurawska]  
24 ANDERSON-WARREN: Olga Zurawska, welcome to the meeting. Your time starts now.  
25 ZURAWSKA: Good afternoon. In my opinion, the City should wait for a formal  
26 response from the FPPC and/or ask the court to decide on whether there is,  
27 in fact, a common law conflict of interest. Please do not go into a closed  
28 session on this case tonight. And on a more general note, we are still

1 dealing with this lawsuit because we haven't an appointed, as opposed to  
2 an elected City Attorney. An appointed City Attorney works for the  
3 Council, not the residents. The Council that originally decided to defend  
4 themselves against this lawsuit only had one goal: to hold onto their seats  
5 as long as possible. We need an elected City Attorney who will be  
6 looking out for the interests of the residents. Thank you.

7 HIMMELRICH: Thank you.

8 ANDERSON-WARREN: I believe that's the last caller on this item.

9 de la TORRE: Hello, Sue?

10 HIMMELRICH: Yes.

11 de la TORRE: I want to make one correction. One of the callers said that I'm advocating  
12 for the Pico Neighborhood Association to drop the case and that's not true.  
13 I would prefer that the City drop its appeal, but I have not made a public  
14 comment that the PNA should drop this case. I just want to make that  
15 correction.

16 HIMMELRICH: Thank you. So now let's open this up for discussion and – so look, I've  
17 been involved in this. I'm a lawyer. I have a pretty strong opinion. I  
18 talked to Oscar over the weekend. I feel Oscar is disqualified in this case.  
19 Oscar was in my deposition in this case, was in other depositions in this  
20 case, worked on the strategy in this case, and as I said to Oscar over the  
21 weekend, it's like a football game, right? If I am planning, right? If I am  
22 going into a huddle to do my last charge towards the goal line, I am not  
23 inviting the coach for the other team into my strategy session about the  
24 play I'm going to call. I mean, it just does not make sense. Similarly, I  
25 would never be asking Maria Loya or PNA to attend their sessions with  
26 their lawyer, Mr. Schenkman, to discuss what their strategy is going to be  
27 on this case, where they are our opponents. And we cannot look at this as  
28 if the litigation is identical to the issue of district election. Right? They're



1 separate issues. We can discuss district elections, what they should look  
2 like, whether we should have them, whether we need other Charter reform  
3 with Oscar de la Torre in the room, you know, at the table, and discussing  
4 all of that. What we were talking about is our discussion of a pending  
5 piece of litigation that we're getting legal advice on and should somebody  
6 who really is part of the opposition be in the room with us? And my  
7 answer is no. It shouldn't happen. And Councilmember McCowan, I hear  
8 you. I see you.

9 McKEOWN: Well, yeah. I think the point you just made is a key one and I'm not sure  
10 here if the public that it's well understood. But there's a big difference  
11 between policy discussion and litigation. Now, if this was a matter of  
12 policy discussion, there's no question that the duly elected Council-  
13 member Oscar de la Torre should be part of that policy discussion, even  
14 though his publicly expressed opinion, before he got elected, and arguably  
15 a reason he got elected according to some people we heard from is that he  
16 opposes the current City position. But this is not, at this point a policy  
17 discussion. I honestly wished it were. I wish that, you know, five years  
18 ago, instead of suing the City, people who are interested in district  
19 elections had begun the process of public discussion because by now, we  
20 could have had a ballot measure and voted on it and the people of this city  
21 would have decided what they want to do. Instead, the plaintiffs chose  
22 litigation. Oscar was, indeed, part of that team. And like Mayor  
23 Himmelrich, I had the experience of being deposed in this case with Oscar  
24 in the room. And the only other people in the room were attorneys for  
25 their side or the City's side. So it's very clear that Oscar took a role in the  
26 initiation and strategizing of this litigation. And because it's litigation, the  
27 situation is very different from its just being a policy discussion. Were  
28 this a policy discussion, I'd be fighting that Oscar be in the room. But it's

1 litigation. It's strategy on litigation and for that reason, the common law  
2 conflict is quite obvious to me. It's a common sense conflict and it's hard  
3 for me to know how people can, with a straight face, argue otherwise.

