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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.

**DEFENDANT CITY OF SANTA
MONICA'S NOTICE OF ERRATA
REGARDING DECLARATION OF CAROL
M. SILBERBERG IN SUPPORT OF
DEFENDANT CITY OF SANTA
MONICA'S MOTION FOR SUMMARY
JUDGMENT OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION**

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

22 Defendants.
23
24

Date: May 6, 2022
Time: 9:15 A.M.
25 Dept.: 15
26

Action Filed: March 4, 2021
27 Trial Date: June 13, 2022
28

1
2 **NOTICE OF ERRATA**

3 Defendant City of Santa Monica (“City”) requests that the Court take notice of the following
4 errata:

5 On February 12, 2022, the City filed its Notice of Motion and Motion of Defendant City of
6 Santa Monica for Summary Judgment or, in the Alternative, Summary Adjudication, along with
7 supporting materials. Among those materials was the Declaration of Carol M. Silberberg in Support
8 of Defendant City of Santa Monica’s Motion for Summary Judgment or, in the Alternative, Summary
9 Adjudication (“Declaration”), filed with four volumes of exhibits. For ease of reference, an identical
10 copy of the Declaration was placed in front of each of four volumes of exhibit. Each copy of the
11 Declaration stated that attached as Exhibit 40 was a “true and correct copy of the January 26, 2021
12 City Council hearing transcript.” Inadvertently, Exhibit 40 contained only excerpts of this document
13 rather than the complete copy of the transcript of the referenced proceeding. Therefore, attached as
14 Exhibit A to this Notice is a complete copy of the January 26, 2021 City Council hearing transcript.

15 Further, each copy of the Declaration also stated:

16 42. Attached hereto as **Exhibit 41** is a true and correct copy of the April
17 13, 2021 City Council hearing transcript.

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

20 These portions of the Declaration inadvertently omitted that there were only excerpts of transcripts
21 provided. Therefore, that language should be and is replaced with the following language:

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

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

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Dated: March 23, 2022

BERRY SILBERBERG STOKES PC
CAROL M. SILBERBERG

/s/ Carol M. Silberberg

Carol M. Silberberg

Attorneys for Defendant
CITY OF SANTA MONICA

Exhibit A

Exhibit 40

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.

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

1 HIMMELRICH: Your turn, Phil, you sing.

2 BROCK: Yeah, that's the one thing that I don't do well. However, Councilmember
3 de la Torre . . .

4 HIMMELRICH: Excuse me, Phil, I see Oscar, yes. So, let's go.

5 DE LA TORRE: Hi, everybody.

6 HIMMELRICH: Okay, Denise, do you have to say, "Councilmember de la Torre and he
7 says yes?" So, go for it.

8 ANDERSON-WARREN: Councilmember de la Torre, yes.

9 DE LA TORRE: Yes. Present.

10 HIMMELRICH: Thank you. And now we're ready for staff report.

11 CARDONA: Thank you, Mayor. The written staff report sets out the relevant facts and
12 legal analysis regarding the Common Law Conflict of Interest. I do
13 however want to address a few issues that have been raised since the staff
14 report was submitted, including in an opinion from the Law Office of
15 Daniel Ambrose that is attached to the Agenda and that I received for the
16 first time today. First, it has been suggested that the Council should wait
17 on guidance from the Fair Political Practices Commission before
18 addressing the Common Law Conflict issue. As noted in the staff report,
19 the City's Attorney's Office has sought guidance from the FPPC regarding
20 whether there is a financial conflict of interest. The City is awaiting that
21 guidance, but I do not know when we will receive it. Council retains the
22 discretion to postpone discussion of the Common Law Conflict issue until
23 the FPPC guidance is received. But this would require postponement of
24 the closed session discussion of the CVRA case that is scheduled for this
25 evening. And the City's brief in the California Supreme Court is due on
26 March 22, 2021; date is approaching. Second, it has been suggested that
27 the Common Law Conflict of Interest doctrine is no longer viable in
28 California given the Legislature's passage of statutes addressing financial

1 conflicts. Both courts and the California Attorney General, however, have
2 made clear that the Common Law Doctrine remains in force. In 1996 in
3 *Clark vs. City of Hermosa Beach*, 48 Cal.App.4th 1152, the court
4 discussed, “the common law prohibition on conflicts of interest” citing
5 case law and California Attorney General opinions and concluding that the
6 Common Law Doctrine, “prohibits public officials from placing
7 themselves in a position where their private personal interests may conflict
8 with their official duties.” The court specifically addressed and rejected
9 the argument that the Common Law Doctrine had been eliminated by
10 statute. Again, citing California Attorney General opinions, the court
11 explained, “While the Political Reform Act focuses on financial conflicts
12 of interest, the common law extends to non-economic conflicts of interest.
13 The common law may be abrogated by express statutory provisions, but
14 that is not the situation here.” Similarly, in 2015, in *Davis vs. Fresno*
15 *Unified School District*, 237 Cal.App.4th 251, the court, citing *Clark*,
16 allowed a cause of action premised on an asserted common law conflict of
17 interest to proceed, explaining that the Common Law Doctrines overlap
18 with California statutes, including in particular, Government Code §1090
19 is not complete, “because the statutes are concerned with financial
20 conflicts of interest and the common law rule encompassed both financial
21 and non-financial interest that could result in divided loyalty.” California
22 Attorney General has also consistently recognized the continuing viability
23 of the Common Law Doctrine with respect to non-financial conflicts of
24 interest. In 2009, in the opinion referenced in the written staff report, the
25 Hon. Norma J. Torres, 92 Ops. Cal. Attorney General 19, the Attorney
26 General first, “found no disqualifying interests within the meaning of
27 §1090 for the Political Reform Act.” It then turned to the “Common Law
28 Doctrine against conflicts of interest” specifically recognizing that while

