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)
ROBERT P. BERRY (SBN 220271)
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

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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 **REPLY MEMORANDUM IN SUPPORT OF DEFENDANT CITY OF SANTA MONICA'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION** Date: May 6, 2021 Time: 9:15 a.m. Dept.: 15 Action Filed: March 4, 2021 Trial Date: June 13, 2022

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INTRODUCTION

Nearly a century ago, *Noble v. City of Palo Alto* (1928) 89 Cal.App.47, 51, set forth the standard of care for public officials, requiring that they act with "disinterested skill, zeal and diligence and primarily for the benefit of the public." Public officials are thus prohibited from "plac[ing] themselves in a position in which [a] personal interest may come into conflict with the duty which they owe to the public." (*Id.* at pp. 51-52.) That "personal interest" need not be tangible – the law requires that "nothing shall tempt them to swerve from the straight line of official duty." (*Id*. at p. 51.) In other words, any "personal interest" that impairs an official's ability to meet their duty of care is a disqualifying conflict because it creates divided loyalties, gives the appearance the official cannot act objectively, and undermines public confidence. (See Mem. at pp. 8-9.)

The City's Motion established that De la Torre has a personal interest that gives rise to a disqualifying common law conflict – his wife is the plaintiff in the CVRA Action, he admits that he owes loyalty to his wife and wants her to win, he was intimately involved with every aspect of the CVRA Action before being sworn in as a councilmember, and he continues to collaborate with the CVRA Action's lead attorney to this day. These interests are all personal and unique to De la Torre. In sum, the undisputed facts show that De la Torre has a common law conflict that pits his personal loyalties against his official duties as a duly elected representative of the City. (See, e.g., *Kimura v. Roberts* (1979) 89 Cal.App.3d 871, 875 [marital relationship "raise[d] a substantial question of fairness and bias, prejudice or influence in the vital [agency] processes, obvious enough to have an effect on public confidence"]; *People ex rel. Lacey v. Robles* (2020) 44 Cal.App.5th 804, 821–822 ["Perhaps it goes without saying, but there is little better example of divided duties or loyalties than being a party on both sides of a lawsuit – or even, for that matter, being forced to pick a side."].) As a result, it disqualifies him from participating in closed sessions on the CVRA Action.

In response, Plaintiffs notably do not dispute that *Noble* sets forth the standard of care. Instead, they contend that the only way to show a "personal interest" creating a conflict of interest is for De la Torre or his wife to obtain a monetary relief or some other unique remedy from the CVRA Action. But there is no support for Plaintiffs' novel and myopic interpretation of the common law conflicts doctrine. Nor is his disqualification undemocratic, as they claim. "Erosion of confidence in

public officials is detrimental to democracy" and to "maintain confidence and to avoid public skepticism, conflicts of interest must be shunned." (*Consumers Union of the U.S., Inc. v. Cal. Milk Producers Advisory Bd*. (1978) 82 Cal.App.3d 433, 444.) This Court should grant the City's motion.

ARGUMENT

I. The Undisputed Facts Show That De la Torre Has Multiple Conflicts of Interest

A. De la Torre Has a Common Law Conflict of Interest

Plaintiffs do not create any real dispute over material facts. Rather, they assert an overly insular standard, claiming De la Torre has no "personal interest" because the CVRA Action will not provide him or his wife with a unique remedy and the City has not identified any such interest. But Plaintiffs' definition of "personal interest" has no legal support, and the City has identified numerous undisputed facts showing that De la Torre has a "personal interest" – including his relationships, his personal embroilment in the CVRA Action, and collaboration with Shenkman – all of which are unique to De la Torre, have been recognized as creating disqualifying conflicts, and evidence his divided loyalties.[1] (Mem. pp. 8-14.) Indeed, even this Court previously found that such facts show that De la Torre has a personal interest giving rise to a common law conflict and raise questions of whether he can fulfill his standard of care as a public official under *Noble.* (Supp. Silb. Decl. Ex. 3.)

