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| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Wilfredo Trivino-Perez, SBN 219345 Trivino Perez & Associates 10940 Wilshire Blvd., 16th Floor Los Angeles, CA 90024 TELEPHONE NO.: 310-443-4251 FAX NO. (Optional): E-MAIL ADDRESS (Optional): wtpeaq@gmail.com ATTORNEY FOR (Name): Plaintiffs Oscar de la Torre and Elias Serna | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles - Central District STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill St. CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Stanley Mosk Courthouse | |
| PLAINTIFF/PETITIONER: Oscar de la Torre and Elias Serna DEFENDANT/RESPONDENT: City of Santa Monica | |
| NOTICE OF SETTLEMENT OF ENTIRE CASE | CASE NUMBER: 21STCV08597 JUDGE: Richard L. Fruin DEPT.: 15 |

NOTICE TO PLAINTIFF OR OTHER PARTY SEEKING RELIEF

You must file a request for dismissal of the entire case within 45 days after the date of the settlement if the settlement is **unconditional**. You must file a dismissal of the entire case within 45 days after the date specified in item 1b below if the settlement is **conditional**. Unless you file a dismissal within the required time or have shown good cause before the time for dismissal has expired why the case should not be dismissed, the court will dismiss the entire case.

To the court, all parties, and any arbitrator or other court-connected ADR neutral involved in this case:

1. This entire case has been settled. The settlement is:
 - a. **Unconditional**. A request for dismissal will be filed within 45 days after the date of the settlement.
Date of settlement: 07-18-2022
 - b. **Conditional**. The settlement agreement conditions dismissal of this matter on the satisfactory completion of specified terms that are not to be performed within 45 days of the date of the settlement. A request for dismissal will be filed no later than (date):
2. Date initial pleading filed: 03-04-2021
3. Next scheduled hearing or conference:
 - a. Purpose: Final Status Conference
 - b. (1) Date: 08/05/2022
(2) Time: 8:30 AM
(3) Department: 15
4. Trial date:
 - a. No trial date set.
 - b. (1) Date: 08/15/2022
(2) Time: 9:30 AM
(3) Department: 15

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 20, 2022

Wilfredo Trivino-Perez

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

Wilfredo Trivino-Perez

(SIGNATURE)

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into and effective as of July 18, 2022, by and among Plaintiffs Oscar de la Torre, an individual and Councilmember of the City of Santa Monica ("de la Torre"), and Elias Serna, an individual ("Serna") (collectively "Plaintiffs"); and Defendant the City of Santa Monica, a municipal corporation and a California charter city duly organized under the laws of the State of California, acting through its City Council ("City" or "City Council") (all collectively the "Parties").

RECITALS

- A. Plaintiff Oscar de la Torre is a Councilmember for the City of Santa Monica, California, and has been since December 2020. Serna is an individual resident of the City of Santa Monica.
- B. A dispute arose between the City Council and de la Torre as to whether de la Torre had a disqualifying conflict of interest that precluded his involvement in City Council decisions and discussions concerning the litigation captioned *Pico Neighborhood Association, et al. v. City of Santa Monica*, Los Angeles Superior Court, Case No. BC 616804, Second District Court of Appeal, Case No. B295935, California Supreme Court, Case No. S263972 (*Pico* case).
- C. A majority of the City Council voted to exclude de la Torre from participation in the *Pico* case.
- D. Thereafter, Plaintiffs filed suit in the case captioned *Oscar de la Torre, et al. v. City of Santa Monica*, Los Angeles Superior Court, Case No.: 21STCV08597 (*Conflict* case), claiming a conflict of interest does not exist and challenging the Council decision to exclude de la Torre.
- E. Now, following discovery and the Parties having filed motions for summary judgment, which were all denied, the Parties have determined it is in the Parties' best interests and the public interest to resolve this matter.
- F. The Parties agree this Agreement is the compromise of disputed claims and this Agreement may not be construed as an admission of liability or wrong doing on the part of any Party or individual.
- G. The City Council and each of its members intend this Agreement to bind the City, City Council, and each City Councilmember individually.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants set forth below, and further good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. The above Recitals are incorporated into this Agreement.
2. Settlement Terms. The Parties agree to the following terms to settle and resolve the Conflict case:
 - a. Upon the full execution of this Agreement, the Parties shall jointly file a stipulation of dismissal of the Conflict Case with the Los Angeles Superior Court. The stipulation of dismissal shall provide for the dismissal with prejudice of the Conflict Case, shall attach this Agreement fully executed by the Parties, provide for the Court to retain jurisdiction pursuant to Code of Civil Procedure section 664.6 to enforce this Agreement until full performance of the terms of this Agreement, which shall be no sooner than the ultimate conclusion of the *Pico* case, and include a proposed order for the Court's assent to the stipulation.