1 “the focus of the statutes analyzed above is on actual or potential financial
2 conflicts, the common law prohibition extends to non-economic interests
3 as well.” Similarly, in 2018, in the Hon. Mark Stone, 101 Ops. Cal.
4 Attorney General 1, the Attorney General affirmed the continuing viability
5 of the Common Law Doctrine with respect to non-economic interests,
6 stating, “The Common Law Doctrine against conflicts of interest prohibits
7 public officials from placing themselves in a position where their private
8 personal interests may conflict with their official duties. Where a Common
9 Law Conflict of Interest exists, the official may not take part either in the
10 discussion nor in a vote on the relevant matter. Common law conflicts of
11 interest extend not only to financial interests, but also to non-economic
12 interests, if there is some personal advantage or disadvantage at stake for
13 the public officer. Common law conflicts are not limited to contracts may
14 arise whenever an official’s personal or pecuniary interests are at stake.”
15 Third, it has been suggested that Councilmember de la Torre is in no
16 different a position from other Councilmembers and that all the
17 Councilmembers have interests in the outcome of the CVRA litigation that
18 pose a non-financial conflict because the resolution of the litigation may
19 affect how they are elected. If this approach were correct, then
20 Councilmembers would be similarly conflicted from voting to adopt an
21 elections code or other campaign finance rules, as incumbents, an ethics
22 code, as required adherence, or any municipal code provisions that might
23 result in administrative or criminal penalty as residents potentially subject
24 to those penalties. The Common Law Doctrine has not been extended this
25 broadly. To the best of my knowledge, no other Councilmember has a
26 personal relationship of a type that might result in common law conflicts
27 similar to that of Councilmember de la Torre, who is married to one
28 plaintiff in the CVRA litigation and has longstanding ties to the other

1 plaintiff. Along these same lines, it has been suggested that determination
2 of whether there is a common law conflict of interest hinges on a
3 determination of what the City's interest in the outcome of the CVRA
4 litigation is or should be. The purpose of the Common Law Conflict
5 Doctrine, however, is to avoid putting a public official in a position where
6 there is a risk that a personal relationship may influence that official's
7 individual determination as to what the City's interest should be. The issue
8 here is whether Councilmember de la Torre's personal relationships with
9 the plaintiffs in the CVRA litigation, one of whom is his spouse, pose such
10 a risk. It has also been suggested that applying the Common Law Conflict
11 of Interest Doctrine here would pose grave concerns of violating
12 Councilmember de la Torre's First Amendment rights. Councilmember de
13 la Torre's campaign activity and political advocacy, including his
14 advocacy for district-based elections and in support of the CVRA lawsuit
15 are not, however, the basis for the conflict of interest. The conflict is based
16 on Councilmember de la Torre's personal relationships with the plaintiffs
17 in the CVRA litigation and the issue is whether there is a risk those
18 relationships may influence Councilmember de la Torre's actions as a
19 Councilmember, not a private citizen, with respect to that litigation.
20 Moreover, even if Councilmember de la Torre is disqualified from
21 participating in Council decisions regarding the CVRA litigation, he
22 would still be able to participate in Council decisions unrelated to the
23 litigation regarding whether the City should adopt district-based elections.
24 Nor would it deprive him of the ability as an individual to continue his
25 advocacy in support of the CVRA lawsuit. Fourth, it has been suggested
26 that seeking to disqualify Councilmember de la Torre demonstrates an
27 unwarranted distrust in his ability to comply with his obligations as a
28 Councilmember, including his obligations to keep confidential material

1 discussed in closed session or to put aside his conflict and act in the best
2 interest of the City. This misunderstands the Common Law Doctrine
3 which does not require a determination that the conflict will come to
4 fruition and actually result in improper action. Thus, in a 2010 case, *D. A.*
5 *Exrail K.A. vs. St. Helena Unified School District*, (2010) West Law
6 370333, a federal district court applied the California Common Law
7 Doctrine to disqualify a district schoolboard member from serving as a
8 guardian ad litem for a child engaged in litigation against the district. As
9 the court explained, “As a board member, the father must act to protect the
10 district’s interest and as Plaintiff’s guardian ad litem, he is charged with
11 representing the interests of his minor daughter in litigation against the
12 district. Although the father declares that this does not present a conflict of
13 interest and represents that he will absent himself from the Board’s
14 litigation strategy sessions, the court finds that the father’s dual role
15 creates an impermissible conflict of interest.” And, as explained in the
16 California Attorney General Opinion referenced in the written staff report,
17 the determining factor is whether there is a “temptation to act for personal
18 or private reasons,” thereby presenting a “potential conflict.” The law,
19 therefore, “will not permit” a public official “to place himself in a position
20 in which he may be tempted by his own private interest to disregard those
21 of his principle.” If this temptation exists, there is a conflict requiring
22 “complete abstention” from the particular matter regardless of whether the
23 public official actually would succumb to this temptation. Finally, it has
24 been suggested that Council should disregard my legal analysis because it
25 is biased as a result of my participation in defending the City in the CVRA
26 litigation. Council, of course, remains free to disregard or differ with my
27 legal analysis, but in defending the City, I have acted as counsel for the
28 City at Council direction. This does not demonstrate any personal bias.

1 Under §708 of the City’s Charter, the City Attorney’s Office provides
2 legal representation to the City. In accordance with the Charter and
3 California Rule of Professional Responsibility 1.13 in representing the
4 City, absent circumstances not present here, we are obligated to take
5 direction from the City’s duly authorized constituents overseeing the
6 litigation. In this case, the City Council. Indeed, as the commentary to
7 Rule 1.13 makes clear in representing an organization, “a lawyer
8 ordinarily must accept decisions the organization’s constituents make on
9 behalf of the organization even if the lawyer questions their utility or
10 prudence. It is not within the lawyer’s province to make decisions on
11 behalf of the organization concerning policy and operations, including
12 ones entailing serious risk.” My actions in representing the City in the
13 CVRA case and in providing the legal analysis set out in the written staff
14 report and in my comments today have been and remain in accordance
15 with these rules and principles. With that, I am happy to try and answer
16 any questions.

17 HIMMELRICH: Councilmember . . . I see. I see. Councilmember Davis, did you hear me?

18 DAVIS: Yes.

19 HIMMELRICH: Thank you.

20 DAVIS: So, thank you, George for that. I just have a couple of questions. One, was
21 there any preliminary opinion from the FPPC?

