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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' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, FOR SUMMARY
ADJUDICATION**

Date: March 24, 2022
Time: 8:30 a.m.
Dept. 15

[Hon. Richard Fruin]

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1 **I. INTRODUCTION**

2 Councilmember de la Torre does not have a conflict of interest, statutory or otherwise,
3 that prevents him from doing what the Santa Monica voters elected him to do – represent them
4 in all city council meetings and decisions, including those concerning *Pico Neighborhood*
5 *Association v. City of Santa Monica* (the “Voting Rights Case”).

6 To determine whether an elected official has a conflict of interest in making decisions
7 concerning an underlying litigation or other dispute, courts evaluate the relief sought in that
8 litigation. If the elected official does not have a “personal” interest in that relief, different than
9 that of any substantial group of constituents, there is no disqualifying conflict. (88
10 Ops.Cal.Atty.Gen. 32 (2005) at pp. 8-9. [“While common law conflicts may sometimes arise
11 in the absence of a financial interest, there still must be some personal advantage or
12 disadvantage at stake” that is different than the interest of a group of constituents generally.]
13 That is true regardless of the elected official’s previous involvement in the litigation, or
14 relationship to the named parties in the litigation. (*BreakZone Billiards v. City of Torrance*
15 (2000) 81 Cal.App.4th 1205, 1208-1209, 1213-1214, 1231-1239 [finding no common law
16 conflict, even where Torrance councilmember participated in council’s decision on *his own*
17 appeal, because councilmember had no peculiarly personal interest in the relief sought through
18 his appeal].)

19 Councilmember de la Torre has no “personal” interest in the Voting Rights Case;
20 rather, his interest is philosophical and political, just like every other member of the Santa
21 Monica City Council. The only relief sought in the Voting Rights Case is a change to the
22 method of electing Defendant’s city council – a change that would impact all Santa Monica
23 voters, not just Councilmember de la Torre. This Court summed it up best in its September
24 30, 2021 ruling:

25 “The issue at stake here is CVRA litigation now on appeal in which the City is
26 a defendant. **Plaintiff De La Torre does not have a personal stake in that**
27 **litigation** but voices a point of view that is contrary to the majority of the
28 councilmembers. These differing viewpoints are to be resolved in a fair

1 political process. **The City’s actions to exclude the participation of a**
2 **councilmember who campaigned in support of the plaintiffs in the CVRA**
3 **litigation thwarts the political process** and raises an actual controversy for
4 judicial determination.”

5 (September 30, 2021 Ruling, overruling Defendant’s Demurrer (emphasis added).)¹

6 When voters disagree with the actions and positions of elected officials, the voters
7 make their voices heard by replacing those officials with candidates who more closely share
8 their views. That is what representative democracy is all about; that is what happened when
9 Mr. de la Torre was elected; and it may not be stifled by a council majority’s wishful thinking
10 about what constitutes a “common-law conflict.”

11 **II. FACTS**

12 The relevant facts are not reasonably subject to dispute. As Defendant stated in its July
13 7, 2021 Case Management Statement, this case “can be resolved as a matter of law with
14 reference to judicially noticed documents.” Indeed, the key question – whether
15 Councilmember de la Torre has a personal interest in the Voting Rights Case – can be
16 conclusively answered by reference to just two judicially noticeable documents – the operative
17 complaint and judgment in the Voting Rights Case.

18 **A. Plaintiffs’ Advocacy and the Voting Rights Case**

19 For several decades, De La Torre has advocated for the elimination of at-large
20 elections, both in Santa Monica and throughout California, because those elections are well-
21 known to disadvantage minority voters and cause elected officials to be unresponsive, even
22 hostile, to those voters. (de la Torre Decl. ¶¶ 2-3; see also *Thornburg v. Gingles* (1986) 478
23 U.S. 30, 47 [The U.S. Supreme Court “has long recognized that ... at-large voting schemes
24 may operate to minimize or cancel out the voting strength of minorities.”]; see also *id.* at 48,
25 fn. 14 [at-large elections also cause elected officials to “ignore [minority] interests without fear

27 ¹ For the Court’s convenience, a copy of the Court’s September 30, 2021 Ruling is attached as
28 Exhibit A to the Declaration of Wilfredo Trivino-Perez.

