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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.

**DECLARATION OF CAROL M.
 SILBERBERG IN SUPPORT OF
 DEFENDANT CITY OF SANTA
 MONICA’S OPPOSITION TO
 PLAINTIFFS’ MOTION FOR SUMMARY
 JUDGMENT OR, IN THE ALTERNATIVE,
 SUMMARY ADJUDICATION –
 VOL IV OF IV (703-831)**

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

22 Defendants.
 23
 24
 25
 26
 27
 28

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

Action Filed: March 4, 2021
 Trial Date: June 13, 2022

1 I, Carol M. Silberberg, declare as follows:

2 1. I am an attorney, duly licensed to practice law in the State of California and am an
3 attorney in the law firm of Berry Silberberg Stokes PC, counsel for Defendant City of Santa Monica.
4 I have personal knowledge of the matters stated herein and, if called upon to do so, I could and would
5 competently testify thereto.

6 2. Attached hereto as **Exhibit 1** is a true and correct copy of transcript excerpts from the
7 deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

8 3. Attached hereto as **Exhibit 2** is a true and correct copy of transcript excerpts from the
9 deposition of Maria Loya taken on January 25, 2022 in this matter.

10 4. Attached hereto as **Exhibit 3** is a true and correct copy of transcript excerpts from the
11 deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

12 5. Attached hereto as **Exhibit 4** is a true and correct copy of transcript excerpts from the
13 deposition of Elias Serna taken on January 21, 2022 in this matter.

14 6. Attached hereto as **Exhibit 5** is a true and correct copy of transcript excerpts from the
15 deposition of Oscar de la Torre in his individual capacity taken on May 9, 2018 in the CVRA Action.

16 7. Attached hereto as **Exhibit 6** is a true and correct copy of transcript excerpts from the
17 deposition of Oscar de la Torre in his capacity as the person most qualified for the Pico Neighborhood
18 Association taken on May 11, 2018 in the CVRA Action.

19 8. Attached hereto as **Exhibit 7** is a true and correct copy of transcript excerpts from the
20 deposition of Maria Loya taken on May 15, 2018 in the CVRA Action.

21 9. Attached hereto as **Exhibit 8** is a true and correct copy of transcript excerpts from the
22 deposition of Terrence O'Day taken on September 23, 2016 in the CVRA Action.

23 10. Attached hereto as **Exhibit 9** is a true and correct copy of transcript excerpts from the
24 deposition of Kevin McKeown taken on December 16, 2016 in the CVRA Action.

25 11. Attached hereto as **Exhibit 10** is a true and correct copy of transcript excerpts from the
26 deposition of Ted Winterer taken on February 26, 2018 in the CVRA Action.

27 12. Attached hereto as **Exhibit 11** is a true and correct copy of transcript excerpts from the
28

1 deposition of Sue Himmelrich taken on May 30, 2017 in the CVRA Action.

2 13. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the trial
3 transcripts in the CVRA action from August 22, 2018 and August 23, 2018.

4 14. Attached hereto as **Exhibit 13** is a true and correct copy of Deposition Exhibit 6 from
5 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

6 15. Attached hereto as **Exhibit 14** is a true and correct copy of Deposition Exhibit 7 from
7 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

8 16. Attached hereto as **Exhibit 15** is a true and correct copy of Deposition Exhibit 12 from
9 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

10 17. Attached hereto as **Exhibit 16** is a true and correct copy of Deposition Exhibit 17 from
11 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

12 18. Attached hereto as **Exhibit 17** is a true and correct copy of Deposition Exhibit 21 from
13 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

14 19. Attached hereto as **Exhibit 18** is a true and correct copy of Deposition Exhibit 24 from
15 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

16 20. Attached hereto as **Exhibit 19** is a true and correct copy of Deposition Exhibit 25 from
17 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

18 21. Attached hereto as **Exhibit 20** is a true and correct copy of Deposition Exhibit 30 from
19 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

20 22. Attached hereto as **Exhibit 21** is a true and correct copy of Deposition Exhibit 31 from
21 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

22 23. Attached hereto as **Exhibit 22** is a true and correct copy of Deposition Exhibit 38 from
23 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

24 24. Attached hereto as **Exhibit 23** is a true and correct copy of Deposition Exhibit 39 from
25 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

26 25. Attached hereto as **Exhibit 24** is a true and correct copy of Deposition Exhibit 41 from
27 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

1 26. Attached hereto as **Exhibit 25** is a true and correct copy of Deposition Exhibit 42 from
2 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

3 27. Attached hereto as **Exhibit 26** is a true and correct copy of Deposition Exhibit 45 from
4 the deposition of Oscar de la Torre taken on January 20, 2022 in this matter.

5 28. Attached hereto as **Exhibit 27** is a true and correct copy of Deposition Exhibit 51 from
6 the deposition of Maria Loya taken on January 25, 2022 in this matter.

7 29. Attached hereto as **Exhibit 28** is a true and correct copy of Deposition Exhibit 56 from
8 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

9 30. Attached hereto as **Exhibit 29** is a true and correct copy of Deposition Exhibit 57 from
10 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

11 31. Attached hereto as **Exhibit 30** is a true and correct copy of Deposition Exhibit 58 from
12 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

13 32. Attached hereto as **Exhibit 31** is a true and correct copy of Deposition Exhibit 60 from
14 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

15 33. Attached hereto as **Exhibit 32** is a true and correct copy of Deposition Exhibit 64 from
16 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

17 34. Attached hereto as **Exhibit 33** is a true and correct copy of Deposition Exhibit 65 from
18 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

19 35. Attached hereto as **Exhibit 34** is a true and correct copy of Deposition Exhibit 68 from
20 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

21 36. Attached hereto as **Exhibit 35** is a true and correct copy of Deposition Exhibit 72 from
22 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

23 37. Attached hereto as **Exhibit 36** is a true and correct copy of Deposition Exhibit 74 from
24 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

25 38. Attached hereto as **Exhibit 37** is a true and correct copy of Deposition Exhibit 76 from
26 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

27 39. Attached hereto as **Exhibit 38** is a true and correct copy of Deposition Exhibit 79 from
28

1 the deposition of Kevin Shenkman taken on January 27, 2022 in this matter.

2 40. Attached hereto as **Exhibit 39** is a true and correct copy of Deposition Exhibit 80
3 without the accompanying exhibits from the deposition of Kevin Shenkman taken on January 27, 2022
4 in this matter.

5 41. Attached hereto as **Exhibit 40** is a true and correct copy of the January 26, 2021 City
6 Council hearing transcript.

7 42. Attached hereto as **Exhibit 41** is a true and correct copy of the April 13, 2021 City
8 Council hearing transcript.

9 43. Attached hereto as **Exhibit 42** is a true and correct copy of the November 9, 2021 City
10 Council hearing transcript.

11 44. On November 11, 2021, Deputy City Attorney Kirsten Galler and I participated in a
12 scheduled meet and confer telephone conference with counsel for Plaintiffs, Wilfredo Trivino-Perez,
13 and Plaintiff Oscar de la Torre. When the telephone conference began, Mr. Shenkman was also on the
14 line and in the same room as Mr. Trivino-Perez and Mr. De la Torre, and Mr. Shenkman participated
15 throughout the two-and-a-half-hour conference, including making legal arguments opposing the
16 discovery sought by the City of Santa Monica.

17 45. In November 2021, Mr. Shenkman drafted a declaration to avoid discovery and to aid
18 in the assertion of the deliberative process privilege. On November 17, 2021, Mr. Trivino-Perez sent
19 an email to me attaching “proposed declarations in lieu of discovery” including a proposed declaration
20 for Mr. Shenkman. Attached hereto as **Exhibit 43** is a true and accurate copy of that email and
21 attachment.

22 46. Attached hereto as **Exhibit 44** is a true and correct copy of documents bates labeled as
23 P0863-0895 produced by Plaintiffs in this matter.

24 47. Attached hereto as **Exhibit 45** is a true and correct copy of documents bates labeled as
25 P0910-0916 produced by Plaintiffs in this matter.

26 48. Attached hereto as **Exhibit 46** is a true and correct copy of a declaration of Jon Katz
27 executed on February 4, 2022 (without the thumb drives referenced therein).

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RE: PICO NEIGHBORHOOD ASSOCIATION
CITY COUNCIL HEARING
HEARING DATE: January 26, 2021
ITEM 8A

1 *NOTE: Due to the cadence of the speech (i.e., mumbling, slurring, being soft-spoken),*
2 *some words of inaudible and will be marked as such. Words may also be marked*
3 *as inaudible due to background noise, overlapping voices, or impurities of the*
4 *recording.*

5
6 ANDERSON-WARREN: So, the first item is Item 8A, Pico Neighborhood Association and
7 Maria Loya vs. the City of Santa Monica - Determination Regarding Common
8 Law Conflict of Interest of Councilmember de la Torre, and we currently have
9 at least three members who are calling in to speak.

10 HIMMELRICH: So, let me just say before you give the staff report, and I know there will
11 be a staff report, that we are launching our new system – would everyone mute
12 please, other than me, because there’s feedback? Thank you. So, we are starting
13 our new system of public comment where you can actually appear in our meetings
14 and speak to us, and we can ask questions and this will be the first time this is
15 happening, so I beg your indulgence. I’m not so great at pushing buttons and, you
16 know, and to the extent that we’re really trying hard to make this a more
17 interactive process, please give us credit for that and don’t hold us - hold it against
18 us if it doesn’t work perfectly. I’m sure it will be my fault. And on that note, I
19 think we can have a staff report.

20 McCOWAN: Should we wait for Councilmember de la Torre before we do the staff report on
21 this item? I don’t know if we can.

22 DILG: Oscar just texted me. He’s having trouble logging in. I’ve just sent – I’ve just
23 resent him the link.

24 HIMMELRICH: Then let’s wait a couple of minutes.

25 ANDERSON-WARREN: Are there any announcements since we have this time?

26 BROCK: I was wondering if the City Clerk happens to be a former actress or singer if she
27 could do like a Broadway tune right now. Denise?

28 ANDERSON-WARREN: Sorry, Phil.

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1 City subject to the provisions of the Charter and the California
2 Constitution. When the necessary powers of the City vested in its City
3 Council are to ensure the procedures by which it approves and takes
4 actions comply with law. Part of the City Attorney's role as recognized by
5 the Charter is indeed providing legal advice on these procedures to make
6 sure that they comply with law. As part of that, the City Council has the
7 authority to make determinations as to conflicts to ensure that when they
8 subsequently consider those actions, they are not participating in decisions
9 that violate the law because one of the Councilmembers present has a
10 conflict. But the City Council does have the authority as part of its
11 necessary power to ensure that it is not acting in violation of law to make
12 determinations and ensure that a Councilmember who is sitting and
13 participating in those decisions is not suffering from a conflict.

14 DE LA TORRE: Okay. Even though earlier you talked about . . .

15 HIMMELRICH: You said that was your last . . .

16 DE LA TORRE: Okay . . .

17 HIMMELRICH: But you're arguing that. You're arguing. So, let's hear from the public and
18 then we can go back to that.

19 DE LA TORRE: Yeah.

20 HIMMELRICH: Okay? Thank you. So, I believe there are number of questions. So, let's
21 open the public hearing. Oh, Councilmember McCowan.

22 McCOWAN: Just one more before we go into public comment. Just a question to get
23 answered. Um, we – sometimes in other issues we'll talk about like ex
24 parte conversations and stuff like that and disclosure of those in advance,
25 I'm just curious in this regard if anyone on the dais has had conversations
26 about the recusal issue with attorney Schenkman?

27 HIMMELRICH: Councilmember de la Torre, you have? You're muted.

28 DE LA TORRE: That's privileged information, right?

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1 HIMMELRICH: No. Look, you're saying you don't have a privilege with Mr. Schenkman,
2 that you are not one of the parties to that case, right? That's not privileged.
3 CARDONA: Councilmember Himmelrich, if Councilmember de la Torre is, in fact,
4 represented by Mr. Schenkman, then he has the right to assert that
5 privilege.
6 HIMMELRICH: Personally represented?
7 CARDONA: Yes, personally represented.
8 HIMMELRICH: So is that what you're saying that he's your personal lawyer, Mr. de la
9 Torre?
10 CARDONA: And Mayor Himmelrich, I should point out at one of the depositions Mr.
11 Schenkman, in fact, represented that he was representing Mr. de la Torre
12 individually, so I believe Mr. de la Torre may have the right to assert the
13 privilege.
14 HIMMELRICH: Okay. I understand. Um, okay, so ...
15 McCOWAN: I was asking universally of all Councilmembers if they've had
16 conversations with the attorney representing the other party in this case on
17 the issue of recusal of Councilmember de la Torre. So, I think ...
18 MCKEOWN: I don't think you heard before that I said no, I have not.
19 HIMMELRICH: And I have not. Has anyone else?
20 McCOWAN: And I have not. I think it's just important for the public to be aware of.
21 Okay, thank you.
22 McKEOWN: Did we hear from Councilmember Brock on that question?
23 McCOWAN: Oh, sorry.
24 BROCK: I didn't say anything because it wasn't relevant to me, so I'm taking all
25 this in and listening quietly, trying not to do what I usually do. I can tell
26 you, in general, even though this is not your answer Kevin, I'm frustrated
27 by the tone of this meeting and the fact that we are going so long on this
28 disruptive issue. Whatever that means to anyone, I'm concerned about

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1 that. I'm concerned about how our Council is perceived from the outside.
2 HIMMELRICH: Okay.
3 BROCK: Thank you.
4 McKEOWN: Are you willing to answer Mayor Pro Tem McCowan's question.
5 HIMMELRICH: Yeah, Phil, we're asking for an answer to the question. Have you
6 discussed with Kevin Schenkman the issue of recusal that we're
7 discussing tonight?
8 BROCK: No, I have discussed issues with attorney Schenkman in the past.
9 HIMMELRICH: And I assume Councilmember Parra that your answer is the same, you
10 haven't discussed recusal with . . .?
11 PARRA: Correct.
12 HIMMELRICH: No, right? So that's the answer?
13 PARRA: No.
14 HIMMELRICH: So, we're fine. Yeah, the answer is no. Okay, so now we have the answers
15 for everyone and now let's go to the public hearing and let's hear from the
16 public. So how many . . .?
17 ANDERSON-WARREN: We have six callers, Mayor.
18 HIMMELRICH: Great. And, um – oh this is, um. Oh, there we go. So, we have – may we
19 have the – we have six callers and do we have people on video? Is that a
20 general . . .? I'm sorry. I'm dealing with my own special issues here.
21 ANDERSON-WARREN: That's okay. We have six callers and the people who signed up for the
22 video have not logged into the meeting, so they may be on the phone.
23 We're not sure.
24 HIMMELRICH: Okay, so, well, let's start with the callers and let's start with the first one.
25 NEWLANDER: Okay, here we go.
26 UNKNOWN: Transferring Stan Epstein.
27 NEWLANDER: Stan Epstein, welcome to the meeting. Your time starts now. Mr. Epstein,
28 you're in the meeting. Your time starts now.

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1 EPSTEIN: Thanks. This is Stan Epstein. I'm sorry, I can't be a guinea pig. I'm also
2 on the phone tonight, but it sounds like . . . This is Stan Epstein. I, thank
3 you.

4 HIMMELRICH: Stan, turn off your whatever else is in the background. There's a time lag.

5 NEWLANDER: Mr. Epstein, are you with us?

6 EPSTEIN: Yes.

7 NEWLANDER: Yeah, there's a delay for the other audio that you're listening to, so turn
8 down the meeting in the background.

9 EPSTEIN: I just did. Thank you. We're talking about two different possible conflicts
10 of interest: one is common law and the other is financial. With respect to
11 financial, I'm very disturbed that the Council didn't waive the privilege
12 about the conversations that Oscar had with George. Those should be very
13 significant to deciding this and it also shows that the FPPC is not going to
14 ever find that there was a financial interest that Oscar had. I've spoken to
15 both Oscar and to the President of the Pico Neighborhood Association and
16 I'm convinced there isn't any. In fact, it would be illegal for any of the
17 legal fee to be paid to Oscar's wife or to be paid to the PNA. There is no
18 financial. With respect to the common law, the comparison to the other
19 case is absolutely ridiculous there. In the case that the AG was talking
20 about, there was the son of the government official was to receive a major
21 loan from the government agency. In this case, Maria is only representing
22 all of the citizens of Santa Monica. She gets nothing special. It's not like
23 she got hurt on a bus, she's – if she wins all 90,000 people in Santa
24 Monica win in the same way that she wins. That's her status. She has no
25 special standing, so therefore Oscar has no personal interest that's
26 different from anybody else that cares about this issue. With respect to
27 secrecy which George says is not the basis for this claim, I do know that
28 Sue was extremely concerned about Oscar's possible failure to keep the

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1 secrecy, which is totally unwarranted. He has a legal duty to keep secret
2 anything that's said in closed session and I'm absolutely sure he will do
3 so, just as Kevin and Sue, who have spouses that have major interests in
4 town and are very active in significant issues, don't have bed talk with
5 their spouses.

6 UNKNOWN: Thank you. Your time is now up.

7 EPSTEIN: Thank you.

8 NEWLANDER: Thank you.

9 UNKNOWN: Transferring Ann Thanawalla.

10 NEWLANDER: Ann Thanawalla, welcome to the meeting. Your time starts now. Ms.
11 Thanawalla, you're in the meeting. Hi. Your time starts now.

12 THANAWALLA: Hello, Hello, City Council. Process is what has to happen here and we're
13 not seeing that. There is no case law that can determine the outcome of
14 this. As elected officials, my elected officials, all of you, I implore you to
15 either seek a judge's opinion, go to court, or move on because
16 Councilmember de la Torre has repeated his position. He has not wavered
17 from his position with regards to district elections nor has any of the other
18 Councilmembers. So, if you think it's okay to decide that he should sit it
19 out, while you all get to go in and continue the conversation with your
20 own individual positions, that's ridiculous. You either take it to court,
21 follow a process with this common law conflict, as you're calling it, where
22 no viable case law exists, or Oscar joins in the conversation about whether
23 or not we should continue to pay outrageous legal fees that we are all on
24 the hook for and you continue to not let us know how much those are or
25 you don't. So, I'm asking you to do not allow some fake organizations to
26 push your buttons, to say, "Oh, my gosh, someone's going to take us to
27 court." No, you go to court, okay, and you do it without being abrasive
28 towards your City Councilmember and I believe Mr. Cardona made an

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1 inaccurate – Mr. Cardona . . .

2 UNKNOWN: Thank you, your time is now up.

3 THANAWALLA: . . . said the conversations he had with Oscar were attorney-client
4 privileged because he wasn't . . .

5 HIMMELRICH: Your time is up, Ann. Ann, your time is up.

6 THANAWALLA I'm finishing my – I'm . . .

7 NEWLANDER: Thank you.

8 UNKNOWN: Transferring Denise Barton.

9 NEWLANDER: Denise Barton welcome to the meeting. Your time starts now.

10 BARTON: Good afternoon. Would this be another example of you the Santa Monica
11 City Council trying to defame Councilmember de la Torre's character and
12 reputation? Just like you did to the Pico Youth Center before the election
13 which Oscar de la Torre was previously running for a Councilmember
14 seat? I ask only because at the bottom of page 5 you answer your own
15 question, where it currently states the Common Law Doctrine and its
16 application. Then as can be seen on page 6, there would seem to need to
17 be a financial benefit necessary to a direct family member, where in this
18 situation there is not. Neither his attorney Kevin Shenkman or the court
19 system being a direct family member. And neither Oscar de la Torre or his
20 wife, Maria Loya, financially benefit from the case. But the community at
21 large will benefit from their actions. Let's look at the actual conflict of
22 interest situations on the City Council which have been allowed by you
23 starting with Gleam Davis' conflict of interest voting and swaying of the
24 discussion on the Miramar Development Agreement owned by Dell,
25 which her husband works for, since the Development Agreement petition
26 was submitted. Then, there's Terry O'Day and the electric car chargers'
27 company he worked for, which the City had contracts with. He was also
28 allowed to vote and swayed the discussion to financially benefit himself

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1 and his company. Then, after he left the company, he said he didn't have
2 to recuse himself even though he still held stock in the company and
3 continued to financially benefit from his actions. And finally, we have
4 Pam O'Connor, who was on the Metro Board and the Expo Line and
5 anyone who thinks that Pam O'Connor did not financially benefit from
6 that is fooling themselves. For all these reasons, Councilmember Oscar de
7 la Torre does not have a conflict of interest in the CRV case. Thank you.

8 NEWLANDER: Thank you.

9 UNKNOWN: Transferring Tricia Crane.

10 NEWLANDER: Tricia Crane, welcome to the meeting. Your time starts now.

11 CRANE: Good afternoon, Mayor Himmelrich and City Council. Interim City
12 Attorney Cardona has not presented a persuasive argument as to why
13 newly elected Councilmember Oscar de la Torre should be prevented from
14 participating in the City Council discussion concerning the voting rights
15 lawsuit in tonight's closed session. The Council should consider and
16 respect the fact that the voters supported the election of Oscar de la Torre
17 with Phil Brock and Christine Parra, precisely because the three shared a
18 campaign platform that promised to seek an end to the City's long and
19 costly fight against district elections. And then there's the fact that
20 Councilmember de la Torre's attorney has advised him to not recuse
21 himself from engaging in tonight's discussions on the districting case.
22 Notwithstanding Mr. Cardona's advice, the determination on this matter,
23 whether or not there is a common law conflict of interest for
24 Councilmember de la Torre, is to be made by this Council. It is your
25 decision. Those of us who seek transparency in our local government
26 really do appreciate the fact that Mayor Himmelrich has called for this
27 discussion to be held in public. Thank you very much.

28 NEWLANDER: Thank you.

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1 UNKNOWN: Transferring Bob Selden.

