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

OSCAR DE LA TORRE and ELIAS  
SERNA

Plaintiffs,

v.

CITY OF SANTA MONICA and  
DOES 1 through 10, inclusive

Defendants.

**Case No.: 21STCV08597**

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

Date: September 30, 2021  
Time: 9:15 a.m.  
Dept. 15

[Hon. Richard Fruin]

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

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

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

15 (*Mangini, supra*, 7 Cal.4<sup>th</sup> at 1063-1064, overruled on other grounds in *In re Tobacco Cases*  
16 *II* (2007) 41 Cal.4<sup>th</sup> 1257, 1276; see also *Richtek USA, Inc. v. uPI Semiconductor Corp.*  
17 (2015) 242 Cal.App.4<sup>th</sup> 651, 660–662; *Searles Valley Minerals Operations, Inc. v. State Bd.*  
18 *of Equalization* (2008) 160 Cal.App.4<sup>th</sup> 514, 519.)<sup>1</sup>

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21 <sup>1</sup> See also *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4<sup>th</sup> 471483 [court may  
22 “not take judicial notice of the truth of any factual assertions” within pleadings filed in separate court  
23 action]; *Tarr v. Merco Construction Engineers, Inc.* (1978) 84 Cal.App.3d 707, 715 [a court “may not  
24 take judicial notice of the truth of allegations made in documents such as pleadings, affidavits and  
25 allegations in bankruptcy proceedings”]; *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865 [truth of  
26 statements within affidavit are not subject to judicial notice]; *Garcia v. Sterling* (1985) 176  
27 Cal.App.3d 17, 22 (existence of statements within deposition transcript filed with the court may be  
28 judicially noticed, but not truth of those statements); *Ramsden v. Western Union* (1977) 71  
Cal.App.3d 873, 878–879 (court may take judicial notice of existence of arrest report, but not the  
truth of factual matters asserted therein); *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914, 915 fn.1

1 A few examples are illustrative. Defendant seeks judicial notice for certain deposition  
2 and trial testimony of non-party Maria Loya (RJN Ex. G) and Councilmember De La Torre  
3 (RJN Exs. C, D), and attorney billing records attached to a declaration (Exhibit E) in *Pico*  
4 *Neighborhood Association, et al. v. City of Santa Monica* (“Voting Rights Case”). That  
5 testimony occurred in this Court (or in a deposition) and those billing records were filed in the  
6 Los Angeles Superior Court, so their existence cannot reasonably be disputed. But that does  
7 not mean the truth of that testimony, or the accuracy of those billing records are beyond  
8 dispute. As Defendant’s Demurrer demonstrates, Defendant is not seeking to rely on merely  
9 the existence of that testimony and document, or just that the testimony occurred and the  
10 document was filed in this Court. Rather, Defendant’s Demurrer relies on the truth of Ms.  
11 Loya’s testimony and the accuracy of those billing entries to imply what involvement Mr. de  
12 la Torre had in the Voting Rights Case. In opposing the motion for attorneys’ fees in the  
13 Voting Rights Case, Defendant will presumably not want the Court to accept those attorneys’  
14 billing records as beyond dispute; they likewise are not subject to judicial notice here.

15 Defendant also seeks judicial notice of its own meeting minutes and agendas (RJN Exs.  
16 H-J), and then attempts to use those meeting minutes as an accurate reflection of everything  
17 that occurred in the council meeting. For instance, Defendant’s Demurrer claims the City  
18 Council reviewed the staff report and relies on the meeting minutes to support that assertion.  
19 Nothing in the meeting minutes states that any of the councilmembers reviewed a staff report.  
20 And, even if the minutes did state that councilmembers reviewed a staff report, that would not  
21 make it true. The existence of these documents might be subject to judicial notice, but the  
22 facts and characterizations recited in the meeting minutes, agendas and staff reports are not.

23 Finally, Defendant seeks judicial notice of the staff report prepared by its interim city  
24 attorney (RJN Ex. I), and then relies in its Demurrer on the facts and characterizations recited  
25 therein. Again, the existence of the staff report may be subject to judicial notice, but the facts  
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27 [court may take judicial notice of averments on information and belief in affidavit, but not of truth of  
28 those averments]; *People v. Long* (1970) 7 Cal.App.3d 586, 591 [court may not judicially notice truth  
of matters stated in public records, such as juvenile court file].

1 and characterizations recited in that staff report are far from being beyond dispute. In fact,  
2 many statements in that staff report are demonstrably false. Though not mentioned in the  
3 council meeting minutes (RJN Ex. J), Councilmember de la Torre provided an opinion letter  
4 prior to the council meeting from another attorney, Dan Ambrose, who explained that  
5 Councilmember de la Torre did not have a conflict of interest. Presumably, Defendant would  
6 object to this Court taking judicial notice of the veracity and correctness of everything in that  
7 opinion letter; its staff report is no different – it is just the opinions and characterizations of an  
8 attorney.

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

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Respectfully submitted:

DATED: September 17, 2021      **TRIVINO-PEREZ & ASSOCIATES**

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

**PROOF OF SERVICE**

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**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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

On September 17, 2021, I served true copies of the following document(s) described as

**OPPOSITION TO REQUEST FOR JUDICIAL NOTICE**

on the interested parties in this action as follows:

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

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

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

Executed on September 17, 2021 at Los Angeles, California.

/s/ Wilifred Trivino-Perez  
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Wilifred Trivino-Perez