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

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

12 OSCAR DE LA TORRE and ELIAS SERNA,

CASE NO.: 21STCV08597

13 Plaintiffs,

Assigned to Hon. Richard L. Fruin

14 v.

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

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

*[Reply in Support of Demurrer to Second
 Amended Complaint filed concurrently
 herewith]*

17 Defendants.

Hearing Date: September 30, 2021

Hearing Time: 9:15 a.m.

Reservation No.: 905283036604

Action Filed: March 4, 2021

Dept.: 15

1 Just as they did in connection with their opposition to the City’s demurrer to the First
2 Amended Complaint (“FAC”), Plaintiffs continue to generally object to this Court taking judicial
3 notice of each and every one of the exhibits the City proffered in support of the demurrer to the
4 Second Amended Complaint (“SAC”) on the ground that the Court may only judicially notice the
5 “existence” of the documents and nothing else. Indeed, save for a single new footnote, Plaintiffs’
6 opposition to the City’s request for judicial notice is word-for-word identical to the opposition
7 Plaintiffs submitted back in July. This is so even though the Court at the September 14, 2021
8 hearing directed the parties to meet and confer on whether the parties can reach agreement on the
9 Court taking judicial notice of the proffered exhibits. In any event, Plaintiffs’ opposition
10 continues to mischaracterize the law governing judicial notice and the City’s use of the exhibits at
11 issue.

12 It is well established that a “pleading valid on its face may nevertheless be subject to
13 demurrer when matters judicially noticed by the court render the complaint meritless.” (*Del E.*
14 *Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; see also Code Civ.
15 Proc., § 430.30, subd. (a); *Campbell v. Lauigan* (1988) 202 Cal.App.3d 651, 655-656 “[C]ourts
16 ... will not close their eyes to situations where a complaint contains ... allegations contrary to
17 facts which are judicially noticed.”). Moreover, where, where, as here, the contents of a
18 document not otherwise attached to the complaint “form the basis of the allegations in the
19 complaint, it is essential that [the court] evaluate the complaint by reference to [those]
20 documents.” (*Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1285 & fn.3.)

21 Plaintiffs contend that a court may not consider the documents’ contents and is instead
22 limited to consideration of only the existence of documents when granting judicial notice. This is
23 simply inaccurate. “[T]he general rule [is] that judicial notice of a document does not extend to
24 the truthfulness of its contents or the interpretation of statements contained therein, *if those*
25 *matters are reasonably disputable.*” (*Apple Inc. v. Super. Ct.* (2017) 18 Cal.App.5th 222, 241
26 [affirming trial court properly took judicial notice of existence and contents of SEC filings],
27 italics added.) If “there is no factual dispute concerning the matter to be noticed” and there are
28 grounds for judicial notice, a court may properly consider the documents’ contents when ruling

1 on a demurrer. (*Id. at p. 242.*) Accordingly, “whether the fact to be judicially noticed is the
2 document or record itself ..., the legal effect of the document ..., a fact asserted within the
3 document ..., or an act by a government agency, the essential question is whether the fact to be
4 judicially noticed is not reasonably subject to dispute.” (*Scott v. JPMorgan Chase Bank, N.A.*
5 (2013) 214 Cal.App.4th 743, 758; see also *id. at pp. 760–761* [“judicial notice can be taken of
6 matters not reasonably subject to dispute, but cannot be taken of matters shown to be reasonably
7 subject to dispute”].) Plaintiffs’ repeated reference to judicial notice being inappropriate because
8 the document is not “beyond dispute” is contrary to the standard that governs. (E.g., RJN Opp. at
9 pp. 2-3.)

10 Moreover, “a court may take judicial notice of a party’s admissions or concessions in
11 cases where the admission ‘cannot reasonably be controverted,’ such as in answers to
12 interrogatories or requests for admission, or in affidavits and declarations filed on the party’s
13 behalf.” (*Tucker v. P. Bell Mobile Services* (2012) 208 Cal.App.4th 201, 219 [trial court properly
14 took judicial notice of deposition testimony and declarations].) In such circumstances, a court
15 ruling on a demurrer may “accept the truth of the facts stated in the [] deposition [or other sworn
16 testimony] only to the extent they were not or could not be disputed.” (*Joslin v. H.A.S. Ins.*
17 *Brokerage* (1986) 184 Cal.App.3d 369, 375; see also *Del E. Webb, supra*, 123 Cal.App.3d at
18 604–605 [“The court will take judicial notice of records such as admissions, answers to
19 interrogatories, affidavits, and the like, when considering a demurrer, only where they contain
20 statements of the plaintiff or his agent which are inconsistent with the allegations of the pleading
21 before the court.”].) Plaintiffs’ new cases raising concerns about hearsay therefore have no
22 application here,¹ particularly given that Plaintiffs have failed to assert any hearsay objections to
23 the proffered exhibits.

