

1 CHRISTOPHER M. HARDING (SBN: 76681)
harding@hlkklaw.com
2 1250 Sixth Street, Suite 200
Santa Monica, California 90401
3 Telephone: (310) 393-1007

4 JOSEPH A. PERTEL (SBN: 181657)
THE LAW OFFICE OF JOSEPH PERTEL
5 jpertel@yahoo.com
2801 Ocean Park Boulevard, #276
6 Santa Monica, California 90405
Telephone: (310) 503-5791

7
8 Attorneys for AMICI CURIAE LEAGUE OF
WOMEN VOTERS OF SANTA MONICA, et al.
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12

13 OSCAR DE LA TORRE and ELIAS SERNA,)
14 Plaintiffs,)

15 v.)

16 CITY OF SANTA MONICA,)
17 And DOES 1 through 10, inclusive)

18 Defendants.)
19)
20)
21)

CASE NO.: 21STCV08597

) Assigned to Hon. Richard L. Fruin

) **APPLICATION OF LEAGUE OF WOMEN**
) **VOTERS OF SANTA MONICA, SANTA**
) **MONICANS FOR INTEGRITY IN**
) **GOVERNMENT, COMMUNITY FOR**
) **EXCELLENT PUBLIC SCHOOLS, AND**
) **THE ALLIANCE OF SANTA MONICA**
) **LATINO AND BLACK VOTERS FOR**
) **LEAVE OF COURT TO FILE AN AMICUS**
) **CURIAE BRIEF IN SUPPORT OF**
) **DEFENDANT CITY OF SANTA**
) **MONICA'S MOTION FOR SUMMARY**
) **JUDGMENT; [PROPOSED] AMICUS**
) **BRIEF**

22
23 Hrg Date: May 6, 2022

24 Time: 9:15 A.M.

25 Dept: 15

26 Reservation No. 661700682638

27 Action Filed: March 4, 2021

28 Trial Date: May 16, 2022

1 As the attached Amicus Brief explains, plaintiff de la Torre has failed to comply with this
2 core purpose of the law. In particular, de la Torre failed to advise his colleagues on the Santa
3 Monica City Council and the general public about his financial ties to CVRA plaintiff Maria Loya,
4 either prior to or during the City Council’s January 26, 2021 vote on the de la Torre conflict issue.
5 De la Torre also failed to disclose the gifts of free legal advice he has received from CVRA
6 plaintiffs’ attorney Shenkman, who has acted as de la Torre’s legal advisor with respect to the
7 conflict-of-interest issue beginning in December 2020, prior to the City Council’s January 26, 2021
8 hearing that resulted in de la Torre’s disqualification.

9 With respect to the democratic process, the California Constitution (article XI, section 3)
10 empowers the Santa Monica voters, through a democratic election, to approve any proposed
11 changes to the Santa Monica City Charter including changes to the City Charter provision
12 establishing at-large City Council elections. Plaintiff de la Torre’s announced purpose in seeking
13 injunctive relief from this Court is to subvert this democratic right of the Santa Monica voters by
14 having the City Council concede the CVRA case without any voter involvement. This, quite clearly,
15 would be undemocratic. And, as the attached Amicus Brief argues, it would violate article XI,
16 section 3 of the California Constitution.

17 Below is a brief description of the four Amici and their interest in this lawsuit:

18 1. League of Women Voters of Santa Monica (“LWVSM”): LWVSM is a non-partisan, non-
19 profit, political organization that encourages informed and active participation in government and
20 seeks to influence public policy through education and advocacy. [http://my.lwv.org/california/santa-](http://my.lwv.org/california/santa-monica)
21 [monica](http://my.lwv.org/california/santa-monica). Advocacy for voting rights, including expanded access to the vote and voter empowerment,
22 are core components of the LWVSM’s mission. LWVSM supports integrity and transparency in
23 government decision-making and the laws that protect these important civic values, including the
24 California Political Reform Act (Government Code sections 81000 et seq.) and the law governing
25 common law conflicts of interest of public officials. A copy of LWVSM’s written public
26 communication to the City Council about the de la Torre conflict of interest issue is included in the
27 record as part of Exhibit E to the Declaration of Denise Warren.

1 2. Santa Monicans for Integrity of Government (“SMIG”): SMIG is an unincorporated, all-
2 volunteer association of Santa Monica residents formed last year in response to de la Torre’s efforts
3 to participate in closed session City Council deliberations and voting on the CVRA case. Prior to
4 the City Council’s January 26, 2021 hearing, SMIG submitted written public communication to the
5 City Council pointing out that de la Torre has a common law conflict of interest (and potentially a
6 financial conflict of interest) that raises public interest concerns about the City Council’s integrity
7 and the appearance of impropriety if de la Torre were allowed to participate in City Council closed
8 session deliberations and voting on the CVRA lawsuit. A copy of SMIG’s written public
9 communication to the City Council is included in the record as part of Exhibit E to the Declaration
10 of Denise Warren.

11 3. Community for Excellent Public Schools (“CEPS”): CEPS is a non-profit organization
12 formed about 20 years ago. CEPS consists of parents, teachers and civic leaders who share a
13 commitment to ensuring excellent public schools in Santa Monica and Malibu, pre-kindergarten
14 through community college. <http://www.excellentpublicschools.org/>. CEPS is committed to
15 integrity and transparency in City government decision-making and to the Santa Monica voters’
16 democratic right to decide on proposed changes to the Santa Monica City Charter including with
17 respect to the manner of electing the City Council. CEPS supports Santa Monica’s system of at-
18 large elections for City Council, which ensures elected officials approach issues from a community-
19 wide perspective and because at-large elections have successfully ensured broad and inclusive
20 community representation on the City Council and other elected boards.