4 HIMMELRICH: Anyone else? Ooh, okay, so yes, Councilmember Davis.

5 DAVIS: So I just want to agree with Mayor Himmelrich and Councilmember  
6 McKeown that were not here discussing the merits of whether or not we  
7 should go to district elections. What we're here is trying to decide who  
8 should sit in on what are very confidential discussions about litigation  
9 strategy and I cannot imagine, and I have been practicing law for – I hate  
10 to admit it – 40 years, ever allowing the spouse of a litigant to come into  
11 private discussions when I represent the other side of the litigation. I  
12 cannot imagine having someone who was an officer and was an officer at  
13 the time the decision was made to sue the City come into very private,  
14 very confidential discussions about strategy simply because he sub-  
15 sequently was elected to the City Council and decided to resign his post in  
16 that organization. I guess, to me, the shocking thing is that the lawyer for  
17 the PNA, Maria Loya, is not here because in theory, Oscar's loyalty is  
18 now torn between the City and the plaintiffs, and I don't know how he  
19 could participate on either side at this point, because he is conflicted out  
20 because of his role as a City Councilmember and his role as the plaintiff's  
21 spouse, as well as a former role with the named party, the Pico Neighbor-  
22 hood Association. So I think there is tremendous conflict here and it's  
23 only emphasized by the fact that I just learned, apparently, I had not  
24 realized it, that the lawyer for PNA and Ms. Loya also represents Mr. de la  
25 Torre in his personal capacity. So the potential for conflict here is rife  
26 and, you know, one of the things we have always tried to do is maintain  
27 the integrity of closed session and of discussions regarding litigation  
28 strategy. And I think that we're called upon to do that here again tonight,

1 and we need to err on the side of integrity. We need to err on the side  
2 from being overly cautious about who participates in these very serious  
3 discussions. So I agree with Mayor Himmelrich and Councilmember  
4 McKeown.

5 HIMMELRICH: May I tack on, I see you Kristin, but I want to tack onto that. So I guess I,  
6 too, am a practicing. Gleam has me by four years. I guess I've been  
7 doing it for 36 years, right? But as people may or may not be aware, I  
8 have had an analogous situation in the Air BNB, as my husband's firm  
9 represented Air BNB against the City in that litigation. And what that  
10 meant, or as was walled off in his firm so no one in the firm was allowed  
11 to speak to him about it or give him any information about that lawsuit,  
12 and similarly, I was walled off in the City from this lawsuit so every time  
13 we had a discussion about it, I stepped out of the room. Everything I  
14 knew about that case was from the newspapers. I didn't even know when  
15 we won. I mean, it was a crazy situation, but this is the way it works in  
16 litigation when a person who is on the Council or related to someone on  
17 the Council is aligned with somebody who's against us. I mean, I think  
18 that, you know, and that made sense to me. I didn't fight that. I could  
19 have said, "He's walled off. I should be allowed to participate because I  
20 was quite interested in that lawsuit, because I cared about it, and I contin-  
21 ued to participate in the policy discussions about short term rental. So the  
22 distinction between litigation and policy is clear. Councilmember  
23 McCowan.

24 McCOWAN: You know, so I just – I wanted to say a couple of things. I'm not a lawyer,  
25 so that's why I ask a lot of probably dumb questions sometimes because I  
26 don't want to cross any lines, but I also don't understand all of the legal  
27 nuances. So I'll just say that. When it comes to closed session, you know,  
28 that is a very sacred space, particularly as it pertains to litigation. Whether

1 we agree with litigation or not, you know, we have to protect the privi-  
2 lege in the closed session. What's interesting is Zoom has kind of created  
3 some additional challenges, right? Like I share an office with my  
4 husband, which I'm in right now, and some of you may have seen me  
5 occasionally talking because he just finished working at five o'clock.  
6 And, you know, but this is an open session, so he was allowed to stay up  
7 here through this process. Typically, he gets kicked out and sent back to,  
8 you know, deal with the kids. I know I don't want to speak for Mayor  
9 [sic] McKeown, I know he has a similar situation. I know Mayor- sorry,  
10 Councilmember McKeown – I know Mayor Himmelrich, we all do these.  
11 We run through these hoops, right, to protect closed session and the  
12 integrity of it and what's talked about. This is separate and apart from the  
13 policy issue and Councilmember de la Torre knows this. We've talked  
14 about this policy issue of districts, right? And I've even said, currently  
15 three of us live in what was described as one of the districts in this lawsuit,  
16 and I've said, and I'll say it publicly to Councilmember de la Torre that if  
17 we came to districts and it was the Pico in our area, I wouldn't run against  
18 him. That's not something I would be interested in doing. And he knows  
19 that and I think, you know, I'm totally happy to have the district conversa-  
20 tion and I would expect Councilmember de la Torre to be there, and I  
21 think that's an opinion held by the majority of this Council. But on this  
22 issue of the litigation that started before my time as well and where it  
23 stands currently, and whether or not Councilmember de la Torre should be  
24 in the room for those strategy conversations, I feel a real conflict, especial-  
25 ly because we have had conversations, too, where a desire to learn the in-  
26 formation has been discussed. And that's problematic, right? It's like it's  
27 closed session . I can't tell you even whether you're allowed to be in the  
28 room or not, what happened in that closed session. And so I feel very

