SUSAN Y. COLA (SBN 178360)
Interim City Attorney
susan.cola@santamonica.gov
KIRSTEN R. GALLER (SBN 227171)
Deputy City Attorney
kirsten.galler@santamonica.gov
BRANDON D. WARD (SBN 259375)
Deputy City Attorney
brandon.ward@santamonica.gov
1685 Main Street, Room 310
Santa Monica, California 90401
Telephone: (310) 458-8336
Facsimile: (310) 395-6727

CAROL M. SILBERBERG (SBN 217658)
BERRY SILBERBERG Stokes PC
csilberberg@berrysilberberg.com
155 North Lake Avenue, Suite 800
Pasadena, CA 91101
Telephone: (213) 986-2688
Facsimile: (213) 986-2677

Attorneys for Defendant
CITY OF SANTA MONICA

Exempt from filing fee pursuant to Government Code § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OSCAR DE LA TORRE and ELIAS SERNA,

Plaintiffs,

v.

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

Defendants.

CASE NO.: 21STCV08597

Assigned to Hon. Richard L. Fruin

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

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

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

I, Carol M. Silberberg, declare as follows:

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

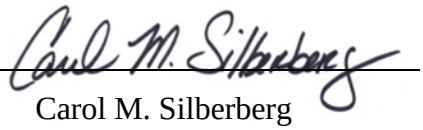
2. Attached hereto as **Exhibit 1** is a true and correct copy of a letter published by the California Fair Practices Political Commission on October 11, 1995, cited as 1995 WL 912275 and retrieved and printed from Westlaw.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the order of this Court entered on July 23, 2021, in this matter.

4. Attached hereto as **Exhibit 3** is a true and correct copy of transcript excerpts from the deposition of Elias Serna taken January 21, 2022, in this matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on April 28, 2022 at Pasadena, California.

By 
Carol M. Silberberg

Index to Exhibits

Ex.	Title	Page No.
1	California Fair Practices Political Commission letter dated October 11, 1995, cited as 1995 WL 912275.	1
2	Court order of July 23, 2021, entered in this matter.	5
3	Transcript excerpts from the deposition of Elias Serna taken on January 21, 2022, in this matter.	13

Exhibit 1

CA FPPC Adv. I-95-287 (Cal.Fair.Pol.Prac.Com.), 1995 WL 912275

California Fair Political Practices Commission

ROBERT J. LANZONE, TOWN COUNSEL

FPPC File No. I-95-288
October 11, 1995

***1** Robert J. Lanzone
Town Counsel
Town of Woodside
2955 Woodside Road
Woodside, CA 94602

Re: Your Request for Informal Assistance

Dear Mr. Lanzone:
This is in regard to your letter requesting informal assistance[1] with respect to the conflict-of-interest provisions of the Political Reform Act (the "Act").[2]

As noted in your letter, and in our letter dated July 24, 1995, the Commission does not provide third party advice. (Regulation 18329(b)(8).) You are now requesting advice about another person's duties under the Act based upon your duty, as city attorney, to advise rather than upon specific authorization. (Regulation 18329(c)(1).) However, your request also pertains, in part, to past conduct. Therefore, we are limiting our assistance to the explanation, in general terms, of the requirements of the Act, pursuant to the provisions of Regulation 18329(c)(4)(a).[3]

QUESTION

Does the receipt of free legal services by a local elected officeholder subject the official to the disqualification and reporting requirements of the Act, and to gift limits?

CONCLUSION

Free legal services provided to a public official may constitute "gifts" to a public official or gifts to the public official's agency. If a local elected officeholder receives "gifts," the public official is subject to the disqualification and reporting requirements of the Act, and to gift limits.

GENERAL DISCUSSION

You have asked whether free legal services constitute "gifts" which can subject a local elected official to the disqualification and reporting provisions of the Act, and to gift limits. We provide you the following general guidance.

A. Conflicts of Interest

Section 87100 prohibits any public official at any level of state or local government from making, participating in making or in any way attempting to use his or her official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest. (Section 87100.)

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $280 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(e).)

A "gift" is defined as "any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." (Section 82028(a).) A "payment" is defined as "a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything of value, whether tangible or intangible." (Section 82044 (emphasis added).)