21 4. The Alliance of Santa Monica Latino and Black Voters (“Alliance”): The Alliance is an *ad*
22 *hoc* coalition of Latino and Black residents and voters of Santa Monica. The Alliance shares with
23 LWVSM, SMIG and CEPS a commitment to integrity and transparency in City government
24 decision-making. The Alliance also supports the democratic rights of Santa Monica voters to decide
25 on proposed changes to the Santa Monica City Charter including with respect to City Council
26 elections. The Alliance believes, based on decades of experience, that Santa Monica’s Latino and
27 Black voters have achieved far greater voting power, influence and success under the City’s at-large
28

1 election system than they would exercise under a district elections system. The Alliance is co-
2 chaired by civic leaders Antonio Vazquez, Santa Monica's first Latino Mayor (2015-2016), a
3 former City councilmember elected to office three times for a total of ten years (1990-1994 and
4 2012-2019) and a long-time Santa Monica resident (currently an elected member of the State Board
5 of Equalization), and Nat Trives, Santa Monica's first Black Mayor (1975-77), a former City
6 councilmember elected to office two times for a total of eight years (1971-79) and a long-time Santa
7 Monica resident. The Alliance was formed last year to participate as an Amicus Curiae in the Santa
8 Monica CVRA case.

9
10 Dated: April 7, 2022

Respectfully submitted,

11 */s/ Christopher M. Harding*
12 Christopher M. Harding

13 LAW OFFICE OF JOSEPH PERTEL

14 By: */s/ Joseph A. Pertel*
15 Joseph A. Pertel

16 *Attorneys for Amici Curiae League of Women*
17 *Voters of Santa Monica, et al.*

1 **[PROPOSED]**
2 **AMICUS BRIEF IN SUPPORT OF DEFENDANT CITY OF**
3 **SANTA MONICA’S MOTION FOR SUMMARY JUDGMENT**

4 **I. INTRODUCTION**

5 In 2016, plaintiff Oscar de la Torre (“de la Torre”), as President of the Pico Neighborhood
6 Association (“PNA”), and his spouse, Maria Loya, filed a lawsuit against the City of Santa Monica
7 arguing that the City’s at-large City Council elections, as established and mandated by the Santa
8 Monica City Charter since 1947,¹ violates the California Voting Rights Act, known as the
9 “CVRA.”² Plaintiffs’ lead counsel in the CVRA case has been and remains attorney Kevin
10 Shenkman.

11 The CVRA case is currently pending in the California Supreme Court (Case No. S263972).
12 The CVRA case is fully briefed and awaiting oral argument.

13 De la Torre’s role as a plaintiff in the CVRA case is indisputable.³ Until the November 2020
14 City Council election, de la Torre actively served as a board member and President of plaintiff
15 PNA.⁴ And de la Torre has served as plaintiff PNA’s primary representative throughout the CVRA
16 lawsuit. De la Torre’s participation in the CVRA lawsuit began in June 2015, when his initial
17 discussions with attorney Shenkman commenced.⁵ This participation has included attending
18 depositions and having his own deposition taken as PNA’s person most knowledgeable about the
19 matters in question. De la Torre also testified at trial on behalf of the plaintiffs. Indeed, de la Torre
20 has at all times been a central figure on the plaintiffs’ side of the CVRA lawsuit, working in concert
21 with attorney Shenkman (his “friend” and one of his “trusted attorneys”)⁶ and CVRA co-plaintiff
22 (and spouse) Loya.⁷

23 ¹ See Santa Monica City Charter section 600, which states in relevant part: “The City Council
24 shall consist of seven members elected from the City at large, at the times and in the manner in this
25 Charter provided, and who shall serve for a term of four years.”

26 ² The CVRA is codified at Elections Code sections 14025 et seq.

27 ³ See City’s Separate Statement of Undisputed Material Facts (“City SF”) at 10 (“De la Torre
28 refers to himself as a plaintiff in the CVRA Action.”)

⁴ See City SF at 7.

⁵ See City SF at 12.

⁶ See City SF at 132-133.

⁷ See City SF at 7-9, 11-13, 31-32, 37, 41-42, 45, 48, 52-56.

1 Since taking office as a councilmember in December 2020, de la Torre has pursued a so-
2 called settlement of the CVRA case whereby the City Council would concede the merits of the case
3 to plaintiffs without submitting the issue of district City Council elections to a democratic vote of
4 the people.⁸ In doing so, de la Torre has continued working with attorney Shenkman and CVRA
5 plaintiff Loya.

6 Attorney Shenkman has also been assisting de la Torre with the conflict-of-interest issue.
7 Shenkman’s legal assistance to de la Torre on the conflict-of-interest issue began shortly after de la
8 Torre’s election to the City Council. In December 2020, de la Torre received “preliminary legal
9 advice” concerning the conflict of interest issue from Shenkman’s firm⁹ and drafted a letter to the
10 Fair Political Practice Commission on the Shenkman firm’s computer.¹⁰ Between January 23 and
11 26, 2021, de la Torre received legal advice and draft comments from Shenkman about the conflict
12 issue.¹¹ Notably, de la Torre has asserted attorney-client privilege for his communications with
13 Shenkman in the period leading up to the City Council’s January 26th hearing.¹² But de la Torre has
14 not compensated attorney Shenkman for his legal advice on the conflict of interest issue.¹³

15 On January 26, 2021, the Santa Monica City Council agendized and held a public hearing on
16 the de la Torre common law conflict question relating to the CVRA case. Scheduled for the same
17 night was a closed session City Council attorney-client briefing and confidential discussion of the
18 case. That night the City Council received written comments from the general public raising
19 concerns about de la Torre’s conflict of interest, including from Amici League of Women Voters of
20 Santa Monica (“LWVSM”) and Santa Monicans for Integrity in Government (“SMIG”).¹⁴ And the
21
22

23 ⁸ See City SF at 109-111. Amici do not believe the City Council may lawfully concede the
24 CVRA case absent a court order directing district City Council elections. See California
25 Constitution article XI, section 3(a) (changes to a City Charter do not take effect unless and until
approved by a democratic vote of the electorate).

26 ⁹ See City SF at 65.

27 ¹⁰ See City SF at 66.

28 ¹¹ See City SF at 68-69.

¹² See City SF at 138.

¹³ See City SF at 126.

¹⁴ See Declaration of Denise Warren Exhibit E.