1 of political consequences”].) The California Legislature expressed its disdain for at-large
2 elections, for these very same reasons, by enacting the California Voting Rights Act.
3 (“CVRA”, Elec. Code §§ 14025 et seq.)

4 Beginning around 2015, De La Torre and others, including Plaintiff Elias Serna,
5 focused their efforts on changing the at-large election system employed by Defendant. (de la
6 Torre Decl. ¶ 4.) With their efforts ignored by Defendant, the Pico Neighborhood Association
7 and Maria Loya filed a lawsuit in this Court to compel Defendant to comply with the CVRA.
8 (de la Torre Decl. ¶ 5.) That case (the “Voting Rights Case”), captioned *Pico Neighborhood*
9 *Association, et al. v. City of Santa Monica*, LASC Case No. BC616804, was filed in April
10 2016 and went to trial in August 2018. (Shenkman Decl. ¶ 3.) The Los Angeles Superior
11 Court (Hon. Yvette Palazuelos) entered judgment in favor of the plaintiffs. (Shenkman Decl. ¶
12 4, Ex. B). An intermediate appellate court reversed. (Shenkman Decl. ¶ 4). The California
13 Supreme Court granted review and depublished the intermediate appellate court’s decision.
14 (Id.) The Voting Rights Case is currently pending in the California Supreme Court. (Id.)

15 The Voting Rights Case seeks only non-monetary relief – an injunction and declaration
16 from the court, implementing district-based elections for Defendant’s city council. (Shenkman
17 Decl. ¶ 3, Ex. A.) Consistent with the requested relief, the Judgment entered by the Los
18 Angeles Superior Court awards the plaintiffs injunctive and declaratory relief – the
19 implementation of district-based elections the plaintiffs requested, but no monetary relief.
20 (Shenkman Decl., ¶ 4 Ex. B.) While the lawyers in the Voting Rights Case are likely entitled
21 to recover their fees and costs, the plaintiffs in that case cannot share in those fees (See Cal.
22 Rule of Prof. Conduct 1-320); and the Voting Rights Case plaintiffs also need not pay any fees
23 or costs; their attorneys accepted the case *pro bono* and agreed to pay all costs. (Shenkman
24 Decl. ¶¶ 5-6, Exs. B, C.)

25 **B. The 2020 Election**

26 De La Torre sought election to Defendant’s city council in the November 2020
27 elections, campaigning on a platform that included an end to the illegal at-large election
28 system and the expensive legal fight to maintain that system. (de la Torre Decl. ¶ 7, Ex. A.)

1 De La Torre and two other opponents of the at-large elections defeated the incumbents, and
2 were sworn into office in December 2020. (de la Torre Decl. ¶¶ 7-9, Exs. A, B).

3 **C. Defendant’s City Council Votes to Exclude De La Torre From Council**
4 **Decisions.**

5 On November 25, 2020, Defendant’s interim city attorney, who had actively
6 participated in the defense of the Voting Rights Case, sought advice from the FPPC on
7 whether De La Torre had a conflict of interest that prevented him from participating in council
8 deliberations and decisions regarding the Voting Rights Case. (de la Torre Decl. ¶ 10, Ex. C.)
9 Then, on January 22, 2021, without waiting for a response from the FPPC, the interim city
10 attorney placed an item on the City Council’s next meeting agenda, for a council vote to
11 exclude De La Torre from all decisions concerning the Voting Rights Case. (de la Torre Decl.
12 ¶ 11, Ex. D). Though some city council members expressed a desire to hear from the FPPC,
13 they ultimately did not wait for guidance from the FPPC or any court. Instead, a bare majority
14 (4 of 7), including one councilmember who testified at trial for the defense in the Voting
15 Rights Case, voted to declare that De La Torre has a conflict of interest and to exclude him
16 from all discussions, meetings and decisions concerning the Voting Rights Case. (de la Torre
17 Decl. ¶ 12, Ex. E.)