1 strongly that this feels like a conflict to me. I would love us to just err on  
2 the side of caution. You know, that's it. I'll leave it there.

3 HIMMELRICH: Councilmember Brock.

4 BROCK: This is an afternoon of fine lines. City Attorney Cardona, can I ask him a  
5 question?

6 HIMMELRICH: Yeah. Of course.

7 BROCK: Okay. George, my questions is, so you said the Attorney General would  
8 not rule on this and they won't delve into this matter. The FPPC will rule,  
9 but only on the financial conflict which is not relevant. I'm correct on  
10 that.

11 CARDONA: I guess so. That is my belief based on communications with them.

12 BROCK: Okay. So my issue is that all of us on this, all in this blue jeans call, have  
13 some sort of bias and that bothers me because the Councilmembers who  
14 were here before voted to commence a lawsuit, the Councilmembers who  
15 were elected have stated publicly that they would like to see the lawsuit  
16 end, negotiated, whatever. So I'm confused. I can't figure out how we  
17 should have to make a decision to this matter because all of us have some  
18 sort of implicit bias in this particular matter. And I see Sue automatically  
19 disagree with me. So they . . .

20 HIMMELRICH: I'm disagreeing with your use of the phrase implicit bias.

21 BROCK: I had the feeling I was very explicit biased. No? Neither implicit or  
22 explicit. Anyway, so look it, that's an issue and, you know, yes, I don't  
23 want that kind of conflict either and I'm bothered by this, and I've been  
24 bothered by this for the last hour, on all sides.

25 HIMMELRICH: I see our . . . go ahead, are you done?

26 BROCK: No. Almost.

27 HIMMELRICH: Okay, go ahead.

28 BROCK: So I personally don't feel qualified to rule on either side of this matter,

1 And I wish there was a higher body that would take this up, and I wish  
2 that Oscar would recuse himself for the evening while we try and figure  
3 this out. I have a feeling that none of my wishes will come true on this, so  
4 I will abstain on the issue because I don't really know where to go right  
5 now on it. Alright? I know that's like kissing your sister or brother, or  
6 whatever it is, but I'm going to abstain.

7 HIMMELRICH: Lane, what do you want to ask?

8 DILG: Counsel, I want to . . . Only for one second. Just because this notion of  
9 bias, I do think it's very important to address that. You all have a  
10 fiduciary duty to the City, to the public, and I can't resist saying that the  
11 name of this lawsuit is Pico Neighborhood Association and Maria Loya  
12 versus City of Santa Monica. So you can decide whatever you want, but I  
13 do think these distinctions between your public – your personal opinions  
14 and where you are in the litigation are important. You do have a fiduciary  
15 duty to the City.

16 HIMMELRICH: Councilmember Parra. Thank you, Lane.

17 PARRA: Thank you, Mayor Himmelrich. I just wanted to note on the record that I  
18 also, you know, I'm sad and I'm confused and conflicted by everything  
19 that I've heard tonight in terms of, you know, conflict of interest because  
20 I'm in agreement. I mean, if you really look at it holistically, you know,  
21 every City Councilmember has a conflict here because we, you know,  
22 there is a financial loss if we were to go to a district voting, you know,  
23 type of a situation and so, you know, like Pro Tem McCowan said, you  
24 know, that if we were to go – I mean, it's a really exciting time, but there  
25 are three representatives right now of the Pico Neighborhood on City  
26 Council, but who's to say, you know, down the line, whether Pico  
27 Neighborhood is going to be represented or not. So the reason why I'm  
28 just kind of thinking out loud, this is all, you know, upsetting and in some

1 instances, to me, because I understand that there are the difference  
2 between policy, you know, having Oscar, or Councilmember de la Torre,  
3 being involved with the policy decisions versus being involved or able to  
4 vote on this. So I'm just kind of, like I said, I'm talking out loud just so  
5 that – and to share with everybody, where I'm at and what I'm thinking  
6 about what I'm hearing tonight, and this is not going to be an easy  
7 decision. So my two cents.