2 NEWLANDER: Bob Selden, welcome to the meeting. Your time starts now.

3 SELDEN: Thank you.

4 NEWLANDER: Go ahead, you're in the meeting. Turn down your background, the
5 background meeting. Good.

6 SELDEN: There's a delay, I guess. Thank you.

7 NEWLANDER: There is.

8 SELDEN Good evening, Councilmembers. This is Bob Selden. My understanding is
9 that the issue of financial interest is not at stake here and so I'm going to
10 skip my comments with respect to that. If I'm wrong, feel free to question
11 me, but my remainders that there's no non-financial or personal interest at
12 stake. There's no conflict of interest. One of the things that's troubled me
13 here is we've heard a lot about caselaw and precedent, but we haven't
14 heard anybody apply the facts here to that law, to explain why Oscar has a
15 conflict. And that is a very serious defect. Now the thing here is that Oscar
16 is actually operating against the PNA's interest in seeking to vote to
17 terminate this litigation. Right now, the Court of Appeals has agreed that
18 the City wins. The only chance for the plaintiffs to prevail is to have it
19 overturned at the Supreme Court, a case from which Oscar wishes to vote
20 to withdraw. It's against PNA's interest. It's against his wife's interest. In
21 that sense, and therefore, there is no conflict of interest with respect to
22 Oscar's position and the City's position. He wants to withdraw it. There is
23 no win for him and there's no financial win or loss, as I've seen in one of
24 the letters that was submitted, because Oscar stands to gain nothing. Maria
25 stands to gain nothing if they win and neither of them is on the hook to
26 pay if they lose. And if you're unaware of the facts behind that, I'll be
27 glad to explain it. So, I would say that Oscar is entitled to vote. We know
28 how he's going to vote. It's a public position. He's not – there's no

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1 privileged communications to be discussed here. It's not a question of
2 litigation strategy. It's a simple up or down vote. And that's the extent of
3 my comment. I really would appreciate it if you let him vote. We elected
4 him to do this, and I think the residents and the majority want to do it.
5 Thank you.

6 NEWLANDER: Thank you.

7 HIMMELRICH: Mr. Selden, hold on. Mr. Selden, is he gone?

8 NEWLANDER: I still have him on unless he hung up.

9 SELDEN: I'm sorry.

10 NEWLANDER: Mr. Selden, hold on. The Council has questions for you.

11 SELDEN: Should I turn my volume back up on the computer?

12 NEWLANDER: No, you can listen on your phone. The Council has questions for you.

13 SELDEN: Oh.

14 NEWLANDER: Yeah.

15 SELDEN: Thank you.

16 HIMMELRICH: And I – yes, Mr. Selden, it's Sue Himmelrich and my question is this: Are
17 you an attorney?

18 SELDEN: I'm a retired attorney.

19 HIMMELRICH: And so, with respect to what Mr. de la Torre wants to do about the
20 litigation, you just told us what he wants to do. How do you know that?

21 SELDEN: It's his public position and I know from his campaigning and from the
22 public statements he's made, he has been one of the leaders in supporting
23 [RECORDING CUTS OUT] litigation.

24 HIMMELRICH: Thank you.

25 NEWLANDER: Thank you, Mr. Selden.

26 SELDEN: Am I done?

27 NEWLANDER: You're all done. Thanks so much.

28 SELDEN: Thank you very much for your time. Bye-bye.

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1 UNKNOWN Transferring Olga Zurawska.

2 NEWLANDER: Olga Zurawska, welcome to the meeting. Your time starts now.

3 ZURAWSKA: Good afternoon. In my opinion, the City should wait for a formal response
4 from the FPPC and/or ask the court to decide on whether there is, in fact, a
5 common law conflict of interest. Please do not go into a closed session on
6 this case tonight. And on a more general note, we are still dealing with this
7 lawsuit because we have an appointed, as opposed to an elected City
8 Attorney. An appointed City Attorney works for the Council, not the
9 residents. The Council that originally decided to defend themselves
10 against this lawsuit only had one goal: to hold onto their seats as long as
11 possible. We need an elected City Attorney who will be looking out for
12 the interests of the residents. Thank you.

13 NEWLANDER: Thank you. I believe that's the last caller on this item.

14 DE LA TORRE: Hello, Sue?

15 HIMMELRICH: Yes.

16 DE LA TORRE: I want to make one correction. One of the callers said that I'm advocating
17 for the Pico Neighborhood Association to drop the case and that's not true.
18 I would prefer that the City drop its appeal, but I have not made a public
19 comment that the PNA should drop this case. I just want to make that
20 correction.

21 HIMMELRICH: Thank you. So, now let's open this up for discussion and – so look, I've
22 been involved in this. I'm a lawyer. I have a pretty strong opinion. I talked
23 to Oscar over the weekend. I feel Oscar is disqualified in this case. Oscar
24 was in my deposition in this case, was in other depositions in this case,
25 worked on the strategy in this case, and as I said to Oscar over the
26 weekend, it's like a football game, right? If I am planning, right? If I am
27 going into a huddle to do my last charge towards the goal line, I am not
28 inviting the coach for the other team into my strategy session about the

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1 HIMMELRICH: Okay, thank you. Mr. de la Torre.

2 DE LA TORRE: Yes. As you all know, I care deeply about voting rights of minorities in
3 Santa Monica and California, more generally. Just like Sue, everyone
4 knows that you care deeply about affordable housing. Just like Kevin,
5 everybody knows that you care about environmental issues. My wife,
6 Maria, and the entire Pico Neighborhood Association Board also care
7 deeply about minority voting rights in Santa Monica. That's why in late
8 2015, they raised the illegality of Santa Monica's at-large Council
9 elections to the City Council here and the City Attorney, then, who was
10 Marsha Moutrie. They laid out their case that the at-large election system
11 violated the California Voting Rights Act and the Equal Protection Clause
12 of the California Constitution. The City didn't even respond to our letter in
13 2015 and so having waited four months, Maria and the Pico Neighborhood
14 Association had no choice but to file a lawsuit. We now know, because it
15 was reported by a newspaper in 2018 and revealed in court about a week
16 later, that in 2016, the City hired Karen McDonald, an expert in
17 demographics and voting patterns, to determine whether the City was
18 violating the California Voting Rights Act. I haven't seen Ms.
19 McDonald's report because much like we just learned was done with the
20 after-action report about the police response to protest and looting on May
21 31, the City suppressed Ms. McDonald's report. But I think we all know,
22 based on the City's suppression of the report, what that report says. It says
23 that the City's at-large elections violate the California Voting Rights Act
24 and should be changed. And that report is part of what's going to be
25 discussed in closed session today. Even faced with that report, rather than
26 resolve the matter amicably and inexpensively back in 2016, the City
27 Council chose to pay the most expensive lawyers they could find –
28 Gibson, Dunn & Crutcher, to attack the California Voting Rights Act and

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the important minority voting rights that it protects and though the City also refused this to let the taxpayers of Santa Monica know how much of their taxes had been paid to Gibson, Dunn & Crutcher. I think we all know that number is very high. Most certainly in the tens of millions. And that is why, as an elected official, I want to be involved to stop the bloodletting. The residents want us to stop wasting taxpayer dollars and that's my fiduciary responsibility to do that. If it wasn't such a large amount, they would let us all know, right? And for that, and for what has all that money been spent, if we think about it? Not to avoid laying off City employees, or to improve our parks, or to provide services to our children, or to senior citizens. No – that money has been spent to protect the seats of Councilmembers. In the process, that money was spent fighting for white supremacy. Yeah, that's right. Now some of you might think, Oscar's lost his mind, accusing the famously liberal City of Santa Monica of fighting for white supremacy. But that's exactly what it did. And is still doing by attacking the California Voting Rights Act here in Santa Monica and jeopardizing the Act statewide. But that's exactly what's going on here and we need to understand that we have every reputable civil rights organization, every black, Latino, and Asian member of the California Legislature, past members of the California Legislature, including three current members of Congress: Secretary of State, now US Senator, Alex Padilla, all implored the California Supreme Court to take the case and find in favor for the plaintiffs. They all recognize that at-large elections are the tool used to maintain white supremacy in municipal government. As Senator Polanco wrote, "You will each be remembered by where you stood on this case whether you were on the right side or the wrong side of history." Make no mistake, the California Supreme Court is about to do exactly what all of those civil rights groups and people of color elected to

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1 office have asked it to do. The California Supreme Court is about to tell
2 you what Ms. McDonald told you back in 2016, that Santa Monica's at-
3 large election system violates the California Voting rights Act. So now, as
4 a Council, we are asked whether we are going to throw good money after
5 bad, spend a few more millions of dollars to fight for white supremacy and
6 against minority voting rights. Just like Phil and Christine, I was elected to
7 make sure that we answer that question: no more. And that's what I will
8 do, regardless of whether some members of this Council think I should
9 shut up or be prohibited from participating. And why is this Council
10 discussing the matter in secret closed session anyway? Why not let the
11 people know what you're doing and why you're doing it? Let's push for
12 more transparency. It's certainly not to protect the City of Santa Monica.
13 The trial is over. No more facts can be raised. The case is in the appellate
14 phase, where only legal issues are addressed. There's no longer anything
15 to hide. The only reason now to have discussions about the Pico
16 Neighborhood Association case in secret closed sessions is to protect the
17 lawyers who gave bad advice and cost the City tens of millions of dollars.
18 Specifically, Interim City Attorney Cardona and Interim City Manager
19 Lane Dilg. And perhaps the Councilmembers who sheepishly followed
20 their flawed advice. So, I suppose Mr. Cardona's biased and superficial
21 staff report should not be surprising. He's trying to protect himself and his
22 buddy, the outgoing City Manager. There are so many problems with Mr.
23 Cardona's analysis. The most important is that he does not present the
24 other side of the argument. He started talking about it today, but it doesn't
25 give the City Council today enough opportunity to really reflect on the
26 opposite side, on the other side of this debate. While Mr. Cardona relies
27 exclusively on non-precedential attorney general opinion addressing a
28 situation very different from this one, Mr. Ambrose, who gave me an

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1 independent legal opinion, points to the precedential decision in *Break*
2 *Zone Billiards vs. City of Torrance*. In the *Break Zone Billiards* case, a
3 business obtained an amendment to its conditional use permit for the City
4 of Torrance's Planning Commission. Then, a Torrance City
5 Councilmember appealed the Planning Commission's decision, and that
6 same Torrance City Councilmember adjudicated his own appeal and
7 reversed the Planning Commission's decision. The business claimed that
8 Torrance Councilmember had a conflict of interest, including based on the
9 so-called Common Law Doctrine that you all are talking about, and the
10 Court of Appeal found there was no conflict, financial or otherwise, that
11 would prohibit that Torrance City Councilmember from voting on his own
12 appeal. And Mr. Cardona fails to cite any authority for this Council to
13 unilaterally exclude me from any Council discussions, deliberations or
14 meetings. Why do you think that? Because there is no such authority. He
15 needs to get an independent opinion to bring that forward. Now there's a
16 government code that I researched here called Section 91003, Government
17 Code § 91003. It provides the exclusive procedure for excluding a
18 Councilmember from participating in the Council's deliberations or
19 decisions for which it is alleged that Councilmember has a conflict of
20 interest. That procedure is first to seek an opinion from the FPPC and then
21 seek an injunction from the superior court. It makes sense that a court pass
22 on any question of conflict of interest, not a City Council. The superior
23 court is versed in municipal law, particularly the judges that deal with the
24 writ petitions every day. This Council is not. There are two attorneys on
25 the Council, and I appreciate the years of service for both Gleam and
26 Mayor Himmelrich. But neither of them deal extensively with municipal
27 law and unlike other cities, our Interim City Attorney is also not well
28 versed in municipal law. He is a career federal prosecutor who is

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1 thoroughly unqualified to be giving us an opinion on this matter. Let me
2 be very clear about this. Neither I nor my wife, nor the Pico Neighbor-
3 hood Association, nor any member of my family has any financial interest
4 in the outcome of the Pico Neighborhood Association's litigation against
5 the City. The attorneys for my wife and the Pico Neighborhood
6 Association agreed at the outset that none of the plaintiffs would ever have
7 to pay for anything. On the flipside of that, they also agreed that they
8 would never receive any financial benefit. The attorney's fees and costs
9 that would likely be awarded to the plaintiffs' attorneys go to the
10 attorneys. They will not, and cannot, be shared with my wife or the Pico
11 Neighborhood Association. Mr. Cardona has already made that clear. If
12 anybody has any evidence that I have a financial interest in that case, you
13 can say it now. There is no conflict. Mr. Cardona attempts to extend the
14 conflict-of-interest law to a so-called non-financial conflict even though
15 the California Legislature has said otherwise. He says a Councilperson has
16 a - a City Councilmember has a conflict any time his or her view is
17 different than the City's position. But that begs the question: who decides
18 the City's position? The City Attorney? And wouldn't that mean that any
19 Councilmember who has strong views on any topic that do not conform to
20 the view of the Council majority could be excluded entirely from the
21 discussions and decisions on that topic? Sue, should you be excluded from
22 any discussions regarding RHNA, the demand – the RHNA demand to
23 produce 9,000 plus new housing units with the majority being affordable
24 or eviction moratoriums since you represent tenants at the Western Center
25 for Law and Poverty? After all, some members of this Council would
26 prefer that we oppose the RHNA demand for 9,000 new housing units.
27 Kevin, should you be excluded from every CEQA matter that comes
28 before this Council or discussions concerning the cost of environmental

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1 sustainability or an electric bus fleet? Some members of this Council
2 might value fiscal responsibility over environmental sustainability. Of
3 course, no one should be excluded. Should Kristin McCowan be excluded
4 when we vote on a black agenda or anything specific to the African-
5 American community? No, I think she should be included in those
6 decisions. Each of us was elected by the voters of Santa Monica with full
7 knowledge of how we care deeply about these topics. That my wife and
8 the Pico Neighborhood Association had to sue the City to make progress
9 on this issue does not change the facts and does not mean that I have a
10 conflict of interest. To be in litigation is also a form of advocacy. If
11 anyone on this Council feels differently or anyone watching at home, you
12 can go to court. I invite you to do so. But until a judge tells me that Mr.
13 Ambrose's analysis is wrong, and I have a conflict of interest, I will do
14 what the voters elected me to do: participate in all City Council
15 deliberations and advocate for an end to this horrible costly mistake.
16 Thank you.

17 HIMMELRICH: So, you're saying. Oscar, you will not recuse? Is that correct?

18 DE LA TORRE: I want to do what the voters elected me to do, and that is . . .

19 HIMMELRICH: That's a yes or no question. You aren't going to recuse right now because
20 then we have to vote . . .

21 DE LA TORRE: No.

22 HIMMELRICH: . . . solely on the issue of whether we want to disqualify you. Those are the
23 two choices. That's a binary choice, right? So, you aren't going to recuse
24 so we have to vote. And, let me understand. So, you were going to insist
25 that any closed session we have regarding the CVRA is illegal if it doesn't
26 include you, is that right?

27 DE LA TORRE: Yes.

28 HIMMELRICH: Let's take a vote. Anyone have anything else to say?

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1 DILG: I would like to speak after you vote.
2 HIMMELRICH: Yes. Mr. Brock.
3 BROCK: George, I'm asking one other question. How long would it take to receive
4 a court decision on this? Would that be a long, drawn-out process?
5 CARDONA: I think that is impossible to predict. The court system works in its own
6 ways. In addition, there's the issue as to whether a court would find that
7 this was ripe for an action by the Council. A court very well might say,
8 "Look, I'm not in a position to decide this. There has to be some action
9 taken by the Council and then a challenge to that action that would give
10 me a case or controversy that would provide a basis." Obviously, if the
11 Council votes to disqualify Oscar, he would have the ability to pursue that
12 in court and that might be a quicker way to get an answer from a court.
13 BROCK: Thank you, George.
14 HIMMELRICH: Kristin.
15 McCOWAN: And I saw Councilmember McKeown, too, but – so a quick question. Is
16 there a way to proceed under whatever the direction was prior to now for
17 the City Attorney and the City without us revisiting or receiving any
18 updates in closed session while we await the conclusion of
19 Councilmember de la Torre's lawsuit?
20 CARDONA: We would proceed with the prior direction that is place, which is simply to
21 proceed with briefing. The Council would not have any input into what
22 that brief says or the positions we take. I would have to base that on prior
23 direction that we have received from Council and our interpretations.
24 McCOWAN: Okay, so that would be another option.
25 CARDONA: In theory, yes.
26 McCOWAN: Okay.
27 HIMMELRICH: Councilmember McKeown.
28 McKEOWN: No, I just wanted to say I regret that Councilmember de la Torre chose not

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1 to accept the voluntary option and I can assure you that if my wife were to
2 sue the City, I would recuse myself.

3 HIMMELRICH: Okay. Are we ready to take a vote? So, as I understand the motion now,
4 Mr. de la Torre will not recuse, so we are voting to determine that Mr. de
5 la Torre has a common law conflict of interest that disqualifies him from
6 his involvement in any closed session or confidential conversations
7 concerning Pico Neighborhood Association, Maria Loya versus City of
8 Santa Monica?

9 CARDONA: And, Mayor Himmelrich, would disqualify him from voting on any
10 decisions made with respect to that case.

11 HIMMELRICH: And would disqualify him from voting on any decisions made with respect
12 to that. Councilmember McCowan.

13 McCOWAN: I just – is there a place to – where the City Attorney would proceed based
14 on prior direction? I mean, is that an option while we wait out the
15 judgment from the court that Councilmember de la Torre is seeking?

16 HIMMELRICH: Councilmember Davis.

17 DAVIS: Well, I think we have to take this vote, I think is what our City Attorney
18 has told us. We have to take the vote to create the conflict so there is a
19 justiciable issue. Otherwise, there's no ripeness. You can't go and say,
20 "What if this happened and what if we did that?" That's an advisory
21 opinion and the courts won't issue that. So, I think we have to take the
22 vote first and then see procedurally where we are.

23 McCOWAN: Got it. Thank you.

24 HIMMELRICH: So, let's take the vote now.

25 DAVIS: Can I just make it clear that a yes vote is a yes to declare that there is a
26 common law conflict of interest, and that Councilmember de la Torre
27 should be excluded as you described?

28 HIMMELRICH: Yes, thank you. Thanks for making that clear. Denise?

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1 ANDERSON-WARREN: Well, Councilmember de la Torre has his hand up.

2 HIMMELRICH: Oh, I'm sorry, thank you.

3 DE LA TORRE: Yeah. I just want to clarify one thing. That if the FPPC or, you know,
4 another higher body, if the courts clarify this issue for me, then I would
5 definitely recuse myself as, you know, I would follow the law. I mean, I
6 just want to make that clear. But I don't feel that that's clarified, and I just
7 wanted to make that last point.

8 HIMMELRICH: Thank you. Let's take a vote.

9 ANDERSON-WARREN: Okay. So, this is a yes or a no. Councilmember Parra.

10 PARRA: No.

11 ANDERSON-WARREN: Councilmember Davis.

12 DAVIS: Yes.

13 ANDERSON-WARREN: Councilmember McKeown.

14 McKEOWN: Yes.

15 ANDERSON-WARREN: Mayor Pro Tem, McCowan.

16 McCOWAN: Yes.

17 ANDERSON-WARREN: Councilmember Brock.

18 BROCK: Abstain.

19 ANDERSON-WARREN: Councilmember de la Torre.

20 DE LA TORRE: No.

21 ANDERSON-WARREN: Mayor Himmelrich.

22 HIMMELRICH: Yes. So that passes 4 to 2.

23 ANDERSON-WARREN: Yes.

24 HIMMELRICH: So, let me just say that we now are going into a closed session where we
25 are discussing this, and Mr. de la Torre is refusing to recuse. I guess we
26 can exclude you electronically from the closed session, who has just now
27 just disappeared, from the closed session.

28 ANDERSON-WARREN: Councilmember Himmelrich . . . before we go, we have to adjourn

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1 this meeting.

2 HIMMELRICH: I'm talking, I'm understand, but this is, I think, part of this discussion.

3 That's my point.

4 ANDERSON-WARREN: Okay.

5 HIMMELRICH: Councilmember – so City Manager, please.

6 DILG: Yes. I simply want to say, before we leave this meeting, I think some of
7 the comments made tonight were outrageous. I want to say that in this
8 particular moment in our country's history, we have seen the need to
9 verify information. We have seen the use of baseless allegations and
10 accusations printed in sources that do not take time to verify. As we see
11 that, it is more important than ever that people – that we not continue to
12 print things simply because they are said. Equally importantly, public
13 service is an honorable profession. I am a Constitutional lawyer and a civil
14 rights lawyer. I have worked for the ACLU as a civil rights lawyer. I am
15 not seeking \$22 Million from this City, and I want to be very clear that
16 this City and all of our communities deserve good public servants. And
17 continued attacks on public servants does not move anyone forward. So, I
18 want to be very clear that I will be here, and I will continue to work to the
19 best of my ability for this community, for all of our community, and I will
20 continue to do that every day. But this is outrageous, and I want to clearly
21 state that on the record.

22 HIMMELRICH: Councilmember Brock.

23 BROCK: My question was during the closed session, there are other items in the
24 closed sessions, so Councilmember de la Torre should be allowed to
25 participate in the other two items, I think?

26 CARDONA: That's correct. He'll be present for those two which we'll do first and
27 we'll save the CVRA for last and ask at that time for Mr. de la Torre to
28 leave in accordance with the Council's direction.

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1 HIMMELRICH: And that's what we did with the Airbnb, Phil. We always . . .
2 BROCK: That's fine. You had said he was excluded. I was just trying to be clear.
3 HIMMELRICH: Yes.
4 BROCK: Thank you very much.
5 HIMMELRICH: So, this meeting now will adjourn, and we will move to the, our 5:30
6 regular meeting of the City Council. And thank you all very much.

7 **END OF HEARING ON ITEM 8A**

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THE BRIEF CASE
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January 10, 2022

I hereby certify under penalty of perjury that The Brief Case has transcribed the audio file provided by the Santa Monica City Council, regarding the City Council Hearing dated January 26, 2021, Item 8A. The file was transcribed, verbatim, to the best of our ability.

After reviewing the transcript, it was necessary to make non-substantive typographical corrections; therefore, this Revised Certification is being provided to verify that the corrections/changes were made in this matter.



CHERI SINGER, Transcription Specialist

Exhibit 41

1 *NOTE: Due to the cadence of the speech (i.e., mumbling, slurring, being soft-spoken),*
2 *some words of inaudible and will be marked as such. Words may also be marked*
3 *as inaudible due to background noise, overlapping voices, or impurities of the*
4 *recording.*

5
6 HIMMELRICH: Well, while we're waiting, Oscar, if you're there, cause I saw you for a
7 minute. Did you have a statement to make?

