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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** **PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION** Date: May 6, 2022 Time: 9:15 a.m. Dept. 15 [Hon. Richard Fruin]

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I. INTRODUCTION

Through all of its complicating intrigue and innuendo, Defendant still fails to identify any "personal" interest Councilmember de la Torre has in the Voting Rights Case. With no "personal interest," there can be no disqualifying conflict of interest that prevents Councilmember de la Torre from fulfilling his duties as an elected member of the Santa Monica City Council to weigh in on all matters concerning the city. (88 Ops.Cal.Atty.Gen. 32 (2005) at pp. 8-9 ["While common law conflicts may sometimes arise in the absence of a financial interest, there still must be some personal advantage or disadvantage at stake" that is different than the interest of a group of constituents generally.].)

If the plaintiffs prevail in the Voting Rights Case, Councilmember de la Torre and his wife will receive an undiluted vote in Santa Monica city council elections, just like all Santa Monica voters – nothing more. If the plaintiffs are unsuccessful in the Voting Rights Case, Councilmember de la Torre and his wife will continue to be subjected to a dilutive at-large election system, just like all Santa Monica voters. These facts, which are largely demonstrated by judicially noticeable documents and thus cannot be denied, compel the conclusion that Councilmember de la Torre has no disqualifying conflict of interest that prevents him from weighing in, as one of seven city councilmembers, on how the City should handle the Voting Rights Case. Contrary to Defendant's insistence, no amount of "embroilment with" the Voting Rights Case, or relationship with the plaintiffs or attorneys in that case, can substitute for the personal interest requisite for any disqualifying conflict of interest to exist. (See *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1208-1209, 1213-1214, 1231-1233 [finding no common law conflict, even where Torrance councilmember participated in council's decision on *his own* appeal, because councilmember had no peculiarly personal interest in the relief sought through his appeal].)

Defendant's attempts to avoid this straightforward rule are the same as it presented in its demurrer, and which this Court correctly rejected in overruling that demurrer:

> "Plaintiff De La Torre does not have a personal stake in that litigation but voices a point of view that is contrary to the majority of the councilmembers. These differing viewpoints are to be resolved in a fair political process. The City's actions to exclude the participation of a councilmember who campaigned in support of the plaintiffs in the CVRA litigation thwarts the political process …" (September 30, 2021 Ruling)

Again, this time through its summary judgment opposition, Defendant asks this Court to change the law and apply standards applicable only to judges and officials acting in a quasi-judicial capacity, so that it may

thwart the political process by excluding the dissenting voice of Councilmember de la Torre. Defendant's arguments have no more merit now than they did when this Court rejected them in overruling Defendant's demurrer. Nor is there any merit in Defendant's eleventh-hour attempt to conjure up some financial conflict after repeatedly disclaiming any such contention in this case.

Accordingly, Plaintiffs' summary judgment motion should be granted, so Councilmember de la Torre can do what he was elected to do – represent the overwhelming majority of Santa Monica voters who demand an end to Defendant's exceptionally wasteful and divisive fight against their voting rights.

II. DEFENDANT STILL FAILS TO IDENTIFY A PERSONAL INTEREST

In their moving papers, Plaintiffs explained that if an elected official does not have "some personal advantage or disadvantage at stake" that is different than the interest of a group of constituents, there is no conflict of interest, even if the elected official is heavily involved in, closely connected with, or supportive of, one side of litigation. (Motion, pp. 5-7, citing 88 Ops.Cal.Atty.Gen. 32 (2005) at pp. 8-9, and *BreakZone,* 81 Cal.App.4th at 1208-1209, 1213-1214, 1231-1239.) Plaintiffs challenged Defendant to identify any personal interest Councilmember de la Torre (or his wife) has in the Voting Rights Case. A full year after this case was filed, and more than a year after Defendant's city council majority deemed it had sufficient information to conclude Councilmember de la Torre had a disqualifying common law conflict in the Voting Rights Case, Defendant still has not, and cannot, identify any such "personal interest." It does not exist.