1 City Council heard public testimony, followed by City Council deliberations. De la Torre was
2 allowed to participate fully in the January 26th public hearing.¹⁵

3 The LWVSM's letter to the City Council specifically raised public interest concerns about
4 government integrity and potential risks to the City's fiscal and reputational health if de la Torre
5 were not disqualified:

6 "The League of Women Voters believes that democratic
7 government depends upon informed and active participation at all
8 levels of government. Furthermore, **we support accountability
and transparency in government.**

* * *

9 ... [T]he facts remain that if Councilmember de la Torre were to
10 participate in the City Council's discussions and decisions
11 regarding the litigation against the City, he **would be privy to
privileged information for a case in which he has personal
connections to both plaintiffs** and has served as the spokesperson
12 of one of the plaintiffs during the course of the litigation (and the
other plaintiff is his wife).

13 The situation appears to indicate that he wishes to participate in
14 both sides of a litigation. Regardless of any financial arrangements,
15 this is **a clear conflict of interest and could potentially expose
the city to both fiscal and reputational damages.**"¹⁶

16 SMIG, in its written public comment to the City Council dated January 26, 2021, argued for
17 plaintiff de la Torre's disqualification based upon both his potential financial conflict of interest as
18 well as his common law conflict of interest. On the issue of financial conflict of interest, SMIG
19 anticipated the potential for de la Torre having financial entanglements that he had not yet
20 disclosed:

21 "SMIG is also concerned that Councilmember de la Torre may
22 have a further financial interest in the outcome of this lawsuit that
23 warrants a preliminary investigation, at a minimum. In this regard,
24 plaintiffs' counsel has filed an attorney's fees motion in this case
25 seeking an award of attorney's fees (not including appellate work)
26 against the City in excess of \$21 million and nearly \$1 million in
27 costs. In order to assess the financial conflict issue, the City needs

28 ¹⁵ See Declaration of Carol M. Silberberg Exhibit 20.

¹⁶ See Declaration of Denise Warren Exhibit E.

1 to know whether Councilmember de la Torre or his family has any
2 financial stake in this lawsuit’s outcome.”¹⁷

3 Since January 26, 2021, Amici and others have learned through discovery that both prior to
4 and during the City Council’s January 26th hearing, plaintiff de la Torre concealed his financial
5 relationships with CVRA plaintiff Maria Loya (his spouse) and with CVRA plaintiffs’ attorney
6 Shenkman. In particular, de la Torre concealed that he receives financial payments from Loya’s
7 wholly-owned company, Holistic Strategies Coaching & Consulting LLC (“Holistic”), and receives
8 free legal advice from attorney Shenkman.¹⁸ Because de la Torre had concealed his financial
9 dependence on Loya and Shenkman when a determination was sought from the FPPC as to whether
10 de la Torre had a financial conflict of interest that would preclude him from participating in City
11 Council closed session discussions and voting on the CVRA case, the City Council only addressed
12 de la Torre’s common law conflict of interest and the financial conflict issue was not considered by
13 the City Council in its January 26th hearing.¹⁹

14 De la Torre also concealed his reliance on attorney Shenkman for free legal advice on the
15 conflict-of-interest issue. Indeed, attorney Shenkman worked with de la Torre on draft comments
16 for the January 26th City Council hearing and sat with de la Torre in the de la Torre/Loya home
17 during the City Council’s January 26th virtual public hearing. Notably, de la Torre did not disclose
18 attorney Shenkman’s presence in his home during the City Council’s January 26th hearing, either to
19 his City Council colleagues or to the general public.²⁰

20 Upon completion of the City Council’s public hearing on January 26th, a majority of the City
21 Council decided that de la Torre has a common law conflict of interest that precludes him from City
22

23 ¹⁷ See Declaration of Denise Warren Exhibit E. Attorney Shenkman’s firm is seeking \$13.4
24 million in attorney’s fees for their trial court work. The balance of the \$21 plus million dollar
25 attorney’s fees request is for co-counsel.

26 ¹⁸ On Loya’s payments to de la Torre, *see* City SF at 143-4; for Shenkman’s free legal advice to
27 de la Torre, *see* City SF at 96-126.

28 ¹⁹ See Declaration of Carol M. Silberberg Exhibit 40. De la Torre did not disclose in his FPPC
filing (Form 700) his payments from Holistic Strategies until mid-2021, well after such disclosure
was legally required. Moreover, as of April 6, 2022, de la Torre has not disclosed in his FPPC
filings his receipt of free legal advice from attorney Shenkman.

²⁰ City SF at 75-76.

1 Council deliberations and voting in the CVRA lawsuit. The vote was four in favor, two against
2 (including de la Torre), and one abstention.²¹ In making this decision, the City Council was guided
3 by legal advice from its City Attorney.²²

4 In explaining to the public her reasons for voting that de la Torre has a common law
5 conflict, Mayor (and attorney) Sue Himmelrich offered:

6 “I’m a lawyer. I have a pretty strong opinion, I talked to Oscar
7 over the weekend. I feel Oscar is disqualified in this case. Oscar
8 was in my deposition in this case, was in another depositions in
9 this case, worked on the strategy in this case, and as I said to Oscar
10 over the weekend, it’s like a football game, right? If I am going
11 into a huddle to do my last charge towards the goal line, I am not
12 inviting the coach for the other team into my strategy session about
13 the play I’m going to call. I mean, it just does not make sense.
14 Similarly, I would never be asking Maria Loya or PNA to attend
15 their sessions with their lawyer, Mr. Shenkman, to discuss what
16 their strategy is going to be on this case, where they are our
17 opponents.”²³

18 Mayor Himmelrich distinguished de la Torre’s common law conflict with respect to the
19 CVRA lawsuit from his participation in policy discussions about district elections, stating:

20 “We can discuss district elections, what they should look like,
21 whether we should have them, whether we need other Charter
22 reform with Oscar de la Torre in the room, you know, at the table,
23 and discussing all of that. What we are talking about is our
24 discussion of a pending piece of litigation that we’re getting legal
25 advice on and should somebody who really is part of the
26 opposition be in the room with us?”²⁴

27 After the City Council voted on January 26th to disqualify de la Torre, De la Torre filed this
28 new lawsuit challenging the City Council’s January 26th determination that he has a common law
conflict of interest.

26 ²¹ See City SF at 88.

27 ²² See Declaration of Carol M. Silberberg Exhibit 40.