- b. The City Council hereby withdraws and vacates its decision to exclude Councilmember de la Torre from closed sessions or any other participation in the Pico case.
- c. City shall not exclude, or seek to involuntarily exclude, Councilmember de la Torre from any discussions, decisions or other participation in the Pico case. Rather, the Parties agree that, with respect to the Pico case, the decision to recuse on account of any potential conflict of interest shall be left to each Councilmember, who may seek advice from the City Attorney if there is any question of a potential conflict.
- d. The Parties shall issue a neutral agreed upon statement in the form attached hereto as Exhibit A, with no other public or media discussion by Councilmembers or City of the Conflict case or this Agreement, other than to refer to the neutral statement. Any questions as to application of this provision shall be discussed between Plaintiffs' counsel and the City Attorney.
- e. No Councilmember will disclose confidential information from closed session discussions or any City attorney-client privileged communication regarding the Pico case without the City Attorney present, except as required by law, and no Councilmember shall assert any privilege in response to any question as to whether this will have occurred in the future. If there is any question or concern about what can be disclosed, the City Attorney shall be consulted before any such disclosure. The remedy for Councilmember violations of this provision shall be any remedy under the law, and the Parties expressly reserve the right to argue that any Councilmember who unlawfully discloses confidential information from closed session discussions should be recused from further participation in the Pico case. Counsel for Councilmember de la Torre consent to his discussing this matter with the City Attorney, other than prior attorney client privileged communications, following the effective date of this Agreement.
- f. The City shall pay \$92,500 to Mr. Trivino-Perez for reimbursement for fees and costs in the Conflict case; prior to payment, Mr. Trivino-Perez will provide to the City Attorney written detail on fees and costs, equal to or greater than \$92,500, incurred in the Conflict case as would be required in making a fee application with the court.
3. The Parties hereby fully release and forever discharge one another, as well as their respective Councilmembers, attorneys, agents, officers, employees, contractors, and volunteers (collectively the "Releasees"), from any and all rights, claims, demands, actions, and causes of action, past and present, known and unknown, which Plaintiffs may now have against them, pertaining to all claims asserted or that could have been asserted based on the facts alleged in the Conflict case.
4. Waiver Of Rights Under Civil Code Section 1542. The Parties acknowledge they have had the opportunity to review this matter with legal counsel of their choosing and are familiar with the provisions of California Civil Code section 1542, which provides as follows:
- A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The Parties, being aware of this Code section, hereby expressly waive any rights they may have thereunder, or under any statutes or common law principles to similar effect.

5. **Non-Assignment of Interests.** Plaintiffs represent and warrant that they have not assigned or otherwise transferred any interest in any claim that they may now have against the City arising out of the Conflict case.

6. **Parties' Remedies.** Each Party shall have all rights and remedies available at law or in equity for the other Party's breach of this Agreement including, but not limited to, an action for specific performance and/or injunction and/or an action for monetary damages.

7. **Entire Agreement.** This Agreement contains the sole and entire agreement and understanding among the Parties concerning the subject matter thereof, and any and all prior discussions, negotiations, commitments, or understandings related hereto, if any, are merged herein and superseded hereby. No representations, warranties, promises, covenants, undertakings, commitments, restrictions or other obligations, verbal, written or otherwise, expressed or implied, other than those expressly contained herein, have been made by any Party to the other concerning the subject matter of this Agreement.

8. **Amendments and Waiver.** This Agreement may be amended only by an agreement in writing signed by each Party hereto. No waiver of any provision or consent to any exception to the terms of this Agreement shall be effective unless in writing and signed by the Party to be bound, and then only for the specific purpose, extent, and instance so provided. Failure on the part of any Party to enforce any of their rights under this Agreement shall not be construed as a waiver of such rights, and a waiver by any Party of a default hereunder in any instance shall not be construed as constituting a continuing waiver or as a waiver in other instances.

