

1 Wilfredo Alberto Trivino-Perez (SBN 219345)
wtpesq@gmail.com
2 **TRIVINO-PEREZ & ASSOCIATES**
10940 Wilshire Blvd., 16th Floor
3 Los Angeles, CA 90024
Phone: (310) 443-4251
4 Fax: (310) 443-4252

5 Attorneys for Plaintiffs Oscar De La Torre and Elias Serna

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
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
**SUPPLEMENTAL DECLARATION OF
KEVIN SHENKMAN IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**
Dept. 15
[Hon. Richard Fruin]

1 I, Kevin Shenkman, declare as follows:

2 1. I am one of several attorneys representing the plaintiffs in the case styled
3 *Pico Neighborhood Association, et al. v. City of Santa Monica* (“Voting Rights Case”).
4 I am over the age of 18 and have personal knowledge of the facts contained in this
5 declaration. I previously submitted a declaration in support of Plaintiffs’ motion for
6 summary judgment; I offer this supplement only to address certain erroneous
7 accusations by Defendant in its opposition to Plaintiffs’ summary judgment motion.
8 Though I fail to see how any of those accusations could possibly be relevant to whether
9 Santa Monica City Council Member Oscar de la Torre has a conflict of interest that
10 prevents him from participating in discussions and decisions concerning the Voting
11 Rights Case, I submit this declaration so that Defendant’s irresponsible accusations are
12 not left un rebutted. If called as a witness, I could and would competently testify as
13 follows:

14 2. Oscar de la Torre had no role in drafting any complaint in the Voting
15 Rights Case. The attorneys for the plaintiffs, including me, were responsible for that
16 task. Mr. de la Torre, like other knowledgeable witnesses with whom we spoke in 2015
17 and 2016, provided us with some information that we included in those complaints, but
18 none of those witnesses, including Mr. de la Torre, had any involvement in the drafting
19 of the complaints. I believe Mr. de la Torre may have read the complaints around the
20 time they were, respectively, filed, but, again, he was not involved in the drafting or
21 revising of any complaint in the Voting Rights Case.

22 3. I understand that Defendant accuses me, in its opposition to summary
23 judgment, of receiving confidential closed session information from an Albany City
24 Council member – Michael Barnes. I have never received any closed session
25 information of any sort from Mr. Barnes or any other member of the Albany City
26 Council. That is likely why the Albany Mayor’s recommendation to censure
27 Councilman Barnes was rejected by all of the other members of the Albany City
28 Council. Just like the Albany Mayor, Defendant has absolutely no evidence, but still
irresponsibly accuses me of a crime.

1 4. Neither I, nor any of the attorneys of Shenkman & Hughes PC, have
2 provided Councilman de la Torre with any gift of legal services. I understand that
3 Defendant claims my advice to Councilman de la Torre in December 2020 and January
4 2021 constitutes a gift of legal services; it was not. As I explained in my deposition, I
5 would not characterize that advice as legal advice. Rather, while I suppose my thoughts
6 may always be informed by my knowledge of the law, my advice to Councilman de la
7 Torre was more of a political nature than a legal nature. Indeed, my advice was related
8 to his position as a member of the Santa Monica City Council and to assist him to carry
9 out the duties of his office.

10 5. Moreover, the only time I performed any work that may have assisted
11 Councilman de la Torre (aside from the off-the-cuff political advice described above,
12 which I don't regard as work at all) was in the few days leading up to the January 26,
13 2021 council meeting at which Defendant's city council majority voted to exclude
14 Councilman de la Torre from certain discussions and decisions. That work was
15 performed in contemplation of potentially pursuing a lawsuit challenging Defendant's
16 exclusion of Councilman de la Torre - which, by January 24, 2021 appeared to be
17 inevitable. Most of my firm's practice involves claims with one-way fee-shifting
18 statutes – voting rights, class action and Private Attorney General Act cases, for
19 example. In all of those cases, we don't bill our clients for our legal services; rather, if
20 we prevail in those cases we seek recovery of our fees from the defendant pursuant to,
21 for example, Elections Code section 14030, Code of Civil Procedure section 1021.5 or
22 Labor Code section 2699(g). The then-contemplated case challenging the exclusion of
23 Councilman de la Torre, in my view, would similarly present an opportunity to recover
24 attorneys' fees from Defendant under Code of Civil Procedure section 1021.5 and/or
25 Government Code section 54960.5. In all of our cases, we engage in a thorough pre-
26 filing investigation that often requires an investigation into the facts of the case and also
27 any relevant law. We never charge our clients or potential clients for any such pre-
28 filing investigation, but that does not make such a pre-filing investigation a gift; rather,
we perform such pre-filing investigations with the understanding that we may later

1 recover fees for that work from a defendant. (See *Stokus v. Marsh* (1990) 217
2 Cal.App.3d 647, 654-656.) Ultimately, in this instance, we concluded that while
3 Defendant's exclusion of Councilman de la Torre is unlawful, and we were not
4 ethically precluded from pursuing a case challenging that exclusion, it would be better
5 for other counsel to pursue that case. Councilman de la Torre and Elias Serna secured
6 other counsel, Mr. Trivino-Perez, and he has pursued the case we had once
7 contemplated filing.

8
9 I declare under penalty of perjury under the laws of the State of California that
10 the foregoing is true and correct.

11 Executed this 2nd day of April 2022, at Malibu, California.



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13 _____
Kevin Shenkman

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