8 DE LA TORRE: Yes, yes, yes, thank you, Mayor. And thank you for reminding me, in the
9 last City Council meeting when the issue of PAL and the allegations were
10 presented I wasn't able to participate in that meeting and so Mayor
11 Himmelrich reminded me that, of the proper procedure for recusal and so I
12 want to do that because I think it's appropriate for this matter. As the
13 public has been informed, the majority of the alleged victims of the Police
14 Activities League sexual abuse issue, we know that most of the victims
15 reside or resided in the Pico neighborhood, a neighborhood I, you know,
16 was raised in. And many of the victims are also youth of color and being
17 that I had been working with young people for so many years, there are
18 some of those victims I had relationships with and it makes it very
19 difficult for me to be impartial in this case because it's emotional, it's
20 psychological, and it's very hard. So, I think for this reason, I think it's
21 best for me to recuse myself on all matters regarding the settlement of
22 these issues and these incidents, and I look forward to a greater healing for
23 the victims and also I look forward to learning of the results of the City's
24 promised internal investigation related to the alleged issue of staff
25 knowing or should have been knowing about these incidents. And so, in
26 any case, I think it's appropriate for me to recuse myself for this item and I
27 hope that there will be a greater accountability and greater healing for the
28 victims in this case.

CITY COUNCIL HEARING
HEARING DATE: April 13, 2021
ITEM 1A

1 HIMMELRICH: So, Oscar, we have one item, the first 1A, is something that you will be in
2 closed session on and then on 1B, we will expect you to leave the meeting
3 and turn your sound off.

4 DE LA TORRE: Okay. Thank you.

5 HIMMELRICH: Thanks very much.

6 **END OF HEARING ON ITEM 1A**

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THE BRIEF CASE
6913 Waxwing Way
Sacramento, California 95842
Telephone: (916) 338-5756

January 27, 2022

I hereby certify under penalty of perjury that The Brief Case has transcribed the audio file provided by the City Attorney's Office of Santa Monica, regarding the City Council Hearing on April 13, 2021, Item 1A. The file was transcribed, verbatim, to the best of our ability.


CHERI SINGER, Transcription Specialist

SM00133

Exhibit 42

CITY COUNCIL HEARING
HEARING DATE: November 9, 2021
ITEM 3G

1 *NOTE: Due to the cadence of the speech (i.e., mumbling, slurring, being soft-spoken),*
2 *some words of inaudible and will be marked as such. Words may also be marked*
3 *as inaudible due to background noise, overlapping voices, or impurities of the*
4 *recording.*

5
6 HIMMELRICH: And now I need to step out so council-, I'm sorry, Mayor Pro Tem
7 McCowan will be leading the meeting.

8 ANDERSON-WARREN: Okay, 3G is adoption of Resolution Amending the Policies for City
9 Boards, Commissions, Committees, Task Forces, and Regional Advisor
10 Boards to include a Nepotism Policy, and Repeal Resolution No. 11338.

11 McCOWAN: Do we have a motion?

12 DE LA TORRE: Yes.

13 ANDERSON-WARREN: Who made a motion?

14 McCOWAN: De la Torre. Is there a second?

15 DAVIS: Second.

16 McCOWAN: We're ready for a roll call vote.

17 BROCK: Excuse me? Discussion?

18 McCOWAN: Oh, I'm sorry. We can, yes, sure.

19 BROCK: I think there's going to be a lot of discussion on this item or at least I'll
20 have some.

21 McCOWAN: Okay. Feel free. That's why I asked.

22 BROCK: No, no, it was moving so fast, I was like, wait a minute. Okay, so how do
23 we want to – should I just go through the items that I have issues with?

24 McCOWAN: You have the floor, Councilmember Brock. Feel free.

25 BROCK: So, while there are a lot of good provisions in this, there are concerns by
26 residents and concerns by people I've heard throughout the City about
27 some of the parts of this resolution. So, I'm just going to go through each
28 piece of the resolution and give you the part that I think needs to be

CITY COUNCIL HEARING
HEARING DATE: November 9, 2021
ITEM 3G

1 without having to go through their reconsideration process.

2 McCOWAN: Okay, so first Councilmember De la Torre was next, so I just want to
3 make sure he doesn't have anything. Given everything that you just heard,
4 do you still have comments?

5 DE LA TORRE: [inaudible]

6 McCOWAN: Okay. Go for it.

7 DE LA TORRE: And maybe Denise, you can remind me of this, but I know that we – one
8 of the directives that we gave and I just wanted to hear from you, your
9 interpretation of the directive, regarding like how for boards and
10 commissions, for us how we can gather baseline data to understand.

11 ANDERSON-WARREN: Okay, we will be coming back. We will be coming back. We've
12 already . . . yeah, we've already done that.

13 DE LA TORRE: We have that, okay. Cool. We're good on that. Thank you. And then the
14 other thing that I wanted to raise, I do want to say that and I know we're
15 only dealing with Item G here regarding the nepotism . . .

16 ANDERSON-WARREN: That's it.

17 DE LA TORRE: Yeah. And so one of the things that I want to say is, that I think it is
18 unfortunate, you know, that it seems that one member of our housing
19 commission would be affected and I do agree with the previous caller, Ms.
20 Hoffman, who said that Mr. Soloff has done a great job, but I do agree
21 also that if we're going to have a rule it must be applied across the board
22 for everyone so that we are fair in the application of our policies. But I
23 started thinking, you know, the issue is really is like sort of the conflict,
24 you know, as we would call a conflict, because the husband, wife,
25 registered domestic partner, son, daughter, mother, father, brother, and
26 sister of a Councilmember would have a hard time sort of distancing
27 themselves or it seems like they could be compromised, right, because of
28 their relationship with a Councilmember. But I started thinking if it would

1 be appropriate to add sort of an employee of a Councilmember or a
2 business partner of a Councilmember. Maybe we would add those either
3 two categories because wouldn't that also be a way to compromise an
4 individual serving on a board or commission, you know, that they work
5 for you? I mean how would they vote against something that you – you
6 know, if I supported something and my employee is on the board and
7 commission, it's hard for them to sort of go against me, right? They're
8 compromised, you know, for lack of a better term. So, I thought that
9 maybe we would add that also you can't be an employee of a Council-
10 member and you can't be a business partner of a Councilmember. And I
11 wanted to know how my colleagues felt about adding those two categories
12 to the list.

13 McCOWAN: Councilmember Negrete is next then Councilmember Brock you're up if
14 you still have one.

15 NEGRETE: I don't have any problem with what Councilmember De la Torre just
16 brought up. I do have a question though as it pertains to the nepotism, so
17 just to be clear, if there was an amendment to say that because this is a
18 new – this is new, that if there is a member who's going to be terminating
19 within seven months, and it sounds like it would be effective January, this
20 member would be off presumably what? May? Do we know the date? Do
21 we need to make an amendment to say that – I – so that's what the
22 amendment would have to be to this, that we're asking to amend that it not
23 be immediate, but rather allow this. It sounds like it's one individual, too.

24 McCOWAN: One, I don't think a motion's been made. Has there? Oh, there was, sorry a
25 motion and a second, so you'd have to make a friendly amendment just
26 addressing whatever particulars of the current nepotism policy and then
27 Councilmember De la Torre, if he wants to add, if that's accepted, it's
28 accepted, Councilmember De la Torre, if he wants to add an amendment

THE BRIEF CASE
6913 Waxwing Way
Sacramento, California 95842
Telephone: (916) 338-5756

January 27, 2022

I hereby certify under penalty of perjury that The Brief Case has transcribed the audio file provided by the City Attorney's Office of Santa Monica, regarding the City Council Hearing on November 8, 2021, Item 3G. The file was transcribed, verbatim, to the best of our ability.



CHERI SINGER, Transcription Specialist

Exhibit 43

Andrew Lamb

From: W. Trivino-Perez, Esq. <wtpesq@gmail.com>
Sent: Wednesday, November 17, 2021 2:54 PM
To: Carol Silberberg; Kirsten Galler; Brandon Ward
Subject: PROPOSED DECLARATIONS IN LIEU OF DISCOVERY
Attachments: de la torre decl in lieu of discovery.pdf; kis decl in lieu of discovery.pdf

Carol,

Attached are the proposed declarations in lieu of discovery. kindly review and advise.

Thank you,

Will

NO US MAIL AT THIS TIME - ELECTRONIC ONLY:

To promote public health, and in hopes of doing our part to slow the spread of the Delta variant, our office is immediately transitioning to remote work for all of our staff until further notice. This will no doubt complicate our usual workflow in several ways, some foreseeable and some not.

TRIVINO PEREZ & ASSOCIATES | Attorneys at Law

Wilfredo Trivino-Perez | Attorney at Law
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Los Angeles, CA 90024
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<http://m.facebook.com/TPALAW>

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1 **DECLARATION OF KEVIN SHENKMAN**

2 I, Kevin Shenkman, declare as follows:

3 1. I am one of several attorneys representing the plaintiffs in the case styled
4 *Pico Neighborhood Association, et al. v. City of Santa Monica* (“Voting Rights Case”).

5 I am over the age of 18 and have personal knowledge of the facts contained in this
6 declaration. If called as a witness, I could and would competently testify as follows:

7 2. Since 2012, a significant portion of my practice has focused on voting
8 rights, and more specifically cases involving the California Voting Rights Act
9 (“CVRA”). In 2013, I was lead counsel in the first CVRA case to go to trial – *Jauregui*
10 *v. City of Palmdale*, tried before Hon. Mark Mooney in the Los Angeles Superior
11 Court. Since that time, my law firm, Shenkman & Hughes PC, and the other law firms
12 we work with, have been responsible for the majority of CVRA litigation in California.
13 Since 2013, I have spoken over a hundred times at various events, such as legal
14 conferences and community meetings, regarding voting rights, district-based elections
15 and the CVRA.

16 3. I met Maria Loya, her husband Oscar de la Torre, and the rest of the board
17 members of the Pico Neighborhood Association in 2015. Though I knew of Mr. de la
18 Torre before that time, particularly because he was a board member for the school
19 district where my children attended school, and I knew that he was a leader in the
20 Latino civil rights community, I had not met him personally until 2015. In late-2015
21 and early-2016, Shenkman & Hughes PC worked with Ms. Loya and the Pico
22 Neighborhood Association, as well as other Santa Monica residents and groups, to
23 convince the Santa Monica City Council to bring their elections into compliance with
24 the CVRA. When those efforts proved unsuccessful, we initiated the Voting Rights
25 Case.

26 4. In developing a case under the CVRA, we often must investigate the
27 political realities of a governing body, as well as the factors the CVRA identifies as
28 “probative but not necessary” to establishing a violation of the CVRA, for example,
“the history of discrimination ... denial of access to those processes determining which

1 groups of candidates will receive financial or other support in a given election, the
2 extent to which members of a protected class bear the effects of past discrimination in
3 areas such as education, employment, and health, which hinder their ability to
4 participate effectively in the political process, [] the use of overt or subtle racial appeals
5 in political campaigns,” and the unresponsiveness of the governing board to the needs
6 and desires of the protected class. To carry out that investigation, we communicate
7 with community members with knowledge of local politics in the political subdivision
8 at issue, among other things. Our investigation of Santa Monica was no exception. As
9 detailed in the billing records of my firm and those of our co-counsel, all of which have
10 been provided to the City of Santa Monica, we inquired of several people
11 knowledgeable in Santa Monica city politics, including Oscar de la Torre. Mr. de la
12 Torre was helpful; he provided us with significant information concerning the political,
13 social and economic realities of Santa Monica, and political figures. Of course, all of
14 that work is complete now, since the trial of the Voting Rights Case concluded in 2018.
15 Now, with the trial concluded, the record is closed and the factual disputes are resolved,
16 so we have no need to further investigate. Since the trial concluded, and the Los
17 Angeles Superior Court entered judgment, in the Voting Rights Case, many of the
18 people with whom we communicated for the purpose of our factual investigation have
19 asked that we update them on the progress of the case and pending appeal, and we have
20 done so upon their requests.

21 5. My firm’s voting rights practice often requires me and my colleagues to
22 engage in the political process as well as the court process. Because the system of
23 election employed by a political subdivision is both a legal issue and a political issue
24 important to thousands of voters, whenever we pursue litigation we also engage with
25 community leaders, community groups and elected officeholders. Over the six years in
26 which we have worked to bring Santa Monica’s city council elections into compliance
27 with the CVRA, I have personally spoken at dozens of Santa Monica community group
28 meetings and fielded questions from Santa Monica residents on each occasion. In the
process, I have communicated with all, or nearly all, of the current members of the

1 Santa Monica City Council, as well as several former councilmembers. For example, I
2 spoke at a Northeast Neighbors meeting regarding district elections, the CVRA and the
3 Voting Rights Case, at which Councilmember Gleam Davis also spoke briefly
4 regarding the same topics, after which I fielded questions. More recently, I spoke at a
5 Santa Monica Democratic Club meeting, attended by Mayor Sue Himmelrich,
6 Councilmember Oscar de la Torre and Councilmember Kristin McCowan, as well as
7 former councilmembers Kevin McKeown and Tony Vazquez, regarding those same
8 topics. Some of my communications with Santa Monica city councilmembers have
9 been in public, while others have been in private.

10 6. My communications with members of the Santa Monica City Council are
11 expressly permitted by the Professional Rules of Conduct. Specifically, while Rule 4.2
12 generally prohibits communications between an attorney and a represented opposing
13 party, it excludes public elected officials from that prohibition: “This rule shall not
14 prohibit [] communications with a public official, board, committee, or body.” (Rule of
15 Prof. Cond. 4.2(c)(1)). Comment 7 to that Rule explains that First Amendment
16 considerations require that attorneys opposing a political subdivision in litigation be
17 allowed to petition the elected officials who make decisions for the public entity:

18 “When a lawyer communicates on behalf of a client with a governmental
19 organization, or certain employees, members, agents, or other constituents
20 of a governmental organization, however, special considerations exist as a
21 result of the right to petition conferred by the First Amendment of the
22 United States Constitution and article I, section 3 of the California
23 Constitution. Paragraph (c)(1) recognizes these special considerations by
24 generally exempting from application of this rule communications with
25 public boards, committees, and bodies, and with public officials as defined
26 in paragraph (d)(2) of this rule.”

27 (Rule of Prof. Cond. 4.2, cmt. 7)

28 7. I frequently have discussions concerning the CVRA, voting rights and
elections with elected officials throughout California. Almost always, those elected
officials communicate with me with the (often express) understanding that our

1 discussions are confidential and will not be disclosed to anyone. When my discussions
2 with elected officials are not in public, I never reveal those discussions, both because it
3 would be a breach of trust to do so and because elected officials would be unlikely to
4 speak to me if they believed I would reveal those discussions.

5 7. Litigating CVRA cases requires significant time, effort, knowledge and
6 resources. Some CVRA cases require thousands of hours of work by attorneys, and
7 hundreds of thousands of dollars in expenses, mostly for expert witnesses who testify
8 about topics such as group voting behavior, statistical methods, demographics and
9 alternative election systems. In *Jauregui v. City of Palmdale*, for example, the Los
10 Angeles Superior Court awarded over \$4 million in attorneys' fees and expenses
11 through two disputed fees motions. The CVRA affords standing to "[a]ny voter who is
12 a member of a protected class and who resides in a political subdivision where a
13 violation ... is alleged." Yet, very few voters have millions of dollars available to
14 spend on attorneys and expert witnesses. Moreover, voters who wish to challenge an
15 at-large election system under the CVRA have no prospect of financial gain through
16 such a lawsuit, because the only financial relief available is attorneys' fees and costs,
17 and non-attorneys cannot share in that recovery. Therefore, Shenkman & Hughes and
18 the other law firms with which we associate, handles all CVRA cases on a *pro bono*
19 basis. Our CVRA clients do not pay us or anyone else any money in connection with
20 those cases. They have no prospect for any financial gain or financial loss from those
21 cases.

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

24 Executed this ____ day of November 2021, at Malibu, California.

25
26 _____
Kevin Shenkman
27
28

Exhibit 44

Fwd: Filing ID 4895959 Accepted on 21STCV08597 - OSCAR DE LA TORRE vs CITY OF SANTA MONICA

From: W. Trivino-Perez, Esq. (wtpesq@gmail.com)
To: shenkman@sbcglobal.net; odelatorre16@yahoo.com
Date: Friday, March 5, 2021, 08:10 AM PST

----- Forwarded message -----

From: **GreenFiling Support** <support@greenfiling.com>
Date: Thu, Mar 4, 2021 at 4:15 PM
Subject: Filing ID 4895959 Accepted on 21STCV08597 - OSCAR DE LA TORRE vs CITY OF SANTA MONICA
To: Wilfredo Trivino-Perez <wtpesq@gmail.com>
CC: wtpesq@gmail.com <wtpesq@gmail.com>



Warning: One or more files could NOT be attached to this email due to file size restrictions. [Click here](#) to open your filing, and download your filed copies.

Accepted

Filing ID: [4895959](#)

Envelope No: 21LA03240156

Document(s): Complaint - Accepted
Summons - Accepted
Civil Case Cover Sheet - Accepted
Civil Case Cover Sheet - Accepted

Case: [21STCV08597 - OSCAR DE LA TORRE vs CITY OF SANTA MONICA](#)

Court Location: Central District Stanley Mosk Courthouse Department 32

Filer: Wilfredo Trivino-Perez

Final Filing Fees: Complaint \$435.00

P0863

Los Angeles County Court \$2.25
Transaction Fee
Provider Service Fee \$7.85
Payment Service Fee \$13.12

Total \$458.22

Card Used: VISA-xxxxxxxxxxxx6302

Invoice Number: 2518076 - [View Invoice](#)

[Click here](#) for a detailed printer friendly filing receipt.

[Click here](#) for a filing statement.

Thank you!

--
Trivino Perez & Associates is operating virtually with full access to phone and email communication during our regular business hours. Our physical office is currently closed in adherence to Governor Newsom's March 19, 2020 Order N-33-20. Please refrain from communication by mail in order to reduce the spread of viruses and other illnesses being transmitted on physical documents.

TRIVINO PEREZ & ASSOCIATES
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Notice.pdf
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P0864



Civil Case Cover Sheet.pdf
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Civil Case Cover Sheet.pdf
580.2kB



Summons on Complaint.pdf
308.1kB

Superior Court of California
County of Los Angeles

Receipt EFM-2021-2999824.1

Date: 3/4/21 4:12 PM

Time: 3/4/21 4:12 PM

CASE # 21STCV08597

OSCAR DE LA TORRE vs CITY OF SANTA

Unlimited Civil- Compl/UD/Pat filed >25k -	435.00
GC70611,70602.5,70602.6	
Court Transaction Fee	2.25
Case Total:	<u>437.25</u>

Total Paid: 437.25

21LA03240156

P0866

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	<small>Reserved for Clerk's File Stamp</small>
<small>COURTHOUSE ADDRESS:</small> Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	FILED Superior Court of California County of Los Angeles 03/04/2021 Sherri R. Carter, Executive Officer / Clerk of Court By <u> N. Alvarez </u> Deputy
NOTICE OF CASE ASSIGNMENT UNLIMITED CIVIL CASE	
Your case is assigned for all purposes to the judicial officer indicated below.	<small>CASE NUMBER</small> 21STCV08597

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

	ASSIGNED JUDGE	DEPT	ROOM		ASSIGNED JUDGE	DEPT	ROOM
<input checked="" type="checkbox"/>	Daniel S. Murphy	32					

Given to the Plaintiff/Cross-Complainant Attorney of Record Sherri R. Carter, Executive Officer / Clerk of Court
on 03/04/2021 (Date) By N. Alvarez Deputy Clerk

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the California Rules of Court, Title 3, Division 7, as applicable in the Superior Court, are summarized for your assistance.

APPLICATION

The Division 7 Rules were effective January 1, 2007. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Division 7 Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure Section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Independent Calendaring Courts will be subject to processing under the following time standards:

COMPLAINTS

All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days.

CROSS-COMPLAINTS

Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

STATUS CONFERENCE

A status conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties to attend a final status conference not more than 10 days before the scheduled trial date. All parties shall have motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, special jury instructions, and special jury verdicts timely filed and served prior to the conference. These matters may be heard and resolved at this conference. At least five days before this conference, counsel must also have exchanged lists of exhibits and witnesses, and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Three of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party, or if appropriate, on counsel for a party.

This is not a complete delineation of the Division 7 or Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is imperative.

Class Actions

Pursuant to Local Rule 2.3, all class actions shall be filed at the Stanley Mosk Courthouse and are randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be a class action it will be returned to an Independent Calendar Courtroom for all purposes.

*Provisionally Complex Cases

Cases filed as provisionally complex are initially assigned to the Supervising Judge of complex litigation for determination of complex status. If the case is deemed to be complex within the meaning of California Rules of Court 3.400 et seq., it will be randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be complex, it will be returned to an Independent Calendar Courtroom for all purposes.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Branch Name: Stanley Mosk Courthouse
Mailing Address: 111 North Hill Street
City, State and Zip Code: Los Angeles CA 90012

SHORT TITLE: OSCAR DE LA TORRE vs CITY OF SANTA MONICA**CASE NUMBER:**
21STCV08597**NOTICE OF CONFIRMATION OF ELECTRONIC FILING**

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Green Filing
Reference Number: 4895959_1
Submission Number: 21LA03240156
Court Received Date: 03/04/2021
Court Received Time: 1:14 pm
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
Notice Generated Date: 03/04/2021
Notice Generated Time: 4:12 pm

Documents Electronically Filed/Received**Status**

Complaint	Accepted
Summons	Accepted
Civil Case Cover Sheet	Accepted
Civil Case Cover Sheet	Accepted

NOTICE OF CONFIRMATION OF FILING

P0869

Notice (name extension)

Accepted

Comments

Submitter's Comments: Civil Case Cover Sheet and Addendum to civil case cover sheet were uploaded separately per efilng company instruction.