28 ²³ See Defendant City of Santa Monica’s Notice of Errata Concerning Declaration of Carol M.
Silberberg Exhibit 40.

²⁴ *Id.*

1 Since January 26, 2021, de la Torre has continued to rely on Shenkman for legal assistance
2 concerning the conflict-of-interest issue, including in this lawsuit. Discovery confirms there have
3 been ongoing communications between de la Torre, Shenkman, and de la Torre’s counsel of record
4 in this lawsuit (Mr. Trivino-Perez) beginning before its filing. Shenkman does not deny assisting
5 Mr. Trivino-Perez in drafting the pleadings;²⁵ Shenkman has regularly received copies of court and
6 other case-related documents from Mr. Trivino-Perez;²⁶ Shenkman has attended case-related
7 meetings with counsel for the City;²⁷ and Shenkman has prepared his own declaration for submittal
8 to this Court.²⁸ The undisputed evidence shows that Shenkman has provided these legal advice to de
9 la Torre for free; de la Torre has not paid any compensation to Shenkman in consideration for these
10 services.²⁹

11 In this Brief, Amici argue that plaintiff de la Torre has intertwined financial and common
12 law conflicts of interest involving attorney Shenkman and co-plaintiff Loya that support the City
13 Council’s January 26th decision to disqualify him from participating in City Council deliberations
14 and voting on the CVRA lawsuit. In addition, Amici argue that de la Torre’s efforts to have the City
15 Council concede the CVRA case, without submitting the issue of district elections to a vote of the
16 people, should weigh against his request for injunctive relief. De la Torre’s objective is to persuade
17 a majority of the City Council to concede the CVRA lawsuit and establish district elections for City
18 Council, effectively amending the City Charter in violation of the democratic rights of Santa
19 Monica’s voters to have the final say over changes to the City Charter. (California Constitution art.
20 XI, section 3(a).)³⁰

21 If de la Torre is successful in this effort, he would put his friend, trusted attorney, and source
22 of free legal advice, CVRA plaintiffs’ attorney Kevin Shenkman, in a strong position to recover

24 ²⁵ See City SF at 99.

25 ²⁶ See City SF at 101, 113-119.

26 ²⁷ See City SF at 120.

27 ²⁸ See City SF at 121-123.

28 ²⁹ See City SF at 126.

29 ³⁰ Amici believe it is hypocritical for de la Torre and attorney Shenkman to use the CVRA
(voting rights) case as leverage in an attempt to circumvent the voting rights of Santa Monica’s
voters under the California Constitution to decide the fate of proposed changes to the Santa Monica
City Charter.

1 millions of dollars in legal fees in the CVRA case. And such fees would be paid by the very
2 taxpayers who would be denied their right to vote on the proposed change in the City’s elections
3 system for the City Council.³¹

4 **II. DE LA TORRE HAS A FINANCIAL CONFLICT OF INTEREST THAT**
5 **PRECLUDES HIS PARTICIPATION IN CITY COUNCIL DELIBERATIONS AND**
6 **VOTING ON THE CVRA CASE**

7 In prior demurrer hearings, this Court has focused on the common law conflict of interest
8 issue. However, discovery has uncovered clear evidence of de la Torre’s financial conflict of
9 interest that, by itself, precludes his presence in closed session attorney-client briefing, litigation
10 strategy, and any City Council vote to settle the CVRA lawsuit. Amici submit that because the
11 California Political Reform Act (“PRA”) and Government Code section 1090 disqualify de la Torre
12 from participating as a councilmember in the CVRA case due to his financial conflict of interest,
13 this Court need not address whether he has a common law conflict of interest (though Amici
14 address this issue in section IV below).

14 **A. De la Torre Has Received and Is Receiving Free Legal Advice from CVRA**
15 **Plaintiffs’ Attorney Shenkman.**

16 Amici are especially troubled by de la Torre’s lack of disclosure and apparent intentional
17 obfuscation of the de la Torre/attorney Shenkman financial relationship and suggest this Court
18
19
20

21 ³¹ The CVRA plaintiffs have suggested at times that district elections have popular support in
22 Santa Monica. Their actions and Santa Monica’s elections history indicate otherwise.

23 The City of Santa Monica is a charter city, with at-large City Council elections established in
24 the City Charter since 1947. Since then, Santa Monica’s voters have twice rejected charter
25 amendment ballot measures to establish district elections for City Council.

- 26 • In 1975, City voters decisively defeated Proposition 3, which would have amended the
27 City Charter to establish district elections for City Council. (*See* the record in the CVRA
28 case at 26AA11593-11594.)
- In 2002, the Santa Monica voters again overwhelmingly rejected a ballot measure
(Measure HH) that included proposed amendments to the City Charter and Municipal
Code to establish district-based City Council elections. (*See* the record in the CVRA
case at 26AA11613, 28AA12328; RT 5862:21-5864:9.)

This provides context for the CVRA plaintiffs’ choice to pursue district elections in the CVRA
case rather than through the charter amendment process.

1 should be as well (including de la Torre’s failure to disclose his receipt of in-kind donations of free
2 legal advice from Shenkman in his Form 700 on file with the FPPC).³² Briefly:

- 3 • Shenkman has provided de la Torre with free legal advice in this conflict-of-interest
4 lawsuit (and the run-up to it including prior to and during the City Council’s January
5 26, 2021 hearing).³³ In this regard, de la Torre has taken the position that his
6 conversations with Shenkman are protected by attorney-client privilege.³⁴
- 7 • Shenkman and his firm are pursuing an attorney’s fee award against the City totaling
8 over \$13.4 million (for Shenkman’s firm, not including co-counsel) in the CVRA
9 case (not including their appellate work).³⁵
- 10 • If the City were to concede the CVRA case to plaintiffs as de la Torre, Loya and
11 attorney Shenkman are attempting to achieve, a substantial award of attorney’s fees
12 to attorney Shenkman and his co-counsel is reasonably foreseeable.