Unable to identify, much less provide evidence of, any "personal interest," Defendant, as predicted, instead focuses on Councilmember de la Torre's "wife being a party to the CVRA Action" and "his embroilment with the CVRA Action." (Opposition, p. 1.) But, as already explained in Plaintiffs' moving papers, neither a relationship with a litigant, nor past involvement in the dispute, is a substitute for a "personal interest." (Motion, pp. 6, 9-12; see also 88 Ops.Cal.Atty.Gen. 32 (2005) at pp. 8-9 ["Here, we find no common law conflict because, once again, the city council member has no personal stake – financial or otherwise – in the proposed lease of the city's property."].)

The sordid story Defendant presents in its Opposition, full of personal accusations with no evidence, is wrong, as detailed in Plaintiffs' response to Defendant's lengthy separate statement, but more importantly it is irrelevant. Even if everything in Defendant's story – full of irrelevant accusations about Kevin Shenkman being involved in this case, and Councilmember de la Torre's voluntary recusal from

addressing the sex abuse cases filed against Defendant because at least one of the victims is a family member – were accurate (it's not), none of that would change the fact that Councilmember de la Torre has no "personal interest" in the Voting Rights Case. Indeed, as explained more fully in Plaintiffs' moving papers, because of the nature of CVRA claims, even the Voting Rights Case plaintiffs themselves have no personal interest in the Voting Rights Case different than the public generally. (Motion, pp. 8-9, citing Elec. Code §§ 14029, 14032.)

Defendant's lengthy story only amplifies what Plaintiffs acknowledged in their operative verified complaint: that Councilmember de la Torre's wife is a plaintiff in the Voting Rights Case (SAC ¶¶ 17, 23); that he was a member of the organizational plaintiff's board (SAC ¶¶ 15, 32); and he has been involved in the effort to adopt district-based elections in Santa Monica, including through the Voting Rights Case (SAC ¶¶ 2, 17-19, 26, 28.) Because Defendant's Opposition presents nothing different than its demurrer, there is no reason for this Court to second-guess its decision overruling that demurrer, or its rationale for doing so – "Plaintiff De La Torre does not have a personal stake in that litigation but voices a point of view that is contrary to the majority of the councilmembers. ... The City's actions to exclude the participation of a councilmember who campaigned in support of the plaintiffs in the CVRA litigation thwarts the political process …." (Sept. 30, 2021 Ruling).

III. WITHOUT A PERSONAL INTEREST IN THE VOTING RIGHTS CASE, THERE IS NO CONFLICT OF INTEREST.

Unable to identify any personal interest in the Voting Rights Case, and unable to cite any authority finding a common law conflict of interest based merely on a councilmember's relationships in the absence of a personal interest,[1] Defendant invites this Court to disqualify Councilmember de la Torre based on the mere "appearance of" a conflict of interest. (Opposition, p. 6.) That murky standard, susceptible to

[1] The authority Defendant's interim city attorney initially cited, and Defendant still relies upon now – 92 Ops.Cal.Atty.Gen. 19 (2009) – involves a clear personal interest. That Attorney General opinion addressed the decision by a redevelopment agency to give a loan to the son of one of the agency's members. That loan was, of course, a personal benefit to the member's son. Here, a victory (or a settlement) in the Voting Rights Case confers no personal benefit to Ms. Loya or the Pico Neighborhood Association, let alone to Councilmember de la Torre. Rather, win or lose, Councilmember de la Torre, like his wife, will get nothing more or less than other Santa Monica voters – either an undiluted vote in city council elections, or the continued subjugation of a discriminatory election system. (*Cf.* Gov't Code § 87103; Cal. Code Regs. tit. 2 § 18703.)

manipulation, is not applicable to elected officials acting in their legislative capacity, as Councilmember de la Torre seeks to do here.

A. Laws Expressly Applicable to the Judicial Branch, Prosecutors and Public Officials Acting in a Quasi-Judicial Capacity, Do Not Apply Here.

Unlike the authorities relied upon in Plaintiffs' moving papers, Defendant's authorities do not address the only three sources of law governing conflicts of interest for elected officials acting in their legislative capacity – the Political Reform Act, Government Code section 1090 and the common law doctrine of conflicts of interest.

In *People v. Connor* (1983) 34 Cal.3d 141, misleadingly relied on by Defendant, the court addressed the disqualification of the Santa Clara County District Attorney's office, pursuant to Penal Code section 1424, because "a deputy district attorney who was employed in that office was both a witness to, and arguably a victim of, the criminal conduct" being prosecuted. (*Id.* at 144.) Councilmember de la Torre is not seeking to prosecute any criminal offense, so neither Penal Code section 1424, nor its unique standard peculiarly suited to criminal prosecution, applies here.