8 HIMMELRICH: Councilmember Davis.

9 DAVIS: There is a significant difference between opinion or bias and conflict of  
10 interest. Everybody is biased to the table. Everybody brings their opinion  
11 to the table. The allegation and the decision we have to make tonight is  
12 not whether or not Councilmember de la Torre has expressed an opinion.  
13 He has. The obligation was have to make is not whether or not he has a  
14 bias against the lawsuit. He's made that very clear. And he is perfectly  
15 entitled to both of those things, an opinion and bias. But those are not  
16 why there's a conflict of interest raised. A conflict of interest falls from  
17 his relationship to the parties that are on the other side of the City in the  
18 litigation, and I want to make it clear somebody said, you know, "I wasn't  
19 on the Council when the City decided to file this lawsuit." No, no, no.  
20 The City did not decide to file this lawsuit. Maria Loya and the Pico  
21 Neighborhood Association sued the City and the City decided to defend  
22 itself. So I want to make it fairly clear, this is not about Oscar'[s] opinions,  
23 this is not about Councilmember de ola Torre's bias, this is not about any  
24 of our opinions or our bias or our stake in our Councilmember seats,  
25 however you want to decide it. It has to do with a very clear fact that Mr.  
26 de la Torre was, in fact, part of the group, the head of the group that  
27 decided to sue the City, that he is married to the individual named plaintiff  
28 in the lawsuit, and that those facts in and of themselves create a legal, a

1 common law, legal conflict of interest. I just want to make it clear  
2 nobody'[s denying that we all have opinions about the lawsuit, agree to its  
3 certain bias. That's true with any decision, any decision this Council  
4 makes. If that were the case, we might as well all go home and close up  
5 the City, and do tiddlywinks to decide what to do. But this is about a very  
6 specific legal issue and I think we, as a Council, have a fiduciary duty to  
7 decide the issue of whether or not Councilmember de la Torre has a  
8 conflict because it goes directly to the integrity of the City.

9 HIMMELRICH: Councilmember McKeown. You had your hand up still?

10 McKEOWN: I did. I'm going to try a motion based on all the discussion I've heard  
11 so far. I move that this City Council respectfully requests Council-  
12 member de la Torre to recuse himself on all matters heretofore involving  
13 Pico Neighborhood and Maria Loya versus the City of Santa Monica and  
14 that should he decline that respectful request, that we determine that there  
15 exists a conflict of interest such that he should not be a participant in such  
16 discussions.

17 HIMMELRICH: [inaudible]

18 DAVIS: Second.

19 HIMMELRICH: Motion by McKeown, seconded by Davis that we request that Council-  
20 member de la Torre recuse himself, and should he decline, that we  
21 determine that he is disqualified. Was that an accurate statement of the  
22 motion?

23 McKEOWN: It was.

24 HIMMELRICH: Okay, thank you. Mr. de la Torre.

25 de la Torre: Yes. As you all know, I care deeply about voting rights of minorities in  
26 Santa Monica and California, more generally. Just like Sue, everyone  
27 knows that you care deeply about affordable housing. Just like Kevin,  
28 everybody knows that you care about environmental issues. My wife,



1 Maria, and the entire Pico Neighborhood Association board also care  
2 deeply about minority voting rights in Santa Monica. That's why in late  
3 2015, they raised the illegality of Santa Monica's at large Council  
4 elections to the City Council here and the City Attorney. Then, it was  
5 Marsha Motrie. They laid out their case that the at large election system  
6 violated the California Voting Rights Act and the Equal Protection Clause  
7 of the California Constitution. The City didn't even respond to our letter  
8 in 2015 and so having waited for months, Maria and the Pico Neighbor-  
9 hood Association had no choice but to file a lawsuit. We now know  
10 because it was reported by a newspaper in 2018 and revealed in court  
11 about a week later than in 2016, the City hired Karen McDonald, an expert  
12 in demographics and voting patterns, to determine whether the City was  
13 violating the California Voting Rights Act. I haven't seen Ms.  
14 McDonald's report because much like we just learned was done with the  
15 After Action report about the police response to protest and looting on  
16 May 31, the City suppressed Ms. McDonald's report. But I think we all  
17 know, based on the City's suppression of the report, what that report says.  
18 It says that the City's at large elections violate the California Voting  
19 Rights Act and should be changed. And that report is party of what's  
20 going to be discussed in closed session today. Even faced with that report,  
21 rather than resolve the matter amicably and inexpensively back in 2016,  
22 the City Council chose to pay the most expensive lawyers they could find  
23 – Gibson, Dunne & Crutcher, to attack the California Voting Rights Act  
24 and the important minority voting rights that it protects and though the  
25 City also refused this to let the taxpayers of Santa Monica know how  
26 much of their taxes had been paid to Gibson, Dunne & Crutcher. I think  
27 we all know that number is very high. Most certainly in the tens of  
28 millions. And that is why, as an elected official, I want to be involved to