22 CARDONA: No. I have not received anything from the FPPC.

23 DAVIS: And do we have a timeframe in which the FPPC believes that they can get
24 us a final determination?

25 CARDONA: I have had conversations with the FPPC, but they have not given me a
26 timeframe in which we can expect a final determination.

27 DAVIS: And assuming, well, that’s my questions based on your staff presentation.
28 Thank you.

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

1 HIMMELRICH: Anyone else? So, I have a question, George, and that is in . . .
2 CARDONA: Where I think . . .
3 HIMMELRICH: Oh, sorry.
4 CARDONA: Councilmember Brock had a question. I don't know if you want to go to
5 him first.
6 HIMMELRICH: I actually am looking at – okay, go ahead, Phil.
7 BROCK: Okay, thank you, George. My question is could we temporarily disqualify
8 Councilmember de la Torre for the closed session today pending the FPPC
9 decision? Or Attorney General's decision? Could we do a temporary
10 recusal in order to proceed with the closed session today, which would not
11 harm Councilmember de la Torre's interest and then hold the rest
12 depending on the official decision from a body outside of our City
13 Council?
14 CARDONA: So, Councilmember de la Torre could recuse himself from proceedings
15 today. If he did that, we could proceed with the discussions today and any
16 actions that would come from those or guidance that would come from
17 those decisions would be made without Councilmember de la Torre's
18 participation. That would leave open the issues under both the Common
19 Law Conflict and potentially the FPPC for a later date, but that is some-
20 thing that the Council could choose to do and we could proceed with the
21 CVRA discussion under those circumstances with a voluntary recusal by
22 Councilmember de la Torre.
23 BROCK: And if I could follow up because the initial, at least my initial perception,
24 Councilmember Parra and I initiated the request for the closed session so
25 that we could be brought up to date on what has happened so far and the
26 status of that lawsuit. So, I don't, unless I'm wrong, I don't see that we're
27 going to make any decisions today.
28 CARDONA: There would also be a discussion of where we are and potential strategy

1 questions relating to the case going forward in anticipation of the brief
2 that's due in March.

3 BROCK: So, we would still have a follow up?

4 CARDONA: I wouldn't (cross-talk) we would still have a follow up session between
5 now and the brief in March.

6 BROCK: Thank you, George.

7 HIMMELRICH: Anyone else? Okay, I have a question, George, and that is it's my under-
8 standing, I looked at a few FPPC decisions today that they disclaim any
9 advice on common law conflicts. They say we're only ruling under the
10 Political Reform Act.

11 CARDONA: That is correct.

12 HIMMELRICH: So, does that mean . . .

13 CARDONA: The FPPC (cross-talk) provide us with guidance on financial conflicts
14 under the PRA and §1090. Depending on how that advice came out, the
15 Council potentially still would have to reach the common law conflicts
16 issue.

17 HIMMELRICH: I do – yes, I understand that, and so even if the FPPC rules on the financial
18 1090, you know, Political Reform Act conflict issues, we still won't have
19 a final determination on the common law issues unless they venture into
20 that area of law. Is that right?

21 CARDONA: The FPPC and their opinions typically disclaims providing guidance on
22 common law conflicts. In other words, they typically say they will not
23 provide guidance on them.

24 HIMMELRICH: So, is it accurate that any opinion we get from the FPPC will probably not
25 analyze the area we really need to be looking at here?

26 CARDONA: Unless the FPPC were to break from its common practice, guidance they
27 provide will apply only under the PRA and §1090. They will not provide
28 guidance on common law conflicts. Again, unless they were to radically

1 break from their past practices.

2 HIMMELRICH: And so ultimately, as I understand it, and this could be wrong, but we're
3 making the decision, George, and not you. You're advising us and then we
4 decide if there's a conflict. Is that right?

5 CARDONA: Correct. I have provided you with my legal guidance and my opinion as to
6 the legal analysis, but ultimately the determination as to whether there's a
7 conflict that would require Councilmember de la Torre to recuse – to be
8 disqualified would be one for the Council.

9 HIMMELRICH: Thank you. Um, are there any other – that's the end of my questions. Are
10 there any other questions? Councilmember McKeown.

11 McKEOWN: Well, thank you. The answer we just got begs another question. If this
12 were a financial conflict, then the FPPC would be the higher power to
13 whom we could turn for resolution. Given that it is an arguably not
14 financial, but a common law conflict, who, in this situation is the higher
15 power?

16 CARDONA: The City – we sought guidance from the California Attorney General, who
17 does provide advice on common law conflicts of interest. However, their
18 statutory authority recently was changed, such that they will only provide
19 advice to City Attorneys if it relates to a criminal matter. So, the
20 California Attorney General's Office declined to provide advice with
21 respect to a common law conflict of interest. The answer is that there
22 essentially is no higher authority other than potentially a court would be
23 the only other authority. And it is not clear at this time that the City could
24 pursue an action in court. In other words, it's not clear that the situation is
25 ripe for the City to pursue an action in court.

26 McKEOWN: Let me follow up then. If, indeed, the only way to get this to court would
27 be for the conflict of interest to become ripe by a Councilmember
28 engaging in a vote where there's a conflict of interest. What are the

1 penalties then? Because I know that for 1090, the penalties are quite
2 severe.

3 CARDONA: And under the common law, they can be severe as well. The action could
4 be voided and depending on the timing, that could have fairly severe
5 effects, but those would be the consequences. The action could be voided
6 and that's one of the things we're trying to avoid. In addition, we have
7 seen today, as part of the written materials that were submitted, there's
8 now a threat of litigation posed by a group of citizens. This just came in
9 today and its part of the comments, but there's a threat of litigation posed
10 if we proceed ... with Councilmember de la Torre.

11 HIMMELRICH: We lost you, George, for a minute. There's a threat of litigation posed if?

12 CARDONA: There's a threat of litigation that states that they threaten to sue the City if,
13 in fact, the City proceeds with discussions and decisions relating to the
14 CVRA case without disqualifying Councilmember de la Torre.

15 HIMMELRICH: Um, thank you. And Oscar, I saw your hand up. Do you – did you have a
16 question?

17 DE LA TORRE: Yes, I have a series of questions for Mr. Cardona. Mr. Cardona, did we at
18 some point meet to discuss the Pico Neighborhood Association vs. The
19 City of Santa Monica lawsuit?