In *Kimura v. Roberts* (1979) 89 Cal.App.3d 871, also incorrectly relied on by Defendant, the court addressed whether the Woodland city council could remove an appointed planning commissioner who was the wife of one of the council members. The council never suggested that the commissioner's marital relationship with a councilmember resulted in a conflict of interest that legally prohibited her from serving; they reasoned it was a "moral conflict of interest rather than a legal conflict of interest." (*Id.* at 873.) The *Kimura* court upheld the removal of the commissioner because "[t]he law is clear that a planning commissioner serving at the pleasure of the appointing power may be terminated for any reason, without cause, notice or a hearing so long as the reason for removal is not an unconstitutional one." (*Id.* at 874.) The court did not evaluate whether the marital relationship between a commissioner and councilmember resulted in any conflict of interest under the law; the court had no need to. Councilmember de la Torre is not an appointed official serving at the pleasure of the city council; he is an elected member of the council himself. Therefore, the standard the Woodland City Council decided to apply for a "moral conflict of interest" does not supplant the legal standard here. (*Id.* at 873.)[2]

[2] Councilmember de la Torre's comments in support of a proposed "anti-nepotism" policy governing who may serve on Santa Monica's commissions are inapposite for the same reason; and, in any event, comments by Councilmember de la Torre are not legal authority.

Defendant's citation to judicial ethics rules and cases addressing councilmembers sitting in a quasi-judicial capacity, similarly miss the mark. In *Petrovich Devel. Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, the court did not address whether a council member had a conflict of interest under any statute or the common law doctrine of conflicts of interest. Rather, the issue was "whether there was a fair trial." (*Id.* at 972.) The *Petrovich* court explained: "City council members wear multiple hats. It is commonly understood that they function as local legislators. But sometimes they act in a quasi-adjudicatory capacity similar to judges. [This] is one of the times that a city council acts in a quasi-adjudicatory capacity. *When functioning in such an adjudicatory capacity*, the city council must be 'neutral and unbiased.'" (*Id.* at 973 (emphasis added).) Similarly, the court in *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012 addressed matters in which city councils "act in an adjudicatory capacity, that is, they sit in a role similar to judges," and never mentions conflicts of interest, except in describing the decisions in *BreakZone* and *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152. (*Woody's* 233 Cal.App.4th at 1021.) The *Woody's* court's distinction of *BreakZone* addresses only the portion of *BreakZone* discussing fair hearings in quasi-adjudicatory matters, not the portion of *BreakZone* finding the absence of a common law conflict. (*Id.*) Unlike the statutes and common law doctrine concerning conflicts of interest, the "neutral and unbiased" standard described in *Petrovich* and *Woody's* is not applicable to legislative decisions of a city council. (See *Save Civita Because Sudberry Won't v. City of San Diego* (2021) 72 Cal.App.5th 957, 983-984 [distinguishing both *Petrovich* and *Woody's* because those cases are limited to quasi-judicial decisions, and are not applicable to legislative decisions: "The principle" that "[a] decisionmaker must be unbiased" discussed in *Petrovich* and *Woody's* "do[es] not apply to quasi-legislative action." (citing cases)].) Council decisions about how to respond to litigation – whether to settle, fight or something entirely different – are legislative, not quasi-judicial. (See *Harris v. DeSoto* (Haw. 1996) 911 P.2d 60, 70-74 [surveying the law of several states: "the power to settle or compromise claims lies exclusively in the legislative branch of municipal government."].) The decision about how to respond to the Voting Rights Case is particularly legislative, not quasi-judicial, because of the broad policy effect that decision has on both the city's coffers and elections; that decision requires no hearing, so Defendant's "fair hearing" cases are inapposite.