1. Plaintiffs' Attempts to Distinguish the City's Authorities Fail

The City provided numerous authorities establishing that De la Torre's relationship with the plaintiffs and lead counsel in the CVRA Action as well as his prior and continuing embroilment in that case give rise to a disqualifying conflict. (Mem. at pp. 8-14). Plaintiffs ask this Court to ignore all of these authorities, but none of their distinctions have merit. For example, *Kimura, supra,* 89 Cal.App.3d 871, demonstrates that a common law conflict arises due to a marital relationship. Plaintiffs argue that the conflict was only a "moral" one and that the law permitted the spouse/ commissioner to be removed for any reason. (Opp. at pp. 12-13). But Plaintiffs ignore that the mayor in that case clarified that "moral conflict" referred to "the appearance of bias which resulted from the marital relationship'" (89 Cal.App.3d at p. 873) – precisely what the common law conflicts

[1] Plaintiffs contend that there is nothing unique about having filed a CVRA lawsuit because any voter has standing to bring such a claim. (Opp. at p. 9.) But it was De la Torre's wife and the non-profit he led– not just any voters –that prosecuted that action since 2016.

doctrine addresses. Moreover, the Court of Appeal agreed that a conflict of interest existed: "***the finding of the mayor and the city council that an actual or implied conflict of interest existed, is eminently rational, practical and legally sound in light of the record***." (*Id.* at p. 875, emphasis added.) Thus, *Kimura* shows that a conflict exists here due to De la Torre's relationship with Loya.[2]

Similarly, the City cited numerous authorities demonstrating how his intertwinement in the CVRA Action distinguished him from councilmembers who have merely taken campaign positions, and results in him having divided loyalties and lacking disinterested skill and zeal. (Mem. p. 10.) In response, Plaintiffs seek to dismiss them as inapplicable because they apply to "prosecutors, judicial officers, and public officials acting in a quasi-judicial capacity." (Opp. at pp. 13-15.) Even assuming this is not a quasi-judicial setting,[3] Plaintiffs cannot credibly assert that De la Torre only owes a duty to act with disinterested skill, zeal, and diligence and primarily for the benefit of the public only when acting in a quasi-judicial role. While the cited cases may arise in a different contexts (or in quasi-judicial roles), that does not relieve him of his duty to comply with the standard of care under *Noble* and does nothing to undo his divided loyalties and the clear conflict of interest here. (See 101 Cal. Ops.Cal.Atty.Gen. 1 (2018), 2018 WL 1971010, at *8 & fn. 91 [common law conflicts apply in variety of contexts and *additional* procedural due process concerns arise when council acts in quasi-judicial context].) Moreover, these cases rely on conflict of interest standards similar to the common law doctrine, which is not surprising because these rules are all based upon the same underlying ethical principles of undivided loyalty, disinterested zeal, and fairness. (Zerunyan Decl. ¶¶ 12, 15,

[2] 92 Ops.CalAtty.Gen 19 (2009) clearly finds familial relationships sufficient to create a personal interest. Plaintiffs miss the point in arguing that the councilmember's son had a "personal interest" in a loan. (Opp. at p. 12.) The councilmember's personal interest was not financial; it was seeing her son succeed: "it is difficult to imagine that the ***agency member has no private or personal interest in whether her son's business transactions are successful or not***." "[T]he agency board member's ***status as the private contracting party's parent and co-tenant places her in a position*** where there may be at least a temptation to act for personal or private reasons rather than with 'disinterested skill, zeal, and diligence' in the public interest, thereby presenting a potential conflict." (2009 WL 129874, at *4, emphasis added.) Here, too, De la Torre's relationship with his wife creates a personal interest.

[3] While Plaintiffs note that the due process issues implicated in a quasi-judicial context do not apply to a challenge in a legislative context (Opp. at p. 14), the analysis is nevertheless informative of a common law conflict analysis (and Plaintiffs do not argue otherwise). That a party might not have a due process right to challenge a quasi-legislative action, does not relieve De la Torre of his duties, including those relating to conflicts. (Supp. Zerunyan Decl.) Moreover, Plaintiffs cite a single Hawaii case to assert that a council's decision on litigation is legislative in nature. However, California courts have long treated a governing body's settlement of a claim to be quasi-judicial. (E.g., *Williamson v. Los Angeles County Flood Control Dist.* (1941) 42 Cal.App.2d 622, 624.)