***2** Under Section 82028, anything of value given to a public official without cost, including legal services, may be a reportable gift, unless it is expressly exempted from the definition of "gift." (Connor Advice Letter, No. A-94-247; Dorsey Advice Letter, No. I-92-302.) For example, the term "gift" does not include "informational material." (Section 82028(b), Regulation 18942.1.)

We have advised that if a person gives a public official a previously prepared legal memorandum or brief from their files, those materials normally would be informational material, not gifts. (Kolkey Advice Letter, No. I-95-134.) Therefore, if a person provides copies of memoranda or other documents in their files for the purpose of conveying information relevant to a governmental issue, we would consider the documents to be "informational material."

However, this exception would not encompass the services of an attorney, for example, who agrees to research and prepare a memorandum for the official. In the Kolkey Advice Letter, supra, we stated:
According to the facts provided, private attorneys have expressed an interest in providing pro bono legal services to the Governor's Office concerning legal issues which come within the official responsibilities of the office. As Legal Affairs Secretary for the Governor, you would be making specific requests and determining who could best utilize the memoranda. The services rendered would not serve primarily to convey information from private sources; rather, they would serve primarily to supplement the work of the Governor's Office legal staff in connection with various governmental projects and litigation. Moreover, the services will involve reaching legal conclusions, rather than merely facilitating the flow of information. Therefore, the "informational material" exception would rarely, if ever, apply to free legal services provided by third parties to the Governor's office.

Therefore, free legal services may constitute "gifts," which can subject an official to the disqualification provisions of the Act. Consequently, a public official may not participate in any decision if it is reasonably foreseeable[4] that the decision will have a material financial effect on a source of gifts of $280 or more.

The test for materiality differs depending on the specific circumstances of each decision. Where a source of gifts is directly before the city council, Regulation 18702.1(a) provides that the effect of the decision on the source of gifts is deemed to be material and disqualification is required. (Combs Advice Letter, No. A-89-177.)

A source of gifts is directly before a public official's agency when the source initiates the proceeding by filing an application, claim, appeal, or similar request, or is a named party in, or the subject of, the proceeding. A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity. (Regulation 18702.1(b).)

***3** Where the source of gifts is not directly before the city council, but may be indirectly affected, Regulation 18702.2 applies. This would generally be the case where an attorney who is the source of a gift to a public official appears before the official's agency solely in a representative capacity. (See for example, Brady Advice Letter, No. A-94-141.)

B. Disclosure Requirements and Gift Limits

The Act also requires that every public official disclose all the official's economic interests that could foreseeably be affected by the exercise of the official's duties. (Sections 81002(c), 87200-87313.) Therefore, a local elected official, such as a councilmember for the Town of Woodside, is required to disclose gifts totalling $50 or more. (Section 87207.) Additionally, effective January 1, 1995, the Act provides for a $280 gift limit in a calendar year from any single source which is applicable to local elected officers. (Section 89501.)

C. Gifts to Official's Agency

Finally, please note, that with respect to the receipt of prospective gifts, Regulation 18944.2 (copy enclosed) may apply. This regulation sets forth criteria for determining whether a gift used by a public official is a gift to an agency, rather than to the public official who benefits from or uses the gift. If the requirements of Regulation 18944.2 are met, we would not treat the donation of free legal services as gifts to any individual official of a public agency.

I hope this is of assistance to you. If you have further questions concerning prospective conduct, please feel free to contact me at (916) 322-5660.
Sincerely,

Steven G. Churchwell
General Counsel
By: Luisa Menchaca
Counsel
Legal Division

Footnotes

1 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

2 Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Section 18000-18995. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

3 Nothing in this letter should be construed to evaluate any conduct which may have already taken place. (In re Oglesby (1975) 1 FPPC Ops. 71.)

4 Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198.)

CA FPPC Adv. I-95-287 (Cal.Fair.Pol.Prac.Com.), 1995 WL 912275

Exhibit 2

 # 9 TENTATIVE 9:15 a.m. Friday, July 23, 2021

OSCAR DeLa TORRE v. CITY OF SANTA MONICA, et al. [21STCV08597]

RULING ON DEMURRER OF DEFENDANT CITY OF SANTA MONICA TO PLAINTIFF'S FAC

MEET & CONFER: DEFECTIVE – CITY's counsel declares that Plaintiff's Counsel didn't respond to MP's efforts to meet & confer

BACKGROUND: Action for declaratory relief; violation of the Brown Act –
TIMELINE:

"For several decades" Plaintiff De La Torre has allegedly "advocated for the implementation of district-based elections, both in Santa Monica and throughout California." He has taken the position that Defendant CITY's "at-large system" of electing its city council "dilutes Latino votes, and has caused Defendant's city council to be unresponsive, even hostile, to Latino voters and the Pico Neighborhood where they are most concentrated."