13 The Fair Political Practices Commission (“FPPC”) is the state administrative agency
14 responsible for administering the PRA, codified at Government Code Sections 81000, *et seq.* The
15 PRA flatly prohibits public officials (including councilmembers such as de la Torre) from voting on
16 matters where they have an actual or perceived financial conflict of interest, including a financial
17 benefit to sources of gifts. The FPPC has determined that a financial conflict exists in circumstances
18 where “it is reasonably foreseeable that the decision will have a material financial effect on a source
19 of gifts of [\$520] or more.” (FPPC Adv. I-95-287 (1995), 1995 WL 912275, at *2; Code Regs., tit.
20 2, § 18700(c)(6)(E).) Attorney Shenkman, through his donation of free legal advice to de la Torre in
21 this case (and the process leading up to it including during the January 26th City Council hearing),
22 is clearly a source of gifts for purposes of the PRA.³⁶

24
25 ³² As of the end of business on April 6, 2022, de la Torre has not filed his Form 700 with the
26 FPPC that was legally due on April 1, 2022 as required by Cal. Gov. Code sections 87203 and 2
27 Cal. Code Regs. section 18723.

28 ³³ See City SF at 65-66, 68-71, 75-76, 82-83.

³⁴ See City SF at 82, 93.

³⁵ See City SF at 57-58.

³⁶ The FPPC’s February 4, 2021 letter indicating that de la Torre did not have a financial
conflict of interest was issued before it was known through discovery in this case that de la Torre

1 This FPPC determination is supported by a key PRA finding as set forth in Government
2 Code section 81001, subdivision (b):

3 “Public officials, whether elected or appointed, should perform their
4 duties in an impartial manner, free from bias caused by their own
5 financial interests or the financial interests of persons who have
supported them.” (Emphasis added.)

6 Amici believe the PRA serves a vital public purpose in this regard: to prevent public
7 officials from voting in service to their financial supporters rather than the public and to maintain
8 the public’s trust in representative democracy. The PRA’s purpose would be subverted if de la
9 Torre were allowed to vote as a councilmember with respect to the CVRA case.

10 De la Torre’s financial conflict vis-à-vis attorney Shenkman also violates Government Code
11 section 1090, which prohibits public officials (including de la Torre) from entering into or making
12 contracts in which they have a financial interest. Here, de la Torre (in concert with attorney
13 Shenkman and de la Torre’s spouse, CVRA plaintiff Loya) is seeking a settlement agreement (i.e., a
14 contract) between the City and plaintiffs in the CVRA case that would benefit attorney Shenkman
15 by facilitating his enormous attorneys’ fees claim in the CVRA case. According to the FPPC:

16 “Although Section 1090 does not specifically define the term
17 ‘financial interest,’ case law and Attorney General Opinions state
18 that prohibited financial interests may be indirect as well direct,
19 and may involve financial losses, or the possibility of losses, as
20 well as the prospect of pecuniary gain. Therefore, ‘[h]owever
21 devious and winding the chain may be which connects the officer
with the forbidden contract, if it can be followed and the
connection made, the contract is void.’” (FPPC, *An Overview of
Section 1090 and FPPC Advice* (October 2020 at p. 9).)³⁷

22 Amici are especially concerned with de la Torre’s lack of transparency concerning the in-
23 kind donation of free legal advice he has received from attorney Shenkman. Counsel for Amici
24 have checked de la Torre’s Form 700 filings with the FPPC and confirmed that, despite the clear
25

26 has been receiving free legal advice from attorney Shenkman and financial compensation from
27 Loya’s company. See City SF at 94.

28 ³⁷ This document can be found at <https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/section-1090/Section%201090%20-%20Overview%20-%20Oct%202020.pdf>.

1 evidence of the free legal advice he has received from attorney Shenkman that emerged in
2 discovery, de la Torre has failed to include the gifts he has received from Shenkman in his Form
3 700 statement of economic interest.³⁸ Thus, de la Torre continues to violate the PRA’s core
4 requirement mandating transparency with respect to his financial benefactors.

5 **B. De la Torre Receives Financial Compensation from CVRA Plaintiff Maria**
6 **Loya’s Wholly-Owned Company.**

7 Amici are also concerned about plaintiff de la Torre’s financial dependence on CVRA
8 plaintiff Loya and how this appears to compromise the autonomy and integrity of de la Torre’s
9 potential voting on the CVRA case. De la Torre’s financial dependence on CVRA plaintiff Loya is
10 undisputed. De la Torre receives financial compensation from Holistic Strategies, a limited liability
11 company wholly-owned by CVRA plaintiff (and de la Torre spouse) Maria Loya.³⁹ This creates a
12 conflict of interest under both the PRA and Government Code section 1090. This conflict of interest
13 is very troubling to Amici because it risks allowing de la Torre’s personal financial interests to
14 outweigh the public interest, thus compromising the integrity and transparency of City decision-
15 making with respect to the CVRA lawsuit.

16 The PRA, in Government Code section 87100, prohibits public officials from influencing
17 any decision in which it is reasonably foreseeable that there will be a material effect on one of their
18 financial interests. A public official at any level of state or local government has a prohibited
19 conflict of interest and may not make, participate in making, or in any way use or attempt to use his
20 official position to influence a governmental decision when he knows or has reason to know he has
21 a disqualifying financial interest. A public official has a disqualifying financial interest if the
22 decision will have a reasonably foreseeable material financial effect, distinguishable from the effect
23 on the public generally, directly on the official or his immediate family.

24 Amici view compliance with this provision of the PRA as vital to protecting the integrity of
25 City decision-making. (*Noble v. City of Palo Alto, supra*). Here, de la Torre is a public official as a
26 member of the City Council. As a City councilmember, he is required to file an annual statement of

27
28 ³⁸ See note 32 herein.

³⁹ See City SF at 143-4.

