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 14 CITY OF SANTA MONICA

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

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 16 **FOR THE COUNTY OF LOS ANGELES**

17 OSCAR DE LA TORRE and ELIAS SERNA,

CASE NO.: 21STCV08597

18 Plaintiffs,

Assigned to Hon. Richard L. Fruin

19 v.

**NOTICE OF MOTION AND MOTION OF
 DEFENDANT CITY OF SANTA MONICA
 FOR SUMMARY JUDGMENT OR, IN THE
 20 ALTERNATIVE, SUMMARY
 21 ADJUDICATION**

21 CITY OF SANTA MONICA,
 and DOES 1 through 10, inclusive

22 Defendants.

Date: May 6, 2022
 Time: 9:15
 Dept.: 15

Reservation No: 661700682638

Action Filed: March 4, 2021
 Trial Date: May 16, 2022

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT on May 6, 2022 at 9:15 a.m. in Department 15 of the above-
3 entitled Court, located at 111 North Hill Street, Los Angeles, California, 90012, defendant City of
4 Santa Monica (“City”) will and hereby does move for an order granting summary judgment in favor
5 of the City and against Plaintiffs Oscar De la Torre and Elias Serna pursuant to Code of Civil
6 Procedure § 437c, on the grounds that the action has no merit, there is no triable issue as to any
7 material fact, that the declarations sought are inappropriate, unnecessary, and improper, Plaintiffs
8 lack standing, and that the City is entitled to judgment as a matter of law.

9 PLEASE TAKE FURTHER NOTICE pursuant to Code of Civil Procedure § 437c(f)(1) that
10 at the same time and place, the City will move in the alternative for an order summarily adjudicating
11 the following causes of action or affirmative defenses:

12 1. That the declaratory relief sought is inappropriate and not necessary or proper
13 regarding any past action of the City Council in disqualifying De la Torre as “[d]eclaratory relief
14 operates prospectively to declare future rights, rather than to redress past wrongs.” (*Canova v.*
15 *Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1497);

16 2. That the declaratory relief sought that De la Torre does not have a conflict of interest
17 would be inappropriate and improper where the Court would have to speculate about future scenarios
18 and the Court cannot make a declaration applicable under all scenarios. (*Sanctity of Human Life*
19 *Network v. California Highway Patrol* (2003) 105 Cal.App.4th 858, 873) (where variables may
20 change in the future, a court cannot “make a declaration at this point that will be applicable under all
21 scenarios”); *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1585
22 (reversing declaratory judgment where there was too much “uncertainty” and relief would have
23 required the court to “speculate about unpredictable future events in order to evaluate the parties’
24 claims”));

25 3. That the declaratory relief sought with respect to the City’s power to exclude De la
26 Torre is legally incorrect and thus has no merit, as the City Council has the power to excluded
27 conflicted members from closed meetings. (City Charter, § 605 [“All powers of the City shall be
28 vested in the City Council, subject to the provisions of this Charter and to the Constitution of the

1 State of California”]; *Simons v. City of Los Angeles* (1976) 63 Cal.App.3d 455, 468; *People ex rel.*
2 *Harris v. Rizzo* (2013) 214 Cal.App.4th 921, 940; *Kimura v. Roberts* (1979) 89 Cal.App.3d 871,
3 875.);

4 4. That the declaratory relief sought that De la Torre does not have a conflict of interest
5 is contrary to the undisputed facts and law. That the undisputed evidence demonstrates that De la
6 Torre has a disqualifying common law conflict of interest based upon, among other things: (a) his
7 prior involvement in the matter of *Pico Neighborhood Association and Maria Loya v. City of Santa*
8 *Monica*, Case No. BC616804 (L.A. Super. Ct. Apr. 12, 2016) (the “CVRA Action”); (b) his
9 continued involvement with the CVRA Action since becoming a councilmember, (c) his entwinement
10 with the lead CVRA Action plaintiff’s attorney, and (d) his wife’s continued role as a named plaintiff
11 in the CVRA Action. (E.g., *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51; *Kimura v. Roberts*
12 (1979) 89 Cal.App.3d 871, 875; *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 484;
13 *Mennig v. City Council* (1978) 86 Cal.App.3d 341, 351; *People ex rel. Lacey v. Robles* (2020) 44
14 Cal.App.5th 804, 821–822; 92 Ops.Cal.Atty.Gen. 19 (2009), 2009 WL 129874; 101
15 Ops.Cal.Atty.Gen. 1 (2018), 2018 WL 1971010.) Additionally, the undisputed evidence
16 demonstrates that De la Torre has a disqualifying financial conflict of interest under either/both the
17 Political Reform Act and/or Government Code § 1090 based upon (a) De la Torre’s receipt of gifts of
18 legal and other services valued at over \$520 from the lead CVRA Action plaintiffs’ attorney and (b)
19 De la Torre’s wife’s consulting company, which stands to financially benefit from any settlement of
20 the CVRA Action;