1 stop the bloodletting. The residents want us to stop wasting taxpayer  
2 dollars and that's my fiduciary responsibility to do that. If it wasn't such a  
3 large amount, they would let us all know, right? And for that, and for  
4 what has all that money been spent, if we think about it. Not to avoid  
5 laying off City employees, or to improve our parks, or to provide services  
6 to our children, or to senior citizens. No – that money has been spent to  
7 protect the seats of Councilmembers. In the process, that money was  
8 spent fighting for white supremacy. Yeah, that's right. Now some of you  
9 might think, Oscar's lost his mind, accusing the famously liberal City of  
10 Santa Monica of fighting for white supremacy. But that's exactly what it  
11 did. And it's still doing it by attacking the California Voting Rights Act  
12 here in Santa Monica and jeopardizing the Act statewide. But that's  
13 exactly what's going on here and we need to understand that we have  
14 every reputable civil rights organization, every black, Latino and Asian  
15 member of the California Legislature, past members of the California  
16 Legislature, including three current members of Congress: Secretary of  
17 State, now US Senator, Alex Padilla, all implored the California Supreme  
18 Court to take the case and find in favor for the plaintiffs. They all recog-  
19 nize that at large elections are the tool used to maintain white supremacy  
20 in municipal government. As Senator Polanco wrote, "You will each be  
21 remembered by where you stood on this case whether you were on the  
22 right side or the wrong side of history." Make no mistake, the California  
23 Supreme Court is about to do exactly what all of those civil rights  
24 movements and people of color elected to office have asked it to do. The  
25 California Supreme Court is about to tell you what Ms. McDonald told  
26 you back in 2016, that Santa Monica's at large election system violates the  
27 California Voting rights Act. So now, as a Council, we are asked whether  
28 we are going to throw good money after bad, bend forks, spend a few

1 more millions of dollars to fight for white supremacy and against minority  
2 voting rights. Just like Phil and Christine, I was elected to make sure that  
3 we answer that question: no more. And that's what I will do, regardless of  
4 whether some members of this Council think I should shut up or be  
5 prohibited from participating. And why is this Council discussing the  
6 matter in secret closed session anyway? Why not let the people know  
7 what you're doing and why you're doing it? Let's push more  
8 transparency. It's certainly not to protect the City of Santa Monica. The  
9 trial is over. No more facts can be raised. The case is in the appellate  
10 phase, where only legal issues are addressed. There's no longer anything  
11 to hide. The only reason now to have discussions about the Pico Neigh-  
12 borhood Association case in secret closed sessions is to protect the  
13 lawyers who gave that advice and cost the City tens of millions of dollars.  
14 Specifically, interim City Attorney Cardona and interim City Manager  
15 Lane Dilg. And perhaps the Councilmembers who sheepishly followed  
16 their flawed advice. So I suppose Mr. Cardona's bias and superficial staff  
17 report should not be surprising. He's trying to protect himself and his  
18 buddy, the outgoing City Manager. There are so many problems with Mr.  
19 Cardona's analysis. The most important is that he does not present the  
20 other side of the argument. He started talking about it today, but it doesn't  
21 give the City Council today enough opportunity to really reflect on the  
22 opposite side, on the other side of this debate. While Mr. Cardona relies  
23 exclusively on non-presidential attorney general opinion addressing a  
24 situation very different from this one, Mr. Ambrose, who gave me  
25 independent legal opinion, points to the presidential decision in *Break*  
26 *Zone Billiards vs. City of Torrance*. In the *Break Zone Billiards* case, a  
27 business obtained an amendment to its conditional use permit for the City  
28 of Torrance's Planning Commission. Then, a Torrance City