Plaintiffs agree with the principle stated in *Woody's*: "You cannot be a judge in your own case." (*Woody's* 233 Cal.App.4th at 1016.) Councilmember de la Torre does not seek to be the judge in the Voting

Rights Case or otherwise adjudicate that case – that role is already filled by Hon. Yvette Palazuelos, and now the justices of the California Supreme Court. It would be unlawful for *any* of the councilmembers to be the judge in the Voting Rights Case. Rather, Councilmember de la Torre seeks to participate in the continuing decisions on how the City should handle the Voting Rights Case – continue to waste tax dollars fighting that lawsuit when those funds could be better spent on public safety, or seek to resolve the case amicably so the community can begin to heal from the divisive years-long fight prompted by Councilmember de la Torre's predecessors. That is a legislative decision, not a quasi-judicial decision, which Santa Monica voters elected Councilmember de la Torre to make.

B. Defendant's Other "Authorities" Are Not Authority At All.

Lacking any legal authority supporting its view that "relationships" and "embroilment" can suffice for a conflict of interest even in the absence of a personal interest, Defendant instead relies on the declaration of its purported expert, Frank Zerunyan, citing his declaration throughout its opposition as if that declaration were precedential legal authority. Mr. Zerunyan's opinions are no substitute for legal authority; they are not authority at all because expert witnesses are not permitted to usurp the role of the court by opining on the law. (See, e.g., *Summers v. A.L. Gilbert Co*. (1999) 69 Cal. App. 4th 1155, 1179-1181 ["allowing an expert to voice an opinion on an issue of law usurps the authority of the court."].)

Nor is the opinion of the Los Angeles City Attorney an authority in this case. LAC Op. No. 2005:3, which Defendant discusses extensively, expressly found no conflict under state law (in circumstances very similar to those presented in this case), and instead relied entirely on LA City Charter §222, which gives the elected city attorney of Los Angeles the power to disqualify any unelected board member if the city attorney feels it is "in the public interest." The Los Angeles city charter does not apply to Santa Monica, and Santa Monica has no similar provision in its charter; nor would LA City Charter §222 apply even if this case concerned Los Angeles rather than Santa Monica because Councilmember de la Torre is an elected councilmember not an unelected board member.

Statements by Councilmember de la Torre regarding unrelated matters, taken out of context, are also not a substitute for legal authority. Far from supporting Defendant's view that relationships alone, with no personal interest, can result in a common law conflict, Defendant's mention of Councilmember de la Torre's voluntary recusal from addressing sex abuse cases against Defendant, thus forcing

Councilmember de la Torre to reveal here that a member of his family was molested by Defendant's employee, demonstrates the depths to which Defendant will go to silence Councilmember de la Torre.

C. Defendant Misrepresents the Most Analogous Authority - *BreakZone*.

Unlike Defendant's "authorities," the decision in *BreakZone*, as discussed in Plaintiffs' moving papers, squarely addresses the question of this case – whether an elected councilmember may participate in council decisions concerning a dispute where the relief sought would affect a large group of constituents but he has a close relationship with one of the litigants. *BreakZone* answers that question in the affirmative.

Unable to distinguish the portion of *BreakZone* addressing common law conflicts – the subject of this case – Defendant misleads. Defendant repeatedly asserts councilman Walker "was never a real party in interest, nor the applicant" (Opposition, p. 8), but what Defendant omits is that councilman Walker was the party appealing the planning commission's decision. (*BreakZone*, 81 Cal.App.4th at 1213-1214.) The right to appeal the planning commission's decision was not limited to councilmembers, as Defendant suggests; similar to the CVRA, the appeal of the planning commission's decision in *BreakZone* could be appealed by "any interested person adversely affected." (Torrance Mun. Code §11.5.1, compare Elec. Code 14032.) And, while Defendant focuses on *BreakZone*'s discussion of the denial of a "fair hearing" (*BreakZone* at 1233-1241) – inapplicable here because Councilmember de la Torre does not seek to be the judge in the Voting Rights Case – Defendant fails to address the portion of *BreakZone* addressing the statutes and common law doctrine of conflicts of interest (*id.* at 1230-33). It is in discussing statutory and common law conflicts of interest that the *BreakZone* court recognized that with no personal interest there can be no conflict of interest, even in the case of councilman Walker who was himself the appellant. (*BreakZone*, 81 Cal.App.4th at 1230, 1232 ["the conflict of interest doctrine requires that the official have some interest in the outcome" "The facts of Terry v. Bender reveal that the public official there under scrutiny was alleged to have a direct and personal interest in the contract before that city council. There is no similar allegation in the instant case."].)