18 **D. The FPPC Rules That De La Torre Has No Conflict of Interest, But**
19 **Defendant Refuses to Revisit Its Exclusion of De La Torre.**

20 On February 4, 2021 the FPPC responded to Defendant’s inquiry, and definitively
21 concluded that De La Torre does *not* have a conflict of interest that prohibits him from
22 participating in meetings and decisions concerning the Voting Rights Case. (de la Torre Decl.
23 ¶ 13, Ex. F.) De La Torre requested that, in light of the FPPC’s determination, Defendant
24 reverse its previous action, but Defendant refused, and even refused to allow the matter to be
25 considered by the council. (de la Torre Decl. ¶ 14, Ex. G.)

26 **III. LEGAL STANDARD FOR SUMMARY JUDGMENT**

27 This Court is no doubt aware of the standard and procedures for summary judgment
28 motions. Code of Civil Procedure section 437c(c) describes the standard: “The motion for

1 summary judgment shall be granted if all the papers submitted show that there is no triable
2 issue as to any material fact and that the moving party is entitled to a judgment as a matter of
3 law.” While “the moving party bears the burden of persuasion that there is no genuine issue of
4 material fact and that he is entitled to judgment as a matter of law[], there is only a genuine
5 issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find
6 the underlying fact in favor of the party opposing the motion in accordance with the applicable
7 standard of proof.” *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.

8 **IV. COUNCILMEMBER DE LA TORRE HAS NO CONFLICT OF INTEREST**

9 As the FPPC confirmed, Councilmember De La Torre “does not have a disqualifying
10 conflict of interest in City Council decisions concerning the [Voting Rights] lawsuit against
11 the City.” (de la Torre Decl., Ex. F at pp. 4, 6.) While Defendant argues the FPPC limited its
12 analysis to California’s statutory framework governing conflicts of interest, that analysis
13 applies equally to the “common law doctrine” of conflicts of interest as well. Just like De La
14 Torre does not have a financial interest in the Voting Rights Case, as the FPPC explained,
15 because none of the relief sought in that case could result in a financial benefit to De La Torre
16 or his family, De La Torre also does not have a non-financial “personal” interest because the
17 relief sought in the Voting Rights Case would confer the same benefit on tens of thousands of
18 Santa Monica voters as De La Torre. (Cf. Gov’t Code § 87103 [“A public official has a
19 financial interest in a decision within the meaning of Section 87100 if it is reasonably
20 foreseeable that the decision will have a material financial effect, *distinguishable from its*
21 *effect on the public generally.*”] (emphasis added); Cal. Code Regs. tit. 2 § 18703.)

22 **A. The Law of Conflicts of Interest for Elected Officials**

23 California’s law concerning conflicts of interest for elected officials is addressed by two
24 statutes – the Political Reform Act (“PRA”, Gov’t Code §§ 81000-91014) and Section 1090 et
25 seq. of the Government Code (“Section 1090”). To the extent it has not been abrogated by
26 those two statutes, there also remains a common law prohibition on conflicts of interest. (See
27 88 Ops.Cal.Atty.Gen. 32 (2005), at p. 9 [“Since the Legislature has, in effect, authorized the
28

1 lease agreement under this ‘noninterest’ exception, the common law prohibition may not be
2 applied in a manner inconsistent with this statute.”.)

3 Particularly because an unduly broad view of the “common law doctrine” could prevent
4 public officials from doing what they were elected to do, the courts are reluctant to find a
5 conflict of interest under the common law doctrine where no conflict exists under the PRA or
6 Section 1090. (See *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205,
7 1233 [declining to find a conflict of interest at common law where conflict of interest statutes
8 had not been violated – “We continue to be cautious in finding common law conflicts of
9 interest ... We reject the application of the doctrine in this case, assuming, arguendo, it
10 exists.”].)