Beginning around 2015: De La Torre and others, including Plaintiff Elias Serna, allegedly "focused their efforts on changing the at-large election system employed by Defendant City of Santa Monica"; however, the CITY was allegedly non-responsive

April 2016: the Pico Neighborhood Association and Maria Loya allegedly filed suit to compel Defendant CITY "to comply with the California Voting Rights Act"; that case [Pico Neighborhood Association, et al. v. City of Santa Monica, LASC Case No. BC616804] went to trial in August 2018, and a judgment was entered in favor of the plaintiffs; Defendant appealed, and the intermediate appellate court reversed; the California Supreme Court granted review and, on its own motion, depublished the intermediate appellate court's decision. The "Voting Rights Case" is currently pending in the California Supreme Court.

November 2020: Plaintiff De La Torre sought election to Defendant's city council; Plaintiff alleges that "the system of election employed by Defendant, and relatedly the Voting Rights Case, was a significant issue in the campaign," and that all of the incumbents "opposed any change to the at-large election system, while De La Torre and his "Change Slate" all professed their support for district elections and an end to Defendant's wasteful fight against the Voting Rights Case"; Plaintiff and two of his

colleagues were elected, and were sworn into office in December 2020. Plaintiff alleges that before he took his seat on the Santa Monica City Council, he resigned from the Pico Neighborhood Association board.

November 25, 2020: the interim city attorney, who had allegedly actively participated in the defense of the Voting Rights Case, allegedly sought advice from the FPPC "on whether Councilmember de la Torre had a conflict of interest that prevented him from lawfully participating in council deliberations and decisions regarding the Voting Rights Case."

January 26, 2021: the interim city attorney allegedly placed an item on the City Council's next meeting agenda, for a council vote to declare that De La Torre has a conflict of interest and exclude him from all council meetings concerning the Voting Rights Case. Plaintiff claims that, "presented with only the interim city attorney's one-sided report, and though some members of Defendant's city council expressed a desire to obtain legal advice from the FPPC, they ultimately did not wait for guidance from the FPPC or any court. Instead, a bare majority (4 of 7) voted to declare that De La Torre has a conflict of interest and to exclude Plaintiff from all discussions, meetings and decisions concerning the Voting Rights Case…," and that "later that same evening, Defendant excluded De La Torre from a closed session meeting,"" out of which no actions were reported

February 4, 2021: the FPPC allegedly "responded to Defendant's inquiry whether De La Torre has a conflict of interest," and "definitively concluded that Plaintiff does not have a conflict of interest that would prohibit him from participating in meetings and decisions concerning the Voting Rights Case." De La Torre then allegedly "requested that, in light of the FPPC's determination, Defendant reverse its previous action excluding him from meetings and decisions concerning the Voting Rights Case," but Defendant refused.

3/4/21: Plaintiff filed the verified Complaint herein

3/12/21: the case was re-assigned to D15

5/25/21: Plaintiff filed the verified FAC, asserting 2 C/As v. all defs:

1. declaratory relief
2. violation of the Ralph M. Brown Act [GC 54950]

6/24/21: Moving defendant filed these general demurrers to C/As 1-2

TENTATIVE RULING: RE THE GENERAL DEMURRERS OF DEFENDANT CITY OF SANTA MONICA TO CAUSES OF ACTION 1-2 OF PLAINTIFF'S FAC, THE COURT RULES AS FOLLOWS:

A) RE C/A 1 [DECLARATORY RELIEF]: SUSTAINED WITH 20 DAYS' LEAVE TO AMEND. While it is true that an action for declaratory relief requires that

there be an "actual controversy" between the parties [see CCP 1060], and the parties here clearly have opposing positions in regard to whether Plaintiff can and/or should be disqualified from taking part in City Council discussions involving the "Voting Rights Case" ["CVRA"], that doesn't end the inquiry here. In order for there to be an "actual controversy" here, the Court would have to find that the CITY acted outside of its authority in disqualifying Plaintiff from participating in Council meetings where the CVRA was the subject of discussion.

