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*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 RESPONSE TO PLAINTIFFS'
STATEMENT OF ADDITIONAL FACTS
IN OPPOSITION TO DEFENDANTS'
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
25 Time: 9:15 A.M.
26 Dept.: 15

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

Pursuant to section 437c(b)(3) of the Code of Civil Procedure and California Rule of Court 3.1350, Defendant City of Santa Monica (“City”) hereby submits its response to each additional material fact that plaintiffs contend are pertinent to the Motion of Defendant City of Santa Monica for Summary Judgment or, in the Alternative, for Summary Adjudication (filed on or about February 12, 2022).¹

ADDITIONAL MATERIAL FACTS THAT PLAINTIFFS² CONTEND ARE PERTINENT TO THE DISPOSITION OF THE MOTION

Plaintiffs’ Undisputed Material Facts and Supporting Evidence:	Defendant’s Response and Supporting Evidence:
<p>1. Oscar de la Torre has advocated for district-based elections for Santa Monica’s city council since at least 2015.</p> <p><u>Evidence:</u> De la Torre Decl. ¶¶ 2-4, 7, 9, 15-16, Ex. A</p>	<p>Undisputed.</p>
<p>2. In April 2016, Maria Loya and the Pico Neighborhood Association filed suit in the Los Angeles Superior Court, alleging the City of Santa Monica’s at-large city council elections violated the California Voting Rights Act (“CVRA”) and the Equal Protection Clause of the California Constitution. That case is styled <i>Pico Neighborhood Association, et al. v. City of Santa Monica</i>, Case No. BC616804, and is now pending in the California Supreme Court (hereinafter, the “Voting Rights Case”).</p> <p><u>Evidence:</u> Shenkman Decl. ¶¶ 3-4</p>	<p>Disputed. The matter Plaintiffs refer to as the Voting Rights Case was filed in April 2016 by the Pico Neighborhood Association, Maria Loya, and Advocates for Malibu Public Schools. (Defendant’s Request for Judicial Notice (dated 2/12/22) Ex. B.) Additionally, the Court of Appeal reversed judgment, holding that the City did not violate the CVRA or California’s Equal Protection Clause. (265 Cal.Rptr.3d 530.) The California Supreme Court granted plaintiffs’ petition for review, but only on the issue of “What must a plaintiff prove in order to establish vote dilution under the California Voting Rights Act?” (474 P.3d 635.)</p> <p>Additionally, Shenkman’s declaration statements are subject to evidentiary objections. (See Evidentiary Objections Nos. 48-51.)</p>

¹ Under the California Code of Civil Procedure and Rules of Court, the City is required to list verbatim the issues and purportedly undisputed material facts from Plaintiffs’ separate statement, but the City does not make any admission by this required repetition.

² Plaintiffs’ filing of April 13, 2022, erroneously states “Defendant” instead of “Plaintiffs.”

Plaintiffs' Undisputed Material Facts and Supporting Evidence:	Defendant's Response and Supporting Evidence:
<p>3. The operative complaint in the Voting Rights Case seeks changes to the method of electing the Santa Monica City Council and an award of attorneys' fees and expenses, but no monetary relief for the plaintiffs.</p> <p><u>Evidence:</u> Shenkman Decl. ¶3, Ex. A</p>	<p>Disputed. The operative complaint in the Voting Rights Case seeks two different declarations, preliminary and permanent injunctive relief, "Other relief tailored to remedy the City of Santa Monica's violation of the California Voting Rights Act of 2001," "Other relief tailored to remedy the City of Santa Monica's violation of the Equal Protection Clause of the California Constitution," "an award of Plaintiffs' attorneys' fees, costs, litigation expenses and prejudgment interest" and "such further relief as the Court deems just and proper." (Defendant's Request for Judicial Notice (dated 2/12/22) Ex. C.)</p> <p>Additionally, Shenkman's declaration statements are subject to evidentiary objections. (See Evidentiary Objections No. 48.)</p>
<p>4. Changing the at-large method of electing the Santa Monica City Council to a district-based method of election, would affect substantially all Santa Monica voters.</p> <p><u>Evidence:</u> De la Torre Decl. ¶¶ 16-18</p>	<p>Disputed. While the statement itself is vague, the cited evidence (De la Torre's opinion) does not support the asserted fact.</p> <p>Additionally, there is no admissible evidence to support the fact. (See Evidentiary Objections Nos. 29, 31, 35.)</p>
<p>5. Following a six-week trial, in February 2019 the Los Angeles Superior Court entered judgment in favor of the plaintiffs in the Voting Rights Case, and issued a Statement of Decision. Consistent with the relief requested in the operative complaint, the Los Angeles Superior Court ordered changes to the method of electing the Santa Monica City Council, and contemplated a motion for an award of attorneys' fees and expenses, but no monetary relief for the plaintiffs.</p> <p><u>Evidence:</u> Shenkman Decl. ¶ 4, Ex. B</p>	<p>The first sentence is undisputed.</p> <p>The second sentence is disputed. The opinion of the trial court in the Voting Rights Case was not wholly consistent with the relief requested in the Voting Rights Case because the complaint requested many remedies that were not awarded, including any declaratory relief or any attorneys' fees (at least in that opinion). (<i>Pico Neighborhood Association et al. v. City of Santa Monica</i> (Super. Ct. LA County Sept. 13, 2019) 2019 WL 10854474, at *23.)</p> <p>Additionally, Shenkman's declaration statements are subject to evidentiary objections. (See Evidentiary Objections Nos. 49-51; 65.)</p>
<p>6. Neither the plaintiffs in the Voting Rights Case, nor Oscar de la Torre, have any obligation to pay any attorneys' fees</p>	<p>Disputed. The Voting Rights Case is ongoing. The current Court of Appeal opinion obligates the Voting Rights Case plaintiffs to pay costs. Additionally, it is</p>