11 “While common law conflicts may sometimes arise in the absence of a financial
12 interest, there still must be some personal advantage or disadvantage at stake” that is different
13 than the interest of a group of constituents generally. (88 Ops.Cal.Atty.Gen. 32 (2005) at pp.
14 8-9.) If an elected official does not have “some personal advantage or disadvantage at stake”
15 that is different than the interest of a group of constituents, there is no conflict of interest, even
16 if the elected official is heavily involved in, or supportive of, one side of litigation. (*Id.*
17 [“Here, we find no common law conflict because, once again, the city council member has no
18 personal stake – financial or otherwise – in the proposed lease of the city’s property.”]; see
19 also *BreakZone*, 81 Cal.App.4th at 1208-1209, 1213-1214, 1231-1239 [finding no common
20 law conflict, even where Torrance councilmember participated in council’s decision on *his*
21 *own* appeal, because councilmember had no peculiarly personal interest in the relief sought
22 through his appeal].)

23 Where the question of a common law conflict arises in connection with an underlying
24 litigation or other dispute where an elected official may have some decision-making role, the
25 existence of a personal interest is determined by evaluating the relief sought in the underlying
26 dispute. (See, e.g., *BreakZone*, 81 Cal.App.4th at 1238-1239 [finding no common law conflict
27 because the approval or denial of the conditional use permit would affect all of the pool hall’s
28 neighbors, not just the councilmember].) Where an official has a personal interest, different

1 than the interest of other constituents, in the relief sought, he may have a conflict of interest;
2 where he does not have such a personal interest in the requested relief, he does not have a
3 conflict of interest. (See *id.*, at 1238-1239 distinguishing *Clark v. City of Hermosa Beach*
4 (1996) 48 Cal.App.4th 1152, 1172-1173 [finding common law conflict because
5 councilmember “stood to benefit personally by voting against the [condominium] project”
6 since that project was one block from his residence and would block “his ocean view,” but
7 noting that no conflict prevents the councilmember from participating in council decisions
8 regarding “the height of new construction” generally because that is a “subject[] of community
9 concern” that affects a large group of constituents, not just the councilmember].)

10 That rule holds regardless of whether the official has expressed a position different than
11 that previously taken by the political subdivision through its governing board or other
12 commission. (Cf. *BreakZone*, 81 Cal.App.4th at 1208-1209 [no conflict of interest where
13 council member expresses a position contrary to determination by the City’s planning
14 commission].) A contrary rule would stifle dissenting voices and prevent the electorate from
15 changing the direction of their local government through elections. (See *City of Fairfield v.*
16 *Superior Court* (1975) 14 Cal.3d 768, 781-782 [disapproving of disqualification of three city
17 council members based on their expression of a view contrary to that of the former city
18 council].)

19 **B. Councilmember De La Torre Does Not Have a *Personal* Interest in the**
20 **Relief Sought in the Voting Rights Case.**

21 De La Torre simply does not have any “personal stake – financial or otherwise” in the
22 relief sought in the Voting Rights Case. (88 Ops.Cal.Atty.Gen. 32 (2005) at p. 8, citing
23 *BreakZone*, 81 Cal.App.4th at 1232-33).

24 The FPPC has already concluded:

25 [N]either the [PRA] nor Section 1090 prohibits Councilmember de la Torre from
26 participating in governmental decisions relating to the [Voting Rights Case],
27 including a potential settlement agreement, where his spouse is a named plaintiff.
28 ... Neither [Councilmember de la Torre] nor his spouse has any financial
interest, direct or indirect in the outcome of the [Voting Rights Case], including

1 any future settlement agreement. There is no obligation on the part of him or his
2 spouse to pay any attorneys' fees or costs in connection with the litigation, and
3 no arrangement under which any portion of any recovery from the City of
4 attorneys' fees or costs would flow to him or his spouse."