1 economic interests (Form 700) and is subject to conflict of interest prohibitions. Accordingly, he
2 has a financial interest in any person or entity that is a source of income of \$500 or more to him if
3 that person or entity also does business in the City. (See Government Code section 82030 and FPPC
4 Regulation 18700.1) Since de la Torre receives income of \$500 or more from CVRA plaintiff Loya
5 and her wholly-owned company, he is deemed to have a financial interest in both her as an
6 individual and the company. (See FPPC Regulation 18700.1 (a)(2).)⁴⁰

7 The next question under the PRA is whether the effect of the governmental decision on that
8 interest is “material,” in which case he must fully recuse himself from any involvement in any
9 decision regarding Maria Loya or her company. If Maria Loya is directly involved in the decision,
10 then the interest is *per se* material and he must fully recuse himself from any involvement in the
11 decision. (FPPC Regulation 18702.3.) Here, Maria Loya is a named plaintiff in the CVRA lawsuit
12 and, thus, directly involved in any decision to settle the lawsuit. Therefore, de la Torre has a conflict
13 of interest in any City decision involving the CVRA lawsuit and must fully recuse himself from it.

14 In addition to the conflict-of-interest provisions in the PRA, Government Code section 1090
15 also prohibits conflicts of interest in contracts. Specifically, state and local officers and employees
16 may not be financially interested in any contract made by them in their official capacity, or by any
17 body or board of which they are members.

18 With regard to Government Code Section 1090, the following four-step analysis is used to
19 determine if a conflict exists:

- 20 1. Is the official subject to the provisions of Section 1090?
 - 21 2. Does the decision at issue involve a contract?
 - 22 3. Is the official making or participating in making a contract?
 - 23 4. Does the official have a financial interest in the contract?
- 24
25
26

27 ⁴⁰ Amici have further concerns with the potential financial benefits to Loya’s business if the
28 City were to concede the CVRA case to the CVRA plaintiffs. *See* City SF at 145 (“Loya counts it as
a win ‘when an organization is able to achieve their goals in making their public policy campaign
into a city ordinance.’”).

1 Again, de la Torre is a public official as a member of the City Council. The FPPC and
2 California courts have taken a broad view of the scope of section 1090 in terms of what is a
3 financial interest. Because Maria Loya, through her company, is a source of income to de la Torre,
4 he will have a financial interest under section 1090 in any contract between the City and Maria
5 Loya or her company.⁴¹ And any settlement of the CVRA case would necessarily involve CVRA
6 plaintiff Loya as a party to the settlement. Accordingly, section 1090 precludes de la Torre from
7 voting as a member of the City Council on entering into a settlement of the CVRA case.⁴²

8 **III. DE LA TORRE HAS A COMMON LAW CONFLICT OF INTEREST THAT**
9 **PRECLUDES HIM FROM PARTICIPATING IN THE SANTA MONICA CITY**
10 **COUNCIL’S CONFIDENTIAL DELIBERATIONS AND VOTING ON THE CVRA**
11 **LAWSUIT**

11 Amici’s concerns with plaintiff de la Torre’s financial entanglements with Loya and
12 Shenkman are magnified by their personal entanglements, including their roles and relationships in
13 the CVRA case, the de la Torre/Loya spousal relationship, and de la Torre’s dependence on
14 Shenkman for legal help with respect to the conflict-of-interest issue. Amici believe the core value
15 of integrity in governmental decision-making, whereby elected officials consider the public interest
16 free from their personal loyalties and stakes, would be jeopardized if the City Council were forced
17 to include de la Torre in City Council deliberations and voting on the CVRA case.

18 **A. The Common Law Conflict of Interest Standard for Public Officials in**
19 **California.**

20 The public policy favoring integrity in government decision-making is reflected in the legal
21 prohibition against common law conflicts of interest. Amici note that separate and apart from
22 financial conflicts, the common law rule wisely “prohibits officials from placing themselves in a
23 position where their private, personal interests may conflict with their official duties.” *Clark v. City*
24

25 ⁴¹ The definition of what is a contract under section 1090 is also broad and encompasses
26 agreements such as legal settlements. *See* Government Code section 1091(b)(15).

27 ⁴² Arguably, section 1090 prohibits the City from entering a settlement agreement in the CVRA
28 case even if de la Torre recuses himself. To avoid this result, the City would need to argue that there
is a remote interest exception under Government Code section 1091. If the City were successful,
then de la Torre still must recuse himself from any participation in the decision regarding the
lawsuit, but the City may continue to enter into a settlement.

1 of *Hermosa Beach* (1996) 48 Cal. App. 4th 1152, 1171, quoting from 64 Ops. Cal. Att’y Gen. 795,
2 797 (1981). As a public official, Councilmember de la Torre must “exercise the powers conferred
3 on him with disinterested skill, zeal and diligence and primarily for the benefit of the public.” *Noble*
4 *v. City of Palo Alto* (1928) 89 Cal. App. 47, 51; *see also Clark v. City of Hermosa Beach, supra*, 48
5 Cal. App. at 1170-71.

6 **B. De la Torre has a Common Law Conflict of Interest that Precludes Him from**
7 **Participating in the City Council’s Confidential Deliberations and Voting on the**
8 **CVRA Lawsuit.**

9 Amici submit that the undisputed evidence of de la Torre’s role in the CVRA case, and his
10 relationships with CVRA plaintiff Loya and CVRA attorney Shenkman, clearly demonstrates de la
11 Torre’s common law conflict of interest.

12 The plaintiffs in the CVRA lawsuit are Maria Loya (de la Torre’s spouse) and the PNA
13 (headed by de la Torre). De la Torre has actively participated in the CVRA lawsuit since June 2015,
14 when his initial (and ongoing) discussions with attorney Shenkman commenced.⁴³ At all relevant
15 times until shortly after the November 2020 election, de la Torre served as a board member and
16 President of plaintiff PNA. And de la Torre has served as plaintiff PNA’s official representative
17 throughout this lawsuit, including attending depositions, having his own deposition taken as PNA’s
18 most knowledgeable person, and testifying at trial.⁴⁴ Overall, de la Torre’s personal involvement as
19 a plaintiff in the CVRA case, combined with his entanglements with both CVRA plaintiff Loya and
20 CVRA attorney Shenkman, prevent him from exercising his powers as a councilmember “with
21 disinterested skill, zeal and diligence primarily for the benefit of the public.” (*Noble v. City of Palo*
22 *Alto, supra.*)

23 Despite de la Torre’s concealment of his financial ties with Shenkman and Loya, de la
24 Torre’s personal interest in the CVRA case has been quite evident to the public (including Amici)
25 since his election to the City Council in November 2020. This has included:

- 26 • At the January 26, 2021 City Council public hearing, plaintiff de la Torre spoke in
27 favor of the City Council conceding the CVRA case. In doing so, he was aided by

28 ⁴³ See City SF at 12.