It is undisputed that the Council acted to disqualify Plaintiff based on a finding that he had a conflict of interest under the common law. The demurrer, and the opposition thereto, ask the Court to resolve two issues: first, whether the Council had the authority to disqualify Plaintiff; and second, whether the Council properly found that Plaintiff has a disqualifying conflict of interest. The Court agrees with the CITY on both of these issues.

Preliminarily, the Court finds that the common-law conflict of interest doctrine remains viable. See, e.g., Clark v. City of Hermosa Beach (1996) 48 CA4th 1152 [cited by CITY for the proposition that common-law conflicts "are separate and distinct from financial conflicts under the Political Reform Act and extend to nonfinancial interests"]. Also, the Court finds merit in Defendant's argument to the effect that the common-law conflict of interest doctrine has been the subject of opinion letters issued by the Office of the Attorney General. One of those opinion letters included a statement that the "temptation to act for personal or private reasons" presents a potential conflict of interest. See 92 Ops, Cal. Atty. Gen. 19, 2009 WL 129874, *5. While not directly on point, these authorities support the position that the common-law doctrine is still in force, and Plaintiff cites no authority to the contrary.

In fact, citing the Clark case [supra], Plaintiff concedes that "some courts have acknowledged a common-law doctrine" which "prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." Plaintiff then attempts to limit application of the common-law doctrine in two ways. First, Plaintiff submits that "courts are reluctant to find a conflict of interest under the common law where no conflict exists under the PRA or Section 1090," citing Breakzone Billiards v. City of Torrance (2000) 81 CA4th 1205 and All Towing Services LLC v. City of Orange (2013) 220 CA4th 946. That there may be judicial "reluctance," however, is far from saying that the Court lacks the power to make findings as to whether a disqualifying common-law conflict exists.

Second, Plaintiff argues that while common-law conflicts may arise in the absence of a financial interest, "there must still be some personal advantage or disadvantage at stake for the public officer" [citing 88 Ops. Cal. Atty. Gen. 32 (2005), at p.8]. Plaintiff goes on to argue that he has no personal stake, financial or otherwise, in the Voting Rights Case. He posits that if the plaintiffs in that case prevail, he will simply gain the benefit of an "undiluted vote," like "thousands of other Latino residents of Santa Monica." His argument, however, glosses over some important facts, which are undisputed here, e.g.: Plaintiff's parents founded the Pico Neighborhood Association [PNA], which is one of the plaintiffs in the CVRA case, and he served as its chair until shortly after his election as a Councilmember; Plaintiff's wife is the other named plaintiff in the CVRA Action; Plaintiff was involved with developing the claims and litigation strategy for the plaintiffs in the CVRA case; Plaintiff testified on the plaintiffs' behalf in deposition and in the CVRA trial; and Plaintiff continued to be involved in the case until at least 6/11/21, when he filed an amicus brief in support of the plaintiffs. As the Reply points out, these facts raise questions as to whether Plaintiff can "exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." See Noble v. City of Palo Alto (1928) 89 Cal.App. 47, 50.

As to whether the City Council had the authority to disqualify Plaintiff, the CITY cites Simons v. City of Los Angeles (1976) 63 CA3d 455, 468, for the propositions that a charter city's power over municipal affairs is "all embracing… and limited only by the city's charter," and that a charter city "has plenary powers with respect to municipal affairs not expressly forbidden to it by the state Constitution or the terms of the charter." In opposition, Plaintiff first cites Lockyer v. City and County of San Francisco (2004) 33 C4th 1055 for the rule that "a local administrative agency has no authority under the California Constitution to exercise judicial power." Even if the Court were to agree that the City Council qualifies as a "local administrative agency," there is nothing before the Court to demonstrate that, by disqualifying Plaintiff, the Council is exercising "judicial power." More importantly, however, the argument ignores that CITY's charter gives the Council plenary powers re "municipal affairs not expressly forbidden to it…"