5 (de la Torre Decl., Ex. F at pp. 2, 5). Indeed, Defendant has repeatedly conceded that
6 Councilmember de la Torre has no financial conflict. (See, e.g. Defendant's Demurrer to
7 Second Amended Complaint, p. 23 ["Plaintiff de la Torre's conflicts here are not financial."];
8 Defendant's Reply in Support of Demurrer to First Amended Complaint, p. 8 ["Simply put,
9 whether Plaintiff has a financial conflict of interest is not at issue. The sole basis for the
10 Council's decision to disqualify Plaintiff ... was because he has a common law conflict of
11 interest."].) Those statements in Defendant's briefs foreclose Defendant from reversing course
12 and arguing that Councilmember de la Torre has a financial conflict. (See *Mangini v. Aerojet-*
13 *General Corp.* (1991) 230 Cal.App.3d 1125, 1152 ["[B]riefs and arguments ... are reliable
14 indications of a party's position on the facts as well as the law, and a [] court may make use of
15 statements therein as admissions against the party."])

16 Nor does De La Torre have any non-financial personal interest in the Voting Rights
17 Case. If the plaintiffs prevail in the Voting Rights Case, Defendant's city council elections
18 will be district-based, and the votes of thousands of Santa Monica residents will no longer be
19 unlawfully diluted; De La Torre will receive nothing more than those thousands of other
20 residents of Santa Monica – an undiluted vote in a fair and lawful election. (de la Torre Decl.
21 ¶¶ 16-18.) The relief granted by the Los Angeles Superior Court in the Voting Rights Case
22 (now pending appeal) confirms this fact. (Shenkman Decl., ¶ 4, Ex. B.) And, while De La
23 Torre may run for re-election and the method of election might impact his prospects, the same
24 is also true for all other councilmembers and potential candidates – i.e. every registered voter
25 residing in Santa Monica.

26 Throughout the course of this case, Defendant has failed to identify any aspect of the
27 relief sought in the Voting Rights Case that would peculiarly benefit De La Torre differently
28 than thousands of other Santa Monica voters. Rather, Defendant has sought to distract this

1 Court from the proper analysis – an evaluation of the relief sought in the Voting Rights Case –
2 by focusing on De La Torre’s past involvement in the prosecution of the Voting Rights Case
3 and his relationships with the plaintiffs in that case. De La Torre’s past involvement in the
4 Voting Rights Case and his relationships with the plaintiffs in that case, is no substitute for
5 showing a personal interest in the relief sought in the underlying case. Even where a
6 councilmember is himself one of the litigants, he has no conflict in making decisions for the
7 city concerning the litigation if a significant portion of the public has a similar interest in the
8 relief sought through the litigation as the councilmember, i.e. the councilmember’s interest is
9 not “personal.” (See *BreakZone*, 81 Cal.App.4th at at 1208-1209, 1213-1214, 1233-1241
10 [finding no common law conflict despite the councilmember himself being a party to the
11 underlying dispute he decided as a member of the city council].)

12 In many types of cases, the plaintiffs necessarily have a personal interest. In a personal
13 injury or wrongful termination case, for example, if the plaintiff prevails he receives money –
14 unquestionably a benefit personal to the plaintiff. Even in some cases seeking non-monetary
15 relief, such as a property-line dispute or a case seeking to abate a private nuisance, the relief
16 may be personal to the plaintiffs. But cases brought under the CVRA, such as the Voting
17 Rights Case here, are different. The relief available in CVRA cases is limited to remedying an
18 unlawful election system. (See Elec. Code 14029 [“Upon a finding of a violation of [the
19 CVRA], the court shall implement appropriate remedies, including the imposition of district-
20 based elections, that are tailored to remedy the violation.”].) All voters have an equal interest
21 in that relief, as recognized by the CVRA’s standing provision, Elections Code section 14032:
22 “**Any voter** who is a member of a protected class and who resides in a political subdivision
23 where a violation of [the CVRA] is alleged may file an action ...” (emphasis added).

