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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' SEPARATE STATEMENT
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, FOR SUMMARY
ADJUDICATION**

Dept. 15

[Hon. Richard Fruin]

Pursuant to Code of Civil Procedure 437c, subdivision (b), and California Rule of Court 3.1350, Plaintiffs Oscar de la Torre and Elias Serna (collectively “Plaintiffs”) respectfully submit their Separate Statement in of Undisputed Material Facts, together with references to supporting evidence, in support of their Motion for Summary Judgment or, in the Alternative, Summary Adjudication.

ISSUE #1: THE FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF SHOULD BE RESOLVED IN FAVOR OF PLAINTIFFS BECAUSE COUNCILMEMBER DE LA TORRE DOES NOT HAVE A PERSONAL INTEREST IN THE OUTCOME OF *PICO NEIGHBORHOOD ASSOCIATION, ET AL. V. CITY OF SANTA MONICA.*

MOVING PARTY’S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY’S RESPONSE AND SUPPORTING EVIDENCE
<p>1. Oscar de la Torre has advocated for district-based elections for Santa Monica’s city council since at least 2015.</p> <p><u>Evidence:</u> De la Torre Decl. ¶¶ 2-4, 7, 9, 15-16, Ex. A</p>	
<p>2. In April 2016, Maria Loya and the Pico Neighborhood Association filed suit in the Los Angeles Superior Court, alleging the City of Santa Monica’s at-large city council elections violated the California Voting Rights Act (“CVRA”) and the Equal Protection Clause of the California Constitution. That case is styled <i>Pico Neighborhood Association, et al. v. City of Santa Monica</i>, Case No. BC616804, and is now pending in the California Supreme Court (hereinafter, the “Voting Rights Case”.)</p> <p><u>Evidence:</u> Shenkman Decl. ¶¶ 3, 4</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>3. The operative complaint in the Voting Rights Case seeks changes to the method of electing the Santa Monica City Council and an award of attorneys' fees and expenses, but no monetary relief for the plaintiffs.</p> <p><u>Evidence:</u> Shenkman Decl. ¶3, Ex. A</p>	
<p>4. Changing the at-large method of electing the Santa Monica City Council to a district-based method of election, would affect substantially all Santa Monica voters.</p> <p><u>Evidence:</u> De la Torre Decl. ¶¶ 16-18</p>	
<p>5. Following a six-week trial, in February 2019 the Los Angeles Superior Court entered judgment in favor of the plaintiffs in the Voting Rights Case, and issued a Statement of Decision. Consistent with the relief requested in the operative complaint, the Los Angeles Superior Court ordered changes to the method of electing the Santa Monica City Council, and contemplated a motion for an award of attorneys' fees and expenses, but no monetary relief for the plaintiffs.</p> <p><u>Evidence:</u> Shenkman Decl. ¶ 4, Ex. B</p>	
<p>6. Neither the plaintiffs in the Voting Rights Case, nor Oscar de la Torre, have any obligation to pay any attorneys' fees or costs in connection with the Voting Rights Case, and there is no arrangement under which any portion of any recovery of attorneys' fees or costs would flow to any of them. On the contrary, the attorneys for the plaintiffs in the Voting Rights Case agreed to litigate that case <i>pro bono</i> and pay all costs.</p> <p><u>Evidence:</u> Shenkman Decl. ¶ 5, Ex. C; De la Torre Decl. ¶¶ 16-17</p>	

MOVING PARTY’S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY’S RESPONSE AND SUPPORTING EVIDENCE
<p>7. In 2020, Oscar de la Torre campaigned for a seat on the Santa Monica City Council. One of the issues in that campaign was the Voting Rights Case and, relatedly, whether the Santa Monica City Council should be elected through at-large or district-based elections. All of the incumbent council members professed their support for at-large elections, while Oscar de la Torre and his “Change Slate” colleagues (Phil Brock, Christine Parra and Mario Fonda Bonardi) all indicated they support a switch to district-based elections). Specifically, in his campaign, Oscar de la Torre voiced his opinion that the City of Santa Monica should stop its wastefully costly fight in the Voting Rights Case.</p> <p><u>Evidence:</u> De la Torre Decl. ¶ 7, Ex. A</p>	
<p>8. Oscar de la Torre was elected to the Santa Monica City Council in November 2020.</p> <p><u>Evidence:</u> De la Torre Decl. ¶ 8, Ex. B</p>	
<p>9. By a vote of 4 of 7 council members on January 26, 2021, Defendant’s city council voted to exclude Councilmember de la Torre from all council meetings, discussions and decisions concerning the Voting Rights Case, based on its assertion that Councilmember de la Torre had a “common law conflict.”</p> <p><u>Evidence:</u> De la Torre Decl. ¶¶ 11-12, Ex. E</p>	
<p>10. In response to an inquiry from Defendant’s interim city attorney, on February 4, 2021 the Fair Political Practices Commission concluded: “neither the [Political Reform] Act nor Section 1090 prohibits Councilmember de la Torre from</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>participating in governmental decisions relating to the [Voting Rights Case], including a potential settlement agreement, where his spouse is a named plaintiff. ... Neither [Councilmember de la Torre] nor his spouse has any financial interest, direct or indirect in the outcome of the [Voting Rights Case], including any future settlement agreement. There is no obligation on the part of him or his spouse to pay any attorneys' fees or costs in connection with the litigation, and no arrangement under which any portion of any recovery from the City of attorneys' fees or costs would flow to him or his spouse."</p> <p><u>Evidence:</u> De la Torre Decl. ¶ 13, Ex. F</p>	

ISSUE #2: THE SECOND CAUSE OF ACTION FOR VIOLATION OF THE RALPH M. BROWN ACT SHOULD BE RESOLVED IN FAVOR OF PLAINTIFFS BECAUSE COUNCILMEMBER DE LA TORRE DOES NOT HAVE A PERSONAL INTEREST IN THE OUTCOME OF *PICO NEIGHBORHOOD ASSOCIATION, ET AL. V. CITY OF SANTA MONICA*, AND THE RALPH M. BROWN ACT PROHIBITS CLOSED SESSION MEETINGS OF A MAJORITY, BUT NOT ALL, OF THE CITY COUNCIL.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>11. This section incorporates by reference all statements and evidence in paragraphs 1-10 of this Statement of Undisputed Material Facts.</p>	
<p>12. Plaintiff Oscar de la Torre has requested that Defendant allow him to be present for all closed session meetings of the Santa Monica City Council concerning the Voting Rights Case, but Defendant has refused.</p>	
<p><u>Evidence:</u> De la Torre Decl. ¶ 14, Ex. G</p>	

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DATED: January 5, 2021

Respectfully submitted:

TRIVINO-PEREZ & ASSOCIATES

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