IV. DEFENDANT WAS RIGHT TO DISCLAIM ANY CONTENTION OF A FINANCIAL CONFLICT; COUNCILMEMBER DE LA TORRE HAS NONE.

Though Defendant previously disclaimed any contention that Councilmember de la Torre has a financial conflict in the Voting Rights Case (see Motion, p. 8) – perhaps because the FPPC concluded there is no financial conflict here (de la Torre Decl. Ex. F) – Defendant nonetheless attempts to now argue that

Councilmember de la Torre has a financial conflict. Regardless, as a matter of law, what Defendant now claims does not amount to a financial conflict.

Defendant claims that Kevin Shenkman provided Councilmember de la Torre with legal advice concerning Defendant's effort to exclude him, and that advice constitutes a gift of more than $520. (Opposition, p. 15.) In other words, according to Defendant, by excluding Councilmember de la Torre, which forced him to sue Defendant, and dragging Mr. Shenkman into this case by seeking documents from his firm and taking his deposition, Defendant was able to manufacture a financial conflict where none existed before, and thus justify its otherwise unlawful exclusion of Councilmember de la Torre. Defendant's perverse theory fails for several reasons. First, Mr. Shenkman's advice is expressly excluded from the definition of "gift." Specifically, the advice provided to Councilmember de la Torre related to how to address the attempt by Defendant to keep Councilmember de la Torre from performing his duties as a councilmember. (Silberberg Decl. Ex. 14, p. 13 [supplemental response to special interrogatory no. 8].) Therefore, pursuant to the "informational material" exception, that advice is "neither [a] gift[] nor income" even if it would "otherwise meet the definition of gift." (Code Regs., tit. 2 §§ 18942(a)(1), 18942.1 [defining "information material" to include any "service that serves primarily to convey information and that is provided to the official for the purpose of assisting the official in the performance of official duties … ."]; see also FPPC Adv. I-94-147 (1994) ["Because the [free] legal services were related to your position as a member of the Half Moon Bay Redevelopment Agency and not to personal matters unrelated to your status as an officeholder, the services would not be reportable on your statement of economic interests."].) Second, Mr. Shenkman's advice was not a gift; it was incidental to Mr. Shenkman's consultation and pre-filing investigation in contemplation of potentially representing Councilmember de la Torre in this case in which Mr. Shenkman could recover an award of attorneys' fees at the conclusion of the case. (Supp. Shenkman Decl. ¶ 5.) Ultimately, Mr. Shenkman and Councilmember de la Torre decided it would be better if Councilmember de la Torre secured other counsel to pursue this case, but that does not change the nature of those initial discussions. (*Id*.) The time spent by Mr. Shenkman over a few days was no more a gift of free legal services than the initial consultations and investigations routinely offered by contingency attorneys in contemplation of potential cases. Finally, even if Mr. Shenkman's advice to Mr. de la Torre could be construed as a "gift" of more than $520, it still would not result in a conflict now because that advice was provided, according to Defendant, in "December 2020 and January 2021" (Opposition, p. 15) –

more than twelve months ago. (See Gov't Code § 87103 [prohibition of elected official in participating in decision affecting source of gift is limited to where the gift is "provided or promised to, received by, the public official within 12 months prior to the time when the decision is made."]; Code Regs., tit. 2 § 18700(c)(6)(E) [same].)[3]

Defendant's other attempt to conjure up a financial conflict fares no better. Defendant claims "a settlement in the CVRA Action ***could*** lead to new customers and raise [the] prestige" of Ms. Loya's business, Holistic Strategies. (Opposition, p. 16 (emphasis added).) Defendant reasons that success in the Voting Rights Case might raise Ms. Loya's profile, which might attract some unidentified and as yet unknown customers to contract with Holistic Strategies, even though it is the attorneys and experts in the Voting Rights Case, not Ms. Loya or Holistic Strategies, who would be responsible for the success in the Voting Rights Case. That sort of speculation is insufficient to raise the specter of a financial conflict. Rather, for a conflict to exist, the government decision must "have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or the official's immediate family … ." (Code Regs., tit. 2 §18700(a).) If "the occurrence of the financial effect is contingent upon intervening events," or is a mere possibility, it is unlikely there is any conflict. (Code Regs., tit. 2 §18701(b)(1); *In re Thorner* (1975) 1 FPPC Ops. 198 ["although it is conceivable that lifting the moratorium will have a material financial effect …, we do not believe such an effect is reasonably foreseeable."].) It is no wonder then that the FPPC, in concluding that Councilmember de la Torre does not have a conflict of interest in the Voting Rights Case, refused to go down the rabbit holes suggested by Defendant's interim city attorney concerning, for example, what terms could possibly be included in a settlement of the Voting Rights Case. (de la Torre Decl. Exs. C, F.) Holistic Strategies currently has one client – a horseracing industry group – that has no connection to voting rights; Holistic Strategies has never done any work related to voting rights; it is exceptionally unlikely that any outcome of the Voting Rights Case will have any effect on its business. (Supp. Trivino-Perez Decl. Ex. C [Loya Depo. 81:2-15]).[4]