24 *BreakZone, supra*, is particularly instructive in demonstrating how a councilmember’s
25 involvement in an underlying dispute, and even being a party to the dispute himself, does not
26 establish a personal interest under the common law doctrine of conflicts of interest. In
27 *BreakZone*, a business obtained an amendment to its conditional use permit from the City of
28 Torrance’s planning commission over the objections of several residents and the police chief.

1 (*Id.* at 1209-1213.) A Torrance City Councilmember, Dan Walker, filed an appeal of the
2 planning commission’s decision. (*Id.* at 1213-1214.) Councilmember Walker adjudicated the
3 appeal, along with his council colleagues, ultimately granting the appeal and denying the
4 business the conditional use permit amendment. (*Id.* at 1214-1219.) The business challenged
5 that decision in court, claiming, among other things, that Councilmember Walker had a
6 conflict of interest because: 1) he himself filed the appeal; and 2) he had received campaign
7 contributions totaling over \$8,000 from businesses that stood to gain financially by the denial
8 of the conditional use permit amendment. (*Id.* at 1220.) The *BreakZone* court found those
9 allegations, even if true, did not amount to a legally cognizable conflict of interest, under the
10 common law doctrine or any statutory prohibition, because even though Councilmember
11 Walker was a party to the appeal he had no personal interest different from other Torrance
12 residents at stake in the appeal. (*Id.* at 1231-1239; also see 88 Ops.Cal.Atty.Gen.32 (2005) at
13 pp. 8-9.) Rather, Councilmember Walker’s interest was the same as that of other Torrance
14 residents – the elimination of the noise and crime they attributed to the pool hall. The
15 *BreakZone* court summed it up: “In this case we consider de novo whether a member of the
16 Torrance City Council may appeal the decision of that city’s planning commission to grant a
17 conditional use permit, participate in the public hearing and city council deliberations on the
18 appeal, and vote on that appeal. ... We will conclude that the council member was not barred
19 from participation.” (*Id.* at 1208-1209.) As in *BreakZone* where Councilmember Walker’s
20 role as the appellant did not justify his disqualification, Councilmember De La Torre’s wife’s
21 role as one of the plaintiffs in the Voting Rights Case likewise does not present a disqualifying
22 conflict of interest here, because there is no *personal* interest (for De La Torre or his wife) in
23 the relief sought.

24 Just like Councilmember Walker in *BreakZone*, Councilmember De La Torre has
25 expressed his desire that one side – the plaintiffs – prevail in the Voting Rights Case so
26 district-based elections are implemented for Santa Monica’s City Council. De La Torre has
27 consistently expressed his support for district-based elections, in his campaign and for several
28 years prior. (de la Torre Decl. ¶¶ 2-4, 7, 9, 15-16). That was one of the reasons he was

1 elected. (de la Torre Decl. ¶ 9.) But that strong advocacy, and even expressing disagreement
2 with the positions of a previous council, including how they have responded to litigation, is no
3 reason to exclude Councilmember De La Torre from decisions concerning that litigation. As
4 the California Supreme Court explained in *City of Fairfield v. Superior Court* (1975) 14
5 Cal.3d 768, disqualifying elected officials from decisions on topics about which they have
6 expressed their strong opinions “would be contrary to the basic principles of a free society ...
7 [and] the very essence of our democratic society.” (*City of Fairfield*, 14 Cal.3d at 781-782,
8 approvingly quoting *Wollen v. Fort Lee* (1958) 27 N.J. 408 and citing cases from several other
9 states.) Where, as here, the electorate disagrees with the positions taken by their elected
10 representatives, including in litigation, and replace those representatives through the
11 democratic process, the will of the electorate should not be thwarted by excluding the newly
12 elected representatives from decisions concerning that litigation. In *City of Fairfield*, the
13 California Supreme Court expressly rejected the contrary view expressed in *Saks & Co. v. City*
14 *of Beverly Hills* (1951) 107 Cal.App.2d 260. (*City of Fairfield*, 14 Cal.3d at 781-782 [“The
15 Court of Appeal decision in *Saks* effectively thwarted representative government by depriving
16 the voters of the power to elect councilmen whose views on this important issue of civic policy
17 corresponded to those of the electorate.”].)