Plaintiffs' Undisputed Material Facts and Supporting Evidence:	Defendant's Response and Supporting Evidence:
<p>or costs in connection with the Voting Rights Case, and there is no arrangement under which any portion of the recovery of attorneys' fees or costs would flow to any of them. On the contrary, the attorneys for the plaintiffs in the Voting Rights Case agreed to litigate that case <i>pro bono</i> and pay all costs.</p> <p><u>Evidence:</u> Shenkman Decl. ¶ 5, Ex. C; De la Torre Decl. ¶¶ 16-17</p>	<p>unclear what additional costs or fees those plaintiffs may be ordered to pay in the litigation. It is undisputed that the document attached as Exhibit C to the Shenkman Declaration states that Shenkman & Hughes contractually obligates itself to pay for such costs or fees on plaintiffs' behalf.</p> <p>The attorneys representing the plaintiffs in the Voting Rights Case are not litigating <i>pro bono</i>, that is without any prospect of compensation. (Black's Law Dict. 11th ed. 2019, <i>pro bono</i>.) Rather, they have requested over \$20 million in attorneys' fees exclusive of costs in June of 2019 (including over \$13.3 million for Mr. Shenkman's firm) (Defendant's Request for Judicial Notice (dated 2/12/22) Ex. D), and may seek additional compensation for Mr. Shenkman's work in this case (Silberberg Decl.(dated 2/12/22) Ex. 3 at 210:24 – 211:9.)</p> <p>Additionally, De la Torre's and Shenkman's declaration statements are subject to evidentiary objections. (See Evidentiary Objections Nos. 29-34, 54, 55.)</p>
<p>7. In 2020, Oscar de la Torre campaigned for a seat on the Santa Monica City Council. One of the issues in that campaign was the Voting Rights Case and, relatedly, whether the Santa Monica City Council should be elected through at-large or district-based elections. All of the incumbent council members professed their support for at-large elections, while Oscar de la Torre and his "Change Slate" colleagues (Phil Brock, Christine Parra, and Mario Fonda Bonardi) all indicated they support a switch to district-based elections). Specifically, in his campaign, Oscar de la Torre voiced his opinion that the City of Santa Monica should stop its wastefully costly fight in the Voting Rights Case.</p> <p><u>Evidence:</u> De la Torre Decl. ¶ 7, Ex. A</p>	<p>The first sentence is undisputed.</p> <p>The second sentence is undisputed.</p> <p>The third sentence is disputed as there is no admissible evidence as to the positions of other candidates. (Evid. Obj. Nos. 16, 46.)</p> <p>The fourth sentence is disputed, as the admissible evidence does not support this assertion. (Evid. Obj. No. 15.)</p>