Plaintiff next argues that the authority to disqualify "has been expressly conferred on the courts and the FPPC…." In support, Plaintiff cites Gov't Code 91003, which allows any person residing in the jurisdiction to "sue for injunctive relief to enjoin violations or to compel compliance with the

provisions of the Political Reform Act…," and which states that the court has discretion to require any plaintiff other than the FPPC "to file a complaint with the FPPC prior to seeking injunctive relief," etc. Plaintiff complains that CITY didn't sue for injunctive relief, and didn't wait for the FPPC to respond to its inquiry before it excluded Plaintiff from a Council meeting; therefore, Plaintiff argues, Defendant has usurped the role of the Court. Further, Plaintiff submits that the Simons case doesn't help CITY, because "any charter city authority must yield to the California Constitution, which… vests the interpretation of the law in the judicial branch," and that city charters must yield on issues such as "the right to vote and the integrity of the judicial process" [citing Jauregui v. City of Palmdale (2014) 226 CA4th 781].

The Reply addresses Plaintiff's arguments persuasively, pointing out that a fundamental principle underlying the separation of powers doctrine is that all "'questions of policy and wisdom concerning matters of municipal affairs are for the determination of the legislative governing body of the municipality and not for the courts.'" See People ex rel. Harris v. Rizzo (2013) 214 Cal.App.4th 921, 940. The Reply points out that Plaintiff's reliance on PRA provisions is misplaced, as such provisions "have no application to the common-law doctrine." Further, the Reply rightly notes that Plaintiff's argument that he has no personal interest in the CVRA Action "is further undermined by his Brown Act claim arguments, in which he contends that he has a 'personal stake in the outcome of the relief sought'—participation in discussions on the CVRA Action." [While the Reply doesn't address Jauregui, that case is inapposite, as the gravamen of the instant case isn't "the right to vote and the integrity of the judicial process." Rather, this case is about the CITY's authority to control its own internal processes.]

To summarize, the Court agrees with Defendant's arguments that: 1) the decision whether to disqualify Plaintiff "was a determination properly made by the City Council in the first instance, subject to potential court review"; and 2) the decision made by the Council- that Plaintiff had a disqualifying conflict of interest- was correct, and Plaintiff was properly excluded from participating in meetings in which the CVRA litigation was discussed. Therefore, there is no "actual controversy" remaining for judicial determination, and the demurrer to cause of action 1 must be sustained.

C/A 2 [VIOLATION OF THE RALPH M. BROWN ACT – GOV'T CODE 54950]: OVERRULED. Plaintiff's 2AC asserts that the Brown Act [Government Code § 54953] requires, with only specified exceptions, that "all persons shall

be permitted to attend" meetings of all or a majority of any city council, and that by excluding him from future Council meetings, defendant CITY threatens to violate the Act. Plaintiff cites Gov. Code, § 54960, subdivision (a), for the proposition that "any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of [the Brown Act] by members of the legislative body...."; and §54960.1, subdivision (a), for the proposition that "any interested person" may "commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of [specified sections of the Brown Act] is null and void under this section."

Defendant raises two arguments in support of its general demurrer: a) Plaintiff lacks standing to assert this cause of action; and b) Plaintiff "failed to exhaust all remedies" before bringing his claim.

Re lack of standing to sue: Defendant cites Holbrook v. City of Santa Monica (2006) 144 CA4th 1242 for the proposition that public officials, including councilpersons, don't qualify as "interested persons" under Gov't Code 54960(a). Plaintiff, however, is persuasive in arguing that the Holbrook case is both limited in its holding and distinguishable on its facts. The court in Holbrook recognized that councilmembers would have standing to sue under the Brown Act if they were "barred from participating in council business... [or] deprived of the ability to participate in the proceedings of the city council..." Also, in Galbiso v. Orosi Pub. Util. Dist. (2010) 182 CA4th 652, the court allowed a Brown Act claim to proceed where the plaintiff sued not only as a Board member, but also on her own behalf because she had a personal stake in the outcome of the relief sought. Here, Plaintiff DeLaTORRE alleges that he has a personal stake in the relief sought because the Council's action in threatening closed meetings is directed at Plaintiff DeLaTORRE. While not argued here, it cannot be said that the Council's action doesn't impact Mr. DeLaTORRE's ability to perform his function on the Council.