18 None of the authorities cited by Defendant in its January 2021 staff report, or
19 throughout this case, support its apparent view that a personal interest can be inferred from an
20 elected official’s involvement in litigation or relationship with the parties to that litigation. 92
21 Ops.Cal.Atty.Gen. 19 (2009) addressed a redevelopment agency’s decision to enter into a loan
22 agreement for commercial property improvement with a corporation wholly owned by the son
23 of one of the agency’s members. (*Id.* at p. 1). Receiving a substantial loan obviously has
24 personal value – of a financial nature, and, as the Attorney General opinion explained: “it is
25 difficult to imagine that the agency member has no private or personal interest in whether her
26 son’s business transactions are successful or not.” (*Id.* at p. 7.) The loan had value to the
27 agency member’s son, not to a large group of the agency’s constituents. (*Id.*) In contrast, the
28 “interest” Councilmember De La Torre, and even the plaintiffs in the Voting Rights Case,

1 have in the relief sought through that case is no different than the interest thousands of Santa
2 Monica voters have in that same relief – to enjoy an undiluted vote in the city council
3 elections. (de la Torre Decl. ¶¶ 3, 13, 16-18, Ex. F.)

4 Likewise, in *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152 the court
5 found a conflict of interest because the official “stood to benefit personally by voting against
6 the [condominium] project” since he had “an interest in preserving his ocean view” from his
7 residence. (*Id.* at 1172.) Had the proposed condominium project not threatened his personal
8 ocean view, but rather the official was generally opposed to developments that exceeded
9 height limitations because those developments would impede the ocean views of residents
10 living inland, the court stated that would not be a conflict of interest. (*Id.* at 1172-73 [“Here,
11 Benz's conflict of interest arose, not because of his general opposition to 35-foot buildings, but
12 because the specific project before the Council, if approved, would have had a direct impact
13 on the quality of his own residence.]). Just like the hypothetical “general opposition to 35-foot
14 buildings” the *Clark* court confirmed would not constitute a personal interest because it would
15 protect many constituents’ ocean views, the relief sought in the Voting Rights Case – the
16 elimination of at-large elections – would inure to the benefit of thousands of Santa Monica
17 voters, not just De La Torre. (de la Torre Decl. ¶¶ 2-3, 16, 18).

18 The Voting Rights Case does not involve a “personal” interest for Councilmember de la
19 Torre; it involves an interest common to a large group of Santa Monicans whom De La Torre
20 was elected to represent. Therefore, he has no legally cognizable conflict in addressing the
21 Voting Rights Case, and is entitled to a declaration from this Court.

22 **V. DEFENDANT MAY NOT EXCLUDE COUNCILMEMBER DE LA TORRE**
23 **FROM CLOSED SESSION MEETINGS CONCERNING THE VOTING**
24 **RIGHTS CASE.**

25 Because Councilmember de la Torre does not have a personal interest in the Voting
26 Rights Case (and perhaps even if he did), Defendant may not prevent him from attending
27 closed session council meetings concerning that case. Holding such closed meetings of the
28 city council, while excluding Councilmember de la Torre, as Defendant insists it will do

1 absent an order by this Court, would violate the Ralph M. Brown Act (Gov't Code §§ 54950 et
2 seq.).