17.) For example, *People v. Connor* (1983) 34 Cal.3d 141, relying on *Kimura*, holds a conflict arises where there is an actual conflict or merely the appearance of one. (Mem. at p. 9) And while both *Connor* and *Schumb v. Superior Court* (2021) 64 Cal.App.5th 973 arise under Penal Code § 1424, the first part of § 1424's test is whether an actual conflict or the appearance of a conflict exists (64 Cal.App.5th at p. 980), which is the same analysis under the common law. Similarly, *Petrovich Development Company, LLC v. City of Sacramento*, *Nasha v. City of Los Angeles*, and *Mennig v. City Council* are still relevant even though they concerned councilmembers acting in a quasi-judicial capacity. Indeed, it is puzzling that Plaintiffs discount these cases when the primary case they rely on also arises in the quasi-judicial context. (See *BreakZone Billiards*, 81 Cal.App.4th 1205, 1209.)

Moreover, the observation in *Robles, supra*, 44 Cal.App.5th at p. 822, that "there is little better example of divided duties or loyalties than being a party on both sides of a lawsuit—or even, for that matter, being forced to pick a side" applies with equal force here, where De la Torre was the party representative in the CVRA Action, his wife remains a plaintiff (to whom he also owes duties of loyalty and confidentiality), and he is also a councilmember of the City who is the defendant. Plaintiffs claim that case only found a "possibility of conflicting duties" and De la Torre is not seeking conflicting offices. (Opp. at p. 14 fn.4.) But Plaintiffs do not explain how this standard is materially different than the common law standard, which applies where there is an actual conflict or merely the appearance of one. (*Kimura, supra*, 89 Cal.App.3d at p. 875.) Under the facts here, it is not only "possible" that there is a significant clash of duties between his two roles (e.g., as a former plaintiff and husband of a plaintiff and as a councilmember), it has actually happened.

Finally, Plaintiffs assert three items as "not authority." But again, they miss the point. First, Professor Zerunyan may provide his expert opinions concerning the standard of care owed by a councilmember based upon his experience and training. Second, the statements by De la Torre at various Council meetings are also not purported to be "legal" authority. (Opp. at p. 16). But they are compelling party admissions demonstrating that De la Torre knows that familial and close relationships can create impermissible conflicts that require recusal or non-participation. The fact that he is acting inconsistent here only highlights his divided loyalty and lack of disinterested skill and zeal. Finally, the decision of the Los Angeles City Attorney, while not binding, is the most on

point analysis. Los Angeles's Charter prohibition on public officials participating in decisions where it would violate the "public interest" is similar to state law on conflicts (*Los Angeles City Ethics Com. v. Super. Ct.* (1992) 8 Cal.App.4th 1287, 1293, fn.5), and the decision relies upon principles from common law conflict of interest cases such as *Kimura* (Supp. Appx. of Authorities, Ex. 2, at p. 8). Tellingly, Plaintiffs do nothing to dispute its factual application here – nor could they.

2. None of Plaintiffs' Authorities, including *BreakZone*, Support Plaintiffs' Invented Legal Standard

In attempting to create a new legal standard, Plaintiffs continue their overreliance upon *BreakZone* – going so far as relying on it to claim that when dealing with common law conflicts involving litigation "the existence of a personal interest is determined by evaluating the relief sought in the underlying dispute." (Opp. at p. 6.) There is nothing in *BreakZone* or any other case they cite that supports their myopic view of the common law conflicts doctrine.

In *BreakZone*, a billiard parlor in Torrance sought to modify its previously issued conditional use permit (CUP). (81 Cal.App.4th at p. 1209.) As expressly allowed by the Torrance Municipal Code, council member Walker, in his role as councilmember, exercised his option to have the city council undergo a discretionary review of Planning Commission's approval. (*Id.* at pp. 1213, 1221, 1224, 1239).[5] The City Council voted to deny the CUP (*id*. at p. 1219), and the applicant filed a writ of mandate challenging the denial – in part based upon deprivation of a fair hearing and in part based on a conflict of interest due to Walker's receipt of campaign contributions from a person opposed to the CUP (*id*. at pp. 1220, 1226, 1235-36). The court held there was no conflict because, at the time, the PRA only applied where a public official had received campaign contributions from a donor aggregating $250 or more within 12 months prior to the decision. (*Id*. at pp. 1227-28). Contrary to Plaintiffs' assertion, the court's finding that there was no common law conflict was not premised on whether "the approval or denial of the conditional use permit would affect all of the pool hall's neighbors." (Opp. at p. 6.) Moreover, *BreakZone* recognized that there are "situations" – like those