1 Councilmember appealed the Planning Commission's decision and that  
2 same Torrance City Councilmember adjudicated his own appeal and re-  
3 versed the Planning Commission's decision. The business claimed that  
4 Torrance Councilmember had a conflict of interest, including based on the  
5 so-called Common Law Doctrine that you all are talking about, and the  
6 Court of Appeal found there was no conflict, financial or otherwise that  
7 would prohibit that Torrance City Councilmember from voting on his own  
8 appeal. And Mr. Cardona fails to cite any authority for this Council to  
9 unilaterally exclude me from any Council discussions, deliberations or  
10 meetings. Why do you think that? Because there is no such authority. He  
11 needs to get an independent opinion to bring that forward. Now there's a  
12 government code that I researched here called Section 91003, Government  
13 Code § 91003. It provides the exclusive procedure for excluding a  
14 Councilmember from participating in the Council's deliberations or  
15 decisions for which it is alleged that Councilmember has a conflict of  
16 interest. That procedure is first to seek an opinion from the FPPC and  
17 then seek an injunction from the superior court. It makes sense that a  
18 court pass on any question of conflict of interest, not a City Council. The  
19 superior court is versed in municipal law, particularly the judges that deal  
20 with the writ petitions every day. This Council is not. There are two  
21 attorneys on the Council, and I appreciate the years of service for both  
22 Gleam and Mayor Himmelrich. But neither of them deal extensively with  
23 municipal law and unlike other cities, our interim City Attorney is also not  
24 well versed in municipal law. He is a career federal prosecutor who is  
25 thoroughly unqualified to be giving us an opinion on this matter. Let me  
26 be very clear about this. Neither I nor my wife, nor the Pico Neighbor-  
27 hood Association, nor any member of my family has any financial interest  
28 in the outcome of the Pico Neighborhood Association's litigation against

1 the City. The attorneys for my wife and the Pico Neighborhood Associa-  
2 tion agreed at the outset that none of the plaintiffs would ever have to pay  
3 for anything. On the flipside of that, they also agreed that they would  
4 never receive any financial benefit. The attorney's fees and costs that  
5 would likely be awarded to the plaintiffs' attorneys go to the attorneys.  
6 They will not, and cannot, be shared with my wife or the Pico Neighbbor-  
7 hood Association. Mr. Cardona has already made that clear. If anybody  
8 has any evidence that I have a financial interest in that case, you can say it  
9 now. There is no conflict. Mr. Cardona attempts to extend the conflict of  
10 interest law to a so-called non-financial conflict even though the  
11 California Legislature has said otherwise. He says a Councilperson - a  
12 City Councilmember has a conflict any time his or her view is different  
13 than the City's position. But that begs the question: who decides the  
14 City's position? The City Attorney? And wouldn't that mean that any  
15 Councilmember who has strong views on any topic that do not conform to  
16 the view of the Council majority could be excluded entirely from the  
17 discussions and decisions on that topic? Sue, should you be excluded  
18 from any discussions regarding Rena, the demand – the [inaudible]  
19 demand to produce 9,000 plus new housing units with the majority being  
20 affordable or eviction moratoriums since you represent tenants at the  
21 Western Center for Law and Poverty? After all, some members of this  
22 Council would prefer that we oppose the Rena demand for 9,000 new  
23 housing units. Kevin, should you be excluded from every Sequa matter  
24 that comes before this Council or discussions concerning the cost of  
25 environmental sustainability or an electric bus fleet? Some members of  
26 this Council might value fiscal responsibility over environmental sustain-  
27 ability. Of course, no one should be excluded. Should Kristin McCowan  
28 be excluded when we vote on a black agenda or anything specific to the

1 African-American community? No, I think she should be included in  
2 those decisions. Each of us was elected by the voters of Santa Monica  
3 with full knowledge of how we care deeply about these topics. That my  
4 wife and the Pico Neighborhood Association had to sue the City to make  
5 progress on this issue does not change the facts and does not mean that I  
6 have a conflict of interest. To be in litigation is also a form of advocacy.  
7 If anyone on this Council feels differently or anyone watching at home,  
8 you can go to court. I invite you to do so. But until a judge tells me that  
9 Mr. Ambrose's analysis is wrong and I have a conflict of interest, I will do  
10 what the voters elected me to do: participate in all City Council delibera-  
11 tions and advocate for an end to this horrible costly mistake. Thank you.