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Green Filing

Contact: Green Filing

Phone: (801) 448-7268

NOTICE OF CONFIRMATION OF FILING

P0870

750

FILED
Superior Court of California
County of Los Angeles

MAY 03 2019

Sherri R. Carter, Executive Officer/Clerk
By: *Rizallada Mias*, Deputy
Rizallada Mias

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

IN RE LOS ANGELES SUPERIOR COURT) FIRST AMENDED GENERAL ORDER
— MANDATORY ELECTRONIC FILING)
FOR CIVIL)

On December 3, 2018, the Los Angeles County Superior Court mandated electronic filing of all documents in Limited Civil cases by litigants represented by attorneys. On January 2, 2019, the Los Angeles County Superior Court mandated electronic filing of all documents filed in Non-Complex Unlimited Civil cases by litigants represented by attorneys. (California Rules of Court, rule 2.253(b).) All electronically filed documents in Limited and Non-Complex Unlimited cases are subject to the following:

1) DEFINITIONS

- a) **“Bookmark”** A bookmark is a PDF document navigational tool that allows the reader to quickly locate and navigate to a designated point of interest within a document.
- b) **“Efiling Portal”** The official court website includes a webpage, referred to as the efiling portal, that gives litigants access to the approved Electronic Filing Service Providers.
- c) **“Electronic Envelope”** A transaction through the electronic service provider for submission of documents to the Court for processing which may contain one or more PDF documents attached.
- d) **“Electronic Filing”** Electronic Filing (eFiling) is the electronic transmission to a Court of a document in electronic form. (California Rules of Court, rule 2.250(b)(7).)

1 e) **“Electronic Filing Service Provider”** An Electronic Filing Service Provider (EFSP) is a
 2 person or entity that receives an electronic filing from a party for retransmission to the Court.
 3 In the submission of filings, the EFSP does so on behalf of the electronic filer and not as an
 4 agent of the Court. (California Rules of Court, rule 2.250(b)(8).)

5 f) **“Electronic Signature”** For purposes of these local rules and in conformity with Code of
 6 Civil Procedure section 17, subdivision (b)(3), section 34, and section 1010.6, subdivision
 7 (b)(2), Government Code section 68150, subdivision (g), and California Rules of Court, rule
 8 2.257, the term “Electronic Signature” is generally defined as an electronic sound, symbol, or
 9 process attached to or logically associated with an electronic record and executed or adopted
 10 by a person with the intent to sign the electronic record.

11 g) **“Hyperlink”** An electronic link providing direct access from one distinctively marked place
 12 in a hypertext or hypermedia document to another in the same or different document.

13 b) **“Portable Document Format”** A digital document format that preserves all fonts,
 14 formatting, colors and graphics of the original source document, regardless of the application
 15 platform used.

16 2) **MANDATORY ELECTRONIC FILING**

17 a) **Trial Court Records**

18 Pursuant to Government Code section 68150, trial court records may be created, maintained,
 19 and preserved in electronic format. Any document that the Court receives electronically must
 20 be clerically processed and must satisfy all legal filing requirements in order to be filed as an
 21 official court record (California Rules of Court, rules 2.100, et seq. and 2.253(b)(6)).

22 b) **Represented Litigants**

23 Pursuant to California Rules of Court, rule 2.253(b), represented litigants are required to
 24 electronically file documents with the Court through an approved EFSP.

25 c) **Public Notice**

26 The Court has issued a Public Notice with effective dates the Court required parties to
 27 electronically file documents through one or more approved EFSPs. Public Notices containing
 28 effective dates and the list of EFSPs are available on the Court’s website, at www.lacourt.org.

1 d) Documents in Related Cases

2 Documents in related cases must be electronically filed in the eFiling portal for that case type if
3 electronic filing has been implemented in that case type, regardless of whether the case has
4 been related to a Civil case.

5 3) EXEMPT LITIGANTS

6 a) Pursuant to California Rules of Court, rule 2.253(b)(2), self-represented litigants are exempt
7 from mandatory electronic filing requirements.

8 b) Pursuant to Code of Civil Procedure section 1010.6, subdivision (d)(3) and California Rules of
9 Court, rule 2.253(b)(4), any party may make application to the Court requesting to be excused
10 from filing documents electronically and be permitted to file documents by conventional
11 means if the party shows undue hardship or significant prejudice.

12 4) EXEMPT FILINGS

13 a) The following documents shall not be filed electronically:

14 i) Peremptory Challenges or Challenges for Cause of a Judicial Officer pursuant to Code of
15 Civil Procedure sections 170.6 or 170.3;

16 ii) Bonds/Undertaking documents;

17 iii) Trial and Evidentiary Hearing Exhibits

18 iv) Any ex parte application that is filed concurrently with a new complaint including those
19 that will be handled by a Writs and Receivers department in the Mosk courthouse; and

20 v) Documents submitted conditionally under seal. The actual motion or application shall be
21 electronically filed. A courtesy copy of the electronically filed motion or application to
22 submit documents conditionally under seal must be provided with the documents
23 submitted conditionally under seal.

24 b) Lodgments

25 Documents attached to a Notice of Lodgment shall be lodged and/or served conventionally in
26 paper form. The actual document entitled, "Notice of Lodgment," shall be filed electronically.

27 //

28 //

1 5) **ELECTRONIC FILING SYSTEM WORKING PROCEDURES**

2 Electronic filing service providers must obtain and manage registration information for persons
3 and entities electronically filing with the court.

4 6) **TECHNICAL REQUIREMENTS**

5 a) Electronic documents must be electronically filed in PDF, text searchable format when
6 technologically feasible without impairment of the document's image.

7 b) The table of contents for any filing must be bookmarked.

8 c) Electronic documents, including but not limited to, declarations, proofs of service, and
9 exhibits, must be bookmarked within the document pursuant to California Rules of Court, rule
10 3.1110(f)(4). Electronic bookmarks must include links to the first page of each bookmarked
11 item (e.g. exhibits, declarations, deposition excerpts) and with bookmark titles that identify the
12 bookedmarked item and briefly describe the item.

13 d) Attachments to primary documents must be bookmarked. Examples include, but are not
14 limited to, the following:

15 i) Depositions;

16 ii) Declarations;

17 iii) Exhibits (including exhibits to declarations);

18 iv) Transcripts (including excerpts within transcripts);

19 v) Points and Authorities;

20 vi) Citations; and

21 vii) Supporting Briefs.

22 e) Use of hyperlinks within documents (including attachments and exhibits) is strongly
23 encouraged.

24 f) **Accompanying Documents**

25 Each document accompanying a single pleading must be electronically filed as a separate
26 digital PDF document.

27 g) **Multiple Documents**

28 Multiple documents relating to one case can be uploaded in one envelope transaction.

1 h) Writs and Abstracts

2 Writs and Abstracts must be submitted as a separate electronic envelope.

3 i) Sealed Documents

4 If and when a judicial officer orders documents to be filed under seal, those documents must be
 5 filed electronically (unless exempted under paragraph 4); the burden of accurately designating
 6 the documents as sealed at the time of electronic submission is the submitting party's
 7 responsibility.

8 j) Redaction

9 Pursuant to California Rules of Court, rule 1.201, it is the submitting party's responsibility to
 10 redact confidential information (such as using initials for names of minors, using the last four
 11 digits of a social security number, and using the year for date of birth) so that the information
 12 shall not be publicly displayed.

13 7) ELECTRONIC FILING SCHEDULE

14 a) Filed Date

15 i) Any document received electronically by the court between 12:00 am and 11:59:59 pm
 16 shall be deemed to have been effectively filed on that court day if accepted for filing. Any
 17 document received electronically on a non-court day, is deemed to have been effectively
 18 filed on the next court day if accepted. (California Rules of Court, rule 2.253(b)(6); Code
 19 Civ. Proc. § 1010.6(b)(3).)

20 ii) Notwithstanding any other provision of this order, if a digital document is not filed in due
 21 course because of: (1) an interruption in service; (2) a transmission error that is not the
 22 fault of the transmitter; or (3) a processing failure that occurs after receipt, the Court may
 23 order, either on its own motion or by noticed motion submitted with a declaration for Court
 24 consideration, that the document be deemed filed and/or that the document's filing date
 25 conform to the attempted transmission date.

26 8) EX PARTE APPLICATIONS

27 a) Ex parte applications and all documents in support thereof must be electronically filed no later
 28 than 10:00 a.m. the court day before the ex parte hearing.

1 b) Any written opposition to an ex parte application must be electronically filed by 8:30 a.m. the
 2 day of the ex parte hearing. A printed courtesy copy of any opposition to an ex parte
 3 application must be provided to the court the day of the ex parte hearing.

4 **9) PRINTED COURTESY COPIES**

5 a) For any filing electronically filed two or fewer days before the hearing, a courtesy copy must
 6 be delivered to the courtroom by 4:30 p.m. the same business day the document is efiled. If
 7 the efiled is submitted after 4:30 p.m., the courtesy copy must be delivered to the courtroom
 8 by 10:00 a.m. the next business day.

9 b) Regardless of the time of electronic filing, a printed courtesy copy (along with proof of
 10 electronic submission) is required for the following documents:

- 11 i) Any printed document required pursuant to a Standing or General Order;
- 12 ii) Pleadings and motions (including attachments such as declarations and exhibits) of 26
 13 pages or more;
- 14 iii) Pleadings and motions that include points and authorities;
- 15 iv) Demurrers;
- 16 v) Anti-SLAPP filings, pursuant to Code of Civil Procedure section 425.16;
- 17 vi) Motions for Summary Judgment/Adjudication; and
- 18 vii) Motions to Compel Further Discovery.

19 c) Nothing in this General Order precludes a Judicial Officer from requesting a courtesy copy of
 20 additional documents. Courtroom specific courtesy copy guidelines can be found at
 21 www.lacourt.org on the Civil webpage under "Courtroom Information."

22 **10) WAIVER OF FEES AND COSTS FOR ELECTRONICALLY FILED DOCUMENTS**

23 a) Fees and costs associated with electronic filing must be waived for any litigant who has
 24 received a fee waiver. (California Rules of Court, rules 2.253(b)(1), 2.258(b), Code Civ. Proc. §
 25 1010.6(d)(2).)

26 b) Fee waiver applications for waiver of court fees and costs pursuant to Code of Civil Procedure
 27 section 1010.6, subdivision (b)(6), and California Rules of Court, rule 2.252(f), may be
 28 electronically filed in any authorized action or proceeding.

1 1) SIGNATURES ON ELECTRONIC FILING

2 For purposes of this General Order, all electronic filings must be in compliance with California
3 Rules of Court, rule 2.257. This General Order applies to documents filed within the Civil
4 Division of the Los Angeles County Superior Court.

5
6 This First Amended General Order supersedes any previous order related to electronic filing,
7 and is effective immediately, and is to remain in effect until otherwise ordered by the Civil
8 Supervising Judge and/or Presiding Judge.

9
10 DATED: May 3, 2019



11 *Kevin C. Brazile*
12 KEVIN C. BRAZILE
13 Presiding Judge
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VOLUNTARY EFFICIENT LITIGATION STIPULATIONS



Superior Court of California
County of Los Angeles



Los Angeles County
Bar Association
Litigation Section

Los Angeles County
Bar Association Labor and
Employment Law Section



Consumer Attorneys
Association of Los Angeles



Southern California
Defense Counsel



Association of
Business Trial Lawyers



California Employment
Lawyers Association

LACIV 230 (NEW)
LASC Approved 4-11
For Optional Use

The Early Organizational Meeting Stipulation, Discovery Resolution Stipulation, and Motions in Limine Stipulation are voluntary stipulations entered into by the parties. The parties may enter into one, two, or all three of the stipulations; however, they may not alter the stipulations as written, because the Court wants to ensure uniformity of application. These stipulations are meant to encourage cooperation between the parties and to assist in resolving issues in a manner that promotes economic case resolution and judicial efficiency.

The following organizations endorse the goal of promoting efficiency in litigation and ask that counsel consider using these stipulations as a voluntary way to promote communications and procedures among counsel and with the court to fairly resolve issues in their cases.

◆ Los Angeles County Bar Association Litigation Section ◆

◆ Los Angeles County Bar Association
Labor and Employment Law Section ◆

◆ Consumer Attorneys Association of Los Angeles ◆

◆ Southern California Defense Counsel ◆

◆ Association of Business Trial Lawyers ◆

◆ California Employment Lawyers Association ◆

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY		STATE BAR NUMBER	Reserving for Court use or Stamp
TELEPHONE NO: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FAX NO. (Optional)	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION - DISCOVERY RESOLUTION			CASE NUMBER

This stipulation is intended to provide a fast and informal resolution of discovery issues through limited paperwork and an informal conference with the Court to aid in the resolution of the issues.

The parties agree that:

1. Prior to the discovery cut-off in this action, no discovery motion shall be filed or heard unless the moving party first makes a written request for an Informal Discovery Conference pursuant to the terms of this stipulation.
2. At the Informal Discovery Conference the Court will consider the dispute presented by parties and determine whether it can be resolved informally. Nothing set forth herein will preclude a party from making a record at the conclusion of an Informal Discovery Conference, either orally or in writing.
3. Following a reasonable and good faith attempt at an informal resolution of each issue to be presented, a party may request an Informal Discovery Conference pursuant to the following procedures:
 - a. The party requesting the Informal Discovery Conference will:
 - i. File a Request for Informal Discovery Conference with the clerk's office on the approved form (copy attached) and deliver a courtesy, conformed copy to the assigned department;
 - ii. Include a brief summary of the dispute and specify the relief requested; and
 - iii. Serve the opposing party pursuant to any authorized or agreed method of service that ensures that the opposing party receives the Request for Informal Discovery Conference no later than the next court day following the filing.
 - b. Any Answer to a Request for Informal Discovery Conference must:
 - i. Also be filed on the approved form (copy attached);
 - ii. Include a brief summary of why the requested relief should be denied;

LACV 036 (new)
LASC Approved 04/11
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STIPULATION - DISCOVERY RESOLUTION

Page 1 of 3

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- iii. Be filed within two (2) court days of receipt of the Request; and
 - iv. Be served on the opposing party pursuant to any authorized or agreed upon method of service that ensures that the opposing party receives the Answer no later than the next court day following the filing.
- c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.
- d. If the Court has not granted or denied the Request for Informal Discovery Conference within ten (10) days following the filing of the Request, then it shall be deemed to have been denied. If the Court acts on the Request, the parties will be notified whether the Request for Informal Discovery Conference has been granted or denied and, if granted, the date and time of the Informal Discovery Conference, which must be within twenty (20) days of the filing of the Request for Informal Discovery Conference.
- e. If the conference is not held within twenty (20) days of the filing of the Request for Informal Discovery Conference, unless extended by agreement of the parties and the Court, then the Request for the Informal Discovery Conference shall be deemed to have been denied at that time.
4. If (a) the Court has denied a conference or (b) one of the time deadlines above has expired without the Court having acted or (c) the Informal Discovery Conference is concluded without resolving the dispute, then a party may file a discovery motion to address unresolved issues.
5. The parties hereby further agree that the time for making a motion to compel or other discovery motion is tolled from the date of filing of the Request for Informal Discovery Conference until (a) the request is denied or deemed denied or (b) twenty (20) days after the filing of the Request for Informal Discovery Conference, whichever is earlier, unless extended by Order of the Court.
- It is the understanding and intent of the parties that this stipulation shall, for each discovery dispute to which it applies, constitute a writing memorializing a "specific later date to which the propounding [or demanding or requesting] party and the responding party have agreed in writing," within the meaning of Code Civil Procedure sections 2030.300(c), 2031.320(c), and 2033.290(c).
6. Nothing herein will preclude any party from applying *ex parte* for appropriate relief, including an order shortening time for a motion to be heard concerning discovery.
7. Any party may terminate this stipulation by giving twenty-one (21) days notice of intent to terminate the stipulation.
8. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.

SHORT TITLE	CASE NUMBER
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The following parties stipulate:

Date: _____ (TYPE OR PRINT NAME)	v	_____ (ATTORNEY FOR PLAINTIFF)
Date: _____ (TYPE OR PRINT NAME)	v	_____ (ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	v	_____ (ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	v	_____ (ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	v	_____ (ATTORNEY FOR _____)
Date: _____ (TYPE OR PRINT NAME)	v	_____ (ATTORNEY FOR _____)
Date: _____ (TYPE OR PRINT NAME)	v	_____ (ATTORNEY FOR _____)

NAME AND ADDRESS OF ATTORNEY OR PARTY THROUGH ATTORNEY		STATE BAR NUMBER	DATE OF FILING
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Plaintiff):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION - EARLY ORGANIZATIONAL MEETING			FILE NUMBER

This stipulation is intended to encourage cooperation among the parties at an early stage in the litigation and to assist the parties in efficient case resolution.

The parties agree that:

1. The parties commit to conduct an Initial Conference (in-person or via teleconference or via videoconference) within 15 days from the date this stipulation is signed, to discuss and consider whether there can be agreement on the following:
 - a. Are motions to challenge the pleadings necessary? If the issue can be resolved by amendment as of right, or if the Court would allow leave to amend, could an amended complaint resolve most or all of the issues a demurrer might otherwise raise? If so, the parties agree to work through pleading issues so that a demurrer need only raise issues they cannot resolve. Is the issue that the defendant seeks to raise amenable to resolution on demurrer, or would some other type of motion be preferable? Could a voluntary targeted exchange of documents or information by any party cure an uncertainty in the pleadings?
 - b. Initial mutual exchanges of documents at the "core" of the litigation. (For example, in an employment case, the employment records, personnel file and documents relating to the conduct in question could be considered "core." In a personal injury case, an incident or police report, medical records, and repair or maintenance records could be considered "core.");
 - c. Exchange of names and contact information of witnesses;
 - d. Any insurance agreement that may be available to satisfy part or all of a judgment, or to indemnify or reimburse for payments made to satisfy a judgment;
 - e. Exchange of any other information that might be helpful to facilitate understanding, handling, or resolution of the case in a manner that preserves objections or privileges by agreement;
 - f. Controlling issues of law that, if resolved early, will promote efficiency and economy in other phases of the case. Also, when and how such issues can be presented to the Court;
 - g. Whether or when the case should be scheduled with a settlement officer, what discovery or court ruling on legal issues is reasonably required to make settlement discussions meaningful, and whether the parties wish to use a sitting judge or a private mediator or other options as

Docket #	Case #
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discussed in the "Alternative Dispute Resolution (ADR) Information Package" served with the complaint;

- h. Computation of damages, including documents, not privileged or protected from disclosure, on which such computation is based;
 - i. Whether the case is suitable for the Expedited Jury Trial procedures (see information at www.lscourt.org under "Civil" and then under "General Information").
2. The time for a defending party to respond to a complaint or cross-complaint will be extended to _____ (INSERT DATE) for the complaint, and _____ (INSERT DATE) for the cross-complaint, which is comprised of the 30 days to respond under Government Code § 08616(b), and the 30 days permitted by Code of Civil Procedure section 1054(a), good cause having been found by the Civil Supervising Judge due to the case management benefits provided by this Stipulation. A copy of the General Order can be found at www.lscourt.org under "Civil", click on "General Information", then click on "Voluntary Efficient Litigation Stipulations".
 3. The parties will prepare a joint report titled "Joint Status Report Pursuant to Initial Conference and Early Organizational Meeting Stipulation, and if desired, a proposed order summarizing results of their meet and confer and advising the Court of any way it may assist the parties' efficient conduct or resolution of the case. The parties shall attach the Joint Status Report to the Case Management Conference statement, and file the documents when the CMC statement is due.
 4. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.

The following parties stipulate:

Date: _____ (TYPE OR PRINT NAME)	_____ (ATTORNEY FOR PLAINTIFF)
Date: _____ (TYPE OR PRINT NAME)	_____ (ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	_____ (ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	_____ (ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	_____ (ATTORNEY FOR _____)
Date: _____ (TYPE OR PRINT NAME)	_____ (ATTORNEY FOR _____)
Date: _____ (TYPE OR PRINT NAME)	_____ (ATTORNEY FOR _____)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY		CASE NUMBER	JUDICIAL BRANCH - 236 Street
TELEPHONE NO: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FAX NO (Optional)	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
INFORMAL DISCOVERY CONFERENCE (pursuant to the Discovery Resolution Stipulation of the parties)			CASE NUMBER

- This document relates to:
 - Request for Informal Discovery Conference
 - Answer to Request for Informal Discovery Conference
2. Deadline for Court to decide on Request: _____ (insert date 10 calendar days following filing of the Request)
3. Deadline for Court to hold Informal Discovery Conference: _____ (insert date 20 calendar days following filing of the Request).
4. For a Request for Informal Discovery Conference, briefly describe the nature of the discovery dispute, including the facts and legal arguments at issue. For an Answer to Request for Informal Discovery Conference, briefly describe why the Court should deny the requested discovery, including the facts and legal arguments at issue.

LACTV 094 (rev)
LASC Approved 04/11
For Optional Use

INFORMAL DISCOVERY CONFERENCE
(pursuant to the Discovery Resolution Stipulation of the parties)

P0884

NAME AND ADDRESS OF ATTORNEY FOR PLAINTIFFS (OPTIONAL)		DATE FILED NUMBER	If signed for Clerk of the Court
TELEPHONE NO: E-MAIL ADDRESS (Optional): ATTORNEY FOR DEFENDANT		FAX NO (Optional)	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			CASE NUMBER
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION AND ORDER - MOTIONS IN LIMINE			

This stipulation is intended to provide fast and informal resolution of evidentiary issues through diligent efforts to define and discuss such issues and limit paperwork.

The parties agree that:

1. At least ___ days before the final status conference, each party will provide all other parties with a list containing a one paragraph explanation of each proposed motion in limine. Each one paragraph explanation must identify the substance of a single proposed motion in limine and the grounds for the proposed motion.
2. The parties thereafter will meet and confer, either in person or via teleconference or videoconference, concerning all proposed motions in limine. In that meet and confer, the parties will determine:
 - a. Whether the parties can stipulate to any of the proposed motions. If the parties so stipulate, they may file a stipulation and proposed order with the Court.
 - b. Whether any of the proposed motions can be briefed and submitted by means of a short joint statement of issues. For each motion which can be addressed by a short joint statement of issues, a short joint statement of issues must be filed with the Court 10 days prior to the final status conference. Each side's portion of the short joint statement of issues may not exceed three pages. The parties will meet and confer to agree on a date and manner for exchanging the parties' respective portions of the short joint statement of issues and the process for filing the short joint statement of issues.
3. All proposed motions in limine that are not either the subject of a stipulation or briefed via a short joint statement of issues will be briefed and filed in accordance with the California Rules of Court and the Los Angeles Superior Court Rules.