Re the "failure to exhaust all remedies" argument: Defendant contends that Plaintiff's "request for a determination that the past action of the Counsel at the Jan. 26 meeting violated the Brown Act would be subject to either Gov't Code sec. 54960.2 or 54960.1, both of which set out either demand or cease and desist prerequisites that Plaintiff never satisfied..." Plaintiff does not dispute that he didn't submit any cease & desist letter to the CITY, and he didn't allege compliance with any such "requirement." Instead, he argues that there is no such pre-lawsuit presentation

requirement where, as here, Plaintiff contends that the prospect of future closed session meetings of a majority, but not all, of the CITY council is a threatened violation of the Brown Act by members of the legislative body. Plaintiff submits that Gov't Code secs. 54960.1 and 54960.2 authorize retrospective relief – a determination that an action already taken by a legislative body of a local agency is null and void; and that while the 1/26/21 closed session meeting of the Council was a violation of the Act, there was no action reported out of that session, and therefore there is nothing to declare "null and void." He argues that Plaintiffs aren't seeking a judgment that the 1/26/21 meeting violated the Act, but instead that the 2nd cause of action is only directed to future meetings and that no notice and opportunity to cure is required where Plaintiff seeks only "prospective relief," consistent with Gov't Code sec. 54960. See the FAC, p.16:para.5.

MP is to serve notice of ruling. This TR shall be the order of the Court, unless changed at the hearing, and shall by this reference be incorporated into the Minute Order. TR E-MAILED TO COUNSEL ON 7/23/21 AT 8:30 a.m.

Exhibit 3

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OSCAR DE LA TORRE and ELIAS SERNA,	)	
Plaintiff,	)	
v.	)	CASE NO. 21STCV08597
CITY OF SANTA MONICA and DOES 1 through 10, inclusive	)	
Defendants.	)	

VIDEO-CONFERENCE DEPOSITION OF

ELIAS SERNA

Santa Monica, California

Friday, January 21, 2022

Job No. 5041253

Reported by:

Damon M. LeBlanc

CSR No. 11958

Pages 1 - 100

A I can't remember.

Q Are you aware that the lawsuit had been filed before an amended complaint was filed to add you as a plaintiff?

A Not aware of it.

Q The first amended complaint was filed on or about May 25. Do you recall how soon before May 25 Mr. De La Torre approached you?

A No.

Q Did Mr. De La Torre tell you what he thought you would get out of this lawsuit?

A Yes.

Q What did he say?

A The lawsuit was about excluding Oscar from participating in City Council discussions concerning voting rights.

THE REPORTER: It broke up. I want to read it back so make sure we got all of it.

(The record was read by the certified shorthand reporter.)

THE WITNESS: Yes.

BY MR. BERRY:

Q So that's what he told you the lawsuit is about. Did he tell you what remedies you would be getting or you would be seeking?

Q Who is paying your legal fees in this case?

A I don't know.

Q Do you have a written retention agreement with Mr. Trivino-Perez?

A I don't know.

Q Do you recall signing anything or him sending you anything relating to fees and costs?

A No.

Q Do you know if Mr. Trivino-Perez working on a contingency fee basis in this case?

A I do not know those details.

Q Has anyone ever told you anything about how legal fees would be handled in this case?

A No.

Q And how do you know you're not responsible for any legal fees in this case?

A I was told I'm not responsible for any legal fees.

Q So someone has had a conversation with you about legal fees in this case; is that correct?

A No.

Q Who told you that you would not be responsible for legal fees in this case?

A Oscar, when we discussed entering the

case, I'm sure said, "It's not going to cost you anything. You don't have to pay anything."

Q Go ahead.

A I can't remember.

Q Do you recall specifically what Oscar said about you not being responsible for fees in this case? Do you recall the words?

MR. TRIVINO-PEREZ: Asked and answered. He said he can't remember. But if he knows more, absolutely.

THE WITNESS: No.

BY MR. BERRY:

Q Did Oscar or anyone else ever tell you whether someone else was going to be covering legal fees in this case?

A No.

Q Did Oscar ever tell you that he was covering legal fees in this case for you?

A No.

Q Did Oscar ever tell you -- Mr. De La Torre ever tell you that his lawyers were being paid on a contingency fee in this case?

A No. I can't remember, but I don't think so.

Q Do you know what a contingency fee is,

sir?

A I'm sorry?

Q Do you know what a contingency fee is, sir?

A No.

Q Meaning the lawyers would be paid out of some percentage of the recovery, not per hour of their time. So with that understanding of what a contingency fee is, did Oscar ever tell you your lawyer is going to be paid a contingency fee in this case?