[5] Plaintiffs are wrong that Walker otherwise had standing to appeal as an interested person adversely affected in the decision. (Opp. at p. 11.) Plaintiffs purport to cite the Torrance Municipal Code, but they omit that it allowed "'*any member of the City Council* [to] file with the City Clerk, a written notice of appeal to the City Council'" – a provision the court specifically noted in distinguishing other cases invalidating councilmember-initiated appeals. (81 Cal.App.4th at p. 1239, italics added.)

here – "in which a decision maker should be disqualified because of the 'probability' of bias, such as when the decision maker has a personal or financial interest in the outcome, or is *either familially or professionally related to the litigant.*" (*Id.* at p. 1237, italics added.) But there was no evidence of such relationships, personal "embroilment" or personal animosity in *BreakZone*. (*Id.* pp. 1238-1239.)

City of Fairfield v. Superior Court, similarly does not apply here. That case merely addresses whether "[c]ampaign statements" "disqualify the candidate from voting on matters which come before him after his election." ((1975) 14 Cal.3d 768, 781.) But Plaintiffs have provided no evidence even suggesting that Council excluded De la Torre based on his campaign statements.[6] Indeed, it is undisputed that the other two members of the "Change Slate" who share De la Torre's positions on district-based elections have not been excluded from closed-session meetings on the CVRA Action. (SUF.60, 62, 90-91.) Further, as courts have held, while campaign statements are insufficient on their own to result in disqualification, embroilment, personal relationships, and financial conflicts may result in disqualification (see Mem. at pp. 8-15 [citing cases]), as is the case here.

Finally, Plaintiffs rely upon 88 Ops.Cal.Atty.Gen. 32 (2005), 2005 WL 716501, where a councilmember served on the board of a nonprofit trust and had, in that capacity, solicited (but did not actually receive) donations from an individual who had another matter before the council. (*Id.* at *1.) The facts presented in that opinion did not deal with the councilmember's spouse, close friend, or employer. Nor did it involve a litigation where the councilmember had spent years suing the city. As such, this opinion has nothing to do with the facts of this case. But it does cite directly to *Noble* – the case setting forth the common law conflicts standard that Plaintiffs have conspicuously avoided.

B. De la Torre Also Has a Financial Conflict

The FPPC has not already decided these issues. (Opp. at p. 5.) The FPPC was not presented with the complete facts the City learned through discovery it compelled in this case, including evidence that De la Torre received free services from Shenkman *after* the City sent its letter to the

[6] Using *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, Plaintiffs argue that Clark could have participated in a "general opposition to 35-foot buildings," just not the "specific" project, and therefore De la Torre similarly may participate in the CVRA Action discussions. (Opp. at p. 12). Plaintiffs have it backwards. De la Torre may participate in general policy opposition to at-large elections, including at Council. Much like *Clark*, however, he may not participate in closed-session meetings on the *specific* litigation brought by himself (as the PNA co-chair) and his wife.

FPPC seeking advice – a fact Plaintiffs now admit in their Opposition (p. 17). (See Code Regs., tit. 2, § 18329; SUF.94, 159, 160-161.) The FPPC's February 4, 2021 letter is therefore not dispositive, and Plaintiffs have failed to carry their burden in disputing that De la Torre has a financial conflict.[7]

1. Shenkman Provided Disqualifying Free Services

The City established that Shenkman provided free legal services to De la Torre. (Mem. pp. 15-16.) Plaintiffs claim that the "free services" fall under the informational material exception to the gift rules. (Opp. at p. 17.) But Shenkman's provision of legal services are not informational materials, as that exception does not "encompass the services of an attorney, for example, who agrees to research and prepare a memorandum for the official." (FPPC I-95-288, 1995 WL 912275.)[8] Shenkman concedes he did legal work in January 2021 for De la Torre and helped to draft De la Torre's script for the Council meeting. (Opp. at p. 17; Shenkman Decl. ¶ 7; SUF.68-70.) According to Plaintiffs, these free legal services were "incidental to Mr. Shenkman's consultation and pre-filing investigation." (Opp. p. 17.) But Plaintiffs cite no applicable gift exception – because there is none.[9]

As a last-ditch effort, Plaintiffs say it is irrelevant because all the services were provided over

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[7] The statements in the City's demurrers are not judicial admissions precluding this Court's consideration of financial conflicts. (See *Travelers Indem. Co. of Connecticut v. Navigators Specialty Ins. Co.* (2021) 70 Cal.App.5th 341, 360–61 ["To be considered a binding judicial admission, 'the declaration or utterance must be one of fact and not a legal conclusion, contention, or argument.'"].) These statements were made in the context of discussing Council's January 26, 2021 decision, which was solely based on the common law, and asserted long before De la Torre produced any discovery. This Court may therefore look beyond arguments made at the pleadings stage.