MODEL TITLE	CASE NUMBER
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The following parties stipulate:

Date:	_____	_____
	(TYPE OR PRINT NAME)	(ATTORNEY FOR PLAINTIFF)
Date:	_____	_____
	(TYPE OR PRINT NAME)	(ATTORNEY FOR DEFENDANT)
Date:	_____	_____
	(TYPE OR PRINT NAME)	(ATTORNEY FOR DEFENDANT)
Date:	_____	_____
	(TYPE OR PRINT NAME)	(ATTORNEY FOR DEFENDANT)
Date:	_____	_____
	(TYPE OR PRINT NAME)	(ATTORNEY FOR _____)
Date:	_____	_____
	(TYPE OR PRINT NAME)	(ATTORNEY FOR _____)
Date:	_____	_____
	(TYPE OR PRINT NAME)	(ATTORNEY FOR _____)

THE COURT SO ORDERS.

Date: _____

JUDICIAL OFFICER



Superior Court of California, County of Los Angeles

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE

THE PLAINTIFF MUST SERVE THIS ADR INFORMATION PACKAGE ON EACH PARTY WITH THE COMPLAINT.

CROSS-COMPLAINANTS must serve this ADR Information Package on any new parties named to the action with the cross-complaint.

What is ADR?

ADR helps people find solutions to their legal disputes without going to trial. The main types of ADR are negotiation, mediation, arbitration, and settlement conferences. When ADR is done by phone, videoconference or computer, it may be called Online Dispute Resolution (ODR). These alternatives to litigation and trial are described below.

Advantages of ADR

- **Saves Time:** ADR is faster than going to trial.
- **Saves Money:** Parties can save on court costs, attorney's fees, and witness fees.
- **Keeps Control (with the parties):** Parties choose their ADR process and provider for voluntary ADR.
- **Reduces Stress/Protects Privacy:** ADR is done outside the courtroom, in private offices, by phone or online.

Disadvantages of ADR

- **Costs:** If the parties do not resolve their dispute, they may have to pay for ADR and litigation and trial.
- **No Public Trial:** ADR does not provide a public trial or a decision by a judge or jury.

Main Types of ADR:

1. **Negotiation:** Parties often talk with each other in person, or by phone or online about resolving their case with a settlement agreement instead of a trial. If the parties have lawyers, they will negotiate for their clients.
2. **Mediation:** In mediation, a neutral mediator listens to each person's concerns, helps them evaluate the strengths and weaknesses of their case, and works with them to try to create a settlement agreement that is acceptable to all. Mediators do not decide the outcome. Parties may go to trial if they decide not to settle.

Mediation may be appropriate when the parties

- want to work out a solution but need help from a neutral person.
- have communication problems or strong emotions that interfere with resolution.

Mediation may not be appropriate when the parties

- want a public trial and want a judge or jury to decide the outcome.
- lack equal bargaining power or have a history of physical/emotional abuse.

How to arrange mediation in Los Angeles County

Mediation for civil cases is voluntary and parties may select any mediator they wish. Options include:

a. The Civil Mediation Vendor Resource List

If all parties agree to mediation, they may contact these organizations to request a "Resource List Mediation" for mediation at reduced cost or no cost (for selected cases):

- ADR Services, Inc. Case Manager patricia@adrservices.com (310) 201-0010 (Ext. 261)
- JAMS, Inc. Senior Case Manager mbinder@jamsadr.com (310) 309-6204
- Mediation Center of Los Angeles (MCLA) Program Manager info@mediationLA.org (833) 476-9145
 - Only MCLA provides mediation in person, by phone and by videoconference.

These organizations cannot accept every case and they may decline cases at their discretion.

Visit www.lacourt.org/ADR.Res.List for important information and FAQs before contacting them.

NOTE: This program does not accept family law, probate, or small claims cases.

b. Los Angeles County Dispute Resolution Programs

<https://wdacs.lacounty.gov/programs/drp/>

- Small claims, unlawful detainers (evictions) and, at the Spring Street Courthouse, limited civil:
 - Free, day-of-trial mediations at the courthouse. No appointment needed.
 - Free or low-cost mediations before the day of trial.
 - For free or low-cost Online Dispute Resolution (ODR) by phone or computer before the day of trial visit <http://www.lacourt.org/division/smallclaims/pdf/OnlineDisputeResolutionFlyer-EngSpan.pdf>

c. Mediators and ADR and Bar organizations that provide mediation may be found on the internet.

3. **Arbitration:** Arbitration is less formal than trial, but like trial, the parties present evidence and arguments to the person who decides the outcome. In "binding" arbitration, the arbitrator's decision is final; there is no right to trial. In "nonbinding" arbitration, any party can request a trial after the arbitrator's decision. For more information about arbitration, visit <http://www.courts.ca.gov/programs-adr.htm>
4. **Mandatory Settlement Conferences (MSC):** MSCs are ordered by the Court and are often held close to the trial date or on the day of trial. The parties and their attorneys meet with a judge or settlement officer who does not make a decision but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. For information about the Court's MSC programs for civil cases, visit <http://www.lacourt.org/division/civil/C10047.aspx>

Los Angeles Superior Court ADR website: <http://www.lacourt.org/division/civil/C10109.aspx>

For general information and videos about ADR, visit <http://www.courts.ca.gov/programs-adr.htm>

SHORT TITLE de la Torre v. City of Santa Monica	CASE NUMBER 21STCV08597
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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL? HOURS/ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked “Limited Case”, skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|---------------------------------------------------------------------------------|-----------------------------------------------------------|
| 1. Class Actions must be filed in the County Courthouse, Central District. | 6. Location of property or permanently garaged vehicle |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly |
| 4. Location where bodily injury, death or damage occurred | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides | 10. Location of Labor Commissioner Office. |

Step 4: Fill in the information requested on page 4 in Item III, complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 2, 4
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 2, 4
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 2, 3, 4, 8
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 2, 4 1, 2, 4
Non-Personal Injury/Property Damage/Wrongful Death Tort	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 2, 4
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 2, 4
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1, 2, 3
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 2, 4
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3	
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3	
Defamation (13)	<input type="checkbox"/> A8010 Defamation (slander/libel)	1, 2, 3	
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3	

Non-Personal Injury/Property Damage/
 Wrongful Death Tort (Cont'd.)
 Employment
 Contract
 Real Property
 Unlawful Detainer
 Judicial Review

S-DORT TITLE de la Torre v. City of Santa Monica	CASE NUMBER
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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2, 3
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2, 5, 6 2, 5
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2, 6
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2, 6
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 6
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5

SHORT TITLE de la Torre v. City of Santa Monica	CASE NUMBER
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Judicial Review (Cont'd.)

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (38)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Cla ms Involving Mass Tort (40)	<input type="checkbox"/> A6006 Cla ms Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Cla ms from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input checked="" type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE: de la Torre v. City of Santa Monica	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		ADDRESS 1695 Main Street
CITY: Santa Monica	STATE: CA	ZIP CODE: 90401

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Mosk / Spring St. courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: March 3, 2021

[Signature]
(SIGNATURE OF ATTORNEY FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010
4. Complete Addendum to Civil Case Cover Sheet form LASC Approved CIV 109 03-04 (Rev. 03/06).
5. Payment in full of the filing fee, unless fees have been waived
6. Signed order appointing the Guardian ad Litem, JC form 982(a)(27), if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

Wilfredo Alberto Trivino-Perez (SBN 219345)
 10940 Wilshire Blvd., 16th Floor
 Los Angeles, CA 90024
 TELEPHONE NO 310-443-4251 FAX NO (Optional)
 ATTORNEY FOR (Name) Plaintiff Oscar de la Torre

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
 STREET ADDRESS 111 N. Hill St
 MAILING ADDRESS 111 N. Hill St.
 CITY AND ZIP CODE: Los Angeles, CA 90012
 BRANCH NAME: Stanley Mosk Courthouse

CASE NAME:
 de la Torre v. City of Santa Monica, et al.

CIVIL CASE COVER SHEET		Complex Case Designation	CASE NUMBER:
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000)	<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	21STCV08597
			JUDGE DEPT

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (08) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trace regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Three - Declaratory Relief; Injunctive Relief; Violation of Ralph M. Brown Act
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: MARCH 3, 2021

Wilfredo Trivino-Perez
 (TYPE OR PRINT NAME)

Wilfredo Trivino-Perez
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000 exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex, if a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (48) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PUPD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PUPD/WD Non-PUPD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Defamation (e.g., slander libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-PUPD/WD Tort (35) Employment Wrongful Termination (36) Other Employment (15)</p>	<p>Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence) Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (not eminent domain, landowners/tenants, or foreclosure) Unlawful Detainer Commercial (31) Residential (32) Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential) Judicial Review Asses. Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Traffic Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (non-domestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case Miscellaneous Civil Complaint RICC (27) Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (non-harassment) Mechanics Lien Other Commercial Complaint Case (non-tort/non-complex) Other Civil Complaint (non-tort/non-complex) Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition</p>
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SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

City of Santa Monica, and DOES 1 through 10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Oscar de la Torre

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a non-profit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO!** Por ley, la corte tiene derecho a reclamar las cuotas y los costos evitados por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:
(El nombre y dirección de la corte es). Los Angeles Superior Court
111 N. Hill St., Los Angeles, CA 90012

CASE NUMBER: (Número del Caso).

21STCV08597

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Wilfredo Trivino-Perez, 10940 Wilshire Blvd., 16th Floor, Los Angeles, CA 90024, (310) 443-4251

DATE: 03/04/2021 Sheri R. Carter Executive Officer / Clerk of Court Clerk, by N. Alvarez, Deputy (Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify): CCP 416.50 public agency

- 4. by personal delivery on (date):

Form Adopted for Information Use
Judicial Council of California
SUM-100 (Rev. July 1, 2009)

SUMMONS

Page 1 of 1
Code of Civil Procedure §§ 412.20-465
www.courts.ca.gov

For your protection and privacy, please press the Clear This Form button after you have printed the form.

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Clear this form

Exhibit 45



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

January 4, 2021

George S. Cardona
Interim City Attorney
City of Santa Monica
City Attorney's Office
1685 Main Street, Room 310
Santa Monica, California 90401

Re: Your Request for Advice
Our File No. A-20-149

Dear Mr. Cardona:

This letter responds to your request for advice regarding the Political Reform Act (the "Act") and Government Code section 1090, et seq.¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the Los Angeles County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTIONS

1. Do the conflict of interest provisions of the Act or Section 1090 prohibit Santa Monica Councilmember Oscar de la Torre from participating in governmental decisions relating to pending litigation against the City, including a potential settlement agreement, where his spouse is a named plaintiff in the lawsuit?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

P0910

2. Do the conflict of interest provisions of the Act or Section 1090 prohibit Councilmember de la Torre from participating in governmental decisions relating to pending litigation against the City, including a potential settlement agreement, where his spouse is the Communications Officer for a nonprofit organization that is also a named plaintiff in the lawsuit?

CONCLUSIONS

1. No. As explained below, neither the Act nor Section 1090 prohibits Councilmember de la Torre from participating in governmental decisions relating to the City's pending litigation, including a potential settlement agreement, where his spouse is a named plaintiff.

2. No. As explained below, neither the Act nor Section 1090 prohibits Councilmember de la Torre from participating in governmental decisions relating to pending litigation against the City, including a potential settlement agreement, where his spouse is the Communications Officer for a nonprofit organization that is also a named plaintiff.

FACTS AS PRESENTED BY REQUESTER

You are the Interim City Attorney for the City of Santa Monica. In November of 2020, Oscar de la Torre was elected to serve as a member of the Santa Monica City Council and assumed his duties as a Councilmember on December 8, 2020. Prior to being elected to the City Council, Councilmember de la Torre served as an elected member of the governing board of the Santa Monica-Malibu Unified School District ("SMMUSD") for approximately 18 years.

The City of Santa Monica ("City") is currently the defendant in pending litigation challenging the City's use of an at-large election system to elect its City Council members. The original complaint in the litigation was filed on April 12, 2016 by three plaintiffs: Pico Neighborhood Association ("PNA"), Maria Loya (the spouse of Councilmember de la Torre), and Advocates for Malibu Public School.

The original complaint alleging violations of California Voting Rights Act ("CVRA") and California Equal Protection Clause did not seek damages, but did seek an award of attorneys' fees, costs, and litigation expenses. A First Amended Complaint ("FAC"), which again included alleged violations of the CVRA and California Equal Protection Clause, was filed in 2017 by PNA and Ms. Loya. The FAC did not seek damages, but did seek an award of attorneys' fees, costs, and litigation expenses.

The litigation proceeded to trial, judgment, and appeal based on the allegations in the FAC. After the trial, the court issued judgment in favor of plaintiffs on both of their causes of action in 2019. Plaintiffs' attorneys then filed a motion seeking approximately \$902,000 in costs and the City filed a motion to strike/tax those costs to significantly reduce them. Plaintiffs' attorneys also filed a motion seeking an award of more than \$22 million in attorneys' fees pursuant to a provision of the CVRA. Pursuant to an agreement between the parties, the City's response to the fee motion, and the

hearings regarding costs and fees have been continued to follow the resolution of proceedings in the Court of Appeal and the California Supreme Court.²

Councilmember de la Torre has advised that there is no obligation on the part of him, his spouse, or PNA to pay any attorneys' fees or costs in connection with the litigation, and that his understanding is that the plaintiffs' attorneys would seek to recover fees and costs only from the City. Councilmember de la Torre has further advised that if plaintiffs' attorneys do not recover any fees or costs from the City, they have no ability to collect costs or fees from him, his spouse, or PNA. Finally, Councilmember de la Torre has orally advised that there is no arrangement under which any portion of any recovery from the City of attorneys' fees or costs would flow to him, PNA, or his spouse; any entity controlled, directly or indirectly, by him, PNA, or spouse; or any entity that employs or would otherwise provide any financial benefit to him or his spouse.³

PNA raises a small amount of money through modest membership dues, and its annual budget is consistently less than \$5,000. PNA has no employees and engages in no commercial transactions. Rather, PNA's board – usually consisting of about 12 residents who are unpaid volunteers – meets approximately once a month to discuss issues pertinent to the Pico Neighborhood, and advocates for the interests of the Pico Neighborhood residents. According to the PNA website, it was “[e]stablished in 1979, the PNA is a non-profit organization that has been involved in a wide variety of issues – crime & safety, housing, neighborhood conditions, commercial development, City Hall watch, youth activities, parks, and traffic control.”⁴

During his recent City Council campaign and as of November 2020, Mr. de la Torre was serving as chair of the PNA board. However, Mr. de la Torre has advised that following his election to the City Council, he resigned from his position as chair of the PNA board. You stated by email dated January 22, 2021, that the list of Board Members from the PNA website identifies his spouse as the “Communications Officer” for PNA. As Councilmember de la Torre and his spouse have always volunteered, they have never received any compensation from PNA.

ANALYSIS

The Act

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the

² The City appealed and the Court of Appeal reversed the judgment. Plaintiffs filed a Petition seeking review by the California Supreme Court, which granted review in October 2020 only on a limited question relating to the CVRA claim. Should plaintiffs ultimately prevail, the City anticipates returning to the trial court for resolution of the pending fee and cost motions.

³ By letter dated November 30, 2020, Councilmember de la Torre confirmed that he has no financial interest in the outcome of the instant lawsuit. At the outset of the case, his spouse and PNA both agreed that they have no right to any attorneys' fees or costs recovered in that case. Moreover, the attorneys representing his spouse and PNA agreed that they would handle the lawsuit pro bono and pay all associated costs.

⁴ See <https://pnasantamonica.wordpress.com/board-members>

official has a financial interest. Pertinent to your facts, the Act's conflict of interest provisions apply to financial interests based on the following:

- An interest in a business entity⁵ in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- The official's interest in his or her personal finances and those of immediate family members. (Section 87103.)

According to the facts, neither Councilmember de la Torre nor his spouse has ever received, nor have they been promised, any compensation from PNA, and there are no other facts to suggest PNA is a source of income to them. Additionally, Councilmember de la Torre does not have a business interest in PNA because, as a nonprofit organization, PNA is not a "business entity" as defined by the Act. (Section 82005.) Finally, there are no facts suggesting decisions related to the pending lawsuit will have any financial effect on his or his immediate family's personal finances. Therefore, based on the facts provided, Councilmember de la Torre does not have a disqualifying conflict of interest under the Act in future City Council decisions related to the instant lawsuit.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended not only to strike at actual impropriety, but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103Cal.App.3d 191, 197.)

Under Section 1090, the prohibited act is the making of a contract in which the official has a financial interest. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.) Finally, when Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is precluded from entering into the contract. (*Thomson, supra*, at pp. 647-649; *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

You have asked whether Councilmember de la Torre may participate in governmental decisions concerning a potential settlement agreement⁶ between plaintiffs and the City. The

⁵ Section 82005 defines a "business entity" as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

determinative question here is whether he has a financial interest in a potential settlement agreement.

The term “financially interested” contained in Section 1090 has been defined as follows:

The phrase ‘financially interested’ as used in Government Code section 1090 means any financial interest which might interfere with a city officer’s unqualified devotion to his public duty. The interest may be direct or indirect. It includes any monetary or proprietary benefit, or gain of any sort, or the contingent possibility of monetary or proprietary benefits. The interest is direct when the city officer, in his official capacity, does business with himself in his private capacity. The interest is indirect when the city officer, or the board of which he is a member, enters into a contract in his or its official capacity with an individual or business firm, which individual or business firm, by reason of the city officer’s relationship to the individual or business firm at the time the contract is entered into, is in a position to render actual or potential pecuniary benefits directly or indirectly to the city officer based on the contract the individual or business firm has received.

(88 Ops.Cal.Atty.Gen. 32, 36.)

Councilmember de la Torre’s spouse

Initially, we note that under Section 1090, an official always has an interest in the community and separate property income of the official’s spouse. (*Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655; 89 Ops.Cal.Atty.Gen. 69 (2006)). Councilmember de la Torre would therefore have a prohibitive financial interest in any potential settlement agreement resulting in a monetary benefit or liability of his spouse based on her status as a plaintiff in the instant lawsuit. According to the facts, however, neither he nor his spouse has any financial interest, direct or indirect, in the outcome of the lawsuit, 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.

Accordingly, Councilmember does not have a financial interest in any potential settlement agreement related to the lawsuit based on his spouse’s status as a plaintiff therein.

PNA

⁶ The litigation against the City may be resolved under a settlement agreement. “A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts.” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810-811, citing *Ginnun v. Holte* (1985) 164 Cal.App.3d 984, 988; see also 91 Ops.Cal.Atty.Gen. 1 (2008); 86 Ops.Cal.Atty.Gen. 142 (2003) [Section 1090 would prohibit a public official from participating in a settlement agreement in which the official is financially interested, and the body in which the official is a member could not enter the contract].)

In addition to being a plaintiff in the lawsuit, Councilmember de la Torre's spouse is the Communications Officer for the other plaintiff, PNA. You have therefore asked whether Councilmember de la Torre would have a financial interest in any settlement agreement resulting in a monetary payment that would benefit PNA. Importantly, the Legislature has created various statutory exceptions to Section 1090's prohibition where the interest involved is deemed a "remote interest," as defined in Section 1091 or a "noninterest," as defined in Section 1091.5. If a noninterest is present, the public official's abstention is generally not required, and the contract may be made by the agency.

Section 1091.5(a)(8) establishes that an officer is not interested in a contract if his or her interest is:

That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

According to the facts, Councilmember de la Torre's spouse volunteers as the Communications Officer for PNA, a nonprofit organization. In addition, based upon the description of issues it addresses, the primary purpose of dealing with crime & safety, housing, youth activities, parks, and traffic control supports important functions of the City. Therefore, even if a settlement agreement would result in a monetary payment that would benefit PNA, Councilmember de la Torre would have a noninterest in the agreement. However, should Councilmember de la Torre participate in such an agreement, he must disclose his interest in the City Council's official records.

Accordingly, for purposes of the Act, Councilmember does not have a disqualifying conflict of interest in City Council decisions concerning the instant lawsuit against the City. For purposes of Section 1090, he is not financially interested in any future settlement agreement based on his spouse's status as a plaintiff, and he has a noninterest in any future settlement agreement resulting in a monetary payment that would benefit PNA.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

JW:aja

Exhibit 46

DECLARATION OF JON KATZ

I, Jon Katz, declare the following:

1. I am over the age of 18 and not a party to this action. I have personal knowledge of each fact stated in this declaration. I am submitting this declaration pursuant to Evidence Code Section 1561(a).

2. I am the president of the Santa Monica Democratic Club.

3. I am the duly authorized custodian of records of the following described business record: The video recording of the April 28, 2021 membership meeting of the Santa Monica Democratic Club featuring Oscar de la Torre, Maria Loya, and Kevin Shenkman.

4. On April 28, 2021, I chaired the membership meeting of the Santa Monica Democratic Club on the topic of potential government reforms. Among other topics, Councilmember de la Torre was invited to speak at that meeting on the issue of district elections. (I had asked him explicitly not to discuss the CVRA lawsuit, but he did anyway.) Attached as Exhibit A is a true and correct copy of my email exchange with Councilmember de la Torre regarding the April 28, 2021 Santa Monica Democratic Club membership meeting.

5. At the start of the April 28, 2021 membership meeting, which was conducted via Zoom, I hit record using the built-in Zoom software. At the end of the meeting, I uploaded the full, unedited recording to the YouTube channel for the Santa Monica Democratic Club and then shared that video link with our membership. The video has been publicly available on YouTube in the nine months since the meeting, and is available at: <https://www.youtube.com/watch?v=iVKzFgt-TvA>.

6. On February 2, 2022, a deposition subpoena was served on me on behalf of the Santa Monica Democratic Club for the production of the above-described business records.

7. On February 2, 2022, I reviewed the video of the April 28, 2021 membership meeting that I posted on YouTube and the video remains unaltered since I made the recording on April 28, 2021. It is a true and correct copy of the video recording of the April 28, 2021 membership meeting.

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8. On February 4, 2022, I downloaded a copy of the video recording of the April 28, 2021 membership meeting from YouTube and saved it to two thumb drives.

9. The enclosed thumb drives contain a true and correct copy of the above-described record that is in my possession, custody, or control as the custodian of records.