A No. He didn't talk to me about that.

Q Did you talk to anybody else about that?

A No.

Q So other than Oscar telling you that you're not responsible for fees, you had no conversation with anyone ever about the legal fees in this case?

A That's correct.

MR. TRIVINO-PEREZ: Objection. Misstates the testimony. He indicating in prior response he does not remember.

BY MR. BERRY:

Q And have you ever had a conversation with anyone about any other person paying for your legal fees or Mr. De La Torre's legal fees in this

case?

A I have not had another conversation about that.

Q And I think you said you don't recall any written agreements or communication on the issues of fees. Is my memory correct on that? Is that what you testified to?

A Yes.

Q And with the definition of a contingency fee case I gave you a minute ago, you have not received any communications -- start over.

You have not agreed to pay a contingency fee to your lawyers in this case; is that correct?

A Yes.

Q And there is certainly -- yes? My statement is correct that you have not done it; right?

A I'm sorry, can you repeat the question?

Q Yeah. I had a negative, and then made it confusing.

Have you agreed in writing or seen any writing that would suggest your attorneys are to be paid on a contingency fee in this case?

A I have no knowledge of that.

Q How about the same question; but instead of you, Mr. De La Torre: Have you seen any documents

A I can't say.

Q You may have had other injuries, you may not have? You don't know?

A Well, with regards to this case, I believe the prayers settle it.

Q Okay.

A As far as lifting Oscar De La Torre, lifting the injunction.

Q How much time did you put into this case before the first amended complaint was filed, personally?

A Probably not much.

Q By "not much," what's your best reasonable estimate of what "probably not much" would mean? How much time?

A A couple of hours over time and discussions.

Q And since it was filed, approximately how much time do you think -- how much more time you've put into this case?

A I would say, again, not much. Not a lot. Definitely not long hours, meetings or anything.

Q More than a couple hours total?

A A few hours total, yeah.

Q Would it be list than five, you think?

A I can't say.

Q You can't say it's more than five either?

A I can't say that either. I just have a -- I mean, I didn't time everything. I would say maybe -- I don't know -- total three hours, more or less.

Q Did you draft Exhibit 28, the "VERIFIED SECOND AMENDED COMPLAINT"?

A No.

Q If you go back and open up Exhibit 27, which is the first amended complaint, do you have that in front you, sir?

A Yes.

Q Did you draft that?

A No.

Q If you go down to the second to the last page, there is a verification page for Elias Serna. Do you see that?

A Yes.

Q Is that your signature on the verification?

A Yes, it is.

Q And you would have signed it on or about May 24, 2021?

Q Do you recall receiving document requests from the City of Santa Monica in this case?

A No.

Q Do you recall ever being asked to look for documents that might be relevant to the issues in this case?

A No.

Q Do you recall the City of Santa Monica ever serving something called "interrogatories," asking you questions about this case?

A No.

Q At any point, have you searched through your records for any documents that might relate to the issues in this case?

A No.

Q Do you use e-mail, sir?

A Yes.

Q Have you used that in the normal course of your communications with people?

A Yes.

Q Have you sent e-mails back and forth with Mr. De La Torre at any point?

A No.

Q How about Mr. Shenkman?

A No. I don't even know have his e-mail.

Q Did you search your e-mails in your computers for any documents that might be relevant to the claims you make in this case?

A No.

Q Do you use texts, sir, like SMS?

A Yes.

Q Did you ever communicate with Mr. De La Torre through texts or SMS?

A All the time but not about this case.

Q Have you ever communicated with him about this case by text?

A I can't say I have. I probably have not.

Q Did you search for any texts relating to any of the issues raised in this lawsuit?

A No.

Q Have you ever commented on this lawsuit on social media, Facebook or Twitter or anything else?

A I can't remember.

Q Do you know whether you've ever commented on the issues underlying this lawsuit on Twitter or Facebook or any other social media?

A Probably I have. I made a little hashtag "RACISM" at the end. "SM" as in capital letters.

CERTIFICATION

OF

CERTIFIED SHORTHAND REPORTER

I, the undersigned, a Certified Shorthand Reporter of the State of California do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further; that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 1/25/2022

Damon M. LeBlanc

Certificate Number 11958