12 HIMMELRICH: So you're saying. Oscar, you will not recuse? Is that correct?

13 de la Torre: I want to do what the voters elected me to do, and that is . . .

14 HIMMELRICH: That's a yes or no question. You aren't going to recuse right now because  
15 then we have to vote . . .

16 de la Torre: No.

17 HIMMELRICH: . . . solely on the issue of whether we want to disqualify you. Those are  
18 the two choices. That's a binary choice, right? So you aren't going to  
19 recuse so we have to vote. And let me understand. So you were going to  
20 insist that any closed session we have regarding the CDRA is illegal if it  
21 doesn't include you, is that right?

22 de la Torre: Yes.

23 HIMMELRICH: Let's take a vote. Anyone have anything else to say?

24 DILG: I would like to speak after you vote.

25 HIMMELRICH: Yes. Mr. Brock.

26 BROCK: George, I'm asking one other question. How long would it take to receive  
27 a court decision on this? Would that be a long, drawn out process?

28 CARDONA: I think that is impossible to predict. The court system works in its own

1 ways. In addition, there's the issue as to whether a court would find that  
2 this was right for an action by the Council. A court very well might say,  
3 "Look, I'm not in a position to decide this. There has to be some action  
4 taken by the Council and then a challenge to that action that would give  
5 me a case or controversy that would provide a basis." Obviously, if the  
6 Council votes to disqualify Oscar, he would have the ability to pursue that  
7 in court and that might be a quicker way to get an answer from a court.

8 BROCK: Thank you, George.

9 HMMELRICH: Kristin.

10 McCOWAN: And I saw Councilmember McKeown, too, but – so a quick question. Is  
11 there a way to proceed under whatever the direction was prior to now for  
12 the City Attorney and the City without us revisiting or receiving any up-  
13 dates in closed session while we await the conclusion of Councilmember  
14 de la Torre's lawsuit?

15 CARDONA: We would proceed with the prior direction that is place, which is simply to  
16 proceed with [inaudible]. The Council would not have any input into what  
17 that breach says or the positions we take. I would have to base that on  
18 prior direction that we have received from Council our interpretations.

19 McCOWAN: Okay, so that would be another option.

20 CARDONA: In theory, yes.

21 McCOWAN: Okay.

22 HIMMELRICH: Councilmember McKeown.

23 McKEOWN: No, I just wanted to say I regret that Councilmember de la Torre chose not  
24 to accept the voluntary option and I can assure you that if my wife ever  
25 sued the City, I would recuse myself.

26 HIMMELRICH: Okay. Are we ready to take a vote? So as I understand the motion now,  
27 Mr. de la Torre will not recuse, so we are voting to determine that Mr. de  
28 la Torre has a common law conflict of interest that disqualifies him from

1 his involvement in any closed session or confidential conversations con-  
2 cerning Pico Neighborhood Association, Mary Loya versus City of Santa  
3 Monica?

4 CARDONA: And Mayor Himmelrich would disqualify him from voting on any  
5 decisions made with respect to that case.

6 HIMMELRICH: And would disqualify him from voting any decisions made with respect to  
7 that, Councilmember McCowan.

8 McCOWAN: I just – is there a place to – where the City Attorney would proceed based  
9 on prior direction? I mean, is that an option while we wait out the judg-  
10 ment from the court that Councilmember de la Torre is seeking?

11 HIMMELRICH: Councilmember Davis.

12 DAVIS: Well, I think we have to take this vote, I think is what our City Attorney is  
13 talking about. We have to take the vote to create the conflict so there is a  
14 [inaudible] issue. Otherwise, there’s no likeness. You can’t go and say,  
15 “What if this happened and what if we did that?” That’s an adversary  
16 opinion and the courts won’t issue that. So I think we have to take the  
17 vote first and then see procedurally where we are.

18 McCOWAN: Got it. Thank you.

19 HIMMELROCH: So let’s take the vote now.

20 DAVIS: Can I just make it clear that a yes vote is a yes to declare that there is a  
21 common law conflict of interest and that Councilmember de la Torre  
22 should be excluded as you described?