⁴⁴ See City SF at 7-9, 11-13, 31-32, 37, 41-42, 45, 48, 52-56.

1 CVRA plaintiffs’ attorney Kevin Shenkman--who was sitting with him at the de la
2 Torre/Loya home during the City Council’s virtual meeting (though de la Torre did
3 not disclose Shenkman’s presence at the de la Torre/Loya home during the City
4 Council’s consideration of this agenda item).⁴⁵ Indeed, de la Torre has asserted
5 attorney-client privilege for his communications with Shenkman in relation to the
6 January 26th City Council hearing, including the advice he received from Shenkman
7 prior to the hearing.⁴⁶ Amici submit this cannot be reconciled with the common law
8 conflict of interest principles that are designed to protect the integrity and
9 transparency of government decision-making.

- 10 • De la Torre has attended meetings of various local organizations to advocate for
11 conceding the CVRA case. For example, on April 12, 2021, de la Torre and his
12 spouse, CVRA co-plaintiff Loya (accompanied once again by attorney Shenkman),
13 attended a virtual meeting of the Santa Monica Democratic Club. The ostensible
14 purpose of de la Torre’s attendance was to discuss the policy issue of district versus
15 at-large elections for City Council. Instead, de la Torre was joined by attorney
16 Shenkman and together they advocated for the City to concede the CVRA case.⁴⁷
- 17 • About the time Councilmember Lana Negrete was appointed to the City Council on
18 June 29, 2021 (to fill a vacancy caused by a mid-term resignation), de la Torre (again
19 accompanied by attorney Shenkman) visited Ms. Negrete and pressed her to vote in
20 favor of settling the CVRA case by conceding district elections.⁴⁸

21 De la Torre’s personal interest in the CVRA case’s outcome is also manifest in the Amicus
22 Brief he filed in the California Supreme Court in the CVRA case. Filed in June 2021, about six
23 months after he was seated on the City Council, de la Torre’s brief expressly asks the California
24 Supreme Court “to reverse the Court of Appeal’s decision, with direction to affirm the Superior
25

26
27 ⁴⁵ See City SF at 68, 69, 70, 75-76.

28 ⁴⁶ See City SF at 82.

⁴⁷ See City SF at 102-105.

⁴⁸ See City SF at 110-111.

1 Court’s judgment.”⁴⁹ Having gone to the trouble of filing his own Amicus Brief in the California
2 Supreme Court, de la Torre’s denial of a personal interest in the CVRA case’s outcome that would
3 compromise the integrity of his decision-making as a councilmember is contradicted by undisputed
4 evidence of de la Torre’s own conduct.

5 Thus, Amici concur with the sworn declaration from attorney, professor and government
6 ethics expert Frank V. Zerunyan, who teaches in the field of government ethics at USC and who has
7 served for many years as a local elected official. As professor Zerunyan states:

8 “While it is my opinion based on my experience and expertise that
9 Mr. de la Torre is entitled to advocate for his position to effectuate
10 the policy change with regard to district-based elections, such as
11 during public comment or 13 items - and I defend his right to do so
12 - but based on the facts I have seen, he improperly seeks to
13 participate in closed sessions regarding the litigation on the
14 California Voting Rights Act (“CVRA”) despite his admitted bias,
15 despite his lack of autonomy, and despite his relationship with his
16 wife, the plaintiff in the CVRA litigation.”⁵⁰

14 De la Torre himself has recently expressed concerns about protecting the integrity of City
15 decision-making in the context of family-based conflicts of interest. In supporting a City anti-
16 nepotism policy prohibiting the spouse of a councilmember from serving on a City board or
17 commission, de la Torre stated that “... like sort of the conflict, you know, as we would call a
18 conflict, because the husband, wife, registered domestic partner, son, daughter, mother, father,
19 brother, and sister of a councilmember would have a hard time sort of distancing themselves or it
20 seems like they could be compromised, right, because of their relationship with a
21 councilmember.”⁵¹ Amici submit that the same point holds true in reverse: a councilmember cannot
22 be disinterested in dealing with a lawsuit filed by his or her spouse against the City, as is true with
23 de la Torre and the CVRA lawsuit. As de la Torre has admitted, he has loyalty to his spouse, CVRA

27 ⁴⁹ See Declaration of Carol M. Silberberg Exhibit 20.

28 ⁵⁰ See Declaration of Frank V. Zerunyan at 20.

⁵¹ See City SF at 108.

1 plaintiff Loya, and is proud of her role as a plaintiff in the CVRA case.⁵² Amici are troubled that,
2 by de la Torre’s own admission, he is not in a position to exercise the disinterested judgment
3 required by law when voting whether the City should concede the CVRA case in favor of his
4 spouse.

5 **C. The City Council’s January 26, 2021 Vote to Exclude de la Torre Was Narrowly**
6 **Limited in Scope to the Pending CVRA Lawsuit and Does Not Affect His Right**
7 **to Participate in Public Debate (Including City Council Debate) Concerning the**
8 **Issue of At-Large Versus District City Council Elections.**

8 In overruling the City’s demurrers (second round), this Court characterized the underlying
9 dispute as political in nature. There are, without question, political differences in Santa Monica
10 about at-large versus district City Council elections. But this lawsuit and the City’s summary
11 judgment motion do not address or seek to resolve such political differences.⁵³

12 The only issue for this Court to resolve is de la Torre’s ability to participate in City Council
13 confidential attorney briefings and voting on whether to concede the CVRA lawsuit. This is, quite
14 clearly, a legal/judicial matter. De la Torre’s ability to participate in discussions as to the merits of
15 district versus at-large City Council elections is not impacted by the City Council’s January 26,
16 2021 decision. Regardless of this case’s outcome, de la Torre is free to speak publicly in favor of
17 plaintiffs’ position in the CVRA case.

