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10 CITY OF SANTA MONICA

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

13 OSCAR DE LA TORRE and ELIAS SERNA,

14 Plaintiffs,

15 v.

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

18 Defendant.
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CASE NO.: 21STCV08597

Assigned to Hon. Richard L. Fruin

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

*[Notice of Demurrer and Demurrer to
Plaintiffs' Second Amended Complaint;
Memorandum of Points and Authorities in
Support Thereof and Request for Judicial
Notice in Support of Demurrer to Second
Amended Complaint filed concurrently
herewith]*

Hearing Date: September 30, 2021

Hearing Time: 9:15 a.m.

Reservation No.: 905283036604

Action Filed: March 4, 2021

Dept.: 15

1 I, Brandon D. Ward, hereby declare and state as follows:

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

7 2. On or about March 3, 2021, Plaintiff Oscar de la Torre (“Plaintiff”) filed the
8 “Verified Complaint for Declaratory and Injunctive Relief” (“Complaint”) against the City. On or
9 about March 5, 2021, the City was served with the Complaint by Plaintiff.

10 3. On May 5, 2021, the City filed its demurrer. Instead of opposing, Plaintiffs filed a
11 First Amended Complaint (“FAC”) on May 25, 2021. The FAC deleted certain of the causes of
12 action to which the City had demurred, but reasserted claims for declaratory relief and violation of
13 the Ralph M. Brown Act. The FAC also added Elias Serna as a Plaintiff.

14 4. On June 24, 2021, Defendant filed and served its demurrer to the FAC. On July
15 23, 2021, this Court sustained the demurrer as to the declaratory relief claim and held that the City
16 Council had the authority to disqualify Plaintiff de la Torre and that “the decision made by the
17 Council—that Plaintiff had a disqualifying conflict of interest—was correct, and Plaintiff was
18 properly excluded from participating in meetings in which the CVRA litigation was discussed.” The
19 Court overruled the demurrer as to the Brown Act claim. Plaintiffs filed their Second Amended
20 Complaint (“SAC”) on August 10, 2021 and served the City by mail.

21 5. Under Code of Civil Procedure section 430.41, the parties are required to “meet and
22 confer at least five days before the date the responsive pleading is due.” Because Plaintiffs served
23 the SAC by mail, the deadline for the City to file its demurrer is September 14, 2021. However, in
24 compliance with the Court’s August 24, 2021 Minute Order that Defendants are to file their
25 demurrer as soon as possible, Defendants are filing their demurrer in advance of the deadline and, as
26 explained below, have met and conferred with counsel for Plaintiffs prior to filing its demurrer.

27 6. On August 16, 2021, counsel for Plaintiffs and I met and conferred on the City’s *ex*
28 *parte* application to continue the trial date and the City’s impending demurrer to the SAC. We

1 discussed Defendant's argument that the SAC did not substantively differ or materially alter the
2 FAC. Accordingly, the SAC suffers from the same flaws as the FAC and Defendant will argue in its
3 demurrer that the declaratory relief claim therefore fails as a matter of law for the same reasons as
4 Defendant identified in its demurrer to the FAC.

5 7. On August 31, 2021, I emailed counsel for Plaintiffs to confirm that he agreed that
6 our discussion on August 16 satisfies the parties' obligation to meet and confer prior to the filing of a
7 demurrer under Code of Civil Procedure section 430.41. I also asked if he would like to set up an
8 additional call to further meet and confer on the demurrer.

9 8. In response, counsel for Plaintiff emailed that he would like to engage in further meet
10 and confer. After a series of email exchanges, in response to a request from Plaintiffs' counsel that
11 Defendant detail in writing the grounds for its forthcoming demurrer and also to facilitate our meet
12 and confer, on August 31, 2021, I emailed counsel for Plaintiffs a detailed response that set out
13 Defendant's positions on why the two causes of action in the SAC are subject to a demurrer and
14 provided legal support for those positions.

15 9. In the early morning of September 1, 2021, counsel for Plaintiffs confirmed that he
16 was available to meet and confer over the phone at 4 pm later that same day. At around noon on
17 September 1, 2021, counsel for Plaintiffs cancelled the meet and confer and asked that it be
18 rescheduled to Friday, September 3, 2021. Counsel for Plaintiffs did not provide a reason for the
19 cancellation.

20 10. On September 3, 2021 at approximately 10 am, I along with my colleague, Kirsten
21 Galler, called counsel for Plaintiffs to continue the parties' meet and confer on Defendant's
22 impending demurrer to the SAC. The parties discussed the subjects of the demurrer and each party
23 requested follow up of the other with supporting legal citation for arguments or statements made in
24 the papers or during the meet and confer. At the end of the meet and confer, counsel for both parties
25 acknowledged that the parties would not reach agreement that would resolve Defendant's objections
26 it intends to raise in its demurrer and that the parties have met and conferred in good faith, as
27 required by Code of Civil Procedure section 430.41. Counsel for Defendant raised that Defendant
28 would like to file its demurrer to the SAC later that same day (on September 3, 2021), in light of the

1 Court's order that Defendant file its demurrer as soon as possible. Counsel for Plaintiffs did not
2 have an objection to the timing of the filing of Defendant's demurrer.

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

5 Executed this 3rd day of September 2021, in Los Angeles, California.

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/s/ Brandon D. Ward
BRANDON D. WARD

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PROOF OF ELECTRONIC SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

I hereby state that I electronically filed the foregoing document with the Clerk of the Court for the Superior Court of California, County of Los Angeles through First Legal, our Electronic Filing Service Provider, on **September 3, 2021** described as:

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

The above document was sent from e-mail address **deborah.freeman@smgov.net**.

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

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/s/ Deborah Freeman
DEBORAH FREEMAN