23 HIMMELRICH: Yes, thank you. Thanks for making that clear. Denise?

24 ANDERSON-WARREN: Well, Councilmember de la Torre has his hand up.

25 HIMMELRICH: Oh, I’m sorry, thank you.

26 de la Torre: Yeah. I just want to clarify one thing.. If the FPPC or, you know, another  
27 higher body, if the courts clarify this issue for me, then I would definitely  
28 recuse myself as, you know, I would follow the law. I mean, I just want to



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1 make that clear. But I don't feel that that's clarified and I just wanted to  
2 make that last point.

3 HIMMLRICH: Thank you. Let's take a vote.

4 ANDERSON-WARREN: Okay. So this is a yes or a no. Councilmember Parra.

5 PARRA: No.

6 ANDERSON-WARREN: Okay. So this is a yes or a no. Councilmember Davis.

7 DAVIS: Yes.

8 ANDERSON-WARREN: Okay. So this is a yes or a no. Councilmember McKeown.

9 McKEOWN: Yes.

10 ANDERSON-WARREN: Okay. So this is a yes or a no. Mayor Pro Tem, McCowan.

11 McCOWAN: Yes.

12 ANDERSON-WARREN: Okay. So this is a yes or a no. Councilmember Brock.

13 BROCK: Abstain.

14 ANDERSON-WARREN: Okay. So this is a yes or a no. Councilmember de la Torre.

15 de la Torre: No.

16 ANDERSON-WARREN: Okay. So this is a yes or a no. Mayor Himmelrich.

17 HIMMELRICH: Yes. So that passes 4 to 2.

18 ANDERSON-WARREN: Yes.

19 HIMMELRICH: So let me just say that we now are going into a closed session where we  
20 are discussing this and Mr. de la Torre is refusing to recuse. I guess we  
21 can exclude you electronically from the closed session, who has just now  
22 just disappeared, from the closed session.

23 ANDERSON-WARREN: Councilmember Himmelrich . . . before we go, we have to adjourn  
24 this meeting.

25 HIMMELRICH: I'm understand, but this is, I think, part of this discussion. That's why  
26 fault.

27 ANDERSON-WARREN: Okay.

28 HIMMELRICH: Councilmember – so City Manager, please.

1 DILG: Yes. I simply want to say, before we leave this meeting, I think some of  
2 the comments made tonight were outrageous. I want to say that in this  
3 particular moment in our country's history, we have seen the need to  
4 verify information. We have seen the use of baseless allegations and  
5 accusations printed in sources that do not take time to verify. As we see  
6 that, it is more important than ever that people – that we not continue to  
7 print things simply because they are said. Equally importantly, public  
8 service is an honorable profession. I am a Constitutional lawyer and a  
9 civil rights lawyer. I have worked for the ACLU as a civil rights lawyer. I  
10 am not seeking \$22 Million from the City, and I want to be very clear that  
11 this City and all of our communities deserve good public servants. And  
12 continued attacks on public servants does not move anyone forward. So I  
13 want to be very clear that I will be here and I will continue to work in the  
14 best of my ability for this community for all of our community, and I will  
15 continue to do that every day. But this is outrageous and I want to clearly  
16 state that on the record.

17 HIMMELRICH: Councilmember Brock.

18 BROCK: My question was during the closed session, there are other items in the  
19 closed sessions, so Councilmember de la Torre should be allowed to  
20 participate in the other two items, I think?

21 CARDONA: That's correct. He'll be present for those two which we'll do first and  
22 we'll save the CDRA for last and ask at that time for Mr. de la Torre to  
23 leave in accordance with the Council's direction.

24 HIMMELRICH: And that's what we did with the Air BNB, Phil. We always . . .

25 BROCK: That's fine. You had said he was excluded. I was just trying to be clear.

26 HIMMELRICH: Yes.

27 BROCK: Thank you very much.

28 HIMMELRICH: So, this meeting now will adjourn and we will move to our 5:30 regular

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meeting of the City Council. Thank you all very much.

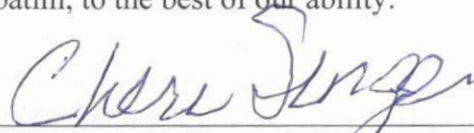
**END OF HEARING ON ITEM 8A**

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**THE BRIEF CASE**  
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March 26, 2021

I hereby certify under penalty of perjury that The Brief Case has transcribed the audio file provided by the Santa Monica City Council, regarding the City Council Hearing dated January 26, 2021, Item 8A. The file was transcribed, verbatim, to the best of our ability.

  
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CHERI SINGER, Transcription Specialist

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