Plaintiffs' Undisputed Material Facts and Supporting Evidence:	Defendant's Response and Supporting Evidence:
<p>8. Oscar de la Torre was elected to the Santa Monica City Council in November 2020.</p> <p><u>Evidence:</u> De la Torre Decl. ¶ 8, Ex. B</p>	<p>Undisputed.</p>
<p>9. By a vote of 4 of 7 council members on January 26, 2021, Defendant's city council voted to exclude Councilmember de la Torre from all council meetings, discussions and decisions concerning the Voting Rights Case, based on its assertion that Councilmember de la Torre had a "common law conflict."</p> <p><u>Evidence:</u> De la Torre Decl. ¶¶ 11-12, Ex. E</p>	<p>Disputed. The motion made at the January 26, 2021 meeting of the Santa Monica City Council was "to determine that Mr. de la Torre has a common law conflict of interest that disqualifies him from his involvement in any closed session or confidential conversations concerning Pico Neighborhood Association [and] Maria Loya versus City of Santa Monica [and] would disqualify him from voting on any decisions made with respect to that." (Silberberg Decl. (dated 2/12/22) Ex. 40 at 722.) The vote was four in favor of the motion, two opposed (including De la Torre), and one abstention. (<i>Id.</i> at 723.) Nor does the cited evidence support the assertions made.</p> <p>Additionally, De la Torre's declaration statements are subject to evidentiary objections. (See Evidentiary Objections Nos. 20-22.)</p>
<p>10. In response to an inquiry from Defendant's interim city attorney, on February 4, 2021 the Fair Political Practices Commission concluded: "neither the [Political Reform] Act nor Section 1090 prohibits Councilmember de la Torre from participating in governmental decisions relating to the [Voting Rights Case], including a potential settlement agreement, where his spouse is a named plaintiff. ... Neither [Councilmember de la Torre] nor his spouse has any financial interest, direct or indirect in the outcome of the [Voting Rights Case], including any future settlement agreement. There is no obligation on the part of him or his spouse to pay any attorneys' fees or costs in connection with the litigation, and no arrangement</p>	<p>Undisputed that the February 4, 2021 letter included this language, in part. However, the excerpt is incomplete and does not properly present the scope of the narrow issue before the FPPC. The FPPC letter states: "Also, note that we are not a finder of fact when rendering advice (In re Oglesby (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice." (Silberberg Decl. Ex. 45 (dated 2/12/22) at 777.) Furthermore, the letter states that it is not providing advice "under other general conflict of interest prohibitions such as common law conflict of interest. (<i>Id.</i>)</p> <p>Additionally, De la Torre's declaration statements are subject to evidentiary objections. (See Evidentiary Objections No. 23.)</p>

Plaintiffs' Undisputed Material Facts and Supporting Evidence:	Defendant's Response and Supporting Evidence:
<p>under which any portion of any recovery from the City of attorneys' fees or costs would flow to him or his spouse.”</p> <p><u>Evidence:</u> De la Torre Decl. ¶ 13, Ex. F</p>	
<p>11. Plaintiff Oscar de la Torre has requested that Defendant allow him to be present for all closed session meetings of the Santa Monica City Council concerning the Voting Rights Case, but Defendant has refused.</p> <p><u>Evidence:</u> De la Torre Decl. ¶ 14, Ex. G</p>	<p>Disputed. The evidence demonstrates that De la Torre sought to have the January 26, 2021 action by City Council reconsidered on July 22, 2021. (De la Torre Decl. Ex. G.) After the Mayor ruled against reconsideration, De la Torre appealed that decision to the full Council. (<i>Id.</i>) However, the City Council voted against such reconsideration. (<i>Id.</i>)</p>
<p>12. Plaintiff Elias Serna, having supported both the adoption of district-based elections for Santa Monica city council elections, and Oscar de la Torre for city council in 2020, will prosecute this case with vigor.</p> <p><u>Evidence:</u> Serna Decl. ¶ 2.</p>	<p>Disputed. Serna's own deposition testimony indicated that he was totally unaware of receiving document requests and interrogatories in this matter (Declaration of Carol M. Silberberg in Support of Reply Memorandum of Defendant City of Santa Monica's Motion for Summary Judgment or, in the Alternative, Summary Adjudication, Ex. 3 at p. 22, Serna Depo. at 85:1-3, 85:8-11), that he had not been asked to search for documents, nor had he searched for any (<i>id.</i> at p. 22, Serna Depo. at 85:4-7, 85:12-15, 86:14-16), the amount of time he has put into this case before the first amended complaint was filed to be “[p]robably not much” or “a couple hours” (<i>id.</i> at p. 20, Serna Depo. at 63:9-17), and he has only spent “a couple hours” or “three hours, more or less” on the case since then (<i>id.</i> at pp. 20-21, Serna Depo. at 63:18 – 64:7) he is totally unaware of how Plaintiffs' counsel is to paid in this lawsuit (<i>id.</i> at pp. 16-19, Serna Depo. at 48:1 – 51:23), and was unaware of this lawsuit before he was added as a plaintiff (<i>id.</i> at p. 15 (Serna Depo. at 46:2-9).</p> <p>Additionally, Serna's declaration statements are subject to evidentiary objections. (See Evidentiary Objections No. 66.)</p>

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Dated: April 28, 2022

BERRY SILBERBERG STOKES PC
CAROL M. SILBERBERG

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

Attorneys for Defendant
CITY OF SANTA MONICA