18 De la Torre also remains free to agendize and participate in City Council discussions of
19 election reform including the manner of electing the City Council.⁵⁴
20
21

22 ⁵² See City SF at 135-136. Here, de la Torre’s conflict of interest is even worse. De la Torre is
23 also effectively a plaintiff in the CVRA case. See City SF at 10 (“De la Torre refers to himself as a
24 plaintiff in the CVRA Action.”)

25 ⁵³ No one is questioning participation by Councilmembers Brock and Parra in the City Council’s
26 closed session deliberations and voting on the CVRA case, though they have expressed views on
27 the case that match de la Torre’s.

28 ⁵⁴ Under the Santa Monica City Council’s practice, de la Torre as a councilmember has the
power, individually or in concert with one or two of his City Council colleagues, to place a “13
item” on the City Council agenda to discuss the policy issue of at-large versus district City Council
elections, including a possible charter amendment to convert from at-large elections to district
elections for City Council. In fact, councilmember-sponsored “13” items are common in Santa
Monica.

1 **IV. THIS COURT SHOULD DENY DE LA TORRE THE INJUNCTIVE RELIEF HE IS**
2 **SEEKING**

3 Amici submit that, for the reasons addressed in sections III and IV herein, this Court should
4 deny de la Torre the injunctive relief he is seeking. In particular, Amici take note of de la Torre’s
5 unclean hands insofar as he concealed his financial ties to CVRA plaintiff Loya and attorney
6 Shenkman, including Shenkman’s free professional assistance to de la Torre with respect to the
7 conflict of interest issue.

8 Moreover, in addition to de la Torre’s financial and common law conflicts of interest, Amici
9 are troubled that de la Torre is seeking an injunction for the purpose of subverting the democratic
10 right of the Santa Monica voters to decide on a proposed City Charter amendment converting from
11 at-large City Council elections to district elections.⁵⁵ Amici submit that any City concession of the
12 CVRA lawsuit without submitting the issue to a vote of the people would violate article XI, section
13 3(a) of the California Constitution, which empowers the Santa Monica voters—not the City
14 Council—with final say over proposed changes to the City Charter.

15 In response, plaintiffs will argue that the City Charter provision for at-large elections
16 violates the CVRA. But this CVRA issue remains unresolved; the CVRA case is pending in the
17 California Supreme Court and awaiting decision. To establish district City Council elections, the
18 trio of de la Torre, Loya and Shenkman will need to prevail in the California Supreme Court (or in a
19 lower court if the case is remanded). That is what the law requires: absent a final, binding court
20 ruling holding that Santa Monica’s at-large elections for City Council violate the CVRA, Santa
21 Monica voter approval is required to change the method of electing the Santa Monica City Council.
22 The City Council, acting on its own, cannot make such a change, whether in the form of a CVRA
23 settlement or otherwise.

24
25
26
27
28

⁵⁵ This purpose is clear from many public statements made by de la Torre, including in his
Amicus Brief on file with the California Supreme Court. *See* Declaration of Carol M. Silberberg
Exhibit 20.

1 **V. CONCLUSION**

2 Amici have approached the de la Torre conflict of interest issue out of concern for the
3 integrity and transparency of government decision-making, public values that are embodied in the
4 state statutes governing financial conflicts of interest and the common law conflict of interest
5 doctrine. From this perspective, Amici believe de la Torre’s intertwined and extensive personal and
6 financial relationships with Shenkman and Loya, underscored by de la Torre’s concealment of
7 much of the relevant information, legally disqualify him from participation in City Council closed
8 session deliberations and voting on the CVRA case. Amici submit the public would have good
9 reason to question the integrity of City Council decision-making if de la Torre were allowed to
10 participate.

11 In sum, the public interest and the law support the conclusion that de la Torre has a conflict
12 of interest with respect to the CVRA lawsuit. Accordingly, the City’s summary judgment motion
13 should be granted.

14 Dated: April 7, 2022

Respectfully submitted,

15 */s/ Christopher M. Harding*

16 Christopher M. Harding

17
18 LAW OFFICE OF JOSEPH PERTEL

19 By: */s/ Joseph A. Pertel*

Joseph A. Pertel

20 *Attorneys for Amici Curiae League of Women Voters*
21 *of Santa Monica, et al.,*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF ELECTRONIC SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years, and I am not a party to this action. My address is 1250 Sixth Street, Suite 200, Santa Monica, California 90401.

I hereby state that I electronically filed the foregoing document with the Clerk of the Court for the Superior Court of California, County of Los Angeles through Janney & Janney, our Electronic Filing Service Provider, on April 7, 2022 described as:

APPLICATION OF LEAGUE OF WOMEN VOTERS OF SANTA MONICA, SANTA MONICANS FOR INTEGRITY IN GOVERNMENT, COMMUNITY FOR EXCELLENT PUBLIC SCHOOLS, AND THE ALLIANCE OF SANTA MONICA LATINO AND BLACK VOTERS FOR LEAVE OF COURT TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT CITY OF SANTA MONICA’S MOTION FOR SUMMARY JUDGMENT; [PROPOSED] AMICUS BRIEF

All participants in the case listed below are registered eFile users and service will be accomplished through our Electronic Filing Service Provider:

Wilfredo Trivino-Perez
Trivino-Perez and Associates
10940 Wilshire Boulevard, 16th Floor
Los Angeles, California 90024
T: (310) 443-4251
F: (310) 443-4252
Email: wtpesq@gmail.com

Joseph Lawrence
Interim City Attorney
1685 Main Street, Room 310
Santa Monica, CA 90401
T: (310) 458-8336
F: (310) 395-6727
joseph.lawrence@santamonica.gov

Kirsten R. Galler
Deputy City Attorney
1685 Main Street, Room 310
Santa Monica, CA 90401
T: (310) 458-8336
F: (310) 395-6727
kirsten.galler@santamonica.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Brandon D. Ward
Deputy City Attorney
1685 Main Street, Room 310
Santa Monica, CA 90401
T: (310) 458-8336
F: (310) 395-6727
brandon.ward@santamonica.gov

Carol M. Silberberg
Robert P. Berry
Berry Silberberg Stokes PC
155 North Lake Avenue, Suite 800
Pasadena, CA 91101
T: (213) 968-2688
F: (213) 986-2677
csilberberg@berrysilberberg.com

/s/ Amy Park

Amy Park