[8] The City correctly cited an FPPC letter at 1995 WL 912275, but Westlaw had a typographical error on the parallel cite – citing to I-95-287 rather than I-95-288. (See Silb. Dec. Ex. 1.) Rather than utilizing the provided Westlaw citation, Plaintiffs refer this Court to I-95-287. It is not surprising Plaintiffs try to avoid reference to 1995 WL 912275, because it demonstrates Shenkman's free legal services were gifts giving rise to a disqualifying financial conflict.

[9] Plaintiffs quote a single FPPC letter (I-94-147), but do not explain how it shows that Shenkman's free legal services are exempt contributions. First, the gift definition exempts only "[c]ampaign contributions [that] are required to be reported." (Gov. Code, § 82028(b)(4).) De la Torre has not only failed to report any such contributions in 2021, but he could not even accept such contributions because he has already reached the $340 local election limit in donations from Shenkman. (RJN, Exs. 1-2.) The City presumes he did not accept illegal and improper contributions, but if he did, such actions would further support his unclean hands. (See Mem. p. 17 fn.9.) Second, Plaintiffs cannot claim the free legal advice is a non-reportable voluntary personal service because Shenkman testified he intends to seek repayment in the CVRA Action. (SUF.127.) Nor do such personal services qualify as being for a "political purpose" because they are not being "carried on for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the qualification or passage of any measure." (Cal. Code Regs. tit. 2, § 18423; see also FPPC Adv. A-00-226, 2000 WL 1876491 ["payments made in connection with" "litigation aimed at influencing the action of the city" "are not made for a political purpose"].)

12 months ago, and that somehow the City is to blame because it "dragg[ed] Mr. Shenkman into this case." (Opp. at p. 16.) Neither argument has merit. Shenkman's involvement has extended well past January 2021 and has nothing to do with any action of the City. After all, it is Trivino-Perez – not the City – who has forwarded nearly all documents served in this case on Shenkman within minutes of being received. (SUF.113-119.) And it was Plaintiffs' and Shenkman's decision to provide documents for collection in this case in December 2021. Shenkman also decided to file multiple declarations in this case for multiple motions, and even provide legal arguments during a meet and confer in November 2021 for more than two hours (which alone exceeds the gift limit). (SUF.120.) And, significantly, Shenkman has not denied drafting or participating in the drafting of documents in this case, despite multiple opportunities to expressly disclaim this fact. (SUF.99.) All Shenkman and Trivino-Perez are willing to say under oath is that the question of Shenkman's participation was racist because it implies Trivino-Perez cannot draft these documents by himself. Of course, the question does not include any such implication – lawyers often co-draft filings. As such, Plaintiffs have failed to raise a disputed issue as to Shenkman's continued involvement in this case (see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849), and the undisputed evidence is that Shenkman continued to provide legal services (within the last 12 months), and such services are also a disqualifying gift.[10]

2. Holistic's Financial Conflict Is Reasonably Foreseeable

Plaintiffs cannot dispute that a favorable outcome for Loya in the CVRA Action would create increased prestige and business for her company, Holistic. Plaintiffs merely dispute the magnitude of this possibility (Opp. at p. 18), and rely upon a 1975 FPPC letter wherein the FPPC actually found that a conflict was reasonably foreseeable under most of the hypothetical situations presented to it. (1 FPPC Oppn. 198, 1975 WL 37363, at *7-8.) The only situation where the FPPC did not find a conflict reasonably foreseeable is unrelated to the facts here. (*Id.* at *6.) Moreover, it is undisputed that: Holistic does consulting work mainly on "social justice" and "socioeconomic" issues, including

[10] Plaintiffs cannot invent a disputed fact by relying on an amended interrogatory answer served after De la Torre's deposition and without any explanation as to trying to change the characterization of Shenkman's "preliminary legal advice" to advice that is of a "political or friendly nature." (SUF.65; WTP Decl. Ex. E; see *Whitmire v. Ingersoll-Rand Co.* (2010) 184 Cal.App.4th 1078, 1088–89.) Nor would any explanation be reasonable, given that De la Torre himself relied on privilege to refuse to answer questions about advice Shenkman gave him (SUF.71, 138) and Plaintiffs' Opposition conceded that the advice provided in January 2021 was legal (Opp. p.17.).