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[3] To support its argument, Defendant purports to quote from FPPC Adv. I-95-287. However, FPPC Adv. I-95-287 concerns the revolving-door provisions of the Department of Forestry, not anything even remotely relevant to this case, and the quotes Defendant includes in its brief are nowhere to be found in FPPC Adv. I-95-287. For the court's convenience, a copy of FPPC Adv. I-95-287 is attached as Exhibit E to the supplemental declaration of Mr. Trivino-Perez.

[4] This is in stark contrast to the facts addressed in FPPC Adv. A-95-352, in which 52% of the escrows closed in the relevant area were handled by the escrow company owned by the Palm Springs Mayor's wife, thus making it reasonably foreseeable that decisions affecting property values in that area would affect the company's revenue (which was dependent on purchase prices). (*Id.* at pp. 3, 11.) Likewise, 86

V. THE REMAINDER OF DEFENDANT'S ARGUMENTS ALL DEPEND ON ITS ERRONEOUS VIEW THAT COUNCILMEMBER DE LA TORRE HAS A CONFLICT OF INTEREST IN THE VOTING RIGHTS CASE.

Because Councilmember de la Torre does not have a disqualifying conflict of interest, he is entitled to declaratory relief. It follows from the lack of a conflict of interest, that Defendant cannot lawfully exclude Councilmember de la Torre from doing what he was elected to do; contrary to Defendant's suggestion, Plaintiffs are not somehow seeking to split their claim (Opposition, p. 5). Nor should any unidentified unforeseeable "future actions," which Defendant doesn't even attempt to posit (see Opposition, pp. 16-17), stop this Court from resolving this case based on the present facts. (See *Cmtys. for a Better Env't v. State Energy Res. Conservation & Dev. Comm'n* (2017) 19 Cal.App.5th 725, 739 ["the ripeness requirement should not operate in this case to prevent the trial court from resolving the concrete dispute before it, given that the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question."].)

Similarly, because Councilmember de la Torre does not have a disqualifying conflict of interest, excluding him from closed session meetings is a violation of the Brown Act, and he is entitled to an injunction prohibiting Defendant from continuing to hold closed session meetings while excluding him, as Defendant has threatened. As explained in Plaintiffs' motion (p. 13), the Brown Act does not permit a closed session accessible to just a majority of the members of a legislative body rather than all members. That does not mean, as Defendant caricatures, all councilmembers must attend every closed session, just that such closed sessions be accessible to all of them – a conclusion perfectly consistent with the Brown Act's purpose of promoting openness and limiting closed meetings.

VI. CONCLUSION

How to handle the Voting Rights Case is a legislative policy decision. As an elected city council member with no "personal interest" in the relief sought in that case, de la Torre is entitled to have his voice heard on that decision. His exclusion thwarts the political process. Plaintiffs' motion should be granted.

Ops.Cal.Atty.Gen. 138 (2003) addressed the peculiar circumstance of a city retaining *pro bono* "a law firm, of which a city council member is a partner," and was concerned with "circumstances [in which] the city's interests and the firm's interests might diverge," and "give rise to potentially significant cost concerns affecting the economic well being of the firm." (*Id.* at pp. 1, 4.) Only when "coupled with the[se] potential losses," did the Attorney General find potential "prestige, publicity and goodwill" for the firm to result in a financial interest. (*Id.* at p. 4.) Here, of course, any such prestige, publicity or goodwill would inure to the attorneys in the Voting Rights Case who prosecuted the case, not Holistic Strategies.

DATED: April 3, 2022

Respectfully submitted:
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