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

Dated: February 4, 2022



Jon Katz

EXHIBIT A



Jon Katz <tmbjon@gmail.com>

SMDC - City Governance Meeting

Oscar de la Torre <odelatorre16@yahoo.com>
To: Jon Katz <tmbjon@gmail.com>

Thu, Apr 29, 2021 at 3:47 PM

Jon:

Our intent was to make the case for district based elections and Maria wanted Kevin available to answer any legal questions related to the CVRA. Tony's reaction to Kevin was unfortunate because it was all going as planned until he started throwing insults etc. Neither you nor I can be held accountable for Tony's reaction. Overall I thought it was a productive exchange and frankly we should have had this conversation 5-6 years ago. We wouldn't have a need for Kevin's involvement if those in power back then would have been about everything they claim to be about now. Racial injustice is more than just immoral but creates real poverty, inequality and harm to those who are marginalized by the current system. We are barely beginning to truly articulate the root causes of systemic racism in SM and it's messy and uncomfortable but as long as we stay engaged and authentically listen and strive for real solutions, we might serve as a model community for our nation. That's my goal and I would like to continue this conversation so that we have a clearer understanding of how this vision can be achieved.

Sent from my iPhone

On Apr 29, 2021, at 11:24 AM, Jon Katz <tmbjon@gmail.com> wrote:

Hey Oscar,

Thank you for coming last night and presenting your case.

I want to let you know that I feel a bit disrespected now, based on our conversation (which you can see below in this thread) where we initially discussed this meeting. I told you that I wanted to give you a platform to present on district elections and why it would be a good solution for Santa Monica *without* bringing the lawsuit into the conversation. I went out on a limb with my Board in defending you, telling them that you gave me your word that we would keep the conversation on the substantive matter of district elections, rather than the specifics of the pending lawsuit.

I thought that you and Maria presented the information about districts well, and people were engaged at that point. When you brought in your attorney, I thought that crossed the line of exactly what we had agreed you would not do. I received complaints during the meeting about this, including Board members who felt that I wasn't able to deliver the meeting that I had promised we would have, as well as city councilmembers who felt conflicted about being present for Mr. Shenkman's presentation.

I have no problem bringing ideas to the Club that challenge their entrenched way of thinking. which is why I reached out to you on this in the first place. I see it as part of my goal as Club President to push the Club in new ways and make people reassess their prior convictions. There was a version of your presentation last night that would have done that, and I think it's a shame that the conversation devolved into precisely the conversation we agreed not to have.

I'm not asking for anything specific here in response, but I just want you to understand my honest feelings about the event.

Thanks and be well,
-Jon

--
tmbjon@gmail.com
cell: (215) 962-4357

On Fri, Feb 19, 2021 at 2:52 PM Jon Katz <tmbjon@gmail.com> wrote:

Great, I am glad we're on the same page. I agree that it's important to contextualize the history of the at-large election system and how it has caused harm, and that is completely within the realm of what I am

thinking about. My goal is to provide a platform to have a real policy discussion about district elections (and the other systems I mentioned) without specifically making a case that connects it to the lawsuit that is currently going on. We should be able to talk about the potential benefits of districts as a city governance policy without wading into the merits of the lawsuit.

I only say this because, as you know, once you get into the specifics of the PNA case it will get people polarized into their predisposed positions, and I want to give you the opportunity to potentially change minds with your presentation.

Thanks,

-Jon

--
tmbjon@gmail.com
cell: (215) 962-4357

On Fri, Feb 19, 2021 at 2:43 PM Oscar de la Torre <odelatorre16@yahoo.com> wrote:

Hello Jon:

Thank you for reaching out. I do agree that a format conducive to a solutions-based dialogue is beneficial and holding white people accountable for systemic racism and past injustices can make people feel uncomfortable. We don't have to mention names but we should be able to discuss the history of the at large election system, its impact on people of color in SM and the Pico Neighborhood but I agree, lets not get stuck there and lets discuss systems of representation that can produce more inclusive and democratice governance in all of our elected bodies. Looking forward to it! -Oscar de la Torre

On Friday, February 19, 2021, 10:57:45 AM PST, Jon Katz <tmbjon@gmail.com> wrote:

Hey Oscar and Maria,

I wanted to let you know that I am working on a presentation for SMDC of various ways that Santa Monica might consider reforming its governance structure.

Obviously, in that discussion, I want to include a fair discussion of district elections and I want to reach out to you both to figure out the best way to present this. I want to do it in a positive way that highlights how districts have the potential to benefit Santa Monica governance, not as a forum to criticize current/past Councilmembers for actions pertaining to your lawsuit. I hope you can see the difference here: we want to keep the discussion around why this policy could be good for Santa Monicans and something that more people should consider rather than get into the specifics of the existing lawsuit and casting blame about past actions.

Similar to our housing discussion last month, I want to include a wide variety of ideas and speakers. Some of the other topics I am trying to include are: elected mayor, ranked choice voting, proportional representation, etc. I am open to more ideas and topics if you have suggestions.

We are thinking of doing this meeting on April 27. Let me know if that timing might work for you.

Thanks,

-Jon

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tmbjon@gmail.com
cell: (215) 962-4357

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PROOF OF SERVICE

I, Jon Katz, reside in Santa Monica, California, am over the age of eighteen years, and not a party to the action in which this service is made.

On February 4, 2022, I served the following document: Declaration of Jon Katz.

I personally served the foregoing document by delivering it to:

Kirsten Galler
Deputy City Attorney
City of Santa Monica

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

Dated: February 4, 2022



Jon Katz

Exhibit 47

1 Wilfredo Alberto Trivino-Perez (SBN 219345)
wtp@tpalawyers.com
2 **TRIVINO-PEREZ & ASSOCIATES**
10940 Wilshire Blvd., 16th Floor
3 Los Angeles, CA 90024
Phone: (310) 443-4251
4 Fax: (310) 443-4252

5 Attorneys for Plaintiffs Oscar De La Torre and Elias Serna
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10

11 OSCAR DE LA TORRE and ELIAS
SERNA

12 Plaintiffs,

13 v.

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

16 Defendants.
17
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Case No.: 21STCV08597

**DECLARATION OF OSCAR DE LA
TORRE IN SUPPORT OF OPPOSITIONS
TO MOTIONS TO COMPEL**

Date: December 9, 2021
Time: 1:30 p.m.
Dept. 15

[Hon. Richard Fruin]

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27 **Exhibit**
28 **0036**

1 I, Oscar de la Torre, declare as follows:

2 1. I am a plaintiff in the above-captioned case. I am over the age of 18 and
3 have personal knowledge of the facts contained in this declaration. If called as a
4 witness, I could and would competently testify as follows:

5 2. I am an elected member of the Santa Monica City Council, having been
6 elected to that position in November 2020. Even prior to my election to the Santa
7 Monica City Council, I was an elected member of the Board of Trustees of the Santa
8 Monica – Malibu Unified School District, having been first elected to that position in
9 2002, and re-elected in 2006, 2010, 2014 and 2018. Based on my nearly two decades
10 of service as a local elected official, I am very familiar with my responsibilities,
11 including being responsive to my constituents and maintaining the confidentiality of
12 closed session discussions.

13 3. I have been involved in the Latino civil rights movement since I was a
14 high school student attending Santa Monica High School. Particularly because of their
15 tendency to disadvantage minority voters, at-large elections, like those employed by the
16 City of Santa Monica to elect its city council, are despised within the Latino civil rights
17 community. I first understood the need for district-based elections in Santa Monica
18 when then City Council member Antonio "Tony" Vazquez publicly advocated for a
19 change to the at-large election system in the early 1990's. Council member Vazquez
20 was the first Latino elected to the Santa Monica City Council – indeed, the only Latino
21 elected to the City Council until 2020 – and was a proponent of district-based elections.
22 I understood back then that he took this position because he had seen the impact of the
23 marginalization of the at-large election system and the social neglect that it produced in
24 the Pico Neighborhood. Although Mr. Vazquez did not live in the Pico Neighborhood,
25 he was the first Latino to ever campaign in the Pico Neighborhood and was fully aware
26 of the concentrated poverty, racial segregation, environmental dumping and gang
27 violence that plagued my generation.

28 4. Since moving back to Santa Monica, following my graduate studies in
public administration at the University of Texas, I have also consistently worked to

1 improve the Pico Neighborhood – the neighborhood of Santa Monica where I was
2 raised and where Latino and African American residents are concentrated. For
3 example, I founded the Pico Youth and Family Center to combat the endemic gang
4 violence that plagued the Pico Neighborhood. I also have advocated for the residents of
5 the Pico Neighborhood, for example, in my role, dating back to 2005, on the board of
6 the Pico Neighborhood Association (“PNA”). The Pico Neighborhood is much less
7 wealthy than other parts of the city, and has long been the dumping ground for all the
8 city’s undesirable, and even toxic, elements. It is my belief, as the Los Angeles
9 Superior Court found in the Voting Rights Case, that the at-large system of election has
10 resulted in a lack of representation on the City Council for the Pico Neighborhood, and,
11 in turn, the City Council being unresponsive to the needs of Pico Neighborhood, and
12 especially its minority residents.

12 5. Accordingly, for several years I have vocally advocated for district-based
13 elections in Santa Monica. I have spoken on that subject at neighborhood group
14 meetings, rallies, political group meetings, protests, and informational events in Santa
15 Monica and elsewhere. I consistently tell people that I favor district-based elections,
16 and I take questions at some of these events concerning several topics, including
17 district-based elections. I believe my advocacy for district-based elections is one of the
18 things I am known for. In the course of that advocacy, which continues to this day, I
19 have spoken about district-based elections, and the related Voting Rights Case, with
20 scores of Santa Monica residents as well as likeminded people who reside outside of
21 Santa Monica. Some of those likeminded people are attorneys, such as R. Rex Parris,
22 Kevin Shenkman and Milton Grimes, who have informed me about the California
23 Voting Rights Act and other laws governing municipal elections in California. I would
24 estimate that over the past 6 years, I have spoken with people concerning district-based
25 elections and the Voting Rights Case on hundreds of occasions.

26 6. Because I am known in Santa Monica for my advocacy for district-based
27 elections, among other things, and because Santa Monica residents favor the adoption
28 of district-based elections by a margin of more than 2 to 1, the issue took a prominent

1 role in my 2020 campaign for a seat on the Santa Monica City Council. When Santa
2 Monica voters elected me, they knew that I support district-based elections, and that I
3 have been very critical of the City's insistence on spending tens of millions of dollars to
4 fight against the voting rights of its citizens. The voters elected me to stop that waste
5 and to implement district-based elections.

6 7. Consistent with my support for district elections, I have also supported the
7 efforts of the plaintiffs in the Voting Rights Case. I have consistently and repeatedly
8 expressed my view that Santa Monica's at-large elections are unlawful (as the Los
9 Angeles Superior Court ultimately ruled), and my hope that the plaintiffs prevail in the
10 Voting Rights Case. The plaintiffs in the Voting Rights Case are Maria Loya, my wife,
11 and the Pico Neighborhood Association, an organization for which, as discussed above,
12 I served as a board member in various capacities from 2005 to 2020. I resigned my
13 position with the Pico Neighborhood Association immediately following my election to
14 the Santa Monica City Council. I applaud Ms. Loya and the Pico Neighborhood
15 Association for their decision to pursue the Voting Rights Case; I have supported that
16 decision since they initiated the case in April 2016. They had no choice but to file that
17 case, because the City of Santa Monica ignored their efforts to bring the City's election
18 system into compliance with the law before they filed that case.

19 8. At various times in the course of the litigation and trial of the Voting
20 Rights Case, spoke with the attorneys prosecuting the Voting Rights Case. For
21 instance, I spoke with the attorneys prior to several of the depositions of Santa Monica
22 political figures, including two of the current members of the Santa Monica City
23 Council, to provide the attorneys with information that could help them to take
24 effective depositions and prepare for trial. I understand those occasions are listed in the
25 billing records the attorneys have submitted in the Voting Rights Case in connection
26 with their motion for an award of attorneys' fees.

27 9. I also testified in the trial of the Voting Rights Case in 2018, and submitted
28 an amicus curiae brief to the California Supreme Court in that case. In my amicus
curiae brief, I made very clear that I was submitting the brief in my individual capacity,

1 not on behalf of the Santa Monica City Council, and that the views expressed in the
2 brief were mine alone. Attorney Todd Bonder assisted me with the preparation of that
3 amicus brief. Other Santa Monica city councilmembers expressed their opposing views
4 at trial and in the press. For example, Gleam Davis and Terry O'Day (who was
5 defeated in his 2020 bid for re-election) both testified at trial, and Gleam Davis and Ted
6 Winterer (who was also defeated in his 2020 bid for re-election) released an op-ed in
7 the Los Angeles Times just a few days before the trial began. In their testimony and
8 op-ed, those councilmembers expressed their view that Santa Monica should keep it's
9 at-large election system. I don't begrudge anyone, including my fellow
10 councilmembers, the right to express their views, even when they are opposite to my
11 own strongly held views and beliefs. I wish they would treat me the same.

12 10. In order to fulfill my duties as an elected councilmember, particularly my
13 oversight duties, I find myself forced to seek the legal opinions of outside attorneys
14 because I can't trust the legal advice and opinions of the Santa Monica City Attorney's
15 Office. I have found that the legal advice and opinions of the Santa Monica City
16 Attorney's Office is often wrong, and is later demonstrated to be wrong. The Santa
17 Monica City Attorney's Office is consistently biased, skewing its opinions to meet the
18 desires of certain councilmembers, and is frequently more interested in covering up its
19 own mistakes than providing the City Council with objective and sound legal advice.
20 The Voting Rights Case is a perfect example of this bias from the Santa Monica City
21 Attorney's Office. The previous interim city attorney, who only recently resigned from
22 that position, was heavily involved in the defense of the Voting Rights Case and
23 insisted that the California Voting Rights Act is unconstitutional. Based, at least in
24 part, on his advice, the previous city councilmembers, some of whom remain on the
25 council now, decided to spend tens of millions of tax dollars in defending the Voting
26 Rights Case and even challenge the California Voting Rights Act itself. Now, a
27 resolution of the Voting Rights Case would reveal the folly of that previous advice
28 from the Santa Monica City Attorney's Office, so that office advises to continue
wasting even more money in the hope that previous advice will somehow be

1 vindicated. Moreover, rather than treating me as an equal member of the City Council,
2 the Santa Monica City Attorney's Office treats me as an "enemy at the gates"; on the
3 few occasions when I have spoken with the City Attorney's Office it has felt more like
4 an interrogation than a collegial discussion for the benefit of Santa Monica residents. I
5 believe the way they have litigated this case demonstrates that attitude. At various
6 times, I have consulted several trusted attorneys regarding a wide variety of topics
7 impacting the City of Santa Monica – housing, crime, homelessness and district-based
8 elections, to name a few. Those attorneys include, but are not necessarily limited to,
9 Dan Ambrose, R. Rex Parris, Wilfredo Trivino-Perez, Kevin Shenkman and Todd
10 Bonder. Since becoming an elected member of the Santa Monica City Council, I have,
11 on a couple occasions, asked Kevin Shenkman to provide me with an update on the
12 progress of the Voting Rights Case, which he has done. I don't have any specific
13 recollection of those discussions, but I do know that the Voting Rights Case is now
14 pending in the California Supreme Court. I appreciate the counsel of all those
15 attorneys, and other members of the general public, because I could not carry out my
16 duties as a councilmember as effectively if I did not receive their thoughts regarding
17 various matters. In my communications with those attorneys, and others, I am careful
18 to never reveal any confidential information disclosed to me only in closed session. If
19 that advice, provided in confidence, were instead subject to disclosure, I would likely
20 have nowhere to get honest advice about the law and other political matters; those who
21 provide me with advice would refuse to do so, or at least be hesitant and thus less
22 candid in their advice.

23 11. I understand that my colleagues on the city council also receive
24 confidential advice from advisers outside of the City's employment. For example, I
25 know that certain council members receive frequent advice from former
26 councilmembers and representatives of groups like Santa Monicans for Renters' Rights
27 and Santa Monica Forward. None of my colleagues on the Santa Monica City Council
28 disclose their communications with advisers. Unlike me, one of them was even found
to have violated the Political Reform Act and other anti-corruption laws. Yet, they are

1 still not required to disclose their communications with individuals and groups with
2 interests in City actions.

3 12. It has been insinuated by some that I have some financial stake in the
4 Voting Rights Case. As I previously informed the Santa Monica City Attorney's
5 Office, neither I, nor my wife, nor the Pico Neighborhood Association has any financial
6 stake in the Voting Rights Case at all. No monetary relief, other than attorneys' fees
7 and costs, is sought in the Voting Rights Case. Rather, as demonstrated by the Los
8 Angeles Superior Court's Judgment in that case, the relief sought is a change in the
9 election system – a change that will benefit all Santa Monica residents. The attorneys
10 who have prosecuted the Voting Rights Case all agreed to do so *pro bono*, with the
11 understanding that if they are successful they may be awarded attorneys' fees and costs
12 by the Los Angeles Superior Court. My wife and I, and the Pico Neighborhood
13 Association board, all understand that we cannot share in any of those attorneys' fees,
14 because it would be illegal for the attorneys to share their fees with non-attorneys. The
15 arrangement with the attorneys prosecuting the Voting Rights Case has always been
16 that they will be entitled to any award of attorneys' fees and costs, and accordingly they
17 will pay all costs associated with that case – nobody else (including Ms. Loya and the
18 Pico Neighborhood Association) has any potential financial benefit or potential
19 financial loss from the Voting Rights Case. Indeed, in seeking an opinion from the Fair
20 Political Practices Commission ("FPPC"), interim city attorney George Cardona
21 acknowledged these facts, and presumably that is why the City acknowledged that I
22 have no statutory conflict of interest under either the Political Reform Act or
23 Government Code section 1090.

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

26 Executed this 6 day of December 2021, at Santa Monica, California.



27 Oscar de la Torre

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PROOF OF SERVICE

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 December 6, 2021, I served true copies of the following document(s) described as

DECLARATION

on the interested parties in this action as follows:

Joseph Lawrence
Interim Santa Monica City Attorney
1685 Main Street, Room 310
Santa Monica, CA 90401

Carol M. Silberberg
155 N. Lake Ave., Suite 800
Pasadena. CA 91101

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 December 6, 2021 at Los Angeles, California.

/s/ Wilifred Trivino-Perez
Wilifred Trivino-Perez

Exhibit 48

1 NOTE: *Due to the cadence of the speech (i.e., mumbling, slurring, being soft-spoken),*
2 *some words of inaudible and will be marked as such. Words may also be marked*
3 *as inaudible due to background noise, overlapping voices, or impurities of the*
4 *recording.*

5
6 ANDERSON-WARREN: So, next we going to 13D. Request of Councilmember Davis that the
7 City Council authorize the City Manager and Interim City Attorney return
8 to the City Council with a proposal to have an independent investigation
9 of possible violations of the Brown Act by the City Councilmembers in
10 connection with the search candidate evaluation and recruitment for the
11 positions of City Manager and City Attorney conducted in 2021 and 2022.
12 The agreement signed by the City Councilmembers in connection – did I
13 just miss something, yes? Sorry. The investigation also would encompass
14 possible breach of confidentiality agreements signed by the City
15 Councilmembers in connection with these matters. Any proposals should
16 include as legally proper full subpoena and other investigatory powers as
17 may be appropriate to conduct a comprehensive review of any potential
18 Brown Act or confidentiality agreement violations that an investigator
19 might discover in the course of the investigation. And we have no callers
20 on this.

21 DAVIS: So, would you like me to introduce it, Mayor?

22 HIMMELRICH: Sure, please do.

23 DAVIS: Alright. I'll try and be brief.

24 HIMMELRICH: Since you're on it.

25 DAVIS: Yeah, since I'm the only person. So, I'll try and be brief. I think everyone
26 is aware that we recently hired a new City Manager and we are currently
27 engaged in the hiring process for a new City Attorney. These kinds of
28 searches need to be confidential for many reasons, one of the most

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1 important is that the caliber of people that we hire into those positions
2 typically are already employed and that if the name of potential candidates
3 or applicants leaks, it can jeopardize their current employment if they are
4 not selected because their current employer will then know they were
5 actually out looking for other jobs. That's why we have these discussions
6 about potential City Manager candidates in closed session and the Brown
7 Act applies to those closed sessions, meaning that whatever is discussed in
8 those closed sessions cannot be shared with persons who are outside of the
9 closed session. Because of the particular importance with regard to the
10 City Attorney position, as well as the City Manager position, our Chief
11 Peoples Officer, Laurie Gentles, also required each and every
12 Councilmember to sign confidentiality agreements, written in plain
13 English, before we engaged in those processes. So, everyone understood,
14 whether they understood the Brown Act or not, that these closed sessions
15 were supposed to be confidential, the names of applicants, discussions
16 about applicants, etc., were not to be shared outside of closed session. We
17 know for a fact that closed session did not remain closed with regard to the
18 City Manager search, and in fact, the name of Rene Bobadilla, who was
19 one of the applicants, was leaked and, in fact, that was one of the reasons
20 Mr. Bobadilla indicated he would not come to Santa Monica because of
21 the lack of integrity of the closed session and the problems with the
22 process. We also know, for a fact, that Mr. White, perhaps not by name,
23 but by description, surfaced prior to his hiring being announced. Now we
24 know that sadly and unfortunately, the names of candidates for the City
25 Attorney position also have been leaked to the public and that there have
26 been discussions with people not engaged in the process, people outside of
27 the Brown Act cone of silence, if you will, about various candidates for
28 that position and that these discussions, as I've mentioned, violate both the

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1 Brown Act and the confidentiality agreement that we each signed. So,
2 while we do know that the confidentiality of the closed session was
3 breached, we don't know how it happened and who is responsible, and
4 therefore in order to protect the integrity of the process, the integrity of
5 this Council, the integrity of this institution, I believe that we should
6 engage in a full investigation to try and investigate what happened here.
7 This is not aimed at any particular person or individual or Councilmember,
8 each of us, myself included, should all be put under the microscope and be
9 subject to the investigation. So, each of us would be, in fact, for lack of a
10 better term, a subject of that investigation as members of the Council. So,
11 you said there were no callers? So, with that, I will move Item 13D.