24 Here, Plaintiffs’ objections do not specify how the contents of each of the documents at
25

26 ¹ E.g., *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865 [judicial notice was improper because
27 “a court cannot take judicial notice of hearsay allegations as being true, just because they are
28 part of a court record or file”]; *Garcia v. Sterling* (1985) 176 Cal.App.3d 17, 22 [same];
Ramsden v. Western Union (1977) 71 Cal.App.3d 873, 879 [same]; *Day v. Sharp* (1975) 50
Cal.App.3d 904, 914 [same].

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

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

- 14 • Exhibits A and B are the Complaint and First Amended Complaints filed in *Pico*
15 *Neighborhood Association (“PNA”) and Maria Loya v. City of Santa Monica*, L.A.
16 Super. Ct. Case No. BC616804 (the “CVRA Action”) and are offered to show who
17 were the parties to the dispute, when the pleadings were filed, and the claims asserted.
18 (Mem. at p. 11.) In doing so, the City is not asking that the Court accept the truth of
19 the matters asserted in those pleadings—that the City’s at-large election allegedly
20 violates the CVRA, which is an issue the City disputes. However, the Court may
21 consider the contents of these pleadings to demonstrate who the parties were, the filing
22 dates, and the claims asserted, particularly given that Plaintiffs have failed to
23 demonstrate that such information is reasonably subject to dispute and Plaintiffs refers
24 to the filing of the litigation in the SAC (¶ 19). (See *Ingram, supra*, 74 Cal.App.4th at
25 p. 1285 & fn.3 [where the contents of a document not otherwise attached to the
26 complaint “form the basis of the allegations in the complaint, it is essential that [the
27 court] evaluate the complaint by reference to [those] documents”].)
28 • Exhibits C, D, and F are relevant excerpts of the trial and deposition testimony

1 Plaintiff de la Torre offered as an individual and Person Most Qualified in the CVRA
2 Action. Notably, Plaintiffs do not and cannot establish that the sworn testimony the
3 City excerpted—establishing that Plaintiff de la Torre was deposed and offered trial
4 testimony on behalf of PNA, his position as co-chair of PNA, that his parents helped
5 in founding PNA, and that he was represented by PNA’s counsel, Mr. Shenkman
6 (Mem. at pp. 11-12)—is subject to reasonable dispute. The Court may therefore
7 properly take judicial notice of the contents of Plaintiff de la Torre’s sworn testimony.

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

- 1 • Exhibit G contains relevant excerpts of the trial testimony of Plaintiff de la Torre’s
2 wife, Maria Loya, in the CVRA Action, and is offered to show that Plaintiff de la
3 Torre was the representative for PNA in that case. (Mem. at p. 12.) Plaintiffs object
4 that the City “relies on the truth of Ms. Loya’s testimony,” but Plaintiffs (again) fail to
5 show how that sworn testimony is subject to reasonable dispute. (RJN Opp. at p. 2.)
6 The Court may take judicial notice of the contents of this testimony too.
- 7 • Exhibits H, I, J, and N are the agenda, agenda packet for item 8A, the meeting minutes
8 for, and the transcript of the January 26, 2021 meeting of the City Council. The City
9 cites these documents to establish that the City Council held a meeting on January 26,
10 2021 to consider whether Plaintiff de la Torre had a common-law conflict of interest,
11 that the City Attorney provided background on the CVRA Action and recommended
12 in the staff report that Council determine that Plaintiff de la Torre has such a common-
13 law conflict and should be disqualified, and that the City Council reviewed the staff
14 report, received the City Attorney’s oral report, heard public comment, and, after a
15 vote, determined that Plaintiff de la Torre had a disqualifying conflict of interest.
16 (Mem. at pp. 11, 13-14.) In objecting to judicial notice of these documents, Plaintiffs
17 argues that the City is “attempt[ing] to use [the] meeting minutes as an accurate
18 reflection of everything that occurred in the council meeting” and that the “facts and
19 characterization recited in the staff report are far from being beyond dispute.” (RJN
20 Opp. at pp. 2-3.) Yet again, Plaintiffs are utilizing the wrong “beyond dispute”
21 standard and nothing Plaintiffs have asserted demonstrates that the City’s agenda,
22 agenda packet, minutes, or hearing transcript are subject to *reasonable* dispute. For
23 example, Plaintiffs continue to argue that the minutes are inaccurate because they do
24 not mention that Plaintiff de la Torre “provided an opinion letter to the council
25 meeting from another attorney, Dan Ambrose, who explained that Councilmember de
26 la Torre did not have a conflict of interest.” (RJN Opp. at p. 3.) But that does not
27 establish that the minutes are subject to reasonable dispute, particularly where the
28 minutes identify the members of the public who offered public comment at the