20 CARDONA: We did.

21 DE LA TORRE: Do you recall when, how long ago was that?

22 CARDONA: I recall that I met with you before you took your Council seat to discuss
23 the potential conflict and to discuss seeking advice from the FPPC and the
24 California Attorney General.

25 DE LA TORRE: Right. Prior to that discussion, did you advise me that I should or could be
26 represented by legal counsel in that discussion?

27 CARDONA: I believe I told you that I represented the City and that attorney-client
28 privilege was held by the City and not by you.

1 DE LA TORRE: Yes, correct. I recall that. Prior to that discussion, well let me ask you this,
2 do you remember if I had legal representation with me for that discussion?

3 CARDONA: You did not.

4 DE LA TORRE: You're correct in that. In that discussion, did you ask me questions about
5 the retainer agreement my wife entered into with her attorneys and any
6 financial arrangements in that retainer agreement?

7 CARDONA: I asked you specific questions that would relate to seeking guidance as to
8 whether and I will ... I'm going to ask Council for some direction.

9 DE LA TORRE: Let me ask you the question though because I recall ... You wanted to
10 know if my wife was ...

11 HIMMELRICH: Excuse me, Oscar. Oscar, you need to let the City Attorney speak if he
12 needs to speak.

13 DE LA TORRE: Okay, that's ...

14 CARDONA: And Oscar, I'm only asking for guidance before I answer these questions,
15 because my answers to these questions will get into conversations that I
16 had with you in your position as a Councilmember-elect. As such, I take
17 the position that those conversations are subject to the attorney-client
18 privilege that is held by Council, as I advised you during the conversation.
19 So, I don't believe that I can talk about the specifics of those conversations
20 without getting direction from Council that I can answer regarding
21 conversations that I believe are subject to the attorney-client privilege that
22 is held by the City.

23 DE LA TORRE: You do recall that we talked about the financial conflicts of interest, and
24 you do recall that you asked me about the arrangement or a potential
25 arrangement. You were asking if my wife was to make any money
26 regarding the litigation, and do you recall that I said "no," that there was
27 no contract that I'm aware of, I haven't signed a contract, my wife hasn't
28 signed a contract [inaudible] [much background noise].

1 HIMMELRICH: Everyone, excuse me. Excuse me. Will everyone except for Mr. de la
2 Torre, Councilmember de la Torre and our Interim City Attorney, please
3 mute because we're having interference on the line. And . . .

4 CARDONA: So, Mayor Himmelrich, I can answer this without getting into attorney-
5 client privilege, and if by answering it in a different way, which is
6 Councilmember de la Torre, based on our conversation, I provided a
7 Request For Guidance to the FPPC. That Request For Guidance set out
8 your representations that, in fact, you had no arrangement by which you or
9 your wife would receive any money in connection with the CVRA case.

10 DE LA TORRE: Okay. So, I just want to remind you that we had that discussion and that it
11 was very clear that I let you know that I don't make any money. You
12 know, I don't have to pay any money.

13 HIMMELRICH: Oscar, not a question, not a question, Oscar. Are you done with your
14 questions?

15 DE LA TORRE: Okay. And I provided information concerning the relationship between my
16 wife and her attorneys. Do you recall that, Mr. Cardona?

17 CARDONA: Again, I don't know if I can answer regarding the specific conversations.

18 HIMMELRICH: I am going to terminate these questions, Oscar.

19 DE LA TORRE: Wait a minute. I thought . . . we're having a dialogue in an open
20 discussion. I mean, you can't terminate the questioning. I mean, that's
21 what this was for. I was hoping . . .

22 HIMMELRICH: Well, depending upon whether you're trying to put into a public meeting,
23 which this is, impermissible attorney-client privileged issues. So, I am
24 concerned that the City Attorney is being . . .

25 CARDONA: Perhaps I can answer this a different way that will solve the problem, but
26 Councilmember de la Torre . . .

27 HIMMELRICH: Thank you.

28 CARDONA: . . . I represented to the FPPC as well that neither you nor your wife had

1 any likelihood of receiving any money in connection and the
2 representation that there were arrangements such that neither you nor your
3 wife would receive any of the attorney's fees that were to be paid and that
4 potentially could be paid in the CVRA case or had any obligation to pay
5 anything to the attorneys, and that the attorneys working, as you believed,
6 under an agreement under which they would bear all of those costs and
7 they would receive all of it. Is that get at what you were getting at?
8 DE LA TORRE: Yes. In fact, you did send a letter to the FPPC, did you not?
9 CARDONA: I did.
10 DE LA TORRE: And you did that without first working me to craft the appropriate letter.
11 You did it on your own. I didn't get – you didn't send me a draft of the
12 letter, correct?
13 CARDONA: I did not. I crafted the letter, I sent it to the FPPC, I advised the FPPC that
14 it had been copied to you, and that you could provide additional
15 information if you so choose.
16 DE LA TORRE: Why didn't you work with me to craft an appropriate letter to the FPPC
17 rather than just sending your own letter? I thought we had agreed that we
18 would work on it together and sign off on it together.
19 CARDONA: I was acting as counsel for the City and felt it appropriate on the City's
20 behalf to draft a letter, provide the information that I believed the City
21 needed to provide in order to obtain an opinion on behalf of the City as a
22 whole.
23 DE LA TORRE: Uh.
24 HIMMELRICH: Oscar, will you stop for one minute so Councilmember McCowan, do you
25 have something that we need to . . . ?
26 McCOWAN: I do. I have a question related to this back and forth and it has to do with
27 privilege and breaking privilege, and I'm just curious, so, part of why this
28 conversation is hard for the City Attorney to have is because there is an

1 assumption of privilege between Councilmember de la Torre and the City
2 Attorney based on the conversation that they had. And my question is,
3 what determines whether or not privilege is broken and do both parties
4 have to agree to that or can one party break privilege?

5 CARDONA: In this case, the privilege is held by the City, as I advised Councilmember
6 de la Torre, not by Councilmember de la Torre. The ability to break
7 privilege rests with the City, not with Councilmember de la Torre.