12 HIMMELRICH: I'll second it, And I'll tell you why I'm seconding it. I believe that the
13 process – the processes we go through are, as I said, the end does not
14 justify the means, if we have stable and rational processes that, and we
15 follow the rules, then things go as you expect. When people don't follow
16 the rules, when we have people leaking information, when people outside
17 our process know what's going on, when we develop what I think is now a
18 reputation for not being trustworthy it extends to our entire identity. I
19 think it's just so important that people perceive us as honorable and people
20 who know how to do things right. I mean, I think that we look like ...
21 having it happen once was bad enough, but now having these leaks again
22 is even worse. And I think that it's our responsibility, the buck stops here.
23 Typically, if you have this problem in a government, you kick it up the
24 ladder, right? We are the top of the ladder and we're doing this wrong. We
25 can't be trusted to keep a secret, right? Can we expect anyone to keep a
26 secret? I mean, this is our job, to maintain confidences, to speak in closed
27 session, to be able to speak freely, because if we cannot speak freely and
28 everything that we say leaks out of it, then people aren't going to be

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1 honest. That's number one. Number two, if we have candidates who really
2 have a job they like, but might want to work here more, they aren't going
3 to apply. I would never apply to a job in an employer who would have
4 leaked it out. I'm just telling you that and I've had, you know, probably in
5 my legal career, I don't know, five or six jobs. So just wouldn't do it.
6 Yeah, so I have Councilmember de la Torre first, I think, Councilmember
7 Brock unless you . . .

8 BROCK: No, no, no, that's fine.

9 DE LA TORRE: I want to clarify, Councilwoman Davis stated that Rene Bobadilla didn't
10 take the job because of the leaks and I talked to Rene Bobadilla and Rene
11 Bobadilla told me that our Interim City Attorney went and lowballed him,
12 gave him a four month severance or six month severance package, when
13 he, the Interim City Attorney, had a nine month and its customary that
14 everybody has a nine month severance, and he also told me that he offered
15 him the lowest, at the pay scale, knowing that, you know, that wasn't, you
16 know, he had a range to work with, so it wasn't because of the leak. And
17 also, the other reality is that his own City Council countered and gave him
18 more money, so that made it hard for him – they made him an offer he
19 couldn't refuse. And they gave him lifetime medical, so it wasn't about the
20 leaks. So, I just want to clarify that. You know, that's real important to put
21 that on the record, you know?

22 DAVIS: Well, his letter to us stated that one of the reasons he didn't come was
23 because of the lack of integrity in the process, including the revelation of
24 his name before the process was concluded. So, that's what he said in the
25 letter. If he said something different to you, that's fine. But what he sent to
26 this Council said one of the reasons, not the only reason, but one of the
27 reasons he was not coming was because of the violation of the Brown Act
28 and the confidentiality agreement that released his name before the

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1 process was concluded.

2 HIMMELRICH: And I, too, spoke to him. I called him the day after and he told me exactly
3 what he said in the letter, so I do believe it had something to do with it.

4 DE LA TORRE: Yeah, he said something in the letter, he told me more information other
5 than was in the letter.

6 HIMMELRICH: Councilmember Brock.

7 BROCK: Councilmember Davis, you're challenging the integrity of every
8 Councilmember and I don't really understand how that's going to help an
9 already fractured Council going forward. Everyone would spend time,
10 generate more bad feelings, when that time would be better spent solving
11 the City's myriad problems that we all see on the streets of Santa Monica.
12 I, instead, will have a substitute motion that says that I propose that a
13 portion of the upcoming City Council retreat on March 25 be spent on
14 items that are important, but not a part of our normal AB 1234 annual
15 training. This can include peripheral important Brown Act training that we
16 didn't get during our normal two-hour training, as well as the handling of
17 confidential agreements, etc. There are at least four Councilmembers that
18 have been on this Council for less than a year or approximately a year or
19 less, and, sorry, 12 or 13 months, Councilmember. You roll your eyes too.
20 So, as well as the handling of confidential agreements, etc., I think all of
21 us would welcome further training and clarification to do our job better as
22 a City Councilperson. We cannot afford to spend an indeterminate amount
23 of money that needs to go to the public's need for safety and security,
24 cleanliness, renovation of our promenade, all the other things in our City
25 right now on some, for whatever it's worth, it sounds like a partisan witch
26 hunt. So, let me condense my substitute motion without the editorializing.
27 HIMMELRICH: Wait, wait, let me just ask, I'm not sure that's a substitute motion. I want
28 to ask if that is a substitute motion. The subject matter, one's an

1 investigation, the other is continuing education.

2 BROCK: No.

3 LAWRENCE: I believe it would be a substitute motion. It's to essentially completely
4 rewrite the motion.

5 BROCK: That's fine.

6 LAWRENCE: No, that's what this is.

7 BROCK: And look it, I'm very clear that I don't know all procedures. I don't think
8 any of the seven of us know all procedures. And maybe because you're a
9 lawyer, Councilmember Davis, and you've been on the Council for a
10 decade, you may have a leg up on myself and some of the other Council-
11 members. So again, I'll try and make that concise this time. I propose that
12 a portion, to be determined by the City Attorney's Office, of our upcoming
13 City Council retreat on March 25 be spent on items that are important, but
14 not a part of our annual AB 1234 training. This can include important
15 Brown Act training, as well as the handling of confidential agreements,
16 etc. This will provide any further training and clarification that the City
17 Council requires to properly do its job.

18 HIMMELRICH: Do I hear a second? Fine. Moved by Brock, seconded by De la Torre. May
19 I go for a second, please. So, look, I would support this motion if it were
20 in addition to the other motion. The reason, in other words, I believe
21 everybody can always use more continuing education. As lawyers, we
22 have to do like 80 hours every three years or something ridiculous. But
23 anyway, look, I believe in that. On the other hand, I do not think this was a
24 failure in education, since we all signed forms saying that we would only
25 talk to other members on the panel and this leaked outside the panel
26 basically. I think that people do understand, and I'm not talking about the
27 nuances of the Brown Act and whether you can speak to this one then or
28 that one then, I'm talking about whether you can speak to somebody

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1 who's not on the City Council, not in the meetings, right? Somebody
2 outside our group about what we're doing in a confidential meeting. I fail
3 to see how that could possibly, once you sign an agreement saying that it
4 is confidential and you won't speak to anybody outside the group, that
5 that's hard to understand. I mean, we all read English here and I just don't
6 think it's so hard to understand, and it's not because I'm a lawyer. Yes, go
7 ahead. Oh, I'm sorry, Councilmember Davis.

8 DAVIS:

9 So, I won't be supporting the substitute motion for three reasons: and the
10 first one is, and I agree with Mayor Himmelrich, that this wasn't about a
11 lack of Brown Act training because we, staff, Ms. Gentles, our Chief
12 People Officer, our legal counsel, repeatedly reminded us that what
13 proceeded in those meetings was to be completely confidential. We all
14 signed confidentiality agreements that had nothing to do with the Brown
15 Act. And so, it's clear to me that this was not, as Mayor Himmelrich says,
16 a failure of training. This was somebody, for whatever reason, decided that
17 they were going to share what happened in close session with people
18 outside of the closed session. Two, I believe the reason it's happened
19 multiple times is because there have not been any consequences. The only
20 way that there are going to be consequences is if we do a full-blown
21 investigation. More training is not going to create consequences for
22 anyone. They will continue to violate the Brown Act and they'll say, "Oh,
23 we need more training." We need to create consequences for people
24 knowingly violating the sanctity of closed session. But in order to do that,
25 we need to know who's done it, how it happened, what happened, and so
26 that requires an investigation. That's the only fair way to do it. Otherwise,
27 we're going to be up here accusing each other of doing all sorts of things.
28 We should have an impartial investigator, who has subpoena power,
investigate this just as we did with the Elizabeth Rial case, just as we have

1 done with other things. The third reason I'm going to oppose this is, so I
2 think this is about creating consequences for violations of the Brown Act
3 because until there are consequences, closed session is going to continue
4 to leak like a sieve. The third reason I'm opposing this is because I think
5 we have a lot to discuss at our retreat. If we want to add a training
6 component, that's fine, but this isn't, per se, a Brown Act issue. This is an
7 integrity issue and if we are going to assure this community that this
8 Council has integrity and that matters of importance that are meant to be
9 discussed in closed session will remain confidential, then when we know,
10 and in this case, we know that somehow names were leaked out of closed
11 session. So, we know there were violations of the Brown Act. We know
12 there were violations of the confidentiality agreement. That when we
13 know those things have been violated if we sit there and go, "Well, we
14 would like some more training," that is not a guarantee or a protection of
15 our integrity. And I think it's important to assure this community that
16 when this Council undertakes something and we all agree that it is going
17 to be confidential, that it, in fact, remains confidential. That's not just
18 important for the City Attorney search, or for the City Manager search,
19 but, for example, we discuss Employment Act related things, in closed
20 session. We discuss labor relations in closed session. And unless and until
21 people understand there are consequences to breaching closed session, the
22 breaches will continue to occur.

23 BROCK:

24 And I would disagree that you're going to enforce integrity that way,
25 number one. Now, number two, you're going to, I presume, talking about
26 a five, six, seven-month investigation, that – and you're talking about
27 subpoena power, which I don't know if you had during the Elizabeth Rial
28 argument, and how much did that cost the City? A hundred thousand?
More? Well, overall, with the settlement for Councilmember O'Connor, I

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1 believe, it cost over a million dollars, but . . .

2 HIMMELRICH: That was different. That was – the settlement happened before the
3 investigation. So, in other words, . . .

4 BROCK: Okay. I got it. I understand that.

5 HIMMELRICH: . . . we had the case, the case was settled, and then we investigated because
6 that doesn't do it.

7 BROCK: So, I'm going to go back to the same thing I said in the last item. Spending
8 City money on some indeterminate thing is not what we're supposed to be
9 doing to protect the residents of the City. And so, I believe in this
10 particular case, I admit I'll use more training and I'll take it very
11 conscientiously. I have no idea who leaked or if there was a leak. I have
12 no idea if it was a Councilmember, if it was a City staff member, if it was
13 a search firm, I have no idea where a leak could have come from, but I
14 trust that my colleagues are supposed to be working for the good of the
15 whole and the good of the City, and I think the residents of the City would
16 appreciate the fact that we have comprehensive training, and if it does
17 happen again, ever happens again, then we go to an investigation. And I
18 will vote at that time to support a full investigation. But I think right now,
19 I think that the answer is we go to additional training and then we – and I
20 know that you'll disagree, but that's my feeling is we go to additional
21 training and we all pledge that if any of these damn leaks happen again, if
22 they happen, whoever they happen by, then I will vote to support an
23 investigation.

24 DAVIS: The only thing I'd like to respond, as you said, if they occurred, it's not an
25 if. We know they occurred. We know that names were released out of
26 closed session, so we know there were leaks. I just want to make that
27 clear.

28 BROCK: Okay. Alright, I'll . . .

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1 DAVIS: There's no question that the Brown Act was violated and that those
2 confidentiality agreements were violated. We just don't know how and the
3 extent of the problem.

4 BROCK: Okay, I'll accept that, Councilmember.

5 HIMMELRICH: Councilmember Negrete.

6 NEGRETE: Okay, this is directed for the City Attorney. Being the newest
7 Councilmember on here, I did – I don't know what – I can't discuss
8 anything else obviously from closed session, but I looked into it. My
9 question is, from – please correct me if I'm wrong, how I understand it is a
10 violation of the Brown Act, that language is in the Charter, correct? In our
11 City Charter?

12 LAWRENCE: It's a state law.

13 NEGRETE: A state law, sorry. But as the City Attorney, if one of the Councilmembers
14 has evidence that somebody's violated the Brown Act or this
15 confidentiality and brings it to your attention, is that not the duty of the
16 City Attorney to investigate it? Like I'm all for transparency. I guess what
17 I'm saying is, the fact that it's coming up and we're doing it this way, I
18 don't understand. If this has been going on even before I got here, like if
19 you knew that, then why wasn't it already investigated the first round and
20 why aren't we investigating – why wasn't it already investigated whenever
21 this came out?

22 BROCK: Why wouldn't it come internally?

23 HIMMELRICH: Because – well, so let me – I did a little research and take it for what it's
24 worth.

25 NEGRETE: Wait, hold on, because I'm posing that question. Is that how that works?

26 LAWRENCE: Well, it depends on the level of information that the City Attorney has. I
27 mean, there are certainly options If the City – if whoever the City Attorney
28 is, if they have a significant amount of information, one of the options of a

1 City Attorney or of a Councilmember is to bring it to the District
2 Attorney's Office. In this particular instance, I believe the level – as other
3 have said, there have – there is information out there that indicates that the
4 confidentiality of the closed session has been breached. How it has been
5 breached we don't exactly know who did it, we don't exactly know, so the
6 next level, I don't think I have at this point in time, enough information to,
7 for instance, bring it to the District Attorney's Office, because I don't have
8 enough information. So, an investigation is the – an investigation is an
9 appropriate step. If you're suggesting do I have the independent authority
10 to investigate the City Council just by myself, we would probably have to
11 think about whether I have that. I'm not so sure I have the independent
12 authority to investigate the City Council.

13 HIMMELRICH: I think you have privilege ...

14 NEGRETE: Well, okay. I was looking it up and it says, there's a whole list of things
15 under City Attorney, and one of them is to prosecute on behalf of the
16 people of all criminal cases for violation of this Charter, and the City
17 ordinances and all misdemeanor offenses arising upon violation of the
18 laws of the State. Isn't that what we just said that this is a . . .

19 HIMMELRICH: There is a complication in here because we have a privileged relationship
20 with the City Attorney, so there's a tension between your ability to
21 prosecute people outside of us because we have a relationship with him
22 that can create a privilege . . .

23 BROCK: Attorney-client.

24 DAVIS: Well, he's one of our direct reports. . .

25 LAWRENCE: And that's why . . .

26 HIMMELRICH: And he's – so he can't . . .

27 NEGRETE: So, I just want to – I'm genuinely trying to understand the process.

28 HIMMELRICH: What she's saying is we're his boss, so basically the rule – that's what I

1 was saying about running it up the flag. So, both, the two people who
2 conceivably could do something about it, the City Attorney and the City
3 Manager, we're their boss, right? So, in addition, the City Attorney has
4 attorney-client privilege, but basically, there's no whistleblower around
5 It's difficult because we're elected officials, so it makes it more difficult.
6 So, it's quite complicated and when I say the buck stops here, the buck
7 stops here.

8 NEGRETE: Well, you're saying it's complicated, which to that point, no one's
9 answering this very clearly.

10 HIMMELRICH: I'm sorry.

11 NEGRETE: Hold on.

12 HIMMELRICH: I'm saying to you that they have a conflict.

13 NEGRETE: But then what you're saying is if I know – so say I know, because I have
14 to say I've had phone calls from community members and already
15 knowing information, so I don't discount that that's not the issue. What
16 I'm trying to figure out is the process that we have. I don't care. I'm all for
17 transparency. Please you should investigate all of us if that's what is
18 supposed to happen. I'm asking the process because unlike you guys, I
19 haven't had as much experience or whatever that first round happened and
20 whatever reprimand or discussion happened after. I'm asking very – if it's
21 this unclear, that's not good.

22 LAWRENCE: If I could just – there have been, in the past, allegations of Council people,
23 for instance, one comes to my mind, using City equipment for personal or
24 political purposes. And what was done in that case, the City, and so it was
25 a specific person and there was specific information that was had, and
26 because of the reasons, as Councilmember Mayor Himmelrich said, the
27 City Attorney contacted the Public Integrity Section of the District
28 Attorney's Office, because we had concrete information and because of

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1 the conflict of being – as you quoted from the City Charter ... because of
2 the conflict of prosecuting or possibly prosecuting your boss, the inherent
3 conflict in that, the process is to transfer it to an independent prosecutorial
4 agency to look into it. But that’s because we had enough information.

5 What this is, is how do you get that information so that you can, if in fact,
6 something shows up, you can then pass it on to the appropriate agency.

7 NEGRETE: So, this is the process we go through if we think something happened, but
8 we don’t have any proof. We bring it as a 13 item and then we get an
9 investigator to investigate to see if the proof is there so it can be
10 prosecuted? Is that – I’m just trying to understand the process.

11 DAVIS: Can I clarify it? Because I need to go back to this. It’s not a suspicion that
12 actually happened. We know there was a Brown Act violation. What we
13 don’t know are the details. Who, for example, what Mr. Lawrence is
14 saying, is they knew who committed the act, they knew what the act was.
15 It was very specific. In this case, unless everyone would like to confess
16 right now as to what they did, we don’t know who violated the Brown Act.
17 We know it was violated. I want to make that very clear. This is not a
18 suspected crime. We know the Brown Act was violated. What we don’t
19 know is who did it, how it happened, who was involved. Yes, if people
20 came to you and said, “I know who the candidates for the City Attorney
21 position are and I want to talk to you about them,” we want to know how
22 did that person find out? We don’t know that now and that’s why we need
23 an independent investigation because it is unfair to ask the City Attorney.
24 We have three direct reports: the City Clerk, the City Manager, the City
25 Attorney. It is unfair to ask the City Attorney to investigate his bosses. It
26 creates an inherent conflict of interest. That’s why we need an independent
27 investigation.

28 SELTZER: We are your lawyer.

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1 NEGRETE: No, I get that. I'm asking because I thought – the way I understood when I
2 did the Brown Act violation is that you're supposed to report this and I
3 was just sort of like, why wasn't an investigation just done then already? I
4 realize things happened and why it came here, right, after the fact? But
5 I'm just asking about the process because. . .

6 LAWRENCE: Yeah, and I guess what I tried to say, is that depending on the facts,
7 depending on the level of information that I have, in fact, I would do that.
8 It would be – this would be completely unnecessary. But the level of
9 information that I have is probably less than the level of information that
10 you all have or some of you have because I just – that's just the fact. So, I
11 don't have enough information personally to be able to say, "Mr. District
12 Attorney, I have – this is the information that I know and I believe you
13 should look into it or the Public Integrity Section should look into it,"
14 because I don't have that information now.

15 NEGRETE: Well, can I – okay, but Councilmember Davis, if you have information
16 specifically . . .

17 DAVIS: And I went to the City Attorney and the City Attorney and the City
18 Manager advised me that this would be the appropriate way to begin an
19 independent investigation because, while I did know that, in fact, the name
20 of people who had applied for the City Attorney's job was out in the
21 public, I don't know who leaked it. I don't know how that happened. So,
22 without anymore information, there was nothing the City Attorney or the
23 City Manager could do. I asked them what the appropriate step would be
24 and they said an independent investigation to identify the facts and then
25 once the facts were brought back to the Council, the Council can decide
26 how to act or the City Attorney can then refer it to the Public Integrity
27 Section of the District Attorney's Office. But right now, we don't know
28 enough and there's no way to know enough without an investigation.

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1 NEGRETE: And it's inappropriate for our office to say who are the community
2 members that exposed that information to you and ask – I'm asking that
3 question.
4 DAVIS: That should all be done in the investigation – that's the point of the
5 investigation.
6 NEGRETE: But I'm saying we can't do that ourselves and the City Attorney's Office,
7 because you're not asking . . .
8 DAVIS: We're not independent. We're the people who committed the – someone
9 up here did something wrong.
10 NEGRETE: I understand, but that information came from an outside member, so it's
11 not the City Attorney investigating us at that point, it's asking that outside
12 – that community member how did you get this information?
13 DAVIS: But presumably, they found that out from someone in the closed session.
14 The only people in the closed session were City Councilmembers.
15 NEGRETE I know. I totally get that. I get that that's presumably, but I guess what I'm
16 saying, we're here because that initial step wasn't taken and if I said Joe
17 and Bob told me that they knew A, B and C's name, is it not – would your
18 office not contact – “Let me have Joe and Bob's information and ask them
19 a few questions to see if I can find out where they got that information.”
20 And if, in that conversation with Joe and Bob, they said, “Councilmember
21 whoever, is who told me it.” Then . . .
22 HIMMELRICH: Yeah, they can't – so we need to have enough information to pass on and
23 going back to the Rial case, I mean, I know you guys want to say
24 something, but let me just – so when we had this situation with the firing
25 of Elizabeth Rial, we didn't have all the facts, right? I mean, there had
26 been motions, it had been in court, there had been depositions, but we
27 needed an investigation to figure out not really what happened, because
28 what happened was less important than what we could do to prevent it

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1 from happening in the future. So, when you have an investigation like this,
2 one of the things you want and sometimes you want them to tell you what
3 steps you can take. So, for instance, we revised our Oaks Initiative, right,
4 and changed some rules in order to prevent that from happening again. I
5 mean, you just sometimes have to, you know, pull off that band-aid and
6 figure out what went wrong and figure out how to keep it from happening
7 again, and the only way to do that is to know the facts of what went
8 wrong. And we just don't know. We know it went wrong, but we don't
9 know how it went wrong.

10 HIMMELRICH: Yes, Councilmember de la Torre.

11 DE LA TORRE: So, you know, I think what's wrong is not so much investigating what the
12 problem is, because the problem is distrust within this governing board,
13 you know? And . . .

14 HIMMELRICH: Your distrust of us?

15 DE LA TORRE: I think . . .

16 HIMMELRICH: So, are you going to admit that you leaked?

17 DE LA TORRE: Well, no, what I'm saying is that there's distrust, right, because there's a
18 power struggle going on and let's just be real about it, right? And it feels
19 like, it just feels like one side doesn't get what they want, so then they're
20 going to use this process to create a, you know, reprisals or whatever And
21 that's how it feels like. And so, what I'm thinking is, is that in the end, in
22 the end, will this so-called independent investigation, because I think that
23 if you have a District Attorney like, right, there was a Public Integrity Unit
24 or whatever. That's another option, right? It doesn't have to be an
25 investigation that's independent, but I don't know how an investigation is
26 independent when we're paying the investigator. Like here you have a
27 City Council voting on funds to hire somebody and then somehow that
28 supposed to be independent. I think if you gave a body that's outside of

1 the City Council, then that has more credibility for being independent, but
2 anyway, regardless of all of that, what I think what Phil mentioned, what
3 he's talking about, is to not ignore this issue, but to deal with it in a way
4 that's going to bring us more together, bring us more whole. I think this
5 other process further drives the wedge that we already are experiencing
6 because of the power dynamics of an election that this City hasn't
7 experienced in a long time. And let's just talk about that elephant in the
8 room.

9 HIMMELRICH: Okay, look, I'm willing to talk about that, Oscar, but you have to
10 understand that for those of us who are trying to do it right, when things
11 leak, then that's a subversion of the process more than figuring out how it
12 got subverted later.

13 DE LA TORRE: Yeah. But here's the thing. The reality is, and I'll just be straight up, there
14 would be none of this going on if one side got what they wanted. You
15 know, that's just really what I'm being real about right now. And it's
16 politics and so what I think what we need to do . . .