9. **Voluntary Agreement; Representation by Counsel.** This Agreement is executed voluntarily by each of the Parties hereto without any duress or undue influence on the part of, or on behalf of, any of them. The terms of this Agreement have been negotiated by the Parties, and the language of this Agreement shall not be interpreted under presumptions in favor of or against any particular Party. Each of the Parties hereto represents and warrants to each other Party that they have read and fully understand the provisions of this Agreement and have had the opportunity to discuss the Agreement with legal counsel of their own choosing. Each of the Parties hereto further represents and warrants to each other Party that their officers or other representatives who sign this Agreement on their behalf are authorized to do so and to bind that Party, both by consent of that Party and under applicable law, and that they are executing this Agreement pursuant to that authority. The Parties, and each of them, acknowledge that each has had the opportunity to be represented in the negotiations for and in the performance of this Agreement by counsel of their own choice; that they have read this Agreement; that they have had the opportunity to have this Agreement fully explained to them by counsel of their own choice; and that each is fully aware of the contents of this Agreement and of its legal effect.

10. **Binding Effect.** This Agreement shall inure to the benefit of the Parties' respective successors, assigns, representatives.

11. **Governing Law.** The validity, interpretation, effect, and enforcement of this Agreement, or any portion thereof, shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of California, without regard to any choice of law provisions. All litigation or other proceedings arising out of this Agreement

to interpret or enforce this Agreement, or any portion thereof, or to recover for any breach thereof, shall be filed in the Los Angeles County Superior Court, unless the Parties agree in writing to an alternative venue for litigation or dispute resolution.

12. Further Assurances. Each Party shall, whenever reasonably requested by the other Party, execute or cause to be executed all such instruments, documents, writings, or agreements as may be necessary to carry out the purposes of this Agreement, and each Party shall do all other acts necessary or reasonably requested by the other Party to carry out the intent and purposes of this Agreement.


13. Counterparts. This Agreement may be executed in one or more counterparts, including in portable document format ("PDF") and/or digital signatures, each of which shall be deemed an original agreement, but all of which together shall constitute one agreement.

14. No Third Party Beneficiaries. Nothing in this Agreement is or shall be construed to be intended to benefit any third party or create any third party beneficiary.

15. Severability. If any terms of this Agreement are determined by any court to be unenforceable, the remaining terms of this Agreement shall nonetheless remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as provided above.

PLAINTIFFS:


Oscar de la Torre, an individual and Councilmember


Elias Serna, an individual

APPROVED AS TO FORM:


Wilfredo Trivino-Perez, attorney for Plaintiffs

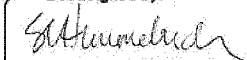
CITY OF SANTA MONICA,
a municipal corporation, by:


David White, City Manager

APPROVED AS TO FORM:


Doug Sloan, City Attorney

CITY COUNCIL OF THE
CITY OF SANTA MONICA, by:


Sue Himmelreich, Mayor

ATTEST:

DocuSigned by:

Denise Anderson-Warren, City Clerk

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| PLAINTIFF/PETITIONER: <i>OSCAR de la Torre and ELIAS SERVA</i> DEFENDANT/RESPONDENT: <i>City of SANTA MONICA</i> | CASE NUMBER: <i>21STCV08597</i> |
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PROOF OF SERVICE BY FIRST-CLASS MAIL

NOTICE OF SETTLEMENT OF ENTIRE CASE

(NOTE: You cannot serve the Notice of Settlement of Entire Case if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):
 10940 Wilshire Blvd. 16th Floor
 Los Angeles, CA 90024

2. I served a copy of the *Notice of Settlement of Entire Case* by enclosing it in a sealed envelope with postage fully prepaid and (check one):

- a. deposited the sealed envelope with the United States Postal Service.
- b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Settlement of Entire Case* was mailed:

- a. on (date): July 20, 2022
- b. from (city and state): Los Angeles, CA

4. The envelope was addressed and mailed as follows:

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| a. Name of person served: Douglas Sloan, City Attorney Street address: 1685 Main Street, 3rd Floor City: Santa Monica State and zip code: CA 90401 | c. Name of person served: Street address: City: State and zip code: |
| b. Name of person served: Carol Silberberg, Esq. Street address: 155 N. Lake Ave., Suite 800 City: Pasadena State and zip code: CA 91101 | d. Name of person served: Street address: City: State and zip code: |

Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

5. Number of pages attached 0 .

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 20, 2022

Wilfredo Trivino-Perez, Esq.

 (TYPE OR PRINT NAME OF DECLARANT)

Wilfredo Trivino-Perez

 (SIGNATURE OF DECLARANT)