8 McCOWAN: Okay. So, I feel that there is problem here because a lot of what's sort of
9 being laid out right now in this Q and A is a conversation that I was
10 informed about one afternoon, after picking up my children and arriving
11 home and Councilmember de la Torre gave me this sort of play-by-play of
12 this conversation. So, there's clearly already a break in privilege here, and
13 so I'm just . . .

14 CARDONA: No, that's not a break in privilege because he was speaking with another
15 Councilmember or Councilmember elect.

16 McCOWAN: Okay. So, I'm good. I just to make sure I'm up to know all of this. Got it.
17 Thank you.

18 CARDONA: Yeah. So, I tried to answer the question . . .

19 HIMMELRICH: So, George, you may want to – so George, you may want to explain how
20 the privilege that we have as a Council and that protects our conversations
21 concerning legal matters operates with respect to individual Council-
22 members versus the Council as a whole.

23 CARDONA: So, the privilege is held by the Council as a whole, which means that those
24 conversations are privileged and that privilege can be waived only by the
25 Council as a whole, not by the individual Councilmember.

26 HIMMELRICH: And conversations between Councilmembers remain under . . .

27 CARDONA: Conversations between Councilmembers in the context of Councilmember
28 to Councilmember, since they are part of the Council, those do not waive

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1 privilege.

2 HIMMELRICH: But a conversation between a Councilmember and a third party would not
3 – would waive the privilege – or would breach the privilege basically.
4 Would be a violation.

5 CARDONA: Yes.

6 HIMMELRICH: And what are the consequences if we have a break in that? If we have a
7 breach of the privilege or breach of the confidentiality of a closed session?

8 CARDONA: The conversations – well, this wasn't in closed session, so it wouldn't be a
9 breach of closed session.

10 HIMMELRICH: I understand that, but ...

11 CARDONA: But if the privilege is breached, then the privilege is often deemed waived
12 and there can be inquiries as to the full context of the conversations by
13 third parties and there's no longer protection for it.

14 DE LA TORRE: May I continue with the questions, Mayor Himmelrich?

15 HIMMELRICH: Yes.

16 DE LA TORRE: Okay. Mr. Cardona, you say you haven't received – you just told us today
17 that you haven't received an opinion from the FPPC and that the Attorney
18 General's Office will also – we cannot – we won't expect an opinion also
19 from the Attorney General's Office, is that correct?

20 CARDONA: Correct. As set out in the staff report I have not received guidance from
21 the FPPC yet and the California Attorney General's Office has advised
22 that they will not provide an opinion because they believe it falls outside
23 their statutory mandate.

24 DE LA TORRE: Who instructed you to seek an opinion from the Attorney General?

25 CARDONA: I made a determination to seek an opinion from the California Attorney
26 General because they are typically the body that provides advice on
27 conflicts of interest, and in the past, they have provided such advice.

28 DE LA TORRE: Okay. Let me ask you a question here. Did you appear as an attorney

1 representing the City of Santa Monica in the trial of the Pico Neighbor-
2 hood Association case versus the City of Santa Monica?
3 CARDONA: I sat through the trial and made occasional appearances. The primary
4 appearances at trial were made by outside counsel who was retained by the
5 City.
6 DE LA TORRE: So, your answer is yes then, right?
7 CARDONA: I made occasional appearances, yes.
8 DE LA TORRE: Occasional appearances in your official capacity for the City of Santa
9 Monica, right?
10 CARDONA: Correct.
11 DE LA TORRE: Okay. Did you advise the previous City Council in the course of that case
12 to not engage in any meaningful settlement discussions and instead pay
13 tens of millions of dollars to you friends at Gibson, Dunn & Crutcher?
14 CARDONA: I cannot answer . . . that would breach privilege.
15 HIMMELRICH: I object. It's privileged information. Excuse me, I'm going to object.
16 George, you shouldn't answer these questions. Oscar, what we have
17 instructed the City Attorney to do until it's determined that you don't have
18 a conflict is not something that you're privy to. In fact, I'm offended that
19 you're asking that question.
20 DE LA TORRE: Alright. Let me ask a further question.
21 HIMMELRICH: Oscar, we're in a public meeting. What we tell our attorneys to do about
22 settlement is as private as what you tell your attorneys to do.
23 DE LA TORRE: I didn't decide to make this a public hearing, but anyway, have you ever
24 advised me that I have a financial conflict of interest in addressing the
25 issue of district elections or the Pico Neighborhood Association case?
26 McCOWAN: Sorry, Councilmember de la Torre, just because you didn't decide to make
27 something a public meeting, this is a public meeting. Because it is a public
28 meeting, you cannot just start to engage in certain conversations that are

1 otherwise privileged. That is your responsibility as the person asking the
2 questions that are leading in an inappropriate direction.

3 DE LA TORRE: We're moving on. We've moved on from that, I understand. Mr. Cardona,
4 do you now contend that I do have a financial interest in the case?

5 HIMMELRICH: I contend you have a financial interest. Forget what George contends. I
6 contend that because you were ordered to pay costs and because you were
7 sanctioned in the Superior Court for not producing discovery to the City,
8 that you have a financial interest in not losing either of those expenses.

9 DE LA TORRE: Yeah, but I'm not . . . [cross-talk]

10 CARDONA: If I could come back for a second. If I could come back for a second. The
11 financial conflicts are not at interest today. All that the staff report
12 addresses is the common law conflict of interest. The financial conflicts, I
13 believe, the better course would be to wait for the FPPC guidance.
14 However, the staff report addresses common law conflicts of interest and
15 as set out in the staff report, I believe the legal analysis demonstrates that
16 you have that type of conflict, which is independent of any financial
17 conflict.

18 DE LA TORRE: Mr. Cardona, who directed you to prepare the January 22 staff report?

19 HIMMELRICH: Objection. Privilege. I'm sorry. Oscar, this is privileged. You may not
20 interfere in our directions to our attorneys in the same way that you, too,
21 when you give them directions in our closed sessions, you, too, will be
22 able to have that be confidential because that's what attorney-client
23 privilege is all about.

24 DE LA TORRE: I'm just trying to understand how, as a City Councilmember, you know,
25 we can direct our City Attorney to do work on our behalf as a City
26 Council? Can one City Councilmember give direction to the City Attorney
27 to do something or is it a collective decision?