17 HIMMELRICH: I don't agree.

18 DE LA TORRE: I know you don't agree and there's reasons why you don't agree, but what
19 I'm saying is . . .

20 HIMMELRICH: What's the reason I don't agree?

21 DE LA TORRE: Well, we don't want to get into the details of it.

22 HIMMELRICH: And I think we're off the topic.

23 DE LA TORRE: So, look, all I'm saying is this, these are matters that we need to discuss in
24 a retreat. You're the leader, right? You're our Mayor and you should be a
25 unifier and bring us together. And find a way that we can come together as
26 a governance team, not just the City Councilmembers, but staff as well
27 and we have an opportunity to do that. I think what Phil is presenting is a
28 pathway to get us there and I want to support that and I want to vote and

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1 get out of here because it's already two in the morning. I have family to
2 take care of.

3 HIMMELRICH: Okay can we take a roll call vote? Does anyone want to talk more?

4 ANDERSON-WARREN: So, we have the substitute motion that was proposed by
5 Councilmember. . .

6 DE LA TORRE: Let's just go, let's vote.

7 ANDERSON-WARREN . . .Brock. So, can we go ahead?

8 HIMMELRICH: First, we're voting on the substitute motion.

9 ANDERSON-WARREN: First we vote on the substitute motion, okay? And so, this is by
10 Councilmember Brock. Okay. Mayor Himmelrich?

11 HIMMELRICH: No. Why'd you go ... you went first with me.

12 ANDERSON-WARREN: I'm sorry. Councilmember De la Torre?

13 DE LA TORRE: Yes.

14 ANDERSON-WARREN: Councilmember Brock?

15 BROCK: Yes.

16 ANDERSON-WARREN: Mayor Pro Tem McCowan?

17 McCOWAN: No.

18 ANDERSON-WARREN: Councilmember Negrete?

19 HIMMELRICH: Hold on.

20 NEGRETE: Sorry.

21 HIMMELRICH: I'm sorry. It's a substitute motion, so that means that instead of having the
22 other motion to do the investigation, all you're voting on is this and it
23 won't go. You will never have a chance to look at ...

24 BROCK: Additional confidentiality and Brown Act training.

25 DAVIS: It's training at the retreat.

26 DE LA TORRE And maybe someone comes correct and says what happened at the retreat.

27 DAVIS: But if you vote yes on this, then we don't go to the next motion, so there
28 won't be an investigation.

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1 NEGRETE: We still can't do an investigation. I'm sorry that we're having a discussion
2 now that I just created that, but this sort of . . .

3 HIMMELRICH: No, it's just they can't – this is the only way because the buck stops with
4 us. We are the top. We have to make a decision.

5 NEGRETE: I don't have – this is – like I have no problem with transparency.

6 BROCK: We're opening discussion again? Then I'll discuss, too, but . . .

7 NEGRETE: I know it's late and this is part of the issue. My question is still remains,
8 sort, of if there was still discussion happening about that.

9 BROCK: Well, we could do this. You know, look it, there's – if I can add
10 something.

11 NEGRETE: Ability to still have . . .

12 BROCK: Councilmember? There's nothing to stop us from having additional Brown
13 Act and confidentiality training and if either Mayor Himmelrich or
14 Councilmember Davis wants to bring it up at the meeting right after
15 March 25, it's fine for that to happen, too. I'd like to see if we feel we get
16 somewhere, I don't want to spend fifty or a hundred thousand dollars on
17 something, so my view is we very simply, we do additional training that
18 Special Counsel Seltzer and Interim City Attorney Lawrence devise
19 whether they bring in someone from outside or it's done by the staff. If
20 Councilmember Davis, Councilmember – sorry, Mayor Pro Tem
21 McCowan, or Mayor Himmelrich decide on March 26 or 27 that they
22 don't think it was effective, they can still bring this forward, but at that
23 point, I would like to know what the potential cost would be and how do
24 we narrow the parameters? We believe there are – hold on – we believe
25 there are two leaks.

26 DAVIS: I believe there are more than two leaks.

27 BROCK: Oh.

28 DAVIS: I believe there are multiple leaks. I just – I don't know how many because

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1 that’s why we want to have the investigation.

2 BROCK: But – okay. We can’t talk about the other part which we could do . . .

3 DAVIS: We can’t talk about it.

4 BROCK: . . . which we could do in closed session on March 25.

5 DAVIS: Well, okay. I’m going to . . .

6 BROCK: So anyway, we’re in the middle of a vote.

7 DE LA TORRE: We’re voting, yeah.

8 BROCK: We’re in the middle of a vote.

9 SELTZER: You have to vote on the substitute motion.

10 DAVIS: Can I just clarify, if the substitute motion passes and we don’t get to vote

11 on the original motion, even though the original motion was an

12 investigation and this is about education, it’s not like we can have our cake

13 and eat it, too. If this motion passes, then there’s no investigation.

14 LAWRENCE: That’s correct.

15 BROCK: Okay, alright. I’m sorry, I misspoke then, Councilmember.

16 NEGRETE: He’s talking about the ability for that to come back.

17 DAVIS: Yeah, somewhere down the road.

18 BROCK: Yeah. You can still do that.

19 DE LA TORRE: And if you get more information, you can go to the District Attorney.

20 BROCK: Councilmember Davis? If we come back after that training and believe it’s

21 still necessary, I will support it.

22 DAVIS Yeah, but it’ll be two months down the road. I want to do this

23 investigation. . .

24 BROCK: It’s four months, it’s five months down the road now.

25 HIMMELRICH: . . . 48 hours.

26 BROCK No, no, what I’m saying is right now its five months down the road now.

27 Yes.

28 HIMMELRICH: No, for one but not for the recent one.

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- 1 BROCK: Well, but, . . .
- 2 DE LA TORRE: How far do we want to go back?
- 3 BROCK: Yeah, Councilmember . . . wait, wait, wait.
- 4 DAVIS: This is very – it’s very clear. It goes back to the City Manager.
- 5 BROCK: That’s five months.
- 6 DAVIS: Right, and the City Attorney, which is currently going on now. I would
7 like to do it before memories fade any farther.
- 8 BROCK: And it . . .
- 9 DE LA TORRE: I have a question. Mayor, can you please . . .
- 10 BROCK: I thought we were in the middle of a vote.
- 11 DAVIS: We are in the middle of a vote.
- 12 HIMMELRICH: Yes, okay. I’m sorry.
- 13 DAVIS: So, it’s up to Councilmember Brock.
- 14 HIMMELRICH: Who’s voting now?
- 15 ANDERSON-WARREN: We are at Councilmember Negrete. Councilmember Negrete, how did
16 you want to vote on the substitute motion?
- 17 NEGRETE: This is like – I don’t like abstaining and I just feel like this is all such a –
18 it’s two o’clock in the morning. I’m going to abstain on this vote.
- 19 BROCK: Okay.
- 20 DAVIS: Did you abstain?
- 21 ANDERSON-WARREN: Councilmember Davis?
- 22 DAVIS: Yes. I mean no on the substitute motion, sorry. No on the substitute
23 motion. I apologize. It’s 2:19 in the morning.
- 24 ANDERSON-WARREN: Councilmember Parra?
- 25 PARRA: Yes.
- 26 HIMMELRICH: So, that motion fails for lack of four, so we move back to the original
27 motion.
- 28 DAVIS: Okay, so let’s vote on the original motion.

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- 1 ANDERSON-WARREN: Hold on a second. Let me get back to that one.
- 2 BROCK: Well.
- 3 HIMMELRICH: Sorry, there's no "well" here.
- 4 BROCK: No, then we open discussion. There's a motion.
- 5 HIMMELRICH: We already had the discussion. You did your substitute. . .
- 6 BROCK: No, I . . .
- 7 HIMMELRICH . . .motion and now we're back to the original motion.
- 8 ANDERSON-WARREN: Okay, so the original motion was by Councilmember Davis.
- 9 DAVIS: Seconded by the Mayor.
- 10 ANDERSON-WARREN: Seconded by the Mayor.
- 11 HIMMELRICH: Seconded by me.
- 12 ANDERSON-WARREN: Right. So now we're going to do a roll call vote.
- 13 BROCK: Well, no, we can have discussion on it.
- 14 DE LA TORRE: Yeah.
- 15 BROCK: Why would you not be able to have discussion?
- 16 DE LA TORRE: Yeah, I have some . . .
- 17 BROCK: I'm frustrated, too, at this point.
- 18 HIMMELRICH: Fine, go ahead. Talk.
- 19 BROCK: No, let Councilmember de la Torre go and then I'll go.
- 20 DE LA TORRE: Yeah, I just want – this is an example of where this is going to go. The
- 21 Mayor asked me if I was the one that leaked information. You know what
- 22 I'm saying? And that right there, I'm really offended by that.
- 23 HIMMELRICH: You said to me . . .
- 24 DE LA TORRE: No, I'm saying that distrust, that's the problem that we're facing with right
- 25 now. And I'm asking you – I'm asking for a pathway for us build unity
- 26 and for you to be a leader and to bring us together.
- 27 HIMMELRICH: I am being a leader. Integrity is important. Process is important.
- 28 DE LA TORRE: Yes.

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1 HIMMELRICH: I'm talking about integrity and process and we don't have integrity and I
2 want to find out what is wrong and how we can fix it.

3 DE LA TORRE: Okay.

4 HIMMELRICH: And the way to do it, as we did it with Pam O'Connor, is through an
5 investigation and recommendations.

6 DE LA TORRE: Alright. Well, . . .

7 HIMMELRICH: And I do not believe that that's a waste of money. I think that we have . . .

8 BROCK: How much money are you talking about?

9 HIMMELRICH: A hundred thousand dollars.

10 BROCK: I'm sorry, I didn't mean to interrupt.

11 DE LA TORRE: A hundred thousand?

12 HIMMELRICH: It was eighty or something.

13 BROCK: So that's the cost of one staff member or one community service officer or
14 one public service officer for a year.

15 HIMMELRICH Well, Phil, it's also the cost of the screens over the murals, right?

16 DE LA TORRE: Yeah, and we're . . .

17 BROCK: Hey, . . .

18 DE LA TORRE: . . . and just so that you know, we're conscious of that and we're trying to
19 figure out a way to not spend that money because – anyway, I'll . . .

20 HIMMELRICH I'm just saying a lot of things cost that much.

21 DE LA TORRE: All I'm saying is I'm for unity. I'm for us trying to find a pathway to do
22 that. I'm for fixing the problems, like I also agree that those are things that
23 shouldn't happen. They happened. They happened in the City Manager
24 search and the number one beneficiary is David White, right here, who
25 didn't leave Santa Monica. He was happy to take the job in Santa Monica,
26 so the whole concept of people aren't wanting to come to work here
27 because of this and the lack of integrity and all that, I don't really see that
28 that's true. So, I just want to say that I think it's a – I think what

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1 Councilmember Brock called it a politically motivated witch hunt. It feels
2 that way. I wish . . .

3 McCOWAN: Who said that? He didn't say that.

4 DE LA TORRE: He did. I feel that we're going to . . .

5 HIMMELRICH: Prepared remarks.

6 DE LA TORRE: We would be better off to follow Councilmember Brock's suggestion on
7 how we get to a path of being in a better place as a governance team. I
8 think having an investigation led by one side of the political, you now,
9 aisle and you know, in the middle of a process right now, where we're
10 trying to hire a City Attorney, I mean, that right there to me is just
11 problematic, like this is all public. How would a City Attorney want to
12 come into this type of dynamic? I don't even think that's healthy for the
13 organization. But in any case, that's what I . . .

14 NEGRETE: We haven't had a retreat and I agree with education.

15 McCOWAN: I haven't said anything on this. Can I just . . .

16 ANDERSON-WARREN: Yes, Councilmember . . .?

17 McCOWAN: I just, so, I hate that we're here at 2:20 in the morning, but I will be
18 supporting this for the simple fact that as a member of this Council, I think
19 we're in a really awkward position. If we don't – like I just don't see how
20 I can, in good conscience, like not support an investigation when we have
21 disclosed to the public that there have been leaks. I don't really know how
22 I can vote no on that without feeling a bit hypocritical and as if I'm
23 protecting something that I don't believe I am protecting. I don't love the
24 idea of spending money on this, but as we saw tonight, we do set aside
25 monies for these types of situations. So, that is my justification for why I
26 cannot not vote for this. I just don't see how I can say, given the fact that
27 we've disclosed to the public that there were – and we don't know if it
28 was us. We don't know if it was a staff person. We don't know anything

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1 because it's not as if it was just seven of us in a closed room. You know,
2 there were other people involved, so we don't know, but as one of the
3 people in that room, I feel, now that we know that information left that
4 room, that I'm obligated in my responsibility to our residents, to vote yes
5 on this. I just don't really see another path. And I think that we should
6 have more training at our retreat.

7 NEGRETE: And I don't want to lose that option and I'm all for transparency.

8 McCOWAN: And we won't. We can bring that back at our next Council meeting.

9 NEGRETE I don't need anyone to have told me that you can't talk to anyone outside
10 the room. That was the confidentiality agreement, so that's not – that was
11 obvious to me. That's not the issue. Just the divisiveness . . .

12 McCOWAN: And again, I'm not even going that. Like this isn't about dividing us or
13 not. I'm not looking at it that way. I'm sorry that people are. It just it's
14 here, it's on our agenda, it is awkward, it is now public that there were
15 Brown Act violations. I don't understand how I can vote no.

16 NEGRETE: And I feel the same way. I don't see, because I feel if I vote no, that makes
17 it look like, oh, why don't you want it? And I genuinely feel like go ahead.

18 BROCK: A few things stick in my mind. And Interim City Attorney Lawrence,
19 you'll stop me when I go over the line.

20 McCOWAN: Is it a Brown Act?

21 BROCK: I have no idea, but this smacks of a political vendetta. It doesn't smack of
22 a legitimate investigation and that's why I'm trying to work a compromise
23 because quite frankly, a vote was taken and immediately afterwards, the
24 threat from that particular Councilperson was, "I'm going to file a 13
25 motion. I'm going to get you guys." So, this – let me – excuse me. I didn't
26 say you.

27 LAWRENCE: I think you need to probably not go any farther.

28 BROCK: That's what I'm asking you. I am asking – I prefaced by comments, but –

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1 no, no, no, no. Hold on. I have other comments that don't cross the line
2 then. But I am extremely frustrated to the point that last week, one night I
3 felt like resigning. And all of us did, I think, yeah. There has been internal
4 turmoil in this Council and Councilmember Davis, I understand your
5 intentions, but I feel that what you're going to do is make the turmoil
6 worse and terminal. That's number one. Number two, I can't support, and
7 I would like to know who leaked, too, but I can't support a hundred or a
8 hundred fifty thousand dollars on something that we should work on
9 additional training and see if that works. We will probably – well, I guess,
10 we'll have a City Clerk, right, selection maybe next year? Sorry about
11 that.

12 HIMMELRICH: You never told us. When are you retiring?

13 ANDERSON-WARREN: I'm retiring tomorrow.

14 BROCK: We can all join you. Sorry, Denise. I didn't mean to – so look it, I want to
15 be fair, but I also, the money, the residents are going to look at this and go,
16 “What the hell? There goes the City Council wasting money again.”

17 HIMMELRICH: I disagree.

18 BROCK: And, that's fine, but you know, I look at that and I think Councilmember
19 Davis, if you want to rephrase your motion, which I know you don't, but it
20 would be rephrased to ask the City Attorney to come back to us with a
21 cost estimate and a potential scope that the City Attorney's Office feels is
22 appropriate to look at. And that's what I – my suggestion, because this is
23 not a crisis tonight unless we're trying to influence the vote. So that's my
24 view, my view is – I will vote to authorize the City Attorney to investigate
25 what the cost would be and what the scope would be, because I think your
26 scope may be larger than it needs to be. Now, I'm not an attorney. I'm not
27 professing to be an attorney. And – but I think it's larger than it needs to
28 be. It sounds like you're trying to pinpoint, and know you just said you're

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1 trying to pinpoint more. But I think what you're really trying to do, and
2 what I would like to know, too, is there are two potential leaks. It sounds
3 like one –one minute – it sounds like one in each search that may have
4 gone awry. Now if we're going to pinpoint it, it would also (a) reduce the
5 cost and it would come back with something that Mr. Lawrence and Mr.
6 Seltzer could come back to us in closed session or open session with a
7 recommendation. I'm not anti-getting to the bottom of it. Yes, I also want
8 additional training on March 25. I think that's really necessary.

9 DAVIS: So, can I respond because I was . . .

10 BROCK: Of course, you can.

11 DAVIS: . . . accused of something pretty horrible up here just now. This is not
12 political retribution. What this is, is I will be honest with you. Absent
13 anything, I was prepared to go to the District Attorney without going
14 through this process and swear out a complaint. That's how frustrated I
15 was and by the way, I can't prove it because again, I only hear things from
16 other people. It's not one or two. I've heard of multiple instances where
17 different candidates – at least – I have heard at least two different
18 candidates just for the City Attorney's job, where they were discussed by
19 people and I will tell you that the people who told it to me did not say it
20 came from staff, but said it came from City Councilmembers. I don't
21 know if that's true or not. This is why we do the investigation. I don't
22 want to sit up here and accuse people. But what I want to do is find out
23 what the heck's going on. And I too was frustrated by what was
24 happening. This has nothing to do with anything else. This has nothing to
25 do with winning or losing or politics or retribution or whatever it all is that
26 you seem to think this is tied to. This is tied to the fact that the most
27 important part of government at any level is integrity. And anyone who
28 sees what's happening at the federal level where you have a bunch of

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1 legislators who are refusing to investigate what happened on January 6,
2 2020, because – and it is completely ruining the trust in government
3 because they’re not wiling to investigate themselves and find out what
4 happened. I don’t want to be that government. I want to be the government
5 that says we know something happened that wasn’t supposed to happen.
6 There is at least some reason to believe again, I can’t go into a court of
7 law and raise my hand and say, “I observed this,” but what I have heard –
8 reason to believe that people sitting on this dais violated the Brown Act an
9 violated a confidentiality agreement, and I think we owe it to the residents.
10 I mean, the residents certainly didn’t object when we spent money
11 investigating Elizabeth Rial, and I don’t think they would object to us
12 investigating whether, in fact, this Council has been guilty of something
13 that could ultimately be construed as a crime. And frankly, I think we
14 should all welcome the investigation because that is what people do when
15 they want to protect the integrity of an institution. I feel like we’re
16 plowing the same ground over and over again, but I want it to be clear this
17 was not intended to have anything to do with retribution or sour grapes or
18 whatever it is that you’re accusing me of. But this has to do with the fact
19 that I have reason to believe that the Brown Act was violated, that once I
20 found that out, I went to the City Attorney and I went to the City Manager.
21 I said, but I can’t prove this, that or the other and what’s the next step, and
22 the next step is an independent investigation and yes, it is independent.
23 Yes, we are paying for it, but the person or entity, whoever we hire, would
24 act independently. That’s what we did with Elizabeth Rial, that’s what’s
25 been done by the Council in other instances where they needed to get to
26 the bottom of things. We can’t refer it to the District Attorney because we
27 don’t know what to say. We don’t know what to say. Person “X” did this
28 and you need to go investigate it. That’s why we have to have the

CITY COUNCIL HEARING

HEARING DATE: February 8, 2022

ITEM 13D

1 investigation.

2 BROCK: So, can I ask . . .

3 HIMMELRICH: City Attorney, excuse me, . . .

4 LAWRENCE: I was just going to say that as I interpret the request, it says, well, not even
5 as I interpret it, but as I read it, it says to direct the City Attorney and the
6 City Manager to come back with a proposal. And so, the proposal
7 presumably or I believe it would have, it would have a scope of work, it
8 would have a contemplated budget so that – and it probably would have
9 who we recommend conduct the investigation. So, you will have a
10 package that you would have a sense to what we’re going to do. And then
11 I would just make this observation because I think we all know it from the
12 things we hear about in life generally. Independent investigations are a
13 common, unfortunately common, part of modern corporate governance.
14 It’s what happens, how you ferret out improper sexual violence or
15 improper relationships or financial whatever. It is a common practice to
16 have independent investigations.

17 HIMMELRICH: And failure to do it can cost you a lot more money than the investigation
18 itself because this conduct could be actionable under certain circumstances
19 and you saw how much it was the last time. Yes

20 BROCK: Alright, so I guess I have three comments and then we can vote and not
21 breach the time limit from our last meeting, which was three o’clock. Oh, I
22 guess we can then. So first, I kind of resent the fact that were talking about
23 January 6 and there was another comment in the same breath. This is not
24 rebellion against the United States, number one or rebellion against Santa
25 Monica, number two. Number three, if we’re going to come back – this
26 comes back to us again then. So, this gets prolonged and prolonged and
27 prolonged.

28 HIMMELRICH: I don’t think – it’s not - the last time we did it, we got an RFP, where we

1 all came up with names of potential investigators and then we agreed,
2 right? I think that was like. . .
3 BROCK: And so, then we can also limit at that time – we can also have a discussion
4 about pinpointing this investigation so it does not become something that’s
5 going to consume the City for the next six or eight months.
6 HIMMELRICH: It’s not going to be that long.
7 BROCK: It appears that this would come up right around election time.
8 HIMMELRICH: You know, I think you can worry . . .
9 McCOWAN: And you don’t need to worry about that, Phil.
10 HIMMELRICH: So, let’s take a vote please. You made your points.
11 ANDERSON-WARREN: This is on the original motion.
12 HIMMELRICH: This is on the original motion. Yes.
13 ANDERSON-WARREN: Councilmember Parra.
14 PARRA: No.
15 ANDERSON-WARREN: Councilmember Davis.
16 DAVIS: Yes.
17 ANDERSON-WARREN: Councilmember Negrete.
18 NGRETE: Yes.
19 ANDERSON-WARREN: Mayor Pro Tem McCowan.
20 McCOWAN: Yes.
21 ANDERSON-WARREN: Councilmember Brock.
22 BROCK No.
23 ANDERSON-WARREN: Councilmember De la Torre.
24 DE LA TORRE: No.
25 ANDERSON-WARREN: Mayor Himmelrich.
26 HIMMELRICH: Yeah, so that passes 4 to 3.
27 **END OF HEARING ON ITEM 13D**
28

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February 11, 2022

I hereby certify under penalty of perjury that The Brief Case has transcribed the audio file provided by the City Attorney's Office of Santa Monica, regarding the City Council Hearing on February 8, 2022, Item 13D. The file was transcribed, verbatim, to the best of our ability.



CHERI SINGER, Transcription Specialist