3 The Brown Act does not permit a closed session accessible to just a majority of the
4 members of a legislative body rather than all the members. (See Gov't Code § 54953 [with
5 only specified exceptions, "all persons shall be permitted to attend" meetings of all or a
6 majority of any city council]; Gov't Code § 54956.9 ["a legislative body of a local agency,"
7 but not just a majority of a legislative body, may "hold[] a closed session to confer [regarding]
8 pending litigation."]) The litigation exception of the Brown Act, which permits a "closed
9 session to confer regarding pending litigation" applies to meetings of "a legislative body of a
10 local agency," not to meetings accessible to just a majority of the legislative body of a local
11 agency. (Gov't Code § 54956.9.) Where the Legislature wanted to refer in the Brown Act to
12 "a majority ... of the members of a legislative body" rather than the entire legislative body, the
13 Legislature did exactly that explicitly. (See, e.g., Government Code §§ 54952.2, 54952.6 and
14 54957.5.) The litigation exception cannot, as Defendant would prefer, be interpreted broadly
15 to suit its policy goals to allow only its favored city council members to attend closed sessions;
16 if Defendant disagrees, it should take it up with the Legislature. (See, *Shapiro v. San Diego*
17 *City Council* (2002) 96 Cal.App.4th 904, 917 ["Statutory exceptions authorizing closed
18 sessions of legislative bodies are construed narrowly."]; 71 Ops.Cal.Atty.Gen. 96 (1988)
19 ["Litigation exceptions to the Ralph M. Brown Act's open meeting requirements must be
20 strictly construed ... If there is to be any change [to allow closed sessions], it is one for the
21 Legislature to make."]; see also Cal. Const. Art. 1, section 3(b)(2) [added by Proposition 59 in
22 2004, requiring Brown Act exceptions to open meeting requirement to be construed
23 narrowly].)

24 Defendant's suggestion, at its January 2021 meeting and throughout this case, that it
25 should be permitted to bend the Brown Act because if Councilmember de la Torre were
26 allowed to attend closed session council meetings then he might be tempted to disclose
27 confidential information, is both wrong and offensive. Councilmember de la Torre has been a
28 local elected official for nineteen years, and has never revealed confidential information from

1 a closed session. (de la Torre Decl. ¶ 19.) He understands that the Brown Act specifically
2 prohibits the disclosure of confidential information, and imposes serious consequences on any
3 official who discloses confidential information from a closed session. (de la Torre Decl. ¶¶
4 20-21; Gov't Code § 54963.) But, the Brown Act does not authorize the anticipatory
5 exclusion of one councilmember because other councilmembers think he might be tempted to
6 disclose confidential information (see Gov't Code § 54963), and, as the California Attorney
7 General has explained, a public agency may not add to the remedies enumerated in the Brown
8 Act for addressing the disclosure of confidential information (see 76 Cal.Ops.Atty.Gen. 289
9 (1993).) If Councilmember de la Torre were to violate the law by disclosing confidential
10 information, he should be made to face the consequences specified in the Brown Act, but he
11 should not be presumed guilty before having any occasion to break the law.

12 VI. CONCLUSION

13 Councilmember de la Torre campaigned in support of the plaintiffs in the Voting Rights
14 Case, promising to end the City of Santa Monica's wasteful fight against the voting rights of
15 all Californians, and he won a seat on the City Council. The undisputed – indeed, judicially
16 noticeable – facts establish that Councilmember de la Torre does not have a personal interest
17 in the Voting Rights Case. The council majority, who hold a view different than
18 Councilmember de la Torre, therefore may not thwart the political process by excluding
19 Councilmember de la Torre from meetings, discussions and votes concerning the Voting
20 Rights Case.

21 The voters of Santa Monica who elected Councilmember de la Torre have waited long
22 enough to have a voice on the City Council regarding this important public issue. Plaintiffs
23 respectfully request that this Court grant summary judgment, so they are not forced to wait any
24 longer.

25
26 DATED: January 5, 2022

Respectfully submitted:
TRIVINO-PEREZ & ASSOCIATES

27 By: /s/ Wilfredo Trivino Perez
28 Wilfredo Trivino-Perez
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