28 HIMMELRICH: It is always collective direction. And I've been on the Council for six

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1 years. That is the way it works. There is – it has always been collective.
2 DE LA TORRE: So, is it safe to say that the majority of the City Council directed Mr.
3 Cardona to produce the staff report for January 22? Is that true then? It
4 wasn't just one person? It wasn't one City Councilmember, right?
5 CARDONA: Oscar, I can't answer that question. Again, because it's privileged
6 information.
7 DE LA TORRE: Okay. Well, you know, just so that I understand, it takes four members of
8 the City Council to direct the City Attorney to produce a report or to do an
9 investigation or to do anything, is that correct?
10 HIMMELRICH: Unless it's something that the City Attorney is empowered to do by the
11 Charter and the City Attorney's other obligations as the City Attorney.
12 Some things don't require any direction of anybody because it is what an
13 attorney does.
14 DE LA TORRE: Okay.
15 HIMMELRICH: Or a city attorney does.
16 DE LA TORRE: Thank you. Thanks, Mayor Himmelrich, for that. Mr. Cardona, did you
17 discuss this agenda item with me at any time or otherwise even notify me
18 that this item would be placed on the agenda?
19 CARDONA: Mayor, I'm not sure I can answer that, but I did not have discussions with
20 you, Oscar.
21 DE LA TORRE: I mean, it was put on the agenda on Friday, right? Is that my
22 understanding?
23 CARDONA: Correct.
24 DE LA TORRE: And you didn't pick up a phone, you didn't send me an email, you didn't
25 give me a heads up that that's what was going to happen, right?
26 CARDONA: I did not have conversations with you prior to putting the staff report on,
27 no.
28 DE LA TORRE: Okay. There are a number of points raised in the legal opinion in the letter

1 that I had to get an independent legal opinion from lawyer, Daniel
2 Ambrose. Have you read the entire letter, Mr. Cardona?

3 CARDONA: I have read the entire letter and attempted to address those arguments that
4 I believe merited addressing in the comments I made at the start of this
5 meeting.

6 DE LA TORRE: Okay. And in the Attorney General opinion that you provided in your staff
7 report, you referenced – you showed me that opinion. It’s from 2009 and
8 you told me that it was very similar to the facts in my case. Do you still
9 believe that those facts hold and it’s similar to the facts in my situation?

10 CARDONA: Again, without getting into conversations I had with you, I remain of the
11 view that the principles set out in that case support a conclusion that you
12 were suffering from a common law conflict of interest.

13 DE LA TORRE: So just to remind everybody, in that case, a business obtained an
14 amendment to its conditional use permit from the City of Torrance, its
15 Planning Commission, correct?

16 HIMMELRICH: Oscar, I’m going to call this not questions, but actually a discussion and I
17 think we should move to public comment, hear what the public has to say,
18 and then you can commence this line. Look, I’ve done it myself. I’m a
19 lawyer. I know what you’re doing and I think it’s fine. You are allowed to
20 air, right, you know, the contentions that you are bringing into this
21 meeting about not having a conflict. Let’s hear from the public. You can
22 continue this out.

23 DE LA TORRE: Can I have one more question, the last one. Are you aware, Mr. Cardona,
24 of any authority that allows a City Council to exclude a duly elected
25 councilmember from council discussions, deliberations, and decisions
26 based on an unadjudicated allegation of a conflict of interest? If so, what is
27 that authority?

28 CARDONA: The City Charter, Section 605, vests in the City Council all powers of the

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?

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

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.

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

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

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

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.

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

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.

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

1 play I'm going to call. I mean, it just does not make sense. Similarly, I
2 would never be asking Maria Loya or PNA to attend their sessions with
3 their lawyer, Mr. Schenkman, to discuss what their strategy is going to be
4 on this case, where they are our opponents. And we cannot look at this as
5 if the litigation is identical to the issue of district election. Right? They're
6 separate issues. We can discuss district elections, what they should look
7 like, whether we should have them, whether we need other Charter reform
8 with Oscar de la Torre in the room, you know, at the table, and discussing
9 all of that. What we are talking about is our discussion of a pending piece
10 of litigation that we're getting legal advice on and should somebody who
11 really is part of the opposition be in the room with us? And my answer is
12 no. It shouldn't happen. And Councilmember McKeown, I hear you. I see
13 you.

14 McKEOWN: Well, yeah. I think the point you just made is a key one and I'm not sure
15 here if the public that it's well understood. But there's a big difference
16 between policy discussion and litigation. Now, if this was a matter of
17 policy discussion, there's no question that the duly elected Council-
18 member Oscar de la Torre should be part of that policy discussion, even
19 though his publicly expressed opinion, before he got elected, and arguably
20 a reason he got elected according to some people we heard from is that he
21 opposes the current City position. But this is not, at this point, a policy
22 discussion. I honestly wish it were. I wish that, you know, five years ago,
23 instead of suing the City, people who are interested in district elections
24 had begun the process of public discussion because by now, we could
25 have had a ballot measure and voted on it and the people of this city would
26 have decided what they want to do. Instead, the plaintiffs chose litigation.
27 Oscar was, indeed, part of that team. And like Mayor Himmelrich, I had
28 the experience of being deposed in this case with Oscar in the room. And

1 the only other people in the room were attorneys for their side or the
2 City's side. So, it's very clear that Oscar took a role in the initiation and
3 strategizing of this litigation. And because it's litigation, the situation is
4 very different from its just being a policy discussion. Were this a policy
5 discussion, I'd be fighting that Oscar be in the room. But it's litigation. It's
6 strategy on litigation and for that reason, the common law conflict is quite
7 obvious to me. It's a commonsense conflict and it's hard for me to know
8 how people can, with a straight face, argue otherwise.