1 meeting itself (Ex. J at 144), and the letter from Plaintiff de la Torre’s attorney was
2 included as part of the agenda packet (Ex. I at 130-134). More fundamentally, the
3 City is not asking that the Court accept the truth of the matters asserted in the
4 documents—that Plaintiff de la Torre has a common-law conflict of interest—but
5 rather is offering these documents to show what the City Council had before it, what
6 transpired at the Council meeting, and the decision the Council made. (See *Evans v.*
7 *City of Berkeley* (2006) 38 Cal.4th 1, 9 fn. 5 [taking judicial notice of minutes and
8 “city attorney’s opinion,” which was offered for the purpose of showing that the “that
9 the city attorney concluded continuing free berths would violate the city’s resolution
10 and ordinance and conveyed that opinion to the city manager and council”].) These
11 public records are also exempt from the hearsay rule. (See Evid. Code, § 1280.) And
12 given that Plaintiffs’ own allegations repeatedly refer to the January 26, 2021 meeting
13 and even quotes statements made at that meeting (e.g., SAC ¶¶ 36-41), but do not
14 attach the agenda packets, minutes, or transcript that “form the basis of the allegations
15 in the complaint, it is essential that [the court] evaluate the complaint by reference to
16 [those] documents.” (*Ingram, supra*, 74 Cal.App.4th at p. 1285.)

- 17 • Exhibit K is the amicus brief submitted by Plaintiff de la Torre to the California
18 Supreme Court in the CVRA Action. The City does not offer this document for the
19 truth of the matters asserted in that brief—and, in fact, disputes the legal and factual
20 arguments made—but has cited the brief to show Plaintiff de la Torre’s continued
21 support of plaintiffs in the CVRA Action. (E.g., Mem. at pp. 13, 18.) As Plaintiffs
22 concede (RJN Opp. at p. 3), this Court may take judicial notice of the “existence” of
23 this document.
- 24 • Exhibits L and M consist of Section 605 of the City’s Charter and the City Council’s
25 Rules. Plaintiffs’ blanket objection to judicial notice of all the exhibits offered by the
26 City presumably includes these exhibits, even though the SAC quotes Section 605
27 (¶ 38) and Plaintiffs have failed to explain why the contents of these official acts and
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public records are subject to reasonable dispute. This Court may take judicial notice
of these exhibits.

Accordingly, for all these reasons, and those stated in the City’s Request for Judicial
Notice in Support of the Demurrer to the Second Amended Complaint, the Court should grant
judicial notice of the City’s proffered exhibits.

Dated: September 23, 2021

Respectfully submitted,

By: /s/ Kirsten R. Galler
Kirsten R. Galler

Attorneys for Defendant
CITY OF SANTA MONICA

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PROOF OF ELECTRONIC SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

I hereby state that I electronically filed the foregoing document with the Clerk of the Court for the Superior Court of California, County of Los Angeles through First Legal, our Electronic Filing Service Provider, on **September 23, 2021** described as:

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

The above document was sent from e-mail address **bradley.michaud@santamonica.gov**.

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

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/s/ Bradley Michaud

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SHORT TITLE: OSCAR DE LA TORRE vs CITY OF SANTA MONICA

CASE NUMBER:
21STCV08597

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Submission Number: 21LA04122226
Court Received Date: 09/23/2021
Court Received Time: 10:22 am
Case Number: 21STCV08597
Case Title: OSCAR DE LA TORRE vs CITY OF SANTA MONICA
Location: Stanley Mosk Courthouse
Case Type: Civil Unlimited
Case Category: Other Complaint (non-tort/non-complex)
Jurisdictional Amount: Over \$25,000
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