an immigration rights client (SF.140-142); De la Torre receives direct compensation from Holistic (SF.143-144.); and Loya expressly admitted that achieving her public policy goals is good for Holistic (SF.145-146). Similarly, Plaintiffs' attempts to distinguish the *Strickland* opinion are unavailing, as the Attorney General clearly stated that the potential increase in prestige leading to additional clients created a conflict. (86 Ops.Cal.Atty.Gen. 138 (2003), 2003 WL 21738753, at *3.)

II. Plaintiffs' Declaratory Relief Claim Fails for Additional Reasons

A. The Declaratory Relief Sought Here Is Improper

Plaintiffs have no response to the City's argument that they are improperly challenging the City's past action of disqualifying De la Torre on January 26, 2021. Because "[d]eclaratory relief operates prospectively to declare future rights, rather than to redress past wrongs" (*Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1497), it is neither necessary nor proper for this Court to issue the requested relief here, regardless of whether De la Torre has a conflict. Any attempt to invalidate Council's past actions should have been brought by mandamus, which Plaintiffs strategically declined to do.

Plaintiffs also fail to explain how they can obtain a prospective declaration on conflicts. (Mem. at pp. 6-7.) They only rely on a case concerning the ripeness of a facial constitutional challenge. (Opp. at p. 19.) But that has nothing to do with the question at issue here – whether the Court can issue a declaration on conflicts applicable to all possible scenarios. (See Mem. at p. 6.) That would be impossible to do – whether a conflict exists is not a static situation. While Plaintiffs assert that "unforeseeable 'future actions'" should not prevent this Court from issuing declaratory relief (Opp. at p. 19), it is far from unforeseeable that a new layer of conflict may exist in the future, given De la Torre's ongoing relationships and involvement in the CVRA Action.

B. Plaintiffs Fail to Refute That the City Is Empowered to Declare a Conflict

The City demonstrated that Council has the authority to resolve common law conflict questions because "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." (Mem. at p. 7, quoting *People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921, 940.) In response, Plaintiffs claim that Council lacks authority because the State has enacted laws on *financial* conflicts

of interest. (Opp. at p. 10 fn.2.) But that fails to address Council's determination of *common law conflicts*, and the mere fact that there are state laws on financial conflicts does not mean that Council lacks authority to disqualify one of its members. Indeed, nothing in the PRA or section 1090 forbids a city from taking necessary steps to avoid violating those statutes. (See Gov. Code, § 81013 [PRA does not prohibit local agency from "imposing additional requirements"].) This claim thus fails.

C. Serna Lacks Standing to Bring a Declaratory Relief Claim

Relying on a U.S. Supreme Court decision for the proposition that a single plaintiff with Article III standing ends the discussion as to other parties (Opp. at pp. 18-19), Plaintiffs claim that Serna has standing. But this principle is found nowhere in California law. *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439, does not apply because that case was a writ of mandate, under which the public interest standing doctrine applies (see Mem. at p. 18 fn.10), and no such claims are at issue here. Plaintiffs' 40-year-old Southern District of Ohio case is also unhelpful – that case was distinguished by the City's authority (which Plaintiffs wholly ignore) because there was no analysis and it involved the complete removal of the public official. (See *Page v. Tri-City Healthcare Dist*. (S.D. Cal. 2012) 860 F.Supp.2d 1154, 1170.)

III. Plaintiffs' Brown Act Claim Is Unsupportable and Absurd

Relegating their argument to a footnote (p. 20 fn. 7), Plaintiffs offer little to defend their Brown Act claim and do not even attempt to address the City's arguments. Their only argument – closed sessions accessible to only a majority of the members of a legislative body are prohibited – is directly contrary to the text and purpose of the Brown Act. (See Mem. at pp. 18-19.) It says nothing about the ability of a public official (as opposed to a member of the public) to participate in any specific meeting. Nor is there any language in the Brown Act that a meeting must be "accessible" to the entire legislative body even if someone cannot attend. Such an interpretation remains absurd because it would abrogate the conflicts of interest doctrine, which prohibits officials with conflicts from participating. Plaintiffs' view is simply not the law.

CONCLUSION

The Court should enter summary judgment or at least summary adjudication for the City.

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