9 HIMMELRICH: Anyone else? Oh, okay, so yes, Councilmember Davis.

10 DAVIS: So, I just want to agree with Mayor Himmelrich and Councilmember
11 McKeown that were not here discussing the merits of whether or not we
12 should go to district elections. What we're here is trying to decide who
13 should sit in on what are very confidential discussions about litigation
14 strategy. I cannot imagine, and I have been practicing law for – I hate to
15 admit it – 40 years, ever allowing the spouse of a litigant to come into
16 private discussions when I represent the other side of the litigation. I
17 cannot imagine having someone who was an officer and was an officer at
18 the time the decision was made to sue the City come into very private,
19 very confidential discussions about strategy simply because he
20 subsequently was elected to the City Council and decided to resign his
21 post in that organization. I guess, to me, the shocking thing is that the
22 lawyer for the PNA and Maria Loya is not here because in theory, Oscar's
23 loyalty is now torn between the City and the plaintiffs, and I don't know
24 how he could participate on either side at this point, because he is
25 conflicted out because of his role as a City Councilmember and his role as
26 the plaintiff's spouse, as well as his former role with the named party, the
27 Pico Neighborhood Association. So, I think there is tremendous conflict
28 here and it's only emphasized by the fact that I just learned, apparently, I

1 had not realized it, that the lawyer for PNA and Ms. Loya also represents
2 Mr. de la Torre in his personal capacity. So, the potential for conflict here
3 is rife and, you know, one of the things we have always tried to do is
4 maintain the integrity of closed session and of discussions regarding
5 litigation strategy. And I think that we're called upon to do that here again
6 tonight, and we need to err on the side of integrity. We need to err on the
7 side of being overly cautious about who participates in these very serious
8 discussions. So, I agree with Mayor Himmelrich and Councilmember
9 McKeown.

10 HIMMELRICH: May I tack on? I see you Kristin, but I want to tack onto that. So, I guess I,
11 too, am practicing. Gleam has me by four years. I guess I've been doing it
12 for 36 years, right? But as people may or may not be aware, I have had an
13 analogous situation in the Airbnb litigation, cause my husband's firm
14 represented Airbnb against the City in that litigation. And what that meant
15 for us was he was walled off in his firm so no one in the firm was allowed
16 to speak to him about it or give him any information about that lawsuit,
17 and similarly, I was walled off in the City from this lawsuit so every time
18 we had a discussion about it, I stepped out of the room. Everything I knew
19 about that case was from the newspapers. I didn't even know when we
20 won. I mean, it was a crazy situation, but this is the way it works in
21 litigation when a person who is on the Council or related to someone on
22 the Council is aligned with somebody who's against us. I mean, I think
23 that, you know, and that made sense to me. I didn't fight that. I could have
24 said, "He's walled off. You know, I should be allowed to participate"
25 because I was quite interested in that lawsuit, because I cared about it, and
26 I continued to participate in the policy discussions about short term
27 rentals. So, the distinction between litigation and policy is clear.
28 Councilmember McCowan.

1 McCOWAN: Yeah, so I just – I wanted to say a couple of things. I’m not a lawyer, so
2 that’s why I ask a lot of probably dumb questions sometimes because I
3 don’t want to cross any lines, but I also don’t understand all of the legal
4 nuances. So, I’ll just say that. When it comes to closed session, you know,
5 that is a very sacred space, particularly as it pertains to litigation. Whether
6 we agree with litigation or not, you know, we have to protect the privilege
7 in the closed session. What’s interesting is Zoom has kind of created some
8 additional challenges, right? Like I share an office with my husband,
9 which I’m in right now, and some of you may have seen me occasionally
10 talking because he just finished working at five o’clock. And, you know,
11 but this is an open session, so he was allowed to stay up here through this
12 process. Typically, he gets kicked out and sent back to, you know, deal
13 with the kids. I know I don’t want to speak for Mayor McKeown, I know
14 he has a similar situation. I know Mayor- sorry, Councilmember
15 McKeown – I know Mayor Himmelrich, we all do these... we run through
16 these hoops, right, to protect closed session and the integrity of it and
17 what’s talked about. This is separate and apart from the policy issue and
18 Councilmember de la Torre knows this. We’ve talked about this policy
19 issue of districts, right? And I’ve even said, currently three of us live in
20 what was described as one of the districts in this lawsuit, and I’ve said,
21 and I’ll say it publicly to Councilmember de la Torre, that if we came to
22 districts and it was the Pico in our area, I wouldn’t run against him. That’s
23 not something I would be interested in doing. And he knows that, and I
24 think, you know, we, I’m totally happy to have the district conversation
25 and I would expect Councilmember de la Torre to be there, and I think
26 that’s an opinion held by the majority of this Council. But on this issue of
27 the litigation that started before my time as well and where it stands
28 currently, and whether or not Councilmember de la Torre should be in the

1 room for those strategy conversations, I feel a real conflict, especially
2 because we've had conversations, too, where a desire to learn the
3 information has been discussed. And that's problematic, right? It's like,
4 it's closed session. I can't tell you even, whether you're allowed to be in
5 the room or not, what happened in that closed session. And so, I feel very
6 strongly that this feels like a conflict to me. I would love us to just err on
7 the side of caution. You know, that's it. I'll leave it there.

8 HIMMELRICH: Councilmember Brock.

9 BROCK: This is an afternoon of landmines. City Attorney Cardona, can I ask him a
10 question?

11 HIMMELRICH: Yeah. Of course.

12 BROCK: Okay. George, my questions is, so you said the Attorney General would
13 not rule on this and they won't delve into this matter. The FPPC will rule,
14 but only on the financial conflict which is not relevant. I'm correct on
15 that?

16 CARDONA: That is my belief based on communications with them.

17 BROCK: Okay. So, my issue is that all of us on this call, on this BlueJeans call,
18 have some sort of bias and that bothers me because the Councilmembers
19 who were here before voted to commence a lawsuit. The Councilmembers
20 who were elected have stated publicly that they would like to see the
21 lawsuit end, negotiated, whatever. So, I'm confused. I can't figure out how
22 we should have to make the decision in this matter because all of us have
23 some sort of implicit bias in this particular matter. And I see Sue
24 automatically disagree with me. So, they . . .

25 HIMMELRICH: I'm disagreeing with your use of the phrase implicit bias.

26 BROCK: I had the feeling, maybe explicit biased. No? Neither implicit or explicit.
27 Anyway, so look it, that's an issue and, you know, yes, I don't want that
28 kind of conflict either and I'm bothered by this, and I've been bothered by

1 this for the last hour, on all sides.