21 5. That Plaintiff Serna lacks standing to bring a declaratory relief claim because he has
22 no special interest or right at issue and has conceded that his alleged “injury” is no different than any
23 other voter. (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 59, quoting Code Civ. Proc,
24 § 367);

25 6. That equitable relief in the form of a declaration or injunctive relief should not be
26 issued here because of De la Torre’s unclean hands (the City’s Fourth Affirmative Defense). De la
27 Torre’s entwinement in the CVRA Action and with the lead CVRA Action plaintiffs’ attorney, as
28 well as his refusal to recuse himself in light of the facts here, violates De la Torre’s duty to act with

1 disinterested skill, zeal, diligence, loyalty, and primarily for the benefit of the public and constitutes
2 “conduct that violates conscience, or good faith, or other equitable standards of conduct” sufficient to
3 invoke the doctrine. (*Kendall-Jackson Winery, Ltd. v. Super. Ct.* (1999) 76 Cal.App.4th 970, 979);

4 7. That there is no evidence of any potential future violation of the Brown Act and that
5 the Brown Act does not provide that all members are entitled or required to attend a closed session.
6 Nor does the Brown Act restrict the authority of the City Council from disqualifying a
7 councilmember from a closed session due to a conflict of interest; and

8 8. De la Torre lacks standing to bring a Brown Act claim because he is not an “interested
9 person” under Gov. Code, § 54960 with standing to challenge future Council action. (*See Holbrook*
10 *v. City of Santa Monica* (2006) 144 Cal.App.4th 1242, 1257; *Galbiso v. Orosi Public Utility*
11 *Dist.* (2010) 182 Cal.App.4th 652.)

12 The City reserves its right to present additional evidence once on-going discovery issues are
13 resolved.

14 This Motion is based upon this Notice, the accompanying Memorandum of Points and
15 Authorities in Support of Defendant City of Santa Monica’s Motion for Summary Judgment or, in the
16 Alternative, Summary Adjudication, the City’s accompanying Separate Statement of Undisputed
17 Material Facts, the Declarations of Carol M. Silberberg, Frank Zerunyan, Denise Anderson-Warren,
18 the City’s Request for Judicial Notice, the Appendix of Supplemental Authorities, the accompanying
19 evidence submitted therewith, the pleadings and records on file herein, all other matters of which the
20 Court may take judicial notice, and upon such other oral and documentary evidence as may be
21 presented hereinafter.

22 In the accompanying Memorandum of Points and Authorities, the Separate Statement of
23 Undisputed Facts is referred to as “SF” followed by the paragraph number; the Request for the
24 Judicial Notice is referred to as “RJN”; the Appendix of Supplemental Authorities is referred to as
25 “ASA” and the Declaration of Frank V. Zerunyan is referred to as the “Zerunyan Decl.,” all of which
26 are being filed contemporaneously herewith.

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Dated: February 12, 2022

BERRY SILBERBERG STOKES PC
CAROL M. SILBERBERG

By /s/ Carol M. Silberberg
Carol M. Silberberg

Attorneys for Defendant
CITY OF SANTA MONICA



Make a Reservation

OSCAR DE LA TORRE vs CITY OF SANTA MONICA

Case Number: 21STCV08597 Case Type: Civil Unlimited Category: Other Complaint (non-tort/non-complex)
Date Filed: 2021-03-04 Location: Stanley Mosk Courthouse - Department 15

Reservation

Case Name: OSCAR DE LA TORRE vs CITY OF SANTA MONICA	Case Number: 21STCV08597
Type: Motion for Summary Judgment	Status: RESERVED
Filing Party: City of Santa Monica (Defendant)	Location: Stanley Mosk Courthouse - Department 15
Date/Time: 05/06/2022 9:15 AM	Number of Motions: 1
Reservation ID: 661700682638	Confirmation Code: CR-TYI4TKDAAFGSUX75D

Fees

Description	Fee	Qty	Amount
Motion for Summary Judgment	500.00	1	500.00
Credit Card Percentage Fee (2.75%)	13.75	1	13.75
TOTAL			\$513.75

Payment

Amount: \$513.75	Type: Visa
Account Number: XXXX8468	Authorization: 511110

[Print Receipt](#)

[+ Reserve Another Hearing](#)