2 HIMMELRICH: I see our . . . I'm sorry, go ahead, are you done?

3 BROCK: No. Almost.

4 HIMMELRICH: Okay, go ahead.

5 BROCK: So, I personally don't feel qualified to rule on either side of this matter,
6 And I wish there was a higher body that would take this up, and I wish
7 that Oscar would recuse himself for the evening while we try and figure
8 this out. I have a feeling that none of my wishes will come true on this, so
9 I will abstain on the issue because I don't really know where to go right
10 now on it. Alright? I know that's like kissing your sister, brother, or
11 whatever it is, but I'm going to abstain.

12 HIMMELRICH: Lane, what do you want to ask?

13 DILG: Counsel, I want to step in only for one second. Just because this notion of
14 bias, I do think it's very important to address that. You all have a fiduciary
15 duty to the City, to the public, and I can't resist saying that the name of
16 this lawsuit is Pico Neighborhood Association and Maria Loya versus City
17 of Santa Monica. So, you can decide whatever you want, but I do think
18 these distinctions between your public – your personal opinions and where
19 you are in the litigation are important. You do have a fiduciary duty to the
20 City.

21 HIMMELRICH: Councilmember Parra. Thank you, Lane.

22 PARRA: Thank you, Mayor Himmelrich. I just wanted to note on the record that I
23 also, you know, I'm saddened, and I'm confused, and conflicted by
24 everything that I've heard tonight in terms of, you know, conflict of
25 interest because I'm in agreement. I mean, if you really look at it
26 holistically, you know, every City Councilmember has a conflict here
27 because we, you know, there is a financial loss if we were to go to a
28 district voting, you know, type of a situation and so, you know, like Pro

1 Tem Mayor McCowan said, you know, that if we were to go – I mean, it’s
2 a really exciting time that there are three representatives right now of the
3 Pico Neighborhood on City Council, but who’s to say, you know, down
4 the line, whether Pico Neighborhood is going to be represented or not. So,
5 the reason why I’m just kind of thinking out loud, this is all, you know,
6 upsetting and in some instances, to me, because I understand that there are
7 the difference between policy, you know, having Oscar, or
8 Councilmember de la Torre, being involved with the policy decisions
9 versus being involved or able to vote on this. So, I’m just kind of, like I
10 said, I’m talking out loud just so that – and to share with everybody, where
11 I’m at and what I’m thinking about what I’m hearing tonight, and this is
12 not going to be an easy decision. So, my two cents.

13 HIMMELRICH: Councilmember Davis.

14 DAVIS: There is a significant difference between opinion or bias and conflict of
15 interest. Everybody brings bias to the table. Everybody brings their
16 opinion to the table. The allegation or the decision we have to make
17 tonight is not whether or not Councilmember de la Torre has expressed an
18 opinion. He has. The obligation we have to make is not whether or not he
19 has a bias against the lawsuit. He’s made that very clear. And he is
20 perfectly entitled to both of those things, an opinion and bias. But those
21 are not why there’s a conflict of interest raised. A conflict-of-interest
22 flows from his relationship to the parties that are on the other side of the
23 City in the litigation, and I want to make it clear, somebody said, you
24 know, “I wasn’t on the Council when the City decided to file this lawsuit.”
25 No, no, no. The City did not decide to file this lawsuit. Maria Loya and the
26 Pico Neighborhood Association sued the City and the City decided to
27 defend itself. So, I want to make it very clear, this is not about Oscar’s
28 opinions, this is not about Councilmember de la Torre’s bias, this is not

1 about any of our opinions or our bias or our stake in our Councilmember
2 seats, however you want to decide it. It has to do with the very clear fact
3 that Mr. de la Torre was, in fact, part of the group, the head of the group
4 that decided to sue the City, that he is married to the individual named
5 plaintiff in the lawsuit, and that those facts in and of themselves create a
6 legal, a common law, but legal conflict of interest. I just want to make it
7 clear. Nobody's denying that we all have opinions about the lawsuit or
8 bringing to it certain bias. That's true with any decision, any decision this
9 Council makes. If that were the case, we might as well all go home and
10 close up the City, and, you know, do tiddlywinks to decide what to do. But
11 this is about a very specific legal issue, and I think we, as a Council, have
12 a fiduciary duty to decide the issue of whether or not Councilmember de la
13 Torre has a conflict because it goes directly to the integrity of the City.

14 HIMMELRICH: Councilmember McKeown. You had your hand up still?

15 McKEOWN: I did. I'm going to try a motion based on all the discussion I've heard
16 so far. I move that this City Council respectfully request Councilmember
17 de la Torre to recuse himself on all matters heretofore involving Pico
18 Neighborhood and Maria Loya versus the City of Santa Monica and that
19 should he decline that respectful request, that we determine that there
20 exists a conflict of interest such that he should not be a participant in such
21 discussions.

22 HIMMELRICH: Do I hear a second?

23 DAVIS: Second.

24 HIMMELRICH: Motion by McKeown, seconded by Davis that we request that
25 Councilmember de la Torre recuse himself, and should he decline, that we
26 determine that he is disqualified. Was that an accurate statement of the
27 motion?

28 McKEOWN: It was.

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

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

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

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

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

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?

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

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?

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

- 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

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.

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

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

1 **PROOF OF ELECTRONIC SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county aforesaid; I am over the age of 18 years and not a party to the
4 within action. My business address is 155 N. Lake Avenue, Pasadena, CA 91011.

5 I hereby state that I electronically filed the following documents with the Clerk of the Court for
6 the Superior Court of California, County of Los Angeles through First Legal, our Electronic Filing
7 Service Provider, on March 16, 2022 described as:

8 **DOCUMENT(S) SERVED:**

- 9 **1. DEFENDANT CITY OF SANTA MONICA’S NOTICE OF ERRATA**
10 **REGARDING DECLARATION OF CAROL M. SILBERBERG IN SUPPORT OF**
11 **DEFENDANT CITY OF SANTA MONICA’S MOTION FOR SUMMARY**
12 **JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION.**

13 All participants in the case are listed below and service will be accomplished through our
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By /s/ Carol M. Silberberg
Carol M. Silberberg